

KEY:

RED HIGHLIGHTING = DEFINITE LIE

YELLOW HIGHLIGHTING = PROBABLE LIE

(i.e. "I don't remember" when any normal person would; answer does not make sense; answer is not credible or believable in context.)

Transcript of **Ellen Ripperger**

Date: October 18, 2016

Case: [REDACTED] -v- US Secret Service

Phone: [REDACTED]

Fax: [REDACTED]

Email: [transcripts@\[REDACTED\]](mailto:transcripts@[REDACTED])

Internet: [www.\[REDACTED\]](http://www.[REDACTED])

Deposition of Ellen Ripperger
Conducted on October 18, 2016

1
2 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
3 Baltimore Field Office
4 -----x
5 [REDACTED] :
6 Complainant, :
7 v. : EEOC No. [REDACTED]
8 JEH JOHNSON, : Agency No.
9 SECRETARY, U.S. : [REDACTED]
10 DEPARTMENT OF HOMELAND :
11 SECURITY, :
12 Agency. :
13 -----x
14 Deposition of ELLEN RIPPERGER
15 Washington, D.C.
16 Tuesday, October 18, 2016
17 11:54 a.m.
18
19
20 Job No.: 125413
21 Pages: 1 - 158
22 Reported By: Victoria Lynn Wilson, RMR, CRR

1
2 Deposition of ELLEN RIPPERGER, held at the
3 offices of:
4
5 UNITED STATES SECRET SERVICE HEADQUARTERS
6 950 H Street, NW
7 Washington, DC 20223
8 (202) 406-8800
9
10 Pursuant to agreement, before Victoria Lynn
11 Wilson, Registered Merit Reporter, Certified
12 Realtime Reporter, Notary Public in and for the
13 District of Columbia.
14
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18
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21
22

3
4 A P P E A R A N C E S
5 ON BEHALF OF THE COMPLAINANT:
6 THOMAS J. GAGLIARDO, ESQUIRE
7 AMERICAN FEDERATION OF GOVERNMENT
8 EMPLOYEES, AFL-CIO 1923
9 6401 Security Boulevard
10 1-G-15 1720 Ball Building
11 Mailstop 1720
12 Baltimore, MD 21235
13 (410) 966-1531
14
15 ON BEHALF OF THE AGENCY AND THE WITNESS:
16 STEVEN GIBALLA, ESQUIRE
17 UNITED STATES SECRET SERVICE
18 950 H Street, NW
19 Room 8300
20 Washington, DC 20223
21 (202) 406-8800
22
23 ALSO PRESENT:
24 [REDACTED]

4
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22



Deposition of Ellen Ripperger
Conducted on October 18, 2016

5

1

2 PROCEEDINGS

3 THE COURT REPORTER: Mr. Giballa,

4 Mr. Wallace asked -- told me to ask you that if the

5 deposition of Mr. Alston is transcribed, which we're

6 going to determine on Thursday --

7 MR. GIBALLA: Okay.

8 THE COURT REPORTER: -- are you going to

9 be ordering a copy of the transcript?

10 MR. GIBALLA: Yes.

11 THE COURT REPORTER: Okay. All right.

12 Thank you.

13 ELLEN RIPPERGER,

14 having been duly sworn, testified as follows:

15 EXAMINATION BY COUNSEL ON BEHALF OF THE COMPLAINANT

16 BY MR. GAGLIARDO:

17 Q Good morning. Would you identify

18 yourself, please.

19 A My name is Ellen Ripperger.

20 Q Agent Ripperger, you work for the United

21 States Secret Service?

22 A That's correct.

6

1 Q How long have you worked for the agency?

2 A I started October 7th, 2001.

3 Q Has that -- has your entire service -- has

4 your entire employment with the Secret Service been

5 in poly -- involving polygraphs or have you had

6 other jobs?

7 A Other jobs. I started out as a

8 cooperative student.

9 Q Okay. What did do you after you were a

10 co-op student?

11 A I went to agent training.

12 Q Okay.

13 A So I converted May 2nd of 2002 -- or, I'm

14 sorry, May 19th of 2002.

15 Q That's when you entered agent training?

16 A Uh-huh.

17 Q You have to say, "yes," or, "no," please.

18 A Yes.

19 Q All right. And I really should have said

20 something before I launched into these questions.

21 If I ask you a question you don't

22 understand, please tell me. If you don't hear me,

7

1 please tell me that. I'll rephrase questions you

2 don't understand. I'll certainly repeat questions

3 you haven't heard. Okay?

4 A Okay.

5 Q And we all do it, I do it worse than

6 anybody, but head nods and "uh-huhs" and all that

7 are worthless.

8 A Okay.

9 Q So it's got to be, "yes," "no,"

10 "affirmative," "negative," or some word.

11 Have you given a deposition before?

12 A No.

13 Q Okay. And not in your role as an agent or

14 in your private life?

15 A No.

16 Q Okay. What did you review -- did you

17 review anything before coming today?

18 A Yes.

19 Q What did you review?

20 A I went over the documents with Attorney

21 Giballa.

22 Q Okay. I'm not going to ask you about any

8

1 conversations you had with Mr. Giballa; all right?

2 But I will ask you what you -- when you say you

3 reviewed things, what those things actually were.

4 A The documents from Mr. [REDACTED]

5 polygraph.

6 Q Okay. I'm going to show you what's been

7 marked as Exhibit 1 and ask you if those are the

8 documents reviewed.

9 (Exhibit 1, previously marked, is attached

10 to the transcript.)

11 Q If you didn't review some of those things,

12 tell me. If you reviewed something other than those

13 things, tell me that. Take as much time as you

14 need. This is not an endurance test or a memory

15 test. I really want to get your complete

16 understanding of what this case is about.

17 A I did not go back over the test questions.

18 Q All right. The page number that's circled

19 in the bottom right --

20 A 5.

21 Q All right. You didn't look at page 5.

22 A 11.

9

1 Q And what is 11, please?
2 A **It's the quality control worksheet.**
3 Q Okay.
4 A **I did not review 12, which is the**
5 **applicant examinee report; 13, which is a**
6 **continuation of that report; 14, which is the**
7 **polygraph database records. My copy was different,**
8 **as I didn't see anything with Robin DeProspero-**
9 **Philpot's signature.**
10 Q All right. You're referring to page 18?
11 A **Correct.**
12 Q Let me ask you a question on 18, and you
13 may or may not know the answer. First of all, you
14 recognize that as Ms. DeProspero-Philpot's
15 signature; is that correct?
16 A **I can read. That's the first time I've**
17 **seen her signature.**
18 Q Who is she?
19 A **I don't know what her exact title is.**
20 Q Is she in your chain of command?
21 A **She's not.**
22 Q What do you think her not-exact title is?

10

1 A **I know she works for SCD.**
2 Q And that stands for --
3 A **Security clearance division.**
4 Q Okay. Have you ever communicated with
5 her?
6 A **No.**
7 Q Never in any way?
8 A **No.**
9 Q All right. Let me make something clear.
10 When I talk about communication, just so we have a
11 common understanding, I'm talking about any and all
12 forms of communication, so it could be
13 person-to-person; it could be telephone; it could be
14 email; it could be written memo or letter. What I
15 always say is it could even be smoke signals. So,
16 when I say, "communicate," you know I mean it in the
17 broadest possible way.
18 So, you're saying you've had no
19 communication with -- with Ms. DeProspero-Philpot?
20 A **No.**
21 Q Okay. Do you see right below her
22 signature there are some letters? I think it says,

11

1 "BQA." Do you agree that that's what it says,
2 "BQA"?
3 A **I don't know. It looks like it could be**
4 **an "O."**
5 Q Okay. Well, the real question is do you
6 know what it stands for.
7 A **Do I know what what stands for?**
8 Q Those initials.
9 A **"BQA"?**
10 Q Yes.
11 A **Yes.**
12 Q What does that stand for?
13 A **It's my understanding that it stands for**
14 **"better qualified applicant."**
15 Q All right. And what does it mean on that
16 document?
17 A **I don't know. I've never seen it on a**
18 **document -- or a report. I don't see reports that**
19 **are at this stage of the process.**
20 Q So if I asked you who is being -- is she
21 saying that somebody is a better qualified
22 applicant?

12

1 A **I don't know.**
2 Q You don't know. We're going to ask her on
3 Friday, so just wanted to check.
4 All right. I interrupted you. You were
5 going through the packet, telling me what you did or
6 did not review, and I have four pages that you did
7 not. I'm sorry. What was that page again?
8 A **I think it was page -- page 18.**
9 Q 18. Thank you.
10 A **Looks like there's another copy, so 22,**
11 **24 --**
12 Q Can I ask you a question on 24, if you go
13 back to that, please. Your name -- your name is
14 there. It appears at least twice on the document.
15 Have you seen this document before, even if you
16 didn't review it in preparation for this deposition?
17 A **I have not seen this document. I wrote a**
18 **polygraph report that I submitted --**
19 Q Okay.
20 A **-- that -- I mean I believe it was this**
21 **one but I don't -- it's been amended since I**
22 **submitted it.**

13

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. ██████████ 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.

14

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?

15

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.

16

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?

17

1 **A Correct.**
2 Q All right. So, again, my question is is
3 there anything you want to add, delete, or modify in
4 any way?
5 **A Is it okay if I confer with counsel for a**
6 **second?**
7 Q Sure. Do you want us to leave?
8 THE WITNESS: Do you want to go outside
9 for a second?
10 MR. GIBALLA: Sure.
11 (A recess was taken.)
12 **A So, I do want to make one amendment, if**
13 **you will.**
14 Q Okay. Tell me what -- what page you're
15 on.
16 **A Page 2, question number 6.**
17 Q It says, "Are you aware if complainant has
18 a disability? If so, when and how did you become
19 aware?" Is that the question?
20 **A Correct.**
21 Q And you want to change the answer to
22 that --

18

1 **A Well --**
2 Q -- or correct or amend it in some way?
3 **A -- what I had submitted initially was that**
4 **the complainant told me he had OCD.**
5 Q And what is OCD in your understanding?
6 **A Obsessive compulsive disorder.**
7 Q And that's a psychiatric condition;
8 correct?
9 **A I don't know. I'm not --**
10 Q You don't know if it's a psychiatric
11 condition?
12 **A I assume. I mean I'm not a doctor.**
13 Q I know. I'm not either. What do you
14 think OCD is, obsessive compulsive disorder is?
15 Something to do with the bones or sinus?
16 **A Yes, I believe it's a mental -- mental**
17 **health condition.**
18 Q Okay. All right. So tell me what change
19 you want to make.
20 **A Just that the complainant told me he has**
21 **obsessive compulsive disorder.**
22 Q All right. Why don't you do it this way.

19

1 Take as much time as you want. Write in -- mark
2 through anything you want to mark out and put in
3 whatever you want to put in and then put initial and
4 today's date on it.
5 Can I take -- go ahead.
6 All right. Let me take a look at what you
7 did.
8 I'm just going to read this into the
9 record. The question by the investigator was, "Are
10 you aware if complainant has a disability? If so,
11 when and how did you become aware?"
12 Agent Ripperger has deleted something of
13 no significance and now the answer reads as follows.
14 "Throughout the exam process, I only asked him the
15 standard polygraph questions that all applicants are
16 asked. There is no question on the form that asks
17 if the examinee has a disability, period."
18 She struck out the words "nor did he tell
19 me he had one" and added, "The examinee told me he
20 has obsessive compulsive disorder."
21 All right. Thank you.
22 All right. Again, just to be sure, is

20

1 there anything else that you want to go over so that
2 you might add, delete, or modify in any way?
3 **A (No verbal response.)**
4 Q Please say, "yes," or, "no."
5 **A No. Sorry.**
6 Q I'm bad at it, too, so don't worry.
7 Just so the record is clear, the witness
8 was shaking her head and now she has said, "No."
9 Okay.
10 (Exhibit 2, previously marked, is attached
11 to the transcript.)
12 Q If you look at the exhibit marked Number 2
13 that's in front of you, and this is something that
14 was provided by Mr. Giballa in response to a request
15 I made, you've seen this document before?
16 **A No.**
17 Q You've never -- look at the second and
18 third and fourth pages. Have you seen any of those
19 pages before?
20 **A I have never seen this page, page 1.**
21 Q Okay. How about the second, third, and
22 fourth pages of the exhibit?

21

1 **A Yes.**
2 Q Okay. And this comes -- it says,
3 "Manual -- Manual Polygraph RO FSD." What -- this
4 is a Secret Service manual?
5 **A It appears to be.**
6 Q All right. And do you know what "RO"
7 stands for?
8 **A I do not.**
9 Q How about FSD?
10 **A Forensic services division.**
11 Q Okay. Now, the headline on the document
12 is "Polygraph Examination Procedures," and then it
13 has various subparagraphs and subheadings, and
14 you've seen those -- those three pages before?
15 **A (No verbal response.)**
16 Q "Yes" or "no," please.
17 **A I'm sorry. Yes.**
18 Q Okay. And these -- and these are the
19 procedures that you are required to follow in
20 administering a polygraph examination of an
21 applicant for employment?
22 **A I haven't seen this or read through this**

22

1 **in a number of years, so before I answer that, I**
2 **would want to read through it.**
3 Q Absolutely. Take your time.
4 MR. GAGLIARDO: I'm going to take a quick
5 break while you're doing that.
6 (A recess was taken.)
7 BY MR. GAGLIARDO:
8 Q Okay. We went off the record for a few
9 minutes, and you've had a chance to review it. Have
10 you seen this document before? I think you said,
11 "Yes."
12 Are those the procedures that you're
13 required to follow when administering a polygraph
14 examination?
15 **A Yes.**
16 Q Okay. Did you follow those procedures
17 when you conducted Mr. ██████ examination?
18 **A Yes.**
19 Q Okay. Now, when you administered the
20 examination to Mr. ██████ was it observed by
21 anybody else?
22 **A No.**

23

1 Q Okay. There was no two-way mirror, nobody
2 observing from behind such a thing?
3 **A There was no one observing the exam.**
4 Q Okay. You were to make an audio recording
5 of the exam, were you not?
6 **A Yes.**
7 Q Okay. And there are -- we were provided
8 with three audio files. The first one is audible.
9 It's simply the introduction of the case. Did you
10 listen to the first audio file after the exam was
11 conducted?
12 **A I have.**
13 Q **When was the first time after the exam was**
14 **administered that you listened -- that you listened**
15 **to the first file?**
16 **A I don't know.**
17 Q **Well, would it have been a day or a couple**
18 **days, a month, not until the whole complaint was**
19 **filed? When -- when was it?**
20 **A I don't remember.**
21 Q The second audio file is largely
22 inaudible. There are some parts that are debatably

24

1 audible without all the detail. Are you aware of
2 that?
3 **A Yes.**
4 Q **When did you first become aware that that**
5 **was the condition of the audio recording?**
6 **A I'm not exactly certain. I think it was**
7 **during the quality control process but, again, I**
8 **don't remember, since it's been so much time.**
9 Q Now, the quality control process is when
10 Agent Alston and others were involved?
11 **A Correct.**
12 Q And I believe that if we look at the --
13 back in Exhibit 1, if we look at some of those
14 pages, for example, pages 8 and 9, you'll see that
15 Agent Alston signed those documents on the 18th of
16 September 2014. Is that about the time period when
17 you first discovered the problem with the audio
18 recording?
19 **A I didn't discover the problem with the**
20 **audio recording.**
21 Q Okay. Who did?
22 **A I don't know.**

25

1 **Q Well, who told you that there was a**
2 **problem?**
3 **A I don't remember.**
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 --
8 **A Yeah.**
9 MR. GIBALLA: Objection.
10 MR. GAGLIARDO: I'm going to finish the
11 sentence.
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.
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.**
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**

26

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."**
4 **So he literally ran up to my office and**
5 **gave me a new external mike.**
6 Q Is this during the examination or -- no,
7 this is after, when he was doing the review?
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.**
12 Q All right.
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.**
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?
21 **A September 18th, 2014.**
22 Q That's when the -- when the reports are

27

1 signed. Was Mr. [REDACTED] -- was the exam given on
2 the same day?
3 **A I'm sorry?**
4 Q Excuse me. This is my fault, agent. Bear
5 with me a second.
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."
9 **A Yes.**
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?
13 **A Yes.**
14 Q And was it on the same day that Sergeant
15 Magnuson told you there was a problem with the mike?
16 **A No.**
17 Q Okay. That's -- sorry to be so
18 roundabout.
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?
22 **A I don't have an exact date.**

28

1 Q Approximately. I mean was it days, weeks,
2 months, years later?
3 **A Days.**
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?
8 **A I don't know.**
9 Q During the exam, did you check if the
10 microphone was working?
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.**
20 Q Okay.
21 **A All of that was functioning properly.**
22 Q And the recording device is the -- your

29

1 computer?
2 **A No, it's an external microphone.**
3 **Q** Well, the microphone is external but
4 what's the device that's collecting the sound?
5 **A I don't know how it works. I just know**
6 **that I plug in the external mike into my computer.**
7 **I assume it's the Lafayette software but --**
8 **Q** Okay. That was another question I had.
9 You were using Lafayette?
10 **A (No verbal response.)**
11 **Q** Okay. Which version? Do you know?
12 **A I don't.**
13 **Q** Where are the digital files for the
14 charts, not the audio recording but for the charts
15 themselves? Because Lafayette records the -- the
16 charts digitally, as well. I mean when you print
17 these things out, you're printing from something.
18 Where are those digital files? Are they resident on
19 your computer?
20 **A They're on my computer, and then there's**
21 **also a copy stored on our I-drive in our forensic**
22 **services for polygraph.**

30

1 **Q** Okay. Has a transcript been made of the
2 audio recording?
3 **A I don't know.**
4 **Q** You've never seen a transcript?
5 **A No.**
6 **Q Have you listened to the audio recording?**
7 **A Yes.**
8 **Q When was the last time you listened? I**
9 **mean roughly. Again, I'm not asking for precise**
10 **time, but you did -- today? Last week? A long time**
11 **ago?**
12 **A Probably right around the middle of**
13 **August.**
14 **Q Of this year?**
15 **A Uh-huh.**
16 **Q You have to say, "yes," or, "no."**
17 **A Yes. Sorry.**
18 **Q** Okay. That's all right. I'll --
19 sometimes -- I will forget at some point to tell you
20 to say, "yes," or, "no."
21 So, in August, what did you hear on the
22 tape -- I mean on the -- from the digital file? I'm

31

1 going to call it a "tape," but we know what we're
2 talking about; right?
3 **A I heard my pretest of Mr. ██████**
4 **Q** What is the pretest?
5 **A It's prior to the end test, prior to**
6 **running charts. It's the beginning of the polygraph**
7 **examination.**
8 **Q** All right. This is not the preamble, this
9 is something different.
10 **A Correct.**
11 **Q** What did you hear?
12 **A Again, I heard my pretest. I heard me**
13 **talking to Mr. ██████ about the polygraph exam and**
14 **the questions that we were going to be going over.**
15 **Q** Okay. Now, the whole exam -- the whole
16 examination process took approximately five hours, a
17 little more than five hours, in Mr. ██████ case?
18 **A No.**
19 **Q** How long did it take?
20 **A I would have to go back and look at the**
21 **exact time on my report.**
22 **Q** Okay. Let's look at your report. I

32

1 believe it's page 19.
2 **A 9:40 we began.**
3 **Q** What page are you on?
4 **A Page 19.**
5 **Q** Okay. I'm having some trouble finding the
6 start time.
7 **A It's right here, middle of the page.**
8 **Q** Time in, time out. I've got it. Time in
9 9:40; time out 13:20; is that correct?
10 **A That's correct.**
11 **Q** So that's not quite four hours, according
12 to this entry; is that correct?
13 **A Correct.**
14 **Q** Okay. So, go ahead, tell me what you
15 heard on the tape. You said you heard your pretest.
16 **A Correct.**
17 **Q** What -- those are a series -- you
18 explained the process to Mr. ██████ What else did
19 you do?
20 **A I don't know what you mean by "process."**
21 **I explained --**
22 **Q** What did you do in the pre -- what's the

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1 pretest? What did you tell him? What was the back
2 and forth between the two of you?
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.**
8 Q All right. Now, some of those
9 documents -- there are some documents here that
10 track what you just said; correct?
11 **A Correct.**
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?
16 **A It is.**
17 Q So, you and Mr. ██████ talked about this,
18 filled this out as part of the pretest; correct?
19 **A I filled it out, yes.**
20 Q Okay. This is your handwriting?
21 **A Up until the signature.**
22 Q Right. And "Fit" is circled by

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1 Mr. ██████
2 **A Correct.**
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?
6 **A Correct.**
7 Q And Mr. ██████ circled "Fit" and then
8 signed it.
9 **A Yes.**
10 Q All right. The next page, page 3,
11 "Polygraph examination interview worksheet," is that
12 part of the pretest?
13 **A Yes.**
14 Q All right. How about page 4?
15 **A Yes.**
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?
21 **A This is the practice test.**
22 Q Okay. Tell me -- if I were an examinee,

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1 tell me when I'm doing on this practice test. What
2 are you telling me?
3 **A Can you be a little bit more specific.**
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"?
7 **A Correct.**
8 Q All right. Then what else do you tell an
9 examinee?
10 **A I tell them to answer "no" to each and**
11 **every question on this page.**
12 Q All right. So what are the questions you
13 ask?
14 **A "Did you write the number one? Did you**
15 **write" --**
16 Q And he says, "No," and so forth, and when
17 he comes to four, he also says, "No" --
18 **A Correct.**
19 Q -- even though that's a false answer.
20 **A What do you mean by "false answer"?**
21 Q Well, he wrote the four. You said, "Did
22 you write any of these?" And if he says, "no," to

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1 four, that's not the truth.
2 **A Correct.**
3 Q All right. And then what does that -- how
4 does that factor into the rest of the polygraph
5 process?
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.**
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.
13 **A Correct.**
14 Q You're also monitoring movement in the
15 chair?
16 **A Correct.**
17 Q Anything else that you monitor?
18 **A The examinee sitting in the chair.**
19 Q What do you mean? His posture or --
20 **A If he's moving around, what his body is**
21 **doing.**
22 Q Okay. Do you measure anything else in

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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.

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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

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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.**

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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.

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1 **A "Do you intend."**
2 Q What did I say?
3 **A "Did."**
4 Q "Did." Okay. Sorry. "Prior to applying
5 with Secret Service, did you ever," is that what
6 those initials mean?
7 **A Yes.**
8 Q "And before," I guess, "you applied with
9 Secret Service, did you ever" is what BAWSSDYE
10 stands for; correct?
11 **A "Before applying with the Secret Service."**
12 Q Didn't I say that? Whatever. I got you.
13 Thank you.
14 All right. Just -- just for completeness,
15 going back to -- I mean looking at the entire
16 exhibit, are there any missing charts or other --
17 are there any charts or reports missing from that
18 packet that you're aware of?
19 **A I can comment on what I put together and**
20 **what I submitted, but as far as --**
21 Q Okay.
22 **A -- what ops may have added -- I mean I've**

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1 **seen what's been in here before, but whether or not**
2 **there was something else taken out, a score sheet or**
3 **something like that, I don't know.**
4 Q Okay. Two questions. First of all, what
5 is ops?
6 **A Oh, I'm sorry. Polygraph operations.**
7 Q And is that your component or is this a --
8 **A I don't work in that component, but it's**
9 **the operations section for the polygraph program.**
10 Q Okay. And do you want to tell us then
11 what you submitted just -- I know that's a little
12 tedious, but if you would, please.
13 **A Well, I submitted the polygraph report.**
14 Q Right. Just do the page numbers, if you
15 would.
16 **A Well, it's out of order, which is why**
17 **it's --**
18 Q Okay. I thought I kept it in the same
19 order produced but I may not have, and I apologize
20 if that's what happened.
21 **A Well, it's not the order that we submit**
22 **them in.**

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1 Q Why don't -- here, let's do it this way.
2 Why don't you -- we'll take a break off the record.
3 Go through it. Anything you submitted, pull out and
4 put in the order that you submitted it and then
5 we'll go back on the record and establish what
6 you've done.
7 **A Okay.**
8 Q Is that fair?
9 **A Uh-huh. Yes.**
10 Q You can nod your head on questions like
11 that.
12 MR. GAGLIARDO: It's 12:36. How about if,
13 while you're doing that, we'll take a short break
14 and we'll come back at 1:00.
15 (A recess was taken.)
16 MR. GAGLIARDO: While we were off the
17 record, Mr. Giballa, on behalf of the Secret
18 Service, advised me that there was actually a back
19 side to the polygraph chart analysis done by
20 Sergeant Magnuson, which is page 10 of Exhibit 1.
21 So, we would label this page 10A and insert it into
22 the exhibit and make that the official exhibit.

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1 MR. GIBALLA: That works.
2 MR. GAGLIARDO: So let's take the marked
3 exhibit and do that.
4 MR. GIBALLA: Okay.
5 MR. GAGLIARDO: And while we were off the
6 record, I had asked Agent Ripperger if she would
7 pull out those documents that she submitted as her
8 report and put them in the order in which they were
9 submitted and it looks like she has done that.
10 THE WITNESS: I have.
11 MR. GAGLIARDO: May I see that, please.
12 Hang on one second. Let's go off the record again.
13 (A discussion was held off the record.)
14 MR. GAGLIARDO: Let's mark that as 4.
15 (Exhibit 4 was marked for identification
16 and is attached to the transcript.)
17 BY MR. GAGLIARDO:
18 Q All right. While we were off the record,
19 we had copies made of what's now been marked as
20 Exhibit 4.
21 Agent Ripperger -- Ripperger, sorry, as I
22 understand it, what you have now assembled as

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1 Exhibit 4 is the report of Mr. ██████ 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**

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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?**

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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.**

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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. ██████ filed his**
7 **complaint.**
8 Q All right. Between the time that you put
9 it on the I-drive and Mr. ██████ 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. ██████ 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

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1 who took your affidavit?
2 **A I believe so.**
3 Q Okay. Do you recall when you were
4 contacted by her the first time about Mr. [REDACTED]
5 case?
6 **A I don't. I don't remember the date.**
7 Q Okay. Do you remember approximately when
8 it was relative to the submission of your report?
9 Your report is dated 9/18/14. Is that the date you
10 dropped it on the I-drive?
11 **A Are you talking about --**
12 Q Exhibit 4.
13 **A Okay. Sorry. Can you repeat the**
14 **question.**
15 Q Yeah. Did you deliver Exhibit 4 on
16 9/18/14?
17 **A I'm not sure.**
18 Q It would have been that day or close --
19 close to it?
20 **A Exactly.**
21 Q Okay. Between that time -- now I lost my
22 question.

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1 Okay. Using that as a reference point,
2 can you estimate when Ms. Macon or Captain Macon
3 first contacted you?
4 **A I don't know the date. I don't know the**
5 **date.**
6 Q Okay. Would it have been before the first
7 of the year, for example, that is January 1 of 2015?
8 **A Well, when I look at the date on my**
9 **affidavit, it says December 19th, 2014 --**
10 Q Okay.
11 **A -- so --**
12 Q It would have been around that time?
13 **A I assume so.**
14 Q All right. And what did -- she goes by
15 the title "Captain"?
16 **A I think so.**
17 Q Okay. We'll call her that for present
18 purposes. Did Captain Macon -- what did Captain
19 Macon tell you?
20 **A She told me that I was a witness to an EEO**
21 **and that Mr. [REDACTED] had filed an EEO in reference**
22 **to his polygraph examination.**

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1 Q What did you say to her?
2 **A I don't remember. It's been too long.**
3 Q Did you have any discussions with her --
4 how many times did you communicate with her?
5 **A I don't know.**
6 Q More than once?
7 **A Yes.**
8 Q Did you ever meet with her in person?
9 **A No.**
10 Q Was your communication by phone?
11 **A We did talk on the phone.**
12 Q Did you also exchange -- did you also
13 communicate by email?
14 **A Yes.**
15 Q Do you have copies of the email that went
16 back and forth between you and Captain Macon?
17 **A I don't, no.**
18 Q Do you keep them on a drive?
19 **A No.**
20 Q What do you do with them? What did you do
21 with them?
22 **A I remember I sent her the affidavit but**

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1 **that's the -- I think the only thing that was ever**
2 **sent to her.**
3 Q Did she send you questions, the questions
4 that are noted on the -- in the affidavit?
5 **A I don't remember how they got to me.**
6 Q All right. Let me tell you --
7 investigators do it a number of different ways.
8 Sometimes they will get the affiant on the phone and
9 say, "I'm going to ask you a set of questions, then
10 I'll draft it up, I'll send it back to you, and you
11 take a look at it." Is that what happened with
12 Captain Macon?
13 **A Sir, I'm sorry, it's just been too long.**
14 **I don't remember the specifics. I know that she**
15 **asked me questions and I answered some. I just**
16 **don't remember all the particulars.**
17 Q Well, when she asked you questions, was it
18 on the phone or by email or how did -- what were the
19 circumstances?
20 **A Again, we spoke by phone and I remember**
21 **she sent me -- or I sent her an affidavit, but I**
22 **don't remember if she mailed it. I don't remember**

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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.

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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

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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

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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.**

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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**

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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

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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**

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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.

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1 **A It could be. You're right.**
2 Q So, again, I -- these are nothing but
3 squiggles to me. So, show me where you see the
4 movement that you're describing.
5 **A Well, right above where it says,**
6 **"Movement," see the --**
7 Q No, I don't see the word -- oh, I see the
8 word "movement" now. The machine does that?
9 **A The instrument.**
10 Q The instrument?
11 **A Well, Mr. [REDACTED] did that by pressing his**
12 **feet and his seat.**
13 Q Okay. Wait a minute. Slow down. If an
14 examinee, whether it's Mr. [REDACTED] or anybody else,
15 presses down on the seat, then the instrument will
16 record that?
17 **A Yes. We have seat sensors.**
18 Q Right. You don't have to do anything;
19 Mr. [REDACTED] doesn't have to do anything; the
20 instrument picks it up.
21 **A Well, Mr. [REDACTED] has to do something --**
22 Q I'm sorry.

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1 **A -- to move in order for the reaction to be**
2 **seen by the sensor.**
3 Q Okay. But the machine is automatically
4 noting the movement.
5 **A The instrument, correct.**
6 Q The instrument. Okay. I can't -- I see
7 what appears to be the word "movement," and then if
8 you go to the next page, it says, "semicolon,
9 artifacted."
10 **A Correct.**
11 Q What does that mean?
12 **A It means it wasn't scored.**
13 Q By you or by the machine -- the
14 instrument?
15 **A The instrument doesn't score. I'm the one**
16 **who scores.**
17 Q All right. So you didn't score it --
18 **A Correct.**
19 Q -- because it was artefact.
20 **A I did not score the question, correct.**
21 Q Well, other than where the -- all right.
22 Let's do it this way. Is there any other place

63

1 where something indicating a countermeasure is
2 recorded or noted other than this one -- one spot?
3 **A I, as an examiner, was taking note**
4 **throughout the test mentally as to the things that I**
5 **see that are consistent with countermeasures.**
6 Q Okay.
7 MR. GIBALLA: Review all of the documents.
8 **A Okay.**
9 MR. GIBALLA: Yeah. If he's asking you to
10 testify to everything, review everything.
11 **A Okay. So, on page 38 --**
12 Q Okay. Let me catch up with you. All
13 right. So we've got 33 and 38. I see, "Early
14 cardio, semicolon, artifacted."
15 **A That's not -- the question next to it, 21,**
16 **there's a very large foot movement at the answer.**
17 Q Where -- show me --
18 **A So, at the top, you see there's -- the top**
19 **three sensors -- arm sensors, seat sensor, foot**
20 **sensors -- the top three lines, the third line has a**
21 **large foot movement.**
22 Q All right. Wait a minute. Let's -- let

64

1 me get -- get clear. The top line is recording
2 what?
3 **A Arm movement.**
4 Q The second line is recording what?
5 **A Seat movement.**
6 Q And the third line is feet?
7 **A Correct.**
8 Q Foot or feet? To record one foot or both
9 feet or how does that work?
10 **A Both feet.**
11 Q Both feet. While we're doing it, what's
12 the fourth line?
13 **A Pneumograph.**
14 Q What does that mean?
15 **A The respiration.**
16 Q What's the next line?
17 **A The pneumograph.**
18 Q Two times respiration is measured?
19 **A Yeah. One is called P1; one is called P2.**
20 Q Okay. What's the -- I can't quite tell
21 what the next line is there, the -- the dark up and
22 downs. What are those?

65

1 **A There are two dark up and downs.**
2 Q Okay. There's one -- there's a single
3 line.
4 **A The single line is the electrodermal**
5 **activity.**
6 Q All right. That's the sweaty palms?
7 **A Fingers.**
8 Q Fingers. And cardiac is the other one?
9 **A Uh-huh.**
10 Q All right. Now, you see a foot
11 movement -- I want you to mark where you're saying
12 there's a foot movement by taking this yellow marker
13 and just circling the thing that indicates -- okay.
14 That's good that way.
15 You want to do the same thing on the other
16 page?
17 **A Yeah. Are we at the start? I don't**
18 **know --**
19 Q I don't know.
20 **A Let's go to the start of the charts if you**
21 **want to walk through the documents.**
22 Q Okay. Let's do it that way. I think the

66

1 first one is page 28 but I'm not positive. Am I
2 correct, 28 is the start?
3 **A Correct.**
4 Q Okay. So let's do it one at a time. Any
5 time you think there's an indication of a
6 countermeasure, mark it with the yellow marker as
7 you did a moment ago.
8 **A It could be -- again, the things that I've**
9 **noted --**
10 Q Are you on 28?
11 **A I'm now on 29 at 6.**
12 Q When you say, "at 6" -- okay. I see it.
13 That's the question?
14 **A Correct.**
15 Q Okay. And this is the foot again?
16 **A Correct.**
17 Q Okay.
18 **A We already discussed on page 33.**
19 Q Nothing on 32?
20 **A No.**
21 Q Okay. 33, where the instrument is marked
22 "movement"?

67

1 **A Correct.**
2 Q And that's foot again? No, that's not
3 foot, is it?
4 **A Appears that it's arm and seat -- I'm**
5 **sorry -- seat and foot.**
6 Q Wait a minute. Which one -- all right.
7 The third line down is --
8 **A Foot.**
9 Q And the fourth line down is seat?
10 **A The fourth line down is pneumo.**
11 Q That's what I thought. Where did you see
12 the seat movement? That's what's confusing me.
13 **A In the one right above it. In the middle**
14 **line -- the middle of the top three, there's a**
15 **downward spike right at the foot.**
16 Q I see. Between 0240 and 0250.
17 **A No.**
18 Q Okay. Just show me -- did you mark it in
19 yellow. I'll find it when you give me that back.
20 You're on page 37?
21 **A Correct.**
22 Q Okay.

68

1 **A We already discussed 21 on page 38.**
2 Q Yes. You've already marked it in yellow.
3 **A And on 39, right at the answer, there's**
4 **movement again.**
5 Q Explain to me when you say, "right at the
6 answer." I don't understand how you -- how you
7 determine where the answer is being given.
8 **A Because it's marked with a line.**
9 Q Okay. Those heavy black lines indicate
10 where the answer is being given?
11 **A Correct.**
12 Q Okay.
13 **A At 21A --**
14 Q Wait a minute. Which page are you on,
15 first of all?
16 **A 43.**
17 Q Okay. Bear with me. 43. Okay. 21A,
18 yes.
19 **A There's inability to maintain a baseline**
20 **in the breathing, which, what we're seeing here is**
21 **consistent with countermeasures.**
22 Q Mark it with yellow.

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

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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

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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 "[REDACTED]"
8 A **Yes.**
9 Q Okay. "Half-sister [REDACTED] 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."**

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1 Q Right.

2 A **"Best: Changed after divorce. Worst:**
3 **Shot a squirrel."**

4 Q Okay. What -- the best what and the and
5 worst what?

6 A **Things individuals have done in their**
7 **lives.**

8 Q Okay. And "YUSSS" is a question. Was
9 there an answer to it?

10 A **I assume he answered. I didn't write it**
11 **down.**

12 Q Okay. It was something not particularly
13 striking one way or the other?

14 A **I don't know. I don't remember.**

15 Q Okay. Fair enough. If you go back to
16 page 2 for a second, do you see under "Medications,"
17 he listed Effexor? Second line of question one or
18 entry one.

19 A **I wrote that.**

20 Q I'm sorry. You wrote that. I apologize.
21 Do you know what Effexor is, what it's used for?

22 A **It's an antidepressant.**

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1 Q Okay. And you -- as you corrected your
2 affidavit, you said he told you about OCD --

3 A **Uh-huh.**

4 Q -- obsessive compulsive disorder and some
5 other things.

6 A **Yes.**

7 Q Given the fact he was OCD and was taking
8 Effexor, what does that tell you about his ability
9 or the way he might answer an exam -- respond to
10 your questions?

11 A **It didn't tell me anything.**

12 Q There's no adjustment needed? There was
13 no accounting for it?

14 A **No.**

15 Q If he had not said he took Effexor, that
16 he's OCD, you wouldn't have done anything
17 differently?

18 A **No. Lots of our applications are on**
19 **psychotropic medications.**

20 Q Okay. Look at the fourth -- number four,
21 "Check the appropriate box." You -- it says, "Sit
22 still, question mark, and a blank line." Explain

79

1 that note that you made.

2 A **Those are three questions that we were to**
3 **ask of our applicants.**

4 Q What was the question?

5 A **"Can you sit still for three to five**
6 **minutes?"**

7 Q Right.

8 A **"Do you have any uncontrolled --**
9 **uncontrolled stress movements or ticks?"**

10 Q Okay. Now, they're blanks. There are no
11 answers there. Do you know what his answers were?

12 A **I don't remember.**

13 Q Okay. And then respiratory and lung
14 problems, it says, "Asthma and pneumonia as a kid";
15 correct?

16 A **I see that he told me, "Asthma," because I**
17 **made a note of it. I don't know about pneumonia. I**
18 **don't remember.**

19 Q Isn't that what it also says there?

20 A **It says -- oh, okay.**

21 Q It says, "Asthma as a kid." Yeah. Right?

22 A **I guess. Sure.**

80

1 Q Is that the word? Is that the word that's
2 written there?

3 A **Yes, sir.**

4 Q Okay. Now, "The yoga, transcendental
5 meditation, biofeedback are considered." Why is
6 that question asked?

7 A **It's asked because they're relaxation**
8 **techniques.**

9 Q Okay. And what if he had said yes? How
10 would that change -- would that change anything?

11 A **No, it would just require an instruction**
12 **to not practice any sort of relaxation technique in**
13 **the chair.**

14 Q Okay. But he told you he did not do those
15 things.

16 A **Based by what I checked in the box, I**
17 **would say yes.**

18 Q Okay. Now, at some point did Mr. [REDACTED]
19 tell you that he had taken Xanax?

20 A **He did.**

21 Q And when did that occur in the course of
22 the examination?

81

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.**

82

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**

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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

84

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

85

1 literature say about the accuracy of polygraphs?
2 **A I don't know.**
3 Q You don't know.
4 **A I mean if you're referring to a specific**
5 **test, or a specific --**
6 Q No, I'm just asking your own knowledge. I
7 mean when you do training, they must say, "Look,
8 these tests are only 80 percent effective," you
9 know --
10 **A I don't know any statistics.**
11 Q You know they're not 100 percent
12 effective; correct:
13 **A Correct.**
14 MR. GIBALLA: So, I'm going to jump in
15 with an objection for the record -- and you can
16 still answer -- which is in the -- as to relevance,
17 because of the judge's order, even in granting the
18 motion to compel, she indicated that the scientific
19 reliability of polygraph examinations was not
20 relevant to this case, so I'm just noting that for
21 the record.
22 MR. GAGLIARDO: Okay. All right. I'm not

86

1 going to argue about whether it's relevant or not.
2 We'll see what comes in the future.
3 Q According to you, there was no discussion
4 about the reliability of the accuracy of polygraphs
5 with Mr. [REDACTED]
6 **A I told Mr. [REDACTED] he failed the exam, and**
7 **"failed" being layman's terms.**
8 Q Right. Right.
9 **A And I didn't have any doubt in my results.**
10 Q Okay. And by "failed," what did you mean?
11 What constitutes failure from -- what constitutes
12 failure?
13 **A Well, again, that's a layman's term. He**
14 **scored -- or I scored my charts of his physiology as**
15 **significant response.**
16 Q On one question and one series. Let's do
17 it this way. Let's get your -- let's get your score
18 sheet, back in Exhibit 1. I think it's page 7 and
19 8 -- 6 and 7. 6 and 7. Am I correct those are your
20 score sheets?
21 **A Correct.**
22 Q Okay. Now, just to be clear, this is a

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1 seven-point score sheet. You can get anywhere from
2 minus-three to plus-three. Because you can get a
3 zero, there are seven different scores that one
4 could get in response to any question; is that
5 correct?
6 **A Not to my knowledge.**
7 Q Well, you have zeros, minus-two,
8 minus-one, minus-three, zero, minus-one, plus-one.
9 You could have given him a plus -- up to a
10 plus-three; right?
11 **A No.**
12 Q What -- what was the range of scores you
13 could have given him? Not to him because of what
14 the answers he gave, but theoretically, any examinee
15 can score between what and what? Isn't it
16 minus-three and plus-three?
17 **A For one particular question? Is that what**
18 **you're asking?**
19 Q Well, I suppose it's one particular
20 question and one particular physiological response.
21 **A No, it can be plus-four, minus-four**
22 **because somebody -- the respiration can be scored.**

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1 Q Is it only respiration that can be up to
2 four?
3 **A Well, no, respiration can only be one**
4 **point, a plus or a minus or a zero or artefact.**
5 Q I'm totally confused now. Let's look at
6 your -- let's look at page 6, your polygraph chart
7 analysis.
8 **A Correct.**
9 Q Series two, chart one, relevant question
10 four and relevant question six. Respiration, you've
11 entered a zero for both four and six; correct?
12 **A Correct.**
13 Q All right. What does that zero mean?
14 **A There was no comparable physiology.**
15 Q Okay. So it's neither good nor bad? Or,
16 well, let me put it this way. When I say, "good or
17 bad," that's, obviously, not right.
18 There's no indication of deception based
19 on his respiration; is that correct?
20 **A No. What's correct is that there was**
21 **no -- there was nothing to score at that -- at that**
22 **spot.**

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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**

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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

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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**

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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

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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**

97

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. █████ 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

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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?

99

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?

100

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?

101

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

102

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?

103

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.

104

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 I.
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?

105

1 **A No.**
2 Q How about what drug might have been used?
3 **A No.**
4 Q Did you ever inquire whether -- well, did
5 you inquire any -- anything about the details of
6 criminal activity or drug use?
7 **A I'm sorry. Say that again, please.**
8 Q Did you inquire at all about criminal
9 activity or drug use outside of the questions that
10 were asked in the polygraph?
11 **A In the post-test --**
12 Q Yes.
13 **A -- examination, we discussed serious crime**
14 **and the fact that he failed that question.**
15 Q Okay. How about drugs --
16 **A I mentioned drugs --**
17 Q -- in the post-test?
18 **A Yes. When an individual goes inconclusive**
19 **on a polygraph, in addition to another question,**
20 **because we don't have a conclusive result, we can**
21 **ask questions about that, as well.**
22 Q Okay. So tell me what the conversation

106

1 was between you and Mr. ██████ regarding drugs in
2 the post-test.
3 **A I don't remember all the specifics. I**
4 **mean --**
5 Q Did you make any notes?
6 **A No.**
7 Q Do you not make notes of the post-test
8 discussions, interrogations, whatever you want to
9 call them?
10 **A I don't have to because typically we have**
11 **the recording.**
12 Q Yeah, I understand, but -- I'm not saying
13 that you had to and you didn't do it, I'm saying do
14 you make notes as a matter of your personal
15 practice.
16 **A If there is an admission that has been**
17 **made that has to go into the poly report, then I**
18 **will make note, as practice, on the sheet when we're**
19 **discussing it, and then during my report writing, I**
20 **will go back and listen to the audio to make sure**
21 **that I have the terminology correct.**
22 Q Okay. Did you -- did you go back to the

107

1 audio to review what you and Mr. ██████ had
2 discussed about drugs in the post-test?
3 **A No, because he didn't make any admissions.**
4 **There was no reason for me to go back and listen to**
5 **it.**
6 Q So, absent an admission, you wouldn't go
7 back and review the tape --
8 **A No.**
9 Q -- or the file, whatever you want to call
10 it?
11 **A There's no need to.**
12 Q So, again, tell me what -- your discussion
13 about drugs, as best you recall it, the back and
14 forth. You talked about marijuana or you talked
15 about heroin and you talked about selling drugs or
16 what -- the time he went to Europe and smuggled
17 drugs back into the U.S. or what?
18 **A I don't remember specifically. It's been**
19 **too long.**
20 Q You have no recollection at all except
21 that there was some discussion about drugs.
22 **A Exactly. Same thing with crime.**

108

1 Q Okay. Same thing. So I don't have to ask
2 you all those questions about crime, you'd tell me
3 the same thing, you don't know, you don't recall?
4 **A I mean I do know that I never said to him**
5 **anything about setting fires in the manner that he**
6 **alleged in the early affidavit.**
7 Q Okay.
8 **A But I do know that we talked about crime**
9 **because he failed it, and I remember the thing --**
10 **that I could go to audio and listen to the audio**
11 **but --**
12 Q We don't have an audio.
13 **A We do have an audio. There's audio there.**
14 Q Can you hear that part?
15 **A Sure -- well, not the post-test but I can**
16 **hear when we were going over the questions.**
17 Q No, that's what -- no, no, no. The
18 post-test. There's no audio of the post-test, is
19 there? There's no discernible audio of the
20 post-test, is there?
21 **A No.**
22 Q And that's what we should have if the --

109

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. █████ 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. █████ 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

110

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. █████ 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.

111

1 Q So you think polygraphs are 100 percent
2 effective.
3 **A What I think is Mr. █████ 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**

112

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. █████
5 **A Not that I recall.**
6 Q Did you ask -- I'm sorry. Did you ask
7 Mr. █████ 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?**

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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**

114

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?

115

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 --

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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

117

1 report?
2 **A They would not be hired.**
3 Q They would not be hired.
4 **A Well, I don't know about hired. I'm**
5 **sorry. We would -- we would pass that information**
6 **on to security clearance division.**
7 Q Right.
8 **A But I've never seen someone be hired.**
9 Q Who didn't clearly pass?
10 **A Exact -- well, no, no, no.**
11 Q Without countermeasures. I'm sorry. I
12 don't want to -- really, I'm -- we're both getting
13 tired. I'm not trying to put words in your mouth.
14 **A Yeah, can we take a couple minutes?**
15 MR. GIBALLA: Sure.
16 **A I may go get some water.**
17 MR. GAGLIARDO: Yeah. All right.
18 (A recess was taken.)
19 BY MR. GAGLIARDO:
20 Q I want to go back on the recording of the
21 exam. You keep it on your computer. Is it a laptop
22 or --

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1 **A It is.**
2 Q You keep it on a laptop that's assigned to
3 you.
4 **A Correct.**
5 Q And the same files are kept on a server
6 that is kept at what --
7 **A I don't know.**
8 Q -- whatever. Some Secret Service server.
9 Who has access to those audio files?
10 **A Polygraph operations.**
11 Q Would it be anybody, I mean another --
12 could another examiner go and listen to your audio
13 if -- just because they want to?
14 **A (No verbal response.)**
15 Q They have to have a valid reason.
16 **A Correct. Well, the rights to the folder**
17 **are limited.**
18 Q Okay. That's my question. Who are they
19 limited to?
20 **A The agents and officers assigned to**
21 **polygraph operations.**
22 Q All of them?

119

1 **A Well, there are only -- it's just a**
2 **handful of people.**
3 Q Okay. But if -- if you're not the quality
4 control reviewer for, say, Alston or Magnuson, can
5 you go and pull any one of their exams just because
6 you want to listen to it?
7 **A No.**
8 Q Okay. Because you're not authorized.
9 **A Correct.**
10 Q Because you're not assigned to that
11 particular case.
12 **A Correct.**
13 Q But your supervisors and managers, I
14 suppose, can always look at any file that you've
15 maintained.
16 **A Correct, assuming I've dropped it into the**
17 **I-drive.**
18 Q Yes, I mean of course. Now, who has --
19 outside of that -- of your component, does anybody
20 else have access to the I-drive?
21 **A I have no idea.**
22 Q Okay. When you -- when you kick it

120

1 upstairs, as I'm fond of saying, do those -- do
2 those people have access to the I-drive?
3 **A When you say --**
4 MR. GIBALLA: I was going to say objection
5 as to vague.
6 Q Say, like, Ms. DeProspero --
7 Ms. DeProspero --
8 MR. [REDACTED] Philpot.
9 Q -- Philpot, does she have access to the
10 I-drive? You don't know.
11 **A I don't know.**
12 Q Okay. If you don't know, that's fine.
13 **A No, I don't know.**
14 Q I'm just asking. Part of the discovery --
15 deposition is to discover what you know and what you
16 don't.
17 **A Sure.**
18 Q I think I asked this but I don't remember.
19 When was the first time you listened to the
20 recording of Mr. [REDACTED] exam?
21 **A I don't remember.**
22 **Q But was it when Sergeant Magnuson came to**

121

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**

122

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. ██████ 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**

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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. ██████ 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**

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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 ██████**
20 **A No.**
21 **Q When Captain Macon contacted you, did that**
22 **prompt you to go listen to the audio file or go**

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1 retrieve the audio file?
2 **A No. I don't remember -- I don't remember**
3 **what I did back then. I mean, again, it's been so**
4 **long.**
5 Q I bet you when the lawyers came to you,
6 they said, "Where is the audio file?" Did they?
7 MR. GIBALLA: Well, objection as to
8 attorney-client.
9 MR. GAGLIARDO: I know that.
10 MR. GIBALLA: Well, you're asking her
11 about what a lawyer told her.
12 MR. GAGLIARDO: I'll withdraw it.
13 Q No, I was really asking is when the
14 lawyers came, is that what prompted you to go see
15 what was in the audio file. See, I'm puzzled -- I
16 mean not puzzled, I'm trying to refresh your
17 recollection as to when you first discovered there
18 was a problem with the [REDACTED] audio. That's what
19 I'm trying to see if I can loosen your memory on in
20 some way. Not doing it, huh?
21 **A Sorry.**
22 Q All right. Did any of your supervisors or

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1 managers, your superiors, say anything to you about
2 the fact that the audio was inaudible, in large
3 part?
4 **A No.**
5 Q Okay. Don't take this the wrong way. You
6 didn't get a letter of reprimand or a letter of
7 caution or instruction or whatever they call it
8 here?
9 **A No, because there are problems with the**
10 **audio -- people forget to push play. I mean it**
11 **doesn't invalidate a test.**
12 **So, there was, obviously, a malfunction**
13 **with the mike. It happened three -- on three exams**
14 **that were done at the almost exact same time or in**
15 **the same time frame, you know.**
16 Q Okay. All right. Let me just clarify one
17 thing. In your report where you say you started at
18 about 9:40 in the morning and you finished around 1
19 something in the afternoon, was that -- did that
20 include the time that the pretest -- excuse me --
21 the post-test took place or would that have excluded
22 that time?

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1 **A No, that's the post-test and it**
2 **corresponds with the audio.**
3 Q So, I'm not trying to argue with you, I'm
4 trying to understand. So, if we timed the amount of
5 audio, we would find that it would -- it would
6 correspond to four-and-a-fraction hours or whatever?
7 **A Correct, or --**
8 Q I mean --
9 **A It corresponds to the minute.**
10 Q What do you mean, "it corresponds to the
11 minute"?
12 **A Well, this comes from the audio file --**
13 **the audio files, so --**
14 Q Oh, I see.
15 **A When I shut off -- as I'm ending the exam,**
16 **I look at the time on the computer. I say, "This**
17 **ends the polygraph," for whatever applicant.**
18 Q At such and such a time.
19 **A At such and such a time, so -- and I push**
20 **"stop."**
21 Q I'm sorry. But then you have to take the
22 time that's on the recording and put it on the

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1 paper, so to speak, or on the digital file.
2 **A Right, but I make note when I'm turning it**
3 **off.**
4 Q Okay. Just so both Mr. [REDACTED] and I are
5 clear, if he had said, "I don't want to continue
6 with the exam," how would that have been recorded?
7 **A I would have evaluated the -- the exam as**
8 **no opinion --**
9 Q Right.
10 **A -- put in there that he asked to**
11 **discontinue testing.**
12 Q Right.
13 **A We ask that examinees make a note that it**
14 **was their decision to end the -- to end the test,**
15 **and then I would send everything over to polygraph**
16 **operations, and then polygraph operations would make**
17 **a decision as to whether or not that individual**
18 **would come back.**
19 Q I see. So it would be either -- it would
20 either exclude the person from being hired or
21 require a retest?
22 **A Well, polygraph can't exclude someone from**

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1 **being hired. We're not adjudicators.**
2 Q No, I understand that, but that would be
3 the effect of the recommendation as it went on up
4 the chain of command and somebody found -- my
5 understanding of your prior testimony is that if you
6 don't clearly pass the test, you don't get hired.
7 You can't get hired on a -- you can't waive the
8 test. You've got to take and pass the test to get
9 hired. Is that your understanding?
10 I understand it's not your decision, but
11 is that your understanding of how things work here?
12 **A For someone to get hired, they have to**
13 **have passed a poly.**
14 Q Right.
15 **A Correct.**
16 Q I thought so. I just wanted to be
17 absolutely clear about that.
18 Did you consider doing a breakout exam on
19 either the crime question or the drug question?
20 **A I did do a breakout. That's what the**
21 **second series --**
22 Q That's what the four and six are?

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1 **A Correct.**
2 Q Maybe it's my misunderstanding of the
3 term. I would -- I thought a breakout would include
4 asking about specific kinds of crimes and drugs.
5 **A We don't do that here.**
6 Q So define a breakout exam for me. Is
7 it --
8 **A I mean you have it. So, we ask an initial**
9 **question -- crime, for instance, which is R24. If**
10 **somebody is inconclusive, then we have, per**
11 **polygraph procedure, certain questions that we ask**
12 **if they are inconclusive to that particular**
13 **question. So then we run another series with those**
14 **questions. If they're --**
15 Q Go ahead. Did you do that with
16 Mr. [REDACTED]
17 **A Yes.**
18 Q Okay.
19 **A We did a breakout of crime and drugs.**
20 Q Okay. Did you tell Mr. [REDACTED] when --
21 did Mr. [REDACTED] tell you he wanted to retake the
22 exam or did he ask if he could retake it, either

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1 one?
2 **A I don't remember.**
3 Q Do you recall ever saying to him, "That's
4 not what" -- wait a minute. I'm sorry. **Do you**
5 **recall saying to him, "You don't have to take it**
6 **again. I have all I need," or words to that effect?**
7 **A No, I have no recollection of that.**
8 Q Okay. Do you recall him telling you when
9 you were questioning him about past crimes, he
10 talked about a minor traffic violation?
11 **A I do remember that.**
12 Q What do you recall the traffic violation
13 discussion was about?
14 **A I just vaguely remember that he mentioned**
15 **a traffic violation. Beyond that, I don't remember**
16 **the specifics.**
17 Q Do you remember a license plate cover,
18 anything about that?
19 **A No.**
20 **Q Do you recall saying to him when he talked**
21 **about minor traffic violations, "You're just**
22 **throwing me a bone"?**

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1 **A No.**
2 Q Did you think -- when you were asking him
3 about crimes, did you think he -- well, strike that.
4 Strike that.
5 Do you know why Mr. [REDACTED] was not given
6 a retest?
7 **A I don't. That's not my decision.**
8 Q Okay. Would you have been willing to
9 retest him if somebody said he needs to be retested?
10 **A If I was authorized to retest him, yes.**
11 Q You know of cases where an examinee has
12 been retested, do you not?
13 **A I do.**
14 Q Do you recall an applicant by the name of
15 Steven Tignor?
16 **A I do.**
17 Q Tell me about his exam, his first exam.
18 Was it inconclusive? Did you have any significant
19 response -- did you administer the exam to Steven
20 Tignor?
21 **A I did.**
22 Q Did he have any significant responses?

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1 **A He did.**
2 Q But he was -- and he was retested?
3 **A Not by me.**
4 Q No, but he was -- you know that he was
5 retested.
6 **A Yes.**
7 Q And eventually he was hired by Secret
8 Service, was he not?
9 **A That's my understanding.**
10 Q Do you know in what capacity he was hired?
11 **A No. I think he's a special agent.**
12 Q Okay. But you don't know for sure?
13 **A No.**
14 Q Okay. Was there concurrence or
15 nonconcurrence -- was there either -- were your
16 results -- were your findings concurred or
17 nonconcurred?
18 **A Concurred.**
19 Q And still -- they were concurred, there
20 were significant responses, and still he was
21 retested?
22 **A Correct.**

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1 Q Do you know why he was retested under
2 those circumstances?
3 **A I do not.**
4 Q Was there anything -- were you criticized
5 or -- I guess "criticized" is an all-encompassing
6 word -- for the way in which you examined Tignor?
7 **A Not by polygraph supervisors, no.**
8 Q Okay. Were you criticized in the way you
9 scored Tignor's, you know, results or whatever
10 you -- the charts?
11 **A No. There was no issue with the test**
12 **according to polygraph management.**
13 Q Okay. But somebody else in the agency
14 questioned what you did?
15 **A I don't know.**
16 Q Here's the only reason I'm asking that
17 question. You said nobody in polygraph did, and
18 that always raises, in a good investigator's mind or
19 agent, "Okay. So who did?"
20 Are you saying that somebody criticized
21 you or had some questions about how the exam was
22 administered or scored?

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1 **A I don't know. I'm not -- that's way above**
2 **my pay grade.**
3 Q You don't know. Okay. That's fair. I'm
4 only asking what you know.
5 Okay. And how do you know -- how did it
6 come to be known to you that he was retested? Just
7 office gossip, so to speak?
8 **A My office colleague in WFO, the Washington**
9 **field office, retested him.**
10 Q Okay. Are you assigned Washington field
11 office?
12 **A Uh-huh.**
13 Q Okay. You've examined military veterans,
14 have you not?
15 **A I have.**
16 Q And some of those veterans have PTSD?
17 **A They -- they do.**
18 Q And does that affect how they respond on a
19 polygraph?
20 **A I don't feel that I'm equipped to answer**
21 **that.**
22 Q Well, do you do anything differently if

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1 you know that an examinee, whether a vet or not --
2 do you do anything different if you know that they
3 have diagnosed posttraumatic stress disorder?
4 **A No. I always administer an exam in the**
5 **exact same way every single time.**
6 Q Can you give me an estimate of how many
7 examinees you've examined who have PTSD?
8 **A I have no idea.**
9 Q Is it a common thing? Is it, like,
10 50 percent of the examinees come in with PTSD or
11 claims of diagnosis?
12 **A I don't track this information. I don't**
13 **know.**
14 Q Have you ever flunked anybody, failed --
15 written a report saying that the person had
16 significant responses and that person had PTSD?
17 **A I don't know. I don't track that.**
18 Q Okay. Is Jocelyn -- I don't know how to
19 pronounce her last name -- K-e-a-v-n-e-y, Keavney,
20 is she in your chain of command?
21 **A She was. She isn't anymore.**
22 Q She was. Okay. And what was the -- how

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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. ██████ 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?

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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

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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

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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?

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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.**

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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.**

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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**

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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

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1 goes down?
2 **A No, what it means is if you're breathing**
3 **and you're -- you've got one component at the top of**
4 **your chest and one component at the top of your**
5 **abdomen, in theory, they should mirror one another.**
6 **And what happens is when people are doing something,**
7 **manipulating their core, sometimes what happens is**
8 **they go like this and then they come back.**
9 Q I'll have to try it some time because I
10 can't figure that out.
11 **A It's on the Internet.**
12 Q Okay. Thanks. Everything is.
13 Can I see Exhibit 12, please.
14 Did you tell me before you had no
15 communications about Mr. [REDACTED] with Robin
16 DeProspero --
17 **A I did not.**
18 Q Did not. Okay. Do you know if there are
19 any statistics kept on who -- who passes -- has
20 anybody ever determined by demographic factors,
21 which I'll explain in a minute, the percentage of
22 people who pass and don't pass polygraph tests? So,

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1 demographics of EEO categories: race, gender,
2 disability, and so forth. Do you know if that's
3 ever kept track of?
4 MR. GIBALLA: Clarify. Do you mean at the
5 Secret Service or --
6 Q Yeah, at the -- no, at the Secret Service.
7 **A I don't know.**
8 Q You've never heard any discussions about
9 that or --
10 **A No.**
11 Q How about from -- not from an EEO
12 perspective but from a professional perspective, has
13 anybody ever said, you know, "Men and women react
14 differently, so, therefore, we ought to do something
15 different," I mean, you know, those kind of
16 inquiries to see if you're really getting --
17 **A I've never had training that suggested**
18 **that.**
19 Q -- the good -- good data?
20 Other than in Tignor's case, has anybody
21 ever complained about your either administration of
22 a test or interpretation of --

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1 **A Define "complaint."**
2 Q Well, anybody say you didn't do it right
3 or didn't do it well or that you, you know, didn't
4 follow protocol?
5 **A Yes.**
6 Q Okay. Other than Tignor, how many times
7 would that have occurred?
8 **A Well, to be clear, Tignor himself never**
9 **complained about me.**
10 Q Right. I mean Scheuer brought it up but
11 let's put that aside. What were these other
12 complaints that you just referred to?
13 **A There was one individual who was angry**
14 **that he failed and blamed me for his failure but --**
15 Q Yes, go ahead.
16 **A -- the Secret Service went back and**
17 **listened to the tape and there was no issue with the**
18 **exam whatsoever. At the end, when I -- when he was**
19 **asked if he was treated professionally, he said,**
20 **"Yes," so --**
21 Q Okay. And you're not talking about
22 Mr. [REDACTED]

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1 **A No.**
2 Q All right. So nothing came of that?
3 **A Nothing has ever come from any -- I don't**
4 **even know how many I've had. I want to say four or**
5 **five. Nothing has ever come of any complaint.**
6 Q All right. So -- and the other complaints
7 were similar kinds of complaints by examinees or
8 were they brought by others?
9 **A Examinees.**
10 Q Always -- so the only -- the only
11 complaints -- again, forget about Scheuer and the
12 rest of that story. All of the other complaints
13 that you're referring to, whether it's four or five
14 or some other number, were by examinees?
15 **A Correct.**
16 Q And the way those disputes are resolved is
17 by listening to the tape and --
18 **A By a supervisor.**
19 Q -- so to speak, double-checking to make
20 sure everything was done by the rules.
21 **A The supervisor -- typically, the**
22 **supervisor who's assigned to -- the Secret Service**

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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. ██████ 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

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1 Mr. ██████ 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. ██████ 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.

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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. ██████
13 A Not by me.
14 Q Do you -- what's the -- what -- if another
15 federal agency inquired whether Mr. ██████ 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

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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.

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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

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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.)

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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**

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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

Deposition of Ellen Ripperger
Conducted on October 18, 2016

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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.)
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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

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