

In The Matter Of:
United States vs.
PFC Bradley E. Manning

Vol. 25
July 31, 2013
UNOFFICIAL DRAFT - 7/31/13 Afternoon Session

Provided by Freedom of the Press Foundation

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VOLUME XXV

IN THE UNITED STATES ARMY

UNITED STATES

VS.

MANNING, Bradley E., Pfc.

COURT-MARTIAL

U.S. Army, xxx-xx-9504

Headquarters and Headquarters Company,

U.S. Army Garrison,

Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

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The Hearing in the above-titled matter was
continued on Wednesday, July 31, 2013, at 1:25 p.m., at
Fort Meade, Maryland, before the Honorable Colonel
Denise Lind, Judge.

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1 APPEARANCES:

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ON BEHALF OF GOVERNMENT:

4

MAJOR ASHDEN FEIN

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CAPTAIN JOSEPH MORROW

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CAPTAIN ANGEL OVERGAARD

7

CAPTAIN HUNTER WHYTE

8

CAPTAIN ALEXANDER van ELLEN

9

10

ON BEHALF OF ACCUSED:

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DAVID COOMBS

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CAPTAIN JOSHUA TOOMAN

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MAJOR THOMAS HURLEY

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1 PROCEEDINGS,

2 BY MR. FEIN:

3 Q And, sir, what did this memorandum -- what
4 type of authorities did it, I guess, give you and the
5 IRTF?

6 A Well, it certainly gave me -- I think it
7 gave me the authority to, one, be the single element
8 within the Department of Defense that was charged with
9 the responsibility of reviewing these documents.

10 It gave me the authority to coordinate
11 broadly across the Department of Defense as I worked
12 with these documents.

13 It gave me the authority to work an Intel
14 mission to understand and provide warning to the
15 Secretary of Defense and I think in there it gave me
16 the authority or the requirement that I would retain or
17 maintain close coordination with the Office of National
18 Intelligence and, in particular, the counter
19 intelligence executive that had some responsibilities
20 for this effort at the national level.

21 Q Sir, did your original tasking and

1 authorities have any either prohibitions of limitations
2 with your involvement with law enforcement?

3 A I don't recall any prohibitions or
4 limitations. What I do recall was that -- and I don't
5 remember whether it was in the document itself, but at
6 least a recognition that our actions would be well
7 coordinated with any law enforcement settlements to
8 ensure that we didn't do anything detrimental to the
9 case.

10 Q And, sir, you mentioned a moment ago one of
11 the tasks was mitigation strategies.

12 Generally, what do you mean by that?

13 A To try to -- perhaps mitigation strategies
14 might not be the best word there. Perhaps a better
15 word is identify where risk might have resulted. Risk
16 came about as a result of this release of documents and
17 to identify that risk and to inform those folks that
18 may be victims of that risk and to get that word and
19 understanding to them as quick as possible.

20 Q Sir, was the IRTF mission focused on a U.S.
21 government wide assessment or was it DOD centric?

1 A The mission was DOD centric and -- but as
2 this was such an -- as this was such an unusual and a
3 new situation and the magnitude of it was such that we
4 quickly became a center of gravity in terms of
5 expertise of understanding this. So we brought in and
6 broadened that envelope by bringing in Department of
7 State type people, other agencies of the national
8 government. Rather than duplicate the effort, begin to
9 connect with us in an effort to save resources.

10 Q Sir, so you used the term -- two terms,
11 unusual and new.

12 What do you mean by that, this was an
13 unusual and new situation?

14 A Well, no one had ever seen, witness or had
15 to deal with a release of this number of documents,
16 this number of classified documents, this type of
17 reporting from the battlefield as the war was going on.

18 Q And, sir, speaking of the information, what
19 type of information was the IRTF tasked to review?

20 A The IRTF was initially tasked to review the
21 Afghan files or the CIDNE Afghanistan database that was

1 leased -- I don't recall the exact number --
2 70,000-plus files and then we were required to review
3 any other information that we thought had been released
4 from government control into WikiLeaks or anywhere
5 else.

6 Q Sir, how long did the IRTF operate for,
7 approximately?

8 A I believe we operated for about ten-plus
9 months.

10 Q Now, sir, just specifically looking at the
11 IRTF macro level operations, as head of the IRTF, what
12 action or correspondence did you have with senior DOD
13 and U.S. government leadership?

14 A So as a matter of routine, I would say
15 there were three things that came to be.

16 First of all, I participated in a daily VTC
17 between the IRTF, the director of national intelligence
18 and the counter-intelligence executive and then we were
19 joined by a series of reps from various agencies across
20 the Intel community and other departments that might
21 have been impacted by this release.

1 The second one was the task force and I
2 released a report to the director of DIA who submitted
3 that report to the Secretary of Defense each and every
4 week and then for at least probably the first 45 days
5 there was a daily or every other day meeting of senior
6 officials just outside of the Secretary of Defense's
7 office down a level where we shared knowledge and tried
8 to understand the issue and went forward.

9 Q Again, sir, on a -- generally speaking with
10 these daily VTCs and these weekly reports up to the
11 Secretary of Defense, what type of information -- what
12 is the gist of that, of either VTC briefs or the
13 reports?

14 A So it was a combination of things.
15 Initially, it was just trying to get the status of the
16 IRTF and understanding the effort that we were
17 undertaking, whether we had all of our resources, how
18 we were going to be configured, out we were going to
19 communicate with people, how we were going to operate
20 in this kind of undefined world that we were creating
21 here.

1 The second part of it was to understand how
2 we were making progress for getting through these
3 documents or understand these documents and have a
4 common understanding of how we were going to push that
5 impact or that risk out to people that needed it. And
6 then last, but not least, you know, an attempt to
7 capture the activities that were ongoing in various
8 elements of the government, the questions that we
9 needed answered so we knew what we were working on and,
10 you know, what was the effort ahead, what was the next
11 step so people had a common understanding as we worked
12 through this.

13 Q Sir, you used the term "undefined world."
14 What do you mean by that when you described
15 the IRTF?

16 A So, you know, these were our documents.
17 This is not new information to the U.S. government,
18 these are our documents. These are documents that
19 we've had in our possession, securely in our possession
20 for a long period of time and now all of the sudden
21 this massive amount of data was available to the

1 public, to the adversary, to everyone and we needed to
2 begin to come to grips and understand what those
3 impacts were.

4 That's not something that you do in that
5 volume where you necessarily do. There's not a course
6 out there, there's something you train, there wasn't a
7 playbook we could go to. We had to figure this out and
8 move forward kind of on the fly in real-time.

9 Q Sir, in your 31 years of experience, has a
10 task force like this ever needed to be set up for
11 similar reasons?

12 A Not to my knowledge.

13 Q Sir, what factors drove the priorities of
14 the review effort during the initial days of the IRTF
15 establishment?

16 A So one of the biggest factors was
17 protecting the troops forward and, you know, I think
18 that was probably the very most important one right off
19 the bat.

20 We had to understand this data and begin to
21 inform the folks on the battlefield as to what the

1 potential implications were for them and then give them
2 some reassurance that they didn't have to sit on the
3 top in the middle of a hill in Afghanistan and go
4 through 77,000 documents to find their vulnerabilities.
5 That was our job. We were going to lift that function
6 from them and that task force was going to work with
7 CentCom to push that data out. That was first and
8 foremost.

9 I think the second one was we needed to
10 start making sure that our sources were not vulnerable
11 because we were going to have people that were going to
12 go out and meet with these sources and that kind of
13 stuff, but we needed to make sure that we were doing
14 the right thing.

15 Q Sir, what do you mean by sources?

16 A In the case that I just mentioned, what I
17 mean is folks that go out and talk to people who were
18 providing human information at the request of the U.S.
19 government or the task in the U.S. government back into
20 the system. That's different than just a casual
21 conversation with a civilian. This is sources and

1 there are some obligations, we have to protect them.

2 And then, as you walk your way down the
3 list of priorities, you get to -- you know, is there
4 anything in here that could hurt the coalition because
5 we had to look out for -- I'm not sure there's another
6 country or department that could get through this
7 amount of data this fast and make sense of it and
8 understand the implications.

9 So we had to know whether our British
10 allies or whether our French friends or whoever else
11 was on the battlefield with us hadn't been put at some
12 risk as a result of our -- of activities.

13 Q So when you just said that no other country
14 would have the ability or department to go through this
15 data this fast, could you please explain to the court?
16 Just put the perspective.

17 What do you mean this amount of data this
18 fast?

19 A 77,000 documents is a lot and you've got to
20 get it in. You've got to verify that it's actually
21 your data. You've got to make sure that it's the data

1 that actually was yours and hasn't been manipulated in
2 some way. And so we had to get the data together. We
3 had to securely have confidence that we knew the data
4 that was out on the Internet and then we had to begin
5 to put technical processes in place so that it wasn't
6 an eyeball line-by-line to figure this thing out.

7 We began to use technical capabilities and
8 I am sure that there are certainly private companies,
9 private industries, there are other folks that could do
10 that. But, as a general rule, there was all the allies
11 that I was talking to as I was going through this,
12 nobody had the wherewithal or the resources to put this
13 together this fast and get to the answers that we
14 needed to get to.

15 Q Sir, was that one within the first month or
16 so?

17 A Oh, absolutely. This was within days.

18 Q And, sir, how did you determine what
19 information had been compromised or potentially
20 compromised and needed to be reviewed?

21 A Well, obviously, we started with the data

1 that we found on the web. I mean, the Afghan national,
2 the Afghan CIDNE database was out there. So we knew
3 that was the start point and that was the priority of
4 the effort.

5 You know, as quick as we got processes
6 going on that, then I begin to shed, you know, five or
7 ten percent of the effort to take on that task that
8 talked about what else is out there, what's missing.

9 The first pointer literally became
10 commentary. I think it was wire.com magazine or
11 something, one of these magazines where there was
12 excerpts in this magazine that talked about chat logs
13 between the Private Manning and individuals within, you
14 know, the community that read wire.com.

15 So we used the data out of those chat logs
16 to begin to take a look at the internal structure and
17 figure out whether that was even possible and, once we
18 realized that it was possible, then we begin to
19 dialogue with the prosecutors to take the next steps
20 forward, to see where we needed to go.

21 THE COURT: Let me interrupt you for just a

1 second. You said if that was possible.

2 If what was possible?

3 THE WITNESS: So, you know, depending on --
4 so I think what was said in the wire.com notes, the
5 magazine, took credit for -- I think he used the term
6 Gitmo files and then he talked about files from the
7 CIDNE database in Iraq and talk about that kind of
8 stuff.

9 So what I wanted to do at first was to
10 figure out whether it was even possible for him to have
11 that access from the location he was. Once we
12 validated that that was possible, then we went with
13 getting synced up with the legal system.

14 BY MR. FEIN:

15 Q And, sir, what do you mean by -- you said
16 it now twice. First, you said you got with the
17 prosecutor, you synced up with the legal system once
18 you identified what's possible.

19 Why and to what extent did you do that?

20 A For a couple of reasons. First of all, the
21 one that hit us in the face was the Iraq logs which,

1 the magnitude of the Iraq logs, was something on the
2 order of 400,000-plus and the fact of this significant
3 force structure that was in Iraq at the time gave us
4 great concern. So to go through that was going to
5 require a significant increase in resources and time
6 and we needed to get on it quickly.

7 So just to kind of make sure that we were
8 heading in the right direction, we linked with the
9 federal prosecutors to get their understanding and to
10 get some verification that, in fact, this was probably
11 gone.

12 Q And just to clarify, sir, because we all
13 say federal prosecutors. You also met with me?

14 A Exactly, right.

15 Q Now, with that, sir, were you getting
16 directions, sir, from the law enforcement or
17 prosecutors or just getting information from them?

18 A I didn't get any direction in terms of
19 things to do. What I did often ask is to make sure
20 that I'm not doing anything that would preclude
21 prosecution. And so I kept -- you know, I had legal

1 advisors on my team that I wasn't getting direction
2 from.

3 Q And, sir, what was the general
4 classification of the information that IRTF started to
5 review?

6 A The classification was U.S. secret and
7 below information.

8 Q At any point, sir, were you concerned that
9 even more highly classified information was being
10 compromised at WikiLeaks?

11 A Yeah, I was very concerned and because, as
12 we learned, as time went on, what was in these logs,
13 this article in wire.com that contained the chat logs,
14 it talked about the Gitmo detainee files, it talked
15 about the Afghan files, it talked about the Iraq files.
16 I think it talked about the department of, say, cables
17 and it also talked about information off a system known
18 as Jaywiks (phonetic). So none of the data we
19 previously talked about.

20 MR. HURLEY: Objection as to the relevancy
21 of this information.

1 THE COURT: What is the relevance of this
2 information if it's not disclosed?

3 MR. FEIN: Ma'am, the relevance is simply
4 to have General Carr explain what the left and right
5 remnants of what IRTF did or didn't do. This was the
6 last question, actually, just to say they didn't look
7 at that.

8 THE COURT: All right. So let's move on
9 then.

10 MR. FEIN: Yes, ma'am.

11 MR. HURLEY: We're not, of course, plan on
12 making these continuing objections, but I think you
13 understand --

14 THE COURT: Put it in your filing. Go
15 ahead.

16 MR. FEIN: Sir, one moment, please.

17 BY MR. FEIN:

18 Q Sir, now, I'd like to talk about -- you've
19 already referenced a few of them, the different data
20 sets that were reviewed.

21 Specifically, what large data sets did the

1 IRTF Erie view.

2 A It reviewed the CIDNE database of
3 Afghanistan. It reviewed the CIDNE Iraq files. It
4 reviewed the Gitmo files.

5 I think there was a couple of assorted
6 pieces of papers and videos and things that came out
7 and then there was the State Department cables. We did
8 not review the entirety of the State Department cables.
9 We did go through the State Department cables and look
10 for indications of where information within there might
11 have an impact on U.S. forces or on the Department of
12 Defense. But I did not do, you know, a line-by-line
13 thorough review of the State Department cables as we
14 did with the Department of Defense information.

15 Q Sir, just to clarify one issue. When you
16 say the CIDNE Iraq and CIDNE Afghanistan, do you mean
17 the SigActs from the CIDNE Iraq and Afghanistan
18 databases?

19 A Exactly, all of those reports that were
20 contained within that database.

21 Q Sir, can you generally characterize what

1 types of other -- when you said there was a few other
2 documents and videos, how would you characterize those
3 as the types of information other than video?

4 A I'm not sure. You know, there -- it was
5 data that was available on the SIPRNET. It was
6 classified information up on the SIPRNET. It had been
7 accessed and pulled down and pushed out.

8 Q Sir, prior to your work meeting the IRTF,
9 were you familiar with the CIDNE database and the
10 SigActs?

11 A I was.

12 Q And how so, sir?

13 A We certainly -- we used it in Afghanistan
14 when I was the J2 in Afghanistan and the CIDNE database
15 was a significant topic of discussion in Afghanistan as
16 we worked with our NATO partners to merge our
17 information databases together.

18 So we were constantly working with the NATO
19 team so that the U.S. and the NATO could get on a
20 common database of information in Afghanistan.

21 Q And, sir, from your experience with CIDNE,

1 did CIDNE contain information that was used by Intel
2 analysts?

3 A It did. It contained information that was
4 used by the operators, by the logisticians as well as
5 by Intel analysts. It gave you situational awareness
6 and an understanding of ongoing reporting on the
7 battlefield.

8 Q And, sir, are you generally familiar with
9 the SigActs that PFC Manning has been found guilty of
10 compromising?

11 A I'm generally familiar with the type of
12 SigActs that are inside this database, yes.

13 Q Is that from your time as the leading IRTF,
14 sir?

15 A It's the time of leading IRTF as well as
16 participating in reading SigActs on a daily basis in
17 Afghanistan.

18 Q In general, sir, what type of information
19 was included in the CIDNE SigActs?

20 A It's largely battlefield reporting. It's
21 events that go on in the battlefield that are captured

1 for command and control purposes for historical records
2 for understanding so that you can build a knowledge
3 database that allows your mission to go forward.

4 Q Sir, did any of the information -- the
5 CIDNE SigActs reveal and aspects of TTPs and how we
6 respond to certain combat situations?

7 A Well, it certainly did. In accumulation,
8 you can certainly begin to appreciate how we might
9 respond when we work medevac operations. You can
10 certainly appreciate incidences and how we respond for
11 things like IED or mortar shells or that kind of stuff.
12 Convoy operations, that kind of stuff.

13 Q Sir, was there was information about
14 insurgent activity?

15 A There was operational reporting on
16 insurgent activity, absolutely. What you would get is
17 inside the database you have things like patrol
18 reports. If a patrol went out and when they came back
19 they would write a report that might include
20 conversations with local nationals who might tell you
21 their view of insurgent activity in the area and how

1 they judge it.

2 So, yes, you could capture an understanding
3 and get more information about insurgent activity as a
4 result of looking at that database.

5 Q And, sir, that example you gave, would
6 those reports sometimes include those local nationalist
7 names?

8 A In many cases they were. I don't know
9 exactly, but I think the Afghanistan database alone had
10 us concerned with as many as 900-plus Afghan names that
11 were in there.

12 Q And, sir, did it just include their names
13 or other identifying information?

14 A In most cases it had other identifying
15 information. Certainly in some cases it might include
16 what their position and/or function might be in a
17 particular village. In some cases it might be
18 identification of the individual that lives in the
19 third compound down.

20 What you're trying to do is you're trying
21 to build some understanding to pass on to the next

1 team. So you're building your knowledge. You're
2 building your information and understanding.

3 So if I'm meeting with the shopkeeper at
4 the third store, I want to know I met with him the next
5 time I go out there or the next team that goes out. So
6 there is some identifying information.

7 Q And, sir, was there information in the
8 CIDNE SigActs about individuals, U.S. persons, in those
9 reports?

10 A Absolutely. So in many of those reports,
11 you know, indicate activities and the activities that
12 U.S. forces were taken as they came back and reported
13 it. But they also included medevac reports that often
14 had stories and some, you know, tough reading
15 associated with the physical injuries that service
16 members were having and in some cases it was the story
17 about how an individual might have lost a limb or how
18 they may have died.

19 Q Sir, based on your experience as the ISAF
20 (phonetic) J2, did you believe that information could
21 be used by our adversaries?

1 A I did.

2 Q And why -- do you today, sir, or did you?

3 A I did.

4 MR. HURLEY: Objection. It's cumulative to
5 what we received during the merits portion of the
6 trial. Do you believe it could, yet how could it and
7 we would say it's cumulative for that purpose, ma'am.

8 THE COURT: Is your question could or is
9 your question did?

10 MR. FEIN: Well, eventually it will be
11 "did", but it's leading up to did it. I'm laying the
12 foundation to get to that ultimate question.

13 THE COURT: Overruled. Go ahead.

14 BY MR. FEIN:

15 Q Sir, based off of your experiences of the
16 ISAF J2, did you believe that information could be used
17 by our adversaries?

18 A Absolutely.

19 Q And why do you believe it could have been
20 used?

21 A In particular to the Afghan files, one of

1 our primary mission is to protect the population over
2 there and we had to get close to the population. We
3 had to understand the population and we had to protect
4 them.

5 If the adversary had more clarity as to
6 which people in the village were collaborating with the
7 U.S. forces, then there is a chance that those folks
8 could be at greater risk.

9 Q Sir, are you familiar the Net-Centric
10 diplomacy database?

11 A I am. I believe that sometimes we refer to
12 that as the Department of State cables that we
13 reviewed.

14 Q And how are you familiar with that, sir?

15 A Two ways. One as a J2 and my analyst, you
16 know, routinely accessed that data to gain more
17 understanding, more situational, to understand
18 pol-military activities that were ongoing in a
19 particular country or environment.

20 And then number 2, as part of the IRTF,
21 once I realized that that was gone I had to, you know,

1 begin to learn more about that particular database.

2 Q Sir, you used the term pol-mil.

3 What do you mean by pol-mil?

4 A Political military relationships. So it
5 was -- you know, as a military command in Iraq, you've
6 got to work your relations with the Afghan political
7 leadership in coordination with the Department of
8 State.

9 Q Sir, in terms of the information within the
10 Department of State cables and specifically DOD
11 information, what type of DOD information was contained
12 within those cables?

13 A I don't know that I specifically recall all
14 the DOD type stuff in there. Certainly there was
15 Department of State cables that talked about their
16 negotiation of deployment, military training teams of
17 the various countries throughout the world and how that
18 negotiation was going, status of forces and all of that
19 kind of stuff, and how they would be protected in that.

20 There were numerous cables in there that
21 talked about the interaction between the defense

1 attaches and the host nation ministry of defense and
2 they were very blunt and sometimes critical of how that
3 particular host nation responded.

4 So that created fractures between our
5 ability to get in there and communicate. And I believe
6 there was data in there that -- you know, to get to
7 places like Iraq and Afghanistan, you have got to rely
8 on a lot of allies, you've got to rely on a lot of
9 countries to work your supply lines and ensure you can
10 take care of your forces and all of those supply lines,
11 all of those efforts required negotiation between the
12 U.S. government and the host government. Then,
13 ultimately, it affects our ability as DOD to do our
14 mission.

15 So I think there was some instances in
16 there where some of those more difficult discussions
17 might have been played out in public as result of these
18 cables.

19 Q Sir, when you say as a result of these
20 cables, are those the cables that -- the compromised
21 cables by PFC Manning?

1 A Yeah, certainly they were all compromised
2 at the time they left the security of the U.S.
3 government. I don't know how many of those cables have
4 actually been fully released into the open, but
5 obviously some of them have.

6 Q Yes, sir.

7 Why was the Department of State reporting a
8 concern to the Department of Defense?

9 A The Department of State was reporting a
10 concern to the Department of Defense because the
11 Department of State took a step a number of years ago
12 to share with the Department of Defense those cables
13 that they thought would be of benefit to military
14 leaders.

15 So over a period of time, they moved cables
16 from their internal State Department system and they
17 provided them through a portal on the SIPRNET to be
18 accessible to the Department of Defense. Great
19 interagency coordination, great opportunity for
20 military folks to be more wired into what was going on.
21 It allowed our Intel and our operators to have much

1 more enhanced situational awareness of what's going on.

2 The fact that we didn't secure -- you know,
3 that there was a crime that took place and if those
4 documents got out, the State Department felt that we
5 had let them down.

6 MR. HURLEY: Ma'am, can we take a break and
7 have a [Inaudible.] during that break?

8 THE COURT: How long would you like?

9 MR. HURLEY: Ten minutes would be fine.

10 THE COURT: Any objection?

11 MR. FEIN: No, ma'am.

12 THE COURT: Once again, same rules apply,
13 sir. We are going to take a brief recess until ten
14 minutes after 2:00.

15 THE CLERK: All rise.

16 (There was a recess taken at 1:57 and the
17 trial resumed at 2:11.)

18 THE CLERK: All rise.

19 THE COURT: Please be seated. The court is
20 called to order. Let the record reflect all parties
21 present in the court at the last recess our again

1 present in court. The witness is on the witness stand.

2 Proceed.

3 BY MR. FEIN:

4 Q Sir, before I proceed, I just want to get
5 some points clarified from you.

6 When you talked about or when you testified
7 earlier about the IRTF in the original mission, was the
8 IRTF focused on the original data from the databases
9 when you talked about looking at the Lamo chats and
10 pulling that information or was the focus on the
11 information that was sitting on the WikiLeaks website?

12 A The first function and the first priority
13 was to deal with the information that was sitting on
14 the WikiLeaks website. But there was a task by the
15 Secretary of Defense that was for us to then provide
16 him warning and review all other documents that are
17 expected to be in the hands of WikiLeaks as a result of
18 this activity.

19 Q Sir, in the early fall of 2010 when the
20 department -- when the IRTF was reviewing the State
21 Department cables, how did you determine that

1 population of documents to review?

2 A We had a -- we got a mirror image of that
3 data that we thought was in the database as of a
4 certain particular date. So we didn't know, you know,
5 exactly what was going to come out on the website or
6 anything -- if it had come out, we certainly had an
7 opportunity to see it.

8 But what we were looking at was a mirror
9 image of those records as they existed at the time that
10 they were likely taken from the secure environment.

11 Q Thank you, sir.

12 Sir, are you familiar with the -- you
13 mentioned earlier the JTF Gitmo documents.

14 How are you familiar with those documents?

15 A Through the IRTF process, we certainly had
16 to review those documents and then I have some
17 familiarity with those documents as a result of my job
18 on the -- when I was the assistant J2 on the joint
19 staff, I had a role in the detainee processes of the
20 joint staff and we used to look at those as we reviewed
21 cases.

1 Q Sir, was the compromise of this information
2 a concern to the Department of Defense?

3 A It was.

4 Q Why, sir, in your role as overseeing IRTF
5 was that a concern?

6 A It was a concern in a number of ways. The
7 first one is that -- I mean, these are pretty dangerous
8 people who have a number of dangerous friends and
9 allies they were working with that are sworn to do us
10 harm.

11 Up until the release of those files, the
12 adversary had no idea what knowledge we had obtained
13 from them. So they had no idea how much of that puzzle
14 we were able to put together or not put together.

15 The second thing of significant concern was I
16 think in those particular documents might have been
17 some of the first time that the broader public gained
18 some understanding as to how some of these folks were
19 detained and captured.

20 Q Now, sir, I assume that was what the
21 potential threat was when the IRTF was looking at it in

1 regards to if it was published or not or released or
2 not, correct?

3 A That's exactly right. I mean, I couldn't
4 wait to the release to figure out and tell someone of
5 the potential risk. I had to get ahead of that so that
6 folks could figure out if there were any mitigation
7 charts. In those documents we talked about how some of
8 these folks were detained, how some of these folks were
9 captured and in many cases it was a result of
10 cooperative efforts between two governments and
11 sometimes those activities were not publicly known and
12 foreign governments were very concerned, should that
13 data get out, it had the potential for bringing down a
14 particular ruling coalition somewhere.

15 Q Now, sir, I'd like to focus your testimony
16 at this point about the initial concerns about all the
17 leaks now that --

18 A If I could go back, just one more thing on
19 the detainee piece because I think this is important.

20 At the time, we were trying to move people
21 out of Gitmo. We were trying to repatriate them to

1 either their own country or second countries. So that
2 involved negotiations between our Department of State
3 and foreign governments and so, you know, everything
4 that was contained in those DABs were not part of that
5 negotiation process.

6 So there was a delta between what we were
7 saying and now what potentially had the possibility of
8 coming out into the public light. There might have
9 been a delta between what the foreign government was
10 saying and what they had told their people and that
11 could, in fact, cause conflict between two nations and
12 stop our efforts to move forward on the Guantanamo.

13 Q Sir, across all the data sets,
14 approximately how much information in total did IRTF
15 review?

16 A You know, I think in the cumulative we were
17 talking about something in the magnitude of 800,000
18 documents. We reviewed every single document out of
19 the Iraq database. So 490-some thousand. We reviewed
20 every document out of the Afghan database and we
21 reviewed every document out of the Gitmo files. Again,

1 on the NCDs, we only did snapshots and things that we
2 thought had implications directly to the Department of
3 Defense.

4 Q Sir, did the size of the compromised
5 information cause any specific concerns for the U.S.
6 government and our foreign partners?

7 A Absolutely. You know, from a foreign
8 partner standpoint, as I said on the Gitmo files, you
9 know, when they talked to the United States and there's
10 classified information, they expect us to have an
11 obligation to protect it and we're protecting it for
12 ourselves and for them.

13 When this data got out, there was a number
14 of foreign partners that were routinely engaged with me
15 who became greatly concerned whether we were still a
16 trusted partner and whether we could still engage in
17 Intel operations with them and they wanted to know what
18 the extent of this is. How far was this going? Should
19 we stop cooperation and how bad is this going to be?

20 Q And, sir, why was it a concern if other
21 nations doubted our ability to guard our classified

1 information?

2 A It's absolutely critical. It was critical
3 for us to have trust in reliance in the war zone with
4 our partners. It was absolutely critical in our
5 special operations forces around the world that had
6 partners. In so many operations we don't do this
7 alone. We have partners and we rely on trust and the
8 ability for nations to work together for common good.

9 Q Sir, did the IRTF have any -- and you,
10 specifically, have any specific concerns about how the
11 compromised data might impact the Iraq and Afghanistan
12 wars at the time?

13 A I did. Very much so. The biggest one was
14 to protect our sources and to protect our troops that
15 were on the ground out working those particular
16 sources.

17 The other thing was to -- concern that we
18 keep the momentum going and we needed to continue to
19 dialogue on the battlefield. We needed to go out on
20 the battlefield. We needed to build relations with the
21 local population. We needed them to keep talking to

1 us. We needed to understand what with going on.

2 This is a difficult environment to
3 understand. You need that information to continue to
4 come on. You need that dialogue and we were very
5 concerned, in some cases, that, you know, folks might
6 choose not to talk to us anymore because of information
7 that would come out on here could be detrimental to
8 their livelihood or their ability to function in that
9 environment.

10 Q So earlier you testified in general about
11 the steps and priorities that IRTF had and you just
12 talked about sources.

13 Sir, what was the duty to notify?

14 A So if the United States intelligence
15 community has created an arrangement with an individual
16 and that arrangement is operating on behalf of the U.S.
17 Intel community, to gather knowledge and report back to
18 us, that becomes a human source. I think we have a
19 regulatory or a legal obligation to protect that
20 particular source.

21 When this data all came out and the

1 hundreds of names that were in there, they were not
2 necessarily -- not all of these names were legitimate
3 intelligence sources that were committed to operating
4 on our behalf. They were relationships of local
5 villagers that were cooperating with patrols and
6 soldiers as they went through as they talked from the
7 police chief to the captain so that they would begin to
8 work together in a security operation. I didn't have a
9 legal or regulatory obligation, but I think as the
10 secretary and others defined it, we had a moral
11 obligation.

12 So we created the concept of, instead of a
13 duty to warn, it was a duty to notify. So we went
14 through the process to evaluate each and every name as
15 to whether their name being released within this
16 context of data put them at a greater risk. And we
17 tried to characterize it and we pushed that forward and
18 we allowed local commanders to make that decision as to
19 whether they wanted or needed to put a soldier in
20 harm's way to go notify this particular individual.

21 Q Sir, how did the task force identify these

1 individuals that ultimately we had a duty to notify?

2 A First and foremost was just, you know,
3 identify by name which is a very difficult task given
4 the name constructs that we were dealing with and
5 over -- you know, one particular name might happen to
6 be in the databases multiple times and so we tried to
7 match them up, narrow them down as best we can,
8 identify a name, attach him to another -- a number of
9 reports, work with CentCom, work with the analyst and
10 try to put a picture together as to whether this
11 individual, as a result of the things he's saying,
12 might be at an additional risk than before the data
13 came out and that we used that to make a risk
14 assessment and we pushed that down in cooperation with
15 CentCom to the ground forces.

16 Q Sir, why was this information then given to
17 CentCom?

18 A CentCom being the higher command for the
19 Afghan and the Iraq war. Rather than come directly
20 from the national or DOD level, we worked through
21 CentCom. We needed their team work, we needed their

1 cooperation, we needed their expertise and we needed a
2 process flow.

3 Q Sir, are you aware of whether anyone was
4 actually harmed as a result of these compromises?

5 MR. HURLEY: Objection.

6 THE COURT: Overruled.

7 A As a result of the Afghan logs, I only know
8 of one individual that was killed. The individual was
9 an Afghan national. The Afghan national had a
10 relationship with the United States government and the
11 Taliban came out publicly and said that they killed him
12 as a result of him being associated with the
13 information in these logs.

14 MR. HURLEY: Ma'am, we may object again as
15 to relevance. General Carr is going to going to talk
16 about how this person wasn't listed in the WikiLeaks
17 disclosures. This individual's name wasn't listed
18 among those names, among the hundreds of names he
19 talked about.

20 THE COURT: Is this, what you're testifying
21 to, tied to the information in the disclosures in any

1 way?

2 THE WITNESS: The Taliban killed him and
3 tied him to the disclosures. We went back and searched
4 for this individual's name in all of the disclosures.
5 The name was not there. It was a terrorist act on
6 behalf of the Taliban threatening all of the others out
7 there. But the name of the individual that was killed
8 was not in the disclosures.

9 THE COURT: Objection. Sustained. Move
10 on.

11 MR. FEIN: Yes, ma'am.

12 BY MR. FEIN:

13 Q Sir, with the names being in these reports,
14 how does having individuals' names in our report impact
15 our operations with local nationals?

16 A Well, their interaction with our soldiers
17 is critical. You can go into a village and we work
18 with a local government. We need the police chief, we
19 need the mayor, we need the civil leaders within that
20 town to work with us and cooperate and talk to us and
21 help us build a civil society.

1 So the concern was if their names came out
2 and they thought that their conversations with the
3 United States was no longer, you know, comfortable or
4 protected, then they would back off from those
5 conversations and less interactions which would slow
6 our momentum and, in fact, our overall mission success.

7 We saw signs of that and we signs where
8 there was no impact. There are some people out there
9 that quit talking to us as a result of their releases.

10 Q Sir, did you determine there's a
11 requirement to notify our foreign partners?

12 A I did on a couple of levels. One, I was
13 directed by more senior government officials to ensure
14 that I provided sufficient transparency to key allies
15 and I routinely met with representatives of their
16 government once a week to ensure that there was enough
17 transparency and they weren't surprised by the
18 potentially harmful statements in the public that got
19 out as a result of this.

20 The second one was that, as we talked
21 earlier, in Afghanistan we were trying to get the NATO

1 team and the U.S. team to get their information in a
2 common database. Part of the data that was later
3 determined to be in this release was a number of
4 documents that was not originated by the United States
5 community. These were actually NATO originated
6 documents and so, even though those documents hadn't
7 come out, I took the step with approval of my
8 leadership to transmit knowledge of that information to
9 each country.

10 THE COURT: Yes?

11 MR. HURLEY: Objection, relevance. Is this
12 what -- is this information that's charged and PFC
13 Manning was found guilty of based? On the witness's
14 description, it's not. So we're objecting as to the
15 relevancy of it.

16 THE COURT: Is this the information that
17 was included in the CIDNE I and A database?

18 THE WITNESS: Yes.

19 THE COURT: Overruled.

20 BY MR. FEIN:

21 Q Sir, what specific steps did the IRTF take

1 to address these concerns?

2 A Again, we met with our foreign partners on
3 a routine basis and in the case of the Afghan files
4 that NATO originated, we consolidated those and pushed
5 them back to them as quickly as possible notifying them
6 that this data was no longer under the control of the
7 U.S. government and had been compromised so that they
8 could do their own review and come to their own
9 conclusions at what risk their people may be in.

10 Q Sir, why did you decide that the IRTF
11 needed to send these letters, this information to
12 foreign partners?

13 A Because the ability to sustain the trust of
14 our NATO allies in Afghanistan and the need to continue
15 to move forward in building the information sharing
16 environment there, we could not afford for us to hang
17 on to this knowing that it was out there without giving
18 them a chance to protect their soldiers just like we
19 were going to do trying to do everything we could to
20 protect our own soldiers.

21 Q Sir, do you recall when -- I guess in

1 context to the IRTF stating that this occurred?

2 A Probably within the first 30 days we came
3 to that conclusion that that data had been compromised.

4 Q Now, in reference to what you testified
5 earlier about personal information of U.S. soldiers,
6 you mentioned that the city reports also contain PII.

7 Did the IRTF conduct any type of process to
8 identify this information?

9 A We did.

10 Q And the actual data?

11 A Yes, we did. We went through all the data
12 to identify where PII had been released into the open
13 and we notified that service member's service, whether
14 it was Army, Navy, Air Force, marine, we pushed it to
15 back to the service so they could take the appropriate
16 and necessary actions to protect the individuals.

17 Q And why, sir? Why transfer it to over to
18 the services like the Army G1?

19 A It did go to the Army G1 in particular
20 because it was a service function and not something the
21 IRTF was doing. We were identifying the risk and

1 moving it to people that could take the appropriate
2 actions to mitigate any damage.

3 Q Sir, why did you feel that it was important
4 to find this type of information particularly the
5 historical information about our soldiers that were
6 killed or injured?

7 A Well, in a case of PII, I think we had some
8 legal obligation when PII data is released out into the
9 open as a result of government activities.

10 In the case of medical data, the concern
11 was two-fold. First of all, we needed to provide
12 warning to families who may have to relive events that
13 were very uncomfortable and significant emotional
14 events as a result of their loved ones either losing an
15 arm or a leg.

16 So we tried to identify that as quickly as
17 we could, get it back into the particular service and
18 allow them to continue to help that family work through
19 this and to give them some warning before they open up
20 their Internet computer and have to relive a very
21 unfortunate event.

1 The second thing is that, if you recall
2 this particular database was largely based on first
3 reports. It's spot reports SigActs. It's that first
4 report off the battlefield and every single death on a
5 battlefield gets investigated and a body of knowledge
6 comes together so that you inform that family as to
7 what really happened to their loved out there on the
8 battlefield.

9 That first report is not always the most
10 accurate. So we wanted to make sure that we gave the
11 services a quick opportunity as they could to get that
12 data to the family and bring them in and warn them that
13 they don't be misled by what's going to hit the
14 Internet when the next release comes out. So that was
15 our attempt, just to try to save the emotional impact
16 from soldiers who had already lost family members or
17 lives.

18 Q Sir, in reference to attache operations?

19 MR. HURLEY: Again, objection.

20 THE COURT: Got it.

21 Q Sir, in reference to the attache

1 operations, you testified earlier in your capacity as
2 the DCHT director that you oversaw attaches.

3 What are the general responsibilities of
4 defense attaches?

5 A A defense attache either represents a
6 service or represents a Department of Defense as a
7 representative to a foreign government. In particular,
8 they are the interlocutor with a ministry of defense or
9 a foreign military, army, navy, air force or marine.

10 They coordinate activities. They
11 coordinate visits. They coordinate cooperation. They
12 work security assistance. They build relationships
13 that help us grow together as coalition partners and
14 militaries. So their job involves an incredible amount
15 of liaison with the local ministry of defense or
16 service.

17 Q Sir, how do -- if at all, do defense
18 attaches collect information important to the
19 Department of Defense?

20 A Well, in that conversation they learn
21 things no different than a soldier out on the

1 battlefield who's been talking to the local police
2 chief. He captures things.

3 So defense attaches do, in fact, capture
4 information and they let us have an understanding of
5 how a particular ministry of defense feels. I mean,
6 what's their position on a particular issue? Do they
7 want to buy this new weapon system? Do they want to
8 buy -- so all of that comes back in reports and
9 dialogues and that adds to the body of information that
10 we contain.

11 Q Sir, in your role as director of DCHC, were
12 you familiar with the impact that the disclosures had
13 on defense attache operations?

14 A I was. Very much so.

15 Q And how are you familiar, sir?

16 A I'm familiar because there were a number of
17 attaches in a number of different countries whose
18 relationship and ability to interact with that country
19 was either stopped, it was minimized, it degraded or it
20 was -- you know, their ability to do their job --

21 MR. HURLEY: I'm sorry, we would reiterate

1 our objection, our hearsay objection and this
2 information, we don't believe, is otherwise admissible.
3 In the position of defense, this is inadmissible
4 hearsay. So under 703 we would request that the court
5 do the probative value -- essentially, the 403 analysis
6 that's required under 703 to determine if the
7 sentencing authority should hear this information, Your
8 Honor.

9 THE COURT: Major Fein, is the information
10 hearsay?

11 MR. FEIN: Ma'am, may we have a moment?

12 THE COURT: Yes. (Pause.)

13 MR. FEIN: Ma'am, the United States
14 contends, first, it is hearsay but it is the same
15 subject matter that was relied on by other experts in
16 this field, General Carr.

17 THE COURT: That's not my issue. Hearsay,
18 then, under RCA703. Does the government -- what is the
19 probative value in helping me evaluate the opinion?

20 MR. FEIN: Ma'am, the probative value here
21 is that General Carr was the head of the entire attache

1 system as the director of DCHC. He's offering his
2 opinion on whether that system was impacted.

3 THE COURT: No, he's not. He's giving
4 factual information that's hearsay right here. You
5 haven't elicited an opinion.

6 MR. FEIN: Yes, ma'am, but I'm building up
7 to that, actually. This is the foundational elements
8 of that opinion on how he knew this information, how he
9 could give an opinion on it to fact.

10 THE COURT: Why don't we do this? I'm
11 going to sustain the defense objection. Let's just get
12 to the opinion and if it comes up on cross-examination,
13 you can start doing this on redirect and this is true
14 for all of the factual matters.

15 MR. FEIN: Yes, ma'am.

16 BY MR. FEIN:

17 Q Do you have an opinion about whether the
18 attaches you were responsible for were affected by the
19 WikiLeaks releases?

20 A Yes.

21 Q How confident, sir, are you on that

1 opinion?

2 A I am extremely confident because it was the
3 data that was reported up through the system.

4 Q And, sir, what is your opinion about how
5 the attaches across-the-board that you were responsible
6 for were affected by the WikiLeaks releases?

7 A I think there were a number of them
8 affected, that they were affected in many very
9 different ways. Some of them were absolutely sealed
10 off for a period of time until that confidence could be
11 rebuilt. Others had only smaller impacts and, you
12 know, a degradation of access and ability to do their
13 job. But it went across a broad swath. As you can
14 imagine the number of countries in the world but not
15 every country was mentioned in the WikiLeaks. But each
16 one took it individually because they were affronted by
17 the data that was now public about them and their
18 relationship with the United States.

19 Q Yes, sir. And why, sir, then -- well, is
20 that a concern of yours, sir, with that impact?

21 A It certainly is a concern of mine because I

1 need to maintain those relationships for a whole number
2 of reasons. In some cases, we had troops on the ground
3 in various countries that we needed to maintain contact
4 with and we needed to know that we had the full support
5 of that host nation. A classic example would be
6 Pakistan. We needed --

7 Q Sorry, thank you. Just based off the
8 court's previous ruling for the defense, we'll just
9 move on from here.

10 Sir, now, I'd like you to focus your
11 attention on information sharing. Sir, why is
12 information sharing so important to the intelligence
13 defense DOD intelligence community?

14 A Well, it's critical in the sense that if
15 we're talking about Intel sharing, then it's critical
16 that a senior Intel officer at whatever level is
17 providing his commander the best assessment and the
18 best information available based on an all source
19 conclusion.

20 You don't want to know that you're only
21 getting 70 percent of the pie as you go in and tell the

1 story. You could be absent critical factors that might
2 change your conclusions and, ultimately, could affect
3 the decisions that a commander would make.

4 So having confidence that the necessary
5 information is being shared up and down the chain
6 appropriately as well as laterally across the various
7 agencies and funneling into that J2 is critical to
8 success.

9 Q Sir, how is the intelligence -- how has
10 intelligence shared within the U.S. government changed
11 post 9-11, sir? Well, up until the WikiLeaks releases.

12 A I mean, post 9-11, the system began to move
13 in amazing ways to ensure that information got to the
14 people that could need it to help both defend the
15 United States as well as in those areas where we had
16 troops in harm's way.

17 So across the board you begin to see more
18 and more instances of pipes and information flows being
19 opened so that people could have the confidence that
20 they had the best information that our nation could
21 provide into the right hands and as we got deeper and

1 we became -- you know, as you go through something like
2 a war, you get better and you do things better and
3 better. So that continued to move forward in a number
4 of ways that were very positive.

5 Q Sir, did you experience or observe any
6 impact information sharing with the United States
7 government after Private First Class Manning's
8 compromising?

9 A I did.

10 MR. HURLEY: Objection. If the witness is
11 going to talk about and I'm sure from the pretrial
12 interview he is, a choice of the federal government to
13 do one thing or another, we would submit that the
14 decision of the U.S. government policy makers is not
15 directed related to PFC Manning --

16 MS. OVERGAARD: You can put that in your
17 filing. I got that down. It's the objection we talked
18 about before. I'll hear the evidence and if I find it
19 doesn't fall within RCA1004 I will disregard it.

20 BY MR. FEIN:

21 Q Sir, in your experience, did you experience

1 or observe after Private First Class Manning's
2 disclosures, an impact to the information sharing
3 within the United States government?

4 A I don't have a -- the answer to the
5 question is absolutely yes. What you have is you have
6 a reluctance. You have people making a reluctance to
7 provide that information down to the lowest levels
8 because they no longer trust the folks that are working
9 that information from protecting it and, therefore,
10 protecting their ability to continue to get that
11 information.

12 Q And, sir, why is trust so important in this
13 process of information sharing within the U.S.
14 government?

15 A Trust is absolutely critical. In some
16 cases, there's millions of dollars of investment that
17 go in to get a particular capability and we need to
18 ensure that we take the appropriate actions to protect
19 that so that that capability will be sustained and
20 provide goodness and value over a long period of time.

21 The other aspect, there's the trust and

1 confidence that our own folks that are going into
2 harm's way have not been betrayed as a result of
3 release of information that now provides an adversary
4 advantage and then in the human world, again, as we
5 mentioned earlier, you have a responsibility to protect
6 your source and if all of the sudden, if the
7 information that they're providing then gets released
8 into the open and the adversary can figure out -- the
9 counter-intelligence agencies of other foreign
10 countries can all of the sudden figure out who these
11 sources are. It's a nasty world and their ability to
12 continue to do that will not be there and in some
13 cases, in some countries their life will be in harm.

14 Q Sir, how much of your military career have
15 you been involved with access to classified
16 information?

17 A My entire career.

18 Q During your career, sir, did you also
19 supervise personnel who had access to classified
20 information?

21 A In nearly every assignment.

1 Q Did that include junior enlisted personnel?

2 A Absolutely.

3 Q Sir, in your experience, were junior
4 enlisted personnel and even junior officers, senior
5 officers, senior enlisted generally committed to
6 protecting classified information that they have access
7 to?

8 A Absolutely.

9 Q And why did you not question that
10 commitment, sir?

11 MR. HURLEY: Objection. Relevance to this
12 question.

13 THE COURT: Overruled on that. Go ahead.

14 BY MR. FEIN:

15 Q The question is: Why didn't you question
16 that commitment, sir, of everyone who worked for you or
17 you worked with on protecting classified information?

18 A Loyalty, performance, the need to have the
19 information to do their job, continued demonstration of
20 capabilities and basically commander's confidence in
21 them.

1 There are cases where we had to remove
2 individuals from access to classified information and
3 you look for various factors that might make them more
4 of a risk. But, overwhelmingly, soldiers provide you
5 that confidence, that they need that information to do
6 the job and they reward you with an absolutely great
7 job.

8 Q And why is that necessary, sir?

9 THE COURT: I know I didn't sustain the
10 objection, but I've got the point.

11 MR. FEIN: Yes, ma'am.

12 BY MR. FEIN:

13 Q Sir, in your experience, were there any
14 physical security measures designed to ensure proper
15 handling of classified information?

16 A Absolutely. There's a number of various
17 measures that were critical.

18 Q Can you please briefly describe the types
19 of physical measures that you've experienced to protect
20 classified information?

21 A In some cases, depending on the environment

1 you're in, you may be required to physically be present
2 with the material and the two-man rule.

3 You might have a case where it has to be
4 locked up into safes of various definition. You've
5 got, you know, the construct of a particular facility
6 needs to be accredited in a way that classified
7 information would be there.

8 You often have guard forces that surround a
9 facility that has classifieds information and, of
10 course, they have a set of rules that are put in place
11 to provide both a deterrence and confidence that
12 classified information is sustained within the facility
13 that it's supposed to be.

14 Q Sir, with all of these different types of
15 security measures, is there any measure that could have
16 prevented someone from compromising classified
17 information?

18 A I don't know that any of them are
19 necessarily foolproof.

20 Q And why, sir?

21 A The amount of effort would be one. You

1 know, you could -- if a person has gone wrong, you
2 could come out of a facility with classified
3 information, you know, tucked inside your sock, tucked
4 inside your cargo pocket. It could be in many
5 different places either in satchel bags or on your
6 body.

7 MR. HURLEY: Ma'am, I'm sorry. We again
8 object. In this instance, it's beyond the scope of
9 General Carr's expertise. He's not offered as an
10 information assurance expert.

11 THE COURT: I'm going to overrule it on
12 that. Major Fein, this is very cumulative to what is
13 going on in the merits a little bit. Establish the
14 point and move on.

15 MR. FEIN: Yes, ma'am. Your Honor, for
16 this section, one final question.

17 BY MR. FEIN:

18 Q Sir, what ultimate then prevents from your
19 experience, sir, an intelligence professional from
20 disclosing classified information that they learn
21 about?

1 A It's their own values. It's their legal
2 obligation. It's their -- it's the trust factor that
3 we put in. I mean, at the end of the day, my head
4 could be a SCIF and you can't stop that. The amount of
5 data that comes in that all of us start to acquire over
6 a period of time that we do our work, there's nothing
7 that you can do to prevent that accumulation of
8 knowledge in there. You have to rely on the trust and
9 confidence of the people that, when we walk out, they
10 would do the appropriate thing and protect it.

11 Q Yes, sir. Sir -- I'm sorry for bouncing
12 back and forth, but back to the IRTF.

13 Did IRTF -- did you direct any way for the
14 IRTF to capture its findings, its ultimate conclusions?

15 A There was a final report that was done and
16 signed out as we closed down the IRTF in the summer of
17 2011.

18 Q And was the impact to DOD complete when
19 that report was published?

20 A No, the impact of DOD continued to be on
21 that.

1 Q Why did the task force then stand down and
2 the report get published prior to that?

3 A It was stood down because we had reviewed
4 all the documents. We had looked through them through
5 a set of criteria and attempted to understand them and
6 understand the implication of when they would come out
7 and we attempted to quantify that, put that in writing
8 and close the task force up.

9 Q Sir, in your opinion, was that IRTF review
10 necessary?

11 A It was critical to us to have confidence to
12 continue. We needed to figure out where the risks
13 were.

14 Q And why, sir?

15 A It would have been morally unconscionable
16 to have all of this data out there and not have
17 somebody take a look at it as to how much risk was
18 being placed on a U.S. soldier or on the U.S. Intel
19 system or on, you know, our ability to continue
20 relations within the world.

21 Q Sir, if -- would the impact would have been

1 more severe if IRTF had not acted so quickly?

2 MR. HURLEY: Objection, speculation.

3 THE COURT: Do you know?

4 THE WITNESS: I do know of a couple of
5 cases that I think it would have been significantly
6 more severe had we not acted in the way we acted.

7 THE COURT: All right. Overruled.

8 BY MR. FEIN:

9 Q Sir, could you please -- first, answer the
10 question. Would the impact have been more severe if
11 the IRTF had not acted so quickly and forcefully?

12 A Yes.

13 Q And why is that, sir?

14 A I think in the particular case, when we had
15 come to an understanding and completely reviewed the
16 495 or 400,000-plus documents out of the Iraq files and
17 we went to great lengths to work with CentCom and the
18 U.S. forces in Iraq to have a full understanding and
19 because we had that understanding of what was in there,
20 we were able to take that knowledge and go to the Iraqi
21 government so that when those documents hit, the Iraqi

1 government wouldn't be surprised. They wouldn't pull
2 back, they wouldn't stop interacting with us. They
3 would continue to be good allies.

4 So us working forward showing that trust
5 and confidence helped them to understand what the
6 release was going to mean and what the impacts were
7 going to be in the press.

8 THE COURT: Yes?

9 MR. HURLEY: Ma'am, we would object and
10 move to strike. It's the same hearsay problem. None
11 of this is in the personal knowledge of General Carr
12 and he's only seen these reports and is held to this
13 conclusion and we would ask the court to go through the
14 same process understanding.

15 THE COURT: In this case, I believe under
16 SEM 703 that information is probative and outweighs the
17 prejudicial effect, but let's not continue down this
18 road.

19 MR. FEIN: Yes, ma'am.

20 THE COURT: Go ahead.

21 MR. FEIN: That was the last question for

1 that section, ma'am.

2 BY MR. FEIN:

3 Q Sir, I just have two more questions just to
4 clarify something you said earlier. Hopefully, just
5 two more.

6 Sir, when you were testifying about the
7 duty to notify, for those individuals in Iraq and
8 Afghanistan, the foreign nationals, what type of
9 information do we typically gather from those
10 individuals that cause the duty to notify?

11 A The type of information that you gain from
12 these individuals might be an understanding as to who
13 in the village might be an insurgent. It might be to
14 understand who might be threatening that village. It's
15 an understanding of where this village leadership or
16 the police chief needs help with his security, what
17 kind of vulnerabilities he has where he needs help.

18 So it's a set of information that they
19 share with us so that we can work together to better
20 their situation and to allow them to maintain security.

21 Q Sir, why is that important to our national

1 security in a war fighting mission?

2 A Because we are over there trying to build
3 them up to the point where they can take their security
4 and then we can come home. So we need to keep that
5 forward momentum. We need to keep that dialogue up and
6 we need to protect folks.

7 MR. FEIN: Thank you, sir. Your Honor, no
8 further questions.

9 THE COURT: Defense, would you like a
10 recess before cross-examination?

11 MR. HURLEY: No, we can grab one in the
12 afternoon.

13 THE COURT: All right.

14 EXAMINATION BY MR. HURLEY:

15 Q Good afternoon, General Carr.

16 A Good afternoon.

17 Q We're going to start off talking about your
18 experience in working for the United States government.

19 You worked for the United States
20 governments for years?

21 A For 31 years, yes.

1 Q You worked in the Department of the Army?

2 A I was a member of the Department of the
3 Army. I obviously had assignments with joint
4 organizations and other services as well.

5 Q You draw a government pension?

6 A I do.

7 Q You now work for a government contractor?

8 A I do.

9 Q That contractor is Northrop Grumman?

10 A It is.

11 Q You're the lead executive for Fort Meade?

12 A Corporate lead executive for the Fort Meade
13 area and Aberdeen Proving Ground.

14 Q And your military experience was vital to
15 getting you that position?

16 A I suspect it was.

17 Q You worked in the intelligence field your
18 entire career?

19 A I was a member of the intelligence for my
20 entire career. I did have some assignments that were
21 outside the intel field.

1 MR. HURLEY: Ma'am, if I might, I don't
2 need to repeat my questions that I asked on voir dire,
3 do I? Maybe we can use those for --

4 THE COURT: Yes, yes.

5 MR. HURLEY: I have them written down to
6 save us some time.

7 BY MR. HURLEY:

8 Q First, let's talk about these conversations
9 with local nationals that show up in the CIDNE
10 reporting, both CIDNE I and CIDNE A, right?

11 So, sir, there were names listed in those
12 reporting?

13 A In some of the reporting, yes.

14 Q And those names were in Arabic? Those are
15 Arabic names?

16 A They were either Iraqi or Afghan names or
17 whatever nationality those individuals were.

18 Q And we don't share an alphabet with either
19 of those countries, do we, sir?

20 A No.

21 Q So they're transliterated (phonetic) into

1 English?

2 A They are.

3 Q And the other identifying information is
4 transliterated into English, right?

5 A I'm not sure what you mean by the other
6 identifying information?

7 Q Well, sir, let me be more specific. The
8 village name was transliterated into English?

9 A Sure.

10 THE COURT: You're saying transliterated.
11 Do you mean translated?

12 MR. HURLEY: Translated, yes, ma'am.

13 THE COURT: I didn't know if there was
14 another word, but wasn't sure I understood.

15 MR. HURLEY: I apologize.

16 THE WITNESS: I'm struggling myself.

17 THE COURT: You mean translated?

18 MR. HURLEY: Yes, ma'am.

19 THE COURT: If transliterated comes out, he
20 means translated. We got it.

21 MR. HURLEY: Thank you, ma'am.

1 BY MR. HURLEY:

2 Q That information -- and not only that, but
3 there's often communication difficulties between
4 coalition forces and local national populous, right?

5 A Sure. Our interrogators -- we have
6 linguists on the battlefield.

7 Q But even with linguists, sometimes that
8 bridge is not completely crossed?

9 A Sure.

10 Q So the information that gets translated,
11 there could be a misunderstanding as to the identifying
12 information, correct?

13 A There could be a misspelling or something
14 like that, absolutely.

15 Q Right. For example, it could be that any
16 of the information including the SigActs -- because it
17 was classified, I won't use the actual information --
18 it could be Steve works at the market, but really there
19 was a miscommunication and the true information is
20 Steve works at the shoe store?

21 Do you see what I mean?

1 A I see what you mean.

2 Q And do you agree that's a possibility?

3 A I agree that it's a possibility, but that's
4 the whole point of continuing to build a body of
5 knowledge so that you reconcile those and you build
6 enough knowledge so that the next guy coming through
7 that village has an enhanced understanding.

8 Q But that enhanced understanding isn't
9 always achieved, is it?

10 A Over time it is always achieved, but there
11 are occasions where there are misrepresentations of
12 individuals, yes.

13 Q You talked about the SigAct reports. So in
14 the CIDNE database there are SigAct reports; is that
15 right?

16 A Yes.

17 Q And there are HUMINT reports?

18 A Not necessarily HUMINT reports. There's
19 SigAct reports, there's spot reports. There's other
20 reports, but did not necessarily what I would refer to
21 as HUMINT source reports. Those are put into different

1 databases.

2 Q So they wouldn't be in CIDNE at all?

3 A They shouldn't be.

4 Q And you indicated on your direct
5 examination that SigAct reports were historical
6 reporting?

7 A They are not what one would call planning.
8 They are reports of events that just took place.
9 You've done something and now you're documenting what
10 transpired and put it down.

11 Q Backward looking in time?

12 A Yes.

13 Q And you talked about, in your testimony
14 with Major Fein -- and we're going to talk about the
15 reactions of local nationals to these disclosures.

16 You indicated the reactions were on a broad
17 spectrum?

18 A Yes.

19 Q From an outright refusal to talk?

20 A There were cases where that was reported.

21 Q To not talking for a while, but then

1 eventually talking?

2 A Absolutely.

3 Q To talking but being a little concerned?

4 A Yes.

5 Q To continuing on as if nothing has
6 happened?

7 A There are cases of that as well.

8 Q And your basis of knowledge of this are
9 things you read, right, General Carr?

10 A Basically, things I read, things that in
11 reporting that came up that the team put together and
12 briefed me at various staff meetings.

13 Q Right. So it's information that you
14 consumed in your role as director of the IRTF?

15 A Yes.

16 Q And in Afghan especially, Afghans are not
17 as plugged in?

18 A This is true.

19 Q So many people didn't know about these
20 disclosures?

21 A This is true.

1 Q And continued on as if nothing had happened
2 after these disclosures?

3 A There certainly are cases of that,
4 absolutely.

5 Q And there was no analytic process conducted
6 by the IRTF about the reactions, was there?

7 A (Pause.)

8 Q So, sir, perhaps my question was confusing.
9 I can rephrase it you would like.

10 A There was an analytic process to understand
11 and to provide warning when we thought there might be a
12 duty to notify.

13 Q Sure.

14 A That analytic process then kind of put a
15 judgmental effect as to whether this might be more
16 significant or less significant. You know, his name
17 was mentioned one time and he said something, probably
18 not a big deal. This guy has been known to give up
19 insurgent's names on multiple occasions, you need to
20 warn him. That analytical judgment was put in place
21 and sent forward. An analytical judgment based on what

1 that village's response was was not necessarily put in.
2 What was done was, as we sent these things forward, we
3 attempted to capture feedback. So, one, we kind of
4 understood and that we would factor that into future
5 analysis as we worked through and continued to move
6 forward with the names. As you said, there were a lot
7 of names and there's a difficulty mixing in, getting
8 the names together. So you're talking about the common
9 person.

10 Q And that mixing difficulty would occur
11 whether you were an American or a member or someone
12 from a foreign -- so that analytical problem, because
13 of the names being translated back and forth, that's a
14 problem for Americans, right? It was a problem for the
15 IRTF?

16 A It was a challenge for the IRTF to solve,
17 yeah.

18 Q Sure. And that challenge would exist for
19 foreign nationals too?

20 A Absolutely.

21 Q And it would exist for our adversaries too?

1 A I suspect so.

2 Q Because so they could have to translate it
3 back from English to whatever their native tongue is?

4 A Yup.

5 Q In the analysis I was talking about when I
6 said there was no analysis done about the reactions is
7 analysis an like this, 24 percent of the people that we
8 went back to stopped talking to us.

9 Was any analysis done like that quantifying
10 it in some way?

11 A I don't recall capturing that percentage or
12 number.

13 Q So the assessment is simply some quit
14 talking and others kept talking?

15 A The assessment is that we had evidence of
16 cases of both of those types of things happening as
17 well as other scenarios out there.

18 Q That fell in between those two?

19 A That fell in between those two extremes.

20 Q In your experience within intelligence
21 operations, General Carr, you understand there are many

1 case to determine public opinion?

2 A Yes.

3 Q Polls?

4 A Yes.

5 Q Questionnaires?

6 A Certainly.

7 Q A census even which is, in fact,
8 recommended for counterinsurgency operations? You have
9 to say yes or no.

10 A A census meaning a population count or a
11 census more like a pole or a survey?

12 Q No, a census meaning a population count.

13 A Okay.

14 Q Where you collect data.

15 A If you are collecting demographic data that
16 are associated with that, then, absolutely, that would
17 be part of counterinsurgency.

18 Q Were any polls used in Iraq to gauge the
19 response -- to engage the response to these
20 disclosures, to your knowledge?

21 A There were a number of information

1 operational activities in both countries and there were
2 a number of surveys, poles and questionnaires that took
3 place. You know, I can't pinpoint or can I cite a
4 particular case for this, but I do believe that pieces
5 of this data might have been part of polls in the
6 aftermath. But I don't have the knowledge in my head
7 that cites them.

8 Q Thank you, sir.

9 So, sir, you said there were 900 names. Is
10 that in all of the CIDNE I and CIDNE A?

11 A No, I think in the Afghan database we had
12 about 900 names to deal with, I believe.

13 Q 900? Do you recall how many were in the
14 Iraq database?

15 A I do not.

16 Q So with all of those individuals whether in
17 the Iraq or Afghanistan database, you received no
18 report that no one listed in there was killed, correct?

19 A Many of those names were of people that are
20 already dead, had died at some point in the
21 battlefield. I remember these documents span a long

1 period of time and not just a point in time.

2 So, you know, what I don't have is a
3 specific example of somebody tying it this to this to
4 this and he died as a result of this. No, other than
5 the one individual I talked about earlier.

6 Q So you weren't doing the IRTF full-time in
7 the 2010, 2011 timeframe, were you, sir?

8 A I still maintain my job as the director of
9 DCHC probably for the first 45 to 60 days of the IRTF.
10 I've probably spend a good eight hours a day on it,
11 but, over time, I balance the two missions.

12 Q And perhaps my question was poorly drafted.
13 You had other missions besides that?

14 A I did.

15 Q And one of those missions was the overall
16 supervision of defense attache offices?

17 A It was.

18 Q And those offices are in embassies around
19 the globe?

20 A They are.

21 Q You put out a request for information to

1 these offices about the WikiLeaks disclosures?

2 A I didn't personally put out a request for
3 information, but my team was on the lookout for where
4 impacts had taken place. So we were reporting them
5 back up into the consolidated system. Again, I was
6 getting briefs in the morning and again at night and I
7 needed to understand and calibrate those impacts so we
8 could take actions.

9 Q And you -- the defense attache offices were
10 asked about the effects of WikiLeaks, though?

11 A I do believe that my subordinates
12 identified the issue with their respective teams that
13 were in the field and asked them to report instances
14 back.

15 Q But that was not done at your direction?

16 A It was done in the sense that as I was
17 going through the morning briefings and everything, I
18 encouraged my team to try to comprehend and understand
19 where the impacts were taking place so that we could
20 work through them.

21 Q And there are several layers between you

1 and the actual defense attache offices?

2 A There are.

3 Q And getting back to your broad spectrum
4 expression, the reactions in those attache offices fell
5 across a broad spectrum?

6 A They did.

7 Q From an outright refusal to speak with?

8 A In some cases, not all.

9 Q To being pushed down the food chain?
10 That's an expression that I got...

11 A Meaning you used come in routinely and meet
12 with lieutenant general so-and-so and now he refuses to
13 see you, but he let you meet with colonel so-and-so.

14 Q To being queried for more information about
15 the disclosures?

16 A Absolutely.

17 Q And to continuing on as if nothing had
18 happened?

19 A In some cases some countries were immune
20 from it because they weren't -- they didn't necessarily
21 see it as an issue.

1 Q And even in some instances there was joking
2 about it?

3 A There was certainly -- as you know, defense
4 attaches live in capitals around the world there were
5 there were other attaches that poked fun at us because
6 we had this to deal with.

7 Q Again, you use the expression it created
8 these fractures in the defense attache offices, one
9 thing that helped mend these fractures was the
10 personnel turnover over time, right?

11 I'm just going off what we talked about
12 yesterday.

13 A I'm not sure. You know, personnel turnover
14 is a routine thing in the Department of Defense. It
15 has its -- obviously if there's a bad relationship, a
16 turnover could, in fact, move to a good relationship.
17 But there's also a loss of knowledge and interaction at
18 that point in time. So I'm not sure what you're trying
19 to get at.

20 Q Could -- the personnel turnover at defense
21 attache office and the personnel turnover with foreign

1 interlocutors, those mutual turning over of personnel
2 that, according to our discussion yesterday, helped
3 mend these fractures that you talked about?

4 A It's always an opportunity for a restart.

5 Q And that opportunity was utilized in this
6 instance?

7 A I don't -- it's utilized in every instance.
8 I mean, whenever there's a change, you want to take
9 advantage of that change and try to build the right
10 relationship.

11 Q Okay. Let's talk about the duty to notify
12 for a second. In the IRTF, you believed that there was
13 a legal duty to notify legitimate human sources?

14 A I think I referred to that as the duty to
15 warn.

16 Q Duty to warn? Thank you, sir.

17 A There is a distinction we created known as
18 duty to notify. If it was a legitimate human source,
19 if somebody had created a relationship with the U.S.
20 government and they were operating on our behalf, if we
21 thought they were in harm's way, we had a requirement

1 to warn them.

2 Q So, sir, you and your team searched the
3 data, the data that was disclosed?

4 A We searched all of the data that was
5 disclosed and we looked for those things. We looked
6 for the potential identification of HUMINT source.

7 Q And you found none that had been revealed
8 as legitimate HUMINT sources?

9 A (Pause.)

10 Q You didn't find any legitimate HUMINT
11 resources revealed by the in-data?

12 A I'm not so sure that's the case. I think
13 what we found in those names that included some folks
14 who had previously been HUMINT sources and we found
15 some folks who, when they were in the data, were not
16 HUMINT sources at the time they were in the data. But
17 because of their cooperative relationship may have
18 evolved to a HUMINT relationship.

19 Q But the data didn't reveal them as
20 legitimate HUMINT sources?

21 A No, the data didn't say, hey, this is a

1 HUMINT source. What the data showed was a cooperative
2 relationship of talking to U.S. service personnel.

3 Q In that the duty to warn went to a duty to
4 notify any individuals that cooperated with the U.S.
5 government or coalition forces?

6 A We believed that -- the Department of
7 Defense believed that we had a moral obligation to
8 protect those civilian people on the battlefield that
9 were cooperating and helping our efforts.

10 Q And you pushed that assessment to the U.S.
11 CentCom?

12 A We worked on those assessment
13 collaboratively between the IRTF and U.S. CentCom. We
14 pushed them down and then they pushed them forward to
15 the battlefield.

16 Q And they did that -- based on your
17 experience and training, they did that probably through
18 what, fragmentary order?

19 A Exactly.

20 Q And you received back reports from U.S.
21 CentCom as to how the notifications were going?

1 A We received feedback on what happened as a
2 result of those fragmentary orders that CentCom sent
3 out, exactly.

4 Q Some people were notified?

5 A Some people were.

6 Q Some people couldn't be found?

7 A Some people couldn't be found. Some people
8 were determined to already be dead.

9 Q Some were in some places that were deemed
10 too dangerous to send soldiers?

11 A Some folks were in places where we
12 determined that individual was more part of the
13 insurgency today than they were part of our cooperative
14 effort and it was not worth risking soldiers' lives to
15 go make that identification.

16 Q To amplify, some were assessed as playing
17 both sides?

18 A Some were assessed as playing both sides.

19 Q And those individuals were not contacted?

20 A I don't know that all of them. Many of
21 them. That was a decision by the commander on the

1 battlefield who tried to play out that moral obligation
2 that we thought we had as Americans and at the same
3 time protect his soldiers from operations harm.

4 Q So -- I'm just going back to the more
5 overall picture, General Carr.

6 You made these assessments/judgments in
7 2011?

8 A Between the 2010, 2011 timeframe, yes.

9 Q I'm sorry, General Carr. I'm going to ask
10 you more one question about the defense attache office.

11 A Sure.

12 Q We talked yesterday in an interview; is
13 that right?

14 A Yes.

15 Q In that interview, you indicated that the
16 effects in the defense attache offices were short-term
17 effects?

18 A I don't know the -- they certainly more
19 immediate effects. As I said, when this -- when we
20 closed up the task force, it didn't necessarily mean
21 that effects didn't continue. I think there were some

1 in the attache business that were, in fact, short-term.
2 Others had more of an intermediate long-term nature to
3 it.

4 Q So you were overseeing the defense
5 attache -- pardon me, the defense attache function up
6 until you left active duty?

7 A I was, yes.

8 Q And there were relationships that had been
9 affected?

10 A There were.

11 Q But some of those had returned to normal
12 before you left?

13 A Yes.

14 Q But some of them hadn't?

15 A Yes.

16 Q In the assessments that you've done now,
17 you haven't assessed whether locals and nationals in
18 Afghanistan are currently affected by these WikiLeaks
19 disclosures, have you?

20 A I do not know the answer, whether they're
21 currently affected today, no.

1 Q And you haven't made an assessment with
2 respect to Iraqi cooperation with U.S. government
3 personnel today to date?

4 A To date, no.

5 Q Sir, let's talk about intelligence analysts
6 for a second and this is in your experience and your
7 expertise.

8 Intelligence analysts put information
9 together? They coalesce information?

10 A True, and attempt to make analytical
11 assessments and judgments from that body of knowledge.

12 Q And that takes training?

13 A It does.

14 Q It also takes experience?

15 A Certainly one would expect to improve with
16 experience, yes.

17 Q As in all things to improve with
18 experience.

19 A Sure.

20 Q Not just anybody can do it?

21 A I would agree.

1 Q It takes skill to connect the dots?

2 A It takes training.

3 Q And predicative analysis itself is a
4 learned skill?

5 A Analysis is definitely a learned skill.

6 Q Let's talk about -- you indicated that on
7 direct examination that sometimes it's appropriate to
8 remove people who have security clearances.

9 What's a derog?

10 A Derogatory information I would assume
11 you're referring to.

12 Q And, if you would, describe it briefly for
13 the court.

14 A Derogatory information might be information
15 that's known about a particular individual that would
16 cause one to be concerned about their reliability. So
17 you might take steps to mitigate the risk.

18 Q By submitting a derogatory information
19 report?

20 A You could submit a derogatory information
21 report and the example would be, depending on your

1 level of access you have and the security clearance
2 that you're granted, if you were to get a DUI, that
3 would constitute a derogatory information report being
4 submitted into the system.

5 Q And intelligence leaders -- and by leaders
6 I mean NCOs and officers, have a responsibility to
7 ensure soldiers are qualified to maintain a security
8 clearance?

9 A They certainly have a responsibility to
10 oversee those subordinates that have a security
11 clearance and if there are indicators such as a derog
12 and other things, then they would take the appropriate
13 steps.

14 Q And they have a responsible to take those
15 appropriate steps when they know about them, correct?

16 A Yes.

17 Q Getting back to intel analysts generally
18 and perhaps soldier supervision generally, junior
19 soldiers, be they intelligence analysts or whatever,
20 they need the right tools, right?

21 A Yes.

1 Q They need the right leadership?

2 A They do.

3 Q At the NCO level?

4 A Yes.

5 Q And at the officer level?

6 A Yes.

7 Q You talked about the potential harm to
8 service members' families that could result from
9 reading about their death through these disclosures.

10 Do you recall that?

11 A I do.

12 Q So the disclosed data did include some
13 information about the deaths of service members?

14 A I believe they did.

15 Q And family members could ostensibly review
16 this data if it was publicly available?

17 A You know, at some point if it was released
18 out onto the web, I suspect family members could run
19 the appropriate search tool and find the data, yes.

20 Q And these initial reports may be
21 inconsistent with what they were told?

1 A The initial reports are just that, they're
2 initial reports and often -- you know, as I said
3 earlier, every death is investigated and families are
4 informed of how that went through and it includes more
5 than just an initial report, but it includes the entire
6 body of knowledge.

7 Q It could also be that the disclosed
8 information was consistent with what the families were
9 told, right?

10 A Could be.

11 Q Because initial reports not only are they
12 sometimes wrong, but they're also sometimes right?

13 A You're absolutely right.

14 Q And the family's confidence in the United
15 States government could have been buoyed by this
16 information? Something happened and the Army told me
17 the truth?

18 A Could be.

19 Q Let's talk about tactics, techniques and
20 procedures and the enemy and I'm going to use the
21 common acronym TTPs.

1 A Yes.

2 Q Perhaps I'll transliterate it.

3 Enemies -- out adversaries in the field can
4 watch our TTPs, right?

5 A Yes, they can.

6 Q If you put in an ID, ID is sort of a modern
7 term for what is essentially a mine, isn't it?

8 A Okay.

9 Q And mine always needs to be overwatched?

10 A Sure.

11 Q And they can adapt -- the adversary can
12 adapt their TPPs based on what they see in coalition
13 forces, right?

14 A This is true.

15 Q They're constantly adapting their TTPs?

16 A They are.

17 Q And we're constantly adapting our TTPs?

18 A We do.

19 Q What is true today in the intelligence
20 world may not be true tomorrow, right? Things that
21 change rapidly?

1 A Assessments change as you gather more
2 information, this is true.

3 Q And what was true today that's not
4 necessarily true tomorrow may certain not be true two
5 years from now? Is that possible?

6 A It's possible.

7 Q Let's talk about the enemy real quick. The
8 enemy that we face or -- you served as a J2 in
9 Afghanistan?

10 A Yes.

11 Q You had to come to assess the local
12 populous?

13 A I did.

14 Q To one degree or another?

15 A Yes.

16 Q Afghanistan struggles with a high degree of
17 illiteracy?

18 A It does.

19 Q Iraq also struggles with a high degree of
20 illiteracy?

21 A Less so.

1 Q But it's still problematic?

2 A I don't know the percentage in Iraq. I
3 think they were one of the more educated societies, to
4 tell you the truth. But certainly Afghanistan is in a
5 different situation.

6 Q And that, in part, explains something you
7 testified earlier about with Afghans being less plugged
8 in than their Iraqi counterparts?

9 A Yes.

10 Q Did you ever coordinate in your role as the
11 director of the IRTF with the Center for Army Lessons
12 Learned?

13 A I did.

14 Q Did you ever call for any rapid adaptations
15 to be issued from the Center for Army Lessons Learned?

16 A I don't think that we did this through the
17 Center for Army Lessons Learned. I think they were
18 done more through the CentCom headquarters and not
19 through the Center for Army Lessons Learned.

20 There were a couple of cases where we
21 identified potential areas that CentCom may want to

1 take a look at and either adapt their practices or take
2 a fresh look at them.

3 Q And you passed that information along to
4 the U.S. CentCom?

5 A We passed that information along to the
6 U.S. CentCom. We did not make that judgment. We did
7 not make those decisions. We identified where there
8 were risks.

9 Q You talked with the government on your
10 direct examination about your review of the JTF Gitmo
11 information?

12 A Yes.

13 Q Did you look at the facts that -- you
14 understand that there's a good deal of litigation
15 that's going on with respect to those particular
16 individuals at JTF Gitmo?

17 A I do know there's a litigation process. I
18 can't explain it all, but I do understand that there's
19 a litigation process.

20 Q Did you ever review any of those court
21 filings to see what information was disclosed in those

1 court filings versus what information you had in the
2 detainee assessment briefs?

3 A As part of the IRTF, I do not recall having
4 gone through that. I know that, over time, there has
5 been a significant amount of data that's been passed
6 into the legal process.

7 Q You testified on direct that you were
8 trying to move people out of the detention center at
9 JTF Gitmo?

10 A There were processes to lower the
11 population down there, yes.

12 Q And that was an administration priority?

13 A I don't know where it was exactly on the
14 priorities, but there was a State Department ambassador
15 that had the primary responsibility of repatriating
16 folks out of Gitmo.

17 Q There was substantial resistance in
18 repatriating people out of Gitmo from inside the United
19 States government, correct?

20 A I don't know that.

21 Q Do you have any knowledge about whether or

1 not the legislators on Capitol Hill were for or against
2 closing the detention center?

3 A I think there was probably a number of
4 public statements out there made between the various
5 parties. I talked to -- some want to keep it open and
6 some want to close it. I don't know that that ever
7 came into the discussion with the IRTF.

8 Q Now, we're getting to that ambassador that
9 you were talking about from the Department of State
10 that you talked to.

11 You recall talking to him a couple of times
12 on the phone?

13 A I did.

14 Q And you recall that there were meetings
15 between your subordinates and either him or his
16 subordinates, so lower level meetings?

17 A I certainly wouldn't call a meeting with
18 the ambassador a lower level meeting. But I personally
19 did not go over a brief. I had subordinates on my team
20 that went over a brief.

21 Again, my job there, what we were trying to

1 do was to understand the potential of that information
2 making it out and trying to let the individual
3 responsible for his government activities be forewarned
4 and take steps to protect the government.

5 Q So you were told about the delta -- that's
6 the word you used -- between what the United States
7 government had told foreign governments that we were
8 trying to give these detainees to? You were told about
9 that delta, right?

10 A I was told that there is a delta.

11 Q And you were similarly told there's a delta
12 between what -- the information we gave to the foreign
13 governments and the information that the foreign
14 governments relay to its people?

15 A What I was told is that the information
16 exchange between two governments might contain more
17 information than what was in a public press statement.
18 Again, a lot of classified information translated and
19 then there is a public press statement that is coming
20 afterward.

21 Q We're going to talk about the loss that

1 accrued as a result of these leaks.

2 Leaked information can show vulnerabilities
3 in weapon systems?

4 A It certainly can.

5 Q And communications platforms?

6 A It certainly can.

7 Q And ground vehicles?

8 A Absolutely.

9 Q And aircraft?

10 A Yup.

11 Q Did coalition forces -- but coalition
12 forces did not stop using any weapon system because of
13 these disclosures, correct?

14 A Not that I know of.

15 Q And they did not stop using any
16 communication platform because of these disclosures?

17 A I think we made some changes in
18 communications.

19 Q But they did not stop using any vehicles?

20 A No.

21 Q And they didn't stop using any aircraft?

1 A True.

2 Q TTPs were given away, though, or TPPs were
3 part of the SigAct -- part of the SigAct information?

4 A As you said earlier, somebody could
5 overwatch an IED and get a TPP and all of the sudden
6 now what we have, that individual in that other army or
7 that other insurgency or that element that's watching
8 us, do they really have the ability that we maintain in
9 our country to spread that word out and learn that
10 lesson across their force? They don't.

11 The release of this type of information
12 allow people to sit at higher levels and to look
13 through that and get an accumulative understanding.

14 Q Do those people that are overwatching it
15 have the ability to read oftentimes?

16 A I'm not -- I don't know that judgment.

17 Q There is a high illiteracy rate in
18 Afghanistan?

19 A There's certainly a high illiteracy rate in
20 Afghanistan.

21 Q We talked earlier that TTPs evolve?

1 A They do.

2 Q And SOPs, standard operating procedure,
3 they likewise evolve?

4 A Yes.

5 Q Evolve because of a change in technology?

6 A One reason.

7 Q Evolve because of a change in tactics?

8 A Absolutely.

9 Q And all unit TTPs are not the same?
10 Different units or going to do things different ways?

11 A I suspect that there's some commonality as
12 well as some differences and preferences.

13 Q And some units will rarely follow their own
14 standard operating procedures, right?

15 A I'm not prepared to say that. I think it
16 depends on the unit environment there and their
17 standard operating procedures they ought to be
18 following.

19 Q Sir, just one second.

20 (Pause.)

21 Last line of question, General Carr.

1 Before I commit to that statement of intent, I'm going
2 look at a few notes.

3 All right, sir. So the conversation we had
4 yesterday again, we talked about how the actual effects
5 from these disclosures could be graphed in one way,
6 right, that they could be plotted on a graph,
7 potentially? Do you recall that?

8 A I don't recall that discussion. I don't
9 recall making any graphs, so to speak.

10 Q Perhaps I'm mistaken. There was -- let me
11 restate the question again.

12 Then there was a lot of reaction initially
13 to these disclosures?

14 A Yes.

15 Q And, over time, that reaction reduces, it
16 goes -- there's a level of reaction and that reaction
17 reduces over time?

18 A I think that -- yes, and that action often
19 reduces through mitigation where the U.S. government
20 attempts to go heal whatever effect or whatever that
21 happened detrimental. We work hard to heal that.

1 Q And some of it is a result of this
2 mitigation you talk about and some of it is just a
3 result of people moving on?

4 A Okay.

5 Q And, as a result, perhaps of mitigation or
6 perhaps some other reasons it reduces even more,
7 correct, over time?

8 So you have the third step where it's even
9 less than where it was at the second spot?

10 A I think in many cases, over time, it would.
11 I think there's some instances, depending on the
12 severity and the impacts that erosion of impact might
13 be a little slower.

14 Q Right, but you haven't gone back to check
15 to see if that erosion of impact is as slow as you
16 assessed it might be in 2011?

17 A I have not.

18 MR. HURLEY: Thank you, General Carr.
19 Thanks, ma'am.

20 THE COURT: Is there a redirect?

21 MR. FEIN: Yes, ma'am.

1 THE COURT: Is it going to be lengthy?

2 MR. FEIN: It is not.

3 THE COURT: Okay, go ahead.

4 EXAMINATION BY MR. FEIN:

5 Q In reference to your testimony just now
6 about Afghanis being plugged in and their literacy
7 rate, sir, did the Taliban know this information was
8 there?

9 A They absolutely did.

10 Q Did they seek this information?

11 A I'm sure they did.

12 Q In reference to the derogs and the
13 questions the defense asked you about derogs, in your
14 experience, in your 31 years, have intel soldiers that
15 at least worked for you committed minor misconduct and
16 received counseling but not been derogged?

17 A Absolutely.

18 Q And why, sir?

19 A As you said, the minor misconduct didn't
20 reach the level of warranting a requirement to put in a
21 derog report and through counseling the leadership

1 chain gained confidence that it was a one time error
2 and was not going to be a vulnerability in the future.

3 Q And, sir, as far as your testimony just now
4 about the information, specifically the Iraqi/Afghani
5 names, a lot of it in Arabic within SigActs in CIDNE,
6 could you explain for the report that vetting process
7 that you've alluded to?

8 I guess before that, did the IRTF just take
9 a single report and then credit a duty to notify?

10 A No.

11 Q What was the process to vet those names in
12 order to create that duty?

13 A We used an incredible amount of technical
14 tools to try to make sure that we drew all the
15 particular records associated with the many variable
16 ways that a particular name could be spelled and then
17 we would correlate them by location on the battlefield.
18 We went to great efforts to find out that, you know,
19 five, six, seven names would come down to a single name
20 and, yes, it was. It was the guy that ran the shop
21 who's now the village police chief or something.

1 So it was a huge effort and a time
2 expenditure and a cost expenditure in a sense to try to
3 make sure that we were providing the best understanding
4 of that data to forward forces because at the end of
5 the day the forward force had to make a decision to put
6 folks in harm's way to go make that notification.

7 Q On those SigActs were the coordinates
8 included?

9 A In many cases there's coordinates and
10 locations included. I don't know that they're on every
11 single one, but in many cases they are, absolutely.

12 Q And those coordinates, for the ones at
13 least the ones with individual's names, those aren't
14 subject to translation between countries, correct?

15 A Absolutely not.

16 MR. FEIN: Thank you, sir.

17 EXAMINATION BY MR. HURLEY:

18 Q So the Taliban has our maps? Don't you
19 have to have a map to have the grid coordinate mean
20 anything?

21 A I don't think I said the Taliban has our

1 maps. I think the question was does the Taliban have
2 access to this information and the answer is yes.

3 Q The last question was it includes grid
4 coordinates, correct?

5 A The grid coordinate on there, yes. There
6 is also village names on there as well.

7 Q But do our adversaries have our maps?
8 Because do you have to have a map to have a grid
9 coordinate mean anything?

10 A You have to have a map to have a grid
11 coordinate mean anything. You have to have a map to
12 understand city names if you don't have personal
13 knowledge of the environment. But you're dealing with
14 an element that understands a lot about the local
15 environment.

16 Q So you said there were 900 or so names in
17 the CIDNE A database; is that right?

18 A I think I said in the Afghan database we
19 were dealing with something in the neighborhood of 900
20 names.

21 Q Is that number there before or after you

1 filtered through the process you were talking about
2 just now with Major Fein?

3 A I think that was the number that we got to
4 after we filtered through the process.

5 Q Let's talk about derogatory information
6 reports real quick.

7 Have you ever had to file a derogatory
8 information report?

9 A I have.

10 Q Without identifying the person that you
11 filed it on, have you had to file more than one?

12 A Absolutely.

13 Q Again, without tying it to a specific
14 person, what's the type of information that you've had
15 to file derogatory information reports on?

16 A DUIs, positive testing on urinalysis,
17 events such as that. Maybe domestic battery cases
18 would cause one to meet that threshold.

19 Q And with domestic -- in your cases was law
20 enforcement always involved when you would file a
21 derogatory information report?

1 A (Pause.

2 Q The cases you cited all seem to contemplate
3 the involvement of law enforcement?

4 A I think those particular cases all have law
5 enforcement involved.

6 Q But one person responsible could file a
7 derogatory information report not having law
8 enforcement involved, right?

9 A I think there are probably events that
10 could take place in units that meet the threshold
11 without having to have law enforcement, yes.

12 Q A history of outbursts from a particular
13 person with security clearance?

14 A A history of outbursts and workplace
15 violence would certainly meet that threshold.

16 MR. HURLEY: Thank you, sir.

17 THE COURT: Any final redirect from the
18 government?

19 MR. FEIN: No, ma'am.

20 THE COURT: A couple of questions.

21 Is there a regulation or some guidance out

1 there for derogs on what type of activity or misconduct
2 triggers the requirement to have one?

3 THE WITNESS: Yes, there is.

4 THE COURT: And what would that be?

5 THE WITNESS: I don't know the exact
6 nomenclature of it, but...

7 THE COURT: Does it have some that are
8 mandatory?

9 THE WITNESS: It does, it does.

10 THE COURT: Do they have others that if you
11 believe it's necessary, but you don't have to?

12 THE WITNESS: Yes, absolutely. I think --
13 you're absolutely right. There are some that if a
14 particular event happens, the reporting of that into
15 the security classification, the personal security
16 system is mandatory. There would be other events that
17 a commander could make an individual decision as to
18 whether he thought or she thought that that particular
19 event needed to be captured for the longer term.

20 THE COURT: Do you have knowledge of
21 someone with a top secret security clearance begins to

1 have -- to be referred to behavioral health or mental
2 health, what if any impact does that have on the
3 security clearance?

4 THE WITNESS: That has changed over time
5 and so I think there were points in time when a
6 referral of that nature might have caused someone to be
7 removed from the environment. But I think the system
8 has adapted over time to judge each case independently
9 and try not to prevent them from going to get
10 behavioral treatment or counseling for fear of losing
11 their jobs.

12 So this system is trying to encourage that
13 mental health and that -- without causing people to be
14 fearful of it and losing their jobs. So they're trying
15 to adapt that.

16 THE COURT: Thank you. Any followup based
17 on that?

18 MR. FEIN: No, ma'am.

19 EXAMINATION BY MR. HURLEY:

20 Q General Carr, if I asked you -- if I gave
21 you a regulatory number, might that jog your memory as

1 to where this derog information is located?

2 A I doubt it seriously.

3 Q Well, let's just give it a stab. How about
4 army regulation 380-67?

5 A I believe it would be in the 380 series.
6 AR380 often has a number of personnel security, what
7 was incited. Whether a 67 or not doesn't come to my
8 mind at this point.

9 MR. HURLEY: Thank you, sir. Thank you,
10 Your Honor.

11 THE COURT: Temporary or permanent excuse
12 him?

13 MR. FEIN: Temporary, ma'am.

14 THE COURT: Mr. Carr, thank you for your
15 testimony. You are temporarily excused.

16 You are free to go today, right?

17 MR. FEIN: Yes, ma'am.

18 THE COURT: But temporary excusal means
19 just at some point that the court martial may call you
20 back.

21 Please don't discuss your testimony or

1 knowledge of the case with anyone other than counsel of
2 the accused while the trial is still going on.

3 THE WITNESS: Thank you.

4 THE COURT: Just to be clear, for the
5 record, I'm going to disregard any testimony about the
6 Taliban killing somebody in accordance with the leak,
7 for example, and tying it to the WikiLeaks and the name
8 of the individual was not released.

9 Yes?

10 MR. HURLEY: Is there anything else that
11 you need from us other than our filing with respect to
12 the issues that we have encountered?

13 THE COURT: Well, just identify the issues
14 in your filing.

15 MR. HURLEY: Yes, ma'am. Other than
16 filing, nothing else, ma'am?

17 THE COURT: No, that's fine.

18 MR. HURLEY: Thank you.

19 THE COURT: All right. We have another
20 witness to go through today.

21 MR. FEIN: Yes, ma'am.

1 THE COURT: And we will do that. How long
2 of a recess do we need?

3 MR. FEIN: A 15-minute recess, ma'am and
4 they're we're ready to call Mr. Kirchhofer.

5 THE COURT: All right. Does that work?

6 MR. HURLEY: Yes, Your Honor.

7 THE COURT: All right. The court is in
8 recess for 15 minutes.

9 (There was a recess taken at 3:46 and the
10 trial resumed at 4:09 p.m.)

11 THE CLERK: All rise.

12 THE COURT: Please be seated. The court is
13 called to order. Let the record reflect all parties
14 present when the court last recessed are again present
15 in court.

16 I met briefly with counsel in my chambers.
17 The defend counsel came to advise me that they had a
18 chance to speak with brigadier general retired Carr
19 with respect to whether or not there was a prepared
20 statement for his congressional testimony.

21 MR. COOMBS: Yes, Your Honor. I spoke with

1 General Carr. He indicated that although he's aware of
2 the statement, he did not put any information into the
3 statement. So he didn't participate in the preparation
4 of the statement, nor did he sign off on it. I asked
5 him if he had any other statements from his previous
6 testimony to congress. He said no).

7 THE COURT: All right. So does that
8 satisfy the defense that there's no outstanding RCA 914
9 matter out there?

10 MR. COOMBS: Yes, Your Honor, it does.

11 THE COURT: And, government, I understand
12 you're continuing to seek this information from the
13 expert witnesses you have coming in?

14 MR. FEIN: Yes, ma'am.

15 THE COURT: Is there anything else we need
16 to address before we continue on?

17 MR. FEIN: No, ma'am.

18 THE COURT: Proceed.

19 MR. FEIN: The United States calls Mr. John
20 Kirchhofer.
21 Whereupon,

1 JOHN KIRCHHOFER,
2 called as a witness, having been first duly sworn to tell the truth,
3 the whole truth, and nothing but the truth, was examined and testified
4 as follows:

5 EXAMINATION BY MR. FEIN:

6 Q Sir, you're Mr. John Kirchhofer for the
7 Defense Intelligence Agency?

8 A Yes, sir.

9 Q And you are a member of the senior
10 executive service?

11 A That's correct.

12 Q And, sir, prior to beginning, you
13 understand that you're here today to discuss your
14 expertise in strategic planning for Department of
15 Defense counter-intelligence and HUMINT functions?

16 A Yes.

17 Q And based off that, sir, also, are you
18 prepared today to provide specialized knowledge to
19 assist the court in understanding the operation of the
20 IRTF and the impact by the WikiLeaks disclosure?

21 A Yes, I am.

1 THE COURT: Are you going to be qualifying
2 this witness as an expert?

3 MR. FEIN: The United States does intend to
4 qualify --

5 THE COURT: In what?

6 MR. FEIN: In the field, Your Honor, of
7 strategic planning for the Department of Defense
8 counter-intelligence --

9 THE COURT: Hold on. Strategic planning --

10 MR. FEIN: For DOD, CI and HUMINT,
11 counter-intelligence and HUMINT intelligence.

12 THE COURT: So strategic planning for
13 DOD --

14 MR. FEIN: No, ma'am. I'm sorry. It's
15 Department of Defense counter-intelligence and
16 Department of Defense HUMINT. So I said DOD, CI and
17 HUMINT. One field, Your Honor.

18 THE COURT: Thank you.

19 MR. FEIN: Yes, ma'am.

20 BY MR. FEIN:

21 Q Sir, what is your current position at the

1 Defense Intelligence Agency?

2 A I'm the deputy chief financial officer for
3 DIA.

4 Q And how long have you been the deputy chief
5 financial officer, sir?

6 A Only two months.

7 Q And how long have you worked at DIA?

8 A I've been with the agency since August of
9 2008.

10 Q And how did you first become associated
11 with the WikiLeaks disclosures?

12 A When -- on the 28th of July, the Secretary
13 of Defense asked the director of DIA to stand up an
14 effort to review what had been compromised and what
15 potentially was going to be compromised. So we stood
16 up a task force immediately. About three days in, once
17 they started to realize the scope of it, they started
18 pulling in additional people and I was in that second
19 wave that came in on the 2nd of August.

20 Q And when you were pulled in, sir, what was
21 your position on the IRTF?

1 A I was the deputy chief of the IRTF.

2 Q And so now we'll talk about the IRTF a
3 little bit later, sir. We're really just now focused
4 on your background.

5 When you were pulled in to the IRTF, what
6 position did you hold or what position did you hold
7 before becoming the deputy chief financial officer?

8 A I was the deputy chief of the office of
9 counter-intelligence at DIA.

10 Q And how long were you in that job for, sir?

11 A Just shy of a year.

12 Q And what position did you hold prior to
13 becoming the deputy chief of the counter --

14 A Counter-intelligence. It sandwiched the
15 IRTF effort. So before and after I was the chief of
16 enterprise strategies for the defense CI and HUMINT
17 center.

18 THE COURT: What was that again?

19 THE WITNESS: The defense
20 counter-intelligence and human intelligence center.

21 Q Sir, you used the term chief of enterprise

1 strategies.

2 Can you please explain for the court? What
3 does that mean?

4 A It's a DISL position, defense intelligence
5 senior level, which is reserved for grades above GS-15
6 with subject matter expertise.

7 So we were in charge of doing all of the
8 strategic planning for the CI HUMINT enterprise and I
9 can describe that if you'd like. We also did perform
10 its management, lessons learned and we exercised
11 functional oversight of the budget.

12 Q So since you offered, sir, yes.

13 Could you please describe what you mean by
14 the CI HUMINT enterprise?

15 A The CI HUMINT enterprise is -- an
16 unclassified figure would be under 20,000 in manpower.
17 The bulk of the workforce is in the U.S. Army in the
18 tactical force, but it also includes all of the other
19 services, the Defense Diligence Agency and then the
20 counter-intelligence elements of other defense
21 agencies. For example, the National Security Agency

1 has a large counter-intelligence staff. That's part of
2 the counter-intelligence enterprise.

3 Q And as the chief of enterprise, you also
4 said performance management was one of your functions.

5 What is performance management?

6 A Performance management is developing
7 performance measures in metrics by which we can
8 determine how well we're performing and then that
9 informs how we're going to change the force in the
10 future or change our effort in the future to improve,
11 constant improvement.

12 Q And, sir, is that part of the long range
13 planning that you're responsible for?

14 A It's part and parcel of it. So the
15 strategic planning is the whole focus of looking at
16 future threats and in building a force that's going to
17 get us to address those strategic threats down the road
18 and performance management feeds that.

19 If we're failing in one area, what are we
20 going to do to improve on it? Is it going to take more
21 money, more training, change the doctrine? That's all

1 involved in that effort.

2 Q So, sir, with building a force, what force?

3 A The CI HUMINT force, that manpower I just
4 talked about.

5 Q Sir, also, as the chief of enterprise
6 strategies, you mentioned that you're responsible for
7 Lessons Learned. What do you mean by that?

8 Could you provide an example?

9 A In a very classic sense, across the
10 Department of Defense Lessons Learned is treated as a
11 federation of organizations. So, typically, we look to
12 the joint staff J7 to lead the effort, but we handled
13 that specifically for the counter-intelligence and
14 human intelligence disciplines. So we had our own
15 system that fed into the joint staff's system and we
16 shared those lessons in best practices across the
17 entire community.

18 Q And what about functional management and
19 budgeting? What does that aspect --

20 A Functional management is typically you have
21 a budget to your -- that is going to match dollars to

1 the plan that you've built. But functional management
2 is the -- it's the intelligence portion of the budget.
3 So we don't just give dollars, we have to explain those
4 dollars. So the dollars are going to pay for
5 personnel. They're going to pay for operational funds
6 for travel, you know, those types of pockets.

7 So with the intelligence, it's that
8 functional piece that gets added to the budget and that
9 was something that I oversaw.

10 Q Sir, you mentioned earlier that, at the
11 time, you were a DISL.

12 What is a DISL?

13 A A DISL, apparently many years ago they did
14 away with GS grades above the grade of 15 and they
15 merged them into one group that they call senior level.
16 Sometimes you'll hear it called senior technical level
17 if it's in the sciences fields and so it's -- SES light
18 some people call it.

19 Q Sir, is that a technical expert? Are you a
20 technical expert when you're in a DISL?

21 A I'm careful on the word technical, but,

1 yes. My exact position description read senior expert
2 for CI and HUMINT enterprise strategies.

3 Q And was that -- to be selected as a DISL,
4 is that a competitive process?

5 A Yes, very competitive. You have to do a
6 great deal of narrative development. Again, specific
7 technical qualifications -- I go back to that word
8 now -- to prove that you have that expertise to do that
9 job, that niche expertise.

10 Q And, sir, in your current position now, are
11 you still a DISL?

12 A No, I'm a member of the senior executive
13 service now.

14 Q And what is your current, at least military
15 equivalent rank, sir?

16 A I'm a tier 2. So it's a two star
17 equivalent.

18 Q Thank you, sir. At this point, I'd like to
19 have you testify about your professional background.

20 When did you first join the Department of
21 Defense?

1 A In January of 1991.

2 Q And what was your first job, sir?

3 A I was a clerk-typist in a force management
4 office with the Army Intelligence and Security Command.

5 Q Have you been a civilian for your entire
6 career?

7 A I have, yes.

8 Q Then where did you move to, sir?

9 A I did that for about a year and then I
10 moved into a position as a human intelligence reports
11 officer and a reports officer, I know not many people
12 are familiar with it. It's essentially taking
13 collection requirements that have been identified by
14 analysts, making sure that the collectors in the field
15 have those requirements and know what they need to be
16 working on. Then it's taking that raw intelligence and
17 they've gathered, putting it into a report and pushing
18 it back out to the community.

19 Q And then where did you move, sir, after
20 being a reports officer at U.S. Army INSCOM?

21 A After I left INSCOM, I came to Fort Meade

1 to the U.S. Army central security facility and I worked
2 in information security activities.

3 Q And what is the army central security
4 facility?

5 A At the time, the central security facility
6 contained the U.S. Army investigative records
7 repository and the Freedom Of Information and Privacy
8 Act office.

9 Q So what was your job, sir, as an
10 information security specialist with that facility?

11 A So my primary job was to review classified
12 information to determine whether it could be released
13 to the public under the provisions of the FOIA or
14 Privacy Act.

15 Q And then where did you move to after that,
16 sir?

17 A Then I went to the 92nd military
18 intelligence group on the group S3 and I helped them
19 build a collection management and dissemination
20 element.

21 Q And what do you mean by that, sir?

1 A Collection management is the way we
2 prioritized those collection requirements that come in
3 and figure out which particular detachment or office
4 could actually collect the office data we needed. So
5 it's then tasking it out to them to collect, monitoring
6 them when it comes back and, again, publishing the
7 report back to the community.

8 Q Sir, so you build this collection
9 management platform. Did it not exist beforehand?

10 A It did not exist beforehand. In 1995, all
11 defense HUMINT was combined a defense intelligence
12 agency and most of that capability of -- collection
13 management capability was resident on the HUMINT side.
14 So that all went to DIA. So the army had to rebuild
15 out of scratch in '95.

16 Q And was that your responsibility?

17 A For that group it was, yes.

18 Q And how long did you do that until, sir?

19 A Until 1998. So '95 to 98.

20 Q And then what did you do following that job
21 as the 92nd group --

1 A I went back to headquarters INSCOM, Fort
2 Belvoir and I became the army counter-intelligence and
3 human intelligence collection manager.

4 Q And how did job differ from what you had
5 previously done at 92nd?

6 A It's a higher headquarters perspective. So
7 as opposed to balancing the collection activities
8 across specific detachments, I was now balancing it
9 across the theater of MI brigades.

10 Q Did those belong to INSCOM?

11 A They were subordinate to INSCOM, yes.

12 Q And what year did you leave INSCOM and then
13 where did you go after that, sir?

14 A In 2003, early 2003 -- I believe it was
15 February -- I went to the Department of Defense
16 counter-intelligence field activity.

17 Q Is that what's called CIFA, sir?

18 A Yes, sir.

19 Q And what did you do at CIFA?

20 A At CIFA I was a program manager for three
21 different portfolios. So I was the chief of the

1 collection analysis and functional services office.

2 Q And so collection, sir, is that the same as
3 what you've already testified about?

4 A Yes.

5 Q And then what do you mean by the analysis
6 of functional services?

7 A So there five functions of
8 counter-intelligence. Those are three of the five that
9 we just mentioned, so collection being very
10 traditional, much like HUMINT if you want to think of
11 it that way. Analysis and production is all source
12 analysis but it's specific to foreign intelligence
13 threats and then the third piece is functional
14 services. It's easiest to think about that as a lead
15 development effort. So it could include polygraph,
16 technical surveillance counter measures. If you find a
17 bug, you've got to found out what you're going to do
18 with it or it could be for travel debriefings after you
19 get back where you're followed to a hotel, that type of
20 thing.

21 Q Sir, I apologize. I should have said this

1 before you even started testifying. If there's any
2 questions that are asked that would elicit classified
3 information, please notify the court from either party
4 before answering.

5 A Okay. Thank you.

6 Q And we can take the appropriate steps.
7 Sir, after -- how long did you spend at
8 CIFA as the chief of collection analysis and functional
9 services?

10 A I was at CIFA until 2008 when CIFA was
11 merged into the Defense Intelligence Agency.

12 Q And where did you go after that, sir?

13 A Then I went to DIA headquarters and that's
14 when I went into the enterprise strategies element.

15 Q Now, sir, when you were the chief of
16 collection analysis and functionality services, did you
17 have any requirements to brief senior government
18 officials or members of Congress?

19 A We did because that was -- I was in the
20 program management directory. So as part of that we
21 had to do budget roll-outs to Congress. We built the

1 strategy, the plan for we were going to build to and
2 then we built to budget around it and we would go brief
3 that to overseers to include members and staffers on
4 the hill.

5 Q And can you just, in general, explain if --
6 you said -- explain in a little bit more detail but
7 keeping it in general what you mean by you develop the
8 requirements and built a budget?

9 What are you actually talking about?

10 A So as its most basic, strategic planning is
11 looking at future threats and then you have to figure
12 out how you're going to mitigate those. How are you
13 going to build a capability or maintain a capability
14 that can deal with those threats over time. So that's
15 the first step in the whole process is developing a
16 strategic plan, where you want to be, and then you
17 start figuring out how you're going to get there and
18 that includes identifying the resources, identifying
19 the manpower, identifying training requirements,
20 looking at doctrine and policy to make sure that's
21 up-to-date because all of that has to evolve to meet

1 the goals and objectives of the strategic plan.

2 Q Thank you, sir. So when you merged -- when
3 CIFA merged into DIA, when did you get picked up to be
4 a DISL?

5 A I went into the enterprise strategies
6 element in an acting capacity in 2008. I was a GS-15
7 at the time. And then I was promoted to DISL
8 competitively into that in, I believe it was, April of
9 2010.

10 Q And how long, sir, were you then the chief
11 of the DIA enterprise strategies?

12 A Until September of 2012.

13 Q Sir, earlier when you were talking about
14 the general responsibilities as being the chief of
15 enterprise strategies, the one question I didn't ask
16 you about was: How did Lessons Learned play into your
17 job there as the chief?

18 A Well, lessons Learned is key to how you're
19 going to impact the entire DOD spectrum, doctrine,
20 organization, training, manpower, logistics -- I
21 haven't thought about this in a while -- personnel and

1 facility. Sorry.

2 So that's one of key drivers to tell you
3 you need to change your strategic plan. Lessons
4 Learned is going to flag items where we're failing or
5 having problems. Then that feeds back into how you
6 plan for the future.

7 Q Thank you, sir.

8 Sir, in September of 2012, where did you
9 move after being the chief of enterprise strategies?

10 A That's when I was promoted to SES and I
11 moved down to the office of counter-intelligence in
12 Quantico, Virginia.

13 Q Sir, when you were the deputy chief of the
14 counter-intelligence office, how large was that office
15 that you were a deputy of?

16 A That office was, depending of how you
17 contracted, 600 to 700 personnel.

18 Q And how long were you the deputy chief
19 there?

20 A Just shy of a year. I just moved up here
21 in June.

1 Q What were your general duties and
2 responsibilities as the deputy chief of the
3 counter-intelligence office?

4 A It was really day-to-day management of the
5 office. So the chief of the office looked up and I
6 tried to make sure that headquarters VIA was happy,
7 that our overseers at the director of national
8 intelligence and USDI were taken care of and I looked
9 down. So I made sure all of the personnel actions were
10 completed, that we met all of our tasks. It really was
11 the day-to-day leadership and management.

12 Q Sir, now, I'd like you to focus on your
13 education, first your civilian education outside of
14 your time of DOD.

15 Could you please just briefly describe to
16 the court your civilian education?

17 A In 1992, I got a bachelor's of arts in
18 international relations and European studies from
19 George Mason University in Virginia. In 1999, I got a
20 master of arts in international affairs from the George
21 Washington University of Washington, D.C.

1 Q And in a very brief way, what type of
2 training have you received within DOD?

3 A Within DOD, I guess I could work backwards,
4 from a leadership perspective, I've gone through apex.

5 THE COURT: What is that?

6 A Which is the civilian equivalent of
7 touchstone, cornerstone, the --

8 Q The capstone, sir?

9 A Capstone for regional officers. So it's a
10 civilian equivalent of that. I went through the
11 national security study program at George Washington
12 University which is an office the Secretary of Defense
13 led, a month long program for senior leaders.

14 Early in my career, I had a lot of training
15 in collection management, force management, kind of all
16 of those basic level training courses to support the
17 jobs I was doing. Information security, operation
18 security, classification rules, that type of training.

19 Q Thank you, sir.

20 Sir, have you -- in reference to the field
21 of strategic plan for DOD and HUMINT, have you ever

1 taught in that field before?

2 A I do. I still do occasionally or did until
3 the job I went to in June. The Joint Counter
4 Intelligence Training Academy which provides all of the
5 advanced training for military services.

6 Q Is that JCITA, sir?

7 A JCITA, yes.

8 Q And how long have you been teaching up
9 until your recent job in June in JCITA?

10 A So the JCITA training actually goes back to
11 late '90s. I couldn't give you an exact date. It's
12 been a long time.

13 Q And what type of courses have you taught
14 there?

15 A Across all levels. They have an advanced
16 course which is where we train our case officers for
17 offensive counter-intelligence operations and
18 investigators. Surveillance, counter-surveillance
19 specialists all go through the advanced course. But
20 they also have a basic level course,
21 counter-intelligence awareness, if you want to call it

1 that, for new CI employees and then I've often --

2 Q Sir, have you taught any type of joint
3 staff courses?

4 A At the joint military intelligence training
5 center, they have the CI awareness course also that's
6 kind of designed for non-CI people so that they can
7 figure out how to plug into CI. I brief on that about
8 four times a year.

9 Q And for how long have you been briefing
10 four times a year?

11 A That goes back to 2008 when we merged into
12 DIA.

13 Q Sir, how often do you teach at JCITA that
14 you were just talking about?

15 A The advanced course was three to four times
16 depending on the number of reiterations each year that
17 they do. That's a long course. For the basic course,
18 six to eight. Usually that depends on funding, how
19 many other issues they can do.

20 Q And in general, sir, what type of topics
21 are you teaching within your field of strategic

1 planning?

2 A It's long term planning for CI HUMINT.
3 It's where the force needs to go and how we're going to
4 get the force there. So it does all go back to the
5 planning effort.

6 Q Sir, have you participated in any type of
7 seminars at National Defense University?

8 A Yes, the National Defense University runs
9 an international fellows program. I believe that's
10 annual and I go in and participate in the seminars and
11 serve on panels for discussions.

12 Q And who are the typical participants in
13 those seminars each year?

14 A These are foreign general officers,
15 typically new general officers coming in to get
16 exposure to the U.S. military.

17 Q Sir, have you ever testified in a criminal
18 court before?

19 A I have not.

20 Q Have you ever briefed members of Congress?

21 A I have briefed members of Congress, but I

1 have not testified.

2 Q And approximately how many members have
3 you -- how many times have you briefed members and then
4 staffers?

5 A If you go back to 2003 for my time in CIFA,
6 probably four to five times for members. Typically
7 budget briefings over the years and then, with
8 staffers, maybe 40 different occasions.

9 Q Sir, when you say in reference to the four
10 to five times to members in reference to budget, is
11 that within your field of strategic planning for DOD CI
12 and HUMINT?

13 A Well, yes, it was always related to how
14 were we going to build -- it's under the context of a
15 budget rollout. So it's what our capability going to
16 be next year and this is our we're going to fund it.
17 So it is future capabilities, yes.

18 Q And, sir, were these briefings with members
19 and staffers based on your expertise in the field of
20 DOD CI HUMINT and strategic planning?

21 A Yes.

1 Q Sir, you said in your current job you're
2 the deputy CFO?

3 A Correct.

4 Q Why is it that DIA selects intel, career
5 intel officers as the deputy CFO within the
6 organization?

7 A That's something the DIA does to make sure
8 that the CFO who doesn't have the expertise and the
9 capabilities themselves counter-intelligence, human
10 intelligence, analysis and production. So the idea is
11 to have a functional expert that sits with her in this
12 case to make sure that when people say if you cut that
13 man, you're going to break my program. I can throw the
14 flag and say not necessarily true from a mission
15 perspective.

16 MR. FEIN: Ma'am, the United States offers
17 Mr. Kirchhofer as an expert in strategic plan for DOD
18 CI HUMINT?

19 MR. HURLEY: We do object, Your Honor. May
20 we have voir dire?

21 THE COURT: Yes.

1 EXAMINATION BY MR. HURLEY:

2 Q Good afternoon, sir.

3 A Good afternoon.

4 Q Now, Mr. Kirchhofer, you didn't know that
5 you were going to be qualified as a expert until
6 yesterday, correct?

7 A Correct.

8 Q That's when you sat down before you sat
9 down with us and they told you?

10 A Yes.

11 Q And they told you what your area of
12 expertise was going to be?

13 A Yes. Well, they knew about my background.

14 Q But you didn't say to them, hey, I know a
15 lot about strategic planning for CI and HUMINT,
16 correct?

17 A As we -- I don't think I said that first.
18 I think they were asking me about my expertise and that
19 was when it came out.

20 Q Okay. But they let you know that they were
21 going to qualify you yesterday?

1 A Yesterday, yes.

2 Q Now, sir, if you're qualified as an expert,
3 you're going to offer a number of opinions and you told
4 us about those opinions yesterday.

5 Those opinions are derived from your work
6 on the IRTF, correct?

7 A Largely, yes. Yeah, primarily.
8 Absolutely.

9 Q And when you were working on the IRTF, you
10 were pretty high up in that program, just General Carr
11 was above you, correct?

12 A There was one other senior executive in the
13 program or in the leadership and that was Scott, yes.

14 Q And then you had a number of people
15 underneath you?

16 A That's correct.

17 Q And those people would report things to
18 you?

19 A Correct.

20 Q And you would take those reports at face
21 value?

1 A I checked their logic trail. I looked at
2 it from the perspective of how would a non-intelligence
3 analyst review this. So when we sent something to the
4 Secretary of Defense, would it elicit more questions?
5 Did the logic seem sound, the argument that we were
6 making? That was the review that I dealt with.

7 Q Sure. You wanted to make sure that it was
8 package neatly for the higher level people who were
9 going to read it?

10 A Whether it answered the mail. I don't know
11 about package, but, yes.

12 Q When I say package, I mean they can
13 understand it?

14 A Correct.

15 Q But you didn't look into, I guess, the
16 specifics of what was being reported?

17 A That they made citations in the
18 documentation, yes. I would look at that to make sure
19 that we were appropriately developing the argument that
20 they were making in their assessments.

21 Q Okay. And when you say citation, they may

1 have cited some sort of report that they created?

2 A Well, not just they created it. It could
3 have either been current intelligence reporting that we
4 were using to inform our understanding of the impact of
5 the compromise or it could have been one of the records
6 that we WikiLeaks posted. So they were citing lots of
7 different items like that.

8 Q Okay. And some of that could have been
9 just raw intelligence?

10 A Yes, absolutely.

11 Q And if that was cited, you would have
12 looked at it?

13 A Correct.

14 Q Now, I want to talk, I guess, about CIs
15 sort of generally.

16 Now, like the people on the ground were
17 doing CI and they're developing a relationship with
18 some national, correct?

19 A They can.

20 Q Okay. That might be one thing they do?

21 A Right.

1 Q And as part of that relationship sometimes
2 they're going to tell that national the truth, right?

3 A Yeah. I don't want to stray too far into
4 classified. There particular activities that we do
5 that deal with foreign nationals and some of them are
6 what we would call offensive activities that might
7 involve a witting or an unwitting foreign national.

8 Q Okay. Let's use an example where I'm a CI
9 person, you're a national. We've developed some sort
10 of rapport, right?

11 A Okay.

12 Q And sometimes I tell you the truth when
13 we're talking, right?

14 A Right.

15 Q And sometimes I would lie to you too,
16 right?

17 A Again, sometimes it gets to either witting
18 or unwitting.

19 Q Part of counter-intelligence can be telling
20 someone else something that's not true, correct?

21 A I'm more comfortable talking about that in

1 closed session in great detail.

2 Q Fair enough. Sure.

3 Sometimes when we're talking to foreign
4 nationals or CI folks, sometimes those foreign
5 nationals lies to the CI folks?

6 A Yes.

7 Q Correct?

8 A Correct.

9 Q And so when you're looking at all of this
10 stuff up at the IRTF level, a lot of it based on this
11 reporting done on the ground where local national tells
12 CI folk individual what could be a lie, right?

13 A Correct.

14 Q And then that CI person reports it up,
15 correct?

16 A Correct.

17 Q To their supervisor, right?

18 A To the customer, right.

19 Q Sure, and then that person may have
20 reported it to the IRTF, hey, this is what we're
21 hearing about the reaction to all of this, correct?

1 A Right. It would have gone -- if it was
2 happening during the time of the IRTF, it would have
3 been reported like any other piece of intelligence and
4 it would come back into a database where we could
5 access it.

6 Q Okay. It would go through multiple levels,
7 correct?

8 A In some cases. It's not always the case.
9 Some places it will come right from the field home and
10 other places to other elements, you know. The army,
11 actually, they try to put more levels of quality
12 control in before they report, typically.

13 Q Okay. But you personally, when you were
14 looking at these reports, didn't do anything to test
15 the reliability of the intelligence that was the basis?

16 A That's the whole basis of analytic
17 tradecraft is vetting the information. So that was all
18 done before that came up to me.

19 Q Okay.

20 A That's part and parcel of what a analyst
21 does, try to determine the voracity or validity of that

1 raw intelligence that's been collected.

2 Q One moment.

3 A Sure.

4 Q Now, you said that your opinions are mostly
5 based on your time in the IRTF and the reports that you
6 would have looked at there and those reports you took
7 for face value, correct?

8 A What does that mean, face value?

9 Q You looked at it and you assumed that what
10 was in there was true?

11 A I questioned them if I felt their logic was
12 wrong. In general, I think they did a pretty good job,
13 though, and I felt comfortable with it. But I did
14 question, I did send reports back. I felt that
15 obligation because I was the first senior executive in
16 the chain of command for them.

17 MR. HURLEY: One second Your Honor.

18 (Pause.)

19 Your Honor, we don't have any further voir
20 dire. We would object based under 702 on the
21 reliability of the underlying data.

1 We would also make a relevance objection as
2 to the expertise. Mr. Kirchhofer said that this is
3 pretty much based on his time at the IRTF and so we
4 don't think he would need to be qualified as an expert
5 to discuss that. We would also think that it would be
6 cumulative to what Mr. Carr, General Carr, retired,
7 discussed.

8 THE COURT: Thank you. While we have this
9 discussion, does the witness need to depart the room?
10 Does either side care if the witness remains in the
11 witness chair?

12 MR. FEIN: The United States doesn't see an
13 issue if he stays, ma'am.

14 THE COURT: What is government position?
15 What are you trying to elicit?

16 MR. FEIN: Ma'am, ultimately, the United
17 States is trying to elicit a few items. One, specific
18 findings that Mr. Kirchhofer oversaw from IRTF about
19 the damage to national security of the United States.

20 Second, the -- what was referenced before
21 with General Carr, the actual resourcing that went into

1 creating the IRTF and how they function internally. So
2 it's not cumulative because General Carr did not
3 testify about that, plus, as General Carr testified, he
4 was not necessarily involved in the daily operations
5 where Mr. Kirchhofer was.

6 As far as the actual expertise, Your Honor,
7 the reliability...

8 THE COURT: The expertise that you want is
9 strategic planning for DOD counter-intelligence and DOD
10 HUMINT.

11 How does that relate to the IRTF?

12 MR. FEIN: Yes, ma'am. I -- well, I can
13 answer that, but I probably would rather -- well...

14 THE COURT: Well, if you want him qualified
15 as a witness, you want to answer it now.

16 MR. FEIN: Yes, ma'am.

17 BY MR. FEIN:

18 Q Mr. Kirchhofer, when you were selected to
19 be the deputy chief of the IRTF, where were you working
20 at the time?

21 A I was the chief of enterprise strategies

1 doing CI and doing strategic planning.

2 Q And based off of that, when you were -- you
3 were one of the original leaders selected for the IRTF?

4 A I was about three days in, four days in.
5 Once they realized the scope, they brought a second
6 senior in. It was their whole intent. My
7 understanding at the time was because of my information
8 security background, my counter-intelligence background
9 and then the nexus between strategic planning and
10 dealing with foreign threats or future threats and that
11 was where they thought that this task force was going
12 to tee up information for how to deal with those future
13 threats.

14 Q So, sir, you were hand picked to do that
15 job?

16 A That's correct.

17 Q And that's from your position as a chief of
18 the enterprise management for CI HUMINT?

19 A Correct.

20 Q Sir, was the -- I'm sorry?

21 A Enterprise strategies.

1 Q I'm sorry, thank you. Enterprise
2 strategies.

3 Sir, was the WikiLeaks disclosures
4 considered a counter-intelligence issue or was it some
5 other type of issue?

6 A In the early stages of an issue like that,
7 you don't necessarily know until you can get a clear
8 foreign connection and typically in a
9 counter-intelligence perspective, it's a connection to
10 a foreign intelligence service or an international
11 terrorist organization.

12 So the question early on was where does
13 WikiLeaks fall that has the data. They're foreign, but
14 are they a foreign government? Are they journalists?

15 Yes, what you would typically do or what
16 you would often see happen in the military department,
17 CIA investigators or criminal investigators would work
18 together until it's clear which way it should go and
19 then that the informs the authorities that they use for
20 the remainder of their investigation.

21 Q But that's not what happened in this case,

1 correct?

2 A Correct. We did not get involved at all in
3 the investigation. We steered clear of that so we
4 wouldn't harm any of the equities.

5 Q You say investigating. You mean the
6 criminal investigation?

7 A Correct.

8 Q And, sir, what about -- where does insider
9 threats come into play as far as CI and HUMINT?

10 A CI has a piece of insider threat, but
11 there's also information assurance that the key
12 partners -- security is a key partner in that and I
13 think this is what the army has really struggled with
14 in post Fort Hood environment is all of these
15 stovepipes looking at the inside threat.

16 Q And, sir, were you brought for that purpose
17 to --

18 A Bringing that counter-intelligence
19 awareness and knowledge, yes, that's part of it and
20 understanding where those lines of authority go.

21 MR. FEIN: Thank you, sir.

1 Your Honor, the United States will maintain
2 that based off Mr. Kirchhofer's selection as being the
3 deputy chief, the one who is essentially the XO of the
4 organization who had Mannings -- that he does have
5 unique specialized knowledge in order to help the trier
6 of fact understand why certain decisions were made both
7 in the makeup and, ultimately, of the findings that
8 were made by IRTF. Specific findings, not all of them.

9 THE COURT: Yes?

10 MR. HURLEY: Ma'am, the defense's position
11 would be that while Mr. Kirchhofer may have been
12 selected because of his background, that background
13 doesn't really have anything to do with his testimony.
14 This sounds like sort of a resourcing argument which we
15 don't think would be proper under 1001B4. It would be
16 like what CIP does or what --

17 THE COURT: Well, that's the issue on the
18 table. Remember, we talked about early. I said I
19 would allow the testimony in, listen to both sides and
20 then decide, after I heard it, whether it falls within
21 the line of cases that you're talking about.

1 So for that purpose -- I mean, I understand
2 your objection. It's noted for the record. It's going
3 into briefing tonight, but I'm going to hear, in my
4 interrogatory capacity at least, that testimony. Okay?

5 Why does this witness have to be an expert,
6 though, is where I'm a little confused. If you're
7 talking about resourcing all of the rest of that, isn't
8 that more of a fact?

9 MR. FEIN: Ma'am, the resourcing part,
10 absolutely, is the fact -- it's the second part. It's
11 his specialized knowledge and experience on the
12 findings, the intelligence findings on national
13 security -- their assessment, his assessment on how
14 national security was impacted by PFC Manning's
15 actions. It's that, Your Honor, of where his expertise
16 is ultimately playing into this.

17 I mean, all of it feeds into each other
18 because in order to make those assessments there had to
19 be an organization to do it.

20 So I agree, Your Honor, that simply saying
21 how many people worked there and how long did they work

1 to and why, that's all just fact witness testimony
2 which we intend to elicit.

3 THE COURT: Yes?

4 MR. HURLEY: Ma'am, we would say that the
5 opinions are opinions you've already heard from General
6 Carr, one. So it could be cumulative. And, two, the
7 defense position would be -- I understand we'll brief
8 it this evening, but our position would be the reason
9 that this individual is being qualified as an expert is
10 so that he talk about hearsay and serve as the
11 case's -- talk about hearsay dump truck pulled up by
12 someone who is an expert so that they can testify about
13 an opinion that otherwise wouldn't be admissible. And
14 our position this expertise doesn't have anything to do
15 with the opinion. So the purpose here is to get in
16 otherwise inadmissible testimony, Your Honor.

17 THE COURT: All right. The court is going
18 to be in recess for 15 minutes. Please don't discuss
19 your testimony or knowledge of the case with anyone
20 other than counsel while the court is in recess.

21 (There was a brief recess taken at 4:47 and

1 the trial resumed at 5:07 p.m.)

2 THE CLERK: All rise.

3 THE COURT: Please be seated. The court is
4 called to order. Let the record reflect all parties
5 present when the court last recessed are again present
6 in court. The government has offered Mr. Kirchhofer as
7 an expert in the field of strategic planning for DOD
8 counter-intelligence and DOD human intelligence. The
9 defense objects to Mr. Kirchhofer's expertise and that
10 his expertise has nothing to do with his opinion and
11 his opinions are cumulative with Brigadier General
12 Carr.

13 The court has considered the defense's
14 objections to Mr. Kirchhofer's expertise and finds the
15 government has established that Mr. Kirchhofer is an
16 expert in the field of strategic planning for DOD
17 counter-intelligence and DOD human intelligence.

18 He was specifically selected to become
19 deputy of the IRTF because of that expertise.

20 With respect to his expertise, the court
21 finds he's properly qualified as an expert by his

1 knowledge of strategic planning operations and budget
2 in the fields of counter-intelligence and human
3 intelligence. His opinion will help the trier of fact
4 understand the evidence and determine the facts at
5 issue.

6 Mr. Kirchhofer was deputy chief of the IRTF
7 and, as such, was directly involved in efforts to
8 mitigate any impact caused by the WikiLeaks disclosures
9 of information given to them by PFC Manning. His
10 testimony is based on sufficient facts and data. The
11 IRTF is not a law enforcement agency.

12 Mr. Kirchhofer is qualified under MRE an 02
13 as an expert in the field of strategic planning for DOD
14 counter-intelligence and DOD human intelligence. The
15 court will allow the government to lay law a foundation
16 for his opinion without eliciting any hearsay
17 foundation for that opinion. Should the witness offer
18 opinions cumulative with Brigadier General Retired
19 Carr's opinion on direct examination, the court will
20 stop the direct examination.

21 The defense motion opposing

1 Mr. Kirchhofer's qualifications as an expert under MRE
2 702 is denied. Mr. Kirchhofer may testify about
3 resourcing the IRTF as a fact witness. If the court
4 determines after reviewing the filings by the parties
5 that the evidence is not admissible aggravation
6 evidence under RCM 1001 before the court will disregard
7 the testimony.

8 Proceed.

9 EXAMINATION BY MR. FEIN:

10 Q One moment, please.

11 Sir, what were your responsibilities as the
12 deputy chief of the IRTF?

13 A Really, it was the day-to-day management of
14 the task force, making sure that all of our folks were
15 focused on the right priorities, making sure that we
16 were responsive to requests for information coming from
17 really everywhere, especially in the early days,
18 overseeing the work, the quality of work and really
19 focused primarily inward at the effort while the chief
20 focused out. That was the difference between us.

21 Q And how long did you have that role with

1 the IRTF, sir?

2 A From the 2nd of August until -- through May
3 of 2011. So August 2010 until May 2011.

4 Q And earlier, sir, you testified that
5 originally there were three or four individuals that
6 were originally selected to stand up to the IRTF.

7 How did you as the deputy then determine
8 who else was needed in order to establish the IRTF?

9 A By that point, it was a Monday when I went
10 and joined the task force and the original team, the
11 first four or five people had spent the weekend
12 identifying what they needed in terms of tools and
13 facilities and IT requirements, rough orders of
14 magnitude for a number of people.

15 So then starting that Monday was when we
16 were reaching out across the department trying to get
17 people brought in. We were working internally to the
18 DIA bureaucracy to get laptops. We had a room with
19 75 computers all set up in a row so we could get all of
20 these analysts working together and collaborating. So
21 all of that was going on on Monday that was getting

1 that going.

2 Q And, sir, can you please explain -- well,
3 before that, I'm sorry, what criteria or what factors
4 did you and you said Ms. Iliard (phonetic) before, the
5 chief --

6 A Correct.

7 Q Did you consider in order to figure out how
8 to man and resource it?

9 A Our initial focus was kind of going in
10 three different directions. So the first was people to
11 help us manage data. Because of the volume of data,
12 none of us had the technical expertise to do that. So
13 what kind of tools could we use? What kind of service
14 should we have? How could we get stuff moved from
15 U.S. central command to DIA headquarters onto a
16 Jaywicks environment, a top secret environment as
17 opposed to a secret environment. So we needed
18 technical expertise in that way.

19 Then we needed very traditional all source
20 analysts from the DIA director of analysis. These are
21 folks who know how to use every intelligence discipline

1 to inform their analytical effort. They've come with
2 that tradecraft that's been taught to the director of
3 national intelligence standards and the third big piece
4 for us was counter-intelligence expertise, folks that
5 understand the foreign threat, how foreign governments
6 or foreign intelligence services might try to use the
7 data for terrorists organizations.

8 So that was our first thrust. It wasn't
9 until we started going into the data that we started
10 realizing, okay, you know, we might need expertise from
11 the Joint Improvised Explosive Device Defeat
12 Organization, JIEDDO. So we were reaching out to them
13 and asking them for help.

14 So it varied depending upon what we were
15 reviewing at any given time, but the first thrust was
16 all source analysis counter-intelligence and it
17 technical expertise.

18 Q Sir, when you talked about getting through
19 the data, what do you mean by that?

20 A So we were trying to determine what exactly
21 had gone public on what WikiLeaks had posted and

1 comparing that to what we thought was in U.S. central
2 command holdings and then it was just dealing with that
3 volume. We pledged to read every word, to get to the
4 impact and that's where we needed to start on right
5 away.

6 Q Sir, can you please explain the task force
7 op tempo during the initial weeks of the IRTF standing
8 up?

9 A The initial two weeks were pretty painful.
10 As people were coming onboard, we were dealing with
11 security clearances, getting access to the systems
12 because they were coming in from everywhere, not just
13 DIA. We had folks from all over. So it was really
14 just trying to get them in the door, getting them up
15 and going and running.

16 Probably by the midst of August was when
17 really hit our stride. We were up to 125 personnel.
18 We went to a 24-hour a day, seven day a week op tempo
19 where we were just doing nothing but reading, reading,
20 reading all of these records.

21 Q And for how long, sir, did the IRTF sustain

1 this 24-hour a day seven-days a week?

2 A That went through September.

3 Q Why was that?

4 A Because at that point we had felt
5 confident -- we had completed reviewing of the CIDNE
6 Afghanistan data and finished the CIDNE Iraq data at
7 that point going into early October.

8 Q Excuse one moment, please, sir.

9 (Pause.)

10 Sir, you mentioned for the composition of
11 the IRTF that there was internal DIA organizations.
12 You also mentioned CentCom.

13 What other organizations were represented
14 that you all pulled into this task force?

15 A So from within DOD, we had personnel from
16 the Secretary of Defense for intelligence and that was
17 where -- one of the places we turned to for the
18 technical expertise. They have an intelligence system
19 support office, I think it's called. And then the
20 other Secretary of Defense for policy provided
21 personnel from OARDEC, the Office for the

1 Administrative Review of Detention of Enemy Combatants.

2 So they sent personnel. Each of the four
3 military services provided people. CentCom, U.S.
4 Southern Command, U.S. Special Operations Command sent
5 people, the defense production agency, the defense
6 security service. That was the primary elements of --
7 from within the department.

8 Q Sir, what do you mean -- excuse me.

9 In regards to those -- at least within the
10 DOD, what do you mean by "they sent people?"

11 A They actually physically sent people to be
12 a part of the -- integral to the task force, working on
13 our op tempo, working in our facilities. So when I say
14 on the floor, the analytical floor where we have the 75
15 terminals, they were integrated into that piece of it.

16 So some of those folks we partnered with
17 who just would fly in or out or just deal with this on
18 a VTC type capacity. But when I say on the task force,
19 they were literally there taking guidance from us day
20 in and day out.

21 Q And why so many organizations within the

1 Department of Defense?

2 A Because just the scope of the data,
3 especially as we moved on beyond the city data that we
4 were concerned about it. Everyone had equities in it.

5 Q And what about organizations in general,
6 sir, not naming -- just a brief description of
7 organizations outside of DOD?

8 A So we did have organizations that put
9 people, again, on the task force, on the floor, and
10 that was the Drug Enforcement Administration, the FBI
11 sent eight analysts to support us and then -- I'm
12 missing one. There was a third group. Oh, Department
13 of State sent a special agent from their diplomatic
14 security element to sit with us and he sat for the
15 duration. So that was the extra [Inaudible.] all on
16 the floor and, of course, we had our partners that we
17 were communicating with daily, via intelligence
18 community and even broader ATCs.

19 Q Sir, over the course of its total
20 operation, about how many people total were either
21 assigned to IRTF or direct support of the IRTF?

1 A We tracked what was assigned. So within
2 that cap of 125 that we were dealing with, we had about
3 300 people cycle on and off the task force over the
4 duration.

5 Q Sir, why was it necessary -- earlier you
6 talked about the 24-7 operation.

7 Why was it necessary for the task force to
8 work around-the-clock to get through the data?

9 A Our whole intent was to make sure that
10 there was no strategic surprise to the secretary or
11 other senior leaders of the department. So we felt
12 like we had to rapidly catch up on what had already
13 been posted related to Afghanistan and then try to get
14 ahead of any potential release of the Iraqi data. So
15 that was really driving that non-stop 24 hours a day
16 nightshift/dayshift just to crank through that data.

17 Q Sir, you used the term strategic surprise.
18 What do you mean by that?

19 A At the end of the day, it's about giving
20 the secretary options to mitigate any potential impacts
21 that were identifying for them. So if he could do that

1 before a public release, the idea was that the impact
2 would be much less on the back end.

3 Q Was the IRTF focus at the strategic or
4 tactical level?

5 A Primarily at the strategic level. I don't
6 know if you want to call it dipping down to the
7 tactical level as needed. So if we identified a
8 soldier's personally identifiable information, we made
9 sure that the Army would be notified and let that
10 person know that their personnel information was out.
11 So if you want to define that as tactical, for the most
12 part we were looking at bigger impacts particular along
13 the line of the seven category of focus areas that the
14 secretary gave us.

15 Q And are those sort of the areas that were
16 in the secretary's memo?

17 A From 5 August, yes.

18 Q Okay, sir.

19 Sir, how did the IRTF internally conduct
20 its review?

21 A So we -- using -- we first triaged the

1 data. So we had it in the database that we were able
2 to run quick searches of alarming things, you know,
3 unclassified nicknames of things that we knew were
4 sensitive. So that was the very first thing we did and
5 then we went through the very -- the network of having
6 an analyst put eyes on every record and then flagging
7 anything that they assessed to have some sort of impact
8 or put up a flag for them and that went to a second
9 level more senior analytical review.

10 Q So what did the IRTF have to do with the
11 kind of findings based off this review?

12 A So our whole focus was on transparency
13 engagement across the community and as it turned out
14 the federal government. We worked very closely with
15 the national counter-intelligence executive and it was
16 easier because we were in the same building as them who
17 helped us reach out across the federal government to
18 other departments and agencies. But our thing was
19 identified and if it's not a DOD equity but someone
20 else's, to immediately reach out and give them the
21 opportunity to help themselves. That's how DEA for

1 example ended up sending people on to the task force
2 floor.

3 Q How were the conclusions of the IRTF at
4 least on a daily or weekly basis captured?

5 A We either looked at things functionally,
6 sometimes regionally. We looked at it from a lot of
7 different ways. So always mindful of the seven
8 categories the secretary had given us. Then we looked
9 at special interest items. We were able to do that
10 based on the expertise on the task force. So we had
11 DIAs preeminent -- I don't know the right word -- star
12 Iraqi analyst that came from our director of analysis
13 and he was able to point out some things to do deep
14 dive looks at in advance of them going public.

15 Q And were there products produced from this?

16 A There were. They did a number of small
17 papers that came up from the analytical floor. Again,
18 they would go through that analytical trade craft at
19 that level and then it would come into the front office
20 where I would do a review.

21 Q And did you review all of those individual

1 reports, sir?

2 A Yes, every one.

3 Q And then what happened, sir -- at the
4 conclusion of the IRTF, what happened with all of those
5 individual reports?

6 A They were used to inform the development of
7 a final report that's over 100 pages in length. It
8 wasn't just cut and paste. We were trying to make sure
9 that the early analysis that we had done in August and
10 September was still valid the following May when we
11 were putting that final report together. But it really
12 was integrating the analytical results of all of those
13 earlier efforts into a cohesive document.

14 Q And who did the IRTF relate findings to?

15 A Our final due out was the director of DIA
16 to the Secretary of Defense, but that was shared. That
17 final report was shared with others because they were
18 impacted.

19 Q What was your role, sir, in the final
20 report?

21 A I did the final -- the senior executive

1 review of it. We built that actually out of the small
2 staff that we had in the front office of the IRTF so
3 the analysts could keep working there. So we took that
4 on in the front office.

5 Q Sir, why -- when you -- were your findings
6 also related to other members of the U.S. government?

7 A They touched on it. For the most part, we
8 tried to really limit -- our focus was all the
9 authority we had on impacts of the department. So
10 primarily for us with other agencies, it was
11 highlighting to them, hey, did you see this, did you
12 know that this is in this dataset. We think you need
13 to look at it. So it was highlighting it and then
14 pushing it off to them so they could do something about
15 it.

16 Q And why push off the DOD findings to them,
17 sir?

18 A Not necessarily DOD findings. I mean, we
19 shared them all. They all -- the Department of State
20 and our other intelligence community partner saw
21 everything we did before we published it so we could

1 benefit from their combined wisdom. It was really --
2 what we were pushing off was if we identify equities
3 that go back to the DEA example that we found, we
4 couldn't necessarily be the organization to say the
5 impact to DEA. They needed to do that. So we just
6 made sure that they knew this is what's out there about
7 you or that impacts you, you know, you need to help
8 yourself to try to figure out how to mitigate that.

9 Q Yes, sir. Now, sir, I'd like to focus your
10 testimony on some specific findings of the IRTF.
11 Again, this isn't an unclassified session, so....

12 THE COURT: Yes?

13 MR. HURLEY: Ma'am, I think we'll object
14 right now. I think the witness's testimony has made
15 clear that the findings of the IRTF were done by
16 subject matter experts. They are the ones who did --
17 came to the conclusions. So if it was an IED issue,
18 JIEDDO made a conclusion, not Mr. Kirchhofer.

19 So our position is that any conclusion that
20 Mr. Kirchhofer would testify about would be hearsay
21 that would be prohibited under 703.

1 THE COURT: Yes?

2 MR. FEIN: Two major issues, ma'am.

3 One, the conclusions that Mr. Kirchhofer is
4 relying on are conclusions that were made in the course
5 of the actual IRTF work product that he oversaw. He
6 signed off on every document, all these conclusions.

7 Second, Your Honor, Mr. Kirchhofer's
8 testimony is based off of a [Inaudible] damage
9 assessment which has already been determined by the
10 Court to not be hearsay based off of defense's motion
11 of judicial notice.

12 So in regards whether it's hearsay or
13 not -- well, the Court has already determined the
14 damage testimony is not hearsay and it's -- but going
15 back to even if it's hearsay, Your Honor, this was
16 relied upon by Mr. Kirchhofer in his official capacity
17 as the deputy chief. He had a role in all of this
18 himself. He even said he didn't just sign the document
19 and send it off.

20 THE COURT: Did you make the opinions that
21 you're testifying about yourself?

1 THE WITNESS: All opinions were informed by
2 what was coming in from where the analytic expertise
3 was. But it came out of the authority of the IRTF. So
4 I felt like I had to agree with either recommendations
5 or we would challenge them, if that makes sense.

6 THE COURT: I'm going to overrule the
7 objection. Go ahead.

8 BY MR. FEIN:

9 Q Sir, during the review of this data --

10 THE COURT: I said overrule the objection.
11 If you want to make further record, go ahead.

12 MR. HURLEY: Yes, ma'am. Our position
13 would be that the prejudice that would derive from this
14 is we don't have the opportunity to cross examine the
15 person who actually made -- formed the opinion. And so
16 while Mr. Kirchhofer may have ultimately said, yeah, I
17 agree or I don't agree, he's not in a position to be
18 examined on the actual specifics of what informed the
19 decision. He can't do that.

20 THE COURT: Overruled.

21 BY MR. FEIN:

1 Q Sir, during the review of data, did the
2 IRTF actually identify any areas of impact?

3 A Yes, we did.

4 Q And excuse me, sir, one moment, please.

5 (Pause.)

6 Sir, for the first area I'd like you to --
7 this person who testified before was on the SigActs,
8 the CIDNE A and CIDNE I databases.

9 Are you familiar with those databases?

10 A Yes, I am.

11 Q What were some of the areas where IRTF
12 identified impact or potential impact for the CIDNE A
13 and CIDNE I SigActs?

14 A I think the first thing that we
15 recognize -- this has actually stretched through the
16 entire IRTF experience was the enhanced risk that
17 cooperating foreign nationals would be having to deal
18 with because their names were not only associated in
19 some way with the U.S. military.

20 Q And were there any others, sir?

21 A Yes, there were some probably less

1 long-term strategically.

2 THE COURT: Yes?

3 MR. HURLEY: Your Honor, we'll renew our
4 cumulative objection. These are all things that
5 General Carr has testified about.

6 THE COURT: Are you asking the same
7 questions that you asked with General Carr?

8 MR. FEIN: No, ma'am. That's why these
9 pauses. I'm making sure. I do understand that
10 knowingly, although that was the same answer,
11 Mr. Kirchhofer has his own unique information and it
12 will be narrowly tailored, Your Honor.

13 THE COURT: All right. If we start getting
14 into the cumulative, I'm going to pull up the prior
15 opinion here in just a moment.

16 MR. FEIN: Yes, ma'am.

17 THE COURT: (Pause.)

18 I'm going to overrule the objection for
19 now, but keep it focused on the things that the last
20 witness didn't give opinions about.

21 MR. FEIN: Yes, ma'am.

1 BY MR. FEIN:

2 Q Sir, specifically with counter IED in
3 reference to the SigActs, what did the IRTF do with
4 related reports that it discovered within the
5 compromised data?

6 A So that -- the sheer volume was probably
7 the first challenge we had to deal, particularly when
8 you looked at what was coming out of the Iraqi data
9 set. So the way the secretary had set up the IRTF, he
10 gave us the sole authority to talk to the impact or to
11 assess the impact of this compromise.

12 So we did reach out to U.S. central
13 command. We worked with JIEDDO so that they could --
14 hold that specific data, cull through it all and then
15 send their findings back to us for final review.

16 Q I'm sorry, one moment, please.

17 Sir, specifically now talking about NATO
18 information that was contained with the SigActs and
19 your personal experience with that information, that's
20 this next area.

21 At any point in the IRTF, did you

1 personally brief NATO partners about the loss of
2 information?

3 A Yes, I did.

4 Q And what did you have to do in order to
5 brief them?

6 A I had to appreciate the impact to each of
7 them that were going to be present. I went to an
8 annual counter-intelligence counter conference at SHAP,
9 Supreme Headquarters Allied Powers. So there were
10 delegations from a number, not quite all of our NATO
11 partners.

12 So I went in to try to explain to them what
13 we thought the impact was going to be both to them on
14 our military to military relationships with them and
15 set the stage for what we knew was coming. So it
16 happened to be the same week that WikiLeaks started
17 posting records from Iraq. So I think I briefed them
18 on a Tuesday and later that week is when that data
19 started going public.

20 Q Sir, what level of individuals did you
21 personally brief when you traveled to the SHAP

1 headquarters?

2 A The majority were one star equivalence. I
3 did some cases of civilians much like the U.S. active
4 duty, one stars.

5 Q And, sir, how would you describe their
6 reaction when you provided this information?

7 A It varied.

8 THE COURT: Yes?

9 MR. HURLEY: We'll renew our hearsay
10 objection.

11 THE COURT: Describing reactions overruled,
12 but go ahead.

13 BY MR. FEIN:

14 Q What was the reaction, sir, not necessarily
15 what they, overall, told you?

16 A I'm trying to get the nuisance of the
17 question, sorry, the difference.

18 The response range, there were some
19 unpleasant comments directed at me and accusations at
20 the U.S. and others patted me on the back and said
21 "we'll get through this." So it really did range from

1 pretty aggressive people getting chesty -- I don't know
2 how else to describe it -- in that open forum and in a
3 closed forum I can tell you what countries if that
4 matters.

5 Q Thank you, sir.

6 Sir, now, in reference to Lessons Learned in
7 your involvement at the IRTF. In addition to the
8 assessments conducted by IRTF, are you aware of any
9 Lessons Learned studies that were conducted as a result
10 of the compromise?

11 A Yes, I am.

12 Q And were you personally involved in
13 conducting or overseeing these Lessons Learned?

14 A Some, but not all.

15 Q And how were you involved, sir, or why
16 would you have been involved?

17 A So one -- as we were building the IRTF
18 originally and then I got assigned to it shortly
19 thereafter, I actually brought a chunk of my team along
20 and that included my whole Lessons Learned team partly
21 because they do knowledge management well, just because

1 of how they operate and that's when we needed. But we
2 decided then to taking advantage of having them on the
3 staff to start doing Lessons Learned studies internally
4 on how the agency handles crisis and contingency
5 response. So they did a number of studies that looked
6 at how we reacted to this. That was our internal work.

7 And then we also worked with -- through the
8 joint staff, J7, with what was then the joint forces
9 command. They did a look for Lessons Learned on how
10 central command and the joint task forces in
11 Afghanistan and Iraq notified those cooperating foreign
12 nationals. They did that review.

13 Then a third one that I didn't have any
14 oversight of as they developed it was JIEDDO related to
15 their area of expertise.

16 Q One moment, please, sir.

17 A Sure.

18 Q Sir, when the IRTF stood down, are there
19 still members at DIA who are -- that were members of
20 the IRTF that are still tracking the effects of these
21 disclosures?

1 A Tracking the effects and probably even the
2 bigger chunk of time is responding to requests from
3 across the department because --

4 THE COURT: Yes?

5 MR. COOMBS: Your Honor, could we have a
6 very brief 882?

7 THE COURT: You want a ten-minute recess?

8 MR. COOMBS: Yes, Your Honor.

9 (There was a recess taken at 5:36 and the
10 trial resumed at 6:00 p.m.)

11 THE COURT: Please be seated. The court is
12 called to order. All parties present before the last
13 recess are again present in court. The witness is on
14 the witness stand.

15 Major Fein?

16 BY MR. FEIN:

17 Q Sir, was there a financial cost associated
18 with the operations of IRTF?

19 A Of direct and indirect, yes.

20 Q And direct, sir, what was the financial
21 cost?

1 A The direct cost to the DIA portion
2 specifically -- that's the only thing I would have
3 visibility on -- was \$6.2 million.

4 Q And what did that include, sir?

5 A That include civilian pay, overtime, IT
6 tools, facilities, extensions into the lease space
7 where we were. I think that's the most all inclusive
8 stuff.

9 Q What do you mean by indirect costs, sir?

10 A Opportunity cost. So, for example, we shut
11 down Lessons Learned program, we pulled analysts off of
12 regional analysis or other accounts, foundational
13 analysis to do this work and I think, from a CentCom
14 perspective, certainly they pulled a lot of people off
15 of the focus on the Middle East to work this issue.

16 Q Sir, given those financial and other
17 opportunity costs, do you still believe that the IRTF
18 was necessary?

19 A I believe it was, yes. Absolutely.

20 Q Why sir?

21 A So that we could mitigate those things that

1 we could before information went public and put us in a
2 bad spot with allies or others.

3 MR. FEIN: Thank you, sir. Your Honor, no
4 further questions.

5 EXAMINATION BY MR. HURLEY:

6 Q Mr. Kirchhofer you've worked your entire
7 professional career in the government; is that correct?

8 A That's correct.

9 Q From your testimony, it seems like you
10 started while you were still in school?

11 A I was, yes.

12 Q You started as a typist?

13 A I did.

14 Q So fair to say you started sort at the
15 lower level?

16 A That's correct.

17 Q You've done very well for yourself and now
18 you're --

19 A Yes.

20 Q I just need you to verbalize your
21 responses.

1 A It's just awkward.

2 Q Okay. And now you're a senior executive?

3 A That's correct.

4 Q In that time, 42 years or so?

5 A Yes.

6 Q You've worked for the government the whole
7 time?

8 A That's correct.

9 Q And in that time you've always dealt with
10 classified information or intelligence in some way?

11 A Yes, I've always been within an
12 intelligence organization.

13 Q I want to talk briefly about -- you
14 testified a little bit about NATO and you talked about
15 having some meetings with folks at NATO, correct?

16 A I went to a conference to brief what we
17 believe the impact would be either to our relationship
18 with them or to capabilities, I guess.

19 Q Okay. When was that, do you recall?

20 A That was in October of 2010.

21 Q Okay.

1 A The week of the 18th. I don't remember
2 what day I briefed that week, but...

3 Q Okay. So October of 2010 you went and
4 briefed some NATO partners.

5 Before that time, had you ever had
6 interactions with NATO partners?

7 A At working levels, but I hadn't recently in
8 my career.

9 Q Okay. Following that briefing, did you
10 have any interactions with NATO partners?

11 A Some followup actions related to that, but
12 nothing else.

13 Q Since you left the IRTF in 2011, have you
14 had any interactions with those NATO partners?

15 A Not so much NATO. The five eyes, I would
16 say. So a different group of international partners.
17 No, not NATO specifically.

18 Q Okay. So the folks that you gave a brief
19 to and said, hey, here's what we think might be coming,
20 you haven't talked to those people since?

21 A Yes, for the Brits, but not with the

1 others. And that was more of a trying to give you an
2 accurate response. It was more of a bilateral
3 relationship as opposed to a NATO engagement if that
4 makes sense.

5 Q Sure. You spoke to them, did you speak
6 about this?

7 A No, it was about counter-intelligence.

8 Q Something about something else?

9 A Correct.

10 Q So after you gave them the briefing about
11 this subject, you didn't talk to them about this
12 subject anymore?

13 A Correct.

14 Q Now, you spoke about those small papers, I
15 think you called them, that formed your opinion here
16 today and the small papers, how often would you get
17 those?

18 A Aperiodic, but routinely. They were coming
19 in kind of steadily the whole time.

20 Q Starting from when you all set up the IRTF?

21 A Probably after the first couple of weeks.

1 I think generally most of what we were doing in the
2 first couple of weeks was all based off of PowerPoint,
3 just throw something down so we can get the message
4 across. We were trying to come up with a better way to
5 have an audit trail of our analytical efforts. So
6 that's when we decided we were just going to go with
7 this information paper I think is what we called them.

8 Q So those information papers, can you give
9 us an estimate of how many of those you would say you
10 received?

11 A I would say at least 100, but I don't know
12 how much more than that. At least 100.

13 Q Okay. And this in those small papers, you
14 were getting analysis from the people who were doing --
15 working for you?

16 A That's correct. Analysis and some of them
17 were related to methodology and tradecraft.

18 Q So methodology --

19 A Yes.

20 Q Tradecraft?

21 A Yes.

1 Q Some analysis?

2 A Yes.

3 Q And ultimately conclusions as well?

4 A Yes. Right, expected impact.

5 Q Now, speaking generally about the IRTF, the
6 IRTF was stood up because Secretary Gates said so,
7 correct?

8 A Correct.

9 Q And when he said so, he distributed a
10 two-page memo?

11 A Yes, two pages.

12 Q And those in that memo he said tell me what
13 the damage is?

14 A He said I want you to look at this. We did
15 not use the word damage. We were very careful. That's
16 a statutory authority within the national
17 counter-intelligence executive. We were just trying to
18 look at the impact on DOD and he gave us seven specific
19 focus areas to start.

20 Q And you would say that memo from the
21 Secretary of Defense saying tell me what the effect is

1 might compel folks to tell him that there was an
2 effect?

3 A He didn't -- no. I don't know that's true.
4 I don't think we felt that. If there was no impact, we
5 would have said it. I think that's what you're getting
6 at there.

7 Q Now -- one moment, please.

8 A Sure.

9 Q Mr. Kirchhofer, you left the IRTF when you
10 all finished, correct?

11 A Right, we were winding down into a small.
12 At that point we were calling it a WikiLeaks damage
13 assessment team.

14 Q Okay. So that was sometime in the middle
15 of 2011?

16 A That was in May.

17 Q May 2011 you get your final report?

18 A We had finished drafting it and then it
19 kind of went into quality control and final editing.
20 At that point I left, yes.

21 Q Okay. So then once you had that final

1 report, you're not getting updates anymore?

2 A That's correct.

3 Q So you're not receiving the short papers.

4 A That's correct.

5 Q And generally you're not involved in what
6 is going on with respect to this?

7 A That's correct.

8 Q And so your opinion is a snapshot?

9 A Primarily, yes. It's an informed snapshot
10 but, yes.

11 Q And that snapshot was May of 2011?

12 A Correct, that was when I stepped away.

13 MR. HURLEY: Thank you, sir.

14 THE COURT: Redirect?

15 MR. FEIN: No, Your Honor.

16 THE COURT: All right. Is there a need
17 to -- before I get there, let me just put on the record
18 we have an RCA802 conference between trial counsel and
19 the defense counsel in court and we discussed certain
20 discovery issues. The counsel have conferred and based
21 upon the government not going down a certain line of

1 questioning, the defense no longer requires that
2 discovery.

3 Is that correct?

4 MR. COOMBS: That is correct, Your Honor.

5 THE COURT: And the defense did ask for
6 certain documents with respect to this witness's
7 testimony. Have those been available?

8 MR. FEIN: I've asked for Bates numbers
9 when we produced and that's being created right now.
10 The documents have been found and we're trying to get
11 the Bates numbers. So we're going to do that. We
12 would offer the United States that before we move into
13 a closed session, that we give that to the defense and
14 give them time to look at it and that way if they want
15 to ask additional questions they have the opportunity.

16 THE COURT: How long is it going to take
17 you to get the documents to the defense?

18 MR. FEIN: Ma'am, we can do it concurrent
19 with closing the courtroom, the actual process of
20 closing the courtroom. If we do that, hopefully that
21 will happen at the same time. So no more than 20

1 minutes.

2 MR. COOMBS: Actually, Your Honor, I've
3 looked at every document that has a Bates number on it.
4 So, based upon Major Fein's proffer, there's a Bates
5 numbers on this that's been provided in discovery, I'm
6 confident, once I see, that will refresh my memory and
7 we won't have questions based upon that.

8 So we can go into the closed session and
9 I'll just confirm that we got in Bates numbers. I'm
10 sure once I see it, I'll understand why I didn't ask
11 certain questions.

12 THE COURT: Why don't we do this then? The
13 idea here is we're going to go into a closed session
14 and that's going to be it for the open sessions today
15 and then we're going to have an open session tomorrow
16 morning. Now, starting tomorrow morning, do the
17 parties need additional time in the morning to prepare
18 for that?

19 MR. FEIN: Yes, ma'am. We could offer that
20 court start tentatively at 10:00 tomorrow morning.

21 THE COURT: Does that give you enough time

1 or do you want to say 11:00 just to be safe?

2 MR. COOMBS: I think maybe 11:00 would be
3 safe. That would give us a little over an hour of each
4 witness.

5 THE COURT: Do you anticipate them to be
6 lengthy witnesses?

7 MR. FEIN: Ma'am, based off the court's
8 guidance today, it will be shorter. I have to talk to
9 my co-counsel how much shorter we can make that but it
10 will be shorter.

11 However, just to clarify, one witness will
12 be available beforehand, ma'am. The other witness
13 don't come until the afternoon. So we're probably
14 going to extend lunch to give that opportunity for the
15 second witness.

16 MR. COOMBS: Then in that case 10:00 to
17 start.

18 THE COURT: You're sure?

19 MR. COOMBS: Yes, ma'am.

20 THE COURT: All right. Then that's what
21 we'll do. We'll just start at 10:00. So for the

1 gallery, we'll be starting at 10:00 tomorrow. We will
2 be going into recess now and enjoy a brief closed
3 session involving classified information that the
4 public is not allowed to attend. I made the specific
5 findings in that regard in an appellant exhibit
6 earlier. We'll start at 10:00 tomorrow and take an
7 extended lunch so defense can have an opportunity to
8 prepare for the second witness that comes along. It
9 may be a late day tomorrow as well. We'll see.

10 Is there anything else we need to address
11 before we end the public session?

12 MR. FEIN: Ma'am, just your ruling was
13 appellant Exhibit 550 for court closure.

14 THE COURT: Thank you. The court is in
15 recess until 10:00 tomorrow morning with the exception
16 of the closed section that we're going to be doing.
17 You need a recess to set the court room up for that?

18 MR. FEIN: Yes, ma'am the United States
19 would ask that we can reconvene 18:30.

20 (Trial was adjourned at 6:10 p.m.)

21

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