

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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BASSEM YOUSSEF,

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION
et. al.,

Defendants.
-----+

Civil Action No.
1:03CV01551 (D.D.C.) (CKK)

Wednesday,
February 2, 2005

DEPOSITION OF:

JOHN PIKUS

called for examination by counsel for the plaintiff,
pursuant to notice, at the law offices of Kohn, Kohn, &
Colapinto, 3233 P Street, Northwest, Washington, D.C.,
20007, at 10:00 a.m., when were present on behalf of
the respective parties:

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APPEARANCES:

On Behalf of the Plaintiff:

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SARA MICHAELCHUCK, ESQ.
ALMARA FAZLI, Intern
DAN LAFRENZ, Intern

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On Behalf of the Defendants:

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Senior Counsel
Federal Programs Branch
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Office of the General Counsel
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ALSO PRESENT:

BASSEM YOUSSEF

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EXHIBITS

<u>EXHIBIT NO.</u>	<u>DOCUMENT</u>	<u>MARKED</u>
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11	Johnson v. Gerson Settlement Agreement	
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12	Plaintiff's First Notice of Depositions	
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13	Sworn Statement	
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P R O C E E D I N G S

(10:49:49 a.m.)

MR. KOHN: Maybe we could just go around and everybody introduce themselves; should we do that?

I'll start. Stephen Kohn, K-o-h-n, attorney for the Plaintiff, Bassem Youssef.

MR. YOUSSEF: I'm Bassem Youssef.

MS. MICHAELCHUCK: Sara Michaelchuck, no "H," and that's M-i-c-h-a-e-l-c-h-u-c-k, attorney.

MS. FAZLI: Almara Fazli.

MR. LAFRENTZ: Dan Lafrenz, L-a-f-r-e-n-z, I'm an intern.

MS. O'NEILL-TAYLOR: Kathleen O'Neill-Taylor, I'm with the FBI.

MS. WELLS: Carlotta Wells, the Department of Justice, representing the Defendant in the case.

MR. PIKUS: John Pikus, P-i-k-u-s, with the FBI.

JOHN PIKUS

was called as a witness and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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1 BY MR. KOHN:

2 Q Mr. Pikus, could you please state your
3 name and address for the record.

4 A John Pikus, P-i-k-u-s. My home address is
5 2430 Harrison Court. I just moved there about a half
6 a year ago. H-a-r-r-i-s-o-n, C-o-u-r-t. Chesapeake
7 Beach, Maryland 20732.

8 Q And have you ever had your deposition
9 taken before?

10 A I've had depositions before, yes.

11 Q And do you know about how many?

12 A Just one.

13 Q And what type of case was that?

14 A I don't know, I forget. It was about
15 seven years ago, and it was a person who was suing the
16 Bureau for not getting a job, a particular job, and I
17 was called in as a witness who was in -- a peer of
18 that person, I wasn't part of a -- an object of that
19 lawsuit.

20 Q And are you an attorney?

21 A No, I'm not.

22 Q And you're represented by counsel for the

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1 FBI today?

2 A Yes.

3 Q And, just generally, the rules of
4 depositions are, there is no judge, so if someone
5 raises an objection, you can still answer the
6 question, unless your counsel instructs you not to.

7 A Yes.

8 Q That happens sometimes and causes a little
9 confusion. Object? Well, what do I do?

10 If you don't understand any of my
11 questions, you're free to ask me to rephrase, or just
12 tell me you don't understand, that's fine.

13 If you need to speak with counsel, you can
14 at any time, and you just have to say, "I'd like to
15 speak with counsel," or, "Go off the record." If you
16 want to go off the record for a personal reason at any
17 time, you can just let us know, and we'll just go off
18 the record.

19 A Yes.

20 Q It's not, like, as formal as a court,
21 where you're just sitting there.

22 A Right.

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1 Q And do you understand that you're under an
2 obligation to tell the complete truth?

3 A Yes.

4 Q Is there any reason why you can't be fully
5 candid today?

6 A No.

7 Q Are you aware that this is a proceeding
8 under the Title 7 of the Civil Rights Act?

9 A No. No, I was not.

10 Q Okay. And it is. And did anyone make you
11 aware that -- Are you aware that testimony under
12 Title 7 is -- your giving testimony is a fully
13 protected activity, and there can be no discrimination
14 or harassment based upon that?

15 A Now I do.

16 Q Does the FBI, to the best of your
17 knowledge, give any training in terms of retaliation
18 for Title 7? If I say Title 7, do you understand what
19 that word means?

20 A Explain it.

21 Q That is the Civil Rights Act of 1964 that
22 makes it illegal to discriminate on the basis of race,

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1 sex or national origin, among other things, religion.

2 A Okay.

3 Q Has the FBI given any training to you
4 about your right to participate and file charges or
5 complain or testify in a Title 7 type proceeding?

6 A Not that I remember.

7 Q And what's your current position with the
8 FBI?

9 A I'm an Inspector in the Inspection
10 Division.

11 Q And how long have you been in that
12 position?

13 A Oh, a little more than a month now.

14 Q And what's your rank, in terms of a GS or
15 SES?

16 A It's an SES level, yes.

17 Q And how long have you been an SES?

18 A Since March 3rd of last year.

19 Q And before you were in the Inspection
20 Division, where did you work?

21 A I was in the Executive Development and
22 Selection Program.

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1 Q And what is that program?

2 A That is the section of -- the Selection
3 Chief over -- previously, they called them
4 Administrators, but Selection Chief over EDSP, the
5 shortened version, and that handles all of the day to
6 day functions of both the selection process for GS
7 managers in the Bureau, 14's and 15's, as well as
8 putting together the SES Boards, and running those
9 boards, in a sense, from an accounting standpoint.

10 Q And how long did you hold that position?

11 A I had it from March 3rd to December 29th,
12 I think was the last day.

13 Q And do you know why you left that
14 position?

15 A I had an opportunity. There were about
16 four -- there's only about nine inspector positions.
17 They are entry level positions, but I had an
18 opportunity once four of them got picked up for SAC
19 jobs, and I spent a good -- like I said, plus 10
20 months in ESP, but I inquired about an opportunity to
21 lateral, they were both entry level SES positions, the
22 one I was in and the one I'm into. I just wanted a

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1 change.

2 Q And before you became the Section Chief in
3 EDSP, where did you work?

4 A I was at ASAC, out in Sacramento.

5 Q As an ASAC there, were you involved in the
6 hiring and promotion process?

7 A I was, in a sense. I ran Local Career
8 Boards as part of the SAMMSS system, that's the
9 Special Agent Mid-Management Selection System, so it's
10 S-A-M-M-S-S, Special Agent Mid-Management Section
11 System. And part of that process is Local Career
12 Boards out in that field.

13 Q And, prior to that, what job did you hold?

14 A Prior to that I was back in inspections.
15 I was the Inspections Management Unit Chief, so I set
16 up inspections. It was a GS-15 Unit Chief position.

17 Q And how long were you at ASAC in
18 Sacramento?

19 A A little over two years. From January 11,
20 2002 to February 20th of 2004.

21 Q And then the Unit Chief Inspections, how
22 long did you hold that position?

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1 A I was there from approximately February of
2 2001 to January 4th, thereabouts, of 2002.

3 Q And, just prior to that, did you work in
4 any positions related -- performing work that would be
5 related to the work that you did as the section chief
6 in EDSP?

7 A No.

8 Q This was special agent type of work?

9 A Yes.

10 Q What year did you enter the Bureau?

11 A 2/20 1990.

12 Q And what's your education background?

13 A I have a B.S. degree from Drexel
14 University in Political Science; I have a Master's
15 degree from Syracuse University in Russian studies,
16 and then I had almost ten years in the Navy as an
17 Intelligence Officer before I entered the Bureau.

18 Q And have you worked -- Do you ever work
19 Counter Terrorism, Middle East related?

20 A No, I have not.

21 Q Have you ever heard of Bassem Youssef?

22 A I've heard of him, you know, but only -- I

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1 don't know what vein or function it was in, and I
2 actually met Bassem for the first time today.

3 Q What have you heard about him, just from
4 rumors, or anything about him prior?

5 A Well, actually, like I said, either a
6 former alat or legat, and that he spent time in the
7 Middle East, and in my capacity at Sacramento as
8 ASAC -- No, not correct, what I said. During my time,
9 my only CT experience as a ASAC in Sacramento, I had
10 the CT program under me, so I didn't have cases, but
11 I had run that program. So I knew the Unit Chiefs
12 that were back in CT Section, or CT Division, and
13 Bassem's name was one of them.

14 Q Can you describe for me essentially the
15 FBI promotional system for entry level SES. If you
16 are in a GS position and you want to go to the SES,
17 what are the Boards -- What is the process for that?

18 A The process is -- say you're an agent
19 looking to enter the SES ranks. You would look into
20 the jobs JPA, we call it, which is a computer system
21 we have, that posts SES positions. They are posted
22 for two weeks. In there it will talk about the

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1 responsibilities, identify the position, talk about
2 the responsibilities and the qualifications. The
3 qualifications almost always just generally run along
4 what we call soft competencies, must have leadership,
5 interpersonal, skills liaison skills, organization,
6 planning, those soft competencies. I have not seen
7 anyone that has said anything different than that, but
8 then in the verbiage it might say agents who are ASACS
9 will have preference, or will have further
10 consideration for the position, or will be further
11 considered for the position, I guess. That's how --
12 there are little variations of that after the
13 qualifications, as to some further refinement. Those
14 who have a particular expertise in a particular area,
15 would also be given preference, too.

16 Q And, before, who would draft up that
17 announcement? I mean, what's the approval process for
18 that?

19 A The Division. The Advertising Division
20 would draft up the announcement. They would send it
21 to us and we would post it on the JPA, the Job
22 Posting.

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1 Q Now what are the rules regarding the
2 drafting of the position?

3 A There are no rules that I know of in terms
4 of drafting, it's best practices. It's practices that
5 have been going on before I arrived and, frankly, I do
6 not know of any specified rules that this has to be
7 done this way, it just has been done that way. And,
8 again, at that point, or my tender, it didn't change.

9 Q So, in terms of, to the best of your
10 knowledge, a Division has the discretion to draft up
11 this -- what I'd call the JPA?

12 A The JPA posting.

13 Q The contents of that?

14 A Right.

15 Q And would there be -- is there an office
16 that you know of, or reviewing authority outside of
17 the division, that would look that over before it
18 would be posted?

19 A Only EDSP, and EDSP would only look at it
20 from a standpoint of making sure it can fit into JPA,
21 and the mechanics.

22 Q So it would be more procedural, as opposed

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1 to the contents?

2 A Correct.

3 Q And, do you know, in terms of best
4 practices, do you know if there were any Bureau wide
5 rules concerning potential conflicts of interest in
6 the wording of a JPA, the substance of it?

7 A No.

8 Q And do you know if there are any rules
9 concerning ensuring there was no biases in terms of
10 the types of qualifications set forth for a position?

11 A No.

12 Q And do you know if there were any rules,
13 either prohibiting or trying to catch, if it happened,
14 where someone may know someone who they may think
15 would be good for this job and they, say, tailored the
16 qualifications to meet that person? Didn't tell
17 anybody, but just kind of put it in the
18 qualifications. Do you know if there was a
19 prohibition on that?

20 A Again, I don't know of any rules in terms
21 of setting the limits for the development of the
22 posting by the divisions.

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1 Q And do you know if there has ever been --
2 I'm going to use the word "audit" in an extremely
3 broad way. An inspection audit from an outside group,
4 an inside group, anybody that's ever looked at that
5 part of the promotional process, the drafting of the
6 JPA's, its content, its rules, its regulations, has
7 ever looked at that and evaluated it?

8 A Not on the SES, I do not know of any.

9 Q What about on the 15 or 14?

10 A The 15s and 14s have been modified greatly
11 over the last several -- actually, over the last two
12 years. The new SAMMSS, we call it, again, that's
13 Special Agent Mid-Management Selection System, has a
14 structured set of criteria in which to apply for
15 positions. If a division wanted to specify a
16 particular skill and, say, they wanted it posted, it
17 would actually have to -- and it wasn't part of the
18 established set that are basically our guidelines to
19 which we go for each of these positions, it would
20 actually have to go to the Career Board, and they
21 would have to look at it and say, "Why does this
22 Advertising Division need to have this -- such a

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1 specific skill for this position?" They would have to
2 justify it.

3 There are some that are set out pretty
4 obvious. Say, for OGC, you want to have somebody who
5 is a lawyer. If you're in a technical -- if you're an
6 ITD, or in one of our technical divisions, you have a
7 kind of a technical background. Those have already
8 been established, because EDSP had gone out to these
9 divisions, saying, "What is the skills that are
10 absolutely required for your job?" Then there is also
11 a set of automatic soft skills, leadership,
12 interpersonal skills, organization and planning and
13 communication, are already set as part of the overall
14 qualifications for any job. They are actually ranked
15 higher than the domain knowledge, or domain skills.
16 These skills actually fall behind, in terms of a
17 preference that Local Career Boards and the SAMMSS
18 Board would look at.

19 Q You're saying the soft skills rate higher
20 than the hard skills?

21 A That's correct, because the philosophy is
22 that you want somebody with good leadership skills,

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1 and of course they have domain knowledge as well, they
2 have to have that, but leadership skills, in the
3 Bureau's philosophy and feeling, is pre-eminent. They
4 want to have somebody with good communication skills,
5 good interpersonal skills.

6 Q Do they have the mechanism to objectively
7 quantify these soft skills, versus just a purely
8 subjective review of it?

9 A The skills for, say, leadership, for one
10 of them that we are actually in the development stage
11 for that, in terms of testing for that, for entry
12 level into the SAMMSS. There is definitions of these,
13 and anchors, as to say, for leadership. How it works
14 under the leadership competency in an application, the
15 candidate would give two examples of their leadership
16 abilities, something that they call KSAs, knowledge,
17 skills and abilities, and are verified.

18 Under the instructions that we give, both
19 to local boards as well as to the SAMMSS Board, we
20 say, for exemplary, it should -- This person -- here's
21 the example: If you believe this person to be
22 exemplary, did this person show the following anchors,

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1 the following criteria for exemplary under leadership.

2 And that has all been reviewed through our
3 organizational psychologists, and it's legally
4 defensible, which is another aspect we always look at,
5 as well, so to answer your question, yes.

6 Q Are all those criteria they set forth in a
7 document?

8 A Yes.

9 Q What is that document?

10 A Oh, actually, it's our new -- I just refer
11 to it under our binder, but we have it under the
12 SAMMSS, and it's called the New SAMMSS Program, again,
13 it's Special Agent Mid-Management Selection System.

14 Q And it's just like a loose-leaf binder
15 with information in it?

16 A Yes. Right. That's what I utilize.

17 Q And is that binder given to members of a
18 Career Board so they can look through it and determine
19 criteria --

20 A Particularly the Local Career Boards who
21 have to know how the system works on the GS level.
22 The 14 and 15 are the two levels of management levels

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1 for the bureau. The Local Career Board in a division
2 would actually do -- Say there's a supervisory
3 position in Sacramento, then I would be the chairman,
4 and I would be already trained. All the chair people
5 have to be trained up on the new system, how to do the
6 rankings, et cetera, and the voting members would also
7 be trained on how to utilize the new SAMMSS.

8 They would open up the 954s, the FD-954s,
9 which are the KSA documents for leadership,
10 interpersonal skills, and even down into soft skills.

11 Q You said the FD-954s. Are those documents
12 that list out the skills?

13 A Right. They would actually put it in
14 there.

15 Q So are these FD-954s just put into a big
16 binder?

17 A Right. Like, say, a particular position,
18 for a supervisory position in Sacramento, there would
19 be, say, three people I put in, there would be three
20 sets of 954s. A candidate would actually fill out the
21 954s, that's his or her application.

22 Q Okay. Yes.

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1 A And, at that point, under the anchors,
2 under leadership, the chairman and the voting members
3 would go up and say, based on your -- And they review
4 this. They review the 954s before they go into the
5 Local Career Board, and so the voting members would be
6 prepared to discuss what they believe to be -- We
7 believe this to be exemplary, or we believe this to be
8 competent. We have exemplary, skilled, competent, or
9 needs improvement. So we end up having four
10 particular areas in which you can actually rate
11 somebody, and that's how it's done.

12 Q Do you know if this type of binder
13 existed, say, back in 2000?

14 A It did not.

15 Q Do you know when it first came to be?

16 A It came before my time. I'll give you a
17 rough guess on it, but the development of it was in
18 2002 and 2003.

19 Q And do you know why they decided to
20 develop it?

21 A I don't know why particularly, but it was
22 tied into the Badge lawsuit of 1992 or '93.

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1 Q Do you know if that was essentially
2 recommended as part of the on-going review of the
3 settlement of that lawsuit, do you know?

4 A I do know that. I read an excerpt from
5 that where the Bureau in agreement with the Plaintiffs
6 was to develop a management aptitude test or a new
7 system, and/or a new system to select candidates in
8 the 14,15 area.

9 Q Do you know if before '02, '03, if there
10 was another set of criteria people could use to try to
11 have some form of objectivity in defining these
12 anchors and criteria?

13 A I don't know. My only experience with
14 that is putting up the jobs myself. Prior to the FD-
15 954, there was something called the FD-638, which
16 identified -- which was a one page document. Within
17 that four corners you had to articulate what were
18 your qualifications for that particular job, based on
19 what the JPA posting said. So they might have
20 requested somebody, or preferred somebody with
21 organized crime experience and/or leadership in the
22 soft skills. There was always leadership in the soft

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1 skills in there, but it was kind of a mix and match of
2 things. And so that's how we -- Then we wrote down in
3 our 638s to those qualifications they were requesting.

4 Q So this set of criteria that you're
5 testifying about, that does not exist in the SES
6 process?

7 A No, the New SAMMSS does not exist -- the
8 954 does not exist.

9 Q What about -- Do you know, is there a book
10 of criteria, in other words is there a published,
11 objective criteria used for the promotional process
12 into the SES?

13 A I don't know. I do know that in our MAOP,
14 basically, our manual of operations, there is a
15 section on SES. In there it talks about what the SES
16 Board should be made up of, in terms of voting
17 members. It also talks about that it's a recommending
18 board for the director's final selection on
19 promotions, and general statements like that.

20 Q If you would be so kind, if we were going
21 to look at a system in which you would eliminate
22 subjectivity, biases, favoritism, okay? You're trying

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1 to set up a promotional system that was as objective
2 as possible, can you compare what's in place to ensure
3 fairness and objectivity in the GS-14 and 15 selection
4 process, versus the SES. Going from a GS to an SES
5 selection process.

6 My question, just to clarify, I'm not
7 saying that the absence means there is bias or is
8 favoritism, I'm just looking at purely objective, like
9 going for a driver's license, they check your eye
10 sight. That doesn't mean that the next day you're not
11 going to be blind or you're not going to miss a curb,
12 it just means that they want a level. They say, okay,
13 you have this and you have that, so they can look at
14 something that's more than just a gut feel or
15 something that's purely discretionary. Does that make
16 sense, that question?

17 A Yes, but ask it again.

18 Q Okay. I'm going to do it again. I'm
19 going to put SES on this side and the 14,15 on the
20 other side. What might exist procedurally with the
21 14,15 to help ensure objectivity and/or to eliminate
22 favoritism, and whether such a thing exists on the SES

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1 side.

2 MS. WELLS: I'm going to object to the
3 form, but you can answer it, if you can.

4 THE WITNESS: You're objecting to what?

5 MS. WELLS: The form of the question. I
6 still think it's confusing.

7 THE WITNESS: Let me answer it this way.
8 On the 14,15 side there is a verification process --

9 BY MR. KOHN:

10 Q Okay. Let's stop there. This is
11 verification process. Let's go through each one.
12 What is that verification process?

13 A Well, in the 954, when you do your two
14 examples, there is a verifier line and the examples
15 that are given of your leadership, or whatever, you
16 have to, as a candidate, have to provide a
17 supervisor's name and phone number to allow the
18 advertising -- actually, somebody designated within
19 that advertising agency, or the division, usually a
20 secretary or somebody designated to just make a phone
21 call to this person and sometimes read it over the
22 phone to that verifier, or fax it to the person and

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1 say, "Is this something that this candidate did,
2 because they put you down as a verifier?" And it's
3 either yes, no or don't know. So that's something on
4 the 14,15 side, that's not on the SES side.

5 Q Okay. What else is on the -- a better way
6 to do it, maybe, if we can do it, is to go through
7 each of the procedural things in place, in terms of
8 safe guards, or procedures to ensure objectivity,
9 truthfulness, verification, et cetera, on the 14,15
10 side, and just look it over and see if it exists on
11 the SES side.

12 A Right.

13 Q So we talked about that. What else exists
14 on the 14,15 side in the promotional process?

15 A Again, just the actual KSAs themselves,
16 the knowledge, skills and abilities. They are
17 specific. The instructions are given as to what the
18 candidate should write to, a specific experience that
19 exhibits or denotes this particular skill. That's
20 something that, again, on the SES side, in the
21 advertisement it talks about the recommended skills of
22 safety and leadership. Then it goes back to something

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1 like the old 638, in terms of you have a two-page
2 resume, basically, that you write to and say, you
3 know, I have great leadership skills.

4 Q So how is it different on the KSA?

5 A Again, the specific -- there is
6 instructions on how to write the KSAs.

7 Q On the 14,15 side?

8 A Right. There are no specific
9 instructions, that I know of, on the SES side.

10 Q And the instructions on how to write it on
11 the 14,15 side are based, essentially, on an objective
12 criteria?

13 A No, they are common sense type of things.
14 It's more -- I guess I would say of the 14 and 15,
15 every step of the way is spelled out. It's to help
16 the candidate understand what they need to do in order
17 to be in the best position to, you know, be the most
18 competitive for that job. So in the instructions to
19 the candidate it says, fill out this 954, and this is
20 how you do it. You should have a specific example
21 verified to go to that competency that you're writing
22 to. On the SES side, the instructions are to fill out

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1 a two-page resume, addressing these competencies that
2 were noted in the --

3 Q Now what about the -- You gave earlier
4 testimony about differences in how they create the
5 position descriptions itself, but what about coming up
6 with the specialized qualifications? Is there a
7 difference in between -- in how a specialized
8 qualification is created or approved in the 14,15 side
9 versus the SES side?

10 A Well, again, like I mentioned earlier,
11 there is -- we do have on the 14,15 side a list of
12 skills. They run the gamut from technical backgrounds
13 to -- language is actually a part of it. It's -- say,
14 if you wanted to use language, you have to specify,
15 based on the rules, why language is pre-eminent over
16 skills, why it's needed in that particular job. The
17 reason being is that -- Again, I'll use that as an
18 example to make sure that there's no bias towards
19 somebody because either they have the language or they
20 don't have the language. The advertising agency has
21 to explain why you need the language for that
22 particular position.

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1 An example would be Hong Kong, legat Hong
2 Kong. You might think it's unimportant as to why
3 Chinese is needed for Hong Kong, but it's one of the
4 most proficient English speaking areas in the world,
5 so we would go to make sure that OIO, or any
6 advertising division -- let's take this case, say,
7 legat, as an example, in Hong Kong -- why Chinese is
8 important. And they may be able to specify why that
9 is. If they can articulate that, and it passed
10 muster, and our EDSP does have a look at it and does
11 make a decision on that, and they say, listen, we want
12 it as part of it, we would actually go to the SAMMSS
13 Board and actually say, is this part of a particular
14 position requirement? You don't have that in SES.

15 Q Now what about membership? In other
16 words, who gets to make the decisions, or participate
17 in the promotional decisions? Is there any -- Like,
18 are there any screening mechanisms either on the 14,15
19 side or the SES side, like, to eliminate someone's
20 friend, supervisor, someone who may have a connection
21 to them in some way, or may have a bias?

22 A At this point there isn't anyone on either

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1 side.

2 Q Do you know if before someone is selected
3 for a board, they have to fill out some type of
4 questionnaire, or swear under oath, or something, that
5 they will be fair?

6 A No.

7 Q Does any member of any of these
8 promotional boards have to make an under oath
9 declaration at any time to verify any of their
10 opinions or recommendations?

11 A By the time I left in December, no.

12 Q Are there any other procedures that you
13 recall at this time that would be in the 14,15 side
14 that are not reflected in the SES side?

15 A The one aspect, the one other thing, was
16 the Division Head Comments, which is an aspect for
17 both the GS 14,15, as well as the SES. The only thing
18 I would say to that is there is instructions on the
19 14,15 side and policy and guidance that -- what the
20 division head can actually write about.

21 The New SAMMSS has a prohibition against
22 writing somewhere on the side, there, "He's like a son

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1 to me," "Promote my friend," type of thing. The
2 Division Head has to look at the performance of the --
3 When I say Division Head, a SAC, say, has somebody in
4 their division who is a candidate for a position back
5 at headquarters.

6 Based on what the candidate has placed
7 down on their KSAs, the Division Head looks at that,
8 as well as the position in which this person is
9 applying for, and just writes "Recommend," or "Doesn't
10 Recommend." Now, under each of the competencies, they
11 can make a comment, but they are pretty restricted,
12 six lines, on each of the competencies that are
13 required for the position, to say, number one -- Well,
14 one of two things: Number one, that this person, yes,
15 under leadership, what this person wrote here, this
16 person can most certainly do the job.

17 That Division Head Comment on the 14,15
18 side, is part of the Local Career Board process to
19 make sure that there's no bias by Local Career Board
20 members who sit there, who may in the past know what
21 the Division Head wants to be ranked.

22 The process is on the local board, they go

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1 through the ranking. They look at the 954s, they
2 debate, they rank the people. At the very end, they
3 open up the Division Head Comments for each of the
4 candidates. That is to make sure there isn't -- they
5 have not seen the Division Head Comments until after
6 they have ranked and done their thing.

7 Now there are instructions in place as to
8 when -- there are instances in which they may change
9 their ranking, based on Division Head Comments, but
10 they are very restrictive. There has to be something
11 in there -- And it's never black and white, but we put
12 some strong wording in there to say the Division Head
13 has to say something that -- particularly, the first
14 thing you look at is "Recommend," or "Do not
15 Recommend."

16 If it's a "Recommend," and they look at
17 the Division Head Comment, say there's three
18 candidates. They say, hmm, this is pretty strong, or
19 this is pretty mediocre; or, this is really bad. They
20 recommend him, but it's really bad in terms of the
21 comments. It has to be tied into the KSAs, and it has
22 to be so overwhelming that the Local Career Board,

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1 looking at this one over here, says, geez, we had this
2 person ranked number one, and we may change it.

3 There's also -- a check on that, in their
4 EC back to SAMMSS Board, they say, "After reviewing
5 the 955," which is the Division Head Comment, "We re-
6 ranked." The SAMMSS Board then looks at the same
7 Division Head Comments with the same KSAs and says
8 either "We agree," or "We don't agree with this. It
9 looks like they put too much stock in the Division
10 Head on this." And that system was set up to pre-
11 empt -- Division Heads sometimes would write glowing,
12 and other Division Heads -- not because they had
13 anything bad to say about the person, but they were
14 busy, and maybe they didn't write it well enough
15 because they wrote it really quick. The whole idea
16 was not to take as much stock into the Division Head
17 Comments, other than to recommend or not recommend.
18 Now that system exists on the 14,15 side. There are
19 Division Head Comments on the SES side, but there's
20 none of that type of instructions, et cetera, along
21 those lines.

22 Q So on the SES side those comments can just

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1 be considered, initially, along with all the other
2 information that has been presented to the Board?

3 A That's correct.

4 Q Anything else come to mind between the
5 differences that might exist?

6 A Not that I know of right now.

7 Q Has there ever been any discussion --
8 begin with informal discussion. Well, let's begin
9 with formal. Has anyone ever come in, to the best of
10 your knowledge, and inspected the SES promotional
11 process for whether it had any biases or problems in
12 it?

13 A Not that I know of.

14 Q You mentioned the Badge suit.

15 A Yes.

16 Q What is that?

17 A That was a class action lawsuit by black
18 agents.

19 Q And are you aware that other classes of
20 agents also filed similar class action suits?

21 A I'm not familiar with that.

22 Q And, in terms of the Badge suit, was it

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1 your understanding that applied to the 14,15 side and
2 not to the SES side, or that it applied to both?

3 A My understanding is that it applied only
4 to the 14,15 side.

5 Q And is it your understanding that some of
6 the procedures and rules on the 14 and 15 side were
7 put into existence because of the Badge lawsuit?

8 A Yes.

9 Q And because the SES side wasn't part of
10 that, they didn't have to do a similar process for the
11 SES side?

12 A Correct. My understanding was that the
13 lawsuit was specifically regarding promotions within
14 the GS level.

15 Q Was there ever any discussion, any --
16 would an inspection team, would the inspectors come in
17 and inspect the promotional process?

18 A No.

19 Q Why not? Why wouldn't the promotional
20 process be subject to an inspection like any other
21 aspect of the FBI?

22 A Unless specifically asked to do the

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1 general inspection process, for my time as a Unit
2 Chief, as a team leader, as a ITD, every step of the
3 way, we look at the effectiveness and efficiency of
4 the section. Not getting into the actual mechanisms
5 that have legal connotations to it, et cetera, we
6 would not do that.

7 Q Okay. So I understand, you would look at
8 the current structure and inspect how that's working,
9 versus review of whether the structure itself needed
10 to be changed?

11 A Right. To see if they are satisfying the
12 customers, to see if their metrics are set up so that
13 they can gauge how well they process their job, and
14 things along those lines. It's the same in terms of
15 inspections of our laboratory, as well as our finance
16 division, as well as OGC, you know, the Office of
17 General counsel. We go in and look at the
18 effectiveness and efficiency of the branches and the
19 units, and see how well they are doing the job.

20 Q Do you know if there have ever been any
21 studies that you are aware -- and I'm using that word
22 in the broadest possible way, where someone has come

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1 in and looked at the SES hiring and promotional
2 process, and just reviewed it as a process?

3 A You know, I only was there for a little
4 bit more than 10 months, and I don't know of any.

5 Q You never read or heard of a study to be
6 reviewed?

7 A No.

8 Q Are you aware that as part of the Badge
9 lawsuit there was some form of on-going process to
10 review the promotional policies and procedures on the
11 GS 14 and 15 side?

12 A Well, that's what the Badge lawsuit --

13 Q Have there been reports and evaluations
14 about that, you know, that are available?

15 A I'm sure there are. I mean, this was a
16 long process. I think Badge started in '92, '93.
17 There was an extension. There was a period of time in
18 which the Bureau agreed to put a system in place and,
19 over the last two years, has put the system in place.

20 The Badge, it's my understanding, also had other
21 aspects of it in terms of, say, primary relief
22 supervisors, and ability to -- you know, there were

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1 other agreements as well, and they were all complied
2 with it. The New SAMMSS is part of that agreement to
3 establish a fair and equitable selection system and,
4 also, there's a request for a -- we call it the old
5 MAP, a management aptitude -- what's the "P" stand
6 for? I forget.

7 MR. YOUSSEF: Placement.

8 THE WITNESS: Yes, something like that.

9 And with a new, either computerized
10 assessment tool for entry level agents going into
11 management, or to come up with some other process. So
12 we're in the process right now. It's called a Badge
13 Working Group. We're working with the Plaintiff's
14 attorney, as well as the Agent's Association is also
15 involved in it, and the FBI.

16 BY MR. KOHN:

17 Q So there's a Badge Working Group?

18 A Yes.

19 Q And is there someone who is the head of
20 that?

21 A ASD is. You know, the actual head of that
22 is Mark Bullock, the Assistant Director.

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1 Q Mark -- what's his last name?

2 A Bullock, B-u-l-l-o-c-k. Again, he's the
3 Assistant Director in ASD, so he Honchos the whole
4 thing.

5 Q Is there someone who is more the work
6 horse, that really runs that working group?

7 A It's a combination from OGC as well as --
8 Our organizational psychologists are involved in it,
9 as well as EDSP.

10 Q And who from EDSP?

11 A It would be -- Right now it's the Unit
12 Chief, Steve Anthony, would be a point contact on
13 that.

14 Q And do you know how long he's held that
15 position for?

16 A He was the acting Unit Chief since July,
17 but he was involved -- He's been in that unit since
18 December of last year, 2003.

19 Q And do you know who was doing that before
20 him?

21 A Before that was the Unit Chief who he
22 succeeded, Janet Kamerman, K-a-m-e-r-m-a-n, and she is

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1 now an ASAC in our Washington Field Office.

2 Q And does the Badge Working Group have
3 minutes or reports, or things like that? Is there,
4 like, a file on it?

5 A You know, I don't know, because I don't
6 know the actual procedures.

7 Q Now the FBI -- Now there's an EEO office
8 within the FBI, an office for Equal Employment
9 Opportunity?

10 A Yes.

11 Q How did they interact with your office in
12 terms of ensuring fairness and equity in the
13 promotional process?

14 A There's an EEO representative on every
15 SAMMSS Board, as well as every SES Board. Ronnie
16 Venture, is the EEO Coordinator for the Bureau. She
17 is an SES herself, and she sits on the SES Board.

18 Q Now who is that?

19 A Veronica Venture. We call her Ronnie.

20 Q And she sits on the SES Board?

21 A Correct.

22 Q And, other than sitting on the Board, does

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1 the EEO Office audit or review hiring and promotional
2 practice for the fairness and quality?

3 A I don't know.

4 Q Do you know, in terms of the Inspection
5 Division, whether -- What I'm trying to gather is, is
6 there anyone, to the best of your knowledge, within
7 the FBI, any office or unit, that looks at hiring and
8 promotional practices, either as a special task, like
9 a one-time commission, or an on-going review process,
10 and says, are these practices discriminatory, or are
11 they fair, or how are they working, substantively?

12 A Not that I know of. There's one unit that
13 it's the, you know, fairness unit, at headquarters.
14 You know, you have the EEO, obviously, that has their
15 responsibility. If there is a project to revamp, a
16 system, say, you mentioned hiring people based on
17 potentially unfair practices, or something like that,
18 procedures. In ASD, our -- it's the PARG, but it's
19 our organizational psychologists. They are involved
20 with it as well as OGC, if there's any projects on-
21 going, so it isn't one unit.

22 Q Do you know if there has ever been a

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1 complaint by an agent that there was discrimination in
2 the promotional practices of the FBI that anyone found
3 to be of merit? In other words, like an investigator
4 of some sort, "Oh, yeah, this person made this claim
5 or allegation, and it looks like it has some merit.
6 We should deal with it."?

7 A Not that I know of.

8 Q In terms of the SES process, did you ever
9 participate or know of any informal discussions in
10 which people said, it might be a good idea to use some
11 of the more objective criteria being used in the 14
12 and 15 for the SES side?

13 A No, not in regards to 14 or 15.

14 Q Were there ever -- Do you know of any
15 discussions or reviews, formal or informal, where
16 people sat down and looked -- and were discussing --
17 it could be formal, like there was a meeting of
18 managers, how to make the SES promotional process more
19 fair or equitable, less favoritism, or could it just
20 be two people in the hallways chatting, and saying,
21 hey, do you think this might be a better way of doing
22 it?

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1 A Yes.

2 Q Okay. What types -- Okay. Just tell me,
3 first, informal, formal, where has that happened?

4 A It's happening in ASD right now. There
5 is -- When I got there, a little bit after I got
6 there, we contracted with Rand Corporation. It's a
7 very simple concept. Rand had worked with the armed
8 services, and I was in a meeting -- a Human Capital
9 meeting in April, and a gentleman from Iran spoke
10 about the fact that save for the Air Force Chief of
11 Staff, he looked down over all of his Generals and he
12 had a very specific General's position that required a
13 specific skill. He looked down and he saw all fighter
14 pilots in his repertoire SESers for promotion, or even
15 in the Colonial ranks, I really don't know. The whole
16 idea, and, again, the simple premise of this is, that
17 you evaluate all 227 SES positions in the Bureau. You
18 look at them and you see what it takes to do that job,
19 and then you evaluate all potential candidates for
20 that position. SES, particularly if you're going to
21 DAD or higher, you have a Cadra of entry level like
22 myself, entry level SES position. What are my

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1 strengths, what are my weaknesses? So you give it at
2 least something of a little bit more criteria to say,
3 "Director, this is a very specific position," or,
4 "This is even a group that could have the
5 qualifications that could do the job well here."

6 Rand Corporation is in the process of
7 sending out a survey now to all of the SESers, both
8 incumbents, as well as former individuals assigned, to
9 ask them questions regarding what it took, what did
10 you need, in terms of -- what didn't you have, even,
11 in terms of abilities to get this job done.

12 Say, for example, if you were in ASD, you
13 know, it would have been good to have a human services
14 background, to handle some of the jobs from the SES
15 side. So that's on-going right now.

16 Q Do you know how that was initiated, or by
17 who, or why?

18 A Mark Bullock, with myself and his Special
19 Assistant, Dan McMullen.

20 Q What, were the ones who are responsible
21 for getting the Rand Corporation certified?

22 A Yes, initially started.

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1 Q And why was there an interest in bringing
2 Rand in to do this?

3 A In looking at the SES process, there was
4 nothing there that prohibited the Director from
5 placing somebody right out of the academy into a
6 position. Of course, the Director doesn't want to do
7 that, he wants to know who are the best candidates.
8 The SES Board is a recommending Board. They sit, they
9 look at a pin sheet that has where I've been or where
10 Bassem has been, they look at the two-page resume, and
11 they make a --

12 MR. KOHN: One second.

13 Can you go down and tell them to be quiet?

14 I'm sorry.

15 THE WITNESS: And they deliberate and say,
16 based on our knowledge of this person, based on the
17 resume, this was our recommending group of people to
18 the Director. It would seem obvious that you might
19 want a better criteria set up to allow the voting
20 members of this recommending Board to have a little
21 bit more at their disposal than just the two-page
22 resume and this pin sheet.

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1 BY MR. KOHN:

2 Q And was that issue then raised? In other
3 words, who approved hiring the Rand Corporation?

4 A DAD, Mark Bullock.

5 Q Okay. Do you know if that was then
6 approved at a higher level? In other words, did he
7 have to go to the Director, or someone like that?

8 A He was -- No, at the level of Assistant
9 Director and EAD, like John Solomon, that's the level
10 at which these things can be done.

11 Q And when did the Rand Corporation start
12 this review process?

13 A They started it in the June time frame.

14 Q And who is the point of contact there at
15 the Rand Corporation?

16 A I don't remember the gentleman's name.
17 I've got cards, but --

18 Q And they had done something similar for
19 the Air Force, is that right?

20 A Yes.

21 Q So they were used by the Air Force for
22 that process?

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1 A Right. And Dan McMullen took it over. I
2 was so starved for agents and personnel in EDSP that I
3 gravely gave up one of my FSO in that section. Dan
4 created a special assistant to Mark Bullock, and one
5 of Dan's primary jobs, when he came on board, was to
6 take that.

7 Q And before this decision was made to put
8 in the Rand Corporation to do this, do you know if any
9 other group or entity had ever come in to do something
10 like this before, for the FBI and SES?

11 A Not that I know of.

12 Q Were there any specific complaints that
13 gave rise, like an incident happened, a story,
14 something occurred, not necessarily that it was good
15 or bad just, you know, to say, hey, maybe it's a good
16 idea to make this more objective?

17 A No. When I got on board there was -- it's
18 now tied into Rand as well. When I got on board there
19 was an initiative on-going to identify in a better way
20 the qualifications, or the skill level of the SESers
21 on board. So, when I got on board -- Well, actually,
22 Steve Anthony was working with, when he was in the

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1 section, before he became the Unit Chief, was working
2 with our ITD, our IT people, in developing a data
3 base. Rand has picked that up as well, working with
4 ITD, to utilize their survey and utilize the data base
5 format. That was just a simple attempt to identify in
6 the SES ranks, what the skills are and what's the work
7 history, and any specifics that go beyond our BPMS,
8 our Bureau Personnel System that we had available to
9 us. That was in the process when I got on board in
10 March, so we just kind of adapted that. So I don't
11 know what was the origin of that, what talk went
12 around that, before -- you know, to get that
13 initiative going, but that's the only thing that I
14 know.

15 Q I'm looking now for checks and safeguards
16 within -- that are procedural in nature and objective,
17 that are built into the SES promotional process to
18 prevent favoritism or discrimination?

19 A I can only say the process is what it is.
20 You know, there is an advertisement, there is a review
21 of publications based on two-page resume in these SES
22 boards. It's a recommender. The Director makes the

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1 decision. I am not privy to discussions at that end
2 on the 7th floor as to what the decisions are, but in
3 the SES Board there is discussion on the candidates.
4 Ronnie Venture sits there from EEO, making sure that
5 they are -- there was only one occasion when I
6 remember -- I mean, she could have mentioned more, or
7 said more, where she spoke up, "No, no. You can't
8 talk that way." I think there was -- an example was
9 that one of the voting members talked about the
10 person's eminent retirement, or something like that.
11 You know, you can't talk about that, because that goes
12 towards age, or something like that. That really is
13 the check on the Board. That's the only process that
14 I'm aware of, and that's how far I go in the process.

15 Q The SES ranking system, is it similar to
16 the GS 14, 15, where they, like, rank three people?

17 A Yes.

18 Q And they give them a number and they also
19 kind of say -- and then send those three off, or do
20 they send everybody off? Do you know how that goes?

21 A The Presenter comes in. There's a
22 Presenter for the Division, for the Advertising

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1 Division. He or she comes in and presents, after
2 reviewing the backgrounds on the candidates ranks, and
3 says, I believe, based on the backgrounds and the job,
4 so-and-so is numbers one, two and three, for the
5 position.

6 Questions are asked by the voting members,
7 and then the person is excused. Then there is
8 discussion within the SES Board as to -- Based on the
9 person's ranking, a lot of times -- Well, I say, a lot
10 of times, when you have something that is specific to,
11 say, the Laboratory Division, and you have the
12 Assistant Director of the Laboratory Division saying,
13 we need this type of person with this type of skills
14 and forensic sciences, the voting members do not have
15 that background. They will look at it and say, "Well,
16 he knows what he wants for that Division, and that is
17 articulated in laymen's terms as to why they need --
18 and then this person is ranked as number one, number
19 two and number three, and then there are discussions
20 along those lines. Then there is a vote, and the vote
21 is for rank one, two, three. If you rank -- it's a
22 non-public vote. Everybody has a sheet, and they just

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1 kind of slide it and then slide it over to me. If you
2 rank somebody number one, they get three points. If
3 you rank somebody number two, they get two points.
4 If you rank number three, you get one point.

5 At the end, when we tally from EDSP and
6 up, whoever has the most points, is number one. It
7 may not be what the presenter had presented, but it is
8 a private vote, in a way. It's not public so, after
9 discussion, that occurs. Then I send, or I did send,
10 when I was in EDSP, the EC that specified what the
11 Presenter had presented, what the Board has decided
12 upon, based on the vote, and then one final thing that
13 comes into play, and it's really the most active part
14 of the SES Board for me is, it's a lifetime check on
15 issues with the person, the candidates, and it's only
16 dealing with the rank candidates. It's EEO and EEO
17 issues, any OPR issues, any security issues, any DOJ,
18 OIG or OPR issues. I don't -- To say who the
19 candidate is, I say, in today's proceedings, there was
20 a candidate who had two EEOs and one OPR during their
21 career, and the EEOs are these: Does this preclude or
22 not preclude this candidate for further consideration

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1 by the Director for selection?

2 The procedures are and the practice is
3 that your break them up by the issue, but the totality
4 is also there, except it tells what the -- those two
5 issues don't on their own, but what is the OPR issue
6 that this person had. Some of them are, like, 10, 15,
7 20 years ago, the others are very fresh. Then the
8 Board says, when I ask them down the Board, does this
9 group of issues preclude this candidate?

10 Q So that actually goes back to the same
11 Board that reviewed it initially?

12 A Right. On the SES Board, in that session.

13 Q Because the GS Board, doesn't that go to
14 the higher Board, they look at those issues?

15 A No.

16 Q The Career Board doesn't look at the OPR,
17 do they? Isn't it the SAMMSS Board?

18 A The SES looks at all the issues and then
19 gives a recommendation. Based on what they say, I
20 check it, you know, for this candidate it's determined
21 not to preclude this number one candidate, let's say.
22 I would do it in the EC and send it on up as part of

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1 communication up to the Director through the Deputy
2 Director.

3 On the SAMMSS Board there are issues that
4 require further -- Because of Badge, it had been
5 determined that certain OPR issues appeared to be
6 discriminatory against certain protected classes,
7 African Americans. So those issues, when they come
8 up, are automatically go up to the Director at his
9 discretion. There isn't an agreement with Badge, it's
10 just that the Director had placed this extra level of
11 review to make sure that a Badge review is conducted
12 in the Director's office to make sure that everything
13 was done correctly. On the SES side, the Director and
14 the Deputy Director have all of the issues placed, as
15 part of an attachment to the EC, going up to the
16 Deputy Director for their review.

17 Q And so then there would be this EC? So
18 every person promoted to the SES, there would be the
19 proceedings before their Board, and then there would
20 be an EC, and then that would go to the Director?

21 A Correct.

22 Q And then the Director would make the

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1 decision?

2 A Correct.

3 Q Now who is the Presenter? Who selects who
4 the Presenter is?

5 A For the SES Boards?

6 Q SES Boards.

7 A It's the Division Head. But to say -- The
8 Division Head is like EADs. Generally, it's the
9 Assistant Director who may do it.

10 Q So, like, for Counter Terrorism, when it
11 became a division, it would be the Assistant Director
12 for the Counter Terrorism Division?

13 A Right. Or EAD carries the ball.

14 Q Okay. So it could be either the EAD or
15 the AD?

16 A Yes.

17 Q And who are the members? Who selects the
18 members for the Board on the SES?

19 A The Deputy Director. The Deputy Director
20 is a chairman. I'm just a worker bee. The Deputy
21 Director is a chairman, who is also a voting member.
22 On the Board are the four EADs, one SAC from the

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1 field, and one Assistant Director, rotated. Both the
2 AD and the SAC are rotated every six months.

3 Q Okay. So the Deputy Director chairs.
4 There are four AD's, one SAC, who is just randomly
5 selected or --

6 A There's a list and, you know --

7 Q And one AD?

8 A Yes.

9 Q And then the Presenter comes in and
10 presents?

11 A Correct.

12 Q Has there ever been a survey of, like, how
13 many times the Presenter wanted, that the person gets
14 the position? Does anyone keep those type of
15 statistics?

16 A No.

17 Q Now have you ever heard -- I know if
18 someone gets an acting position, or they are TDY'd to
19 a position, do you know what I'm talking about?

20 A Yes.

21 Q There's a position open and somebody
22 becomes acting, or given a position on a temporary

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1 basis, do you know what -- I'm just going to throw out
2 a hypothetical, on just how this plays out, to the
3 best of your knowledge. Say there is a position and
4 someone becomes acting in that and they serve that for
5 10 months and do a really good job, and the Presenter
6 comes in and says, well, he's been acting there for 10
7 months, he knows it is a great job. How does that fit
8 in to this promotional process?

9 A It does occur, I mean, in the sense that
10 if you have somebody in that acting position and they
11 put in for the job, there is talk regarding how they
12 performed in that job. A lot of times the SES
13 succession planning in the Federal side is a little
14 bit different than on the private side. The person
15 generally has to leave before the other person can
16 come on in and occupy that SES slot. So you don't
17 have a lot of turnover, you have some time gaps. So
18 you do have people placed in acting positions
19 frequently, I would say, within the Bureau. So on
20 many occasions they would put in for that job as well.
21 So the discussions go, in terms of the SES Board, the
22 Presenter may -- there's no prohibition against it, so

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1 the Presenter may say, these candidates are in for the
2 position. This candidate is acting in this capacity
3 right now, and I rate this candidate as whatever --

4 Q As number one, because I've worked with
5 them; or, as number three, because I've worked with
6 them?

7 A Well, I would say this, I have seen it
8 where you don't do a good job, and that happens.

9 Q In other words, if someone would say --
10 again, a hypothetical. If someone held an acting
11 position for six months, the Presenter now, instead of
12 this person -- Assume it's a Headquarters position, so
13 assume one applicant was in Denver and another
14 applicant was in Hong Kong, and a third applicant was
15 there acting, in Headquarters working directly, let's
16 say, with the Presenter. And the Presenter came --
17 Theoretically, that Presenter could say, essentially,
18 I rate this person who is acting as number three,
19 based on the fact he was acting in the position for
20 six months, and I think he's number three.
21 Conversely, He could say, I've worked with this person
22 for six months and I rate him number one.

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1 A Yes. Right.

2 Q Based on the experience of interacting
3 with that person in their acting capacity.

4 A They go over all three candidates' history
5 and there is Division Head Comments, but there is
6 nothing in the regulations that I can see where
7 personal interaction with somebody is prohibited, you
8 know, in terms of talking about it. That does occur.

9 Q Were you -- would you sit in the SES
10 Career Board meetings?

11 A Yes. Do you mean the actual
12 deliberations, all the way through?

13 Q Yes.

14 A Right. Because my job is to set them up,
15 get everybody up there and get the binders out and
16 record the results.

17 Q Okay. So you would hear what people said
18 and what occurred at the actual meeting?

19 A Correct.

20 Q Okay. Now in terms of -- I'm now looking
21 at Counter Terrorism, you would have been doing that
22 for the time period that you served in that position?

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1 A Correct. My first Board was end of March.
2 The last Thursday of March.

3 Q March of '04?

4 A Right.

5 Q Was your first Board?

6 A Right. It was the March of '04.

7 Q And your last one was?

8 A December 3rd.

9 Q And do you know who served in your
10 position at the time after 9/11 and, say, the year or
11 18 months after 9/11?

12 A I do not. I do know that Kevin Kendrick
13 served in my position. Actually, he was in my
14 position from approximately July of '02 to -- through
15 to his -- to my arrival. He was the EDSP
16 Administrator, the Section Chief job, from July of '02
17 until sometime in the spring of '03, when he became
18 the acting DAD, acting Assistant Director. My
19 understanding is that he still maintained his presence
20 because they were short of people, doing what I did,
21 all the way through February of '04, before my
22 arrival.

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1 Q And do you know who had his position right
2 before him?

3 A No, I don't.

4 Q And I'm assuming on each of these SES
5 promotional processes -- what type of records are kept
6 there? Are the deliberations taped?

7 A Yes, they are.

8 Q And those are maintained?

9 A Yes, they are.

10 Q Do you know for how long?

11 A For a very long time.

12 Q Okay. And then are all the notes, like
13 the voting records and things like that, in other
14 words, are all the documents people submitted for the
15 job there, maintained?

16 A Yes.

17 Q And are the notes people take -- I'm
18 talking about the voting records and all of that,
19 those are maintained?

20 A The binders are returned to us, and the
21 paperwork is all put back as part of the binders, and
22 maintained.

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1 Q So when you say "the binders," those are
2 all recycled for each --

3 A Well, the binders would have -- yes. It
4 would be a binder that would have a particular series
5 of job selections for that SES Board, or the SES
6 Board. The binder would have my name on it and would
7 have the documents in there.

8 Q And those are all maintained?

9 A Yes.

10 Q And do you know where the record of the
11 SES promotions are maintained?

12 A They are maintained at FBI headquarters.
13 The recent ones are up in EDSP, up on the 10th floor,
14 and then we have a storage area. Actually, we have
15 two storage areas, in which they are maintained.

16 Q Calling your attention to the 9/11
17 terrorist attack, and -- You're aware that after 9/11,
18 the Bureau increased the size of its Counter Terrorism
19 Division?

20 A Yes.

21 Q Were you involved in any of the
22 discussions, directly or indirectly, regarding the

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1 types of qualifications the Bureau was looking for in
2 executive management to deal with post 9/11 issues,
3 Middle Eastern terrorism, for example?

4 A No.

5 Q Was there somebody, to the best of your
6 knowledge, who was tasked with looking at personnel
7 issues, in terms of promotions, qualifications, what
8 the Bureau needs, dealing with post 9/11 terrorist
9 issues?

10 A No, I have no knowledge of that.

11 Q Do you have knowledge of all of the
12 promotional activities regarding the Counter Terrorism
13 Division for persons who are promoted to the SES since
14 2001?

15 A No, I do not.

16 Q Your knowledge would be the time period
17 you served?

18 A Correct.

19 Q While you served in the Career Board, were
20 there any SES Counter Terrorism Positions that opened
21 up or were filled?

22 A Yes.

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1 Q Which ones?

2 A The one that Laurie Bennett got, Section
3 Chief Division.

4 Q What was his name?

5 A Laurie. Laurie Bennett.

6 Q Oh. Her?

7 A Yes.

8 Q Bennett?

9 A Bennett, B-e-n-n-e-t-t.

10 MR. YOUSSEF: She's my boss.

11 THE WITNESS: I'm trying to think of who
12 else on there. There was a temporary one that was
13 selected, Gary Rohen, for six months. R-o-h-e-n. He
14 was a Unit Chief, and he got selected for six months,
15 as an SES.

16 BY MR. KOHN:

17 Q What's that, an SE --

18 A It is a term. SES's are both permanent as
19 well as term. Where their term expires and they go
20 back to their previous rank.

21 Q And then can they then reapply or, if they
22 do a good job, can the job become permanent?

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1 A No. It's a term position. They can
2 reapply up to a certain period of time. The terms are
3 kind of set.

4 Q And do you know what division or what part
5 of the SES, or what part of the Counter Terrorism he
6 was involved in?

7 A No. He worked for Tom Donovan. Who is
8 the SES guy over there. I don't know. He was in CTD,
9 I remember that.

10 Q So these are the two positions. Do you
11 remember any others?

12 A Yes. There was another one who was
13 Jennifer Love-Smith. She made Section Chief as well
14 during that time.

15 Q Anyone else, do you remember, during that
16 time frame?

17 A In CTD, I can't remember right now.

18 Q Now, during these deliberations for
19 Counter Terrorism Division, for either of these three
20 people, or if someone else comes into your mind, do
21 you know, was there a discussion of the applicant's
22 knowledge and experience in the Middle East, and with

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1 Middle Eastern Terrorism, to the best of your
2 knowledge? Do you remember that coming up?

3 A You know, I cannot remember. That would
4 be in the record.

5 Q That would be on tape?

6 A That would be on tape, if there was.

7 Q Okay. Do you remember when you served in
8 the position, whether there was any discussion about
9 how best to promote persons who speak Arabic, have
10 Counter Terrorism Operational experience, have
11 knowledge and experience in the Middle East, or
12 experience dealing with, say, experience dealing with
13 terrorist groups like Al Qaeda, Middle Eastern
14 Terrorist groups, the best way to try to get the
15 persons with those qualifications into the SES?

16 A No.

17 Q And, to the best of your knowledge, that
18 type of discussion never happened, that you knew of?

19 A I was never privy to, no.

20 MR. KOHN: Why don't we just take a ten-
21 minute break.

22 (Whereupon, the proceedings went off the

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1 record at 12:06 p.m. and went back on the record at
2 12:27 p.m.)

3 MR. KOHN: Let's go back on the record.

4 MS. WELLS: Steve, Mr. Pikus has a
5 clarification. We would like to do it on the record.

6 THE WITNESS: I guess it's called a
7 clarification. When I was talking to them, because
8 they were mentioning about the initiative, putting
9 background on people on SES, into data bases, that was
10 one initiative, when I got there, that was already in
11 the making.

12 I remember it, and the reason that it was
13 is, because there was an inspector from the Inspection
14 Division who had come down a -- probably about a year
15 before, probably about a year before, somewhere in
16 2003, and that was one of the recommendations. Now I
17 don't know why that person from the Inspection
18 Division, that inspector, had come down to do it, but
19 when I got there in March, I was told that was one of
20 the recommendations from a "look-see" by the
21 Inspection Division into the processes of EDSP. So
22 I'm not sure whether it was based on, you know,

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1 working to see whether the process was fair, or
2 anything like that, or if it was just kind of looking
3 at a process more similar to a normal inspection. I
4 just wanted to say that for the record.

5 DIRECT EXAMINATION (Cont'd)

6 BY MR. KOHN:

7 Q Okay. Describe what exactly was in place,
8 being put in place at the time that you were hired,
9 that you understood came from that inspection?

10 A The one thing that I remember was that the
11 gentlemen, Steve Anthony, who was the Unit Chief, was
12 working with the IT people to develop a data base in
13 which SES personnel and their backgrounds, and their
14 qualifications or strengths, everything from language
15 and everything from that, is placed into a data base
16 that would be accessible by upper management in FBI.

17 Q Has that happened?

18 A That got folded in, eventually, into Rand
19 Corporation and what they are doing.

20 Q But do you know if that data base exists
21 currently?

22 A No, it doesn't exist currently on the

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1 SESers, typical of IT. You have one product and
2 another product, and it kind of goes, if it's not the
3 correct one. By the time we got around to it, Rand
4 Corporation came into play and, hey, let's see if we
5 can work with the IT people. So I wanted to mention
6 that.

7 Q Did you ever see that inspection report?

8 A There is a 14 or 15 page, kind of precise,
9 talking about best practices suggestion. It is out
10 there. It would be accessible by -- either through
11 EDSP, ASD, probably that's the best ones. I don't
12 know if Inspections would hold onto that.

13 Q While you were there, were you ever made
14 aware that either you wrote up, or someone wrote to
15 you, or you learned that someone put together a
16 memorandum of suggestions of how to improve the
17 process?

18 A That was -- Again, when I got there in
19 March, that was -- there were other ones as well on
20 there, and I'm trying to think of another one on
21 there. There was something along the lines of EDSP
22 was given a document from Inspections saying, hey,

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1 these are some best practices suggestions. This was
2 before my arrival. ASD responded saying, hey,
3 suggestion number one looks good, we'll do that;
4 suggestion number five, thank you, very much, but we
5 don't think we can do that one. It was that
6 interaction between ASD and Inspections on some best
7 practices to suggestions that, after a look-see by
8 Inspections, this document was produced. There are,
9 probably -- I would say probably about a dozen or so
10 suggestions.

11 Q So there would be a series, or there would
12 be the original best practices and response, maybe
13 some correspondence going back and forth, and then a
14 final document?

15 A I think what it said, I think the document
16 was something along the lines of re-engineering
17 suggestions for EDSP, or something like that.

18 Q Do you know if any of those dealt directly
19 with the Counter Terrorism Division?

20 A No, just generically.

21 Q Just generic stuff?

22 A Yes. And I just wanted to bring it up for

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1 the record, because you had asked regarding any
2 inspection or look-see at the process.

3 Q And anything else where someone seemingly
4 wrote a memo, one of your subordinates, or maybe did
5 you ever write a memo saying, here are some
6 suggestions to make this system work better?

7 A No.

8 Q Do you know if anyone ever wrote a memo to
9 you about that?

10 A No. These are, you know, in talking about
11 Rand Corporation and the Human Capital, then I went
12 back and I spoke with Mark Bullock about it. Dan
13 McMullen had come in, TDY, about the June time frame,
14 I believe, and then we got him on board, and it was
15 all just discussion saying, in our heads, it looks
16 like from what Rand has done with the Air Force, it
17 looks like something we should do. Now Rand
18 Corporation had already been on contract for other
19 things with the Bureau, and so there were monies
20 available, and Rand basically turned under a new
21 contract, turned some of their people in the direction
22 of this.

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1 It was really easily done, because they
2 were already working on other projects that I was not
3 familiar with, with the Bureau. So they had people
4 already in the building working on these other
5 projects. The idea was maybe we could have them, and
6 how they think and how they do things, in terms of
7 what they did for the Air Force and can do for us. It
8 was all discussions, me sitting down with Mark Bullock
9 and me sitting down with Dan McMullen, but it wasn't
10 here's my suggestion, here's my EC, or something like
11 that. We had a good communication flow, so we weren't
12 doing it in that manner.

13 Q And getting back to the SES, the issue of
14 qualifications. If I understand your testimony, there
15 is, like, a general set of qualifications, leadership.
16 Do you remember what they were?

17 A Not really. I can't remember now.

18 Q There's a general set of what we call
19 soft --

20 A I call them soft competencies, or soft
21 qualifications. They are soft, because they are --

22 Q And then a division director could then

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1 come up with some specific criteria?

2 A Right. There may be something that would
3 be given -- I'd never seen it where it says, those
4 people without these qualifications need not apply.
5 But they would see that preference would be given to
6 those people with the particular qualifications. But
7 the only one I can really remember now was there was
8 one that said -- and it was work history related, was
9 ASACS. Preferred qualifications would be to be an
10 ASAC.

11 Q Now are you aware in terms of getting into
12 SES, whether there are any objective qualifications
13 that are mandatory? For example, years of service,
14 you must be a 15, that type of thing? In other words,
15 where there is an objective rule that you must meet
16 this in order to get there?

17 A My understanding of the general policies
18 are that there isn't a must. You must have this or
19 you must have that. For example, SACs in the field,
20 they are second level. The policy would say something
21 to the effect that the SAC candidates should come from
22 Inspectors, Section Chiefs and ASACS, who are IIPs,

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1 meaning they go out on inspections as a system
2 inspector. Then there would be something to the
3 effect that, if the Director chose to choose somebody
4 other than this group, that the Board would identify
5 the qualifications for that person for the Director's
6 consideration.

7 Q So it's essentially "shoulds," but in
8 terms of a mandatory criteria, none?

9 A None.

10 Q And what about the practice of somebody
11 asking someone else to apply for a position.
12 Specifically, say, the Division Director, knows
13 somebody, knows the skills, and taps them personally
14 to apply. Does that happen?

15 A I would assume it does. There's no
16 prohibition against it. In the entry level SES
17 positions, there are individuals who come on the list
18 who give me a call. One of the instructions is to
19 contact the EDSP Section Chief to identify that you're
20 putting in for the job. So I'll be talking with
21 someone and they say, yeah, I'll be putting in for a
22 job, but there isn't anything that is said, to my

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1 recollection, that Joe Smith, AD called me up and told
2 me to put him in for a job. But that's not out of the
3 realm of possibilities.

4 Q And there's no screening for that?

5 A No.

6 Q In other words, no one asks that question,
7 "How did you come about to apply for this job?"

8 A No.

9 Q Were you ever asked, did anyone ever
10 suggest to you, like, from a higher -- Why don't you
11 go and apply for this SES position, or this particular
12 position?

13 A No. When I was at ASAC out in Sacramento,
14 you know, two years is coming around, and there's
15 approximately about 140 ASACs out there. So there was
16 only so many entry level SES positions.
17 Traditionally, the SES positions -- traditionally, not
18 all -- all the way across the board, those candidates
19 that come from those ASACs ranks are generally from
20 the traditional way of moving up the chain. So I
21 had -- Nobody has ever told me -- I have put in for
22 several jobs, and I got one of them.

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1 Q Do you know that anyone has ever filed a
2 complaint about the SES promotional practices?

3 A No.

4 Q Have you ever heard any person reporting
5 informally of what they would suspect to be violations
6 or infractions of promotional fair -- just strike
7 that. Has anyone ever told you that there was an
8 allegation that any -- either the 14 or 15 or SES
9 promotional practices violated either the Badge
10 settlement or any anti-discrimination law?

11 A No.

12 Q In your mind, having worked in the
13 position you held, what do you think the major
14 deficiencies in the SES promotional process are?

15 A You're asking for a personal opinion on
16 that?

17 Q Yes. Based upon your holding the position
18 there. In other words, what you think the
19 deficiencies are, the areas that need improvement.

20 A Well, I think the -- what we just talked
21 about in terms of strengthening up the criteria for
22 selection. Again, this is my own personal opinion and

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1 speculation, and all the rest of that.

2 Q Yes.

3 A And I was only there for a little bit more
4 than 10 months but, in my review, again, when I got
5 there and when I was sitting in on these meetings and
6 heard about Rand Corporation, I think the general
7 feeling was to give our key executives a better handle
8 on the qualifications of our people, as well as what
9 the qualifications of each job requires. I think if
10 there's anything there that needs to be strengthened,
11 that's where it needed to be strengthened. I'm kind
12 of glad the Rand Corporation is doing what they are
13 doing, because I think it would actually strengthen
14 that weakness in that area.

15 The key executives, what I saw during my
16 tenure on the SES Board, tried to do the best they can
17 to come to some decision in recommending to the
18 Director what they believe to be the best person. I
19 have never heard where, hey, I was in a car pool
20 together with Joe Schmow, and he's a good guy, you
21 know, let's put him in. I've never heard that.

22 I think they try to do, honestly, the best

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1 job they can to try to find out who the best person
2 is, knowing full well that, you know, somebody out in
3 Sacramento or somebody out in Denver, they may not
4 know a lot about. So they try to look as closely at
5 these individuals as possible. Not knowing them, not
6 seeing them face to face, not having them in an acting
7 position, they realize that they have to give
8 everybody a fair shot. That's my opinion of it, if
9 you want that. I gave you the weakness, but I also
10 wanted to interject that as well.

11 Q What other weaknesses would you detect in
12 the system?

13 A Really, that is it. They have --

14 Q In your mind, is there any -- do you think
15 that the Presenters should have the role they have, or
16 do you know if it works really well, or do you think
17 there's any room, in other words, to have someone else
18 make a presentation?

19 A Well, the -- I think the idea is that the
20 Presenter is a division head who will have that
21 Section Chief working for them either directly or
22 indirectly, and has, I think, allowance within our

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1 system that is given to those people who have to work
2 with these individuals on a daily basis and to have a
3 comfortability factor, or level. I see that.

4 Q Does the same thing exist in the 14, 15
5 Career Boards where the person who is the Presenter is
6 the person who has to work or supervise the person?

7 A No. Because the way the system is, EDSP
8 personnel read off the -- What they get is the local
9 Career Board back in the field office, and they read
10 off what the results of that local Career Board was,
11 and if there's any anomalies, if there was, like, a
12 flip because of a Division Head type of thing. And
13 then the SAMMSS Board there is a final decision maker
14 on everything, but legats, alats, which goes up to the
15 Director.

16 In terms of the local Career Board out in
17 the field, there may be a stationary position -- when
18 I say stationary and non-stationary, roughly it's in
19 place that 50 percent of the supervisors in the field
20 are designated stationary. That means that somebody
21 in the field has dibs on that. If they are qualified
22 for the position, and there is an equally qualified

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1 headquarters person, if they put that person in front,
2 then that's fine. There has to be a reason why the
3 headquarters person gets in front of the -- gets
4 ranked before the Field SA, or candidate, in a
5 stationary.

6 Non-stationary means that if you have a
7 qualified headquarters SA putting in for a field desk,
8 and there is an agent out in the field who wants to
9 put in for it, and he's equally qualified, the
10 headquarters person gets the dibs on it. The reason
11 I'm bringing that up is because that's where we look
12 real closely at to make sure there's no hanky-panky in
13 that area.

14 Then the SAMMSS, the reason it's set up
15 is -- it's set up that way, where it's almost an
16 automatic thing, except there isn't that type of stuff
17 going on in the field office, where you have people
18 who know somebody in the field, and that person gets
19 the job. If it's a non-stationary, it doesn't matter
20 how well they know that person, how well they don't
21 know the person in headquarters, they have to look at
22 the 954s, they have to judge the person, and if that

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1 person in headquarters is qualified for the position,
2 and the only other competition is the field -- SA out
3 in the field, and it's a non-stationary job, it
4 doesn't matter if those people know that guy, this guy
5 gets the job.

6 Q Okay. My question was, in the 14 and
7 15's, you've talked about the Presenter was the
8 Division Director who would have to work with the
9 person. In the Career Boards for the 14s and 15s, is
10 there a Presenter who, like on the SES side, is the
11 person who will have to end up living with that
12 appointment?

13 A The Chairman does that, the Chairperson
14 does that for the Board.

15 Q So the Chairperson of the local Board will
16 be the supervisor of that person, whoever is selected?

17 A The Chairperson is usually an ASAC,
18 actually, it is an ASAC out in the field. I can't
19 think of any other position that would be Career Board
20 on the local side but a 14. Some of the larger field
21 offices, you would have 14s and 15s, but the
22 Chairperson, like I've chaired the local Career Boards

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1 for EDSP. I said, okay, you all have read your 954s,
2 here's the chart, you know, Bassem, what do you say on
3 this person's exemplary, competency skills? And then
4 you go around --

5 Q Because the Chair would be the supervisor?

6 A The Chair would be -- Yes, the supervisor.

7 Q Of the person being hired?

8 A Right.

9 Q And is that for all GS 14, 15 Career
10 Boards where the Chair is the supervisor?

11 A No. In larger field offices, you might
12 have an ASAC running a Chair, and that person that
13 they are considering might be a 14 position for
14 another ASAC.

15 Q Okay. So in the Career Boards for the 14
16 and 15s, there is no requirement that the Chair of the
17 Career Board be the person who will be the supervisor
18 of the applicant?

19 A There is no requirement either way.

20 Q Whereas, on the SES side, the general
21 practice is that it is always the Division Director,
22 who the person would be reporting to?

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1 A On the entry level, yes.

2 Q And on the 15, a GS 15 position, if you're
3 going for a 15 position, who is required to Chair the
4 Career Board for the 15?

5 A That would be a rank higher.

6 Q So it would be a Section Chief?

7 A A Section Chief, correct.

8 Q And would that Section Chief -- Is it
9 required to be the person who would then be
10 supervising the 15s, or could it be a Section Chief
11 from a different Section all together?

12 A No. Right. A lot of times Divisions have
13 a lot of Career Boards, and they spread it over --

14 Q Okay. Now who chooses on the 14 and 15
15 the composition -- Who chooses the Chairman or
16 Chairperson, of the Career Boards for the 14 and 15s?

17 A Well, again, mostly the vast majority of
18 it, if not exclusively -- on the Section Chief, and I
19 have a 15-year Chief, it's my job. It's not another
20 Section Chief or the DAD, or anybody else, it's my
21 job to set things up. I set it up, I'm the
22 Chairperson. It's a natural thing that the

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1 Chairperson would be the Section Chief over, you know,
2 for the 15s that he or she has under them. What I'm
3 saying is, for some divisions, there are so many of
4 them, you know, the Section Chief might ask another
5 Section Chief, can you Chair a Board on some of these
6 15s?

7 Q Okay. But the general practice would then
8 be the Section Chief in the Section for which the 15
9 would be hired, becomes the person who establishes the
10 Career Board?

11 A Right.

12 Q Including chooses the members of the
13 Career Board?

14 A Yes. And they have to be 15 or higher.

15 Q Okay. And what checks and balances exist
16 to ensure that the composition of the Career Board for
17 the 14 and 15 positions isn't biased somewhat?

18 A There is a minority member on the Board,
19 either as a voting member or as an observer in every
20 local Career Board.

21 Q Any other thing -- In other words, is
22 there any other criteria established to ensure there

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1 is no favoritism or bias in the members of the Career
2 Board?

3 A No, there isn't anything along those
4 lines.

5 Q And the minority person, what is their
6 specific job?

7 A To ensure that there were no inappropriate
8 comments made regarding race, color, creed, religion,
9 type of stuff.

10 Q So do they essentially come in and observe
11 what is said on tape?

12 A They come in and witness the Board.

13 Q In operation. But do they -- And if they
14 are non-voting, what's their role? If they hear
15 something that might be discriminatory, they say it,
16 if not, they just --

17 A Yes. At the end of the Career Board, I
18 would turn to the non-voting member and say, is
19 everything spoken about today, in your estimation, did
20 it fall along the lines that it was appropriate talk
21 regarding those type of things.

22 Q Do you think most FBI managers know that

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1 they are not supposed to, in a Career Board context,
2 use words and phrases that might be viewed as
3 discriminatory? In other words, in terms of your
4 knowledge and experience of persons who sit on Career
5 Boards, do you think most of them know that you
6 shouldn't say, we want a woman for this job; or, we
7 don't want a black for that job; don't hire any
8 blacks, we don't like it? Do you think most of them
9 know not to say that orally?

10 A Yes. Most, if not all.

11 Q And do you think that -- Again, even if --
12 this might call for some speculation, but let's
13 assume, hypothetically, there was someone who was a
14 bigot. Do you think that person would, in the Career
15 Board on tape, exhibit their bigotry, or do you think
16 they will keep it to themselves, based on your
17 knowledge of the FBI culture?

18 A All I know is, I've never heard of it
19 happening at all, during my tenure. I've been either
20 a voting member or a Chairperson for the last nine
21 years.

22 Q And you've never heard someone come in and

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1 make a specific discriminatory remark, like, I don't
2 like blacks; or, I don't like Hispanics, or something
3 like that?

4 A Correct.

5 Q And given -- that does not surprise me,
6 given the day and age, would you agree with me? I
7 mean, we wouldn't expect someone to come into a taped
8 Career Board meeting and exhibit explicit racist type
9 of behavior?

10 A Right.

11 Q Have you ever heard of the phrase,
12 referring to the FBI, that it has a good old boys
13 network?

14 A Yes.

15 Q Okay. Where have you heard that?

16 A I think in -- on TV and in Congress and
17 the Senate and hearings, and places like that. I have
18 not heard -- I'm trying to think of, on a work basis,
19 in what context it would be used in a conversation.

20 Q Do you know if there has ever been an
21 audit, inspection, review, investigation, of the FBI,
22 into what I would call the good old boys network? In

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1 other words, if someone said, is there a good old boys
2 network in the FBI? In other words, if someone said,
3 is there a good old boys network into the FBI? We
4 want to find out if it exists or verify it or unverify
5 it. Do you know if that's ever happened?

6 A No, not really. I'm trying to think. I
7 think, you know, in terms of OPR, after this happened
8 a couple of years ago where there was an investigation
9 into unfair practices in terms of administration of
10 adverse actions towards --

11 Q Double standards?

12 A -- double standards, say, between higher
13 level management or lower level management.

14 Q Have you ever participated in any meetings
15 in which there was a specific discussion on how to
16 increase minority applications for the Senior
17 Executive Service?

18 A No.

19 Q Have you ever participated in any
20 discussions whatsoever, meetings, on which there was a
21 discussion on how to get more Arab Americans, or
22 persons of Arabic background into the FBI?

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1 A Into the FBI?

2 Q Yes.

3 A I won't say more. When I was in
4 Sacramento, under my purview was our applicant
5 processing. One of the things -- you know, there are
6 requested recruitment goals. When I say "goals," they
7 weren't quotas, or anything like that, through the
8 applicant processing section, and the whole process,
9 particularly since 9/11, the idea was to recruit
10 individuals who have much needed language skills,
11 along with other qualifications, and Arabic was one of
12 them.

13 Q And when you say "other qualifications,"
14 in the post 9/11 environment, would that include, say,
15 knowledge or experience in Middle Eastern culture?

16 A They might have advanced degrees, yes, in
17 that, or something along the lines.

18 Q Why was there an emphasis to recruit, say,
19 persons with Arabic language skills?

20 A Because we were devoid of it. My
21 understanding for many years, and after 9/11 it became
22 quite apparent, particularly in the agent population.

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1 Again, this is where I'm getting into what I know, in
2 my limited knowledge, and that's based on my two years
3 in Sacramento, is that we definitely needed more
4 language capability in the Arabic language,
5 particularly with our agents.

6 Q And was there ever any discussion when you
7 were serving in your position, vis-a-vis, promotions
8 into the 14 or 15 SES ranks, formal or informal by
9 anybody, about any need to try to get more people,
10 say, who are Arabic speaking into any positions
11 whatsoever?

12 A No.

13 Q Do you know if -- At the time you were
14 there, were there any meetings, discussions, white
15 papers, whatever, about how the 9/11 attacks and the
16 new emphasis of the FBI, in terms of counter terrorism
17 would impact on the criteria for promoting persons
18 into the SES?

19 A No.

20 Q And what about in terms of promotions to
21 persons into GS 14 or 15 rank, was there ever any
22 discussions whatsoever about how the 9/11 attack and

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1 any lessons learned, or needs of the Bureau, based
2 upon that attack, and what we now know about Middle
3 Eastern Terrorism, were there any discussions, looking
4 at those needs, about how that would impact on the
5 skills and qualifications we're looking for in the GS
6 14, 15 or SES ranks?

7 A No.

8 Q Were you ever shown a copy of the Badge
9 settlement agreement?

10 A I have excerpts of it. I have certain
11 pages of it, excerpts of it, but I don't remember ever
12 having the whole agreement.

13 Q Is there a place in your office where all
14 of those settlement agreements and consent orders are
15 kept?

16 A No.

17 Q So, if someone did want to look at it,
18 they could access it?

19 A No, not from EDSP, not from my office.

20 Q I'm going to show -- Why don't we mark the
21 first exhibit, here. I'll you what number in a
22 second.

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1 (Whereupon, the document was
2 marked Youssef Exhibit No. 11
3 for identification.)

4 MR. KOHN: We're going to call this
5 Youssef Deposition Exhibit No. 11. For the record,
6 this is --

7 THE WITNESS: Is this it, here?

8 MR. KOHN: Yes, and then another one is
9 coming, too. These are just excerpts from the Badge
10 settlement.

11 THE WITNESS: Okay.

12 BY MR. KOHN:

13 Q Just, for the record, these are excerpted
14 pages from the Badge settlement, and is the agreement
15 signed on 1/26 1993, some of the pages, and the first
16 one, I'd just like you to go to page two. The page
17 numbers that I'm referring to are the page numbers of
18 the actual settlement agreement, as opposed to an
19 exhibit page number.

20 Do you see there that it talks here about,
21 under Career Development Program, "The FBI has
22 retained an outside contractor to examine or recommend

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1 changes in the existing Career Development Program.

2 Do you see that?

3 A Yes.

4 Q Did you ever see or know of reports
5 written by this contractor about what the
6 recommendations were or findings were regarding
7 improving the Executive Development Selection Program?

8 A Let me see, there was a couple of things I
9 was involved in.

10 Q My question is, were there reports or
11 evaluations that were done by this contractor, or any
12 contractor, that someone could look at in terms of
13 either understanding why the current promotional
14 system existed, or goals or potential modifications to
15 that system?

16 A Yes. The review and recommendation of the
17 existing Career Development Program happened way
18 before my time. I don't know who the particular
19 contractor would be. But that would be during my time
20 period, and the reason the SAMMSS Board was set up the
21 way it was, was to minimize disparate impact on
22 protected classes, make it as fair as possible. My

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1 understanding is that this did go on, in terms of the
2 Industrial Organizational Psychologist type work on
3 this is probably available through the FBI.

4 Q While you were in your position, did you
5 ever attend any meetings or do any documents in which
6 the goal was -- in which people sat down and said,
7 okay, let's bring the responsible people together and
8 ensure that we are minimizing to the greatest extent
9 possible, any adverse impact on any group protected
10 under Title 7, you know, women, blacks, minorities, if
11 that was ever a focus of a discussion?

12 A Well, the whole Badge process, when I got
13 there in March, was already in full swing. The
14 actual -- remember that the actual GS 14, 15,
15 selection process had already been shut down since
16 December. There was a working group that consisted of
17 the FBI's organizational psychologists, the
18 Plaintiffs, as well as the Agent's Association,
19 working in tandem with the ASD, to develop this new
20 SAMMSS, and there was a number of discussions going on
21 in that. I was not privy to those, those were working
22 group types, but I knew that they were going on.

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1 Q Was there a similar working group for SES
2 promotions?

3 A No.

4 Q If you could look under what would be the
5 bottom as page 42, and that would be the original 42.
6 I'm just looking under Compliance and Review
7 Provisions, number four in the first sentence. It
8 says that "The Bureau will through this summit, retain
9 experts to study and make recommendations with respect
10 to the Career Development Program." I'm wondering if
11 you are aware of who any of those experts were, or if
12 you ever saw any of the evaluations or reports of
13 those experts?

14 A No.

15 Q And, if you could look on page 43, under
16 letter B, where it mentions a three-member review
17 committee. Do you know if that was still in
18 existence?

19 A That's that Badge Review Committee.

20 Q So that is still there?

21 A Yes. It has been revamped. It is still a
22 review -- it's not what they call a review committee,

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1 it's a working group. Again, they are tasked with
2 continuing with finalization of the SAMMSS procedures,
3 fine-tune them, but also work on a new assessment tool
4 for entry level people who want to raise their hand to
5 come into management, to provide a final assessment
6 tool for that, which we had, I think, two years to get
7 done.

8 Q If you could turn to page 49 of that
9 settlement agreement.

10 A Okay.

11 Q Turn to the Compilation of Data. I'm
12 looking under Substance of Data. Is there data
13 collected? See where it talks about promotions? Is
14 there a data system for information related to
15 promotions within the FBI, or what do you know of that
16 data system?

17 A The only information I know, again, in
18 compiling, in establishing, developing the new SAMMSS,
19 data was obtained, and it was obtained through our
20 organizational psychologists in developing a system.
21 When I came on board, a lot of this stuff was probably
22 already done. I did not see any data.

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1 Q Okay. But do you know what it says -- I
2 mean, look under Compilation of Data. It says that --
3 You can read the whole thing, but --

4 A Yes, let me read it.

5 Q Yes, why don't you just read the
6 Compilation of Data.

7 A Yes, that's all part of the Badge for the
8 14, 15.

9 Q And do you know if there -- I'd like to
10 know what is the -- If you look under the Compilation
11 of Data, it says that they are going to "Compile data
12 to determine whether any of the employment practices,
13 or personnel systems at issue may have a despaired
14 impact upon any group of employees." My question is,
15 under B, where it says, Substance of Data, it says,
16 "Data collected and maintained to include the
17 following areas: One, promotions." Do you know what
18 data is collected and maintained regarding all groups
19 of employees to determine whether there is any
20 despaired impact on promotions?

21 A No, I do not.

22 Q Who would have that information?

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1 A The Administrative Services Division and,
2 again, probably within the purview of the -- it's the
3 PARG, and, again, I can't remember what the -- it's
4 the organization psychologists, that work for -- in
5 ASD.

6 Q And ASD stands for?

7 A Administrative Services Division.

8 Q And who is that organizational
9 psychologist?

10 A The people that you'd probably want to
11 talk with is Amy Grubb, G-r-u-b-b, Dr. Amy Grubb, who
12 is the person who is a point of contact with the
13 organizational psychologist, working with the working
14 group, and has been working on this for several years.

15 Q And, in terms of that, do you know if this
16 type of data that is referenced here was being
17 collected or is collected for Senior Executive Service
18 positions?

19 A No.

20 Q Meaning it wasn't collected or you don't
21 know?

22 A I don't know.

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1 Q On page 50, where it says, "Applications
2 and Selections for In-service Training Courses," is
3 that something -- do you have to apply to get in-
4 service training?

5 A The in-service training courses are -- I'm
6 not that familiar with them. They didn't come across
7 my desk. There are a selection process for in-service
8 training because there's generally, say, in a field
9 office, there may only be two slots available for that
10 Field Division to go to Quantico, in which case the
11 process is that the field office would have a Career
12 Board, and the Career Board information presented to
13 members of the -- the voting members, which is not
14 constituted -- you've got to have a Chairman, and it
15 should have all the instructions for the field
16 officers to form a Career Board.

17 When I was out in Sacramento, I would sit
18 down with a couple of supervisors and say there are
19 two people in for this one job. Here are their ECs,
20 here are their qualifications. It did not conform to
21 any requirement to Badge. It didn't have to be Career
22 Boarded in SAMMSS, or anything like that, but it just

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1 had to be a process in which it's documented, so that
2 if there are any questions as to the reasoning why,
3 you'd better put down in your EC why you have selected
4 this person over this person, because that other
5 person might complain. That's all, really, the
6 procedures or requirements were for that. In terms of
7 applications and selections for in-service training,
8 back in '93, that may be what they wrote that out as,
9 but in 2005 or 2004, when I was there, that's all the
10 policy that was in place for them to do. In terms of
11 collection of data along that line as well, I'm not
12 sure where that would be kept.

13 MR. KOHN: I want to show the witness, so
14 we can just mark this as Exhibit -- what's the number
15 now? Twelve. Exhibit No. 12 is today's Notice of
16 Deposition.

17 (Whereupon, the documents were
18 marked as Youssef Exhibit No. 12
19 for identification.)

20 BY MR. KOHN:

21 Q I'm just asking if you see -- Were you
22 informed before coming here that you would be the

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1 official representative of the FBI for promotional
2 activities concerning Counter Terrorism Unit, under
3 Number three?

4 A Well, I was told that I was the subject
5 matter expert, or the expert on promotional matters
6 for the Bureau.

7 Q And calling your attention directly now to
8 the Counter Terrorism part of that, in other words,
9 people being promoted into the Counter Terrorism
10 Division in an SES and/or GS 15 role. To the best of
11 your knowledge, what specific steps did the FBI take
12 to encourage minorities to apply for SES positions in
13 Counter Terrorism?

14 A I know of no specific steps taken by the
15 FBI to encourage minorities to apply for SES
16 positions.

17 Q And what about to encourage minorities to
18 apply for GS 15 positions?

19 A I know of none on that level, too.

20 Q And do you know of any steps taken by the
21 FBI in terms of the Counter Terrorism Division to
22 recruit persons who had Arabic speaking skills into

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1 SES positions within the Counter Terrorism Division?

2 A No.

3 Q And do you know of any specific steps
4 taken by the FBI to recruit persons with Arabic
5 speaking skills into GS 15 positions?

6 A No.

7 Q In terms of direct operational counter
8 terrorism experience in Middle Eastern Counter
9 Terrorism Operations, do you know of any steps taken
10 to recruit persons to apply up to SES positions, who
11 had that background?

12 MS. WELLS: I'm going to object to the
13 form of the question. I don't know that it's clear
14 what you mean by "direct operational counter terrorism
15 experience."

16 MR. KOHN: Okay.

17 BY MR. KOHN:

18 Q Would you know, if I were to say someone
19 had operational experience in Middle Eastern terrorism
20 cases, would that have a meaning to you as an FBI --

21 A It would mean that that person had
22 expertise in that area.

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1 Q And was actively involved in actual
2 operational activities related to Middle Eastern
3 terrorist groups?

4 A Right.

5 Q Okay. Do you know of any efforts made to
6 recruit persons with that background and experience to
7 an SES position in the Counter Terrorism Division?

8 A No.

9 Q And the same question as for GS 15
10 positions?

11 A No.

12 Q In terms of knowledge and experience with
13 the Middle East, you know, in terms of the culture and
14 the heritage and the history of that region of the
15 world, do you know of any specific steps taken to
16 recruit or encourage persons with that level of
17 expertise into an SES position within the Counter
18 Terrorism Division?

19 A No.

20 Q And the same question as for a GS 15
21 position?

22 A No.

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1 Q Now I think I asked you this once before,
2 but I'm going to try to make it even a broader
3 question, which is, after 9/11, are you aware of any
4 review whatsoever from agent recruitment through who
5 you want for Director of the FBI, any level, anything
6 where anyone sat down formally or informally, and
7 said, "Look what happened on September 11, 2001, and
8 how that impacts the needs of the FBI and the needs of
9 national security," and looked at that and said, what,
10 specifically, are the new staffing needs of the FBI?

11 A No.

12 Q Did you ever participate in any
13 discussions with the Director of the FBI about
14 staffing needs of the Bureau?

15 A No.

16 Q And who was your supervisor when you were
17 the Section Chief of the EDSP?

18 A It's a Deputy Assistant Director, DAD,
19 Jodi Weis, J-o-d-i, W-e-i-s. Jodi Weis.

20 Q And was that a he or a she?

21 A He.

22 Q And was he in that position the whole

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1 time?

2 A He got there in June, so for part of that
3 it was Kevin Kendrick, who, if you remember, I said he
4 was acting, and then he got the position of the DAD.

5 Q Okay. And any discussions about staffing
6 needs with either of those two people for SES?

7 A No.

8 Q Do you know if there were any
9 Congressional inquiries regarding the staffing
10 policies of the FBI?

11 A I was not privy to any, if there were, no.

12 Q Have you ever heard of a process known as
13 TDY, to TDY somebody?

14 A Right. Temporary duty.

15 Q Can someone be -- Does the Career Board
16 process come into play in a decision to give someone a
17 temporary duty assignment?

18 A No.

19 Q So a manager can TDY someone into a
20 position, they don't have to go through any formal
21 screening process for that position?

22 A Correct.

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1 Q Do you know what safeguards are in place
2 at the FBI, procedural, to ensure that a TDY decision
3 is non-discriminatory?

4 A No. I know of no process in place to
5 ensure that.

6 Q What about -- that's a TDY. What other
7 mechanisms -- Well, then you can also name someone an
8 acting, put some into an acting position.

9 A They are already in the unit, there, or
10 they are already in the section, yes, or they are in
11 the Division somewhere and it goes into effect.

12 Q Can you TDY someone into an acting
13 position? Do you know?

14 A Well, it's phraseology, I guess. You TDY
15 somebody back to sit in on an acting, say, SES
16 position. They are in acting for both TDY and acting,
17 they are both TDY and acting. That's really -- I
18 forgot your question.

19 Q Okay. In terms of making someone acting,
20 does that go through the Career Board process?

21 A No, it doesn't.

22 Q Again, do you know of any specific

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1 safeguards to ensure there is no discriminatory
2 practices in naming someone into an acting position?

3 A No.

4 Q Meaning you don't know of any such
5 procedures?

6 A No. I don't know of any. I've exercised
7 it myself, you know, in EDSP, moving up Steve Anthony
8 into an acting, but he was familiar with the
9 procedures and I stuck him in there.

10 Q So you made a decision to put the person
11 in --

12 A Yes, from the Section Chief level.

13 Q Do you know of any audits, reviews,
14 inspections, evaluations, you know, internal to the
15 FBI, external to the FBI, whatever, of the staffing
16 needs and requirements for the Counter Terrorism
17 Division at any level, where someone looked to the CT
18 Division and said, what do we need here?

19 A No, I don't know of any.

20 Q Do you know of any -- and, again, I'm
21 using this in a very broad way -- surveys, audits,
22 inspections, reviews, be it done internal to the FBI

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1 or they hired an outside contractor, in which it was
2 actually evaluated whether having persons who could
3 speak Arabic or, say, the languages spoken by
4 International terrorists, whether having that skill
5 set, would actually be helpful in the FBI's
6 responsibility on the war on terror?

7 A No, I don't know.

8 MR. KOHN: Why don't we just go off the
9 record for a moment. Why don't we just go and take a
10 brief lunch break.

11 MS. WELLS: Well, if we're going to go and
12 then come back in and be done in, like, 15, 20
13 minutes, it's not worth it. I'd just as soon keep
14 going.

15 THE WITNESS: Well, we've gone through at
16 least three-quarters of it.

17 MR. KOHN: That's page 17 to 29, but I do
18 know there's at least another exhibit that might take
19 a little time, so let's go off the record.

20 (Whereupon, the proceedings in the above-
21 entitled matter went off the record at 1:18:58 p.m.
22 and went back on the record at 2:05:34 p.m.)

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9 Q Let's just assume something like this
10 happened, someone got an "O" from the Career Board.
11 Under the old system you said it could be changed.
12 Could they just literally erase it and put in a
13 different one, or does it have to be a paperwork
14 justifiable change?

15 A Paperwork justified, right.

16 Q So that would be in the file, you couldn't
17 change it without the paperwork?

18 A Correct.

19 Q And would you expect the Division Director
20 to review the ratings and give it a second look?

21 A Oh, yes. Every Division Head, before it
22 goes out under their name, would be looking at it.

23 Q Okay. And we're up to what exhibit
24 number, do you know? I'm going to show the witness a

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1 document that we'll mark as Exhibit No. 13.

2 (Whereupon, the document was
3 marked for identification as
4 Youssef Deposition Exhibit
5 No. 13 for identification.)

6 BY MR. KOHN:

7 Q For the record, this is an EEO witness
8 statement for a Regina Stephens. It's five pages long
9 and dated July 10th, 2003.

10 A First, do you know who Regina Stephens is?

11 Q Yes.

12 A Who is she?

13 Q Actually, before I knew her, she actually
14 worked in EDSP for a period of time, before I got
15 there way back when. I used to see her. Then I think
16 she was an office assistant or a secretary when I saw
17 her, if this is the one I'm thinking about, this
18 Reggie, and I think she's retired now.

19 Q If you could go to page three of this
20 exhibit. She testified that from -- I'm looking at
21 paragraph number nine, the second paragraph. It says,
22 "I entered duty in '69." She says that her position

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1 was a personnel management specialist for the EDSP
2 program. What does a personnel management specialist
3 do?

4 A Well, exactly what it says here that she
5 does. Now they are not -- They weren't PMS's when I
6 was there, they were Human Resource Specialists. They
7 may have been renamed. They are GS 12 and 13s.
8 Basically, their job is to make sure that EDSP runs.
9 They collect the -- in the old days, collect the 638s,
10 like she says here, review the divisional Career Board
11 recommendations to see if there were any anomalies in
12 there that need to be basically brought up to a higher
13 level. They don't do anything themselves in terms of
14 making any decisions or -- the only time they might
15 throw it back to the local Career Board is, they know
16 policy. They say, okay, based on what you have here
17 and what we see coming back to us, you didn't follow
18 policy. They would alert the Unit Chief and then say,
19 we're sending it back to the Local Career Board to
20 redo, or something along those lines. Those are some
21 of the anomalies they look for.

22 Q And if you could go down -- what she notes

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1 here is that she reviewed a recommendation for a
2 vacancy, and it was her opinion, after view -- If you
3 go down to the bottom of the page, to the Local Career
4 Board's ranking, "Sufficient justification did not
5 exist to rank Anita Dickens and Christopher Todd above
6 Youssef." Can you just explain to me -- What I'd like
7 to understand is, who would this person be -- You've
8 already identified Regina Stephens. What would give
9 her any expertise to draw this conclusion. I mean,
10 explain to me how it would occur that someone like her
11 would review this information and reach this type of
12 conclusion?

13 A You know, it's only -- I'd have to say
14 that at least for Reggie in this case and her look,
15 and -- actually, I'm trying to think of the old system
16 versus the new system, here. Under the old system it
17 would have to be something in terms of enough
18 justification. Based on her experience it may just
19 not -- I mean, really, even you and I might not even
20 see it -- be devoid of proper reasoning and basically
21 a -- I'm trying to think of the right wording, here,
22 and look at what they wrote in the Local Career Board,

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1 and say, geez, we cannot take this to the Board
2 because, based on our experience, and I'm telling this
3 to the Unit Chief, and I'm telling this to you, it
4 really looks like you don't have enough justification
5 for them to even talk in the Career Board as to why
6 you ranked who you ranked, and how you ranked it.
7 They do have that type of leeway, in a sense.

8 Even my people, when I was there, they'd
9 look at it and go, they just haven't provided enough
10 justification in the sense that there is just nothing
11 there. I mean, they may have said something that --
12 therefore, the sky is blue and therefore this person
13 ranked -- I mean, it doesn't get that bad, but on some
14 of the Local Career Boards back then, particularly.
15 Today, it is just ignorance, more than anything else,
16 on how a Career Board is supposed to run, where they
17 kind of get kicked back. On the old Boards, it was a
18 situation where there just wasn't enough words, there
19 just wasn't enough justification for it.

20 Now, I'd like to say for the record, here,
21 that I know this, at least presently, during my
22 tenure, the HRS would notify the Unit Chief that --

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1 when they do that, they usually have push back from
2 the Local Board. Everybody is in the loop as to why
3 the reasoning is that EDSP has done what they've done
4 in terms of sending it back to the local Board. We
5 have to abide by the policies. A lot of it, though
6 is -- this one, it is not policy so much as it's a
7 look and saying, hey, best practice says this is not
8 enough that it will go to Career Board and pass muster
9 with those voting on the Career Board. I can only
10 conjecture, not seeing the EC, as to why she had done
11 that.

12 Q So when she, say, would do this, make this
13 finding, would your office, or the office that she's
14 working for, which would be the -- when she was in
15 EDSP, is this essentially something they are sending
16 back to the Career Board, but the EDSP office doesn't
17 have the power, that's my question, in other words, to
18 say yes or no on the selection. They are just
19 essentially reporting back that this looks like not
20 sufficient justification?

21 MS. WELLS: I'm going to object to the
22 form of the question. You can answer.

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1 BY MR. KOHN:

2 Q I'm just trying to say, who makes -- In
3 other words, so this happens, these things are written
4 up.

5 A Right.

6 Q The specialist makes this type of finding.
7 Where does it go from there?

8 A This is where the -- it's always kind of a
9 situation, and they think EDSP forced us to do things,
10 but -- I know, presently -- I don't know in this
11 situation, but I know how we do it presently is that
12 we go back to the Board, the local Board, whoever was
13 the Division Head or the Chairperson, and say that
14 this was not done correctly, you don't have enough
15 justification. We can't force them, then, to do
16 things. They can turn it back and say, "Listen, this
17 is our stance, this is our EC, we want you to take it
18 to the Board."

19 Q The SAMMSS Board?

20 A The SAMMSS Board, yes.

21 Q And then would the SAMMSS Board be
22 given -- Assuming they said to take it to the SAMMSS

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1 Board -- the note that in this case Regina Stephens
2 wrote?

3 A I don't know if they did it back then, but
4 they would do it today. The SAMMSS Board, the
5 responsibilities of the EDSP individuals that were on
6 the Board, and I sat on the SAMMSS Board, as I did the
7 SES Board, to notify the Board members, because they
8 get 3000 pages. Some of our current Career Boards
9 have 30 to 40 vacancies that we've gone through, and
10 these binders, sometimes, are two binders like this,
11 and they've got three weeks to look at it, and
12 sometimes, just for the sake of making sure, we say,
13 hey, this is an anomaly, here. We think that -- We at
14 EDSP think they didn't have enough justification. We
15 just want you, because you're the final arbiter, to
16 look at it. It's a reminder to you to look at it.
17 That's how they do it at present. I don't know how
18 they did it back then.

19 Q Looking at this, looking on page four, I'm
20 looking at the very end of the very long paragraph
21 where it's written, "-- not participate in the CB. I
22 believe the divisional CB does not provide sufficient

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1 justification for --" Do you see that?

2 A Yes.

3 Q Then it goes on to say, "And I do not know
4 if my suggestions were made to the EC." What would
5 that mean, if she does not know if her suggestions
6 were made to the EC?

7 A Their EC. It got --

8 Q The EC got sent to the SAMMSS Board?

9 A No, the EC back from the local Career
10 Board. Let me read this. Again, not knowing the
11 situation, it appears to me what happened was, she did
12 contact Pyszczymuka, said what she said, and they
13 couldn't -- she apparently lost track of that EC
14 coming from the Career Board. It may have been sent
15 back to their local Career Board to make changes.
16 She's not sure whether they even made changes. A lot
17 of times it's that in this case the PMS, the Human
18 Resource Specialist, might be onto another project, or
19 might have others coming through. It isn't like
20 that's her baby from cradle to grave. There's no
21 internal mechanism or guidelines that I had within my
22 section to have that person take it from cradle to

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1 grave. She may have been out that day, the next day,
2 type of thing, and somebody else may have handled it
3 and sent it all the way through.

4 Q How often would one of these specialists,
5 like Regina Stephens, write up a memo pointing out the
6 fact that there were not sufficient justifications for
7 a ranking?

8 A Did she write a memo here?

9 Q It says that she wrote a note dated 1/18.
10 It's on page three. "I summarized my review in a
11 note dated 1/18/02 sent to Michael Pyszczymuka."

12 A Pyszczymuka, yes.

13 Q Is that the Section Chief of the Personnel
14 Management?

15 A No, he's the Section Chief of the
16 Personnel Management of the --

17 Q No, he's the Division Head. He's the one
18 who probably did the Career Board for this 15. The
19 note may have come in an e-mail. You know, the note
20 may have come -- she might have attached the note back
21 on the local Career Board, sent it back to him, she
22 may have walked back something to him, I don't know.

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1 In terms of that happening, again, I can only tell you
2 what happens today. We use the word, "kick back."
3 Like I said, it's not a permanent kick back. They may
4 not accept it at the local Career Board level and say,
5 send it through, we don't care what you have to say
6 EDSP.

7 Generally what happens is, over the phone
8 we say, "This is problematic in terms of how you
9 conducted your local Career Board, or how you ranked."
10 My people have followed through with e-mails back to
11 the local Career Board or to the Chairman, whoever
12 they were talking to, the point of contact in that
13 division, and said, these are the problems with your
14 local Career Board, or how you ranked, you didn't get
15 enough justification, et cetera, and that does occur,
16 at least presently. She may have written a note. I'm
17 not sure how that happens but, to answer your
18 question, that does occur occasionally.

19 Q Have you ever heard of a position that's
20 an SIS, Senior Intelligent Service?

21 A Or is that a Senior Intelligent
22 Specialist?

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1 Q No, this is within, like, the CIA, or
2 another comparable to an SES, SIS?

3 A No, actually, not. It may be part of the
4 agency, but something like that, no.

5 Q You've just never heard of it?

6 A No. We have an SL, that's the only other
7 Senior Level position, an SL, a Senior Level. It's
8 the same pay scale as the SES positions, but they
9 don't have other accouterments, or other things that
10 go with the SES, or permanent SES positions, which is
11 like you get to keep leave up to, like 720 hours, and
12 things like that. SL positions, the Bureau has about
13 eight of them right now.

14 Q After the September 11th terrorist attack,
15 were you aware that there were efforts made to staff
16 up, essentially, an enlarged and enhanced Counter
17 Terrorism Division within the FBI?

18 A No. I was not involved with that at all.
19 I had left in January of 2002, and I was out in
20 Sacramento doing my stuff.

21 MR. KOHN: Let's just go off the record
22 for a moment.

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1 (Whereupon, the proceedings in the above-
2 entitled matter went off the record at 2:25:04 p.m.
3 and went back on the record at 2:27:03 p.m.)

4 BY MR. KOHN:

5 Q You're currently -- What's your position
6 in the Inspection Division?

7 A I'm an inspector.

8 Q And is that an SES position?

9 A Yes, it is.

10 Q So would you, then, oversee inspections?

11 A I would oversee -- yes. There's an
12 inspection schedule, and I go to LA next week, and I'm
13 scheduled through the rest of the year.

14 Q And in terms of the LA inspection, did you
15 understand that Mr. Youssef was going to go out and
16 participate in that inspection?

17 A Originally, I did, yes.

18 Q And has anyone explained to you why he's
19 not going out for that inspection?

20 A There was a -- Yesterday, when I heard
21 that he was not going out. I can't remember where it
22 came from. There was a meeting, we do a pre-

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1 inspection meeting with the whole kit and caboodle of
2 people, and somebody had said that he had not notified
3 his supervisor that he was going out.

4 Q Someone said that he had not notified his
5 supervisor that he was going out on an inspection?

6 A Right.

7 Q And that's why he said that he wasn't able
8 to go, because of that reason?

9 A Yes.

10 Q And do you know who told you that?

11 A No. It was -- I think we have a person up
12 in inspections who handles the -- I'm new to
13 inspections, so there are --

14 MR. YOUSSEF: Linda or Linda, two ladies.

15 THE WITNESS: It could have been either
16 Linda or Linda, or it could have been -- there's a guy
17 up there, too, not Tyrone, I forget, but they set up
18 the scheduling for people.

19 BY MR. KOHN:

20 Q And did that have an impact on the LA
21 inspection, if all of you couldn't go?

22 A No. We had another gentleman, Ken Ivy's

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1 wife had a heart attack, down in Houston, so we had to
2 replace him. There was one other person, I think,
3 that had to be replaced. It happens. Nobody blinks,
4 because there is enough people that they can call on
5 the list to replace individuals.

6 Q But the effort, or the -- to the best of
7 your knowledge, the Inspection Division didn't say
8 that they didn't want Mr. Youssef?

9 A Correct.

10 Q It was that you were told that he hadn't
11 notified his supervisor?

12 A Correct.

13 Q And do you know of any other reason why he
14 couldn't have gone on that inspection?

15 A Yes. There as something else. There was
16 something regarding performance.

17 Q What did they say about that?

18 A They just said it was a performance issue,
19 or something like that.

20 Q As to why they wouldn't want him to go on
21 the inspection?

22 A No, that's why -- Yes. No, not that we

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1 wouldn't, just that we -- that's the reason that he
2 wasn't going to go. So it was the -- I don't know if
3 it came from the same people, it was just in the
4 meeting yesterday, that's what I heard. I'm sitting
5 there and --

6 You weren't on my team, so I was worried
7 about Ken Ivy and trying to replace him.

8 Q Do you know what they said about the
9 performance issue, or what was said?

10 A That was it.

11 Q So they said, essentially, that he hadn't
12 notified his supervisor and there was a performance
13 issue.

14 A It may be a performance issue, or
15 something along those lines, yes.

16 Q Did anything else come up about that?

17 A No, that was it, real quick.

18 Q Did anyone else mention or say anything
19 about Mr. Youssef?

20 A No.

21 Q Had you ever heard before today that Mr.
22 Youssef had filed some type of claim against the FBI?

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1 A Only when I was told I was going to be a
2 witness.

3 Q You've never heard about a discrimination
4 lawsuit or something like that?

5 A No. When you're out on the West Coast,
6 you're so far removed from -- Happily.

7 Q And have you ever, while you've been in
8 the FBI, did anyone ever discuss anything to do about
9 Youssef, other than this one incident, any other
10 discussions where you may have heard about Mr.
11 Youssef's performance or anything about him, in any
12 other meeting or context?

13 A No.

14 Q What about in terms of once you knew you
15 were going to be a witness here? Did you discuss him
16 with anybody or did anyone give you any information
17 about him?

18 A No. I heard -- I think I was notified in
19 September, and we tried to set up things during that
20 time period. I just talked with the attorneys, and
21 here I am.

22 MR. KOHN: I don't have any further

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1 questions.

2 THE WITNESS: Well, that didn't take too
3 long.

4 MS. WELLS: No.

5 THE WITNESS: We just skipped right
6 through.

7 MR. KOHN: Do you guys have any questions?

8 MS. WELLS: No.

9 MS. O'NEILL-TAYLOR: No.

10 MR. KOHN: Okay. Thank you.

11 (Whereupon, the proceedings in the above-
12 entitled matter went off the record at 2:32:05 p.m.)

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