

STATE OF MICHIGAN

MICHIGAN NATIONAL GUARD - AGENCY,

vs.

ADVERSE ACTION APPEAL

JOSEPH L. SMOCK,

Appellant.

_____ /

MILITARY HEARING

BEFORE COLONEL KEVIN K. DAWKINS, HEARING EXAMINER

Camp Grayling, Michigan - Tuesday, October 7, 2014

Appearances:

For the Agency:

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Also Present: Joseph L. Smock
SSG Steven Schultz, Assist. CPT Bedells
LTC Alice Niedergall, HRO
MAJ Allyn Johnson, Labor Relations
Specialist
James Sweat, President 2132 Local
Ja'net Vallotton, 2nd Chair to Mr.
Banchs

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EXHIBITS:

MARKED:

None

1 Graying, Michigan
2 Tuesday, October 7, 2014 - At about 7:59 a.m.

3 COURT RECORDER: We are on the record.
4 Today's date is October 7th, 2014. The time is now 7:59
5 a.m.

6 THE HEARING EXAMINER: I will call this
7 meeting to--or this hearing to order. The time is 7:59
8 a.m. It is 7 October. We are in Building 104A at Camp
9 Grayling, Michigan.

10 The Adjutant General of Michigan has received
11 an adverse action appeal from Joseph Smock under the
12 provisions of Technician Personnel Regulation TPR 752.
13 This case is an adverse action resulting in removal
14 against Mr. Smock, the Appellant. Mr. Smock's appeal is
15 based upon his claim that there is a lack of cause or
16 supporting evidence for the action brought against him.

17 The purpose of this hearing is to afford both
18 the Appellant and the Agency the opportunity to present
19 evidence and witnesses, to cross-examine witnesses, and to
20 make presentations to support their respective views.

21 Now, in this case the Appellants have asked
22 for an open hearing, which is why we have the spectators
23 here in the room today. I'd like to just issue some
24 instructions to--to the audience members.

25 I expect quiet respect for this process. No

1 emotional outbursts or disruptive behavior of any kind.
2 No photography or any other form of recording of any part
3 of the proceeding. No entering or exiting the hearing
4 room between the time that a witness is sworn in and the
5 time that they're released from the room. If you need to
6 take a break or something, the best time to do that would
7 be when we're between witnesses. And no contact,
8 whatsoever, between the witnesses and the audience during
9 the testimony.

10 As previously stated in the prehearing
11 conference, the Agency will be asked to present its case
12 first. An opening statement may be made by the
13 representative for the Agency followed immediately by the
14 representa- --or representative for the Appellant. Please
15 note that I will afford the Appellant representative the
16 right to withhold their opening statement until the Agency
17 representative has completed their side of the case.

18 Do you have a preference, Mr. Banchs?

19 MR. BANCHS: I'm going to--I'm going to wait.

20 THE HEARING EXAMINER: Okay.

21 MR. BANCHS: Yes, sir.

22 THE HEARING EXAMINER: Is the representative
23 for the Agency ready to make his opening statement?

24 CAPTAIN BEDELLS: We are, sir. We're going to
25 reserve our time for additional time at closing, if we

1 need it. So essentially I'm going to waive it at this
2 point and just reserve it for the end of our case in
3 chief.

4 THE HEARING EXAMINER: Okay.

5 CAPTAIN BEDELLS: If you have no objections.

6 THE HEARING EXAMINER: No, I don't.

7 CAPTAIN BEDELLS: But while we're on the
8 record and before we start with our first witness, there
9 is one housekeeping matter, sir.

10 Yesterday, when we went through the Exhibit
11 list, you were very careful and noted--in noting each and
12 every exhibit to Book 1, MATES 15-6 Book 1. But what had
13 happened is the way this--and I spoke with Mr. Banchs
14 earlier today about this--the way this book was presented
15 to us by Colonel Doolittle--and we can establish this if
16 necessary when he testifies--is he had simply used a clip
17 of some--yeah--a clip of some sort to attach the actual
18 15-74 in his report. And I don't remember, as we went
19 through the record, as we established the record
20 yesterday, whether we actually noted that, in addition to
21 all the exhibits in-in Book 1 was the actual 15-74, and
22 the report that Colonel Doolittle wrote, which is--you
23 know, is done through numbered pages. So it should be
24 easy--that should be easy to reference.

25 MR. BANCHS: No objection, sir.

1 THE HEARING EXAMINER: Okay. So--

2 MR. BANCHS: And that's the way that our
3 binder that we provided you is tabbed out, with the first
4 tab is that.

5 THE HEARING EXAMINER: Okay.

6 MR. BANCHS: Yes, sir.

7 THE HEARING EXAMINER: Okay. Very good.

8 CAPTAIN BEDELLS: Okay. Great. Well, with no
9 objection, then we're ready to call our first witness.

10 THE HEARING EXAMINER: Okay. Proceed.

11 STAFF SERGEANT SCHULTZ: Colonel Meyers?

12 CAPTAIN BEDELLS: Right.

13 STAFF SERGEANT SCHULTZ: Colonel Meyers.

14 MAJOR JOHNSON: Okay.

15 CAPTAIN BEDELLS: Sir, if you'd sit right
16 there.

17 THE HEARING EXAMINER: If you could remain
18 standing for just a second, I'll swear you in, please.

19 Do you swear or affirm that the testimony that
20 you are about to give in this case is the truth, the whole
21 truth and nothing but the truth, so help you God?

22 LIEUTENANT COLONEL MEYERS: I do.

23 THE HEARING EXAMINER: Okay. Thanks.

24 Further, you're advised that you are assured the freedom
25 from restraint, interference, discrimination, coercion or

1 reprisal from testifying in this case.

2 THE WITNESS: Okay.

3 THE HEARING EXAMINER: Your witness.

4 CAPTAIN BEDELLS: Thank you, sir.

5 LIEUTENANT COLONEL SCOTT LEE MEYERS

6 (At about 8:05 a.m., sworn as a witness, testified as
7 follows)

8 DIRECT EXAMINATION

9 BY CAPTAIN BEDELLS:

10 Q Sir, would you please state your full name for the record?

11 A **Scott Lee Meyers.**

12 Q Colonel Meyers, how are you--how are you currently
13 employed?

14 A **I'm the Surface Maintenance Manager for the State as a
15 federal technician.**

16 Q Okay. And how long have you held that position as a
17 Surface Maintenance Officer?

18 A **About a year-and-a-half.**

19 Q Okay. And I note that you're wearing the Army uniform, so
20 I presume you are a member of the Michigan Army National
21 Guard, correct?

22 A **Yes.**

23 Q How long have you been a member of the Michigan Army
24 National Guard?

25 A **Since 1989.**

1 Q Okay. And I want to revert back to your capacity as the
2 Surface Maintenance Officer. Prior to holding that
3 position, were you a federal technician?
4 **A Yes.**
5 Q In another capacity?
6 **A Absolutely. It's my--**
7 Q Okay. On what--
8 **A --third job.**
9 Q What job was that?
10 **A I was the Superintendent of the CSMS.**
11 Q How long did you hold that position?
12 **A These are hard questions now. About four years.**
13 Q Prior to that four-year period, were you employed in
14 another capacity?
15 **A I was. I was the Maintenance Manager, managed all the**
16 **small shops throughout the State, the FMS's. I started**
17 **that in 2002.**
18 Q And that was Maintenance Manager?
19 **A It was.**
20 Q Okay. How long did you hold that position?
21 **A Whatever that difference is.**
22 Q From--did you say 2000?
23 **A 2002 is when I started.**
24 Q 2002?
25 **A Uh-huh.**

1 Q So if we backtrack, you were a year-and-a-half as the
2 Surface Maintenance Officer--

3 A **Yeah.**

4 Q --correct? Four years prior to that as a federal
5 technician, correct?

6 A **Correct.**

7 Q And then--so that'd take us back about five-and-a-half
8 years, so maybe eight-and-a-half years you were--or eight
9 years or so you were--

10 A **Right. And I had some deployments in there that I would**
11 **say took away--**

12 Q Maintenance Manager?

13 A **Yeah.**

14 Q Okay. Sir, have those--have all those positions been at
15 the facility in Lansing?

16 A **They have.**

17 Q Okay. And what is--that's CSMS, correct?

18 A **Well, kind of. I'm the Maintenance Manager. Like I said,**
19 **my office was in Lansing, first at the old facility that**
20 **we had. And then when the new CSMS was built, they rolled**
21 **the surface maintenance office into the--into the CSMS.**
22 **So, yeah, so my employment has mostly been in Lansing.**

23 Q Okay. And in large measure, supervising other employees,
24 correct?

25 A **Absolutely. Yeah.**

1 Q Okay. In your capacity--I want to go--come back to your
2 current capacity. In your capacity as Surface Maintenance
3 Officer, approximately how many employees do you
4 supervise?

5 **A Including temps, temp and DEPs, contractor workers, it's**
6 **about 356.**

7 Q Okay. And I gather that the MATES facility in Grayling is
8 one of the shops that falls under your--

9 **A It is.**

10 Q --supervision, correct?

11 **A Correct.**

12 Q Okay. And who is the--who currently is the supervisor at
13 the MATES facility in Grayling, Michigan?

14 **A We have Major Austhof on ADOS orders temporarily--**

15 Q Okay.

16 **A --as a supervisor there.**

17 Q Prior to Major Austhof holding that position, who held
18 that position?

19 **A Lieutenant Colonel Golnick.**

20 Q Okay. And I understand Lieutenant Colonel Golnick is
21 retired; is that correct?

22 **A Yes.**

23 Q Okay. Okay. And is there a new--you've mentioned that
24 Major Austhof is currently holding that position as a
25 supervisor at MATES. Is there a new person who is--who

1 has interviewed for that position?

2 **A There was an AGR command directive there, Major Abbe.**

3 Q Okay.

4 **A And he'll start 1 November.**

5 Q Okay. And, again, you will be his immediate supervisor;
6 is that correct?

7 **A I will, yeah. That's correct.**

8 Q Okay. Okay. Briefly explain, if you can, for the Hearing
9 Examiner, what you do as the Surface Maintenance Officer
10 beyond supervise approximately 356 employees?

11 **A And, again, I don't directly supervise those employees.**
12 **They all fall under my responsibility. However, I manage**
13 **all 12-and-a-half facilities, call it half because we've**
14 **got a sub-shop. And work the budget for all the Class-9,**
15 **2060, 2065 monies. I budget analysts, equipment**
16 **specialists, supervisors. I manage all the safety of use**
17 **messages, SUMS (phonetic), MAMS (phonetic) for the State.**
18 **Equipment readiness for the State is my overall**
19 **responsibility.**

20 Q Okay. And you mentioned 12 facilities; is that what you
21 said?

22 **A Right. We just--we had 13. We just closed one.**

23 Q Okay. And as part of your responsibilities, I gather,
24 from time to time, you are charged with disciplining
25 employees; is that correct?

1 **A** **I am. It usually falls first on the first-line**
2 **supervisor. And then many times I would be in the role of**
3 **original decision maker for the smaller facilities.**

4 **Q** **Okay.**

5 **A** **Larger facilities you have a couple layers of supervisors**
6 **there that handle most discipline.**

7 **Q** **Okay. You mentioned that ordinarily it would fall to the**
8 **first-line supervisor. And now we can get into the--to**
9 **this case in particular. You had mentioned that**
10 **Lieutenant Colonel Golnick was the supervisor at MATES for**
11 **some period of time, correct?**

12 **A** **He was for years.**

13 **Q** **Until he--until he retired, correct?**

14 **A** **Uh-huh.**

15 **Q** **And now Major Austhof holds that position, correct?**

16 **A** **He does.**

17 **Q** **And there's going to be another Major who will hold that**
18 **position, correct?**

19 **A** **Correct.**

20 **Q** **Okay. So if--theoretically, if a disciplinary problem**
21 **arose at MATES, would not Lieutenant Colonel Golnick be**
22 **the immediate--or first-line supervisor?**

23 **A** **Well, actually at a large facility like MATES, there's**
24 **another layer of supervisors. And Golnick would be the**
25 **original decision maker for MATES--**

1 Q Okay.

2 A --because that facility has two tiers of supervisors.

3 Q Okay. So below Lieutenant Colonel Golnick there was

4 another level of supervisors?

5 A There was.

6 Q Okay. Okay.

7 A The foreman was Lieutenant Colonel McNamara.

8 Q Okay.

9 A And then he--they also have several other supervisors up

10 there at MATES.

11 Q Okay. So with respect to this case, you drafted the

12 proposed adverse action notice, correct?

13 A I did.

14 Q And bearing that in mind, and bearing in mind that

15 Lieutenant Colonel Golnick was the supervisor at MATES, my

16 question to you, sir, is why was it that Lieutenant

17 Colonel Golnick did not issue the proposed adverse action

18 notice?

19 A I issued Lieutenant Colonel Golnick recommendation for

20 termination as a proposed adverse action, as well.

21 Q Okay.

22 A Yeah. As well as Lieutenant Colonel McNamara.

23 Q Okay. So in other words, the two supervisors that might

24 otherwise be involved in issuing a proposed adverse action

25 notice where, themselves, subject to a proposed adverse

1 action notice--

2 **A They were.**

3 Q --is that correct?

4 **A They were.**

5 Q Okay. Okay. So what I'd like to do is--what I'd like to

6 do is hand you what has been marked as Exhibit 3 to the

7 Smock file, and call your attention to Tab A, which is the

8 Proposed Adverse Action Notice. Take a--take a moment,

9 sir, to read that if you would.

10 **A I'm familiar with this.**

11 Q Okay. And if you could--if you could direct your

12 attention to the second page, and note that there's a

13 signature at the bottom, correct?

14 **A Correct.**

15 Q Is that your signature?

16 **A It is.**

17 Q Okay. And did you, yourself, present this document to Mr.

18 Smock?

19 **A I did.**

20 Q Okay. And I note that there is a signature at the bottom

21 and a date. So it's your testimony that he actually

22 signed and dated that document when he received it?

23 **A He did.**

24 Q Okay. Very well. Okay. So if I could draw your

25 attention to the--to the first paragraph. And paragraph 1

1 ends with "This letter constitutes your 30-day notice of
2 removal."

3 **A That's correct.**

4 Q Okay. So it was your decision to propose removal of Mr.
5 Smock, correct?

6 **A It was.**

7 Q Okay. And I'll draw your attention to paragraph 2. You
8 noted that you--you propose removal on the basis that Mr.
9 Smock had violated provisions of TPR 752, and in
10 particular Table D-1 Item 11.

11 **A Yes.**

12 Q Okay. That was your finding?

13 **A It was.**

14 Q Okay. On what basis did you--in other words,
15 what--what--what did you rely upon in--in concluding
16 that--that Mr. Smock's conduct or misconduct warranted
17 removal?

18 **A I read the entire 15-6. Excuse me. There's a lot of
19 other stuff in there that I was--some of it I felt was
20 hearsay, and I--and I--and I struck those items and
21 focused on items where I saw sworn testimony from several
22 or--witnesses or those that wrote their testimony in
23 there.**

24 Q Okay. And, sir, we will get to the--we will get to Books
25 1 and 2 of the 15-6, but if you could just bear with me

1 for a moment.

2 **A Sure.**

3 Q And so, after striking what you deemed to be hearsay or
4 otherwise unreliable information, you arrive--you arrived
5 at it looks like approximately nine charges; is that
6 correct; and that's found in paragraph 2?

7 **A Correct.**

8 Q Okay. Sir, I presume that, when you enumerated or
9 alphabetized these nine charges, you thought
10 there--that--you thought that there was sufficient
11 evidence to warrant removal based on these allegations; is
12 that correct?

13 **A Correct.**

14 Q Let's walk--let's walk through them, if we would, sir. A
15 says, "You wrongfully removed a flat screen television
16 from the MATES building." Okay. Did you base that
17 allegation on what was in the 15-6?

18 **A I did.**

19 Q Okay. And B, "You wrongfully removed sheets of OSB from
20 the MATES building." Again, did you find evidence of that
21 in the--in the 15-6?

22 **A Yes. All these items were in the 15-6--**

23 Q Okay.

24 **A --if that helps.**

25 Q Okay. Fair enough. Sir, would any one of these, if

1 proved, warrant removal?

2 **A Absolutely. Theft, especially over many, many years.**

3 **Now, one occasion, we certainly look at the TPR and**

4 **their--their past performance history and, if it's**

5 **something we can correct, and if we can have the justice**

6 **back to the taxpayer reasonably, then--then we do.**

7 **Q Okay.**

8 **A Occasionally there are items that we discipline for**

9 **absolutely less than termination.**

10 **Q Okay.**

11 **A It was a lot of them as a whole, as well as the length of**

12 **time.**

13 **Q Okay. So, for instance, if--if we--if we assume that Mr.**

14 **Smock wrongfully removed wood from a MATES building and**

15 **all the other eight charges were--remained questionable--I**

16 **mean, you mentioned that there--that some of them you**

17 **struck yourself based on hearsay--would you find it a**

18 **proper basis for removal if you could demonstrate that**

19 **wood was stolen from the MATES facility?**

20 **A I would. I mean there--now, if it was scrap wood that was**

21 **stolen and somebody nipped it in the bud early, and that**

22 **was the only offense, then we would certainly probably**

23 **look at the TPR to see what else. But in these particular**

24 **cases, it was quite a bit more than that.**

25 **Q Okay. And we'll get to the 15-6 so we can touch on it**

1 then. Thank you. Okay. So you mention in paragraph 3,
2 in part, what you relied upon in--in the allegation set
3 forth in paragraph 2, correct?

4 **A Correct.**

5 Q Okay. Now, there--there was a--in addition to the
6 testimony or sworn statements that was--both of which were
7 provided, we had audio, I gather you read the actual
8 report authored by Colonel Doolittle, correct?

9 **A I did.**

10 Q Okay. And when you mention that you--that you struck
11 certain provisions in the 15-6, was it you struck certain
12 provisions of his report?

13 **A If I didn't see that it--that it was solely hearsay,**
14 **didn't collaborate or corroborate with anybody--**

15 Q Right.

16 **A --else, I didn't necessarily believe it to be untrue; I**
17 **just didn't feel like there would be enough to--to**
18 **specifically charge.**

19 Q Okay. Now, I'm going to just take a look at this Exhibit.
20 Let me take a look at this right here. Okay. If I
21 can--if I could draw your attention to Exhibit B, the
22 following Exhibit, and what is the date of that Exhibit?

23 **A 12 Feb.**

24 Q Okay.

25 **A 2014.**

1 Q And what was the date of your proposed adverse action
2 notice?
3 **A Same day.**
4 Q Okay. Did you--had you seen that previous to today?
5 **A I have not seen this.**
6 Q Okay. Okay.
7 MR. BANCHS: I'm sorry. What are you looking
8 at?
9 CAPTAIN BEDELLS: B like Bravo, in the Smock
10 file.
11 MR. BANCHS: Okay. Go ahead.
12 CAPTAIN BEDELLS: It's the Request for
13 Representation.
14 MR. BANCHS: Roger that.
15 BY CAPTAIN BEDELLS:
16 Q Okay. And I gather--Exhibit C, have you seen that
17 document before today?
18 **A Yesterday.**
19 Q Okay. How about Exhibit D?
20 **A No.**
21 Q So your testimony is you've not seen that document before
22 today?
23 **A I did not, no.**
24 Q Okay. And how about E, the Reply to the Adverse Action
25 Notice?

1 **A** **No.**

2 Q And what is the date of that instrument?

3 **A** **24 Feb.**

4 Q Okay. Okay. And to whom is it addressed?

5 **A** **Colonel Durkac.**

6 Q Okay. So it's not addressed to you, correct?

7 **A** **Correct.**

8 Q All right. And I'll--I will call your attention to

9 Exhibit F. And what is the date of that document, sir?

10 **A** **24 February.**

11 Q Okay. Again, did you see that document before today?

12 **A** **No.**

13 Q Okay. And how about Exhibit G?

14 **A** **I have seen this document. Yeah.**

15 Q Okay. And what is the title of that document?

16 **A** **Original Decision of Removal.**

17 Q Okay. Who authored that document?

18 **A** **Colonel Durkac.**

19 Q Okay. Do you--so it's your testimony you had seen that

20 document before today?

21 **A** **I have seen this document.**

22 Q Okay. And, finally, H.

23 **A** **I wrote this document.**

24 Q All right. So obviously you--and what is the date of that

25 document?

- 1 **A** **12 February.**
- 2 Q So again, simultaneous to your proposed adverse action
3 notice, you, yourself, Exhi- --issued Exhibit H, correct?
- 4 **A** **Correct.**
- 5 Q Okay.
- 6 **A** **I had him leave the building that day under a paid status
7 for the 30 days.**
- 8 Q Okay. Because it--on 12 February, what--what--the effect
9 you desired was a proposed removal, correct?
- 10 **A** **Correct.**
- 11 Q Okay. And, finally, Exhibit I, have you seen that
12 document before today?
- 13 **A** **I think I received this yesterday.**
- 14 Q Okay.
- 15 **A** **Yeah, but I hadn't before.**
- 16 Q Okay. And Exhibit J?
- 17 **A** **No.**
- 18 Q And I think the last Exhibit there is K. Have you seen
19 that document?
- 20 **A** **This one? No. It was the same, it looks like, as the
21 other one.**
- 22 Q And for the record, Exhibit K is addressed to Chief
23 Mosciski, correct?
- 24 **A** **It is.**
- 25 Q Okay. Okay, sir. So Exhibit 3, correct?

1 **A** **It is.**

2 Q Three? So Exhibit 3 titled the Smock Case File contains
3 both documents you--you have seen before, in at least two
4 occasions authored, and in other occasions you've not seen
5 the document at all, correct?

6 **A** **Correct.**

7 Q And is it fair to say that the reason you've not seen some
8 of those documents is that--that they were drafted
9 or--and/or received subsequent or after your proposed
10 adverse action notice was authored on 12 February,
11 correct?

12 **A** **Right.**

13 Q Okay.

14 **A** **That's typical. That's the next higher step.**

15 Q Okay. And in this particular case, the next higher step
16 was who?

17 **A** **Colonel Durkac.**

18 Q Okay. Now, before I get to that, when you authored the
19 proposed adverse action notice, did you--well, strike
20 that. Let me ask it another way. You're familiar with
21 the concept of Douglas Factors, correct?

22 **A** **Yeah.**

23 Q I mean, you supervise a number of employees at MATES, and
24 you've been in the maintenance community for--

25 **A** **I have, yeah.**

1 Q --14 years, we say.

2 A **And the Doug- --the Douglas Factors haven't been out that**

3 **long, but--**

4 Q Okay.

5 A **--yes, I am familiar with the checklist.**

6 Q Very familiar with them, I'd say, correct?

7 A **I am.**

8 Q Okay. Now, prior to issuing that proposed adverse action

9 notice, and bearing in mind that you are the proposing

10 official, not the original decision maker--

11 A **Correct.**

12 Q --did you consider the Douglas Factors?

13 A **We do. And I make sure my subordinate supervisors do, as**

14 **well.**

15 Q Okay. In this particular case, in the case of Mr.

16 Smock--excuse me--prior to issuing that proposed adverse

17 action notice, did you yourself, consider the Douglas

18 Factors?

19 A **Yeah. I went and initialed off every one of the boxes**

20 **beside the checklist as I wrote the proposed adverse**

21 **action.**

22 Q Okay.

23 A **I believe I sent--I sent that to HRO, as well, with my**

24 **signature on it.**

25 Q Okay. Well, we're here on the record today. So if

1 you--if you don't mind, what I'm going to do is ask you
2 how you decided these factors. And let me--

3 **A Had the checklist or the Douglas Factor checklist.**

4 **Q** Right. I have a copy here, but we don't have it--we
5 don't--it's a blank copy that's obviously not into
6 evidence.

7 CAPTAIN BEDELLS: But let me, if there's no
8 objection, I'm going to show him what's a blank copy.

9 MR. BANCHS: There is one in evidence.

10 CAPTAIN BEDELLS: Not signed by him, though,
11 correct?

12 MR. BANCHS: I can't tell who signed it.

13 CAPTAIN BEDELLS: Yeah. That's--

14 THE WITNESS: I--

15 MR. BANCHS: It's 28 February 2014.

16 CAPTAIN BEDELLS: That's Colonel Durkac's
17 signature--

18 MR. BANCHS: Okay.

19 CAPTAIN BEDELLS: --so. If you want to--we
20 can show him that one or this one, which is blank.

21 MR. BANCHS: I don't object--

22 CAPTAIN BEDELLS: Okay.

23 MR. BANCHS: --if it's just to show the form.

24 CAPTAIN BEDELLS: Yeah. It's just the form.

25 BY CAPTAIN BEDELLS:

1 Q So I'm showing you a blank form of the Douglas Factors.
2 And I just want to walk through these. So prior to
3 issuing the proposed adverse action notice with respect to
4 Mr. Smock, you--I gather you considered--and we've already
5 established that, you considered a number--
6 **A I went through the entire checklist, I did.**
7 Q --of offenses, correct?
8 **A I did.**
9 Q Approximately nine offenses
10 **A Uh-huh.**
11 Q Correct?
12 **A Yes.**
13 Q Okay. And did you consider these offenses serious?
14 **A Absolutely. I do not like to terminate anybody.**
15 Q Okay. Well, okay, so--yeah. You understand termination
16 is serious. But did you consider the nature of these
17 offenses serious--
18 **A I did.**
19 Q --themselves? Okay. Did you consider the offenses
20 intentional versus negligent?
21 **A Both.**
22 Q Okay. And did you consider--well, did you--did you
23 determine that these offenses were done for personal gain?
24 **A I did.**
25 Q Okay. Did you consider Mr. Smock's level of experience?

1 **A** **I did.**

2 Q Did you consider his past disciplinary record, if any?

3 **A** **I did look through his personnel file.**

4 Q Okay. Did you consider Mr. Smock's past performance?

5 **A** **I did.**

6 Q Did you consider his length of service?

7 **A** **I did. I've always had a good working relationship with**
8 **Mr. Smock.**

9 Q Okay. Approximately how long did--has Mr.--how long have
10 you known Mr. Smock?

11 **A** **I don't know. Half dozen years, seven, eight years,**
12 **maybe.**

13 Q To your knowledge, has he always been employed at the
14 MATES facility here in Grayling?

15 **A** **Yes, or at Camp Grayling, but really working out of MATES.**

16 Q Okay. Did you consider how--how the, we'll call it
17 alleged conduct at this point, affected the confidence in
18 employees at the MATES facility?

19 **A** **I did.**

20 Q Did you consider whether your proposed action was
21 consistent with other or similar cases?

22 **A** **I did. I mean we don't have a lot of cases, to be honest**
23 **with you, that we work with where the offenses are the**
24 **same.**

25 Q Okay. Did you consult the Table of Penalties in the TPR?

1 **A** **I did. That's usually the first thing we--we look at.**

2 Q Okay. Did you consider the notoriety of the offenses?

3 **A** **Yes.**

4 Q Okay. And while we're on that point, you testified that

5 you con- --you looked at the 15-6, correct?

6 **A** **I did.**

7 Q And the report, itself, correct?

8 **A** **I did.**

9 Q And each of the Exhibits?

10 **A** **I did.**

11 Q Do you remember look- --if you looked at what's been

12 marked as Exhibit 2, which is Book 2 of the MATES

13 investigation?

14 **A** **When I looked at the 15-6, there were probably just**

15 **different binders, but I don't know that I seen--**

16 Q Okay.

17 **A** **--Book 2 specifically.**

18 Q Well, let me show you what's been marked in Book 2, and

19 just--they're--they're Exhibits primarily.

20 **A** **Yeah. I've seen that same--**

21 Q Okay. Okay. When we talk about the notoriety of the

22 offense, do you know what the genesis of this

23 investigation was? Are you familiar with why this began?

24 **A** **I am. I don't remember the exact month. I believe it was**

25 **in the fall. I was--happened to be at MATES. And Colonel**

1 Gardiner, who is the Deputy Commander here at Post--I was
2 actually talking with Lieutenant Colonel McNamara out in
3 the motor pool. Came running out and said CID is here,
4 and they want to talk to--to the supervisor here. In this
5 case, Golnick was gone, so McNamara mentioned that--what
6 my role was. They were--there were two investigators,
7 both wearing civilian clothes. And they took me to one of
8 the office spaces and went through an anonymous letter
9 that they had received. And then went over the letter
10 with me, and stated that they--they gave me their business
11 cards and they stated that they were likely to hand this
12 over to the State and were recommending an investigation.

13 Q Okay. So it's your testimony that, as far as you know,
14 the genesis of this investigation was actually with CID?

15 A **An anonymous letter to CID, yeah.**

16 Q Okay. Okay. Would you consider that some degree of
17 notoriety that--

18 A **I would.**

19 Q --CID knows about it? Did you have any knowledge of CID's
20 investigation prior to actually seeing them at the MATES
21 facility?

22 A **I did not.**

23 Q Okay.

24 A **It was definitely a surprise when I met with them.**

25 Q Okay. Did you consider whether, in this case, Mr. Smock

1 was aware that his actions would constitute an offense?

2 **A Yes.**

3 Q Okay. In other words, sir, are there--are there--are
4 there instances in which, while you might have been in
5 the--in this is community for 14-plus years, people aren't
6 aware of a particular transgression, and you have to
7 correct them for what you might characterize as a minor
8 offense?

9 **A That occasionally happens. That is correct.**

10 Q Oh. Okay. Is there any reason to believe that someone
11 might not be aware that the action of theft constituted a
12 violation?

13 **A No.**

14 Q Okay. And you've testified you considered it an
15 intentional offense for personal gain, correct?

16 **A Correct.**

17 Q Okay. What about the possibility of rehabilitation? Did
18 you consider that?

19 **A I did.**

20 Q Okay. Did you consider any mitigating factors that might
21 have--might have weighed in favor of Mr. Smock not being
22 culpable or not being responsible for the theft?

23 MR. BANCHS: Can I object here real quick,
24 sir? I know we're talking about Mr. Smock here, but
25 the--I'm sure when the CID was talking to the Colonel,

1 they weren't just talking to him about Colonel--Mr. Smock.
2 I mean, the letter talked about all kind of wrongdoing,
3 in addition to Mr. Smock. So I mean, if we're going to
4 talk about the letter that CID, the anonymous letter--

5 CAPTAIN BEDELLS: No, no. I'm not talking
6 about--I'm talking about--if I wasn't--if I wasn't clear,
7 Ben, what I mean is we're talking about the proposed
8 adverse action notice.

9 MR. BANCHS: Right. But when we're talking
10 about the anonymous letter, you know, I--I would just
11 prefer that, when we talk about the anonymous letter, it's
12 not just--the anonymous letter wasn't just about something
13 that Joe was doing. It was about something that a bunch
14 of people were doing allegedly. So I'm just, you know--

15 CAPTAIN BEDELLS: I'll stipulate the anonymous
16 letter talked about a number of things--

17 MR. BANCHS: Okay.

18 CAPTAIN BEDELLS: --and a number of people.

19 BY CAPTAIN BEDELLS:

20 Q Okay. So back to, in my--if I was unclear, I'm speaking
21 in the context of your proposed adverse action notice.

22 A **Yeah. I knew that.**

23 Q Correct? Okay. Prior to issuing that, did you consider
24 the prospect of rehabilitation?

25 A **I did.**

1 Q Okay. And did you--did you consider factors that might be
2 mitigating in some--in some respect? In other words--and
3 I think you already testified, sir, that there's certain
4 things you struck out entirely, correct?

5 **A Correct.**

6 Q Notwithstanding striking certain things that might make
7 him less culpable, you still arrived at approximately nine
8 offenses, correct?

9 **A Correct. And to be fair, I did that with everybody that
10 was accused for wrongdoing in that 15-6.**

11 Q Okay. And, finally, did you consider sanctions other than
12 removal?

13 **A Absolutely.**

14 Q Okay.

15 **A And others were punished differently.**

16 Q Okay. Okay. So after considering all these factors, you
17 arrive on or about 12 February with the conclusion that
18 "I'm going to propose removal," correct?

19 **A I did.**

20 Q Okay. Now, you've testified that you've read the--you
21 read the 15-6 and each of the Exhibits, correct?

22 **A I did.**

23 Q Did you have occasion to speak with--well, let me strike.
24 Let me ask you this: Who authored the 15-6, the report?

25 **A Colonel Doolittle and Lieutenant Emery, I believe.**

1 Q Okay. Did you speak with Colonel Doolittle about his
2 findings?

3 **A I did not.**

4 Q Did you speak with--is it Lieutenant Emery?

5 STAFF SERGEANT SCHULTZ: Captain now,
6 Lieutenant then.

7 CAPTAIN BEDELLS: Okay.

8 BY CAPTAIN BEDELLS:

9 Q Did you speak with Lieutenant Emery about his findings?

10 **A Directly, I don't believe I did.**

11 Q Okay. Indirectly, how might you have spoken with him?

12 **A Well, I read the 15-6 at the JAG office, and I believe
13 Lieutenant, at the time, Emery was--I know he was there.**

14 Q Okay.

15 **A And all he did is provide the investigation to me. I sat
16 in the office and read for a whole day.**

17 Q Okay. Okay. Sir, I'm next going to show you what has
18 been marked as Smock Exhibit Number 1. And call your
19 attention to--

20 CAPTAIN BEDELLS: --Steve, if you could help
21 him out--that--right.

22 BY CAPTAIN BEDELLS:

23 Q Call your attention to what effectively is an unidentified
24 exhibit to the 15-6, which is the manner in which we
25 received it from Colonel Doolittle. And ask you if you

1 recognize that document.

2 **A Yes, I do.**

3 Q Okay. Is it your testimony that you read that doc-
4 --you've read that document?

5 **A I have, yeah.**

6 Q Did you read that document prior to issuing the proposed
7 adverse action notice on 12 February?

8 **A I did.**

9 Q Okay. Yet, you did not speak with Colonel Doolittle about
10 his findings correct?

11 **A I did not.**

12 Q Okay. I'm going to call your attention to page 1 of the
13 actual report, which is immediately after the 15-74.
14 Okay. And the document is dated 30 January, correct?

15 **A It is.**

16 Q And your proposed adverse action notice is dated 12
17 February, correct?

18 **A It was.**

19 Q Okay. Understanding that there's about 12 or 13 days that
20 lapsed between the completion of this report and your
21 proposed adverse action notice, did you--

22 **A I'm sure I wasn't the first to see it.**

23 Q Okay. That's my--thanks, sir. Okay. But do you believe
24 that two-week's time was sufficient for you to consider
25 each of the Douglas Factors, weigh each of the Douglas

1 Factors and arrive at your proposed removal?

2 **A It was sufficient.**

3 Q Okay. Okay. And you gave a careful reading of this

4 report, correct?

5 **A A couple times.**

6 Q Okay.

7 **A I received this report with the whole 15-6 in here.**

8 Q Right. And you've already mentioned that there was an

9 anonymous--anonymous letter that CID received, correct?

10 **A Correct.**

11 Q And I'll call your attention to the first paragraph of

12 page 1 of the 15-6 Report, and ask you to just read that

13 first paragraph, right under "Background."

14 **A "The purpose of this memorandum--"**

15 Q Oh, no, you don't have to read it into the record, sir.

16 If you'd just read it to yourself, and I'm going to ask

17 you a couple questions.

18 **A Okay.**

19 Q Okay. So to your knowledge, was the--was the reference in

20 the 15-6 Report to an anonymous letter, to your knowledge,

21 was that the anonymous letter that you spoke of earlier

22 when you testified?

23 **A I believe so.**

24 Q Okay. So it appears to be about a 10-page anonymous

25 letter, correct?

1 **A** **And I did read that letter, as well.**

2 Q Okay.

3 **A** **So it was, like, 10 pages, I believe.**

4 Q Did you read that anonymous letter prior to receiving the

5 15-6?

6 **A** **I think I got it with the 15-6--**

7 Q Okay.

8 **A** **--I actually went over the letter with the CID when they**

9 **were at MATES.**

10 Q Okay.

11 **A** **I don't know--I don't remember if it was the entire letter**

12 **at that time. But it was different charges they went over**

13 **or allegations or whatever that they saw in the letter.**

14 Q Okay.

15 **A** **And actually physically have a copy of the letter then.**

16 Q Okay. And, again, you considered that of some notoriety,

17 the fact that CID was involved, correct?

18 **A** **I did.**

19 Q Okay. Okay. And I'll call your attention next, if you'd

20 take a moment just to read the second paragraph under

21 "Background"; if you--please.

22 **A** **Yeah.**

23 Q Okay. The investigator, the IO, as he's identified here,

24 Colonel Doolittle, notes in that second paragraph that he

25 was careful to look at signs that the anonymous complaint

1 was just an attempt to discredit, disparage individuals at
2 MATES. Do you see that?

3 **A I did.**

4 Q Okay. Did you take a similar view as you read the 15-6
5 and its attachments?

6 **A Absolu- --absolutely, and I did when I read the anonymous
7 letter, too, in my mind trying to figure who wrote it, and
8 who had a potential grievance on somebody.**

9 Q Okay. Okay. And, sir, if we could call your attention to
10 the--to the second page, if you'd just turn to page 2. On
11 the--in the lead paragraph of page 2--and take a moment to
12 read this--but I'll--you're a quick read, so I'll just ask
13 my question. There's reference to a culture and loyalty
14 at MATES.

15 **A There still is.**

16 Q Okay. Can you speak to--speak to that issue for the
17 benefit of the Hearing Examiner? What--what, in your
18 mind, is the investigating officer talking about when he
19 talks about a culture or a loyalty at MATES, and he talks
20 about the Camp Grayling Joint Maneuver Training Center is
21 in the City of Grayling, as well. So what--what is your
22 understanding of this--of the culture or loyalty at MATES?

23 **A I believe this has groomed over many years. It's a--it's
24 a tight community. MATES has a lot of different family
25 members there. There are, I would--about three clicks**

1 that kind of work together. And their loyalty is very,
2 very tight. And it's kind of, I suppose, over to the
3 Camp, as well. Colonel Golnick, as an example, I
4 remember, if you left the shop, he wasn't planning ever
5 hiring you back kind of thing. So there was--it was just
6 kind of that mentality up there that they were a very
7 close-knit family.

8 Q Okay.

9 A Dysfunctional, maybe, but they were--they were definitely
10 tight.

11 Q Okay.

12 A They still are.

13 Q Now, how about the third paragraph down, the theme of that
14 paragraph from the--from the IO's perspective, at least,
15 seems to be a concern for employees who might fear
16 reprisal or be labeled snitches. And take a moment
17 to--take a moment to read the paragraph, sir, if you need.

18 A It's still happening today. Somebody just had their tires
19 slashed the other day at MATES. Somebody else was--

20 MR. BANCHS: I object, sir. That's
21 not--that's--those facts aren't in evidence. We don't
22 know if that's true or not.

23 CAPTAIN BEDELLS: Well--

24 MR. BANCHS: It's prejudicial to the case. I
25 mean, what does that have to do with Joe?

1 CAPTAIN BEDELLS: Well--can I respond?

2 THE HEARING EXAMINER: Please.

3 CAPTAIN BEDELLS: Yeah. It's a fact not in
4 evidence because this is our first witness. And I'm not
5 offering it for the truth of the matter asserted. I'm
6 offering it for the concept that's discussed in this--in
7 this 15-6 Report, which is a fear of reprisal.

8 BY CAPTAIN BEDELLS:

9 Q So I'm--you're not suggesting, sir, that Mr. Smock slashed
10 someone's tires?

11 **A I have no idea. I'm not.**

12 Q We're talking about the general theme of a fear of
13 reprisal or people being labeled snitches

14 MR. BANCHS: Well, can I--

15 BY CAPTAIN BEDELLS:

16 Q --is that correct?

17 MR. BANCHS: Can I expand on that? Was it
18 somebody that works for the Guard that had their tires
19 slashed? Is there a police report? I mean, what benefit
20 does that bring to this, other than, yeah, there might be
21 people that are, you know, worried because of what they
22 said?

23 CAPTAIN BEDELLS: That's exactly what we're
24 getting at.

25 MR. BANCHS: Yeah, but--

1 CAPTAIN BEDELLS: That's in the--that's in the
2 report.

3 MR. BANCHS: But was it somebody in the
4 National Guard or affiliated with the National Guard that
5 had their tires slashed? Is there a police report?

6 CAPTAIN BEDELLS: Well, you'll have--

7 MR. BANCHS: Was that reported to somebody?

8 CAPTAIN BEDELLS: You'll have a chance to
9 cross-examine him, so.

10 MR. BANCHS: Well, I just object to that whole
11 line of questioning, sir.

12 THE HEARING EXAMINER: Well, if it's factual,
13 I'll allow it, and I'll give it'd due--due weight. And
14 you will have the opportunity--

15 THE WITNESS: And just next door someone
16 mentioned that--I mean, they'd asked for permission to
17 drive a GSA down here, because they were afraid of damage
18 that'd be done to their vehicle. I mean, it--and whether
19 it would be factual or infactual, it's certainly the
20 thought process and the feeling of a lot of the employees
21 there. And it has continued throughout this investigation
22 time.

23 CAPTAIN BEDELLS: Okay. So if I can continue.

24 BY CAPTAIN BEDELLS:

25 Q So was there--was there a concern, as far as you know, of

1 employees not being completely forthcoming during the
2 course of this investigation?

3 **A Absolutely.**

4 Q Okay. And, again, that was the--that was the fear of
5 reprisal that the IO alludes to, correct?

6 **A Both from probably some management side when Colonel
7 Golnick was there and just amongst their peers; I believe
8 that to be true.**

9 Q Okay. You just mentioned that at least one employee's
10 mentioned that he or she wants to drive a GSA because they
11 fear, I don't know, some sort of similar retaliation.
12 That's recently? That just occurred?

13 **A Before walking into this room.**

14 Q Okay. To your knowledge, when--when did--when did this
15 investigation commence, if you recall? And if you don't
16 recall, I can show you something that refreshes your
17 recollection.

18 **A The 15-6 investigation?**

19 Q Yes. Yes, sir.

20 **A Gosh, it's been almost a year ago, last October-ish.**

21 Q Okay.

22 **A I was--when they announced Colonel Doolittle as the
23 investigating officer, I was aware about, I guess,
24 September maybe.**

25 Q Okay. During the course of the investigation, did you

1 receive any similar concerns from employees about their
2 fear of reprisal or being labeled a snitch?

3 **A Absolutely.**

4 **Q** Okay. From whom did you receive these concerns?

5 **A I received them from Master Sergeant Cooper. I even**
6 **received it from Lieutenant Colonel McNamara. I received**
7 **it from Colonel Golnick, as well. I had heard that a lot**
8 **of individuals up there were concerned.**

9 **Q** Okay. I want to--when you say Cooper, that's Master
10 Sergeant Cooper?

11 **A It is.**

12 **Q** Master Sergeant Thad Cooper?

13 **A Yeah.**

14 **Q** Okay. Can you tell us what Master Sergeant Cooper relayed
15 to you in the form of a fear of reprisal?

16 **A He, personally, I don't think, felt--he said, "Yeah, they**
17 **can try and do what they want, but I'm going to be**
18 **truthful." But he was concerned that others would not.**
19 **He said "You're going to find the real truth 20 years from**
20 **now as stuff leaks out--"**

21 **Q** Okay. So--

22 **A "--because they're afraid to talk."**

23 **Q** So when you say he was concerned others would not, do you
24 mean he was concerned others would not be truthful?

25 **A Just wouldn't come forward.**

1 Q Okay.

2 A **Same.**

3 Q Again, that--that conversation occurred while the
4 investigation was ongoing?

5 A **While it was on, yeah.**

6 Q Okay. And then you next mention Lieutenant Colonel
7 McNamara.

8 A **Uh-huh.**

9 Q Is it your testimony that he contacted you, as well, about
10 a fear of reprisal or retaliation?

11 A **He--I don't think he was fearful for retaliation, but he
12 was fearful for potential reprisal, at the time, from
13 Golnick, I think, primarily.**

14 Q Okay. Well, let's--let's clarify. Because at this point
15 you've testified Lieutenant Colonel McNamara, himself,
16 was--was a subject of a proposed adverse action notice,
17 correct?

18 A **Correct.**

19 Q Okay. When he feared reprisal, was his fear exactly that,
20 that he--that he's going to get wrapped up with this
21 investigation?

22 A **Yep.**

23 Q Okay. Okay. And you also mention Lieutenant Colonel
24 Golnick as someone who might have mentioned the fear of
25 reprisal, correct?

1 **A** **Correct.**

2 Q Okay. Again, he was the subject of a proposed adverse
3 action notice, correct?

4 **A** **He was.**

5 Q Okay. So, once again, his fear of reprisal that--was that
6 he would be the subject--or that he would suffer some
7 discipline as a result of the investigation, correct?

8 **A** **He told me that there's going to be about five people**
9 **standing when this is all done by the sounds of the**
10 **investigation.**

11 Q Okay. So unlike the reprisal that an employee just
12 mention--the fear of reprisal that an employee just
13 mentioned to you on your way here today and the fear of
14 reprisal that Master Sergeant Thad Cooper mentioned,
15 namely that they might suffer, I don't know, some sort of
16 harm or--at least with respect to Lieutenant Colonel
17 Golnick and Lieutenant Colonel McNamara, is it--is it fair
18 to say that their fear of reprisal really was that they
19 were going to be disciplined themselves?

20 **A** **True.**

21 Q Okay. Okay. I mean, they were both supervisors--

22 **A** **Correct.**

23 Q --in some context, correct? Have you talked to Major
24 Austhof about--about the culture and loyalty at MATES we
25 discussed earlier?

1 **A** **I have.**

2 Q Okay. And what does Major Austhof have to say about how
3 things are progressing at MATES?

4 **A** **They're improving. They're having regular partnership**
5 **council meetings, regular insight from the employees.**
6 **There is still upwards of a third of the shop that is**
7 **still bitter. And then about two-thirds of the shop are**
8 **coming around.**

9 Q Okay.

10 **A** **Improving.**

11 Q Okay. I want to--if I can draw your attention to page 9
12 of the actual report, and draw your attention to the third
13 paragraph down, begins with "Chief--" "--CW2 Mack."

14 **A** **Okay.**

15 Q If you could take your time--take some time to read that
16 paragraph, please.

17 **A** **Okay. Doesn't surprise me.**

18 Q Okay. When you say it doesn't surprise you, what doesn't
19 surprise you about that particular paragraph as you read
20 it?

21 **A** **That every person would know the questions they were going**
22 **to be asked, and that they were probably coached.**

23 Q Have you--sir, have you ever been the--served as an
24 investigating officer in a 15-6?

25 **A** **It's been awhile, but I have.**

1 Q Okay. And you've indicated that you've read this entire
2 file, correct?

3 A I have.

4 Q Do you recall whether or not the investigating officer, in
5 this particular case, admonished the witnesses not to
6 speak one--with one another following their interview?

7 A Ab- --I mean--

8 Q Do you have a separate recollection of that?

9 A Just that--just what I've read in the investigation and
10 the sworn statements that they said do not discuss these
11 questions with anyone else.

12 Q Okay.

13 A I saw his--it wasn't a line through, but it was definitely
14 bolded on the top and bottom of every question that he
15 asked those. And I got that not until I read the 15-6.

16 Q Okay. Yet, it doesn't surprise you that--that--

17 A People were coached and stuff.

18 Q Okay.

19 A Master Sergeant Smock was the Union representation for
20 those individuals, too, so.

21 Q Okay. And we'll get--we'll get to the Union
22 representation matter in a moment.

23 Okay. If you could next turn to page 12 of the--of
24 the report. And if you could read the introductory
25 paragraph that--paragraphs, there's three paragraphs. And

1 take your time. We're going to be here a long time.

2 Page--or paragraph 4, entitled "Theft."

3 **A Okay.**

4 CAPTAIN BEDELLS: Are you tracking the same--

5 THE HEARING EXAMINER: They're the same. The
6 page numbers are different.

7 MR. BANCHS: There's two versions of the IO
8 report. One's dated 24 January and one's dated 30.
9 They're exactly the same, it's just that the format is
10 different.

11 CAPTAIN BEDELLS: I just noticed that his--his
12 is different.

13 THE HEARING EXAMINER: Yeah.

14 CAPTAIN BEDELLS: Yeah. I'm using the 30 one.

15 MR. BANCHS: Uh-huh.

16 CAPTAIN BEDELLS: You used the 24 one?

17 MR. BANCHS: The 30 one is at the end of the
18 second book. The way that it was provided to us, that's
19 the one that was on the cover page of the investigation.
20 So I assumed that was the official one, not that version
21 that you're using.

22 CAPTAIN BEDELLS: Yeah.

23 MR. BANCHS: And we don't--we don't have Book
24 2 printed out, sir.

25 THE HEARING EXAMINER: Oh, this isn't Book 2?

1 MR. BANCHS: Book 2 is just the second piece
2 of--

3 THE HEARING EXAMINER: Okay.

4 MR. BANCHS: Yeah.

5 CAPTAIN BEDELLS: Yeah. I'm--

6 MR. BANCHS: But it's exactly the same.

7 CAPTAIN BEDELLS: The rep- --but the page--the
8 page numbers are different.

9 MR. BANCHS: The page--the pages are
10 different, yes.

11 THE HEARING EXAMINER: If you would identify
12 the paragraph heading, I could find it, and the page it's
13 on.

14 CAPTAIN BEDELLS: It's paragraph 4, titled
15 "Theft."

16 THE HEARING EXAMINER: "Theft of--"

17 CAPTAIN BEDELLS: Not "Theft of Time,"
18 the--paragraph exactly preceding that. It's just "Theft."

19 BY CAPTAIN BEDELLS:

20 Q Sir, have you had an opportunity to read that?

21 A Yes.

22 MR. BANCHS: It's going to be 12 in your
23 version, sir. It's going to be 12. It's on page 10.

24 THE HEARING EXAMINER: It's actually 10.
25 Right.

1 MR. BANCHS: Yeah. Paragraph 12.

2 THE HEARING EXAMINER: Right.

3 CAPTAIN BEDELLS: So--just so--excuse me, sir,
4 for one. Just so I'm clear, there's two reports. You
5 used one 24 January, and I'm looking at the 30 January
6 one, but they're exactly the same? How do we know that is
7 my ques- --is my concern?

8 MR. BANCHS: I didn't--I didn't--well, first
9 off, these are not my documents.

10 CAPTAIN BEDELLS: Yeah.

11 MR. BANCHS: These are what you guys provided
12 me.

13 CAPTAIN BEDELLS: Yeah. But that's what he's
14 looking at.

15 MR. BANCHS: Right.

16 CAPTAIN BEDELLS: You provided--

17 MR. BANCHS: The way that you guys provided me
18 the evidence, that was the report that was on the cover,
19 at the very beginning of the 15-6. The one you're looking
20 at is at the end. Okay. So Doolittle authored two
21 separate reports that the wording is exactly the same.
22 The only thing different is the format.

23 CAPTAIN BEDELLS: Well, my concern, Ben, is
24 for--Mr. Banchs, is actually for you, because--

25 THE HEARING EXAMINER: Hold on a second.

1 Let's go off the record here until we get this resolved,
2 please.

3 COURT RECORDER: We are going off the record.
4 The time is 8:55.

5 (Off the record)

6 (On the record)

7 COURT RECORDER: We are back on the record.
8 The time is 8:56.

9 BY CAPTAIN BEDELLS:

10 Q As you read that--those three paragraphs, sir, did you
11 have a genuine concern for what was happening at MATES?

12 A **Absolutely.**

13 Q I'll call--I'll read into the record--and it's already in
14 evidence, but I'll read in to the record. The lead
15 paragraph says, "According to a few candid persons
16 interviewed, theft at the MATES is a regular and accepted
17 practice." I mean, as the--as the Surface Maintenance
18 Officer, I gather you had some concern about a statement
19 like that, correct?

20 A **To say it mildly--mildly, yes.**

21 Q Okay. And the closing paragraph of--the closing paragraph
22 of number 4, reads, "Though many persons appear to be
23 involved, one person has been mentioned throughout the
24 investigation, and that is Master Sergeant Joe Smock,"
25 correct?

1 **A** **Correct.**

2 **Q** Okay. Now, my question again is did that cause you some
3 reason for concern?

4 **A** **It did.**

5 **Q** You've known Mr. Smock, you testified, six years, right?

6 **A** **And worked with him on partnership issues over that time
7 period, seen him in social gatherings, as well.**

8 **Q** Prior to reading this, had you had any reason to believe
9 that Mr. Smock had engaged in any form of theft at MATES?

10 **A** **No.**

11 **Q** During the six years that you knew him, did you have any
12 disciplinary problems, whatsoever, with Joe Smock?

13 **A** **None. At least that rose to my attention, none.**

14 **Q** Okay. You indicated you consulted his personnel file
15 prior to issuing that proposed adverse action notice,
16 correct?

17 **A** **I did.**

18 **Q** Okay. Do you recall, as you sit here today--and we--while
19 it's not--while it's not in evidence, we do have a copy of
20 his--

21 CAPTAIN BEDELLS: We do have a copy of that
22 personnel file, correct, Major Johnson?

23 MAJOR JOHNSON: We do.

24 CAPTAIN BEDELLS: Okay. Great.

25 BY CAPTAIN BEDELLS:

1 Q So while it's not in evidence, if you need it to refresh
2 your recollection--and perhaps, you don't--but you've
3 testified you consulted that personnel file, correct?

4 **A I did.**

5 Q Okay. Did you find anything in there that indicated any
6 prior problems with theft with Joe Smock?

7 **A No.**

8 Q Okay. Yet, you determined your proposed adverse action
9 notice that he be removed, correct?

10 **A Correct.**

11 Q Okay. Who--who maintained--strike that. While this
12 investigation was going on, who was Mr. Smock's immediate
13 supervisor?

14 **A Colonel Golnick.**

15 Q Okay. And how long, to your knowledge, had Colonel
16 Golnick been Mr. Smock's supervisor?

17 **A In reality, for many, many years. Now, whether they--that**
18 **was done on paper or who actually wrote the initial PAA,**
19 **but Master Sergeant Smock always directly reported to**
20 **Colonel Golnick.**

21 Q Okay. When you say "many, many years," can you give us an
22 idea of how many years?

23 **A I don't remember how many years Golnick was a supervisor**
24 **up at MATES, but it was 2004, maybe.**

25 Q Okay. So is it fair to say that--if 2004 is not accurate,

1 would it be fair to say that the entire span of time
2 during which you've known Mr. Smock, Lieutenant Colonel
3 Golnick was his supervisor?

4 **A He was. Now, like I said, they probably had another layer**
5 **in there at times. But it was, for all intents and**
6 **purposes, Master Sergeant Smock reported to Golnick.**

7 **Q** Okay. Who would be charged with--not--maintaining is the
8 wrong word. Who would be charged with noting any sort of
9 disciplinary or violations of--

10 **A Supervisor, Golnick.**

11 **Q** --Master Sergeant Smock?

12 **A Colonel Golnick.**

13 **Q** Okay. Okay. In light of the fact that Lieutenant Colonel
14 Golnick was Mr. Smock's immediate supervisor and charged
15 with maintaining the personnel file on him, and further in
16 light of the fact that you proposed adverse action notice
17 against Lieutenant Colonel Golnick, himself, was there any
18 cause for concern as you looked over the personnel file?

19 **A Yes.**

20 **Q** Okay. What was your concern?

21 **A That Colonel Golnick probably knew. They were--they were**
22 **always tight. Smock and Golnick were always together.**
23 **Master Sergeant Smock was absolutely part of the**
24 **decision-making process and family there at MATES.**

25 **Q** Okay.

1 **A** **They trusted each other.**

2 Q In other words, did you--did you have cause for concern
3 that the personnel file might not reflect--

4 **A** **Correct.**

5 Q --accurately reflect the performance of Joe Smock?

6 **A** **It probably accurately put the good things that he did in
7 there.**

8 Q Okay.

9 MR. BANCHS: Sir--

10 THE WITNESS: I would give you that.

11 CAPTAIN BEDELLS: Okay.

12 MR. BANCHS: Since we're talking so much about
13 the personnel file, I wouldn't object to that actually
14 coming into evidence. Because if we're going to reference
15 it, then we need to actually put our hands on it.
16 Because, at this point, we're just taking the Colonel's
17 word on what's in the file. I have not seen the file.

18 CAPTAIN BEDELLS: Well, I don't need it into
19 evidence. He's--his testimony is his testimony. You can
20 cross-examine it--

21 MR. BANCHS: Well, he could--

22 CAPTAIN BEDELLS: --cross-examine him.

23 MR. BANCHS: He--I mean, does he have a
24 perfect memory of what's in the personnel file?

25 CAPTAIN BEDELLS: Well--

1 THE WITNESS: There's nothing bad on Joe Smock
2 in that personnel file.

3 CAPTAIN BEDELLS: Right. I doubt he does, but
4 it's sufficient that his testimony--you can cross-examine
5 him. We don't--we don't have any intention of introducing
6 it into evidence at this point, so.

7 MR. BANCHS: Well--

8 CAPTAIN BEDELLS: And we'd object to
9 introducing it into evidence because--

10 MR. BANCHS: --Mr. Smock is telling me that
11 Lieutenant Colonel Golnick is not his official first-line
12 supervisor. It was actually Colonel McNamara.

13 CAPTAIN BEDELLS: Then, when he testifies,
14 Ben, he can--he can state that on direct--

15 MR. BANCHS: So I'm--

16 CAPTAIN BEDELLS: --or you can cross-examine
17 him on it. So I'd like to continue my questioning, if I
18 can, sir.

19 MR. BANCHS: So I--sir, I just want to make
20 sure. Are we going to be allowed to reference things that
21 are not in evidence, then?

22 THE HEARING EXAMINER: Since it's come up,
23 since you're likely to bring it up again, I don't object
24 to it being entered into--into evidence.

25 MR. BANCHS: Okay. Well, can we have the file

1 here before we continue the evi- --the discussion?

2 MAJOR JOHNSON: Yes.

3 CAPTAIN BEDELLS: Well, I'm going to move onto
4 a new--

5 MR. BANCHS: That's fine.

6 CAPTAIN BEDELLS: --while we're getting that,
7 because--

8 THE HEARING EXAMINER: Yeah. Let's proceed.

9 CAPTAIN BEDELLS: --I'm not going to wait for
10 him to review--

11 THE HEARING EXAMINER: No.

12 CAPTAIN BEDELLS: --the personnel file. It's
13 rather large. Okay. So I'm going to--I'll come back to
14 that if I need to.

15 THE HEARING EXAMINER: Yeah. Go ahead.

16 BY CAPTAIN BEDELLS:

17 Q Okay. So I want to draw your attention to page 16, sir,
18 the second paragraph down. Okay. If you could take a
19 moment to read that paragraph.

20 **A This is the "Theft of Time," one?**

21 Q Right. I'm going to start reading it, because--I'm going
22 to read it, if you don't mind, to make sure we're all on
23 the same page, because we don't have--we don't have--this
24 is right before "Theft of Copper."

25 MR. BANCHS: What?

1 MR. SMOCK: What page is he on?

2 CAPTAIN BEDELLES: I think it's the previous
3 page, sir.

4 MR. BANCHS: Oh. It's 16.

5 CAPTAIN BEDELLES: It was Master Sergeant
6 Smock--"It was said Master Sergeant Smock ran a
7 construction--"

8 THE HEARING EXAMINER: Yeah.

9 CAPTAIN BEDELLES: --are we all tracking?
10 Okay. Great.

11 BY CAPTAIN BEDELLES:

12 Q Did you have an opportunity to read that?

13 A Yes.

14 CAPTAIN BEDELLES: Ben, did you have an
15 opportunity to read that?

16 MR. BANCHS: Yeah. Go ahead.

17 BY CAPTAIN BEDELLES:

18 Q Okay. Okay. So you've read that paragraph. So--let me
19 take a look through that thing and see what's there.
20 Let's--let's go through this.

21 So "It was said Master Sergeant Smock ran a
22 construction business." Now, as I look at your proposed
23 adverse action notice, I don't find any allegation in
24 there about Master Sergeant Smock running a construction
25 business.

1 **A** **Correct.**

2 **Q** So was it your determination that this is one of those
3 instances in which there wasn't sufficient basis to remove
4 him on--for these reasons?

5 **A** **Correct. There was--and through the investigation, I**
6 **discovered many people were running side businesses. And**
7 **since then, all side jobs, additional jobs have to be**
8 **approved by the supervisor.**

9 **Q** Okay.

10 **A** **It was my under- --my impression that was the rules, but**
11 **it certainly was not in affect at MATES.**

12 **Q** Okay. Had you--prior to this investigation commencing,
13 had you heard of employees running side businesses out of
14 MATES?

15 **A** **I have. I knew small projects here and there. I didn't**
16 **realize there was full-time--additional full-time**
17 **employment is what surprised me.**

18 **Q** Okay. And then it goes on to say that--that "The
19 construction business--" for which you did not discipline
20 him, correct?

21 **A** **Correct.**

22 **Q** "--was said to specialize in garages, pole barns and other
23 wood structures, such as deer blinds, ice shanties, decks
24 and gazebos for example." Do you--do you see that?

25 **A** **I do.**

1 Q Okay. Now--and this is where we see clarification. So
2 while you did not remove him for, according to your own
3 testimony, running a side business, this paragraph alludes
4 to wood structures. And one of the basis--one of the
5 bases upon which you removed--or you proposed removal of
6 Mr. Smock was that he wrongfully removed sheets of OSB
7 from the MATES building, wrongfully removed wood from the
8 MATES building and wrongfully removed sheets of luan from
9 the MATES building.

10 A **Correct.**

11 Q Correct? Okay. So was it your position that it wasn't so
12 much--it wasn't at all him running a side business; it was
13 your belief, based on this 15-6, that the theft of
14 materials was occurring?

15 A **Correct.**

16 Q Okay. And if I could have you turn to page 17 on your
17 file, and this one is "Theft, Diesel," paragraph C of the
18 report. Take a moment to read the first paragraph, sir.

19 A **Okay.**

20 Q And in light of that paragraph, you, in your proposed
21 adverse action notice, wrote that Master Sergeant Smock
22 was being removed because he wrongfully removed diesel
23 fuel from the MATES building. Do you recall that being in
24 your proposed adverse action notice?

25 A **Yes.**

1 Q Okay. So, again, this would be one of the instances in
2 which you believed there was sufficient corroboration
3 of--of the allegation, correct?

4 A **Correct.**

5 Q Okay. Okay. And if you could turn to the next page 18,
6 under D, "Theft of Wood." And take a moment to read the
7 first paragraph.

8 A **Okay.**

9 Q And I call in parti- --your attention in particular to the
10 second sentence of that paragraph.

11 A **It's a really large sentence.**

12 Q Right. It is. I'm--that's--we can maybe do some
13 professional development in grammar for all of us.
14 That's--that is a long sentence.

15 So why don't we break it up. It speaks about a
16 couple of things. One of which is the theft of wood to
17 use--to use in the construction of home improvements.
18 Okay. To your knowledge, do you know whether--what form
19 of home improvements Mr. Smock is alleged to have used
20 this wood on?

21 A **No, I did not--I've never been to Mr. Smock's home.**

22 Q Okay. Did you hear any--do you recall--

23 A **Yes.**

24 Q --well, strike that. Do you--did you hear any accounts of
25 what he is alleged to have used this stolen wood for?

1 **A** **Absolutely.**

2 Q Okay. And what have you heard?

3 **A** **I've heard fishing shanties, gazebo. I've heard the**
4 **tip-ups. I've heard display cases.**

5 Q Okay. When you speak of display cases, what--what--are we
6 talking about, like, a shadow box display case?

7 **A** **Some, yes. Yeah.**

8 Q Okay.

9 **A** **Or larger display cases for military trophies or what have**
10 **you.**

11 Q Okay. Okay. And then let's take up the second portion of
12 that sentence, where it talks about wood to build a
13 two-story shed/playhouse for his son. Aside from what you
14 read here, have you heard--heard from anyone allegations
15 with respect to a two-story shed or playhouse for his son?

16 **A** **Had not.**

17 Q Okay. And how about OSB to build garages at his
18 residence. Other than reading it in here, have you ever
19 heard any information--

20 **A** **No.**

21 Q --about OSB used for a garage?

22 **A** **No.**

23 Q Okay. And I think you already--and the gazebo at his
24 residence. I believe your testimony was you had heard
25 about a gazebo?

1 **A** **I had heard a gazebo.**

2 Q Okay. And--and ice shanties?

3 **A** **I had heard about ice shanties.**

4 Q Okay. How about a bar for the 1070 First Maintenance
5 Company? Have you ever heard about that?

6 **A** **I have--since the investigation, I've heard about it.**
7 **This is when I've heard about these things.**

8 Q Okay. So it's your testimony the first time you heard
9 about this was as you read this report and people--

10 **A** **And then after the fact, people started--yes.**

11 Q Coming forward. Okay. And how about--again, this talks
12 about his two-story playhouse--the luan? Is it your
13 testimony you'd not heard about that?

14 **A** **No.**

15 Q Okay. Very--very well. Do you recall from whom you heard
16 these reports about, at least, the gazebo, the tip-ups and
17 the ice shanty?

18 **A** **Reading the investigation and afterwards, I did--I'm**
19 **trying to think who came to my office after the**
20 **proposed--it was after the proposed decision was given,**
21 **though. Master Sergeant Cooper was one. I believe Master**
22 **Sergeant Herblet was another. Chief Mack was another.**

23 Q So Chief Mack--

24 **A** **There--there was a few. I just--after the proposed action**
25 **and since then, several people have approached me at the**

1 **MATES.**

2 Q Okay. Did they--and when you say at MATES, I know those
3 three people to have worked at MATES at one point. It's
4 my understanding Master Sergeant Cooper does--no longer
5 works there, correct?

6 A **No. After Colonel Golnick and Colonel McNamara left, I**
7 **went up there for a couple weeks until I put Major Austhof**
8 **on ADOS. And during that period, after the original**
9 **decision was made, and even all the way to even just a few**
10 **weeks ago, people would approach me at MATES on the**
11 **investigation. And even people that were not in the sworn**
12 **statements would say, "Hey, the right thing's being done."**

13 Q Okay.

14 A **But it was--**

15 Q Are they sharing additional information--and I just
16 want--are they sharing additional information that wasn't
17 disclosed in the--during the course of the 15-6?

18 A **No.**

19 Q Okay.

20 A **I haven't heard--just confirming a lot of the other**
21 **things. Bu--**

22 Q Okay.

23 A **--yeah.**

24 Q So Master Sergeant Cooper no longer works at MATES,
25 correct?

1 **A** **Correct. He's been assigned--**

2 Q Do you know where he works?

3 **A** **To the U.P.**

4 Q Okay. To your knowledge did he--and I understand you're

5 not his direct supervisor, but to your knowledge did he

6 request a transfer or--

7 **A** **He did.**

8 Q Okay. And you also mentioned Chief Mack as someone who

9 has come forward after the proposed adverse action notice

10 and said the right this is done. Does he continue to work

11 at MATES in Grayling?

12 **A** **No. Just recently he's down in Detroit.**

13 Q Okay. Did he request a transfer, to your knowledge?

14 **A** **He did not officially request a transfer.**

15 Q Okay.

16 **A** **He said, "It sucks working here now that the investigation**

17 **is over." Several people regularly approach him, call him**

18 **names for--for testifying.**

19 Q He told you that?

20 **A** **He did.**

21 Q What sort of names did he tell you that they--

22 **A** **The Dales--**

23 Q --call him?

24 **A** **--came up as regularly making comments towards him.**

25 Q Okay. When you say "Dales," what--are these two--

1 **A** **Both Tiffany and--yeah--and her husband. They both work--**
2 Q And these are--
3 **A** **--they're both employees at MATES.**
4 Q They're technicians at MATES?
5 **A** **They are.**
6 Q Okay.
7 MR. BANCHS: I object again. This is hearsay.
8 THE HEARING EXAMINER: You know, I'm going to
9 hear this. You're objection's noted--
10 MR. BANCHS: Okay. Thank you, sir.
11 THE HEARING EXAMINER: --but I want to--I want
12 to hear it.
13 BY CAPTAIN BEDELLS:
14 Q So you have at least two technicians who have approached
15 Chief Mack. And--and--what specifically have--
16 **A** **Working conditions up there have been tough since the**
17 **investigation. And to be fair, regardless if it was Smock**
18 **or not, it was--it's a tight family with tight clicks up**
19 **there. And anybody that was--and the fact that the**
20 **investigation went public throughout the community, and**
21 **other people were named in the investigation, certainly**
22 **stirred the pot of this community.**
23 Q Okay. Did Chief--I want to confine my question to Chief
24 Mack. Did Chief Mack relay to you exactly what--is it
25 Tiffany Dale--

1 **A** **Uh-huh.**

2 **Q** --and/or Bruce Dale said to him?

3 **A** **He did, but I couldn't be accurate if I said it right now.**

4 **It definitely wasn't positive, though.**

5 **Q** Okay. So much so that he--he doesn't work here anymore,

6 right, at MATES in Grayling?

7 **A** **He does not work at MATES, correct.**

8 **Q** Okay. Does he continue to be a federal technician?

9 **A** **He is.**

10 **Q** And do you--

11 **A** **He applied to go to--move to Detroit.**

12 **Q** Okay. So he works at Selfridge; is that correct?

13 **A** **That's correct.**

14 **Q** Okay. I want to go back to--in light of--in light of that

15 testimony, I want to go back to Master Sergeant Cooper.

16 Did Master Sergeant Cooper ever relay to you that anyone

17 had approached him and commented on his testimony during

18 the course of the 15-6 investigation?

19 **A** **He did, but he was more concerned about others than**

20 **himself. He didn't--he was blowing it off. He just**

21 **didn't know that others would be able to do so. He did**

22 **want out afterwards, as well. He said it's just not going**

23 **to be a pleasant place to work, and he had family he**

24 **wanted to take care of in the U.P. He's got medical**

25 **issues and--**

1 Q Okay.

2 A **--he asked if he could go up there.**

3 Q Okay. And, I'm sorry, you mentioned three. You said

4 Chief Mack, Master Sergeant Cooper and a third person

5 who--

6 A **Master Sergeant Herblet.**

7 Q Okay. Master--and he's a Master Sergeant, as well?

8 A **He is.**

9 Q And so Master Sergeant Herblet is a third person who

10 confronted you after the conclusion of the investigation,

11 and commented on--

12 A **Not necessarily on his--he wasn't feeling intimidated, but**

13 **he knew others were in the shop. And felt the--and we**

14 **kind of discussed it--we kind of discussed it earlier,**

15 **just the environment of--not a friendly environment to**

16 **those who had made comments in the 15-6.**

17 Q Okay. And they're sworn statements, in fact--

18 A **Correct.**

19 Q --is really what they are? They're more than comments.

20 Okay. So did Master Sergeant Herblet tell you that

21 while--and you've testified, while he didn't really feel

22 intimidated, who did he--did he relay to you that this

23 is--these are--these people might--

24 A **His was more general. No. His is more general--**

25 Q Okay.

1 A --on the shop feels--

2 Q Okay.

3 A --that everyone's now--it went for a period no one would
4 talk to anybody, and I think that happened throughout the
5 15-6, as well. Afraid of who would say something next bad
6 about them. It's been a--it's been a little bit of a
7 rough go up there--

8 Q Okay.

9 A --or up here.

10 CAPTAIN BEDELLS: Okay. We'll break in a few
11 and we can talk about this. (To Staff Sergeant Schultz)

12 BY CAPTAIN BEDELLS:

13 Q Other than Chief Mack, Master Sergeant Herblet and Master
14 Sergeant Cooper, has any employee--and I understand,
15 again, you are not their--you're a Lieutenant Colonel, and
16 you're not their direct supervisor. But other than those
17 three, has any employee at MATES, or for that matter any
18 employee talked to you about a fear of reprisal for coming
19 forward and providing sworn statements in connection with
20 this 15-6?

21 MR. BANCHS: Can I object to this. It's asked
22 and answered already. We've already talked about slashed
23 tires. We talked about not being promoted. We've talked
24 about allegedly--

25 THE HEARING EXAMINER: Where--

1 CAPTAIN BEDELLS: No. The question--that's
2 not--that's not the question. The question is other than
3 the three people that we've covered. And I granted--I
4 grant you we've asked and answered those questions,
5 Cooper, Herblet and Mack.

6 BY CAPTAIN BEDELLS:

7 Q Are there any employees at all, outside of MATES, who have
8 come forward and complained to Lieutenant Colonel Meyers
9 about a fear of reprisal?

10 MR. BANCHS: It's not in the record, for one.
11 It would be hearsay, if we don't identify who they are.
12 And how do they apply to Mr. Smock's case?

13 THE HEARING EXAMINER: That's my question.
14 Where are you going in terms--where does it bring it back
15 to the issues here with Mr. Smock?

16 CAPTAIN BEDELLS: Well, it's the--it's the
17 theme, sir, of one--it's one of the themes of this entire
18 investigation, which is reprisal, being labeled snitches
19 and--and generally a reluctance to come forward. Not--not
20 with--not just with Mr. Smock, but the investigation, in
21 general. So what I'm--where I'm going is do we think we
22 have the--do we think we have the full story here. And
23 according to, at least, the three people that we've
24 mentioned, Cooper, Herblet and Smock (sic)--or Cooper,
25 Herblet and Mack, that there was a reluctance to come

1 forward. I mean, that--I think that's of paramount
2 concern in this investigation, so.

3 MR. BANCHS: But, if we--if we allow this line
4 of questioning just into this particular case--I mean,
5 we're not prosecuting the entire case. We're only talking
6 about Mr. Smock here, so.

7 CAPTAIN BEDELLES: Right. I understand. But
8 I--

9 MR. BANCHS: Is he going around town
10 intimidating everybody?

11 CAPTAIN BEDELLES: I'm--I'm--to be clear, I
12 don't think that--I've listened to the testimony as
13 everyone else. I don't think Lieutenant Colonel Meyers
14 has suggested that it is Joe Smock--you're--Joe Smock
15 who's intimidated people. It's just a general fear of
16 intimidation.

17 MR. BANCHS: Well, I'll bring--

18 CAPTAIN BEDELLES: And that goes to the--that
19 goes to the nature of the investigation, sir.

20 MR. BANCHS: I'll make one last point, sir.
21 You know, we'll even stipulate that people might even fear
22 reprisal, whatever, because of whatever they said.
23 However, legally, Mr. Smock, even if he was still a
24 technician, doesn't have any authority to reprise against
25 these people. He can't demote them or anything. He's

1 just a regular employee. So, again, what's--

2 CAPTAIN BEDELLS: I think my question was
3 during the course of the investigation. And he was an
4 employee during the course of the investigation.

5 MR. BANCHS: But he was not a supervisor.

6 CAPTAIN BEDELLS: Okay.

7 MR. BANCHS: He was not in a management
8 position--

9 CAPTAIN BEDELLS: He was--he was--

10 MR. BANCHS: --to be able to take action. He
11 was not an actionable person.

12 CAPTAIN BEDELLS: He was an employee, so.

13 THE HEARING EXAMINER: I think we've got two
14 issues here. One is the investigation and what that
15 generated in terms of an environment. But then we
16 specifically boil down, in Mr. Smock's case, what Colonel
17 Meyers did in Mr. Smock's case, specific charges. I can
18 see where there may be some relevance in terms of how that
19 environment impacted the choice of penalty, something
20 along those lines. But I--again, we're getting back--I'd
21 like to stick as much possible to the specific charges in
22 this case and the proposed penalties that--

23 CAPTAIN BEDELLS: Okay.

24 THE HEARING EXAMINER: --were proposed, and
25 ultimately the decision that was made based upon those

1 charges.

2 CAPTAIN BEDELLS: Why don't I get at it
3 another way, sir. I'll try.

4 THE HEARING EXAMINER: Okay.

5 BY CAPTAIN BEDELLS:

6 Q Who was your Union rep at the MATES facility?

7 A **Smock.**

8 Q Okay. The--you've had an opportunity to review the 15-6
9 and the employees who provided sworn statements?

10 A **Correct.**

11 Q Okay. To your knowledge, were any of them a member of the
12 Union?

13 A **Who?**

14 Q The people who provided the sworn statements.

15 A **I--**

16 Q Was a single person, to your knowledge--and let's
17 take--let's take--

18 A **To be honest, I don't--**

19 Q Let's take Master Sergeant Cooper.

20 A **I don't believe he was a member of the Union.**

21 Q Okay. How about Chief Mack?

22 A **No.**

23 Q Okay. How about the Whitchers? How about Sharon
24 Whitcher?

25 A **No.**

1 Q Todd Whitcher?

2 A **I don't believe so, no.**

3 Q Okay. How about Herblet?

4 A **No.**

5 Q Okay. So, to your knowledge, none of those people are

6 part of the Union?

7 A **I don't believe so. Now, once the investigation started,**

8 **everyone seemed nervous, and I'm sure Union membership**

9 **went up--**

10 Q Okay.

11 A **--so they'd have representation.**

12 Q Okay. To your knowledge, was any--strike that. Did you

13 receive a complaint that any particular person was denied

14 Union representation?

15 A **No.**

16 Q Would that even elevate to you?

17 A **It potentially would, but, no, I never--I've never heard**

18 **that throughout the community--**

19 Q Okay.

20 A **--that no one was denied.**

21 Q Okay.

22 A **I just haven't.**

23 Q Okay. I'll call you to the very last paragraph--and we

24 should all be able to find this one--the very last

25 paragraph of the 15-6 Report, prior to the "Point of

1 Contact," obviously. The one that beings "As said in the
2 opening comments." Can you take a moment to read that
3 paragraph, please?

4 **A Okay.**

5 Q Okay. Did you receive any complaints about the--from
6 employees at MATES, about the manner in which Colonel
7 Doolittle conducted this investigation?

8 **A I did.**

9 Q As you sit here today, do you recall from whom you
10 received a complaint?

11 **A I heard from--from several. I heard from Master Sergeant
12 Smock, Colonel Golnick, Colonel McNamara. I'm trying to
13 think who else. I believe Master Sergeant Piper was--was
14 one. I believe Master Sergeant Herblet complained.**

15 Q Okay.

16 **A They just didn't--a lot of it, I think, was just also the
17 attention on their facility. They didn't like the
18 negative attention on their facility.**

19 Q Okay. And that closing paragraph also touches upon, once
20 again, as he said in the opening comments, of a--the
21 concept of reprisal as a significant concern--

22 **A There was.**

23 Q --correct?

24 **A And whether--I would say maybe not even unintentional
25 reprisal, being a small community, somebody at MATES--and**

1 I'm hesitant because I don't remember who mentioned that,
2 you know, "We're close. Smock's wife is my kid's
3 teacher." I mean there's just--it's a close, small-town
4 community.

5 Q All right. So with all this in mind, was your decision to
6 propose removal of Mr. Smock a difficult decision?

7 A Yes. Known him for a long time. Always had a very good
8 working relationship. Been out to the ice fishing. Hung
9 around specifically with Joe because he's fun to be
10 around.

11 Q Okay.

12 A It was--

13 Q So it's fair to say it was tough for you?

14 A It was.

15 Q Okay.

16 A Still is tough.

17 CAPTAIN BEDELLS: I don't have any further
18 questions, sir, at this time.

19 THE HEARING EXAMINER: Okay. Thank you.

20 CAPTAIN BEDELLS: Do you want to break or--

21 THE HEARING EXAMINER: You guys want a break?

22 Yeah.

23 Go off the record.

24 MR. BANCHS: This is going to go long.

25 THE HEARING EXAMINER: Let's take--what time

1 is it?

2 COURT RECORDER: We are off the record. The
3 time is 9:29.

4 (Off the record)

5 (On the record)

6 COURT RECORDER: We are back on the record.
7 The time is 9:43.

8 THE HEARING EXAMINER: Mr. Banchs, you may
9 cross-examine this witness.

10 MR. BANCHS: Thank you, sir.

11 Good morning sir.

12 THE WITNESS: Morning.

13 MR. BANCHS: My name is Ben Banchs. I just
14 want to give you a little background on who I am, just so
15 you know.

16 THE WITNESS: I know who you are.

17 MR. BANCHS: Okay. Good.

18 THE WITNESS: Another lawyer.

19 MR. BANCHS: I've been in the Guard for 23
20 years, and I was a technician for 7, so, you know, this
21 is--a lot of this--this is not foreign to me, so.

22 THE WITNESS: Okay.

23 MR. BANCHS: I'm going to ask you the question
24 from that approach.

25 THE WITNESS: Okay.

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CROSS-EXAMINATION

BY MR. BANCHS:

Q Okay. I'm just curious, sir, at the time that the investigation ended, at the end of January, what were you doing? Were you TDY or anything or were you just--

A I don't remember what I was doing.

Q Were you at the office doing your regular job or--

A I can't--I would assume so. I was not on any long, extended vacations or TDY at that time.

Q Okay. All right. You mentioned that you've been the SMM for about a year-and-a-half.

A Uh-huh.

Q You were the CMSMS super--or superintendent for four years, and before that you were maintenance manager for a year, so you've been around?

A Yes.

Q You're familiar with the technician program?

A Full aware.

Q When was the last time or how many times have you been to supervisor's training?

A Quite a few. Three or four times, at least.

Q And when was the last time you went as a refresher?

A Year-and-a-half ago.

Q Okay. And the reason I'm asking is because, in your testimony, you--you mentioned that the Douglas Factors, or

1 you were--you were familiar with the Douglas Factors, but
2 I think you said that they hadn't been around for that
3 long.

4 **A** **We hadn't been required to initial the checklist for the**
5 **Douglas Factors when I was first hired.**

6 **Q** Okay. Which was?

7 **A** **'02.**

8 **Q** 2002?

9 **A** **Correct.**

10 **Q** Okay. Because I just wanted to refresh your memory the
11 Douglas Factors have been around since 1981.

12 **A** **Correct. We didn't--what we would get in the past would**
13 **be from the management labor relations specialist, not**
14 **that particular checklist, but said, hey--they would**
15 **scrutinize our proposed action where the case would be,**
16 **and then email you back, did you consider this, this and**
17 **this. And you played that game back and forth.**

18 **Q** Okay. So they--you were still considering the Douglas
19 Factors, you just weren't aware if there was--

20 **A** **It was just a different format.**

21 **Q** --a checklist?

22 **A** **Right.**

23 **Q** Okay.

24 **A** **We got that checklist a few years ago.**

25 **Q** All right. You said that you've been an original

1 decisions maker on several occasions.

2 **A I have.**

3 Q Okay. About how many?

4 **A More than 20.**

5 Q Okay. And you're--

6 **A Maybe not that many.**

7 Q And so I'm assuming that you've been the

8 proposed--proposing official, as well, several occasions,

9 correct?

10 **A Not as many.**

11 Q Not as many?

12 **A No. Even when I was the maintenance manager, I was still**

13 **a supervisor of supervisors. And we typically didn't have**

14 **supervisors that got in trouble. Now, a lot of times**

15 **their employees did. So most of the time someone else**

16 **would be the proposed--**

17 Q Okay.

18 **A --and I would be the original decision maker.**

19 Q But in this case, because of the circumstances, meaning

20 that the persons who would have normally served as the

21 proposing officials, Colonel Golnick, Colonel McNamara,

22 since they were out of the loop because of what was going

23 on--

24 **A Correct.**

25 Q --you had to serve this time as a proposing official,

1 right?

2 **A I did.**

3 **Q** And at that time, is there a reason that--that the
4 original decisions maker was Colonel Durkac, the Chief of
5 Staff? I mean, how many layers between you and Colonel
6 Durkac are there?

7 **A There's one additional layer. Colonel Gardiner's my**
8 **direct supervisor.**

9 **Q** Okay.

10 **A** He had just--he was still up here as the Deputy Commander
11 when the CID came onboard. So he recently came into
12 there. And because of his affiliation and being around
13 Grayling, as well, I speculate that's why he was not the
14 original decision maker in this case.

15 **Q** Okay. All right. Let's see. You testified that--that
16 you were--you were either called down or you came down
17 here. Was it the CID that requested you to come down here
18 concerning the anonymous letter?

19 **A** No. I was already here. I was checking on some--some--I
20 forget what I was checking on. I think I was up here for
21 unit business at the time, checking on howitzers. They
22 were doing a howitzer refit, I believe, is why I was here.
23 And while I was here, CID happened to show up. So I did
24 not know they were here.

25 **Q** And refresh my memory, sir, about what--what time was

1 that? What date? Month and year is fine.

2 **A** **It was--it was nice outside because I wasn't wearing a**
3 **jacket. It was sunny out. It was before the 15-6 started**
4 **by a month or two. So--**

5 **Q** June, July?

6 **A** **Somewhere in there, I believe.**

7 **Q** Of last year, right?

8 **A** **Correct.**

9 **Q** And before that, you were not aware that the CID was
10 conducting any kind of inquiry?

11 **A** **No. Definitely a surprise.**

12 **Q** Okay. What exactly did the CID tell you when you happened
13 to come across?

14 **A** **They asked if--who I was and what position I held. And**
15 **they brought me into the conference room up there and went**
16 **over the anonymous letter. And said, you**
17 **know--highlighted some of their areas of concern. And**
18 **they specifically said, you know, "We're not directing you**
19 **to do anything. But right now, as a supervisor, we want**
20 **you to be aware of this. And we will submit our**
21 **recommendation to your chain of command, to the JAG Force**
22 **Headquarters. But they brought me in to say, "Hey, these**
23 **are--these are things that--have you had any knowledge**
24 **of?" kind of things.**

25 **Q** Okay. So you weren't aware of any of these--of these

1 allegations; you weren't aware that there was an anonymous
2 letter written until you happened to come across the CID?

3 **A Correct.**

4 **Q And you met with them. You guys went over the letter.**

5 Did they tell you why they were going to hand it over to
6 the State of Michigan and they didn't feel there was any
7 need for them to continue?

8 **A They actually stated "We're not sure--" at that time, they**
9 **were unsure if CID was going to do the investigation.**
10 **They said--I mean, they told me because of their backlog**
11 **and there wasn't over a million dollars, and they kind of**
12 **had their own--they said typically this would be handed**
13 **down to your chain of command to do an investigation. "We**
14 **will likely recommend a 15-6 to your--to your State."**

15 **Q Okay. And the reasons that I'm asking these questions**
16 **specifically is because the Captain has alluded to the**
17 **notoriety of--of the letter at that point in time. But if**
18 **I'm hearing you correctly, you weren't even aware of the**
19 **letter until you happened to come across the CID. And at**
20 **that point in time, did they indicate to you that they had**
21 **released that letter to anybody other than the Michigan**
22 **National Guard chain of command, top command?**

23 **A I, at that time, didn't even know that they**
24 **necessarily--that the chain of command had that letter.**

25 **Q Oh.**

- 1 **A** When I got back to Lansing, I called and said, "Hey, CID
2 is up here at Camp Grayling. I don't know a lot except
3 for anonymous letter." At that time, I believe I talked
4 to Colonel John Wojcik. And he said "We're aware." And
5 just--you know, we'll take that guidance from CID when it
6 actually comes.
- 7 **Q** So it would be safe to say that summer of last year the
8 letter was not public knowledge, so it was not--there was
9 not much notoriety?
- 10 **A** I will tell you that as soon as CID walked in the door,
11 information spread quickly.
- 12 **Q** Right. Well, rumor, speculation, correct?
- 13 **A** Well, CID's here. They're investigating MATES is
14 certainly how it was portrayed.
- 15 **Q** Is that the first time that the CID has investigated a
16 Michigan National Guard facility?
- 17 **A** First time they've investigated one of mine.
- 18 **Q** Okay. Fair enough. So after that, were you aware that a
19 15-6 had been ordered? After June or July of 2013?
- 20 **A** Yes.
- 21 **Q** You were aware that Colonel Doolittle began an
22 investigation or that he was appointed--how did--how did
23 you find out that a 15-6 was being conducted?
- 24 **A** Chief of Staff Colonel Durkac brought me in and said,
25 "Hey, we're going to initiate a 15-6." At the time,

1 they--he mentioned that they were--were talking about
2 potentially doing one at MATES and Camp Grayling
3 separately. And they--he discussed that they were--I
4 think I was brought in the meeting before they picked
5 Colonel Doolittle, but they--they were going to appoint a
6 15-6 investigating officer. It'd be an O6, looking for
7 someone with a background who'd be able to do an
8 investigation type stuff.

9 Q But at that time, you didn't know it was going to be
10 Colonel Doolittle?

11 A Initially, no. But I did know it was Colonel Doolittle
12 before he started the investigation.

13 Q Okay.

14 A I was told that Colonel Doolittle would be there. And
15 they had to make sure people were available for the
16 questioning, and that he was going to have an office here
17 on main post. And that he had an assistant, Lieutenant
18 Emery.

19 Q So his investigation started, I guess, you know,
20 towards--in August. But in earnest, he didn't really
21 start interviewing people till around the beginning of
22 September; is that your recollection?

23 A I believe that to be true.

24 Q So between September and January 30, or whenever you
25 received the letter, his report of investigation, did you

1 have any interaction with Colonel Doolittle or Lieutenant
2 Emery or anybody?

3 **A No. Just on this side of the house. I didn't have an--**
4 Q Employees and stuff?

5 **A Employees and stuff.**

6 Q Okay.

7 **A "Hey, I'm being asked these types of questions," you know,**
8 **those types of things is what I heard.**

9 Q And were--were these communications with--with--with these
10 folks that were being interviewed, where they--like
11 you--like you've mentioned before, some were concerned?
12 Where they asking you for advice? I mean, what kind of
13 interaction did you have with them?

14 **A No. And I didn't know a lot to discuss. I mean, Sweat**
15 **called me regularly about the conduct of investigation.**
16 **Master Sergeant Smock did, as well. Colonel Golnick,**
17 **Lieutenant Colonel McNamara did, as well. I had regular**
18 **communications with folks during the investigation.**

19 Q Now, Sweat and Smock contacted you as employees or as
20 Union reps?

21 **A It doesn't really--I don't know. They were--**
22 Q Their concerns were--

23 **A I'd always had a good working relationship with both of**
24 **them, and so they were concerned with everybody was being**
25 **questioned, and where's this going, type of thing.**

1 Q Did they ever mention they were concerned with Colonel
2 Doolittle's tactics or the conduct of the investigation,
3 that employees were being denied representation?
4 **A I didn't hear about denied representation until later.**
5 Q Okay. But it was before the investigation was over?
6 **A Correct.**
7 Q Okay. At what--do you remember the--the ROI is
8 dated--well, we have two versions, obviously. One's the
9 20th (sic) and one's the--I'm sorry--the 24th, and one's
10 the 30th of January.
11 **A ROI? Is that--**
12 Q The Report of Investigation--
13 **A Okay.**
14 Q --that Colonel Doolittle authored.
15 **A Yeah.**
16 Q When--do you remember when you saw that? When was the
17 first time that you got your hands on that?
18 **A After the investigation was complete, I got a call from**
19 **the JAG office that the investigation was complete.**
20 **"There's a 15-6 and the ROI for your review." And that's**
21 **when I went over to JAG. They put me up in an office,**
22 **gave me all the binders, the ROI, all the sworn**
23 **statements.**
24 Q Do you remember the date, though, sir, because you issued
25 your letter on February 12th?

1 **A** **Yeah, it was--it was not much before that. Maybe a week**
2 **or so--maybe a week.**

3 **Q** A week after he finished it?

4 **A** **I believe so. I didn't have--I probably had it for, yeah,**
5 **it might have been a little bit more than a week. After I**
6 **read it, it took awhile to do the administrative part. I**
7 **did meet with HRO formatting a letter and that type of**
8 **thing. So--**

9 **Q** Well, and I hate to be a stickler, but I just want to, you
10 know, get this in my head. That January 30th was a
11 Thursday.

12 **A** **Okay.**

13 **Q** Okay. Do you recall maybe what day of the week you got
14 your hands on the report where you could actually start
15 reading this investigation?

16 CAPTAIN BEDELLS: Well--

17 THE WITNESS: I don't remember the day of the
18 week exactly. I believe it was pretty quick. I believe
19 once they had it, I was called right away that the
20 investigation is complete. And they were--they had it all
21 in binders.

22 BY MR. BANCHS:

23 **Q** Okay. And you issued your letter on the 12th. So that's
24 less--that's even less than a week-and-a-half.

25 **A** **It was--I probably had--it took me--I read all the stuff**

1 in one full day. And then I came back to read it again.
2 And then I asked questions of JAG after that. It was
3 probably a week process. Maybe--maybe--
4 Q And you--
5 A Like--you said a week-and-a-half maybe. It wasn't--it
6 wasn't that long.
7 Q So after you receive the report, you did not meet or talk
8 with Colonel Doolittle--
9 A I did not.
10 Q --was your testimony? Okay. You did speak with HRO?
11 A I did.
12 Q And you spoke with JAG?
13 A I did.
14 Q And you spoke with them for advice and direction on how to
15 write it or--
16 A Yeah. On--on--it has been awhile since I did a--did a
17 proposed action. And they asked, "Well, what are you
18 thinking after you read this?" And I said, "Well, these
19 are my areas of concern. These are the areas that I see
20 corroboration or collaboration."
21 Q Were you--were you provided the audio recordings?
22 A I was not.
23 Q No?
24 A I still have not heard them.
25 Q Okay. So you just took Colonel Doolittle's Report of

1 Investigation and all the documents, and you just took
2 them at face value?

3 **A And all the 15-6, and the sworn statements, yes, that's**
4 **right.**

5 Q Right. Okay. You mentioned that you made this decision
6 on your own after reading this?

7 **A Uh-huh.**

8 Q And forget my bluntness but I just need to ask you were
9 you ordered to write the letter, sir?

10 **A No.**

11 Q You wrote it based on what you wrote--

12 **A I didn't see any--**

13 Q --what you read?

14 **A I didn't get pressured from higher to--**

15 Q Okay. You wrote the letter. You wrote it on your own.
16 You wrote it without--with the advice and guidance of HRO
17 and JAG, but it was--this is your product, correct?

18 **A Correct.**

19 Q Okay. They helped me with the formatting, "Hey, put this
20 sentence here."

21 Q You mentioned that you relied on testimony, that your
22 excluded some, you know, you were trying to determine what
23 was hearsay and what was not. Whose testimony, in your
24 recollection, did you rely the most on, if you can
25 remember?

1 **A** It was--it was the whole testimony. And when I first read
2 the 15-6, the--there were others besides Master Sergeant
3 Smock that were included with my review and my
4 recommendation at that same exact time.

5 **Q** Uh-huh.

6 **A** So it wasn't--I didn't grab the 15-6 and then just look
7 for Master Sergeant Smock, and then grab a 15-6 and look
8 for Lieutenant Colonel Golnick.

9 **Q** Right.

10 **A** I went through the whole--the whole thing.

11 **Q** Well, you wrote several proposed action letters that week?

12 **A** I did. I did.

13 **Q** Yeah. In fact, you wrote, what? I think--I think it was
14 like five?

15 **A** Uh-huh. And I considered others, as well.

16 **Q** So you wrote--you mention that you--you proposed
17 termination for Colonel Golnick, Colonel McNamara, Mr.
18 Smock, Mrs. Reed, and then you proposed suspension for Mr.
19 Bower--

20 **A** And Thayer.

21 **Q** --and Thayer.

22 **A** I did.

23 **Q** So that's six--six people, in less than a week, you were
24 able to devote all this time to this? I'm just--I'm not
25 trying to be facetious here.

1 CAPTAIN BEDELLS: Well, I'm going to object at
2 this point. I don't think he's characterized that it was
3 less than a week. I think--there's two problems here.
4 One is we have two letters--or two--or two 15-6 ROIs,
5 right. We have one dated, which I don't have, which is
6 presumably--or apparently--

7 MR. BANCHS: One's the 24th.

8 CAPTAIN BEDELLS: Right. The 24th. So
9 there's one product that might have been complete on the
10 24th. And for reasons I cannot fully explain, we have
11 another one dated almost a week later on the 30th. So I'm
12 going to object to the characterization that it was less
13 than a week. I think Lieutenant Colonel Meyers has
14 testified he's not exactly sure when he got it. The 30th
15 is--according to you--a Thursday.

16 MR. BANCHS: A Thursday.

17 CAPTAIN BEDELLS: Okay. But it might have
18 been the previous Friday for all we know, the 24th. So
19 I'm going to object to the characterization that it's
20 under a week. I--we don't know. He doesn't know when he
21 received it.

22 MR. BANCHS: Okay. Two weeks. I'll stipulate
23 to--

24 BY MR. BANCHS:

25 Q You had two weeks to do all this--

1 **A** **Correct.**

2 **Q** --to review this entire file? I just find it hard to
3 believe, sir, that it took you two weeks to do all this,
4 when it took the investigator from September to January.
5 And even me preparing just for this one case has taken me
6 months. And you don't even--you haven't even had the
7 opportunity to listen to about 34-plus hours of audio that
8 was included with this?

9 **A** **I did not.**

10 **Q** Okay. So, again, I ask you whose witness testimony did
11 you rely on the most, because in your letter to Mr. Smock,
12 you only cite Mr. Cooper's testimony, Mrs. Fouts'
13 testimony and Mr. Witcher's testimony.

14 **A** **I felt that those testimonies were corroborated the most.**

15 **Q** The most.

16 **A** **I believe other potential sworn statements and things**
17 **certainly, but those seemed to--to, I'd see one**
18 **corroborate with other, corroborate with another on the**
19 **sworn statements.**

20 **Q** You said that you--that you--that you gave due--due
21 consideration to the different types of evidence, and that
22 you tried to stay away from hearsay; was that correct?

23 **A** **I did.**

24 **Q** Okay. Can you tell me--

25 **A** **Some of it looked what I would say--there was blatant--and**

1 I guess I characterize that as one reference to something
2 I heard so-and-so did this and there was no other
3 corroboration, no other--I--I mean, the copy I had had
4 highlighters and notes and scratches all over it.

5 Q Well, sir, do you remember any direct evidence that you
6 relied on?

7 A I believe there was several witnesses that said "I saw,"
8 "I witnessed." That's absolutely in a sworn statement--

9 Q Okay. That would--

10 A --obviously--

11 Q That would be probably Mr. Cooper who claimed he had
12 direct evidence of Mr. Smock actually stealing wood?

13 A Probably.

14 Q Okay. Mrs. Fouts was the only person who actually saw--

15 A Right.

16 Q --Colonel Golnick and Mr. Smock carry a TV--

17 A On the TV.

18 Q --to the car. And Mr. Whitcher, well, he pretty
19 much--we'll get to him later.

20 Who did you strike? Do you remember who you struck?
21 Because you said that there was some testimony that you
22 didn't even pay attention to.

23 A Some that was striked on behalf of Master Sergeant Smock.
24 I don't really recall right this second. I mean,
25 that--like I said, I highlighted. And I--when I was

1 sitting with the JAG, and I said, "I don't see this one,"
2 and "This one just doesn't--it's just complete blatant
3 hear- --"

4 Q So--

5 A --not that there wouldn't necessarily be truth with it. I
6 just wasn't able to see that and another person saw or
7 witnessed.

8 Q When you read or your heard the concerns about the Union
9 or Mr. Smock specifically trying to interfere with the
10 investigation, is there a reason you didn't charge him
11 with, you know, interference or obstruction?

12 CAPTAIN BEDELLS: Hold--I'm not clear on the
13 question. Who was interfering with it? The
14 investigation?

15 BY MR. BANCHS:

16 Q When you read or you heard from other employees that--

17 A I didn't hear that--

18 Q --Mr. Smock--

19 A --till later. I didn't--I didn't hear from an employee
20 that Master Sergeant Smock was interfering with the
21 investigation, and I had not talked to Doolittle.

22 Q Well, it's in that--it's in the 15-6. There was--there
23 was witnesses that made statements that Mr. Smock was
24 interfering with the investigation in his Union capacity.

25 A I did not read the 15-6 until it was complete, though, so.

1 Q No, I'm saying this is--this is after the 15-6 was
2 completed, and this should have been before you wrote your
3 letter. That would--that's all in the record.

4 A Yeah. I thought that when Sweat and Smock--I didn't have
5 anything in writing that--that I felt that was them doing
6 anything that would be more than the other allegations.
7 Specifically, I guess, coaching was the best I could--

8 Q Okay. Did you--

9 A And they--and he was their Union rep, both of them, I
10 guess. I mean Sweat was assigned up here. So--

11 Q Okay. Did you--I'm sorry, sir. Did you happen to bring
12 your notes or anything or what--

13 A No. I don't think it's necessary.

14 Q Okay. All right.

15 A I haven't--I refreshed my memory on this recently.

16 Q Okay. So just to clarify, so far, you received the
17 investigation report. You did not talk to Colonel
18 Doolittle at all afterwards.

19 A Not before I read the report.

20 Q And then--and approximately two--I'll even give you
21 two-and-a-half weeks timeframe, that was sufficient for
22 you to review all this evidence and write six proposal
23 letters of adverse action?

24 A Uh-huh.

25 Q Okay. Did you--going back to Joe. In that two-and-a-half

1 week period, when you were reviewing this investigation
2 and before you wrote the letter--you are familiar with TPR
3 752, correct?

4 **A I am.**

5 Q All right. TPR 752--

6 **A I don't have it in front of me, but I--**

7 Q --requires you, as a proposal official, to do your own
8 investigation, right?

9 **A I used the investigation, the 15-6.**

10 Q So you solely relied on the 15-6?

11 **A I did.**

12 Q Did you ever bring Mr. Joe--Mr. Smock into the office and
13 point blank ask him, "Joe, did you do these things? Did
14 you steal a TV? Did you steal OSB?"

15 **A I did not.**

16 Q Why not?

17 **A With all the sworn statements from those who testified in
18 the 15-6, that is what I relied on.**

19 Q Did you bring any of those people into the office and say,
20 "Did you really see this?" or you just took it at face
21 value?

22 **A It was a sworn statement. I would absolutely--I mean, you
23 can be punished under the same TPR for--for inaccurate
24 sworn statements, as well.**

25 Q Well, there is a sworn statement in there from Mr. Smock

1 that he didn't do the things.

2 **A Right.**

3 Q So did you con- --did you give that any weight?

4 **A Absolutely.**

5 Q When the--when the hearing--I mean, when the investigating
6 officer did his report of investigation, he found that
7 Major Burrell was one of the more credible and capable
8 leaders in that building.

9 **A I--**

10 Q And he actually recommended him to run the facility after
11 Golnick and McNamara were gone.

12 **A I did read that.**

13 Q Okay. Did you read Major Burrell's statement concerning
14 Mr. Smock?

15 **A I did.**

16 Q What did--do you recall what it says?

17 **A No. I mean, I guess I could pull it up. Let's see where
18 we're at.**

19 CAPTAIN BEDELLS: Nine.

20 THE WITNESS: I don't--

21 BY MR. BANCHS:

22 Q If you go to page 2 of his statement, it's page number 2
23 at the bottom--

24 **A Okay.**

25 Q --of his own written statement in regards to the questions

1 that he was asked. And you see that number 2 at the top
2 where it says, "Wood, Diesel, Copper and Other"?

3 **A I do.**

4 Q And 2.a.1. Can you read that for me, sir?

5 **A "I've heard Master Sergeant Smock may have taken used wood
6 from here on unofficial business at his home, more of a
7 running joke with little viability or research done to
8 verify."**

9 Q So the investigating officer highlighted Major Burrell as
10 one of the more honest people in the facility; he even
11 recommended for him to be the supervisor to take over for
12 Colonel Golnick. He, in his sworn statement, said that he
13 thought that that rumor was more of a running joke. Did
14 you lend that statement any weight? I mean, the
15 investigating officer obviously found him to be an
16 obvious--an honest individual and even recommended him to
17 run the facility. And he's saying that it's more of a
18 running joke.

19 **A Not a ton of weight. I think, when I read this and
20 knowing Major Burrell--and he had, obviously relatives in
21 the facility, as well, and I--and I like Major Burrell.
22 But I don't know that he was in that part of that click.
23 So I believe that that joke might have some validity to
24 it.**

25 Q So you don't believe Major Burrell?

1 **A** **Not on the joke part. And I believe that that's probably**
2 **what he believes.**

3 **Q** Okay. Did you--you testified--so I just want to keep a
4 running tab for my own sake. You didn't talk to Colonel
5 Doolittle after you received the report of investigation.
6 And you did not speak with the folks that were actually
7 accused, to include Mr. Smock, about the allegations that
8 were being made by their coworkers against them.

9 **A** **That's correct.**

10 **Q** Okay. Did you not feel it was important to give Mr. Smock
11 an opportunity to defend himself, I mean--or did you just
12 believe everything at face value?

13 **A** **I--**

14 CAPTAIN BEDELLS: You mean other than today?
15 Defend himself other than today? I mean your question was
16 you didn't think it was fair. He had--he's defending
17 himself today.

18 MR. BANCHS: Well, I mean, I don't want to get
19 all technical and all. But if you look at the TPR, the
20 TPR recommends that you speak with the employee before
21 you--

22 CAPTAIN BEDELLS: Right.

23 MR. BANCHS: --propose discipline. And then,
24 after your write the discipline, that person has an
25 opportunity to provide a reply. So I'm--

1 CAPTAIN BEDELLS: I understand. He--

2 MR. BANCHS: --I'm just trying to understand
3 the process.

4 CAPTAIN BEDELLS: Right. And I'm trying to
5 understand your question. So he's asked and answered that
6 he didn't feel it necessary to talk to--to Joe Smock
7 for--in light of the 15-6 that he received. But your
8 question was didn't you think it was important that he
9 have an opportunity to defend himself. I mean, he has the
10 opportunity through the TPR, right? Right now.

11 MR. BANCHS: Well, do you want me to question
12 you or him?

13 CAPTAIN BEDELLS: Well, no. I have an
14 objection to your question.

15 MR. BANCHS: Okay. Well, I don't know what
16 your objection is. Because I'm asking him the question
17 again, after I've provided him other information
18 about--about Major Burrell.

19 CAPTAIN BEDELLS: I--

20 MR. BANCHS: So I want to know after he read
21 that--

22 CAPTAIN BEDELLS: Right. So I object to the
23 question. The form of the question was do you--do you
24 think it's important that--or you can read it back--but do
25 you think it's important that Joe Smock have an

1 opportunity to defend himself. And my question is does it
2 mean other than what we're doing here today.

3 THE HEARING EXAMINER: Well, I think--go ahead
4 and answer the question.

5 THE WITNESS: Well, when--and I--and I had not
6 been a part of administering a proposed action with a 15-6
7 in the past. And in the past, yes, that was the
8 investigation. For this instance, I was part of the
9 decisions of appointing--or ensuring that there was an
10 investigating officer because of the amount of
11 allegations.

12 BY MR. BANCHS:

13 Q Right.

14 A **So I looked at Master Sergeant Smock definitely had the**
15 **ability to do all his other testimony and everything else**
16 **with that investigating officer.**

17 Q I'm sorry. You're talking about Mr. Smock?

18 A **Yes.**

19 Q Right. But--but the AR 15-6 process is merely an
20 investigation and recommendation--

21 A **Correct.**

22 Q --of findings.

23 A **Yeah.**

24 Q You still, as a proposing official, have a responsibility
25 to look at that and weigh that evidence, and--

1 **A** **I did.**

2 **Q** Okay. But that didn't include talking to Mr. Smock before
3 you issued the letter?

4 **A** **That's correct.**

5 **Q** Okay. You also testified that you did not see any of the
6 documents after you issued your proposed action letter.
7 So basically, when Mr. Smock provided his reply/rebuttal
8 to your proposed letter to Colonel Durkac--

9 **A** **That was between him and Colonel Durkac.**

10 **Q** You did not see any of that at all?

11 **A** **Not--not until I was--**

12 **Q** Until now. Okay. Were you not curious to see his reply
13 to the--I mean--

14 **A** **A little bit. But Colonel Durkac's fair, and he told me**
15 **he'd be going with an open mind. "I don't know**
16 **how--whether or not I'm going to agree with you or not,**
17 **but I will definitely hear all sides of the story before I**
18 **make my decision."**

19 **Q** Okay.

20 **A** **And I feel confident with that.**

21 **Q** Since this is the first time that you have a chance to see
22 the rebuttal evidence that Mr. Smock turned in, in reply
23 to your charges, let's just review that real quick. And
24 let's take the easiest one. Let's talk about the TV. It
25 says you wrongfully removed a flat screen television from

1 the MATES. And I'm assuming that--and that charge goes
2 along with Table D-1, which is stealing. So basically
3 you're--you're--you're proposing to terminate Mr. Smock
4 for stealing a TV, right?

5 **A Uh-huh.**

6 **Q** And that charge was based on whose testimony?

7 **A Fouts, I believe.**

8 **Q** Janet Fouts. Did anybody else, other than Janet Fouts,
9 see Mr. Smock and Colonel Golnick carrying a TV out to the
10 car?

11 **A I don't remember that part of the investigation.**

12 **Q** No.

13 **A But I believe I was relying--**

14 **Q** She was the only one?

15 **A Uh-huh.**

16 **Q** To your--did you ever ask for maybe a property book to see
17 if there was a TV missing from the MATES?

18 **A I did. And there--I believe there still is a TV missing
19 from either MATES or Camp Grayling.**

20 **Q** Do you believe or are you sure because this is the--

21 **A I believe. I'm not--I'm not absolutely--**

22 **Q** --I mean, his job is on the line here.

23 **A I'm not absolutely sure.**

24 **Q** Okay.

25 **A And I understand it's--I did not go after Master Sergeant**

1 **Smock. I consider myself a friend of his. So absolutely**
2 **was I not taking this lightheartedly.**

3 Q No, I'm not saying you took it lightheartedly,
4 because--what I'm trying to say is that, if I accused you
5 of stealing a TV, what am I going to need to prove that
6 you stole a TV, other than somebody alleging that I took
7 it?

8 A **What are you going to need?**

9 Q Yeah. I mean, if I--if Joe says that I stole a TV, are
10 you just going to fire me for that?

11 A **No. I mean, you want to see if there was, in fact, a TV**
12 **at MATES that--**

13 Q Right.

14 A **--was removed from the facility.**

15 Q So was there?

16 A **There was, I believe.**

17 Q And what--did you feel it was important to maybe put it
18 into the record or maybe put it into the--you know, or
19 maybe show Joe, "Hey, this TV's missing from this property
20 log." Did you guys do a FLIPL on the missing TV?

21 A **We have not. Now, we have initiated a FLIPL on all of**
22 **MATES. Since I've had Major Austhof there, he's done a**
23 **complete inventory, and there are a lot of things missing.**

24 Q Okay. Now, would it--would it make any sense that,
25 perhaps, the TV did not belong to MATES?

1 **A** **I've heard that Colonel Golnick purchased a TV and had it**
2 **delivered to MATES.**

3 **Q** Yeah. And Mr. Smock helped him carry it out to the car.
4 Is that plausible?

5 **A** **It is plausible.**

6 **Q** It's a fact. It's an actual fact. So I want you to turn
7 to--let me see--I don't know what tab it would be on
8 yours. If you don't mind, sir, so you don't have to do
9 the work. There you go.

10 Now, Mrs.--Ms. Fouts didn't know the exact date that
11 the TV--alleged TV theft happened, but she did say it was
12 sometime, you know, last summer. So Colonel Golnick
13 provided his bank statement from USAA, showing where he
14 ordered a TV from Wal-Mart. There's the freight, where
15 they shipped it to the MATES' facility. And it coincides
16 with around about the dates that Master Sergeant Fouts
17 allegedly remembered them carrying a TV to the car. You
18 know, it's interesting to note that, if you would have
19 actually talked to Mr. Smock, he would have never denied
20 that he helped Colonel Golnick carry a TV--his TV out to
21 the car. So if you would have seen this evidence, do you
22 think that you would have maybe thought twice about--

23 **A** **Probably not entered that--not necessarily find**
24 **hers--obviously several pieces of evidence there. I**
25 **thought that was an additional thing, for sure.**

1 Q Because the curious part here is that, you know, Mr. Smock
2 had rebuttal evidence for the charge that he was stealing
3 a TV. What--Mrs. Fouts only saw them carrying a TV.

4 **A Correct.**

5 Q I mean, I've been in the Guard for a long time. I was a
6 technician. I've ordered stuff and had it delivered to
7 work before. So that's not a rare occurrence.

8 **A I don't know that it happens all the time, but, I believe**
9 **you.**

10 Q But it does happen sometimes. I mean, it is plausible. I
11 mean, is there any restrictions in somebody ordering a
12 personal item and having it delivered to the worksite?

13 **A No. But we have addressed that since then.**

14 Q But at the time?

15 **A Prob- --no. There was not.**

16 Q Right. So, I mean, they weren't doing anything
17 necessarily wrong. And there was an explanation for it.

18 **A That's probably true.**

19 Q Okay. Concerning the wood theft, you've already testified
20 you didn't talk to Mr. Smock about it, you just strictly
21 went off of what the other folks were saying, correct?

22 **A I did pull up the amount of wood MATES had ordered over**
23 **the past year--**

24 Q Okay.

25 **A --as I was reading through the 15-6.**

1 Q And do you remember how much that was?

2 A **On average, it was 600 bucks a month.**

3 Q Well, I got--I got it chartered out here. And
4 this--straight out of the 15-6. I mean, I can show you.
5 But I mean, if you want to--

6 CAPTAIN BEDELLS: It's--it's part of Book 2?

7 MR. BANCHS: Yeah--well--yeah. The receipts
8 are all in there, but I just--I charted them out here for
9 mine.

10 CAPTAIN BEDELLS: Okay. So what are--what
11 Exhibit are you on? I mean, he needs an opportunity to
12 review the stuff ahead of you--you know--

13 MR. BANCHS: Sure. Yeah.

14 CAPTAIN BEDELLS: He--I think he's--I think
15 he's already testified he has not seen that document,
16 because it's--your reply is dated subsequent--

17 MR. BANCHS: Oh, no, no, no.

18 CAPTAIN BEDELLS: --to his--

19 MR. BANCHS: No. He--no. Obviously, he did
20 not see what Mr. Smock--

21 CAPTAIN BEDELLS: Right.

22 MR. BANCHS: --turned in as a rebuttal.

23 CAPTAIN BEDELLS: So give him an opportunity
24 to review it. But tell me what Exhibit it is, and I'll
25 give it to him.

1 MR. BANCHS: It's going to be the wood
2 receipts, the orders. I think the credit card purchases
3 it might be.

4 CAPTAIN BEDELLS: Okay. Very good. M.

5 MR. BANCHS: Or--yeah.

6 BY MR. BANCHS:

7 Q I mean, my figures are based on what that--the credit card
8 receipts that were submitted to us as part of the 15-6.

9 A Okay.

10 Q So from November of 2012 to August of 2013, there was a
11 total of--based on those receipts--\$4,099 worth of wood
12 ordered at the MATES facility.

13 A It's 12--okay.

14 Q It's about \$500 a month in just that time span, because
15 it's less than a year.

16 A Right.

17 Q Yeah. How much of that wood did Mr. Smock steal?

18 A There was very little of that wood used for job orders at
19 this MATES. There was very little requirement for MATES
20 to use wood.

21 Q But how much of that did he steal?

22 A I believe the bulk of it, after reading the 15-6.

23 Q Just from reading the 15-6, based on the allegations, only
24 hearsay allegations that other--

25 A I didn't believe it to be hearsay, otherwise I wouldn't

1 **have charged him.**

2 Q But can you point to where any of those witnesses said, "I
3 know that Joe Smock stole this bunk of wood on this
4 particular day"?

5 A **No. I think it was a running and--after reading the 15-6,
6 I believed it likely happened for years.**

7 Q But it was a--but according to Major Burrell, it was a
8 running joke. So, I mean--

9 A **I--I believe, when I read that testimony that it was a
10 running joke, because Master Sergeant Smock had cover.**

11 Q Well, that's not the way Major Burrell portrayed it, but
12 did you think to maybe ask Mr. Smock to go look at his
13 house and go look at these garages that he supposedly
14 built with the wood and see--

15 A **No.**

16 Q --because that wood is stamped. OSB--OSB board is
17 stamped.

18 A **Right.**

19 Q Okay. Let's look at the--let me have this one, sir. This
20 one. If you look at--if you--just starting from this
21 page, sir, you'll see that Mr. Smock, in rebuttal to your
22 charges, provided invoices of where he had actually
23 purchased wood personally over the years.

24 A **Well, he ran a side business of construction. I would
25 hope he didn't steal everything from MATES.**

1 Q Well, I mean, you're assuming that he stole. You
2 don't--I'm asking for the evidence. Where is the
3 evidence, other than just hearsay evidence?

4 **A I don't know that him buying lumber matches the projects
5 that he's worked on.**

6 Q Okay. Well, if you keep scrolling through that, let's get
7 to the pictures that Mr. Smock voluntarily provided to
8 Colonel Durkac of the inside of his garages and of the
9 outside and stuff like that, showing the date stamped on
10 the actual OSB boards to be 2001.

11 **A I guess I'm not seeing that in here.**

12 Q Well, let's--let's bust out the clearer pictures. Well,
13 I'll tell you what: If you really want to verify that the
14 boards are stamped '01, we can stop and you guys can look
15 at it. But I'm telling you--I'm taking--

16 **A I would--I would believe you that they were stamped '01.
17 But I would also contend that I believed theft now, since
18 I've read the investigation, has been going on for years.**

19 Q And that's just your assertion based on what you read
20 other people's hearsay testimony, right?

21 **A And discussions at--**

22 Q You said that Mr.--you said that--you said that you've
23 been knowing Joe for a long time, and that you served
24 on--with Partnership Council; you even said that he's a
25 fun guy to be around.

1 **A** **Yes.**

2 **Q** When you read this anonymous letter, did it make any sense
3 to you? I mean, you been knowing this guy for how many
4 years?

5 **A** **Long time. I mean, I--we don't hang out.**

6 CAPTAIN BEDELLS: For--

7 THE WITNESS: I'm not up here all the time.

8 But--

9 CAPTAIN BEDELLS: Excuse--for clarification,
10 we're talking about the--we moved from the 15-6 to the
11 anonymous letter, right? That was your question? When
12 you read--

13 MR. BANCHS: Well, the--

14 CAPTAIN BEDELLS: --the anonymous letter?

15 MR. BANCHS: Yes. The anonymous letter, yeah.

16 CAPTAIN BEDELLS: Okay. I just wondered.

17 Okay.

18 THE WITNESS: I--he's also got some used-car
19 salesman in him. He's--he's--fun things. And part of his
20 role and just personality is that, where I actually did
21 believe--and I didn't want to, at all. But I felt that
22 there was--reading it going, "Man, I could definitely see
23 this."

24 BY MR. BANCHS:

25 **Q** And--and knowing him that long and then reading those

1 anonymous letters and just your impression of who Joe is,
2 you still didn't think to bring him in the room, even just
3 as a friend, and say, "Hey, Joe, man, did you really do
4 these things?"

5 **A During the investigation, I was told to not talk about the**
6 **investigation with the employees.**

7 Q No. This is after you received the ROI.

8 **A After--I--I believed what I read or I wouldn't have--**

9 Q Okay. Concerning his personnel files, that there was no
10 disciplinary action in there at all--

11 **A No.**

12 Q --basically he was the model employee. But--but according
13 to your testimony, that's also being held against him
14 because he was in cahoots with Colonel Golnick? And I'm
15 just being blunt.

16 **A I believe that.**

17 Q Okay. You just said that Master Sergeant Smock ran a
18 construction business on the side, and maybe that--

19 **A Finding out more during the investigation. I knew he did**
20 **odd projects on the side. I didn't realize the--how much**
21 **until the investigation to be finalized.**

22 Q But didn't other people also run construction-type
23 business on the side?

24 **A I found that out through the investigation, as well,**
25 **including--**

1 Q Who else ran a construction business?

2 A **Colonel Golnick ran a construction business.**

3 Q Who else, of his accusers?

4 A **Chief Mack did--did side construction, as well.**

5 Q So Joel Mack, who, by the way, his interview was about an
6 hour and 20 minutes, basically is alleging Joe was
7 stealing the wood and all this, at the same time he has a
8 side business that involves construction in wood?

9 A **He does.**

10 Q Did--did Chief Mack have a key to the facility?

11 A **I don't know if he did or not.**

12 Q He did. It's on the record.

13 A **Okay.**

14 Q Chief Mack had the same access and had the same "motive"
15 as Mr. Smock to steal wood from the MATES and go do
16 whatever the--whatever he does. Did you lend that any
17 credibility or maybe detract from the credibility of Chief
18 Mack's testimony?

19 A **I did. And to be frank, I didn't have much of a working
20 relationship with Chief Mack at all. I did have a working
21 relationship with Smock. So I was even more hesitant
22 to--to look at Master Sergeant Smock being--having done--**

23 Q And here's why: Because when you're doing this and when
24 you're working with hearsay testimony, you have to lend
25 some witnesses more credibility than others, correct?

1 **A** **Okay.**

2 Q Well, I mean, that's what I would do. I mean--

3 **A** **It was the bulk of the testimony throughout the facility.**

4 Q Understood. Well, would you--

5 **A** **As an--to be fair, I'd lend high credibility to Master**
6 **Sergeant Cooper's testimony.**

7 Q Right. But, staying with Mr. Mack because he actually had
8 a construction business on the side, did it not give you
9 any pause that considering that Mr. Smack (sic)--Mr. Mack
10 was one of the only witnesses that was actually read his
11 rights, and he was read his rights for military property
12 wrongful disposition and larceny and wrongful
13 appropriation?

14 **A** **I absolutely was--and I looked at potential disciplinary**
15 **actions against Chief Mack, as well.**

16 Q Right. But at that point in time, when you saw the rights
17 waiver/warning, did it not maybe give you a little pause
18 to give his testimony any credibility? Mr. Smock was
19 never read his rights by the investigating officer. Mr.
20 Mack was.

21 **A** **I assumed all were given their rights.**

22 Q Well, no, they worse--they weren't, sir--

23 **A** **Okay.**

24 Q --and you would have known that if you actually would have
25 looked at the 15-6 file, sir. But he was--

1 **A** **I absolutely looked at the 15-6 file.**

2 Q He was--Mr. Mack was read his rights for larceny and
3 wrongful appropriation, the same thing that Mr.--Mr. Smock
4 got fired for. Did any discipline--was any discipline
5 taken against Mr. Mack?

6 **A** **There was not.**

7 Q What happened--

8 **A** **He was definitely considered on the short list as--as--as**
9 **I was reading the 15-6, I wrote his name down, because I**
10 **had concerns. And then as I didn't see a lot except from**
11 **a particular click that was definitely, I felt,**
12 **protecting--**

13 Q Well, again with the click. So and it--and you have an
14 individual here, Mr. Mack, who provided hearsay testimony
15 about his allegations as Mr. Smock was stealing wood for
16 the last how many years, 10 years maybe?

17 **A** **Sure.**

18 Q This individual was actually read his rights for long-
19 --larceny and wrongful appropriation.

20 **A** **Yep.**

21 Q Nothing happened to him. Mr. Smock gets fired.

22 **A** **Right.**

23 Q Where is Mr. Mack now?

24 **A** **He's a newly hired supervisor at FMS-2 in Detroit.**

25 Q So you guys promote him?

1 **A** **We did, just two weeks ago.**

2 Q Okay. So in your mind, there's no way that Mr. Mack could
3 have stolen the wood?

4 **A** **I don't believe he did.**

5 Q Okay. Going to Mr. Cooper, Mr. Cooper was a supervisor or
6 is a supervisor, correct?

7 **A** **No. He's not.**

8 Q Well, then--

9 **A** **He's an inspector.**

10 Q Then why would he have keys to the MATES facility, as
11 well?

12 **A** **I don't--Major Burrell was key control, and under the
13 direction of Golnick whoever got keys.**

14 Q Okay.

15 **A** **We have keys issued to CSMS to many, many employees, as
16 well.**

17 Q So now we have two individuals who testified against Mr.
18 Smock that had the same access to the same materials that
19 he's being accused of stealing, right? One runs a
20 business on the side that involves wood. Mr. Cooper, back
21 in 2010, built a garage out of OSB. Any suspicions there?

22 **A** **No.**

23 CAPTAIN BEDELLS: Is that--is that in the
24 15-6, the fact that he built--

25 MR. BANCHS: Yes, it is.

1 CAPTAIN BEDELLS: --that he built out of OSB
2 in what year?

3 MR. BANCHS: 2010.

4 CAPTAIN BEDELLS: Okay.

5 MR. BANCHS: Yeah.

6 BY MR. BANCHS:

7 Q Could he have stolen the wood?

8 A **I didn't believe he did.**

9 Q Nobody ever accused him of stealing the wood. I'm just
10 saying, you know, it is plausible.

11 A **Not one testimony was against him either.**

12 Q Okay. So we have two alternate theories to the--to the
13 wood disappearing. And, by the way, there was--did--was
14 there ever any concern about abnormal expenditures at
15 MATES, when--when you guys went in to look at the record?

16 A **You mean after the 15-6 or year to year to year?**

17 Q After--before, even? I mean, because here's the thing:
18 These things were not happening in a vacuum at MATES. So
19 MATES is using all this money to buy wood, that's got to
20 be hitting somebody up high.

21 A **\$4,000 isn't going to hit my desk. But the superintendent
22 of each of those facilities absolutely signs off on those
23 purchases.**

24 Q Okay.

25 A **Whoever requests it, then the credit card holder, then the**

1 building official will certify, and then the super- --and
2 to be honest with you, Colonel Golnick micromanaged every
3 purchase there, that I've learned after the fact. Because
4 even afterwards, every supervisor would come up--even when
5 I was there for a couple of weeks--and ask me if they
6 could buy \$25 on so-and-so.

7 Q Knowing Joe for as long as you did, you know that he's
8 very good with his woodworking, correct?

9 A I have not witnessed it, but I have absolutely heard that
10 he's good with it, so.

11 Q I mean, aside from the allegations that he was using wood
12 inappropriately, at some point in time, he was using
13 use--he was using wood appropriately, correct? I mean, he
14 was building BII boxes. He was building--

15 A And we haven't done that in years, but--or not a lot. I
16 mean, BII boxes aren't going to spend that much money.

17 Q Okay.

18 A But, yes, he has been a go-to person for building things,
19 I believe, at the MATES.

20 Q Do you know anything else that Joe did around the shop at
21 MATES, as far as wood-related items?

22 A He was the--he ended up being, with the change of PD, the
23 shop--I don't want to say maintenance person, but his job
24 was to--to help with facility improvements and things that
25 were breaking, and fixing and coordinating with Camp

1 **Grayling here to get things done.**

2 Q Would you be shocked to know that people, all throughout
3 the MATES, whether it was supervisors or--or people that
4 were at the same level, you know, coworkers, would ask him
5 to build bookshelves, desk shelves, shelves for benches--

6 A **I did not, no.**

7 Q --new bench tops, putting replacement wood decking on
8 trailers, making steps, maps, poster case display cases?
9 I mean, these are all things that he would--he would do
10 with this wood whether it was purchased or it was
11 scrapped. Would that make sense?

12 A **I--typically those taskings should not come to MATES as a
13 task, and there would be a job order attached to it. He
14 may have done those things over--over the years. I
15 would--**

16 Q But would that explain--you know, I mean, so what I'm
17 trying to propose to you, sir, is just alternate theories
18 to--because since you didn't speak to Mr. Smock--

19 A **Not that much quantity every single month for all those
20 projects, I don't believe. I believe that it was stolen.**

21 Q And you don't think that--that maybe Mr. Mack, with a side
22 business, or Mr. Cooper with his access?

23 A **I did not believe at all.**

24 Q Okay.

25 A **And to be--**

1 Q Did you talk to them at all?

2 A --to be fine--I--

3 Q I mean, you have spoken with Cooper and Mack since all
4 this.

5 A I have. I'm just trying to think if I talked to--I would
6 not have talked to Mack. I don't know if I'd have talked
7 to Cooper. I would occasionally call him for things, and
8 I--I don't--I don't know that I did.

9 Q Okay. So, and again, just to keep a running tab here, you
10 received the ROI; you wrote six adverse action proposals
11 in a matter of two weeks; you didn't speak to any of the
12 people that you proposed action against; you didn't talk
13 to any other employees or witnesses; you just took the
14 15-6 findings at face value; you never spoke with the
15 investigating officer; and you--you did not lend any
16 weight to issues such as the fact that one of your
17 witnesses or one of the people that you relied on was
18 actually read his rights because he was being accused of
19 larceny and wrongful appropriation.

20 A Correct.

21 Q Okay. All right. You spoke earlier about people that
22 have approached you from the MATES or at the MATES
23 facility afterwards, after all this, you know, the
24 investigation came out, especially after the recordings
25 came out. You've alluded to people having their tires

1 slashed. People are afraid for their safety or whatever.
2 Joel Mack alleges that the Dales scared him away.

3 **A I believe--I don't--I don't know that he would articulate**
4 **it that way, but he definitely brought it to the**
5 **supervisor's attention right away, brought it to Major**
6 **Burrell, who brought it up the chain, as well--**

7 **Q So is that how--**

8 **A --on the Dales, specifically.**

9 **Q Is that how he ended up--**

10 **A And that's how I was aware of it.**

11 **Q So did the command make a decision to transfer Mr. Mack to**
12 **a different facility or did he apply for a job?**

13 **A He applied for the job. He was the only certified**
14 **applicant for the supervisor down there. I was surprised**
15 **no--no one from Grayling typically ever applies. He**
16 **definitely wanted--he had about a third of the shop**
17 **completely against him. We did a sensing survey or an**
18 **employee survey afterwards. And there was a lot of direct**
19 **things written in that specifically on his name, for being**
20 **a traitor, all kinds of things in the--and I shared that**
21 **with him, as well, as well as the other supervisors.**

22 **Q Speaking about Mr. Mack specifically, because he's--even**
23 **though you didn't actually cite him as being one of**
24 **your--your witnesses against Mr. Smock, you said that you**
25 **read the whole record. And you obviously--you know,**

1 he--he made a lot of allegations. Did you read the--you
2 didn't hear the--the audio; you've already testified to
3 that.

4 **A Correct.**

5 Q But you say you did read the 15-6?

6 **A I did.**

7 Q And you read the--the summary--they're not really
8 transcripts, because they're not verbatim, but the notes
9 that--that were made of his audio interview, which is in
10 there?

11 CAPTAIN BEDELLS: Well, can you point to it
12 and give him an opportunity to look at it, and that will
13 refresh his recollection?

14 MR. BANCHS: Sure.

15 CAPTAIN BEDELLS: It's a big document.

16 MR. BANCHS: I can do that.

17 THE WITNESS: Where the quotes were?

18 BY MR. BANCHS:

19 Q Well, I'll show it to you, sir. Is that--is this volume 1
20 or 2?

21 **A This is 1.**

22 CAPTAIN BEDELLS: That's 1.

23 THE WITNESS: This must be 2, maybe.

24 MR. BANCHS: Well, it's going to be in 1.

25 CAPTAIN BEDELLS: It's in 1. I think it's 2.

1 Exhibit 2A through--

2 THE WITNESS: It's 4 here.

3 BY MR. BANCHS:

4 Q And my notes are--my notes have times, because I didn't
5 even go off of that. I went off the actual audio
6 recording. But--

7 A Okay.

8 Q --that is a--

9 A Yeah. This looks--yeah.

10 Q --loosely a--a loose transcript of what his audio
11 interview was. And I'm just--I just want to put this out
12 there, because you say you read the 15-6.

13 A I did.

14 Q So these statements are in there.

15 A Correct.

16 Q And I'm just--I'm just trying to get in your mind as to
17 why you lent certain people more credibility than others.
18 Mr. Mack, about 4 minutes and 30 seconds into his
19 interview, he alludes to Colonel Doolittle that he has
20 knowledge of at least two members of the Michigan National
21 Guard that are lying about their medical ailments to
22 support a disability retirement. Yet, he had never told
23 anybody about that.

24 A I have come to the belief that many in the technician
25 workforce are lying about their medical ailments,

1 **including employees that work for me at the CSMS.**

2 Q Right. But if--but--but, again, if--if you're a
3 technician, right, you're suppose to get a standard
4 conducts and ethics brief every six months. And I know
5 nobody ever does.

6 A **Nope.**

7 Q Okay. But you're still--

8 A **But annually, I would say that's--for most facilities
9 that's probably fair.**

10 Q And that's in Title 5 of the Code of Federal Regulations
11 2635, right? And what that says is that you, as a steward
12 of the U.S. Government, you as an employee have a duty to
13 protect and conserve Government property, and shall not
14 use such property or allow its use for other than
15 authorized purposes.

16 A **Correct.**

17 Q You have a duty to report and protect.

18 A **Okay.**

19 Q So you have a witness here who's telling you--and this has
20 nothing to do with wood, now. He's telling you more
21 wrongdoing that he's aware of that he not reporting.

22 A **I believe on the medical there is--even at the last
23 facility I managed, I would see several people come back
24 with--from deployment without an LOD, who need to retire
25 using the medical retirement program, because you're well**

1 aware it's much more valuable to go out with a medical
2 than not. And they all seem to get some documentation
3 from the VA that helps them initiate that medical
4 investigation.

5 Q But--

6 A **Even myself, I would guess that half those medical
7 retirements I don't believe to be legitimate.**

8 Q Well, I'm very familiar with the technician program. And,
9 believe me, I don't begrudge anybody for--some people for
10 going that route, because--

11 A **It's disgusting.**

12 Q --they might not see--

13 A **It's a disgusting retirement.**

14 Q The technician program is stacked against the employee.

15 A **I believe that to be--**

16 Q All right.

17 A **--on that issue.**

18 Q But--you--right, wrong or indifferent, you, as a federal
19 employee have a duty to report fraud.

20 A **If you can prove fraud. Now, on these cases on these
21 medical, they have justification from the VAs. They have
22 justification from others that allows that medical board
23 to make that decision on medical.**

24 Q Well, in the transcripts--and if you hear the audio it was
25 ever more absurd. But he, I mean, talks to Colonel

1 Doolittle factually knowing, and he mentions who the
2 employees are. And Colonel Doolittle jokes with him that
3 maybe they can set up some kind of company afterwards,
4 after they both get out of the Guard and they can go after
5 these people.

6 **A I will tell you that that's an issue, the medical**
7 **retirements, throughout the technician workforce, and not**
8 **just this State.**

9 **Q** But does it make it right?

10 **A We report it regularly. I bring up these issues. I bring**
11 **it up with issues with your office when we have the joint**
12 **meetings to improve or change the way retirements are**
13 **paid. It forces a lot of those technicians to lie to take**
14 **care of their families.**

15 **Q** Mr. Mack, towards the end of his interview, he repeated--
16 tells the investigating officer that he wanted to discuss
17 topics that he discussed with--with Mr. Cooper. And the
18 obvious inference here is that Cooper gave him a full
19 debrief of what his Q and A was, because Cooper's
20 interview was before Mr. Mack's.

21 **A Okay.**

22 **Q** You didn't find that disturbing?

23 **A No. Just--I didn't find it that disturbing, with what**
24 **Sweat and Smock were doing as far as that part of the**
25 **investigation either. And they called me**

1 **during--these--these two did not. I know Smock and Sweat**
2 **did, advising people not to talk or, "Hey, be obviously**
3 **truthful in what you say."**

4 Q But the difference here is that Mr. Sweat and Mr. Smock
5 were doing it as Union representatives, so they had
6 a--they--that's part of their role as Union is to talk to
7 the employees and inform them that there's an
8 investigation going on.

9 A **It was throughout the entire facility. Each other were**
10 **telling people "Don't talk." There--there was definitely**
11 **that--that feeling throughout the entire facility. When I**
12 **came up in the wintertime, they were all, you could tell,**
13 **hesitant to say anything.**

14 Q But didn't you find it a little disturbing that certain
15 folks were colluding to put a story out there that was one
16 way--and if you believe what the allegations are, that
17 maybe Mr. Smock and Mr. Sweat--

18 A **I didn't feel they were colluding to put out a story.**

19 Q Well, if--if you read their--their sworn statements,
20 they're almost identical.

21 A **Well, then that lends, when I read it, some truth to the**
22 **allegation.**

23 Q So you think, since the statements are identical or almost
24 identical, that that lends them credibility, not
25 colluding?

1 **A** They were--but you mentioned who you rely on. I
2 absolutely--Master Sergeant Cooper's always been a go-to
3 guy. And all people at the MATES seem to respect him
4 until the investigation came out. He wasn't part
5 of--where you would have certainly part of the shop that
6 hated the Whitchers, you would have certain parts of the
7 shop that would hate Chief Mack, that was not the case
8 with Cooper, for sure.

9 **Q** Okay. So you don't find it disturbing that--that Mack, in
10 his interview with the IO, tells the investigating
11 officer, "You're not asking me all the questions that you
12 asked Cooper. Please ask me the questions,"
13 basically--and I'm paraphrasing.

14 **A** I don't know that to--to be true on how he said it in
15 the--

16 **Q** Well, it's in the transcript. And, after that, if--and
17 I--

18 CAPTAIN BEDELLS: Well, point to the--point to
19 where it is in the transcript--

20 MR. BANCHS: Sure.

21 CAPTAIN BEDELLS: --so he has an opportunity
22 to read it. We're not going to listen to 34--I hope we're
23 not going to listen to 34 hours of tape.

24 MR. BANCHS: Well, you wanted to expedite
25 this. So I mean he said he read--

1 CAPTAIN BEDELLS: Okay. Then--

2 THE WITNESS: I did.

3 MR. BANCHS: --the 15-6.

4 CAPTAIN BEDELLS: I do want to expedite this.

5 MR. BANCHS: Okay.

6 CAPTAIN BEDELLS: So point it--point to the
7 piece of the transcript, please, where it says what you're
8 claiming it says.

9 MR. BANCHS: Well, it's not a claim.

10 CAPTAIN BEDELLS: Well, you're going to--I'm
11 sure when you find it, it will be exactly as you say.

12 MR. BANCHS: Okay.

13 BY MR. BANCHS:

14 Q I want to make sure I get the right one. Okay. So here,
15 on page 15--and I'll read it for expedience purposes.

16

17 CAPTAIN BEDELLS: And--but show it to him, so
18 he--

19 MR. BANCHS: Sure. I will.

20 CAPTAIN BEDELLS: --context. He can read the
21 entire excerpt.

22 BY MR. BANCHS:

23 Q Well, here, I'll do you a favor. You can have yours back.
24 And I'll take mine.

25 I don't know if you want to follow along, sir, but

1 it's going to be--it's going to be the Mack transcript,
2 11-8-13. And it's going to be page 15 of his transcript.

3 **A Okay.**

4 Q At the bottom of the page. Colonel Doolittle asks Mr.
5 Mock (sic)--Mr. Mack, "You had some issues you wanted to
6 talk about, medical issues." And Mr. Mack answers, "I
7 want to answer a question you asked the other guys.
8 There's a roll of copper, you asked Cooper. He told me
9 something else, and I said the (Inaudible) was supposed to
10 be at the shop." "When Cooper said that to me, I was like
11 are they referring to that roll of copper--" and this is
12 later on at the bottom, it's going to be the last
13 sentence. "When Cooper said that to me, I was like they
14 are referring to that roll of copper that was supposed to
15 be put out in the motor pool. I don't know what happened.
16 He loaded it into the truck."

17 And what I'm trying to highlight here is they
18 were--that was more than just witty banter going on back
19 and forth, "Oh, you know, the investigation is really
20 tough" or whatever. I mean, these folks were actually
21 talking about what they were going to tell the
22 investigator. Did that--did that not bring you any pause?

23 **A I believe it was throughout the entire facility that this**
24 **was happening.**

25 Q But does that make it right? Because my point is that

1 weren't you concerned that the investigation was tainted
2 at that point in time?

3 **A When you do a sworn statement, I believe you take out**
4 **that--that taint, for sure.**

5 Q When you do a sworn statement?

6 **A I mean, people had sworn statements. They testified for**
7 **what they believed to be true.**

8 Q But the sworn statements came after the interviews. And
9 the sworn statements were basically capturing what these
10 people said in the interviews.

11 **A And that's what they--they put in writing and sworn to.**
12 **And those were looked at closely when I was reviewing the**
13 **15-6 was the actual sworn statements.**

14 Q So if you turn to page 17, sir, and it's towards the top,
15 where it says "First Lieutenant Emery." And even the
16 investigating officer's assistant took issue with the--and
17 I'll call it collusion for the lack of a better word; you
18 don't have to agree with me. But he says, "I want to jump
19 in for a second if I could. You've been very candid with
20 us, and we appreciate that. And sorry about the mix-up
21 earlier. One that does concern me and maybe I just
22 haven't been as explicit or clear is the conversation we
23 have in here. And this isn't to you. This is just if you
24 can go back and tell people the specifics which are coming
25 back doesn't make me very happy. We want to tell people

1 it is broad. We're not trying to single certain people
2 out. The TAG--the TAG's not here to hammer mechanics, no
3 pun intended. But that privacy act is saying we're not
4 going to tell other people what you said, and we expect
5 that in return. So from our standpoint, we're trying to
6 run the investigation and we want there to be some flow of
7 investigation. However, the specifics, that troubles me."

8 So even the investiga- --one of the investigating
9 officers themselves were concerned with--and I'm going to
10 assume here that they were concerned with the fact that
11 these people were trying to get their story straight. Did
12 that not bring you any pause?

13 **A** **Before the investigation, when the MATES employees knew**
14 **that an investigating officer was going to be appointed,**
15 **and rumor had gotten out on the anonymous letter, I**
16 **believe people were trying to scatter to get stories**
17 **straight across the facility.**

18 To be--to be honest, I believe that's why a police
19 officer was chosen to be the investigating officer,
20 because there was a lot of assumption that people were
21 trying to get their story straight.

22 **Q** You said before that you're familiar with the AR 15-6,
23 correct?

24 **A** **I was at the time--**

25 **Q** With the reg?

1 **A** **--that I made the decision. The 15-6 reg.**

2 Q Regulation 15-6, Section 3-8 Delta, talks about the
3 discussion of evidence. And I'll just read it to you, I
4 mean, this is a reg.

5 "An investigating officer or board may direct
6 witnesses who are subject to Army authority, and request
7 other witnesses, not to discuss their statements or
8 testimony with other witnesses or with persons who have no
9 official interest in the proceedings until the
10 investigation is complete."

11 Does that sound about right?

12 **A** **I believe you.**

13 Q Okay. The second sentence of this AR 15-6, 3-8 Delta,
14 "This precaution is appropriate to eliminate possible
15 influence on the testimony of witnesses still to be heard.
16 Witnesses may not be precluded from discussing any
17 relevant matter with the recorder, or respondent, or
18 counsel for a respondent."

19 Well, there was no respondent in this AR 15-6.
20 There was never one identified. So the only people that
21 your employees were, by regulation, allowed to speak,
22 after they signed that Privacy Act statement, was either
23 the recorder, counsel or a respondent.

24 **A** **Like I said--**

25 CAPTAIN BEDELLS: I'm going to object. Okay.

1 He's--he's testified that he acknowledged that people were
2 talking with one another. What is your question? You've
3 read the reg. He's not--I mean your question's probably
4 more appropriate for Colonel Doolittle. He did--he didn't
5 run the--he didn't run--and I know you'll ask him--

6 MR. BANCHS: He will.

7 CAPTAIN BEDELLS: But he didn't run the
8 investigation. So what--what would you--I don't
9 understand the point of your question.

10 MR. BANCHS: My point is I'm trying to ask the
11 Colonel, did that not bring him pause, because he doesn't
12 have to be an investigating officer to be concerned about
13 that. The point is here that people were obviously trying
14 to get their story straight against other people.

15 CAPTAIN BEDELLS: And he's testified to--

16 MR. BANCHS: Right. I just want--

17 CAPTAIN BEDELLS: --to exactly that point.

18 MR. BANCHS: I just want to hammer away at
19 that point. That's all I'm trying to say.

20 CAPTAIN BEDELLS: Okay. Well, I don't--and I
21 don't want you to hammer away at the point.

22 MR. BANCHS: Well--

23 CAPTAIN BEDELLS: Once he makes the point--

24 MR. BANCHS: It's not--

25 CAPTAIN BEDELLS: Okay. Well, I'm going to

1 object to him hammering at a point.

2 MR. BANCHS: You can object and we'll let the
3 investigating--I mean--

4 CAPTAIN BEDELLS: We've--we've--we've now been
5 about 40 minutes on what Chief Mack might--might have
6 stolen wood, might not have stolen wood. Chief
7 Mack--we're not here for Chief Mack. We're here for Joe
8 Smock. And we've spent now over 40 minutes on what Mack
9 might have stolen, you know, whether he was given his
10 rights and whatnot.

11 So, I mean, at this point, I'm going to object
12 to continuing on this line of either Cooper or Mack, so.

13 THE HEARING EXAMINER: Yeah. I've heard this
14 witness testify that--that there were conversations
15 happening between the folks who were interviewed during
16 the 15-6 investigation, that he took that into
17 consideration when he wrote the recommended--

18 THE WITNESS: That's true.

19 THE HEARING EXAMINER: --proposed actions.

20 BY MR. BANCHS:

21 Q Okay. Well, I'll ask you again, knowing what you know now
22 that's in this book, as far as receipts, as far as
23 pictures, you would still charge Mr. Smock with stealing
24 wood solely based on the statements that these other folks
25 that obviously colluded with each other made?

1 CAPTAIN BEDELLS: Which Book? When you say
2 which Book, just identify which Book.

3 MR. BANCHS: Oh. The Smock Case File, the
4 pictures and stuff right here.

5 CAPTAIN BEDELLS: Okay. Smock Case File, not
6 the 15-6?

7 MR. BANCHS: Not the 15-6.

8 CAPTAIN BEDELLS: Okay.

9 MR. BANCHS: Well, I mean, I'm going back and
10 forth, because I'm talking about the--the statements in
11 the 15-6 and--

12 CAPTAIN BEDELLS: Go back and forth, but,
13 please--

14 MR. BANCHS: It's just general questions.

15 CAPTAIN BEDELLS: --identify what Book--yeah,
16 I understand. And I--but please identify when you say
17 which book.

18 BY MR. BANCHS:

19 Q Do you understand what I'm saying, sir?

20 A I do. I do.

21 Q Okay. Good.

22 A And I would, on the wood. I would reconsider the
23 television.

24 Q You would reconsider the television?

25 A I would.

1 Q But you would still propose termination for the wood?

2 A **As one of the allegations, I would.**

3 Q Okay. Talking about charge number--or charge 2 Echo,
4 wrongfully, on the proposed action letter that you wrote,
5 you "wrongfully installed Government-purchased tires on
6 your son's truck." The allegation was Mr. Thad Cooper in
7 his 15-6 written statement alleged that--well, several
8 people--I'm sorry--alleged that--that Mr. Smock had
9 installed Government-purchased tires on his son's truck.
10 Mr. Thad Cooper was the only person that alleged direct
11 knowledge. And he's the only one that you reference in
12 your--in your--

13 A **He was.**

14 Q --proposed--

15 A **And that I did read it throughout the 15-6 from others.**

16 Q Okay. All right. And in his sworn statement dated 10
17 December to the question--in response to the question that
18 says, "Describe who you know or heard using MATES
19 electronic tools, equipment parts for other than official
20 use. Cooper states that Mr. Smock was seen leaving the
21 shop by Tim Sheldon. Joe had come into the shop to
22 install new tires on his son's Chevy S-10 pickup. Joe not
23 only used the shop tire changing equipment, but he stole
24 the tires that he installed on the truck. This occurred
25 over the summer of 2013 around the month of August."

1 Did you--did you--were you able to validate
2 that--that allegation at all, other than Mr. Cooper's
3 statement?

4 **A First of all, no vehicle should be in a maintenance bay**
5 **getting any work done on it. That's privately**
6 **owned.**

7 Q Right. I agree.

8 **A And--but, yes, I did--I did read that statement, Master**
9 **Sergeant Cooper's statement in the 15-6.**

10 Q Well, let me ask you, with your--I'm assuming you have
11 some knowledge of the different types of evidence. Of the
12 different--

13 **A Sure.**

14 Q --types--there's--well, I mean, I don't want to get into
15 it. But what is direct evidence to you? When somebody
16 tells you that they have direct evidence, what does that
17 mean to you, sir?

18 **A That they physically see or--**

19 Q Well, how can--how can Master Sergeant Cooper claim direct
20 knowledge, when in his statement he seems--he says that
21 Mr. Smock was seen leaving the shop? He doesn't claim to
22 have seen physically Mr.--he just says that he was seen
23 leaving the shop by Mr. Tim Sheldon. So now you
24 have--you're relying on hearsay testimony as direct
25 evidence.

1 **A** **Okay.**

2 **Q** Okay. Furthermore, Mr. Cooper alleges that Mr. Smock
3 stole tires from the MATES. Not only did he put tires--so
4 basically Cooper's saying Smock drove his son's truck into
5 the MATES facility, jacked it up and stole Government
6 tires and put them on his son's truck. That's basically
7 the--the nuts and bolts of the allegation. And Cooper is
8 saying that he heard that from Tim Sheldon. So it's
9 not--so, now it's hearsay; it's not direct evidence, and
10 he's alleging all this stuff. Right. Were there tires
11 missing from the MATES facility?

12 **A** **I assume so, but, again, Colonel Golnick and, frankly,**
13 **Master Sergeant Smock would be in charge of the--or**
14 **charged with a lot of that and the building official.**

15 **Q** Well, it's--

16 **A** **But I believe that tires were stolen.**

17 **Q** You believe the tires were stolen, but you have no proof
18 that they were?

19 **A** **I believe the sworn statements were--were accurate.**

20 **Q** But these are hearsay statements. Do you have any proof
21 the tires were actually stolen, sir?

22 CAPTAIN BEDELLS: He--but he's testified that
23 he relied on the sworn statements. I understand your
24 characterization. I think he does, too. But he relied on
25 the sworn statement of Cooper, in this case, saying that

1 Tim Sheldon told him that.

2 BY MR. BANCHS:

3 Q Well, when was the investigation completed? And it's--I
4 know it's rhetorical. But the investigation was
5 completed, according to this, at the end of January.

6 Right? We're now in October. That has given you nine
7 months, at least, worst case scenario, to go back and do
8 FLIPLs, do AR 15-6 on so far stolen wood or missing tires?

9 A We have initiated a lot of those documents. Now, keep in
10 mind there was a lot of things that had been missing. The
11 FLIPL is sitting with Colonel Gardiner's office right now.

12 So, yes, the--as you peel back this onion, there are many
13 layers of things that have been discovered this past year.

14 Q Do you have the evidence now? Has it been completed?

15 A I will never be able to find down to a specific four
16 tires, that would easily be--

17 Q Well, then how can you--

18 A --unable for me to--to see. Same with the nuts and bolts
19 leaving in the lunch pail as an example, I would not be
20 able to account for every nut and bolt from my position.

21 Q Well, that's fine. That's great. I understand that the
22 magnitude of theft was so large, and you're not going to
23 be able to count for four Government tires. But we're
24 terminating an employee's tenure on the allegation that he
25 stole four physical tires from the United States

1 Government. So it would be important to have--

2 **A It certainly wasn't just that allegation. It was several**
3 **allegations.**

4 Q Well, yeah, right. But we're just talking about the tires
5 right now.

6 **A Okay.**

7 Q I think for me and for you it would be important to know
8 that these individual four tires were actually stolen by
9 Mr. Smock.

10 **A I don't know which four individual tires for sure.**

11 Q If you don't have that, then were just firing an
12 individual on what somebody else claims they did.

13 **A Sworn statements from that facility, that is--**

14 Q Sworn statements that are hearsay, sir.

15 CAPTAIN BEDELLS: Okay. We've established
16 that.

17 THE HEARING EXAMINER: This--

18 MR. BANCHS: Okay.

19 THE WITNESS: Two supervisors were terminated,
20 did not appeal.

21 BY MR. BANCHS:

22 Q Well, they retired, if I'm correct.

23 **A All four were offered the same.**

24 Q Who?

25 **A All four were offered the ability to resign ahead of time**

1 **before--**

2 Q Who's that--what four?

3 **A Master Sergeant Smock, Reed, Golnick and McNamara.**

4 Q Well, so since they didn't retire, that makes them guilty?

5 I don't understand what you're trying to--

6 **A No. I believe that they absolutely were aware, the**
7 **supervisors were aware of the activity, as well.**

8 Q Okay. But we're talking about Mr. Smock, and Mr. Smock
9 chose not to retire. He chose to fight the charges.

10 **A Well aware. And that's--and, like I said, I believe that**
11 **to be true, as well.**

12 Q All right. So Cooper alleges that Tim Sheldon told him
13 this, correct? His statement is apparently based on a
14 statement made by Mr. Tim Sheldon--and I'm reading at the
15 bottom of the page of our reply, which is page 7.

16 CAPTAIN BEDELLS: Can he--can--he's not--he's
17 not seen this. I think we've established that during my
18 direct. He's not seen--

19 THE WITNESS: Is that in this one?

20 BY MR. BANCHS:

21 Q It's going to be--let me see, sir, because--

22 **A In the Smock--**

23 Q --because their--their tabs are different than ours.

24 MR. BANCHS: Actually, it was just opened to
25 that. He just closed it.

1 CAPTAIN BEDELLS: Okay.

2 BY MR. BANCHS:

3 Q It's going to be--go back to the tires, sir. It's going
4 to be page--well, look--if you look right here, page 7 of
5 this, we're at the bottom of that.

6 CAPTAIN BEDELLS: Sir I think it's appropriate
7 that--and I understand where he's going with this--that if
8 he's going to ask Lieutenant Colonel Meyers to answer
9 questions as to a document he hasn't seen, and the reason
10 he hasn't seen it is because it's dated after his proposed
11 adverse action notice, we give Lieutenant Colonel Meyers
12 and opportunity to read the whole--the entire document,
13 with the understanding he hasn't seen it. I mean, I know
14 Mr. Banchs is going to question him on--on a document that
15 was submitted--I believe it was addressed to Colonel
16 Durkac. So he's not seen it before, and he's going to ask
17 him questions about it. And I think maybe we can pause
18 and let him read the whole thing. It's long.

19 THE HEARING EXAMINER: I agree. For the
20 second time--I assume, Mr. Banchs, with the other charges
21 that are coming, you're going to refer heavily upon your
22 response to the--

23 MR. BANCHS: On the rebuttal items that we
24 submitted, yes, sir.

25 THE HEARING EXAMINER: So, yeah, I would--I

1 would agree that, if we can give Colonel Meyers a few
2 minutes to read your full response, I think that'll speed
3 things up.

4 THE WITNESS: Is that--

5 MR. BANCHS: It's going to be, like, half an
6 hour, sir.

7 THE WITNESS: --tabs before each accusation?

8 THE HEARING EXAMINER: I think it's going to
9 take longer if we--if we--each time we address one of the
10 charges for him to--

11 MR. BANCHS: Well, let me get through the tire
12 charge real quick, because I think I can expedite this if
13 you guys are willing.

14 CAPTAIN BEDELLS: Well, subject to this
15 objection: He's never seen the document before. Okay?
16 So I mean, it's just--it's--we've got to extend him the
17 courtesy of being able to review the document before he
18 answers it. It wasn't addressed to him. I know you're
19 going to ask him, "In light of, you know, sworn statements
20 that were offered outside of the course of the 15-6
21 investigation, would you have done this similarly?" I--he
22 needs to read the document, sir. He needs--he needs to
23 read the entire document, so. And it will take a half
24 hour, so.

25 THE HEARING EXAMINER: Let's take a half hour

1 and let Colonel Meyers read that. I think for him to be
2 able to put it all in context, it will--in the long run,
3 it will expedite it.

4 THE WITNESS: It's all in this, though, right?

5 MR. BANCHS: Well, I think it's--let me see,
6 sir.

7 THE HEARING EXAMINER: So let's go off
8 the--we'll go off the record.

9 MR. BANCHS: Look at Tab E. That's--that's
10 Mr. Smock's reply to your charges, and all the evidence as
11 provided.

12 CAPTAIN BEDELLS: When we go off the record,
13 are we going to excuse the people in the audience?

14 THE WITNESS: Just E or does it go all the
15 way?

16 MR. BANCHS: No. Well, Tab E is going to be
17 his reply, and all the evidence we submitted in rebuttal
18 to your charges.

19 THE WITNESS: So F and G, those are--

20 CAPTAIN BEDELLS: I mean, because we're off--

21 THE HEARING EXAMINER: Let me--let me take
22 this off.

23 MR. BANCHS: I mean, I'll tell you they're up
24 here.

25 THE HEARING EXAMINER: For the record, we're

1 going to take a brief break. It's what--it is--

2 CAPTAIN BEDELLS: 11:00.

3 COURT RECORDER: 11:00.

4 THE HEARING EXAMINER: 11:00 o'clock.

5 THE WITNESS: Okay. I see.

6 THE HEARING EXAMINER: We'll break until

7 11:20--

8 THE WITNESS: Okay.

9 THE HEARING EXAMINER: --to allow Colonel
10 Meyers to read the Appellant's response to the proposed
11 adverse action.

12 COURT RECORDER: We are off the record.

13 (Off the record at about 10:59 a.m.)

14 (On the record)

15 COURT RECORDER: We are back on the record.

16 The time is 11:44.

17 THE HEARING EXAMINER: The record will
18 indicate we took a short break to allow Colonel Meyers to
19 read the Appellant's rebuttal to the adverse action that
20 he proposed.

21 The Appellant's representative, go ahead.

22 BY MR. BANCHS:

23 Q All right. Sir, now having--having had an opportunity to
24 read the rebuttal that we provided on behalf of Mr.
25 Smock--

1 **A** **Yes.**

2 **Q** --two quick questions: You--you have already testified
3 that you did not talk to Mr. Smock after you received the
4 15-6 and before you wrote your proposed action letter,
5 correct?

6 **A** **Correct.**

7 **Q** And you had not seen any of this evidence that was
8 provided in rebuttal to your proposed action; is that
9 correct?

10 **A** **That's correct.**

11 **Q** Having seen this evidence anew, would--would you
12 have--would you have--well, would you have done anything
13 different? Would you have still charged Mr. Smock with
14 the same charges or maybe not charged him with some and
15 you kept others?

16 **A** **There's still some discrepancies from the statements in**
17 **here and to what they were being charged. So they didn't**
18 **completely answer, I guess, a--or rebut a lot of the**
19 **reasons that I put there. So currently I--I'm not exactly**
20 **sure on that, the TV one. However, even on the sworn**
21 **statement from Fouts, had it a year different than the**
22 **receipt on the TV that was in here. But--so overall, that**
23 **one, when you originally asked me, I felt like there**
24 **was--potentially look at that TV issue again for sure.**
25 **But then just reading this there's still some discrepancy**

1 on the--the evidence of when a TV was taken versus when
2 one was bought. So I--that one I still have unresolved
3 thoughts on, I guess.

4 Q Well, what about the other charges?

5 A On the--on the tires, I read that one thoroughly, as well.
6 The MATES and no one in here--it talked about, it's not
7 even a style for a military vehicle. The MATES, however,
8 does have to perform and pay for maintenance on our NTV
9 fleet, which is civilian vehicles that are, for lack of a
10 better term, look like a GSA vehicle, but are older. So I
11 don't know that I--I don't know that this testimony or
12 these examples quite rebuts that to my satisfaction,
13 either, because we obviously repair civilian-looking
14 equipment, as well.

15 So right now, I would say that--that the charges
16 that I put in there would still be the same.

17 And I don't argue the validity of the receipts or
18 the delivery or those things. Those are absolutely--I
19 believe those to obviously all be true.

20 Q That's unfortunate, sir. So I'll ask--the last question
21 I'll ask you is that--and hindsight's always 20/20. But
22 had you had access to--to all that rebuttal evidence,
23 would you perhaps have maybe looked a little deeper before
24 you wrote your--your proposed action letter?

25 A I--

1 Q Because they do provide an alternate explanation for--for
2 what Mr. Smock was being charged with or allegedly charged
3 by his coworkers.

4 A They provide--they provide an argument. However, I don't
5 believe that the argument is satisfactory to answering
6 the--the actual allegations.

7 And my assumption is that the original decision
8 maker did do his due diligence with that part of the
9 process. I mean, and--the--that's why we have those three
10 levels, in my mind, that--whenever I do original decisions
11 maker, I do exactly what you say. I bring in the inter-
12 --those being accused. I interview them. I go through
13 any other substantiating evidence. And that is the rule
14 that I've always observed of the original decision maker.
15 So--and I have confidence in Colonel Durkac. So I--I
16 would believe that that would have occurred. I don't
17 know. I wasn't in the room. I didn't review--I did
18 not--I'm not Colonel Durkac.

19 Q Last questions, sir, if this is ultimately overturned and
20 Mr. Smock gets his job back, how would you feel about
21 that?

22 A I've thought about that, and the same with Mrs. Reed. I
23 know we're talking about Mr. Smock. But, like I said, if
24 that is the end result, I would--he would come back to
25 work. I'm not exactly sure where, of course. But I would

1 **not have--I would treat him fairly.**

2 MR. BANCHS: Thank you, sir.

3 I don't have any further questions right now.

4 THE HEARING EXAMINER: Counsel for the Agency,
5 do you want to redirect?

6 CAPTAIN BEDELLS: Just--yeah. And then we can
7 maybe break for lunch for those people.

8 REDIRECT EXAMINATION

9 BY CAPTAIN BEDELLS:

10 Q So, I just want to be clear for the record. You've spent
11 a great deal of time testimony--testifying about an
12 Exhibit that was drafted by Mr. Banchs and dated 24
13 February. Just--just to be clear, for the record,
14 you--you did not have that document in hand--

15 A **When I made my decision, correct.**

16 Q --prior to making your decision?

17 A **That's correct.**

18 Q Okay. And you further testified that you did not speak
19 with Mr. Smock prior to issuing your proposed adverse
20 action notice, correct?

21 A **Not--I mean, I've spoken with--**

22 Q About--

23 A **Absolutely, I have. Yes.**

24 Q Let me clarify that.

25 A **Sorry.**

1 Q You did not speak with Master Sergeant Smock--

2 A **I'm being technical, maybe.**

3 Q It's been a long day. So you did not speak with Master
4 Sergeant Smock about your proposed adverse--prior to
5 issuing your proposed adverse action notice with respect
6 to this case, correct?

7 A **Correct.**

8 Q Okay. Now, I believe the phrase you used--and I hope
9 we're not disparaging any used car salesmen in the room
10 here. But you--

11 A **My brother's a used car salesman.**

12 Q --were you--were you--were you intimating that you
13 would--you'd question, when you made reference to that,
14 that you questioned the truthfulness you might get from
15 Mr. Smock if you did question him?

16 A **I guess I--I looked at it more as to he's a salesman. I
17 mean, he's not here, obviously, but on how this was able
18 to actually occur, in my belief, over the years. And
19 that's what I question specifically was--was the ability
20 to hide and have those relationships. That's where
21 I--that's what I meant on that testimony, I guess.**

22 CAPTAIN BEDELLS: Okay. I have no further
23 questions.

24 THE HEARING EXAMINER: Mr. Banchs?

25 MR. BANCHS: I don't have anything else, sir.

1 THE HEARING EXAMINER: I just have one
2 question, and it's just more of a clarification for the
3 record.

4 EXAMINATION

5 BY THE HEARING EXAMINER:

6 Q If I understand you correctly, of the nine specific
7 charges, all of the--having now read the rebuttal, other
8 than the charge of the TV, regarding the TV and the tires,
9 you're comfortable with the proposed actions you wrote in
10 each one of those?

11 A I am.

12 Q And how would you characterize, just briefly your thoughts
13 about your original proposal, specifically related to the
14 television and the tires?

15 A On the television, I was unaware that Colonel Golnick had
16 ordered one and had it delivered, and that Master Sergeant
17 Smock helped him carry it from the building. I would
18 likely believe that to be true. And seeing the--the
19 receipt, I believe that to be true. However, because of
20 Master Sergeant Fouts' testimony that it was almost a year
21 later, I saw a discrepancy in the--in the date. So I
22 don't know if it was--that there was a time when CFMO were
23 purchasing televisions--it wasn't on our local purchase
24 cards--but for workout facilities and different things
25 like that. So that's why I--I feel half as comfortable on

1 the TV, I guess.

2 Q Okay.

3 A I--this here wasn't enough for me to completely erase the
4 thought. But it--were there two TVs that left, would be
5 something--

6 Q So it'd be fair to say there'd be some additional evidence
7 you would want to have--

8 A Correct.

9 Q --before you wrote that charge?

10 A Just because it didn't match the--

11 Q Right. Okay.

12 A --the testimony versus the receipt, was off by quite a
13 bit. Now, I don't know if she remembers the exact date
14 sitting right here. I guess you guys will ask those
15 questions, but.

16 Q And regarding the tires?

17 A We do buy a lot of tires. There was a fire, obviously, at
18 MATES. I have not pulled to see what equipment was
19 damaged or positioned in storage or unusable or any of
20 those types of things during the exact sworn testimony on
21 what was inside. So that one--I do know that there was a
22 fire. I have no idea which equipment was actually
23 cordoned off for--for that use.

24 Q So, again, would it be--I don't mean to cut you off. But
25 would it be fair to say that, given the evidence before

1 you now, if you were writing a proposed action, you would
2 want additional information before you brought this
3 charge?

4 **A On the tire, one, or drop it completely.**

5 THE HEARING EXAMINER: Okay. Thank you.

6 THE WITNESS: Am I free to go?

7 THE HEARING EXAMINER: I remind you that you
8 remain under oath and that you are subject to recall to
9 this hearing until such time that it has been adjourned.
10 Again, I will remind you not to discuss your
11 testimony with anyone.

12 THE WITNESS: Yes, sir.

13 THE HEARING EXAMINER: With that, you're
14 released.

15 (At about 11:54 a.m., witness released)

16 THE HEARING EXAMINER: Thank you. Let's go
17 off the record for just a minute.

18 COURT RECORDER: We are going off the record.
19 The time is 11:54.

20 (Off the record)

21 (On the record)

22 COURT RECORDER: We are on the record. The
23 time is 12:59.

24 THE HEARING EXAMINER: Welcome. Do you swear
25 or affirm that the testimony that you are about to give in

1 this case is the truth, the whole truth and nothing but
2 the truth, so help you God?

3 COLONEL DURKAC: I do.

4 THE HEARING EXAMINER: You are advised that
5 you are assured the freedom from restraint, interference,
6 discrimination, coercion or reprisal from testifying in
7 this case.

8 THE WITNESS: I do.

9 THE HEARING EXAMINER: Okay. Have a seat.

10 THE WITNESS: Thanks. Thanks for the water.
11 At least I'm assuming that's mine.

12 MAJOR JOHNSON: Yes, sir. You can have it.

13 THE WITNESS: All right. Thanks. I'm just
14 overcoming a cold, so.

15 COLONEL GREGORY A. DURKAC

16 (At 12:59 p.m., sworn as a witness, testified as follows)

17 DIRECT EXAMINATION

18 BY CAPTAIN BEDELLS:

19 Q Sir, would you please state your full name for the record?

20 A **Gregory Alan Durkac, D-u-r-k-a-c.**

21 Q And how are you currently employed?

22 A **I am with the Michigan Army National Guard.**

23 Q And in what--what capacity are you with the Michigan Army
24 National Guard?

25 A **I'm the Army Chief of Staff.**

1 Q Okay. And how long have you served in your role as Chief
2 of Staff?

3 **A About 15 months.**

4 Q Prior to serving in your capacity as Chief of Staff,
5 what--what role did you hold within the Michigan Army
6 National Guard?

7 **A I was the Michigan Army National Guard G3, operations
8 officer.**

9 Q Okay. Are you, sir, a federal technician or AGR soldier
10 or--

11 **A I'm an AGR soldier.**

12 Q Okay. How long have you been an AGR soldier?

13 **A This current tour since November 6th of 2000.**

14 Q Okay. Prior to--prior to 2006 (sic), were you on a
15 separate set of orders or did you hold a different
16 occupation?

17 **A I was actually an M-Day soldier.**

18 Q Okay.

19 **A Commander of the Airborne LRS Company. And I was in a
20 civilian business.**

21 Q Okay. Very well. And I'm going to--we need to facilitate
22 things and speed right along, so I'm going to jump right
23 into this particular file--

24 **A Okay.**

25 Q --if I--if I could, sir. I understand you were the

1 deciding official with respect to Mr. Smock's termination,
2 correct?

3 **A I was, yes.**

4 Q And you authored what is marked as--

5 **A Is that G?**

6 Q G.

7 **A Yeah.**

8 Q Right. Exhibit 3, Tab G.

9 **A Okay.**

10 Q I'll ask you to briefly take a look at that, and tell the
11 Hearing Examiner whether you, in fact, authored that
12 letter.

13 **A I did.**

14 Q And if you could--thank you--turn over to the second
15 page--or--the third page.

16 **A Third page. Okay.**

17 Q And does that bear your signature?

18 **A It does.**

19 Q And there's another signature on that memoranda, correct?

20 **A Yes.**

21 Q And do you believe that to be the signature of Joe Smock?

22 **A I do.**

23 Q To your knowledge, were you present when he signed and
24 acknowledged receipt of that letter?

25 **A I was.**

1 Q Okay. And that letter's dated 28 February, correct?

2 A **That is correct.**

3 Q Again, in order to move things right along, you--I gather,
4 prior to authoring this removal letter, you considered
5 evidence of some sort; is that fair to say?

6 A **I did.**

7 Q Okay. Can you tell the Hearing Examiner what evidence you
8 considered prior to issuing the original decision?

9 A **I read the 15-6 from the investigating officer. I also
10 read the anonymous letter that was sent to the CID. And I
11 also read the rebuttal from Union representation and Mr.
12 Smock.**

13 Q Okay. And we'll get to some of the Exhibits in there.
14 But did you read the entire 15-6 and all the exhibits
15 attached to it?

16 A **I did, cover to cover, probably--**

17 Q Okay.

18 A **--I would say minimum three times.**

19 Q Okay. Did you--do you recall whether, in fact, you read
20 three times Colonel Doolittle's report?

21 A **I did.**

22 Q Okay. Now, Lieutenant Colonel Meyers has testified and,
23 thus, there's certain facts in evidence at this point,
24 that he was not the first-line supervisor of Mr. Smock.
25 But he served as the official drafting the proposed

1 adverse action notice because the person who might
2 otherwise draft that was himself the subject of a proposed
3 adverse action notice. Are you aware of that?

4 **A That is correct. I am aware.**

5 Q And what--to your knowledge, what person would that have
6 been who ordinarily would have drafted the proposed
7 adverse action notice against Joe Smock?

8 **A That would have been Lieutenant Colonel Golnick--**

9 Q Okay.

10 **A --the MATES superintendent.**

11 Q Okay. And were you the immediate supervisor of Lieutenant
12 Colonel Meyers?

13 **A No, I was not.**

14 Q Okay. Who was--at the--at the time you drafted your
15 original decision letter, who was Lieutenant Colonel
16 Meyers' direct supervisor?

17 **A That was Colonel Jim Gardiner.**

18 Q Okay.

19 **A Yeah.**

20 Q Is there a reason that Colonel Gardiner did not, himself,
21 draft the original decision letter? Could you explain to
22 the Hearing Examiner why that is?

23 **A Yeah. Absolutely. At the--at the time of this**
24 **investigation, there were two other open investigations**
25 **related to activities on Camp Grayling, and potentially**

1 **MATES. Colonel Gardiner was the former Deputy Commander**
2 **of Camp Grayling. And out of protection for him and the**
3 **current investigations that were still ongoing, we chose**
4 **to put me in that position as the original decision**
5 **authority, since I was Colonel Gardiner's direct**
6 **supervisor.**

7 Q Very well. Did you have occasion to review the proposed
8 adverse action notice that was drafted by Lieutenant
9 Colonel Meyers prior to issuing your original decision?

10 A **I did.**

11 Q Did you have an opportunity to speak with Lieutenant
12 Colonel Meyers regarding his proposed adverse action
13 notice?

14 A **I did.**

15 Q Okay. And I think you've already alluded to the fact that
16 you looked to the reply of Joe Smock prior to issuing the
17 original decision letter, correct?

18 A **Yes, I did.**

19 Q And now I can draw your attention to that particular
20 Exhibit.

21 A **Okay.**

22 Q Okay. What is the date of that--of that reply?

23 A **It's actually February 24th, 2014.**

24 Q Okay. If you recall, is that the day on which you
25 received that reply or did you receive it on another day?

1 **A** **No, actually didn't receive the email with the documents**
2 **until the 26th.**

3 Q Of February?

4 **A** **Of February; that is correct.**

5 Q Okay. And there was--there is--if I'm not mistaken there
6 is another letter dated 24 February.

7 CAPTAIN BEDELLS: See what exhibit that one is
8 in there. That's it there. (To Staff Sergeant Schultz)

9 BY CAPTAIN BEDELLS:

10 Q Another letter that addresses both the Reed and Smock
11 file.

12 MR. BANCHS: It's Tab F.

13 STAFF SERGEANT SCHULTZ: That's it right
14 there. Yeah.

15 THE WITNESS: Yeah.

16 BY CAPTAIN BEDELLS:

17 Q Do you recall if you reviewed that particular letter prior
18 to issuing your original decision?

19 **A** **I do.**

20 Q Okay. Now, there is a distinction between these two
21 letters and I want to--

22 **A** **I understand.**

23 Q --be careful. So let's--since we have it--we're open to
24 that particular tab, let's take a look. I want you
25 to--sir, if you'd please take a moment and peruse that

1 letter. I know it's a three-page-long letter but I want
2 to distinguish it from the official reply and ask you some
3 questions on it.

4 **A Okay.**

5 Q Okay, sir. Does that refresh your recollection as to--so
6 that you're able to answer the question as to whether you
7 read that prior to issuing the original decision?

8 **A Yeah, I did read it.**

9 Q And are you confident saying that you did?

10 **A I did. Yes, sir.**

11 Q Okay. Sir, and I'm going to ask you for your
12 characterization. There's obviously this letter, which
13 served as an attachment to the official reply, if you
14 will. How would you summarize what--what's being stated
15 in this--in this February 24, 2014 letter?

16 **A I mean, honestly I look at it as a bit of a distracter--**

17 Q Okay.

18 **A --mainly because I have the 15-6 that really focuses in on**
19 **the allegations and the facts. And I mean the--this**
20 **letter just really distracts from the core issue that we**
21 **need to address.**

22 Q Okay. And is it fair to say that this letter talks about
23 procedural--what perceived procedural defects in the
24 investigation; is that fair to say?

25 **A Yes.**

1 Q Okay. And then, if we can turn back to the official
2 reply--and I know you're familiar with that.

3 A **Uh-huh.**

4 Q I don't remember what that--is that Tab G? Okay. And as
5 you--as you recall that official reply, do you believe
6 that that reply applies--addresses more the merits of the
7 case?

8 A **It does.**

9 Q Okay.

10 A **It does.**

11 Q Nevertheless, you considered both of them before you
12 issued your original decision?

13 A **I did.**

14 Q Okay. Now, prior to issuing your original decision, were
15 you aware of any alleged procedural defects outside of
16 this letter?

17 A **No.**

18 Q In other words, had you heard of anything?

19 A **No, I did not.**

20 Q Okay.

21 A **I did not.**

22 Q Did you talk to Colonel Doolittle at all prior to issuing
23 your original decision letter?

24 A **I spoke with him just to verify facts, to verify
25 attachments, you know, to clarify a question that I had on**

1 a particular item that was on the letter, but not
2 procedural discussion.

3 Q Okay.

4 A Okay.

5 Q And you--

6 CAPTAIN BEDELLS: --if you could help out with
7 the Exhibit-- (To Staff Sergeant Schultz)

8 BY CAPTAIN BEDELLS:

9 Q --you noted--

10 A Which on you looking for?

11 Q The Douglas Factors checklist.

12 STAFF SERGEANT SCHULTZ: It should be after
13 the original decision letter.

14 CAPTAIN BEDELLS: Right.

15 THE WITNESS: Oh. In the same tab? Yeah.
16 Got it.

17 BY CAPTAIN BEDELLS:

18 Q Is that your signature at the conclusion of the checklist?

19 A It is.

20 Q And, sir, what is the date of that checklist?

21 A It's the same date that I issued the letter, 28 February.

22 Q Okay. And you've already testified that--

23 A Yeah.

24 Q --that that was on the 28th, as well. So as you testify
25 here today, is it a fact that you did consider each of

1 these factors before deciding that Master Sergeant Smock
2 be removed from the technician workforce?

3 **A** **I did.**

4 **Q** Okay. So I want to just walk through each one of these,
5 if you would.

6 Did you consider forms of discipline lesser than
7 termination?

8 **A** **I did.**

9 **Q** Okay. And did you consider the offenses that were alleged
10 against then Master Sergeant Smock as serious?

11 **A** **I did.**

12 **Q** Did you consider the--those offenses that Mr. Smock was
13 alleged to have committed intentional?

14 **A** **Yes.**

15 **Q** Versus negligent?

16 **A** **Yes.**

17 **Q** Okay. Did you consider that the offenses alleged against
18 Mr. Smock were done for personal gain?

19 **A** **I did.**

20 **Q** Did you consider, before issuing your original decision
21 letter to terminate his employment, his level of
22 experience?

23 **A** **I did.**

24 **Q** Did you consider his past disciplinary record?

25 **A** **I did.**

1 Q Did you consider his length of service to the
2 organization?

3 A **Yes, sir, I did.**

4 Q Did you consider how his conduct or misconduct might
5 affect his supervisor's confidence if he were to continue
6 working?

7 A **Absolutely. I certainly did.**

8 Q Okay. And to your knowledge--and understanding that
9 you're acting as a Chief of Staff--to your knowledge was
10 the proposed action consistent with similar cases as far
11 as you might have known?

12 A **I did, yes.**

13 Q In particular theft cases?

14 A **Yeah.**

15 Q Okay.

16 A **Yeah.**

17 Q And did you, in your analysis of the Douglas Factors,
18 consult the TPR and the table of offenses?

19 A **I did.**

20 Q Okay. One of the Douglas Factors is the notoriety of the
21 offense. And I gather what they're getting at is, you
22 know, what--what is the effect upon the Agency
23 if--if--with respect to the investigation; is it some
24 minor transgression or something that's noteworthy. Did
25 you consider the notoriety of the offenses?

1 **A** **I certainly did.**

2 **Q** Okay. And I want to expand upon that. When we talk about
3 notoriety, to your knowledge, what was the--I used the
4 term with Lieutenant Colonel Meyers--the genesis or what
5 prompted this 15-6, if you know?

6 **A** **We received notification through our Staff Judge Advocate**
7 **that an anonymous letter had been submitted to the CID.**
8 **CID had conducted their inquiry. I don't recall the**
9 **length of the inquiry, but as a result of their inquiry**
10 **and investigation, it was turned back over to the chain of**
11 **command, because it was more suited for the chain of**
12 **command to conduct an external investigation to find out**
13 **if the allegations in the anonymous letter were**
14 **substantiated.**

15 **Q** Okay. Did you speak with the CID investigators at all?

16 **A** **I did not personally, no.**

17 **Q** Okay.

18 **A** **No. No.**

19 **Q** Did you--did you, prior to issuing your original decisions
20 letter, consider whether this particular employee, Mr.
21 Smock, was aware that this constituted an offense under
22 the TPR?

23 **A** **Absolutely. Yeah. I looked--**

24 **Q** Okay.

25 **A** **I looked--yeah. Absolutely. Yes.**

1 Q Okay. And did you consider whether there was a potential
2 for rehabilitation?

3 A I did.

4 Q Okay. And you ultimately decided, I gather, that there
5 wasn't--

6 A No.

7 Q --correct?

8 A No. There wasn't.

9 Q Okay. And did you consider any mitigating factors that
10 might have--that might have tended to show that Mr. Smock
11 wasn't culpable for the offenses for which he was alleged
12 to have committed?

13 A I looked at that, yes.

14 Q Okay. And, finally, did you consider any alternative
15 sanctions short of removal that might have served the
16 Agency's interests?

17 A I did.

18 Q Okay. Now, what I'd like to briefly do, briefly as I can,
19 is call your attention to--

20 CAPTAIN BEDELLS: --can you get that 15-6 out?

21 (To Staff Sergeant Schultz)

22 THE WITNESS: Okay.

23 BY CAPTAIN BEDELLS:

24 Q I'm showing you what is part of Exhibit 1, which is Book 1
25 of the MATES investigation.

1 **A** **Okay.**

2 **Q** It's not an attachment. It was essentially placed in the
3 inside cover of that--that book. As you look at that
4 document, sir, do you--do you recall reviewing that
5 document?

6 **A** **I do, yes.**

7 **Q** And I believe you testified probably three times--

8 **A** **Yes.**

9 **Q** --you reviewed it?

10 **A** **Yeah. Absolutely.**

11 **Q** Okay. Okay. And I want to call your attention to the
12 very first paragraph under "Background."

13 **A** **Okay.**

14 **Q** And I'd like you to read, take your time, those two
15 paragraphs. And I'm going to ask you a couple questions
16 about those.

17 **A** **Okay.**

18 **Q** Okay. There's reference to an anonymous letter in the
19 opening paragraph of that report of investigation. My
20 question to you is is that the same anonymous letter of
21 which you spoke about--

22 **A** **Correct.**

23 **Q** --the CID receiving?

24 **A** **It is. Yes, sir.**

25 **Q** Okay.

1 **A** **Yeah.**

2 Q And there's another sentence in that--in the second
3 paragraph that speaks to the investigating officer being
4 mindful of the anonymous claim--the anonymous complaint
5 trying to disparage or discredit people, hence the
6 anonymity of it.

7 **A** **Correct.**

8 Q As you read through the--as your read through the 15-6,
9 did you bear that possibility in mind before deciding to
10 terminate Joe Smock?

11 **A** **I did.**

12 Q Okay.

13 **A** **I did.**

14 Q Okay. And then if you could turn to the second page, sir.

15 **A** **Okay.**

16 Q And just read the first three paragraphs of that page, if
17 you would, please.

18 **A** **Okay.**

19 Q Okay, sir. The first paragraph touches upon a theme that
20 the IO explores in a couple places in this investigation
21 about a culture or a loyalty at MATES.

22 **A** **Uh-huh.**

23 Q Okay. I'm asking you what did you understand that term to
24 mean as you read through the 15-6?

25 **A** **My interpretation of the culture at MATES was that it was**

1 a very protective class, very protective society in that,
2 you know, wrongdoing was encouraged. It was, if you were
3 a snitch or you went outside that level of loyalty or the
4 family, so to speak, that, you know, you were--you were
5 reprised against.

6 Q Okay.

7 A Okay.

8 Q And that touches upon the second question I was going to
9 ask which is a couple paragraphs down, which talks about a
10 fear of reprisal.

11 A Uh-huh.

12 Q So prior to--prior to issuing the original decision
13 letter, I believe you--correct me if I'm wrong--you did
14 speak with Colonel Doolittle, correct?

15 A I did.

16 Q And you sought to clarify a couple issues?

17 A Correct.

18 Q Was one of the issues this matter or was it something
19 entirely different?

20 A One of the issues was actually just the cooperation, the
21 command climate. You know, as a Chief of Staff and the
22 full-time supervisor, I'm also concerned with the command
23 climate. I'm also concerned with bullying, intimidation
24 and toxic leadership. And, given the fact that one of the
25 centers of the investigation was the senior leader in the

1 **MATES organization, you know, I did need to clarify or, at**
2 **least, get some additional information about the culture.**

3 Q Okay. And what did Colonel Doolittle tell you regarding
4 the culture at MATES--

5 A **Predominantly that--**

6 Q --if you recall?

7 A **--there were people that were very willing to come**
8 **forward, but they were very concerned about the--the**
9 **autonomy of their claim, the anonymity of their person.**
10 **They were also very concerned about the family, their**
11 **family, because of the community influence, because of the**
12 **length of this behavior spanning decades.**

13 Q And did you--did you bear all that in mind--

14 A **I did.**

15 Q --when you made your decision?

16 A **I did.**

17 Q Okay. Now, I believe you testified that you did not hear
18 of any procedural irregularities prior to issuing your
19 original decision; is that correct?

20 A **No, I did not.**

21 Q Okay.

22 A **I did not.**

23 Q Okay. After you issued your original decision letter,
24 have you had any occasion to hear of any procedural
25 irregularities?

1 **A** **No. Only the letter that came in as part of the rebuttal.**

2 Q Okay. Okay. Okay. If I could draw your attention page
3 12 of that report.

4 CAPTAIN BEDELLS: I'm going--sir, I'm going
5 over--and, Ben, I'm going over the same stuff I gave--with
6 Lieutenant Colonel Meyers, so.

7 BY CAPTAIN BEDELLS:

8 Q This is the last--it's paragraph 4, "Theft," and it is the
9 last paragraph of that--of that heading. Sir, if you
10 would read just the last paragraph under 4, right before
11 "Theft of Time." That last paragraph.

12 **A** **Okay.**

13 Q Again, does this touch upon the culture or loyalty
14 that--that--that we discussed earlier--

15 **A** **It does.**

16 Q --in your mind?

17 **A** **It does.**

18 Q Okay. And when they--and as you read this report, who did
19 you understand the reference to "Chris" be in that
20 paragraph?

21 **A** **That would have been Lieutenant Colonel Golnick.**

22 Q Okay. And my understanding is that he was the supervisor
23 at that facility, correct?

24 **A** **He was the senior officer at MATES. Yeah.**

25 Q Okay. And as we discussed, hence the decision to have

1 Lieutenant Colonel Meyers--

2 **A Correct.**

3 Q --issue the proposed adverse action notice?

4 **A That is correct.**

5 Q Okay. Very well. Okay. And if I could next have you

6 move to page 16.

7 **A Okay.**

8 Q And if you would kindly read the second paragraph to

9 yourself of that page.

10 **A Okay.**

11 Q Okay. Now, I'm going to break this down, and please bear

12 with me. Sir, there's a--there's a reference in the

13 opening sentence there that it's alleged Master Sergeant

14 Smock ran a construction business on the side specializing

15 in garages, pole barns and other wood structures. Now, my

16 question to you is--and feel free to consult your original

17 decision letter which is in that--

18 **A Right.**

19 Q --in that document. But my question to you, sir, is was

20 that a--the running of an outside business, was that a

21 basis upon which you chose to remove Master Sergeant Smock

22 from the technician workforce?

23 **A No. Not running the business was a--**

24 Q Okay.

25 **A --was a consideration.**

1 Q Okay. It goes on to say that he's alleged to have
2 constructed such wood structures as deer blinds, ice
3 shanties, decks and gazebos.

4 **A Uh-huh.**

5 Q Okay. Now, I note for the record that in your original
6 decision letter you mentioned that he's being removed for
7 wrongful--that he's being removed from the technician
8 workforce for wrongfully removing sheets of OSB board,
9 wood of a general nature from the--from MATES, I guess,
10 and sheets of luan from the MATES building. Do you--do
11 you recall that--

12 **A I do.**

13 Q --in your original decision letter?

14 **A Yeah. I do.**

15 Q Okay. The next sentence goes on to read, "Master Sergeant
16 Smock was also said to build and sell ice fishing tip-ups
17 and other various wooden display cases built during work
18 order (sic) use--" "--work hours using wood bought by
19 MATES credit card holders." Again, my question is is that
20 allegation in the 15-6 part of the--the enumerated
21 offenses--

22 **A Yes.**

23 Q --in your original decision letter?

24 **A It is.**

25 Q And, again, sir, would that be found in either B, C or D,

1 where we talk about OSB, wood or luan?

2 **A** Well, depending on the--you know, the type of product that
3 was built during work hours, it could have been a--it
4 could have been various types of woods or OSB board. But,
5 yes.

6 Q Okay.

7 **A** I mean any of those items that were used for profit from a
8 Government credit card was taken into consideration.

9 Q Okay.

10 **A** Okay.

11 Q And just for the record, because I didn't--I didn't
12 establish this with Lieutenant Colonel Meyers, but I
13 suggest I know the answer, you've never personally
14 observed Joe Smock steal anything from the MATES facility,
15 correct?

16 **A** No, I have not.

17 Q Okay. And, in a general sense, you relied on the ROI by
18 Colonel Doolittle, correct?

19 **A** I did.

20 Q And in a more specific sentence, it's fair to say that you
21 actually looked at all the exhibits?

22 **A** I did.

23 Q You looked at sworn statements, correct?

24 **A** I did.

25 Q Okay. While you might never have witnessed Mr. Smock

1 steal anything from MATES--and I didn't ask this of
2 Lieutenant Colonel Meyers--did you ever--have you ever
3 purchased a tip-up from him?
4 **A I have not.**
5 Q Okay. I know you to be a fisherman, so that's why I
6 asked.
7 **A I am a fisherman, yes.**
8 Q Okay.
9 **A But I did not--**
10 Q How about a deer blind?
11 **A I have not.**
12 Q Okay.
13 **A I hunt from tree stands. Okay, so.**
14 Q Okay. Very well.
15 **A And I stalk them, so.**
16 Q No display cases, either--
17 **A No.**
18 Q --never purchased a display case?
19 **A No.**
20 Q Okay.
21 **A No.**
22 Q And, finally, if I could get you to turn to page 18, sir.
23 **A Sure.**
24 Q And read the final paragraph of that page.
25 **A Okay.**

1 Q Okay. And when you testified earlier to the fact that you
2 based the allegation that--or the conclusion, I should
3 say, that he wrongfully removed wood, it depended on the
4 type of structure; do you recall that testimony?

5 **A Uh-huh.**

6 Q Okay. And in this particular paragraph, we--we talk about
7 oriented strand board, which I never knew that's what OSB
8 stood for. But I gather that's what you--that's what you
9 were distinguishing, correct?

10 **A Correct.**

11 Q Okay. And it also talks about luan in the construction of
12 a playhouse in that paragraph, does it not?

13 **A Uh-huh.**

14 Q Okay. So in other words, when you--when you signed this
15 original decision letter removing Mr. Smock from the
16 technician workforce, you broke out the different types of
17 property he's alleged to have stolen, correct?

18 **A I did.**

19 Q Okay.

20 **A Yeah.**

21 Q And I also note that--that it is--your original decision
22 letter is very similar to the proposed adverse action
23 notice drafted by Lieutenant Colonel Meyers.

24 **A It is.**

25 Q And if you need it to refresh your recollection, that is

1 in there, as well.

2 CAPTAIN BEDELLS: Steve, if you could help him
3 find it.

4 THE WITNESS: Yeah. I think it's in the
5 frontend here. Yep.

6 BY CAPTAIN BEDELLS:

7 Q Okay.

8 A **Yep.**

9 Q You do see the similarities, correct?

10 A **I do.**

11 Q Okay. Is that because you had spoken with Lieutenant
12 Colonel Meyers and determined that his proposed adverse
13 action notice was substantially--

14 A **Yes. Yep. We discussed it at length.**

15 Q Okay.

16 A **Yeah.**

17 Q Okay. Now, as part of your original decision letter,
18 you--you invited a reply, because that is what's required,
19 correct?

20 A **I did.**

21 Q Okay. And if you can recall--and feel free to refresh
22 your recollection and look at your original decision
23 letter--did you, in fact, invite--invite Mr. Smock to
24 reply in some form?

25 A **I did.**

1 Q Okay.

2 A I did. In fact, the--the proposed adverse action notice
3 by Colonel Meyers, in paragraph 5, says, "You have the
4 right to reply to this proposed action orally, in writing
5 or both to the deciding official Colonel Gregory A.
6 Durkac."

7 Q Okay.

8 A Okay. And then the--you know, given the same opportunity
9 when we present the original decision on 28 Feb.

10 Q Okay.

11 A Okay.

12 Q And you did, in fact, receive a reply, did you not?

13 A I did. In writing.

14 Q In what form? Right.

15 A It was in written form, but it wasn't from Master Sergeant
16 Smock directly. It was a reply from the Union.

17 Q Okay. If Master Sergeant Smock or his representative Mr.
18 Banchs picked up the phone and said, "Sir, did you receive
19 our written reply?" if they had done that and said, "We
20 also want to meet with you," would you have been willing
21 to meet with them?

22 A Absolutely. Absolutely.

23 Q Did you receive that--

24 A No.

25 Q --did you receive any such request?

1 **A** **Did not. Did not.**

2 Q Did you view it--did you view it in your capacity as the
3 officer making the--drafting the original decision letter
4 your responsibility to investigate this any further?

5 **A** **No. I had everything that--that I needed based on the**
6 **information that was provided, discussion with the**
7 **recommending officer, and the employees--all employees,**
8 **not just Joe Smock--were provided the opportunity to**
9 **rebut--**

10 Q Okay.

11 **A** **--either in oral form or written form.**

12 Q And, again, if Master Sergeant Smock had said, "Sir, I
13 would really like to meet with you in your office," you
14 would have done that?

15 **A** **Absolutely.**

16 Q Let me ask you, since this--since you authored this
17 original decision memo, have you had occasion to author
18 any other original decision memos?

19 **A** **I have. I have.**

20 Q And understanding it's not--without--without discour-
21 --without disclosing for whom you issued that original
22 decision letter, did that person request a meeting with
23 you?

24 **A** **That person did.**

25 Q Okay. And were you prepared to meet with that person?

1 **A** **I did.**

2 MR. BANCHS: I'm just--can I object here?
3 What is the relevance of this? The employee has a right
4 to reply. It can be oral or in writing. And just because
5 they don't provide an oral reply should not be prejudicial
6 to them. I mean, in fact, the written reply is even
7 better than the oral reply because it contains a record of
8 whatever the rebuttal is.

9 CAPTAIN BEDELLS: I'm not disputing that.
10 You're free to cross-examine him--

11 MR. BANCHS: Okay.

12 CAPTAIN BEDELLS: --when it's your time, Ben,
13 so.

14 THE WITNESS: Do you want me to answer the
15 question?

16 BY CAPTAIN BEDELLS:

17 Q Yeah. Go ahead.

18 **A** **Okay. Yes. Absolutely.**

19 Q Okay.

20 **A** **An employee was provided an opportunity, requested a**
21 **meeting with me, but did not show.**

22 Q And you made yourself available?

23 **A** **Absolutely--**

24 Q Okay.

25 **A** **--for an hour.**

1 Q Okay. After you received the two letters dated 24
2 February from Mr. Banchs, did that, in any way, change
3 your position with respect to the grounds for removal of
4 Joe Smock?

5 **A It did not.**

6 Q Okay. It took--it took Lieutenant Colonel Meyers
7 about--and this is not a comment on his ability to
8 read--but it took him about a half hour to read that,
9 because it's lengthy, right, those two things. Are
10 you--are you confident in your recollection of that
11 document so that I could ask you some questions now or
12 would you like an opportunity to re-read that?

13 **A I've read it earlier, again, yesterday, but I'd like to go
14 back and just kind of go through it again, if you don't
15 mind.**

16 Q Okay. I'm going to ask you some questions about it, sir.

17 **A Yeah. Sure.**

18 Q And I anticipate Mr. Banchs will ask--

19 **A Sure.**

20 Q --ask you some questions, so.

21 **A Absolutely.**

22 THE HEARING EXAMINER: Let's go off the record
23 for 10 minutes, is that sufficient?

24 CAPTAIN BEDELLS: If he's a faster reader,
25 sir.

1 THE HEARING EXAMINER: Well, he's communicated
2 he read it yesterday--

3 CAPTAIN BEDELLS: Okay.

4 THE HEARING EXAMINER: --just yesterday.

5 THE WITNESS: Yeah. I did read it yesterday,
6 but I'd like to go back through again, if that's fine,
7 sir.

8 CAPTAIN BEDELLS: Okay.

9 THE HEARING EXAMINER: Okay.

10 THE WITNESS: Okay.

11 THE HEARING EXAMINER: We'll go off the
12 record.

13 THE WITNESS: All right. Okay.

14 COURT RECORDER: We are going off the record.
15 The time is 1:35.

16 (Off the record)

17 (While off the record, Staff Sergeant Schultz
18 leaves hearing, and Lieutenant Colonel Niedergall assists
19 Captain Bedells)

20 (On the record)

21 COURT RECORDER: We are back on the record.
22 The time is 1:46 p.m.

23 THE HEARING EXAMINER: We're returning from a
24 brief break to allow Colonel Durkac to re-read the
25 rebuttal to the proposed adverse action.

1 THE WITNESS: Okay.

2 BY CAPTAIN BEDELLS:

3 Q Sir, have you adequately refreshed your recollection of
4 that document?

5 A **Yep. To the best I can.**

6 Q Okay. And my question to you is, in light of reviewing
7 that document and as you sit here today, is there anything
8 you would change about your decision to terminate the
9 employment of Joe Smock?

10 A **No, I would not.**

11 Q Okay. And I gather you read the attachments to that
12 letter, as well?

13 A **I have.**

14 Q Okay. And in particular, I believe there were exhibits
15 that offered a defense to the allegation that he stole a
16 television. Do you recall reading that--

17 A **That is correct.**

18 Q --those exhibits?

19 A **Yep.**

20 Q Okay. Why is it that that doesn't persuade you that--that
21 that wasn't a proper basis to terminate him?

22 A **Well, the statement states of 2013 from Master Sergeant
23 Fouts, and the receipts here are dated 2012. So there's
24 an inconsistency.**

25 Q Okay

1 MR. BANCHS: I want to clarify something.

2 Master Sergeant Fouts never stated a year. She just said
3 "last summer."

4 CAPTAIN BEDELLS: Okay.

5 THE WITNESS: Okay.

6 BY CAPTAIN BEDELLS:

7 Q You recollection was that her testimony was that it was
8 done in the summer--her testimony was that she'd observed
9 it in the summer of 2013; that's your understanding of the
10 testimony?

11 A **That is correct. Yep. That is correct.**

12 Q Okay. And, again, the receipts in there are for what
13 year?

14 A **2012.**

15 Q Okay. And there are also exhibits attached to that letter
16 that offer a defense to the allegation that he wrongfully
17 removed--I'm sorry--wrongfully installed
18 Government-purchased tires on his son's truck.

19 A **Yes.**

20 Q Do you recall reading those--the exhibits?

21 A **I do.**

22 Q Okay. And, again, it does not persuade you to change your
23 mind with respect to that offense?

24 A **Does not.**

25 CAPTAIN BEDELLS: Okay. I have no further

1 questions.

2 Thank you, sir.

3 THE WITNESS: Yep. You're welcome.

4 THE HEARING EXAMINER: Mr. Banchs?

5 MR. BANCHS: All right. Colonel, how are you
6 doing, sir?

7 THE WITNESS: Good, and yourself?

8 MR. BANCHS: All right.

9 CROSS-EXAMINATION

10 BY MR. BANCHS:

11 Q Sir, have you ever been a technician?

12 A **I have not.**

13 Q Okay. So you've been AGR your--either M-Day or AGR your
14 whole career?

15 A **Active duty, M-Day, AGR.**

16 Q And you stated you were M-Day prior to your 2006 tour,
17 correct?

18 A **2000.**

19 Q 2000. Okay. You've been--your latest tour has been since
20 2006?

21 A **No. No. My latest tour's been 6 November 2000.**

22 Q 6 November 2000. Okay.

23 A **Correct.**

24 Q All right. I got it backwards. Okay. Before you got on
25 this AGR tour and you said you were M-Day and you also had

1 a civilian job, what was your civilian job, sir?

2 **A I was--I had two different positions. I worked for a**
3 **management consulting firm. I traveled around the**
4 **company--or traveled around the country working with**
5 **project management teams to find efficiencies, to increase**
6 **profit margins with certain companies, based on where our**
7 **President would--you know, would put us.**

8 **And then the job after that is I was the operations**
9 **manager and director of sales for a construction material**
10 **company. So I did a lot of work in construction.**

11 **Q** Okay. About how many total employees--and we'll just take
12 the technician side of the house--do you supervise
13 currently or have you since you became the Chief of Staff
14 15 months ago?

15 **A For direct supervision?**

16 **Q** Well, I mean, just overall, sir. How many--

17 **A Overall?**

18 **Q** Yes, sir.

19 **A We have roughly--you know, and of course, this is a**
20 **changing number as we go through, you know, attrition and**
21 **turnover.**

22 **Q** Yes, sir.

23 **A I would say somewhere between 640 and 660.**

24 **Q** Okay. And just--just for my curiosity, when was the last
25 time--or how many times have you attended technician

1 supervisory training?

2 **A Most recently was, I believe, two years ago.**

3 Q Two years ago.

4 **A Yeah, was my technician supervisory training.**

5 Q And in your career, sir, about how many times would you

6 say you've been to supervisors training for technicians?

7 **A I didn't need to prior to this assignment, because all of**

8 **my employees, when I was an OIC for AGR--**

9 Q Okay.

10 **A --and I attended technician supervisory training twice**

11 **since I've been assigned to the Joint Force Headquarters**

12 **in 2009.**

13 Q And how many times have you been a decisions maker in a

14 disciplinary process for a technician?

15 **A This would--this one and then most recently about two**

16 **months ago.**

17 Q So--and not--you know, staying away from the facts of the

18 case two months ago--

19 **A Right.**

20 Q --how many disciplinary actions was that? Was that just

21 one person or--

22 **A This most recent one?**

23 Q Yes, sir.

24 **A Was one person, yes, sir.**

25 Q So total you have issued seven original decision letters

1 in your tenure--

2 **A That is--**

3 Q --as Chief of Staff?

4 **A That is correct.**

5 Q Did you ever serve as a proposing officer before then?

6 **A I never--never had a situation where I needed to be the**

7 **proposing officer.**

8 Q Okay. You ordered the 15-6 investigation, correct, sir?

9 **A Yes, sir, on behalf of the Adjutant General.**

10 Q On behalf of the--and that was in response to the

11 anonymous letter?

12 **A In response to the anonymous letter, and the CID returning**

13 **the investigation back to the chain of command.**

14 Q Do you remember about when, maybe--month and year, when

15 you received official notice from the CID?

16 **A I do not recall.**

17 Q And that notice, did it come in a phone call; was it a

18 formal letter from the CID letting you guys know that they

19 received an anonymous letter and they were turning it over

20 to the State? I mean, how did that notice come about?

21 **A I don't know how the CID notification came to our**

22 **headquarters. But I was informed by our Senior Staff**

23 **Judge Advocate.**

24 Q And so you were just notified that CID sent y'all an

25 anonymous letter, but you didn't see the actual formal

1 notice from them?

2 **A No. I did see the formal letter. Okay? They did provide**
3 **us the letter.**

4 **Q Okay.**

5 **A They provided in writing to this Judge--Staff Judge**
6 **Advocate office that they had referred this back to the**
7 **command, and then the senior JAG had come to me and said**
8 **this has been referred back to the command.**

9 **Q** What was--did they state in that letter what the reasons
10 were for them turning it over to the State? Did they
11 reference any kind of lack of evidence, no merit? It
12 wasn't big time enough for them? I mean, what was the
13 reason that they did not pursue the investigation?

14 **A I--you're going to have to ask--I don't--I recall that the**
15 **letter was--or the notification was given back to the**
16 **chain of command for further investigation by the chain of**
17 **command.**

18 **Q Okay.**

19 **A I don't want to speculate on what the CID proposed to our**
20 **Staff Judge Advocate.**

21 **Q** Roger that, sir. When you--when you were ordered to or
22 asked--or however the--the notice came about to initiate a
23 15-6, did you have a process for determining who was going
24 to be the investigating officer or did you already have
25 Colonel Doolittle in mind before this?

1 going to be framed with the Staff Judge Advocate to ensure
2 that, not only did Colonel Doolittle have the resources to
3 conduct the investigation, but also, you know, the scope
4 and intent of the investigation.

5 BY MR. BANCHS:

6 Q Let me borrow this for a second, sir.

7 A **Sure.**

8 Q I'm sure this letter came with a--with some kind of
9 face-to-face, correct--the issuance or did you just issue
10 to him via DIGITS or something?

11 A **Yeah. We issued it to him DIGITS. And then I did have a**
12 **face-to-face with him talking about, you know, he will**
13 **conduct the investigation on behalf of the Adjutant**
14 **General.**

15 Q Okay.

16 A **Okay. As the appointing authority and the Chief of Staff,**
17 **I'm also obligated to provide the resources to conduct the**
18 **investigation in a timely manner. And then that was the**
19 **extent of our discussion.**

20 Q And after that, did you meet with him before the
21 investigation was completed and you received his report of
22 investigation?

23 A **No. The only thing that I reached out to Colonel**
24 **Doolittle on was to ensure that, if he needed extensions**
25 **for his orders and the resources for his Captain that was**

1 on staff with him, that that--I made sure there was a
2 seamless transition with their operations officer. But as
3 far as the conduct or any of the specifics of the
4 investigation, we did not speak of those.

5 Q But just to be clear, sir, so you--it's fair to say that
6 you met at least with him once before--or-or in
7 conjunction with the appointment process?

8 A Correct. Yep.

9 Q During his investigation, you did not speak to him at all?

10 A I did speak to him.

11 Q Okay. What was the--what would be the subject--

12 A Just what I just said, the subject of the investi- --or
13 the subject--

14 Q Just logistical?

15 A Yeah. Just basically I'm the resource provider to ensure
16 he has what he needs to conduct the investigation in a
17 timely manner.

18 Q But no discussion of the actual investigation?

19 A No. None whatsoever.

20 Q Okay. And then afterwards--

21 A Yes.

22 Q --after--after he submitted his report of investigation at
23 the end of the January, whether it was the 24th or the
24 30th--

25 A Okay.

1 Q --how many times did you meet with or speak with him after
2 that?

3 A I would say a minimum two times just to ask questions and
4 clarify points that I needed just a little bit more
5 clarity on regarding statements--

6 Q Just on what he submitted?

7 A --on what he submitted. Okay.

8 Q Okay. In your--in your appointment letter--and I'm going
9 to highlight the relevant part that applies to
10 technicians, you gave clear instructions to Colonel
11 Doolittle that he, if he was interviewing technicians,
12 that he would--that he was required to contact the HRO and
13 ensure that the technicians were given their Weingarten
14 Rights prior to any interviews. Did you--were you ever
15 notified by the HRO that there were concerns that the
16 Union was presenting that Colonel Doolittle was denying
17 employees their right to be represented?

18 A No, I was not.

19 Q Not once?

20 A Nope.

21 Q Okay. When you received the ROI, since you were the
22 investigating official, and you had a couple of
23 conversations with Colonel Doolittle, at what point in
24 time--and you don't have to give me the exact date, sir,
25 but we'll assume it was sometime, you know, best case

1 scenario after the 24th, which is the first date on the
2 thing, how soon did you turn that over to Colonel Meyers?

3 **A You're saying the date of his final 15-6?**

4 **Q** After he--after Colonel Doolittle--because you were the
5 appointment--appointing officer--

6 **A I understand.**

7 **Q** So once he turned that report of investigation over to you
8 with his completed investigation--

9 **A Right.**

10 **Q** --how soon after did you provide that to Colonel Meyers
11 for him to start his process?

12 **A I did not provide it to Colonel Meyers. I'm sure that it**
13 **was--once it met legal sufficiency and it was reviewed, it**
14 **was turned over by the--by the SJA staff.**

15 **Q** Okay. So it was somebody else that did it?

16 **A I can't answer that.**

17 **Q** Okay.

18 **A I don't know.**

19 **Q** No worries.

20 **A Yeah.**

21 **Q** Between the time that Colonel Meyers received the ROI and
22 he wrote his six adverse action letters, to include Mr.
23 Smock's, that was about a period of two weeks. Did you
24 speak with Colonel Meyers at any point during those two
25 weeks before he issued the original proposal--proposal

1 letters; and, if you did how many times, to your
2 recollection, sir?

3 **A Give me a minute here. I'm just trying to piece together**
4 **the timeline real quick.**

5 Q And, if it helps sir, the letters that Colonel Meyers
6 issued to the employees were dated February 12th--

7 **A Yeah.**

8 Q --and they received them that same day.

9 **A Yeah. That's what I've got right here.**

10 Q Right.

11 **A Going back to--I recall the events that, you know, we**
12 **received the investigation. At a minimum, I met with**
13 **Colonel Meyers twice just to ask him if he had any**
14 **questions or concerns that he needed to discuss regarding**
15 **the investigation. Okay?**

16 Q Okay.

17 **A And then that--that was the last we had spoke, of course,**
18 **post his proposed notice.**

19 Q And then after the notices were issued, you--you testified
20 that you talked to Colonel Meyers several times.

21 **A Uh-huh.**

22 Q About how many was several? Because the time period
23 between the time that those were issued and the time that
24 you issued your original decision letter was less than two
25 weeks.

1 **A** **It was. It was. And most of our discussion was about the**
2 **rebuttals and how soon were they going to come in, so that**
3 **we had all the information--or at least I had all the**
4 **information that I could review.**

5 **Q** The employee rebuttals?

6 **A** **Correct.**

7 **Q** Okay.

8 **A** **Which didn't occur until the 26th.**

9 **Q** Correct. And initially, if you recall, we--the timeline
10 for replies was a little bit shorter, and we had asked for
11 an extension of time, if you recall that, and you granted
12 that.

13 **A** **I understand.**

14 **Q** Until--and there was a discrepancy. The letter said
15 February 25th, Wednesday--

16 **A** **Uh-huh.**

17 **Q** --but Wednesday was actually February 26.

18 **A** **I understand.**

19 **Q** And Chief Mosciski contacted us and said, "Look, we're
20 going to go with, you know, what benefits the employees
21 more, so you guys have until the 26th to submit your
22 reply."

23 **A** **That's correct.**

24 **Q** Okay. So you received the reply on the 26th. It
25 was--there was something made about the fact that you were

1 never contacted by the--Mr. Smock--I'm just going to stick
2 with Mr. Smock--to provide you with a verbal reply. Okay.
3 But he did provide and we did provide, on his behalf as
4 his employee representative, a rebuttal reply on his
5 behalf concerning all the charges that Colonel Meyers made
6 against him.

7 **A That is correct.**

8 Q Yes. And you said you went over those--

9 **A I did.**

10 Q --correct? Okay. And you had a chance to read those
11 again 10 minutes ago. I'm just curious as to why the
12 verbal reply would have been so important to you. Would
13 you have ruled any differently, at this point in time?

14 CAPTAIN BEDELLS: Well, I'll object to the
15 characterization of the question. I don't think he
16 testified that it would have been important to him. I
17 simply asked him if he--

18 MR. BANCHS: Okay. Well, I'll rephrase.

19 BY MR. BANCHS:

20 Q Would it have been important to you to hear a verbal
21 reply?

22 **A No. Not any more or less important than the written reply
23 that I received on the 26th.**

24 Q Okay. So it didn't matter to you whether he did it
25 verbally or written? Okay.

1 **A** **It was just an opportunity that the employee was afforded.**

2 Q Okay. He was afforded that opportunity, but he didn't

3 request it?

4 **A** **Correct.**

5 Q Good. Okay. You testified earlier that you--sir, you

6 read--I want to get the right wording here. As this--you

7 read the 15-6 investigation at least three times. Did you

8 listen to the audio recordings of the interviews?

9 **A** **I listened to some of them. I, you know, played them**

10 **while I was reading and went through and matched up, you**

11 **know, the statements with, you know, the actual audio.**

12 **But, yeah.**

13 Q Are you satisfied with--

14 **A** **Oh, absolutely.**

15 Q Yeah. Okay.

16 **A** **Absolutely.**

17 Q So you receive the ROI at the end of January. And you

18 made your original decisions in less than a month, to be

19 fair? The 28th of February your decision was issued. You

20 didn't receive the technician replies until February 26th.

21 You read the 15-6, by your own testimony, three times.

22 How many times did you read the technician replies, sir?

23 **A** **At least three.**

24 Q Okay.

25 **A** **I mean, I got it that morning. And, you know, because of**

1 **the significance of this investigation and the**
2 **significance of the potential actions that could have been**
3 **determined, I read through this very thoroughly numerous**
4 **times at that time.**

5 Q Well, I might not be--I might not be as quick of a reader
6 or writer as you are, sir, but that reply took
7 approximately three weeks to write.

8 A **I understand.**

9 Q And it was my attempt to go back throughout the entire
10 record--

11 A **I understand.**

12 Q --and extract all the statements that were made against
13 Mr. Smock and butt them up against statements that were
14 maybe made on his behalf.

15 A **I understand.**

16 Q Listen to 34 hours plus of verbal interviews. Okay.
17 Digging up rebuttal evidence, whether it was a TV receipt
18 and stuff like this. And that took--and it was an
19 expedited three weeks, because you guys only gave us two,
20 so I'd already been working on this before this happened,
21 okay, trying to gather evidence and stuff. In two days,
22 sir, you reviewed six different proposed adverse actions
23 and you issued six letters in two days. You did this by
24 yourself?

25 A **With staff.**

1 Q Okay.

2 A Okay.

3 Q Going back to some of the earlier questions that Captain
4 Bedells said, you guys decided that Colonel Meyers would
5 be the proposing official because of the situation at the
6 MATES, but you were not going to put Colonel Gardiner in a
7 position to be the deciding official because he had two
8 other investigations going on, and he was also a former
9 commander of the MATES. Were there any--

10 A No, that's not true.

11 Q Okay.

12 A That's not true. There were two open investigations
13 relative to Camp Grayling and MATES.

14 Q Okay.

15 A We did not know the outcome. It would have been premature
16 to assume. And Colonel Gardiner was the former Deputy
17 Commander of the Camp Grayling installation.

18 Q Okay.

19 A So, therefore, out of protection for him and to allow the
20 two other investigations to run their course and gather
21 the facts, it was in the best interest of the Agency to
22 not put Colonel Gardiner in a position of a
23 decision--original decision authority.

24 Q But how would that put--have put Colonel Gardiner in any
25 kind of awkward position?

1 CAPTAIN BEDELLS: You mean beyond being the
2 possible subject of the investigation?

3 MR. BANCHS: Well, Colonel Gardiner was never
4 implicated in the investigation.

5 CAPTAIN BEDELLS: He never was but I suppose
6 he could have been.

7 MR. BANCHS: Well, he wasn't. I mean, it was
8 in the record.

9 CAPTAIN BEDELLS: Okay.

10 MR. BANCHS: Before--before the decision was
11 made to make Colonel Meyers the proposing official and for
12 Colonel Durkac to become the original decision maker, that
13 decision was made, I'm assuming, if everything was done
14 properly, after the report of investigations come in.

15 CAPTAIN BEDELLS: Right.

16 MR. BANCHS: So if the report of
17 investigations were read by Colonel Durkac or even your
18 JAG staff--

19 CAPTAIN BEDELLS: Well, as it pertains to this
20 one investigation, correct?

21 MR. BANCHS: Okay. You can narrow it down to
22 this--

23 CAPTAIN BEDELLS: There were--there
24 were--yeah.

25 MR. BANCHS: --one.

1 CAPTAIN BEDELLS: No, no. I mean, what you're
2 saying is true as it--as it pertains to this
3 investigation. Didn't you testify there were more than
4 one investigation going on?

5 THE WITNESS: Uh-huh.

6 BY MR. BANCHS:

7 Q Right. But I'm just wondering, you know, was it that
8 Colonel Gardiner was just incapable of handling more than
9 two?

10 A **Absolutely not.**

11 Q Okay.

12 A **No. It's not a matter of being capable. It's a matter of
13 the scope of the other investigations were un- --excuse
14 me--the findings of the other investigation were unclear,
15 and we didn't know if Colonel Gardiner would have been a
16 person of interest of those investigations, which would
17 have potentially linked to this and compromised the 15-6.
18 So we kept Colonel Gardiner out of the original decision
19 authority for the integrity of the ongoing investigations.**

20 Q Well, I'll just--this is the last time--I'll just ask this
21 so we can move on. But I'm just curious, sir, in your
22 opinion, how it would have compromised, possibly, the--you
23 know, his role, I guess, as a deciding official?

24 THE HEARING EXAMINER: Ben, what's your
25 concern about the fact that Colonel Gardiner was not

1 appointed as the deciding official?

2 MR. BANCHS: He would have been the next layer
3 of supervision before--

4 THE HEARING EXAMINER: Beyond that, what's
5 your concern?

6 MR. BANCHS: --the Chief of Staff. That's it.
7 That's all. I'm just wondering.

8 THE HEARING EXAMINER: Okay. Because there's
9 no requirement in 752 for that next immediate supervisor
10 to be the deciding official.

11 MR. BANCHS: There isn't, but typically it's,
12 you know, one and two, and then, you know--because--and
13 the other concern is that if you already bring the
14 original decision up to the Chief of Staff level, you only
15 really have one more layer there--

16 THE HEARING EXAMINER: Right.

17 MR. BANCHS: --which is the Adjutant General.
18 That's the only reason I'm asking.

19 THE WITNESS: I understand.

20 BY MR. BANCHS:

21 Q Okay.

22 A **I understand.**

23 Q Is there a reason, sir, that you felt the need to issue
24 your decision two days after you received the technician's
25 reply? Was there--I mean, I hate to characterize it this

1 way, but was there, like, a rush to judgment--

2 **A No.**

3 **Q --because there is no timeline--**

4 **A No.**

5 **Q --for you to issue an original decision letter.**

6 **A No, there was no rush to judgment. You know--**

7 **Q And--**

8 **A --by the time we had re- --we had reviewed and received**
9 **all the information in a timely manner. Okay. We read**
10 **through everything that was proposed, you know, by**
11 **yourself, by the investigating officer, and the original**
12 **decision was a result of that.**

13 **Q** When I read your reply, sir, there was no explanation
14 provided other than whether the issues were resolved. TPR
15 752 clearly requires that you provide a reason for the
16 decision, paragraph 7-5, "The original decision will
17 explain what causes in the proposed action letter were
18 sustained and which were not. The causes need not be
19 restated." But "When the penalty proposed--" "--when
20 the penalty proposed in the proposed adverse action
21 letter is to be imposed, an explanation of why such
22 penalty is appropriate will be included."

23 The only explanation that you gave the technicians
24 or Mr. Smock was that you didn't feel the issues were
25 resolved. What does that mean, sir?

1 CAPTAIN BEDELLS: Can I--do you mind if I show
2 him a copy of what you're referencing, so he can take a
3 look at it?

4 MR. BANCHS: Sure.

5 CAPTAIN BEDELLS: Okay. What--and what
6 provision is that?

7 MR. BANCHS: 7-5.

8 CAPTAIN BEDELLS: You might want to look at--

9 THE WITNESS: Yeah.

10 CAPTAIN BEDELLS: --a couple of those.

11 THE WITNESS: Okay. So restate your question
12 again so I get a better understanding of what you're--what
13 you're asking.

14 BY MR. BANCHS:

15 Q You didn't provide any reasons as to why you made your
16 decision other than that the issues were not resolved,
17 that you didn't feel they were resolved.

18 A **I mean, every one of the allegations that were made in the**
19 **15-6 were substantial enough that they hadn't been**
20 **resolved based on your reply. So none of the issues were**
21 **resolved. None of the information that you provided or**
22 **Mr. Smock provided in the rebuttal changed anything on the**
23 **original decision or at least onto the allegations--**

24 Q Well--

25 A **--because they weren't resolved.**

1 Q Right. So but the way that the disciplinary process is
2 supposed to work is that the proposal letter is the
3 supervisor's opinion of what was done wrong. And then the
4 technician has an opportunity to reply to those charges.

5 **A Right.**

6 Q And you as the trier of fact, for lack of a better word,
7 are supposed to weigh the supervisor's proposal versus the
8 technician's reply in a fair manner. You're supposed to
9 give them both the same amount of weight and then make
10 your decision. Okay? So your role was not to say, "Okay,
11 well, he didn't convince me that he didn't do what Colonel
12 Meyers said he did." Your role was to actually do an
13 investigation, as well. And that's why you're required to
14 provide an explanation as to why.

15 So, for example, with the TV, Colonel Meyers'
16 accusation was that Ms. Janet Fouts observed him and
17 Colonel Golnick carry a TV out to the car. So the ex-
18 --there should have, you know, at least been an
19 explanation in the original decision letter that you
20 looked at that and you looked at his--to explain to him
21 why you didn't feel that his evidence was substantial
22 enough to overturn. You know, and even--and I remember,
23 because I was on the phone when you presented him the
24 letter.

25 **A Correct.**

1 Q You only read what was in your letter. And you were asked
2 for further explanation, and you did not provide one. So
3 I was just wondering, because it is a quick turnaround,
4 sir, from the time that you received his rebuttal until
5 the time that you authored--and I'm assuming
6 that--that--and the letter came early on the 28th. It
7 didn't come late. So I mean, I don't want to speculate
8 about anything, but you had less than 48 hours to print
9 this letter.

10 A **Uh-huh.**

11 Q Took us three weeks to write it. It took the
12 investigating officer five months to do his investigation.

13 A **That is correct.**

14 Q Thirty-five hours of testimony. And in one--in a
15 day-and-a-half, two days at best, a decision is made
16 signed, sealed and delivered, and Mr. Smock doesn't have a
17 job anymore. I'm just wondering, maybe you can clarify
18 for me that process, because I'm about to get into some of
19 the actual testimony.

20 A **Okay. Yeah. I took exactly the information that was**
21 **provided. I mean, part of my job is to--as a deciding**
22 **official, is to impartially review all the evidence, the**
23 **evidence the 15-6 provided, the evidence that you**
24 **provided, the evidence or the recommendation from the**
25 **recommending officer. And I reviewed everything. I'm not**

1 really sure what else you're asking me to give you.

2 Q Okay.

3 A I mean, I--I guess, if--it was a very deliberate objective
4 point-of-view based on all the information that was
5 provided me.

6 Q Okay.

7 A I don't think the TPR provides a minimum amount of time
8 that I have to review the information to render an
9 original decision. But I do understand that it does
10 require methodical process, and that's exactly what I went
11 through.

12 Q No, I grant you that, sir.

13 A Okay.

14 Q But there's also no limit on how soon you have to issue
15 your decision, just--

16 A I understand.

17 Q --as soon as possible.

18 A I understand.

19 Q Okay. I want to address the culture and loyalty debate
20 that's been going on--or not debate, but just some of the
21 questions around that. Because it's being--it's just
22 being put in a negative light. How did that weigh in your
23 decision as far as the folks here at Grayling just being
24 too close? There's been reference made to the Grayling
25 mafia. You indicated that the behavior has been--had

1 spanned decades. Are you telling me that no one knew
2 about this? I mean, if the behavior's been going on for
3 decades, nobody knew or suspected that this was going on
4 prior to the anonymous letter being received?

5 CAPTAIN BEDELLS: Did he testi- --excuse me,
6 sir.

7 THE HEARING EXAMINER: Yes.

8 CAPTAIN BEDELLS: Did he testify as to the
9 Grayling mafia?

10 MR. BANCHS: No. I'm saying that that's in
11 the record, that that's what Colonel Doolittle had in his
12 letter.

13 CAPTAIN BEDELLS: Okay.

14 MR. BANCHS: Yeah.

15 CAPTAIN BEDELLS: So I just want to be--I want
16 to be careful. So that's not something that Colonel
17 Durkac mentioned--

18 THE WITNESS: No.

19 CAPTAIN BEDELLS: --the Grayling mafia.

20 MR. BANCHS: No, sir. I said, you know, the
21 culture and loyalty debate that--I'll clarify--that was in
22 his report of investigation, in his letter.

23 CAPTAIN BEDELLS: Colonel Doolittle's--

24 MR. BANCHS: Colonel Doolittle's.

25 CAPTAIN BEDELLS: --ROI?

1 MR. BANCHS: Yes. He referenced the Grayling
2 mafia, behavior that's been spanning for decades.

3 BY MR. BANCHS:

4 Q And that--so my question was that no one up higher up in
5 the chain of command beyond the MATES know or suspected
6 any of this wrongdoing was going on if it was going on for
7 decades. I mean, inspections were conducted. We received
8 copies of the inspections that'd been conducted at the
9 MATES by the Army, by the National--by the Michigan
10 National Guard. No wrongdoing was ever found. I believe
11 there was only one FLIPL ever done since 2007 concerning
12 GSA use, and it had nothing to do with any of the
13 employees that were charged in this time around.

14 So this--these things did not occur in a vacuum
15 is--I guess, is what I'm going to. So I was just
16 wondering, if the behavior was going on for decades, and
17 at least definitely since 2007, did no one know or suspect
18 what was going on?

19 CAPTAIN BEDELLS: Sir, did you understand--

20 THE HEARING EXAMINER: Let's narrow it--

21 CAPTAIN BEDELLS: --that question?

22 THE HEARING EXAMINER: Let's narrow it to--

23 CAPTAIN BEDELLS: That's a long question.

24 THE WITNESS: Yeah. I'm--I'm--

25 THE HEARING EXAMINER: Yeah. Let's narrow it

1 to--

2 THE WITNESS: That's exactly what I was going
3 to ask. What's the question?

4 THE HEARING EXAMINER: Colonel Durkac's faced
5 with making a decision. He's got this information here.
6 He's already testified that he was aware of a culture and
7 a climate. If we can keep it to, then, how that--

8 MR. BANCHS: Well--well--okay. I'll ask you
9 this:

10 THE HEARING EXAMINER: --how that impression
11 that he had of the environment affected his decision.

12 BY MR. BANCHS:

13 Q Why did it take an anonymous letter for the Michigan
14 National Guard to finally decide to take action if they
15 knew it was going on for decades?

16 A I'm not going to speak to the entire Michigan National
17 Guard or previous administrations or previous Chiefs of
18 Staff. Okay. What I'm going to speak to is that, when we
19 received the anonymous letter that talked about the
20 culture, the climate and the issues surrounding MATES, we
21 took immediate and active action to engage an
22 investigation. The allegations or the comments made about
23 culture previous to this, I mean, that's opinion and
24 speculation by others in, you know--so to ask me to speak
25 for the Michigan National Guard 10 years ago, I'm sorry, I

1 **can't do that.**

2 Q Okay. And the other reason I ask you, sir, is
3 because--and this is probably more a question for Colonel
4 Doolittle. But in the same breath--and I'm asking you
5 because you were the decision maker and you did read this
6 investigation three times. In the same breath that
7 Colonel Doolittle talks about all this going on for
8 decades and never--and never being reported, I guess, he
9 also writes--and this is in the report of information,
10 paragraph 4, "Theft"--he talks about folks that have done
11 the right thing; that reported the theft up the chain and
12 watched the chain do nothing. So I'm just--you know, I
13 mean, which--either people didn't report it before or they
14 did. I was just curious.

15 A **Well, I will offer up to you that the chain of command at**
16 **the time was one of the individuals who was a person of**
17 **interest on the investigation, who resigned. So you**
18 **can--if you want to make an assumption, if you want to**
19 **draw a conclusion--you know, I honestly don't know, you**
20 **know, where that information goes. It didn't get to my**
21 **level.**

22 Q How long have you known, Joe, sir, Mr. Smock?

23 A **I would say on and off probably last few years.**

24 Q And you've served with him?

25 A **Not directly.**

1 Q On the Partnership Council, though.

2 A **We did, yeah.**

3 Q Yeah.

4 A **Yeah. Yeah.**

5 Q And what's your general impression of Mr. Smock before
6 this?

7 A **Before the investigation?**

8 Q Yes, sir.

9 A **My personal opinion? You're asking my personal opinion of
10 Joe Smock?**

11 Q Sure.

12 A **I don't--**

13 CAPTAIN BEDELLS: It's a fair question, sir.
14 I mean, he can ask.

15 THE WITNESS: I understand. I don't trust
16 him.

17 BY MR. BANCHS:

18 Q Okay.

19 A **Okay.**

20 Q And why?

21 A **Mainly because there are--you know, in leadership roles
22 throughout my--my career, not only do I measure the
23 technician that wears the uniform, but the NCO behind it.
24 And I just--I can't say that I have a favorable impression
25 of him as a senior NCO.**

1 Q And this is before this investigation?

2 A **No. No. No. I would say that this culminated during the**
3 **time of the investigation and my review.**

4 Q Clearly I asked you before the investigation, though, sir.

5 A **Oh. I didn't have enough exposure to--to gauge Joe Smock**
6 **or--**

7 Q But was it--but, in general, was it a favorable impression
8 or unfavorable?

9 A **It was neutral. I didn't--like I said, I didn't have**
10 **enough--didn't know him enough. He wasn't in my unit. We**
11 **never interacted that much, so.**

12 Q Did you--do you think that maybe your impression of Mr.
13 Smock, I mean, based on what you just told us, was reason
14 enough that maybe you should recuse yourself as being the
15 original decision maker in this case and handing it off to
16 somebody else?

17 A **No. I don't believe that at all.**

18 Q Well, if you already went into it with a negative light,
19 and it only took you one day to decide that what he
20 did--what he was accused of doing was true versus the
21 rebuttal evidence that he provided to you--

22 A **I say, again, I went through the information in detail,**
23 **objective point-of-view matching the rebuttal against the**
24 **facts, and what was stated in the original decision**
25 **letter. And, you know, two days is a long time, it truly**

1 **is, when this is the number 1 priority sitting on your**
2 **desk, to get this right as the Chief of Staff and an**
3 **original decision authority.**

4 Q Okay. Did you review Joe's personnel file, his technician
5 folder? Not his OPF. Not his official personnel folder
6 from HRO, but his technician folder that contains the NGB
7 form 904, where you track discipline and his performance
8 appraisals and things like that? Did you review that in
9 conjunction with this?

10 A **I had limited access, because I know the files are not**
11 **necessarily made public. But I did what was made**
12 **available to me by HRO.**

13 Q And your Douglas Factors, you said you considered his
14 experience and his prior disciplinary record. Did you
15 consider the fact that he didn't have a prior disciplinary
16 record, at all, period?

17 A **Uh-huh.**

18 Q Okay. How much weight did you lend that?

19 A **Given the severity of the allegations and in accordance**
20 **with the table, I did consider it. I can't tell you what**
21 **weight.**

22 Q Well, it's not like he's only been an employee for a year.
23 I mean, the man has over 20 years of technician service.

24 A **I understand.**

25 Q And not one blip on the record.

1 **A** **I understand.**

2 **Q** It's been--it's been talked about by the investigating
3 officer and by other folks that provided testimony, for
4 the lack of a better word, that Master Sergeant Smock ran
5 a construction business on the side. But he's not really
6 a licensed contractor. So, I mean, when they say that he
7 was running a business, what does that mean to you? Do
8 you think that he has a contractor's license? You having
9 been in the construction business yourself, when you hear
10 that somebody has a construction business, did you assume
11 that he--that he was an actual contractor on the side?

12 **A** **I wouldn't have assumed anything unless I saw it in the**
13 **investigation with hard evidence that he was a licensed**
14 **contractor or a business owner for construction. But I do**
15 **know that a lot of technicians, you know, do freelance and**
16 **do other odd jobs. So I didn't make any assumption that**
17 **he was a licensed contractor.**

18 **Q** But that tag that he ran a "construction business" on the
19 side, did that maybe help you connect some kind of dots to
20 say, "Well, maybe, yeah, he had use for wood for personal
21 gain"?

22 **A** **No. That did not.**

23 **Q** No?

24 **A** **No.**

25 **Q** Okay. Let's see. So the fact that none of these folks

1 were doing odd jobs on the side, construction related,
2 that had nothing to do with your maybe trying to connect
3 this, that maybe other people might have been stealing
4 wood, as well?

5 **A No. The allegations didn't lead that direction.**

6 Q Okay. There's one thing that the investigating officer
7 never really established, and that was what the source--or
8 who the source of the anonymous letter was. Did--were you
9 guys interested in finding out who the source of the
10 anonymous letter was, because just from reading the
11 testimony, not once did the investigating officer ever ask
12 anybody, at least on the record, whether they actually
13 wrote the letter or not. Did you guys not think that that
14 was important? And the reason I ask--and I'm sorry for
15 the long-winded questions--is because, in the first--in
16 the first two paragraphs of his ROI, the investigating
17 officer, Colonel Doolittle says that he didn't find any
18 reason to believe that anybody was scorned or--and that's
19 the last sentence of the second paragraph in "Background."
20 "In large, the anonymous letter, though void of essential
21 detail"--and that's something that's curious to me--that's
22 "void of essential detail"--"did not appear to be the
23 product of a scorned author." How did he know that if the
24 letter was anonymous?

25 **A You're asking the wrong guy.**

1 CAPTAIN BEDELLS: Yeah. I mean, at some point
2 I've got to object. You're asking him to speculate as to
3 what Colonel Doolittle know--knew.

4 MR. BANCHS: Well, we agreed earlier that we
5 were going to be allowed to ask leading questions.

6 CAPTAIN BEDELLS: Well, that's not a leading
7 question. That's a question that just--you're asking him
8 purely to speculate. How would he know what was going
9 through someone else's mind when they wrote this letter?
10 Colonel Doolittle's going to testify next.

11 MR. BANCHS: You're absolutely right. But it
12 was his job to also review that report of investigation
13 because it's his job to determine whether Colonel
14 Doolittle's investigation was proper or not. So he should
15 have asked that same question. The person who wrote the
16 anonymous letter did they have a motive? Did they have a
17 reason to write the letter? Was it a scorned author? So
18 it--is he just going to take Colonel Doolittle's--

19 CAPTAIN BEDELLS: Well, so your question--

20 MR. BANCHS: --word?

21 CAPTAIN BEDELLS: So your question is look at
22 the--look--here--you're asking Colonel Durkac, not Colonel
23 Doolittle, to look at the anonymous letter and offer an
24 opinion as to whether he thought--

25 MR. BANCHS: You know what--

1 CAPTAIN BEDELLS: --the author had--was
2 scorned.

3 MR. BANCHS: --I'll rephrase.

4 BY MR. BANCHS:

5 Q Forget Colonel Doolittle's investigation. You, after
6 reading the anonymous letter, you did not feel that it
7 could have been authored by somebody who had an ax to
8 grind at MATES?

9 A No.

10 Q Not at all?

11 A No.

12 Q Not somebody that maybe had filed an EEO complaint before
13 and was dismissed for lack of merit?

14 A No.

15 Q Not--

16 A No, I did not.

17 Q Not one of the employees that didn't, per se, like the
18 Colonel Golnick click?

19 A No. My objection, reading the letter is to determine how
20 to get to the bottom of this letter. What are the facts,
21 what is the climate, what is the culture, what are the
22 issues surrounding this letter, which is why we went to an
23 investigating officer. I'm not going to speculate or
24 assume anything in the letter nor do I care who wrote it.
25 That's--

1 Q How do--did you--did you guys consider the fact that the
2 letter was not written by one sole individual; that it was
3 written--written by a collection of people--

4 THE HEARING EXAMINER: I--

5 BY MR. BANCHS:

6 Q --the same people--

7 THE HEARING EXAMINER: I don't know that it's
8 relevant. I mean, a letter landed in this
9 command's--somebody's desk or CID dropped it. They took a
10 look at it and decided to do an investigation, and they
11 pursued an investigation. We've had the full
12 investigation here. The technician adverse action
13 resulted from--directly from the actual investigation that
14 was done. So I'm not sure the line of questioning we're--

15 MR. BANCHS: Well, the letter was the catalyst
16 for the investigation.

17 THE HEARING EXAMINER: I agree.

18 MR. BANCHS: And, you know, I'm curious to
19 know why it was never asked either by the investigating
20 officer or Colonel Durkac, himself, as to, you know, did
21 you try to find out who the anonymous letter author was.
22 That's all I'm trying to establish.

23 CAPTAIN BEDELLS: Well, in certain--if I could
24 chime in here. No one is--at least these two gentlemen,
25 Colonel Durkac or Lieutenant Colonel Meyers has indicated

1 that the anonymous letter was in any form a basis for
2 their proposed adverse action notice in the case of
3 Lieutenant Colonel Meyers--

4 MR. BANCHS: It's--

5 CAPTAIN BEDELLS: --or the original decision
6 letter in the case of Colonel Durkac. They said they
7 relied on the sworn statements over and over again they've
8 said it. They relied on the ROI, the exhibits attached to
9 the ROI, in the way of sworn statement. They've not
10 indicated they relied on the anonymous letter, so.

11 MR. BANCHS: I respectfully disagree. There
12 would have never been a 15-6 had there not been an
13 anonymous letter.

14 CAPTAIN BEDELLS: And that's not the--that's
15 not what I'm disputing.

16 MR. BANCHS: Okay.

17 CAPTAIN BEDELLS: But the fact of the matter
18 is you have an ROI, not an anonymous letter, and that's
19 what they relied upon. That's what they've testified to
20 under oath on numerous occasions now.

21 MR. BANCHS: Well, if the investigating
22 officer didn't feel it was important to note the fact that
23 he didn't think it was a scorned author, then it is an
24 issue. Because the flip side of that is is that there
25 potentially was somebody that had an ax to grind. I mean,

1 if you have an ax to grind against somebody--

2 CAPTAIN BEDELLS: You're arguing with me, Ben.
3 You can ask Colonel Doolittle.

4 THE HEARING EXAMINER: Whether or not they had
5 an ax to grind really is irrelevant once they do the
6 investigation. They do the investigation, and they write
7 the investigation saying "This is what I found,"
8 regardless of what was alleged.

9 MR. BANCHS: Okay.

10 THE HEARING EXAMINER: At that point, that's
11 in the background. Now there's this new--

12 MR. BANCHS: It goes to my theory, sir, that a
13 group of people colluded to go--that's all it is.

14 THE HEARING EXAMINER: Right. And I
15 understand that. I'm not sure Colonel Durkac can speak to
16 that, though. I'm not--I mean, I--

17 MR. BANCHS: Well, I'm just asking if he
18 considered that possibility that--

19 THE HEARING EXAMINER: And he's--he's--

20 MR. BANCHS: --that a group of people did,
21 because--

22 THE HEARING EXAMINER: He's testified that he
23 did consider that.

24 MR. BANCHS: Okay. Okay, good.

25 BY MR. BANCHS:

1 Q But you lent it no weight?

2 A **(Witness shakes head negatively) Unh-unh.**

3 Q Okay. In his report of investigation, the investigating
4 officer made several recommendations as to who should lead
5 the shop when it was all said and done. And he
6 highlighted Major Burrell as the potential, you know,
7 person who should assume command based on his interview of
8 Major Burrell. And, you know, he felt that he was an
9 honest person, and he was the right man for the job.
10 Okay.

11 Let's go to the 15-6. Are you familiar with Major
12 Burrell's testimony? Do you remember it, sir?

13 A **I'd have to go back and take a look at it.**

14 LIEUTENANT COLONEL NIEDERGALL: Tab 2. Tab 2.

15 MR. BANCHS: No, ma'am. The sworn--the sworn
16 statement.

17 LIEUTENANT COLONEL NIEDERGALL: The sworn
18 statement.

19 MR. BANCHS: Yes, ma'am.

20 LIEUTENANT COLONEL NIEDERGALL: Nine.

21 CAPTAIN BEDELLS: A-9.

22 BY MR. BANCHS:

23 Q Can you read this right here, sir, Major Burrell's
24 statement concerning the wood, diesel and copper theft.

25 A **So this is part of--**

1 Q That's Major Burrell's written statement--

2 A Okay.

3 Q --sworn statement.

4 A All right. I just want to make sure I know the source.

5 So just para- --or question 1?

6 Q Yes, sir, just question 1.

7 A Okay. Okay. So--

8 Q I'm sorry. So you have an investigating officer who feels
9 that Major Burrell was a top troop. And you have this top
10 troop saying that "I've heard Master Sergeant Smock may
11 have taken wood from here on unofficial business at his
12 home. More of a running joke with little viability or
13 research done to verify."

14 Did you lend that any kind of credibility? Did you
15 lend that testimony any more weight than you did the
16 detractors of Master Sergeant Smock, especially
17 considering that the investigating officer highlighted
18 Major Burrell as a top troop, an honest troop? And the
19 reason I'm asking, sir, is because what you have here is
20 you have certain people that are making accusations of Mr.
21 Smock, accusing him of stealing wood and of stealing other
22 materials, who might have a motivation to make those
23 allegations against him, specifically Mr. Mack and Mr.
24 Cooper. And then you have an individual who the
25 investigating officer highlighted as a top troop, saying

1 that it's more of a running joke, that there's really
2 nothing to substantiate those allegations.

3 **A Did I weigh that? Yes.**

4 Q Okay.

5 **A Yes.**

6 Q And can you tell me why you sided with--or you decided to
7 go against--you know, for example, even if it was just a
8 wood/diesel issue, that somebody like Major Burrell--and,
9 granted, he wasn't the only one that testified in that
10 light--

11 **A Right.**

12 Q --that Master Sergeant Smock had not done that. So I'm
13 just curious what you--and, even if you didn't rule him
14 one way or the other, the point here is that there was
15 contradicting testimony from people that were questioned
16 in conjunction with the investigation. So just wondering
17 why you decided to go the other route and substantiate
18 or--or affirm the allegations that were made against Mr.
19 Smock.

20 **A I would say that, you know, as a--you know, looking at all**
21 **the information taken from a holistic perspective, there**
22 **were a lot of, you know, statements that I had to review**
23 **and weigh. But at the end of my--my analysis, I stayed**
24 **with the recommendation from the--from Lieutenant Colonel**
25 **Meyers.**

1 Q Well, with all due respect, sir, the--Colonel Meyers'
2 proposal and the bulk of the investigation is heavy on
3 hearsay and light on evidence, in fact, if any evidence.
4 So if you have contradicting hearsay testimony, then
5 shouldn't you try to rely on maybe some direct evidence,
6 and was there any? Do you see what I'm--you have
7 contradicting testimony. And you have contradicting
8 testimony from somebody that the IO found to be credible.
9 And this credible witness is saying that he doubts, that
10 it's a running joke with little viability or research done
11 to verify.

12 CAPTAIN BEDELLS: Sir, at some point--I mean,
13 I'm biting my tongue. I understand what he's getting at.
14 But we have to ask questions. We're--he's making
15 statements and then, you know, having--injecting a
16 question midway through, and then--and then closing with a
17 question. I mean, I think we ask questions, and then we
18 follow up. I appreciate and I--

19 MR. BANCHS: Okay. I'll rephrase.

20 CAPTAIN BEDELLS: --I'll allow you to be
21 leading, but--

22 MR. BANCHS: I'll rephrase.

23 CAPTAIN BEDELLS: But that's not a question.

24 BY MR. BANCHS:

25 Q Why did you lend--why did you lend other witnesses more

1 credibility than this witness, per se, when he was
2 identified by the IO as your top troop in the facility?

3 **A** **I--you know, you're asking me to label Major Burrell as a**
4 **top troop.**

5 Q Not--the investigating officer did that.

6 **A** **Okay. I get that. Okay. I'm not the investigating**
7 **officer. I weighed all the facts, all the statements, and**
8 **I came up with my original decision to support the**
9 **allegations.**

10 Q If you relied on Major Meyers' (sic) proposal, then the
11 witnesses against Mr. Smock were limited to--were not
12 limited to, but the primary witnesses against Mr. Smock
13 was Mrs. Fouts, Mr. Cooper and Mr. Witcher. Mrs. Fouts'
14 testimony really only went to the theft of the TV. Mr.
15 Cooper and Mr. Witcher were the primary accusers of Mr.
16 Smock, per se, in the theft--the theft of wood and the
17 theft of materials. And Mr. Mack is also front and center
18 in those accusations.

19 Did you have--did it give you any pause, while you
20 were reading the investigation, that specifically Mr. Mack
21 and Mr. Cooper appeared to be colluding, appeared to be
22 getting their story straight?

23 **A** **I did not.**

24 Q Are you aware of what I'm talking about? Do you remember
25 what I'm talking about? In the--

1 LIEUTENANT COLONEL NIEDERGALL: E-5 and 6.

2 BY MR. BANCHS:

3 Q In the transcripts of Mr. Mack's--

4 MR. BANCHS: Which one is it, ma'am?

5 LIEUTENANT COLONEL NIEDERGALL: The questions
6 or the sworn statements?

7 MR. BANCHS: The questions.

8 LIEUTENANT COLONEL NIEDERGALL: The questions
9 for Mack is on 4; Cooper's on 5--B-4 and 5.

10 BY MR. BANCHS:

11 Q I'll just summarize for you real quick, if--

12 CAPTAIN BEDELLS: Well, if you can
13 let--point--

14 MR. BANCHS: I am going to look at it.

15 CAPTAIN BEDELLS: Okay.

16 BY MR. BANCHS:

17 Q But, before I get to it, what brought concern to me as I
18 read this and I heard the recording of the testimony, was
19 that Mr. Mack was pretty much telling the investigating
20 officer, "You're not asking me all the questions you asked
21 Cooper." And clearly these folks, if you're familiar with
22 the AR 16- --15-6 process, they were given Privacy Act
23 statements, and they were told not to discuss the subject
24 of their interview or whatever with other people. Well,
25 clearly, that was going on. Okay?

1 Page--page 15, at the bottom of Mr. Joel Mack's
2 testimony, when Colonel Doolittle asks him, "You had some
3 issues you wanted to talk about, medical issues." And Mr.
4 Mack's response was, "I want to answer a question you
5 asked the other guys. There's a roll of copper you asked
6 Cooper basically about." You know, and he also says,
7 "When Cooper said that to me, I was like are they
8 referring to that roll of copper that was supposed to be
9 put out of the motor pool. I don't know what happened.
10 He loaded it into the truck and he took it out of the
11 motor pool." But basically he was recounting what Cooper
12 had already testified to Colonel Doolittle and Lieutenant
13 Emery about. Okay? That was in Joel Mack's verbal
14 statement to the investigators. Okay?

15 And a few questions later Lieutenant Emery tells
16 him--and this is going to be on page 17--he says, "I want
17 to jump in for a second if I could. You've been very
18 candid with us, and we appreciate that. And sorry about
19 the mix-up earlier. One that does concern me, and maybe I
20 just haven't been as explicit or clear, is the
21 conversations we have in here. And this isn't to you.
22 This is just if you can go back and tell people, the
23 specifics which are coming back doesn't make me very
24 happy. What we want to tell people is it's broad. We're
25 not trying to single certain people out. The TAG's not

1 here to hammer mechanics, no pun intended. But that
2 Privacy Act is saying we're going to tell other people--"
3 "--we're not going to tell other people what you said, and
4 we expect that in return. So from our standpoint we're
5 trying to run the investigation, and we want there to be
6 some flow of information. However, specifics, that
7 troubles me."

8 So even your own investigators, sir, were concerned
9 about the amount of backtalk that was going on after and
10 before--before they came to the interview and after they
11 left. Did that not give you any pause?

12 **A No.**

13 **Q** Okay. So you're--you were okay with witnesses colluding
14 with each other?

15 **A I--I didn't--**

16 CAPTAIN BEDELLS: Well, that's not what
17 he--objection. That's not what he testified to. That's
18 not at all. I mean, let's--sir--

19 MR. BANCHS: Okay. I'll rephrase.

20 CAPTAIN BEDELLS: Sir, I'll--

21 MR. BANCHS: I'll rephrase.

22 CAPTAIN BEDELLS: I'll--I'll--okay.

23 MR. BANCHS: I'll rephrase.

24 BY MR. BANCHS:

25 **Q** Did you not consider that the investigation might have

1 been compromised at that point in time, sir?

2 **A I did not feel that the investigation was compromised.**

3 THE HEARING EXAMINER: Let me ask this: Were
4 you aware of the appearance that it may have been
5 compromised--

6 THE WITNESS: No.

7 THE HEARING EXAMINER: --when you went--when
8 you read the 15-6?

9 THE WITNESS: No. I didn't feel that it
10 was--that it sent that message that the investigation was
11 compromised.

12 THE HEARING EXAMINER: Okay.

13 BY MR. BANCHS:

14 Q Going to Master Sergeant Cooper's testimony.

15 CAPTAIN BEDELLS: Can I suggest that the
16 easier way to do this, sir, is to have him read, as I do.
17 I give them the document. I ask them to read the
18 document. And then you ask questions about the document.
19 So if he has a document that he'd like Colonel Durkac to
20 read, you hand it to him. Say "Can you please read the
21 following paragraphs," and then you ask the questions
22 about it.

23 THE HEARING EXAMINER: I would agree with
24 that.

25 MR. BANCHS: Well, it's going to take longer.

1 I mean, if you--I can read, because I've written this
2 stuff directly from the record. If there is any doubt
3 that what I'm reading from my questions is not what's in
4 the record, then we can go into the record and
5 make--verify.

6 CAPTAIN BEDELLS: Well, it's not so much that
7 I doubt what you're saying, Ben. I can see you reading
8 from it. But when the document's right in front of him,
9 you give him an opportunity to read it himself, and then
10 you ask questions about it--

11 MR. BANCHS: I'll be honest with you--

12 CAPTAIN BEDELLS: --it's an easier way to
13 answer.

14 MR. BANCHS: The only reason I'm even going
15 into the record is to--to, you know, satisfy you guys.
16 Because I've written all this out. So--

17 CAPTAIN BEDELLS: Okay.

18 MR. BANCHS: --I mean if you want me to
19 physically show him where it's at--

20 CAPTAIN BEDELLS: That's what I want you to
21 do. Yeah.

22 MR. BANCHS: Well, that's going to take
23 longer.

24 CAPTAIN BEDELLS: Okay. Well--

25 MR. BANCHS: Okay.

1 CAPTAIN BEDELLS: --but he--but--it's--I
2 understand we're concerned about length. But we also have
3 to be fair to the witnesses. Let him read it, and then
4 ask the questions. It's--

5 THE HEARING EXAMINER: Yeah. I think if you
6 put the testimony in front of him, then feel free to ask
7 the questions that you've got.

8 MR. BANCHS: Well, it's just--it's--

9 THE HEARING EXAMINER: He can refer directly
10 to--

11 MR. BANCHS: It's in so many different places,
12 but I'll--you know.

13 BY MR. BANCHS:

14 Q Here you go, sir, at the bottom of this page.

15 A **Okay.**

16 Q This is Tab 5, but it's not numbered. It's the
17 second-to-last page at the bottom, there's a question
18 there.

19 A **Okay.**

20 Q And Colonel Doolittle basically asks--

21 A **Okay. So this is Cooper?**

22 Q Mr. Cooper's testimony at the bottom, November 13.

23 Colonel Doolittle basically asks--and I'll paraphrase
24 since it's in front of him--"Not too long ago there were
25 allegations that diesel was missing. Do you know

1 anything?" Is that accurate, at the bottom, sir, the last
2 question?

3 **A Yeah. It says, "Not too long ago, you had allegations**
4 **diesel was--"**

5 Q And Mr. Cooper's reply was, and paraphrasing, but you have
6 the testimony in front of you--"No, I don't. But the
7 one--the 1031st has a bullpen with secured fencing. Quite
8 often there's no fuel in the equipment," and he's talked
9 about putting trail cameras out there because they suspect
10 that there's theft of fuel. Is that accurate?

11 **A Okay. So, I've read the statement.**

12 Q Okay. And, real quick, if you don't mind, later on a
13 follow-up question was "Do you have any knowledge--"
14 basically it's the same one--I mean--I'm sorry--the next
15 one. "Do you have any knowledge of people taking 5 or
16 55-gallon cans or drums of fuel home," correct?

17 **A Yeah.**

18 Q And he states that he has no knowledge of that.

19 **A Okay.**

20 Q Okay. If you don't mind, sir.

21 MR. BANCHS: Where is his written statement?

22 LIEUTENANT COLONEL NIEDERGALL: Of Cooper?

23 MR. BANCHS: Yes, ma'am.

24 LIEUTENANT COLONEL NIEDERGALL: E-6.

25 BY MR. BANCHS:

1 Q Tab 6--oh, E. Sir, right here, 2.B.1.

2 CAPTAIN BEDELLS: And we're going to--at the
3 end of all him reading this, you're going to propose a
4 question; is that right?

5 MR. BANCHS: If you allow me, yes.

6 CAPTAIN BEDELLS: No, I'm just asking--

7 MR. BANCHS: I am.

8 CAPTAIN BEDELLS: --because he's reading
9 things, and we're not asking questions.

10 MR. BANCHS: I am.

11 CAPTAIN BEDELLS: We just keep moving on to
12 different excerpts.

13 MR. BANCHS: I am.

14 BY MR. BANCHS:

15 Q This is--this is dated 10 December his written statement,
16 correct?

17 A **Okay. So the question is?**

18 Q All right. So and just to paraphrase what Master Sergeant
19 Cooper wrote a month and five days later after he gave his
20 verbal testimony, he provides a sworn written statement
21 where now he says that "Joe Smock has been seen taking
22 55-gallon drums of diesel fuel from the shop out of the
23 front gate." Okay. So, a month and five days later, when
24 he had no knowledge, he has--"I have no knowledge of that"
25 on 5 December, a month and five days later now he's seen

1 Joe Smock taking gallons of fuel out of the back gate.

2 **A Uh-huh.**

3 **Q** Did you not find an issue with the inconsistency of the
4 testimony that the witnesses were providing one month
5 later, they're seeing things that they claimed they had no
6 knowledge of the month before?

7 **A No. I didn't see an issue with it at all.**

8 **Q** So what would you attribute that difference in sworn
9 testimony to?

10 **A** You'd have to ask, you know, Master Sergeant Cooper that
11 question. But I did not see any issue because, from my
12 perspective, when I reviewed the documentation, we talked
13 about the fear of reprisal in a lot of cases, that people
14 may not have wanted to provide information through the
15 course. And then, once they felt that they had an
16 opportunity to come forward without fear of reprisal,
17 without--or at least with the support of others, that they
18 provided that information.

19 **Q** Well--and I know you can't get in Mr. Cooper's head, and
20 you can't get in Mr. Mack's head, but what, to your
21 knowledge, changes in a month that they no longer fear
22 reprisal when they provided their written statement, when
23 they were interviewed the month before, they were told at
24 the onset that their interview would not be released to
25 anybody, that the only people that was going to listen to

1 that was yourself and the TAG.

2 **A That's right. I can't tell you what changes in a month.**

3 **Q** Okay. And that still didn't give you pause to maybe even
4 just consider Mr. Smock's reply for longer than a day or
5 two.

6 **A Now we've gone from two days to a day-and-a-half to less**
7 **than a day.**

8 **Q** Okay. 48 hours.

9 **A I've reviewed the information over and over again from the**
10 **time I received it till the time I made my original**
11 **decision. Okay. It was thorough. It was objective. And**
12 **I took everything into consideration. Okay.**

13 **Q** All right. Sir, I'll ask you one more question: If Mr.
14 Smock is returned to employment, how would you feel about
15 that?

16 **A If this hearing runs its course and all the testimony, all**
17 **the facts are reviewed, Mr. Smock is entitled to every**
18 **right that this Hearing Examiner provides based on the**
19 **outcome of the discussion and the testimony.**

20 **Q** But I asked you your personal feeling about him returning
21 to work, sir, because he will be under your command. He's
22 a technician and you're the Chief of Staff.

23 **A That is correct. He would be under my command, but not**
24 **directly. So he would be working for another supervisor.**
25 **I don't have a personal opinion on that.**

1 MR. BANCHS: Okay. No further questions.

2 CAPTAIN BEDELLS: A couple follow-ups, sir,
3 very briefly.

4 REDIRECT EXAMINATION

5 BY CAPTAIN BEDELLS:

6 Q Sir, you--we covered this lapse of time between you
7 making--you authoring your original decision and the time
8 upon--at which you received the reply from Mr. Banchs,
9 correct?

10 A **Correct.**

11 Q I think we've--we've settled on 48 hours. Certainly, you
12 did not wait--

13 A **No.**

14 Q --until--until that reply came in to review the ROI--

15 A **No.**

16 Q --these two folders?

17 A **No.**

18 Q So is it fair to say that you had already reviewed the
19 15-6, all the exhibits?

20 A **That is correct.**

21 Q Okay.

22 A **That is correct. The only--**

23 Q So you had that in mind pri- --and then you received--you
24 had two entire days to devote to reviewing the technician
25 reply, correct?

1 **A** **That is correct.**

2 Q Okay. And you're confident that you gave the due process
3 that Mr. Smock's afforded during those two days?

4 **A** **Which I sat there and I tabbed, and I cross-referenced**
5 **everything there to the 15-6 in those two days.**

6 Q Okay. Very well.

7 **A** **Okay.**

8 Q Mr. Banchs questioned you about the--the language--no, I'd
9 like you to keep that--the language of your reply--

10 **A** **Yep.**

11 Q --or of your termination letter. And I believe there's
12 some reference--if you can open it up, I'd like you to
13 take a look at your--

14 **A** **It's right here. Yeah.**

15 Q --original decision letter.

16 **A** **I've got it right here.**

17 Q And I need to look at it, as well, because my copy's
18 unsigned, and I want to make sure--

19 **A** **Yes.**

20 Q --I look at the right one.

21 **A** **Yeah. This is it right here, Tab G.**

22 Q Okay. Okay. And you close each--when you provide an
23 explanation--

24 **A** **That is correct.**

25 Q --read through there and take your time--as you provide an

1 explanation as to what you've decided vis-a-vie each
2 issue, you conclude with you do not believe the issue was
3 resolved, correct?

4 **A That's correct.**

5 CAPTAIN BEDELLS: Okay. Now, just for--and I
6 remember going through this with you, Ben, what was it,
7 back in March we went over this.

8 BY CAPTAIN BEDELLS:

9 Q I call your attention to 7.4.

10 **A Correct.**

11 Q Okay. Did you have section 7.4 of TPR 752 in mind when
12 you authored that letter?

13 **A Yes.**

14 Q Okay. Because--because it specifically says, sir, for the
15 Hearing Examiner, "When referencing replies, the original
16 decision letter will note all issues raised in the replies
17 and indicate if the issues were resolved."

18 Okay. So my question to you is, when you authored
19 that letter and said, "I don't think it's been resolved,"
20 did you mean that it hasn't been resolved in your favor,
21 this reply has not resolved this issue, that I maintain
22 that I'm going to continue to remove--remove you for these
23 enumerated offenses?

24 **A The rebuttal did not indicate that the issue was**
25 **sufficiently addressed or resolved that would change my**

1 **decision.**

2 CAPTAIN BEDELLS: Okay. I just wanted to
3 clear that up. Okay.

4 I have no further questions, sir.

5 MR. BANCHS: Can I follow up, sir, real quick?

6 THE HEARING EXAMINER: Go ahead.

7 REXCROSS-EXAMINATION

8 BY MR. BANCHS:

9 Q Sir, stay there, if you don't mind, Chapter 7, if that's
10 TPR 752.

11 **A It is.**

12 Q Okay. Cause I don't want to--I want to make sure we're
13 not cherry picking which parts of the TPR we're following.
14 If you look at Chapter 7, 7-1, it talks about the general
15 original decision letter. And it has five--it has six
16 parts. And your letter clearly has a statement of what
17 action was taken. It clearly has a date the action will
18 become effective. It clearly references the technician
19 replies. It has HRO assistance information and then
20 provides the technician appeal rights. The only thing
21 that your letter does not provide is a reason for the
22 decision. Now, that is a requirement of TPR 752, not an
23 option. So surely you complied with referencing the
24 technician replies, and that's Chapter 7-4, which you can
25 certainly say that the issues were not resolved. But

1 you're still required to provide a reason for that
2 decision. That's all I'm going to say about that.

3 CAPTAIN BEDELLS: Well, was that a question?
4 If it's not a question, I want it--

5 MR. BANCHS: I wanted to point it out.

6 CAPTAIN BEDELLS: Okay.

7 MR. BANCHS: The letter is absent, one of the
8 required sections.

9 CAPTAIN BEDELLS: That's fine. If that's a
10 final--that's not evidence. That's you saying something,
11 so--if there's no question, sir, I have no further
12 questions.

13 MR. BANCHS: Well, I--you know, what, to
14 please the Court I ask the question.

15 BY MR. BANCHS:

16 Q Why is it that your letter is missing that section, sir?

17 THE HEARING EXAMINER: Let me interject here.
18 I would submit that, reading paragraph 4 of the original
19 decision, while it may not satisfy you, meets that
20 requirement.

21 MR. BANCHS: Well, I'll respectfully disagree,
22 sir, but that's fine.

23 CAPTAIN BEDELLS: Well, we're all going to
24 disagree here. But that's what I'm saying about a
25 question, it's not a question, sir.

1 MR. BANCHS: It doesn't provide any reason.
2 It just restates the original charges.

3 THE HEARING EXAMINER: Anything else from
4 either party?

5 MR. BANCHS: No.

6 CAPTAIN BEDELLS: I have nothing further. And
7 I don't know if you want to break. My next witness is
8 going to be Colonel Doolittle.

9 THE HEARING EXAMINER: I do. Let me read this
10 statement real quick.

11 Chief, I remind you that you remain under oath
12 and that you are subject to recall to this hearing until
13 such time that it has been adjourned.

14 Again, I'll remind you not to discuss your
15 testimony with anyone.

16 THE WITNESS: Yes, sir.

17 THE HEARING EXAMINER: Thank you.

18 THE WITNESS: Yep.

19 (At about 2:53, witness released)

20 THE HEARING EXAMINER: And we will--what time
21 is it?

22 COURT RECORDER: 2:53 or 14:53.

23 THE HEARING EXAMINER: What time?

24 CAPTAIN BEDELLS: Sir, it's up to you. I
25 mean, Colonel Doolittle's next, and I think--I'm guessing

1 he's going to be a long time.

2 MR. BANCHS: What? Oh.

3 CAPTAIN BEDELLS: Colonel Doolittle. We're
4 going to be a long time.

5 MR. BANCHS: I thought you said he was in an
6 accident. Oh.

7 CAPTAIN BEDELLS: No. I'm guessing he's going
8 to be a long time.

9 MR. BANCHS: Oh, no. Okay. Okay.

10 THE HEARING EXAMINER: 3:15?

11 CAPTAIN BEDELLS: That's fine.

12 THE HEARING EXAMINER: So we will reconvene at
13 15:15.

14 CAPTAIN BEDELLS: We probably--

15 COURT RECORDER: We are off--

16 THE HEARING EXAMINER: And we're off--

17 COURT RECORDER: Excuse me. We are off the
18 record. The time is 2:54 p.m.

19 (Off the record)

20 (On the record)

21 COURT RECORDER: We are back on the record.
22 The time is 3:11 p.m.

23 THE HEARING EXAMINER: Colonel Doolittle, do
24 you swear or affirm that the testimony that you are about
25 to give in this case is the truth, the whole truth and

1 nothing but the truth, so help you God?

2 COLONEL DOOLITTLE: I do.

3 THE HEARING EXAMINER: Okay. You are also
4 advised that you are assured the freedom from restraint,
5 interference, discrimination, coercion or reprisal for
6 testifying in this case.

7 THE WITNESS: Okay.

8 THE HEARING EXAMINER: You can have a seat,
9 please.

10 Captain Bedells?

11 CAPTAIN BEDELLS: Thank you, sir.

12 COLONEL SCOTT LEE DOOLITTLE

13 (At 3:11 p.m., sworn as a witness, testified as follows)

14 DIRECT EXAMINATION

15 BY CAPTAIN BEDELLS:

16 Q Sir, would you please state your full name for the record?

17 A **Scotty Lee Doolittle.**

18 Q Sir, how are you currently employed?

19 A **I am working for the City of Grand Rapids as a Police
20 Sergeant.**

21 Q And obviously you are, then, a--what we characterize as an
22 M-Day soldier in the Michigan Army National Guard,
23 correct?

24 A **I am.**

25 Q Okay. And you hold the rank of Colonel. How long have

1 you been in the Michigan Army National Guard?

2 **A** **In June it'll be 30 years--oh, in the Michigan National**
3 **Guard. Twenty-seven years. Excuse me.**

4 **Q** Okay. And in the military a total of 30, correct?

5 **A** **Thirty years, correct.**

6 **Q** Okay. And you mentioned you're a police officer with the
7 City of Grand Rapids?

8 **A** **I am.**

9 **Q** How long have you been a police officer with the City of
10 Grand Rapids?

11 **A** **I'm in my 19th year.**

12 **Q** Nineteenth year. Are you part of a Union in your--in your
13 role as a police officer?

14 **A** **I am.**

15 **Q** Is that POAM?

16 **A** **No. We used to be POLC, which was Police Officers Labor**
17 **Council. But we broke off, and now we are self-unionized.**

18 **Q** Oh, interesting.

19 **A** **It's Grand Rapids Police Officers Association.**

20 **Q** Okay. And in your capacity as a police officer, have you
21 received any special training with respect to interviewing
22 people?

23 **A** **We have. We go through and we do annual, quarterly**
24 **training on tactics and techniques on how to talk and**
25 **interview with people. Yes.**

1 Q You testify in court occasionally?

2 A **I've--yes.**

3 Q Okay. So in your capacity--well, let me lay a foundation
4 here. You were designated as the investigating officer in
5 connection with a 15-6, correct?

6 A **I was.**

7 Q And as you sit here--and feel free to--feel free to
8 consult Exhibit 1, which is Book 1 of the 15-6. But you
9 were named as the investigating officer for a 15-6,
10 correct?

11 A **That is correct.**

12 Q And what did--explain to the Hearing Off- --Hearing
13 Examiner what your perception of that 15-6--or the scope,
14 if you will, of that 15-6 was?

15 A **When I was brought on, I was actually currently on orders
16 helping out with the C2-CRE mission. Chief of Staff
17 called me into his office, handed me the appointment
18 order, which is in front of me signed here, indicating
19 that I was the investigating officer. In the order,
20 itself, it talked about misconduct at the MATES facility.
21 At the same time, I was handed a 10-page document,
22 anonymous document, that spelled out or had a bunch of
23 allegations of misconduct.**

24 Q Okay. That's--

25 A **And I was told that I was to investigate that.**

1 Q Okay. Great. So--so--and we've established through the
2 two prior witnesses that what spurred this investigation,
3 I understand, was an anonymous letter, correct?

4 **A That is correct.**

5 Q Did you--did you know from where that anonymous letter
6 came--and, by that, I don't mean the author. I mean, how
7 did--how did the Michigan Army National Guard come into
8 contact with that--with that anonymous letter, if you
9 know?

10 **A I'm not certain. I believe it came from CID to the Chief
11 of Staff or to the Michigan National Guard, but I don't
12 know if that was the route. If it came to Michigan
13 National Guard then to CID, then to me, I'm not certain.**

14 Q Okay. Okay. But you think that CID--and by that, you
15 mean Army Criminal Investigation Division--

16 **A Correct.**

17 Q --was involved, correct? Okay. Back to this anonymous
18 letter, during the course of your--strike that. Let
19 me--let me go a different direction. During the course of
20 this 15-6, okay, did you utilize your skills as a police
21 investigator or the--or the skills you developed at
22 your--at various--with interviewing techniques in the
23 investigation, itself? Do you understand the question?

24 **A I did.**

25 Q You do understand the question?

1 **A** **You could rephrase it, please.**

2 **Q** Okay. Okay. Yeah. Because I wasn't clear as I just said
3 it.

4 Did you use your interview techniques developed as a
5 police officer when you interviewed people in connection
6 with this 15-6?

7 **A** **Yes.**

8 **Q** Okay. Did you view anything as inherently wrong if you
9 used those techniques?

10 **A** **No.**

11 **Q** Okay. During the course of the investigation, did you
12 conclusively ascertain the author of that anonymous
13 letter?

14 **A** **No. I did not.**

15 **Q** Did you choose to ask those persons you interviewed
16 whether they were the author of an anonymous letter?

17 **A** **Just one person.**

18 **Q** Who did you ask?

19 **A** **Sharon Witcher.**

20 **Q** Okay. Did she offer a reply?

21 **A** **She indicated that she wasn't. She told me she was not.**

22 **Q** That she was not. Okay. The--what can we do--ah. This
23 is the one that has to go back in there. I'm showing you
24 what is a part of your 15-6, which is a part of your ROI,
25 and that's the 1574 and your report, itself, correct?

1 **A** **Correct.**

2 Q Okay. Now, that--that document you have before you in the
3 form of a three-ring binder is titled "Book--" is entitled
4 "MATES 15-6 Book 1," correct?

5 **A** **Correct.**

6 Q It's marked as Exhibit 3 to this hearing--or Exhibit 1,
7 rather, to this hearing, correct?

8 **A** **Yes. Correct.**

9 Q Okay. When you--when you assembled the report, did you
10 include the 1574 as part of Book 1; in other words, was
11 it--was it, itself, part of Book 1?

12 **A** **I believe it was.**

13 Q Okay. Do you recall if you just inserted into one of the
14 jacket inner-jackets or something?

15 **A** **I believe it was. I think it was either the second**
16 **document--**

17 Q Okay. My next question is can you note the date on your
18 ROI, please?

19 **A** **This 3--no. 3 September 2013, and--**

20 Q I mean your report. I'm sorry. What is your--

21 **A** **24 January 2014.**

22 Q Okay. Did you author two separate reports, one dated 24
23 January, and one dated 30 January?

24 **A** **No.**

25 Q Okay. It was a single report you authored?

1 **A** **Now, I did an executive summary of the report in written**
2 **format, but--**

3 **Q** Okay.

4 **A** **--there wasn't two of these, no. I don't--**

5 **Q** Okay. So that--take a moment, sir, to review it, please.
6 I just want to make sure that that is your actual ROI.

7 **A** **Yeah. That's got my signature on it.**

8 **Q** Okay. So in--

9 **A** **And it's got my report.**

10 **Q** Okay. In light of that, I want you to turn to page 22.
11 And this is 6, "Recommendation." Okay.

12 **A** **Just glasses. Go ahead.**

13 **Q** Take a moment, please, to read that short paragraph 6
14 under "Recommendation." Just the first paragraph, sir.

15 **A** **Oh. Sorry.**

16 **Q** Yeah.

17 **A** **I'm down to the third paragraph.**

18 **Q** That's fine. Have you had an opportunity to read just the
19 first paragraph?

20 **A** **Yes.**

21 **Q** Okay. In that first paragraph of page 22, you recommended
22 the following immediately be removed from the MATES
23 facility, and included in that is a--under letter C, like,
24 Charlie, Master Sergeant Joe Smock; is that correct?

25 **A** **That is correct.**

1 Q Explain, if you will, to the Hearing Examiner, on what
2 basis you believe that Joe Smock should have been removed
3 from the MATES facility?

4 A Okay.

5 Q And, sir, I--this is done in order to expedite this
6 process. So if you need to consult your ROI and start at
7 the beginning, feel free to. We're just trying to get the
8 testimony in as to why you felt--or rather why you
9 recommended removal of Joe Smock.

10 A Okay. As I stated earlier under oath, I received or I
11 read or previewed a 10-page anonymously-written letter
12 indicating allegations of misconduct. In that 10-page
13 letter, there were specific allegations on theft,
14 inappropriate relations. There were--there were a lot of
15 major things. Throughout the course of the investigation,
16 through witness testimony, it was revealed that the
17 allegations were--the allegations were not disproved. So
18 the 80 separate allegations of--that I looked in the form
19 or in the letter, I wasn't able to say, "Nope, that didn't
20 happen, that didn't happen, that didn't happen." But of
21 the 80 allegations, many of them happened or I was able to
22 get sworn statements or testimony from interviews
23 indicating that there were persons involved.

24 Joe Smock was indicated by multiple people
25 throughout the investigation. And because of the

1 **implications and the severity of the allegations, theft of**
2 **wood, theft of diesel, theft of parts, that was how I**
3 **based the recommendation to the Chief of Staff.**

4 Q Okay. Very well. Well, let's go--let's touch upon a
5 couple of those matters. So you set out--if I understand
6 you correctly, you set out in this investigation to
7 disprove the allegations set forth in the anonymous
8 letter; is that right?

9 A **That's correct.**

10 Q Okay. And in your--in the course of your investigation,
11 you've testified that you were not able to disprove much
12 of what was in the anonymous letter; is that--

13 A **That's correct.**

14 Q --fair to say?

15 A **That's fair.**

16 Q And, in fact, you were able to, through sworn statements,
17 implicate, you said, in this instance Mr. Smock, and
18 that's really what I want to limit this to. I don't want
19 to get off the rails on--you know, on any other--any other
20 personnel at this point.

21 So you mentioned diesel fuel, for instance. Sir,
22 what did you rely upon in concluding that Joe Smock stole
23 diesel fuel from MATES?

24 A **What did I use?**

25 Q Right.

1 **A** **I was using testimony alone.**

2 **Q** Okay. The testimony of whom, if you recall?

3 **A** **Oh.**

4 **Q** And feel free to consult the 15-6. We're going to be here
5 a very long time.

6 **A** **Okay.**

7 **Q** So if you don't--if you don't have an independent
8 recollection and you need to refresh your
9 recollection--and I know you're a police officer--so take
10 your time and refresh your recollection. But right now
11 we'll talk about diesel fuel.

12 **A** **Okay. On page 17, we look at it. And it was said,**
13 **"Master Sergeant Joe Smock was observed leaving MATES in**
14 **an NTV with multiple 55-gallon drums filled with diesel**
15 **fuel. Reports indicate Master Sergeant Smock took the**
16 **fuel to his--" or his "--to his residence for person use."**
17 **Testimony from both Master Sergeant Cooper and CW2 Mack**
18 **indicated that that was observed by Master Sergeant**
19 **Herblet and Lieutenant Colonel Golnick. And there was a**
20 **comment made between the two saying that Golnick said to**
21 **Master Sergeant Herblet, "What are you going to do about**
22 **this?" And Master Sergeant Herblet said, "He works for**
23 **you; he doesn't work for me."**

24 **Q** Okay.

25 **A** **So the two people right there that indicated that Master**

1 **Sergeant Smock took the fuel were CW2 Mack and Master**
2 **Sergeant Cooper.**

3 Q Okay. Sir, now, I know that between Mr. Banchs, myself
4 and the Hearing Examiner, we've all read this 15-6 more
5 than once. But I'll--so--so just bear with me, please,
6 because I know you're familiar with it, as well, and you
7 were the IO. So what you're saying is that both Chief
8 Joel Mack and Master Sergeant Thad Cooper told you, in the
9 form of a sworn statement--

10 **A Correct.**

11 Q --that another person, okay, had observed Mr. Smock
12 leaving the MATES facility with diesel fuel; is that fair
13 to say?

14 **A Yes.**

15 Q Okay. That other person, who apparently told both Chief
16 Mack and Master Sergeant Cooper, is Master Sergeant
17 Herblet, correct?

18 **A Correct.**

19 Q Okay. Did you question Master Sergeant Herblet on this
20 matter?

21 **A I did.**

22 Q Okay. And what was his response?

23 **A He didn't recall.**

24 Q Okay. Did he say it didn't happen or did he say he didn't
25 recall?

1 **A** He said it--it did happen, but he didn't know what Master
2 Sergeant Smock was going to do with the diesel. He said
3 he could have taken it to the recycle bin, but then later
4 recanted his statement and said, "Well, the recycle
5 community was the opposite direction of actually where
6 Master Sergeant Smock was taking the diesel."

7 **Q** Okay. How about Lieutenant Colonel Golnick, because his
8 name also crept up in this account as someone who asked
9 Master Sergeant Herblet "What are you going to do about
10 it?"; is that correct?

11 **A** That's correct.

12 **Q** Did you ask Lieutenant Colonel Golnick, "Hey, Lieutenant
13 Colonel Golnick, do you have a recollection of this"?

14 **A** I did not re-ask him that.

15 **Q** Okay. Well, re-ask him. Did you ask him once?

16 **A** No.

17 **Q** Okay.

18 **A** When I interviewed Lieutenant Colonel Golnick, I only
19 interviewed him with the first set of questions, which
20 were just general in nature that I asked--I was asking all
21 of the MATES employees that I interviewed first. That was
22 to establish a baseline to go through and get more
23 specific question on the who, what, when, where and why.
24 So it was information finding for the first portion of the
25 interview--or the first portion of the investigation. And

1 **then it would have got a little bit more pointed as I**
2 **learned information.**

3 Q Okay. Let's--for the sake of clarity, let's take--let's
4 take this--your report in its order, rather than jumping
5 around. So we've already touched on diesel fuel. So
6 let's--go back to the first part of your--of your report.

7 Paragraph 1 talks about background. Do you see--

8 A **Which page are you on?**

9 Q I'm on paragraph 1, "Background."

10 A **Oh, way--**

11 Q Right. Very beginning. We're going to start right at the
12 beginning. Thank you, sir.

13 Okay. Now, we've already touched upon the first
14 sentence there where we talked about the anonymous letter
15 kind of serving as the genesis of this whole
16 investigation, correct?

17 A **Correct.**

18 Q Okay. And as far as you know, that's what spurred this
19 investigation, correct?

20 A **To my knowledge, yes.**

21 Q Okay. And you wrote "The scope of the investigation was
22 extremely broad," in the--in the first sentence of the
23 second paragraph, correct?

24 A **That is correct.**

25 Q Sir, how long did this investigation span?

1 **A** About four months. Now, in there, there were a couple
2 of--we had a continuing resolution where we were taken off
3 orders. There was leave that was--had to be burned up
4 while I was in there. So time was four months, but there
5 was not four months that was spent on the investigation,
6 itself.

7 **Q** Okay. So it spanned a four-month time period, but we
8 didn't spend all that time investigating, correct?

9 **A** **That's correct.**

10 **Q** Okay. Do you know approximately how many people were
11 interviewed in the course of this investigation?

12 **A** **Approximately 50.**

13 **Q** Okay. All or a bulk of them at MATES--I mean--strike
14 that. Were all or a bulk of the employees MATES
15 employees?

16 **A** **The majority.**

17 **Q** Okay. Majority.

18 **A** **Yes.**

19 **Q** So some were not?

20 **A** **Correct.**

21 **Q** Okay. Were the bulk of them members of the Union, if you
22 know?

23 **A** **The majority were. Not all of them were.**

24 **Q** Okay. So it's your estimate that a majority of the 50 or
25 so people you interviewed were actually members of--and

1 when I say "Union," let's say a Union. Okay. Were they
2 members of a Union?

3 **A Yes.**

4 CAPTAIN BEDELLS: Okay. I don't know if we
5 have more than one Union, to be honest with you, so.

6 MR. BANCHS: Well, I'm just curious, does it
7 matter? Because whether they're a member or not, they're
8 represented by the Union, so.

9 CAPTAIN BEDELLS: Right. Understood. And
10 that's where I'm going to go.

11 BY CAPTAIN BEDELLS:

12 Q So, from--during the course of your--

13 THE WITNESS: Providers.

14 MR. BANCHS: I'm talking strictly about the
15 employees.

16 THE WITNESS: Okay.

17 MR. BANCHS: Yeah.

18 CAPTAIN BEDELLS: There's only one Union?

19 THE WITNESS: That's why I said in the
20 majority. I wasn't counting the supervisors as--

21 CAPTAIN BEDELLS: Okay.

22 MR. BANCHS: Roger that.

23 THE WITNESS: Yeah.

24 CAPTAIN BEDELLS: So I've just been informed
25 by HRO that we have one Union, so that clarifies that.

1 BY CAPTAIN BEDELLS:

2 Q So, during the course of your investigation, you're
3 obviously going to interview represented employees,
4 correct?

5 A **That's correct.**

6 Q Represented by a Union?

7 A **Yes.**

8 Q You, yourself, are a member of a Union?

9 A **I am.**

10 Q Okay. At any point, during the course of the
11 investigation, did any employee request--make a specific
12 request for Union representation?

13 A **Yes.**

14 Q Okay. As part of your investigation, did you think to ask
15 each person, "Are you represented by the Union"?

16 A **I did not.**

17 Q Okay. Did you ever, however, deny anyone representation
18 if they requested Union representation? I mean deny.

19 A **Okay. No.**

20 Q "No, you will not get representation." Okay.

21 A **No, I did not deny anybody representation.**

22 Q Did you ever tell a person represented by the Union that,
23 in your opinion, there was no need for representation?

24 A **I did.**

25 Q Okay.

1 **A** **And I put it in--in the investigation, itself.**

2 Q Okay. Do you recall who you might have told that to?

3 **A** **Yeah. It was Master Sergeant Reed.**

4 Q Renee Reed?

5 **A** **Yes.**

6 Q Okay. That's the only person who you told "You don't need
7 Union representation"?

8 **A** **That's correct.**

9 Q And is that presumably--and I know we're going to have
10 Reed tomorrow. But just for the sake of the process here,
11 I'd like to just explore this. So she affirmatively
12 stated, "I would like Union representation"?

13 **A** **Well, she asked it in a question. She says, "Do I need
14 Union representation?" It was in an email exchange
15 between the two. I asked her to come back to talk about
16 some of the answers that she gave that directly conflicted
17 with some of the answers that I'd received from other
18 people.**

19 Q Okay.

20 **A** **So I was going to cross on that one, ask her some more
21 general questions. She said, "Do I need a Union rep?"
22 And at that time, I said, "I don't think you need a Union
23 rep at that time." It was misconstrued that I was not
24 being--**

25 Q Okay.

1 **A** --giving them the opportunity.

2 **Q** Okay.

3 **A** **And I never did--just for the record, I never did**
4 **re-interview her.**

5 **Q** Okay. You're aware that--well, let me ask you. Are you
6 aware that some have alleged you used rather heavy-handed
7 techniques during the course of this investigation?

8 **A** **No.**

9 **Q** Okay.

10 **A** **No. I--in fact, I would say that I probably went strongly**
11 **the other way to try to gain the confidence of each of the**
12 **persons, by trying to put them at ease, relax them and**
13 **then, you know, do the questioning from there. Now, I may**
14 **have, after one or two times of asking the same question,**
15 **you know, reverted and tried to elicit a response. But**
16 **through my experience, you--you get better testimony from**
17 **somebody that trusts you versus somebody that's trying**
18 **to--you know, the heavy-handed tactic.**

19 **Q** Okay. Aside from any allegation that you were
20 heavy-handed, do you believe that you were fair in your
21 investigation?

22 **A** **Absolutely.**

23 **Q** Okay. Now, I'm going to draw your attention to the clos-
24 --to the last sentence of the second paragraph on the
25 first page--I'm sorry, the--I'm sorry. The

1 second-to-the-last sentence, which begins "While
2 investigating." You can read the whole--you can read the
3 whole paragraph. The second paragraph in the--on page 1.
4 **A The whole second paragraph or just from there?**
5 Q Just read the whole thing.
6 **A Okay. "The scope of the investigation--"**
7 Q No, no, no. Not out loud, just to yourself.
8 **A Oh.**
9 Q I'm sorry.
10 **A Sorry.**
11 Q I've got to be careful not to do that.
12 **A Okay.**
13 Q Okay. So you indicated in there that you were--that you
14 were at least cognizant of the possibility that the
15 anonymous letter that served--that spurred this whole
16 investigation could be an attempt to disparage or
17 discredit certain personnel, correct?
18 **A Absolutely.**
19 Q Okay. Now, during the course of the investigation, did
20 you gather any evidence that led you to the conclusion
21 that this anonymous letter is just that; it is just simply
22 a matter--a manner at which one employee wants to get at
23 another?
24 **A No.**
25 Q Okay. Did you discover evidence to the contrary, that

1 there was some validity to the allegations in the
2 anonymous letter?

3 **A I did.**

4 Q Okay. Okay. Now, finally, the last--the last sentence
5 says, "In large, the anonymous letter, though void of
6 essential detail, did not appear to be a product of a
7 scorned author." So it--hence, your conclusion was that,
8 even though it didn't--even though it didn't state
9 specific allegations, the purpose wasn't just to get at
10 one or two personnel; is that correct?

11 **A That's correct.**

12 Q Okay. Now, it's important to note that you, yourself,
13 indicated that that anonymous letter is void of essential
14 detail.

15 **A It is.**

16 Q Okay. What did you mean by--I know what void of essential
17 detail means, but what details did you unearth during the
18 course of your investigation that were not in the
19 anonymous letter?

20 **A Specific daytime groups, other individuals that witnessed**
21 **the alleged allegations. Just more information than what**
22 **was actually in the letter. I mean the allegations may**
23 **cite--I think if we had a few more months to look into**
24 **them, I could have provided dates. I could have provided**
25 **more sustenance to hand over to the--the investigating--or**

1 **the Chief of Staff's office.**

2 Q Why did you need more months? I don't understand. Were
3 people not forthcoming?

4 A **Not at first, no. It--when you looked at the community in**
5 **whole, they were very loyal to each other. It was--it is**
6 **a very strong community. And I even put it in my report**
7 **that I applaud the loyalty of the community and the**
8 **cohesiveness of the unit. It was a few individuals that**
9 **came forward and said, "Okay, yeah, the letter**
10 **itself--these are the questions that are being asked.**
11 **That is true. This is--this is what I know about it." I**
12 **even asked if people had heard about the allegations**
13 **happening, and many would say, yeah, they heard it all.**
14 **They've heard it also.**

15 Q Okay. You mention that you applaud the loyalty. You also
16 use the term culture. And if you can flip the page to
17 page 2 and read that first paragraph. You use both those
18 words in that paragraph, correct?

19 CAPTAIN BEDELLS: Are you tracking, sir?

20 THE HEARING EXAMINER: Uh-huh.

21 THE WITNESS: You talking this paragraph or
22 the very first paragraph?

23 BY CAPTAIN BEDELLS:

24 Q The very first--

25 A **Okay. I got it.**

1 Q --right.

2 A **The culture, loyalty. I've got it.**

3 Q Okay.

4 A **Yes.**

5 Q The same concept you testified to you wrote in here?

6 A **Correct.**

7 Q You meant the same thing?

8 A **I did.**

9 Q Okay. And if you skip down a couple paragraphs to the
10 third paragraph that begins, "Other areas"--

11 A **Uh-huh.**

12 Q --take a moment to read that, if you will.

13 A **Okay.**

14 Q Okay. So to synopsize that paragraph, you conclude--you
15 write "The IO ascertains reprisal is real and was
16 exhibited throughout the investigation." I mean that
17 synopsizes that paragraph. What led you to believe that
18 reprisal is real and was exhibited throughout the
19 investigation? I mean, was it testimony?

20 A **It was. There were persons who testified or gave me
21 statements, verbal statements, answered my questions, that
22 said, "I have to worry about my family. I'm not going to
23 say anything." Multiple times, "I have to worry about my
24 family." And that was concerning to me as the
25 investigating officer.**

- 1 Q Okay. You say "I'm not going to say anything." So, in
2 fact, did they not say anything or did they say, "Yeah, I
3 witnessed--" "I witnessed the theft of this, but I got to
4 worry about my family"; or was it the case that they just
5 said, "I'm not saying anything, because I--"
- 6 A **"I'm not saying anything."**
- 7 Q Okay. Okay. And you said personnel said that. Can you
8 name any people who--who told you that?
- 9 A **Fred Fodder (phonetic)--is it Fodder? I'd have to look
10 through my notes. Yeah, there are people who have said
11 that. That--I have it written in my notes that say,
12 "Yeah, I'm not going to say. I have to worry about my
13 family." So he gives the implication that he, indeed,
14 knows information, but he's not willing to come forward
15 and talk about it.**
- 16 Q Is it just one person or are there any other people who
17 said that?
- 18 A **There were other people that indicated that also. That
19 they weren't willing--**
- 20 Q Okay. If--well, we'll go back to it. But if you--if you
21 had an opportunity to review your notes, would your notes
22 divulge other people who shared that concern?
- 23 A **Yeah.**
- 24 Q Okay. But you can't think of them right now?
- 25 A **I can't.**

1 Q Okay. Well, we'll do it the right way. So we'll refresh
2 your recollection later.

3 A Yeah. And then there were other people who went back to
4 **MATES** and reported back to me that they were called
5 **snitches--**

6 Q Okay. Well--

7 A --for giving information regarding the--

8 Q Well, that's in the paragraph, as well. So--so what
9 personnel came back to you and said I was--"I was called a
10 snitch" or "Someone's calling me a snitch"?

11 A **Master Sergeant Fouts came back to me and told me she was**
12 **called a snitch.**

13 Q Did she say by whom she was called a snitch?

14 A **She--I don't recall. I can't rem- --I think she did. I**
15 **don't know who it was that--that said it. Master Sergeant**
16 **Sheldon comes to mind, but right now I can't remember who**
17 **it was.**

18 Q Okay. If you looked at your notes, it might refresh your
19 recollection?

20 A **That was a conversation we had where I--I'm not certain**
21 **that I took a note to that.**

22 Q And understand, sir, I'm not limiting--my questions aren't
23 limited to the sworn statements. You're under oath. And
24 I just want to know, as you sit here under oath, did other
25 people come to and say, "You know, what, sir, I fear

1 reprisal" or "I've been called a snitch."

2 **A** **They--**

3 **Q** **So--**

4 **A** **They did. And it didn't just go to that. There were**
5 **people that approached me that indicated that they did not**
6 **want the Union present while they gave their**
7 **presentations.**

8 **Q** Okay. Again, sir--

9 MR. BANCHS: Can I object here. How does this
10 relate to Mr. Smock specifically? He hasn't been accused
11 of intimidating anybody.

12 CAPTAIN BEDELLS: And I'm not trying to
13 suggest he, himself, intimidated anyone. I'm trying to
14 get at the nature of the investigation. Some people
15 weren't completely forthcoming.

16 MR. BANCHS: Okay. Well, you've established
17 through previous witnesses, and now--you know, I should
18 have objected probably about two minutes ago. But some of
19 the stuff that he's talking about is not in the record,
20 even though it's in his notes.

21 CAPTAIN BEDELLS: Yeah. Well, I'm going to
22 continue with him unless I'm overruled, because he's the
23 investigating officer. And he actually--you could object,
24 I suppose, with the other people--he's actually the person
25 to whom these people alleged to have been called--

1 MR. BANCHS: Well, I'll--

2 CAPTAIN BEDELLS: --snitches or feared
3 reprisal.

4 MR. BANCHS: For the sake of expediting this
5 process, I'll stipulate that some people have felt
6 intimidated in the process of this investigation. Now, if
7 you feel that you need to explore further about
8 specifics--

9 CAPTAIN BEDELLS: I do.

10 MR. BANCHS: --I would ask that they relate
11 specifically to Mr. Smock.

12 CAPTAIN BEDELLS: I--well, I'm not--I'm not
13 alleging Mr. Smock was a source of the intimidation or
14 reprisal. The issue is were the witnesses we're going to
15 hear from later today completely candid and forthcoming to
16 Colonel Doolittle when he first interviewed them. That's
17 the issue. And what we're going to get at today, if I'm
18 provided the opportunity to ask the names, is did--did,
19 for instance, Chief Mack tell you the whole story when you
20 first interviewed him. So that's what--that's what I'm
21 trying to get at is--

22 MR. BANCHS: Well, we're treading in dangerous
23 territory here because this is not part of the original
24 record. And I know the conversation we had earlier, but,
25 you know--

1 CAPTAIN BEDELLS: He talks about
2 reprisal--it's right in the 15-6.

3 THE HEARING EXAMINER: Yeah. There are some
4 discrepancies in--between what people testified to
5 verbally and then what they actually wrote in written
6 statements. So I think it's important for Colonel
7 Doolittle to tell us, because he was present for both of
8 the--both when he verbally interviewed them, and then when
9 some of those folks came back and wrote written
10 statements.

11 MR. BANCHS: That's--

12 THE HEARING EXAMINER: So I am interested in
13 understanding why there's a discrepancy.

14 MR. BANCHS: Right. And I completely get
15 that. You know, but we're talking now about statements
16 that were made after the investigation was over, because
17 he--Colonel Doolittle just said that Janet Fouts
18 approached him after the investigation and was being told
19 that she was a snitch. So that's not part of this--

20 THE WITNESS: No, sir. Sorry. To clarify,
21 that actually happened while the inter- --investigation
22 was still going. I was using--I was going back after I
23 did her initial interview, and I was going after the sworn
24 statement. She gave me a sworn statement. When she came
25 back, I was still collecting sworn statements, and I was

1 still on orders for that. And she told me that people
2 were--were calling her a snitch.

3 MR. BANCHS: Okay.

4 THE WITNESS: So that actually was during
5 the--

6 MR. BANCHS: But it was during the
7 investigation?

8 THE WITNESS: Yes, sir.

9 MR. BANCHS: And she got her statement in,
10 though, right?

11 THE WITNESS: She did.

12 MR. BANCHS: Her statement's in the record?

13 THE WITNESS: Yeah.

14 THE HEARING EXAMINER: Yeah. We can ask those
15 individual witnesses why there's a discrepancy between
16 what they said originally and then what they--in the cases
17 where they said something different when they put it down
18 in writing.

19 CAPTAIN BEDELLS: Yeah. Okay. Well, I just
20 wanted--I just want to know, from his perspective--

21 THE HEARING EXAMINER: Generally.

22 CAPTAIN BEDELLS: Right. Yeah. Who--yeah.

23 BY CAPTAIN BEDELLS:

24 Q So you've now testified that there--that there were people
25 who weren't completely candid during the course of the

1 investigation. And I'm not interested after the
2 investigation. I understand Mr. Banchs' point on that.
3 But during the course of the investigation, were there
4 people who weren't completely candid?

5 **A** That's correct.

6 **Q** Okay.

7 **A** Chief Mack. The first time that I--I spoke with him,
8 while we were on the record--we tape recorded all of the
9 interviews with their permission--when the tape recorder
10 shut off, he--he provided other information regarding
11 the--the case or the allegations of misconduct. When he
12 gave his sworn statement, he even provided additional
13 information regarding it. So it was--it was almost--I
14 wouldn't say he was deceptive in his first interview. It
15 might have been just because of the generality of the
16 questions that I was asking. I wasn't asking specific
17 people. It was do you know of anybody that did X. Do you
18 know of anybody that did Y. So it was generalization. As
19 we moved into the sworn statements, the questions were
20 more pointed, and he was able to add additional.

21 And I think that Chief Whitcher is another example.
22 Todd Whitcher, the male. He, in his testimony, indicated
23 that, you know, he didn't know, didn't know, didn't know.
24 There was a few other things. After the investigation, he
25 came in and his comment to me was, "Hey, if I don't take

1 care of this or if I don't do something right now, this
2 might never get taken care of." He provided a sworn
3 statement with detail.

4 **Thad Cooper, Master Sergeant--**

5 Q Is that sworn statement part of your--

6 A **It is part of the investigation.**

7 Q --okay. Part of your--okay. Sorry I cut you off.

8 A **Master Sergeant Cooper was the same thing. He, in his**
9 **initial interview, gave me small pieces of how to--how I**
10 **started developing the story. And then he moved into more**
11 **specific allegations to confirm that the allegations--so**
12 **he was more specific in his sworn statement also.**

13 Q Okay. So we have Chief Mack, Chief Witcher, male
14 Witcher, Todd Witcher, and Master Sergeant Cooper,
15 correct?

16 A **Uh-huh.**

17 Q As three individuals who--who weren't completely
18 forthcoming in their first interview, correct?

19 A **Correct.**

20 Q Okay. Fair enough. Okay. Now, if I could call--move to
21 page 9 of your report, sir. There is a paragraph, the
22 third paragraph down that begins with "CW2," if you could
23 read that to yourself, please.

24 A **Okay.**

25 Q Okay. My question is, foremost, did you, during the

1 course of your investigation, admonish your--those persons
2 you interviewed not to discuss their testimony with anyone
3 else?

4 **A Absolut- --yes. Every one that we interviewed signed a**
5 **Privacy Act statement. They were told not to discuss this**
6 **with any persons at MATES.**

7 **Q** Well, this paragraph seems to be completely at odds with
8 what you instructed the witnesses to do.

9 **A That's correct.**

10 **Q** Okay. So can you explain to the Hearing Examiner why it
11 was that you--or testify under oath that you, in fact, did
12 tell these people "Don't speak to one another," yet it
13 appears as though they did speak to one another? How do
14 you--can you explain it?

15 **A I can't explain why they did that. I was told that there**
16 **was a shop meeting called. And Master Sergeant Smock,**
17 **indeed, told everybody that "You don't have to testify to**
18 **hearsay. You don't have to tell anything that you just**
19 **heard. Just tell them what--what you observed."**

20 **Q** Who told you about this meeting?

21 **A Chief Mack told me about that meeting. Cooper told me**
22 **about that meeting. Warrant Officer--well, now Warrant**
23 **Officer 1 Sharon Witcher told me about the meeting.**
24 **Individuals came forward and said, yep, they knew--they**
25 **were--they were told not to say anything that they didn't**

1 **observe.**

2 Q Okay. Did you limit your investigation, in any respect,
3 to "I only want to know what you observed; I'm not really
4 interested in what you might have heard from some-" --did
5 you limit the investigation in that respect?

6 A **I did not.**

7 Q Okay.

8 A **No. In that situation, as we received, "Hey, I heard
9 this," it just established more of the areas that I would
10 go in and do the re-investigation and focus on. So if I
11 had five people indicate that Master Sergeant Smock took
12 diesel fuel from the MATES facility, you know, then I
13 could say, okay, I can go and investigate that. If I have
14 five or six people say that wood was taken from the
15 facility, maybe they did not observe the wood being taken
16 from the facility, but I could investigate it that way.
17 So it was--hearsay was how I built that--that further
18 questioning.**

19 Q Okay. Well, you're a police officer, sir. I mean, was it
20 your intent that you develop your investigation in such a
21 manner that, although someone might have heard of someone
22 doing something, you can eventually find the person who
23 might have--might or might not have witnessed; is that
24 fair to say?

25 A **That was my overall intent.**

1 Q Okay.

2 A I wanted somebody that put first-hand knowledge on this.

3 Q So you're not going to begin with limiting yourself to

4 "I'm only interested in if you saw it"?

5 A No, absolutely not.

6 Q Because--

7 A When I asked people "Did you--have you heard of it?"

8 they'll give me a name, "Yeah, I heard it from so-and-so."

9 Well, of course, then I'm going to go and talk to

10 so-and-so. That's how I developed my leads.

11 Q Okay. Okay. I want to call your attention to page 12,

12 the paragraph 4, that is captioned "Theft."

13 A Okay.

14 Q Not "Theft of Time," but just "Theft." If you could take

15 a moment to just read those three paragraphs, please.

16 Okay, sir. I want to speak to the first two

17 paragraphs. We talk about--we talk about everything from

18 theft of time, copper, diesel, wood and nuts and bolts.

19 Okay. As you sit here today, what do you believe, if

20 anything, Mr. Smock stole from MATES, as we look at this

21 paragraph?

22 A Based on the sworn statements that I--I was given, I was

23 told that Mr. Smock stole diesel, he stole wood and

24 time--excuse me.

25 Q Okay. Okay. As you sit here today, with respect to the

1 nuts and bolts, and that's truly what it says here is nuts
2 and bolts, do you believe Mr. Smock is guilty of stealing
3 nuts and bolts?

4 **A I don't know that.**

5 Q Okay.

6 **A When they gave the generality, they said employees from**
7 **MATES would bring in their--their lunch pail, the old**
8 **metal-style lunch pails.**

9 MR. BANCHS: Can I object here? He's not--he
10 wasn't fired for stealing nuts and bolts. That's not one
11 of the charges.

12 CAPTAIN BEDELLS: Agreed. Yeah. That's why I
13 was asking him.

14 BY CAPTAIN BEDELLS:

15 Q Because you don't believe he stole nuts and bolts,
16 correct?

17 **A I don't know.**

18 Q Okay.

19 **A And there was no sworn statement or anybody that said he**
20 **did.**

21 MR. BANCHS: Oh. I thought he said he did.
22 Okay. Go ahead.

23 CAPTAIN BEDELLS: Well, I think--yes. He
24 doesn't know.

25 THE WITNESS: Oh, I'm sorry.

1 BY CAPTAIN BEDELLS:

2 Q So--and I'll call your attention to the last sentence of
3 the third paragraph, "Though--" what I'm trying to
4 reconcile, sir, is that last sentence reads, "Though many
5 persons appear to be involved, one person has been
6 mentioned throughout the investigation, and that is Joe
7 Smock."

8 A **That's correct.**

9 Q So it's your testimony that he was invest- --he was
10 mentioned throughout the investigation, those are your
11 words, and it was--it was--he was mentioned as a result of
12 stealing time, diesel and wood--

13 A **Correct.**

14 Q --is that correct?

15 A **That's correct.**

16 Q Okay. And we already talked about the diesel--

17 A **Okay.**

18 Q --so I think we're going to be able to skip ahead there.

19 Let's talk about the time, which is the next
20 paragraph here. So take a moment, and that's a long one.
21 So I'm not going to ask you to--I'm not going to ask you
22 to read the whole "Theft of Time." If you can, if you can
23 recall without reading that, tell us what you unearthed in
24 the way of Mr. Smock stealing time, and what that even
25 means, stealing time.

1 **A** Technicians are granted time-off awards. I was given
2 information in two sworn statements indicating that there
3 was a fire at MATES. And because of the fire at MATES,
4 Mr. Smock received a safety award of anywhere from 24 to
5 30 hours of a time-off award. The individuals that
6 provided the information said that Master Sergeant Smock
7 was actually on vacation at the time of the fire and
8 wasn't present. I was also told in a sworn statement and
9 through commentary that Joe Smock regularly goes on spring
10 break. He doesn't manage his time off, his actual use of
11 time off well. So he gets time-off awards that regularly
12 coincide with spring break.

13 **Q** Okay.

14 **A** And those time-off awards are usually presented by the
15 superintendent, shop superintendent.

16 **Q** Okay. Fair enough. Now, I'll call your attention to page
17 16, the second paragraph down.

18 CAPTAIN BEDELLS: I'm touching on the same
19 ones, gentleman. I apologize you can't follow along with
20 your copy, but same one.

21 BY CAPTAIN BEDELLS:

22 **Q** The second paragraph begins, "It was said."

23 **A** Okay.

24 **Q** Just take a moment to read that, please.

25 **A** Okay.

1 Q Okay. Now, you write in there that "It was said Master
2 Sergeant Smock ran a construction business." Now, I will
3 tell you if you--well, strike that. Let me ask you this:
4 Have you had an opportunity to look at the original
5 decision letter authored by Colonel Durkac in--on this
6 file?

7 A **I did not.**

8 Q Okay. You have not?

9 A **I have not.**

10 Q Okay. Well, then I will tell you that the fact--and I
11 don't know that it's a fact--the allegation that Master
12 Sergeant Smock ran a construction business played no part
13 in his termination. Okay. That said, I will ask you that
14 there are allegations about using MATES faci- --MATES wood
15 supplied from the MATES facility to construct ice
16 shanties, decks and gazebos. Okay. And you reference
17 that right in your report, correct?

18 A **Correct.**

19 Q So I want to know, sir, for the sake of the Hearing
20 Examiner, who told you that Master Sergeant Smock built
21 ice shanties, if you recall?

22 A **Sergeant--Staff Sergeant, now Sergeant First Class Barrick
23 indicated about the ice shanty.**

24 Q Okay. How about a deck?

25 A **Chief Joel Mack.**

1 Q Excuse me.

2 A **Master Sergeant Cooper. Master--or CW2 Whitcher.**

3 Q Okay. Talked about a deck?

4 A **Uh-huh.**

5 Q How about a gazebo? Who told you that Master Sergeant

6 Smock had built a gazebo using wood from MATES?

7 A **Chief Mack, Master Sergeant Cooper.**

8 MR. BANCHS: Can he--can he clarify whether it

9 was in the initial interview or was in their written

10 statements?

11 CAPTAIN BEDELLS: Sure--I mean--

12 MR. BANCHS: And can he point to it, maybe so

13 we--

14 CAPTAIN BEDELLS: Well, you'll get a chance to

15 cross-examine him, but I'll indulge--so--

16 MR. BANCHS: Okay. Go ahead.

17 CAPTAIN BEDELLS: Well, you'll get a chance to

18 cross-examine him. But let--

19 BY CAPTAIN BEDELLS:

20 Q Colonel Doolittle, sir, with--we'll start with the ice

21 shanties. Was it Barrick, you said?

22 A **Yeah. And that was during an interview.**

23 Q In an interview?

24 A **Yes.**

25 Q Okay. Did he provide a sworn statement to that effect, to

1 your knowledge?

2 **A He did, and I don't know if that was covered in there.**

3 Q Okay. How about--what was my next one? How about decks?

4 And you--I believe you testified that Chief Mack had--had

5 provided you information--

6 **A Correct.**

7 Q --to the effect that Mr. Smock had built a deck.

8 **A Uh-huh.**

9 Q Was that in his first interview with you?

10 **A It was not.**

11 Q Was it in his second interview with you?

12 **A It was.**

13 Q Is it encapsulated in a sworn statement or did he just

14 tell you this?

15 **A I believe it is in the sworn statement, but I--**

16 Q But you don't know as you sit here?

17 **A --don't--yeah. Without reading the sworn statement**

18 **again--I didn't review all of the sworn statement again**

19 **after--**

20 Q Okay.

21 **A --or prior to this.**

22 Q And finally the gazebo--oh, strike that. The deck. You

23 also said that, in addition to Chief Mack, you said

24 Cooper, correct?

25 **A Cooper.**

- 1 Q Okay. So same question: Did Cooper tell you in his first
2 interview that Mr. Smock had used lumber to build a deck,
3 his second interview?
- 4 A **Second.**
- 5 Q Okay. Second interview. To your knowledge, is it
6 encapsulated in a sworn statement?
- 7 A **To my knowledge, yes.**
- 8 Q Okay. And I believe the third person you said had talked
9 about Mr. Smock using wood for construction of a deck was
10 Whitcher?
- 11 A **Todd Whitcher.**
- 12 Q Is that right?
- 13 A **That's correct.**
- 14 Q Okay. Same question--or how many times did you interview
15 him?
- 16 A **Two for sure. I gave him the general questions. He came
17 back in, and I want to say there was a third time, but I--**
- 18 Q Did he provide it--did he provide that information in his
19 first interview?
- 20 A **He did not. He was--**
- 21 Q Second interview?
- 22 A **I'm not certain. I don't know if it was the second or
23 third interview that he actually provided that
24 information.**
- 25 Q Okay. But you're pretty certain that the three of those

1 gentlemen provide you information to the effect that Mr.
2 Smock had used wood from MATES to build a deck?

3 **A Yes.**

4 Q Do you know where the deck was located? Was it at MATES,
5 for instance?

6 **A No. It was not at--**

7 Q Okay.

8 **A --at MATES.**

9 Q Okay.

10 **A It was at Mr. Smock's house.**

11 Q Okay. Okay. And finally the gazebo, I believe--and
12 I--and that's where--that's where Mr. Banchs asked the
13 question. The gazebo. I believe you said Mr. Mack
14 provided you information to the effect that Mr. Smock had
15 built a gazebo using MATES from wood; is that correct?

16 **A That's correct.**

17 Q Okay. Did he provide it in the first interview?

18 **A No.**

19 Q Okay. The second interview?

20 **A I don't know.**

21 Q Okay.

22 **A It could have been the second interview. It could have
23 been the third interview.**

24 Q Okay. And, again, my question is is it encapsulated in a
25 sworn statement, to your knowledge?

1 **A** **To my knowledge, it is.**

2 **Q** Okay. Okay. And then we go on in that same paragraph to
3 say--you write, rather, "Master Sergeant Smock was also
4 said to build and sell ice fishing tip-ups and other
5 various wooden display cases built during work hours,
6 using wood bought by MATES credit card holders."

7 Okay. So let's take the tip-ups first, and then
8 we'll talk about the display cases. Who provided you
9 information with respect to the allegation that Mr. Smock
10 built tip-ups at MATES using wood from--or using wood from
11 MATES?

12 **A** **Master Sergeant Cooper.**

13 **Q** Only Master Sergeant Cooper?

14 **A** **I believe so. I'm not 100 percent sure, but I know Master**
15 **Sergeant Cooper said--said that, and he indicated that he**
16 **actually bought one.**

17 **Q** Bought one?

18 **A** **Yeah.**

19 **Q** Okay. Did he tell you how he knew that--what if--what if
20 Master Sergeant Smock just--Mr. Smock is just bringing
21 tip-ups to work and saying, "Hey, I got tip-ups," like
22 Girl Scout cookies? Right? Like, "Hey, this stuff's for
23 sale." Did he tell you how he knew those tip-ups were
24 built there?

25 **A** **He--I'm assuming that he witnessed it. I don't think that**

1 **I asked him if he brought it from home when I interviewed**
2 **him.**

3 Q Okay. So you assume that he'd witnessed him actually
4 building the tip-up right there?

5 **A That's correct.**

6 Q Okay. How about--same--same question for the display
7 cases. Who told you that--that Mr. Smock built wooden
8 display cases, at MATES, during working hours, using wood
9 bought by a MATES credit card?

10 **A It'd have been Chief Mack and Master Sergeant Cooper.**

11 Q Okay. Did Chief Mack indicate--well, in light of what you
12 told me about the tip-ups, did either one of those guys
13 indicate that they had purchased a display case?

14 **A No.**

15 Q Okay.

16 **A Neither of them indicated that they had bought one.**

17 Q Did they indicate how they knew that he built those
18 display cases at MATES?

19 **A I'm assuming, speculating that it was on visual. They**
20 **observed it happening.**

21 Q Okay. Okay.

22 **A You'd have to ask them--**

23 Q I will.

24 **A Yeah.**

25 Q Oh, I'm sure we will.

1 **A** **Yeah.**

2 Q So, okay. There's no allegation that Mr. Smock stole
3 copper, correct?

4 **A** **No allegation.**

5 Q And, in fact, it wasn't a basis for his removal.

6 Okay. Diesel was, and we touched on that, correct?

7 **A** **Correct.**

8 Q Okay. Okay. I'll call your attention to--I'm sorry--page
9 18, the paragraph D, like Delta. It says "Theft (wood)."

10 **A** **Uh-huh.**

11 Q Why don't you take a moment just to read that first
12 paragraph.

13 **A** **Okay.**

14 Q Okay. There's a lot in that paragraph, so I'm going to
15 break it down. Okay. Because these are terms of art,
16 these luan and orioned (sic)--oriented strand board or
17 OSB, both of which comprise, I guess, some form of wood.
18 So you did conclude that Master Sergeant Smock had stole
19 wood from MATES, correct?

20 **A** **Based on the sworn statements, yes.**

21 Q Okay. And, of course, you didn't personally observe any
22 of this, right?

23 **A** **I did not observe--**

24 Q You're just the IO?

25 **A** **--no.**

1 Q Right. Okay. So who--as you sit here, sir, can you
2 recall who told you that Mr. Smock took luan from the
3 MATES facility?

4 A **It was either Chief Mack, Master Sergeant Cooper or both.**

5 Q Okay. You don't recall as you sit here?

6 A **I don't recall which one--**

7 Q Okay.

8 A **--actually said that. I want to say it's Chief Mack, but
9 I don't want to testify to something that I--I know it was
10 one or the other.**

11 Q Okay. How about the OSB? Who--who--

12 A **Same.**

13 Q One that--it's either--okay. Let me ask the question for
14 the record. Do you recall who told you that Mr. Smock
15 took OSB, oriented strand board, from the MATES facility?

16 A **It was either Master Sergeant Thad Cooper or CW2 Joel
17 Mack.**

18 Q Okay.

19 MR. BANCHS: Do you want to ask him to look
20 for it?

21 CAPTAIN BEDELLS: I was going to leave that to
22 you, Ben.

23 MR. BANCHS: No. I mean, you're not going to
24 make me do all your work. I mean, whenever I've been
25 questioning witnesses, you're forcing me to put the

1 investigation in front of their face and have them read
2 it. I mean--

3 CAPTAIN BEDELLS: Well, if you want--if you
4 want to have him read it; I'm satisfied with his
5 testimony.

6 MR. BANCHS: Well, I'm good with expediting.

7 CAPTAIN BEDELLS: Okay.

8 MR. BANCHS: But, you know, if he doesn't
9 recall which one, that is important, because these are
10 allegations that terminated a man's job.

11 CAPTAIN BEDELLS: Okay. Well, I'm probably am
12 going to ask the actual witnesses. So that's what I'll
13 do. Is I'm going to call--Coop- --we're off the
14 record--or we're--sorry--deviating, sir. But I'm going to
15 ask Cooper and Mack, so I'll get right to the source.

16 BY CAPTAIN BEDELLS:

17 Q So I'm satisfied with your answer, sir, that it was either
18 Mack or Cooper who told you about luan or OSB, you just
19 don't recall which without looking at the--

20 **A Without looking it up.**

21 Q --without looking at their sworn statements, correct?

22 **A Correct.**

23 Q Okay. Now, there's--you also write in here that Master
24 Sergeant Smock is--used wood for various home
25 improvements. Okay. My question to you, sir, is are we

1 talking about the deck again?

2 **A I was told that Master Sergeant Smock--**

3 Q Well, answer--just answer the--

4 **A No.**

5 Q Okay.

6 **A There's other, yes.**

7 Q Okay. So it's not just the deck?

8 **A Correct.**

9 Q Okay. What other allegations did you receive in the way
10 of him taking wood for home improvements?

11 **A That he built a gazebo--a gazebo outside of the deck from**
12 **wood provided by MATES. Used OSB to panel his upstairs of**
13 **his garage for a playroom. He also--without looking at**
14 **it, those are the two that come to mind.**

15 Q Okay. Well, you also mentioned luan earlier. Do you have
16 any--do you have any recollection--and I don't want you to
17 guess, so, you know, we might have you look at your sworn
18 statements--or the sworn statements, rather. But do you
19 have an independent recollection of what the luan was used
20 for?

21 **A I don't. I don't.**

22 Q Okay. Did you interview a fellow by the name of Staff
23 Sergeant Cory Rock?

24 **A Doesn't ring a bell, no.**

25 Q Okay. And is it the--did you get an opportunity to

1 interview Lieutenant Colonel Golnick?

2 **A I did.**

3 **Q Under oath?**

4 **A No. He was part of the initial--he had the Privacy Act,**
5 **but not under oath.**

6 **Q Okay. No sworn statement, in other words?**

7 **A I did not get a sworn statement from Colonel Golnick.**

8 **Q If I could direct your attention to page 21 of your**
9 **report. There's only one paragraph on 21, so take a**
10 **moment to read that.**

11 **A Okay.**

12 **Q You said you were not able to follow up or confirm an**
13 **allegation that--another allegation that was leveled**
14 **against Mr. Smock, correct?**

15 **A That's correct.**

16 **Q I don't even want to speak to that allegation, because**
17 **it's really not a part of this--part of this hearing. But**
18 **what I do want to speak to is the allegations of wood in**
19 **the way of luan and OSB that were part of this**
20 **investigation. Do you think if you were given more time,**
21 **you might--you might have been able to develop more**
22 **evidence?**

23 **A Oh, absolutely. I could have followed up a lot more,**
24 **talked with other people that may have been involved,**
25 **received more sworn statements.**

1 Q One of the--sir, one of the bases for Mr. Smock's removal
2 from the technician workforce was the theft of--or the
3 alleged theft of a television. Do you recall
4 investigating this matter at all?

5 A I do.

6 Q And do you recall who alleged that Mr. Smock played some
7 role in the theft of a television?

8 A Master Sergeant Fouts.

9 Q Okay. Was it only Master Sergeant Fouts?

10 A Yes.

11 Q Okay. And what specifically do you recall her saying
12 about the theft of a television?

13 A She indicated that there was a TV that was purchased by
14 MATES to go into the fitness center. The television never
15 made it into the fitness center. Instead she observed
16 Master Sergeant Smock and Colonel Golnick take it out to a
17 car. She didn't recognize whose car it was or she didn't
18 remember what--whose car it was, and put it inside.

19 Q Okay. Did she recall the timeframe during which that is
20 alleged to have occurred?

21 A According to her testimony, it was in the--it was in the
22 summer of 2013.

23 Q Okay.

24 MR. BANCHS: Again, she did not say 2013. She
25 said the summer.

1 CAPTAIN BEDELLS: Right. Everyone seems to
2 have this recollection it was 2013.

3 THE WITNESS: This summer. It was this
4 summer.

5 CAPTAIN BEDELLS: Right. Mr. Banchs is
6 correct.

7 BY CAPTAIN BEDELLS:

8 Q Did you deduce that to mean 2013?

9 A **I did.**

10 Q Okay. Now, did Mr. Smock provide a sworn statement of any
11 effect in this investigation?

12 A **He did not.**

13 Q Okay.

14 A **I didn't ask him for a sworn statement.**

15 Q Okay. Why not?

16 A **At that point, we were getting late into the**
17 **investigation, itself. I had--for the 15-6 portion of the**
18 **investigation, there was enough sworn statements and**
19 **individual recollections saying, okay, here is where we**
20 **are. This is the allegation, allegation of theft. And**
21 **there were enough people that had come forward to say that**
22 **the preponderance of the evidence indicated that--that he**
23 **was responsible for the theft.**

24 Q Okay. So you didn't question him about the TV, the wood?

25 A **No.**

1 Q Your conclusion that he stole time?

2 A **That's correct.**

3 Q Okay.

4 A **And that would--that goes back into that same, if there**

5 **was more time, I would have gotten sworn statements from**

6 **all of the individuals or asked for it. As a matter of**

7 **fact, I provided the Union, itself, with the questions**

8 **that I was asking in written documentation.**

9 Q Okay.

10 A **I provided that for the Union, so that they could start**

11 **preparing their answers.**

12 Q Did you ask Lieutenant Colonel Golnick about the

13 television? Because that--again, that's one of the bases

14 upon which Mr. Smock was terminated was this TV.

15 A **I did not. I did not.**

16 Q Okay. I want to--I want to--I want to show you what's

17 been marked as Smock Exhibit 3, and ask you did you ever

18 see the reply that Mr. Banchs authored on behalf of Mr.

19 Smock?

20 A **Who did he send it to?**

21 Q Well, he sent it to Colonel Durkac. I should have

22 mentioned that, sir. But I'm just wondering if you

23 saw--if you ever saw it.

24 A **I--no, I have not.**

25 Q Okay.

1 **A** **It--just for the record, after I turned in the**
2 **investigation, I didn't have any other type of contact**
3 **regarding the case, itself, until right now.**

4 **Q** So you--obviously, you've never seen the attachments
5 either, correct?

6 **A** **I have not.**

7 **Q** Okay. I don't have any questions on it, actually.

8 Did you ever see the proposed adverse--I wasn't
9 paying attention to what you just testified to, so let me
10 ask you this: Did you ever see the proposed adverse
11 action notice that Lieutenant Colonel Meyers drafted?

12 **A** **I did not.**

13 **Q** Did you ever--and you might have just answered, you had no
14 contact--I think you just said you had no dealings with
15 this. But did you ever see the original decision letter
16 that Colonel Durkac authored in this matter?

17 **A** **I did not.**

18 **Q** Okay. So it's fair to say that, once you turned in your
19 report of investigation, on or about--is it 24 January we
20 think now?

21 **A** **Correct.**

22 **Q** That you had no further dealings with this, no further
23 investigation, correct?

24 **A** **That's correct.**

25 **Q** Didn't review any more documents?

1 **A** **No. I was on orders to the 31st. I actually briefed**
2 **Colonel Durkac the findings in that interim seven-period**
3 **day--seven-day period. So I turned in the report; he read**
4 **it; I briefed it.**

5 **Q** Okay.

6 **A** **So there--that was the dealings I--**

7 **Q** Was that person-to-person you briefed him?

8 **A** **Correct.**

9 **Q** Okay. Would you be surprised if you learned that certain
10 people allege that you were a light heavy-handed in this
11 investigation?

12 **A** **No. I wouldn't be surprised.**

13 **Q** But I believe you testified earlier, you don't believe you
14 were heavy-handed, correct?

15 **A** **I don't believe I was, but I wouldn't be surprised. When**
16 **I--when I ask questions, sometimes I'm more direct. If I**
17 **write an email, I'm very direct. Some people can see that**
18 **as more heavy-handed versus being passive and asking**
19 **roundabout questions. So it could be, yes. It could be**
20 **determined that I'm heavy-handed--**

21 **Q** Okay.

22 **A** **--by directness.**

23 CAPTAIN BEDELLS: I don't have any further
24 questions. Thank you, sir.

25 THE HEARING EXAMINER: I've got a question

1 for--or a couple questions just for clarification to
2 understand how you captured the documentation for this
3 investigation.

4 EXAMINATION

5 BY THE HEARING EXAMINER:

6 Q You initially interviewed individuals?

7 A **Yes, sir.**

8 Q And that was recorded?

9 A **It was.**

10 Q Every one of those was recorded?

11 A **Yes.**

12 Q So there's a--there's an audio recording of those
13 interviews?

14 A **There is.**

15 Q Was that formalized in writing? Is there a transcript?
16 Is there--

17 A **Some of them were. Some of the transcripts were provided.
18 I don't know--I can't give you a list of who actually
19 was--**

20 Q Verbatim transcripts?

21 A **Verbatim. There were a few of them that--**

22 Q And what--what prompted you to--for the ones that you
23 captured verbatim transcripts, what was your reason for--

24 CAPTAIN BEDELLS: Sir, I'm going--if--I can
25 just interrupt the two Colonels for a minute. I

1 apologize.

2 When we use verbatim, this is a verbatim
3 transcript?

4 THE HEARING EXAMINER: Exactly.

5 CAPTAIN BEDELLS: I think that you had Captain
6 Emery transcribe those?

7 THE WITNESS: He did.

8 CAPTAIN BEDELLS: He's not a certified court
9 reporter.

10 THE HEARING EXAMINER: Okay. Okay.

11 CAPTAIN BEDELLS: And I wouldn't characterize
12 those as verbatim transcripts. They are--they might be
13 close, but I don't even--

14 THE WITNESS: They've very close.

15 CAPTAIN BEDELLS: --but I don't even think
16 they're complete.

17 THE HEARING EXAMINER: Okay. I appreciate
18 that.

19 CAPTAIN BEDELLS: So what we have, sir, is we
20 have some of the audio, some portions of some of the audio
21 recordings that were transcribed. I never had them
22 transcribed because I think--I hope we furnished you the
23 audio.

24 THE HEARING EXAMINER: You did.

25 CAPTAIN BEDELLS: Okay. And we furnished Mr.

1 Banchs, I know, the audio. So we just said this is a
2 better product. You can listen to it yourself.

3 THE HEARING EXAMINER: Okay.

4 CAPTAIN BEDELLS: So verbatim, the term of
5 art, no, it was not.

6 BY THE HEARING EXAMINER:

7 Q Right. So there were initial interviews, and those were
8 all captured on audiotape.

9 A **Yes, sir.**

10 Q Some of those were--were converted to--I won't say they're
11 verbatim, but they were--they were transcribed?

12 A **Nearly, yes, sir.**

13 Q Then there were follow-up interviews. Those were done
14 audiotape also?

15 A **I believe they were. I think that every interview that I
16 had was done on audiotape.**

17 Q Would you not know? I mean--

18 A **As I testified a little while ago, there was sometimes
19 where after the tape went off, more information would be
20 given. So there was some--**

21 Q And how was that--how was that captured?

22 A **Through notes.**

23 Q Okay. And then there were sworn statements?

24 A **That's correct.**

25 Q And what--how did you decide which sworn statement--which

1 people you wanted sworn statements from?

2 **A** Based on the information that I received during the
3 initial interviews. I had individuals that kept on
4 reoccurring, saying they would have information regarding
5 it. If in, you know, other people's sworn statements,
6 they indicate there are other people that know. So I kept
7 on using the--the lead method. I would interview. I'd
8 get leads. If enough of the leads came together, I would
9 interview that individual, and then I would request sworn
10 statements.

11 **Q** Okay. And then the totality of the audio interviews, the
12 transcription of some of those audio interviews, your
13 notes, and then the sworn statements, that--that was your
14 report?

15 **A** That was the report.

16 **Q** I mean, obviously, you made recommendations based upon
17 that. But that was--that was your evidence?

18 **A** Yes, sir.

19 THE HEARING EXAMINER: Okay. Thanks.

20 Mr. Banchs, you can cross-examine.

21 MR. BANCHS: Thank you, sir.

22 CROSS-EXAMINATION

23 BY MR. BANCHS:

24 **Q** Real quick, because this is one of the last things that
25 you testified about, Colonel, you were asked--and because

1 the majority of the evidence that's in the record is, in
2 my opinion, hearsay. Okay. But it's mainly witness
3 testimony. Would you agree that there's not specifically
4 much physical evidence that you either gathered or you
5 provided to--to Colonel Durkac when you completed your
6 report?

7 **A I would say that's accurate.**

8 Q Can you recall any physical evidence that you collected?

9 **A I cannot.**

10 Q Okay. But you kind of attribute this to the fact that you
11 didn't have enough time, and that you--if you'd have--if
12 you would have had more time, you could have secured more
13 evidence?

14 **A That's correct.**

15 Q And I'm assuming some of that evidence might be physical
16 or documentary--documentary evidence. Would that be
17 accurate?

18 **A That would be accurate.**

19 Q Okay. Now, do you feel that maybe, if you would have
20 collected that evidence, that could have--there was a
21 potential you could have--that it could have exonerated,
22 maybe, Mr. Smock?

23 **A There's a potential, yes, sir.**

24 Q Okay. So why not put that in your report?

25 **A I think I did, when I said that all of my findings, there**

1 was nothing--my findings, that there was nothing that
2 I--how did I word it? That I didn't--I didn't disprove--I
3 forget how I worded it and where I did. But as I said
4 earlier is that I didn't disprove any of the allegations
5 through my investigation. So--

6 Q Well--

7 A --as I was--as I was going, somebody didn't say, "No, Joe
8 Mack (sic) didn't steal 5-gallon (sic) cans of diesel."

9 Q Well, not Joel Mack. But we're talking specifically about
10 Mr. Smock. And I'm sorry. Let me find the correct
11 paragraph that you're speaking about. You said, yes,
12 specifically regarding the allegations that--and this is
13 page--I'm sorry, folks--

14 A Thank you.

15 Q --this is page 21.

16 A All right.

17 MR. BANCHS: And, sir, I don't know what--

18 THE HEARING EXAMINER: Tell me how the
19 paragraph starts, and then I can find it.

20 MR. BANCHS: It starts with "There are--" and
21 this is the one that Captain Bedells talked about
22 earlier--"There are allegations that Mr. Joe Smock was the
23 NCOSC of a 4 person--"

24 MR. SMOCK: Should be the last page.

25 MR. BANCHS: No, it's not--well, it's not--

1 CAPTAIN BEDELLS: No, no. It's back, sir.

2 MR. BANCHS: --the last page. It's--

3 CAPTAIN BEDELLS: Back, back, back.

4 MR. BANCHS: It's after "Destruction of
5 willful throwing away of Government property."

6 THE HEARING EXAMINER: Okay.

7 THE WITNESS: Yes.

8 BY MR. BANCHS:

9 Q Okay. So specifically, you said that you could not
10 confirm the allegation that he might have thrown items
11 away or that he was authorized illegal comp time? You did
12 say that?

13 A **Correct.**

14 Q Right. But later on in your report--and this is going to
15 be in the "Recommendation" section, and it's going to be
16 2, 3, 4, 5--it's going to be the fifth paragraph in the
17 "Recommendation" section.

18 MR. BANCHS: In yours, sir, it's going to be
19 page 23.

20 THE HEARING EXAMINER: Thank you.

21 BY MR. BANCHS:

22 Q You state--

23 CAPTAIN BEDELLS: Where on page 23?

24 MR. BANCHS: It's going to be--

25 THE HEARING EXAMINER: Fifth para- --

1 MR. BANCHS: --the second paragraph on page
2 23.

3 CAPTAIN BEDELLS: Okay.

4 MR. BANCHS: It starts off, "Master Sergeant
5 Joe Smock."

6 BY MR. BANCHS:

7 Q In your--you sound pretty definitive about this, "Master
8 Sergeant Joe Smock should be arrested and charged with
9 theft and embezzlement. He should be terminated for a
10 myriad of criminal offenses to include theft of wood, OSB,
11 luan, woodworking equipment, woodworking tools, tires,
12 scrap, time and countless other items, a criminal
13 investigation would expose." So that kind of contradicts
14 what you just told me that--that you put in your report
15 that, if you would have had more time, you might have been
16 able to exonerate specifically, in this case, Mr. Smock.
17 Can you explain that?

18 A **You asked me if I had more time, would--if I could get
19 evidence would it exonerate him. There's a possibility.
20 Yes. There is a possibility that it could exonerate him.**

21 Q Right. But I didn't find--I was just curious, because you
22 had testified this in regards to Captain Bedell's
23 answer--questions. You know, if you had more time, could
24 you--but--yeah, I don't--I didn't see where you put that
25 in your report that you needed more time, per se.

1 **A** **I wasn't granted more time. I asked for more time.**

2 Q Okay. Sir, you've been in the Guard for awhile, and

3 you've been a police officer for quite awhile, as well.

4 And obviously--what is your job in the Guard, sir?

5 **A** **Right now I am the Intelligence Officer for the 46th**

6 **Military Police Command.**

7 Q Okay. Well, but--and to be a 15-6 investigator, I think

8 the burden is just that you have to be an officer above

9 the rank of Major, so you certainly fulfill that

10 requirement. But you're definitely more than qualified to

11 serve as an investigating officer due to your police

12 training, would you agree?

13 **A** **I would think so, yes.**

14 Q Okay. So how many times have you served either as an IO

15 in a military capacity or--you know, how many

16 investigations have you conducted as--

17 **A** **This is my second.**

18 Q --as a police officer?

19 **A** **Oh. As a police officer?**

20 Q Oh, I'm sorry. I'm--let me--I apologize. One question at

21 a time. So as a--as a military member, this is your

22 second investigation--

23 **A** **That's correct.**

24 Q --as an investigating officer?

25 **A** **Yes.**

1 Q How about in your--in your police officer capacity? How
2 many--I mean--

3 **A Hundreds, thousands.**

4 Q Hundreds?

5 **A Yeah.**

6 Q Being it is your second AR 15 would you say that you're
7 familiar with the regulation?

8 **A I'm familiar with it, yes.**

9 Q Okay. Real quick, just for my--for my benefit, the
10 standard of proof in this setting is merely the
11 preponderance of the evidence, right?

12 **A That's right.**

13 Q And just quick, what does that mean in lay terms, I guess?

14 **A Preponderance of the evidence just means that a reasonable
15 person would understand that this was wrong or something
16 happened.**

17 Q And that's--that's much different than in the civilian
18 world, in a criminal matter, where it's beyond--

19 **A --a reasonable--yeah.**

20 Q --beyond a reasonable doubt? And when you have a beyond a
21 reasonable doubt burden, what does that mean?

22 **A That there has to be physical evidence pointing to that
23 allegation.**

24 Q But even in a preponderance of the evidence standard, it's
25 always preferable to have physical evidence to back up

1 hearsay testimony, correct?

2 **A That is true.**

3 **Q**Okay. I don't know if you're familiar with this term--you
4 might be--but this is--this comes out of an Air Guard Reg,
5 but it's the counterpart to the 15-6. And I'm an Air
6 Guard guy, so I apologize for that.

7 **A Okay.**

8 **Q**But did you do a proof analysis; meaning did you identify
9 the evidence that you were going to need to prove or
10 disprove each allegation?

11 CAPTAIN BEDELLS: I'm going to object. It's
12 not in the 15-6, so he wasn't obligated to do it, so.

13 MR. BANCHS: Well, it is in the 15-6. It's
14 just worded differently.

15 CAPTAIN BEDELLS: Well, then let's look at how
16 it's worded in the 15-6.

17 MR. BANCHS: Well, I'll just put it into lay
18 terms.

19 CAPTAIN BEDELLS: Okay.

20 BY MR. BANCHS:

21 **Q**Did you determine what evidence you were going to need in
22 order to either prove or disprove the allegations in the
23 anonymous letter? And specifically in Mr. Smock's
24 case--forget the entire letter. Let's just talk about the
25 theft.

1 **A** But we can't discard the entire letter. There was a
2 10-page document that I was charged with trying to
3 investigate.

4 **Q** Well, roger that.

5 **A** Yeah.

6 **Q** But specifically, if you were--if you're investigating a
7 charge of theft, what evidence did you feel you needed in
8 order to prove an allegation of theft?

9 **A** I had to show that the allegations were either or true or
10 they were not true. Based on sworn statements indicating
11 that the anonymous letter, I ascertained that the--there
12 was more evidence indicating that it was true, that there
13 were people that had information regarding it. It might
14 not be the physical evidence of, hey, there was \$400 worth
15 of wood. We got this. We know that it was gone the very
16 next day. We have Suburban Nut and Bolt talk about
17 stocking the shelves one day, coming back the next day and
18 the bolts being gone. I didn't--I mean, it just--it's
19 as--it's not beyond a reasonable doubt.

20 **Q** So in taking the example you just used about a bunk of
21 wood being there one day and being gone the next, and Mr.
22 Smock being on the hook for that particular allegation,
23 for example, I mean, you know, I mean we've heard that
24 Mack and Cooper are specifically accusing Mr. Smock of
25 those kinds--

1 **A** **Yes, sir.**

2 **Q** --of illegal activities. Did you give any--any
3 consideration to, for example, the size and weight of a
4 bunk of wood and how it would be nearly impossible for one
5 single individual to physically conduct that activity?

6 **A** **I did not.**

7 **Q** And the type of transportation that he would require to
8 actually take a bunk of OSB from--from the MATES facility
9 to his house?

10 **A** **I did not.**

11 **Q** I mean, do you know how big a bunk of wood is or how much
12 it weighs, the dimensions of it?

13 **A** **I don't.**

14 **Q** You've testified already that, even though you were
15 conducting and you were serving as an IO, you were using
16 your police skills; you were wearing your police officer
17 hat throughout the investigation.

18 CAPTAIN BEDELLS: I don't think he testified
19 that he was wearing his police officer hat.

20 THE WITNESS: I definitely was not.

21 CAPTAIN BEDELLS: I think he testified--

22 MR. BANCHS: Well, he used his police officer
23 skills.

24 CAPTAIN BEDELLS: Correct.

25 BY MR. BANCHS:

1 Q Yes.

2 A **Uh-huh.**

3 Q Okay. You know, whether you're acting as an IO or whether
4 you're acting as a police officer and, you know, just
5 boiling it down, if I accuse somebody of theft, what would
6 I have to do to prove that allegation. And it's
7 rhetorical, so let me get to the point. So--do you--how
8 do you make sure that the allegation has merit? How do
9 you make sure that the correct individuals are being
10 charged? And--and how do you make sure that, for example,
11 this Agency is successful in prosecuting the right person?

12 A **Okay.**

13 CAPTAIN BEDELLS: Is this question in a
14 general sense or--

15 THE HEARING EXAMINER: I would--I would
16 suggest go specifically to the charges here and ask this
17 witness--

18 MR. BANCHS: Okay. Fair enough.

19 THE HEARING EXAMINER: I think that'll get to
20 the point. I'm not trying to cut you off, Ben. I'm
21 just--I think if you get specifically--

22 MR. BANCHS: Well, then I'll get to that
23 later.

24 You're--you're--you're absolutely right, sir.

25 BY MR. BANCHS:

1 Q Well, let--because I need to start from the beginning. I
2 was just--I don't know. I'm just trying--you know.

3 I'll tell you what. Let's start at this point in
4 time. What was your first reaction to the anonymous
5 letter, as a member of the Michigan National Guard? Did
6 you--what was your general feeling about the types of
7 allegations, the number of allegations and the number of
8 people that were being implicated?

9 A I thought it was pretty severe. Yeah. I thought
10 that--you know, I hoped that this was not happening within
11 our Guard.

12 Q Did you know any of the people that were--that were
13 being--that were involved, per se, either accused or--the
14 ones that were accusing people and the ones that were
15 accused?

16 A At the time of the anonymous letter, I didn't know who was
17 accusing anybody. So I had to try to dig that up. So
18 eventually I found people that con- --confirmed the
19 allegations within the--the letter, itself.

20 Q And out of the 50-plus individuals that were at MATES that
21 you interviewed and the people that were identified in
22 that letter, had you ever--have you--had you--had you ever
23 interacted with any of those people prior to the
24 investigation, any of those folks?

25 A I had.

1 Q Okay. Professionally or personally?

2 A **Both.**

3 Q Both. Okay. Had you ever interacted with Sergeant Smock?

4 A **I hadn't.**

5 Q Okay. Did you feel it was important to try and identify

6 the source of the anonymous letter for--either for

7 credibility or plausibility purposes?

8 A **I did try to determine that, yes.**

9 Q Okay.

10 A **And that's why I asked Sharon Witcher if she was the**

11 **author of the letter.**

12 Q And if I recall correctly, she was the only one that you

13 asked. Is there a reason for that?

14 A **As Captain Bedells indicated, did I speculate who wrote**

15 **the letter? I speculated that she wrote the letter.**

16 Q So you, when you--is this before or after you questioned

17 her?

18 A **After. This was after she provided the sworn statement I**

19 **asked the question.**

20 Q Okay. Now, Ms. Wick-ter (phonetic) had pre- --

21 A **Witch-er (phonetic).**

22 Q --Witcher had previously filed an EEO complaint, right?

23 A **That's correct.**

24 Q And you didn't feel that that might have made her--if you

25 believed--now, granted, we don't know for sure who wrote

1 the letter. But would your hunch that she was the author,
2 you don't think that that was--maybe made her a scorned
3 author, perhaps?

4 **A** Yeah. Actually, we pulled that investigation. We
5 reviewed it. It was individual allegations on her behalf
6 of her not receiving positions. So I did--I understood
7 what the--the investigation they did for her. And it
8 wasn't part of the allegation. And that's actually when I
9 indicated that I thought she was the author, because some
10 of the ways she wrote her sworn statement, some of the
11 same terminology was in there, so. I used it off of her
12 writing skills.

13 **Q** And throughout your investigation, just based on your
14 recollection when you were questioning Witcher--

15 **A** Uh-huh.

16 **Q** --and Mack and Cooper, were you ever concerned that their
17 testimony was so close that maybe they were colluding with
18 each other?

19 **A** I don't know if it was so close. I think that they
20 experienced a lot of the same things. I think that they
21 heard a lot of the same things. I think they
22 were--because they worked in such close proximity at
23 **MATES**, they knew a lot of the same things. So, yes, I
24 used that.

25 **Q** You mentioned earlier that--you mentioned earlier

1 that--that hearsay is one of the types of evidence that
2 can be considered in this kind of situation, and it's
3 basically how you developed your further questions.

4 **A Yes, sir.**

5 Q Okay. And that you--you know, if you limited yourself to
6 direct evidence, you know, you might not be able to
7 develop any leads. So when you have testimony like, it
8 was said, I heard it, so-and-so told me, those are all
9 starting points to go down, perhaps, different--

10 **A That's correct.**

11 Q --avenues, correct? But eventually you--I mean, it's
12 preferable to actually get to the source of those
13 statements, correct?

14 **A That would have been my preference. Yes, sir.**

15 Q Do you think that you got to the source of--I'll rephrase.
16 Which of the allegations that were made against Mr. Smock
17 do you think that you actually got to the source?

18 **A The theft of wood. I have sworn statements indicating**
19 **that they have first-hand knowledge or knowledge of Mr.**
20 **Smock taking the wood. The diesel, he was seen leaving**
21 **the MATES facility. We'll go back to the last paragraph**
22 **on page 21 that I--I said that Mr. Smock--or Master**
23 **Sergeant Smock was in charge of a four-person team.**
24 **Multiple individuals told me that was part of the click**
25 **part. That he was a team and that was part of the**

1 **throwing away of military property. I couldn't verify**
2 **that. I didn't have more than one person. It wasn't a**
3 **single source. If I put it in the--the report, it was**
4 **more than likely multiple sources told me the same**
5 **information.**

6 Q Right.

7 A **And it could have been collaborative information, but the**
8 **way it was presented wasn't.**

9 Q And can you explain why--and I'll get to the specifics
10 individual--the specific individuals in a second--why you
11 lend--you lend more credibility to certain witnesses
12 versus others? And I'll give you an example: In your
13 report of investigation, you talk about Major Burrell as
14 being your choice for taking the facility, if it was up to
15 you. And you mention that he was a straight shooter, you
16 know, top troop, not in those exact words. But--but
17 curiously enough Major Burrell's sworn statement kind of
18 exonerates Mr. Smock. That he says the allegations
19 against Mr. Smock are more of a running joke, that there's
20 really not proof of that. Is there a reason that you
21 didn't lend that enough credibility to, perhaps, even just
22 with the wood charge, to say it's more likely than not
23 that Mr. Smock didn't take the word, because I have
24 someone here who I believe is a top troop telling me and
25 contradicting what these other folks are saying.

1 **A** **Now, when he said it was a running joke, he was indicating**
2 **that he didn't know about the allegations. It was a**
3 **running joke that had it--he just didn't know. So that's**
4 **what the credibility that I took from that.**

5 **Q** **So that's how you interpreted it?**

6 **A** **Yes, sir.**

7 **Q** **That he just had no knowledge of it?**

8 **A** **That's correct.**

9 **Q** **Okay.**

10 **A** **That's what he wrote in his sworn statement.**

11 **Q** **Well, wouldn't no knowledge be good knowledge? I mean, if**
12 **the theft of wood was so prevailing and so well known,**
13 **wouldn't it strike you as curious that the person who you**
14 **thought was a top troop at the facility didn't know that**
15 **it was going on?**

16 **A** **I had sworn statements from the four supervisors. And not**
17 **all of them indicate that Master Sergeant Smock took the**
18 **wood.**

19 **Q** **Concerning the--the theft of fuel, was Mr. Smock the only**
20 **one that was implicated as having stole--taken fuel?**

21 **A** **No. No. He was not.**

22 **Q** **Who was the other individual?**

23 **A** **Chief Mack.**

24 **Q** **Chief Mack. Would--would you think as a--as a trained**
25 **police officer, wouldn't that be a motive for Mr. Mack to,**

1 perhaps, put the stink on Mr. Smock?

2 **A** **I would. And there was follow-up to Chief Mack's**
3 **statement. He was implicated by Sergeant Dale as she**
4 **confronted him. He went around full circle, talked with**
5 **Major Burrell. Major Burrell in his statement said that**
6 **he did the investigation and he didn't find any relevance**
7 **into Chief Mack stealing diesel.**

8 **Q** Right. But also, in your testimony and as you answered
9 Mr.--I'm sorry--Captain Bedell's questions, you testified
10 that there was no physical evidence; that you relied on
11 testimony alone for the--for the diesel, the--and--for the
12 diesel theft. And your statements were based on Cooper
13 and Mack. And Cooper and Mack did not claim direct
14 knowledge of the diesel theft. They said that they
15 received that information from Troy Herblet and Colonel
16 Golnick.

17 **A** **Was it Sergeant Rock?**

18 **Q** No. You testified earlier--

19 CAPTAIN BEDELLS: You testified Herblet and
20 Golnick.

21 THE WITNESS: Yeah. Yeah. Yeah.

22 CAPTAIN BEDELLS: But if you're--

23 THE WITNESS: Yeah. I'm--

24 CAPTAIN BEDELLS: --if you're second--

25 THE WITNESS: Sergeant Rock was in there also.

1 There was a portion of it that Sergeant Rock knew also
2 that he actually witnessed it. He's the first-hand
3 witness, and I did not talk to him.

4 BY MR. BANCHS:

5 Q Right. Now, we have--and I'll show you--well, you know
6 what. I'll show your--now, so Captain Bedells doesn't
7 jump on me.

8 CAPTAIN BEDELLS: I'm too tired to jump on
9 you. It's been a long day.

10 BY MR. BANCHS:

11 Q And I know you haven't seen this, so. We have a statement
12 from Colonel Golnick here. And this is going to be
13 Tab--crap--

14 CAPTAIN BEDELLS: Is this the Smock File, Case
15 File?

16 MR. BANCHS: It's Tab E. Yes.

17 CAPTAIN BEDELLS: Here, why don't you--

18 MR. BANCHS: Smock File, Tab E.

19 THE WITNESS: Do you want yours?

20 MR. BANCHS: Yes, sir. You can hand me that.

21 CAPTAIN BEDELLS: What tab is--

22 MR. BANCHS: Tab E. And it's going to be--

23 THE WITNESS: It's a single page.

24 CAPTAIN BEDELLS: I got it.

25 MR. BANCHS: It's not numbered.

1 CAPTAIN BEDELLS: I got it. Got it. I think
2 he has it.

3 MR. BANCHS: You got it? Okay.

4 BY MR. BANCHS:

5 Q There's a statement from Colonel Golnick in there that he
6 provided--

7 A That's the wrong one. There you go.

8 Q Yeah. Reference charge 2-A to the top.

9 A Dated 20 February 2014?

10 Q Yes, sir.

11 A Colonel Golnick provided a statement in support of Mr.
12 Smock's reply. And he says that--that the allegations are
13 totally untrue. "Neither myself nor Master Sergeant
14 Herblet ever saw Joe Smock take any drums of anything out
15 of the front gate the whole time I've worked there. I
16 find it hard to believe that people can just make stuff
17 up." Well, that's his opinion. And you also testified
18 that, in your interview with Sergeant Herblet, he did not
19 recall Master Sergeant Smock taking the wood--I mean the
20 fuel.

21 A He didn't recall where he took it.

22 Q Okay. He didn't recall where--but--so he just saw him
23 driving with fuel?

24 A Correct.

25 Q And he just assumed that he stole it?

1 **A** **I don't--I'm not going to speculate.**

2 Q Okay. So he just saw--he just saw Joe--

3 **A** **Uh-huh.**

4 Q --taking fuel somewhere? Okay. Real quick, I wanted to

5 touch on something, sir. You said that, since you

6 completed your report of investigation and you briefed

7 Colonel Durkac, that you had not had any further contact

8 with anyone else about this until today?

9 **A** **I have not done anything with this investigation.**

10 Q Okay. So after you briefed Colonel Durkac initially at

11 the end of January, you had no further contact with him?

12 **A** **I--no--well, with Colonel Durkac?**

13 Q Yes, sir.

14 **A** **Absolutely I've had contact with him.**

15 Q No. Regarding this.

16 **A** **No.**

17 Q No. And what about Colonel Meyers?

18 **A** **I think at a golf outing two weeks ago I talked to him and**

19 **said, "Hey, are we going to do the trial?"**

20 Q But before February 12 when he issued his proposed letter

21 of termination for Mr. Smock--

22 **A** **I didn't see it.**

23 Q --were you contacted by either one in regards to the

24 investigation with further questions or anything like

25 that?

1 **A** **No, sir.**

2 Q Okay. Thank you, very much.

3 CAPTAIN BEDELLS: Well, hold on a second.

4 Didn't we have testimony that he actually briefed Colonel
5 Doolittle after you concluded the investigation?

6 THE WITNESS: After 24. I didn't come of
7 fort- --orders until the 31st of January.

8 CAPTAIN BEDELLS: Okay. I didn't--I guess I
9 didn't understand. I just want to make clear that you
10 indicated you did brief Colonel Doolittle after the--

11 THE WITNESS: Durkac.

12 MR. BANCHS: Colonel Durkac.

13 CAPTAIN BEDELLS: --Durkac--sorry--after the
14 investigation was closed, correct?

15 THE WITNESS: Correct.

16 CAPTAIN BEDELLS: Okay. Sorry.

17 BY MR. BANCHS:

18 Q But that was--

19 CAPTAIN BEDELLS: Sorry to interrupt. I
20 misunderstood the question, then, so.

21 MR. BANCHS: Well, I'll rephrase.

22 BY MR. BANCHS:

23 Q So when did you come off order--well, when--do you
24 remember when you briefed Colonel Durkac?

25 **A** **I don't remember the day, but it was before the 31st of**

1 **January.**

2 Q Okay. So between the 31st of January and February 28th,
3 did you speak with Colonel Meyers or Colonel Durkac at all
4 about this investigation?

5 **A I don't believe so.**

6 Q Okay. Thank you. Turning your attention to--were you
7 troubled at all by the, I hate to say fact, but were you
8 troubled at all that--that witnesses were--were speaking
9 to each other about your--your questions and your
10 interviews before they were coming to be interviewed by
11 you?

12 **A I was.**

13 Q Okay. Did you--and how were you troubled by it?

14 **A I would have liked to have been able to ask the questions**
15 **before they had it, so they could formulate an answer. I**
16 **would have liked their first-hand testimony, say, hey,**
17 **this has--this is what happened, how it happened instead**
18 **of preparing an answer in advance.**

19 Q But it gave you no pause that they were--they were--they
20 were in cahoots, per se, that they were colluding with
21 each other?

22 **A It wasn't in collusion, as in they were implicating Master**
23 **Sergeant Smock. They weren't coming to me and saying,**
24 **"Yep, I saw him take the diesel," "I saw him take wood";**
25 **on the converse it was "I didn't see anything," "I don't**

1 **know anything." "I didn't hear anything."**

2 Q Very well. Let's see. Let's to this the right way.

3 MR. BANCHS: What the--ma'am?

4 LIEUTENANT COLONEL NIEDERGALL: Yes?

5 MR. BANCHS: Joel Mack, his--his interview?

6 LIEUTENANT COLONEL NIEDERGALL: Joel Mack's
7 interview is B-4.

8 MR. BANCHS: B-4.

9 BY MR. BANCHS:

10 Q Sir, if we turn to B-4, and it's going to be page 15 at
11 the bottom. We're going to start there real quick.

12 **A Roger.**

13 Q And your question to him is you had some issues. You
14 wanted to talk about medical issues. And that referenced
15 something earlier at the beginning of the interview where
16 he alleged that he knew of two people that were defrauding
17 the Government, and you said we'll talk about it later.
18 His reply to you was, "I want to answer questions that you
19 asked the other guys." And he mentions Thad Cooper. And
20 I won't read the whole thing. But if we turn to page 17,
21 you can read it, sir, if you'd like. But I was just
22 trying--you know, in reply--in response to a question that
23 you asked him, he replies that he wants to talk about
24 other things that you asked other witnesses.

25 **A Uh-huh.**

1 Q Okay. On page 17, your assistant in this investigation,
2 Lieutenant Emery--and you read that--highlighted--and I'll
3 just read it for the re- --"I want to jump in for a second
4 if I could," and he goes on to relate to Mr. Mack that
5 he's--that it troubles him, as you see it, "That troubles
6 me that there's conversations going on."

7 **A Correct.**

8 Q That--the fact that your assistant investigator was
9 troubled by that--and you--

10 **A Let's hold--he's not an assistant investigator.**

11 Q Okay. Well, I don't know what his role was, sir.

12 **A Yeah. He was an administrative assistant.**

13 Q Okay. All right. But he was asking questions, as well?

14 **A He was the one that was having people sign the Privacy Act
15 statement. That's why he made that statement.**

16 Q Right. But he does ask questions, like, further on down
17 the page he says, "In your opinion, does it seem like the
18 rules for the personnel stuff are being followed like
19 they're supposed to?" So he was actively asking questions
20 of the witnesses.

21 **A Of the Privacy Act.**

22 Q No, sir. This is not just related to the Privacy Act. He
23 asked Mr. Mack here, just three questions down, "In your
24 opinion, does it seem like the rules for the personnel
25 stuff are being followed like they're supposed to?" And

1 Mr. Mack answers, "I'll blame some of that on HRO." So he
2 was asking questions about the active--the active
3 investigation.

4 **A Okay. You'll hear through the audio, that if he asked a**
5 **question following this actual interview, that it was**
6 **directed only towards the Privacy Act statements.**

7 **Q** Okay. It's not in the transcript, and I hate to bring it
8 up because we would have to listen to it. But if you
9 could confirm this, at the end of this interview, Mr. Mack
10 tells you, "If you turn off that tape, I'll tell you a lot
11 more." Do you recall that?

12 **A I do recall that.**

13 **Q** Did you do that?

14 **A I did.**

15 **Q** Did y'all speak more?

16 **A We did.**

17 **Q** And can you tell us what that conversation was about?

18 **A There was--he made a lot of allegations, a lot of the same**
19 **allegations that were found in his sworn statement. He**
20 **said he had a lot of information. And then, not only did**
21 **he make those allegations, but he went back to MATES**
22 **following his interview with me--let me start with Chief**
23 **Mack came in, and he was very, very, very nervous, I mean,**
24 **very nervous. If you listen to the audio, you can--you**
25 **can clearly hear that he was speaking rapidly, going very**

1 fast. He was bouncing around from topic to topic. I was
2 even having a hard time keeping him on course.

3 Afterwards, he came in and he made allegations about
4 persons stealing materials from--from MATES. And that was
5 how--that was one of the leads that I used to go into the
6 wood, copper, diesel.

7 Q Okay.

8 A Okay.

9 Q The reason that I want to highlight Mr. Mack and Mr.
10 Cooper is because it's--you know, you testified earlier
11 and--well, Captain Bedells has made it a point to
12 highlight the fact that some people were intimidated. And
13 the reason that their interview might have been different
14 than their sworn statement is because of the intimidation
15 factor. Okay.

16 But just recalling the record, that--that--that fear
17 didn't apply to everybody because, if I remember
18 correctly--and I know that I'm kind of leading you
19 here--but folks like Sharon Witcher's interview was
20 almost identical reflection of what her sworn statement
21 was. So some folks were not necessarily intimidated
22 during the interview.

23 A That's correct.

24 Q Would you agree with that?

25 A I would agree.

1 Q So the reason that I want to highlight Master Sergeant
2 Cooper and Mr. Mack is because their verbal testimony--or
3 their verbal interview, because it wasn't testimony, and
4 their written statement was considerably different.

5 A **Yes, sir.**

6 Q Did that not bring you some concern?

7 A **It brought me a lot of concern.**

8 Q Okay. And what did--how did you deal with that issue or
9 concern?

10 A **Usually asked more specific questions. Like, Master**
11 **Sergeant Cooper, when he left, he did not disclose a lot**
12 **of information after the first interview. When he came**
13 **back for the second interview, he had more information.**
14 **And he--he made a comment similar to, "Hey, I've just got**
15 **to do the right thing."**

16 Q One of the allegations that Mr. Mack made, and several
17 people made, and this is part of previous testimony, is
18 that Mr. Smock ran a construction business on the side.
19 Right.

20 A **(Witness shakes head affirmatively)**

21 Q But other people were running businesses on the side, as
22 well.

23 A **Yes, sir.**

24 Q And some that were construction-related, like Mr. Mack?

25 A **Yes.**

1 Q And he had keys to the facility just like Mr. Smock did?

2 A **I didn't ask him that. I don't know if he had the same**
3 **keys.**

4 Q Well, he--I mean, we can find it if you want, but I mean
5 it's--it was--it was--

6 CAPTAIN BEDELLS: Well, why--

7 THE WITNESS: Maybe he did. Okay.

8 CAPTAIN BEDELLS: I mean, you can't testify,
9 Ben. But we can ask Mack, he's next--

10 MR. BANCHS: Okay. Sure.

11 CAPTAIN BEDELLS: --did you have keys?

12 BY MR. BANCHS:

13 Q Well, he had access to the facility--

14 A **Yes, sir.**

15 Q --in the same manner that Mr. Smock did?

16 A **I don't know. In some of the allegations, it said Master**
17 **Sergeant Smock had keys to everything and within the**
18 **facility.**

19 Q Okay. But--but Mr. Mack was running a side business; it
20 was construction related.

21 A **Yes, sir.**

22 Q So wasn't it plausible that he could have also had a
23 motive to steal wood?

24 A **It's plausible. Yes.**

25 Q And did you explore that possibility?

1 **A** **I did not.**

2 Q Okay.

3 **A** **I didn't have anybody come up and say Mr. Mack was**
4 **stealing wood.**

5 Q Okay. Did you, at any time--and I know you were time
6 constrained. But--well, you've already testified that you
7 did not confront Master Sergeant Smock about the
8 allegations against him.

9 **A** **I did not.**

10 Q And that was because you didn't have time?

11 **A** **I didn't have time.**

12 Q But when you--you did know that people were alleging,
13 several witnesses were alleging that he had--that he had
14 stolen wood to construct things at his house early
15 November, correct?

16 **A** **Uh-huh.**

17 Q In fact--well, actually, in--in October, because you said
18 that, after you turned off the tape with Mr. Mack, he went
19 ahead and gave you all this extra information that wasn't
20 in his--in his interview?

21 **A** **That's correct.**

22 Q Okay. So between October and January when you're in--when
23 your investigation ended, did you not maybe find that it
24 might have been important to actually ask Mr. Smock if you
25 could go to his house?

1 **A** **I had him on the list for a second interview. Yes, I did.**

2 Q Okay. But not just an interview, but just--

3 **A** **And a sworn statement.**

4 Q Well, not--not even a sworn statement, sir, but actually

5 traveling to his house, if we would have volunteered. I

6 mean, obviously, you don't have the, you know, warrant

7 powers or anything, right?

8 **A** **Right.**

9 Q But if he would have volunteered, you know, to go see his

10 house, you know, to go see where--if he did steal two

11 55-gallon drums of fuel, where he could actually store 110

12 gallons of fuel, you know, maybe just to observe the dates

13 on the boards on the OSB boards that were inside his

14 garage. Did you--you know, that would have been direct

15 evidence. Did you--did you feel the need to do that or--

16 **A** **No, I did not.**

17 Q Okay. Why not?

18 **A** **I was going to give him a second interview. I was going**

19 **to ask him the same questions, more specifically, "Hey,**

20 **did you take this, did you not take this?" I would have**

21 **asked for a sworn statement. I never got that**

22 **opportunity.**

23 Q But did you not get it because he refused to give it to

24 you or because you just--

25 **A** **No.**

1 Q --didn't get the chance?

2 A He didn't--he didn't refuse to do anything. He--he was
3 cordial. He came in when his interview was there. He had
4 you on the phone during the interview.

5 Q Yeah, I was. Absolutely.

6 A Absolutely.

7 Q So would you--and I hate to put words in your mouth--but
8 would you say that your interview--your investigative
9 process concerning the theft of wood and diesel, per se,
10 was not complete when it comes to Mr. Smock?

11 A I wouldn't say that. I wasn't looking for more than
12 reasonable suspicion.

13 Q Okay.

14 A I wasn't looking for more than--I wasn't--it wasn't a
15 criminal investigation. It was saying were the
16 allegations in the anonymous letter of misconduct at
17 MATES, is there viability to them. And I--based on what I
18 received from multiple sources, I said yes.

19 Q If this would have been a criminal investigation, did you
20 have enough to charge Mr. Smock with?

21 CAPTAIN BEDELLS: I'll object. It's--

22 BY MR. BANCHS:

23 Q Understanding that it's not--

24 CAPTAIN BEDELLS: I'm objecting. It's a
25 hypothetical question. And it's not--it's not a criminal

1 investigation, so.

2 MR. BANCHS: Well, we--

3 CAPTAIN BEDELLS: So I don't know what
4 it--what it goes to, so.

5 THE HEARING EXAMINER: If you could--Ben, if
6 you can go to--if you can go to the--each of the charges
7 specifically and ask questions that would demonstrate the
8 thought process Colonel Doolittle went through, and
9 specifically what evidence that he was looking at. He
10 doesn't--I realize he doesn't know the charges at this
11 point, because he didn't see the proposal. But I think,
12 if you tell him the charge, Colonel Doolittle can go to
13 his report and identify specifically the evidence that he
14 found.

15 CAPTAIN BEDELLS: Well, I think I did that in
16 part, sir--

17 THE HEARING EXAMINER: You did.

18 CAPTAIN BEDELLS: --with respect to the
19 tires--

20 THE HEARING EXAMINER: Yep.

21 CAPTAIN BEDELLS: --the wood and the
22 television.

23 MR. BANCHS: Well--

24 CAPTAIN BEDELLS: I think I left a couple
25 things out there, so.

1 BY MR. BANCHS:

2 Q Let's start from the top. Based on your report of
3 investigation, sir, Colonel Meyers issued a termination
4 letter to Mr. Smock for one, two, three, four, five, six,
5 seven, eight, nine different offenses. The first one that
6 he removed a flat screen TV from the MATES. And I think
7 you did testify some that that was based on Master
8 Sergeant Fouts' statement.

9 A **That's correct.**

10 Q That she witnessed--one day this summer she witnessed
11 Lieutenant Colonel Golnick and Master Sergeant Joe Smock
12 carry out a big flat--a big flat screen TV which they
13 subsequently loaded into a vehicle that she assumed
14 belonged to Lieutenant Colonel Golnick.

15 A **I didn't put the "assumed Lieutenant Colonel Golnick."
16 I--as I recall it right now, they put it in a vehicle.**

17 Q Okay.

18 A **I don't know whose vehicle it was.**

19 Q All right. That--and that was really the bulk of her
20 testimony, other than--than--and you asked her in an
21 interview, you know, if--that there was some record of
22 that TV being ordered. And she said it was an MWR form,
23 but she didn't really--she couldn't recall.

24 A **We tried to chase that down, because that was a piece of
25 tangible--we can show that there was a record of--of the**

1 purchase. I went through multiple sources trying to find
2 that--where that came from. I contacted the MWR folks. I
3 contacted US PF&O to see if there was a record of that. I
4 didn't find anything, sir.

5 Q So there was no record of a TV being missing--of a TV
6 missing?

7 A Other than somebody's statement saying that it was
8 designated for the fitness center. And that they saw
9 Master Sergeant Smock and Colonel Golnick taking it out.

10 Q But this is--this is Master Sergeant Fouts' statement?

11 A That's correct.

12 Q And the MWR form she referenced you could not locate?

13 A That's correct.

14 Q Okay.

15 A I did not find it.

16 Q Couldn't it have been that he was just carrying a TV out
17 to the--to the car?

18 A It could, sir. I don't know why somebody would bring a TV
19 to a facility only to carry it out. I--that was why I put
20 it in the report.

21 Q If you look at Tab--that same tab that you're in, sir, if
22 you could go back--

23 A Okay.

24 Q --this way. Keep going.

25 A Mr. Palmer?

1 Q No, sir. It's going to be the VISA receipt.

2 A **All right.**

3 **(Horns sound in the background)**

4 CAPTAIN BEDELLS: Do we leave, sir?

5 THE WITNESS: I'll get there.

6 MR. SMOCK: It's all the way in the front.

7 It's all the way in the front.

8 BY MR. BANCHS:

9 Q Yes, sir. It will be--

10 A **Thank you.**

11 Q --all the way at that tab. There you go.

12 A **Thank you. That would have been a lot of flipping the**
13 **pages.**

14 Q I'm sorry. I didn't know how far back you were. So--

15 A **I was quite a ways.**

16 Q Yeah. Colonel Golnick--Colonel Golnick provided his
17 credit card receipt and a delivery--a freight bill of
18 laden, for a lack of a better word, showing that he
19 ordered a TV in the summer of 2012, and had it delivered
20 to the MATES facility. So there is a plausible reason why
21 he--

22 A **Okay.**

23 Q --would have been carrying or he would have been--being
24 helped carrying a TV out of the MATES facility. Would
25 this have helped your investigation at all?

1 **A** **I'm not sure if there's a correlation. Again, that TV was**
2 **said to have been subject to go into the fitness room.**

3 **Q** But not finding any evidence that a TV was actually
4 missing, because you said that you even went all the way
5 up to the PFO and there was no record of a TV--

6 **A** **I did.**

7 **Q** --correct?

8 **A** **I tried to find that information regarding the television.**

9 **Q** Okay. But it--in this case, seeing this now, you know, is
10 there a plausible explanation for it, perhaps, the fact
11 that maybe Master Sergeant Fouts had her summers wrong,
12 especially since--

13 **A** **Well, you'll--you'll have to ask her that.**

14 **Q** Okay. We will.

15 **A** **Because it was specific in her testimony "this summer."**
16 **"This summer," and we were in September or October.**

17 **Q** But as the investigating officer, had you had this, would
18 it--would it have given you an alternate theory to the
19 "crime"?

20 **A** **It would have. But I--now, I will say that, if the TV had**
21 **been in the MATES facility for a full year, I think that**
22 **she would have--she would have known--Master Sergeant**
23 **Fouts would have know that it was there. So I can**
24 **speculate both sides. I can weigh both sides. And I**
25 **would say, yeah, this is evidence saying that there was a**

1 **TV that was delivered in 2012. There's physical evidence**
2 **to say that.**

3 Q There's almost 70 people that work at the MATES facility.
4 Did you find it strange that Master Sergeant Fouts was the
5 only one that saw these two individuals carrying out a big
6 screen TV?

7 A **To tell you the truth, I didn't ask anybody else on that**
8 **allegation. That was the--there were so many allegations**
9 **in there, that that was just another one that would have**
10 **had to have been investigated.**

11 Q As an investigator, you're always interested in the who,
12 what, when and where.

13 A **Absolutely.**

14 Q Understanding that she gave you just a last summer, you
15 know, did you--why did you not ask her "Can you give me a
16 specific date?"

17 A **I think I asked for specific dates in just about**
18 **everything I did, and she could not.**

19 Q She could not recall a specific date. Two individuals
20 denied--well, two individuals that you found to be
21 credible, Major Brian Burrell and Master Sergeant Troy
22 Herblet, answered in the negative as to--and I'll just
23 par- --if you want to go to the record, we can--but Major
24 Burrell said, "I don't know or have any information on
25 this," concerning the theft of a television, and Troy

1 Herblet say, in his sworn statement, that he denied
2 knowledge of the existence or an alleged theft of a
3 television when he replied. Again, just wondering why you
4 lent Master Sergeant Fouts sole, you know, witnessing this
5 TV being taken any more creditability than you did these
6 other two individuals.

7 **A** **Without looking at the--I think it was one of the**
8 **questions on the sworn statement. And I think I provided**
9 **that to you.**

10 **Q** Yes, sir.

11 **A** **So I believe that it was on there. And I don't know how**
12 **everybody answered that question. I can't give you that**
13 **everybody answered negative or everybody answered**
14 **positive. But I--without looking at them, I can't do**
15 **that.**

16 **Q** All right. Now, moving on to the wood.

17 **A** **Yes, sir.**

18 **Q** And these were--even though the Agency split them up into
19 separate charges--

20 THE HEARING EXAMINER: Can I ask a question
21 just real quick?

22 MR. BANCHS: Sure.

23 THE HEARING EXAMINER: In summary, what was
24 your conclusion regarding Sergeant Fouts' statement
25 regarding the TV? What was your conclusion as the

1 investigator?

2 THE WITNESS: That it was just another
3 allegation. It was out there. She observed two
4 individuals taking it.

5 THE HEARING EXAMINER: And that's consistent
6 with your--with your statement or with the actual report.

7 Okay. Go ahead. Sorry, Ben.

8 MR. BANCHS: No, no problem.

9 BY MR. BANCHS:

10 Q Moving on to the wood. And like, again, they split this
11 up into four--three different charges of, you know,
12 stealing OSB, stealing wood and stealing sheets of luan,
13 but we kind of combined it all because it's wood.

14 A I had to look up some of it. I didn't know what OSB was,
15 and I didn't know what luan was. I--so I didn't know that
16 wood--it was all wood. So that's--

17 Q Sure. But in our reply concerning the alleged theft of
18 these wood products, we combined our rebuttal into just
19 one answer. I was just letting you know that.

20 A Okay.

21 Q Yeah.

22 A I was going to say I didn't read your reply, so I don't
23 know.

24 Q Okay. Now, based on our review of the 15-6, and I think
25 you will agree with this, the only person that claimed any

1 direct knowledge that Mr. Smock--direct knowledge, now--of
2 Mr. Smock removing wood products was Master Sergeant Thad
3 Cooper?

4 **A I want to say that Chief Mack also--oh. You said direct**
5 **knowledge. Okay.**

6 Q Well, as far as the record that we have here in front of
7 us that was admitted into evidence, the only person that
8 alleged direct knowledge was Master Sergeant Cooper.
9 Does--does that--

10 **A I know he did. I don't know if he is the only one that**
11 **said that.**

12 Q Okay.

13 **A I don't know.**

14 Q Another individual Todd Whitcher--

15 **A Whitcher.**

16 Q --Whitcher alleged to have heard accusations regarding Mr.
17 Smock. Do you recall that? Would it have made a
18 difference to you to know that--

19 **A Well, I know that they work side-by-side, so there--**

20 Q Yes. They work side-by-side.

21 **A --there's a possibility.**

22 Q Okay. Of course a handful of other witnesses alleged to
23 have heard of large quantities of wood being unaccounted
24 for, and some allegedly claim to have seen the wood
25 stacked up one day and missing the next, which we talked

1 about earlier.

2 **A Correct.**

3 Q However, no one, other than Cooper, that we saw, claimed
4 any direct knowledge. Again--I mean, I know that hearsay
5 is acceptable in these type of proceedings, but why not
6 inspect further?

7 **A It was--it was a conglomeration of individuals indicating**
8 **that it was gone. It was one person that actually said,**
9 **"Yeah, I have direct knowledge." So I had preponderance**
10 **of the evidence right there. I had hearsay, and I had**
11 **somebody confirming the hearsay.**

12 Q Even though Master Sergeant Cooper claimed direct
13 knowledge of wood being taken, he never provided any
14 actual direct evidence of it, did he?

15 **A Other than the tip-up.**

16 Q What about the tip-up?

17 **A That he bought one from Mr. Smock.**

18 Q The one that he purchased?

19 **A Yeah.**

20 Q But was he trying to allege that he bought a tip-up that
21 was made with stolen wood?

22 **A He was.**

23 Q Okay. Well, wouldn't that make him complacent in the
24 theft of wood?

25 **A Don't know.**

1 Q Did he say that--did he buy it for evidence?

2 A No. I think he bought it to use it.

3 Q Okay. And, again, as we've said already, that--

4 A I'm not here to investigate Master Sergeant Cooper. I was
5 doing allegations of theft. Okay. I could have
6 taken--there were a lot of different areas that we could
7 have gone to, a lot. I mean, the--the 10 pages of written
8 documentation I'm certain would have been 20 after--after
9 this. It filtered from MATES to Camp Graying. I think
10 there were additional 15-6's conducted on that based on
11 some of the information, the hearsay and the testimony
12 from this investigation. So I could have gone a lot of
13 different directions. I didn't have time. That's it.

14 Q Okay. And that's all fair and good. But it would have
15 been nice for you to put that in the report that you
16 needed more time, because the way your report reads is
17 that unequivocally Mr. Smock committed these offenses.
18 That's--

19 A Did Colonel Durkac not say that in his that he--he set a
20 time. He drew a line in the sand. That's why I couldn't
21 get all the sworn statements from the people that I wanted
22 to. The second interviews, I didn't have time for that.

23 Q I don't recall Colonel Durkac saying that. But--

24 A Okay. Well, that's--that's not hearsay. That's direct
25 from him to me.

1 Q Okay. So in other words, if I hear you correctly, your
2 investigation was not complete?

3 CAPTAIN BEDELLS: I don't think he--

4 THE WITNESS: So--

5 CAPTAIN BEDELLS: --I'm going to object to
6 that characterization. That's not what he said. He
7 didn't say it was incomplete. He said it ended, and he
8 would like to have gotten a second round of sworn
9 statements. But I don't think he testified it's
10 incomplete.

11 THE WITNESS: Based on the information that I
12 received, my--I stopped the investigation there.

13 BY MR. BANCHS:

14 Q You were--you were forced--you reached a stopping point?

15 A **That's correct.**

16 Q Ideally, you would have continued, though?

17 A **Absolutely.**

18 Q Okay.

19 A **That--and that's from 19 years of police background. I
20 would have kept going.**

21 Q Okay. Well, I mean, I don't know how you want me to
22 characterize this, but--

23 A **But I wasn't going for criminal evidence. I was going for
24 a 15-6 investigation.**

25 Q How--

1 **A** **Did the--did the allegations of misconduct, were they**
2 **valid or were they not valid. And, in my testimony, I**
3 **said they were valid.**

4 **Q** I'll rephrase. You would have felt more comfortable with
5 your conclusions had you secured more evidence?

6 **A** **Sure.**

7 **Q** Okay.

8 **A** **Yes. That's a--that's an accurate statement.**

9 **Q** Again, concerning Master Sergeant Cooper, Mr. Mack, the
10 differences in their testimony--

11 **A** **I think Master Sergeant Fouts talks about a bar that was**
12 **built for one of the units using wood from MATES.**
13 **Sergeant Barrick talks about wood that was used to build**
14 **an ice shanty. So it wasn't just those two.**

15 THE HEARING EXAMINER: Can I jump in here?
16 Ben, again, don't mean to interrupt you.

17 I've got a line of questioning that I would
18 like to ask. And it may be somewhat along the lines that
19 you're asking. I certainly want you to be able to ask
20 questions you need to ask. But can I--

21 MR. BANCHS: Well, you know what. I--

22 THE HEARING EXAMINER: What I'd like to do is
23 ask some questions.

24 MR. BANCHS: At this--

25 THE HEARING EXAMINER: And if it answers your

1 questions--I have specific interest in obviously the first
2 thing that I need to determine here, and is that did these
3 things occur.

4 MR. BANCHS: At this point, sir, I'm actually
5 satisfied with what I've gotten from Colonel Doolittle
6 right now--

7 THE HEARING EXAMINER: Okay.

8 MR. BANCHS: --because--I'll just leave it at
9 that.

10 So I'll--you know, I'll--

11 THE HEARING EXAMINER: I do have some
12 questions. And I'll allow both of you after I get done.

13 MR. BANCHS: I'll reserve my right to
14 re-question.

15 THE HEARING EXAMINER: Okay. Okay. Okay.

16 EXAMINATION

17 BY THE HEARING EXAMINER:

18 Q So, specifically--and I'm going to include--and we can
19 split them apart if we need to--but I'm going to include
20 OSB, wood and luan in this. Mr. Smock was charged with
21 stealing those, wrongful removal of those products. From
22 your report, specifically, what evidence do you have in
23 your report--and I realize you didn't--you didn't write
24 the proposal. It was--it was somebody else who
25 wrote--Colonel Meyers who wrote the proposal. But from

1 your report, and it's in front of you so you can refer to
2 it if you want, where can you point in that report
3 specifically where that charge is supported?

4 **A How did I get to it or where does it say it in the report?**

5 Q Where is it--where is it in the 15-6? Because Colonel
6 Meyers had the 15-6. That's what he used to generate his
7 charges.

8 **A It would have been based on the sworn statements.**

9 Q Okay. What specifically? What--what sworn statement
10 specifically--

11 **A I'm sorry. I'm not tracking what you're saying.**

12 CAPTAIN BEDELLS: Do you want him, sir, to
13 review the sworn statements, because if that's what you're
14 asking--I didn't ask him to review the sworn statements,
15 but I did cover all these things. So if you're asking him
16 to review the sworn statements, we might want to give him
17 some time to find--

18 BY THE HEARING EXAMINER:

19 Q I'm just trying to get to--and, again, Colonel Meyers
20 wrote the charges. So he took what you wrote and wrote
21 the charges. So I'm not going to ask you to directly
22 support the charges. But if I tell you what the charge is
23 that was brought, I assume you can go into your report and
24 say "Here is where I found that." "Here's where I found
25 that."

1 **A** **Okay.**

2 **Q** "Here's where--"

3 **A** **I think I understand.**

4 **Q** "Here's what I heard--" "Here's what somebody said they
5 heard" versus "Here's what somebody said they saw or are
6 directly aware of or participated in." That's--that's
7 what I'm trying to get to.

8 **A** **Okay.**

9 **Q** And maybe--and I'm going to ask that about each one of
10 these.

11 **A** **Okay.**

12 THE HEARING EXAMINER: So maybe do we want to
13 take a--like a dinner break and give you some time to do
14 that and come back? And I'm hoping, if you have that time
15 to do that, we can just run through these. And then if
16 you--either one of you have further questions beyond
17 that--that's what I--what's what I need to know.

18 CAPTAIN BEDELLS: Well, sir, I thought--yeah,
19 that sounds a great--like a great plan. I thought I asked
20 him, like, for instance, you're talking about wood,
21 there's theft of wood, you can go right to page 18 and
22 read about theft of wood. There's theft of diesel--we
23 touched upon these things. And I guess the question I'd
24 have, for his--for his benefit is, he touched on them with
25 me. He said, for instance, that when it came to the

1 gazebo, it was Chief Mack who provided him testimony about
2 the gazebo, and so forth, I believe. Correct? So--so I
3 can direct him to take a look at that, and that's--and you
4 can scrawl--and you can use my copy or you can scrawl on
5 the lines. Do you understand what the Colonel Dawkins
6 wants?

7 THE WITNESS: It's probably be easier to look
8 at the sworn statements, highlight the sworn statements
9 and say this is where I got that information. Would that
10 be easier?

11 CAPTAIN BEDELLS: I don't know what's easier.
12 I don't think that's going to be quicker, but we can do
13 whatever, sir.

14 But I understand what you're saying.

15 THE HEARING EXAMINER: Here's what I'm--here's
16 my point, so if I go to the theft of wood paragraph, your
17 report says, "During the investigation it was determined
18 there was validity to the allegation that wood, luan and
19 OSB and other wood material were stolen from the MATES.
20 The persons who made statement indicate Smock is
21 responsible for much of the theft." That's a conclusion
22 and a summation that they made statements. I'm really
23 interested in specifically--and what I'm really interested
24 in is did they say they heard somebody say that or are
25 they directly aware that that occurred.

1 THE WITNESS: We'll look at the sworn
2 statements. That's how I--I came from it. So if you give
3 us a recess until--or for dinner, I'll highlight those and
4 give you that answer when you come back.

5 THE HEARING EXAMINER: Do you think that's not
6 efficient or what's your concern?

7 CAPTAIN BEDELLS: That's not my--I have no
8 concerns, sir. I apologize. I thought I covered that,
9 because I asked him about the tip-ups. I asked him about
10 the gazebo. I asked him about the two-story shed. So I
11 asked him about ice shanties. But I--if I didn't cover
12 it, I thought I did cover it, at least the people who--who
13 provided him--provided him some form of testimony. Now,
14 Mr. Banchs wanted him to look at the--at the sworn
15 statements. So, if that's what you're requiring, I think
16 that's a good idea. We can go right to the sworn
17 statements. But I think he's at least testified as to who
18 gave him the information on the--

19 THE HEARING EXAMINER: Yeah. I don't--I don't
20 have any question about that. And obviously those--

21 CAPTAIN BEDELLS: Okay. Okay.

22 THE HEARING EXAMINER: --those witnesses are
23 going to come before us later, so we certainly can ask
24 them directly.

25 CAPTAIN BEDELLS: Right.

1 THE HEARING EXAMINER: But while we have
2 Colonel Doolittle, I'm interested in the direct connection
3 between whatever evidence he used--I'd like to see the
4 specific item-by-item piece of evidence you used to draw
5 the conclusions that you drew, which later became part of
6 a final investigation that became part of the allegations
7 and the charges--

8 THE WITNESS: Okay.

9 THE HEARING EXAMINER: --and the adverse
10 action case. Does that--does that make--do you understand
11 what I'm asking?

12 THE WITNESS: I do. I believe I do.

13 THE HEARING EXAMINER: And I don't think it'll
14 take that long. I mean, I--let's say you--you know, that
15 you've got--there's five things specifically regarding the
16 one charge, five statements. And just point to them and
17 say--and then we can look at them and see what exactly
18 somebody said, and then that'll be on the record.

19 THE WITNESS: Roger.

20 CAPTAIN BEDELLS: Okay.

21 THE HEARING EXAMINER: All right. So
22 let's--what time is it?

23 MR. SMOCK: 5:16.

24 THE HEARING EXAMINER: How long do you think
25 it'll take you to--

1 THE WITNESS: Half an hour.

2 THE HEARING EXAMINER: Does anybody want to
3 eat? I mean, what--

4 MR. SMOCK: Take a half an hour and be done
5 with it and come back, so we can be done tonight
6 or--what's your call?

7 CAPTAIN BEDELLS: Oh, we're--I don't think--I
8 think you're being optimistic, there, Mr. Smock. I don't
9 think we're finishing tonight.

10 MR. SMOCK: I don't think so either, sir. But
11 I mean, do you want to eat now or do you want to eat at
12 8:00 or 9:00 o'clock tonight?

13 CAPTAIN BEDELLS: Well, we're taking a break.
14 I don't know who's--I'm not hungry--but we're taking a
15 break. I don't--the witnesses next door might be hungry.
16 I can tell you that much, sir.

17 THE HEARING EXAMINER: Let's take an hour
18 break. Let's reconvene at 6:15, at which time we'll take
19 back up where we left off here. And if somebody wants to
20 eat in that time or is able to eat or--that's fine.

21 So we'll go off the record now and then--until
22 6:15.

23 COURT RECORDER: We are going off the record.
24 The time is 5:17.

25 (Off the record)

1 (On the record)

2 COURT RECORDER: We are back on the record.

3 The time is 6:21 p.m.

4 THE HEARING EXAMINER: Okay. We're back on
5 the record after taking a break to allow Colonel Doolittle
6 to review his report, and specifically with the intent to
7 connect the dots between the conclusions he drew in his
8 investigation and the specific evidence that led him to
9 those conclusions.

10 BY THE HEARING EXAMINER:

11 Q So, with reference to the proposed adverse action--and
12 I'll ask you to be brief. I hope, as you went through,
13 you were able to kind of specifically point to each item.

14 Mr. Smock was charged with wrongfully removing--I
15 think the flat screen TV I'm satisfied with, with what
16 we've got on that.

17 And we've talked quite a bit about the OSB, the wood
18 and the luan. But if you can, just--just in a short
19 period of time point specifically to your--to the sworn
20 statements in your report that led you to that--that
21 conclusion--

22 A Right.

23 Q --or those conclusions.

24 A If you look at Kathryn Barrick's sworn statement reference
25 the wood, she has hearsay, "I heard that Joe Smock was

1 **using--"**

2 Q Hold on. Hold on just a second, please.

3 A **That would be Tab 2, sir.**

4 Q Yeah. Mine are--mine are tabbed differently.

5 A **Tab 2.**

6 MR. BANCHS: Well, yeah, he's got a different
7 one, sir.

8 THE WITNESS: All right.

9 BY THE HEARING EXAMINER:

10 Q You said Barrick?

11 A **Barrick. Kathryn Barrick. And I think I will go**
12 **sequentially, and so it should go by date, if that's how**
13 **your book is.**

14 THE HEARING EXAMINER: Ben, do those continue
15 into the next book?

16 MR. BANCHS: Yes, sir.

17 You said Tab 2. What's the letter, though?

18 THE WITNESS: Echo.

19 MR. BANCHS: Yeah. It's going to be towards
20 the--yes, sir.

21 BY THE HEARING EXAMINER:

22 Q Okay. Looking at Kathryn Barrick's.

23 A **If you go to the middle of the first--check that--middle**
24 **of page 3, and it'll be under the heading "Wood, Diesel,**
25 **Copper, Other." And the very first line item, "I heard**

1 that Joe Smock was using wood from MATES to build an ice
2 shanty. I physically did not see him take any nor did I
3 ever see the ice shanty."

4 Q See, I don't have that.

5 MR. BANCHS: It's going to be Tab 34 for you,
6 sir. You said Katie Barrick, correct?

7 THE WITNESS: That's correct.

8 BY THE HEARING EXAMINER:

9 Q Okay. I have Tab 34.

10 A **Page 3.**

11 MR. BANCHS: Is that Katie Barrick?

12 THE WITNESS: It is.

13 CAPTAIN BEDELLS: That's not--that's not her
14 sworn statement.

15 THE WITNESS: Tab 2--excuse me. I was already
16 jumping ahead. I apologize.

17 CAPTAIN BEDELLS: It's a handwritten sworn
18 statement.

19 MR. BANCHS: I think that's Brian Barrick,
20 sir.

21 THE WITNESS: No, this is Katie.

22 THE HEARING EXAMINER: Is it this one?

23 MR. BANCHS: Okay.

24 CAPTAIN BEDELLS: What does it say right here?

25 MR. BANCHS: What date is that?

1 CAPTAIN BEDELLS: That's Brian Barrick--
2 THE HEARING EXAMINER: Right.
3 CAPTAIN BEDELLS: --I think--
4 THE WITNESS: November 26, 2013.
5 CAPTAIN BEDELLS: --so Katie Barrick--
6 THE HEARING EXAMINER: She's right here.
7 CAPTAIN BEDELLS: Katie Barrick, is there a
8 handwritten--there you go. Right there.
9 MR. BANCHS: Oh, there's two. It's Tab 33,
10 sir.
11 CAPTAIN BEDELLS: Yep.
12 MR. BANCHS: But there's nothing in there.
13 THE HEARING EXAMINER: Tab 33?
14 CAPTAIN BEDELLS: She provided two sworn
15 statements on 26th and 27th of November, 2013.
16 THE HEARING EXAMINER: Okay. I'm with you.
17 MR. BANCHS: Oh, yeah. It--the tab's in the
18 wrong place, I think.
19 THE HEARING EXAMINER: It's 3 of 5.
20 MR. BANCHS: It's--it's--yeah. Do you have it
21 now, sir?
22 THE HEARING EXAMINER: I do. I do.
23 MR. BANCHS: Okay.
24 BY THE HEARING EXAMINER:
25 Q Okay. Next?

1 **A** Okay. Then we'll go on to Brian Barrick. And his is
2 going to be on page 2, and that's also on the 27th of
3 November.

4 **Q** Okay.

5 **A** And he says, "When a load of wood would come in, people on
6 the floor would say 'Joe must be in the building--' or
7 '--must be building something.'"

8 **Q** Okay. Next?

9 **A** Tab 5, which will be Joel Mack, and it'll be on page 2.

10 **Q** This is not a written statement. This is a--

11 **A** **This is a typed statement.**

12 **Q** And it's--

13 **A** **It'll be under paragraph 2, subset a, number 1.**

14 **Q** And again, this was derived--did he type this?

15 **A** **He typed this.**

16 **Q** Okay. Okay.

17 **A** **Tab 6 or the next Tab, which would be Thad Cooper, and**
18 **that will be page 2 of 6. It's on page--it's middle of**
19 **the page tab--or 2.a.1.**

20 **Q** I'm sorry. Say again?

21 **A** **It should be 2.a.1. All of them are going to be 2.a.1**
22 **because all the questions were exactly the same.**

23 **Q** This is Cooper?

24 **A** **Yes, sir.**

25 **Q** All right. So in that statement--this is the first I've

1 seen where somebody's claiming first-hand knowledge.

2 **A That's correct.**

3 Q Did you ask him how he came to have that knowledge?

4 **A I didn't ask him that.**

5 Q Okay.

6 **A Tab 7, Sharon Whitcher.**

7 Q Hang on just one second. Okay.

8 **A All right. Page 2, again 2.a.**

9 Q Okay.

10 **A And it'll be that first paragraph, "Several people seen."**

11 Q Okay.

12 **A Tab 11, which would be Todd Whitcher. And this is a**

13 **little bit more involved.**

14 Q Okay. Mr. Whitcher, in Subparagraph G, indicates, "Joe

15 Smock used the machines at MATES' woodshop to cut material

16 from the MATES to take home and have his son assemble

17 tip-ups." Do you know how he came to have that knowledge?

18 **A I'll make an assumption that, because they sit next to**

19 **each other, that Cooper probably told him.**

20 Q Okay. And we can ask him when he comes in.

21 **A Yeah.**

22 Q Okay.

23 **A And that's it.**

24 Q Okay.

25 **A That's all the sworn statements.**

1 THE HEARING EXAMINER: Okay. You've answered
2 my questions. I'll let the two parties ask any further,
3 if they have any.

4 CAPTAIN BEDELLS: Well, you--sir, you--you--

5 THE HEARING EXAMINER: We were at cross, so--

6 CAPTAIN BEDELLS: Well, no, actually--I don't
7 think he had tendered the witness yet, so I--if he wants
8 to continue, he can continue, or I'll just have a few
9 questions for--

10 THE HEARING EXAMINER: Right.

11 MR. BANCHS: Well, just to pick up where you
12 left off, sir.

13 RE-CROSS-EXAMINATION

14 BY MR. BANCHS:

15 Q The only direct evidence that anybody claimed here was
16 Cooper. Master Sergeant Cooper claimed that he had direct
17 evidence. Everybody else was--everybody else, from what
18 I've read that you've highlighted, claimed hearing about
19 it; is that correct?

20 A **That's correct.**

21 Q Okay.

22 THE HEARING EXAMINER: I would--I would add
23 that I think Witcher--it appears Witcher claimed direct
24 knowledge. We don't know that until we ask him, but--

25 THE WITNESS: Correct.

1 THE HEARING EXAMINER: Regarding the tip-ups.

2 MR. BANCHS: I guess if you read his sentence
3 literally, I guess, yes, in G. His--we could ask him.
4 But everywhere else, he says the only person I've heard--

5 THE HEARING EXAMINER: Right.

6 BY MR. BANCHS:

7 Q Was also said--the cold storage building was also noted to
8 me by Dave Fettig (phonetic). I overheard. I overheard.
9 So--and we will get to ask them.

10 There's several--not several. There's been a couple
11 of individuals who have claimed in these statements that
12 you just highlighted for us that one of the things that
13 Mr. Smock built at his house was a deck. And you--and
14 you--you know what, it's irrelevant. I'll withdraw the
15 question.

16 MR. BANCHS: I don't have any more questions,
17 sir.

18 THE HEARING EXAMINER: Okay.

19 Redirect?

20 CAPTAIN BEDELLS: Thank you.

21 REDIRECT EXAMINATION

22 BY CAPTAIN BEDELLS:

23 Q Sir, you have no personal direct knowledge of Joe Cooper
24 (sic) stealing anything, do you?

25 A Joe Smock?

1 Q Joe Smock. What did I say?

2 **A Joe Cooper.**

3 Q It's getting late.

4 CAPTAIN BEDELLS: I told you I needed
5 something to eat, sir.

6 MAJOR JOHNSON: --G1.

7 CAPTAIN BEDELLS: Sorry. Well, we've
8 exonerated Joe Cooper, anyway.

9 BY CAPTAIN BEDELLS:

10 Q So you have no direct knowledge of Mr. Smock stealing
11 anything, correct?

12 **A I do not.**

13 Q And you simply served as the investigating officer on a
14 15-6 into the--as your--as the introductory paragraph of
15 your 15-6 said, "An extremely broad investigation,"
16 correct?

17 **A Correct.**

18 Q Okay. You've also provided testimony to the effect that
19 you would like to have continued this investigation if
20 possible, correct?

21 **A Oh, I didn't like to do anything. To provide additional
22 information--**

23 Q Well, let me rephrase it. Not "like to," that you would
24 have continued this investigation if given the chance?

25 **A No. If I was ordered to do this investigation with more**

1 **time, I think that I would have uncovered additional**
2 **evidence.**

3 Q Okay.

4 A **There was nothing pleasurable about this experience--**

5 Q Okay.

6 A **--nor did I want this experience.**

7 Q Understood. So--so if ordered, you would have continued
8 investigating to--what did you say? Discover more?

9 A **To uncover more--**

10 Q Okay.

11 A **--evidence.**

12 Q Okay.

13 THE HEARING EXAMINER: Can we have--

14 BY CAPTAIN BEDELLS:

15 Q Do you think it--do you think that--do you think that you
16 provided enough information to the appointing authority in
17 this matter to substantiate the claims that we just
18 covered?

19 A **I believe, based on--yes.**

20 CAPTAIN BEDELLS: Okay. I have no further
21 questions.

22 THE HEARING EXAMINER: All right. And

23 I--here's my sign I'm getting tired. I realize we hadn't
24 gone through the other--the other charges yet in terms of
25 the direct connect with the evidence.

1 CAPTAIN BEDELLS: Okay.

2 THE HEARING EXAMINER: And I appreciate
3 your--your efficiency here.

4 EXAMINATION

5 BY THE HEARING EXAMINER:

6 Q Regarding the--another charge against Mr. Smock was that
7 he "wrongfully installed Government purchased tires on his
8 son's truck."

9 A **And that was a claim that was made in one of the sworn
10 statements. I think it was Thad Cooper.**

11 MR. BANCHS: If I can help the witness, it was
12 Mr. Thad Cooper, the only one that claimed direct
13 knowledge. It was in this 10 December 2013 statement.

14 THE WITNESS: Thank you.

15 MR. BANCHS: In his sworn statement.

16 THE WITNESS: All right.

17 LIEUTENANT COLONEL NIEDERGALL: Does that
18 help--

19 THE WITNESS: I've got it now.

20 LIEUTENANT COLONEL NIEDERGALL: --because
21 you--

22 THE WITNESS: I actually had it. I just
23 opened to Tab 9 instead of Tab 6.

24 It's in here, I just can't find it. And he
25 was the only one that made that allegation.

1 MR. BANCHS: It's 2.d.1. 2 Delta 1.

2 THE WITNESS: Thank you.

3 MR. BANCHS: It's the same paragraph where he
4 alleges that he also stole a chainsaw.

5 THE WITNESS: Chainsaw.

6 BY THE HEARING EXAMINER:

7 Q And, again, we can talk to Sergeant Cooper when he comes
8 in, but he alleges that--his statement is, "Joe had come
9 into the shop to install new tires on his son's Chevy S-10
10 pickup. Joe not only used the shop tire-changing
11 equipment, but he stole the tires that he installed on the
12 truck."

13 Do you know how he--do you know how he came to have
14 that knowledge?

15 A **No, sir.**

16 Q Okay. The next charge is that Mr. Smock "wrongfully
17 removed heaters from the buildings at Camp Grayling."

18 MR. BANCHS: Again, if I may--if I may help
19 the witness.

20 THE HEARING EXAMINER: Please.

21 MR. BANCHS: The only individual that claimed
22 direct knowledge of this was Mr.--Master Sergeant Thad
23 Cooper.

24 THE WITNESS: Oh. Same--same paragraph.

25 MR. BANCHS: Okay.

1 THE WITNESS: The last sentence.

2 MR. BANCHS: Yeah. 2 Delta 1, the last
3 sentence.

4 THE WITNESS: Yep. Yep.

5 BY THE HEARING EXAMINER:

6 Q And that actually goes to the next charge, too, which his
7 removing equipment parts, that Joe Smock "wrongfully
8 removed equipment parts from the air-to-ground range."
9 His statement--Mr. Cooper's statement would indicate
10 direct knowledge. Are you--do you have any knowledge of
11 how he came to--

12 A **No, sir. Same as the last.**

13 Q Okay.

14 A **He wrote it in the statement.**

15 Q Okay. Are there any other references--any other
16 individuals that you interviewed that said anything about
17 equipment parts from the air-to-ground range?

18 A **Todd Whitcher will have knowledge of that also. It wasn't
19 in his sworn statement though.**

20 Q Is it anywhere in the--in the report?

21 A **No.**

22 Q Okay. Mr. Smock was charged with "wrongfully removing
23 diesel fuel from the MATES building."

24 A **Yeah. And that should be in--all in the same--I tabbed it
25 for the ease of the investigation, and should always be in**

1 the whatever tab that was. And I didn't have your list in
2 front of me. I only highlighted the wood. So I'm going
3 to have to go through each one of them again. I apologize
4 to waste the time.

5 MR. BANCHS: It's going to be 2 Bravo 1--

6 THE WITNESS: Yeah.

7 MR. BANCHS: --for the fuel allegations or for
8 Mr. Cooper--well, that's going to be for every sworn
9 statement.

10 THE WITNESS: Yes. Exactly. They're all the
11 same.

12 MR. BANCHS: And if I may point out, he's not
13 claiming direct knowledge, though. He just says "Joe has
14 been seen taking 55-gallon drums." And that's when he
15 implicated Golnick and Herblet as the witnesses.

16 BY THE HEARING EXAMINER:

17 Q Okay. From your recollection of talking to those
18 individuals--and I realize it was a long time ago. I know
19 you've looked at the report again recently to prepare for
20 this hearing. Are there any of the folks that you talked
21 to that indicated direct knowledge of Mr. Smock taking
22 diesel fuel?

23 A Just the--the implication that Herblet and Golnick were
24 there, observed it and said it. But I--I--none of them
25 said that they actually saw Master Sergeant Smock take the

1 **diesel.**

2 Q And did you ask Herblet or Golnick?

3 A **I did. I asked Herblet. And his statement's in here, so**

4 **I'll refer to it. And he doesn't claim any first-hand**

5 **knowledge of him doing it. He claims in 2.b.2, "I heard**

6 **someone found cans by the loading dock, but never heard**

7 **who put them there. Heard 1071st vehicles were siphons,**

8 **and I thought that they called the Sheriff's Office. I**

9 **don't know of any filling up, but I know that Joe Smock**

10 **had his personal tractor here to York rake the mess left**

11 **behind for--" "--by the snowmelt."**

12 Q Okay.

13 A **And then if you look at 2 Bravo 8, "I did not know of**

14 **anyone who stole diesel."**

15 Q Okay. And you did not ask Colonel Golnick; is that

16 correct?

17 A **I didn't have a second interview with Colonel Golnick.**

18 Q Okay.

19 A **No, sir.**

20 Q The final charge was that Mr. Smock "wrongfully

21 appropriated a chainsaw purchased with Government funds

22 for his own use."

23 A **And it's going to go back to Thad Cooper's statement.**

24 Q 2 Delta 1?

25 A **Yes, sir.**

1 Q And, again, would seem to indicate that Mr. Cooper's
2 indicating direct knowledge in that his statement is, "Joe
3 had the shop purchase a new chainsaw for the shop, which
4 just happened to be the same make and model of his
5 personal chainsaw. He brought his old saw in and swapped
6 it out with the new one that was intended to be used for
7 the shop."

8 Did he indicate to you how he had direct knowledge
9 of that statement?

10 A No, sir.

11 THE HEARING EXAMINER: Okay.

12 MR. BANCHS: Sir, can I point out that the
13 chainsaw is currently at the facility right now?

14 CAPTAIN BEDELLS: Well, you can point it out,
15 Ben. We're going to need evidence through testimony. And
16 that--if you can get there, we can get there.

17 MR. BANCHS: Well, I'm cur- --if I may ask--

18 CAPTAIN BEDELLS: I'm trying to get--we need
19 to move along here.

20 MR. BANCHS: Yeah. Real quick. If I may ask
21 Colonel Doolittle.

22 MR. BANCHS: I understand that you didn't have
23 an opportunity to go physically to Mr. Smock's house, but
24 did you--did you try to locate the--the chainsaw--

25 THE WITNESS: I did not.

1 MR. BANCHS: --at the shop?

2 THE WITNESS: If you look at the dates on
3 that, I was--now, I was being pressed. So, no, I did not
4 go look at the chainsaw. It was just--it was in a sworn
5 statement. So I took it as first-hand knowledge.

6 MR. BANCHS: Okay. But I mean, it was--it
7 would have been readily available in the building that you
8 were already in, correct?

9 CAPTAIN BEDELLS: Are you finished with your
10 questioning, sir?

11 THE HEARING EXAMINER: I am.

12 CAPTAIN BEDELLS: Okay.

13 THE WITNESS: I don't know where they--they
14 store the--if they store them at MATES or not. I don't
15 know if they do.

16 MR. BANCHS: Okay.

17 THE WITNESS: I assume they do, but that's
18 speculation on my part.

19 MR. BANCHS: All right. Fair enough.

20 THE HEARING EXAMINER: Okay. I don't have any
21 more questions.

22 MR. BANCHS: No, sir.

23 THE HEARING EXAMINER: Okay. Colonel
24 Doolittle, I remind you that you remain under oath, and
25 that you are subject to recall to this hearing until such

1 time that it has been adjourned.

2 Again, I'll remind you not to discuss your
3 testimony with anyone.

4 And I want to thank you for your patience and
5 your time here today.

6 THE WITNESS: Thank you. Appreciate it.

7 (At about 6:47, witness released)

8 CAPTAIN BEDELLS: Chief Mack. And I want to
9 get the--

10 LIEUTENANT COLONEL NIEDERGALL: All right.
11 Chief Mack.

12 CAPTAIN BEDELLS: Did I give you your money
13 back?

14 THE HEARING EXAMINER: Yeah. I'll go use it.
15 Do you want any?

16 MR. BANCHS: Are we on the record, because--

17 LIEUTENANT COLONEL NIEDERGALL: I want to
18 clarify that, too. Because he gave--

19 THE HEARING EXAMINER: Yeah. Let's go off
20 the--let's go off the record.

21 LIEUTENANT COLONEL NIEDERGALL: He gave his
22 dinner money back to him.

23 COURT RECORDER: We are going off the record.
24 The time is 6:48.

25 (Off the record)

1 (On the record)

2 COURT RECORDER: We are back on the record.

3 The time is 6:49 p.m.

4 CAPTAIN BEDELLS: Just stay standing, Chief.

5 THE HEARING EXAMINER: Stay standing for just
6 a second. Would you raise your right hand, please? Do
7 you swear or affirm that the testimony that you are about
8 to give in this case is the truth, the whole truth and
9 nothing but the truth, so help you God?

10 CHIEF MACK: Absolutely, sir.

11 THE HEARING EXAMINER: Further, you're advised
12 that you are assured the freedom from restraint,
13 interference, discrimination, coercion or reprisal for
14 testifying in this case.

15 THE WITNESS: Yes, sir.

16 THE HEARING EXAMINER: Okay. You can have a
17 seat, please.

18 CAPTAIN BEDELLS: Chief, do you want a bottle
19 of water? We're going to be here awhile I got a feeling.

20 THE WITNESS: No, that's all right. Let's go.

21 CHIEF JOEL MACK, JR.

22 (At 6:49 p.m., sworn as a witness, testified as follows)

23 DIRECT EXAMINATION

24 BY CAPTAIN BEDELLS:

25 Q Okay. Please state your full name for the record.

1 **A** **It's Joel Mack, Jr.**

2 Q Sir, how are you currently employed?

3 **A** **I'm employed at FMS2.**

4 Q And where--

5 **A** **Federal technician.**

6 Q And where is that?

7 **A** **It's Selfridge Air Force Base.**

8 Q Okay. How long have you been there?

9 **A** **Two-and-a-half months.**

10 Q Okay. Prior to that where did you work?

11 **A** **MATES.**

12 Q How long did you work at MATES?

13 **A** **Eighteen years.**

14 Q What was the last position you held at MATES before going
15 to Selfridge?

16 **A** **A Wage Leader for--**

17 Q How long were you a Wage--

18 **A** **--for FMS. How long was I Wage Leader?**

19 Q Yes, sir.

20 **A** **Six years.**

21 Q Okay. Prior to that, prior to being a Wage Leader, what--

22 **A** **Two years in the small arms vault.**

23 Q Okay. Prior to that?

24 **A** **I was a Surface Maintenance Mechanic on the floor on the
25 auto section.**

1 Q Okay. So 18 years at MATES all toll, correct?

2 A **Yes, sir.**

3 Q Okay. During those 18 years, did you have an opportunity
4 to work with Joe Smock?

5 A **Absolutely.**

6 Q Okay. How--

7 A **He's the reason I got a job there.**

8 Q Okay. Explain--explain. He hired you?

9 A **I--no. He--we were at AT in MI AWWA, and I talked to him
10 about getting a federal technician job. He made some
11 phone calls to Master Sergeant Zugilla (phonetic), which
12 was the supervisor then. And I started as a temporary,
13 what, a month after that maybe.**

14 Q Okay.

15 A **And it's just continued on from there.**

16 Q Okay.

17 A **We were bay partners.**

18 Q Would it be safe to assume that you considered Joe Smock a
19 friend for some of those years?

20 A **Several years--**

21 Q Okay.

22 A **--sir.**

23 Q Okay. What--was it a lateral move down to Selfridge; was
24 it a promotion?

25 A **It was--**

1 Q How did that come about?

2 A --me. It was a decision left up to me. It was a--I mean,
3 paper, it was a promotion. I did it for
4 reasons--reprisal, sir, is why I went down there.

5 Q Okay. Explain to the Hearing Examiner what you mean by
6 you left MATES because--

7 A Since--

8 Q --of reprisal.

9 A Since the investigation, there's been a lot of stuff said
10 about me, done to me, not--just in reference to the
11 investigation as a whole. You know, people telling me to
12 fuck off at work, and "You're a piece a shit." And, I
13 mean, last I checked I was a Warrant Officer. And an E6
14 or someone does that, I mean, that--that's an issue. And
15 it wasn't dealt with. It was "You need to stay away from
16 them." Well, I was making sure they were okay because
17 they were crying, one. It wasn't like I made them cry.
18 It was their choice to listen to the audio of what was
19 said in the previous investigation. And there was stuff
20 that I said about them. Deal with it. It's the truth.

21 Q Do you file an EEO complaint as a result of--

22 A No, sir.

23 Q --this reprisal?

24 A I went up to the supervisor, after I had told him what
25 happened on the floor. I went up to the super- --intern

1 superintendent, told him what was happening. And he asked
2 me what I expected. I referenced the TPR. And he told me
3 it was just a guidance.

4 Q Okay.

5 A Wasn't a rule.

6 Q And what interim supervisor is that?

7 A That was Major Austhof at the time.

8 Q Okay.

9 MR. BANCHS: I'm sorry. Can--can he clarify
10 something? What was it that he was--that was just in
11 accordance with the TPR? I lost track of the--

12 THE WITNESS: The repercussions for reprisal.

13 BY CAPTAIN BEDELLS:

14 Q Okay. Now, as part of this 15-6, you were interviewed,
15 correct?

16 A Yes, sir.

17 Q How many times

18 A Twice.

19 Q Okay. At the time of your--at the first time you were
20 interviewed, were you a member of the Union?

21 A Yes, sir.

22 Q Okay. Did you request Union representation?

23 A No, sir.

24 Q At the second time you were interviewed, were you a member
25 of the Union?

1 **A** **Yes, sir.**

2 **Q** Did you request Union representation?

3 **A** **No, sir.**

4 **Q** Okay. Were you encouraged at some point to seek Union
5 representation?

6 **A** **I was--I was told that it was available if I wanted it.**

7 **Q** Okay. And you elected not to?

8 **A** **Yes, sir.**

9 **Q** Why--why did you elect not to?

10 **A** **Because I didn't need it, sir.**

11 **Q** Okay. Did you provide a sworn--did you provide a sworn
12 statement in connection with the 15-6?

13 **A** **Yes, sir.**

14 **Q** Okay. Did you provide more than one sworn statement in
15 connection with the 15-6?

16 **A** **No, sir. I submitted one sworn statement.**

17 **Q** Okay. Did you provide an oral interview in connection
18 with the sworn statement?

19 **A** **Yes, sir.**

20 **Q** Okay. Did you tell the truth during that oral interview?

21 **A** **Yes, sir.**

22 **Q** Tell the truth on the--in your sworn statement?

23 **A** **Yes, sir.**

24 **Q** Okay. I gather you realize that Joe Smock's been
25 terminated from his position as a federal technician,

1 correct?

2 **A Yes, sir.**

3 Q Okay. Have you ever seen the termination letter or the
4 original decision letter--

5 **A No, sir.**

6 Q --authored by Colonel Durkac? Okay.

7 **A No.**

8 Q I have it open in that book.

9 **A I see that.**

10 Q Okay. I'd like you to just take a moment to read that,
11 and we'll follow the Colonel Dawkins' methodology here and
12 see if we can get--can't get out of here a little bit
13 quicker. Take your time.

14 **A Yeah. Things are tough right now. I can feel my heart
15 beat in my throat, just to let you know.**

16 Q Okay.

17 **A Yeah. I just wanted to tell you that.**

18 Q You've had an opportunity to review that whole letter--

19 **A Yes, sir.**

20 Q --correct? Okay. So you'll note that un- --that there
21 are a number of grounds--I think it's on the second
22 page--enumerated grounds for his termination, correct?

23 **A Yes, sir. That was the first page.**

24 Q Okay. I want to start with the first one. Okay. And
25 does that talk about the wrongful removal of a flat screen

1 TV?

2 **A Yes, sir.**

3 Q To make sure we're on the same--the same page, here.

4 Okay. My question to you, Chief Mack, is do you have any

5 personal knowledge of Joe Smock removing a flat screen TV

6 from MATES?

7 **A Yes--or, no, sir. I do not. Not a flat screen. No.**

8 Q Okay. Did you ever hear that Joe Smock wrongfully removed

9 a flat screen TV from MATES?

10 **A I heard that, but--yes, sir.**

11 Q Okay. From whom did you hear it?

12 **A That was just around the shop it was being talked about.**

13 Q Do you remember who talked to you about it?

14 **A Not right now, sir, no.**

15 Q Okay. Again, no first-hand knowledge, correct?

16 **A No. No, sir. Absolutely not.**

17 Q Okay. The second one I believe reads, "You wrongfully

18 removed sheets of OSB board from the MATES building." Is

19 that how your copy reads?

20 **A Yes, sir.**

21 Q Okay. My question again to you is do you have any

22 first-hand knowledge, Chief, of Joe Smock removing OSB

23 board from the MATES building?

24 **A Yes, sir.**

25 Q Okay.

1 **A** **I do.**

2 **Q** Please explain to the Hearing Examiner the source of your
3 first-hand knowledge of him removing OSB from the MATES
4 facility.

5 **A** **It was actually--it was plywood is what it was. It wasn't**
6 **OSB. There's a difference. But it was we--Mr. Smock--I**
7 **don't know how you want--Master Sergeant Smock--however**
8 **you want me to refer to him as--ripped some shelving**
9 **material, and I helped him load it in the truck and haul**
10 **it over to his red cabin by his house.**

11 **Q** Okay.

12 MR. BANCHS: Can I object to this real quick,
13 sir, because it's not--those facts are not in evidence.
14 He's never testi- --he never made a statement, whether
15 verbal or written, in the record as to that.

16 THE HEARING EXAMINER: He's under oath right
17 now. I need to--I need to determine whether or not--part
18 of what I need to do is determine whether or not what Mr.
19 Smock's been charged with happened or didn't happen.

20 MR. BANCHS: Okay.

21 THE HEARING EXAMINER: So--but I will--I will
22 acknowledge this: This--what we may hear now may be
23 something that hasn't been in the record prior to now.

24 CAPTAIN BEDELLS: Okay. Well, I will
25 disagree. I think in his sworn statement and--

1 THE HEARING EXAMINER: Okay.

2 CAPTAIN BEDELLS: --in this record he says
3 that wood was taken by Joe Smock. So what we're
4 getting--what we--and we discussed this earlier, what
5 we're going to do is specify. And apparently OSB's wrong.
6 So it's a nuance. It's not OSB. It's plywood, which is
7 very--

8 THE WITNESS: It's plywood.

9 THE HEARING EXAMINER: Well, there's a charge
10 of wood, too, further down, so.

11 CAPTAIN BEDELLS: Okay. So wood encompasses
12 OSB, luan and everything. But--

13 MR. BANCHS: But he has never claimed direct
14 knowledge in the--and if you can point it to the record,
15 I'd be more than happy to--

16 CAPTAIN BEDELLS: I don't need to point to the
17 record. We've got a witness here providing testimony
18 under oath. Please don't interrupt me again. We need to
19 get through this.

20 MR. BANCHS: Okay. But I want my objection
21 noted that this was not--

22 THE HEARING EXAMINER: Noted. And you'll have
23 the opportunity to cross.

24 MR. BANCHS: Thank you, sir.

25 BY CAPTAIN BEDELLS:

- 1 Q So please explain to the Hearing Examiner, Chief,
2 what--how it is that you have first-hand knowledge of not
3 OSB but plywood being taken from the MATES building by Joe
4 Smock.
- 5 A **I said that I helped Mr. Smock load it in and unload it at
6 the red cabin.**
- 7 Q Okay. What is the red cabin?
- 8 A **It's a cabin over by Mr. Smock's house. It's--I don't
9 know if it's their family cabin or what it is. It's
10 across the river from his home.**
- 11 Q Okay. Was anyone else present when you unloaded this
12 plywood?
- 13 A **Mr. Smock--Mr. Smock and I were in the truck.**
- 14 Q Okay. And how is it that you know that this plywood came
15 from MATES?
- 16 A **It was in the back woodshop. It was ripped right there,
17 laying by the table saws.**
- 18 Q Okay. Were you there when it was ripped?
- 19 A **No, sir.**
- 20 Q Okay.
- 21 A **I was there to load it in the truck with Mr. Smock.**
- 22 Q Okay. Again, were you--where were you when you helped
23 load it into the truck?
- 24 A **I was at MATES.**
- 25 Q Okay. Where at MATES? That's cor- --

1 **A** **I'm just confused with your question. I was--**
2 Q Okay.
3 **A** **--back in the woodshop area when we loaded it up.**
4 Q Okay. If you're--if--and, please, Chief, it's been a long
5 day. So I--it's been a long day for everyone. So if you
6 are confused, please just say, "Hey, Captain Bedells, I
7 don't understand your question." Okay. Please. So--
8 So I understand this correctly, you are in the--at
9 MATES in the woodshop?
10 **A** **Yeah. It used to be the old paint bay at MATES.**
11 Q Okay. The old paint bay. And you helped Mr. Smock load
12 up ripped sections of plywood in the back of a pickup
13 truck; is that correct?
14 **A** **The shop truck, blue, NTV, Ford NTV.**
15 Q Okay. Did you see him rip the plywood?
16 **A** **No, sir.**
17 Q Okay. Are you confident that the plywood that you helped
18 him load into the blue shop truck is plywood that belonged
19 to MATES?
20 **A** **Absolutely.**
21 Q Okay. Did you drive over in that pickup truck to
22 the--what's it called--the red--
23 **A** **I just called it their red cabin.**
24 Q The red cabin.
25 **A** **Yeah.**

1 Q Did you drive in that pickup truck?

2 A **I rode in that truck, yes.**

3 Q And is it your testimony that you actually helped him

4 unload that plywood--

5 A **Yes, sir.**

6 Q --at the red cabin?

7 A **Yes, sir.**

8 Q Okay. Now, that's plywood. Do you have any other

9 knowledge of--well, strike that. Let me--let me go back.

10 When you helped Mr. Smock load the plywood while at the

11 MATES facility, was any other person present?

12 A **Not to my knowledge.**

13 Q Okay. And you're certain it was the blue shop truck--

14 A **Absolutely.**

15 Q --that you loaded it into? Because you rode it in,

16 correct?

17 A **Yes, sir.**

18 Q Okay. Do you recall approximately when this occurred?

19 A **Five, six years ago.**

20 Q Okay. Do you have any other knowledge of Mr. Smock using

21 wood--we'll just open it up to wood, and then you can

22 specify what type of wood--wood from the MATES facility

23 for projects outside of MATES?

24 A **Yes, I do.**

25 Q Okay.

1 **A** **The--**

2 Q Please--we're going to go--we'll go right through them.

3 So start with the type of wood that you believe he removed

4 from the MATES facility.

5 **A** **He remuted--removed treated material to build a gazebo at**

6 **his house.**

7 Q How is it that you know he removed treated wood

8 facility--just let me finish my question. I know you want

9 to get out of here. We all do. But let me--

10 **A** **Well, they had like--**

11 Q Let me finish. How is it that you know that Mr. Smock

12 used--used treated wood from the MATES facility to build a

13 gazebo at his house?

14 **A** **Mr. Smock told me he did. He had to use all treated**

15 **material because there was no other material left at the**

16 **shop besides the treated lumber.**

17 Q Okay. When did he tell you this?

18 **A** **Two years ago.**

19 Q Okay.

20 **A** **And I can't--**

21 Q Fair enough. I'm not going to hold you to an exact month

22 or, for that matter, year. It was within the last couple

23 years, correct?

24 **A** **Yes, sir.**

25 Q Okay. Was anyone else present when Mr. Smock told you

1 this?

2 **A No.**

3 Q And what is the--you mention that he told you this, and
4 you went on to say because there was no other type of wood
5 available. What--I don't understand the significance of
6 that.

7 **A That's what was available at the shop in the wood storage
8 area.**

9 Q Was it your impression that he would have preferred to use
10 cedar or something--

11 **A I--**

12 Q --instead of treated wood?

13 **A I can't--I have no idea, sir, what his--**

14 Q Okay. But it was treated lumber that he used for the
15 gazebo?

16 **A Absolutely.**

17 Q Okay. Do you have any other knowledge or Mr. Smock
18 removing wood of any sort from the MATES facility?

19 **A Not--not physically seeing it, no, sir.**

20 Q Okay. Now, my next question is do you have any knowledge
21 of Mr. Smock using wood at the MATES facility, not
22 necessarily leaving the MATES facility, but using wood at
23 the MATES facility for projects that are unrelated to
24 official business, if you will, of the--of the Michigan
25 Army National Guard?

1 **A** Well, I assisted Mr. Smock in building the bar that's up
2 at the Armory. That's a--I don't know what you want to
3 call it. It's just portable bar that was--they use at the
4 Armory when they have parties.

5 **Q** Okay.

6 **A** Shadow boxes. Mr. Smock built shadow boxes there.

7 **Q** Okay. Hold one second. Let me--

8 **A** Okay.

9 **Q** --slow down. So with respect to the bar, that's in an
10 Armory, correct?

11 **A** Yes, sir.

12 **Q** Okay. So while it--while it might have left MATES, it
13 didn't go to his house, correct?

14 **A** No, sir.

15 **Q** It ended up in an armory.

16 **A** Check.

17 **Q** But the lumber was used for--the lumber was used--the
18 lumber that was used was from the MATES facility, correct?

19 **A** Yes, sir.

20 **Q** Okay. Was there a job order for that thing or--

21 **A** I don't know that, sir.

22 **Q** Okay.

23 **A** I have no idea.

24 **Q** Okay. Okay. You were about to say that--you were about
25 to say display boxes or fly boxes?

1 **A** **Yeah. Shadow boxes, whatever you want to call them.**

2 **Q** Okay. Now, how is it that you know that Mr. Smock used
3 wood from the MATES facility to build fly boxes or shadow
4 boxes?

5 **A** **He was building at the shop.**

6 **Q** Okay.

7 **A** **That's how I know. Now, do I know that all the wood came**
8 **from there? Absolutely not. I know that some of the wood**
9 **came from Stephan Wood Products, because we actually went**
10 **there and got it ourselves.**

11 **Q** Okay.

12 **A** **But--**

13 **Q** But you believe at least some of it came from the MATES
14 facility?

15 **A** **Yes, sir.**

16 **Q** And how is it that you know he was building these shadow
17 boxes or fly boxes?

18 **A** **Because he was raffling some off for the auction. It was**
19 **to help one of the local guys that used to be Ray's Canoe**
20 **Livery. It's the Old Fly Shop now or Old Au Sable or**
21 **whatever it is now.**

22 **Q** Okay. Did you personally observe him in possession of any
23 of these shadow boxes while at the MATES facility?

24 **A** **Yeah. There's--there was one--one's hanging in Colonel**
25 **Golnick's office. There was one hanging in his office, as**

1 well. But did I personally see--I didn't go to the
2 auction, so, no, I did not see them at the auction.

3 Q Okay. Okay. Did you--did you, yourself, ever purchase
4 one of these fly boxes or shadow boxes?

5 A No, sir. It's not my thing, sir.

6 Q Okay. Okay. Did you personally observe Mr. Smock use
7 wood products from MATES to build anything besides the bar
8 that's at the Armory and these shadow boxes?

9 A The--no.

10 Q Okay. Did you personally observe Mr. Smock use any wood
11 products in the construction of something that wasn't just
12 entirely wood? In other words--and what I'll get to
13 is--I'll get right to the point, because time's precious
14 here. Did you ever observe Mr. Smock build tip-ups using
15 any materials from MATES?

16 A Mr. Smock was selling tip-ups from there. He was building
17 them at MATES. I don't know where all the materials came
18 from. I mean, I know that there was oak. There was
19 spring steel for the flags or duck tape or whatever the
20 hell was on for the flags. I don't--

21 Q Okay.

22 A I mean I bought them from Mr. Smock. I know they were
23 built there. I don't know if he physically used MATES'
24 material or whatever--the Government's material.

25 Q Okay. So I'm clear, you purchased tip-ups from Mr.

1 Smock--

2 **A Yes, sir.**

3 Q --correct? And how much did you pay for those tip-ups?

4 **A I think they were \$20 apiece.**

5 Q Okay. And you believe that--or where did you purchase the

6 tip-ups?

7 **A Right at MATES from--**

8 Q Okay.

9 **A --Mr. Smock.**

10 Q Okay. So the tip-up was physically at the MATES facility?

11 **A Yes, sir.**

12 Q Okay. Do you have reason to believe he used material from

13 MATES to build these tip-ups or do you have absolutely no

14 idea whether he did that?

15 **A I--I mean, I don't know. I didn't physically see him make**

16 **those at MATES. I mean, he sold them to me at MATES. I**

17 **mean--**

18 Q Okay. Did you ever see him work on them at MATES?

19 **A No, sir.**

20 Q Okay. Okay. Now, the--and we're into C now, correct?

21 Okay. We're talking about wood in general, correct?

22 **A Yes, sir.**

23 Q We've corrected OSB to really mean plywood, correct?

24 **A Yes, sir.**

25 Q Because it wasn't--it wasn't OSB, at least that you saw,

1 correct?

2 **A Check.**

3 Q It was plywood.

4 **A But I was told. I didn't see him physically take that**
5 **wood out of the facility. He told me he used treated**
6 **lumber to build his gazebo from the shop.**

7 Q Right. Okay. That's with respect to the treated lumber
8 which would be C.

9 **A Check.**

10 Q Okay. So let's move down to D. There's an allegation
11 that Mr. Smock "wrongfully removed sheets of luan from the
12 MATES building." My question to you, Chief, is did you
13 personally observe Mr. Smock remove sheets of luan from
14 the MATES facility?

15 **A No, sir. I did not.**

16 Q Did you ever hear that he removed sheets--

17 **A Yes, sir. I did.**

18 Q --of luan? From whom did you hear--

19 **A Mr. Sheldon told us that he went to look at Joe's new shed**
20 **that he built out to the lake, the second story on it, and**
21 **it was all luan inside. And prior to that, he had seen**
22 **the pile of luan out back in the wood pile. So after all**
23 **that, he came back in Monday morning and looked, and all**
24 **the luan was gone.**

25 Q Okay. When you say Mr. Sheldon, is that Tim Sheldon of

1 Jim Sheldon? I understand there's a couple Sheldons.

2 **A Tim. Tim Sheldon.**

3 Q Okay. So Tim Sheldon. You said Tim Sheldon told us.

4 Who's us?

5 **A Master Sergeant Cooper and I in the vault area.**

6 Q Okay. So my next--you answered my next question, which is

7 was anyone else present when Tim Sheldon told you this?

8 **A Yes, sir.**

9 Q Okay. And your answer is yes?

10 **A Yes.**

11 Q And who was that?

12 **A Master Sergeant Cooper.**

13 Q Okay. And where were you when Tim Sheldon told you and

14 Master Sergeant Cooper that he suspected Mr. Smock of

15 removing sheets of luan from MATES?

16 **A In the vault supply room.**

17 Q Do you recall approximately when this was?

18 **A I--this year.**

19 Q Oh, it was as recent as this year?

20 **A Yeah. I mean, well, it'd be last year, because all of the**

21 **termination happened in February. So it'd been last year.**

22 Q Okay.

23 **A It's been a long year.**

24 Q Understood. Was anyone else present besides Master

25 Sergeant Cooper who might have heard this?

1 **A** **No. There was three of us there. That was it.**

2 **Q** Okay. Next allegation, E, "You wrongfully installed
3 Government-purchased tires on your son's truck." Did you
4 personally observe, Chief, Mr. Smock--did I say remove? I
5 meant installed. Let me read that again. E. Say, "You
6 wrongfully installed Government-purchased tires on your
7 son's truck." My question to you, Chief, is did you
8 personally observe Mr. Smock install Government-purchased
9 tires on his son's truck?

10 **A** **No.**

11 **Q** Okay. Did you ever hear that he had used
12 Government-purchased tires to place on his son's truck?

13 **A** **Yes, sir.**

14 **Q** From whom did you hear it?

15 **A** **I want to say--it was from Mr. Smock, actually, because he**
16 **got them up from the range. He got them for his son's**
17 **truck and his jeep.**

18 **Q** Was it this Mr. Smock or the--

19 **A** **That--**

20 **Q** --son Mr. Smock?

21 **A** **That Mr. Smock.**

22 **Q** Okay. So--

23 **A** **Master Sergeant Smock.**

24 **Q** Okay. So Master Smock--Master Sergeant Smock, himself,
25 told you that he used Government-purchased tires to place

1 on his son's truck?

2 **A Yes--not--yeah. Both vehicles.**

3 Q Oh, sorry.

4 **A I said his jeep, too.**

5 Q Oh, okay.

6 MR. BANCHS: Facts not in evidence.

7 CAPTAIN BEDELLS: Okay.

8 MR. BANCHS: He's only alleged to putting
9 tires on one vehicle.

10 CAPTAIN BEDELLS: Okay. Well, sir, you were
11 interested in getting at it, so--so I can't strike it now.
12 It's out.

13 BY CAPTAIN BEDELLS:

14 Q I'm going to ask you questions that are particular to the
15 son's truck. Okay?

16 **A Okay.**

17 Q Was anyone else present when Joe Smock told you that he
18 used Government-purchased tires to place on his son's
19 truck?

20 **A No.**

21 Q Okay. Do you recall approximately when it was that Joe
22 Smock told you that he did this?

23 **A It'd been last summer.**

24 Q Summer of 2013?

25 **A Check.**

1 Q Okay. Do you recall where you were when he told you this?

2 A **No. I was at the shop somewhere. I--not right offhand.**

3 Q It was at work, though?

4 A **Yeah.**

5 Q Wasn't at hunting camp or--

6 A **No.**

7 Q --something like that?

8 A **No. No.**

9 Q Okay. F, read along and tell me if your F reads

10 differently than mine. "You wrongfully removed heaters

11 from buildings at Camp Grayling." Is that the way F reads

12 on yours?

13 A **Yes, sir.**

14 Q Okay. Do you have any first-hand or personal knowledge

15 that Joe Smock removed heaters from buildings at Camp

16 Grayling?

17 A **Not--not first hand, no, sir.**

18 Q Okay. Have you ever heard that Joe Smock removed heaters

19 from buildings at Camp Grayling?

20 A **I heard that, yes, sir.**

21 Q From whom did you hear it?

22 A **It was going around the shop that he had them, and that**

23 **they were on Craig's List from--**

24 Q Okay.

25 A **--Mr. Whitcher and Master Sergeant Cooper. Master**

1 Sergeant Cooper actually brought it up to his supervisor,
2 which was Lieutenant Colonel McNamara, that they were on
3 Craig's List. Lieutenant Colonel McNamara went down and
4 told Joe to get the shit off Craig's List.

5 Q How do you know Lieutenant Colonel McNamara told Joe to
6 get the shit off Craig's List?

7 A Because that's what happened. As soon as Master Sergeant
8 Cooper told him, he walked right down to Mr. Smock and--or
9 Master Sergeant Smock and told him that. I don't know
10 personally what he said. I guess I should say he walked
11 down in his area and told him--

12 Q Okay.

13 A --or talked to him.

14 Q So--so, again, it was--you have no direct knowledge of him
15 removing heaters?

16 A No, sir.

17 Q You didn't witness him remove the heaters?

18 A No, sir.

19 Q You were told, again, by whom?

20 A Master Sergeant Cooper.

21 Q Thad Cooper?

22 A Yes, sir.

23 Q And did you say Witcher, as well?

24 A Yes. Yes.

25 Q Would that be Sharon Witcher--

1 **A** **No--**

2 Q --or Todd Whitcher?

3 **A** **That'd be CW2 Todd Whitcher.**

4 Q Todd Whitcher. So those two individuals told you that Joe

5 had wrongfully--or had removed heaters from buildings at

6 Camp Grayling and put them on Craig's List?

7 **A** **They were on Craig's List, yes.**

8 Q And it's your testimony that Master Sergeant Cooper

9 confronted Lieutenant Colonel McNamara about this?

10 **A** **Yes, sir.**

11 Q And it's your further testimony that, as far as you know,

12 Lieutenant Colonel McNamara went down to Joe Smock and

13 said--

14 **A** **Yes, sir.**

15 Q --get this shit off Craig's List?

16 **A** **I can't tell you--**

17 Q Or words to that effect?

18 **A** **I'm sure he said something, because they weren't on there**

19 **no more, so.**

20 Q Okay. Did you, yourself, ever see these--

21 **A** **No, sir. I--**

22 Q --things on Craig's List?

23 **A** **We're at work.**

24 Q Okay. Okay. G--and I might come back to all of these,

25 because I want to make sure--I want to do a thorough

1 examination. Okay. But G, "You wrongfully removed
2 equipment parts from the air-to-ground range."

3 Did you ever personally witness Mr. Smock remove
4 equipment parts from the air-to-ground range?

5 **A No.**

6 **Q** Okay. Did you ever hear that he had removed equipment
7 parts from the air-to-ground range?

8 **A Yes, sir.**

9 **Q** What parts did you hear he removed from the air-to-ground
10 range?

11 **A The tires that we referred to earlier. Kubota Tractor
12 engines, diesel tractor engines that were up there.**

13 **Q** From whom did you hear that he removed tires from the
14 air-to-ground range?

15 **A From Master Sergeant Smock.**

16 **Q** Okay. Again, him telling you that--

17 **A Yes, sir.**

18 **Q** --he put those on his son's truck, correct?

19 **A And his jeep, yes, sir.**

20 **Q** Okay. And you mentioned a Kubota Tractor?

21 **A Yeah. The Camp had a bunch of Kubota Tractors up here
22 that they took out to the range to be destroyed because it
23 wasn't worth fixing them anymore. And they removed the
24 diesel engines off of them up there.**

25 **MR. BANCHS:** Can you note my objection one

1 more time, sir, that this is not in evidence, the Kubota
2 Tractor, per se?

3 CAPTAIN BEDELLS: Well, it--it is in evidence.
4 It's equipment parts. That's what we're talking about.

5 MR. BANCHS: But he's being very specific
6 about a Kubota Tractor engine. That's not in evidence.
7 He was only accused of stealing a transmission from the
8 range.

9 CAPTAIN BEDELLS: No. "You wrongfully removed
10 equipment parts from the air-to-ground range."

11 MR. BANCHS: Right. And that's specific part
12 was alleged to be a transmission.

13 CAPTAIN BEDELLS: No, it's not or it would say
14 more specifically a transmission part. That's not what's
15 alleged in here. It says equipment parts.

16 MR. BANCHS: It's in the record.

17 CAPTAIN BEDELLS: Okay.

18 THE HEARING EXAMINER: In what record?

19 MR. BANCHS: In the 15-6.

20 THE HEARING EXAMINER: Right. But the--but
21 the proposed adverse action only says--

22 MR. BANCHS: Right. It was general equipment.

23

24 BY CAPTAIN BEDELLS:

25 Q Sir, what does--how does your G read? G on your--on

1 that--on that, how does it read?

2 **A** **Oh, it says "You wrongfully removed equipment parts."**

3 **Q** Okay.

4 MR. BANCHS: That's fine. Yeah.

5 BY CAPTAIN BEDELLS:

6 **Q** Okay. So--

7 THE HEARING EXAMINER: Let me just--for the
8 record, I'll note that that specific piece of equipment
9 was not mentioned anywhere in the 15-6 investigation.
10 There was a transmission mentioned in the 15-6, but--

11 CAPTAIN BEDELLS: It's--it's an equipment
12 part. That's all I'm saying.

13 THE HEARING EXAMINER: I understand.

14 CAPTAIN BEDELLS: It's like the wood.

15 THE HEARING EXAMINER: Right. Right.

16 CAPTAIN BEDELLS: We talked about wood in a
17 general sense.

18 THE HEARING EXAMINER: Right.

19 CAPTAIN BEDELLS: Now we're getting more
20 specific, so.

21 THE HEARING EXAMINER: Okay.

22 BY CAPTAIN BEDELLS:

23 **Q** So--so, I'm sorry, Chief. We cut you off. You testified
24 that it was not the tractor, itself, but the diesel engine
25 of a single tractor or multiple tractors?

1 **A** **There's multiples up there.**

2 Q Okay. And how is it that you know that Mr. Smock removed
3 diesel engines from multiple Kubota Tractors up at the
4 air-to-ground range?

5 **A** **Because he told me.**

6 Q When did he tell you this?

7 **A** **Oh, my goodness. '12. 2012.**

8 Q Okay. So a couple years ago?

9 **A** **Uh-huh.**

10 Q Okay. Where were you, if you recall, when he told you
11 this?

12 **A** **In his office.**

13 Q At MATES?

14 **A** **Uh-huh.**

15 Q Okay. Okay. We're going to go down to H. My H reads,
16 "You wrongfully removed diesel fuel from the MATES
17 building." Is that how your H reads?

18 **A** **Yes, sir.**

19 Q Okay. Did you personally observe Mr. Smock ever remove
20 diesel fuel from the MATES building?

21 **A** **No, sir.**

22 Q Okay. Did you ever hear that he had removed diesel fuel
23 from the MATES building?

24 **A** **Yes, sir.**

25 Q From whom did you hear it?

1 **A** **I was--I was--it was brought to my knowledge that it was**
2 **removed in 55-gallon drums from--it was first CW2**
3 **Whitcher, Todd type, and then Master Sergeant Cooper.**
4 **Q** Okay.
5 **A** **They were--they--**
6 **Q** Okay. Where were you when--did these--did these two
7 individuals tell you at the same time or on different
8 occasion?
9 **A** **Yeah. We were up in the front inspector's office.**
10 **Q** Okay. So all three of you were together, correct?
11 **A** **Check. Yes, sir.**
12 **Q** Do you recall approximately when that was?
13 **A** **That we talked about it?**
14 **Q** Yes.
15 **A** **It was in '12.**
16 **Q** 2012?
17 **A** **Yeah.**
18 **Q** Okay.
19 **A** **Late '12, early '13.**
20 **Q** And understanding that it was Todd Whitcher, correct?
21 **A** **Yes, sir.**
22 **Q** And Master Sergeant Cooper--
23 **A** **Yes, sir.**
24 **Q** --who told you that Joe Smock had removed diesel fuel?
25 **A** **Yes, sir.**

1 Q Was there anyone present besides the three of you?

2 A **Not to my knowledge, sir.**

3 Q Okay. And where again were you when they told you this?

4 A **In the inspector's office.**

5 Q Okay. Chief, if you could, please explain the

6 circumstances upon which they--did they intimate to you

7 that "I personally observed him remove diesel fuel"?

8 A **No. They said that what happened is Master Sergeant Smock**

9 **went through the front gate with 55-gallon drums in the**

10 **back of his truck. And Lieutenant Colonel Meyers (sic)**

11 **went down and seen Master Sergeant Herblet and asked him,**

12 **"What the fuck Joe Smock's going out of the gate with all**

13 **these 55-gallon drums in the back of his truck?" And**

14 **Master Sergeant Herblet looked at him, "I don't know. You**

15 **seen it, you ask him."**

16 Q Okay.

17 A **And that's where the whole diesel fuel--but I did not see**

18 **none of this.**

19 Q Okay. Now, you testified--it's been a long day. I messed

20 up. I called someone Joe Cooper. You said Lieutenant

21 Colonel Meyers.

22 A **I'm sorry. I'm sorry.**

23 Q Okay.

24 A **Golnick. Sorry.**

25 Q The record--that's fine.

1 **A** **Sorry.**

2 Q Yep, just to be clear, because we're creating a record

3 here. So--so your testimony is that Chief Witcher,

4 correct--

5 **A** **Check.**

6 Q --CW2 Witcher--

7 **A** **Todd.**

8 Q --and Master Sergeant Cooper, correct--

9 **A** **Yes, sir.**

10 Q --told you that Lieutenant Colonel Golnick, not Lieutenant

11 Colonel Meyers but Lieutenant Colonel Golnick--

12 **A** **Check.**

13 Q --had asked Master Sergeant Herblet--

14 **A** **Yes.**

15 Q --what the fuck--yeah.

16 **A** **What was--yeah.**

17 Q Your words, "What the fuck was he leaving with diesel

18 fuel?"

19 **A** **Uh-huh.**

20 Q Okay. Okay. So they relayed that to you; you didn't

21 observe it yourself, correct?

22 **A** **Absolutely not.**

23 Q Okay. If I ask--if I ask Todd Witcher and/or--

24 CAPTAIN BEDELLS: --what's Herblet's first

25 name? I don't know what his--

1 MR. BANCHS: Troy.

2 BY CAPTAIN BEDELLS:

3 Q Troy. If I ask Troy Herblet, Chief Witcher and Master
4 Sergeant Cooper this account, they--

5 A **I don't know what they're going to tell you. I'm under
6 oath, and I know I'm going to tell you.**

7 Q Okay. But if they tell the truth, they should give me the
8 same account that you have, correct?

9 A **I hope so.**

10 Q Right. Check. Okay. I, "You wrongfully--" oh. Any
11 other--any other instances in which you've been told of--

12 A **No, sir.**

13 Q --Smock removing diesel fuel? Okay. I, "You wrongfully
14 appropriated a chainsaw, purchased with Government funds,
15 to your own use."

16 Did you ever see--and really this gets to an
17 exchange of a chainsaw, you know. Did you ever see Joe
18 Smock leave--leave the MATES facility with a chainsaw that
19 belonged to the MATES facility?

20 A **No, sir.**

21 Q Did you ever hear that he had left the MATES facility with
22 a chainsaw that didn't belong to him?

23 A **Yeah, I heard that.**

24 Q From whom did you hear it?

25 A **I--I don't remember, sir.**

1 Q Okay.

2 A **There was so much shit flying around--or stuff flying**
3 **around that--**

4 Q Okay. What were--you don't recall who. Do you recall
5 approximately when you heard this?

6 A **Well, a lot of it was when the investigation going on.**
7 **There was a lot of stuff flying around there, you know.**

8 Q Okay. Do you recall approximately where you were when you
9 heard this?

10 A **At MATES.**

11 Q Okay.

12 A **I mean--**

13 Q And can you--can you at least give the Hearing Examiner
14 some circumstances regarding this? And I understand you
15 didn't see it, you don't recall who told you it, but you
16 know it was at MATES and it was about the time the
17 investigation. Explain the circumstances--

18 A **I--I--**

19 Q --of what you heard.

20 A **I don't know that Joe Smock took the chainsaw. Absolutely**
21 **not. I don't.**

22 Q Okay.

23 A **I mean it's plain and simple. Just because somebody says**
24 **it doesn't mean it's true.**

25 Q Right. So what did you--what did you hear about it

1 though?

2 **A** **That Joe Smock took the chainsaw and switched it out with**
3 **one of his chainsaws that weren't working anymore.**

4 **Q** Okay. But no personal knowledge of that?

5 **A** **Absolutely not.**

6 **Q** Okay. Did you ever--Chief, did you ever hear that--that
7 Mr. Smock used diesel fuel from MATES to fill up his
8 personal tractor--

9 **A** **Yeah, I'd heard that, yes.**

10 **Q** --at MATES?

11 **A** **Yes, sir.**

12 **Q** Okay. That's what I'm getting at. So that's why I want
13 to go back to H. So we're back at H, talking about diesel
14 fuel. Did you personally observe Mr. Smock use diesel
15 fuel from MATES to fill up his tractor?

16 **A** **No, sir.**

17 **Q** Okay. Did someone tell you that he had used diesel fuel
18 to fill up his tractor?

19 **A** **Yes, sir.**

20 **Q** Who told you that--

21 **A** **Mr. Whitcher told me.**

22 **Q** Okay. Todd Whitcher. Do you--

23 **A** **Yes, sir.**

24 **Q** Do you recall approximately when he told you this?

25 **A** **This was 2012.**

1 Q Again 2012?

2 A **Yes.**

3 Q Okay. Do you recall--

4 A **A lot of stuff came to the surface when the investigation**

5 **started, you know, people started talking.**

6 Q Okay. Well, my understanding is the investigation didn't

7 start till the fall of 2013.

8 A **Check.**

9 Q Okay.

10 A **So it would be '13. I misspoke.**

11 Q Okay.

12 A **2013, sir.**

13 Q Okay. So about 2013, Todd Witcher--

14 A **Yeah.**

15 Q Okay. Okay. Again, you didn't observe it, correct?

16 A **No, sir.**

17 Q Todd Witcher tells you Joe Smock used diesel fuel from

18 the MATES to fill up his person- --his tractor, correct?

19 A **Yeah. Mr. Smock brought his tractor in to do some**

20 **landscaping because whatever reason it couldn't get done**

21 **by FE in time and it needed to get done. And then--**

22 Q Okay. So that was my next question. Can you explain the

23 circumstances? So that's the circumstances of his tractor

24 being there?

25 A **Yes, sir.**

1 Q So he's doing MATES a favor, if you will, by bringing--
2 A **Yes, sir.**
3 Q --his personal tractor in?
4 A **Yes. Joe did a lot of that stuff to--**
5 Q Okay.
6 A **I mean--you--do you want me to finish?**
7 Q Yeah, go ahead. Yeah.
8 A **Then I was told that he filled it up at the diesel pump**
9 **there.**
10 Q Okay. Maybe because he used diesel fuel to do something
11 for MATES he figured--
12 A **Well, probably. I can't answer that question.**
13 Q Right.
14 A **I didn't do it.**
15 Q Understood. And you didn't observe it?
16 A **No, sir.**
17 Q Okay. So if I understand, there's really two occasions.
18 You heard from Todd Witcher that he used diesel fuel to
19 fill up his tractor, and the other occasion is you heard
20 from Witcher and--
21 A **And Cooper.**
22 Q --Cooper--
23 A **Check.**
24 Q --that is used--that he took diesel fuel right off MATES,
25 correct?

1 **A** **That there was 55-gallon drums that went out that had**
2 **diesel fuel in them.**

3 **Q** Okay. And Lieutenant Colonel Golnick, you heard, had
4 questioned Herb- --

5 **A** **Yes.**

6 **Q** --Troy Herblet about it?

7 **A** **Yep. Absolutely.**

8 **Q** Okay. Did we talk about the luan?

9 **A** **Yeah.**

10 **Q** We talked about the luan, correct?

11 **A** **Yes, sir.**

12 **Q** Chief, how do you feel about appearing here today?

13 **A** **Not happy at all.**

14 **Q** Right.

15 **A** **I mean, Joe and I were close friends. And it's fuck-**
16 **--toughest thing I've ever done in my life.**

17 **Q** And you don't obviously commute from Grayling to
18 Selfridge, do you?

19 **A** **Well, no.**

20 **Q** You moved down there?

21 **A** **Yep.**

22 **Q** Okay. What about your family or close--close--

23 **A** **Is this relevant to something right now?**

24 **Q** Yeah. If it's terribly uncomfortable, I can cease the
25 questioning.

1 **A** **Way uncomfortable right now.**

2 Q Okay. Okay. You mentioned at the outset of the
3 investigation that you--

4 **A** **I need a second. I need a second.**

5 LIEUTENANT COLONEL NIEDERGALL: Yeah. He
6 needs a break.

7 CAPTAIN BEDELLES: Okay.

8 THE HEARING EXAMINER: Let's go off the
9 record.

10 COURT RECORDER: We are off the record. The
11 time is 7:24.

12 (Off the record)

13 (On the record)

14 COURT RECORDER: We are back on the record.
15 The time is 7:27 p.m.

16 THE HEARING EXAMINER: Captain Bedells, do you
17 have any more questions?

18 CAPTAIN BEDELLES: I do, sir. Thanks.

19 BY CAPTAIN BEDELLES:

20 Q Chief, my apologies. I--you know, you get in the--you get
21 in the--

22 **A** **It's all good, sir.**

23 Q --you get in the zone, and you start firing questions, and
24 I didn't even notice.

25 CAPTAIN BEDELLES: And, Lieutenant Colonel

1 Niedergall, thanks for letting me know what happened
2 there.

3 BY CAPTAIN BEDELLS:

4 Q So, I'm going to obviously go onto a different subject.

5 You've been truthful here today, correct?

6 A **Absolutely.**

7 Q Right. And you've already testified, this is one of
8 the--to use your words, one of the toughest fucking things
9 you've ever done, correct?

10 A **Absolutely.**

11 Q Okay. How are things going down in Selfridge?

12 A **It's a job, sir.**

13 Q Okay. Do you keep in contact with anyone--any
14 workers--I'm not going into personal matters. Do you keep
15 in contact with any workers at MATES since you left?

16 A **No. It wasn't the greatest terms when I left.**

17 Q Okay.

18 A **I wasn't happy with some things, like I referred to with
19 the reprisal stuff and not being addressed like I should
20 be.**

21 Q Okay.

22 A **Or I felt I should be, I guess.**

23 Q Right. And you're aware you could go to the IG, right--

24 A **But--**

25 Q --if you wanted to?

1 **A** **Sure.**

2 CAPTAIN BEDELLS: Okay. Okay. Well, just
3 putting it out there. All right. Okay. I--I think I've
4 covered everything in sufficient detail. I thank you for
5 your testimony here today. We're finally getting to some
6 material witnesses. So I might have some questions on
7 redirect. But Mr. Banchs here, who's representing Mr.
8 Smock, is going to have some questions. He's going to
9 cross-examine you presumably on what I elicited on direct.
10 Okay.

11 THE WITNESS: Sure.

12 CAPTAIN BEDELLS: So I'm going to place an
13 objection if he goes outside of anything that you
14 testified to on direct. Okay.

15 THE WITNESS: Yes, sir.

16 CAPTAIN BEDELLS: So if you--if you want to
17 look to me or take a moment to talk to me, then feel free
18 to do that. Okay?

19 THE HEARING EXAMINER: Mr. Banchs?

20 MR. BANCHS: Well, I object to his proposing
21 he's going to object to anything that goes outside what he
22 questioned.

23 THE HEARING EXAMINER: We'll wait to see when
24 the objections are asked.

25 MR. BANCHS: Okay. Because I want to

1 establish a record here, and I want to talk about the
2 employee's credibility, so there are going to be questions
3 that are going to be asked of the witness that you did not
4 ask.

5 CROSS-EXAMINATION

6 BY MR. BANCHS:

7 Q Chief, I appreciate the situation that you're in. Believe
8 me, I do. I've been in the Guard 23 years, and I was a
9 technician for 7, and I represent people on a daily basis.
10 Okay. And I--

11 **A Why didn't you represent me, then, a Union rep.**

12 Q I understand that you had a long year and this is terribly
13 uncomfortable for you. But there's another side to this,
14 and that's Mr. Mack (sic) and Mr.--Mr. Smock and his
15 family. Okay. So just bear that in mind when I ask you
16 these questions, because I am representing him. Okay?

17 I want to--the first thing that I want to touch on
18 is something you said that really struck me, and it really
19 goes to the heart of all of this. When you were being
20 questioned about the chainsaw, you indicated to Captain
21 Bedells that you had no first knowledge--or no first-hand
22 knowledge of--of--of the allegations of Mr. Smock either
23 swapping or stealing a chainsaw. That you don't recall
24 who said it. And that you heard about it during the
25 investigation. Does that sound familiar?

1 **A** **Yes, sir.**

2 **Q** And the last statement you made regarding the chainsaw
3 questioning, before he--Captain Bedells started talk-
4 --asking you about the diesel again, you said, very
5 clearly, "Just because someone says that doesn't mean it's
6 true."

7 **A** **That's true, sir.**

8 **Q** Do you remember saying that?

9 **A** **Yes, sir.**

10 **Q** Okay. I want you to keep that in mind as we go through
11 this questioning.

12 I want to take you back to your--to your--to your
13 verbal interview that you had with Colonel Doolittle. Do
14 you remember that?

15 **A** **Yes, sir.**

16 **Q** That was--

17 **A** **Two hours and 5 minutes of it.**

18 **Q** Absolutely. And that was early October 2013?

19 **A** **I don't know exact date, sir.**

20 **Q** I can give you the exact date, if you want, but--

21 **A** **Apparently this was open knowledge all this trial. I**
22 **didn't--wasn't aware of that.**

23 **Q** I'm sorry?

24 **A** **Go ahead.**

25 **Q** Your interview was October--

1 **A** **Check.**

2 **Q** --early October.

3 **A** **Check.**

4 **Q** Okay. There was a lot of stuff that you guys discussed in
5 that interview.

6 **A** **Yeah.**

7 **Q** Okay. Right at the beginning of the interview, you allude
8 to the investigator that you have knowledge of at least
9 two other members of the Michigan National Guard that were
10 lying about their medical conditions in order to justify
11 disability retirement from the Federal Government. Do you
12 recall that conversation?

13 **A** **Yes, sir.**

14 CAPTAIN BEDELLS: I'm going to place an
15 objection. It doesn't go--I thought we've established
16 that we're going to try to get to what was the grounds for
17 his termination.

18 MR. BANCHS: This goes to the witness'
19 credibility.

20 CAPTAIN BEDELLS: The--okay. Let me just
21 finish my objection, then I imagine you'll get to--

22 MR. BANCHS: I'm sorry. I apologize--

23 CAPTAIN BEDELLS: --you'll get to respond.

24 MR. BANCHS: --for stepping on you.

25 CAPTAIN BEDELLS: Thanks.

1 I thought we were going to establish that we
2 were concerned about whether an offense was committed. I
3 don't know how Chief Mack's reference in a 2 hour and 5
4 minute interview covering subjects such as whether other
5 employees of the Michigan Army National Guard submitted
6 medical claims. I don't understand. And I don't
7 understand how it's going to impact his credibility
8 either. We--you can simply ask him, you know, you
9 cross-examine him on the facts and circumstances, as he's
10 already explained on direct, surrounding his personal
11 knowledge of wood being taken, diesel fuel, luan and so
12 forth.

13 So I'll just--I'll place--I'm not going to
14 object every time. That's the continuing objection I want
15 throughout the record that this is immaterial and it's not
16 proper for--for cross-examination at this point, so.

17 MR. BANCHS: Well--I'm sorry, sir--

18 THE HEARING EXAMINER: Go ahead.

19 MR. BANCHS: Well, certainly, I'm not going to
20 get into who the people are. I just--I want to establish
21 a pattern here of Chief Mack having knowledge of
22 wrongdoing or allegedly having knowledge of wrongdoing and
23 not doing anything about it for a period of years. That's
24 all I'm trying to establish here. And I want to know
25 whether he knows what--that he has a duty, under federal

1 law to report wrongdoing. That's--I'm just trying to
2 establish it.

3 And fairly enough, this is his testimony, and
4 it was included in the 15-6, so it is part of the record.

5 CAPTAIN BEDELLS: How does it go, sir, to
6 whether or not these offenses were committed? I'm trying
7 to save us time. I just don't understand why we're going
8 to go outside of what is--what the basis for the removal
9 was and what his direct testimony is with respect to
10 these--some of which he readily admits he has no know-
11 --no personal knowledge whatsoever. So we can spend hours
12 going around and around on, you know, a multitude of
13 things.

14 MR. BANCHS: It's not going to take long, this
15 line of questioning. Believe me, I will dive into--

16 THE HEARING EXAMINER: I'm going to note your
17 objection. I want to--I'll allow this line of questioning
18 briefly to--

19 MR. BANCHS: I'm setting--I'm just setting up
20 the stage, sir.

21 THE HEARING EXAMINER: Go ahead.

22 BY MR. BANCHS:

23 Q Do you recall that conversation?

24 A **Yes, sir.**

25 Q Okay. When you--when you had knowledge of these two

1 individuals that are allegedly defrauding the Government,
2 did you make a report of that to anybody whether--

3 **A No, sir.**

4 **Q** --it was the IG, Michigan Army National Guard, IG OPMIG?

5 **A Yes, sir.**

6 **Q** You did. Okay. So you are familiar with the standard of
7 conduct for Federal employees, right?

8 **A Yes, sir.**

9 **Q** All right. And you supposed--well, now that you're a
10 supervisor, you're required to brief that to your
11 employees, correct?

12 **A Yes, sir.**

13 **Q** And those standards are derived from Title 5 of the Code
14 of Federal Regulations 2635, which is the Standards of
15 Ethical Conduct section of the CFR. Okay. And that Title
16 briefly says that an employee--a Federal employee has a
17 duty to protect and conserve Government property, and
18 shall not use such property or allow its use for other
19 than authorized purposes.

20 **A Yes, sir.**

21 **Q** Okay. And so you must be aware, since you're a supervisor
22 and you've been a Federal employee for awhile, that you
23 are--that your failure to report such fraud makes you
24 complicit and subject to discipline as a Federal employee
25 in accordance with TPR 752 and a slew of other laws. You

1 are aware of that, correct?

2 **A Yes, sir.**

3 Q Okay. All right. At approximately 5:50 into the
4 interview, you're asked who your supervisor is, and you
5 indicate that it's Major Burrell. And you go on to say
6 that you had knowledge that the IO had already questioned
7 Major Burrell, and that you remarked to Major Burrell,
8 "Holy cow, you should hear what's going on now." Do you
9 recall that statement?

10 **A Yes, sir.**

11 Q Okay. Is it fair to say that, before you were interviewed
12 and even after you were interviewed initially, that you
13 were discussing the potential questioning in this case
14 with Major Burrell, Mr. Cooper, Mr. Witcher and other
15 employees that were--that were going to be interviewed?

16 **A Yeah.**

17 Q Even though that--even though--even though those people
18 were advised and you eventually were advised not to
19 discuss the subject of your interview--

20 **A That was--**

21 Q --or of the investigation?

22 **A You're correct, sir. Because actually I told Mr. Smock
23 what they were asking about it.**

24 Q Okay. I'm just--I'm just--I'm asking the question. Did
25 you discuss it even though you were advised not to?

1 **A** **Yes, sir.**

2 Q Okay. Did you have any reason to--did you have any
3 motivation or reason to--to supply testimony that would
4 have, you know, implicated Colonel Golnick or Colonel
5 McNamara or anybody at MATES for any wrongdoing?

6 **A** **Absolutely not. Do you really think I want to test a**
7 **guy--testify against a friend or was a friend, I'd say?**

8 Q Well, so you did this--you did not do this for personal
9 gain, is what you're saying?

10 **A** **There is no--**

11 Q Okay.

12 **A** **--what is the personal gain, sir? More reprisal?**

13 Q Okay. Well, did you have--maybe did--maybe you were
14 trying to get back at somebody.

15 **A** **No.**

16 Q Okay. At 14 minutes into the interview, you describe a
17 conversation that you had with Lieutenant Colonel Golnick
18 where you told him you were interested in going to Warrant
19 School, and that he replied that if you did you wouldn't
20 have a job; do you recall that?

21 **A** **Absolutely.**

22 Q That didn't make you mad?

23 **A** **Like you forget it--well, wouldn't you, sir?**

24 Q I'm asking. I'm not on trial here, sir.

25 **A** **Neither am I.**

1 CAPTAIN BEDELLS: Neither is he.

2 THE WITNESS: I'm not on trial either.

3 MR. BANCHS: Well, he's the witness.

4 CAPTAIN BEDELLS: Neither is he. So--

5 MR. BANCHS: I'm just--

6 CAPTAIN BEDELLS: --are we going to get to a
7 question--

8 THE HEARING EXAMINER: Yeah. What's--

9 CAPTAIN BEDELLS: --that bears on whether an
10 offense was committed by Smock, not by Chief Mack.

11 THE HEARING EXAMINER: Where--where are you
12 going with this?

13 MR. BANCHS: Well, I--what I'm--what I'm
14 trying to establish is that perhaps the way that the Chief
15 viewed certain actions or certain things that happened at
16 the MATES were not necessarily what he thought they were.
17 In other words, Colonel Golnick was not telling him that,
18 if he went to Warrant School, he was going to fire him
19 from being a technician. The reason that he was going to
20 lose his job was because he was going to be in grade
21 inversion. That's all I'm trying to get at. Because
22 later on in the interview, Colonel--Chief Mack claims that
23 he knows the regulations in and out. Just trying to
24 establish a record here.

25 CAPTAIN BEDELLS: And my objection is how does

1 any of this go to whether or not Mr. Smock committed the
2 offenses for which he was removed.

3 THE HEARING EXAMINER: Yeah. I don't--I don't
4 see how you could establish--even if you could establish
5 what you're intending to establish, I'm not sure what its
6 relevance is to these specific charges.

7 MR. BANCHS: Well, you know--yeah. Well, it
8 also goes to the motivation behind making the statements,
9 because, you know, I mean, for years he had knowledge of
10 all this wrongdoing and he withheld it, all of a sudden
11 till the investigation happened. That's all it's about.

12 THE HEARING EXAMINER: If you want to ask him
13 when you--when you deal with these direct issues--I don't
14 want to--I don't want to lead you.

15 MR. BANCHS: Yeah.

16 THE HEARING EXAMINER: But you're free to ask
17 him why he didn't report that earlier, why he waited until
18 the investigation.

19 MR. BANCHS: Okay.

20 BY MR. BANCHS:

21 Q Do you recall you making the statement about the Right
22 Road Project?

23 A **Me? I was asked that question, yes.**

24 Q Right. And what was your reply to Colonel Doolittle's
25 questions about whether you knew something about the Right

1 Road Project.

2 CAPTAIN BEDELLS: I'm not--

3 THE WITNESS: I--

4 CAPTAIN BEDELLS: I'm not familiar with this
5 Right Road Project at all. Is it--is it something in the
6 audio or--

7 MR. BANCHS: It is in evidence, absolutely.

8 CAPTAIN BEDELLS: Okay. Okay. Can he take a
9 look at it? If you're going to ask him questions about
10 it, Mr. Banchs, I think he's got a right--

11 MR. BANCHS: Well, you know, I will remind
12 you--

13 CAPTAIN BEDELLS: --he's got a right to look.

14 MR. BANCHS: --that I gave you a lot of
15 latitude to ask a lot of questions without forcing you to
16 reference the record. So I'm asking for the latitude. Or
17 we can drag this on forever.

18 CAPTAIN BEDELLS: Well, that's because I show
19 my witnesses what I'm going to question them about. And
20 we are--and you're not doing that. So if you'd just
21 simply show him what you're going to question him about.

22 MR. BANCHS: Okay. Well--

23 CAPTAIN BEDELLS: Ask him to read it.

24 MR. BANCHS: Absolutely.

25 CAPTAIN BEDELLS: And don't give me the

1 latitude if you don't want, but I'm--

2 THE HEARING EXAMINER: Ben, does this go to
3 one of the charges?

4 MR. BANCHS: Sir?

5 THE HEARING EXAMINER: Does this go to one of
6 the charges?

7 MR. BANCHS: What? The Right Road project?

8 THE HEARING EXAMINER: This Road Project.

9 MR. BANCHS: Not really, but I'm just trying
10 to establish a record here. I'm trying to establish
11 credibility or--or establish the fact that the witness is
12 not credible. Okay. That's all I'm trying to do. And
13 these questions were asked--

14 THE HEARING EXAMINER: How many--

15 MR. BANCHS: --of the witness.

16 THE HEARING EXAMINER: How many more of these
17 other--we've talked about the medical disability issue.
18 You've got this one. Do you have more along these lines?

19 MR. BANCHS: Actually, I do have a lot, you
20 know. And--and, yes, there's a lot of allegations that
21 this witness has made that go to his credibility, that
22 were made in the interview. But they're in the record,
23 sir. You're free to read them.

24 I'll tell you what. I'll jump to this one.
25 Okay.

1 CAPTAIN BEDELLS: Well, provided it's--when
2 you say "this one," provided it's one that's a basis for
3 his removal, I don't have an objection.

4 MR. BANCHS: Well--

5 CAPTAIN BEDELLS: Otherwise, my objection
6 continues. And I won't interrupt him again. I just--

7 MR. BANCHS: Okay. Good. I mean--if--you
8 know, he's objected. If you think I'm going out of line,
9 you know, stop me. But--

10 THE HEARING EXAMINER: No, I under- --I
11 understand and I'm interested. What's the next item you
12 have that you wanted to go to?

13 MR. BANCHS: Well, it dealt with--it dealt
14 with certain personnel moves that dealt with the
15 Todds--I'm sorry--with the Witcher--with the Witchers
16 and stuff like that, talking about the Dales, you know,
17 his--his--his impression that the Dales were somehow, you
18 know, promoting each other, giving each other trashcan
19 leave, stuff like that.

20 But I'll--you know, I mean, it's in the
21 record, sir. I mean, I'm just trying to establish--no
22 disrespect to the Chief, but I'm trying to establish the
23 fact that he is not--in our--in our mind, he is not a
24 credible witness, so. That's all I'm trying to do.

25 THE HEARING EXAMINER: He's under oath here

1 today. He's been--there's been direct. There
2 are--there's a bunch of fodder out there available.

3 MR. BANCHS: Okay.

4 THE HEARING EXAMINER: I've got to assume,
5 he's under oath and he's telling the truth here tonight.

6 MR. BANCHS: Okay. Fine.

7 THE HEARING EXAMINER: And, if that's
8 consistent with--with the 15-6, it's clearly on the record
9 now, that you have questions about his credibility.

10 MR. BANCHS: Okay.

11 THE HEARING EXAMINER: And I'll--

12 MR. BANCHS: So, I'll jump to the discussion,
13 the back-and-forth discussions with him and Colonel
14 Doolittle about--oh, I'm sorry--Lieutenant Emery about him
15 discussing his testimony with other witnesses.

16 THE HEARING EXAMINER: Okay.

17 MR. BANCHS: Okay.

18 Ma'am, can you refresh my memory what tab it
19 was in your--his--his interview.

20 LIEUTENANT COLONEL NIEDERGALL: The interview
21 for Joel Mack is B-4.

22 BY MR. BANCHS:

23 Q Okay. Sir, if you open this 15-6, Bravo 4, and you go to
24 page 15, this is your trans- --or--I'm sorry--the notes
25 from your interview.

1 CAPTAIN BEDELLS: And, Mr. Banchs, can he have
2 an opportunity to read what excerpt you're going to call
3 his attention to?

4 MR. BANCHS: I'm about to.

5 CAPTAIN BEDELLS: Okay. Okay.

6 MR. BANCHS: It's the same ones--

7 CAPTAIN BEDELLS: Thanks.

8 MR. BANCHS: --that we brought already.

9 CAPTAIN BEDELLS: Right. Right. Great.

10 MR. BANCHS: It's no different.

11 CAPTAIN BEDELLS: Great.

12 BY MR. BANCHS:

13 Q If you go to the last question on here, sir, and I'll just
14 read it to you. Colonel Doolittle asks you if you have
15 some issues that you wanted to talk about. And he
16 regards--and he references the medical issues that you had
17 initially brought up at the beginning of your interview.
18 And your reply was that you wanted--said, "I want to
19 answer a question you asked the other guys, and it was
20 about a roll of copper, a question that you asked Master
21 Sergeant Cooper." You recall--

22 A **Check.**

23 Q --that exchange? Okay.

24 A **Yes, sir.**

25 Q If you turn to page 17, and it's the second bold paragraph

1 there where it says "Lieutenant Emery." Lieutenant Emery
2 jumps in, after you guys had a little more back and forth,
3 and he tells you, "I want to jump in for a second if I
4 could. You've been very candid with us, and we appreciate
5 that. And sorry about the mix-up earlier. One that does
6 concern me, and maybe I just haven't been as explicit or
7 clear, is the conversation we have in here, at this
8 isn't--" "--and this isn't to you. This is just if you
9 can go back and tell people." And he's asking you to go
10 back and tell people. "The specifics which are coming
11 back doesn't make me very happy. What we want to tell
12 people is it's broad, and we're not trying to single out
13 people. The TAGs not here to hammer mechanics. No pun
14 intended. But that privacy act is saying we're not going
15 to tell other people what you said, and we expect that in
16 return. So from our standpoint, we're trying to run the
17 investigation, and we want there to be some flow of
18 information. However, specifics, that troubles me."

19 Okay. So the investigator is highlighting to you
20 the fact that he's troubled by the fact you're already
21 coming in here, and you know everything he's going to ask
22 you. And you're telling him that you want to tell him
23 other things. So my question to you is how much and who
24 did you collaborate with prior to and after your
25 interview?

1 **A** **I talked to--**

2 CAPTAIN BEDELLS: Well, objection to the term
3 collaborate.

4 THE WITNESS: That's--I was--I didn't
5 collaborate.

6 BY MR. BANCHS:

7 Q Who did you discuss--

8 CAPTAIN BEDELLS: Right.

9 BY MR. BANCHS:

10 Q --the interview--your--your pending interview and post to
11 your interview, who did you discuss that with?

12 **A** **The questions of the interview? That's--**

13 Q Anything that had to do with the investigation.

14 **A** **So we talked with--and there was some--I don't remember**
15 **all the names, because it was going--I don't even remember**
16 **who was first. I was way down the line. I was in**
17 **Colorado hunting, whatever it was. And that was just**
18 **stuff that they had talked about. I don't even remember**
19 **who brought it up.**

20 Q I'm sorry. Let me--let me just ask it again. Who--who at
21 MATES did you--

22 **A** **I don't remember who.**

23 Q Just let me finish the question. Who at MATES did you
24 speak with prior to your interview and after your
25 interview about the investigation?

1 **A** **I talked with Mr. Smock, as well.**

2 Q Okay.

3 **A** **I'm trying to think how--who all went ahead of me.**

4 Q Well, if you don't mind me asking, would you say that you

5 spoke with Master Sergeant Cooper?

6 **A** **No. I think he was after me.**

7 Q Well, you--you said that you wanted the investigator to

8 ask you questions that they had asked Cooper.

9 **A** **Yeah. Because this question of the copper referred to the**

10 **copper that was ordered on my--my floor of the shop.**

11 Q Okay. But--

12 **A** **That's why.**

13 Q Yeah. I'm not--the copper is irrelevant because it's not

14 one of the charges. It just want to highlight the fact

15 that you wanted the investigator specifically to ask you

16 questions that they had asked Cooper. So you spoke to Mr.

17 Smock. You obviously spoke to Mr. Cooper; would that be

18 fair to say?

19 **A** **I don't know.**

20 Q Did you speak with Mr. Wick-ter (phonetic)?

21 **A** **It's Witch-er (phonetic).**

22 Q Whitcher.

23 **A** **Yeah.**

24 Q Did you speak with his wife?

25 **A** **No. No. Nope.**

1 Q No?

2 A **No.**

3 Q You just--you admitted that you spoke to Major Burrell

4 about your pending interview?

5 A **Yes, sir. I did.**

6 Q Okay. Did you speak with Major Burrell after your

7 interview?

8 A **Yes, sir. I did.**

9 Q Okay.

10 A **As a matter of fact, I reported back to him.**

11 Q So maybe your memory's getting any clearer. Do you

12 remember any other people that you spoke with, because

13 there's about 60 people at the MATES.

14 A **Yeah, that's probably right. 65 at the time, I think.**

15 Q Okay.

16 A **Not off the top of my head, sir, I don't--I was concerned**

17 **with allegations being made about that roll of copper that**

18 **was ordered. And I wanted to make sure the bases were**

19 **covered on that.**

20 Q Did you ever tell anybody that you did not want to talk

21 about the interview because you were instructed not to?

22 A **No. They do in there? I don't remember it if I did. No.**

23 Q No. It wasn't--

24 A **I wasn't comfortable with it.**

25 Q --it would have been post-interview.

1 **A** **No.**

2 Q Because I'll grant you this much: You were not warned not
3 to talk about the interview until you actually were
4 interviewed.

5 **A** **Check.**

6 Q So after the interview, did you heed that--that--that
7 really it's more of a command than anything. You were
8 instructed not to speak to anybody--

9 **A** **Yes, sir.**

10 Q --about the interview. Okay. At the end of that
11 interview, you indicate to Colonel Doolittle that, if he
12 turns the tape off, that there's a lot more than you're
13 willing to say.

14 **A** **Absolutely.**

15 Q Okay. Can you recall what you told him after the tape
16 stopped here today?

17 **A** **I don't see it in these--**

18 Q Well, it's not in there, because the tape was stopped.

19 **A** **It's probably our--our stuff to talk about, then, sir.**

20 Q Okay. But now you're under oath.

21 **A** **Right.**

22 Q So you're required to cooperate. You have to tell us what
23 you told Colonel Doolittle after the tape stopped.

24 **A** **We talked about things that--how I didn't trust this**
25 **interview and how things would get twisted around. And**

1 that there's--there was no one for me to go to tell the
2 problem, because, if I went to that person and told them,
3 there was a problem they would just go back to the
4 individual that there was a problem, and it still would be
5 not solved. And I knew who--no idea where to go to talk
6 to someone about the problems.

7 Q So the only--

8 A And I was glad that he was here doing the investigation
9 because it's the type of thing that all shops should have.

10 Q So the only thing you spoke to Colonel Doolittle about
11 after the tape was stopped was that you were happy that he
12 was there doing the interview?

13 A Absolutely. Talked about some stuff that was going on out
14 to the Camp that doesn't pertain to Mr. Smock. If that's
15 what we we're talking about, stuff with Smock or are we
16 still talking about my credibility?

17 Q Well, if you can--if you just answer my questions, I think
18 we'll stay on track.

19 A Okay.

20 CAPTAIN BEDELLS: Well--

21 THE WITNESS: And we talked--I talked about
22 stuff that was being stole at the Camp.

23 BY MR. BANCHS:

24 Q At a minute--

25 A Knowledge of it being stole.

1 Q Okay. At a minute 54 in the interview you remarked to
2 Colonel Doolittle and said you're disappointed in Joe
3 about some of the things you've heard. Can you explain
4 what and from who specifically?

5 A **There's the stuff that I knew that Mr. Smock was doing.**
6 **That's what I was referring to.**

7 Q At--immediately after that, you remarked to Colonel
8 Doolittle about things that were built at Joe's house,
9 that he and his wife lived way beyond their means.

10 A **That's in the--that's in here?**

11 Q Yes, sir.

12 A **Where's that at?**

13 Q If you look at the very last page, page 18--I'm sorry.
14 Better go back to 6- --17 at the top. The question that
15 Colonel Doolittle asked you, "That was the click I was
16 looking for earlier." So you've hit on a hot button for
17 him, obviously.

18 A **Where are you referring?**

19 Q Seventeen.

20 A **Oh. Okay.**

21 A **Page 17 at the bottom of your own testi- --of your own**
22 **interview. I'm sorry. He remarks, "That was the click I**
23 **was looking for earlier." So your answer, "It's the truth.**
24 **He'll stand right up and say Joe has got something. We**
25 **had a meeting yesterday about this investigation and**

1 having Union representation." You know, and you continue
2 talking about all this stuff. Then if you turn the page,
3 you say, "And Joe, I don't know what to say about Joe.
4 I'm kind of disappointed in some of the things I've heard.
5 I didn't know about--and to here--" so this is why the
6 test- --it's not a verbatim transcript-- "--and 800
7 gallons. There's only one guy that says we need it. It's
8 not hard to figure out who did it, in my opinion." So
9 then Colonel Doolittle asks you one last question, "How
10 about bunks of lumber?" And you said, "There's a lot of
11 lumber. I mean, I build--" "--I build." You said you
12 build.

13 **A** He's--because the question's not correct as what was
14 asked. He asked about lumber in there, and he was
15 referring to me using lumber.

16 **Q** Okay. But you reply--I mean, and when we--you know, we
17 can certainly listen to the tape if we need to. "There's
18 a lot of lumber. I mean, I build." You're saying you
19 build.

20 **A** Uh-huh.

21 **Q** "I can show you receipts. I own a diesel truck, and you
22 know where I'm trying to go? No. There's things that are
23 built at Joe's house. Let's put it this way: Joe's wife
24 and him, he lives way above his means for not working on
25 the side. If you turn that off, I could tell you more."

1 **A** **I must have said that, then.**

2 Q Okay. I mean, are you familiar with the--with the Smock's
3 finances or anything?

4 **A** **No. I don't know of it.**

5 Q Okay. So were you--you were just speculating at that
6 point in time?

7 **A** **Well, I--yeah.**

8 Q Okay. In the 15-6 file, there's a December 10th warning
9 of rights. You were advised of your rights to remain
10 silent. Do you recall that?

11 **A** **Yeah.**

12 Q Do you want me to show it to you?

13 **A** **Sure.**

14 Q Do you remember what you were being advised of your rights
15 about?

16 **A** **Yeah. It was parts and diesel fuel, throwing away parts
17 and diesel fuel. That was--**

18 Q Okay. Do you want--do you need to see it or are you okay
19 with--

20 **A** **I'm good.**

21 Q Okay. Do you remember why you were being advised of your
22 rights?

23 **A** **Because I was--there was allegations of me taking diesel
24 fuel and throwing away parts.**

25 Q So specifically with diesel fuel and the parts, you were

1 implicated in the same types of wrongdoing that Mr. Smock
2 eventually got fired for?

3 **A According to that, I guess I was.**

4 **Q**Well, if there was a warning of your rights, you must have
5 been implicated by somebody, and Colonel Doolittle must
6 have found it credible; would you agree?

7 CAPTAIN BEDELLS: I would object to that.
8 Object to that.

9 MR. BANCHS: Well, he must have thought it
10 had--

11 CAPTAIN BEDELLS: One, the two don't go--

12 MR. BANCHS: --some merit.

13 CAPTAIN BEDELLS: The two don't go
14 hand-in-hand necessarily. We give rights warnings to
15 people all the time who aren't going to be implicated in
16 something. And he can't testify to the second part of
17 your question.

18 And what I'm going to--what I'm going to
19 caution everyone here is--is Mr. Mack is not here to
20 defend himself. We're here to find out whether Mr. Smock
21 committed the offenses that are enumerated here. We're
22 not--we're not attacking credibility with respect to his
23 testimony about Mr. Smock at this point. Now what we're
24 doing is just attacking him. So--

25 MR. BANCHS: Well, if you allow me, I will--if

1 you--if--

2 CAPTAIN BEDELLS: I've allowed--

3 MR. BANCHS: But you can object.

4 CAPTAIN BEDELLS: Mr. Banchs--yeah. Mr.
5 Banchs, I've allowed enough. What--

6 MR. BANCHS: Oh, okay.

7 CAPTAIN BEDELLS: What you can do is attack
8 his credibility with respect to what he's testified to
9 here tonight. And he's testified about everything from a
10 flat screen TV, which he admittedly has no knowledge of
11 beyond one person telling him about a flat screen TV
12 disappearing, all the way down to a chainsaw, which he has
13 admitted that he doesn't have any personal knowledge of.
14 In between, he has personal knowledge of things. Attack
15 him--attack his credibility on those points.

16 I'm--

17 MR. BANCHS: It is our alternate--

18 CAPTAIN BEDELLS: Sir, with all due respect,
19 he's --

20 MR. BANCHS: It is an alternate theory of the
21 crime. If the individual was charge--he was actually read
22 his rights and potentially was going to be charged. He
23 was--he was advised that he might be charged with the same
24 types of wrongdoing that Mr. Smock was going to do, then
25 he had a motivation to implicate somebody else.

1 CAPTAIN BEDELLS: Okay.

2 MR. BANCHS: That's all--that's--you know, if
3 you stipulate to that, then we can move on.

4 CAPTAIN BEDELLS: I will--

5 MR. BANCHS: But that's--that's the only place
6 I was going with it.

7 CAPTAIN BEDELLS: I will stipulate to--I will
8 stipulate to nothing, because we're not even--

9 MR. BANCHS: Okay.

10 CAPTAIN BEDELLS: --talking about crimes here.
11 We're talking about the removal of a Federal technician.
12 No one, as far as I know, has been prosecuted with any
13 crimes, including Mr. Mack, so.

14 MR. BANCHS: Well, if he was read his rights,
15 then he was--he was potentially going to be charged with a
16 crime. Granted, it was in a military setting.

17 CAPTAIN BEDELLS: Disagree. Disagree. We
18 read rights warnings to people, and there might be
19 absolutely no evidence that you're going to be charged
20 with a crime, so.

21 MR. BANCHS: Well, for the record, there was
22 only three people that were read their rights in
23 conjunction with this investigation, and Mr. Smock was not
24 one of them. Mr. Mack was. That's--

25 THE HEARING EXAMINER: The fact is he

1 wasn't--when the investigation concluded--help me out
2 here. Was--were there any charges brought as a result of
3 the 15-6 against Mr. Mack?

4 THE WITNESS: No, sir.

5 MR. BANCHS: No, sir. There were not.

6 THE HEARING EXAMINER: Okay.

7 MR. BANCHS: And--no. But I'll get to that.

8 CAPTAIN BEDELLS: He wasn't disciplined,
9 whatsoever.

10 THE HEARING EXAMINER: Okay. So even--even if
11 you theoretically could demonstrate that Mr. Mack's
12 credibility is questionable, that may or may not be
13 relevant to these specific charges.

14 MR. BANCHS: Well, I'm not done yet, because
15 I'm going to get to his line of questioning here in a
16 second. So I mean, I'm going to be--I'm getting ready to
17 address what he asked Mr. Mack. So, I mean--I'm just--I'm
18 building up to it.

19 THE HEARING EXAMINER: What--

20 MR. BANCHS: I mean, it is relevant, in my
21 mind. I mean, you certainly don't have to consider it,
22 sir. And if you tell me I have to move on, I'll move on.

23 You see, look. I'll show you, if you want.
24 This is what I just asked him, and here's where I am.
25 This is where you started.

1 CAPTAIN BEDELLS: I don't know why you didn't
2 start where I--where I left off awhile ago.

3 MR. BANCHS: Well, because you're not
4 prosecuting my case--

5 CAPTAIN BEDELLS: Yeah.

6 MR. BANCHS: --or you're not defending my
7 case.

8 CAPTAIN BEDELLS: Well, we have--we have
9 what's in--what's in the record on direct is what I
10 elicited from him. So I understand we're not--I
11 understand the Court Rules don't apply here. This isn't a
12 Court of Law. But we're getting way into the weeds, as
13 far as I'm concerned, when we're talking about what--you
14 know, rights warnings for Chief Mack. So, if we're there,
15 sir, I can be patient. I've been patient enough.

16 MR. BANCHS: Well, you have--and, if you don't
17 mind me saying this, sir, the line of questioning that
18 he's--he has opened with, at the very beginning, conc-
19 --especially with the other witnesses that came before,
20 really had nothing to do with the charges that Mr. Smock
21 was being charged with. I mean, we've talked about all
22 manner of stuff today. So--

23 THE HEARING EXAMINER: Yeah. But I think
24 since--since our dinner break, we've--we've all agreed to
25 bring this back more in line with the specific charges

1 here.

2 MR. BANCHS: Well, we've all--

3 THE HEARING EXAMINER: And I under- --I
4 understand. I think I understand the issue of credibility
5 of this witness. I understand your view of its weight
6 on--on the issues.

7 MR. BANCHS: Well--

8 THE HEARING EXAMINER: I'm just trying to
9 understand what yet you're trying to establish that hasn't
10 already been established. And I'm--

11 MR. BANCHS: Well, like I said, I'm--I'm--I've
12 gotten to where he started. So I'm almost finished.

13 THE HEARING EXAMINER: Almost--what?

14 MR. BANCHS: I'm almost finished. I'm right
15 where he started now.

16 THE HEARING EXAMINER: So you're getting ready
17 to go into the--the specific charges that were--

18 MR. BANCHS: Yes, sir.

19 THE HEARING EXAMINER: --brought against Joe
20 Smock?

21 Okay. Go ahead, then.

22 MR. BANCHS: Yes, sir.

23 THE HEARING EXAMINER: Go ahead.

24 BY MR. BANCHS:

25 Q All right. Mr. Mack, starting where Captain Bedell's

1 initiated his questioning, he asked you specific questions
2 about the charges against Mr. Smock. He asked you whether
3 you had direct knowledge of Mr. Smock stealing a TV, and
4 you said no.

5 **A Correct.**

6 **Q** Is that accurate?

7 **A Yes, sir.**

8 **Q** Okay. When it came to--to the wood products--and I'm not
9 going to split them up between OSB and plywood and luan.
10 They're all wood products to me. Okay. But specifically
11 when he talked about the plywood, you admitted to helping
12 Mr. Smock load and unload, I'm assuming,
13 Government-purchased plywood.

14 **A Yes, sir.**

15 **Q** Loaded at the MATES, and you helped him--

16 **A Yes, sir.**

17 **Q** --in a GSA--or--I'm sorry--

18 **A He asked me to help him.**

19 **Q** --an NTV.

20 **A Helped him--asked me help him unload the stuff, yes, sir.**

21 **Q** And you did?

22 **A Yes, sir.**

23 **Q** Okay. And you--and so basically you're admitting here in
24 front of everybody that you committed a Federal offense?

25 **A Yes, sir.**

1 Q Okay. And you're okay with that?

2 A **I'm under oath, sir. I'm doing what's right, sir.**

3 Q Okay. But that wasn't a--the only one you committed,
4 right, because you also admitted that you helped him--that
5 he told you--you didn't help him--that--that he stole
6 treated lumber to build his gazebo. He admitted this to
7 you--

8 A **Yes, sir.**

9 Q --according to you. And at that point in time--well, let
10 me back up to the plywood. Did you report that event to
11 anybody?

12 A **Just like I referred to earlier, sir, who do I tell? I go
13 up front and tell the boss the thing, and he goes back and
14 tells Joe that--the boss--sorry--Lieutenant Colonel
15 Golnick and tell Joe you need to quit stealing stuff, or
16 go back and, hey, this is what--because that's what
17 happens, sir.**

18 Q So--so, I mean, are you telling me that--that your chain
19 of command--

20 A **I'm asking you who would I tell? Who I would tell in
21 the--**

22 Q Is your chain of command end with Lieutenant Colonel
23 Golnick? Do we not have other venues for bringing up
24 concerns like whistleblower, DoD IG, stuff like that?

25 A **I've gone higher than that, and it just goes back to the**

1 **phone calls, to nothing happens.**

2 Q So you're saying that you did report it?

3 A **No, sir. I didn't.**

4 Q Okay. You didn't--but--so--so then you didn't report it
5 because you didn't think it was going to go anywhere?

6 A **Exactly what I said, sir.**

7 Q And you thought you were going to be fired?

8 A **I asked who I would report that to, because, it just goes
9 right back where it came from.**

10 Q Do you guys have a--one of those standard bulletin boards
11 in the shop that have, like, DoD IG hotline and EEO and
12 stuff like that?

13 A **Yes, sir.**

14 Q Never thought to call them?

15 A **What--nope.**

16 CAPTAIN BEDELLS: He's asked and answered it
17 several times. Where would it go? He didn't see the
18 point in it. I think he's asked and answered it several
19 times.

20 MR. BANCHS: Okay. Well, I'm going to ask him
21 again.

22 BY MR. BANCHS:

23 Q When he told you that he stole treated lumber, at that
24 point in time, did you feel it was necessary to report
25 that you were just notified of a Federal offense?

1 **A** And I'll say the thing is where do I go. You go up front
2 were I'm supposed to, I use my immediate supervisor, and
3 it comes right back to, "Hey, Joel Mack said you were
4 stealing stuff."

5 **Q** Okay.

6 THE HEARING EXAMINER: There's two questions
7 there. You asked--the question is did you know that that
8 was not acceptable, not appropriate?

9 THE WITNESS: Absolutely, sir.

10 THE HEARING EXAMINER: Okay. And chose not to
11 say anything about it?

12 THE WITNESS: Correct, sir.

13 THE HEARING EXAMINER: Okay.

14 BY MR. BANCHS:

15 **Q** Talking about the plywood, how did you know it was
16 Government wood? I don't think you established that when
17 Col- --Captain Bedells was telling you that. The wood
18 that y'all stole--that y'all took from MATES and y'all
19 brought it to the red cabin, how did you know that it was
20 Government-purchased wood?

21 **A** I don't know exactly, except for there was a bunk of wood
22 sitting right next to it that wasn't ripped.

23 **Q** Did you see a receipt or anything like that?

24 **A** No.

25 **Q** That any wood was any--whatever, reported missing, like a

1 FLIPL or anything like that?

2 **A No, sir.**

3 Q Okay. All right. I'm sorry. So going back to the
4 treated lumber, he told you about it; you didn't tell
5 anybody. Wood for projects, and they were--according to
6 you, they were unofficial. Concerning the bar at the
7 Armory, you testified that you didn't know if the bar was
8 ordered or not, but if it's at the Armory then it was
9 probably requisitioned by somebody within the
10 organization, correct?

11 **A You're making an assumption of that. I don't know that.**

12 Q Okay. Shadow boxes, you testified that he used wood for
13 shadow boxes, fly boxes, shadow boxes in the shop. Do you
14 recall how many total, maybe, within--

15 **A No, sir.**

16 Q And over--

17 **A I wasn't back there building them.**

18 Q Over what kind of--over what timeframe did he build these
19 shadow boxes and fly boxes?

20 **A Two months, month. I--**

21 Q Just over a two months?

22 **A I don't know. I wasn't back there building them. I have
23 no idea.**

24 Q But these are--these--but these are the things that you
25 said that you actually had--

1 **A** **Exactly.**

2 Q --first-hand knowledge of.

3 **A** **Yep.**

4 Q Okay. So over a period of two months, he built a few
5 shadow boxes and fly boxes, correct?

6 **A** **Sure.**

7 Q And you said that some of them were in Colonel Golnick's
8 office, some of there were in Colonel McNamara's office,
9 and maybe throughout the facility?

10 **A** **I said Colonel Golnick's office and his office, Master**
11 **Sergeant Smock's.**

12 Q Okay. Did he ever build, like, a flag case that's in
13 the--the break room or something like that?

14 **A** **There's flag cases all over. I don't know if Master**
15 **Sergeant Smock built them or not, no.**

16 Q Okay. Well, let me ask you this: If he used
17 Government-purchased wood to make shadow boxes and flag
18 boxes that stayed at the shop, is--would that be illegal?

19 **A** **And I also said that he made them for the auction**
20 **downtown.**

21 Q Okay. Do--

22 CAPTAIN BEDELLS: Well, you can ask--answer
23 his question. Listen to his question first, so you can--

24 MR. BANCHS: Yeah. Well, thank you.

25 BY MR. BANCHS:

1 Q But if they stayed at the facility and he built them, per
2 se, for his boss who told him to do it or he built them
3 for the--like, he built a bar for the Armory because--I
4 mean, is that illegal activity?

5 **A No, sir.**

6 Q Okay. The tip-ups. You said you purchased a tip-up for
7 \$20, correct?

8 **A Yeah. I actually purchased two of them.**

9 Q Okay. So you spent \$40. But do--when it came to the
10 tip-ups, you said that you didn't know where the wood came
11 from.

12 **A Correct.**

13 Q And you said that Mr. Smock doesn't build them at the
14 MATES?

15 **A I--no, I didn't say that.**

16 CAPTAIN BEDELLS: No, I don't think he
17 testified--I'd object--

18 THE WITNESS: I did not say that.

19 CAPTAIN BEDELLS: --to that characterization
20 of his testimony.

21 BY MR. BANCHS:

22 Q I wrote it. I mean, so--okay. So you're saying that he
23 did build the tip-ups at the MATES?

24 **A I said I didn't have knowledge of where he built them at.**

25 Q Oh, okay.

1 **A** **I purchased them at MATES.**

2 Q Okay. So you didn't know where he built them?

3 **A** **No, sir.**

4 Q You just said he was selling them at work?

5 **A** **Check.**

6 Q So he was kind of running a side business at work?

7 **A** **I--sure.**

8 Q Was he the only one?

9 **A** **Selling tip-ups?**

10 Q No. Running a side business.

11 **A** **There's several people at the shop running--**

12 Q Okay.

13 **A** **--side businesses.**

14 Q I just want to get this clear. When it comes to him using

15 wood at his house for--the wood that you helped to bring

16 to the red barn and the treated lumber that you claim he

17 told you that stole to build his gazebo, you're pretty

18 sure that that was wood that he stole or it was

19 Government-purchased wood. But when it comes to the

20 tip-ups, something that you purchased from him, you're not

21 sure where the wood came from?

22 **A** **Well, it was oak, and it's not something common that you**

23 **would have at our facility.**

24 Q Well, I'm just saying, I mean, I don't--

25 **A** **So am I.**

1 Q --you know, nobody's--nobody--so far, nobody has really
2 specified whether this product was oak or--we were just
3 talking about OSB, luan and, I guess, wood--

4 **A You told me earlier wood is wood.**

5 Q Right. Wood is wood.

6 **A Right.**

7 Q Right. But what I'm saying is, when it came to the
8 tip-ups, you're pretty sure that that's not
9 Government-purchased wood, but when it comes to these
10 other items, it could be Government purchased?

11 **A I can't--can't answer that. I don't know, sir. I'm just
12 telling you that the tip-ups are made out of oak. Did
13 oak--did MATES have oak? I don't know that. I wasn't the
14 one purchasing wood there to know that.**

15 Q Okay. Hold on one second. When it comes to the luan, you
16 say you did not see Mr. Smock actually steal luan,
17 correct?

18 **A No, sir.**

19 Q And then you say your heard it from Tim Sheldon--

20 **A Yes, sir.**

21 Q --that it was one day there, and then it was gone?

22 **A Yeah. It--**

23 Q Okay.

24 **A It was there on Friday and gone on Monday. And--**

25 Q All right.

1 **A** --as Mr. Sheldon was over at Master Sergeant Smock's
2 house, the whole garage that he--or the addition he built
3 on top of the shed was all completed with luan.

4 **Q** So, in other words, you're--you're piecing it altogether?
5 I mean, Mr.--you didn't see Mr. Smock actually take the
6 luan. You just--

7 **A** **That's what I said.**

8 **Q** And Mr.--and Mr. Tim Sheldon just merely told you that
9 there was wood there one day, and then the next day there
10 wasn't; is that correct?

11 **A** **Over the weekend, correct.**

12 **Q** Okay. And so who's making the connection that that wood
13 that Joe used to build whatever he was building was that
14 same stack or bunk or whatever of luan that was in--at the
15 MATES the day before?

16 **A** **Master Sergeant Sheldon was.**

17 **Q** So did he actually say, not only was it not there, but he
18 also used it to build?

19 **A** **No. He said that he was there all Friday. He went over**
20 **to Master Sergeant Smock's over the weekend. They were**
21 **showing him the new shed. The whole inside of the shed**
22 **was completed with luan. So immediately he came after**
23 **work on Monday and went to see if the luan was still in**
24 **the back in the storage area, and it was all gone.**

25 **Q** Okay. So if I point you to a statement that Mr. Timothy

1 Sheldon provided in support of Mr. Smock's reply, on 20
2 February 2014--and I'll show it to you, if you don't mind.

3 **A Sure.**

4 **Q** And it's going to be in the Smock file.

5 MR. BANCHS: Are you guys okay with that?

6 Sir, do you need to see it?

7 CAPTAIN BEDELLS: Is this a sworn statement or
8 a handwritten statement?

9 MR. BANCHS: It's a handwritten statement.

10 CAPTAIN BEDELLS: Okay. Okay.

11 MR. BANCHS: It's--it's kind of in the middle,
12 sir. Is that--is that yours?

13 CAPTAIN BEDELLS: Yeah.

14 THE HEARING EXAMINER: I've got it.

15 MR. BANCHS: Give it to him and--

16 THE HEARING EXAMINER: I've got it.

17 MR. BANCHS: You've got it?

18 **BY MR. BANCHS:**

19 **Q** This is what Mr. Timothy Sheldon provided in support of
20 Mr. Smock's reply in--in answering whether he had any
21 knowledge of anybody stealing wood. He says, "I have
22 knowledge of the second story on the old shed, but do not
23 know where the lumber was prepared. I have knowledge of
24 the gazebo, but do not know what kind of lumber it was
25 built with or do not know where the lumber was purchased.

1 I have no other knowledge of 2.a.1," which is wood theft.

2 **A Check.**

3 Q Okay.

4 **A Yeah. Mr. Smock was calling everybody to get them to sign**

5 **those things.**

6 Q Okay. So, if I hear your testimony correct, you're saying

7 that Mr. Tim Sheldon unequivocally told you that basically

8 Mr. Smock stole luan to build his shed?

9 **A Absolutely.**

10 Q And that this--so then this statement is false?

11 **A I know that I'm under oath telling the truth or--**

12 Q Okay. Well, he's going to be under oath later on, too.

13 **A Then we'll see.**

14 Q Okay. But is your testimony here that this is not a true

15 statement?

16 **A Yes, sir.**

17 Q Okay. Regarding the tires, you claim--or you say that you

18 did not see the actual Joe putting tires on his son's

19 truck--

20 **A No, sir.**

21 Q --or even on the jeep--

22 **A No, sir.**

23 Q --which is new evidence? That you actually heard it from

24 Mr. Smock?

25 **A Yes, sir.**

1 Q So, once again, Mr. Smock is admitting to committing a
2 Federal crime, and you--

3 A **Yes, sir.**

4 Q --told who?

5 A **Nobody.**

6 Q Okay.

7 A **I go back to what I said before, who do I tell.**

8 Q Okay. The heaters, you also claim no first-hand knowledge
9 of that. You say that you heard it from Mr. Witcher and
10 Mr. Cooper?

11 A **Mr.--**

12 Q Mr. Witcher, I'm sorry. And then you also say that
13 Cooper told McNamara, and then McNamara told Joe to remove
14 it from Craig's List. Now, I--

15 A **I don't know. And I--**

16 Q Okay. I wanted to clarify that.

17 A **--I corrected that. I corrected that. And I said it the
18 second time. I said that I have no--**

19 Q So you just heard that that happened?

20 A **--I have no idea what Lieutenant Colonel McNamara went
21 down and told Master Sergeant Smock. All I know is they
22 were off of Craig's List after--after that.**

23 Q But--but did you see Cooper actually talk to McNamara or
24 did you just hear that, as well?

25 A **I seen him, sir.**

- 1 Q So you saw Cooper talk to McNamara, and then you assumed
2 McNamara talked to Mr. Smock because the Craig's List
3 postings were gone?
- 4 A **Yes, sir.**
- 5 Q But then you also testified that you didn't actually see
6 the Craig's List posting.
- 7 A **Not--it was gone.**
- 8 Q But did you ever see it?
- 9 A **Oh, yes. It was on Mr. Whitcher's computer.**
- 10 Q Okay. So you actually did see it, because when you--
- 11 A **Yes, sir.**
- 12 Q --when you testified earlier, I thought you said that you
13 hadn't seen it, you just heard about it.
- 14 A **I seen it on Craig's List.**
- 15 Q Okay. And what did you see on Craig's List exactly?
- 16 A **There was two heaters in a picture.**
- 17 Q Okay.
- 18 A **It was--**
- 19 Q Can you describe the heaters?
- 20 A **They're the ones that hang from the ceiling in industrial
21 building.**
- 22 Q Well, you remember--
- 23 A **You got a picture of them in there.**
- 24 Q In where?
- 25 A **In your--in your evidence thing.**

- 1 Q In our evidence?
- 2 **A Uh-huh.**
- 3 Q Okay. Well, let's look at them. Is this one of the
- 4 heaters? And this is going to be--it's--it's in there.
- 5 Does that look like one of the heaters?
- 6 **A No. That's purchased from Woodhaven.**
- 7 Q Okay.
- 8 **A So is that one.**
- 9 Q What about this one?
- 10 **A That one is, too.**
- 11 Q Well, actually this is the same heater, it's just a back
- 12 shot of it.
- 13 **A Check.**
- 14 Q What about this heater? Does that look like one of the
- 15 heaters?
- 16 **A That is not one of them. It just--almost looks like the**
- 17 **same one.**
- 18 Q No, it's a different one. It--just for my edification--
- 19 **A Those are the new ones. The ones that came out of the**
- 20 **buildings were old ones.**
- 21 Q Okay. So they're like the old--like real old, silver
- 22 rectangular ones, right?
- 23 **A They're not like that. They're similar, they**
- 24 **just--they're older.**
- 25 Q But you said you saw a picture of them on Craig's List.

1 Can you just--maybe just a brief description of what it
2 is, because, if they don't look like this, then what do
3 they look like?

4 **A They're--they're similar to that. They got--I don't know**
5 **what color they were. They were--they got a casing around**
6 **the outside. They had the big pipes where they'd been cut**
7 **off.**

8 Q Do you recall Mr. Smock's screen name on Craig's List?

9 **A No.**

10 Q Do you remember how much he was asking for them?

11 **A No, sir.**

12 Q Okay. Moving on to the parts from the air-to-ground
13 range, you also claimed no first-hand knowledge. But you
14 do--you do say that you heard that he removed tires from
15 vehicles?

16 **A He told me is what I said.**

17 Q He--oh, I'm sorry. He told you. You heard it from him.
18 And he also admitted to stealing Kubota Tractor engines
19 out of multiple tractors?

20 **A Yes, sir.**

21 Q Did he also tell you who helped him do it?

22 **A No, sir.**

23 Q Well, did you ask him who helped him?

24 **A No, sir.**

25 Q Because, if somebody admitted to me that they were

1 stealing engines out of tractors, I would be, like, well,
2 who helped you, because can he do it on his own?

3 **A I don't know that. I don't know what he took up there for**
4 **equipment. I wasn't there.**

5 Q But I'm just talking--I mean, in general. I mean, let's
6 be honest with each other.

7 **A I'm being honest, too.**

8 Q Can one person steal a tractor engine by themselves?

9 **A A 3-cylinder engine, absolutely.**

10 Q A 3-cylinder engine?

11 **A Uh-huh.**

12 Q Okay. So it's a 3-cylinder engine?

13 **A Yep.**

14 Q Okay. Multiple ones of them?

15 **A That's what I was told.**

16 Q Okay.

17 **A I didn't see them, so I don't know.**

18 Q And he told you this in 2012 in his office at MATES?

19 **A Yes, sir.**

20 Q That was your testimony. And you, again, told nobody?

21 **A No, sir.**

22 Q Okay. The diesel fuel, you already said you had no
23 first-hand knowledge of that, that you heard that from
24 Whit- --I can't get this straight--Whitcher and Cooper.
25 And that was in front of the inspect- --in the front

1 inspector's office sometime around 2012. But I think--I
2 think you went back and said that it wasn't 2012; it was
3 2013.

4 **A Check. It was.**

5 Q Okay. So were all the dates 2013, then?

6 **A Yes, sir.**

7 Q Okay.

8 **A Not all of them. The Kubota engine was--**

9 Q All right.

10 **A --probably 2012. The tires were 2012 timeframe.**

11 Q And at that time, when you heard from Whitcher and Cooper
12 that he stole 55-gallon drums and he drove out of the
13 front gate, what kind of vehicle was he driving in?

14 **A I didn't see it, sir. He said he took it out in his
15 truck. I wasn't there, didn't see it.**

16 Q Who said it?

17 **A Mr. Whitcher and Master Sergeant--**

18 Q Mr. Whitcher said that he--that Joe took it out in his
19 personal vehicle?

20 **A The story was told by Master Sergeant Herblet to Master
21 Sergeant Cooper. And Master Sergeant Herblet was
22 confronted by Lieutenant Colonel Golnick. And Master
23 Sergeant Herblet told Lieutenant Colonel Golnick to
24 take--and "You take care of it, you seen it."**

25 Q Right. That's--

1 **A** **That's what I know.**

2 **Q** Okay.

3 **A** **I don't know what it went out in. I don't know the colors**
4 **of the barrel. I don't know the colors of the truck.**

5 **Q** Okay. So you don't know if it was his personal vehicle or
6 a Government vehicle?

7 **A** **What--no.**

8 CAPTAIN BEDELLS: He's already testified he
9 doesn't know.

10 MR. BANCHS: I don't think he's made it clear.

11 BY MR. BANCHS:

12 **Q** I just want to--you don't know?

13 **A** **I just said that I didn't know what color it was or what**
14 **color the barrels were neither. I have no idea what kind**
15 **of truck it was. I have no idea what color the barrels**
16 **were, none of the above.**

17 **Q** Did they say how many barrels he took?

18 **A** **No, sir.**

19 **Q** Okay. But even one barrel--you're familiar with a
20 55-gallon drum of fuel. How many people would it take to
21 load that into any vehicle? Can one man by himself lift a
22 55-gallon--

23 CAPTAIN BEDELLS: Empty?

24 BY MR. BANCHS:

25 **Q** --drum?

1 CAPTAIN BEDELLS: Empty, full, half full? I

2 guess I--

3 MR. BANCHS: Even empty.

4 CAPTAIN BEDELLS: Okay.

5 THE WITNESS: Absolutely.

6 BY MR. BANCHS:

7 Q Okay.

8 A **And we have--**

9 Q But they weren't empty because they test- --they told you,
10 from what I remember--

11 A **Check.**

12 Q --that he left and he came back with them empty.

13 A **Yeah.**

14 Q So they were full.

15 A **Uh-huh.**

16 Q So, again--

17 A **I don't know if they were full.**

18 THE HEARING EXAMINER: This witness has only
19 testified that somebody told him that those barrels went
20 out the gate.

21 MR. BANCHS: Right.

22 THE HEARING EXAMINER: He--by his own
23 admission, he indicates no direct knowledge.

24 MR. BANCHS: Right. But his--but, sir, his
25 hearsay testimony was used to fire Mr. Smock.

1 THE HEARING EXAMINER: Right. And that's why
2 I wanted to get to Colonel Doolittle's questioning, so
3 that I know, and it's on the record, what was hearsay and
4 what was--what was direct. So I will--

5 MR. BANCHS: Well, maybe I'm being over--a
6 little over zealous. I'm just trying to hammer home the
7 point that this is all hearsay. And we're almost at the
8 end here.

9 BY MR. BANCHS:

10 Q The chainsaw, again--and I'm just going over all the
11 questions that Colonel--that Captain Bedells asked you.
12 No first-hand knowledge, you don't recall who said it. It
13 was during the investigation. And you clearly said that
14 just because someone says it, doesn't mean it's true,
15 correct?

16 A Yes, sir.

17 Q Okay. The last item that Captain Bedells asked you about
18 was the diesel for--for Mr. Smock's truck--tractor. You
19 have no first-hand knowledge of that; you heard it from
20 Todd Witcher?

21 A Yes, sir.

22 Q That was in 2013. That's when you said you misspoke. And
23 that Mr. Smock brought his own personal tractor in to do
24 some landscaping, and then he allegedly filled up with
25 Government fuel afterwards?

1 **A** **Yes, sir. Yeah. He was the one that had Craig's List**
2 **open.**

3 Q Okay. Was anyone else there, to your knowledge?

4 **A** **Thad Cooper was in the office on the other side.**

5 Q But not looking at the screen?

6 **A** **No, sir.**

7 Q Okay. So he was there, but not looking at the screen. So
8 it's your testimony that you and Chief Todd Witcher are
9 looking at the screen on his computer, which has Craig's
10 List up on it--

11 **A** **Check.**

12 Q --correct?

13 **A** **Yes, sir.**

14 Q And there are heaters--while you couldn't describe them--

15 **A** **There are two--there--**

16 Q --were the heaters consistent with what is around Camp
17 Grayling?

18 **A** **They're similar to what the pictures are--yeah. They're**
19 **the ones that are in the old buildings.**

20 Q Okay. So you recognized them as being similar to those in
21 buildings on Camp Grayling?

22 **A** **Yes, sir.**

23 Q Okay. And you--you didn't see a screen name, so you
24 didn't know if it said reply to Joe Smock?

25 **A** **I didn't look at that. As soon as I seen what they were,**

1 **I--I mean, they're an industrial heater.**

2 Q Okay. Okay. But, again, you didn't see that they had

3 said reply to Joe Smock if you're--

4 **A No.**

5 Q --interested in paying for them?

6 **A Absolutely not. No.**

7 Q You didn't see a price either?

8 **A No, sir.**

9 Q Okay. But you--but, if I recall your testimony, you

10 did--you did see Cooper and Witcher discuss this with--

11 **A No. Master Sergeant Cooper did, because Witcher told him**

12 **about it on the screen. He looked it up--I don't know if**

13 **he looked it up, but--**

14 Q Okay.

15 **A --right away he went into Colonel Golnick--or McNamara's**

16 **office and said something.**

17 Q Okay. Did--and your testimony is--and this was my

18 inartful questioning--you did see Master Sergeant Cooper

19 speak with Lieutenant Colonel McNamara?

20 **A Yes, sir.**

21 Q Did you hear them speak about--

22 **A No.**

23 Q --this particular--

24 **A No, sir.**

25 Q Okay.

1 **A** **I wasn't in their office. The door closed, and they were**
2 **in there talking.**

3 **Q** Okay. So you just presumed that, because Whitcher talked
4 to Cooper and told him, "Hey, you should talk to
5 Lieutenant Colonel Gol-" --you just made that assumption?

6 **A** **Yes, sir.**

7 CAPTAIN BEDELLS: Okay. Okay. That--

8 THE HEARING EXAMINER: Mr. Banchs, you--

9 CAPTAIN BEDELLS: I have no further questions.

10 THE HEARING EXAMINER: Recross?

11 MR. BANCHS: Just on this particular topic.

12 RE CROSS-EXAMINATION

13 BY MR. BANCHS:

14 **Q** Did Cooper or Whitcher say where the heaters came from; do
15 you remember?

16 **A** **No, sir.**

17 **Q** Okay.

18 **A** **I was--no.**

19 **Q** They were--they allegedly, based on what's--what was--what
20 Mr. Smock was fired for and what's in the record, the
21 allegedly came from the buildings that were demolished in
22 the 600 area. Are you familiar with the 600 area?

23 **A** **Yeah.**

24 **Q** Okay. Having heard what Mr. Whitcher and Mr. Cooper told
25 you, I want to present you this--with a statement that was

1 made by Mr. Jim Shirkey, who was a utility supervisor at
2 Camp Grayling.

3 **A Okay.**

4 **Q** Do you mind reading that?

5 CAPTAIN BEDELLS: Is that a sworn statement or
6 a--

7 MR. BANCHS: No, sir. It's another--

8 CAPTAIN BEDELLS: --typewritten statement?

9 MR. BANCHS: --statement that was provided
10 in--

11 CAPTAIN BEDELLS: Okay.

12 MR. BANCHS: --in support of Mr.--Mr. Smock's
13 rebuttal.

14 CAPTAIN BEDELLS: Okay. So an unsworn
15 statement.

16 MR. BANCHS: Unsworn statement, yes.

17 CAPTAIN BEDELLS: Okay.

18 THE WITNESS: Okay.

19 **BY MR. BANCHS:**

20 **Q** Okay. Having read that, would you still believe Mr.
21 Cooper and Mr. Witcher, that the heaters that Mr. Smock
22 might or might not have had on Craig's List came from this
23 or maybe they were personal heaters, if he even did try to
24 sell them on Craig's List?

25 **A I'm--I'm under oath telling the truth here. So whatever**

1 that piece of paper, that's their decision to write. I'm
2 under oath telling the truth. So I can't assume--

3 Q You're telling the truth about what you heard, correct?

4 A Yes, sir.

5 MR. BANCHS: Okay. Thank you, very much.

6 CAPTAIN BEDELLS: No--no further questions,
7 sir.

8 THE HEARING EXAMINER: Okay. I have one.

9 EXAMINATION

10 BY THE HEARING EXAMINER:

11 Q When you and Mr. Smock were preparing to load the truck
12 with the ripped plywood and departed the base and unloaded
13 at the other end, at any time during that process did you,
14 in your mind, believe that that was not a right thing to
15 do?

16 A That that was--absolutely, sir.

17 Q That that was not a right thing to do? Okay.

18 A Yes, sir.

19 THE HEARING EXAMINER: Okay. Thank you.

20 I remind you that you remain under oath and
21 that you are subject to recalling to this hearing until
22 such time that it has been adjourned.

23 Again, I will remind you not to discuss your
24 testimony with anyone.

25 And I want to thank you for your--for your

1 time here. And I know it's been tough. It's been a long
2 day, so really appreciate you being here and your
3 testimony.

4 CAPTAIN BEDELLS: I'm fading fast, sir.

5 THE HEARING EXAMINER: Yeah. I--me, too.

6 CAPTAIN BEDELLS: I'm fading fast.

7 UNIDENTIFIED SPEAKER: Who is up next?

8 LIEUTENANT COLONEL NIEDERGALL: Cooper.

9 THE HEARING EXAMINER: What time do you have?

10 CAPTAIN BEDELLS: We're not--it's 8:30. We're
11 not going to get done tonight.

12 THE HEARING EXAMINER: No.

13 COURT RECORDER: We're still on the record--

14 THE HEARING EXAMINER: Okay.

15 COURT RECORDER: --just so you're aware.

16 THE HEARING EXAMINER: Mr. Banchs, are you
17 opposed to adjourning for tonight and re-adjourning in the
18 morning?

19 MR. BANCHS: I mean, I would--I'm fine we keep
20 going on, but, I mean--

21 THE HEARING EXAMINER: I think for the sake
22 of--we're all sitting around this table, and for all
23 sitting in that room next door and for you guys who have
24 been sitting here all day, we'll adjourn for now.
25 Reconvene at 08:00 tomorrow morning and continue with the

1 next witness who will be?

2 CAPTAIN BEDELLS: Master Sergeant Cooper.

3 MAJOR JOHNSON: Okay.

4 THE HEARING EXAMINER: And, with that, we'll
5 go off the record.

6 COURT RECORDER: We are going off the record.

7 The time is 8:21.

8 (At 8:21 p.m., session concluded)

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RECORDER'S CERTIFICATE OF TRANSCRIPTION

I do hereby certify that on the date and at the place set forth on the title page hereof, there did personally appear before myself, Notary Public, the witnesses named on the table of contents page; that said witnesses were sworn to tell the truth and that testimony electronically recorded, the same being later reduced to typewriting, and that the foregoing is a true and accurate transcription by me of said electronic recording.

I further certify that I, to the best of my knowledge, am not related to or employed by any party to this cause or their respective counsel/representative.



Tracy L. O'Brien

Notary Public - CER - 5175

My commission expires 3/19/2020

