

From: [REDACTED]
To: [REDACTED]; [REDACTED]@yahoo.com; [REDACTED]
Subject: [EXTERNAL] Supplement to Motion for Sanctions
Date: Thursday, September 20, 2018 10:12:06 AM

From: Tom Gagliardo <tomgagliardo@gmail.com>
Sent: Thursday, October 6, 2016 4:04 PM
To: ANTOINETTE.EATES@eeoc.gov
Cc: STEVEN GIBALLA (LEG); [REDACTED]
Subject: Supplement to Motion for Sanctions

This is to supplement the motion for sanctions that was filed on October 4, 2016. In a telephone conversation this morning with USSS counsel, Steven Giballa, he informed me that Mr. [REDACTED] claim of spoliation is unfounded because at about 40 minutes into the second audio file, and continuing to approximately the 90 minute mark, voices can be heard. It appears that USSS is not disputing that only static was recorded for the remainder of the more than five-hour interview. Mr. [REDACTED] and I then jointly played the audio files using head phones, as Mr. Giballa had suggested. While a female voice can be heard and, to a lesser extent, a male voice can also be heard; neither of us could discern what was being said. While an occasional word can very infrequently be discerned, it was impossible to comprehend an entire sentence, or extract anything of substance or usefulness on the recording the USSS provided, with the exception of the first minute of the exam, and possibly the last minute of the exam. This determination was made listening to discrete intervals of the entire recording at approximately 5 minute intervals, rather than listening to several hours of static. Because the files are too large to send by email, we would like to provide you with the audio disk that was provided by USSS to enable you to determine the facts concerning the clarity of the recording provided, if the recording provided meets what the threshold of what a reasonable person would expect to be provided consistent with your order, whether or not it was properly preserved, and if in its present form it contains anything of usefulness to determine the numerous material factual disputes that have arisen between Agent Ellen Ripperger's and [REDACTED] accounts of what occurred during Mr. [REDACTED] polygraph examination.

We would also suggest that all counsel confer with you by telephone or in person to resolve this matter.

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Thomas J. Gagliardo
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*“The presence of those seeking the truth is infinitely to be preferred to the presence of those who think they've found it.” Terry Pratchett (1948-2015) in *Monstrous Regiment*.*