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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 17-CV-23749-SEITZ

UNITED STATES OF AMERICA,

vs.

PETER SOTIS,
EMILIE VOISSEM,

Defendants.

) Pages 1-116

) Miami, Florida

) January 11, 2022
) 10:00 A.M.

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

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INDEX OF WITNESSES

Chauncey Chapman:

Direct Examination.....Page 23
Cross-Examination.....Page 34

CHARACTER WITNESSES FOR EMILIE VOISSEM

Jackie Magill.....Page 84

Margaret Kendall.....Page 89

Brett Eagan.....Page 95

Samantha Hebrard.....Page 100

Tyler Hebrard.....Page 110

10:11AM 1
10:11AM 2
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THE COURT: If counsel would please state your appearance.

MR. THAKUR: Good morning, Your Honor. Michael Thakur, on behalf of the United States.

And with me at counsel's table to my left is Department of Justice trial Attorney Nate Swinton; and to my right is Department of Commerce Special Agent Tina Korb.

THE COURT: C-o-r-p?

MR. THAKUR: K-o-r-b.

THE COURT: K-o-r-b. Thank you.

MR. UDOLF: Good morning, Your Honor. Happy New Year. Bruce Udolf on behalf of Peter Sotis, who is present in court.

THE COURT: Okay. Good morning to both of you. And on behalf of our probation department?

MS. GOULD: Good morning, Your Honor. Syreta Gould on behalf of U.S. Probation.

THE COURT: Please have a seat. Is Mr. Moss intending to be present here on behalf of Ms. Voissem, since we have some issues relating to the joint objections to the statements in the Peter Sotis investigation report?

MR. MOSS: That is correct, Judge. Tony Moss on behalf of Emilie Voissem, who is also present. If we can come to counsel table for that purpose?

THE COURT: Yes. We have an unusual situation here. And

1 I should tell the parties upon further reflection and study
2 yesterday, that I am persuaded that the base offense level is 26.
3 However, under the application note No. 2, I believe that there
4 should be a four-level departure from the 26.

5 MR. UDOLF: Judge, I'm sorry. I'm having trouble hearing
6 Your Honor.

7 THE COURT: My impression after further reflection and
8 study yesterday at looking at the guidelines -- because my
9 responsibility is to apply the guidelines correctly, and then I
10 have various tools to adjust the impact of the guidelines -- I do
11 believe that the appropriate guideline base offense level for the
12 crimes at issue is a Level 26.

13 In our phone conversation yesterday, I had mentioned that
14 I was leaning towards a Level 14. I realize that would be
15 erroneous, and so the proper one is a Level 26.

16 But I see under application note No. 2 to that guideline
17 that the Sentencing Commission has authorized me to depart
18 downward, to depart, to take into consideration the unique factors
19 of the particular case. And in evaluating them, my initial --
20 because, again, my practice is I try and do my homework before we
21 come here so that you all have been doing your homework and we can
22 be as efficient as possible -- my calculation is that the
23 appropriate departure from a Level 26 is to depart downward four
24 to a Level 22 from that, and then proceed with the rest.

25 I read the government's papers last night as to the role

10:14AM 1 enhancement. I still believe that at this point that the Level 2
10:15AM 2 is the appropriate level for the role enhancement for Mr. Sotis,
10:15AM 3 and I am inclined to go with the two levels upward for obstruction
10:15AM 4 of justice and his frustration of the investigation and
10:15AM 5 encouraging others to do likewise, particularly Ms. Voissem.

10:15AM 6 So that roughly brings me -- I guess I should tell you
10:15AM 7 all where I am, since it's different from the presentence
10:15AM 8 investigation report. You all need to know where I am so that you
10:15AM 9 can proceed accordingly and persuade me that I am wrong and that I
10:16AM 10 need to do differently.

10:16AM 11 So with Mr. Sotis, I presently would be at, with
10:16AM 12 everything, would be a total offense level of 26, which provides a
10:16AM 13 guideline range of 63 to 78 months. So the question is: Where
10:16AM 14 within the guideline range to impose the sentence. Right now,
10:16AM 15 based upon what I saw at the trial, I am more inclined to go to
10:16AM 16 the higher end of the guidelines. Okay.

10:17AM 17 Do you want a five-minute break to absorb all that? But
10:17AM 18 I really think that it is important that you all know sort of
10:17AM 19 where I am, so you all can decide how that affects your strategy
10:17AM 20 going forward.

10:17AM 21 MR. UDOLF: That might be useful. Judge, also, is there
10:17AM 22 any way we could turn up your microphone because I'm having an
10:17AM 23 awful lot of trouble hearing?

10:17AM 24 THE COURT: Is that better? Not better yet?

10:17AM 25 MR. UDOLF: It's better, yes.

10:17AM 1 THE COURT: Then I have to sit right here on the
10:17AM 2 microphone.
10:17AM 3 MR. UDOLF: That's better.
10:17AM 4 THE COURTROOM DEPUTY: It's at the max. Do you want me
10:17AM 5 to try to move it a little bit?
10:18AM 6 THE COURT: Mr. Thakur and Mr. Udolf, do you want five
10:18AM 7 minutes before we proceed or what?
10:18AM 8 MR. THAKUR: Your Honor, I'm ready to proceed. But Mr.
10:18AM 9 Udolf needs five minutes --
10:18AM 10 THE COURT: The first order of business is then for me to
10:18AM 11 ask: Mr. Sotis, have you had an opportunity to review the
10:18AM 12 presentence investigation report that Ms. Gould prepared in your
10:18AM 13 case?
10:18AM 14 MR. SOTIS: I have. I have had an opportunity to read
10:18AM 15 it, Your Honor.
10:18AM 16 THE COURT: And did you have a chance to see the first
10:19AM 17 and second addendums? The second addendum was filed yesterday.
10:19AM 18 MR. SOTIS: I did.
10:19AM 19 THE COURT: And did you have an opportunity to talk to
10:19AM 20 your counsel, Mr. Udolf, about the presentence investigation
10:19AM 21 report?
10:19AM 22 MR. SOTIS: Yes, we have talked at length.
10:19AM 23 THE COURT: And have you seen the objections that he
10:19AM 24 filed to the presentence investigation report?
10:19AM 25 MR. SOTIS: I have. I have seen them all.

10:19AM 1 THE COURT: And I presume you've also seen his sentencing
10:19AM 2 memorandum?
10:19AM 3 MR. SOTIS: Yes, I have, Your Honor.
10:19AM 4 THE COURT: And the first order of business -- you may
10:19AM 5 have a seat, Mr. Sotis.
10:19AM 6 And, in fact, for the sake of the court reporter and for
10:19AM 7 your counsel, if you can just be close to your microphone when you
10:19AM 8 speak.
10:19AM 9 MR. SOTIS: Yes.
10:19AM 10 THE COURT: Ms. Voissem, although we're not proceeding
10:20AM 11 with your sentencing right now, I would like to ask you, since
10:20AM 12 your counsel joined into some of the objections that Mr. Sotis'
10:20AM 13 counsel made to the presentence investigation report, and I think
10:20AM 14 that it is probably beneficial if we go through it and we deal
10:20AM 15 with those objections to the offense conduct together, and then
10:20AM 16 proceed with Mr. Sotis' sentencing, and then followed by Ms.
10:20AM 17 Voissem's sentencing.
10:20AM 18 Does anybody have a better suggestion than that?
10:20AM 19 MR. MOSS: None from Ms. Voissem.
10:20AM 20 THE COURT: Mr. Udolf?
10:20AM 21 MR. UDOLF: It's fine with us.
10:21AM 22 THE COURT: And, Mr. Thakur?
10:21AM 23 MR. THAKUR: That's fine, Your Honor.
10:21AM 24 THE COURT: Because the presentence investigation report,
10:21AM 25 the offense conduct is the same for both; except in discussing the

10:21AM 1 roles --

10:21AM 2 MR. THAKUR: That's correct.

10:21AM 3 THE COURT: -- and who is highlighted.

10:21AM 4 MR. THAKUR: And obstruction.

10:21AM 5 THE COURT: And the obstruction.

10:21AM 6 Shall we use the second addendum to go through the
10:21AM 7 paragraphs, or do I need to use your objections? How do you want
10:21AM 8 to proceed?

10:21AM 9 But first let me ask Ms. Voissem: Ms. Voissem, have you
10:21AM 10 had an opportunity to review the presentence investigation report
10:21AM 11 that Ms. Gould prepared in your case?

10:21AM 12 MS. VOISSEM: Yes, Your Honor.

10:22AM 13 THE COURT: And have you had an opportunity to see the
10:22AM 14 first and second addendum that Ms. Gould prepared? The second
10:22AM 15 addendum to the presentence investigation report, it was just
10:22AM 16 filed yesterday.

10:22AM 17 MS. VOISSEM: I don't believe I have seen her addendum to
10:22AM 18 it, no.

10:22AM 19 MR. MOSS: I'm not sure that I've seen that one either,
10:22AM 20 Judge, but we would certainly have time to review it before this
10:22AM 21 afternoon.

10:22AM 22 THE COURT: I am going to ask my law clerk to make two
10:22AM 23 copies.

10:22AM 24 And, Ms. Voissem, have you seen the objections that your
10:22AM 25 counsel filed in this sentencing memorandum that he filed on your

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behalf?

MS. VOISSEM: Yes, Your Honor.

THE COURT: And have you had a chance to talk to him about the statements in the presentence investigation report?

MS. VOISSEM: We've communicated by e-mail, Your Honor, yes.

THE COURT: I notice that your objections to the offense level are relatively few, because they pertain primarily as to yourself. So if you are up for it, we will simply proceed.

And, Mr. Moss, I will ask you to make sure that you keep me on track. Make sure that I don't miss out on the ones that you're asserting a specific objection to. I'm trying to chart each one.

I haven't had a chance to do this going line by line, Mr. Udolf, since 2003.

MR. UDOLF: Judge, I hate to interrupt. I'm having real trouble hearing you. I don't know what it is. I think the equalizer on the system is heavily bass, so I can't hear the top end at all. I'm sorry.

THE COURT: I don't know what to do.

MR. UDOLF: If there is any way to lower the bass and add some treble or something?

THE COURTROOM DEPUTY: We don't have that.

MR. UDOLF: If I look like I have a blank look on my face sometimes, that's because I really can't make out what you're

10:24AM 1 saying. I'm really straining.

10:24AM 2 THE COURT: Do you want to come up here a little closer?

10:24AM 3 MR. UDOLF: Maybe that's the answer.

10:25AM 4 THE COURT: Valerie, perhaps if we check with IT and they

10:25AM 5 could tell us. Is anyone else having difficulty?

10:25AM 6 MR. THAKUR: None, Your Honor.

10:25AM 7 THE COURT: I don't think I've ever been accused of ever

10:25AM 8 having too low a voice or described as having too low a voice. I

10:25AM 9 will try and -- I don't know what to do, Mr. Udolf. I want you to

10:25AM 10 hear.

10:25AM 11 MR. UDOLF: I apologize. It's my own defective eardrums,

10:25AM 12 Judge, but I will do my best.

10:25AM 13 THE COURT: Do you have hearing aids?

10:25AM 14 MR. UDOLF: I do, and they're broken, so I don't have

10:25AM 15 them today.

10:25AM 16 THE COURT: Oh, okay. Let's see. What can we do?

10:25AM 17 THE COURTROOM DEPUTY: Do you want me to call IT?

10:25AM 18 THE COURT: Yes, would you. Let's take a five-minute

10:25AM 19 break while I see if we can fix the sound so that Mr. Udolf can

10:25AM 20 hear.

10:26AM 21 So we will be in recess -- wait a minute. Let me see if

10:26AM 22 I can get somebody.

10:26AM 23 (Brief pause.)

10:26AM 24 While we're waiting, I want the record to reflect that I

10:26AM 25 did read all of the letters that were filed on behalf of Mr. Sotis

1 in Docket Entry 136. Specifically, the letters of Ms. Janson, the
2 lengthy letter from Mr. Thomas Caison, from Robert Osborn,
3 particularly referring to the tragedy with the death of
4 Mr. Stewart; the letter of Dr. Slott, the letter of Mr. Bristol,
5 Joseph Kloss, Marcia Slott, Mr. Sotis' brother Thomas, his wife,
6 Dr. Sotis, and Mark Alan Flory.

7 Are those who are here, Mr. Udolf, that are present on
8 behalf of Mr. Sotis, would they like to be recognized as being
9 present in the courtroom on behalf of Mr. Sotis?

10 MR. UDOLF: Would you introduce yourself.

11 MR. SOTIS: Your Honor, my wife, Claudia Sotis, is here.

12 THE COURT: Mrs. Sotis, thank you very much for being
13 here and being such a support for him.

14 MR. SOTIS: Barbara Rabinell, a family friend.

15 THE COURT: Miss Rabinell, thank you very much for being
16 here and being so supportive.

17 MR. SOTIS: And Chauncey Chapman, another family friend,
18 Your Honor.

19 THE COURT: And his last name, Mr. Sotis?

20 MR. SOTIS: Chapman.

21 THE COURT: Chapman. Mr. Chapman, thank you very much
22 for being here.

23 Is it any better, Mr. Udolf, that we can at least start
24 until I can bring IT; or would you rather wait until I can see
25 whether or not I can get IT down here to fix the sound?

10:29AM 1 MR. UDOLF: Judge, I appreciate you indulging me.

10:30AM 2 THE COURT: No, it's not an indulgence.

10:30AM 3 MR. UDOLF: I don't want to delay the process. I think
10:30AM 4 we could probably start going through the objections now, because
10:30AM 5 a lot of the objections -- I know they seem to be very numerous --
10:30AM 6 a lot of them are just merely to preserve some issues in the event
10:30AM 7 of an appeal, so we don't waive any particular point. So to that
10:30AM 8 extent, I think we can get through most of them fairly quickly.

10:30AM 9 The bulk of my presentation -- I'm sorry. The bulk of my
10:30AM 10 presentation --

10:30AM 11 THE COURT: Have a seat and sit next to the microphone so
10:30AM 12 that the court reporter can hear us.

10:30AM 13 MR. UDOLF: All right. The bulk of my presentation is
10:30AM 14 going to be on the issue of guidelines and possible variance,
10:30AM 15 which, depending how much you want to hear based on what you've
10:30AM 16 said earlier, but I'd like to at least preserve those issues for
10:30AM 17 if there is an appeal, but that's going to be the bulk of my
10:31AM 18 presentation and the issues of a variance and the 3553 factors.

10:31AM 19 I don't think it's probably necessary to spend a great
10:31AM 20 deal of time on the 28 paragraphs of the 28 objections that we
10:31AM 21 filed. I'd like to note for the record, Your Honor may have some
10:31AM 22 requests for clarifications on some of them, but some of them we
10:31AM 23 can get through fairly quickly.

10:31AM 24 THE COURT: Okay. Then let's start. I have your
10:31AM 25 objections. And the first objection is -- I believe that that one

1 was corrected; the correct spelling of your --

2 MR. UDOLF: They had the wrong address.

3 THE COURT: The wrong address.

4 MR. UDOLF: So that's the correct address.

5 THE COURT: The next one is on paragraph No. 8, which is
6 on page 5.

7 MR. UDOLF: Yes. The purpose of that was just to
8 clarify, for the record, that these were not going to the
9 government. They were going to a private entity that is located
10 in Libya, and we just wanted the record to reflect that. That's
11 the only reason we noted that as an objection.

12 THE COURT: The paragraph reads: Items categorized under
13 ECCNs require a license for export based on a specific "reason for
14 control."

15 The "reason for control" in turn determined the countries
16 to which the export of an item required a license. Goods and
17 technology controlled by foreign national security reasons
18 required a license for export to countries including Libya. All
19 items categorized under ECCN 8A002.Q.1 were controlled for export
20 for, among other reasons, national security reasons. 15 CFR Part
21 774 Sup No. 1, entry for ECCN 8A002.Q.1 (closed-circuit
22 rebreathers).

23 So that basically says these rebreathers were on the
24 Commerce Control List.

25 MR. UDOLF: That's not an issue. We don't object to

10:34AM 1 that. The only thing we -- this is a rather long-winded
10:34AM 2 clarification, but we just wanted it to note that the rebreathers
10:34AM 3 were not going to the government of Libya; they were going to a
10:34AM 4 private concern.

10:34AM 5 THE COURT: I think that that is addressed later on in
10:34AM 6 the presentence investigation report.

10:34AM 7 MR. UDOLF: It is.

10:34AM 8 THE COURT: So what do you want to add here in
10:34AM 9 paragraph 8, considering that fact, that that is addressed in a
10:34AM 10 subsequent paragraph and this simply describes the basis for a
10:34AM 11 license for export based upon national security reasons?

10:34AM 12 MR. UDOLF: There is no other objection to paragraph 8.

10:34AM 13 THE COURT: Well, I plan to overrule the objection
10:35AM 14 because it's covered later on in the presentence investigation
10:35AM 15 report where it's really more relevant, and this is just
10:35AM 16 describing the purpose of why rebreathers are on the Commerce
10:35AM 17 Control List.

10:35AM 18 Is that correct, Mr. Thakur?

10:35AM 19 MR. THAKUR: Yes, Your Honor.

10:35AM 20 THE COURT: And I did not see an objection by Mr. Moss as
10:35AM 21 to that paragraph. Is that correct?

10:35AM 22 MR. MOSS: That is correct, Judge.

10:35AM 23 THE COURT: Okay. The next objection is on paragraph
10:35AM 24 No. 12. Your objections here are that these -- you note that the
10:35AM 25 PSI correctly notes that certain rebreathers have a dual-use

1 capability for both civilian recreational use, as well as for
2 military use due to the technical specifications and
3 configurations.

4 You go on to say: The four rebreathers in question did
5 not have any adaptive military use.

6 What is the basis for that statement, because I notice
7 somewhere in the addendum that you had indicated you were going to
8 provide some kind of documentation to support that statement?

9 MR. UDOLF: Well, I have a witness here that could
10 testify about that, if necessary.

11 THE COURT: Okay. Who is the witness?

12 MR. UDOLF: That was Mr. Chapman who stood up earlier.

13 THE COURT: Oh, okay.

14 MR. UDOLF: But in terms of, you know, this is another
15 example of, you know, trying to err on the side of caution.

16 The principal argument that we made with respect to the
17 rEvo rebreathers, clearly rebreathers are on the Commerce Control
18 List that's issued by the Commerce Department, which means they
19 require a license. That's not an issue in the case.

20 But the fact is that the rebreathers are not on the
21 Munitions List put out by the Department of State, and that's the
22 list that is utilized for -- it's 2M5.2, I think, which is the
23 Level 26 or for other offenses involving, you know, small weapons
24 or rifles is a Level 14.

25 But that particular guideline specifically references the

10:38AM 1 State Department list; that is the United States Munitions List
10:38AM 2 and not the Commerce Department.

10:38AM 3 There's no question that for purposes of a criminal
10:38AM 4 violation, the Commerce Department list clearly applies to
10:38AM 5 rebreathers. But our contention is that rebreathers are not
10:38AM 6 contemplated by 2M5.2 because it's not the same generic items of
10:38AM 7 munitions that are described in that particular statute. And
10:38AM 8 that's why we suggested by default that the Court consider using
10:38AM 9 2B1.1 under -- I think it's -- it's 2X. I should know this off
10:39AM 10 the top of my head.

10:39AM 11 THE COURT: If you know the sentencing guidelines off the
10:39AM 12 top of your head, Mr. Udolf, you're a better man than anybody in
10:39AM 13 this courtroom.

10:39AM 14 MR. UDOLF: No, but I just read these a dozen times in
10:39AM 15 the past 48 hours.

10:39AM 16 It's 2X5.1 and also it's reflected in -- there is a
10:39AM 17 corresponding --

10:39AM 18 THE COURT: I'll tell you what, Mr. Udolf -- I'd like to
10:39AM 19 compliment Ms. Martinez. She's going to give you the headphones
10:39AM 20 that the interpreters use, but you have to sit over here.

10:39AM 21 THE COURTROOM DEPUTY: Can you at least try them on first
10:39AM 22 to see if they even work?

10:39AM 23 (Brief pause.)

10:40AM 24 THE COURT: Let's take a five-minute break so we can
10:43AM 25 figure out what we're doing here. Okay.

10:43AM 1 (Recess.)

10:49AM 2 MR. UDOLF: Judge, if I may, let me see if I can recover
10:50AM 3 from that embarrassing interlude.

10:50AM 4 I think the point I was raising with respect to
10:50AM 5 paragraph 12 that we wanted to preserve as an issue was that while
10:50AM 6 rebreathers do have military applications, rEvo III rebreathers do
10:50AM 7 not other than for training purposes, and we get into greater
10:50AM 8 detail later on, well, I think in the sentencing memorandum as to
10:50AM 9 that issue as to why, even though it's on the Commerce Control
10:50AM 10 List, rebreathers, they are not listed on the munitions list; and,
10:50AM 11 therefore, arguably, 2M5.2 should not apply. That was where we
10:51AM 12 were going with that argument.

10:51AM 13 I understand Your Honor has at least preliminarily
10:51AM 14 determined that 2M5.2 does apply, and I guess --

10:51AM 15 THE COURT: You were referring to 2X.

10:51AM 16 MR. UDOLF: Oh, I'm sorry. Yes.

10:51AM 17 THE COURT: And as I'm looking at 2X7.2 --

10:51AM 18 MR. UDOLF: No. It's 2X5.1.

10:51AM 19 THE COURT: -- it pertains to submersible and
10:51AM 20 semi-submersible vessels, and that has a base offense level of a
10:51AM 21 26.

10:51AM 22 MR. UDOLF: This is not a vessel.

10:51AM 23 THE COURT: It's not a vessel, but it's submersible and
10:51AM 24 it allows the individual to be sort of an individual submarine
10:51AM 25 without a shell around them.

10:51AM 1 MR. UDOLF: A scuba mask is a submersible item also, but
10:51AM 2 it's not a submersible vessel. I mean, a submarine is a
10:52AM 3 submersible vessel.

10:52AM 4 THE COURT: But what I'm just saying is when you look at
10:52AM 5 Part X, the other offenses, which is where you were going --

10:52AM 6 MR. UDOLF: Right.

10:52AM 7 THE COURT: -- I did not see anything that really applied
10:52AM 8 --

10:52AM 9 MR. UDOLF: No, it didn't, and that's why --

10:52AM 10 THE COURT: -- except for that particular mention.

10:52AM 11 MR. UDOLF: I saw that as well. But it seemed to me
10:52AM 12 that, arguably and being creative, that this particular guideline,
10:52AM 13 that is 2X5.1, suggests that you use the next most analogous
10:52AM 14 guideline if one clearly does not apply, and that's why we
10:52AM 15 recommended that the Court consider 2B1.1, because basically a big
10:53AM 16 part of the government's evidence in this case was that the
10:53AM 17 defendant needed the money, he wanted this to go through, and he
10:53AM 18 made misrepresentations to government officials and to others
10:53AM 19 according to the government. And, therefore, by analogy it would
10:53AM 20 seem that 2B1.1 might be more appropriate.

10:53AM 21 And that's where we're going with the objection in
10:53AM 22 paragraph 3, and we're just basically preserving that as an issue.

10:53AM 23 THE COURT: You agree though that 2M5 pertains to,
10:53AM 24 including the subsets, are that portion of the guidelines that
10:53AM 25 deal with the prohibited financial transactions and exports and

1 providing material support to designated foreign terrorist
2 organizations?

3 MR. UDOLF: Yes. Yes.

4 THE COURT: There's been no evidence of this being
5 provided to a designated foreign terrorist organization. It's
6 simply things were very fluid in 2006 in Libya, it was a very
7 volatile country, that in 2012 it killed our ambassador because of
8 the various terrorists groups that were unnamed, unformed,
9 operating there, operating simply for terrorist purposes.

10 MR. UDOLF: Correct.

11 THE COURT: So the problem that I have is that I have to
12 go with the closest thing that I can find, and the closest thing
13 that I can find is using that one, and then looking at the
14 application note No. 2 to take into consideration the issues that
15 you're bringing up.

16 MR. UDOLF: I don't disagree, Judge. I mean, clearly,
17 that is one of the sections that most resemble the facts in this
18 case.

19 But there are differences, and there are differences that
20 justify a substantial departure if the Court were going to apply
21 or find that a 26 level was the right starting point. That's
22 basically the argument that we're making and we're trying to
23 preserve.

24 THE COURT: So you agree: You did not forward anything
25 thus far to the probation department regarding the technical

1 specifications for rebreathers?

2 MR. UDOLF: That's correct. That's correct.

3 THE COURT: And do you want to present your witness,
4 Mr. Chapman?

5 MR. UDOLF: I could do it now or later, Judge. He was
6 also going to address the Court personally as well.

7 THE COURT: I want to give Mr. Thakur an opportunity.
8 Put Mr. Chapman under oath; you can examine him, and then give Mr.
9 Thakur or his team an opportunity to cross-examine, and you have
10 your evidence as part of the file.

11 MR. UDOLF: All right.

12 THE COURT: Is that what you would like to do?

13 MR. UDOLF: Yes.

14 THE COURT: Mr. Chapman, you may not have anticipated
15 this, but you're going to be our first witness today.

16 THE WITNESS: Where would you like me?

17 THE COURT: If you would come up and have a --

18 THE COURTROOM DEPUTY: Do you want him to sit on the
19 witness stand or at the podium?

20 THE COURT: How long do you think the examination is
21 going to be, Mr. Udolf? Shall we put him in the witness box?
22 Will everybody be able to see him?

23 MR. THAKUR: Yes, Your Honor.

24 THE COURT: Okay.

25 THE WITNESS: I pledge allegiance to the United States.

10:57AM 1 THE COURT: No, it doesn't work. Ever since we've had to
10:57AM 2 reconfigure the courtrooms because of COVID, it's always a
10:57AM 3 challenge.

10:58AM 4 You need to put your earphones back on, Mr. Udolf.
10:58AM 5 Mr. Chapman, say something so we can see whether or not
10:58AM 6 Mr. Udolf can hear you.

10:58AM 7 THE WITNESS: Mr. Udolf, can you hear me?

10:58AM 8 MR. UDOLF: Yes, I can hear you.

10:58AM 9 THE WITNESS: If I remove my mask, does that help?

10:58AM 10 THE COURT: Yes, it does. Thank you.

10:58AM 11 THE COURTROOM DEPUTY: Do you want me to swear him?

10:58AM 12 THE COURT: Yes. If you would stand, and you will be
10:58AM 13 sworn in.

10:58AM 14 (Witness duly sworn.)

10:58AM 15 THE WITNESS: I do.

10:59AM 16 THE COURTROOM DEPUTY: Thank you. Could you please state
10:59AM 17 and spell your name for the court reporter.

10:59AM 18 THE WITNESS: Full name?

10:59AM 19 THE COURTROOM DEPUTY: Yes.

10:59AM 20 THE WITNESS: Chauncey Brewster Chapman, III.

10:59AM 21 (Microphone feedback.)

10:59AM 22 THE WITNESS: Back up a little bit?

10:59AM 23 THE COURT: Yes.

10:59AM 24 THE WITNESS: C-h-a-u-n-c-e-y, B-r-e-w-s-t-e-r, C-h-a-p,
10:59AM 25 as in Paul, m-a-n, III.

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THE COURT: You may proceed.

CHAUNCEY BREWSTER CHAPMAN, III, DEFENDANT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. UDOLF:

Q. Mr. Chapman, do you know the defendant, Peter Sotis?

A. Yes, I do.

Q. How long have you known him?

A. Roughly 15 years.

Q. In what capacity?

A. Professional and personal.

Q. Are you involved in the diving industry or have you been?

A. Yes. I've been professionally diving for 50 years.

Q. Since the 1960s, is that a fair statement?

A. '71 is when I first started in professional diving. '68 was when I was first certified as a recreational diver.

Q. I see. And also you were involved in diving in the manufacture and design of --

THE COURT: Let's let him talk. Remember, this is direct examination.

MR. UDOLF: All right. I'm sorry. I thought he was finished.

THE COURT: Huh?

MR. UDOLF: I thought he was finished.

THE COURT: But the question, you were giving him his testimony, to which he was going to answer yes or no. And since

11:00AM 1 it's direct examination, he should really have the opportunity of
11:00AM 2 letting him sort of explain his background.

11:00AM 3 MR. UDOLF: Yes, Your Honor.

11:00AM 4 THE COURT: Thank you.

11:00AM 5 BY MR. UDOLF:

11:00AM 6 Q. Have you been involved in the manufacture and design of
11:00AM 7 rebreathers?

11:00AM 8 A. Yes. In 1985 I was employed by American Underwater Products
11:00AM 9 in San Rafael, California. I worked as a chief technology
11:00AM 10 officer, dealt with manufacturing, quality management systems, and
11:01AM 11 product design, development, and testing.

11:01AM 12 THE COURT: Tell us about that. How did you get started
11:01AM 13 in it?

11:01AM 14 THE WITNESS: Gosh. In 1971 I took -- I went to a trade
11:01AM 15 school, and I learned how to service diving equipment.

11:01AM 16 In 1975 I started in recreational diving and was trained
11:01AM 17 by a number of manufacturers in servicing their equipment and
11:01AM 18 taken under the wing by a very good engineer and taught a lot
11:01AM 19 about compressor systems and diving systems.

11:01AM 20 In 1985 I was called out -- I was hired by American
11:01AM 21 Underwater Products for sales. I was called out to California to
11:01AM 22 help with the manufacturer of a regulator. And when they found
11:01AM 23 out I could actually do it, they decided I should move to
11:01AM 24 California.

11:01AM 25 THE COURT: Move the microphone a little bit away from

11:01AM 1 you.

11:01AM 2 THE WITNESS: A little bit away?

11:01AM 3 THE COURT: Yes.

11:01AM 4 THE WITNESS: Is that better?

11:01AM 5 THE COURT: Yes. We're getting feedback.

11:01AM 6 THE WITNESS: So I initially worked in manufacturing
11:02AM 7 regulators, buoyancy compensators, and with the purchase -- the
11:02AM 8 design and purchase of fins, masks, snorkel dive bags. And for
11:02AM 9 one reason or another, I ended up developing our quality
11:02AM 10 management system starting in 1996, registered under ISON 9000.

11:02AM 11 I also because of my work with regulators, worked in the
11:02AM 12 engineering department to attune regulators so that once the basic
11:02AM 13 look was developed, I would take it and work with our machine shop
11:02AM 14 and our testing equipment and make it work better.

11:02AM 15 I had the opportunity to --

11:02AM 16 THE COURT: Why don't you use the lavalier. That's much
11:02AM 17 better.

11:02AM 18 THE WITNESS: Okay. Anyway, in 1991 the U.S. Navy came
11:03AM 19 out with a test method, and I designed and built test systems
11:03AM 20 based on that test method, so they were able to test to U.S. Navy
11:03AM 21 standards. This was important for the industry because we tested
11:03AM 22 everybody's regulators. We were a manufacturing supplier to the
11:03AM 23 industry; we didn't just supply our own brands.

11:03AM 24 In 1994 we started working on a rebreather called the
11:03AM 25 Fabian, and this is my introduction into the rebreathers. I fell

11:03AM 1 in love with the devices, dealt with the Fabian a couple of times
11:03AM 2 in Monterey, California. The Fabian never made it to market
11:03AM 3 because the -- for a number of reasons.

11:03AM 4 THE COURT: Slow down, Mr. Chapman. Remember, this is
11:03AM 5 something that you lived and you know like the back of your hand.

11:03AM 6 THE WITNESS: Yes, ma'am.

11:03AM 7 THE COURT: We're all hearing it for the first time, and
11:03AM 8 so we need to make sure we understand what you're saying and we're
11:03AM 9 absorbing what you're saying.

11:03AM 10 THE WITNESS: All right.

11:03AM 11 THE COURT: Right now it's coming out as if it was a fire
11:04AM 12 hydrant of information.

11:04AM 13 THE WITNESS: Sorry about that.

11:04AM 14 THE COURT: It's sort of knocking us over and we're
11:04AM 15 going: Wait a minute.

11:04AM 16 THE WITNESS: I love being underwater, Your Honor. It's
11:04AM 17 just my passion in life. And working with diving equipment and
11:04AM 18 training other people to share my passion has just been like this.

11:04AM 19 So normal diving is you blow bubbles, and I call them
11:04AM 20 thunder breathers. It makes a lot of noise. You're not on the
11:04AM 21 menu. You have two tails, one eye, and you're blowing bubbles.

11:04AM 22 THE COURT: I'm sorry.

11:04AM 23 THE WITNESS: When you go diving.

11:04AM 24 THE COURT: You've got to speak a little more slowly so
11:04AM 25 we make sure that we hear what you're saying.

11:04AM 1 THE WITNESS: Okay. Thank you. We all start diving on
11:04AM 2 open circuit, which is inhale and exhale, you make a cloud of
11:04AM 3 bubbles. It's a very noisy system. Very limited time, about
11:04AM 4 30 minutes dive per set up, back on the boat, you get another
11:04AM 5 tank, you go back in for another 30 minutes.

11:05AM 6 With rebreathers, their extended time underwater depends
11:05AM 7 upon the design of the unit. Three hours is a nominal time for
11:05AM 8 commercial recreational rebreathers. It's a much nicer way to
11:05AM 9 dive. They're quieter, and the extended range, extended duration,
11:05AM 10 the ability to go to greater depths, allows you to see a lot more
11:05AM 11 of the ocean, to do a lot more exploration, whether it's in caves
11:05AM 12 or direct diving or just being down with unique marine life and
11:05AM 13 fish and photographing and documenting the ocean ground.

11:05AM 14 So in 1994 we did the Fabian project, which did not make
11:05AM 15 it to market.

11:05AM 16 And in 1980 -- excuse me. In 2003 we started on the
11:05AM 17 ATUBA Project.

11:05AM 18 THE COURT: The what?

11:06AM 19 THE WITNESS: ATUBA, Advanced Tactical Underwater
11:06AM 20 Breathing Apparatus. ATUBA was a spec provided to us by NSWC,
11:06AM 21 Naval Surface Warfare Center, Panama City. It was a three-year
11:06AM 22 project to develop a multi-load rebreather that would support
11:06AM 23 military drivers in a specific mission.

11:06AM 24 Our war fighters are -- the swimmer delivery vehicle
11:06AM 25 drivers are housed in a nuclear submarine, and the small submarine

11:06AM 1 sits on the upper deck. They walk out of the large submarine, get
11:06AM 2 in the small submarine, it takes them close to the target. They
11:06AM 3 change from the semiclosed Mark 16 unit, over to the fully closed
11:06AM 4 Mark 25 unit, they swim in, they do their mission, they come back,
11:06AM 5 they repeat the process, and get back into the submarine.

11:06AM 6 So the Mark 25 is a unique rebreather in that it is a
11:06AM 7 pure oxygen rebreather, and it is a fully closed-circuit
11:07AM 8 rebreather. It does not bubble. Semiclosed units like -- just
11:07AM 9 all of the recreational rebreathers and the Mark 16, which is one
11:07AM 10 of the primary military rebreathers, can bubble just spontaneous;
11:07AM 11 just make bubbles, and that's just what they do, and it's okay.

11:07AM 12 The Mark 25 is specifically used when the war fighters
11:07AM 13 are approaching the shore to be sure that they are totally
11:07AM 14 undetectable. It's a silent unit, and it does not bubble. In
11:07AM 15 order to ascend, the diver has to metabolize the oxygen in the
11:07AM 16 breathing loop to reduce the volume so that during the ascent no
11:07AM 17 gas will escape.

11:07AM 18 With a semiclosed unit, you're using mixed gases, and
11:07AM 19 throughout the dive they bubble, if you change your depth a little
11:08AM 20 bit -- and there is some geeky stuff about why this happens --
11:08AM 21 they bubble. And when you ascend, they will dump a tremendous
11:08AM 22 amount of gas out, depending upon the depth from which you're
11:08AM 23 coming from.

11:08AM 24 So that may be more than you wanted to know.

11:08AM 25 THE COURT: Probably.

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THE WITNESS: Thank you.

THE COURT: But my question is: Okay. So you're making a difference between the Mark 25, which is a totally enclosed system, and this one that is a semienclosed system?

THE WITNESS: The rEvo would be considered semiclosed rebreather by the military, as would the Prism and all of the other recreational rebreathers, and that's because they have the ability to release gas out of the diver's control.

THE COURT: Okay. Thank you.

THE WITNESS: And the Mark 25 does not.

THE COURT: Now you can proceed, Mr. Udolf.

BY MR. UDOLF:

Q. Well, first of all, are there any other characteristics that are important in considering whether or not a certain rebreather can be utilized in a military mission?

A. Well, the basic --

Q. Other than bubbles that you described?

A. -- three characteristics: One of them is the bubbles. Another one is noise.

Typically in a protected area, the governing body would deploy a hydrophone array throughout the harbor to listen for intrusion. And on recreational rebreathers, they use a magnetic solenoid, and the magnetic solenoid has two states; open and closed. And when it's energized, it clicks. And it is when it de-energizes it clicks again, it's a very distinctive sound. In

1 fact, as a recreational diver, you want to hear that happen
2 because it means your unit is maintaining the breathing gas that
3 you need to -- the mix that you need to have your breathing gas.

4 When the gas is injected, there is noise of just rushing
5 air. There is another valve on recreational rebreathers called a
6 diluent edition valve. And when that valve is activated either
7 automatically or manually, there is another gas flow noise. And
8 these are very detectable. They're not --

9 The Mark 25 rebreather does not have a solenoid, does not
10 have an unrestricted injection of gas at any time, so it's very,
11 very, very, silent; whereas, recreational rebreathers are not
12 silent.

13 And the third characteristic --

14 Q. Well, before you get into that, how does that affect its
15 usefulness?

16 Such as the rEvo rebreather, how does it affect its
17 usefulness for a military application?

18 A. If I can dial back a little bit, one of the advantages of a
19 recreational rebreather is extended range or extended duration
20 over open-circuit diving. So where you can take a bunch of tanks
21 and stay underwater for a while, instead you can just take a
22 single rebreather and stay underwater for a while.

23 So that would be a benefit to any underwater operation;
24 whether you were, you know, preparing a ship's hull or looking at
25 fish or exploring caves, being able to have a single unit that has

11:11AM 1 an extended range is a great benefit.

11:11AM 2 Q. Well, that wasn't -- maybe I didn't make myself clear.

11:11AM 3 How does the noise level affect its usefulness in a military
11:11AM 4 application?

11:11AM 5 A. Well, it would kind of erase it. If you're going to do ship
11:11AM 6 husbandry in your own harbor, anything would work.

11:11AM 7 But if you're doing military war fighting missions, having a
11:11AM 8 unit that makes noise is not desirable.

11:11AM 9 Q. All right. And does --

11:11AM 10 Well, let me ask you: What was the third thing?

11:11AM 11 A. The third thing is magnetic signature.

11:11AM 12 Q. What is the magnetic signature?

11:12AM 13 A. Magnetic signature, if you had just a regular old magnet or a
11:12AM 14 washer or a piece of metal and moved the two together, it would be
11:12AM 15 attracted one to the other. The sensors can sense magnetism and
11:12AM 16 magnetic affinity. The new electronics are amazing.

11:12AM 17 Ships, if you will remember, you know, back in the movies
11:12AM 18 I'm sure we've all seen, where there is a COVID-virus-looking
11:12AM 19 device underwater, that's a ship's mine; those little pegs were
11:12AM 20 triggers. And some ship mines that became more advanced had
11:12AM 21 magnetic sensors. So if you had a diver swim up to a mine to
11:12AM 22 disarm it, which needed to be done to clear the mine area, and the
11:12AM 23 underwater breathing apparatus had a magnetic signature, it could
11:12AM 24 trigger the mine. You don't want to do that.

11:12AM 25 So the Mark 16 has the magnetic -- has a magnetic signature,

11:12AM 1 this is a quote, that's less than a paper clip. And the Mark 16
11:13AM 2 rebreather was specifically designed for use in antimagnet mine
11:13AM 3 warfare.

11:13AM 4 So explosive ordinance disposal divers would be able to
11:13AM 5 approach the mine, not trigger the mine, and disarm the mine.

11:13AM 6 Q. Let me ask you this: Does the rEvo III rebreathers --

11:13AM 7 Well, are you familiar with those rebreathers?

11:13AM 8 A. Yes, I am.

11:13AM 9 Q. Do they put out bubbles?

11:13AM 10 A. Yes, they do.

11:13AM 11 Q. All right. Do they make noise?

11:13AM 12 A. Yes, they do.

11:13AM 13 Q. And do they have a significant magnetic signature?

11:13AM 14 A. Trick question, and I want to answer that.

11:13AM 15 I believe they do because of the materials they're made out
11:13AM 16 of, but I have not had the opportunity to test them or to see them
11:13AM 17 tested.

11:13AM 18 Q. What materials are they made of?

11:13AM 19 A. Steel. Ferrous metals will trigger magnetic sensors; buckles,
11:13AM 20 D rings, weight slides. The cylinders that contain the gases are
11:13AM 21 all from steel. There're steel components inside common valves.

11:14AM 22 There is a lot of metal that you would have to design out of
11:14AM 23 the rEvo in order to reduce its magnetic signature, and then you
11:14AM 24 may find that some of the plastics have magnetic signatures
11:14AM 25 because of the dyes that are used to color them.

11:14AM 1 Q. Based on what you have just told us, does the United States
11:14AM 2 military utilize rEvo III rebreathers?

11:14AM 3 A. I don't know if -- I personally don't know.

11:14AM 4 I do know that the U.S. military invited a number of
11:14AM 5 recreational rebreather manufactures to come in, train a group of
11:14AM 6 Navy divers, and leave some units for evaluation. And they did
11:14AM 7 not accept any of the units, including the rEvo, for use by the
11:14AM 8 fleet.

11:14AM 9 Q. And was actually Mr. Sotis part of that training?

11:14AM 10 A. My understanding is that Mr. Sotis did the training. Mr.
11:14AM 11 Sotis is a premier rEvo distributor in the United States.

11:15AM 12 Q. All right. And to be fair -- well, I guess I need to ask you
11:15AM 13 one further question.

11:15AM 14 Based on everything you've said, is a rEvo III rebreather,
11:15AM 15 is it useful in active military missions?

11:15AM 16 A. No.

11:15AM 17 Q. All right. Now, to be fair, can the rEvo rebreather be used
11:15AM 18 in training for military-grade rebreathers?

11:15AM 19 A. The rEvo's performance characteristics are similar to the Mark
11:15AM 20 16, and there are a few rebreathers that they're now using came
11:15AM 21 out of Fullerton and Canada that are basically semiclosed units.
11:15AM 22 Yes, you could use the rEvo to train a driver.

11:15AM 23 MR. UDOLF: Judge, that's all the questions I have about
11:15AM 24 this particular issue. I will have other questions regarding Mr.
11:15AM 25 Sotis.

11:16AM 1 Do you want me to, in the interest of time, just do that
11:16AM 2 now?

11:16AM 3 THE COURT: Mr. Thakur, what is your pleasure? Just
11:16AM 4 stick with the expertise at this point? Or do you want him to
11:16AM 5 complete whatever he was going to ask him?

11:16AM 6 MR. THAKUR: Yes, Your Honor, I'd like to cross-examine
11:16AM 7 him now.

11:16AM 8 MR. UDOLF: No further questions.

11:16AM 9 THE COURT: Okay. When he speaks about him on a personal
11:16AM 10 basis and his personal characteristics, we will consider that
11:16AM 11 simply as testimonial as opposed to statements under oath. It
11:16AM 12 will be more in the area of opinions of a personal nature.

11:16AM 13 MR. UDOLF: Yes, Your Honor.

11:16AM 14 THE COURT: Mr. Thakur, you may proceed.

11:16AM 15 MR. THAKUR: Thank you.

11:16AM 16 CROSS-EXAMINATION

11:16AM 17 BY MR. THAKUR:

11:16AM 18 Q. Good morning, Mr. Chapman.

11:16AM 19 A. Good morning.

11:16AM 20 Q. You indicated that you have not tested rEvo III rebreathers as
11:17AM 21 to its magnetic signature; is that correct?

11:17AM 22 A. That's correct.

11:17AM 23 Q. So you cannot tell this Court precisely how it compares to a
11:17AM 24 military-grade magnetic signature in any quantifiable terms?

11:17AM 25 A. Not quantifiably.

11:17AM 1 Q. And you indicated that rEvo III rebreathers produce few
11:17AM 2 bubbles; is that correct?

11:17AM 3 A. REvo III semiclosed rebreathers will produce bubbles. The
11:17AM 4 amount of bubbles it produces have to do with the dive profile and
11:17AM 5 the diver's skill level.

11:17AM 6 Q. But you would agree it produces far less bubbles than ordinary
11:17AM 7 scuba gear?

11:17AM 8 A. Yes, sir. Open circuit, yes, sir.

11:17AM 9 Q. And the fact that it produces far less bubbles than ordinary
11:17AM 10 scuba gear is a type of stealth function; correct?

11:17AM 11 A. Semiclosed-circuit rebreathers are not designed as stealth
11:18AM 12 units. I didn't -- I think you said stealth unit.

11:18AM 13 Q. No, I said stealth function.

11:18AM 14 A. Stealth function?

11:18AM 15 Q. In other words, it's far less detectable than an ordinary
11:18AM 16 scuba equipment?

11:18AM 17 A. Well, when you say scuba -- I'm sorry to be picky, but scuba
11:18AM 18 --

11:18AM 19 THE COURT: Wait. The court reporter can only take down
11:18AM 20 one person at a time.

11:18AM 21 THE WITNESS: I'm sorry. Scuba is an acronym for
11:18AM 22 self-contained underwater breathing apparatus, and when you're
11:18AM 23 talking about --

11:18AM 24 THE COURT: Mr. Chapman, please.

11:18AM 25 THE WITNESS: I'm sorry.

11:18AM 1 THE COURT: Ask your question. Let's make sure that he
11:18AM 2 understands your question. And then wait a nanosecond,
11:18AM 3 Mr. Chapman, so that my court reporter can switch to the next
11:18AM 4 person, and then answer the question.

11:18AM 5 And then if you would let him finish before you ask your
11:18AM 6 next question. Thank you.

11:18AM 7 MR. THAKUR: Yes, Your Honor.

11:18AM 8 THE WITNESS: Thank you.

11:18AM 9 BY MR. THAKUR:

11:18AM 10 Q. Mr. Chapman, you're aware that both semiclosed-circuit and
11:18AM 11 closed circuits are on the Commerce Control List; is that correct?

11:19AM 12 A. No, I am not. And if I can expand briefly?

11:19AM 13 THE COURT: Yes.

11:19AM 14 THE WITNESS: The last time I was involved with Vitar
11:19AM 15 (phonetic) and the Commerce Control List was in 2010, 2011, and I
11:19AM 16 have not even seen the current Commerce Control List.

11:19AM 17 BY MR. THAKUR:

11:19AM 18 Q. Back then was semicircuit and closed-circuit part of the
11:19AM 19 Commerce Control List?

11:19AM 20 A. The semiclosed rebreather that we wanted to ship was
11:19AM 21 adjudicated as not munitions and was transferred over to the
11:19AM 22 Department of Commerce for commerce control.

11:19AM 23 Q. So, in other words, it was on the Commerce Control List?

11:19AM 24 A. Yes.

11:19AM 25 Q. Now, let's talk about the difference between what's on the

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1 Commerce Control List and open circuits.

2 You're familiar with open-circuit rebreathers or

3 open-circuit diving equipment?

4 A. Yes.

5 Q. So those items that are on the Commerce Control List,

6 including semiclosed circuits, produce far less bubbles than open

7 circuits; is that correct?

8 A. That is correct.

9 Q. And they produce far less noise than open circuits?

10 A. That is correct.

11 Q. And they have far greater range than open circuits?

12 A. That is correct.

13 Q. Can you tell us about the range compared to open circuit

14 versus semiclosed circuit?

15 A. Standard open-circuit diving, recreational diving is done with

16 a single 80-foot cubic tank. A diver diving in 30 to 60 feet of

17 water will get a duration of 30 to 40 minutes. Small people with

18 tiny lungs that aren't swimming will get longer. Large people

19 with large lungs who are working hard will get a less amount of

20 time; but plus or minus 35 minutes per cylinder.

21 A closed-circuit rebreather's duration depends upon its gas

22 and its scrubber duration. Scrubber durations are nominally at

23 three hours. Gas durations are kind of four to six hours.

24 Q. Can you tell us the rEvo III rebreather's specification and

25 what range it would have?

11:21AM 1 A. I looked at the rEvo duration testing a few months ago. I was
11:21AM 2 talking to somebody. It's under three hours, and that's based --
11:21AM 3 The European Union has personal protective equipment
11:21AM 4 standards, and there is a standardized test method for
11:21AM 5 closed-circuit or semiclosed-circuit rebreathers. And the test is
11:21AM 6 fairly rigorous. And the rEvo time, if I remember correctly, was
11:21AM 7 just under three hours.
11:21AM 8 Q. Which is several hours more than open-circuit diving?
11:22AM 9 A. Oh, a bunch more, yes. Yes, sir.
11:22AM 10 Q. And it has a far greater range than an open circuit?
11:22AM 11 A. By having greater time, it has a greater range.
11:22AM 12 Q. And you would agree that if someone wanted to use this
11:22AM 13 equipment, these rEvo rebreathers for a nefarious purpose, they
11:22AM 14 then would have far greater range, far greater stealth than
11:22AM 15 nonregulated, non-commerce-controlled scuba equipment?
11:22AM 16 A. Are you comparing it to open circuit?
11:22AM 17 Q. Yes.
11:22AM 18 A. Yes.
11:22AM 19 Q. In fact, you said you've been in the diving industry in South
11:22AM 20 Florida for more than a decade. More than two decades, right?
11:22AM 21 A. Not South Florida. I've been in the diving industry for five
11:22AM 22 decades.
11:22AM 23 Q. How about in South Florida?
11:22AM 24 A. I was here in 19 -- the early 1980s for about three years, and
11:22AM 25 I've been here for five years this time.

11:22AM 1 Q. Are you aware that in 2002 the FBI released a bulletin
11:23AM 2 specifically warning about the uses of underwater equipment that
11:23AM 3 could be used in a terrorist attack?

11:23AM 4 A. No, I am not.

11:23AM 5 Q. So you're not aware that the FBI actually visited scuba shops,
11:23AM 6 dive shops in South Florida around that time to warn them about
11:23AM 7 that?

11:23AM 8 A. No, I didn't know that.

11:23AM 9 Q. And are you aware that law enforcement still has that concern?
11:23AM 10 In fact, when they visited at Helium, they talked about that same
11:23AM 11 level of concern; about rebreathers being used in a terrorist
11:23AM 12 attack?

11:23AM 13 A. I did not know that.

11:23AM 14 MR. THAKUR: One moment, Your Honor.

11:23AM 15 (Brief pause to consult with government counsel.)

11:23AM 16 BY MR. THAKUR:

11:23AM 17 Q. And you mentioned that you're aware that the rEvo rebreather,
11:23AM 18 among other commercial rebreathing apparatuses, were used for
11:24AM 19 training by the U.S. military; is that correct?

11:24AM 20 A. My understanding is there was one occasion where the rEvo was
11:24AM 21 used and military personnel were trained at the Naval Experimental
11:24AM 22 Diving Unit in Panama City, Florida.

11:24AM 23 Q. And you don't have any familiarity, do you, about how foreign
11:24AM 24 militaries might use rebreathers?

11:24AM 25 A. No, sir, I don't have any firsthand experience in how foreign

11:24AM 1 militaries might use rebreathers, but it's kind of like asking me
11:24AM 2 if I know how to use a car.

11:24AM 3 It's a common piece of equipment for use underwater.
11:24AM 4 Everybody is pretty much going to be using the same one.

11:24AM 5 Q. Well, you're aware, for instance, how foreign militaries might
11:24AM 6 be able to get a commercial-grade rebreather and modify it for
11:24AM 7 their military purposes?

11:24AM 8 A. No, I am not familiar with how they would go about doing that.

11:24AM 9 MR. THAKUR: No further questions, Your Honor.

11:25AM 10 THE COURT: Any redirect?

11:25AM 11 MR. UDOLF: No, Your Honor.

11:25AM 12 THE COURT: Did you say yes or no?

11:25AM 13 MR. UDOLF: No, Your Honor.

11:25AM 14 THE COURT: Mr. Chapman --

11:25AM 15 THE WITNESS: Yes, ma'am.

11:25AM 16 THE COURT: -- you survived. Thank you very much. Have
11:25AM 17 you testified ever before?

11:25AM 18 THE WITNESS: No. Perry Mason trained me. May I?

11:25AM 19 THE COURT: You may step down.

11:25AM 20 THE WITNESS: Thank you.

11:25AM 21 THE COURT: Thank you very much.

11:25AM 22 (Witness excused.)

11:25AM 23 THE COURT: Be careful because there is a ramp.

11:25AM 24 Mr. Udolf, does that then take care of your objection to
11:26AM 25 12 and, I believe, also paragraphs 48 and 49? It provides the

1 foundation that you want for your two objections, paragraphs 48
2 and 49, as well as for paragraph 12.

3 MR. UDOLF: Well, that's certainly the only evidence that
4 we offer as to those paragraphs.

5 THE COURT: Do you agree or disagree with what is there
6 right now in paragraph 12 as stated, or is there something that
7 you want to add to paragraph 12?

8 In other words, I hear that you object to it. Tell me
9 how you would want to modify paragraph 12, and set out your
10 proposal.

11 MR. UDOLF: I would just eliminate the words "and
12 military applications" because based on the testimony that we
13 heard, other than training purposes, a rEvo III rebreather does
14 not have any military application.

15 THE COURT: And, Mr. Thakur, what is your position?

16 MR. THAKUR: Your Honor, we disagree. It is obviously
17 dual use. There's multiple people testifying as to its dual use.
18 We have a declaration from someone from the defense technology
19 department, talking about how it has --

20 THE COURT: Bring the microphone a little closer to you,
21 please.

22 MR. THAKUR: Yes, Your Honor.

23 THE COURT: You can sit down. Please sit down. The
24 microphone, you can move it, and just slide it over so that you're
25 close to it, please.

11:28AM 1 MR. THAKUR: Yes, Your Honor.

11:28AM 2 THE COURT: Pull it closer, the whole thing. There we
11:28AM 3 go.

11:28AM 4 MR. THAKUR: Okay. As I indicated, multiple people
11:28AM 5 testified at trial that rebreathers have a dual use; both a
11:28AM 6 commercial and a military application. Specifically, in our
11:28AM 7 declaration that we provided to the Court from James Marsh, who is
11:28AM 8 part of the Defense Technology Security Administration, who has
11:28AM 9 had over two decades' worth of experience at the surface war
11:28AM 10 office in the U.S. Navy, indicated that these types of
11:28AM 11 rebreathers, including rEvo, would have a military application;
11:28AM 12 even if, as indicated, it may produce some bubbles, or even if it
11:29AM 13 has some metal components that would produce some amount of sound.

11:29AM 14 Obviously, militaries can train on that. The U.S.
11:29AM 15 military did, in fact, train on the rEvo rebreathers. Foreign
11:29AM 16 militaries can still use it for training. And probably most
11:29AM 17 importantly, nefarious groups, including terrorists groups, can
11:29AM 18 use it for attacks, even with these added components.

11:29AM 19 A stealth function still exists, even if it's in lesser
11:29AM 20 form than what a military-grade rebreather would look like. This
11:29AM 21 has been a concern of law enforcement for more than two decades,
11:29AM 22 since 2002. It was specifically told to the defendants in this
11:29AM 23 case by commerce agent Brent Wagner about its concerns for
11:29AM 24 terrorism uses. So I think everything within paragraph 12 is
11:29AM 25 accurate.

11:30AM 1 THE COURT: Having considered all of the evidence, both
11:30AM 2 at trial and in the affidavits, and Mr. Chapman's testimony here
11:30AM 3 today, I will not remove the words "military application" because
11:30AM 4 although maybe not as extensive a military application from the
11:30AM 5 defendant's perspective, it does have a military use based upon
11:30AM 6 the evidence in the case. So I will overrule the objection, and
11:30AM 7 maintain the words "military application."

11:30AM 8 MR. UDOLF: Your Honor, if I may, just to clarify for the
11:30AM 9 record. I didn't get a lot of these materials until last night,
11:31AM 10 including Mr. Marsh's declaration that was filed yesterday.

11:31AM 11 But I would note that in his declaration he refers to
11:31AM 12 rebreathers, and I don't believe he refers to rEvo III rebreathers
11:31AM 13 at all. He just refers to rebreathers generically, and so I think
11:31AM 14 the record should reflect that.

11:31AM 15 MR. THAKUR: Your Honor, paragraph 2 of the declaration,
11:31AM 16 he does refer to four rEvo III rebreathers to be an issue in this
11:31AM 17 case.

11:31AM 18 MR. UDOLF: Yeah, but every other reference to
11:31AM 19 rebreathers is generic; it's not rEvo III. All he says there is:
11:31AM 20 I am generally familiar with the facts of this case and
11:31AM 21 defendant's attempt to export four rEvo III rebreathers to Libya.
11:31AM 22 That's the only reference. Everything else is generic.

11:31AM 23 MR. THAKUR: Your Honor, I would note actually that the
11:31AM 24 declaration seems to be in keeping with what the defense's only
11:32AM 25 witness talked about today; which is about the extended range of

11:32AM 1 it and these commercial rebreathers, the extended time that it can
11:32AM 2 be used underwater, and the fewer bubbles that it produces, so I
11:32AM 3 think they're consistent.

11:32AM 4 THE COURT: I am going to leave paragraph 12. I am
11:32AM 5 taking all of the testimony of both Mr. Chapman, Mr. Marsh's
11:32AM 6 affidavit, what I heard during the trial, and those are things
11:32AM 7 that I will consider as I determine under application note No. 2
11:32AM 8 of the two -- I mean 2 and 5.2, application note No. 2.

11:32AM 9 Again, I am dealing with the sentencing guidelines as
11:33AM 10 they are. Thank God the Sentencing Commission provided that
11:33AM 11 application note so that I can try and fashion the right base
11:33AM 12 offense level.

11:33AM 13 Okay. And the next objection, paragraph 18?

11:33AM 14 MR. UDOLF: The only thing we would add to that, Judge,
11:33AM 15 is that Osama Bensadik contacted Helium to purchase rebreathers,
11:33AM 16 at the time he contacted them, no mention was made of a Libyan
11:33AM 17 company involvement.

11:33AM 18 I think the evidence was that -- if I recall correctly --
11:33AM 19 that it was discovered that this item was planned for shipment
11:33AM 20 sometime in May, and the initial contact was in April.

11:33AM 21 So we just think that the record should reflect that at
11:34AM 22 the outset it was not apparent to people at Helium that the
11:34AM 23 rebreathers would be heading for or contemplating heading for
11:34AM 24 Libya.

11:34AM 25 THE COURT: Isn't it simply a description of the various

11:34AM 1 people and their roles, paragraphs 13, 14, 15, 16, 17, 18?

11:34AM 2 MR. UDOLF: It is, Your Honor.

11:34AM 3 THE COURT: So it's an accurate statement for the
11:34AM 4 purposes of, basically, just simply is a statement of fact, which
11:34AM 5 the evidence supported. It doesn't imply the timeline. This is a
11:34AM 6 statement of who? Osama Bensadik was a resident of Virginia.
11:34AM 7 There is no dispute as to that; correct?

11:34AM 8 MR. UDOLF: Correct.

11:34AM 9 THE COURT: And he is the one that initiated the contact
11:35AM 10 through the Zaghabs?

11:35AM 11 MR. UDOLF: Right, Your Honor. I suppose I'm being
11:35AM 12 overly careful here. We will withdraw the objection.

11:35AM 13 THE COURT: Okay. And that does preserve your Libyan
11:35AM 14 company, as opposed to the country of Libya --

11:35AM 15 MR. UDOLF: Yes, Your Honor.

11:35AM 16 THE COURT: -- which was very important in one of your
11:35AM 17 earlier objections.

11:35AM 18 MR. UDOLF: That's correct.

11:35AM 19 THE COURT: Okay. The next objection is 21.

11:35AM 20 MR. UDOLF: We have no further argument as to that, Your
11:35AM 21 Honor.

11:35AM 22 THE COURT: Okay. Since this is simply a direct quote of
11:35AM 23 the indictment, which is what the defendants were found guilty of,
11:35AM 24 I will overrule the objections, if that's the sole objection there
11:35AM 25 is.

11:35AM 1 If you have anything in particular that you would like to
11:35AM 2 add or subtract, I am happy to consider it.

11:36AM 3 MR. UDOLF: No, Judge.

11:36AM 4 THE COURT: Okay. So the objection to paragraph 21 is
11:36AM 5 overruled.

11:36AM 6 Paragraph 23, your objection is to specifically, quote:
11:36AM 7 Attempted -- that --

11:36AM 8 The whole sentence is: After being instructed by the
11:36AM 9 Department of Commerce special agent that the rebreathers could
11:36AM 10 not be exported to Libya while a license determination was
11:36AM 11 pending, Sotis, Voissem, and Deborah Wesler attempted to evade
11:36AM 12 export restriction by having an intermediary company, Ramas, LLC,
11:36AM 13 arrange to pick up and export the controlled items to Libya
11:37AM 14 without a license.

11:37AM 15 And your objection is?

11:37AM 16 MR. UDOLF: Well, basically, it was Mohammad Zaghab that
11:37AM 17 originally suggested to Ms. Voissem that his shipping company take
11:37AM 18 over.

11:37AM 19 THE COURT: Wasn't that in response to messages from Mr.
11:37AM 20 Sotis' company that they needed -- the defendants were having
11:37AM 21 problems getting them, and so that they should take them over?

11:37AM 22 MR. UDOLF: No, Judge. I know that's an issue that the
11:37AM 23 government has raised.

11:37AM 24 THE COURT: But I thought that was the testimony at trial
11:37AM 25 as well.

11:37AM 1 MR. UDOLF: Well, Mr. Sotis suggested to Ms. Voissem on
11:37AM 2 one occasion in an e-mail that maybe it's time for Osama and
11:38AM 3 Mohammad to take this thing over, or words to that effect. And I
11:38AM 4 think that was on July 30th or 31st. But that was never
11:38AM 5 communicated to Mohammad Zaghab.

11:38AM 6 As a matter of fact, Mohammad Zaghab on August 1st first
11:38AM 7 fronted the idea of: Maybe we should take this over. And then
11:38AM 8 Emilie Voissem responded on August 2nd: Yeah, maybe that's a good
11:38AM 9 idea to do that, take it over.

11:38AM 10 But Mr. Sotis never originated that idea with Mr. Zaghab.
11:38AM 11 That was just discussed in-house.

11:38AM 12 MR. THAKUR: Your Honor, I would say that obviously the
11:38AM 13 e-mail does exist between Sotis and Voissem on that.

11:38AM 14 THE COURT: And the date of that is?

11:38AM 15 MR. THAKUR: July 30th.

11:38AM 16 THE COURT: Okay.

11:38AM 17 MR. THAKUR: And that's after they found out from Mr.
11:38AM 18 Robotka that there was this ban on shipments to Libya. And so
11:39AM 19 Sotis directly said to Voissem that: We don't need trouble from
11:39AM 20 the government for making an illegal shipment, so the Zaghabs
11:39AM 21 should look into what they wanted to do with this.

11:39AM 22 MR. UDOLF: Judge, actually, I have to point this out.
11:39AM 23 They keep mentioning that they found out from Mr. Robotka that
11:39AM 24 there was a ban on shipments to Libya. That was not correct.

11:39AM 25 THE COURT: I understand that your position has been that

11:39AM 1 Mr. Robotka is -- I don't want to be gross -- is a lying son of a
11:39AM 2 gun, and everything that comes out of his mouth should be
11:39AM 3 disregarded; and, in fact, is the equivalent of perjury.

11:39AM 4 MR. UDOLF: I wouldn't be that coarse, Judge. I would
11:39AM 5 just say he's not reliable.

11:39AM 6 THE COURT: That was the sense that I got from reading
11:39AM 7 the papers.

11:40AM 8 MR. THAKUR: Your Honor, in this case there're e-mails
11:40AM 9 between Voissem and Sotis saying: Mr. Robotka found this embargo
11:40AM 10 document on Libya, and that's what Sotis is responding to saying:
11:40AM 11 We don't want trouble from the government for making an illegal
11:40AM 12 shipment.

11:40AM 13 MR. UDOLF: Yeah. That was on July 31st.

11:40AM 14 THE COURT: Right. But there is no dispute that Robotka
11:40AM 15 did -- this started the conversation in-house, even as to whether
11:40AM 16 or not there were problems going forward, or I guess maybe the
11:40AM 17 forwarder.

11:40AM 18 When was the freight forwarder?

11:40AM 19 MR. THAKUR: It was right around that time. I think
11:40AM 20 July 29th.

11:40AM 21 MR. UDOLF: That's correct. That's correct.

11:40AM 22 THE COURT: And that was about the time. And when did
11:40AM 23 Mr. Robotka --

11:40AM 24 MR. THAKUR: His testimony was that he communicated that
11:40AM 25 even before that. What we do have is, I think, the text message

11:41AM 1 to Emilie Voissem on July 29th talking about how rebreathers have
11:41AM 2 a distinctive military application, and concerns by the U.S.
11:41AM 3 government about previous uses of underwater equipment in
11:41AM 4 bombings. That was on July 29th. That would have been the same
11:41AM 5 day that, I think, Global Forwarding communicated with Helium
11:41AM 6 their concerns.

11:41AM 7 THE COURT: Remind me: Who is the text between?

11:41AM 8 MR. THAKUR: It was a text from Sean Robotka to Emilie
11:41AM 9 Voissem.

11:41AM 10 THE COURT: Okay.

11:41AM 11 MR. UDOLF: I'm sorry, Judge. I didn't mean to
11:41AM 12 interrupt. But I think there was an e-mail from Ms. Voissem,
11:41AM 13 either on the 30th or the 31st, within a day or two after she
11:41AM 14 received this text from Mr. Robotka informing Mr. Sotis about the
11:41AM 15 issue of the President Obama's executive order.

11:42AM 16 THE COURT: When did that occur? And how is that
11:42AM 17 documented?

11:42AM 18 MR. UDOLF: It's documented by an e-mail.

11:42AM 19 MR. THAKUR: That's correct. Emilie Voissem e-mailed
11:42AM 20 Pete Sotis, copying Sean Robotka saying that: Sean Robotka found
11:42AM 21 this, President Obama's declaration.

11:42AM 22 THE COURT: I remember that document. And then Mr. Sotis
11:42AM 23 responded?

11:42AM 24 MR. THAKUR: He responded on July 30th, what is contained
11:42AM 25 in Government's Exhibit 12U saying that: It's time that Bensadik

1 or Zaghab should look into taking over the shipment because "we
2 don't want trouble from the government for making an illegal
3 shipment."

4 THE COURT: So what you're saying is that --

5 So precisely how would you want to amend this so we can
6 see what your proposal is, Mr. Udolf?

7 MR. UDOLF: Well, specifically in paragraph 6 of our
8 objection, we point out that, in fact, it was Mr. Zaghab that
9 originally suggested that his company take over shipment of the
10 rebreathers.

11 THE COURT: I think that there is a suggestion that that
12 may have emanated from something out of Mr. Sotis' shop.

13 MR. UDOLF: No, it did not.

14 THE COURT: How do you know?

15 MR. UDOLF: Because it's not reflected in the e-mails or
16 the texts.

17 MR. THAKUR: Your Honor, if I may? I think there is a
18 larger point on this sentence, which is that the evasion was that
19 the defendants didn't inform the Zaghab's about what the Commerce
20 Department had said were their concerns.

21 They wanted to get their money. They wanted these items
22 to go to Libya. And they knew that if the Zaghab's were doing it,
23 they were insulated from what was happening. That's why it uses
24 the terms: evade the export restrictions by having an
25 intermediary company arrange to pick it up.

11:44AM 1 THE COURT: How about we just simply say: Attempted to
11:44AM 2 evade the export restrictions by allowing an intermediary company
11:44AM 3 to arrange to pick up and export?

11:44AM 4 MR. THAKUR: That's fine.

11:44AM 5 MR. UDOLF: We don't object to that.

11:44AM 6 THE COURT: Okay. So instead of the word "having," we'll
11:44AM 7 just put "by allowing." Will you make that change, Ms. Gould?

11:45AM 8 MS. GOULD: Yes.

11:45AM 9 THE COURT: Does that take care of the objection to
11:45AM 10 paragraph 23?

11:45AM 11 MR. UDOLF: I think so, Judge.

11:45AM 12 THE COURT: The next objection is to paragraph 24.

11:45AM 13 MR. UDOLF: Judge, there is no evidence whatsoever
11:45AM 14 regarding \$180,000 purchase of rebreathers and other diving
11:45AM 15 equipment in this case.

11:45AM 16 THE COURT: And remind me: What's the government's
11:45AM 17 response to that?

11:45AM 18 MR. THAKUR: Your Honor, we -- and I think they would
11:45AM 19 concede that the amount of money they received from Libya through
11:45AM 20 the Zaghabs was, I think, at least \$112,000. And at the time of
11:46AM 21 the returning of the equipment in August of 2016 Cody Group was in
11:46AM 22 the process of ordering additional equipment. And, in fact, we
11:46AM 23 indicated in our response there were at least 17 separate type of
11:46AM 24 items that they were requesting worth thousands of additional
11:46AM 25 dollars at the time.

11:46AM 1 So we want to correct it to say: at least \$112,000 worth
11:46AM 2 of rebreathers and other diving equipment. And we're fine with
11:46AM 3 that, but it certainly was well in excess of \$112,000.

11:46AM 4 MR. UDOLF: Judge, the problem with that is that the only
11:46AM 5 thing that required a license in this case were the rebreathers,
11:46AM 6 and the cost of the rebreathers was \$39,120; of that, about \$4600
11:47AM 7 would have been profit to Add Helium.

11:47AM 8 THE COURT: What I suggest to the parties is we say
11:47AM 9 purchase in excess of -- changing the words: approximately
11:47AM 10 \$180,000 worth of rebreathers and other diving equipment; put in:
11:47AM 11 to purchase in excess of 112,000; or we can round it up to
11:47AM 12 \$113,000 worth of rebreathers and other diving equipment.

11:47AM 13 MR. UDOLF: Your Honor, we would still object to that
11:47AM 14 because the only thing that required a license, and therefore was
11:47AM 15 a violation of the law, was the shipment of the rebreathers.

11:48AM 16 THE COURT: But that is not what that paragraph 24 goes
11:48AM 17 to. Paragraph 24 simply outlines the substance of the
11:48AM 18 relationship and what Bensadik was intending to do.

11:48AM 19 And as I understand it, you were concerned about the
11:48AM 20 \$180,000 worth of rebreathers. And your total amount received
11:48AM 21 from these purchases was \$112,923.31, which for lawyers' purposes,
11:48AM 22 we usually round up to the next closest when it's 923 and \$0.31.
11:48AM 23 If you want me to, I can make it \$112,950 so we round it out and
11:49AM 24 have more zeros.

11:49AM 25 MR. UDOLF: Not necessary, Judge. I just ask that you

11:49AM 1 note our objection.

11:49AM 2 THE COURT: Is there any objection to my making that
11:49AM 3 amendment, changing from approximately \$180,000 worth of
11:49AM 4 rebreathers to: in excess of \$113,000 worth of rebreathers and
11:49AM 5 other diving equipment?

11:49AM 6 MR. THAKUR: No objection from the government.

11:49AM 7 MR. UDOLF: No further objection, Your Honor.

11:49AM 8 THE COURT: All right. And, Ms. Gould, can you make that
11:49AM 9 change?

11:49AM 10 MS. GOULD: Yes, Your Honor.

11:49AM 11 THE COURT: The next one is in paragraph 27.

11:49AM 12 MR. UDOLF: Judge, we'd just ask that the Court note our
11:49AM 13 objection to that.

11:49AM 14 THE COURT: Because based on the testimony at trial, I
11:49AM 15 will overrule it. The paragraph says: Robotka learned in
11:50AM 16 July 2016 that the shipment was going to Libya and told Voissem
11:50AM 17 and Sotis that such shipments to Libya were illegal and that they
11:50AM 18 should not do it. Robotka informed Voissem that rebreathers have
11:50AM 19 a military application and that the U.S. government considers them
11:50AM 20 dual-use equipment. Based upon the evidence, I will overrule
11:50AM 21 that.

11:50AM 22 The next one is No. 28.

11:50AM 23 MR. UDOLF: We have nothing to add to the objection that
11:50AM 24 we stated in our paragraph 9.

11:51AM 25 THE COURT: You have a statement in here in your

11:51AM 1 paragraph 9 as to paragraph 28 of the presentence investigation
11:51AM 2 report. You have: Indeed as early as August 1, 2016, Diana
11:51AM 3 Zaghab informed Miss Voissem that she believed the executive order
11:51AM 4 was not applicable to their transaction.

11:51AM 5 I don't remember that testimony. Was there testimony to
11:51AM 6 that effect?

11:51AM 7 MR. THAKUR: I don't know that there was testimony, but
11:51AM 8 it was in an e-mail.

11:51AM 9 MR. UDOLF: Yes, it was in an e-mail. I don't know if it
11:51AM 10 came out at trial or not.

11:51AM 11 THE COURT: Well, what was the date of that e-mail? And
11:51AM 12 that was the Obama Executive Order 13726?

11:51AM 13 MR. THAKUR: Yes, Your Honor. I think it was in the same
11:52AM 14 e-mail that Diana Zaghab was asking whether or not it was dual use
11:52AM 15 and never received a response.

11:52AM 16 THE COURT: I'm sorry, what did you say?

11:52AM 17 MR. THAKUR: I think it was part of the same e-mail or
11:52AM 18 certainly the same e-mail chain in which Diana Zaghab was asking
11:52AM 19 Emilie Voissem: Is this considered dual use or have some
11:52AM 20 technical function?

11:52AM 21 Diana wasn't familiar with rebreathers. She was asking
11:52AM 22 Voissem about her knowledge about it, and Voissem never responded
11:52AM 23 as to whether or not it was dual use.

11:52AM 24 THE COURT: And in what context then did that follow the
11:52AM 25 statement that Miss Zaghab said that the executive order was not

1 applicable to their transaction? Before or after?

2 MR. THAKUR: I think it might have been part of the same
3 e-mail conversation.

4 THE COURT: Before or after that sentence? Can I see the
5 e-mail, I guess, is what I'm asking?

6 MR. THAKUR: I can try to pull it up. I, unfortunately,
7 don't have that particular exhibit with me.

8 MR. UDOLF: It's Exhibit 12W, I think.

9 THE COURT: I do hate to do this, but as I told you all
10 yesterday, I have a 12:00 o'clock appointment that should take an
11 hour, and it's by Zoom; so I do need to go and boot it up.

12 If you could find that and bring it back. Let's see if
13 there is another one that we can take care of so that we're going
14 to keep marching on until it's five minutes of. Hopefully my law
15 clerk back in chambers is ordering some kind of lunch. Thank you.
16 And then we can resume at 1:30. I'm concerned we're not going to
17 finish at the rate we're going today.

18 Paragraph 10 of your objections refers to -- so I'm not
19 yet ruling on that until the objection to paragraph 28 --

20 Your objection to paragraph 28, how do you want me to
21 change that is what I'm asking, Mr. Udolf?

22 MR. UDOLF: Well, we object to any reference to the
23 executive order.

24 THE COURT: You agree that it was discussed among the
25 defendants?

11:55AM 1 MR. UDOLF: Yes.

11:55AM 2 THE COURT: So how can I ignore it?

11:55AM 3 MR. UDOLF: Well, I guess my position is that it has
11:55AM 4 nothing to do -- that it was an erroneous issue, and it should not
11:55AM 5 be relevant in this particular case.

11:55AM 6 THE COURT: But you will agree that it did cause
11:55AM 7 discussion among the defendants --

11:56AM 8 MR. UDOLF: I do.

11:56AM 9 THE COURT: -- as to: Is this going cause us a problem?
11:56AM 10 Including Mr. Sotis' statement: Well, I don't want any problems
11:56AM 11 with the government sending an illegal shipment.

11:56AM 12 MR. UDOLF: The objection is for the record, Judge, in
11:56AM 13 that sense.

11:56AM 14 THE COURT: Okay. And I will overrule the objection.
11:56AM 15 How about that?

11:56AM 16 MR. UDOLF: Okay.

11:56AM 17 THE COURT: But if you can find that e-mail so that I can
11:56AM 18 just make sure that I refresh my recollection, Mr. Thakur, over
11:56AM 19 lunch, I would appreciate it.

11:56AM 20 MR. THAKUR: Yes, Your Honor.

11:56AM 21 THE COURT: The next objection is paragraph 30.

11:57AM 22 MR. UDOLF: We object to this paragraph for the reasons
11:57AM 23 stated.

11:57AM 24 THE COURT: Because it does not include that Mr. Mohammad
11:57AM 25 Zaghab suggested on August the 1st Ramas handle the shipment

11:57AM 1 through our shipping company, which is Government Exhibit 12BB,
11:57AM 2 e-mail of 8/1/16 at 5:11 P.M.?

11:57AM 3 MR. UDOLF: Yes. Judge, could I be excused for a minute?

11:57AM 4 THE COURT: We're all going to be excused. How about
11:57AM 5 that? We're in recess, and we will resume at 1:30.

11:58AM 6 (Lunch recess at 11:58 A.M.)

01:37PM 7 THE COURT: All counsel are present and all the
01:37PM 8 defendants and the probation office are present. Please have a
01:37PM 9 seat, everyone.

01:37PM 10 And so that the record reflects, the motion to join in --
01:37PM 11 Ms. Voissem's motion to join in and Mr. Sotis' motion to join in
01:37PM 12 his codefendant's objections, all of those are granted. So both
01:37PM 13 motions are granted.

01:37PM 14 I saw that there were two motions by each side; right?

01:37PM 15 MR. UDOLF: Judge, I think we -- as I recall, we adopted
01:37PM 16 some of the authorities that were cited by Ms. Voissem's counsel.

01:37PM 17 THE COURT: That's the most recent thing that you all
01:37PM 18 did.

01:37PM 19 MR. UDOLF: Right.

01:37PM 20 THE COURT: That motion is granted. Or are you just
01:38PM 21 adopting and not seeking leave?

01:38PM 22 In other words, I'm trying to make sure that I clean up
01:38PM 23 all of the gaps.

01:38PM 24 MR. UDOLF: We're just adopting it, Your Honor. Thank
01:38PM 25 you.

01:38PM 1 THE COURT: I hope everyone was able to have lunch.

01:38PM 2 And where we were, paragraph 30, I believe -- correct --

01:38PM 3 is that where we were --

01:38PM 4 MR. UDOLF: Yes.

01:38PM 5 THE COURT: -- of the presentence investigation report.

01:38PM 6 So what you're suggesting is you want us to add in there

01:39PM 7 a reference to the exhibit?

01:39PM 8 MR. UDOLF: Yes, Your Honor. That would be, I believe,

01:39PM 9 Exhibit 12BB, based on the day before there was an e-mail from

01:39PM 10 Mohammad Zaghab to Emilie Voissem in which he says: Please let us

01:39PM 11 know if you want us to handle the shipping through our companies.

01:39PM 12 So basically the e-mail from Emilie the following day was

01:39PM 13 in response to that offer, and we'd ask that the record be so

01:39PM 14 clarified -- that that paragraph be so clarified.

01:40PM 15 THE COURT: And then the second objection that you have

01:40PM 16 in paragraph 30 is the final sentence of the paragraph, which says

01:40PM 17 that: Ms. Voissem did not respond to Ms. Zaghab's query regarding

01:40PM 18 whether any of the items in the shipment were considered dual use,

01:40PM 19 which is Government's Exhibit 12V.

01:40PM 20 MR. UDOLF: Correct, Your Honor. I think we suggest in

01:40PM 21 our motion that she probably was -- we hypothesized anyway that it

01:40PM 22 was highly likely that she didn't even know what dual use was and

01:40PM 23 was too embarrassed to basically say that, and that she was not

01:40PM 24 intentionally trying to mislead the Zaghabs at all.

01:41PM 25 THE COURT: Mr. Thakur.

01:41PM 1 MR. THAKUR: Your Honor, I think that's highly unlikely
01:41PM 2 based on the trial testimony that on the very day -- it was
01:41PM 3 actually Government Exhibit 12R from Diana Zaghab to Emilie
01:41PM 4 Voissem, July 29, 2016, where Diana Zaghab says: Usually the
01:41PM 5 Department of Commerce would require a special license if a
01:41PM 6 commodity is considered sensitive or high technology. Then she
01:41PM 7 gives some examples of it.

01:41PM 8 Is your diving equipment considered special high tech or
01:41PM 9 can be deemed as dual use? Direct question from Diana Zaghab to
01:41PM 10 Emilie Voissem.

01:41PM 11 That very day she -- meaning Emilie Voissem -- gets a
01:41PM 12 text message from Sean Robotka saying that the U.S. government
01:41PM 13 considers rebreathers to have a distinctive military use --
01:41PM 14 application -- a distinctive military application. And Sean
01:42PM 15 Robotka goes on to explain how the government was concerned about
01:42PM 16 how there was bombings in 2002 using underwater equipment.

01:42PM 17 So all this in context shows very much that Emilie
01:42PM 18 Voissem was aware this could be used for military technology in
01:42PM 19 response to this.

01:42PM 20 THE COURT: Perhaps we should add a paragraph here that
01:42PM 21 may address both issues, and it would probably be --

01:42PM 22 What time was the e-mail from Ms. Zaghab?

01:42PM 23 MR. THAKUR: 1:54 P.M.

01:42PM 24 THE COURT: And what time was the e-mail from Ms. Voissem
01:42PM 25 to Sotis copying Robotka?

01:42PM 1 MR. THAKUR: Oh, you're talking about the presidential
01:43PM 2 declaration?

01:43PM 3 THE COURT: Yes.

01:43PM 4 MR. THAKUR: That was at 9:51 P.M. on July 29th. That's
01:43PM 5 contained in Government Exhibit 12T.

01:43PM 6 THE COURT: Okay. So perhaps between paragraph --
01:43PM 7 present paragraph 27 and paragraph 28, there should be an addition
01:43PM 8 that on July the 29th at 1:54 P.M. Ms. Zaghab sent that e-mail
01:44PM 9 and, quote, "the e-mail." And then at 9:51 P.M. on the 29th
01:44PM 10 Voissem e-mailed Sotis the Department of Commerce.

01:44PM 11 And then that way it ties into the timeline of all of the
01:44PM 12 -- these are the critical e-mails of the case, and I think they
01:44PM 13 should all be reflected in the presentence investigation report.

01:44PM 14 MR. THAKUR: I think we should also add from Government
01:44PM 15 Exhibit 19 that on July 29th, at 7:43 P.M., Robotka texted Emilie
01:45PM 16 Voissem saying that in 2003 Homeland tried to take over all the
01:45PM 17 diving because of the shipped booming or bombing they abandoned at
01:45PM 18 the inception their view on rebreathers. They have a distinctive
01:45PM 19 military application.

01:45PM 20 MR. UDOLF: What date was that?

01:45PM 21 MR. THAKUR: That was on July 29, 2016, at 7:43 P.M.,
01:45PM 22 contained in Government's Exhibit 19.

01:45PM 23 THE COURT: Okay. Ms. Gould, you're going to have -- I
01:45PM 24 know it's feasible, but how do you recommend that we do it?
01:45PM 25 Simply in a third addendum or what?

01:45PM 1 MS. GOULD: I can revise the PSR and add that paragraph.

01:46PM 2 THE COURT: My only concern then is that if you look at

01:46PM 3 the revised PSR, the new paragraph numbers won't really coincide

01:46PM 4 with the objections, and it makes it difficult; assuming there is

01:46PM 5 going to be an appeal.

01:46PM 6 MS. GOULD: I can prepare an addendum so it doesn't mess

01:46PM 7 up the paragraph numbers.

01:46PM 8 THE COURT: So let us all have agreement on what is going

01:46PM 9 to be in this addendum paragraph.

01:46PM 10 Mr. Thakur, since you have the -- I presume you have the

01:46PM 11 exhibits in front of you?

01:46PM 12 MR. THAKUR: I do, Your Honor.

01:46PM 13 THE COURT: If you could slowly outline the dates and

01:46PM 14 times and the substance of the e-mails so that the court reporter

01:46PM 15 can get them down.

01:46PM 16 MR. THAKUR: Yes, Your Honor.

01:46PM 17 THE COURT: And then I will ask my wonderful court

01:47PM 18 reporter to make a copy of that to give to the probation officer.

01:47PM 19 Or maybe we should write it out because I also want Mr. Udolf and

01:47PM 20 Mr. Moss to be able to see it and know what we're doing.

01:47PM 21 Any suggestions for how we do this?

01:47PM 22 What we have are three important paragraphs of

01:47PM 23 documentary evidence that was at trial, that are not specifically

01:48PM 24 specified in the presentence investigation report.

01:48PM 25 MR. THAKUR: I think to keep it chronologically as it is

01:48PM 1 in the PSI, we can modify paragraph 28, which begins: On July 29,
01:48PM 2 2016, Voissem e-mailed Sotis.

01:48PM 3 And before that we can talk about how on July 29, 2016,
01:48PM 4 at 1:54 P.M. in an e-mail contained in Government Exhibit 12R,
01:48PM 5 Diana Zaghab asked Emilie Voissem whether diving equipment is
01:48PM 6 considered special high tech or can be deemed as dual use, and
01:48PM 7 that the Department of Commerce would require a special license if
01:48PM 8 a commodity is considered sensitive or high technology.

01:48PM 9 THE COURT: So you would insert that as a new first
01:48PM 10 sentence in paragraph 28?

01:49PM 11 MR. THAKUR: Yes. And then continuing the next sentence
01:49PM 12 on that same day, on July 29, 2016, at 7:43 P.M. Sean Robotka sent
01:49PM 13 a text message to Emilie Voissem saying in 2003 Homeland tried to
01:49PM 14 take over all diving because of the ship, then spells it
01:49PM 15 b-o-o-m-i-n-g, but at trial clarified he meant bombing, they
01:49PM 16 abandoned at the inception their view on rebreathers. They have a
01:49PM 17 distinctive military application.

01:49PM 18 THE COURT: And which exhibit number is that?

01:49PM 19 MR. THAKUR: That's contained in Government Exhibit 19.

01:50PM 20 MR. MOSS: Just for clarification, is this the e-mail
01:50PM 21 that you're alluding to in paragraph 27, when you say Robotka
01:50PM 22 informed Voissem, that text message, is that the means of
01:50PM 23 communication that the government is referring to?

01:50PM 24 MR. THAKUR: Yes.

01:50PM 25 THE COURT: I see where you're going, Mr. Moss. The

01:50PM 1 modification should be to paragraph 27, then.

01:50PM 2 MR. MOSS: Right, if we're doing this chronologically --

01:50PM 3 MR. THAKUR: Yes.

01:50PM 4 THE COURT: Yes.

01:50PM 5 MR. MOSS: -- then we would say: At such and such a time

01:50PM 6 on July 29th, Robotka informed Voissem via text that rebreathers

01:50PM 7 have a military application.

01:50PM 8 THE COURT: And then instead of making your proposed

01:50PM 9 addition to paragraph 28, make it to paragraph 27.

01:50PM 10 MR. THAKUR: Yes, that's fine.

01:50PM 11 THE COURT: Ms. Gould, are we being halfway clear as to

01:51PM 12 this committee redrafting your excellent work?

01:51PM 13 MS. GOULD: Yes, Your Honor.

01:51PM 14 THE COURT: Okay. So the amendment will be to

01:51PM 15 paragraph 27, which will say: On July 29th at 1:54 P.M. Diana

01:51PM 16 Zaghab e-mailed Voissem and asked --

01:51PM 17 If you could say it one more time so that Ms. Gould can

01:51PM 18 get it down.

01:51PM 19 MR. THAKUR: Yes. I'm sorry, I just missed that. Are we

01:51PM 20 talking about the e-mail on July 29th, or the text message?

01:51PM 21 THE COURT: The e-mail on the 29th at 1:54.

01:51PM 22 MR. THAKUR: Okay.

01:51PM 23 THE COURT: And that is Government Exhibit?

01:51PM 24 MR. THAKUR: 12R, as in rain.

01:52PM 25 THE COURT: If Ms. Gould has that exhibit number, then

01:52PM 1 she can go back as she amends it to get the actual language.

01:52PM 2 MR. THAKUR: Yes.

01:52PM 3 THE COURT: So that will be the first sentence.

01:52PM 4 And then the second sentence is that -- at what time was
01:52PM 5 the text from Mr. Robotka?

01:52PM 6 MR. THAKUR: It was at 7:43. In military time it is
01:52PM 7 listed here as 1943.

01:52PM 8 THE COURT: And that was a text?

01:52PM 9 MR. THAKUR: That was a text message.

01:52PM 10 THE COURT: And then paragraph -- so that is added to
01:52PM 11 paragraph 27 as well.

01:52PM 12 MR. THAKUR: That's correct.

01:52PM 13 THE COURT: And then on paragraph 28, the only addition
01:53PM 14 we are adding there is that on July 29th of 2016 we're putting in
01:53PM 15 the time of 9:51 P.M.

01:53PM 16 MR. THAKUR: That's correct.

01:53PM 17 THE COURT: So then coming back to Mr. Udolf's point of
01:53PM 18 his desire to make it clear that the e-mail from Mr. Zaghab on
01:54PM 19 August the 1st, we simply amend paragraph 30, add in the sentence
01:54PM 20 just on August -- we don't have to be on or about. We know it's
01:54PM 21 August 1st. What time was that e-mail?

01:54PM 22 MR. THAKUR: At 12:37 P.M. from Diana Zaghab to Emilie
01:54PM 23 Voissem.

01:54PM 24 THE COURT: Ms. Gould, can we add in at the beginning of
01:54PM 25 paragraph 30: On August 1st at 12 --

01:55PM 1 The time again, Mr. Thakur?

01:55PM 2 MR. THAKUR: So this is referring to?

01:55PM 3 THE COURT: Mr. Zaghab.

01:55PM 4 MR. UDOLF: I'm referring to the one at 5:11.

01:55PM 5 THE COURT: Oh, at 5:11?

01:55PM 6 MR. THAKUR: Yes.

01:55PM 7 THE COURT: So it's at 5:11 P.M.?

01:55PM 8 MR. UDOLF: Correct.

01:55PM 9 THE COURT: And what time was the August 2nd from Ms.

01:55PM 10 Voissem to the Zaghab's?

01:55PM 11 MR. UDOLF: That was 2:06, Judge. 2:06 P.M.

01:55PM 12 THE COURT: Would you add those specific times? Why

01:56PM 13 don't you read back to us what amendments you are going to make,

01:56PM 14 Ms. Gould.

01:56PM 15 MS. GOULD: Can you hear me?

01:56PM 16 THE COURT: Yes.

01:56PM 17 MS. GOULD: Okay. So paragraph 27, there is going to be

01:56PM 18 a first sentence referring to Government's Exhibit 12R. And you

01:56PM 19 told me to refer to that to get the full language, but it's going

01:56PM 20 to be: On July 29, 2016, at 1:54 P.M. in regards to an e-mail.

01:56PM 21 And then the second sentence in that paragraph is

01:56PM 22 referring to a text message sent at 7:53 P.M. I believe you said

01:57PM 23 that's Government Exhibit 19.

01:57PM 24 MR. THAKUR: 19, that's correct.

01:57PM 25 THE COURT: And that's at 7:53 or 43?

01:57PM 1 MR. MOSS: I have 7:43.

01:57PM 2 THE COURT: That's what my notes say, 7:43.

01:57PM 3 MR. THAKUR: 7:43.

01:57PM 4 THE COURT: Okay.

01:57PM 5 MS. GOULD: 7:43 P.M.

01:57PM 6 And to paragraph 28, we're adding in a sentence in the

01:57PM 7 beginning referring to the time of 1:54 P.M.

01:57PM 8 THE COURT: And where are you putting that in?

01:57PM 9 MS. GOULD: You said that's in paragraph 28, in the

01:57PM 10 beginning of the paragraph.

01:57PM 11 THE COURT: Oh, okay.

01:58PM 12 MR. MOSS: Excuse me, Judge. I'm not clear.

01:58PM 13 My understanding was that the paragraph 27 would include

01:58PM 14 the references to the 1:54 and 7:43 communications; and

01:58PM 15 paragraph 28 would be amended to refer to the 9:51 e-mail, the one

01:58PM 16 that's already referenced in 28.

01:58PM 17 I just want to be sure I had the right sequence.

01:58PM 18 THE COURT: You're correct, Mr. Moss.

01:58PM 19 MR. THAKUR: And for clarification for probation, that

01:58PM 20 e-mail in paragraph 28, July 29th at 9:51, is Government

01:58PM 21 Exhibit 12T.

01:58PM 22 MS. GOULD: 12T.

01:58PM 23 And then as to paragraph 30, what I heard, it was on

01:58PM 24 August 2, 7:16, we're adding in the time of 12:37 P.M., 2:06 P.M.,

01:59PM 25 and 5:11 P.M.; is that correct?

01:59PM 1 THE COURT: What you're doing is you're adding in on
01:59PM 2 August the 1st, 2016, at 5:11, 5:11 P.M.
01:59PM 3 MS. GOULD: August 1st, 2016, at 5:11 P.M.
01:59PM 4 THE COURT: The Zaghabs e-mailed. And what exhibit
01:59PM 5 number is that?
01:59PM 6 MR. THAKUR: 12BB.
01:59PM 7 THE COURT: 12BB.
01:59PM 8 MS. GOULD: 12BB.
01:59PM 9 THE COURT: So if you will, then get that text and insert
01:59PM 10 it.
02:00PM 11 MS. GOULD: Okay.
02:00PM 12 THE COURT: And then the next sentence will be: On or
02:00PM 13 about August the 2nd, 2016, at 2:06 P.M., Voissem e-mailed
02:00PM 14 Mohammad and Diana Zaghab.
02:00PM 15 MS. GOULD: Okay. I have that for the second sentence.
02:00PM 16 Is it just those two changes to paragraph 30?
02:00PM 17 THE COURT: I think so. The other objection you had, Mr.
02:00PM 18 Udolf?
02:00PM 19 MR. UDOLF: It pertained to the reference to the fact
02:00PM 20 that Ms. Voissem did not respond to the question regarding dual
02:00PM 21 use.
02:00PM 22 We're happy for the Court just to note our objection for
02:01PM 23 the reasons indicated.
02:01PM 24 THE COURT: So you're not pursuing your last sentence --
02:01PM 25 the last two sentences: It's also obvious from these e-mails that

02:01PM 1 Ms. Voissem was taking a good bit of abuse from Mohammad Zaghab
02:01PM 2 for delays in shipment prior to meeting with Wagner.

02:02PM 3 MR. UDOLF: I'm trying to see where that is.

02:02PM 4 THE COURT: It's the third sentence from the end.

02:02PM 5 MR. UDOLF: Oh, my objection. I'm sorry.

02:02PM 6 THE COURT: I think that that is more argument, isn't it,
02:02PM 7 rather than relevant to the particular --

02:02PM 8 MR. UDOLF: Correct. That's correct, Judge.

02:02PM 9 THE COURT: So with the additions, is there any objection
02:02PM 10 with the additions that Ms. Gould has just outlined of the
02:02PM 11 timelines with the references to the actual government exhibits?

02:02PM 12 MR. UDOLF: None beyond which we have already noted.

02:02PM 13 MR. MOSS: None for Ms. Voissem.

02:02PM 14 THE COURT: Any other objections that have not been
02:02PM 15 articulated or an alternative proposal submitted or overruled?

02:02PM 16 MR. THAKUR: No, Your Honor.

02:02PM 17 THE COURT: The next one is paragraph 31. And
02:03PM 18 paragraph 31 has several sentences. And you simply say, Mr.
02:03PM 19 Udolf, in its entirety it does not accurately reflect the facts.

02:03PM 20 MR. UDOLF: Well, to the extent that any of the
02:03PM 21 allegations contained in that paragraph are based on statements of
02:03PM 22 Mr. Robotka, particularly the statement that Robotka told somebody
02:03PM 23 the shipment was detained by Wagner and could not go anywhere, we
02:03PM 24 object to that, based on the credibility of arguments that we
02:03PM 25 previously made.

02:03PM 1 I also note that the statement that: Sotis falsely
02:03PM 2 claimed that Agent Wagner said nothing in response to when
02:04PM 3 Mohammad Zaghab asked what had occurred with conversations, it's a
02:04PM 4 technical matter. I mean, nothing had occurred because the
02:04PM 5 decision was pending. So that statement is subject to
02:04PM 6 interpretation.

02:04PM 7 THE COURT: Hold on. Which sentence and paragraph are
02:04PM 8 you now referring to?

02:04PM 9 MR. UDOLF: It's the fourth line from the bottom of that
02:04PM 10 paragraph. It says: Sotis falsely claimed he -- Agent Wagner --
02:04PM 11 said nothing.

02:04PM 12 And my point is that it's technically true that Wagner
02:04PM 13 did not make a determination about any kind of licensure issue, so
02:04PM 14 that statement is subject to an interpretation. And for that
02:04PM 15 reason, we noted the objection.

02:04PM 16 THE COURT: But you're not denying that Sotis responded
02:05PM 17 that --

02:05PM 18 MR. UDOLF: He said nothing.

02:05PM 19 THE COURT: -- he said nothing?

02:05PM 20 MR. UDOLF: He said nothing. Actually, what we're
02:05PM 21 objecting to is the adverb falsely.

02:05PM 22 MR. THAKUR: Your Honor, if I remember the testimony
02:05PM 23 correctly from Mohammad Zaghab, he said that when he spoke to
02:05PM 24 Peter Sotis, Peter Sotis said when the Commerce agent came, he
02:05PM 25 walked around and didn't talk to anybody. Mr. Zaghab asked for

02:05PM 1 clarification: He didn't say anything? And Mr. Sotis told
02:05PM 2 Mr. Zaghab: He said nothing. So in that context, it's clearly
02:05PM 3 false.

02:05PM 4 MR. UDOLF: To be honest with the Court, I don't recall
02:05PM 5 the testimony, and I don't have a transcript of it, so I can't
02:05PM 6 challenge.

02:05PM 7 THE COURT: That's what I remember from Mr. Zaghab's
02:05PM 8 testimony as to the conversation that he testified to that he had
02:06PM 9 with Mr. Sotis.

02:06PM 10 So I will note your objection but overrule it, based on
02:06PM 11 the testimony that I heard. Okay?

02:06PM 12 And I guess that's the primary thing you're objecting to?

02:06PM 13 MR. UDOLF: Yes, Your Honor.

02:06PM 14 THE COURT: And also you're objecting to Robotka
02:06PM 15 testifying that he told Sotis that the shipment was detained?

02:06PM 16 MR. UDOLF: Correct.

02:06PM 17 THE COURT: That was the testimony, and the jury,
02:06PM 18 obviously --

02:06PM 19 He testified to that. He had an opportunity to
02:06PM 20 cross-examine and bring out the various things that undermine his
02:06PM 21 credibility.

02:07PM 22 MR. UDOLF: Understood, Your Honor. We're just making it
02:07PM 23 for the record.

02:07PM 24 THE COURT: So those objections are overruled.

02:07PM 25 Paragraph 32.

02:07PM 1 MR. UDOLF: The only problem we have with this paragraph,
02:07PM 2 Judge, was that it should be clarified that this was going to a
02:07PM 3 private end user and not to Libya, as in the government of Libya,
02:07PM 4 which is a distinction or request for clarification that we
02:07PM 5 previously made in another paragraph as well.

02:07PM 6 THE COURT: I don't remember looking at the bill of
02:07PM 7 lading myself. Did it indicate that the destination was for Cody
02:08PM 8 Group Submarine Services?

02:08PM 9 MR. UDOLF: Correct, and Misurata -- which has various
02:08PM 10 spellings -- Libya.

02:08PM 11 THE COURT: But did it specifically say that name, Cody
02:08PM 12 Group Submarine Services?

02:08PM 13 MR. UDOLF: Yes. It's in the bill of lading, yes.

02:08PM 14 THE COURT: Do you agree with that, Mr. Thakur?

02:08PM 15 MR. THAKUR: I think it did say Cody Group. Whether it
02:08PM 16 said submarine services on the bill of lading --

02:08PM 17 MR. UDOLF: Hold on.

02:08PM 18 THE COURT: Well, whatever the document says is what we
02:08PM 19 will put in there.

02:08PM 20 MR. UDOLF: There is a document that says that, and I
02:08PM 21 will find it in a minute. I think it's -- I think it's 8 -- oh,
02:08PM 22 I'm sorry. It's 8C. It's a bill to Mr. Abdulla Elbanani,
02:09PM 23 E-l-b-a-n-a-n-i, Cody Group Submarine Services. It has a street
02:09PM 24 address for Misurata, Libya.

02:09PM 25 THE COURT: Can you show that to Ms. Gould so she can

02:09PM 1 write it down. And if you would insert that in: The shipment was
02:09PM 2 to, and then list exactly what is on the bill of lading.

02:09PM 3 MR. UDOLF: It's actually called a commercial invoice,
02:09PM 4 Judge.

02:10PM 5 MR. THAKUR: The bill of lading itself, which I believe
02:10PM 6 is Government Exhibit 7J, does not indicate to Cody. It's general
02:10PM 7 cargo diving equipment, Misurata, Libya.

02:10PM 8 THE COURT: So what did Voissem handle? The bill of
02:10PM 9 lading or the commercial --

02:10PM 10 MR. THAKUR: The bill of lading. The commercial invoice
02:10PM 11 was to Ramas; between Ramas and Cody Group.

02:10PM 12 THE COURT: Okay. So, Ms. Gould, we are going to --
02:10PM 13 So what exactly does the bill of lading say?

02:10PM 14 MR. THAKUR: The bill of lading contained in Government
02:10PM 15 Exhibit 7J from Sunspeed Transport, it indicates description,
02:10PM 16 number of articles, general cargo, then it gives dimensions,
02:11PM 17 diving equipment, Misurata, Libya, and it gives the weight.

02:11PM 18 THE COURT: So there is no reference to the Cody Group in
02:11PM 19 the bill of lading?

02:11PM 20 MR. THAKUR: Not on the bill of lading itself, no.

02:11PM 21 MR. UDOLF: Not on the bill of lading, no.

02:11PM 22 THE COURT: Then we will not add it in there, because
02:11PM 23 that contract would have been between the Zaghabs and their
02:11PM 24 shipping company, and Ms. Voissem would have prepared the bill of
02:11PM 25 lading.

02:11PM 1 MR. THAKUR: That's correct.

02:11PM 2 THE COURT: Okay. So with that, I'm going to overrule
02:11PM 3 the objection because it is an accurate statement of what Ms.
02:11PM 4 Voissem did.

02:11PM 5 Paragraph --

02:12PM 6 MR. MOSS: Excuse me, Judge. Before we move to 31, Ms.
02:12PM 7 Voissem just wants to note her objection to any statement that she
02:12PM 8 was the one who handled the bill of lading.

02:12PM 9 She just informed me that that was handled by Diana
02:12PM 10 Zaghab, not herself. In other words, Mrs. Zaghab was the one who
02:12PM 11 actually prepared the bill of lading, and she objects to any
02:12PM 12 comments in that paragraph that she was the one that did so.

02:12PM 13 THE COURT: Okay.

02:12PM 14 MR. THAKUR: Your Honor, I think we've got government
02:12PM 15 e-mail where she's telling Diana that she handed that paperwork to
02:12PM 16 the transport driver; so essentially a distinction without a
02:12PM 17 difference.

02:12PM 18 THE COURT: She may not have prepared it, but does the
02:12PM 19 evidence show that she saw the bill of lading?

02:12PM 20 MR. THAKUR: If she was handing it to the driver -- she
02:12PM 21 was e-mailed the bill of lading from Diana. And so in Government
02:13PM 22 Exhibit 12GG, August 9, 2016, Diana Zaghab e-mailed Emilie Voissem
02:13PM 23 with that bill of lading, saying: I have attached another BOL --
02:13PM 24 or bill of lading -- for you to forward to the loading facility
02:13PM 25 for the driver/trucker along with the one that I sent to you

02:13PM 1 yesterday. I am including that one as well for your ready
02:13PM 2 reference. Please make sure both documents are given to him.
02:13PM 3 Pickup is scheduled today. Please advise as soon as shipment has
02:13PM 4 been picked up and provide me with signed documents.

02:13PM 5 THE COURT: So what were the two documents that were
02:13PM 6 provided in the two separate e-mails?

02:13PM 7 MR. THAKUR: That's contained in Government Exhibit 12GG1
02:13PM 8 and 12GG2. It's the inland shipping instructions, as well as the
02:13PM 9 bill of lading.

02:13PM 10 THE COURT: And what does the inland shipping
02:13PM 11 instructions say on it?

02:13PM 12 MR. THAKUR: That says: Ship from Helium or Add Helium
02:14PM 13 at their Fort Lauderdale address. Ship to Shipco Transport in
02:14PM 14 Miami.

02:14PM 15 It says origin instructions: Libya shipment.

02:14PM 16 And then under carrier information, it says it's: Diving
02:14PM 17 equipment, 1,605 pounds.

02:14PM 18 THE COURT: Well, based upon the exhibits in evidence, I
02:14PM 19 will leave it the way it is.

02:14PM 20 MR. THAKUR: I should also note for the record,
02:14PM 21 Government Exhibit 12HH, Emilie Voissem e-mailed Diana Zaghab
02:14PM 22 August 9, 2016, at 5:53 P.M. saying: Hello, Diana. The crates
02:14PM 23 were picked up about 3:30 P.M. I provided the driver with the
02:14PM 24 paperwork, BOL -- meaning bill of lading -- and the other
02:15PM 25 document. He did sign the pickup documents, but I'm afraid the

02:15PM 1 driver took it by mistake. He picked up the papers after loading
02:15PM 2 the crates, and I cannot find them. And she provided pictures of
02:15PM 3 the crates.

02:15PM 4 THE COURT: What was the last thing you said?

02:15PM 5 MR. THAKUR: She provided pictures of the crates before
02:15PM 6 the lid was put on, and that's contained in Government
02:15PM 7 Exhibit 12HH1.

02:15PM 8 THE COURT: So I will overrule Ms. Voissem's objection,
02:15PM 9 unless she wants to say: Coordinated the pickup of the
02:15PM 10 rebreathers with Mohammad and Diana Zaghab. I mean, she handled
02:15PM 11 the bill of lading prepared by the Zaghabs.

02:15PM 12 MR. THAKUR: That's correct.

02:15PM 13 MR. MOSS: That would be acceptable.

02:16PM 14 THE COURT: So if after the word bill of lading, Ms.
02:16PM 15 Gould, if you would insert: prepared by the Zaghabs.

02:16PM 16 Any other matters as to paragraph 32?

02:16PM 17 MR. UDOLF: Not on behalf of Mr. Sotis.

02:16PM 18 MR. MOSS: Nothing on behalf of Ms. Voissem.

02:16PM 19 THE COURT: Paragraph 33.

02:16PM 20 MR. UDOLF: Judge, we would amend our objection to 33,
02:16PM 21 and limit it solely to the statement contained in that paragraph
02:17PM 22 that Special Agent Wagner, quote: Informed them -- meaning Mr.
02:17PM 23 Sotis and Ms. Voissem -- that the license determination had been
02:17PM 24 completed and the rebreathers were export controlled by Commerce
02:17PM 25 and did require a license for export to Libya.

02:17PM 1 The evidence -- I believe the gentleman's name was
02:17PM 2 Mr. Lou, who was the individual at the Commerce Department that
02:17PM 3 made the determination that a license was required. He testified
02:17PM 4 that he didn't make that determination or render that decision
02:17PM 5 until August 19th, two days after this conversation.

02:17PM 6 I recognize that Mr. Wagner did testify to this effect,
02:17PM 7 but Mr. Lou contradicted that. And I know on redirect he was
02:17PM 8 asked at least three times: Is it possible that you could have
02:17PM 9 communicated that orally to Mr. Wagner? To which he finally
02:18PM 10 succumbed and said: Yeah, anything is possible, or words to that
02:18PM 11 effect. So for that reason, we object to that portion of 33.

02:18PM 12 THE COURT: So what you want it to say is that: On
02:18PM 13 August 19th? Or do you want it to say: on or about August 17th
02:18PM 14 or 19th?

02:18PM 15 MR. UDOLF: Well, we have no objection to the statement
02:18PM 16 that at least as to Mr. Sotis that he did not alert Mr. Wagner to
02:18PM 17 the fact that the goods had already been shipped as of
02:18PM 18 August 17th.

02:18PM 19 We just object to the statement that Mr. Wagner informed
02:18PM 20 him and Ms. Voissem that rebreathers required an export license on
02:18PM 21 the 17th.

02:19PM 22 MR. THAKUR: Special Agent Wagner's testimony was
02:19PM 23 corroborated by Sean Robotka, by his testimony, as well as his
02:19PM 24 calendars.

02:19PM 25 We also have an e-mail contained in Government

02:19PM 1 Exhibit 12JJ from Deb Wesler to Emilie Voissem, where Deb Wesler
02:19PM 2 indicated on August 17th that: Special Agent Wagner called and
02:19PM 3 NEED -- and NEED is in all capital -- to speak to you about the
02:19PM 4 shipment to Libya today. He actually suggested you call him on a
02:19PM 5 conference call with Peter as the info he has for you will also
02:19PM 6 affect Peter.

02:19PM 7 Given the urgency of that e-mail, I think it's clear that
02:19PM 8 Special Agent Wagner had received information that day regarding
02:19PM 9 the license determination, hence the urgency of it.

02:19PM 10 THE COURT: Based upon that document, I will overrule the
02:19PM 11 objection and leave paragraph 33 as stated.

02:20PM 12 Okay. Paragraph 34.

02:20PM 13 MR. UDOLF: Our only objection to this, Judge, is that
02:20PM 14 the explanation that Mr. Sotis was not in a position to have the
02:20PM 15 shipment canceled as neither he nor Add Helium had forwarded
02:20PM 16 shipment and neither had authority to revoke it. That was the
02:20PM 17 sole basis for our objection as to 34.

02:21PM 18 THE COURT: Right now it says -- you're talking about
02:21PM 19 August the 24th, with the FBI agent there, reiterating that the
02:21PM 20 rebreathers required an export license from the Department of
02:21PM 21 Commerce. Before Agent Wagner left, you agree that Sotis
02:21PM 22 approached him and introduced himself as the owner of Add Helium?
02:21PM 23 Do you agree that Agent Wagner provided Sotis with a summary of
02:21PM 24 what he discussed with Voissem and Robotka? Is that true? Do you
02:22PM 25 agree with that?

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MR. UDOLF: Yes.

THE COURT: And you agree with: Sotis told the agent he was very concerned with protecting the United States and admitted that he knew this kind of technology could be used against it, and he did not want that to happen; do you agree with that?

MR. UDOLF: I do.

THE COURT: And do you agree that: Sotis then requested special agent and Voissem to go into his office to discuss the Libyan export; do you agree with that?

MR. UDOLF: I do.

THE COURT: And do you agree with: At that point Sotis informed Special Agent Wagner that the shipment had already been picked up and was en route to Libya?

MR. UDOLF: Correct.

THE COURT: And do you agree that: Special agent told Sotis he needed to contact the shippers and have the shipment returned because Add Helium had violated U.S. laws and they knew that the items had been detained?

MR. UDOLF: We don't dispute that.

THE COURT: Pardon?

MR. UDOLF: We don't dispute that.

THE COURT: And do you dispute the next sentence that says: Sotis claimed that he did not ship the items and that their customer had somebody retrieve the dive gear and rebreathers from Add Helium?

02:23PM 1 MR. UDOLF: I'm trying to locate that sentence.

02:23PM 2 THE COURT: That's the next sentence of that paragraph.

02:23PM 3 MR. UDOLF: Yes, we would agree with that.

02:23PM 4 THE COURT: And do you agree with: Special Agent Wagner
02:23PM 5 instructed Voissem to contact the freight forwarder and find out
02:23PM 6 where the shipment was?

02:23PM 7 MR. UDOLF: We do.

02:23PM 8 THE COURT: Do you agree with that?

02:23PM 9 MR. UDOLF: Yes.

02:23PM 10 THE COURT: And you agree that: Voissem confirmed she
02:23PM 11 understood?

02:23PM 12 MR. UDOLF: Correct.

02:23PM 13 THE COURT: And do you agree that: As Special Agent
02:23PM 14 Wagner exited the office of Add Helium, Sotis followed him outside
02:24PM 15 and defiantly asked if Special Agent Wagner told Voissem to
02:24PM 16 contact the freight forwarder to stop the shipment, which the
02:24PM 17 agent replied that he did; do you dispute that?

02:24PM 18 MR. UDOLF: Probably not.

02:24PM 19 THE COURT: Okay.

02:24PM 20 MR. UDOLF: I probably wouldn't have used the word
02:24PM 21 defiantly; but in sum and substance, no, we don't.

02:24PM 22 THE COURT: And do you dispute that: Sotis then
02:24PM 23 responded that Add Helium could not stop the shipment because it
02:24PM 24 had been scheduled by the company in Libya?

02:24PM 25 MR. UDOLF: Yes, we don't dispute that.

02:24PM 1 THE COURT: And do you dispute the next sentence, which
02:24PM 2 is: Special Agent Wagner then told Sotis if I had violated U.S.
02:24PM 3 laws, I would call whomever I could to try; do you dispute that
02:24PM 4 Wagner said that?

02:24PM 5 MR. UDOLF: No, nor do we dispute Mr. Sotis' response as
02:25PM 6 set forth there.

02:25PM 7 THE COURT: So I'm still at a loss as to what in
02:25PM 8 paragraph 34 you want to have changed, since it's just simply
02:25PM 9 outlining what transpired as part of the offense.

02:25PM 10 MR. UDOLF: I understand, Judge. We will withdraw the
02:25PM 11 objection.

02:25PM 12 THE COURT: Okay. Thank you. Paragraph 36 --

02:25PM 13 And there is no objection to 35?

02:25PM 14 MR. UDOLF: Correct.

02:25PM 15 THE COURT: Then paragraph 36.

02:25PM 16 And you object to it in its totality because you dispute
02:25PM 17 that the purported conversations took place?

02:25PM 18 MR. UDOLF: Correct. I understand that's what
02:25PM 19 Mr. Robotka testified to. We dispute that.

02:25PM 20 THE COURT: Does the government have anything to respond
02:26PM 21 to paragraph 36?

02:26PM 22 MR. THAKUR: No, Your Honor. Just that that is the trial
02:26PM 23 testimony of Sean Robotka.

02:26PM 24 THE COURT: Mr. Thakur, was Mr. Ken Wesler ever
02:26PM 25 interviewed?

02:26PM 1 MR. THAKUR: No, just Deborah Wesler, who is the spouse.

02:26PM 2 THE COURT: May I ask why Ken Wesler was not interviewed?

02:26PM 3 MR. THAKUR: I'm not certain, Your Honor.

02:26PM 4 THE COURT: Okay. So given the fact that you don't

02:26PM 5 dispute that that's what Robotka testified to, although it's your

02:26PM 6 position that he was not truthful --

02:26PM 7 MR. UDOLF: Correct.

02:26PM 8 THE COURT: -- I will overrule the objection.

02:26PM 9 MR. UDOLF: That is as to paragraph?

02:27PM 10 THE COURT: 36.

02:27PM 11 MR. UDOLF: 36, okay.

02:27PM 12 THE COURT: Paragraph 37, I guess, is again the same

02:27PM 13 situation -- no, it's different.

02:27PM 14 You're objecting to any statements made by Mr. Wesler to

02:27PM 15 Robotka?

02:27PM 16 MR. UDOLF: Correct.

02:27PM 17 THE COURT: What is the government's response?

02:27PM 18 MR. THAKUR: That, again, I think is part of the trial

02:27PM 19 testimony of Sean Robotka.

02:27PM 20 And it's also confirmed by the fact by both case agents

02:27PM 21 who testified that there were key e-mails involving Peter Sotis

02:28PM 22 that were not turned over in the administrative subpoena that only

02:28PM 23 were recovered from the e-mail, so it confirms what was admitted;

02:28PM 24 that, essentially, Ken Wesler was withholding documents to protect

02:28PM 25 Peter Sotis.

02:28PM 1 THE COURT: Okay. I will overrule the objection to
02:28PM 2 paragraph 37.

02:28PM 3 Paragraphs 38 and 39, you object to them in their
02:28PM 4 entirety?

02:28PM 5 MR. UDOLF: Judge, if I may have just a minute to review
02:28PM 6 my notes?

02:28PM 7 THE COURT: Counsel, I'm now looking at the time. It's
02:28PM 8 2:30. I have another thing I have to do at 3:00, and so I'm
02:28PM 9 looking at we're not going to finish today at the rate we're
02:28PM 10 going.

02:28PM 11 But this is important. I have to deal with all of the
02:29PM 12 objections, that's what the law requires, and give both parties an
02:29PM 13 opportunity to be heard.

02:29PM 14 Any suggestions?

02:29PM 15 MR. UDOLF: Whatever the Court's pleasure is on behalf of
02:29PM 16 Mr. Sotis.

02:29PM 17 THE COURT: Let's keep on going until I need to leave for
02:29PM 18 another Zoom at 3:00. And if someone can look at my schedule next
02:29PM 19 week and see what we look like.

02:29PM 20 Let's keep on going and my master of the calendar back in
02:29PM 21 chambers will be coming up with a suggestion.

02:30PM 22 (Brief pause.)

02:30PM 23 THE COURT: How does everybody look for resuming on
02:31PM 24 Tuesday morning whatever we haven't finished today?

02:31PM 25 MR. THAKUR: The government is available, Your Honor.

02:31PM 1 THE COURT: I have the whole day available.

02:31PM 2 MR. UDOLF: I believe I'm available.

02:31PM 3 MR. MOSS: I just have a state court matter that I can
02:31PM 4 easily reschedule.

02:31PM 5 THE COURT: Okay.

02:31PM 6 MR. MOSS: My only concern, Your Honor, is that Ms.
02:31PM 7 Voissem has several members who flew in from out of state to
02:31PM 8 attend today's hearing. I understand most of them are scheduled
02:31PM 9 to fly out either tomorrow morning or in the afternoon. So I
02:31PM 10 don't know if it would be possible at least for them to be heard,
02:31PM 11 because there are three people who did want to speak on Ms.
02:31PM 12 Voissem's behalf, if they would have the opportunity to at least
02:31PM 13 make their statements before we adjourn for the day; so if they're
02:31PM 14 not able to return on the 18th, at least their statements will be
02:32PM 15 in the record?

02:32PM 16 MR. UDOLF: Mr. Sotis has no objection to doing that.

02:32PM 17 MR. THAKUR: We have no objection either, Judge.

02:32PM 18 THE COURT: The other option is that we could also do it
02:32PM 19 tomorrow morning. But if they're flying out tomorrow, I would
02:32PM 20 rather do it today.

02:32PM 21 So with all of your permission, then let us set aside the
02:32PM 22 tedious work and let me hear Ms. Voissem's witnesses, because this
02:32PM 23 was supposed to be her time rather than Mr. Sotis 'time of going
02:32PM 24 over the objections.

02:32PM 25 And I thank the family members who did come very much for

02:32PM 1 being here. And I apologize that this is the difficult part of
02:32PM 2 the sentencing, but the law requires me to go through each
02:33PM 3 paragraph that is objected to in the presentence investigation
02:33PM 4 report, and let the parties make their record, and then I have to
02:33PM 5 rule. So it's very, very tedious, especially for those of you
02:33PM 6 that do not have the presentence investigation report in your
02:33PM 7 hands. Because it's confidential, we can't share it. Mr. Moss.

02:33PM 8 MR. MOSS: Thank you for allowing me this de facto
02:33PM 9 bifurcation of Ms. Voissem's proceeding. She has three
02:33PM 10 individuals; they are Jackie McGill, her mother; Lonnie Tenant,
02:33PM 11 her husband; and Samantha Hebrard, H-e-b-r-a-r-d, is Ms. Voissem's
02:33PM 12 daughter.

02:33PM 13 Who wants to speak? Excuse me one second.

02:34PM 14 Correction, Judge. The speakers are going to be Jackie
02:34PM 15 McGill; Maggie Lebron, who is a family friend; and Brett Eagan,
02:34PM 16 whose name was just provided to me now, but he will identify
02:34PM 17 himself.

02:34PM 18 Who is speaking first? Jackie Magill, Your Honor.

02:34PM 19 THE COURT: Good afternoon, Miss Magill.

02:34PM 20 MR. MOSS: What is your name?

02:34PM 21 MS. MAGILL: My first name is Jackie, J-a-c-k-i-e. Last
02:34PM 22 name Magill, M-a-g-i-l-l.

02:35PM 23 MR. MOSS: And what is your relationship to Emilie?

02:35PM 24 MS. MAGILL: I am Emilie Voissem's mom.

02:35PM 25 MR. MOSS: And I see that you have a statement that's

02:35PM 1 written?

02:35PM 2 MS. MAGILL: I do.

02:35PM 3 MR. MOSS: Please do so.

02:35PM 4 THE COURT REPORTER: Judge, I'm having trouble hearing

02:35PM 5 her.

02:35PM 6 MS. MAGILL: This could have been done today. I have to

02:35PM 7 fly home tomorrow.

02:35PM 8 THE COURT: I truly apologize. I asked counsel to let me

02:35PM 9 know how long things are going to take so that the family members

02:35PM 10 that do come are not inconvenienced.

02:35PM 11 MS. MAGILL: I live in California.

02:35PM 12 THE COURT: Where in California?

02:35PM 13 MS. MAGILL: I live in California in the Sierras.

02:35PM 14 THE COURT: Beautiful.

02:35PM 15 MS. MAGILL: And I had to change my flight because of

02:35PM 16 last week, getting it postponed to this week. And I was here for

02:35PM 17 the whole trial. Anyway, if I can do this?

02:35PM 18 THE COURT: Would you like to have a glass of water as

02:35PM 19 well?

02:36PM 20 MS. MAGILL: Pardon me.

02:36PM 21 THE COURT: Would you like a glass of water?

02:36PM 22 MS. MAGILL: Sure. I have hearing aids too, but they

02:36PM 23 work like crap, so.

02:36PM 24 THE COURT: Maybe using --

02:36PM 25 MS. MAGILL: I'm not being mean. I'm not planning on

02:36PM 1 being all sugarcoated here because I'm not happy with any of this.

02:36PM 2 THE COURT: Let me also give you a handheld microphone.

02:36PM 3 MS. MAGILL: Okay.

02:36PM 4 THE COURT: Would you feel more comfortable sitting down?

02:36PM 5 MS. MAGILL: No. Thank you.

02:36PM 6 THE COURT: And I believe my law clerk gave you some

02:36PM 7 Kleenex, just in case you need that.

02:36PM 8 MR. MOSS: We have some.

02:36PM 9 MS. MAGILL: I've got some. Thank you.

02:36PM 10 Good afternoon, Your Honor. I'm Emilie's mom, and I want

02:36PM 11 to tell you a little bit about her. She's a good person, always

02:36PM 12 wanting to help people. Her younger brother had a hard time in

02:37PM 13 school, and she was always there to help him with all his

02:37PM 14 schoolwork and everything. And growing up she had a really good

02:37PM 15 group of friends, and they were always over at the house.

02:37PM 16 From the time she was really little, she wanted to be a

02:37PM 17 police officer. At the age of 15 when she was old enough, she

02:37PM 18 became a Police Explorer. And she was a Police Explorer through

02:37PM 19 high school and loved it and couldn't wait to be a police officer.

02:37PM 20 THE COURT: And why did she want to be a police officer?

02:37PM 21 MS. MAGILL: Because she loved to help people, and she

02:37PM 22 loved the law, she loved our country, she loved people. She just

02:37PM 23 always wanted to be a cop.

02:37PM 24 So she just always did very proud in high school and she

02:38PM 25 got to help out with a lot of functions in the town where she

02:38PM 1 lived in San Luis Obispo. She's a mom to two wonderful kids.

02:38PM 2 She's a grandma. She has a granddaughter and a grandson and she

02:38PM 3 has a grandson on the way. She's a fantastic grandma.

02:38PM 4 Anyone -- and I know during this trial, portraying her as
02:38PM 5 not being a good person at the trial, but she would do anything
02:38PM 6 for anybody. She likes to help people. She likes to do what's
02:38PM 7 right. She doesn't like to do -- she likes to do what's right.

02:38PM 8 I know I'm not reading all this right.

02:38PM 9 After going to high school, she became an EMT. And then
02:39PM 10 after she got married, had her two kids, and then she became a San
02:39PM 11 Luis Obispo County dispatcher, which she was for seven years. She
02:39PM 12 loved that job also, but still wanted to be a police officer. And
02:39PM 13 she actually worked full-time. She was an EMT at that time, and
02:39PM 14 she put herself through the sheriff's academy, and she did that on
02:39PM 15 nights and weekends and became a deputy sheriff.

02:39PM 16 THE COURT: And this was while she was a single mom with
02:39PM 17 the two kids?

02:39PM 18 MS. MAGILL: Pardon me?

02:39PM 19 THE COURT: Was she a single mother at this time?

02:39PM 20 MS. MAGILL: Part of that, yes. But she and her
02:39PM 21 ex-husband shared custody, so it made it easier for her to go to
02:39PM 22 school and everything.

02:39PM 23 THE COURT: Okay.

02:39PM 24 MS. MAGILL: And grandma was there to help out too, when
02:39PM 25 I could.

02:40PM 1 She also -- after she was in law enforcement, I believe
02:40PM 2 she actually went back to the Explorer program and she mentored
02:40PM 3 the young Explorers that thought they might want to be a police
02:40PM 4 officer, so she went back and talked with all the kids and
02:40PM 5 everything like that, to put them on the right path if they wanted
02:40PM 6 to be in law enforcement.

02:40PM 7 And I know for a fact that my -- if my daughter thought
02:40PM 8 there was anything wrong with sending the rebreathers, she would
02:40PM 9 never have done so. She wanted people to experience underwater
02:40PM 10 photography a lot. She loved it. Some of her pictures are
02:41PM 11 amazing that she's taken underwater, and she wanted to share that
02:41PM 12 with everybody and just, you know.

02:41PM 13 And 19 years ago I got diagnosed with kidney cancer. I
02:41PM 14 had surgery and thought they got it all, and four years ago it
02:41PM 15 decided to come back, so.

02:41PM 16 THE COURT: Did you say kidney cancer?

02:41PM 17 MS. MAGILL: Kidney cancer. I lost my left kidney,
02:41PM 18 adrenal glands, and ribs and some other things, and healthy until
02:41PM 19 about 2019, and then I had cancer in my left lung. Had a lung
02:42PM 20 resection last year, and now I have it in my right lung and my
02:42PM 21 liver. And since it's Stage 4 now, I think it's three to
02:42PM 22 five years. And the thought of my daughter not being here -- the
02:42PM 23 thought of her not being able to see me if I don't live that long
02:42PM 24 is really hard.

02:42PM 25 And these last two and a half years have been horrible.

02:42PM 1 It's like she's already been in prison for two and a half years.
02:42PM 2 And with COVID and everything else, she hasn't been able to get a
02:43PM 3 job or anything. And she finally did get a job just recently, and
02:43PM 4 he let her go because of the trial. So she hasn't been able to
02:43PM 5 work because they do a background check and see three or four
02:43PM 6 felonies on there, so it's just -- I don't know. I'm sorry. I
02:43PM 7 don't have any more.

02:43PM 8 MR. MOSS: Thank you, Jackie. Maggie Lebron.

02:43PM 9 Spell your first name and last name for the record and
02:43PM 10 tell us what your relationship is with Ms. Voissem.

02:44PM 11 THE COURT: Are you vaccinated and boosted?

02:44PM 12 MS. KENDALL: Yes, ma'am.

02:44PM 13 MR. MOSS: Everybody is vaccinated.

02:44PM 14 THE COURT: You can take off your mask. It helps the
02:44PM 15 court reporter. Thank you.

02:44PM 16 MS. KENDALL: My legal name is Margaret, M-a-r-g-a-r-e-t,
02:44PM 17 Kendall, K-e-n-d-a-l-l, which I am currently in a divorce
02:44PM 18 proceeding, so I'm getting used to having my own name again.

02:44PM 19 MR. MOSS: One second, Your Honor.

02:44PM 20 MS. KENDALL: I am Emilie's friend and coworker from Add
02:44PM 21 Helium.

02:44PM 22 THE COURT: And where do you work with her?

02:44PM 23 MS. KENDALL: I worked with her and Mr. Sotis at Add
02:44PM 24 Helium.

02:44PM 25 I apologize. I didn't know. I was going to wing it. I

02:44PM 1 thought I was reading something I submitted.

02:45PM 2 MR. MOSS: For the Court's reference, this is from Docket
02:45PM 3 131-1, page 12. This is the letter that Miss Lebron submitted as
02:45PM 4 part of the initial exhibits. Go ahead.

02:45PM 5 THE COURT: I'm looking at 131-12, and I thought that was
02:45PM 6 a --

02:45PM 7 MR. MOSS: It's 131, page 12. It's Exhibit No. 1.

02:45PM 8 THE COURT: Oh, page 12. Okay. So I'm meeting the
02:45PM 9 person who sent the e-mail at maglebron@gmail.com?

02:45PM 10 MS. KENDALL: Yes, Your Honor. Okay. Shall I read it,
02:46PM 11 or have you already?

02:46PM 12 THE COURT: I read it. But what in particular would you
02:46PM 13 like me to focus on?

02:46PM 14 MS. KENDALL: Your Honor, I'm terrified to stand up here,
02:46PM 15 and I'm not even the one truly facing you. I'm terrified for my
02:46PM 16 friend. I have guilt because in a previous job I was a shipper,
02:46PM 17 so I understand how shipping works, and I feel like I could have
02:46PM 18 saved any problems either one of them would have had by telling
02:46PM 19 them to double-check this or double-check that. So it feels like
02:46PM 20 survivor's remorse.

02:46PM 21 THE COURT: I'm so sorry.

02:46PM 22 MS. KENDALL: Emilie and I bonded because we were both
02:46PM 23 women and divers at a very sophisticated company, in the land of
02:46PM 24 tank tops, board shorts and flip-flops. Our company was supposed
02:46PM 25 to be more refined, so we took care of a different kind of

02:47PM 1 clientele.

02:47PM 2 And as I state in my letter, most of the time it was:
02:47PM 3 When can I get my stuff? Can you make it, you know, available to
02:47PM 4 me wherever I am on this planet?

02:47PM 5 THE COURT: Very demanding, entitled clientele.

02:47PM 6 MS. KENDALL: Yes, ma'am. Yes, Your Honor.

02:47PM 7 THE COURT: And they put a lot of pressure on the
02:47PM 8 employees.

02:47PM 9 MS. KENDALL: Yes, Your Honor, especially because it's a
02:47PM 10 business of word-of-mouth, we didn't have advertisements that were
02:47PM 11 out there trying to pull people in, so.

02:47PM 12 I've spoken with a friend who is an attorney and he tells
02:47PM 13 me, you know: Don't say it couldn't happen. Don't say she didn't
02:47PM 14 do it.

02:47PM 15 But all I can tell you from deep down in my heart is
02:47PM 16 she -- if she heard a true word that said this sits here or this
02:48PM 17 stays or this is detained, we wouldn't be standing here.

02:48PM 18 Emilie follows the law. I mean, she was the law. And as
02:48PM 19 I state in the letter: How do I tell another person, the law,
02:48PM 20 that my friend is a good person other than just saying she's a
02:48PM 21 good person, who wouldn't have done any of this intentionally.

02:48PM 22 I worry for her. As I also stated, her career in law
02:48PM 23 kept her from forming a bond in a relationship with her children.
02:48PM 24 And now she has the opportunity to really cement that bond and
02:48PM 25 make a greater bond with her grandchildren, and I just want that

02:48PM 1 for her.

02:48PM 2 I really don't know what else to say without rambling,
02:48PM 3 except she is a good person that walked into a mistake
02:49PM 4 unknowingly, and I just hope you find that and think about that
02:49PM 5 for sentencing.

02:49PM 6 THE COURT: It's Kendall now, right?

02:49PM 7 MS. KENDALL: Yes, legally it's Mrs. Kendall.

02:49PM 8 THE COURT: Oh, okay.

02:49PM 9 MR. MOSS: Is there anything else you'd like the Court to
02:49PM 10 know about Emilie that's not covered in your letter?

02:49PM 11 MS. KENDALL: She's just a beautiful person that never
02:49PM 12 did any of this intentionally, not knowing. She deserves time
02:49PM 13 with her family.

02:49PM 14 THE COURT: Miss Kendall, how do you explain that someone
02:49PM 15 with her background, and given the atmosphere of the place, given
02:49PM 16 the red flags that they had, why didn't she say: Wait a minute.
02:49PM 17 Let's be careful here. Let's not facilitate something we know
02:50PM 18 that is a problem by not saying anything?

02:50PM 19 MS. KENDALL: That is very easy. Trust. Trust in
02:50PM 20 someone above her really knowing what she didn't know. I don't
02:50PM 21 know if that makes sense.

02:50PM 22 THE COURT: I'm reading between the lines.

02:50PM 23 MS. KENDALL: Trust that others would know better than
02:50PM 24 her, so let me just get behind them because they probably know
02:50PM 25 more than I.

02:50PM 1 THE COURT: Isn't that being sort of blind and naive for
02:50PM 2 someone her age?

02:50PM 3 MS. KENDALL: Yes, Your Honor. As I stated, I've been in
02:50PM 4 shipping before, and it's very complicated. I was in charge of
02:50PM 5 hazardous goods, and unintentionally I shipped hazardous goods the
02:50PM 6 wrong way paperwork-wise for a good year or two unintentionally.
02:51PM 7 The paperwork process is so complicated. And people present
02:51PM 8 themselves as though they know everything, and a lot of times they
02:51PM 9 do it just because they want to get that stuff out the door and to
02:51PM 10 the client. That's what scares me. I could be there next to her.
02:51PM 11 Like I said, I wish --

02:51PM 12 I was not in the office. I stayed out of the office. I
02:51PM 13 talked with clients, that was my job; to let the rich people talk
02:51PM 14 so that the other people could work. And it kills me every day to
02:51PM 15 know I wasn't there sitting in an office to go: What's going on?
02:51PM 16 No, no, no, don't do this.

02:51PM 17 I understand your question. That answer is very easy for
02:51PM 18 me, being where she has been. You trust the people that say: No,
02:51PM 19 no, no. This is how it works. And, unfortunately, and I don't
02:51PM 20 know if it's just from being -- I hate to say it, I don't know if
02:51PM 21 it's just because we're women. But many shippers that raise their
02:52PM 22 voice or get aggressive, they come across like they know what
02:52PM 23 they're doing, and they really don't care if we're going to take
02:52PM 24 the blame.

02:52PM 25 THE COURT: And would you say that Mr. Sotis was a very

02:52PM 1 strong-willed person?

02:52PM 2 MS. KENDALL: Strong-willed, yes. You would believe when
02:52PM 3 he tells you: I know what I'm doing, and you don't question it
02:52PM 4 because you trust in him, because he comes across sincere for the
02:52PM 5 most part, in my dealings more sincere, so you have no reason to
02:52PM 6 question it. You think you're being protected; like a father.

02:52PM 7 THE COURT: Hopefully this is a lesson to all concerned
02:52PM 8 that in this day and age, unfortunately, character doesn't seem to
02:52PM 9 matter anymore, and people will say whatever they do to get what
02:53PM 10 they want, and some people are feeling entitled, some people want
02:53PM 11 to make a lot of money, but it seems that the dollar is what
02:53PM 12 drives us now rather than --

02:53PM 13 MS. KENDALL: Yes, Your Honor.

02:53PM 14 THE COURT: -- let's be careful, let's make sure we've
02:53PM 15 crossed the t's and dotted the i's. And, unfortunately, there are
02:53PM 16 consequences.

02:53PM 17 So you can see all of the people that provided flight
02:53PM 18 training to the folks that flew in too, they all thought they
02:53PM 19 dealt with people in good faith and, unfortunately, the world is
02:53PM 20 now -- you have the old saying: I trust everyone, but I count my
02:53PM 21 cards.

02:53PM 22 MS. KENDALL: Yes, Your Honor. As my father says:
02:53PM 23 Trust, but verify.

02:53PM 24 THE COURT: Yes.

02:54PM 25 MS. KENDALL: This situation, which we would have never

02:54PM 1 thought we'd have to verify. I believe that across the board for
02:54PM 2 the whole entire company. It just -- especially for Emilie; trust
02:54PM 3 the leader.

02:54PM 4 THE COURT: Thank you very much.

02:54PM 5 MS. KENDALL: Thank you.

02:54PM 6 MR. MOSS: Thank you. Brett Eagan. Mr. Eagan, if you
02:54PM 7 can spell your name for the record and tell your relationship to
02:54PM 8 Emilie.

02:54PM 9 MR. EAGAN: B-r-e-t-t.

02:54PM 10 MR. MOSS: By the way, are you vaccinated?

02:54PM 11 MR. EAGAN: Yes.

02:54PM 12 MR. MOSS: You can take your mask off.

02:54PM 13 MR. EAGAN: My first name is B-r-e-t-t. Last name
02:54PM 14 E-a-g-a-n. Friend and also as a coworkers with Emilie.

02:54PM 15 MR. MOSS: Where were you coworker specifically?

02:54PM 16 MR. EAGAN: At Add Helium.

02:54PM 17 MR. MOSS: Okay. Go ahead.

02:55PM 18 MR. EAGAN: As far as Emilie, I first met her when she
02:55PM 19 moved to Florida. I believe it was around 2012, 2013. She and I
02:55PM 20 had worked together for approximately five years, along with
02:55PM 21 staying friends up to now.

02:55PM 22 I've known Emilie for a very long time, obviously, so I
02:55PM 23 have a good understanding of her character, ethics, morals, and
02:55PM 24 standards. I'm also a retired police officer. I'm from
02:55PM 25 California, so we have shared our experiences in law enforcement

02:55PM 1 and other things that we had in common, which included a passion
02:55PM 2 for diving.

02:55PM 3 During our years working side by side in the scuba
02:55PM 4 industry, she and I were crew members on my boat, as well as the
02:55PM 5 dive partners and coworkers at Add Helium.

02:55PM 6 THE COURT: And when were you coworkers? What period of
02:55PM 7 time?

02:55PM 8 MR. EAGAN: I believe it was actually right when all of
02:55PM 9 this was going on. I believe I was there for about, I think, like
02:55PM 10 eight months. Seven or eight months, something like that.

02:56PM 11 THE COURT: What was your position in the company?

02:56PM 12 MR. EAGAN: I was a captain, as well as I was training to
02:56PM 13 be an instructor for rebreathers.

02:56PM 14 THE COURT: So you weren't in the office? You weren't
02:56PM 15 doing the office part; you were doing the service part?

02:56PM 16 MR. EAGAN: I was actually in the office quite a bit;
02:56PM 17 because when I wasn't on the boat, I was actually in the office
02:56PM 18 helping out with orders, shipping. Not anything that I really
02:56PM 19 knew about, but I was there to help out in any way possible.

02:56PM 20 And because there wasn't anybody in that position at the
02:56PM 21 time, I was helping out in any way I could.

02:56PM 22 THE COURT: Why wasn't there anybody in that position at
02:56PM 23 the time?

02:56PM 24 MR. EAGAN: The person that was there prior to me, had
02:56PM 25 left and was no longer with the company.

02:56PM 1 MR. MOSS: Excuse me. What time frame was this?

02:56PM 2 MR. EAGAN: Probably -- I don't even remember what year
02:56PM 3 it was. I mean it was --

02:57PM 4 MR. MOSS: Let me ask you this.

02:57PM 5 Were you still affiliated with the company in any way in
02:57PM 6 August of 2016 when these events -- July and August when these
02:57PM 7 events were taking place?

02:57PM 8 MR. EAGAN: Yes. I remember the shipment or the pallet
02:57PM 9 was still there and had been there for, I don't know, two or
02:57PM 10 three months sitting in the warehouse during the time that I was
02:57PM 11 there. I do remember some of the conversations regarding it,
02:57PM 12 vaguely, because I wasn't really involved in any of that.

02:57PM 13 But I do remember the pallet, and even the people that
02:57PM 14 were doing the courses and things like that and being at Add
02:57PM 15 Helium during the time that I was there.

02:57PM 16 MR. MOSS: Go ahead. Unless the Court has any additional
02:57PM 17 questions. Okay. Go ahead, Mr. Eagan.

02:57PM 18 MR. EAGAN: Emilie has always shown a high character work
02:57PM 19 ethic, and person of great generosity during the years that I have
02:57PM 20 known her. There's been occasions where based on my travels and
02:57PM 21 schedule being changing, Emilie has always offered me a room in
02:58PM 22 her house anytime I was in town, short periods of time.

02:58PM 23 In fact, when COVID first started and I came back from
02:58PM 24 the Caribbean a little bit early, working as a yacht captain is
02:58PM 25 why I was over there, she actually offered me and my girlfriend at

02:58PM 1 the time a room in her house, which we stayed for a while. She's
02:58PM 2 also part of a very close group of friends of ours that we have
02:58PM 3 all known and been very close for years.

02:58PM 4 As far as Peter, I've known him as well, probably even
02:58PM 5 longer than Emilie. He used to come out on the boat that I worked
02:58PM 6 on for diving.

02:58PM 7 THE COURT: What was the name of your boat?

02:58PM 8 MR. EAGAN: Well, it was Sea Dog and Sea Siren. It was
02:58PM 9 with the Pompano Dive Center.

02:58PM 10 So I've known Peter for a lot of years as well. He was
02:59PM 11 always very charismatic. He's also developed a following for a
02:59PM 12 lot of us divers as kind of a guru in a lot of aspects. He is
02:59PM 13 very excellent in his training and in running a business. We were
02:59PM 14 all very impressed with the way he was able to grow his business
02:59PM 15 and continue the type of training that he did, which was very
02:59PM 16 specialized.

02:59PM 17 Based on everything that was going on with Peter and Add
02:59PM 18 Helium, Peter actually offered me a position with the company and
02:59PM 19 it was supposed to develop into an international sales position
02:59PM 20 and working with yachting, which I was already working with.
02:59PM 21 Knowing Peter, he is -- and having worked for him, he is kind of a
02:59PM 22 micromanager and very integrated in his business, so I can't
03:00PM 23 imagine anything going on in that business where he wasn't aware
03:00PM 24 of or didn't have control in the decision-making process.

03:00PM 25 So it was kind of disheartening for me to see Emilie in

03:00PM 1 the position where she's taking part of the blame over something
03:00PM 2 that I know her to have been following, you know, guidance and
03:00PM 3 direct orders from her boss.

03:00PM 4 I know she is a fantastic assistant, and I've never seen
03:00PM 5 her overstepping any authority or anything that she said during my
03:00PM 6 tenure with Add Helium. It was always based on Peter's authority
03:00PM 7 and authorization.

03:00PM 8 I know from personal experience that any and all
03:00PM 9 decisions would need to go through him for confirmation. Because
03:00PM 10 of my personal involvement, observations, and direct long-term
03:00PM 11 knowledge of all the parties involved, that at this point it's
03:00PM 12 hard to see justice as being served with Emilie facing, you know,
03:01PM 13 as much time as she's looking at.

03:01PM 14 I have spent most of my adult life serving my community
03:01PM 15 from the Marine Corps to law enforcement. And this is one of
03:01PM 16 those cases in which I'm deeply saddened knowing the outcome of
03:01PM 17 this case and the circumstances that are involved. Emilie has
03:01PM 18 been a servant to her community, she's been a great friend to a
03:01PM 19 lot of us, loving mother, devoted employee, has always provided a
03:01PM 20 level of loyalty to her boss and to anybody that she's worked
03:01PM 21 with.

03:01PM 22 I simply ask that you thoroughly take the beliefs and
03:01PM 23 personal knowledge of myself and those that truly know Emilie, and
03:01PM 24 also of those who know Peter and the truth about the
03:01PM 25 characteristics of this case and as a boss and business owner, and

03:01PM 1 I hope that you can find it in your heart to show some leniency in
03:01PM 2 the sentencing for someone who my friends and I all believe to be
03:02PM 3 a wonderful friend, a good person, and someone who got wrapped up
03:02PM 4 in a horrible situation because she believed and trusted in
03:02PM 5 someone. And that's it.

03:02PM 6 MR. MOSS: Thank you, Mr. Eagan.

03:02PM 7 THE COURT: Thank you very, very much. I ask you to
03:02PM 8 please keep me in your prayers. As you can imagine, this is a
03:02PM 9 part of the job I truly do not like.

03:02PM 10 MR. EAGAN: Thank you, Your Honor.

03:02PM 11 THE COURT: Thank you.

03:02PM 12 MR. MOSS: So on that note, it's 3:02, Your Honor, and I
03:02PM 13 know you have a commitment. So how do you want to proceed?

03:02PM 14 THE COURT: I appreciate that. It was important to take
03:02PM 15 the time. My colleague will start and I'll just come in late, and
03:02PM 16 I'll explain why I'm late. It was more important for me to be
03:02PM 17 here and to listen.

03:02PM 18 MR. MOSS: So on that note, then I will return the mic to
03:03PM 19 Mr. Udolf on behalf of Mr. Sotis.

03:03PM 20 THE COURT: What I'm going to do though is if we can
03:03PM 21 recess today, is there anyone else who cannot come back on Tuesday
03:03PM 22 that wants to speak?

03:03PM 23 MR. MOSS: This is Samantha Hebrard coming up. Same
03:03PM 24 instruction. Spell your full name.

03:03PM 25 MS. HEBRARD: My full name is Samantha, S-a-m-a-n-t-h-a.

03:03PM 1 My last name is Hebrard, H-e-b-r-a-r-d.

03:03PM 2 THE COURT: And you are?

03:03PM 3 MS. HEBRARD: I am her daughter.

03:03PM 4 THE COURT: Yes. And the mother of her grandkids.

03:03PM 5 MS. HEBRARD: Yeah. Everyone seems to be talking about
03:04PM 6 the case and everything that happened there, but I want to talk to
03:04PM 7 you about my mom as a person and as a whole. I don't know Peter.
03:04PM 8 I don't know fully what went down then, but I do know my mom.

03:04PM 9 I grew up with a law enforcement family. My dad, my
03:04PM 10 stepmom, my mom, they're all law enforcement. And then I went
03:04PM 11 into the military myself for four years until I got out medically.

03:04PM 12 THE COURT: And which branch did you serve?

03:04PM 13 MS. HEBRARD: I was in the Army. So I went from there to
03:04PM 14 coming out and from that standpoint and growing up in a military
03:04PM 15 aspect, you're always told: Listen to your higher-ups. Do as
03:04PM 16 you're told. And the same goes for law enforcement.

03:04PM 17 And my mom is that kind of person who trusts the people
03:05PM 18 above her. She always has, you know. You have those people that
03:05PM 19 are the father figures or the people that are in charge of you,
03:05PM 20 and you don't cross that line. You get told: Do not cross that
03:05PM 21 line. Do not go above them. You do as they say. And she is that
03:05PM 22 person who trusts in those people above her. She's always been a
03:05PM 23 very trusting person, and maybe that's a flaw, but to me that's a
03:05PM 24 good flaw. I'd rather have someone trusting and honest than
03:05PM 25 dishonest and deceitful.

03:05PM 1 And she has been -- we had a falling out when I was
03:05PM 2 younger. I just didn't really stay in touch. I was very
03:05PM 3 hardheaded; like my father, a very hardheaded person. But in 2016
03:05PM 4 I lost my best friend in the service, and she was there for me.

03:05PM 5 THE COURT: I'm so sorry. I'm so sorry.

03:06PM 6 MS. HEBRARD: And she has been there for me every day on.
03:06PM 7 So no matter what I've been going through and no matter when I
03:06PM 8 need her, I can call her and she would be on the next flight no
03:06PM 9 matter what it was. Because I live in Texas, and she would be
03:06PM 10 there.

03:06PM 11 But from our standpoint of barely having any
03:06PM 12 communication to these past few years, she has been the best mom,
03:06PM 13 the best grandma possible. And depending on what happens when
03:06PM 14 this whole thing ends, I don't know how I'm supposed to explain to
03:06PM 15 my children where their grandma is because grandma trusted
03:06PM 16 somebody that she shouldn't have, that did them wrong.

03:06PM 17 And, like, I don't know you, but I don't want to look at
03:07PM 18 you because you're making my kids lose their grandma because she
03:07PM 19 trusted in you, and that hurts me, and you don't even know me.
03:07PM 20 And you didn't only hurt her by allowing her to trust in you and
03:07PM 21 instilled her trust there, you hurt everyone else.

03:07PM 22 And, you know, I have a two- and a four-year-old. My
03:07PM 23 four-year-old knows Grammy. Grammy's the best thing ever. And,
03:07PM 24 you know, she told me the outcome of what they were looking at
03:07PM 25 sentencing her wise, and it's a long time. My daughter is going

03:07PM 1 to be pretty grown, and I don't think it's right. I think her
03:07PM 2 trusting someone shouldn't be where it's at now, because she's not
03:07PM 3 the kind of person that's like: Okay. I got told not to do this.
03:08PM 4 I'm going to do it anyways. She's not that person. She's prior
03:08PM 5 law enforcement. She's not going to be that person to be like:
03:08PM 6 Oh, I got told they got detained. I'm not going to send it.
03:08PM 7 Like, she's not going to fuckin' send it. It doesn't make sense
03:08PM 8 as to why -- I always get in trouble -- it doesn't make sense for
03:08PM 9 her to send anything over or to push anything forward if she was
03:08PM 10 told no.

03:08PM 11 My mom is that kind of person that gets told: Okay.
03:08PM 12 Don't do this. She's not going to do it. Especially coming from
03:08PM 13 that police aspect of things, it just -- all of it doesn't make
03:08PM 14 sense to me. And she's always been a good person, even when we
03:09PM 15 had our falling out, she was always a good person. I was a
03:09PM 16 stubborn teenager, and moms and daughters butt heads. It happens.

03:09PM 17 But the bottom line is I think personally that she just
03:09PM 18 instilled her trust in the wrong place. She lost her dad and --
03:09PM 19 which was very hard on her.

03:09PM 20 THE COURT: When did that happen?

03:09PM 21 MS. HEBRARD: When did Pop Roger pass?

03:09PM 22 MS. VOISSEM: January of '18.

03:09PM 23 MS. HEBRARD: In January of '18 he passed. And he was
03:09PM 24 all the way in California when all of that happened, but when she
03:09PM 25 was out here in Florida, she looked at him -- she flat-out told me

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that she looked at this man as a father figure to her. When her and I would talk on the phone, she told me that this guy was like a father for her here.

And then when everything went down with her dad, she actually flew him out here and took care of him until he passed.

THE COURT: That's the thing that I'm grappling with. How is somebody that is over 40, who has a background in both the military and law enforcement --

MS. HEBRARD: She is a trusting person. If you knew her as a person one-on-one, you would see the trust that she instills in people. And she trusts, like, right off the bat. Like I know military and police, you know, you're told: Be aware of your surroundings. Be aware of your surroundings.

But when you go into a job aspect, you're told to trust your higher-ups. You're told to trust what they say and what they do. And I'm sure she got to know him on a personal basis and believed the things that he has told her. So whatever he told her from the get-go, she sat there and believed it because who wouldn't if someone was telling you something to your face: Oh, like, I do this for a living or I do that and I'm a good person, if you don't have anything to base it off of, you're going to base them as a good person and you're going to trust him. And because he's her boss, how are you not going to trust what they're telling you?

I mean that's like my job now. I trust my higher-ups. I

03:11PM 1 trust that they have me at the best interest.

03:11PM 2 THE COURT: I would urge you not to be so. I mean in
03:11PM 3 this day and age, each one of us has responsibility that if you
03:11PM 4 know -- and you know in your gut something is not right, you need
03:12PM 5 to speak up.

03:12PM 6 MS. HEBRARD: And you also have the places and the way
03:12PM 7 things are built. Like the military, I had a good time but a hard
03:12PM 8 time in the military because I did trust my higher-ups and I
03:12PM 9 shouldn't have. Because I trusted them because I was told I had
03:12PM 10 to, and I was told I have no other trust other than to trust my
03:12PM 11 higher-ups. And when I tried to report it, I got fallback from
03:12PM 12 it.

03:12PM 13 THE COURT: The military is not very good at that, as we
03:12PM 14 have seen in the recent news reports, nor is the police
03:12PM 15 department.

03:12PM 16 MS. HEBRARD: Yeah. So a lot of it is instilling trust,
03:12PM 17 and in this instance it was instilled in the wrong person. But I
03:12PM 18 don't think anything from my mom was potentially bad. I don't
03:12PM 19 think she had that in her mind, like: Oh, I'm going to do this,
03:13PM 20 even though I'm not supposed to. I think it was: Oh, I'm going
03:13PM 21 to do as I'm told. Going to get it done and over with. It's what
03:13PM 22 I was told to do. I'm doing it.

03:13PM 23 And I don't think it connected that: Oh, well, this is
03:13PM 24 going to lead to this huge long thing. I think it was just a
03:13PM 25 trust in her boss. And I think that's where the underlying thing

03:13PM 1 was: She trusted the wrong person, and I think that's where the
03:13PM 2 big downfall was, honestly.

03:13PM 3 THE COURT: So it was okay to, even when the boss says:
03:13PM 4 We don't want to get in trouble with the government by doing the
03:13PM 5 shipping, what prevented your mother from saying: Wait a minute.
03:13PM 6 We don't even want to ship this stuff?

03:13PM 7 Or are you just sharing with me that your mother is
03:13PM 8 probably not as obnoxious as I would be personally? She's more of
03:13PM 9 a kind and trusting person?

03:14PM 10 MS. HEBRARD: She is a kind and trusting person. I mean
03:14PM 11 she's very kind and very thoughtful and I think, you know. My
03:14PM 12 brother worked for this man and my brother knows his character. I
03:14PM 13 don't know if he's going to speak today, but my brother worked for
03:14PM 14 him as well and knows the kind of character he is and how -- I
03:14PM 15 mean, he can give better examples than I can, because I didn't
03:14PM 16 work for the man.

03:14PM 17 But my mom is a good person, and from the bottom of my
03:14PM 18 heart that's what I believe. And this sentencing is definitely
03:14PM 19 not an easy thing for me because I finally got my mom back in my
03:14PM 20 life, and then my kids have her, and she's all the support I have.
03:14PM 21 She is the only person that's been there day in and day out.
03:14PM 22 She's the only person that comes and helps me with them when I
03:14PM 23 need it. I mean, she's basically my world. And this whole thing
03:15PM 24 is destroying it, and she's already been punished from when all of
03:15PM 25 this started being on probation, not being able to get jobs

03:15PM 1 because of everything on probation, and getting permission to even
03:15PM 2 come out and see me and trying to work with them. And even last
03:15PM 3 minute they tell her: Oh, well, now you can go, like, the day
03:15PM 4 before.

03:15PM 5 And she punishes herself daily. She has the stress and
03:15PM 6 anxiety and everything else it gives her and the hard time that
03:15PM 7 she has had these past few years, just trying to make it through
03:15PM 8 this, and then it getting dragged out another week because they
03:15PM 9 want to go through every little detail is absolutely ridiculous
03:15PM 10 and heartbreaking because at this point she just wants to get
03:15PM 11 everything over with and move on with her life and go forward, and
03:15PM 12 she can't, and I don't think that's right.

03:16PM 13 THE COURT: Thank you very much, Miss Hebrard.

03:16PM 14 MR. MOSS: One point of clarification.

03:16PM 15 Did I understand you to say that you worked for Mr. Sotis
03:16PM 16 at one time yourself?

03:16PM 17 MS. HEBRARD: My brother did.

03:16PM 18 MR. MOSS: Your brother?

03:16PM 19 MS. HEBRARD: My brother did, Tyler.

03:16PM 20 MR. MOSS: Is he here? We may address that at a later
03:16PM 21 point. Thank you.

03:16PM 22 MS. HEBRARD: Thank you.

03:16PM 23 MR. MOSS: Judge, at this point I'm going to return the
03:16PM 24 proceedings to the Court. Based on our discussions between myself
03:16PM 25 and Mr. Udolf, my intentions for final sentencing hearing were, in

03:16PM 1 large measure, going to be based on the totality of Mr. Sotis'
03:16PM 2 presentation. So at this point, now that the speakers have been
03:16PM 3 heard, I will turn the proceedings back over to him, and then I
03:16PM 4 will be glad to resume for Ms. Voissem at whatever time the Court
03:16PM 5 would set.

03:16PM 6 THE COURT: What time would be convenient for you all?
03:17PM 7 Because at the rate we're going, I don't want you all to have to
03:17PM 8 sit here. Most of the subsequent objections have to do with
03:17PM 9 issues that pertain, primarily, to him; the obstruction, the
03:17PM 10 enhancement for role, and things like that.

03:17PM 11 MR. MOSS: Right. And I would mention for the record,
03:17PM 12 Judge, that the specific objections of Mr. Sotis to which we
03:17PM 13 joined, we also, as did Mr. Udolf, basically joined them in order
03:17PM 14 to preserve the record in the event that the Court found that any
03:17PM 15 of the objections in Mr. Sotis' presentation may have arguably had
03:17PM 16 any kind of impact with Ms. Voissem.

03:17PM 17 We're not going to expand on any of the arguments that
03:17PM 18 Mr. Udolf has already made, but we would just preserve the record
03:17PM 19 as to that.

03:17PM 20 THE COURT: Haven't we covered all of the objections that
03:17PM 21 you joined in --

03:17PM 22 MR. MOSS: Actually, I believe we have.

03:17PM 23 THE COURT: -- at this point?

03:17PM 24 MR. MOSS: I believe we have.

03:18PM 25 THE COURT: Then we will start at --

03:18PM 1 MR. MOSS: Actually, Judge, Mr. Hebrard, with the Court's
03:18PM 2 permission, Ms. Voissem's son just indicated that he wants to
03:18PM 3 speak.

03:18PM 4 THE COURT: Okay. Let me just take a quick break so that
03:18PM 5 I can let the people that I'm interviewing know why I'm not there
03:18PM 6 interviewing them and why my colleague is doing it. Okay? Let's
03:18PM 7 just take a five-minute break.

03:18PM 8 MR. MOSS: Sure.

03:27PM 9 (Recess.)

03:27PM 10 THE COURT: So we can continue tomorrow morning.

03:27PM 11 MR. MOSS: That will be fine, Your Honor.

03:27PM 12 MR. UDOLF: That's fine.

03:27PM 13 THE COURT: Please have a seat, everyone. Everyone is
03:27PM 14 present.

03:27PM 15 Where is Mr. Sotis? I don't see Mr. Sotis. It took a
03:28PM 16 little juggling because Judge Reid is going to be at a hearing
03:28PM 17 with me tomorrow, so fortunately she is on the Zoom call that
03:28PM 18 we're having. So okay. Mr. Sotis is back in the courtroom.

03:28PM 19 Ms. Voissem, do you want to go with your son today, or
03:28PM 20 would you rather tomorrow? I have told everyone that he wants to
03:29PM 21 speak, and I'm happy to listen now. They are proceeding and my
03:29PM 22 other law clerk is moving tomorrow's hearing so that I can start
03:29PM 23 tomorrow morning at 10:00, so that we can finish this, because
03:29PM 24 your daughter is right; we do need to bring this to an end, and we
03:29PM 25 will do whatever it takes. Mr. Moss, sir --

03:29PM 1 MR. MOSS: Yes.

03:29PM 2 THE COURT: -- what is you-all's preference? Does her

03:29PM 3 son want to speak today, or does he want to speak tomorrow?

03:29PM 4 MR. MOSS: Whatever preference he has. Okay. Why don't

03:29PM 5 you come on up.

03:30PM 6 THE COURT: Ms. Gould, thank you very much. I had no

03:30PM 7 idea that it was going to take this much time.

03:30PM 8 MS. GOULD: No problem.

03:30PM 9 MR. MOSS: All right. As with all the other speakers,

03:30PM 10 spell your name and tell us your relationship to Emilie.

03:30PM 11 MR. HEBRARD: My name is Tyler Hebrard, T-y-l-e-r,

03:30PM 12 H-e-b-r-a-r-d, and Emilie is my mother.

03:30PM 13 I guess I'll start off telling you a little bit about

03:30PM 14 myself. I'm having a baby due soon. That will be my mother's

03:30PM 15 third grandchild.

03:30PM 16 THE COURT: Congratulations. When is the baby due?

03:30PM 17 MR. HEBRARD: Due in April. And my wife, her mother just

03:31PM 18 passed away this last year from cancer, her dad works in Dubai,

03:31PM 19 and I work out of town. I live in California, but I work in

03:31PM 20 Northern California and we live in Central California, so I'm not

03:31PM 21 home very often.

03:31PM 22 MR. MOSS: What do you do for a living?

03:31PM 23 MR. HEBRARD: I am a truck driver. I drive trucks

03:31PM 24 commercially across the state of California. So with that being

03:31PM 25 said, I was really looking forward to my mother being there.

03:31PM 1 She's been a good mother to me throughout my whole life. She's
03:31PM 2 always been there for me. She's always been the one that I could
03:31PM 3 count on. She's always been the one I went to for advice.

03:31PM 4 My dad has always been the protector, but he's never been
03:31PM 5 the guy that I could lean on, the guy I could get the advice from;
03:31PM 6 and that's been my mom, anytime I needed somebody to talk to. I
03:32PM 7 lived with her -- sorry.

03:32PM 8 THE COURT: Would you like some water too? A Kleenex?

03:32PM 9 MR. MOSS: We have Kleenex.

03:32PM 10 THE COURT: We can get some water too.

03:32PM 11 MR. HEBRARD: She's always been there. She always gave
03:32PM 12 me a place to stay. Even in my adult life, anytime I've needed
03:32PM 13 her for anything, she's always been there for me.

03:32PM 14 Like my sister stated, she's always been the helping,
03:32PM 15 trusting kind, and my wife really needs that. My wife really
03:32PM 16 needs that for our baby. I can do as much as I can do, and I will
03:33PM 17 be there as much as I can be there for that baby. But as I've
03:33PM 18 seen my mom with my sister's grandchildren, I've seen the kind of
03:33PM 19 grandmother that she's been and how much those kids love her, and
03:33PM 20 I can't help but sit and think how we're not going to have that,
03:33PM 21 and how by the time that she gets out my kid is going to be past
03:33PM 22 the infant stage and past the toddler stage.

03:33PM 23 Some of the sentencing guidelines I've heard are just
03:33PM 24 awful for what has been stated was a mistake. It was something
03:33PM 25 that she never intended to do. Never intended to cross that kind

03:33PM 1 of boundary. She's always been a straight shooter and always been
03:33PM 2 on the right side of the law, as well as the rest of my family, so
03:34PM 3 I've never found myself in this position.

03:34PM 4 And I just know that I'm going to need her. I know that
03:34PM 5 I'm going to need her, being a father. I know that I'm going to
03:34PM 6 need -- that my wife is going to need her, and that I'm not going
03:34PM 7 to get that like my sister did. I just know, as has been stated,
03:34PM 8 that she's just a good person. She's always tried to do
03:34PM 9 everything right.

03:34PM 10 I know that she's always been trying to progress. I know
03:34PM 11 she came to Florida. She left law enforcement and she came to
03:34PM 12 Florida because it was her passion; not for the money, not to do
03:34PM 13 anything but find happiness in herself. She came out here and, I
03:35PM 14 mean, she took a good salary and she came out here and took a huge
03:35PM 15 pay cut and worked on a dive boat and did what she loves every
03:35PM 16 day. She was out on the water, she was taking photos and
03:35PM 17 underwater photography, and progressing, and she was just trying
03:35PM 18 to move up. She was trying to move up. She was always looking to
03:35PM 19 better her life out here.

03:35PM 20 She had an apartment when she first moved out here, and
03:35PM 21 she -- I mean, she left a house. She had a nice house back in
03:35PM 22 California. She left, she came out here to a little apartment and
03:35PM 23 a little income, and she was working on building herself up. She
03:35PM 24 went to Add Helium because she saw the potential to grow herself.
03:35PM 25 I think she saw that she could go somewhere and build something

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here and she did.

She bought a house, she started building up her life, and getting everything together out here. And as has been stated, she was just a little too trusting in the wrong person, and I think that she just got caught up in something she couldn't get out of.

THE COURT: Why not?

MR. HEBRARD: What was that?

THE COURT: Why couldn't she get out of it?

MR. HEBRARD: Because I think by the point that she realized that mistakes were made, I think by the point she realized, that it was too late. I think that this all happened --

When the indictment came, I think she didn't realize that it was -- that it got to that point, that it was going this severe, that there was any punishment, that they were doing anything wrong. I think that she believed -- she believed in her superiors. And I think that --

THE COURT: But why would she do that, given her background?

MR. HEBRARD: I think as my sister stated, I think that she is a very trusting person. I mean, with a law enforcement background, I mean, I understand you tend to question things. But also she had worked for Add Helium for many years, and she had grown to know her superiors there. And I think that she -- there was a trust there. There was a trust in that business to where she got comfortable. Maybe when she first went into the business

03:37PM 1 and started there, maybe she questioned things. She was a little
03:37PM 2 more wary of different things that were going on and how business
03:37PM 3 worked and how that type of industry worked.

03:37PM 4 But I think with time and with her being in the position
03:37PM 5 she was, I think that she got used to it, and she got used to
03:37PM 6 day-to-day life and following what her superiors asked her to do.
03:37PM 7 And I don't think -- by the time I think the red flags popped up,
03:37PM 8 I think it was too late. I think that by the time she realized
03:38PM 9 that things happened that shouldn't have happened, that she was
03:38PM 10 already in it and she was already part of it.

03:38PM 11 THE COURT: And you worked at Add Helium?

03:38PM 12 MR. HEBRARD: Yes.

03:38PM 13 THE COURT: When and in what capacity?

03:38PM 14 MR. HEBRARD: I worked in the warehouse taking in
03:38PM 15 inventory and organizing, cleaning. I worked in 2015 to the
03:38PM 16 beginning of 2016, yeah.

03:38PM 17 THE COURT: How many employees were there?

03:38PM 18 MR. HEBRARD: There was maybe like seven or eight as far
03:38PM 19 as in the office every day, and then there was also instructors,
03:38PM 20 different instructors for different rebreathers that would come
03:38PM 21 and go for the classes.

03:38PM 22 THE COURT: And who all was in the office?

03:38PM 23 MR. HEBRARD: Yes.

03:39PM 24 THE COURT: Who was in the office? You said seven or
03:39PM 25 eight. Who? Can you name them?

03:39PM 1 MR. HEBRARD: Actually it would be Peter; my mom, Emilie;
03:39PM 2 Ken Wesler; Deb Wesler; Robert in the service department.
03:39PM 3 THE COURT: What was Robert's --
03:39PM 4 MR. MOSS: Robert Johnson?
03:39PM 5 MR. HEBRARD: Yes.
03:39PM 6 THE COURT: Okay.
03:39PM 7 MR. HEBRARD: And me in the warehouse back there. Oh,
03:39PM 8 and -- sorry. It's been a little while. Tony. There was a guy
03:39PM 9 in the office, Tony.
03:39PM 10 THE COURT: What did Tony do?
03:39PM 11 MR. HEBRARD: He managed -- I mean, like I said, I worked
03:39PM 12 in the warehouse, so I don't know everybody's full job
03:39PM 13 description, but he did enter -- sorry. I don't know for sure
03:40PM 14 what his full job capacity was. I don't want to say the wrong
03:40PM 15 thing.
03:40PM 16 MR. MOSS: Let me ask a quick question.
03:40PM 17 You said you were with Add Helium from early 2015 to
03:40PM 18 2016?
03:40PM 19 MR. HEBRARD: Correct.
03:40PM 20 MR. MOSS: About what month would it have been that you
03:40PM 21 left?
03:40PM 22 MR. HEBRARD: About June. I moved back to California.
03:40PM 23 MR. MOSS: So you weren't present for anything related to
03:40PM 24 the transaction which brought us here?
03:40PM 25 MR. HEBRARD: No. No. Everything, well, the shipping

1 and all that was going on with that, I was not at Add Helium.

2 MR. MOSS: Anything else you'd like to add?

3 MR. HEBRARD: I just ask, Your Honor, that you take into
4 account all of my family and my mom's friends' statements today
5 and the e-mails that they've sent in. Everyone is very sincere in
6 saying my mom is a very good person and never would have tried to
7 be deceitful or try to break any laws. She had no gain from this.
8 There is no financial aspect to her or any reason for her, besides
9 just trying to be a good employee.

10 I ask that you just take what everybody said today and
11 just really think about her character in her sentencing here and
12 how much everybody needs her in their lives now.

13 THE COURT: Thank you very much.

14 MR. MOSS: Thank you, Tyler.

15 THE COURT: We will resume tomorrow morning at 10:00.

16 MR. MOSS: Yes, Your Honor.

17 MR. THAKUR: Yes, Your Honor.

18 THE COURT: Okay. We are in recess.

19 (Recess at 3:42 P.M.)

20 C E R T I F I C A T E

21 I certify that the foregoing is a correct transcript from
22 the record of proceedings in the above-entitled matter.

23
24 March 17, 2022

/s/ Vernita Allen-Williams

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