

Deposition of Ellen Ripperger
Conducted on October 18, 2016

1 (Pages 1 to 4)

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1	U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	1
2	Baltimore Field Office	2
3	-----x	3
4	██████████ :	4
5	Complainant, :	5
6	v. : EEOC No. ██████████	6
7	JEH JOHNSON, : Agency No.	7
8	SECRETARY, U.S. : ██████████	8
9	DEPARTMENT OF HOMELAND :	9
10	SECURITY, :	10
11	Agency. :	11
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14	Deposition of ELLEN RIPPERGER	14
15	Washington, D.C.	15
16	Tuesday, October 18, 2016	16
17	11:54 a.m.	17
18		18
19		19
20	Job No.: 125413	20
21	Pages: 1 - 158	21
22	Reported By: Victoria Lynn Wilson, RMR, CRR	22
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1	Deposition of ELLEN RIPPERGER, held at the	1
2	offices of:	2
3		3
4		4
5	UNITED STATES SECRET SERVICE HEADQUARTERS	5
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7	Washington, DC 20223	7
8	(202) 406-8800	8
9		9
10		10
11		11
12		12
13	Pursuant to agreement, before Victoria Lynn	13
14	Wilson, Registered Merit Reporter, Certified	14
15	Realtime Reporter, Notary Public in and for the	15
16	District of Columbia.	16
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18		18
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20		20
21		21
22		22

1	A P P E A R A N C E S	
2	ON BEHALF OF THE COMPLAINANT:	
3	THOMAS J. GAGLIARDO, ESQUIRE	
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12	ON BEHALF OF THE AGENCY AND THE WITNESS:	
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16	Room 8300	
17	Washington, DC 20223	
18	(202) 406-8800	
19		
20	ALSO PRESENT:	
21	██████████	
22		

1	C O N T E N T S	
2	EXAMINATION OF ELLEN RIPPERGER	PAGE
3	By Mr. Gagliardo	5
4	By Mr. Giballa	155
5	E X H I B I T S	
6	(Attached to transcript)	
7	EXHIBITS	PAGE
8	Exhibit 1 Report and discovery materials	8
9	Exhibit 2 Polygraph Examination Procedures	20
10	Exhibit 3 Witnesses Affidavit - Ellen	
11	Ripperger	16
12	Exhibit 4 Report	44
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		

Deposition of Ellen Ripperger
Conducted on October 18, 2016

2 (Pages 5 to 8)

<p>5</p> <p>1</p> <p>2 PROCEEDINGS</p> <p>3 THE COURT REPORTER: Mr. Giballa,</p> <p>4 Mr. Wallace asked -- told me to ask you that if the</p> <p>5 deposition of Mr. Alston is transcribed, which we're</p> <p>6 going to determine on Thursday --</p> <p>7 MR. GIBALLA: Okay.</p> <p>8 THE COURT REPORTER: -- are you going to</p> <p>9 be ordering a copy of the transcript?</p> <p>10 MR. GIBALLA: Yes.</p> <p>11 THE COURT REPORTER: Okay. All right.</p> <p>12 Thank you.</p> <p>13 ELLEN RIPPERGER,</p> <p>14 having been duly sworn, testified as follows:</p> <p>15 EXAMINATION BY COUNSEL ON BEHALF OF THE COMPLAINANT</p> <p>16 BY MR. GAGLIARDO:</p> <p>17 Q Good morning. Would you identify</p> <p>18 yourself, please.</p> <p>19 A My name is Ellen Ripperger.</p> <p>20 Q Agent Ripperger, you work for the United</p> <p>21 States Secret Service?</p> <p>22 A That's correct.</p>	<p>7</p> <p>1 please tell me that. I'll rephrase questions you</p> <p>2 don't understand. I'll certainly repeat questions</p> <p>3 you haven't heard. Okay?</p> <p>4 A Okay.</p> <p>5 Q And we all do it, I do it worse than</p> <p>6 anybody, but head nods and "uh-huhs" and all that</p> <p>7 are worthless.</p> <p>8 A Okay.</p> <p>9 Q So it's got to be, "yes," "no,"</p> <p>10 "affirmative," "negative," or some word.</p> <p>11 Have you given a deposition before?</p> <p>12 A No.</p> <p>13 Q Okay. And not in your role as an agent or</p> <p>14 in your private life?</p> <p>15 A No.</p> <p>16 Q Okay. What did you review -- did you</p> <p>17 review anything before coming today?</p> <p>18 A Yes.</p> <p>19 Q What did you review?</p> <p>20 A I went over the documents with Attorney</p> <p>21 Giballa.</p> <p>22 Q Okay. I'm not going to ask you about any</p>
<p>6</p> <p>1 Q How long have you worked for the agency?</p> <p>2 A I started October 7th, 2001.</p> <p>3 Q Has that -- has your entire service -- has</p> <p>4 your entire employment with the Secret Service been</p> <p>5 in poly -- involving polygraphs or have you had</p> <p>6 other jobs?</p> <p>7 A Other jobs. I started out as a</p> <p>8 cooperative student.</p> <p>9 Q Okay. What did do you after you were a</p> <p>10 co-op student?</p> <p>11 A I went to agent training.</p> <p>12 Q Okay.</p> <p>13 A So I converted May 2nd of 2002 -- or, I'm</p> <p>14 sorry, May 19th of 2002.</p> <p>15 Q That's when you entered agent training?</p> <p>16 A Uh-huh.</p> <p>17 Q You have to say, "yes," or, "no," please.</p> <p>18 A Yes.</p> <p>19 Q All right. And I really should have said</p> <p>20 something before I launched into these questions.</p> <p>21 If I ask you a question you don't</p> <p>22 understand, please tell me. If you don't hear me,</p>	<p>8</p> <p>1 conversations you had with Mr. Giballa; all right?</p> <p>2 But I will ask you what you -- when you say you</p> <p>3 reviewed things, what those things actually were.</p> <p>4 A The documents from Mr. [REDACTED]</p> <p>5 polygraph.</p> <p>6 Q Okay. I'm going to show you what's been</p> <p>7 marked as Exhibit 1 and ask you if those are the</p> <p>8 documents reviewed.</p> <p>9 (Exhibit 1, previously marked, is attached</p> <p>10 to the transcript.)</p> <p>11 Q If you didn't review some of those things,</p> <p>12 tell me. If you reviewed something other than those</p> <p>13 things, tell me that. Take as much time as you</p> <p>14 need. This is not an endurance test or a memory</p> <p>15 test. I really want to get your complete</p> <p>16 understanding of what this case is about.</p> <p>17 A I did not go back over the test questions.</p> <p>18 Q All right. The page number that's circled</p> <p>19 in the bottom right --</p> <p>20 A 5.</p> <p>21 Q All right. You didn't look at page 5.</p> <p>22 A 11.</p>

<p style="text-align: right;">9</p> <p>1 Q And what is 11, please?</p> <p>2 A It's the quality control worksheet.</p> <p>3 Q Okay.</p> <p>4 A I did not review 12, which is the</p> <p>5 applicant examinee report; 13, which is a</p> <p>6 continuation of that report; 14, which is the</p> <p>7 polygraph database records. My copy was different,</p> <p>8 as I didn't see anything with Robin DeProspero-</p> <p>9 Philpot's signature.</p> <p>10 Q All right. You're referring to page 18?</p> <p>11 A Correct.</p> <p>12 Q Let me ask you a question on 18, and you</p> <p>13 may or may not know the answer. First of all, you</p> <p>14 recognize that as Ms. DeProspero-Philpot's</p> <p>15 signature; is that correct?</p> <p>16 A I can read. That's the first time I've</p> <p>17 seen her signature.</p> <p>18 Q Who is she?</p> <p>19 A I don't know what her exact title is.</p> <p>20 Q Is she in your chain of command?</p> <p>21 A She's not.</p> <p>22 Q What do you think her not-exact title is?</p>	<p style="text-align: right;">11</p> <p>1 "BQA." Do you agree that that's what it says,</p> <p>2 "BQA"?</p> <p>3 A I don't know. It looks like it could be</p> <p>4 an "O."</p> <p>5 Q Okay. Well, the real question is do you</p> <p>6 know what it stands for.</p> <p>7 A Do I know what what stands for?</p> <p>8 Q Those initials.</p> <p>9 A "BQA"?</p> <p>10 Q Yes.</p> <p>11 A Yes.</p> <p>12 Q What does that stand for?</p> <p>13 A It's my understanding that it stands for</p> <p>14 "better qualified applicant."</p> <p>15 Q All right. And what does it mean on that</p> <p>16 document?</p> <p>17 A I don't know. I've never seen it on a</p> <p>18 document -- or a report. I don't see reports that</p> <p>19 are at this stage of the process.</p> <p>20 Q So if I asked you who is being -- is she</p> <p>21 saying that somebody is a better qualified</p> <p>22 applicant?</p>
<p style="text-align: right;">10</p> <p>1 A I know she works for SCD.</p> <p>2 Q And that stands for --</p> <p>3 A Security clearance division.</p> <p>4 Q Okay. Have you ever communicated with</p> <p>5 her?</p> <p>6 A No.</p> <p>7 Q Never in any way?</p> <p>8 A No.</p> <p>9 Q All right. Let me make something clear.</p> <p>10 When I talk about communication, just so we have a</p> <p>11 common understanding, I'm talking about any and all</p> <p>12 forms of communication, so it could be</p> <p>13 person-to-person; it could be telephone; it could be</p> <p>14 email; it could be written memo or letter. What I</p> <p>15 always say is it could even be smoke signals. So,</p> <p>16 when I say, "communicate," you know I mean it in the</p> <p>17 broadest possible way.</p> <p>18 So, you're saying you've had no</p> <p>19 communication with -- with Ms. DeProspero-Philpot?</p> <p>20 A No.</p> <p>21 Q Okay. Do you see right below her</p> <p>22 signature there are some letters? I think it says,</p>	<p style="text-align: right;">12</p> <p>1 A I don't know.</p> <p>2 Q You don't know. We're going to ask her on</p> <p>3 Friday, so just wanted to check.</p> <p>4 All right. I interrupted you. You were</p> <p>5 going through the packet, telling me what you did or</p> <p>6 did not review, and I have four pages that you did</p> <p>7 not. I'm sorry. What was that page again?</p> <p>8 A I think it was page -- page 18.</p> <p>9 Q 18. Thank you.</p> <p>10 A Looks like there's another copy, so 22,</p> <p>11 24 --</p> <p>12 Q Can I ask you a question on 24, if you go</p> <p>13 back to that, please. Your name -- your name is</p> <p>14 there. It appears at least twice on the document.</p> <p>15 Have you seen this document before, even if you</p> <p>16 didn't review it in preparation for this deposition?</p> <p>17 A I have not seen this document. I wrote a</p> <p>18 polygraph report that I submitted --</p> <p>19 Q Okay.</p> <p>20 A -- that -- I mean I believe it was this</p> <p>21 one but I don't -- it's been amended since I</p> <p>22 submitted it.</p>

<p style="text-align: right;">13</p> <p>1 Q All right. Do you -- all right. Do you 2 see the report that you're referring to that you 3 prepared and that has been amended -- 4 A I do. 5 Q -- in the packet? 6 What page is it? 7 A 24. 8 Q I'm confused. Who prepared page -- the 9 report that's page 24? 10 A I prepared Mr. [REDACTED] polygraph report 11 after I tested him. 12 Q Okay. Is this the report? 13 A I believe so. 14 Q Okay. 15 A It looks like it but, again, there are 16 amendments. 17 Q What are the amendments? 18 A The reviewer is different. When I submit 19 it -- 20 Q The reviewer says, "EDA." Is that Agent 21 Alston? 22 A I believe so.</p>	<p style="text-align: right;">15</p> <p>1 A Not on this page, I don't believe. 2 Q Okay. 3 A I didn't review the questions on page 4 35 -- 5 Q Okay. 6 A -- page 36, page 40, page 45 -- 7 Q Did you review 41, which are also 8 questions? I'm only asking because you seem to not 9 have reviewed the pages that have typed questions or 10 other kind of data. 11 A 41 doesn't have questions, I don't 12 believe. 13 Q Yeah, it's other data, I see. 14 A Yeah. I didn't review that. 15 Q And 45, you say? 16 A Correct. 17 Q All right. 18 A 46, 50, 54, 55, 60 and 61, 64. 19 Q Okay. Thank you. Now, is there anything 20 not in the packet that you did review? 21 A Yes, the affidavit -- 22 Q Okay.</p>
<p style="text-align: right;">14</p> <p>1 Q Edward Alston? 2 A I believe so. 3 Q And you say that was added to your report? 4 A Correct. 5 Q All right. It wasn't changed from 6 something you put down, it was something that was 7 added afterwards? 8 A Correct. 9 Q Okay. All right. 10 A When I submitted my report, there was no 11 "concur" or "nonconcur" box checked. 12 Q Okay. I see that. Okay. 13 A And, of course, no signature. 14 Q The signature here looks to be Thomas 15 Christopher signing for the SAC -- for the SAC? 16 MR. GIBALLA: Is that a question? 17 A Are you asking me a question? 18 Q Yes. Is that Mr. Christopher's signature, 19 Thomas M. Christopher? 20 A I've never seen it. I may be. I mean it 21 looks like it says, "Christopher." 22 Q Okay. Any other amendments?</p>	<p style="text-align: right;">16</p> <p>1 A -- witness affidavit. 2 Q I'm going to ask you about that in a 3 second. Anything else? 4 A No. 5 Q Okay. All right. I'm going to show you 6 what's been marked as Exhibit 3. 7 (Exhibit 3 was marked for identification 8 and is attached to the transcript.) 9 Q You pointed to it and referred to it as 10 the affidavit. Is that the affidavit -- is that a 11 copy of the affidavit that you gave to the Equal 12 Employment Opportunity investigator in this case? 13 And take a moment, look at the document, take as 14 much time as you need to examine it, because I'm 15 going to ask you if there's anything you want to 16 change, so if there's anything to add, delete, or 17 modify in any way. 18 A This is the corrected version of -- or the 19 version that our legal counsel made changes to that 20 was ultimately submitted as my witness affidavit. 21 Q All right. And you've signed that -- 22 initialed and signed that document?</p>

<p style="text-align: right;">17</p> <p>1 A Correct.</p> <p>2 Q All right. So, again, my question is</p> <p>3 there anything you want to add, delete, or modify in</p> <p>4 any way?</p> <p>5 A Is it okay if I confer with counsel for a</p> <p>6 second?</p> <p>7 Q Sure. Do you want us to leave?</p> <p>8 THE WITNESS: Do you want to go outside</p> <p>9 for a second?</p> <p>10 MR. GIBALLA: Sure.</p> <p>11 (A recess was taken.)</p> <p>12 A So, I do want to make one amendment, if</p> <p>13 you will.</p> <p>14 Q Okay. Tell me what -- what page you're</p> <p>15 on.</p> <p>16 A Page 2, question number 6.</p> <p>17 Q It says, "Are you aware if complainant has</p> <p>18 a disability? If so, when and how did you become</p> <p>19 aware?" Is that the question?</p> <p>20 A Correct.</p> <p>21 Q And you want to change the answer to</p> <p>22 that --</p>	<p style="text-align: right;">19</p> <p>1 Take as much time as you want. Write in -- mark</p> <p>2 through anything you want to mark out and put in</p> <p>3 whatever you want to put in and then put initial and</p> <p>4 today's date on it.</p> <p>5 Can I take -- go ahead.</p> <p>6 All right. Let me take a look at what you</p> <p>7 did.</p> <p>8 I'm just going to read this into the</p> <p>9 record. The question by the investigator was, "Are</p> <p>10 you aware if complainant has a disability? If so,</p> <p>11 when and how did you become aware?"</p> <p>12 Agent Ripperger has deleted something of</p> <p>13 no significance and now the answer reads as follows.</p> <p>14 "Throughout the exam process, I only asked him the</p> <p>15 standard polygraph questions that all applicants are</p> <p>16 asked. There is no question on the form that asks</p> <p>17 if the examinee has a disability, period."</p> <p>18 She struck out the words "nor did he tell</p> <p>19 me he had one" and added, "The examinee told me he</p> <p>20 has obsessive compulsive disorder."</p> <p>21 All right. Thank you.</p> <p>22 All right. Again, just to be sure, is</p>
<p style="text-align: right;">18</p> <p>1 A Well --</p> <p>2 Q -- or correct or amend it in some way?</p> <p>3 A -- what I had submitted initially was that</p> <p>4 the complainant told me he had OCD.</p> <p>5 Q And what is OCD in your understanding?</p> <p>6 A Obsessive compulsive disorder.</p> <p>7 Q And that's a psychiatric condition;</p> <p>8 correct?</p> <p>9 A I don't know. I'm not --</p> <p>10 Q You don't know if it's a psychiatric</p> <p>11 condition?</p> <p>12 A I assume. I mean I'm not a doctor.</p> <p>13 Q I know. I'm not either. What do you</p> <p>14 think OCD is, obsessive compulsive disorder is?</p> <p>15 Something to do with the bones or sinus?</p> <p>16 A Yes, I believe it's a mental -- mental</p> <p>17 health condition.</p> <p>18 Q Okay. All right. So tell me what change</p> <p>19 you want to make.</p> <p>20 A Just that the complainant told me he has</p> <p>21 obsessive compulsive disorder.</p> <p>22 Q All right. Why don't you do it this way.</p>	<p style="text-align: right;">20</p> <p>1 there anything else that you want to go over so that</p> <p>2 you might add, delete, or modify in any way?</p> <p>3 A (No verbal response.)</p> <p>4 Q Please say, "yes," or, "no."</p> <p>5 A No. Sorry.</p> <p>6 Q I'm bad at it, too, so don't worry.</p> <p>7 Just so the record is clear, the witness</p> <p>8 was shaking her head and now she has said, "No."</p> <p>9 Okay.</p> <p>10 (Exhibit 2, previously marked, is attached</p> <p>11 to the transcript.)</p> <p>12 Q If you look at the exhibit marked Number 2</p> <p>13 that's in front of you, and this is something that</p> <p>14 was provided by Mr. Giballa in response to a request</p> <p>15 I made, you've seen this document before?</p> <p>16 A No.</p> <p>17 Q You've never -- look at the second and</p> <p>18 third and fourth pages. Have you seen any of those</p> <p>19 pages before?</p> <p>20 A I have never seen this page, page 1.</p> <p>21 Q Okay. How about the second, third, and</p> <p>22 fourth pages of the exhibit?</p>

<p style="text-align: right;">21</p> <p>1 A Yes.</p> <p>2 Q Okay. And this comes -- it says,</p> <p>3 "Manual -- Manual Polygraph RO FSD." What -- this</p> <p>4 is a Secret Service manual?</p> <p>5 A It appears to be.</p> <p>6 Q All right. And do you know what "RO"</p> <p>7 stands for?</p> <p>8 A I do not.</p> <p>9 Q How about FSD?</p> <p>10 A Forensic services division.</p> <p>11 Q Okay. Now, the headline on the document</p> <p>12 is "Polygraph Examination Procedures," and then it</p> <p>13 has various subparagraphs and subheadings, and</p> <p>14 you've seen those -- those three pages before?</p> <p>15 A (No verbal response.)</p> <p>16 Q "Yes" or "no," please.</p> <p>17 A I'm sorry. Yes.</p> <p>18 Q Okay. And these -- and these are the</p> <p>19 procedures that you are required to follow in</p> <p>20 administering a polygraph examination of an</p> <p>21 applicant for employment?</p> <p>22 A I haven't seen this or read through this</p>	<p style="text-align: right;">23</p> <p>1 Q Okay. There was no two-way mirror, nobody</p> <p>2 observing from behind such a thing?</p> <p>3 A There was no one observing the exam.</p> <p>4 Q Okay. You were to make an audio recording</p> <p>5 of the exam, were you not?</p> <p>6 A Yes.</p> <p>7 Q Okay. And there are -- we were provided</p> <p>8 with three audio files. The first one is audible.</p> <p>9 It's simply the introduction of the case. Did you</p> <p>10 listen to the first audio file after the exam was</p> <p>11 conducted?</p> <p>12 A I have.</p> <p>13 Q When was the first time after the exam was</p> <p>14 administered that you listened -- that you listened</p> <p>15 to the first file?</p> <p>16 A I don't know.</p> <p>17 Q Well, would it have been a day or a couple</p> <p>18 days, a month, not until the whole complaint was</p> <p>19 filed? When -- when was it?</p> <p>20 A I don't remember.</p> <p>21 Q The second audio file is largely</p> <p>22 inaudible. There are some parts that are debatably</p>
<p style="text-align: right;">22</p> <p>1 in a number of years, so before I answer that, I</p> <p>2 would want to read through it.</p> <p>3 Q Absolutely. Take your time.</p> <p>4 MR. GAGLIARDO: I'm going to take a quick</p> <p>5 break while you're doing that.</p> <p>6 (A recess was taken.)</p> <p>7 BY MR. GAGLIARDO:</p> <p>8 Q Okay. We went off the record for a few</p> <p>9 minutes, and you've had a chance to review it. Have</p> <p>10 you seen this document before? I think you said,</p> <p>11 "Yes."</p> <p>12 Are those the procedures that you're</p> <p>13 required to follow when administering a polygraph</p> <p>14 examination?</p> <p>15 A Yes.</p> <p>16 Q Okay. Did you follow those procedures</p> <p>17 when you conducted Mr. ██████ examination?</p> <p>18 A Yes.</p> <p>19 Q Okay. Now, when you administered the</p> <p>20 examination to Mr. ██████ was it observed by</p> <p>21 anybody else?</p> <p>22 A No.</p>	<p style="text-align: right;">24</p> <p>1 audible without all the detail. Are you aware of</p> <p>2 that?</p> <p>3 A Yes.</p> <p>4 Q When did you first become aware that that</p> <p>5 was the condition of the audio recording?</p> <p>6 A I'm not exactly certain. I think it was</p> <p>7 during the quality control process but, again, I</p> <p>8 don't remember, since it's been so much time.</p> <p>9 Q Now, the quality control process is when</p> <p>10 Agent Alston and others were involved?</p> <p>11 A Correct.</p> <p>12 Q And I believe that if we look at the --</p> <p>13 back in Exhibit 1, if we look at some of those</p> <p>14 pages, for example, pages 8 and 9, you'll see that</p> <p>15 Agent Alston signed those documents on the 18th of</p> <p>16 September 2014. Is that about the time period when</p> <p>17 you first discovered the problem with the audio</p> <p>18 recording?</p> <p>19 A I didn't discover the problem with the</p> <p>20 audio recording.</p> <p>21 Q Okay. Who did?</p> <p>22 A I don't know.</p>

<p style="text-align: right;">25</p> <p>1 Q Well, who told you that there was a 2 problem?</p> <p>3 A I don't remember.</p> <p>4 Q All right. When I asked you a moment ago, 5 I said, "When did you first learn that there was a 6 problem with the digital file and the audio 7 recording," you said sometime during the --</p> <p>8 A Yeah.</p> <p>9 MR. GIBALLA: Objection.</p> <p>10 MR. GAGLIARDO: I'm going to finish the 11 sentence.</p> <p>12 Q -- during the quality control process, 13 it's a long time ago, but you think that's when it 14 was, roughly so.</p> <p>15 A Again, I don't know. I assume. I think 16 that's when it was determined. As I said in my 17 affidavit, there were three tests during that time 18 period where the audio -- there were issues with the 19 audio, issues with the external mike.</p> <p>20 I do remember that one of my colleagues 21 called me to tell me that there was an issue with my 22 microphone. He was in -- Magnuson, he's one of the</p>	<p style="text-align: right;">27</p> <p>1 signed. Was Mr. [REDACTED] -- was the exam given on 2 the same day?</p> <p>3 A I'm sorry?</p> <p>4 Q Excuse me. This is my fault, agent. Bear 5 with me a second.</p> <p>6 Yeah. Okay. So, I see in -- if you look 7 at page 16 of Exhibit 1, it says, "Polygraph 8 examination warning of rights and consent to speak."</p> <p>9 A Yes.</p> <p>10 Q That's signed by Mr. [REDACTED] and the date 11 is September 18th. Is that the date the polygraph 12 exam was actually administered?</p> <p>13 A Yes.</p> <p>14 Q And was it on the same day that Sergeant 15 Magnuson told you there was a problem with the mike?</p> <p>16 A No.</p> <p>17 Q Okay. That's -- sorry to be so 18 roundabout.</p> <p>19 When was it that Sergeant Magnuson told 20 you you had a problem with the mike and ran up -- 21 brought you another one?</p> <p>22 A I don't have an exact date.</p>
<p style="text-align: right;">26</p> <p>1 individuals that quality controlled the exam. He 2 gave me a call and said, "Your mike isn't working. 3 I'm going to run you up a new one."</p> <p>4 So he literally ran up to my office and 5 gave me a new external mike.</p> <p>6 Q Is this during the examination or -- no, 7 this is after, when he was doing the review?</p> <p>8 A No, this is after. But I don't know at 9 what point I listened or if he listened to [REDACTED] 10 I can't speak for either Ed or for Magnuson, Bill 11 Magnuson.</p> <p>12 Q All right.</p> <p>13 A And I just don't remember exactly when it 14 was determined that there was -- there were some 15 issues with the audio.</p> <p>16 Q So the inference that I'm drawing is that 17 between the examination, which was -- let's get the 18 right -- the right date. I'm surprised these 19 documents don't have dates on them. Pardon me. Do 20 you remember the date of the examination?</p> <p>21 A September 18th, 2014.</p> <p>22 Q That's when the -- when the reports are</p>	<p style="text-align: right;">28</p> <p>1 Q Approximately. I mean was it days, weeks, 2 months, years later?</p> <p>3 A Days.</p> <p>4 Q Days. Okay. Between Mr. Ripperger -- 5 Mr. [REDACTED] polygraph and Sergeant Magnuson 6 bringing you a new mike, did you conduct any other 7 polygraph exams?</p> <p>8 A I don't know.</p> <p>9 Q During the exam, did you check if the 10 microphone was working?</p> <p>11 A I recorded the preamble. So, in order to 12 listen to it, you have to take out the jack from -- 13 the mike from the jack. So, yes, I listened to the 14 preamble -- the preamble was there -- plugged the 15 mike back in. On my computer screen, when we hit 16 "record," it shows that we're recording. Throughout 17 the exam, it showed me that I was recording the 18 exam, and there's a dialogue box that shows the 19 volume being recorded.</p> <p>20 Q Okay.</p> <p>21 A All of that was functioning properly.</p> <p>22 Q And the recording device is the -- your</p>

<p style="text-align: right;">29</p> <p>1 computer?</p> <p>2 A No, it's an external microphone.</p> <p>3 Q Well, the microphone is external but</p> <p>4 what's the device that's collecting the sound?</p> <p>5 A I don't know how it works. I just know</p> <p>6 that I plug in the external mike into my computer.</p> <p>7 I assume it's the Lafayette software but --</p> <p>8 Q Okay. That was another question I had.</p> <p>9 You were using Lafayette?</p> <p>10 A (No verbal response.)</p> <p>11 Q Okay. Which version? Do you know?</p> <p>12 A I don't.</p> <p>13 Q Where are the digital files for the</p> <p>14 charts, not the audio recording but for the charts</p> <p>15 themselves? Because Lafayette records the -- the</p> <p>16 charts digitally, as well. I mean when you print</p> <p>17 these things out, you're printing from something.</p> <p>18 Where are those digital files? Are they resident on</p> <p>19 your computer?</p> <p>20 A They're on my computer, and then there's</p> <p>21 also a copy stored on our I-drive in our forensic</p> <p>22 services for polygraph.</p>	<p style="text-align: right;">31</p> <p>1 going to call it a "tape," but we know what we're</p> <p>2 talking about; right?</p> <p>3 A I heard my pretest of Mr. [REDACTED]</p> <p>4 Q What is the pretest?</p> <p>5 A It's prior to the end test, prior to</p> <p>6 running charts. It's the beginning of the polygraph</p> <p>7 examination.</p> <p>8 Q All right. This is not the preamble, this</p> <p>9 is something different.</p> <p>10 A Correct.</p> <p>11 Q What did you hear?</p> <p>12 A Again, I heard my pretest. I heard me</p> <p>13 talking to Mr. [REDACTED] about the polygraph exam and</p> <p>14 the questions that we were going to be going over.</p> <p>15 Q Okay. Now, the whole exam -- the whole</p> <p>16 examination process took approximately five hours, a</p> <p>17 little more than five hours, in Mr. [REDACTED] case?</p> <p>18 A No.</p> <p>19 Q How long did it take?</p> <p>20 A I would have to go back and look at the</p> <p>21 exact time on my report.</p> <p>22 Q Okay. Let's look at your report. I</p>
<p style="text-align: right;">30</p> <p>1 Q Okay. Has a transcript been made of the</p> <p>2 audio recording?</p> <p>3 A I don't know.</p> <p>4 Q You've never seen a transcript?</p> <p>5 A No.</p> <p>6 Q Have you listened to the audio recording?</p> <p>7 A Yes.</p> <p>8 Q When was the last time you listened? I</p> <p>9 mean roughly. Again, I'm not asking for precise</p> <p>10 time, but you did -- today? Last week? A long time</p> <p>11 ago?</p> <p>12 A Probably right around the middle of</p> <p>13 August.</p> <p>14 Q Of this year?</p> <p>15 A Uh-huh.</p> <p>16 Q You have to say, "yes," or, "no."</p> <p>17 A Yes. Sorry.</p> <p>18 Q Okay. That's all right. I'll --</p> <p>19 sometimes -- I will forget at some point to tell you</p> <p>20 to say, "yes," or, "no."</p> <p>21 So, in August, what did you hear on the</p> <p>22 tape -- I mean on the -- from the digital file? I'm</p>	<p style="text-align: right;">32</p> <p>1 believe it's page 19.</p> <p>2 A 9:40 we began.</p> <p>3 Q What page are you on?</p> <p>4 A Page 19.</p> <p>5 Q Okay. I'm having some trouble finding the</p> <p>6 start time.</p> <p>7 A It's right here, middle of the page.</p> <p>8 Q Time in, time out. I've got it. Time in</p> <p>9 9:40; time out 13:20; is that correct?</p> <p>10 A That's correct.</p> <p>11 Q So that's not quite four hours, according</p> <p>12 to this entry; is that correct?</p> <p>13 A Correct.</p> <p>14 Q Okay. So, go ahead, tell me what you</p> <p>15 heard on the tape. You said you heard your pretest.</p> <p>16 A Correct.</p> <p>17 Q What -- those are a series -- you</p> <p>18 explained the process to Mr. [REDACTED] What else did</p> <p>19 you do?</p> <p>20 A I don't know what you mean by "process."</p> <p>21 I explained --</p> <p>22 Q What did you do in the pre -- what's the</p>

<p style="text-align: right;">33</p> <p>1 pretest? What did you tell him? What was the back 2 and forth between the two of you?</p> <p>3 A The pretest is, again, the first part of 4 the exam where you're going over the rights, the 5 medical form; you do the practice test and the 6 question review. And what I can hear is the 7 question review.</p> <p>8 Q All right. Now, some of those 9 documents -- there are some documents here that 10 track what you just said; correct?</p> <p>11 A Correct.</p> <p>12 Q All right. So, I'm probably not going to 13 get them all, so you're going to have to help me 14 out. Paragraph -- excuse me. Page 2, "Polygraph 15 data sheet," that's part of the pretest?</p> <p>16 A It is.</p> <p>17 Q So, you and Mr. [REDACTED] talked about this, 18 filled this out as part of the pretest; correct?</p> <p>19 A I filled it out, yes.</p> <p>20 Q Okay. This is your handwriting?</p> <p>21 A Up until the signature.</p> <p>22 Q Right. And "Fit" is circled by</p>	<p style="text-align: right;">35</p> <p>1 tell me when I'm doing on this practice test. What 2 are you telling me?</p> <p>3 A Can you be a little bit more specific.</p> <p>4 Q Well, do you hand him a sheet of paper 5 with the numbers with one blank and tell him, "Write 6 in the missing number"?</p> <p>7 A Correct.</p> <p>8 Q All right. Then what else do you tell an 9 examinee?</p> <p>10 A I tell them to answer "no" to each and 11 every question on this page.</p> <p>12 Q All right. So what are the questions you 13 ask?</p> <p>14 A "Did you write the number one? Did you 15 write" --</p> <p>16 Q And he says, "No," and so forth, and when 17 he comes to four, he also says, "No" --</p> <p>18 A Correct.</p> <p>19 Q -- even though that's a false answer.</p> <p>20 A What do you mean by "false answer"?</p> <p>21 Q Well, he wrote the four. You said, "Did 22 you write any of these?" And if he says, "no," to</p>
<p style="text-align: right;">34</p> <p>1 Mr. [REDACTED]</p> <p>2 A Correct.</p> <p>3 Q All right. And that's the procedure; you 4 write "Fit" or "Unfit" and you ask the examinee to 5 circle one or the other; is that correct?</p> <p>6 A Correct.</p> <p>7 Q And Mr. [REDACTED] circled "Fit" and then 8 signed it.</p> <p>9 A Yes.</p> <p>10 Q All right. The next page, page 3, 11 "Polygraph examination interview worksheet," is that 12 part of the pretest?</p> <p>13 A Yes.</p> <p>14 Q All right. How about page 4?</p> <p>15 A Yes.</p> <p>16 Q All right. And tell me what page 4 is 17 really about. What -- I see a series of numbers 18 in -- you know, in a vertical row, and number four 19 is handwritten in and printed is "(No)" on both 20 sides of the four. What's this all about?</p> <p>21 A This is the practice test.</p> <p>22 Q Okay. Tell me -- if I were an examinee,</p>	<p style="text-align: right;">36</p> <p>1 four, that's not the truth.</p> <p>2 A Correct.</p> <p>3 Q All right. And then what does that -- how 4 does that factor into the rest of the polygraph 5 process?</p> <p>6 A We want to see what the individual's 7 physiology looks like when he tells a lie, so we ask 8 him to lie at number four.</p> <p>9 Q Okay. And when you say, "the physiology," 10 your monitoring blood pressure, heart rate, 11 respiration, and galvanic skin response, sweaty 12 palms.</p> <p>13 A Correct.</p> <p>14 Q You're also monitoring movement in the 15 chair?</p> <p>16 A Correct.</p> <p>17 Q Anything else that you monitor?</p> <p>18 A The examinee sitting in the chair.</p> <p>19 Q What do you mean? His posture or --</p> <p>20 A If he's moving around, what his body is 21 doing.</p> <p>22 Q Okay. Do you measure anything else in</p>

<p style="text-align: right;">37</p> <p>1 terms of determining whether there is an indication 2 of deception? 3 A No. 4 Q Do you make your own personal observation? 5 I mean, you know, the classic thing is shifty eyes 6 and that kind of stuff. 7 A Are you asking me if I specifically saw 8 him doing shifty eyes or -- 9 Q First of all -- 10 A What are shifty eyes? 11 Q No, I'm just asking you in general. What 12 are you -- I mean we know that there are the 13 formal -- there's the formal monitoring of the 14 physiological things that I just mentioned. 15 A Sure. 16 Q Do you do -- do you, in administering the 17 test, measure or observe or use anything else to 18 determine whether there's an indication of 19 deception? 20 A I look at the examinee to see if he's 21 following my instructions. 22 Q Okay.</p>	<p style="text-align: right;">39</p> <p>1 of tracking the questions that are asked; correct? 2 A Correct. 3 Q And "R" means it's a relevant question. 4 A Correct. 5 Q So, if there is a -- if there's an 6 indication of deception to a relevant question, 7 that's when there's a problem with the -- that's 8 when there's a problem; correct? 9 A Correct. 10 Q All right. And "C" is a comparative 11 question? 12 A Comparison. 13 Q Comparison question. So you would measure 14 the physiological response to a comparison question 15 to a relevant question as a way of determining 16 whether or not there's an indication of deception? 17 A We score relevant questions against 18 comparison questions and determine which has a 19 larger response. 20 Q Okay. I think we're saying the same 21 thing, aren't we? I'm not trying to trap you. 22 A No, not exactly.</p>
<p style="text-align: right;">38</p> <p>1 A That's why I look at the examinee. 2 Q Okay. Did Mr. [REDACTED] follow your 3 instructions? 4 A I don't remember if he answered this 5 question yes or no. 6 Q Okay. Do you have a specific 7 recollection -- I know you do a lot of these. Do 8 you have a specific recollection of Mr. [REDACTED] 9 polygraph examination? 10 A A couple pieces of it, sure. 11 Q Okay. I think you told me you did not -- 12 so, we're on the pretest. We're on the pretest. 13 Look at page 5. You said you didn't look at it in 14 preparation for the deposition, but is this part of 15 the pretest? 16 A Well, that depends. This is the exam 17 questions, so, technically speaking, it would be the 18 end test. But we review these questions with the 19 examinee prior to administering the test, so that 20 would be the pretest. 21 Q Okay. Now, I think I understand this but 22 correct me if I'm wrong. The numbers track is a way</p>	<p style="text-align: right;">40</p> <p>1 Q I'm trying to understand -- 2 A I mean you're talking about deception. 3 I'm looking to determine whether or not there is a 4 bigger response. 5 Q Okay. Well, let me ask you this, then. 6 If there's a bigger response to the relevant 7 question, is that an indication of deception? 8 A It's an indication that there's a 9 significant -- or a more significant response on the 10 relevant question. In layman's terms, yes, then 11 that would be indicative of deception. 12 Q Okay. Now, what does the "S" stand for? 13 Some of these questions -- I think -- looks like 14 only one of them is marked "S," but what is that 15 about? 16 A Sacrifice relevant. 17 Q What does that mean? 18 A What it means is that it's a question that 19 we use to introduce the relevant issues. 20 Q All right. And, again, I want to make 21 sure I understand the initials on this page. "DYI" 22 is "did you intend"? Question S22.</p>

<p style="text-align: right;">41</p> <p>1 A "Do you intend."</p> <p>2 Q What did I say?</p> <p>3 A "Did."</p> <p>4 Q "Did." Okay. Sorry. "Prior to applying</p> <p>5 with Secret Service, did you ever," is that what</p> <p>6 those initials mean?</p> <p>7 A Yes.</p> <p>8 Q "And before," I guess, "you applied with</p> <p>9 Secret Service, did you ever" is what BAWSSDYE</p> <p>10 stands for; correct?</p> <p>11 A "Before applying with the Secret Service."</p> <p>12 Q Didn't I say that? Whatever. I got you.</p> <p>13 Thank you.</p> <p>14 All right. Just -- just for completeness,</p> <p>15 going back to -- I mean looking at the entire</p> <p>16 exhibit, are there any missing charts or other --</p> <p>17 are there any charts or reports missing from that</p> <p>18 packet that you're aware of?</p> <p>19 A I can comment on what I put together and</p> <p>20 what I submitted, but as far as --</p> <p>21 Q Okay.</p> <p>22 A -- what ops may have added -- I mean I've</p>	<p style="text-align: right;">43</p> <p>1 Q Why don't -- here, let's do it this way.</p> <p>2 Why don't you -- we'll take a break off the record.</p> <p>3 Go through it. Anything you submitted, pull out and</p> <p>4 put in the order that you submitted it and then</p> <p>5 we'll go back on the record and establish what</p> <p>6 you've done.</p> <p>7 A Okay.</p> <p>8 Q Is that fair?</p> <p>9 A Uh-huh. Yes.</p> <p>10 Q You can nod your head on questions like</p> <p>11 that.</p> <p>12 MR. GAGLIARDO: It's 12:36. How about if,</p> <p>13 while you're doing that, we'll take a short break</p> <p>14 and we'll come back at 1:00.</p> <p>15 (A recess was taken.)</p> <p>16 MR. GAGLIARDO: While we were off the</p> <p>17 record, Mr. Giballa, on behalf of the Secret</p> <p>18 Service, advised me that there was actually a back</p> <p>19 side to the polygraph chart analysis done by</p> <p>20 Sergeant Magnuson, which is page 10 of Exhibit 1.</p> <p>21 So, we would label this page 10A and insert it into</p> <p>22 the exhibit and make that the official exhibit.</p>
<p style="text-align: right;">42</p> <p>1 seen what's been in here before, but whether or not</p> <p>2 there was something else taken out, a score sheet or</p> <p>3 something like that, I don't know.</p> <p>4 Q Okay. Two questions. First of all, what</p> <p>5 is ops?</p> <p>6 A Oh, I'm sorry. Polygraph operations.</p> <p>7 Q And is that your component or is this a --</p> <p>8 A I don't work in that component, but it's</p> <p>9 the operations section for the polygraph program.</p> <p>10 Q Okay. And do you want to tell us then</p> <p>11 what you submitted just -- I know that's a little</p> <p>12 tedious, but if you would, please.</p> <p>13 A Well, I submitted the polygraph report.</p> <p>14 Q Right. Just do the page numbers, if you</p> <p>15 would.</p> <p>16 A Well, it's out of order, which is why</p> <p>17 it's --</p> <p>18 Q Okay. I thought I kept it in the same</p> <p>19 order produced but I may not have, and I apologize</p> <p>20 if that's what happened.</p> <p>21 A Well, it's not the order that we submit</p> <p>22 them in.</p>	<p style="text-align: right;">44</p> <p>1 MR. GIBALLA: That works.</p> <p>2 MR. GAGLIARDO: So let's take the marked</p> <p>3 exhibit and do that.</p> <p>4 MR. GIBALLA: Okay.</p> <p>5 MR. GAGLIARDO: And while we were off the</p> <p>6 record, I had asked Agent Ripperger if she would</p> <p>7 pull out those documents that she submitted as her</p> <p>8 report and put them in the order in which they were</p> <p>9 submitted and it looks like she has done that.</p> <p>10 THE WITNESS: I have.</p> <p>11 MR. GAGLIARDO: May I see that, please.</p> <p>12 Hang on one second. Let's go off the record again.</p> <p>13 (A discussion was held off the record.)</p> <p>14 MR. GAGLIARDO: Let's mark that as 4.</p> <p>15 (Exhibit 4 was marked for identification</p> <p>16 and is attached to the transcript.)</p> <p>17 BY MR. GAGLIARDO:</p> <p>18 Q All right. While we were off the record,</p> <p>19 we had copies made of what's now been marked as</p> <p>20 Exhibit 4.</p> <p>21 Agent Ripperger -- Ripperger, sorry, as I</p> <p>22 understand it, what you have now assembled as</p>

<p style="text-align: right;">45</p> <p>1 Exhibit 4 is the report of Mr. [REDACTED] polygraph 2 examination that you put together and sent on down 3 the line; is that correct? 4 A Yes. 5 Q All right. 6 MR. GAGLIARDO: Let the record show that 7 that exhibit consists of 13 -- or 14 pages, I 8 believe. I'm sorry, everybody. 13 pages. 13 or 14 9 pages. 10 Q All right. Let me understand what 11 happened to this after it left your hands, as far as 12 you know. On the very first page, it says, 13 "Distribution, AD technical development of mission 14 support original and SAIC forensic services division 15 with one copy with attachments." 16 Did you deliver or have this document 17 delivered to the technical development and mission 18 support? 19 A No. 20 Q All right. What did you -- let's do it 21 this way. What did you do with this report? 22 A I simply submitted it to polygraph</p>	<p style="text-align: right;">47</p> <p>1 Q You said you gave it to -- 2 A Polygraph operations. 3 Q Yeah. Is that part of one of these 4 components that's listed here? 5 A Polygraph is part of forensic services 6 division. 7 Q Okay. So, again, let me understand. You 8 put it on the I-drive so polygraph could access it, 9 and that is why the box marked "SAIC forensic 10 services division" is checked? Or was there -- was 11 it given to three -- was that a separate delivery? 12 A This distribution list is for operations, 13 not for examiners. We just fill it out because it 14 says what the distribution is after ops is finished 15 with it. 16 Q All right. Did you give it to anybody 17 other than the polygraph people -- 18 A No. 19 Q -- you, yourself? 20 All right. And you did so by putting it 21 on the I-drive, you said. 22 A Correct.</p>
<p style="text-align: right;">46</p> <p>1 operations. 2 Q All right. Did you give it to a specific 3 individual? 4 A No. 5 Q All right. How did you transmit it? Was 6 it by email or otherwise? 7 A No. It -- I drop it into an I-drive 8 folder. 9 Q And I-drive means it's a shared -- 10 A The shared -- 11 Q -- shared drive? 12 A Correct. 13 Q So you can access it and so can whoever 14 else is designated; is that correct? 15 A Correct. 16 Q So it's done digitally. 17 A Correct. 18 Q All right. And tell me again to whom -- 19 because it's not marked on here; is that correct? 20 That's neither technical development mission support 21 or forensic services division or is it? 22 A Is what?</p>	<p style="text-align: right;">48</p> <p>1 Q Did you have any communications with 2 anybody -- remember my broad definition of 3 "communication." Did you have communications with 4 anybody about this report after you dropped it onto 5 the I-drive? 6 A Well, yes, once Mr. [REDACTED] filed his 7 complaint. 8 Q All right. Between the time that you put 9 it on the I-drive and Mr. [REDACTED] filed his 10 complaint, did you communicate with anybody about 11 it? 12 A No. 13 Q And how did it come to your attention that 14 Mr. [REDACTED] had filed a complaint? 15 A I heard from Michelle Macon, Captain 16 Michelle Macon, but I can't remember if it was via 17 email or phone, but she contacted me. 18 Q All right. And tell me who Michelle Macon 19 is. 20 A She handles EEO cases for the Secret 21 Service. 22 Q All right. Did she -- is she the person</p>

<p style="text-align: right;">49</p> <p>1 who took your affidavit?</p> <p>2 A I believe so.</p> <p>3 Q Okay. Do you recall when you were</p> <p>4 contacted by her the first time about Mr. [REDACTED]</p> <p>5 case?</p> <p>6 A I don't. I don't remember the date.</p> <p>7 Q Okay. Do you remember approximately when</p> <p>8 it was relative to the submission of your report?</p> <p>9 Your report is dated 9/18/14. Is that the date you</p> <p>10 dropped it on the I-drive?</p> <p>11 A Are you talking about --</p> <p>12 Q Exhibit 4.</p> <p>13 A Okay. Sorry. Can you repeat the</p> <p>14 question.</p> <p>15 Q Yeah. Did you deliver Exhibit 4 on</p> <p>16 9/18/14?</p> <p>17 A I'm not sure.</p> <p>18 Q It would have been that day or close --</p> <p>19 close to it?</p> <p>20 A Exactly.</p> <p>21 Q Okay. Between that time -- now I lost my</p> <p>22 question.</p>	<p style="text-align: right;">51</p> <p>1 Q What did you say to her?</p> <p>2 A I don't remember. It's been too long.</p> <p>3 Q Did you have any discussions with her --</p> <p>4 how many times did you communicate with her?</p> <p>5 A I don't know.</p> <p>6 Q More than once?</p> <p>7 A Yes.</p> <p>8 Q Did you ever meet with her in person?</p> <p>9 A No.</p> <p>10 Q Was your communication by phone?</p> <p>11 A We did talk on the phone.</p> <p>12 Q Did you also exchange -- did you also</p> <p>13 communicate by email?</p> <p>14 A Yes.</p> <p>15 Q Do you have copies of the email that went</p> <p>16 back and forth between you and Captain Macon?</p> <p>17 A I don't, no.</p> <p>18 Q Do you keep them on a drive?</p> <p>19 A No.</p> <p>20 Q What do you do with them? What did you do</p> <p>21 with them?</p> <p>22 A I remember I sent her the affidavit but</p>
<p style="text-align: right;">50</p> <p>1 Okay. Using that as a reference point,</p> <p>2 can you estimate when Ms. Macon or Captain Macon</p> <p>3 first contacted you?</p> <p>4 A I don't know the date. I don't know the</p> <p>5 date.</p> <p>6 Q Okay. Would it have been before the first</p> <p>7 of the year, for example, that is January 1 of 2015?</p> <p>8 A Well, when I look at the date on my</p> <p>9 affidavit, it says December 19th, 2014 --</p> <p>10 Q Okay.</p> <p>11 A -- so --</p> <p>12 Q It would have been around that time?</p> <p>13 A I assume so.</p> <p>14 Q All right. And what did -- she goes by</p> <p>15 the title "Captain"?</p> <p>16 A I think so.</p> <p>17 Q Okay. We'll call her that for present</p> <p>18 purposes. Did Captain Macon -- what did Captain</p> <p>19 Macon tell you?</p> <p>20 A She told me that I was a witness to an EEO</p> <p>21 and that Mr. [REDACTED] had filed an EEO in reference</p> <p>22 to his polygraph examination.</p>	<p style="text-align: right;">52</p> <p>1 that's the -- I think the only thing that was ever</p> <p>2 sent to her.</p> <p>3 Q Did she send you questions, the questions</p> <p>4 that are noted on the -- in the affidavit?</p> <p>5 A I don't remember how they got to me.</p> <p>6 Q All right. Let me tell you --</p> <p>7 investigators do it a number of different ways.</p> <p>8 Sometimes they will get the affiant on the phone and</p> <p>9 say, "I'm going to ask you a set of questions, then</p> <p>10 I'll draft it up, I'll send it back to you, and you</p> <p>11 take a look at it." Is that what happened with</p> <p>12 Captain Macon?</p> <p>13 A Sir, I'm sorry, it's just been too long.</p> <p>14 I don't remember the specifics. I know that she</p> <p>15 asked me questions and I answered some. I just</p> <p>16 don't remember all the particulars.</p> <p>17 Q Well, when she asked you questions, was it</p> <p>18 on the phone or by email or how did -- what were the</p> <p>19 circumstances?</p> <p>20 A Again, we spoke by phone and I remember</p> <p>21 she sent me -- or I sent her an affidavit, but I</p> <p>22 don't remember if she mailed it. I don't remember</p>

<p style="text-align: right;">53</p> <p>1 if she emailed it. I don't know if it came 2 interoffice mail. I don't remember how I got it. I 3 just know that I emailed her an affidavit. 4 Q Do you have any other copies of your 5 affidavit? You said it was changed by counsel. Do 6 you have the original affidavit before it was 7 changed? 8 A I don't but legal does. 9 Q You submitted it to legal? 10 A Correct. 11 MR. GIBALLA: Also, if I can just 12 clarify -- 13 MR. GAGLIARDO: Please. 14 MR. GIBALLA: Yeah. So that -- 15 MR. GAGLIARDO: Do you want to do this on 16 the record or off? 17 MR. GIBALLA: Doesn't matter. 18 MR. GAGLIARDO: Go ahead. 19 MR. GIBALLA: So, I think that -- there 20 are two different EEO investigators, and I think 21 that they're getting conflated right now. Michelle 22 Macon is an EEO counselor for the Secret Service.</p>	<p style="text-align: right;">55</p> <p>1 said. Was this given to the outside investigator? 2 A Joe Kisicki, yes. 3 Q Okay. All right. And you see that in the 4 document itself; correct? 5 A Correct. 6 Q The first -- second line there? 7 A Uh-huh. 8 Q Okay. Did you give another affidavit 9 other than this one? 10 A I did, to Michelle Macon. 11 Q You made a statement. You made a 12 statement to her and she summarized it in a 13 counselor's report; is that correct? 14 A Correct. 15 Q Okay. All right. Would you look at 16 Exhibit Number 1 and the quality -- 17 A Where is 1? I don't have 1. 18 Q -- the quality control worksheet, I 19 believe, is the document I want. 20 MR. GIBALLA: Oh, so Exhibit 1 was never 21 put back together, because we took parts of 22 Exhibit 1 and made it into Exhibit 4, so we might</p>
<p style="text-align: right;">54</p> <p>1 She does the pre-complaint counseling. The outside 2 investigation we hired different -- 3 MR. GAGLIARDO: I was wondering about 4 that. 5 MR. GIBALLA: We hired a different entity, 6 and it's in the ROI. Captain Macon's affidavit 7 is -- it's in here. It's one of the exhibits but, 8 anyway -- 9 MR. GAGLIARDO: Okay. That's all right. 10 We'll get through it. 11 MR. GIBALLA: So I think there was some 12 confusion about which affidavit you were talking 13 about. 14 BY MR. GAGLIARDO: 15 Q Well, let's clarify. Look at Exhibit 4. 16 This is signed on April the 20th, 2015, and you had 17 referred to -- 18 A Exhibit 4? 19 Q Yeah. Isn't that -- Exhibit 3. I'm 20 sorry. Exhibit 3. 21 A Okay. 22 Q All right. You heard what Mr. Giballa</p>	<p style="text-align: right;">56</p> <p>1 need to take a moment to -- 2 MR. GAGLIARDO: All right. Let's do that 3 then. 4 (A discussion was held off the record.) 5 BY MR. GAGLIARDO: 6 Q I'm -- if you look at Exhibit 1, page 12, 7 it says, "Applicant Examinee Report." 8 A Uh-huh. 9 Q Did you prepare that document? 10 A No. 11 Q Who prepares it? Do you know who prepared 12 it? 13 A I don't. 14 Q Okay. Now, your name is on here, and it 15 says a number of things that are attributed to you. 16 Where would that person have gotten the information? 17 A I don't know. I don't know. 18 Q All right. Look at the -- toward the -- 19 in the second box, the biggest box on the page, in 20 the bottom left corner, it says, "CMS suspected." 21 That means -- "CMS" is countermeasures? 22 A Correct.</p>

<p style="text-align: right;">57</p> <p>1 Q And it says, "Examiner, no." That's you, 2 correct, the examiner? 3 A Correct. 4 Q And you did not suspect countermeasures 5 were being taken by Mr. [REDACTED] did you? 6 A I did. 7 Q You did suspect them? 8 A Uh-huh. 9 Q Why does this report say, "No"? 10 A I don't know. I didn't do this report. 11 Q Okay. Look at page 11. This is signed by 12 Agent Alston and Agent Christopher. It says, 13 "Counter/Anticountermeasure actions taken by 14 examiner. Describe if applicable, not applicable"; 15 right? Because above, it says, "Suspected 16 countermeasures (Examiner)," check box, "No." 17 A Yeah, I didn't fill out this report. 18 Q Why did Agent Alston say that you didn't 19 suspect countermeasures if you did? 20 A I didn't -- I didn't communicate that in 21 the report because we got a conclusive result, and a 22 conclusive result trumps countermeasures, so I</p>	<p style="text-align: right;">59</p> <p>1 sheets are pages 6 and 7 in Exhibit 1? 2 MR. GIBALLA: So it's going to be the 3 charts, though. 4 Q Is that what you're looking for, the 5 charts themselves? 6 A Yes. It was on the charts. 7 Q Let's just be clear about something. 8 Looking at pages 6 and 7, those are your polygraph 9 chart analyses; correct? 10 A Yes. 11 Q All right. And you don't indicate on 12 either page 6 or 7 anything about countermeasures; 13 is that also correct? 14 A Correct. 15 Q All right. So, now show me where in the 16 charts you say you either indicated or where you now 17 can say there were countermeasures being employed. 18 A Well, per Secret Service policy, okay, a 19 countermeasures call is only made when an individual 20 has made an admission to countermeasures. 21 I spoke to Mr. [REDACTED] during his post- 22 test about countermeasures, but because he didn't</p>
<p style="text-align: right;">58</p> <p>1 wasn't -- 2 Q Well, if countermeasures are taken, it's 3 not a valid test, is it? 4 A If countermeasures are taken? 5 Q If an examinee employs countermeasures, 6 the test results are not valid, are they? 7 A That's not always the case. 8 Q What would make it -- what would make it 9 the case? What would make it not the case? 10 A Well, an individual can attempt 11 countermeasures but that doesn't mean that you can't 12 score out a chart. You can't score -- in 13 Mr. [REDACTED] case, there were movements that I did 14 not score. Those movements are consistent with my 15 training with regard to individuals trying to help 16 themselves on a polygraph. 17 Q Show me -- I'm sorry. 18 A It doesn't have to be in my report. I 19 indicated on the chart that I did not score certain 20 questions or certain -- 21 Q All right. Show me where that's indicated 22 on the charts or the scoring sheets. Your scoring</p>	<p style="text-align: right;">60</p> <p>1 make an admission to that, those boxes on the report 2 that you see, those wouldn't be checked unless the 3 examiner made an admission to countermeasures. 4 Q Right. In fact, the document says he did 5 not make those things, the one -- the report that 6 you said you didn't fill out. 7 A Correct -- 8 Q Okay. 9 A -- because we got a conclusive result. 10 Q Go ahead. I understand your testimony. 11 But show me on the chart where you say there's -- 12 A Page -- page -- I can't see what question 13 this is because it's blocked out. 14 Q What page, first of all? 15 A Page 33. 16 Q 33. Okay. 17 A I think this was actually irrelevant, but 18 there was a movement. Okay? Foot movements and 19 seat movements are often consistent with individuals 20 who are attempting to do countermeasures. 21 Q Okay. Or it could just be that the person 22 has been sitting in the chair a long time and moves.</p>

<p style="text-align: right;">61</p> <p>1 A It could be. You're right.</p> <p>2 Q So, again, I -- these are nothing but</p> <p>3 squiggles to me. So, show me where you see the</p> <p>4 movement that you're describing.</p> <p>5 A Well, right above where it says,</p> <p>6 "Movement," see the --</p> <p>7 Q No, I don't see the word -- oh, I see the</p> <p>8 word "movement" now. The machine does that?</p> <p>9 A The instrument.</p> <p>10 Q The instrument?</p> <p>11 A Well, Mr. [REDACTED] did that by pressing his</p> <p>12 feet and his seat.</p> <p>13 Q Okay. Wait a minute. Slow down. If an</p> <p>14 examinee, whether it's Mr. [REDACTED] or anybody else,</p> <p>15 presses down on the seat, then the instrument will</p> <p>16 record that?</p> <p>17 A Yes. We have seat sensors.</p> <p>18 Q Right. You don't have to do anything;</p> <p>19 Mr. [REDACTED] doesn't have to do anything; the</p> <p>20 instrument picks it up.</p> <p>21 A Well, Mr. [REDACTED] has to do something --</p> <p>22 Q I'm sorry.</p>	<p style="text-align: right;">63</p> <p>1 where something indicating a countermeasure is</p> <p>2 recorded or noted other than this one -- one spot?</p> <p>3 A I, as an examiner, was taking note</p> <p>4 throughout the test mentally as to the things that I</p> <p>5 see that are consistent with countermeasures.</p> <p>6 Q Okay.</p> <p>7 MR. GIBALLA: Review all of the documents.</p> <p>8 A Okay.</p> <p>9 MR. GIBALLA: Yeah. If he's asking you to</p> <p>10 testify to everything, review everything.</p> <p>11 A Okay. So, on page 38 --</p> <p>12 Q Okay. Let me catch up with you. All</p> <p>13 right. So we've got 33 and 38. I see, "Early</p> <p>14 cardio, semicolon, artifacted."</p> <p>15 A That's not -- the question next to it, 21,</p> <p>16 there's a very large foot movement at the answer.</p> <p>17 Q Where -- show me --</p> <p>18 A So, at the top, you see there's -- the top</p> <p>19 three sensors -- arm sensors, seat sensor, foot</p> <p>20 sensors -- the top three lines, the third line has a</p> <p>21 large foot movement.</p> <p>22 Q All right. Wait a minute. Let's -- let</p>
<p style="text-align: right;">62</p> <p>1 A -- to move in order for the reaction to be</p> <p>2 seen by the sensor.</p> <p>3 Q Okay. But the machine is automatically</p> <p>4 noting the movement.</p> <p>5 A The instrument, correct.</p> <p>6 Q The instrument. Okay. I can't -- I see</p> <p>7 what appears to be the word "movement," and then if</p> <p>8 you go to the next page, it says, "semicolon,</p> <p>9 artifacted."</p> <p>10 A Correct.</p> <p>11 Q What does that mean?</p> <p>12 A It means it wasn't scored.</p> <p>13 Q By you or by the machine -- the</p> <p>14 instrument?</p> <p>15 A The instrument doesn't score. I'm the one</p> <p>16 who scores.</p> <p>17 Q All right. So you didn't score it --</p> <p>18 A Correct.</p> <p>19 Q -- because it was artefact.</p> <p>20 A I did not score the question, correct.</p> <p>21 Q Well, other than where the -- all right.</p> <p>22 Let's do it this way. Is there any other place</p>	<p style="text-align: right;">64</p> <p>1 me get -- get clear. The top line is recording</p> <p>2 what?</p> <p>3 A Arm movement.</p> <p>4 Q The second line is recording what?</p> <p>5 A Seat movement.</p> <p>6 Q And the third line is feet?</p> <p>7 A Correct.</p> <p>8 Q Foot or feet? To record one foot or both</p> <p>9 feet or how does that work?</p> <p>10 A Both feet.</p> <p>11 Q Both feet. While we're doing it, what's</p> <p>12 the fourth line?</p> <p>13 A Pneumograph.</p> <p>14 Q What does that mean?</p> <p>15 A The respiration.</p> <p>16 Q What's the next line?</p> <p>17 A The pneumograph.</p> <p>18 Q Two times respiration is measured?</p> <p>19 A Yeah. One is called P1; one is called P2.</p> <p>20 Q Okay. What's the -- I can't quite tell</p> <p>21 what the next line is there, the -- the dark up and</p> <p>22 downs. What are those?</p>

<p style="text-align: right;">65</p> <p>1 A There are two dark up and downs.</p> <p>2 Q Okay. There's one -- there's a single</p> <p>3 line.</p> <p>4 A The single line is the electrodermal</p> <p>5 activity.</p> <p>6 Q All right. That's the sweaty palms?</p> <p>7 A Fingers.</p> <p>8 Q Fingers. And cardiac is the other one?</p> <p>9 A Uh-huh.</p> <p>10 Q All right. Now, you see a foot</p> <p>11 movement -- I want you to mark where you're saying</p> <p>12 there's a foot movement by taking this yellow marker</p> <p>13 and just circling the thing that indicates -- okay.</p> <p>14 That's good that way.</p> <p>15 You want to do the same thing on the other</p> <p>16 page?</p> <p>17 A Yeah. Are we at the start? I don't</p> <p>18 know --</p> <p>19 Q I don't know.</p> <p>20 A Let's go to the start of the charts if you</p> <p>21 want to walk through the documents.</p> <p>22 Q Okay. Let's do it that way. I think the</p>	<p style="text-align: right;">67</p> <p>1 A Correct.</p> <p>2 Q And that's foot again? No, that's not</p> <p>3 foot, is it?</p> <p>4 A Appears that it's arm and seat -- I'm</p> <p>5 sorry -- seat and foot.</p> <p>6 Q Wait a minute. Which one -- all right.</p> <p>7 The third line down is --</p> <p>8 A Foot.</p> <p>9 Q And the fourth line down is seat?</p> <p>10 A The fourth line down is pneumo.</p> <p>11 Q That's what I thought. Where did you see</p> <p>12 the seat movement? That's what's confusing me.</p> <p>13 A In the one right above it. In the middle</p> <p>14 line -- the middle of the top three, there's a</p> <p>15 downward spike right at the foot.</p> <p>16 Q I see. Between 0240 and 0250.</p> <p>17 A No.</p> <p>18 Q Okay. Just show me -- did you mark it in</p> <p>19 yellow. I'll find it when you give me that back.</p> <p>20 You're on page 37?</p> <p>21 A Correct.</p> <p>22 Q Okay.</p>
<p style="text-align: right;">66</p> <p>1 first one is page 28 but I'm not positive. Am I</p> <p>2 correct, 28 is the start?</p> <p>3 A Correct.</p> <p>4 Q Okay. So let's do it one at a time. Any</p> <p>5 time you think there's an indication of a</p> <p>6 countermeasure, mark it with the yellow marker as</p> <p>7 you did a moment ago.</p> <p>8 A It could be -- again, the things that I've</p> <p>9 noted --</p> <p>10 Q Are you on 28?</p> <p>11 A I'm now on 29 at 6.</p> <p>12 Q When you say, "at 6" -- okay. I see it.</p> <p>13 That's the question?</p> <p>14 A Correct.</p> <p>15 Q Okay. And this is the foot again?</p> <p>16 A Correct.</p> <p>17 Q Okay.</p> <p>18 A We already discussed on page 33.</p> <p>19 Q Nothing on 32?</p> <p>20 A No.</p> <p>21 Q Okay. 33, where the instrument is marked</p> <p>22 "movement"?</p>	<p style="text-align: right;">68</p> <p>1 A We already discussed 21 on page 38.</p> <p>2 Q Yes. You've already marked it in yellow.</p> <p>3 A And on 39, right at the answer, there's</p> <p>4 movement again.</p> <p>5 Q Explain to me when you say, "right at the</p> <p>6 answer." I don't understand how you -- how you</p> <p>7 determine where the answer is being given.</p> <p>8 A Because it's marked with a line.</p> <p>9 Q Okay. Those heavy black lines indicate</p> <p>10 where the answer is being given?</p> <p>11 A Correct.</p> <p>12 Q Okay.</p> <p>13 A At 21A --</p> <p>14 Q Wait a minute. Which page are you on,</p> <p>15 first of all?</p> <p>16 A 43.</p> <p>17 Q Okay. Bear with me. 43. Okay. 21A,</p> <p>18 yes.</p> <p>19 A There's inability to maintain a baseline</p> <p>20 in the breathing, which, what we're seeing here is</p> <p>21 consistent with countermeasures.</p> <p>22 Q Mark it with yellow.</p>

69

1 **A The "DB" on 44 could be. Deep breath.**
2 **Sorry. Deep breath.**
3 Q Okay. Where the instrument has marked
4 that.
5 **A Uh-huh. "D-apnea," the cessation of**
6 **breathing that you see on page 47, combined with the**
7 **movement, this is also consistent with**
8 **countermeasures, significant movement.**
9 **Movement -- foot movement --**
10 Q Page, please.
11 **A 52, the first two questions, you can see**
12 **there's -- there are foot presses consistent with**
13 **responses.**
14 Q Just mark them in yellow, please.
15 **A Same thing with the last question, foot**
16 **movement.**
17 Q I don't know. Is there more? Yeah. 56.
18 **A "Extended apnea," meaning examinee holding**
19 **his breath at number 2 on 56. The "DB" could be a**
20 **countermeasure.**
21 Q And deep breath -- "DB" means deep breath?
22 **A Deep breath, correct.**

70

1 Q Let me ask a question. You -- sometimes
2 the instrument is marking things and sometimes it's
3 not.
4 **A The instrument doesn't mark anything.**
5 **Those are notations --**
6 Q Well, the printed "DB artifacted."
7 **A I typed that in.**
8 Q You typed in "DB"?
9 **A Correct.**
10 Q That's what -- okay. So I did
11 misunderstand you before. Okay. Thank you for
12 clarifying that.
13 But when you say, "artifacted," when is --
14 artefact, to me, is something you disregard.
15 **A Exactly. We're not scoring that question.**
16 Q You're not scoring the question?
17 **A Correct, because of the "DB."**
18 Q So, do you ask the question again?
19 **A No.**
20 Q Okay.
21 **A At 1B on page 57, you have convergent and**
22 **divergent pneumographs. This is consistent with**

71

1 **countermeasures.**
2 Q You have to mark it, please.
3 **A I am.**
4 Q And explain to me -- this is 57; correct?
5 **A Uh-huh.**
6 Q And let me just see where you marked on
7 your paper.
8 **A This is not normal here, what you're**
9 **seeing. This is not normal physiology.**
10 Q And do we know -- how do we know which
11 questions are being asked?
12 **A These marks at the bottom, right here,**
13 **these squares, they're blacked out on the copies but**
14 **they tell you what --**
15 Q Yeah. Why are they blacked out?
16 **A I think because they're a colored box, so,**
17 **I think, probably, when it Xeroxed it -- because you**
18 **can see 1B.**
19 Q Yes, I see 1B. Can we somehow -- we're
20 going to need to determine what -- which questions
21 those are.
22 MR. GIBALLA: Okay. We can get you a

72

1 colored copy.
2 MR. GAGLIARDO: That would be good.
3 MR. GIBALLA: Okay. That would probably
4 be better than these copies.
5 MR. GAGLIARDO: We can -- or let's go off
6 the record -- well, let's finish and then we'll talk
7 about that.
8 Q All right. Go ahead, agent.
9 **A The apnea on page 58, "apnea" meaning the**
10 **cessation of breathing.**
11 Q What are -- the interval for each box is
12 how long? One second?
13 **A You can see the time at the bottom. It's**
14 **five seconds between bars. So, that's time down at**
15 **the bottom where it says 2:40, 2:50, 3. Seconds.**
16 Q Okay.
17 **A Yeah.**
18 Q All right. What page are you on now? 63?
19 **A 62.**
20 Q 62?
21 **A Uh-huh. Again, a "DB," which, again,**
22 **could or could not be CMs.**

73

1 Q I don't see it marked. I don't see it
2 printed.
3 A Yeah, it's up there. Are you on the right
4 page? 63.
5 Q No. That's why. Okay. I do see it now.
6 A And, again, the breathing isn't consistent
7 throughout, and you can see here you have
8 significant deeper breaths than what you have right
9 here. Again, oftentimes that's an individual's
10 attempt to affect the results.
11 MR. GAGLIARDO: Okay. Let's go off the
12 record for a second.
13 (A discussion was held off the record.)
14 BY MR. GAGLIARDO:
15 Q Did you review Mr. [REDACTED] form SF86,
16 the background security clearance paperwork?
17 A I did.
18 Q Okay. And you did that before you
19 administered the exam?
20 A Correct.
21 Q Was there anything in that material that
22 indicated anything to you that was problematic or

74

1 indicative of -- well, that was problematic in any
2 way?
3 A At this point I would have to look back at
4 my one piece of paper. Off the top of my head, I
5 don't remember anything.
6 Q When you say, "the one piece of paper,"
7 what are you referring to? It's in the packet?
8 A Yeah.
9 Q Then please take a moment and find it and
10 find the page and take a look and tell me what you
11 think.
12 A Page 3.
13 Q Okay.
14 A Nothing stood out. I made a note of --
15 Q Where it says, "Case facts, no derog"?
16 A Correct.
17 Q Let me make sure we can read all of this.
18 A Sorry. Bad handwriting.
19 Q No, don't worry about that. Okay. There
20 are a couple things I can't read. You know, I've
21 done medical depositions where you have a doctor
22 read everything into the record and it's

75

1 excruciating, to say the least.
2 A couple things I can't read. Marital
3 status, it says, "married," but I can't remember
4 read the next word.
5 A It's his wife's name. [REDACTED] I
6 believe.
7 Q [REDACTED] Yeah. Okay.
8 Then in education, it says something,
9 "[REDACTED] [REDACTED] Okay.
10 Got that.
11 And the next line, I'm not even going to
12 guess, MBA. I know where he got his MBA but what
13 did you write?
14 A [REDACTED]
15 Q [REDACTED]
16 A [REDACTED] however you say it.
17 Q I don't know how to say it. I may be
18 wrong.
19 And the high school is just [REDACTED] or
20 something. That's not terribly important.
21 Then you have his family, the relationship
22 and the names of individuals; is that correct?

76

1 A Correct.
2 Q All right. I can't -- the third line
3 down, I believe that says, "Steven"?
4 A Stepmom.
5 Q Oh, stepmom. Glad I asked. Because I
6 certainly can't read the next. Does it say,
7 "Laurie"?
8 A Yes.
9 Q Okay. "Half-sister Megan," is that what
10 it says?
11 A I believe so.
12 Q All right. I can read the next two. I
13 cannot read under "Hobbies and organizations," the
14 first entry that you've made there.
15 A "Mountain bike."
16 Q "Mountain bike." Okay. "Rollerblades,
17 right, read, NRA member, Institute of Electrical
18 Engineers." Okay.
19 "YUSSS question mark," tell me what these
20 notes -- well, first of all, read those notes in the
21 right hand of the case facts box.
22 A "YUSSS."

<p style="text-align: right;">77</p> <p>1 Q Right.</p> <p>2 A "Best: Changed after divorce. Worst:</p> <p>3 Shot a squirrel."</p> <p>4 Q Okay. What -- the best what and the and</p> <p>5 worst what?</p> <p>6 A Things individuals have done in their</p> <p>7 lives.</p> <p>8 Q Okay. And "YUSSF" is a question. Was</p> <p>9 there an answer to it?</p> <p>10 A I assume he answered. I didn't write it</p> <p>11 down.</p> <p>12 Q Okay. It was something not particularly</p> <p>13 striking one way or the other?</p> <p>14 A I don't know. I don't remember.</p> <p>15 Q Okay. Fair enough. If you go back to</p> <p>16 page 2 for a second, do you see under "Medications,"</p> <p>17 he listed Effexor? Second line of question one or</p> <p>18 entry one.</p> <p>19 A I wrote that.</p> <p>20 Q I'm sorry. You wrote that. I apologize.</p> <p>21 Do you know what Effexor is, what it's used for?</p> <p>22 A It's an antidepressant.</p>	<p style="text-align: right;">79</p> <p>1 that note that you made.</p> <p>2 A Those are three questions that we were to</p> <p>3 ask of our applicants.</p> <p>4 Q What was the question?</p> <p>5 A "Can you sit still for three to five</p> <p>6 minutes?"</p> <p>7 Q Right.</p> <p>8 A "Do you have any uncontrolled --</p> <p>9 uncontrolled stress movements or ticks?"</p> <p>10 Q Okay. Now, they're blanks. There are no</p> <p>11 answers there. Do you know what his answers were?</p> <p>12 A I don't remember.</p> <p>13 Q Okay. And then respiratory and lung</p> <p>14 problems, it says, "Asthma and pneumonia as a kid";</p> <p>15 correct?</p> <p>16 A I see that he told me, "Asthma," because I</p> <p>17 made a note of it. I don't know about pneumonia. I</p> <p>18 don't remember.</p> <p>19 Q Isn't that what it also says there?</p> <p>20 A It says -- oh, okay.</p> <p>21 Q It says, "Asthma as a kid." Yeah. Right?</p> <p>22 A I guess. Sure.</p>
<p style="text-align: right;">78</p> <p>1 Q Okay. And you -- as you corrected your</p> <p>2 affidavit, you said he told you about OCD --</p> <p>3 A Uh-huh.</p> <p>4 Q -- obsessive compulsive disorder and some</p> <p>5 other things.</p> <p>6 A Yes.</p> <p>7 Q Given the fact he was OCD and was taking</p> <p>8 Effexor, what does that tell you about his ability</p> <p>9 or the way he might answer an exam -- respond to</p> <p>10 your questions?</p> <p>11 A It didn't tell me anything.</p> <p>12 Q There's no adjustment needed? There was</p> <p>13 no accounting for it?</p> <p>14 A No.</p> <p>15 Q If he had not said he took Effexor, that</p> <p>16 he's OCD, you wouldn't have done anything</p> <p>17 differently?</p> <p>18 A No. Lots of our applications are on</p> <p>19 psychotropic medications.</p> <p>20 Q Okay. Look at the fourth -- number four,</p> <p>21 "Check the appropriate box." You -- it says, "Sit</p> <p>22 still, question mark, and a blank line." Explain</p>	<p style="text-align: right;">80</p> <p>1 Q Is that the word? Is that the word that's</p> <p>2 written there?</p> <p>3 A Yes, sir.</p> <p>4 Q Okay. Now, "The yoga, transcendental</p> <p>5 meditation, biofeedback are considered." Why is</p> <p>6 that question asked?</p> <p>7 A It's asked because they're relaxation</p> <p>8 techniques.</p> <p>9 Q Okay. And what if he had said yes? How</p> <p>10 would that change -- would that change anything?</p> <p>11 A No, it would just require an instruction</p> <p>12 to not practice any sort of relaxation technique in</p> <p>13 the chair.</p> <p>14 Q Okay. But he told you he did not do those</p> <p>15 things.</p> <p>16 A Based by what I checked in the box, I</p> <p>17 would say yes.</p> <p>18 Q Okay. Now, at some point did Mr. [REDACTED]</p> <p>19 tell you that he had taken Xanax?</p> <p>20 A He did.</p> <p>21 Q And when did that occur in the course of</p> <p>22 the examination?</p>

<p style="text-align: right;">81</p> <p>1 A Well, as you can see from question number 2 three, when I was asking if he had taken anything in 3 the last 12 months, that's when he mentioned the 4 Xanax. 5 Q Okay. So that's at the very beginning? 6 A Correct. 7 Q Did that topic -- did his taking the Xanax 8 ever come up again? 9 A No. 10 Q All right. And Xanax is an antianxiety 11 medication; correct? 12 A That's my understanding. 13 Q All right. Does that indicate that 14 anything should be done differently in terms of the 15 test? 16 A No. 17 Q All right. Does that affect one's 18 physiological responses so as to provide different 19 measures than if -- if he was -- had not taken the 20 Xanax? 21 A Well, the reason we ask the question is 22 because certain drugs can affect the polygraph.</p>	<p style="text-align: right;">83</p> <p>1 see what effect, if any, a specific drug would have 2 on the exam. 3 Q So this is the Lafayette software. 4 A Correct. 5 Q So you could just say -- did you put in 6 Effexor? 7 A No. 8 Q Did you put in Xanax? 9 A No. 10 Q Did you put in anything about any of the 11 medications he was taking into the software? 12 A No. 13 Q Why not? 14 A Again, these are drugs that commonly are 15 taken by applicants. There was nothing that was 16 unusual or different about what he told me here. 17 And given the time that he told me he took the 18 Xanax, it shouldn't have affected the exam in any 19 way. 20 Q It was approximately 12 hours -- a little 21 less than 12 hours from the start of the exam; isn't 22 that correct? He took it at 10 p.m. and, according</p>
<p style="text-align: right;">82</p> <p>1 Q Okay. That's what I'm asking. Does -- is 2 Xanax one of those drugs? 3 A I believe so. 4 Q What about Effexor? 5 A I don't know. 6 Q Okay. And -- go ahead. 7 A I mean even though he told me he took 8 Xanax, we still proceeded. 9 Q Why, if that could affect -- 10 A Because he told me it was 10 p.m. the 11 night before, and even if he had told me that the 12 morning of, I still would have tested him. 13 Q Are there guidelines about what 14 medications can affect the -- the exam? 15 A I don't know that there are guidelines. 16 I'm not sure. 17 Q When you said Xanax is a medication that 18 could affect the exam, what is that based on: Your 19 own personal knowledge, training that you've gotten, 20 a handbook, or what? 21 A There is a part of the software that lists 22 out medications and you can check the software to</p>	<p style="text-align: right;">84</p> <p>1 to your report, you started at 9:40, so just short 2 of 12 hours. 3 A Yeah, if what he was telling me was true, 4 correct. 5 Q So, if it was 12 hours, you don't think it 6 would have had any effect? 7 A I don't know. I'm not a doctor. 8 Q Okay. You don't know. All right. 9 A But it didn't stop me from administering 10 the exam. 11 Q Okay. 12 MR. GAGLIARDO: Do you have Exhibit 3? 13 Q Did you and Mr. [REDACTED] ever discuss the 14 reliability of polygraphs, in general, that is 15 whether they were accurate to a greater or lesser 16 extent? 17 A Not that I recall. 18 Q You don't recall telling him that 19 polygraphs are almost always correct? 20 A No. That's not the sort of thing I would 21 say in an exam. 22 Q All right. How often -- what does the</p>

<p style="text-align: right;">85</p> <p>1 literature say about the accuracy of polygraphs?</p> <p>2 A I don't know.</p> <p>3 Q You don't know.</p> <p>4 A I mean if you're referring to a specific</p> <p>5 test, or a specific --</p> <p>6 Q No, I'm just asking your own knowledge. I</p> <p>7 mean when you do training, they must say, "Look,</p> <p>8 these tests are only 80 percent effective," you</p> <p>9 know --</p> <p>10 A I don't know any statistics.</p> <p>11 Q You know they're not 100 percent</p> <p>12 effective; correct:</p> <p>13 A Correct.</p> <p>14 MR. GIBALLA: So, I'm going to jump in</p> <p>15 with an objection for the record -- and you can</p> <p>16 still answer -- which is in the -- as to relevance,</p> <p>17 because of the judge's order, even in granting the</p> <p>18 motion to compel, she indicated that the scientific</p> <p>19 reliability of polygraph examinations was not</p> <p>20 relevant to this case, so I'm just noting that for</p> <p>21 the record.</p> <p>22 MR. GAGLIARDO: Okay. All right. I'm not</p>	<p style="text-align: right;">87</p> <p>1 seven-point score sheet. You can get anywhere from</p> <p>2 minus-three to plus-three. Because you can get a</p> <p>3 zero, there are seven different scores that one</p> <p>4 could get in response to any question; is that</p> <p>5 correct?</p> <p>6 A Not to my knowledge.</p> <p>7 Q Well, you have zeros, minus-two,</p> <p>8 minus-one, minus-three, zero, minus-one, plus-one.</p> <p>9 You could have given him a plus -- up to a</p> <p>10 plus-three; right?</p> <p>11 A No.</p> <p>12 Q What -- what was the range of scores you</p> <p>13 could have given him? Not to him because of what</p> <p>14 the answers he gave, but theoretically, any examinee</p> <p>15 can score between what and what? Isn't it</p> <p>16 minus-three and plus-three?</p> <p>17 A For one particular question? Is that what</p> <p>18 you're asking?</p> <p>19 Q Well, I suppose it's one particular</p> <p>20 question and one particular physiological response.</p> <p>21 A No, it can be plus-four, minus-four</p> <p>22 because somebody -- the respiration can be scored.</p>
<p style="text-align: right;">86</p> <p>1 going to argue about whether it's relevant or not.</p> <p>2 We'll see what comes in the future.</p> <p>3 Q According to you, there was no discussion</p> <p>4 about the reliability of the accuracy of polygraphs</p> <p>5 with Mr. [REDACTED]</p> <p>6 A I told Mr. [REDACTED] he failed the exam, and</p> <p>7 "failed" being layman's terms.</p> <p>8 Q Right. Right.</p> <p>9 A And I didn't have any doubt in my results.</p> <p>10 Q Okay. And by "failed," what did you mean?</p> <p>11 What constitutes failure from -- what constitutes</p> <p>12 failure?</p> <p>13 A Well, again, that's a layman's term. He</p> <p>14 scored -- or I scored my charts of his physiology as</p> <p>15 significant response.</p> <p>16 Q On one question and one series. Let's do</p> <p>17 it this way. Let's get your -- let's get your score</p> <p>18 sheet, back in Exhibit 1. I think it's page 7 and</p> <p>19 8 -- 6 and 7. 6 and 7. Am I correct those are your</p> <p>20 score sheets?</p> <p>21 A Correct.</p> <p>22 Q Okay. Now, just to be clear, this is a</p>	<p style="text-align: right;">88</p> <p>1 Q Is it only respiration that can be up to</p> <p>2 four?</p> <p>3 A Well, no, respiration can only be one</p> <p>4 point, a plus or a minus or a zero or artefact.</p> <p>5 Q I'm totally confused now. Let's look at</p> <p>6 your -- let's look at page 6, your polygraph chart</p> <p>7 analysis.</p> <p>8 A Correct.</p> <p>9 Q Series two, chart one, relevant question</p> <p>10 four and relevant question six. Respiration, you've</p> <p>11 entered a zero for both four and six; correct?</p> <p>12 A Correct.</p> <p>13 Q All right. What does that zero mean?</p> <p>14 A There was no comparable physiology.</p> <p>15 Q Okay. So it's neither good nor bad? Or,</p> <p>16 well, let me put it this way. When I say, "good or</p> <p>17 bad," that's, obviously, not right.</p> <p>18 There's no indication of deception based</p> <p>19 on his respiration; is that correct?</p> <p>20 A No. What's correct is that there was</p> <p>21 no -- there was nothing to score at that -- at that</p> <p>22 spot.</p>

<p style="text-align: right;">89</p> <p>1 Q So let's go to the next one then, 2 electrodermal activity. You stored him a minus-two 3 on R4 and a zero with a strike-through on six. What 4 does the minus-two mean? 5 A It means that the electrodermal activity 6 response could be scored as a minus-two. 7 Q Yeah, but what does a minus-two indicate? 8 Leaning towards deception or leaning towards 9 honesty? Negative numbers -- 10 A Leaning towards significant response. 11 Q Right. And significant response means 12 indicative of deception; isn't that the terminology 13 you use? 14 A I don't use "deception" often in my test. 15 I mean we use "significant response, no significant 16 response." 17 Q Okay. So what does the zero with a line 18 through it mean? 19 A That means the question wasn't scored. 20 That was the artefact that you saw on the chart. 21 Q Okay. 22 A That's where it corresponds on the score</p>	<p style="text-align: right;">91</p> <p>1 which you filled out, series two, chart two and 2 chart three, were both inconclusive, is that 3 correct, for -- I'm sorry -- for question four, 4 relevant question four. 5 A I'm sorry. Can you restate your question. 6 Q Yeah. I see -- look. I just -- it's 7 clear to me what you wrote on this piece of paper. 8 I just want you to tell me if I'm right or wrong. I 9 see zeros in a number of cases, which means 10 there's -- it's inconclusive wherever a zero is 11 indicated, and the only significant response is on 12 R4 was series two chart one and an R6 series two 13 chart two; isn't that correct? 14 A Series two chart one, R4 was scored as a 15 minus-three. 16 Q Right. That's significant. 17 A Series two chart two was scored a 18 minus-two. 19 Q Right. And those are the only two 20 significant responses indicated on this document; 21 isn't that correct? 22 A Well, but the terminology we use is</p>
<p style="text-align: right;">90</p> <p>1 sheet. 2 Q Okay. And then cardiovascular activity is 3 minus-one, so it wasn't as -- 4 A You can't give a minus-two in cardio. 5 Q All right. Let's -- you're saying 6 respiration, you can only give what scores? Other 7 than zero, what other score could you give any 8 examinee? 9 A A plus-one or a minus-one or a zero or an 10 artefact. 11 Q So, plus-one or minus-one or zero. And on 12 electrodermal activity, what's the range? 13 A Minus-two, minus-one, zero, plus-one, 14 plus-two. 15 Q Okay. Cardiovascular activity? 16 A Minus-one, zero, plus-one or, again, 17 artefact. 18 Q And subtotal, obviously, doesn't count. 19 Okay. Now, a subtotal of zero means -- 20 indicates what? Inconclusive? 21 A Correct. 22 Q Okay. So, according to this document</p>	<p style="text-align: right;">92</p> <p>1 different. 2 Q All right. Use your terminology and tell 3 me -- 4 A You can't -- you don't just look at one 5 chart and make a determination of significant 6 response, no significant response. I mean those 7 are what you score an entire series, not just a 8 chart. So you have to have two good askings of a 9 question. 10 Q Did you have two good askings of a 11 question? 12 A Yes. 13 Q For both four and six? 14 A Well, R4, we had conclusive results 15 because he had a minus-three and, yes, because there 16 was nothing artefacted in chart two or chart three, 17 then, yes, we had three good askings. 18 Q Okay. 19 A So we got our conclusive result with the 20 minus-three. 21 Q All right. And R6 was ultimately 22 determined to be inconclusive. You did not have a</p>

93

1 significant finding for R6; is that correct?

2 **A Correct.**

3 Q All right. Now, was the mere fact that on

4 R4 you had a significant response, did that alone

5 constitute fail for Mr. [REDACTED] using the layman's

6 term?

7 **A On series two chart one, R4, the**

8 **minus-three?**

9 Q Uh-huh.

10 **A Well, as I just said, you have to have two**

11 **good askings, so that -- had that been the only**

12 **thing we got, no. I would have had to have the**

13 **other two charts, which we do. We have three good**

14 **askings. Yes, R4, chart one was scored as**

15 **minus-three, so the total is minus-three, a failing**

16 **result.**

17 Q Okay. Did he fail R6?

18 **A No.**

19 Q Okay. Going to the next page, did he fail

20 R24?

21 **A You're actually going backwards though.**

22 Q Okay. It's the order that I have them in

94

1 this exhibit.

2 **A But this is series one. This was the**

3 **first series.**

4 Q I understand that. You're right. It's

5 going backwards. He didn't fail R24, 26 to 28, did

6 he?

7 **A He did not.**

8 Q Right. In fact, you even wrote,

9 "inconclusive."

10 **A Correct.**

11 Q Okay. Did you tell Mr. [REDACTED] he could

12 stop the polygraph exam at any time?

13 **A Yes.**

14 Q Did he ever attempt to stop the exam?

15 **A No.**

16 Q What would you have done if he had stopped

17 the exam prior to your findings according to your

18 report on R4? So, let's say -- let me ask it this

19 way. If at the end of series one he said, "I want

20 to stop the exam," all the results being

21 inconclusive, what would your report have said?

22 **A It would have said that Mr. [REDACTED] asked**

95

1 **to conclude the exam.**

2 Q Would that disqualify -- does that

3 constitute a failure of the exam?

4 **A No.**

5 Q Would he then be entitled to retake the

6 exam?

7 **A That wouldn't be a decision I make.**

8 Q Do you know what criteria -- what criteria

9 is employed to determine whether somebody can take

10 or retake an exam?

11 **A Well, we have to get conclusive results,**

12 **and if somebody is not fit to be examined, for**

13 **whatever reason, they're emotional, tired, I would**

14 **send my report to polygraph ops. Polygraph**

15 **operations would then make a decision if they should**

16 **be retested.**

17 Q Do you know what criteria they employ?

18 **A I don't know all the criteria, but,**

19 **typically, if someone has not had a good day in the**

20 **room and it's a -- because of a physiological reason**

21 **or they're upset about something, it's possible**

22 **that, you know, they'll retest the individual.**

96

1 Q I'm going to ask you about a specific

2 individual in a moment. Did you ever criticize the

3 fact that Mr. [REDACTED] had taken the Xanax?

4 **A No.**

5 Q What did you say about the -- what's

6 the -- what did you say about the -- did you make

7 any comments about his use of the Xanax at any time

8 during the exam other than in the initial

9 questioning about whether or not he had taken any?

10 **A No.**

11 Q Never came up again?

12 **A No.**

13 Q If he said it did, you would say he's

14 lying?

15 **A What I would say is that's not my**

16 **recollection. I do not recall bringing up Xanax**

17 **again.**

18 Q Okay. Did you ask him any questions

19 between the time that he was actually -- excuse the

20 expression -- hooked up to the machine?

21 **A Yes. I scoped the questions, meaning I**

22 **explained the questions, to Mr. [REDACTED] that we**

<p style="text-align: right;">97</p> <p>1 were going to be asking on the polygraph exam, and 2 inclusive of that is going over our sheet that you 3 have in here which lists off a number of crimes that 4 we ask, or drugs. 5 Q Okay. And that's at the beginning of the 6 process; is that correct? 7 A It's in the pretest. 8 Q In the pretest. So, between series one 9 and series two, did you say anything to him, ask him 10 anything? 11 A Between the admission -- the 12 administration of series one and series two? 13 Q Yes. 14 A I don't remember. 15 Q And this is really my ignorance. Do you 16 disconnect him and then reconnect him or he just 17 stays in the chair and you say, "I'm going to do 18 this again"? How does that work? 19 A It's my recollection that I took 20 Mr. [REDACTED] out of the chair; we took a break; and 21 then I came back in, told him he was having some 22 responses to some of the questions, asked him if</p>	<p style="text-align: right;">99</p> <p>1 A No. 2 Q Why -- what reason did you give him for -- 3 what reason did you give him for doing the test over 4 again? 5 A Again, because he was having some 6 responses to some of those questions that I asked 7 him. 8 Q Is that what you said to him, "You're 9 having responses so I'm going to test you again"? 10 You have to say, "yes," or -- you have to answer 11 verbally. 12 A Yes, "We have to go back through some 13 questions," is how I say it with my applicants. 14 Q You said, "We have to go back through some 15 questions." Did you say, "because," something? 16 A Yes, "because you were having some 17 responses to some of those questions." That's the 18 terminology that I use. 19 Q Okay. Did you ever say anything to him 20 about coming from a broken home or have -- did you 21 ever say anything to him about coming from a broken 22 home?</p>
<p style="text-align: right;">98</p> <p>1 there was an issue, and then put him back -- or 2 something that he wanted to talk about, and then we 3 went over the next set of questions. 4 Q But the truth of the matter was in series 5 one, he had no significant responses; isn't that 6 correct? 7 A Well -- 8 Q That's what your report says, isn't it? 9 A What -- he was inconclusive. 10 Q Right. 11 A So he was responding to some of those 12 questions. 13 Q Did you tell him it was inconclusive? 14 A No. 15 Q What -- what words did you actually use? 16 A I don't remember verbatim. It's been too 17 long. 18 Q Did you tell him he failed? 19 A No. 20 Q Tell him he was lying? 21 A No. 22 Q Tell him you didn't believe him?</p>	<p style="text-align: right;">100</p> <p>1 A Not that I recall. 2 Q Anything about an alcoholic father? 3 A I didn't. I think he brought that up. 4 Q On the pretest, didn't he bring both those 5 things up? That's why we have stepbrothers, 6 stepparents and half-siblings? 7 A Well, those are from my notes from his 8 SF86. But I -- I don't remember specifically what 9 he told me, except that I do vaguely remember -- I 10 don't remember specifics but I do remember there was 11 conversation about family. 12 Q Do you remember tie -- I'm sorry. I don't 13 mean to cut you off. I apologize. 14 A No, go ahead. 15 Q Do you recall tying those things to his 16 experimentation with drugs as a young person? 17 A I don't remember that. 18 Q You don't remember saying to him something 19 along the lines of, "Coming from a broken home with 20 an alcoholic father, it would be understandable that 21 you experimented with drugs when you were young"? 22 That doesn't jog your memory at all?</p>

101	103
<p>1 A It could have been a theme I used but, you 2 know, I've done 350 polygraphs. I can't remember 3 the specifics of everything that I told him. 4 Q All right. And when you say it's a theme 5 you could have used, to do what? 6 A To talk to him about why he failed the 7 test. 8 Q Did you ever ask him -- there's a form 9 that, as you pointed out a moment ago, talks about 10 specific -- enumerates certain crimes and certain 11 drugs. Did you go -- did you read him that list? 12 A I did. 13 Q Did you read that list to him, to use 14 proper English? 15 A I did. 16 Q You read the whole thing verbatim? 17 A Not start to finish, as if I was reading a 18 book, but I did go over each and everything that's 19 listed here. 20 Q Did you give him a copy of this? 21 A No. He doesn't see this during the exam. 22 Q Okay. Did you -- you didn't sign this</p>	<p>1 A No. 2 Q How about the falsification of his 3 application regarding medical or health concerns and 4 so forth? 5 A I don't remember anything unusual. 6 Q Did he make any admissions to you at any 7 time, admissions that would constitute use of drugs 8 or criminal activity? 9 A He did not. 10 Q Did he make any admission about concealing 11 undetected crimes? 12 A No. 13 Q Did he make -- he didn't make any 14 admissions at all? 15 A No. 16 Q Okay. Did you ask him if he liked to 17 start fires? 18 A I did not, not in that terminology. 19 Q What terminology did you use? 20 A Well, when I'm reading over the scoping 21 questions, we ask about arson and what I say is -- 22 Q Excuse me just for interrupting.</p>
102	104
<p>1 form. Why is that? 2 A Forgot. 3 Q You forgot. 4 A Uh-huh. 5 Q That's the only reason you didn't sign it? 6 A Correct. 7 Q Did you notice his reaction to any -- you 8 know, just watching him, human being to human being, 9 did you watch his reaction as you asked him these 10 questions, if he had ever caused the death of anyone 11 accidental or intentional and so forth, burglary or 12 arson and so forth? Did you look at him and see how 13 he was responding? 14 A Yes, I was speaking to him, so, yes, I 15 looked at him. 16 Q Did he -- did he act in any way that made 17 you suspicious? 18 A No. 19 Q How about when you asked him about drugs, 20 such as marijuana, hash, heroine, cocaine, Ecstasy, 21 and crack, et cetera, did he react to any of those 22 things as you observed him?</p>	<p>1 A -- page 18 -- 2 Q The scoping questions, you're talking 3 about the questions or the items on page 15 of 4 Exhibit 1. 5 A Right. 6 Q Go ahead. 7 A What I said to him was arson -- the way 8 I've always defined it is, "arson, setting fires," 9 but I did not say to him, "Did you ever set any 10 fires?" 11 Q But he didn't react to that? 12 A Not that I remember, no. 13 Q Now, given the fact -- and the question he 14 failed -- the two questions that were problematic, 15 one was inconclusive and one was a failure, had to 16 do with criminal activity and drug use; correct? 17 A Uh-huh. 18 Q Did you -- you have to say, "yes," or, 19 "no," please. 20 A Yes. 21 Q Okay. Did you make any determination what 22 crime might have been involved?</p>

<p style="text-align: right;">105</p> <p>1 A No.</p> <p>2 Q How about what drug might have been used?</p> <p>3 A No.</p> <p>4 Q Did you ever inquire whether -- well, did</p> <p>5 you inquire any -- anything about the details of</p> <p>6 criminal activity or drug use?</p> <p>7 A I'm sorry. Say that again, please.</p> <p>8 Q Did you inquire at all about criminal</p> <p>9 activity or drug use outside of the questions that</p> <p>10 were asked in the polygraph?</p> <p>11 A In the post-test --</p> <p>12 Q Yes.</p> <p>13 A -- examination, we discussed serious crime</p> <p>14 and the fact that he failed that question.</p> <p>15 Q Okay. How about drugs --</p> <p>16 A I mentioned drugs --</p> <p>17 Q -- in the post-test?</p> <p>18 A Yes. When an individual goes inconclusive</p> <p>19 on a polygraph, in addition to another question,</p> <p>20 because we don't have a conclusive result, we can</p> <p>21 ask questions about that, as well.</p> <p>22 Q Okay. So tell me what the conversation</p>	<p style="text-align: right;">107</p> <p>1 audio to review what you and Mr. [REDACTED] had</p> <p>2 discussed about drugs in the post-test?</p> <p>3 A No, because he didn't make any admissions.</p> <p>4 There was no reason for me to go back and listen to</p> <p>5 it.</p> <p>6 Q So, absent an admission, you wouldn't go</p> <p>7 back and review the tape --</p> <p>8 A No.</p> <p>9 Q -- or the file, whatever you want to call</p> <p>10 it?</p> <p>11 A There's no need to.</p> <p>12 Q So, again, tell me what -- your discussion</p> <p>13 about drugs, as best you recall it, the back and</p> <p>14 forth. You talked about marijuana or you talked</p> <p>15 about heroin and you talked about selling drugs or</p> <p>16 what -- the time he went to Europe and smuggled</p> <p>17 drugs back into the U.S. or what?</p> <p>18 A I don't remember specifically. It's been</p> <p>19 too long.</p> <p>20 Q You have no recollection at all except</p> <p>21 that there was some discussion about drugs.</p> <p>22 A Exactly. Same thing with crime.</p>
<p style="text-align: right;">106</p> <p>1 was between you and Mr. [REDACTED] regarding drugs in</p> <p>2 the post-test.</p> <p>3 A I don't remember all the specifics. I</p> <p>4 mean --</p> <p>5 Q Did you make any notes?</p> <p>6 A No.</p> <p>7 Q Do you not make notes of the post-test</p> <p>8 discussions, interrogations, whatever you want to</p> <p>9 call them?</p> <p>10 A I don't have to because typically we have</p> <p>11 the recording.</p> <p>12 Q Yeah, I understand, but -- I'm not saying</p> <p>13 that you had to and you didn't do it, I'm saying do</p> <p>14 you make notes as a matter of your personal</p> <p>15 practice.</p> <p>16 A If there is an admission that has been</p> <p>17 made that has to go into the poly report, then I</p> <p>18 will make note, as practice, on the sheet when we're</p> <p>19 discussing it, and then during my report writing, I</p> <p>20 will go back and listen to the audio to make sure</p> <p>21 that I have the terminology correct.</p> <p>22 Q Okay. Did you -- did you go back to the</p>	<p style="text-align: right;">108</p> <p>1 Q Okay. Same thing. So I don't have to ask</p> <p>2 you all those questions about crime, you'd tell me</p> <p>3 the same thing, you don't know, you don't recall?</p> <p>4 A I mean I do know that I never said to him</p> <p>5 anything about setting fires in the manner that he</p> <p>6 alleged in the early affidavit.</p> <p>7 Q Okay.</p> <p>8 A But I do know that we talked about crime</p> <p>9 because he failed it, and I remember the thing --</p> <p>10 that I could go to audio and listen to the audio</p> <p>11 but --</p> <p>12 Q We don't have an audio.</p> <p>13 A We do have an audio. There's audio there.</p> <p>14 Q Can you hear that part?</p> <p>15 A Sure -- well, not the post-test but I can</p> <p>16 hear when we were going over the questions.</p> <p>17 Q No, that's what -- no, no, no. The</p> <p>18 post-test. There's no audio of the post-test, is</p> <p>19 there? There's no discernible audio of the</p> <p>20 post-test, is there?</p> <p>21 A No.</p> <p>22 Q And that's what we should have if the --</p>

<p style="text-align: right;">109</p> <p>1 A Sir, I wish we had it, I really do. I 2 wish we did. 3 Q What about criminal activity? Do you -- 4 do you recall any part of the discussion at all? 5 A Not the specifics, no. 6 Q During the post test, did Mr. [REDACTED] do, 7 say, act in any way that aroused your suspicion? 8 A Define "aroused my suspicion." 9 Q Well, did he do anything that made you 10 think that he wasn't telling you the truth? 11 A Yes, he failed the polygraph. 12 Q No, I understand that part. I'm saying in 13 the post-test. I think it's fair to call it an 14 interrogation but, whatever you want to call it, did 15 you notice anything about Mr. [REDACTED] that would 16 indicate to you in your experience as a trained law 17 enforcement officer that he wasn't telling you the 18 truth? 19 Obviously, cops have to make those 20 decisions on the street all the time without the 21 benefit of a polygraph, and they say, "Well, yeah, I 22 saw the way the guy was moving and he was</p>	<p style="text-align: right;">111</p> <p>1 Q So you think polygraphs are 100 percent 2 effective. 3 A What I think is Mr. [REDACTED] had a 4 significant response to this exam. 5 Q Well, you know that there are false 6 positives; right? They tell you that in your base 7 -- in your training. There are false positives in 8 polygraph tests, aren't there? 9 A There is some subjectivity to polygraph. 10 Q No, but there's some false positives. 11 There are significant responses even though people 12 are telling the truth; isn't that what every 13 polygraph examiner knows and is taught? 14 MR. GIBALLA: Again, same objection as to 15 the relevance of the reliability -- scientific 16 reliability of polygraph. 17 But you can answer to the best of your 18 ability. 19 MR. GAGLIARDO: I understand. I 20 understand. 21 A We discussed reliability in training, but 22 it's been four years since I went through and I</p>
<p style="text-align: right;">110</p> <p>1 stuttering, he was hesitating, he was contradicting 2 himself, you know, he made up a totally unbelievable 3 explanation," all sorts of things that not only law 4 enforcement officers but all of us do in assessing 5 whether somebody is telling us the truth or not. 6 MR. GIBALLA: So, I'm going to object to 7 that one as slightly compound, but you can -- 8 MR. GAGLIARDO: Yeah, slightly. 9 MR. GIBALLA: -- answer to the best of 10 your ability. 11 Q Was there anything that Mr. [REDACTED] said 12 or did or didn't do in the post-test that indicated 13 to you that he was not telling the truth? 14 A I mean that's a hard question to answer 15 because, as a polygraph examiner, I can't separate 16 the result from what we're doing in the post-test. 17 I mean I have the results, I have his physiology 18 that definitively told me he failed the exam. 19 So, when I'm talking to him in the exam, 20 everything -- I do remember he denied it, but I mean 21 I don't believe denials when I have a failing 22 polygraph result.</p>	<p style="text-align: right;">112</p> <p>1 don't remember the specifics. I know there's some 2 subjectivity to polygraph. 3 Q Okay. Did you discuss reliability with 4 Mr. [REDACTED] 5 A Not that I recall. 6 Q Did you ask -- I'm sorry. Did you ask 7 Mr. [REDACTED] if he wanted to retake the test -- or 8 excuse me -- if he would retake the test? 9 A I asked if he would be willing to retake 10 the test. 11 Q All right. 12 A I don't have the ability to authorize a 13 retest. 14 Q No, I understand. But you did ask him if 15 he was willing to do that. 16 A Correct. That's standard Secret Service 17 protocol. 18 Q Okay. And did you say with you as the 19 examiner? 20 A I asked him if -- if it would be a problem 21 if I was the examiner. 22 Q And what did he say?</p>

<p style="text-align: right;">113</p> <p>1 A He said, initially, no, but then he said, 2 "I would really prefer that someone else do the 3 retest." 4 Q Okay. So, he said he was willing to do it 5 but -- first, with you, and then, after he thought 6 about it, he said no? 7 A And then he said, correct, he preferred 8 someone else. 9 Q Okay. Did you tell him that you knew he 10 was using or thought he was using countermeasures? 11 A I did. 12 Q In the post-test; right? 13 A Correct. 14 Q What exactly did you tell him? 15 A We don't use the term "countermeasures" 16 ever with an examinee, so I told him that he was 17 trying to help himself on the exam and manipulating 18 it. 19 Q Okay. What did he say? 20 A He denied it. 21 Q What did you say? 22 A Just that the physiology that I was seeing</p>	<p style="text-align: right;">115</p> <p>1 A Yes. 2 Q Are you okay? 3 A Yeah. 4 Q Okay. 5 MR. GIBALLA: You want to take a quick 6 break? 7 A No. 8 MR. GIBALLA: You're good? Okay. 9 Q Do you know if the practice at Secret 10 Service is similar to the FBI, that they won't fire 11 an employee for failing a polygraph but they will 12 for using countermeasures? 13 A I don't know anything about the FBI's 14 policies. 15 Q No, I'm asking if that's what happens here 16 at Secret Service. I'm telling you that's my 17 understanding of what happens at the FBI. I'm 18 asking you is it the same thing here. 19 A I'm sorry. Can you rephrase. 20 Q My understanding of the practice at -- the 21 policy at the FBI is that they won't fire an 22 employee for flunking a polygraph but they will --</p>
<p style="text-align: right;">114</p> <p>1 was consistent with countermeasures. 2 Q As you've explained when we went over that 3 before; correct? 4 A Correct. 5 Q Okay. Did you at any time during the exam 6 tell him to keep his feet still? 7 A I have no recollection of doing that, but 8 that would be the sort of thing I would say when an 9 individual is moving like he was. 10 Q Okay. So, would you say, also, "Look, 11 quit taking deep breaths," and things like that, or 12 would -- 13 A We give breathing instructions, yes. 14 Q At the beginning? 15 A If it's necessary, at some point during 16 the exam. 17 Q Okay. 18 A The goal is to collect good data. 19 Q I understand. So, if, in the course of 20 the test, somebody is, obviously, taking long deep 21 breaths, you're going to tell them to stop doing 22 that; yes?</p>	<p style="text-align: right;">116</p> <p>1 alone, but they will fire an employee for using 2 countermeasures when taking a polygraph. 3 A An employee or an applicant? 4 Q In the FBI example, it's an employee. 5 A We don't retest our employees. 6 Q You don't? 7 A We don't have five-year updates. 8 Q Really? I'm surprised. Okay. I didn't 9 know that. I assumed that you did. 10 A Huh-uh. 11 Q Okay. What about with a -- with an 12 applicant, would -- if an applicant didn't show 13 significant response but you thought they had 14 employed countermeasures, would that go down as, 15 quote, a "fail"? 16 A No. 17 Q What would it go down -- how would it be 18 reported? 19 A "No opinion, countermeasures." 20 Q And do you know what upstairs, so to 21 speak, would do with that kind of report or do with 22 that person's application, given that kind of</p>

<p style="text-align: right;">117</p> <p>1 report?</p> <p>2 A They would not be hired.</p> <p>3 Q They would not be hired.</p> <p>4 A Well, I don't know about hired. I'm</p> <p>5 sorry. We would -- we would pass that information</p> <p>6 on to security clearance division.</p> <p>7 Q Right.</p> <p>8 A But I've never seen someone be hired.</p> <p>9 Q Who didn't clearly pass?</p> <p>10 A Exact -- well, no, no, no.</p> <p>11 Q Without countermeasures. I'm sorry. I</p> <p>12 don't want to -- really, I'm -- we're both getting</p> <p>13 tired. I'm not trying to put words in your mouth.</p> <p>14 A Yeah, can we take a couple minutes?</p> <p>15 MR. GIBALLA: Sure.</p> <p>16 A I may go get some water.</p> <p>17 MR. GAGLIARDO: Yeah. All right.</p> <p>18 (A recess was taken.)</p> <p>19 BY MR. GAGLIARDO:</p> <p>20 Q I want to go back on the recording of the</p> <p>21 exam. You keep it on your computer. Is it a laptop</p> <p>22 or --</p>	<p style="text-align: right;">119</p> <p>1 A Well, there are only -- it's just a</p> <p>2 handful of people.</p> <p>3 Q Okay. But if -- if you're not the quality</p> <p>4 control reviewer for, say, Alston or Magnuson, can</p> <p>5 you go and pull any one of their exams just because</p> <p>6 you want to listen to it?</p> <p>7 A No.</p> <p>8 Q Okay. Because you're not authorized.</p> <p>9 A Correct.</p> <p>10 Q Because you're not assigned to that</p> <p>11 particular case.</p> <p>12 A Correct.</p> <p>13 Q But your supervisors and managers, I</p> <p>14 suppose, can always look at any file that you've</p> <p>15 maintained.</p> <p>16 A Correct, assuming I've dropped it into the</p> <p>17 I-drive.</p> <p>18 Q Yes, I mean of course. Now, who has --</p> <p>19 outside of that -- of your component, does anybody</p> <p>20 else have access to the I-drive?</p> <p>21 A I have no idea.</p> <p>22 Q Okay. When you -- when you kick it</p>
<p style="text-align: right;">118</p> <p>1 A It is.</p> <p>2 Q You keep it on a laptop that's assigned to</p> <p>3 you.</p> <p>4 A Correct.</p> <p>5 Q And the same files are kept on a server</p> <p>6 that is kept at what --</p> <p>7 A I don't know.</p> <p>8 Q -- whatever. Some Secret Service server.</p> <p>9 Who has access to those audio files?</p> <p>10 A Polygraph operations.</p> <p>11 Q Would it be anybody, I mean another --</p> <p>12 could another examiner go and listen to your audio</p> <p>13 if -- just because they want to?</p> <p>14 A (No verbal response.)</p> <p>15 Q They have to have a valid reason.</p> <p>16 A Correct. Well, the rights to the folder</p> <p>17 are limited.</p> <p>18 Q Okay. That's my question. Who are they</p> <p>19 limited to?</p> <p>20 A The agents and officers assigned to</p> <p>21 polygraph operations.</p> <p>22 Q All of them?</p>	<p style="text-align: right;">120</p> <p>1 upstairs, as I'm fond of saying, do those -- do</p> <p>2 those people have access to the I-drive?</p> <p>3 A When you say --</p> <p>4 MR. GIBALLA: I was going to say objection</p> <p>5 as to vague.</p> <p>6 Q Say, like, Ms. DeProspero --</p> <p>7 Ms. DeProspero --</p> <p>8 MR. [REDACTED] Philpot.</p> <p>9 Q -- Philpot, does she have access to the</p> <p>10 I-drive? You don't know.</p> <p>11 A I don't know.</p> <p>12 Q Okay. If you don't know, that's fine.</p> <p>13 A No, I don't know.</p> <p>14 Q I'm just asking. Part of the discovery --</p> <p>15 deposition is to discover what you know and what you</p> <p>16 don't.</p> <p>17 A Sure.</p> <p>18 Q I think I asked this but I don't remember.</p> <p>19 When was the first time you listened to the</p> <p>20 recording of Mr. [REDACTED] exam?</p> <p>21 A I don't remember.</p> <p>22 Q But was it when Sergeant Magnuson came to</p>

<p style="text-align: right;">121</p> <p>1 you, was that the first time, when he told you there 2 was a problem? 3 A I don't remember. 4 Q Forgive me if I'm asking what I've already 5 done but you have listened to it since -- 6 A Correct. 7 Q -- the -- okay. Once? More than once? 8 A Twice. 9 Q Twice. And you could hear some things but 10 not a lot of things; is that correct? You want to 11 argue about "some" and "all" is vague, I will 12 concede the point. By category, could you hear the 13 pretest? 14 A Yes. 15 Q Could you hear the test itself? 16 A I don't remember. 17 Q Could you hear the post-test? 18 A No. 19 Q I think you already said no on that one; 20 right? 21 A No. 22 Q Are those the three major parts or am I</p>	<p style="text-align: right;">123</p> <p>1 because that's how he knew to come and tell you, 2 "Here's a mike." 3 A Well, that wasn't with Mr. [REDACTED] test, 4 that was with a different test. So, that's what I'm 5 saying; there were three tests during that time 6 period where the audio -- there were problems with 7 the audio. 8 So, Magnuson had -- was listening to a 9 different test. He realizes that the audio, all of 10 a sudden, appears 45 minutes into the exam. He 11 calls me up that morning and says, "There's an issue 12 with your audio, with your mike. I'll run you up a 13 new one." 14 Q Well, do you have -- you may say you don't 15 know, but what made him think it was the mike and 16 not something else that was the problem? How did he 17 identify the mike as the problem? 18 A Because the audio files were there. 19 Q Yeah. 20 A And when you play the audio file, you can 21 see where it -- it recorded. So, if it hadn't 22 recorded, there wouldn't be an audio file. There's</p>
<p style="text-align: right;">122</p> <p>1 missing a part that I should ask about besides the 2 preamble, as you called it? 3 A No, just three parts of a poly, so -- 4 Q All right. Was this the first time you 5 had a problem with the integrity of the -- of the 6 audio? Had you ever had an equipment failure or any 7 other problem prior to Mr. [REDACTED] case? 8 A I don't know what the order was in terms 9 of -- there were three tests during that same time 10 that had an audio issue where the mike cut in and 11 cut out. I don't know the order because I put my 12 polygraph file into the inbox, the polygraph inbox, 13 an then it's QCed at different points. 14 I mean -- well, my test is QCed and then 15 there are other tests that I put in, so, 16 sequentially, they may have -- it may not have 17 happened sequentially, if that makes sense. 18 Q The quality control reviewers are supposed 19 to spot-check to make sure the audio is there; 20 correct? 21 A Correct. 22 Q And that's, obviously, what Magnuson did</p>	<p style="text-align: right;">124</p> <p>1 only one way to record and that's the mike. 2 Q And after you -- after you replaced the 3 mike, you had no further problems? 4 A Correct. They're cheap little external 5 mikes. I don't know -- 6 Q Go ahead. 7 A No, I don't even know what they cost but 8 they've since been replaced because they were 9 problematic. 10 Q Do you set them on the table in the 11 examining room? 12 A Uh-huh, or actually click them onto -- the 13 port is right next to the plug where the -- the 14 power goes in, so I just click it to the power, 15 so -- because it's got a clip on it. It doesn't 16 stand on the table by itself; it just clips on. 17 Q So, when Magnuson told you there was a 18 problem with somebody else's tape, did that cause 19 you to double-check on [REDACTED] 20 A No. 21 Q When Captain Macon contacted you, did that 22 prompt you to go listen to the audio file or go</p>

<p style="text-align: right;">125</p> <p>1 retrieve the audio file?</p> <p>2 A No. I don't remember -- I don't remember</p> <p>3 what I did back then. I mean, again, it's been so</p> <p>4 long.</p> <p>5 Q I bet you when the lawyers came to you,</p> <p>6 they said, "Where is the audio file?" Did they?</p> <p>7 MR. GIBALLA: Well, objection as to</p> <p>8 attorney-client.</p> <p>9 MR. GAGLIARDO: I know that.</p> <p>10 MR. GIBALLA: Well, you're asking her</p> <p>11 about what a lawyer told her.</p> <p>12 MR. GAGLIARDO: I'll withdraw it.</p> <p>13 Q No, I was really asking is when the</p> <p>14 lawyers came, is that what prompted you to go see</p> <p>15 what was in the audio file. See, I'm puzzled -- I</p> <p>16 mean not puzzled, I'm trying to refresh your</p> <p>17 recollection as to when you first discovered there</p> <p>18 was a problem with the [REDACTED] audio. That's what</p> <p>19 I'm trying to see if I can loosen your memory on in</p> <p>20 some way. Not doing it, huh?</p> <p>21 A Sorry.</p> <p>22 Q All right. Did any of your supervisors or</p>	<p style="text-align: right;">127</p> <p>1 A No, that's the post-test and it</p> <p>2 corresponds with the audio.</p> <p>3 Q So, I'm not trying to argue with you, I'm</p> <p>4 trying to understand. So, if we timed the amount of</p> <p>5 audio, we would find that it would -- it would</p> <p>6 correspond to four-and-a-fraction hours or whatever?</p> <p>7 A Correct, or --</p> <p>8 Q I mean --</p> <p>9 A It corresponds to the minute.</p> <p>10 Q What do you mean, "it corresponds to the</p> <p>11 minute"?</p> <p>12 A Well, this comes from the audio file --</p> <p>13 the audio files, so --</p> <p>14 Q Oh, I see.</p> <p>15 A When I shut off -- as I'm ending the exam,</p> <p>16 I look at the time on the computer. I say, "This</p> <p>17 ends the polygraph," for whatever applicant.</p> <p>18 Q At such and such a time.</p> <p>19 A At such and such a time, so -- and I push</p> <p>20 "stop."</p> <p>21 Q I'm sorry. But then you have to take the</p> <p>22 time that's on the recording and put it on the</p>
<p style="text-align: right;">126</p> <p>1 managers, your superiors, say anything to you about</p> <p>2 the fact that the audio was inaudible, in large</p> <p>3 part?</p> <p>4 A No.</p> <p>5 Q Okay. Don't take this the wrong way. You</p> <p>6 didn't get a letter of reprimand or a letter of</p> <p>7 caution or instruction or whatever they call it</p> <p>8 here?</p> <p>9 A No, because there are problems with the</p> <p>10 audio -- people forget to push play. I mean it</p> <p>11 doesn't invalidate a test.</p> <p>12 So, there was, obviously, a malfunction</p> <p>13 with the mike. It happened three -- on three exams</p> <p>14 that were done at the almost exact same time or in</p> <p>15 the same time frame, you know.</p> <p>16 Q Okay. All right. Let me just clarify one</p> <p>17 thing. In your report where you say you started at</p> <p>18 about 9:40 in the morning and you finished around 1</p> <p>19 something in the afternoon, was that -- did that</p> <p>20 include the time that the pretest -- excuse me --</p> <p>21 the post-test took place or would that have excluded</p> <p>22 that time?</p>	<p style="text-align: right;">128</p> <p>1 paper, so to speak, or on the digital file.</p> <p>2 A Right, but I make note when I'm turning it</p> <p>3 off.</p> <p>4 Q Okay. Just so both Mr. [REDACTED] and I are</p> <p>5 clear, if he had said, "I don't want to continue</p> <p>6 with the exam," how would that have been recorded?</p> <p>7 A I would have evaluated the -- the exam as</p> <p>8 no opinion --</p> <p>9 Q Right.</p> <p>10 A -- put in there that he asked to</p> <p>11 discontinue testing.</p> <p>12 Q Right.</p> <p>13 A We ask that examinees make a note that it</p> <p>14 was their decision to end the -- to end the test,</p> <p>15 and then I would send everything over to polygraph</p> <p>16 operations, and then polygraph operations would make</p> <p>17 a decision as to whether or not that individual</p> <p>18 would come back.</p> <p>19 Q I see. So it would be either -- it would</p> <p>20 either exclude the person from being hired or</p> <p>21 require a retest?</p> <p>22 A Well, polygraph can't exclude someone from</p>

<p style="text-align: right;">129</p> <p>1 being hired. We're not adjudicators.</p> <p>2 Q No, I understand that, but that would be</p> <p>3 the effect of the recommendation as it went on up</p> <p>4 the chain of command and somebody found -- my</p> <p>5 understanding of your prior testimony is that if you</p> <p>6 don't clearly pass the test, you don't get hired.</p> <p>7 You can't get hired on a -- you can't waive the</p> <p>8 test. You've got to take and pass the test to get</p> <p>9 hired. Is that your understanding?</p> <p>10 I understand it's not your decision, but</p> <p>11 is that your understanding of how things work here?</p> <p>12 A For someone to get hired, they have to</p> <p>13 have passed a poly.</p> <p>14 Q Right.</p> <p>15 A Correct.</p> <p>16 Q I thought so. I just wanted to be</p> <p>17 absolutely clear about that.</p> <p>18 Did you consider doing a breakout exam on</p> <p>19 either the crime question or the drug question?</p> <p>20 A I did do a breakout. That's what the</p> <p>21 second series --</p> <p>22 Q That's what the four and six are?</p>	<p style="text-align: right;">131</p> <p>1 one?</p> <p>2 A I don't remember.</p> <p>3 Q Do you recall ever saying to him, "That's</p> <p>4 not what" -- wait a minute. I'm sorry. Do you</p> <p>5 recall saying to him, "You don't have to take it</p> <p>6 again. I have all I need," or words to that effect?</p> <p>7 A No, I have no recollection of that.</p> <p>8 Q Okay. Do you recall him telling you when</p> <p>9 you were questioning him about past crimes, he</p> <p>10 talked about a minor traffic violation?</p> <p>11 A I do remember that.</p> <p>12 Q What do you recall the traffic violation</p> <p>13 discussion was about?</p> <p>14 A I just vaguely remember that he mentioned</p> <p>15 a traffic violation. Beyond that, I don't remember</p> <p>16 the specifics.</p> <p>17 Q Do you remember a license plate cover,</p> <p>18 anything about that?</p> <p>19 A No.</p> <p>20 Q Do you recall saying to him when he talked</p> <p>21 about minor traffic violations, "You're just</p> <p>22 throwing me a bone"?</p>
<p style="text-align: right;">130</p> <p>1 A Correct.</p> <p>2 Q Maybe it's my misunderstanding of the</p> <p>3 term. I would -- I thought a breakout would include</p> <p>4 asking about specific kinds of crimes and drugs.</p> <p>5 A We don't do that here.</p> <p>6 Q So define a breakout exam for me. Is</p> <p>7 it --</p> <p>8 A I mean you have it. So, we ask an initial</p> <p>9 question -- crime, for instance, which is R24. If</p> <p>10 somebody is inconclusive, then we have, per</p> <p>11 polygraph procedure, certain questions that we ask</p> <p>12 if they are inconclusive to that particular</p> <p>13 question. So then we run another series with those</p> <p>14 questions. If they're --</p> <p>15 Q Go ahead. Did you do that with</p> <p>16 Mr. [REDACTED]</p> <p>17 A Yes.</p> <p>18 Q Okay.</p> <p>19 A We did a breakout of crime and drugs.</p> <p>20 Q Okay. Did you tell Mr. [REDACTED] when --</p> <p>21 did Mr. [REDACTED] tell you he wanted to retake the</p> <p>22 exam or did he ask if he could retake it, either</p>	<p style="text-align: right;">132</p> <p>1 A No.</p> <p>2 Q Did you think -- when you were asking him</p> <p>3 about crimes, did you think he -- well, strike that.</p> <p>4 Strike that.</p> <p>5 Do you know why Mr. [REDACTED] was not given</p> <p>6 a retest?</p> <p>7 A I don't. That's not my decision.</p> <p>8 Q Okay. Would you have been willing to</p> <p>9 retest him if somebody said he needs to be retested?</p> <p>10 A If I was authorized to retest him, yes.</p> <p>11 Q You know of cases where an examinee has</p> <p>12 been retested, do you not?</p> <p>13 A I do.</p> <p>14 Q Do you recall an applicant by the name of</p> <p>15 Steven Tignor?</p> <p>16 A I do.</p> <p>17 Q Tell me about his exam, his first exam.</p> <p>18 Was it inconclusive? Did you have any significant</p> <p>19 response -- did you administer the exam to Steven</p> <p>20 Tignor?</p> <p>21 A I did.</p> <p>22 Q Did he have any significant responses?</p>

<p style="text-align: right;">133</p> <p>1 A He did.</p> <p>2 Q But he was -- and he was retested?</p> <p>3 A Not by me.</p> <p>4 Q No, but he was -- you know that he was</p> <p>5 retested.</p> <p>6 A Yes.</p> <p>7 Q And eventually he was hired by Secret</p> <p>8 Service, was he not?</p> <p>9 A That's my understanding.</p> <p>10 Q Do you know in what capacity he was hired?</p> <p>11 A No. I think he's a special agent.</p> <p>12 Q Okay. But you don't know for sure?</p> <p>13 A No.</p> <p>14 Q Okay. Was there concurrence or</p> <p>15 nonconcurrence -- was there either -- were your</p> <p>16 results -- were your findings concurred or</p> <p>17 nonconcurred?</p> <p>18 A Concurred.</p> <p>19 Q And still -- they were concurred, there</p> <p>20 were significant responses, and still he was</p> <p>21 retested?</p> <p>22 A Correct.</p>	<p style="text-align: right;">135</p> <p>1 A I don't know. I'm not -- that's way above</p> <p>2 my pay grade.</p> <p>3 Q You don't know. Okay. That's fair. I'm</p> <p>4 only asking what you know.</p> <p>5 Okay. And how do you know -- how did it</p> <p>6 come to be known to you that he was retested? Just</p> <p>7 office gossip, so to speak?</p> <p>8 A My office colleague in WFO, the Washington</p> <p>9 field office, retested him.</p> <p>10 Q Okay. Are you assigned Washington field</p> <p>11 office?</p> <p>12 A Uh-huh.</p> <p>13 Q Okay. You've examined military veterans,</p> <p>14 have you not?</p> <p>15 A I have.</p> <p>16 Q And some of those veterans have PTSD?</p> <p>17 A They -- they do.</p> <p>18 Q And does that affect how they respond on a</p> <p>19 polygraph?</p> <p>20 A I don't feel that I'm equipped to answer</p> <p>21 that.</p> <p>22 Q Well, do you do anything differently if</p>
<p style="text-align: right;">134</p> <p>1 Q Do you know why he was retested under</p> <p>2 those circumstances?</p> <p>3 A I do not.</p> <p>4 Q Was there anything -- were you criticized</p> <p>5 or -- I guess "criticized" is an all-encompassing</p> <p>6 word -- for the way in which you examined Tignor?</p> <p>7 A Not by polygraph supervisors, no.</p> <p>8 Q Okay. Were you criticized in the way you</p> <p>9 scored Tignor's, you know, results or whatever</p> <p>10 you -- the charts?</p> <p>11 A No. There was no issue with the test</p> <p>12 according to polygraph management.</p> <p>13 Q Okay. But somebody else in the agency</p> <p>14 questioned what you did?</p> <p>15 A I don't know.</p> <p>16 Q Here's the only reason I'm asking that</p> <p>17 question. You said nobody in polygraph did, and</p> <p>18 that always raises, in a good investigator's mind or</p> <p>19 agent, "Okay. So who did?"</p> <p>20 Are you saying that somebody criticized</p> <p>21 you or had some questions about how the exam was</p> <p>22 administered or scored?</p>	<p style="text-align: right;">136</p> <p>1 you know that an examinee, whether a vet or not --</p> <p>2 do you do anything different if you know that they</p> <p>3 have diagnosed posttraumatic stress disorder?</p> <p>4 A No. I always administer an exam in the</p> <p>5 exact same way every single time.</p> <p>6 Q Can you give me an estimate of how many</p> <p>7 examinees you've examined who have PTSD?</p> <p>8 A I have no idea.</p> <p>9 Q Is it a common thing? Is it, like,</p> <p>10 50 percent of the examinees come in with PTSD or</p> <p>11 claims of diagnosis?</p> <p>12 A I don't track this information. I don't</p> <p>13 know.</p> <p>14 Q Have you ever flunked anybody, failed --</p> <p>15 written a report saying that the person had</p> <p>16 significant responses and that person had PTSD?</p> <p>17 A I don't know. I don't track that.</p> <p>18 Q Okay. Is Jocelyn -- I don't know how to</p> <p>19 pronounce her last name -- K-e-a-v-n-e-y, Keavney,</p> <p>20 is she in your chain of command?</p> <p>21 A She was. She isn't anymore.</p> <p>22 Q She was. Okay. And what was the -- how</p>

<p style="text-align: right;">137</p> <p>1 were -- how did the chain of command work between 2 you and her? 3 A She was my direct report. 4 Q She was your first level supervisor? 5 A Uh-huh. 6 Q You have to say, "yes," or, "no." 7 A Yes. Sorry. 8 Q Okay. And when was that? Was it at the 9 time Mr. [REDACTED] exam was given, which was 10 September of 2014? 11 A Yes, I believe it was. 12 Q Did she ever intervene on your behalf 13 regarding polygraph examination results? 14 MR. GIBALLA: Objection as to vague. 15 A I don't know what that question means. 16 Q Did anybody ever criticize you and 17 Ms. Keavney said -- you know, stood up for you and 18 said, "Back off," or whatever? 19 A Again, I don't -- I don't know what you're 20 asking me. 21 Q Did anybody ever question you and 22 Ms. Keavney take your side of the dispute?</p>	<p style="text-align: right;">139</p> <p>1 involving the witness. 2 Q Yeah, "dispute" as broadly defined as 3 possible. 4 A One of my colleagues told her one time 5 that I didn't come into work one day, so she asked 6 me if that was the case and I said, "No." I had 7 gone to the range and then I had taken leave in the 8 afternoon, and so she had to -- somebody had 9 reported that to the deputy special agent in charge. 10 And, so, I was out at the range with the GS-14 who 11 saw me. She calls the GS-14. The GS-14 says, "She 12 was there." 13 Q I got it. 14 A That's -- 15 Q That's what I was asking, if there are 16 things like that. 17 A No. I mean I'm not a problematic 18 employee. I'm not someone who has to rely on my 19 supervisor to come to my defense. 20 Q You know who Jerry Scheuer is; correct? 21 A I do. 22 Q Did he question you about the Tignor</p>
<p style="text-align: right;">138</p> <p>1 A About what? 2 Q About anything. 3 A Are we talking examinees? 4 Q Could be examinees, it could be a 5 co-worker, it could be somebody elsewhere in the 6 agency. Let me give you an example. I'm general 7 counsel to a union. I answer to the president. 8 Members call her all the time and say good things 9 and bad things about me. Okay? I hope all the 10 time -- I certainly know most of the time she'll 11 say, "He did the right thing," you know, and stand 12 up for me. Now, if I really screwed up, I suppose 13 she would -- you know, she wouldn't do that. 14 Is it that kind of a situation? Did it 15 ever occur? And if so, did Ms. -- how do you say 16 her last name? 17 A "Keeve' nee." 18 Q "Keeve' nee." Did Ms. Keavney ever -- was 19 there ever a dispute is the foundational question. 20 If the answer is yes, did she ever stand up for you? 21 MR. GIBALLA: So, just to clarify, the 22 initial question now is was there ever a dispute</p>	<p style="text-align: right;">140</p> <p>1 examination? 2 A Yes. 3 Q What did he ask you about or tell you? 4 A He -- 5 Q He was the resident agent in charge at the 6 time; correct? 7 A Right. He called me on the phone and 8 accused me of accusing a state trooper of being a 9 liar and -- because Tignor was a state trooper at 10 the time. And he told me that I failed the 11 examinee, which I don't fail anyone, they fail. 12 It's their physiology that I'm measuring or 13 recording and scoring. 14 So, I mean his comments were typical of 15 criticisms people have of poly, so I didn't take it 16 personally. I didn't think it was a big deal. But, 17 yeah, he wanted his applicant retested. 18 Q Okay. Did Keavney say -- intervene in 19 that situation or in any way? 20 A Jocelyn didn't. I think -- I don't think 21 it was Jocelyn who did. 22 Q Okay. Do you know who did?</p>

141

1 **A I think it was Gary Moore.**
2 Q And what was his position?
3 **A He was the program manager.**
4 Q For poly?
5 **A (No verbal response.)**
6 Q And, again, I know -- what was Keavney's
7 position?
8 **A She was the operations 14.**
9 Q In poly?
10 **A Correct.**
11 Q Okay. And when you said, "Jocelyn," you
12 were referring to Ms. Keavney?
13 **A Correct.**
14 Q Okay, just to be clear.
15 Did Ms. Keavney try to block the retest
16 or --
17 **A She did.**
18 Q She did?
19 **A Well, polygraph operation -- let me**
20 **rephrase. I don't know if it was Jocelyn. I know**
21 **that polygraph said that there was no issue with the**
22 **test and that he should not be authorized a retest.**

142

1 Q So who overruled her?
2 **A I don't know. I believe -- as I said, I**
3 **believe it was Gary Moore. He was the program**
4 **manager.**
5 Q And that's because the RAC really wanted
6 this guy?
7 **A Presumably. I don't know.**
8 Q Well, he expressed that opinion. He
9 wanted -- I think your words were he wanted his -- I
10 forgot whether you said applicant or what to be
11 hired.
12 MR. GIBALLA: Just to clarify, if you
13 don't mind, because I'm not sure.
14 MR. GAGLIARDO: Sure. Go ahead.
15 MR. GIBALLA: Were you saying Gary Moore
16 did the overruling or was overruled?
17 **A Gary Moore listened to the recording of**
18 **the Tignor tape and said there were absolutely no**
19 **issues and there was no reason Tignor should be**
20 **retested. Now, if you want to call that an**
21 **overruling, then he overruled it, but it went up to**
22 **the eighth floor.**

143

1 BY MR. GAGLIARDO:
2 Q I'm sorry. So, Moore said you don't
3 retest.
4 **A Correct.**
5 Q Scheuer said retest. McKeavney said --
6 **A Scheuer wanted a retest.**
7 Q Wanted a retest. Keavney didn't, and the
8 eighth floor finally said retest him. The guy got
9 retested and got hired?
10 **A I -- I don't know.**
11 Q As far as you know. As far as you know.
12 **A As far as I know.**
13 Q Okay. Did you and Ms. Macon, Captain
14 Macon, discuss whether or not Mr. [REDACTED] was trying
15 to manipulate the process or employing
16 countermeasures? Did that come up in discussions
17 with her or communications with her?
18 **A It did, briefly.**
19 Q Tell me about it.
20 **A I don't remember specifics. It's been too**
21 **long. But I know we discussed countermeasures**
22 **because she was asking what is a countermeasure and**

144

1 **if I saw them during the exam.**
2 Q And you said you had?
3 **A Correct. She -- she was asking in the**
4 **context of -- I guess Mr. [REDACTED] had said that he**
5 **didn't think I was very sure of my results.**
6 Q And you said -- go ahead.
7 **A I said I was certain of my results. What**
8 **I wasn't -- or what -- countermeasures -- we can't**
9 **specifically say countermeasures on a report unless**
10 **we get an admission of countermeasures, or at that**
11 **time we couldn't.**
12 Q You can now?
13 **A The policy has changed, yes.**
14 Q Okay. Not to put words in your mouth but
15 just to recall, there were deep breaths and there
16 was movement. Those were the two things that
17 indicated countermeasures to you; is that correct?
18 **A In what we call converging and diverging**
19 **pneumos.**
20 Q I'll ask you off the record about that.
21 I'm just curious how -- you mean you get one --
22 like, your breathing goes up and your heart rate

<p style="text-align: right;">145</p> <p>1 goes down?</p> <p>2 A No, what it means is if you're breathing</p> <p>3 and you're -- you've got one component at the top of</p> <p>4 your chest and one component at the top of your</p> <p>5 abdomen, in theory, they should mirror one another.</p> <p>6 And what happens is when people are doing something,</p> <p>7 manipulating their core, sometimes what happens is</p> <p>8 they go like this and then they come back.</p> <p>9 Q I'll have to try it some time because I</p> <p>10 can't figure that out.</p> <p>11 A It's on the Internet.</p> <p>12 Q Okay. Thanks. Everything is.</p> <p>13 Can I see Exhibit 12, please.</p> <p>14 Did you tell me before you had no</p> <p>15 communications about Mr. [REDACTED] with Robin</p> <p>16 DeProspero --</p> <p>17 A I did not.</p> <p>18 Q Did not. Okay. Do you know if there are</p> <p>19 any statistics kept on who -- who passes -- has</p> <p>20 anybody ever determined by demographic factors,</p> <p>21 which I'll explain in a minute, the percentage of</p> <p>22 people who pass and don't pass polygraph tests? So,</p>	<p style="text-align: right;">147</p> <p>1 A Define "complaint."</p> <p>2 Q Well, anybody say you didn't do it right</p> <p>3 or didn't do it well or that you, you know, didn't</p> <p>4 follow protocol?</p> <p>5 A Yes.</p> <p>6 Q Okay. Other than Tignor, how many times</p> <p>7 would that have occurred?</p> <p>8 A Well, to be clear, Tignor himself never</p> <p>9 complained about me.</p> <p>10 Q Right. I mean Scheuer brought it up but</p> <p>11 let's put that aside. What were these other</p> <p>12 complaints that you just referred to?</p> <p>13 A There was one individual who was angry</p> <p>14 that he failed and blamed me for his failure but --</p> <p>15 Q Yes, go ahead.</p> <p>16 A -- the Secret Service went back and</p> <p>17 listened to the tape and there was no issue with the</p> <p>18 exam whatsoever. At the end, when I -- when he was</p> <p>19 asked if he was treated professionally, he said,</p> <p>20 "Yes," so --</p> <p>21 Q Okay. And you're not talking about</p> <p>22 Mr. [REDACTED]</p>
<p style="text-align: right;">146</p> <p>1 demographics of EEO categories: race, gender,</p> <p>2 disability, and so forth. Do you know if that's</p> <p>3 ever kept track of?</p> <p>4 MR. GIBALLA: Clarify. Do you mean at the</p> <p>5 Secret Service or --</p> <p>6 Q Yeah, at the -- no, at the Secret Service.</p> <p>7 A I don't know.</p> <p>8 Q You've never heard any discussions about</p> <p>9 that or --</p> <p>10 A No.</p> <p>11 Q How about from -- not from an EEO</p> <p>12 perspective but from a professional perspective, has</p> <p>13 anybody ever said, you know, "Men and women react</p> <p>14 differently, so, therefore, we ought to do something</p> <p>15 different," I mean, you know, those kind of</p> <p>16 inquiries to see if you're really getting --</p> <p>17 A I've never had training that suggested</p> <p>18 that.</p> <p>19 Q -- the good -- good data?</p> <p>20 Other than in Tignor's case, has anybody</p> <p>21 ever complained about your either administration of</p> <p>22 a test or interpretation of --</p>	<p style="text-align: right;">148</p> <p>1 A No.</p> <p>2 Q All right. So nothing came of that?</p> <p>3 A Nothing has ever come from any -- I don't</p> <p>4 even know how many I've had. I want to say four or</p> <p>5 five. Nothing has ever come of any complaint.</p> <p>6 Q All right. So -- and the other complaints</p> <p>7 were similar kinds of complaints by examinees or</p> <p>8 were they brought by others?</p> <p>9 A Examinees.</p> <p>10 Q Always -- so the only -- the only</p> <p>11 complaints -- again, forget about Scheuer and the</p> <p>12 rest of that story. All of the other complaints</p> <p>13 that you're referring to, whether it's four or five</p> <p>14 or some other number, were by examinees?</p> <p>15 A Correct.</p> <p>16 Q And the way those disputes are resolved is</p> <p>17 by listening to the tape and --</p> <p>18 A By a supervisor.</p> <p>19 Q -- so to speak, double-checking to make</p> <p>20 sure everything was done by the rules.</p> <p>21 A The supervisor -- typically, the</p> <p>22 supervisor who's assigned to -- the Secret Service</p>

149

1 supervisor who's assigned to NCCA listens to the
2 recording to determine if there's an issue.
3 Q Okay. So you cite to NCCA. That's the
4 liaison between Secret Service and the National
5 Center for Credibility Assessment?
6 A That's correct.
7 Q And they monitor whether or not you're
8 abiding the rules; correct?
9 A If there's a complaint, that's right.
10 Q And who was that person back in September
11 of '14, 2014, when Mr. [REDACTED] case was -- or
12 examination was conducted?
13 A It was John Lowe.
14 Q Okay. And who was your immediate
15 supervisor at that time?
16 A Jocelyn.
17 Q Jocelyn was. Okay.
18 I think I asked this but just to be sure,
19 other than filing the report that we made Exhibit 4,
20 I believe is the correct number, you didn't
21 communicate -- and remember "communication" defined
22 broadly -- you didn't communicate with anyone about

150

1 Mr. [REDACTED] examination?
2 I know you talked to counsel eventually
3 when all this occurred and you've talked to the
4 counselors, but I mean did you -- other than lawyers
5 and EEO related people, did you communicate with
6 anybody about Mr. [REDACTED] examination? Did you
7 and Jocelyn talk about it?
8 A Yes.
9 Q And what were the discussions -- did you
10 put anything in writing, whether that means hard
11 copy or digital? Was there anything in writing
12 between you and Jocelyn?
13 A She -- I believe she got the affidavit to
14 approve, the first affidavit that was done with
15 Michelle Macon, but I can't remember now. But,
16 yeah, I spoke to Jocelyn.
17 Q Did Jocelyn make changes to your
18 affidavit?
19 A She did.
20 Q If we show you the affidavit, can you tell
21 us -- would you be able to tell us what changes --
22 A No.

151

1 Q -- she made?
2 A It's been too long.
3 Q Were these changes simply what I would
4 call "editorial changes" or was she saying, "Add
5 this," or, "Take this out," kind of editing?
6 A I don't remember.
7 Q Has the -- have the results of the test
8 ever been shared outside -- again, excluding the EEO
9 process, has -- have the test results been shared
10 with anybody outside of Secret Service?
11 A What test results?
12 Q Mister -- the whole -- Mr. [REDACTED]
13 A Not by me.
14 Q Do you -- what's the -- what -- if another
15 federal agency inquired whether Mr. [REDACTED] had ever
16 taken a polygraph and whether he had passed or not,
17 would the Secret Service provide that information or
18 would they say it's against policy?
19 A I don't know.
20 Q You don't know?
21 A No.
22 Q Have you ever been asked to provide

152

1 information for another federal agency?
2 A No.
3 Q How long do you keep the records of a
4 polygraph exam?
5 A On my computer?
6 Q No. What's the -- the document retention
7 policy of SSA -- SSA -- of Secret Service?
8 A I don't know.
9 Q You're not allowed -- you can't clean off
10 your computer for a period of time; they tell you
11 you have to keep your emails and everything for a
12 certain period of time; is that right?
13 A (No verbal response.)
14 Q What's that period?
15 A I -- actually, come to think of it, I
16 don't think I've ever been told that I had to keep
17 emails for a certain period of time.
18 MR. GIBALLA: I can just clarify. We have
19 a vault system. All of our emails are kept forever.
20 MR. GAGLIARDO: Really?
21 MR. GIBALLA: Yeah. At least for now.
22 Dating back to 2012.

Deposition of Ellen Ripperger
Conducted on October 18, 2016

39 (Pages 153 to 156)

<p style="text-align: right;">153</p> <p>1 Q Most agencies will say you have to keep 2 them for a certain period of time and they'll say 3 you destroy them after a certain period of time, 4 whether it's emails or whatever. 5 A No, I don't know. 6 MR. GAGLIARDO: All right. Let me talk to 7 Mr. [REDACTED] 8 (A recess was taken.) 9 BY MR. GAGLIARDO: 10 Q Do you recall at the beginning, the 11 pre-exam, that Mr. [REDACTED] told you he was a little 12 nervous and you told him that was perfectly natural 13 or words to that effect? 14 A I don't recall the specific conversation 15 but when an examinee tells me that they're nervous, 16 I remind them that that's a natural thing that 17 attends a polygraph. 18 Q When Mr. [REDACTED] explained that the 19 medication he takes in the morning for depression 20 and OCD causes nausea if he eats breakfast, did you 21 tell him that you had instructed him to eat a big 22 breakfast and that he had not been following your</p>	<p style="text-align: right;">155</p> <p>1 MR. GAGLIARDO: I'm done. 2 MR. GIBALLA: Okay. 3 MR. GAGLIARDO: So if you have any 4 questions -- 5 EXAMINATION BY COUNSEL ON BEHALF OF THE AGENCY 6 BY MR. GIBALLA: 7 Q Actually, I just have one question that I 8 wanted to ask, which was, Ms. Ripperger, you 9 mentioned that your supervisor, Jocelyn Keavney, 10 reviewed your affidavit at one point; is that 11 correct? 12 A That's correct. 13 Q And do you know why she reviewed your 14 affidavit? 15 A Yes. She reviewed it because she wanted 16 to make sure that there wasn't something in there 17 that would be troubling from a programmatic 18 perspective, meaning information about the test or 19 why the -- asked particular questions, you know, 20 again, just making sure there's -- at that point in 21 this process, it wasn't as far along as it is now, 22 so, again, it was just concern that I might put</p>
<p style="text-align: right;">154</p> <p>1 instructions? 2 A It's possible. I don't remember. 3 Q Do you recall saying anything along the 4 lines of, "Let's hope that's the only time you 5 haven't followed my directions"? 6 A It's possible I said that. I don't 7 remember. 8 Q Okay. In regards to Mr. Tignor or Agent 9 Tignor, do you know if he has a disability? 10 A I don't know. 11 Q Did you find -- did he employ any 12 countermeasures or did you suspect him of employing 13 any countermeasures? 14 A I don't remember the exam. 15 Q Okay. Did he make any admissions? 16 A No. 17 Q Okay. You recall that he did not? 18 A He did not make any admissions. 19 MR. GAGLIARDO: Okay. Okay. All right. 20 I think that's it. Mr. [REDACTED] is checking his 21 notes, so bear with us. 22 (A discussion was held off the record.)</p>	<p style="text-align: right;">156</p> <p>1 something in there that I shouldn't put in there, 2 so -- 3 Q From an operational security perspective? 4 A Exactly. 5 MR. GIBALLA: Okay. 6 MR. GAGLIARDO: That's it? 7 MR. GIBALLA: That's it. 8 MR. GAGLIARDO: Thank you. Thank you for 9 your time. 10 THE COURT REPORTER: Mr. Gagliardo, do you 11 want me to hold this off until Thursday? 12 MR. GAGLIARDO: Yeah, why don't we just 13 see what happens on Thursday and where we're going, 14 but we're probably going to order. 15 THE COURT REPORTER: And you'll contact us 16 or do you want us to contact you? 17 MR. GAGLIARDO: Would you call me? 18 THE COURT REPORTER: Sure. I will. And 19 if it is transcribed, you want all the exhibits 20 attached to this deposition; is that right? 21 MR. GAGLIARDO: Yes, I think that makes 22 the most sense because there are ones -- there are</p>

Deposition of Ellen Ripperger
Conducted on October 18, 2016

40 (Pages 157 to 158)

157

1 several here that aren't there, and both of Alston's
2 are here. So, yes, all four exhibits should be on
3 the Ripperger.

4 THE COURT REPORTER: Okay. It is an
5 option that I could make a copy of Exhibits 1 and 2
6 and attach them to this morning's deposition --

7 MR. GAGLIARDO: Oh, okay.

8 THE COURT REPORTER: -- if that would be
9 more convenient for you, or we can handle it however
10 you like.

11 MR. GAGLIARDO: It's really not necessary.

12 THE COURT REPORTER: Okay. That's fine.

13 And, Mr. Giballa, if it is transcribed,
14 are you ordering a copy?

15 MR. GIBALLA: Yes, please.

16 THE COURT REPORTER: With the exhibits?

17 MR. GIBALLA: Yes.

18 THE COURT REPORTER: Okay. Thank you all
19 very much.

20 (Off the record at 3:51 p.m.)
21
22

158

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Victoria L. Wilson, the officer before
3 whom the foregoing deposition was taken, do hereby
4 certify that the foregoing transcript is a true and
5 correct record of the testimony given; that said
6 testimony was taken by me stenographically and
7 thereafter reduced to typewriting under my
8 direction; that reading and signing was not
9 requested; and that I am neither counsel for,
10 related to, nor employed by any of the parties to
11 this case and have no interest, financial or
12 otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and affixed my notarial seal this 31st day of
15 October, 2016.
16 My commission expires January 31, 2019.

17

18

19

20 VICTORIA L. WILSON

21 NOTARY PUBLIC IN AND FOR

22 THE DISTRICT OF COLUMBIA

A			
abdomen	46:13 47:8 118:9	21:20 22:13 37:16	52:20 61:2 66:8,15
145:5	119:20 120:2,9	38:19 84:9	67:2 68:4 70:18
abiding	accidental	administration	72:21,21 73:6,9 81:8
149:8	102:11	97:12 146:21	83:14 86:13 90:16
ability	according	admission	96:11,17 97:18 99:4,5
78:8 110:10 111:18	32:11 83:22 86:3 90:22	59:20 60:1,3 97:11	99:9 105:7 107:12
112:12	94:17 134:12	103:10 106:16 107:6	111:14 125:3 131:6
able	accounting	144:10	137:19 141:6 148:11
150:21	78:13	admissions	151:8 155:20,22
about	accuracy	103:6,7,14 107:3	against
7:22 8:16 10:10,11	85:1 86:4	154:15,18	39:17 151:18
16:2 20:21 21:9	accurate	advised	agencies
24:16 31:2,13 33:17	84:15	43:18	153:1
34:14,17,20 40:2,15	accused	affect	agency
43:12 48:4,10 49:4,11	140:8	73:10 81:17,22 82:9,14	1:7,11 3:12 6:1 134:13
54:3,12,13 59:7,12,22	accusing	82:18 135:18	138:6 151:15 152:1
72:7 74:19 78:2,8	140:8	affected	155:5
79:17 82:4,13 83:10	act	83:18	agent
83:16 85:1 86:1,4	102:16 109:7	affiant	5:20 6:11,15 7:13
95:21 96:1,5,6,7,9	actions	52:8	13:20 19:12 24:10,15
98:2 99:20,21 100:2	57:13	affidavit	27:4 44:6,21 57:12,12
100:11 101:6,9	activity	4:10 15:21 16:1,10,10	57:18 72:8 133:11
102:19,19 103:2,10	65:5 89:2,5 90:2,12,15	16:11,20 25:17 49:1	134:19 139:9 140:5
103:21 104:3 105:2,5	103:8 104:16 105:6,9	50:9 51:22 52:4,21	154:8
105:8,15,21 107:2,13	109:3	53:3,5,6 54:6,12 55:8	agents
107:14,15,15,21	actually	78:2 108:6 150:13,14	118:20
108:2,5,8 109:3,15	8:3 27:12 43:18 60:17	150:18,20 155:10,14	ago
113:6 115:13 116:11	93:21 96:19 98:15	affirmative	25:4,13 30:11 66:7
117:4 121:11 122:1	124:12 152:15 155:7	7:10	101:9
125:11 126:1,18	AD	affixed	agree
129:17 130:4 131:9	45:13	158:14	11:1
131:10,13,18,21	add	AFL-CIO	agreement
132:3,17 134:21	16:16 17:3 20:2 151:4	3:5	2:13
138:1,2,9 139:22	added	after	ahead
140:3 143:19 144:20	14:3,7 19:19 41:22	6:9 13:11 23:10,13	19:5 32:14 53:18 60:10
145:15 146:8,11,21	addition	26:7,8 45:11 47:14	72:8 82:6 100:14
147:9,21 148:11	105:19	48:4 77:2 113:5	104:6 124:6 130:15
149:22 150:6,7	adjudicators	124:2,2 153:3	142:14 144:6 147:15
155:18	129:1	afternoon	alcoholic
above	adjustment	126:19 139:8	100:2,20
57:15 61:5 67:13 135:1	78:12	afterwards	all
absent	administer	14:7	5:11 6:19 7:5,6 8:1,18
107:6	132:19 136:4	again	8:21 9:10,13 10:9,11
absolutely	administered	12:7 13:15 17:2 19:22	11:15 12:4 13:1,1
22:3 129:17 142:18	22:19 23:14 27:12	24:7 25:15 30:9	14:5,9 15:17 16:5,21
access	73:19 134:22	31:12 33:3 40:20	17:2 18:18,22 19:6,15
	administering	44:12 46:18 47:7	19:21,22 21:6 24:1

25:4 26:12 28:21 30:18 31:8 33:8,12,13 34:3,10,14,16,20 35:8 35:12 36:3 37:9 39:10 40:20 41:14 42:4 44:18 45:5,10,20 46:2,5,18 47:16,20 48:8,18,22 50:14 52:6 52:16 54:9,22 55:3,15 56:2,18 58:21 59:11 59:15 60:14 62:17,21 63:7,12,22 65:6,10 67:6 68:15 72:8,18 74:17 76:2,12,20 81:10,13,17 84:8,22 85:22 88:13 90:5 92:2,21 93:3 94:20 95:18 100:22 101:4 103:14 105:8 106:3 107:20 108:2 109:4 109:20 110:3,4 112:11 117:17 118:22 121:11 122:4 123:9 125:22 126:16 131:6 138:8,9 148:2,6,12 150:3 152:19 153:6 154:19 156:19 157:2 157:18 alleged 108:6 allowed 152:9 all-encompassing 134:5 almost 84:19 126:14 alone 93:4 116:1 along 100:19 154:3 155:21 already 66:18 68:1,2 121:4,19 also 3:20 15:7 29:21 35:17 36:14 51:12,12 53:11 59:13 69:7 79:19 114:10	Alston 5:5 13:21 14:1 24:10 24:15 57:12,18 119:4 Alston's 157:1 always 10:15 58:7 84:19 104:8 119:14 134:18 136:4 148:10 amend 18:2 amended 12:21 13:3 amendment 17:12 amendments 13:16,17 14:22 AMERICAN 3:4 amount 127:4 analyses 59:9 analysis 43:19 88:7 angry 147:13 another 12:10 27:21 29:8 55:8 105:19 118:11,12 130:13 145:5 151:14 152:1 answer 9:13 17:21 19:13 22:1 35:10,19,20 63:16 68:3,6,7,10 77:9 78:9 85:16 99:10 110:9,14 111:17 135:20 138:7 138:20 answered 38:4 52:15 77:10 answers 79:11,11 87:14 antianxiety 81:10 antidepressant 77:22	any 7:22 10:7,11 14:22 16:17 17:4 20:2,18 28:6 35:22 41:16,17 48:1 51:3 53:4 62:22 66:4 74:1 79:8 80:12 83:1,10,18 84:6 85:10 86:9 87:4,14 90:7 94:12 96:7,7,9,18 102:7,16,21 103:6,6 103:10,13 104:9,21 105:5 106:5 107:3 109:4,7 114:5 119:5 119:14 122:6 125:22 132:18,22 140:19 145:19 146:8 148:3,5 154:11,13,15,18 155:3 158:10 anybody 7:6 22:21 47:16 48:2,4 48:10 61:14 118:11 119:19 136:14 137:16 137:21 145:20 146:13 146:20 147:2 150:6 151:10 anymore 136:21 anyone 102:10 140:11 149:22 anything 7:17 9:8 15:19 16:3,15 16:16 17:3 19:2 20:1 36:17,22 37:17 43:3 59:12 61:18,19 70:4 73:21,22 74:5 78:11 78:16 80:10 81:2,14 83:10 97:9,10 99:19 99:21 100:2 103:5 105:5 108:5 109:9,15 110:11 115:13 126:1 131:18 134:4 135:22 136:2 138:2 150:10 150:11 154:3 anyway 54:8 anywhere 87:1	apnea 69:18 72:9,9 apologize 42:19 77:20 100:13 appears 12:14 21:5 62:7 67:4 123:10 applicable 57:14,14 applicant 9:5 11:14,22 21:21 56:7 116:3,12,12 127:17 132:14 140:17 142:10 applicants 19:15 79:3 83:15 99:13 application 103:3 116:22 applications 78:18 applied 41:8 applying 41:4,11 appropriate 78:21 approve 150:14 approximately 28:1 31:16 49:7 83:20 April 54:16 aren't 39:21 111:8 157:1 argue 86:1 121:11 127:3 arm 63:19 64:3 67:4 around 30:12 36:20 50:12 126:18 aroused 109:7,8 arson 102:12 103:21 104:7,8 artefact 62:19 70:14 88:4 89:20
--	---	---	--

90:10,17 artefacted 92:16 artifacted 62:9 63:14 70:6,13 aside 147:11 asked 5:4 11:20 19:14,16 25:4 39:1 44:6 52:15 52:17 71:11 76:5 80:6,7 94:22 97:22 99:6 102:9,19 105:10 112:9,20 120:18 128:10 139:5 147:19 149:18 151:22 155:19 asking 14:17 15:8 30:9 37:7 37:11 63:9 81:2 82:1 85:6 87:18 97:1 115:15,18 120:14 121:4 125:10,13 130:4 132:2 134:16 135:4 137:20 139:15 143:22 144:3 askings 92:8,10,17 93:11,14 asks 19:16 assembled 44:22 assessing 110:4 Assessment 149:5 assigned 118:2,20 119:10 135:10 148:22 149:1 assume 18:12 25:15 29:7 50:13 77:10 assumed 116:9 assuming 119:16 Asthma 79:14,16,21	attach 157:6 attached 4:6 8:9 16:8 20:10 44:16 156:20 attachments 45:15 attempt 58:10 73:10 94:14 attempting 60:20 attends 153:17 attention 48:13 Attorney 7:20 attorney-client 125:8 attributed 56:15 audible 23:8 24:1 audio 23:4,8,10,21 24:5,17 24:20 25:6,18,19 26:15 29:14 30:2,6 106:20 107:1 108:10 108:10,12,13,13,18 108:19 118:9,12 122:6,10,19 123:6,7,9 123:12,18,20,22 124:22 125:1,6,15,18 126:2,10 127:2,5,12 127:13 August 30:13,21 authorize 112:12 authorized 119:8 132:10 141:22 automatically 62:3 aware 17:17,19 19:10,11 24:1 24:4 41:18 a.m	1:17 <hr/> B <hr/> B 4:5 back 8:17 12:13 24:13 28:15 31:20 33:1 41:15 43:5,14,18 51:16 52:10 55:21 67:19 74:3 77:15 86:18 97:21 98:1 99:12,14 106:20,22 107:4,7,13 107:17 117:20 125:3 128:18 137:18 145:8 147:16 149:10 152:22 background 73:16 backwards 93:21 94:5 bad 20:6 74:18 88:15,17 138:9 Ball 3:7 Baltimore 1:2 3:9 bars 72:14 base 111:6 based 80:16 82:18 88:18 baseline 68:19 BAWSSDYE 41:9 bear 27:4 68:17 154:21 because 15:8 16:14 29:15 46:19 47:13 55:21 57:15,21 59:22 60:9,13 62:19 68:8 70:17 71:16,17 76:5 79:16 80:7 81:22 82:10 85:17 87:2,13,22 92:15,15 95:20 99:5,15,16	105:20 106:10 107:3 108:9 110:15 118:13 119:5,8,10 122:11 123:1,18 124:8,15 126:9 140:9 142:5,13 143:22 145:9 155:15 156:22 become 17:18 19:11 24:4 been 5:14 6:4 8:6 12:21 13:3 16:6 23:17 24:8 30:1 42:1 44:19 49:18 50:6,12 51:2 52:13 60:22 93:11 98:16 101:1 104:22 105:2 106:16 107:18 111:22 124:8 125:3 128:6 132:8,12 143:20 151:2,8,9,22 152:16 153:22 before 2:13 6:20 7:11,17 12:15 20:15,19 21:14 22:1,10 41:8,11 42:1 50:6 53:6 70:11 73:18 82:11 114:3 145:14 158:2 began 32:2 beginning 31:6 81:5 97:5 114:14 153:10 behalf 3:2,12 5:15 43:17 137:12 155:5 behind 23:2 being 11:20 28:19 57:5 59:17 68:7,10 71:11 86:7 94:20 102:8,8 128:20 129:1 140:8 believe 12:20 13:13,22 14:2 15:1,12 18:16 24:12 32:1 45:8 49:2 55:19
---	---	--	---

75:6 76:3,11 82:3 98:22 110:21 137:11 142:2,3 149:20 150:13		3:6	C
below 10:21		box 14:11 28:18 47:9 56:19 56:19 57:16 71:16 72:11 76:21 78:21 80:16	C 3:1 4:1 5:2 39:10
benefit 109:21		boxes 60:1	call 26:2 31:1 50:17 59:19 106:9 107:9 109:13 109:14 126:7 138:8 142:20 144:18 151:4 156:17
besides 122:1		BQA 11:1,2,9	called 25:21 64:19,19 122:2 140:7
best 77:2,4 107:13 110:9 111:17		break 22:5 43:2,13 97:20 115:6	calls 123:11 139:11
bet 125:5	bit 35:3	breakfast 153:20,22	came 53:1 96:11 97:21 120:22 125:5,14 148:2
better 11:14,21 72:4	black 68:9	breakout 129:18,20 130:3,6,19	canned 76:6
between 26:17 28:4 33:2 48:8 49:21 51:16 67:16 72:14 87:15 96:19 97:8,11 106:1 137:1 149:4 150:12	blacked 71:13,15	breath 69:1,2,19,21,21,22	cannot 76:13
	blamed 147:14	breathing 68:20 69:6 72:10 73:6 114:13 144:22 145:2	can't 26:10 48:16 58:11,12 60:12 62:6 64:20 74:20 75:2,3 76:2 90:4 92:4 101:2 110:15 128:22 129:7 129:7 144:8 145:10 150:15 152:9
Beyond 131:15	blank 35:5 78:22	breaths 73:8 114:11,21 144:15	capacity 133:10
big 140:16 153:21	blanks 79:10		Captain 48:15 50:2,15,18,18 51:16 52:12 54:6 124:21 143:13
bigger 40:4,6	block 141:15	briefly 143:18	cardiac 65:8
biggest 56:19	blocked 60:13	bring 100:4	cardio 63:14 90:4
bike 76:15,16	blood 36:10	bringing 28:6 96:16	cardiovascular 90:2,15
Bill 26:10	body 36:20	broad 48:2	case 8:16 16:12 23:9 31:17 49:5 58:7,9,9,13 74:15 76:21 85:20 119:11 122:7 139:6
biofeedback 80:5	bone 131:22	broadest 10:17	
	bones 18:15	broadly 139:2 149:22	
	book 101:18	broken 99:20,21 100:19	
	both 34:19 64:8,10,11 88:11 91:2 92:13 100:4 117:12 128:4 157:1	brought 27:21 100:3 147:10 148:8	
	bottom 8:19 56:20 71:12 72:13 72:15	Building 3:7	
	Boulevard	burglary 102:11	

146:20 149:11 158:11 cases 48:20 91:9 132:11 catch 63:12 categories 146:1 category 121:12 cause 124:18 caused 102:10 causes 153:20 caution 126:7 Center 149:5 certain 24:6 58:19,20 81:22 101:10,10 130:11 144:7 152:12,17 153:2,3 certainly 7:2 76:6 138:10 CERTIFICATE 158:1 Certified 2:14 certify 158:4 cessation 69:5 72:10 cetera 102:21 chain 9:20 129:4 136:20 137:1 chair 36:15,18 60:22 80:13 97:17,20 chance 22:9 change 16:16 17:21 18:18 80:10,10	changed 14:5 53:5,7 77:2 144:13 changes 16:19 150:17,21 151:3 151:4 charge 139:9 140:5 chart 43:19 58:12,19 59:9 60:11 88:6,9 89:20 91:1,2,12,13,14,17 92:5,8,16,16 93:7,14 charts 29:14,14,16 31:6 41:16 41:17 58:22 59:3,5,6 59:16 65:20 86:14 93:13 134:10 cheap 124:4 check 12:3 28:9 57:16 78:21 82:22 checked 14:11 47:10 60:2 80:16 checking 154:20 chest 145:4 Christopher 14:15,19,21 57:12 Christopher's 14:18 circle 34:5 circled 8:18 33:22 34:7 circling 65:13 circumstances 52:19 134:2 cite 149:3 claims 136:11 clarify 53:12 54:15 126:16	138:21 142:12 146:4 152:18 clarifying 70:12 classic 37:5 clean 152:9 clear 10:9 20:7 59:7 64:1 86:22 91:7 128:5 129:17 141:14 147:8 clearance 10:3 73:16 117:6 clearly 117:9 129:6 click 124:12,14 clip 124:15 clips 124:16 close 49:18,19 CMs 56:20,21 72:22 cocaine 102:20 colleague 135:8 colleagues 25:20 139:4 collect 114:18 collecting 29:4 colored 71:16 72:1 Columbia 2:16 158:22 combined 69:6 come 43:14 48:13 81:8 123:1 128:18 135:6 136:10 139:5,19 143:16 145:8 148:3,5 152:15	comes 21:2 35:17 86:2 127:12 coming 7:17 99:20,21 100:19 command 9:20 129:4 136:20 137:1 comment 41:19 comments 96:7 140:14 commission 1:1 158:16 common 10:11 136:9 commonly 83:14 communicate 10:16 48:10 51:4,13 57:20 149:21,22 150:5 communicated 10:4 communication 10:10,12,19 48:3 51:10 149:21 communications 48:1,3 143:17 145:15 comparable 88:14 comparative 39:10 comparison 39:12,13,14,18 compel 85:18 complainant 1:5 3:2 5:15 17:17 18:4 18:20 19:10 complained 146:21 147:9 complaint 23:18 48:7,10,14 147:1 148:5 149:9 complaints 147:12 148:6,7,11,12 complete
--	--	---	--

8:15 completeness 41:14 component 42:7,8 119:19 145:3,4 components 47:4 compound 110:7 compulsive 18:6,14,21 19:20 78:4 computer 28:15 29:1,6,19,20 117:21 127:16 152:5 152:10 concealing 103:10 concede 121:12 concern 155:22 concerns 103:3 [REDACTED] [REDACTED] conclude 95:1 conclusive 57:21,22 60:9 92:14,19 95:11 105:20 concur 14:11 concurred 133:16,18,19 concurrence 133:14 condition 18:7,11,17 24:5 conduct 28:6 conducted 22:17 23:11 149:12 confer 17:5 conflated 53:21 confused	13:8 88:5 confusing 67:12 confusion 54:12 consent 27:8 consider 129:18 considered 80:5 consistent 58:14 60:19 63:5 68:21 69:7,12 70:22 73:6 114:1 consists 45:7 constitute 93:5 95:3 103:7 constitutes 86:11,11 contact 156:15,16 contacted 48:17 49:4 50:3 124:21 context 144:4 continuation 9:6 continue 128:5 contradicting 110:1 control 9:2 24:7,9 25:12 55:18 119:4 122:18 controlled 26:1 convenient 157:9 convergent 70:21 converging 144:18 conversation 100:11 105:22 153:14 conversations	8:1 converted 6:13 cooperative 6:8 copies 44:19 51:15 53:4 71:13 72:4 cops 109:19 copy 5:9 9:7 12:10 16:11 29:21 45:15 72:1 101:20 150:11 157:5 157:14 core 145:7 corner 56:20 correct 5:22 9:11,15 14:4,8 15:16 17:1,20 18:2,8 24:11 31:10 32:9,10 32:12,13,16 33:10,11 33:18 34:2,5,6 35:7 35:18 36:2,13,16 38:22 39:1,2,4,8,9 41:10 45:3 46:12,14 46:15,17,19 47:22 53:10 55:4,5,13,14 56:22 57:2,3 59:9,13 59:14 60:7 62:5,10,18 62:20 64:7 66:2,3,14 66:16 67:1,21 68:11 69:22 70:9,17 71:4 73:20 74:16 75:22 76:1 79:15 81:6,11 83:4,22 84:4,19 85:12 85:13 86:19,21 87:5 88:8,11,12,19,20 90:21 91:3,13,21 93:1 93:2 94:10 97:6 98:6 102:6 104:16 106:21 112:16 113:7,13 114:3,4 118:4,16 119:9,12,16 121:6,10 122:20,21 124:4	127:7 129:15 130:1 133:22 139:20 140:6 141:10,13 143:4 144:3,17 148:15 149:6,8,20 155:11,12 158:5 corrected 16:18 78:1 correspond 127:6 corresponds 89:22 127:2,9,10 cost 124:7 could 10:12,13,13,14,15 11:3 47:8 60:21 61:1 66:8 69:1,19 72:22,22 82:9 82:18 83:5 87:4,9,13 89:6 90:7 94:11 101:1,5 108:10 118:12 121:9,12,15 121:17 130:22 138:4 138:4,5 157:5 couldn't 144:11 counsel 5:15 16:19 17:5 53:5 138:7 150:2 155:5 158:9 counseling 54:1 counselor 53:22 counselors 150:4 counselor's 55:13 count 90:18 countermeasure 63:1 66:6 69:20 143:22 countermeasures 56:21 57:4,16,19,22 58:2,4,5,11 59:12,17 59:19,20,22 60:3,20 63:5 68:21 69:8 71:1
---	--	---	--

113:10,15 114:1 115:12 116:2,14,19 117:11 143:16,21 144:8,9,10,17 154:12 154:13 Counter/Anticounte... 57:13 couple 23:17 38:10 74:20 75:2 117:14 course 14:13 80:21 114:19 119:18 COURT 5:3,8,11 156:10,15,18 157:4,8,12,16,18 cover 131:17 co-op 6:10 co-worker 138:5 crack 102:21 [REDACTED] [REDACTED] Credibility 149:5 crime 104:22 105:13 107:22 108:2,8 129:19 130:9 130:19 crimes 97:3 101:10 103:11 130:4 131:9 132:3 criminal 103:8 104:16 105:6,8 109:3 criteria 95:8,8,17,18 criticisms 140:15 criticize 96:2 137:16 criticized 134:4,5,8,20 CRR	1:22 curious 144:21 cut 100:13 122:10,11 <hr/> D D 5:2 dark 64:21 65:1 data 15:10,13 33:15 114:18 146:19 database 9:7 date 19:4 26:18,20 27:10,11 27:22 49:6,9 50:4,5,8 dated 49:9 dates 26:19 Dating 152:22 day 23:17 27:2,14 49:18 95:19 139:5 158:14 days 23:18 28:1,3,4 DB 69:1,19,21 70:6,8,17 72:21 DC 2:7 3:17 deal 140:16 death 102:10 debatably 23:22 December 50:9 deception 37:2,19 39:6,16 40:2,7 40:11 88:18 89:8,12 89:14 decision	95:7,15 128:14,17 129:10 132:7 decisions 109:20 deep 69:1,2,21,21,22 114:11 114:20 144:15 deeper 73:8 defense 139:19 define 109:8 130:6 147:1 defined 104:8 139:2 149:21 definition 48:2 definitively 110:18 delete 16:16 17:3 20:2 deleted 19:12 deliver 45:16 49:15 delivered 45:17 delivery 47:11 demographic 145:20 demographics 146:1 denials 110:21 denied 110:20 113:20 DEPARTMENT 1:9 depends 38:16 deposition 1:14 2:1 5:5 7:11 12:16 38:14 120:15 156:20 157:6 158:3 depositions 74:21	depression 153:19 DeProspero 9:8 120:6,7 145:16 DeProspero-Philpot 10:19 DeProspero-Philpot's 9:14 deputy 139:9 derrog 74:15 Describe 57:14 describing 61:4 designated 46:14 destroy 153:3 detail 24:1 details 105:5 determination 92:5 104:21 determine 5:6 37:18 39:18 40:3 68:7 71:20 95:9 149:2 determined 25:16 26:14 92:22 145:20 determining 37:1 39:15 development 45:13,17 46:20 device 28:22 29:4 diagnosed 136:3 diagnosis 136:11 dialogue 28:18 different 9:7 13:18 31:9 52:7
---	---	---	---

<p>53:20 54:2,5 81:18 83:16 87:3 92:1 122:13 123:4,9 136:2 146:15 differently 78:17 81:14 135:22 146:14 digital 25:6 29:13,18 30:22 128:1 150:11 digitally 29:16 46:16 direct 137:3 direction 158:8 directions 154:5 disability 17:18 19:10,17 146:2 154:9 discernible 108:19 disconnect 97:16 discontinue 128:11 discover 24:19 120:15 discovered 24:17 125:17 discovery 4:8 120:14 discuss 84:13 112:3 143:14 discussed 66:18 68:1 105:13 107:2 111:21 143:21 discussing 106:19 discussion 44:13 56:4 73:13 86:3 107:12,21 109:4 131:13 154:22 discussions 51:3 106:8 143:16 146:8 150:9</p>	<p>disorder 18:6,14,21 19:20 78:4 136:3 dispute 137:22 138:19,22 139:2 disputes 148:16 disqualify 95:2 disregard 70:14 distribution 45:13 47:12,14 District 2:16 158:22 divergent 70:22 diverging 144:18 division 10:3 21:10 45:14 46:21 47:6,10 117:6 divorce 77:2 doctor 18:12 74:21 84:7 document 11:16,18 12:14,15,17 16:13,22 20:15 21:11 22:10 45:16 55:4,19 56:9 60:4 90:22 91:20 152:6 documents 7:20 8:4,8 24:15 26:19 33:9,9 44:7 63:7 65:21 doing 22:5 26:7 35:1 36:21 37:8 43:13 64:11 99:3 110:16 114:7,21 125:20 129:18 145:6 done 43:6,19 44:9 46:16 74:21 77:6 78:16 81:14 94:16 101:2 121:5 126:14 148:20</p>	<p>150:14 155:1 double-check 124:19 double-checking 148:19 doubt 86:9 down 14:6 45:2 61:13,15 67:7,9,10 72:14 76:3 77:11 116:14,17 145:1 downs 64:22 65:1 downward 67:15 draft 52:10 drawing 26:16 drive 46:11 51:18 drop 46:7 dropped 48:4 49:10 119:16 drug 83:1 104:16 105:2,6,9 129:19 drugs 81:22 82:2 83:14 97:4 100:16,21 101:11 102:19 103:7 105:15 105:16 106:1 107:2 107:13,15,17,21 130:4,19 duly 5:14 during 24:7 25:7,12,17 26:6 28:9 59:21 96:8 101:21 106:19 109:6 114:5,15 122:9 123:5 144:1 DYI 40:21 D-apnea</p>	<p>69:5 D.C 1:15 <hr/>E <hr/>E 3:1,1 4:1,5 5:2,2 each 35:10 72:11 101:18 early 63:13 108:6 eat 153:21 eats 153:20 Ecstasy 102:20 Ed 26:10 EDA 13:20 editing 151:5 editorial 151:4 education 75:8 Edward 14:1 EEO 48:20 50:20,21 53:20 53:22 146:1,11 150:5 151:8 EEOC 1:6 effect 83:1 84:6 129:3 131:6 153:13 effective 85:8,12 111:2 Effexor 77:17,21 78:8,15 82:4 83:6 eighth 142:22 143:8 either 18:13 26:10 59:12,16 128:19,20 129:19</p>
--	--	---	--

130:22 133:15 146:21 Electrical 76:17 electrodermal 65:4 89:2,5 90:12 Ellen 1:14 2:1 4:2,10 5:13,19 else 16:3 20:1 22:21 32:18 35:8 36:17,22 37:17 42:2 46:14 61:14 113:2,8 119:20 123:16 134:13 elsewhere 138:5 else's 124:18 email 10:14 46:6 48:17 51:13 51:15 52:18 emailed 53:1,3 emails 152:11,17,19 153:4 emotional 95:13 employ 95:17 154:11 employed 59:17 95:9 116:14 158:10 employee 115:11,22 116:1,3,4 139:18 employees 3:5 116:5 employing 143:15 154:12 employment 1:1 6:4 16:12 21:21 employs 58:5 end 31:5 38:18 94:19 128:14,14 147:18 ending 127:15	ends 127:17 endurance 8:14 enforcement 109:17 110:4 Engineers 76:18 English 101:14 enough 77:15 entered 6:15 88:11 entire 6:3,4 41:15 92:7 entitled 95:5 entity 54:5 entry 32:12 76:14 77:18 enumerates 101:10 Equal 1:1 16:11 equipment 122:6 equipped 135:20 ESQUIRE 3:3,13 establish 43:5 estimate 50:2 136:6 et 102:21 Europe 107:16 evaluated 128:7 even 10:15 12:15 35:19 75:11 82:7,11 85:17 94:8 111:11 124:7 148:4	eventually 133:7 150:2 ever 10:4 41:5,9 51:8 52:1 81:8 84:13 94:14 96:2 99:19,21 101:8 102:10 104:9 105:4 113:16 122:6 131:3 136:14 137:12,16,21 138:15,18,19,20,22 145:20 146:3,13,21 148:3,5 151:8,15,22 152:16 every 35:11 111:12 136:5 everybody 45:8 everything 63:10,10 74:22 101:3 101:18 110:20 128:15 145:12 148:20 152:11 exact 9:19 27:22 31:21 117:10 126:14 136:5 exactly 24:6 26:13 39:22 49:20 70:15 107:22 113:14 156:4 exam 19:14 23:3,5,10,13 26:1 27:1,12 28:9,17 28:18 31:13,15 33:4 38:16 73:19 78:9 82:14,18 83:2,18,21 84:10,21 86:6 94:12 94:14,17,20 95:1,3,6 95:10 96:8 97:1 101:21 110:18,19 111:4 113:17 114:5 114:16 117:21 120:20 123:10 127:15 128:6 128:7 129:18 130:6 130:22 132:17,17,19 134:21 136:4 137:9 144:1 147:18 152:4 154:14 examination	4:2,9 5:15 21:12,20 22:14,17,20 26:6,17 26:20 27:8 31:7,16 34:11 38:9 45:2 50:22 80:22 105:13 137:13 140:1 149:12 150:1,6 155:5 examinations 85:19 examine 16:14 examined 95:12 134:6 135:13 136:7 examinee 9:5 19:17,19 34:4,22 35:9 36:18 37:20 38:1,19 56:7 58:5 61:14 69:18 87:14 90:8 113:16 132:11 136:1 140:11 153:15 examinees 128:13 136:7,10 138:3 138:4 148:7,9,14 examiner 57:1,2,14,16 60:3 63:3 110:15 111:13 112:19 112:21 118:12 examiners 47:13 examining 124:11 example 24:14 50:7 116:4 138:6 exams 28:7 119:5 126:13 except 100:9 107:20 exchange 51:12 exclude 128:20,22 excluded 126:21 excluding 151:8 excruciating
---	---	--	--

75:1 excuse 27:4 33:14 96:19 103:22 112:8 126:20 exhibit 4:8,9,10,12 8:7,9 16:6 16:7 20:10,12,22 24:13 27:7 41:16 43:20,22,22 44:3,15 44:20 45:1,7 49:12,15 54:15,18,19,20 55:16 55:20,22,22 56:6 59:1 84:12 86:18 94:1 104:4 145:13 149:19 exhibits 4:7 54:7 156:19 157:2 157:5,16 experience 109:16 experimentation 100:16 experimented 100:21 expires 158:16 explain 68:5 71:4 78:22 145:21 explained 32:18,21 96:22 114:2 153:18 explanation 110:3 expressed 142:8 expression 96:20 Extended 69:18 extent 84:16 external 25:19 26:5 29:2,3,6 124:4 eyes 37:5,8,10 <hr/> F <hr/> fact	60:4 78:7 93:3 94:8 96:3 104:13 105:14 126:2 factor 36:4 factors 145:20 facts 74:15 76:21 fail 93:5,17,19 94:5 116:15 140:11,11 failed 86:6,7,10 98:18 101:6 104:14 105:14 108:9 109:11 110:18 136:14 140:10 147:14 failing 93:15 110:21 115:11 failure 86:11,12 95:3 104:15 122:6 147:14 fair 43:8 77:15 109:13 135:3 false 35:19,20 111:5,7,10 falsification 103:2 family 75:21 100:11 far 41:20 45:11 143:11,11 143:12 155:21 father 100:2,20 fault 27:4 FBI 115:10,17,21 116:4 FBI's 115:13 federal 151:15 152:1 FEDERATION 3:4 feel	135:20 feet 61:12 64:6,8,9,10,11 114:6 few 22:8 field 1:2 135:9,10 figure 145:10 file 23:10,15,21 25:6 30:22 107:9 119:14 122:12 123:20,22 124:22 125:1,6,15 127:12 128:1 filed 23:19 48:6,9,14 50:21 files 23:8 29:13,18 118:5,9 123:18 127:13 filing 149:19 fill 47:13 57:17 60:6 filled 33:18,19 91:1 finally 143:8 financial 158:11 find 67:19 74:9,10 127:5 154:11 finding 32:5 93:1 findings 94:17 133:16 fine 120:12 157:12 Fingers 65:7,8 finish 25:10 72:6 101:17 finished 47:14 126:18 fire	115:10,21 116:1 fires 103:17 104:8,10 108:5 first 9:13,16 23:8,10,13,15 24:4,17 25:5 33:3 37:9 42:4 45:12 49:4 50:3,6 55:6 60:14 66:1 68:15 69:11 76:14,20 94:3 113:5 120:19 121:1 122:4 125:17 132:17 137:4 150:14 fit 33:22 34:4,7 95:12 five 31:16,17 72:14 79:5 148:5,13 five-year 116:7 floor 142:22 143:8 flunked 136:14 flunking 115:22 folder 46:8 118:16 follow 21:19 22:13,16 38:2 147:4 followed 154:5 following 37:21 153:22 follows 5:14 19:13 fond 120:1 foot 60:18 63:16,19,21 64:8 64:8 65:10,12 66:15 67:2,3,5,8,15 69:9,12 69:15 foregoing 158:3,4 forensic
---	---	---	--

21:10 29:21 45:14 46:21 47:5,9 forever 152:19 forget 30:19 126:10 148:11 Forgive 121:4 forgot 102:2,3 142:10 form 19:16 33:5 73:15 101:8 102:1 formal 37:13,13 forms 10:12 forth 33:2 35:16 51:16 102:11,12 103:4 107:14 146:2 found 129:4 foundational 138:19 four 12:6 32:11 34:18,20 35:17,21 36:1,8 78:20 88:2,10,11 91:3,4 92:13 111:22 129:22 148:4,13 157:2 fourth 20:18,22 64:12 67:9,10 78:20 four-and-a-fraction 127:6 frame 126:15 Friday 12:3 front 20:13 FSD 21:3,9 functioning 28:21 further	124:3 future 86:2 <hr/> G <hr/> G 5:2 Gagliardo 3:3 4:3 5:16 22:4,7 25:10 43:12,16 44:2,5 44:11,14,17 45:6 53:13,15,18 54:3,9,14 56:2,5 72:2,5 73:11 73:14 84:12 85:22 110:8 111:19 117:17 117:19 125:9,12 142:14 143:1 152:20 153:6,9 154:19 155:1 155:3 156:6,8,10,12 156:17,21 157:7,11 galvanic 36:11 Gary 141:1 142:3,15,17 gave 16:11 26:2,5 47:1 87:14 gender 146:1 general 37:11 84:14 138:6 getting 53:21 117:12 146:16 Giballa 3:13 4:4 5:3,7,10 7:21 8:1 14:16 17:10 20:14 25:9 43:17 44:1,4 53:11,14,17,19 54:5,11,22 55:20 59:2 63:7,9 71:22 72:3 85:14 110:6,9 111:14 115:5,8 117:15 120:4 125:7,10 137:14 138:21 142:12,15 146:4 152:18,21 155:2,6 156:5,7 157:13,15,17 give	46:2 47:16 55:8 67:19 90:4,6,7 99:2,3 101:20 114:13 136:6 138:6 given 7:11 27:1 47:11 55:1 68:7,10 78:7 83:17 87:9,13 104:13 116:22 132:5 137:9 158:5 Glad 76:5 go 8:17 12:12 17:8 19:5 20:1 31:20 32:14 43:3,5 44:12 53:18 60:10 62:8 65:20 72:5,8 73:11 77:15 82:6 89:1 99:12,14 100:14 101:11,18 104:6 106:17,20,22 107:4,6 108:10 116:14,17 117:16,20 118:12 119:5 124:6 124:22,22 125:14 130:15 142:14 144:6 145:8 147:15 goal 114:18 goes 50:14 105:18 124:14 144:22 145:1 going 5:6,8 7:22 8:6 12:2,5 16:2,5,15 19:8 22:4 25:10 26:3 31:1,14,14 33:4,12,13 41:15 52:9 59:2 71:20 75:11 85:14 86:1 93:19,21 94:5 96:1 97:1,2,17 99:9 108:16 110:6 114:21 120:4 156:13 156:14 gone 139:7 good 5:17 65:14 72:2 88:15	88:16 92:8,10,17 93:11,13 95:19 114:18 115:8 134:18 138:8 146:19,19 gossip 135:7 gotten 56:16 82:19 GOVERNMENT 3:4 grade 135:2 granting 85:17 greater 84:15 GS-14 139:10,11,11 guess 41:8 75:12 79:22 134:5 144:4 guidelines 82:13,15 guy 109:22 142:6 143:8 <hr/> H <hr/> H 2:6 3:15 4:5 half-siblings 100:6 Half-sister 76:9 hand 35:4 76:21 158:14 handbook 82:20 handful 119:2 handle 157:9 handles 48:20 hands 45:11 handwriting 33:20 74:18 handwritten
---	--	--	--

34:19	158:3	Huh-uh	40:11 74:1 89:12
Hang	hereunto	116:10	individual
44:12	158:13	human	46:3 58:10 59:19 95:22
happened	Here's	102:8,8	96:2 105:18 114:9
42:20 45:11 52:11	123:2 134:16		128:17 147:13
122:17 126:13	heroin	I	individuals
happens	107:15	idea	26:1 58:15 60:19 75:22
115:15,17 145:6,7	heroine	119:21 136:8	77:6
156:13	102:20	identification	individual's
hard	hesitating	16:7 44:15	36:6 73:9
110:14 150:10	110:1	identify	inference
hash	high	5:17 123:17	26:16
102:20	75:19	ignorance	information
head	himself	97:15	56:16 117:5 136:12
7:6 20:8 43:10 74:4	110:2 113:17 147:8	immediate	151:17 152:1 155:18
headline	hired	149:14	initial
21:11	54:2,5 117:2,3,4,8	important	19:3 96:8 130:8 138:22
HEADQUARTERS	128:20 129:1,6,7,9,12	75:20	initialed
2:5	133:7,10 142:11	inability	16:22
health	143:9	68:19	initially
18:17 103:3	hit	inaudible	18:3 113:1
hear	28:15	23:22 126:2	initials
6:22 30:21 31:11 33:6	Hobbies	inbox	11:8 40:21 41:6
108:14,16 121:9,12	76:13	122:12,12	inquire
121:15,17	hold	include	105:4,5,8
heard	156:11	126:20 130:3	inquired
7:3 31:3,12,12 32:15	holding	inclusive	151:15
32:15 48:15 54:22	69:18	97:2	inquiries
146:8	home	inconclusive	146:16
heart	99:20,22 100:19	90:20 91:2,10 92:22	insert
36:10 144:22	HOMELAND	94:9,21 98:9,13	43:21
heavy	1:9	104:15 105:18 130:10	instance
68:9	honesty	130:12 132:18	130:9
held	89:9	indicate	Institute
2:1 44:13 56:4 73:13	hooked	59:11 68:9 81:13 89:7	76:17
154:22	96:20	109:16	instructed
help	hope	indicated	153:21
33:13 58:15 113:17	138:9 154:4	58:19,21 59:16 73:22	instruction
here	hours	85:18 91:11,20	80:11 126:7
14:14 32:7 33:9 42:1	31:16,17 32:11 83:20	110:12 144:17	instructions
43:1 46:19 47:4 54:7	83:21 84:2,5 127:6	indicates	37:21 38:3 114:13
56:14 68:20 71:8,12	however	65:13 90:20	154:1
73:7,9 83:16 97:3	75:16 157:9	indicating	instrument
101:19 115:15,18		63:1	61:9,10,15,20 62:5,6
126:8 129:11 130:5		indication	62:14,15 66:21 69:3
157:1,2		37:1,18 39:6,16 40:7,8	70:2,4
hereby	huh	66:5 88:18	integrity
	125:20	indicative	

122:5 intend 40:22 41:1 intentional 102:11 interest 158:11 Internet 145:11 interoffice 53:2 interpretation 146:22 interrogation 109:14 interrogations 106:8 interrupted 12:4 interrupting 103:22 interval 72:11 intervene 137:12 140:18 interview 34:11 introduce 40:19 introduction 23:9 invalidate 126:11 investigation 54:2 investigator 16:12 19:9 55:1 investigators 52:7 53:20 investigator's 134:18 involved 24:10 104:22 involving 6:5 139:1 irrelevant 60:17	Island 75:9,9 issue 25:21 98:1 122:10 123:11 134:11 141:21 147:17 149:2 issues 25:18,19 26:15 40:19 142:19 items 104:3 itself 55:4 121:15 124:16 I-drive 29:21 46:7,9 47:8,21 48:5,9 49:10 119:17 119:20 120:2,10 <hr/> J J 3:3 jack 28:12,13 January 50:7 158:16 JEH 1:7 Jerry 139:20 Job 1:20 jobs 6:6,7 Jocelyn 136:18 140:20,21 141:11,20 149:16,17 150:7,12,16,17 155:9 Joe 55:2 jog 100:22 John 149:13 JOHNSON 1:7 judge's 85:17 jump	85:14 <hr/> K <hr/> Keavney 136:19 137:17,22 138:18 140:18 141:12 141:15 143:7 155:9 Keavney's 141:6 keep 51:18 114:6 117:21 118:2 152:3,11,16 153:1 Keeve 138:17,18 kept 42:18 118:5,6 145:19 146:3 152:19 kick 119:22 kid 79:14,21 kind 15:10 37:6 116:21,22 138:14 146:15 151:5 kinds 130:4 148:7 Kisicki 55:2 knew 113:9 123:1 know 9:13,19 10:1,16 11:3,6 11:7,17 12:1,2 18:9 18:10,13 21:6 23:16 24:22 25:15 26:8 28:8 29:5,5,11 30:3 31:1 32:20 34:18 37:5,12 38:7 42:3,11 45:12 50:4,4 51:5 52:14 53:1,3 56:11,17 56:17 57:10 65:18,19 69:17 71:10,10 74:20 75:12,17 77:14,21 79:11,17 82:5,15 84:7 84:8 85:2,3,9,10,11 95:8,17,18,22 101:2 102:8 108:3,4,8 110:2	111:5 112:1 115:9,13 116:9,20 117:4 118:7 120:10,11,12,13,15 122:8,11 123:15 124:5,7 125:9 126:15 132:5,11 133:4,10,12 134:1,9,15 135:1,3,4 135:5 136:1,2,13,17 136:18 137:15,17,19 138:10,11,13 139:20 140:22 141:6,20,20 142:2,7 143:10,11,11 143:12,21 145:18 146:2,7,13,15 147:3 148:4 150:2 151:19 151:20 152:8 153:5 154:9,10 155:13,19 knowledge 82:19 85:6 87:6 known 135:6 knows 111:13 K-e-a-v-n-e-y 136:19 <hr/> L L 158:2,20 label 43:21 Lafayette 29:7,9,15 83:3 laptop 117:21 118:2 large 63:16,21 126:2 largely 23:21 larger 39:19 last 30:8,10 69:15 81:3 136:19 138:16 later 28:2 launched 6:20
--	--	--	---

Laurie 76:7 law 109:16 110:3 lawyer 125:11 lawyers 125:5,14 150:4 layman's 40:10 86:7,13 93:5 leaning 89:8,8,10 learn 25:5 least 12:14 75:1 152:21 leave 17:7 139:7 left 45:11 56:20 legal 16:19 53:8,9 less 83:21 lesser 84:15 letter 10:14 126:6,6 letters 10:22 let's 26:17 31:22 43:1 44:2 44:12,14 45:20 54:15 56:2 59:7 62:22 63:22 65:20,22 66:4 72:5,6 73:11 86:16,17 86:17 88:5,6 89:1 90:5 94:18 147:11 154:4 level 137:4 liaison 149:4 liar 140:9 license 131:17	lie 36:7,8 life 7:14 liked 103:16 limited 118:17,19 line 45:3 55:6 63:20 64:1,4 64:6,12,16,21 65:3,4 67:7,9,10,14 68:8 75:11 76:2 77:17 78:22 89:17 lines 63:20 68:9 100:19 154:4 list 47:12 101:11,13 listed 47:4 77:17 101:19 listen 23:10 28:12 106:20 107:4 108:10 118:12 119:6 124:22 listened 23:14,14 26:9,9 28:13 30:6,8 120:19 121:5 142:17 147:17 listening 123:8 148:17 listens 149:1 lists 82:21 97:3 literally 26:4 literature 85:1 little 31:17 35:3 42:11 83:20 124:4 153:11 lives 77:7 long 6:1 25:13 30:10 31:19 51:2 52:13 60:22	72:12 98:17 107:19 114:20 125:4 143:21 151:2 152:3 look 8:21 16:13 19:6 20:12 20:17 24:12,13 27:6 31:20,22 37:20 38:1 38:13,13 50:8 52:11 54:15 55:15 56:6,18 57:11 74:3,10 78:20 85:7 88:5,6 91:6 92:4 102:12 114:10 119:14 127:16 looked 102:15 looking 40:3 41:15 59:4,8 looks 11:3 12:10 13:15 14:14 14:21 36:7 40:13 44:9 loosen 125:19 lost 49:21 lot 38:7 121:10 Lots 78:18 Lowe 149:13 lung 79:13 lying 96:14 98:20 Lynn 1:22 2:13 <hr/> M <hr/> M 14:19 machine 61:8 62:3,13 96:20 Macon 48:15,16,18 50:2,2,18 50:19 51:16 52:12 53:22 55:10 124:21 143:13,14 150:15	Macon's 54:6 made 16:19 20:15 30:1 44:19 55:11,11,22 59:19,20 60:3 74:14 76:14 79:1,17 102:16 106:17 109:9 110:2 123:15 149:19 151:1 Magnuson 25:22 26:10,11 27:15 27:19 28:5 43:20 119:4 120:22 122:22 123:8 124:17 mail 53:2 mailed 52:22 Mailstop 3:8 maintain 68:19 maintained 119:15 major 121:22 make 10:9 17:12 18:19 23:4 37:4 40:20 43:22 58:8,8,9 60:1,5 74:17 92:5 95:7,15 96:6 103:6,10,13,13 104:21 106:5,7,14,18 106:20 107:3 109:19 122:19 128:2,13,16 148:19 150:17 154:15 154:18 155:16 157:5 makes 122:17 156:21 making 155:20 malfunction 126:12 management 134:12 manager 141:3 142:4
---	--	--	--

managers 119:13 126:1	3:9	76:17	87:21
manipulate 143:15	mean 10:16 11:15 12:20	Members 138:8	minus-one 87:8,8 90:3,9,11,13,16
manipulating 113:17 145:7	14:20 18:12 28:1	memo 10:14	minus-three 87:2,8,16 91:15 92:15
manner 108:5	29:16 30:9,22 32:20	memory 8:14 100:22 125:19	92:20 93:8,15,15
manual 21:3,3,4	35:20 36:19 37:5,12	Men 146:13	minus-two 87:7 89:2,4,6,7 90:4,13
many 51:4 136:6 147:6 148:4	40:2,17 41:6,15,22	mental 18:16,16	91:18
marijuana 102:20 107:14	58:11 62:11 64:14	mentally 63:4	minute 61:13 63:22 67:6 68:14
Marital 75:2	82:7 85:4,7 86:10	mentioned 37:14 81:3 105:16	127:9,11 131:4
mark 19:1,2 44:14 65:11	88:13 89:4,15,18 92:6	131:14 155:9	145:21
66:6 67:18 68:22	100:13 106:4 108:4	mere 93:3	minutes 22:9 79:6 117:14
69:14 70:4 71:2	110:14,17,20 118:11	Merit 2:14	123:10
76:19 78:22	119:18 122:14 125:3	Michelle 48:15,16,18 53:21	mirror 23:1 145:5
marked 8:7,9 16:6,7 20:10,12	125:16 126:10 127:8	55:10 150:15	missing 35:6 41:16,17 122:1
40:14 44:2,15,19	127:10 130:8 139:17	microphone 25:22 28:10 29:2,3	mission 45:13,17 46:20
46:19 47:9 66:21	140:14 144:21 146:4	middle 30:12 32:7 67:13,14	Mister 151:12
68:2,8 69:3 71:6 73:1	146:15 147:10 150:4	might 20:2 55:22 78:9 104:22	misunderstand 70:11
marker 65:12 66:6	meaning 69:18 72:9 96:21	105:2 155:22	misunderstanding 130:2
marking 70:2	155:18	mike 25:19 26:2,5 27:15,20	modify 16:17 17:3 20:2
marks 71:12	means 39:3 40:18 46:9 56:21	28:6,13,15 29:6	moment 16:13 25:4 56:1 66:7
married 75:3	62:12 69:21 89:5,11	122:10 123:2,12,15	74:9 96:2 101:9
material 73:21	89:19 90:19 91:9	123:17 124:1,3	monitor 36:17 149:7
materials 4:8	137:15 145:2 150:10	126:13	monitoring 36:10,14 37:13
matter 53:17 98:4 106:14	measure 36:22 37:17 39:13	miles 124:5	month 23:18
Maybe 130:2	measured 64:18	military 135:13	months 28:2 81:3
MBA 75:12,12	measures 81:19	mind 134:18 142:13	Moore 141:1 142:3,15,17
McKeavney 143:5	measuring 140:12	minor 131:10,21	143:2
MD	medical 33:5 74:21 103:3	minus 88:4	more 31:17 35:3 40:9 51:6
	medication 81:11 82:17 153:19	minus-four	69:17 121:7 157:9
	medications 77:16 78:19 82:14,22		
	83:11		
	meditation 80:5		
	meet 51:8		
	Megan 76:9		
	member		

morning 5:17 82:12 123:11 126:18 153:19 morning's 157:6 most 138:10 153:1 156:22 motion 85:18 Mountain 76:15,16 mouth 117:13 144:14 move 62:1 movement 36:14 60:18 61:4,6,8 62:4,7 63:16,21 64:3 64:5 65:11,12 66:22 67:12 68:4 69:7,8,9,9 69:16 144:16 movements 58:13,14 60:18,19 79:9 moves 60:22 moving 36:20 109:22 114:9 much 8:13 16:14 19:1 24:8 157:19 must 85:7 <hr/> N <hr/> N 3:1 4:1,1 5:2 name 5:19 12:13,13 56:14 75:5 132:14 136:19 138:16 names 75:22 National 149:4 natural 153:12,16 nausea 153:20	NCCA 149:1,3 necessary 114:15 157:11 nee 138:17,18 need 8:14 16:14 56:1 71:20 107:11 131:6 needed 78:12 needs 132:9 negative 7:10 89:9 neither 46:20 88:15 158:9 nervous 153:12,15 never 10:7 11:17 14:20 20:17 20:20 30:4 55:20 96:11 108:4 117:8 146:8,17 147:8 new 26:3,5 28:6 123:13 next 34:10 62:8 63:15 64:16 64:21 75:4,11 76:6,12 89:1 93:19 98:3 124:13 night 82:11 nobody 23:1 134:17 nod 43:10 nods 7:6 nonconcur 14:11 nonconcurrent 133:17 nonconcurrence 133:15 normal 71:8,9	notarial 158:14 Notary 2:15 158:21 notations 70:5 note 63:3 74:14 79:1,17 106:18 128:2,13 noted 52:4 63:2 66:9 notes 76:20,20 100:7 106:5,7 106:14 154:21 nothing 61:2 66:19 74:14 83:15 88:21 92:16 148:2,3,5 notice 102:7 109:15 noting 62:4 85:20 not-exact 9:22 NRA 76:17 number 8:18 17:16 20:12 22:1 34:18 35:6,14 36:8 52:7 55:16 56:15 69:19 78:20 81:1 91:9 97:3 148:14 149:20 numbers 34:17 35:5 38:22 42:14 89:9 NW 2:6 3:15 <hr/> O <hr/> O 4:1 5:2 11:4 object 110:6 objection 25:9 85:15 111:14 120:4 125:7 137:14 observation 37:4	observe 37:17 observed 22:20 102:22 observing 23:2,3 obsessive 18:6,14,21 19:20 78:4 obviously 88:17 90:18 109:19 114:20 122:22 126:12 occur 80:21 138:15 occurred 147:7 150:3 OCD 18:4,5,14 78:2,7,16 153:20 October 1:16 6:2 158:15 office 1:2 26:4 135:7,8,9,11 officer 109:17 158:2 officers 110:4 118:20 offices 2:2 official 43:22 often 60:19 84:22 89:14 oftentimes 73:9 oh 42:6 55:20 61:7 76:5 79:20 127:14 157:7 okay 5:7,11 6:9,12 7:3,4,8 7:13,16,22 8:6 9:3 10:4,21 11:5 12:19 13:12,14 14:9,12,12 14:22 15:2,5,19,22 16:5 17:5,14 18:18 20:9,21 21:2,11,18 22:8,16,19 23:1,4,7 24:21 27:6,17 28:4,20
---	--	--	---

29:8,11 30:1,18 31:15 31:22 32:5,14 33:20 34:22 36:9,22 37:22 38:2,6,11,21 39:20 40:5,12 41:4,21 42:4 42:10,18 43:7 44:4 47:7 49:3,7,13,21 50:1,6,10,17 54:9,21 55:3,8,15 56:14 57:11 59:18 60:8,16,18,21 61:13 62:3,6 63:6,8 63:11,12 64:20 65:2 65:13,22 66:4,12,15 66:17,21 67:18,22 68:9,12,17,17 69:3 70:10,11,20 71:22 72:3,16 73:5,11,18 74:13,19 75:7,9 76:9 76:16,18 77:4,8,12,15 78:1,20 79:10,13,20 80:4,9,14,18 81:5 82:1,6 84:8,11 85:22 86:10,22 88:15 89:17 89:21 90:2,15,19,22 92:18 93:17,19,22 94:11 96:18 97:5 99:19 101:22 103:16 104:21 105:15,22 106:22 108:1,7 112:3 112:18 113:4,9,19 114:5,10,17 115:2,4,8 116:8,11 118:18 119:3,8,22 120:12 121:7 126:5,16 128:4 130:18,20 131:8 132:8 133:12,14 134:8,13,19 135:3,5 135:10,13 136:18,22 137:8 138:9 140:18 140:22 141:11,14 143:13 144:14 145:12 145:18 147:6,21 149:3,14,17 154:8,15 154:17,19,19 155:2 156:5 157:4,7,12,18 once 48:6 51:6 121:7,7	one 12:21 17:12 19:19 23:3 23:8 25:20,22 26:3 27:21 34:5 35:5,14 40:14 44:12 45:15 47:3 54:7 55:9 60:5 62:15 63:2,2 64:8,19 64:19 65:2,8 66:1,4 67:6,13 72:12 74:4,6 77:13,17,18 82:2 86:16,16 87:3,17,19 87:20 88:3,9 89:1 91:12,14 92:4 93:7,14 94:2,19 97:8,12 98:5 104:15,15 110:7 119:5 121:19 123:13 124:1 126:16 131:1 139:4,4,5 144:21 145:3,4,5 147:13 155:7,10 ones 156:22 one's 81:17 only 15:8 19:14 40:14 52:1 59:19 85:8 88:1,3 90:6 91:11,19 93:11 102:5 110:3 119:1 124:1 134:16 135:4 148:10,10 154:4 operation 141:19 operational 156:3 operations 42:6,9 46:1 47:2,12 95:15 118:10,21 128:16,16 141:8 opinion 116:19 128:8 142:8 Opportunity 1:1 16:12 ops 41:22 42:5 47:14 95:14 option 157:5	order 28:11 42:16,19,21 43:4 44:8 62:1 85:17 93:22 122:8,11 156:14 ordering 5:9 157:14 organizations 76:13 original 45:14 53:6 other 6:6,7 8:12 14:22 15:10 15:13 28:6 34:5 41:16 47:17 53:4 55:9 62:21,22 63:2 65:8,15 77:13 78:5 90:6,7 93:13 96:8 122:7,15 146:20 147:6,11 148:6,12,14 149:19 150:4 others 24:10 148:8 otherwise 46:6 158:12 ought 146:14 out 6:7 19:2,18 28:12 29:17 32:8,9 33:14,18 33:19 42:2,16 43:3 44:7 47:13 57:17 58:12 60:6,13 71:13 71:15 74:14 82:22 91:1 97:20 101:9 122:11 139:10 145:10 151:5 outcome 158:12 outside 17:8 54:1 55:1 105:9 119:19 151:8,10 over 7:20 8:17 20:1 31:14 33:4 97:2 98:3 99:3 101:18 103:20 108:16 114:2 128:15	overruled 142:1,16,21 overruling 142:16,21 own 37:4 82:19 85:6 <hr/> P <hr/> P 3:1,1 5:2 packet 12:5 13:5 15:20 41:18 74:7 page 4:2,7 8:18,21 9:10 12:7 12:8,8 13:6,8,9 15:1,3 15:6,6,6 17:14,16 20:20,20 27:7 32:1,3 32:4,7 33:14 34:10,10 34:14,16 35:11 38:13 40:21 42:14 43:20,21 45:12 56:6,19 57:11 59:12 60:12,12,14,15 62:8 63:11 65:16 66:1,18 67:20 68:1,14 69:6,10 70:21 72:9,18 73:4 74:10,12 77:16 86:18 88:6 93:19 104:1,3 pages 1:21 12:6 15:9 20:18 20:19,22 21:14 24:14 24:14 45:7,8,9 59:1,8 palms 36:12 65:6 paper 35:4 71:7 74:4,6 91:7 128:1 paperwork 73:16 Paragraph 33:14 Pardon 26:19 part 33:3,15,18 34:12 38:14 47:3,5 82:21 108:14 109:4,12 120:14
---	--	--	---

122:1 126:3 particular 87:17,19,20 119:11 130:12 155:19 particularly 77:12 particulars 52:16 parties 158:10 parts 23:22 55:21 121:22 122:3 pass 117:5,9 129:6,8 145:22 145:22 passed 129:13 151:16 passes 145:19 past 131:9 pay 135:2 people 47:17 111:11 119:2 120:2 126:10 140:15 145:6,22 150:5 percent 85:8,11 111:1 136:10 percentage 145:21 perfectly 153:12 period 19:17 24:16 25:18 123:6 152:10,12,14 152:17 153:2,3 person 48:22 51:8 56:16 60:21 100:16 128:20 136:15 136:16 149:10 personal 37:4 82:19 106:14 personally 140:16 person's	116:22 person-to-person 10:13 perspective 146:12,12 155:18 156:3 Philpot 120:8,9 Philpot's 9:9 phone 48:17 51:10,11 52:8,18 52:20 140:7 physiological 37:14 39:14 81:18 87:20 95:20 physiology 36:7,9 71:9 86:14 88:14 110:17 113:22 140:12 picks 61:20 piece 74:4,6 91:7 pieces 38:10 place 62:22 126:21 plate 131:17 play 123:20 126:10 please 5:18 6:17,22 7:1 9:1 12:13 20:4 21:16 42:12 44:11 53:13 69:10,14 71:2 74:9 104:19 105:7 145:13 157:15 plug 29:6 124:13 plugged 28:14 plus 87:9 88:4 plus-four 87:21	plus-one 87:8 90:9,11,13,16 plus-three 87:2,10,16 plus-two 90:14 pneumo 67:10 pneumograph 64:13,17 pneumographs 70:22 pneumonia 79:14,17 pneumos 144:19 point 26:9 30:19 50:1 74:3 80:18 88:4 114:15 121:12 155:10,20 pointed 16:9 101:9 points 122:13 policies 115:14 policy 59:18 115:21 144:13 151:18 152:7 poly 6:5 106:17 122:3 129:13 140:15 141:4 141:9 polygraph 4:9 8:5 9:7 12:18 13:10 19:15 21:3,12,20 22:13 27:7,11 28:5,7 29:22 31:6,13 33:14 34:11 36:4 38:9 42:6 42:9,13 43:19 45:1,22 47:2,5,8,17 50:22 58:16 59:8 81:22 85:19 88:6 94:12 95:14,14 97:1 105:10 105:19 109:11,21 110:15,22 111:8,9,13 111:16 112:2 115:11	115:22 116:2 118:10 118:21 122:12,12 127:17 128:15,16,22 130:11 134:7,12,17 135:19 137:13 141:19 141:21 145:22 151:16 152:4 153:17 polygraphs 6:5 84:14,19 85:1 86:4 101:2 111:1 port 124:13 position 141:2,7 positive 66:1 positives 111:6,7,10 possible 10:17 95:21 139:3 154:2,6 post 59:21 109:6 posttraumatic 136:3 posture 36:19 post-test 105:11,17 106:2,7 107:2 108:15,18,18 108:20 109:13 110:12 110:16 113:12 121:17 126:21 127:1 power 124:14,14 practice 33:5 34:21 35:1 80:12 106:15,18 115:9,20 pre 32:22 preamble 28:11,14,14 31:8 122:2 precise 30:9 prefer 113:2 preferred
---	--	---	---

113:7 preparation 12:16 38:14 prepare 56:9 prepared 13:3,8,10 56:11 prepares 56:11 present 3:20 50:17 president 138:7 presses 61:15 69:12 pressing 61:11 pressure 36:10 Presumably 142:7 pretest 31:3,4,12 32:15 33:1,3 33:15,18 34:12 38:12 38:12,15,20 97:7,8 100:4 121:13 126:20 previously 8:9 20:10 pre-complaint 54:1 pre-exam 153:11 print 29:16 printed 34:19 70:6 73:2 printing 29:17 prior 31:5,5 38:19 41:4 94:17 122:7 129:5 private 7:14 probably 30:12 33:12 71:17 72:3 156:14 problem	24:17,19 25:2,6 27:15 27:20 39:7,8 112:20 121:2 122:5,7 123:16 123:17 124:18 125:18 problematic 73:22 74:1 104:14 124:9 139:17 problems 79:14 123:6 124:3 126:9 procedure 34:3 130:11 procedures 4:9 21:12,19 22:12,16 proceeded 82:8 process 11:19 19:14 24:7,9 25:12 31:16 32:18,20 36:5 97:6 143:15 151:9 155:21 produced 42:19 professional 146:12 professionally 147:19 program 42:9 141:3 142:3 programmatic 155:17 prompt 124:22 prompted 125:14 pronounce 136:19 proper 101:14 properly 28:21 protocol 112:17 147:4 provide 81:18 151:17,22 provided 20:14 23:7	psychiatric 18:7,10 psychotropic 78:19 PTSD 135:16 136:7,10,16 Public 2:15 158:1,21 pull 43:3 44:7 119:5 purposes 50:18 Pursuant 2:13 push 126:10 127:19 put 14:6 19:2,3,3 41:19 43:4 44:8 45:2 47:8 48:8 55:21 83:5,8,10 88:16 98:1 117:13 122:11,15 127:22 128:10 144:14 147:11 150:10 155:22 156:1 putting 47:20 puzzled 125:15,16 p.m 82:10 83:22 157:20 P1 64:19 P2 64:19 <hr/> Q <hr/> QCed 122:13,14 qualified 11:14,21 quality 9:2 24:7,9 25:12 26:1 55:16,18 119:3 122:18 question 6:21 9:12 11:5 12:12 14:16,17 17:2,16,19 19:9,16 29:8 33:6,7	35:11 38:5 39:3,6,11 39:13,14,15 40:7,10 40:18,22 49:14,22 60:12 62:20 63:15 66:13 69:15 70:1,15 70:16,18 76:19 77:8 77:17 78:22 79:4 80:6 81:1,21 86:16 87:4,17,20 88:9,10 89:19 91:3,4,5 92:9 92:11 104:13 105:14 105:19 110:14 118:18 129:19,19 130:9,13 134:17 137:15,21 138:19,22 139:22 155:7 questioned 134:14 questioning 96:9 131:9 questions 6:20 7:1,2 8:17 15:3,8 15:9,11 19:15 31:14 35:12 38:17,18 39:1 39:17,18 40:13 42:4 43:10 52:3,3,9,15,17 58:20 69:11 71:11,20 78:10 79:2 96:18,21 96:22 97:22 98:3,12 99:6,13,15,17 102:10 103:21 104:2,3,14 105:9,21 108:2,16 130:11,14 134:21 155:4,19 quick 22:4 115:5 quit 114:11 quite 32:11 64:20 quote 116:15 <hr/> R <hr/> R 3:1 5:2 39:3 RAC 142:5
---	--	--	--

race 146:1	17:11 22:6 43:15 117:18 153:8	154:8	124:2,8
raises 134:18	recognize 9:14	Registered 2:14	report 4:8,12 9:5,6 11:18
ran 26:4 27:20	recollection 38:7,8 96:16 97:19	related 150:5 158:10	12:18 13:2,9,10,12
range 87:12 90:12 139:7,10	107:20 114:7 125:17	relationship 75:21	14:3,10 31:21,22
rate 36:10 144:22	131:7	relative 49:8	42:13 44:8 45:1,21
react 102:21 104:11 146:13	recommendation 129:3	relaxation 80:7,12	48:4 49:8,9 55:13
reaction 62:1 102:7,9	reconnect 97:16	relevance 85:16 111:15	56:7 57:9,10,17,21
read 9:16 19:8 21:22 22:2	record 19:9 20:7 22:8 28:16	relevant 39:3,6,15,17 40:6,10	58:18 60:1,5 84:1
74:17,20,22 75:2,4	43:2,5,17 44:6,12,13	40:16,19 85:20 86:1	94:18,21 95:14 98:8
76:6,12,13,17,20	44:18 45:6 53:16	88:9,10 91:4	106:17,19 116:21
101:11,13,16	56:4 61:16 64:8 72:6	reliability 84:14 85:19 86:4	117:1 126:17 136:15
reading 101:17 103:20 158:8	73:12,13 74:22 85:15	111:15,16,21 112:3	137:3 144:9 149:19
reads 19:13	85:21 124:1 144:20	rely 139:18	reported 1:22 116:18 139:9
real 11:5	154:22 157:20 158:5	remember 23:20 24:8 25:3,20	Reporter 2:14,15 5:3,8,11
realizes 123:9	recorded 28:11,19 63:2 123:21	26:13,20 38:4 48:2,16	156:10,15,18 157:4,8
really 6:19 8:15 34:17 97:15	123:22 128:6	49:6,7 51:2,22 52:5	157:12,16,18
109:1 113:2 116:8	recording 23:4 24:5,18,20 25:7	52:14,16,20,22,22	REPORTER-NOTA... 158:1
117:12 125:13 138:12	28:16,17,22 29:14	53:2 74:5 75:3 77:14	reports 11:18 26:22 41:17
142:5 146:16 152:20	30:2,6 64:1,4 106:11	79:12,18 97:14 98:16	reprimand 126:6
157:11	117:20 120:20 127:22	100:8,9,10,10,12,17	request 20:14
Realtime 2:15	140:13 142:17 149:2	100:18 101:2 103:5	requested 158:9
reason 81:21 95:13,20 99:2,3	records 9:7 29:15 152:3	104:12 106:3 107:18	require 80:11 128:21
102:5 107:4 118:15	reduced 158:7	108:9 110:20 112:1	required 21:19 22:13
134:16 142:19	reference 50:1,21	120:18,21 121:3,16	resident 29:18 140:5
recall 49:3 84:17,18 96:16	referred 16:9 54:17 147:12	125:2,2 131:2,11,14	resolved 148:16
100:1,15 107:13	referring 9:10 13:2 74:7 85:4	131:15,17 143:20	respiration 36:11 64:15,18 87:22
108:3 109:4 112:5	141:12 148:13	149:21 150:15 151:6	88:1,3,10,19 90:6
131:3,5,8,12,20	refresh 125:16	154:2,7,14	respiratory 79:13
132:14 144:15 153:10	regard 58:15	remind 153:16	respond 78:9 135:18
153:14 154:3,17	regarding 103:3 106:1 137:13	rephrase 7:1 115:19 141:20	responding 98:11 102:13
recess	regards	replaced	response

20:3,14 21:15 29:10 36:11 39:14,19 40:4,6 40:9 86:15 87:4,20 89:6,10,11,15,16 91:11 92:6,6 93:4 111:4 116:13 118:14 132:19 141:5 152:13 responses 69:13 81:18 91:20 97:22 98:5 99:6,9,17 111:11 132:22 133:20 136:16 rest 36:4 148:12 restate 91:5 result 57:21,22 60:9 92:19 93:16 105:20 110:16 110:22 results 58:6 73:10 86:9 92:14 94:20 95:11 110:17 133:16 134:9 137:13 144:5,7 151:7,9,11 retake 95:5,10 112:7,8,9 130:21,22 retention 152:6 retest 95:22 112:13 113:3 116:5 128:21 132:6,9 132:10 141:15,22 143:3,5,6,7,8 retested 95:16 132:9,12 133:2,5 133:21 134:1 135:6,9 140:17 142:20 143:9 retrieve 125:1 review 7:16,17,19 8:11 9:4 12:6,16 15:3,7,14,20 22:9 26:7 33:6,7 38:18 63:7,10 73:15 107:1,7	reviewed 8:3,8,12 15:9 155:10 155:13,15 reviewer 13:18,20 119:4 reviewers 122:18 Rhode 75:9,9 right 5:11 6:19 8:1,18,19,21 9:10 10:9,21 11:15 12:4 13:1,1 14:5,9 15:17 16:5,21 17:2 18:18,22 19:6,21,22 21:6 25:4 26:12,18,18 30:12,18 31:2,8 32:7 33:8,12,22 34:3,10,14 34:16 35:8,12 36:3 39:10 40:20 41:14 42:14 44:18 45:5,10 45:20 46:2,5,18 47:16 47:20 48:8,18,22 50:14 52:6 53:21 54:9,22 55:3,15 56:2 56:18 57:15 58:21 59:11,15 60:4 61:1,5 61:18 62:17,21 63:13 63:22 65:6,10 67:6,13 67:15 68:3,5 71:12 72:8,18 73:3,8 76:2 76:12,17,21 77:1 79:7 79:21 81:10,13,17 84:8,22 85:22 86:8,8 87:10 88:13,17 89:11 90:5 91:8,16,19 92:2 92:21 93:3 94:4,8 98:10 101:4 104:5 111:6 112:11 113:12 117:7,17 121:20 122:4 124:13 125:22 126:16 128:2,9,12 129:14 138:11 140:7 147:2,10 148:2,6 149:9 152:12 153:6 154:19 156:20 rights	27:8 33:4 118:16 Ripperger 1:14 2:1 4:2,11 5:13,19 5:20 19:12 28:4 44:6 44:21,21 155:8 157:3 RMR 1:22 RO 21:3,6 Robin 9:8 145:15 ROI 54:6 role 7:13 Rollerblades 76:16 room 3:16 95:20 124:11 roughly 25:14 30:9 roundabout 27:18 row 34:18 rules 148:20 149:8 run 26:3 123:12 130:13 running 31:6 R24 93:20 94:5 130:9 R4 89:3 91:12,14 92:14 93:4,7,14 94:18 R6 91:12 92:21 93:1,17 <hr/> S <hr/> S 3:1 4:1,5 5:2 40:12,14 SAC 14:15,15 Sacrifice 40:16 SAIC 45:14 47:9	said 6:19 20:8 22:10 25:5,7 25:16 26:2 32:15 33:10 35:21 38:13 47:1,21 53:5 55:1 60:6 78:2,15 80:9 82:17 93:10 94:19,21 94:22 96:13 99:8,14 104:7 108:4 110:11 113:1,1,4,6,7 121:19 125:6 128:5 132:9 134:17 137:17,18 139:6 141:11,21 142:2,10,18 143:2,5,5 143:8 144:2,4,6,7 146:13 147:19 154:6 158:5 same 27:2,14 39:20 42:18 65:15 69:15 107:22 108:1,3 111:14 115:18 118:5 122:9 126:14,15 136:5 saw 37:7 89:20 109:22 139:11 144:1 say 6:17 8:2 10:15,16 14:3 15:15 20:4 30:16,20 36:9 41:2,12 51:1 52:9 57:9,18 59:16,17 60:11 66:12 68:5 70:13 74:6 75:1,16,17 76:6 80:17 83:5 84:21 85:1,7 88:16 94:18 96:5,6,13,15 97:9,17 99:10,13,15 99:19,21 101:4 103:21 104:9,18 105:7 109:7,21 112:18,22 113:19,21 114:8,10 119:4 120:3 120:4,6 123:14 126:1 126:17 127:16 137:6 138:8,11,15 140:18 144:9 147:2 148:4 151:18 153:1,2
---	---	--	---

<p>saying 10:18 11:21 39:20 65:11 90:5 100:18 106:12,13 109:12 120:1 123:5 131:3,5 131:20 134:20 136:15 142:15 151:4 154:3</p> <p>says 10:22 11:1 13:20 14:21 17:17 21:2 27:7 35:16,17,22 45:12 47:14 50:9 56:7,15,20 57:1,12,15 60:4 61:5 62:8 72:15 74:15 75:3,8 76:3,10 78:21 79:14,19,20,21 98:8 123:11 139:11</p> <p>SCD 10:1</p> <p>Scheuer 139:20 143:5,6 147:10 148:11</p> <p>school 75:19</p> <p>scientific 85:18 111:15</p> <p>scoped 96:21</p> <p>scoping 103:20 104:2</p> <p>score 39:17 42:2 58:12,12,14 58:19 62:15,17,20 86:17,20 87:1,15 88:21 89:22 90:7 92:7</p> <p>scored 62:12 86:14,14 87:22 89:6,19 91:14,17 93:14 134:9,22</p> <p>scores 62:16 87:3,12 90:6</p> <p>scoring 58:22,22 70:15,16 140:13</p> <p>screen 28:15</p>	<p>screwed 138:12</p> <p>seal 158:14</p> <p>seat 60:19 61:12,15,17 63:19 64:5 67:4,5,9 67:12</p> <p>second 16:3 17:6,9 20:17,21 23:21 27:5 44:12 55:6 56:19 64:4 72:12 73:12 77:16,17 129:21</p> <p>seconds 72:14,15</p> <p>Secret 2:5 3:14 5:21 6:4 21:4 41:5,9,11 43:17 48:20 53:22 59:18 112:16 115:9,16 118:8 133:7 146:5,6 147:16 148:22 149:4 151:10 151:17 152:7</p> <p>SECRETARY 1:8</p> <p>section 42:9</p> <p>security 1:10 3:6 10:3 73:16 117:6 156:3</p> <p>see 9:8 10:21 11:18 13:2 14:12 15:13 24:14 27:6 34:17 36:6 37:20 44:11 55:3 60:2,12 61:3,6,7,7 62:6 63:5,13,18 65:10 66:12 67:11,16 69:6 69:11 71:6,18,19 72:13 73:1,1,5,7 77:16 79:16 81:1 83:1 86:2 91:6,9 101:21 102:12 123:21 125:14,15,19 127:14 128:19 145:13 146:16 156:13</p>	<p>seeing 68:20 71:9 113:22</p> <p>seem 15:8</p> <p>seen 9:17 11:17 12:15,17 14:20 20:15,18,20 21:14,22 22:10 30:4 42:1 62:2 117:8</p> <p>selling 107:15</p> <p>semicolon 62:8 63:14</p> <p>send 52:3,10 95:14 128:15</p> <p>sense 122:17 156:22</p> <p>sensor 62:2 63:19</p> <p>sensors 61:17 63:19,19,20</p> <p>sent 45:2 51:22 52:2,21,21</p> <p>sentence 25:11</p> <p>separate 47:11 110:15</p> <p>September 24:16 26:21 27:11 137:10 149:10</p> <p>sequentially 122:16,17</p> <p>Sergeant 27:14,19 28:5 43:20 120:22</p> <p>series 32:17 34:17 86:16 88:9 91:1,12,12,14,17 92:7 93:7 94:2,3,19 97:8,9 97:12,12 98:4 129:21 130:13</p> <p>serious 105:13</p> <p>server 118:5,8</p> <p>service 2:5 3:14 5:21 6:3,4</p>	<p>21:4 41:5,9,11 43:18 48:21 53:22 59:18 112:16 115:10,16 118:8 133:8 146:5,6 147:16 148:22 149:4 151:10,17 152:7</p> <p>services 21:10 29:22 45:14 46:21 47:5,10</p> <p>set 52:9 98:3 104:9 124:10 158:13</p> <p>setting 104:8 108:5</p> <p>seven 87:3</p> <p>seven-point 87:1</p> <p>several 157:1</p> <p>SF86 73:15 100:8</p> <p>shaking 20:8</p> <p>shared 46:9,10,11 151:8,9</p> <p>sheet 33:15 35:4 42:2 86:18 87:1 90:1 97:2 106:18</p> <p>sheets 58:22 59:1 86:20</p> <p>she'll 138:10</p> <p>shifty 37:5,8,10</p> <p>short 43:13 84:1</p> <p>SHORTHAND 158:1</p> <p>Shot 77:3</p> <p>should 6:19 81:14 95:15 108:22 122:1 141:22 142:19 145:5 157:2</p> <p>shouldn't</p>
---	---	--	--



83:18 156:1	18:15	something	52:14 100:10 101:3
show	sir	6:20 8:12 10:9 14:6,6	106:3 109:5 112:1
8:6 16:5 45:6 58:17,21	52:13 80:3 109:1	18:15 19:12 20:13	131:16 143:20
59:15 60:11 61:3	sit	29:17 31:9 42:2,3	spike
63:17 67:18 116:12	78:21 79:5	59:7 61:21 63:1	67:15
150:20	sitting	70:14 75:8,20 77:12	spoke
showed	36:18 60:22	95:21 98:2 99:15	52:20 59:21 150:16
28:17	situation	100:18 123:16 126:19	spot
shows	138:14 140:19	145:6 146:14 155:16	63:2 88:22
28:16,18	six	156:1	spot-check
shut	88:10,11 89:3 92:13	sometime	122:19
127:15	129:22	25:7	squares
side	skin	sometimes	71:13
43:19 137:22	36:11	30:19 52:8 70:1,2	squiggles
sides	slightly	145:7	61:3
34:20	110:7,8	sorry	squirrel
sign	Slow	6:14 12:7 20:5 21:17	77:3
101:22 102:5	61:13	27:3,17 30:17 41:4	SSA
signals	smoke	42:6 44:21 45:8	152:7,7
10:15	10:15	49:13 52:13 54:20	stage
signature	smuggled	58:17 61:22 67:5	11:19
9:9,15,17 10:22 14:13	107:16	69:2 74:18 77:20	stand
14:14,18 33:21	software	91:3,5 100:12 105:7	11:12 40:12 124:16
signed	29:7 82:21,22 83:3,11	112:6 115:19 117:5	138:11,20
16:21,22 24:15 27:1,10	some	117:11 125:21 127:21	standard
34:8 54:16 57:11	7:10 8:11 10:22 18:2	131:4 137:7 143:2	19:15 112:16
significance	23:22 24:13 26:14	sort	stands
19:13	30:19 32:5 33:8,9	80:12 84:20 114:8	10:2 11:6,7,13 21:7
significant	40:13 52:15 54:11	sorts	41:10
40:9,9 69:8 73:8 86:15	78:4 80:18 97:21,22	110:3	start
89:10,11,15,15 91:11	98:11 99:5,6,12,14,16	sound	32:6 65:17,20 66:2
91:16,20 92:5,6 93:1	99:17 107:21 111:9	29:4	83:21 101:17 103:17
93:4 98:5 111:4,11	111:10 112:1 114:15	speak	started
116:13 132:18,22	117:16 118:8 121:9	26:10 27:8 116:21	6:2,7 84:1 126:17
133:20 136:16	121:11 125:20 134:21	128:1 135:7 148:19	state
signing	135:16 145:9 148:14	speaking	140:8,9
14:15 158:8	somebody	38:17 102:14	statement
similar	11:21 87:22 95:9,12	special	55:11,12
115:10 148:7	110:5 114:20 124:18	133:11 139:9	States
simply	129:4 130:10 132:9	specific	2:5 3:14 5:21
23:9 45:22 151:3	134:13,20 138:5	35:3 38:6,8 46:2 83:1	statistics
since	139:8	85:4,5 96:1 101:10	85:10 145:19
12:21 24:8 111:22	somehow	130:4 153:14	status
121:5 124:8	71:19	specifically	75:3
single	someone	37:7 100:8 107:18	stays
65:2,4 136:5	95:19 113:2,8 117:8	144:9	97:17
sinus	128:22 129:12 139:18	specifics	stenographically

158:6	49:8	suspicion	110:19 138:3 147:21
stepbrothers	submit	109:7,8	talks
100:5	13:18 42:21	suspicious	101:9
stepmom	submitted	102:17	tape
76:4,5	12:18,22 14:10 16:20	sweaty	30:22 31:1 32:15 107:7
stepparents	18:3 41:20 42:11,13	36:11 65:6	124:18 142:18 147:17
100:6	43:3,4 44:7,9 45:22	sworn	148:17
Steven	53:9	5:14	taught
3:13 76:3 132:15,19	subparagraphs	system	111:13
still	21:13	152:19	technical
78:22 79:5 82:8,12	subtotal	S22	45:13,17 46:20
85:16 114:6 133:19	90:18,19	40:22	technically
133:20	sudden		38:17
stood	123:10	T	technique
74:14 137:17	suggested	T	80:12
stop	146:17	4:1,1,5	techniques
84:9 94:12,14,20	summarized	table	80:8
114:21 127:20	55:12	124:10,16	tedious
stopped	superiors	take	42:12
94:16	126:1	8:13 16:13,13 19:1,5,6	telephone
stored	supervisor	22:3,4 28:12 31:19	10:13
29:21 89:2	137:4 139:19 148:18	43:2,13 44:2 52:11	tell
story	148:21,22 149:1,15	56:1 74:9,10 95:9	6:22 7:1 8:12,13 17:14
148:12	155:9	115:5 117:14 126:5	18:18 19:18 25:21
street	supervisors	127:21 129:8 131:5	30:19 32:14 33:1
2:6 3:15 109:20	119:13 125:22 134:7	137:22 140:15 151:5	34:16,22 35:1,5,8,10
stress	support	taken	42:10 46:18 48:18
79:9 136:3	45:14,18 46:20	17:11 22:6 42:2 43:15	50:19 52:6 64:20
strike	suppose	57:5,13 58:2,4 80:19	71:14 74:10 76:19
132:3,4	87:19 119:14 138:12	81:2,19 83:15 96:3,9	78:8,11 80:19 91:8
strike-through	supposed	117:18 139:7 151:16	92:2 94:11 98:13,18
89:3	122:18	153:8 158:3,6	98:20,22 105:22
striking	sure	takes	107:12 108:2 111:6
77:13	17:7,10 19:22 37:15	153:19	113:9,14 114:6,21
struck	38:10 40:21 49:17	taking	123:1 130:20,21
19:18	74:17 79:22 82:16	63:3 65:12 78:7 81:7	132:17 140:3 143:19
student	106:20 108:15 117:15	83:11 114:11,20	145:14 150:20,21
6:8,10	120:17 122:19 133:12	116:2	152:10 153:21
stuff	142:13,14 144:5	talk	telling
37:6	148:20 149:18 155:16	10:10 51:11 72:6 98:2	12:5 35:2 84:3,18
stuttering	155:20 156:18	101:6 150:7 153:6	109:10,17 110:5,13
110:1	surprised	talked	111:12 115:16 131:8
subheadings	26:18 116:8	33:17 107:14,14,15	tells
21:13	suspect	108:8 131:10,20	36:7 153:15
subjectivity	57:4,7,19 154:12	150:2,3	term
111:9 112:2	suspected	talking	86:13 93:6 113:15
submission	56:20 57:15	10:11 31:2,13 40:2	130:3
		49:11 54:12 104:2	

terminology 89:12 91:22 92:2 99:18 103:18,19 106:21	thereafter 158:7	93:13 121:22 122:3,9 123:5 126:13,13	95:13 117:13
terms 37:1 40:10 81:14 86:7 122:8	therefore 146:14	through 12:5 19:2 21:22 22:2 43:3 54:10 65:21 89:18 99:12,14 111:22	title 9:19,22 50:15
terribly 75:20	thing 23:2 37:5 39:21 52:1 65:13,15 69:15 84:20 93:12 101:16 107:22 108:1,3,9 114:8 115:18 126:17 136:9 138:11 153:16	throughout 19:14 28:16 63:4 73:7	today 7:17 30:10
test 8:14,15,17 31:5 33:5 34:21 35:1 37:17 38:18,19 58:3,6 59:22 63:4 81:15 85:5 89:14 99:3,9 101:7 109:6 112:7,8,10 114:20 121:15 122:14 123:3,4,9 126:11 128:14 129:6,8,8 134:11 141:22 146:22 151:7,9,11 155:18	things 8:3,3,11,13 29:17 37:14 56:15 60:5 63:4 66:8 70:2 74:20 75:2 77:6 78:5 80:15 100:5,15 102:22 110:3 114:11 121:9 121:10 129:11 138:8 138:9 139:16 144:16	throwing 131:22	today's 19:4
tested 13:11 82:12	think 9:22 10:22 12:8 18:14 22:10 24:6 25:13,15 38:11,21 39:20 40:13 50:16 52:1 53:19,20 54:11 60:17 65:22 66:5 71:16,17 74:11 84:5 86:18 100:3 109:10,13 111:1,3 120:18 121:19 123:15 132:2,3 133:11 140:16,20,20 141:1 142:9 144:5 149:18 152:15,16 154:20 156:21	Thursday 5:6 156:11,13	together 41:19 45:2 55:21
testified 5:14		ticks 79:9	told 5:4 18:4,20 19:19 25:1 27:15,19 38:11 50:20 78:2 79:16 80:14 82:7,10,11 83:16,17 86:6 97:21 100:9 101:3 110:18 113:16 121:1 124:17 125:11 139:4 140:10 152:16 153:11,12
testify 63:10		tie 100:12	took 31:16 49:1 55:21 78:15 82:7 83:17,22 97:19 97:20 126:21
testimony 60:10 129:5 158:5,6		Tignor 132:15,20 134:6 139:22 140:9 142:18 142:19 147:6,8 154:8 154:9	top 63:18,18,20 64:1 67:14 74:4 145:3,4
testing 128:11		Tignor's 134:9 146:20	topic 81:7
tests 25:17 85:8 111:8 122:9 122:15 123:5 145:22		time 8:13 9:16 16:14 19:1 22:3 23:13 24:8,16 25:13,17 30:8,10,10 31:21 32:6,8,8,8,9 48:8 49:4,21 50:12 60:22 66:4,5 72:13,14 83:17 94:12 96:7,19 103:7 107:16 109:20 114:5 120:19 121:1 122:4,9 123:5 126:14 126:15,20,22 127:16 127:18,19,22 136:5 137:9 138:8,10,10 139:4 140:6,10 144:11 145:9 149:15 152:10,12,17 153:2,3 154:4 156:9	total 93:15
Thank 5:12 12:9 15:19 19:21 41:13 70:11 156:8,8 157:18	third 20:18,21 63:20 64:6 67:7 76:2		totally 88:5 110:2
Thanks 145:12	Thomas 3:3 14:14,19		toward 56:18
theme 101:1,4	thought 42:18 67:11 113:5,10 116:13 129:16 130:3		towards 89:8,8,10
themselves 29:15 58:16 59:5	three 21:14 23:8 25:17 47:11 63:19,20 67:14 79:2,5 81:2 91:2 92:16,17	timed 127:4	track 33:10 38:22 136:12,17 146:3
theoretically 87:14		times 51:4 64:18 147:6	tracking 39:1
theory 145:5		tired	traffic 131:10,12,15,21
			trained 109:16
			training 6:11,15 58:15 82:19

85:7 111:7,21 146:17 transcendental 80:4 transcribed 5:5 156:19 157:13 transcript 4:6 5:9 8:10 16:8 20:11 30:1,4 44:16 158:4 transmit 46:5 trap 39:21 treated 147:19 trooper 140:8,9 trouble 32:5 troubling 155:17 true 84:3 158:4 trumps 57:22 truth 36:1 98:4 109:10,18 110:5,13 111:12 try 141:15 145:9 trying 39:21 40:1 58:15 113:17 117:13 125:16 125:19 127:3,4 143:14 Tuesday 1:16 turning 128:2 twice 12:14 121:8,9 two 33:2 42:4 53:20 64:18 65:1 69:11 76:12 88:9 91:1,1,12,12,13 91:14,17,17,19 92:8 92:10,16 93:7,10,13 97:9,12 104:14	144:16 two-way 23:1 tying 100:15 typed 15:9 70:7,8 typewriting 158:7 typical 140:14 typically 95:19 106:10 148:21 <hr/> U Uh-huh 6:16 30:15 43:9 55:7 56:8 57:8 65:9 69:5 71:5 72:21 78:3 93:9 102:4 104:17 124:12 135:12 137:5 uh-huhs 7:6 ultimately 16:20 92:21 unbelievable 110:2 uncontrolled 79:8,9 under 76:13 77:16 134:1 158:7 understand 6:22 7:2 38:21 40:1,21 44:22 45:10 47:7 60:10 68:6 94:4 106:12 109:12 111:19 111:20 112:14 114:19 127:4 129:2,10 understandable 100:20 understanding 8:16 10:11 11:13 18:5 81:12 115:17,20 129:5,9,11 133:9 undetected 103:11 Unfit	34:4 union 138:7 United 2:5 3:14 5:20 University 75:9 unless 60:2 144:9 until 23:18 33:21 156:11 unusual 83:16 103:5 updates 116:7 upset 95:21 upstairs 116:20 120:1 use 37:17 40:19 89:13,14 89:15 91:22 92:2 96:7 98:15 99:18 101:13 103:7,19 104:16 105:6,9 113:15 using 29:9 50:1 93:5 113:10 113:10 115:12 116:1 U.S 1:1,8 107:17 <hr/> V v 1:6 vague 120:5 121:11 137:14 vaguely 100:9 131:14 valid 58:3,6 118:15 various 21:13 vault 152:19 verbal 20:3 21:15 29:10 118:14 141:5 152:13	verbally 99:11 verbatim 98:16 101:16 version 16:18,19 29:11 vertical 34:18 vet 136:1 veterans 135:13,16 via 48:16 Victoria 1:22 2:13 158:2,20 violation 131:10,12,15 violations 131:21 volume 28:19 <hr/> W wait 61:13 63:22 67:6 68:14 131:4 waive 129:7 walk 65:21 Wallace 5:4 want 8:15 16:15 17:3,7,8,12 17:21 18:19 19:1,2,3 20:1 22:2 36:6 40:20 42:10 53:15 55:19 65:11,15,21 91:8 94:19 106:8 107:9 109:14 115:5 117:12 117:20 118:13 119:6 121:10 128:5 142:20 148:4 156:11,16,19 wanted 12:3 98:2 112:7 129:16 130:21 140:17 142:5 142:9,9 143:6,7 155:8
---	--	--	--

155:15 warning 27:8 Washington 1:15 2:7 3:17 135:8,10 watch 102:9 watching 102:8 water 117:16 way 10:7,17 16:17 17:4 18:2,22 20:2 38:22 39:15 43:1 45:21 62:22 65:14,22 74:2 77:13 78:9 83:19 86:17 88:16 94:19 102:16 104:7 109:7 109:22 124:1 125:20 126:5 134:6,8 135:1 136:5 140:19 148:16 ways 52:7 week 30:10 weeks 28:1 went 6:11 7:20 22:8 51:15 98:3 107:16 111:22 114:2 129:3 142:21 147:16 we'll 43:2,5,13,14 50:17 54:10 72:6 86:2 we're 5:5 12:2 28:16 31:1 38:12,12 39:20 64:11 68:20 70:15 71:19 106:18 110:16 117:12 129:1 156:13,14 we've 63:13 WFO 135:8 whatever	19:3 41:12 95:13 106:8 107:9 109:14 118:8 126:7 127:6,17 134:9 137:18 153:4 whatsoever 147:18 WHEREOF 158:13 wherever 91:10 whether 37:1,18 39:16 40:3 42:1 61:14 84:15 86:1 95:9 96:9 105:4 110:5 128:17 136:1 142:10 143:14 148:13 149:7 150:10 151:15 151:16 153:4 whoever 46:13 whole 23:18 31:15,15 101:16 151:12 wife's 75:5 willing 112:9,15 113:4 132:8 Wilson 1:22 2:14 158:2,20 wish 109:1,2 withdraw 125:12 without 24:1 109:20 117:11 witness 3:12 16:1,20 17:8 20:7 44:10 50:20 139:1 158:13 Witnesses 4:10 women 146:13 wondering 54:3 word 7:10 61:7,8 62:7 75:4	80:1,1 134:6 words 19:18 98:15 117:13 131:6 142:9 144:14 153:13 work 5:20 42:8 64:9 97:18 129:11 137:1 139:5 worked 6:1 working 26:2 28:10 works 10:1 29:5 44:1 worksheet 9:2 34:11 55:18 worry 20:6 74:19 worse 7:5 worst 77:2,5 worthless 7:7 wouldn't 60:2 78:16 95:7 107:6 123:22 138:13 write 19:1 34:4 35:5,14,15 35:22 75:13 77:10 writing 106:19 150:10,11 written 10:14 80:2 136:15 wrong 38:22 75:18 91:8 126:5 wrote 12:17 35:21 77:19,20 91:7 94:8 X x 1:3,12 4:5 Xanax 80:19 81:4,7,10,20 82:2,8,17 83:8,18 96:3,7,16 Xeroxed	71:17 Y yeah 15:13,14 25:8 27:6 47:3 49:15 53:14 54:19 57:17 63:9 64:19 65:17 69:17 71:15 72:17 73:3 74:8 75:7 79:21 84:3 89:7 91:6 106:12 109:21 110:8 115:3 117:14,17 123:19 139:2 140:17 146:6 150:16 152:21 156:12 year 30:14 50:7 years 22:1 28:2 111:22 yellow 65:12 66:6 67:19 68:2 68:22 69:14 yoga 80:4 young 100:16,21 yourself 5:18 47:19 YUSSS 76:19,22 77:8 Z zero 87:3,8 88:4,11,13 89:3 89:17 90:7,9,11,13,16 90:19 91:10 zeros 87:7 91:9 0 0240 67:16 0250 67:16 1 1 1:21 4:8 8:7,9 20:20
--	--	--	---

24:13 27:7 43:20 50:7 55:16,17,17,20 55:22 56:6 59:1 86:18 104:4 126:18 157:5 1B 70:21 71:18,19 1-G-15 3:7 1:00 43:14 10 43:20 82:10 83:22 10A 43:21 100 85:11 111:1 11 8:22 9:1 57:11 11:54 1:17 12 9:4 56:6 81:3 83:20,21 84:2,5 145:13 12:36 43:12 125413 1:20 13 9:5 45:7,8,8 13:20 32:9 14 9:6 45:7,8 141:8 149:11 15 104:3 155 4:4 158 1:21 16 4:11 27:7 1720 3:7,8 18 1:16 9:10,12 12:8,9	104:1 18th 24:15 26:21 27:11 19 32:1,4 19th 6:14 50:9 1923 3:5 <hr/> 2 <hr/> 2 4:9 17:16 20:10,12 33:14 69:19 77:16 157:5 2nd 6:13 2:40 72:15 2:50 72:15 20 4:9 20th 54:16 2001 6:2 2002 6:13,14 2012 152:22 2014 24:16 26:21 50:9 137:10 149:11 2015 50:7 54:16 2016 1:16 158:15 2019 158:16 202 2:8 3:18 20223 2:7 3:17 21 63:15 68:1 21A 68:13,17	21235 3:9 22 12:10 24 12:11,12 13:7,9 26 94:5 28 66:1,2,10 94:5 29 66:11 <hr/> 3 <hr/> 3 4:10 16:6,7 34:10 54:19,20 72:15 74:12 84:12 3:51 157:20 31 158:16 31st 158:14 32 66:19 33 60:15,16 63:13 66:18 66:21 35 15:4 350 101:2 36 15:6 37 67:20 38 63:11,13 68:1 39 68:3 <hr/> 4 <hr/> 4 4:12 34:14,16 44:14,15 44:20 45:1 49:12,15 54:15,18 55:22 149:19	40 15:6 406-8800 2:8 3:18 41 15:7,11 410 3:10 43 68:16,17 44 4:12 69:1 45 15:6,15 123:10 46 15:18 47 69:6 <hr/> 5 <hr/> 5 4:3 8:20,21 38:13 50 15:18 136:10 52 69:11 54 15:18 55 15:18 56 69:17,19 57 70:21 71:4   58 72:9 <hr/> 6 <hr/> 6 17:16 59:1,8,12 66:11 66:12 86:19,19 88:6 60 15:18 61 15:18 62
--	--	---	---

72:19,20

63

72:18 73:4

64

15:18

6401

3:6

7

7

59:1,8,12 86:18,19,19

7th

6:2

8

8

4:8 24:14 86:19

80

85:8

8300

3:16

9

9

24:14

9/18/14

49:9,16

9:40

32:2,9 84:1 126:18

950

2:6 3:15

966-1531

3:10