

0001

NO. 067-203396-03

1
2 GAMAL ABDEL-HAFIZ) IN THE DISTRICT COURT
3 VS.)
4 ABC, INC., ABC NEWS, INC., ABC)
5 NEWS HOLDING COMPANY, INC.,) TARRANT COUNTY, TEXAS
6 DISNEY ENTERPRISES, INC.,)
7 WFAA-TV, L.P., WFAA OF TEXAS,)
8 INC., BELO CORP., CHARLES)
9 GIBSON, BRIAN ROSS, ROBERT) 67th JUDICIAL DISTRICT
10 WRIGHT, AND JOHN VINCENT)
11 =====

VIDEOTAPED ORAL DEPOSITION

of

DANNY A. DEFENBAUGH

TAKEN FOR PLAINTIFF

03/07/06

20 ORAL ANSWERS AND DEPOSITION OF DANNY A.
21 DEFENBAUGH, a witness produced at the instance of the
22 Plaintiff, taken in the above-styled and numbered cause
23 on Tuesday, March 7, 2006, from 1:18 o'clock p.m. to 3:57
24 o'clock p.m., before ROBIN G. LADD, a Certified Shorthand
25 Reporter and Notary Public in and for the State of Texas,
reported by machine shorthand, at the offices of LOE,
WARREN, ROSENFELD, KAITCER, HIBBS & WINDSOR, 4420 West
Vickery Boulevard, City of Fort Worth, State of Texas,
pursuant to the Texas Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

A P P E A R A N C E S

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1
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10 Appearing for the Defendants, ABC, Inc., et al.:
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12 JACKSON WALKER
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17 Also present:
18 Mr. Gamal Abdel-Hafiz
19 Mr. Lynn Montgomery, Video Specialist
20
21 Mr. H. John Benson, Jr., Assistant General
22 Counsel
23 Federal Bureau of Investigation
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1 MR. KAITCER: Mr. Latham, I asked you
2 earlier about Todd Hutton who represents Robert Wright
3 and John Vincent in this case. You talked to him earlier
4 today; is that correct?
5 MR. LATHAM: Yeah. It's my understanding
6 he's -- he's not going to be here.
7 MR. KAITCER: Also, the agreements that we
8 had in this case is that this deposition, as the other
9 depositions, can be used in both the case filed in the
10 67th district court against the Fox defendants as well as
11 the -- I'm sorry -- against the ABC defendants as well as
12 the case filed in the 96th district court against the Fox
13 defendants?
14 MR. LATHAM: That's correct.
15 MR. KAITCER: And I think our agreements
16 are just take the deposition under the rules.
17 DANNY A. DEFENBAUGH
18 having been first duly sworn, testified as follows:
19 DIRECT EXAMINATION
20 BY MR. KAITCER:
21 Q Good afternoon. Could you state your name for
22 the record, please, sir?
23 A Danny A. Defenbaugh, D-E-F-E-N-B-A-U-G-H.
24 Q And Mr. Defenbaugh, my name is Jeff Kaitcer and
25 I represent the plaintiff in this case, Special Agent

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1 Gamal Abdel-Hafiz. You and I have never met before
 2 today; is that correct?
 3 A That's correct.
 4 Q Are you employed, sir?
 5 A Yes, I am.
 6 Q How are you employed?
 7 A I own my own security consulting and private
 8 investigating firm, Defenbaugh & Associates, here in
 9 Dallas -- or I'm sorry, across the river in Dallas.
 10 Excuse me.
 11 Q Okay. And how long have you been employed in
 12 that capacity?
 13 A Since about August of 2002.
 14 Q Prior to August of 2002, were you employed?
 15 A Yes.
 16 Q How were you employed?
 17 A I was employed by the FBI from June the 2nd,
 18 1969, until retirement on April the 30th of 2002.
 19 Q Have you ever had your deposition taken before?
 20 A Yes, I have.
 21 Q So you're familiar with what a deposition is?
 22 A Yes, sir.
 23 Q And obviously, since we have a court reporter
 24 here, you'll need to try to -- you'll need to try to make
 25 your answers audible as opposed to a nod of the head or a

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1 uh-huh or huh-uh.
 2 A Correct.
 3 Q And even though we do have a video being made
 4 of this it's probably better for the record if you can
 5 make your answers like that. Also, if I ask you a
 6 question that I didn't make myself clear on or that you
 7 didn't understand, please let me know and I'll try to
 8 rephrase it, okay?
 9 A Okay. Thank you.
 10 Q And at some point in time, there may be
 11 objections made by Mr. Latham who may object as to form
 12 or leading or something like that. Under the Texas rules
 13 of procedure, you can go ahead and answer that question,
 14 okay?
 15 A Okay.
 16 Q Now if Mr. Benson objects, on the other hand,
 17 representing the government of the United States here, he
 18 may instruct you not to answer based upon national
 19 security concerns or whatever other reasons that he may
 20 need to object, and if he -- if he objects, he'll
 21 probably instruct you not to answer. And in that case,
 22 don't answer the question, okay?
 23 A Yes, sir.
 24 Q Could you tell me what your positions or your
 25 work history was with the FBI from June 2nd, 1969, to

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1 April 30th, 2002?
 2 A Started out with the FBI in a support clerical
 3 capacity as a messenger. I was then a tour leader and
 4 then a tour leader in charge of the indoor range. I was
 5 then promoted to the FBI laboratory. At that time it was
 6 known as the forensic explosives and security unit. I
 7 was in the explosives portion of that unit as a physical
 8 science technician. Went to school at night. Received
 9 my degree and became an FBI agent on February the 2nd,
 10 1976.
 11 Q Let me stop you there if I could. Where was
 12 your degree from?
 13 A I have a bachelor of science from American
 14 University in Washington, D.C. in administration -- it's
 15 bachelor of science in administration of justice. I have
 16 a master's of forensic science from George Washington
 17 University in Washington, D.C.
 18 Q Okay. So when you first started with the FBI,
 19 you were, I guess, kind of working your way through
 20 college or beginning to do that?
 21 A Yes, sir. I graduated from high school on a
 22 Friday and went to work for the FBI on a Monday.
 23 Q And during that period of time, prior to your
 24 actual entry as an FBI special agent, you worked for the
 25 bureau in other capacities and at the same time you were

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1 going to school?
 2 A That is correct.
 3 Q So you became a special agent on February the
 4 2nd of 1976?
 5 A Correct.
 6 Q And what was your first job with the FBI as a
 7 special agent?
 8 A I was assigned to our Chicago division to the
 9 terrorism squad working primarily the FALN bombing
 10 subjects who were -- at that time it was a Puerto Rican
 11 nationalist terrorist group, domestic, who were involved
 12 in approximately 189 bombings from about September 1973
 13 until April -- excuse me -- February of 1980 in New York,
 14 Chicago, Washington, D.C. and in San Juan, Puerto Rico.
 15 Q Okay. And what did you do after that particular
 16 assignment?
 17 A I was the laboratory coordinator handling all
 18 the forensic aspects in crime scenes, oversight for the
 19 FBI Chicago division. I was then part of the crime squad
 20 which handled primarily bank robberies, fugitives,
 21 kidnappings, extortion type of cases.
 22 Q And what time period was this that you were
 23 involved in those duties?
 24 A Got transferred back -- or ordered actually,
 25 ordered back to the laboratory in I believe about

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1 February of 1980, back to the explosives unit as a
2 supervisor. Or so it would be -- both of those duties,
3 both the terrorism and the bank robberies were between --
4 I think I got to Chicago after new agents class in May of
5 1976 and left Chicago plus or minus approximately
6 February of 1980, I believe.

7 Q And after you left Chicago in February of 1980,
8 where did you do?

9 A I was ordered back to the FBI explosives unit
10 as a supervisor as a hazardous devices and forensic
11 examiner in the explosive unit of the laboratory.

12 Q And is that in the home office of --

13 A In Washington, D.C.

14 Q In Washington --

15 A At that time in Washington, D.C., yes, sir.

16 Q Okay. And how long were you a supervisory
17 agent on that particular -- with that particular
18 assignment?

19 A I was transferred as an inspector's aid in
20 November of 1986 conducting field audit and inspections
21 of FBI field divisions, and in the very early winter of
22 1988, February or March time frame, I was then
23 transferred to our office of professional responsibility
24 in Washington, D.C.

25 Q What does the office of professional

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1 responsibility handle?

2 A The office of special responsibility for OPR
3 for the FBI handles any allegations of misconduct against
4 FBI employees.

5 Q All right. And how long were you with the OPR?

6 A I was transferred as supervisor to FBI in Miami
7 January, I believe, of 1989.

8 Q Okay. What were your duties when you got to
9 Miami in January of 1989?

10 A I was supervisor in charge of the major case
11 squad there which handled all violent crimes such as
12 kidnapping, everything but bank robberies. Kidnappings,
13 extortions, highjackings and also all international and
14 domestic terrorism acts.

15 Q Okay. And how long did you hold that position
16 in Miami?

17 A The squad was split during my time, and I
18 became the supervisor of the violent crimes fugitive task
19 force -- I'm sorry. I don't recall.

20 Q Okay.

21 A My next assignment was assistant special agent
22 in charge of our Mobile, Alabama, field office which I
23 arrived there in February -- January, February of 1993, I
24 believe.

25 Q So you worked in Miami for five years or so,

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1 and then you became assistant special agent in charge in
2 Mobile?

3 A Correct.

4 Q What were your duties as the assistant special
5 agent in charge?

6 A I was the operational supervisor running the
7 office and all investigations within that field division.

8 Q And did you have a superior at the Mobile
9 office?

10 A There was a special agent in charge there, yes,
11 sir.

12 Q And tell me what the significance is of a
13 special agent in charge.

14 A Special agent in charge is exactly that. He's
15 the special agent in charge of that field office. He
16 insures the office runs effectively, efficiently and
17 within the laws. He sets priorities as far as
18 investigative avenues of approach so that he or she will
19 make a determination as to what type of investigative
20 priorities that that office will focus upon within
21 delineation of looking at the same time with what the
22 United States attorney's office priorities are and making
23 sure that those priorities mesh together so that you have
24 a well-run law enforcement and prosecutive presence,
25 federal presence within that field division.

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1 Q Okay. And I suppose that there's no one in a
2 field office above the special agent in charge?

3 A As far as the FBI?

4 Q As far as the FBI is concerned.

5 A That's correct.

6 Q The next highest official would be someone in
7 Washington probably?

8 A The next highest official --

9 Q Above special agent in charge.

10 A Yes. That's correct.

11 Q Who would that be, just in general terms?

12 A It would depend upon what you're talking about.
13 If it's within an investigative avenue such as with
14 terrorism or civil rights, there would be an individual
15 section chief who would be liaison primarily to the
16 assistant special agent in charge.

17 There would also be a deputy assistant director
18 or assistant director within those divisions, whether it
19 be a criminal division, foreign counterterrorism,
20 counterterrorism, administrative division, and those
21 would be the counterparts to the special agent in charge
22 who he or she would relate to on a headquarters level.

23 Q All right. And you are in Mobile as the
24 assistant special agent in charge in January or February
25 of 1993 until when?

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1 A Middle of April 1995. I was on my
2 house-hunting trip in Washington, D.C. when I received a
3 call making the announcement that I would be the -- or
4 the inspector in charge of the Oklahoma City bombing
5 case.

6 Q Okay. So you were working in Mobile at that
7 time?

8 A I was under transfer to -- to our headquarters
9 as an inspector, as one of the six inspectors who worked
10 directly for the director of the FBI.

11 Q What particular area were you -- so let me make
12 sure I understand this. You were assistant special agent
13 in charge in Mobile and you had received a transfer or
14 promotion, if you will --

15 A Promotion, yes, sir.

16 Q -- promotion back to Washington for a
17 particular -- as inspector for a particular area?

18 A No. As one of the six inspectors that are
19 assigned to our headquarters, those inspectors are in
20 charge of conducting the field audits of all the 56 field
21 divisions of the FBI.

22 Q Okay. And then while you were in the process
23 of making that move, you learned that you were gonna be
24 in charge of investigating the Oklahoma City bombing?

25 A Yes, sir. I had just put money down on a house

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1 and was notified by Larry Potts who at that time was the
2 deputy director of the FBI that I would be sent to run
3 the Oklahoma City bombing investigation.

4 Q Okay. And how long were you involved in
5 running the Oklahoma City bombing investigation?

6 A Approximately three, four months from April
7 30th, May 1st of 1995 until I was assigned as the special
8 agent in charge of the FBI Dallas division which was
9 January the 12th, 1998. During that time, the Oklahoma
10 City bombing investigation and trial changed venue and
11 moved from Oklahoma City to Denver, so I was involved
12 with that entire transition and the trial, both McVeigh
13 and Nichols.

14 Q Okay. Did you spend a lot of time in Denver, I
15 guess, during that period?

16 A My memory serves me correctly, we got to Denver
17 the spring of 1996, I believe. The rest of the time was
18 in Denver.

19 Q So from the spring of '96 until January 12th,
20 '98, you were involved in the McVeigh and Nichols' trials
21 in Denver?

22 A I was the inspector in charge of that, yes,
23 sir.

24 Q Okay. Then you moved to the Dallas field
25 office in January of 1998 as the special agent in charge?

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1 A That's correct.

2 Q And you've already sort of told us what the
3 duties are of a special agent in charge. Was there
4 anything special about the Dallas office or did you just
5 run that according to what you previously told us as far
6 as what the special agent in charge does?

7 A I think every field division is special within
8 itself. Dallas was the tenth largest field office of the
9 56 FBI offices. Dallas, like any other field office, had
10 unique investigative priorities and unique crime
11 problems.

12 Q In general terms, can you tell us what the
13 somewhat unique aspects were of the Dallas field office
14 as far as investigation and the things that y'all were
15 handling?

16 A One of the first things I did was actually
17 split the joint terrorism task force into two different
18 squads, one to focus directly on international terrorism,
19 the other to focus on the domestic side of
20 counterterrorism.

21 Q Basically what did the squad that split into
22 international terrorism do?

23 A Conduct investigations of international
24 terrorism.

25 Q And would that be involved in terms of

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1 gathering information or investigating those things that
2 take place outside the borders of the United States?

3 A Yes. But not the primary focus. The primary
4 focus would be investigating those individuals and/or
5 groups who had presence within this territory that were
6 either identified by the Department of Justice or state
7 department as a criteria type of country that would be
8 investigated or those individuals who participated in or
9 were suspected of terrorist activity.

10 Q All right. And then you said there was the
11 other -- the second part of the split I think that dealt
12 with counterterrorism.

13 A Well, no, I said domestic. I believe I said
14 domestic terrorism.

15 Q Okay. Domestic terrorism. Tell me how that
16 differs from the international terrorism.

17 A Domestic terrorism would look at individuals
18 and focus upon those groups who are, if you will,
19 home-grown, homebred. The best example that I can give
20 is Ralph MacLaren ran with the Republic of Texas. That
21 was the case that the FBI was involved with that
22 MacLarens ended up being arrested and convicted from the
23 San Antonio division. Those type of groups, whether they
24 be involved with antihate such as violation of civil
25 rights activities or those groups that would want to

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1 overthrow the United States.

2 Q From within?

3 A From within.

4 Q So that would be the focus of the domestic
5 terrorism squad?

6 A As a general focus, yes, sir.

7 Q And I know that it wasn't under the Dallas
8 auspices but like the Oklahoma City bombing typically
9 would have been investigated by the domestic terrorism
10 side of it; is that correct?

11 A Well, in Oklahoma City, they did not have a --
12 a squad --

13 Q Right.

14 A -- big enough for that, but it would include --
15 would have been domestic terrorism related once it became
16 identified as such.

17 Q Right. Whereas international terrorism would
18 be a group that was, I suppose, identified by the FBI,
19 the Department of Justice, like the Hamas or something as
20 a terrorist group, and that was what the international
21 terrorism squad did; is that correct?

22 A That would be a good example yes, sir.

23 Q Okay. So in any event, you got to Dallas and
24 you divided up the terrorism squad into those two areas.
25 Were there any other aspects of your tenure as the

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1 outreach programs that were established to reach out to
2 the entire community including all those minority areas
3 of consequential concern.

4 Q When you say he was involved in outreach, could
5 you explain a little bit about -- explain a little bit to
6 the jury what you mean by that?

7 A The FBI Dallas, no different than any other
8 field division, insures that they service the entire
9 community with regard to investigations, and a lot of
10 SAC's, including myself, because the Dallas division had,
11 I think, neglected for some time reaching out to a lot of
12 the minority communities, I was heavily involved in
13 attending to a number of the different minority focus
14 groups.

15 For example, I was assigned as one of the law
16 enforcement representatives for Senator Royce West here
17 in this area. I was involved with John Wiley Price in
18 being on his at that time radio show that catered
19 primarily toward the -- the black community. I was
20 heavily involved with the Baptist Missionary Church in
21 south Dallas, Oak Cliff area.

22 I was very heavily involved with associating
23 with the India Pakistani community, the Muslim community
24 within itself was with outreach. I was involved in
25 establishing the first and is still continuing Korean

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1 special agent in charge of the Dallas office which were
2 unique or semiunique to Dallas as opposed to other field
3 offices?

4 A Yes. Directly after September 11th, there were
5 a lot of hate crimes that were committed against the
6 Muslim community such as we had -- excuse me, the FBI had
7 two murders within that division and comparatively
8 speaking with the other FBI offices, there was a lot more
9 hate crime type of activity within Dallas at the
10 beginning more so than most of the other field offices.

11 Q Okay. Now, and then you, I guess, retired from
12 the FBI on April 30th, 2002?

13 A Correct.

14 Q And at that time, you were the special agent in
15 charge of the Dallas office?

16 A That is correct.

17 Q So basically you finished out your, looks like,
18 33 years just about with the FBI as the special agent in
19 charge of the Dallas office?

20 A Yes, sir.

21 Q Are you familiar with Gamal Abdel-Hafiz?

22 A Yes, I am.

23 Q How did you become familiar with him?

24 A Gamal was a special agent assigned to the FBI
25 Dallas division and I knew Gamal through focusing on

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1 Crime Commission for -- for Dallas and it was involved --
2 or excuse me, evolved because there was a tremendous gang
3 problem with the Korean community, and we set up a crime
4 commission to assist them in assisting us in targeting
5 that type of gang activity.

6 Q You probably have already done it in your
7 answer, but could you tell the jury why outreach is
8 important with respect to these various communities?

9 A Probably the best example I can give you is the
10 Korean community because the Asian community from where
11 they come from and their culture are very suspicious of
12 law enforcement, and if you can't reach within the
13 community you can't core out crime.

14 Q Okay. So it's important, then, I guess to have
15 contacts within the community so that the community will
16 feel comfortable in coming to the FBI?

17 MR. LATHAM: Objection, leading.

18 Q (By Mr. Kaitcer) I'll go ahead and rephrase.
19 What are the reasons behind the FBI's outreach program?

20 A You want to develop confidence within the
21 community so that they have not only a comfortable sense
22 but also have placed you in a position of trust where
23 they realize that if they have a certain issue or problem
24 that is within the FBI's responsibilities that the FBI
25 will react for them.

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1 Q And what are those problems that can occur that
2 are within the FBI -- FBI's responsibilities?

3 A Any type of crime. Again, with the Korean
4 community, it was primarily directed toward gang and drug
5 activities. In the Muslim community, it was directed
6 primarily toward having faith and trust in the FBI to
7 furnish information with regard to individuals and/or
8 activities that would have allegations to intend to harm
9 the United States.

10 Q Okay. In particular would that apply to
11 investigate terror investigations?

12 A Very much applicable to that.

13 Q And was Special Agent Gamal Abdel-Hafiz
14 involved in that outreach process?

15 A Gamal was heavily involved. Gamal came to me
16 and asked if I would like to meet some of the members of
17 the Muslim community, and because of Gamal it made my job
18 very, very easy, quite frankly. He was able to set up a
19 number of different meetings with individuals who were
20 well thought of within the Muslim community from IMAMS to
21 business leaders, community leaders who I was able to
22 meet and then thereafter meet on a regular basis to
23 discuss their problems and issues and the FBI's focus and
24 priority with regard to not only international terrorism
25 but catching crime and -- excuse me, catching criminals,

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1 putting them in jail.

2 At one time, in fact I don't know if I'm
3 rambling on here, but one of the first meetings was that
4 the Muslim community did not realize that the violation
5 for desecrating a house of worship applied to a mosque
6 and what was a house of worship, so it didn't matter
7 whether it was a temple or -- or a church or a -- or a
8 mosque.

9 Q Okay. And in carrying out your job and duties
10 as the special agent in charge of the Dallas field
11 office, were the actions of Gamal as an FBI agent at a
12 particular -- with respect to this community outreach
13 program helpful to you?

14 A Extremely helpful, yes, sir. Made my job a lot
15 easier.

16 Q Why did it make your job easier?

17 A Because Gamal -- because of his nationality and
18 because of his religion and because of already having
19 been within the Dallas division before me was able to
20 focus and direct me into certain areas to where I
21 wouldn't have to, for example, with the Korean community,
22 probably a best example I can give you is to show you the
23 reverse. Within the Korean community we knew that we had
24 a problem. It wasn't until that I met with the Korean
25 ambassador and he was able to direct me to the community

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1 leaders that I would know who to reach out to. Whereas
2 with Gamal he already knew them, he was already within
3 the FBI so he was able to introduce me.

4 On the adverse side, with the Korean community
5 I was able to get a Korean national FBI agent from new
6 agents' class to come to Dallas to help me do the same
7 thing.

8 Q And what was your opinion of the work that
9 Special Agent Abdel-Hafiz was doing for you?

10 A Investigatively or with regard to community
11 outreach?

12 Q Well, both. I'll -- we'll break it down. How
13 did he do investigatively?

14 A Investigatively, I think that I never found or
15 saw or heard from any of Gamal's supervisors anything
16 other than he did completely superior work.

17 Q All right. And how about from an outreach
18 perspective?

19 A Personally I thought he did an exceptional job
20 for me.

21 Q Now, were you familiar with a request that was
22 made for consensual monitoring at one point in time by
23 the Chicago field office?

24 A I'm generally familiar, yes. My memory -- I
25 remember certain things, yes, sir.

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1 Q Okay. And I'll represent to you that the facts
2 that bring us to the subject of this lawsuit I think took
3 place -- or some of those facts took place back in 1999.
4 Does that comport with your recollection of it?

5 A If you say that's true, I would agree if that
6 is the date where this incident started.

7 Q Okay. Well let me, if I could, then -- I'm
8 going to show you what has been already marked in
9 previous depositions as Exhibit Number 41, and if you
10 need to, take a few minutes to study that if you want to
11 see if that helps refresh your memory.

12 MR. LATHAM: What Exhibit number is that?

13 MR. KAITCER: 41.

14 Q (By Mr. Kaitcer) Have you had a chance to look
15 over that?

16 A Yes, sir.

17 Q Have you ever seen that document before?

18 A That's my initials and my mark, so I obviously
19 have.

20 Q Okay. Now, as I understand it, this is a -- is
21 this what's called an EC or electronic communication?

22 A Yes, sir.

23 Q And this was authored by Gamal Abdel-Hafiz; is
24 that right? At least as to the typewritten part?

25 A I can't answer that. I don't see where there's

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1 a secretary's initials or anything else.

2 Q Okay. It says drafted --

3 A Drafted by. I'm sorry. Yes, sir, I do.

4 Q That's sort of right under your initials; is
5 that right?

6 A Yes, sir.

7 Q What is the purpose behind a communication like
8 this, if you could tell the jury?

9 A It's normally to document either investigative
10 results or results of, in this case, a variety of
11 different conversations, by the looks of it, and an
12 agreement on what was either going to be or not going to
13 take place with regard to a request for consensual
14 monitoring.

15 Q And I note that it's got a mark approved by
16 with your name and I guess your initials next to it; is
17 that right?

18 A Yes, sir, that's correct.

19 Q It also has two other names under the part that
20 says approved by?

21 A Yes, sir.

22 Q Who are those folks?

23 A Fernando Candelario was one of my assistant
24 special agents in charge and Ronald Patton was the
25 supervisor of the international terrorism side of the

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1 Q Sure.

2 A Because consensual monitoring can come into a
3 variety of different forms. You could have consensual
4 monitoring where you monitor an individual by placing a
5 monitoring device on a telephone. And that would be one
6 form of telephonic consensual monitoring. You could have
7 another form of consensual monitoring which would be to
8 place a -- an instrument either on -- don't want to get
9 into anything technical here -- either on the person or
10 within an area where the conversation would take place.

11 Q Like on T.V. shows, I guess, is it like wearing
12 a wire where a person puts it on their body?

13 A It could be on the body or --

14 Q And in the room --

15 A -- something else.

16 Q -- where the room was, say, bugged or something
17 like that?

18 A It would be available for consensual
19 monitoring.

20 Q Okay.

21 A And then there are two other types. One would
22 be that title three type of monitoring where you would
23 have it monitored where it's not consensual that you
24 would have either on the phone or within a -- an area or
25 within a specific space that there would be instruments

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1 Joint terrorism task force at that time.

2 Q Okay. Why is it that you would have three
3 individuals signing off on this to approve this
4 communication?

5 A Probably because in this case if it has to do
6 with any consensual monitoring, either the approval or
7 the disapproval of that, that has to be done through the
8 special agent in charge and through their approval or
9 disapproval. So that would be one of the reasons why I
10 would have signed this communication.

11 Q Why would Fernando Candelario and Ronald Patton
12 sign it as well?

13 A The FBI is very paramilitary and you follow
14 that culture (sic), if you will, and each individual up
15 the line would show or reflect that they agreed and
16 approved to the content.

17 Q All right. And when you sign off as approved
18 by, are you signing off on every word or are you just
19 signing off on the general tenure of the communication?

20 A If I sign my initials to it, I read it, I
21 agreed with its content.

22 Q All right. Now you mentioned that any time
23 that consensual monitoring is requested it has to be
24 approved by the special agent in charge; is that right?

25 A Yeah. If I may clarify.

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1 or equipment that would record the conversation and/or
2 the videographing of that, and there is lastly the --
3 which has gained quite a bit of notoriety here lately,
4 the FISA, the foreign intelligence surveillance act type
5 of monitoring which are approved by a special Court that
6 are normally used in foreign counterintelligence type of
7 investigations.

8 Q Okay. So in this instance, where consensual
9 monitoring was requested, do you have an understanding as
10 to what sort of consensual monitoring was requested?

11 A It was requested it be placed on Gamal's
12 person.

13 Q Okay. And who has the responsibility for
14 authorizing that sort of consensual monitoring?

15 A The special agent in charge of the division
16 where the monitoring is going to place -- take place and
17 in this case the special agent in charge of the agent
18 assigned to that field office where the monitoring --

19 Q And in this case who would that be?

20 A In this case for Gamal it would have been me.

21 Q So it was your, I guess, decision to authorize
22 or not authorize the consensual monitoring?

23 MR. LATHAM: Object, leading.

24 Q (By Mr. Kaltzer) I'll rephrase. From an
25 individual basis, whose responsibility was it to approve

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1 or disapprove consensual monitoring in this case?

2 A That of the special agent in charge.

3 Q And that was?

4 A At that time it was me.

5 Q If you would turn to -- well you may not need
6 to turn to anything. I guess look at the second page of
7 Exhibit Number 41, if you would, in paragraph 4. If
8 you'd read over that paragraph for just a moment, if you
9 would.

10 A (Witness complies)

11 Q There is the statement made that says it was
12 also explained there existed a huge potential for SA
13 Abdel-Hafiz to lose his ability to gather intelligence
14 from the Arab community if it were known in the community
15 that he had recorded a conversation between himself and
16 another Muslim seeking advice. Do you see where it says
17 that?

18 A Yes, sir.

19 Q Are you familiar with that statement?

20 A I am fairly familiar with the -- not the
21 statement within itself, but part of the reason that was
22 discussed was that because of Gamal's relationship within
23 the community, his actual assistance in community
24 outreach which Gamal at that time was even being utilized
25 by the director, Louis Freeh himself, to forge

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1 relationships nationally with regard to the -- the Arab
2 and Muslim communities and that in this situation, if I
3 recall correctly, part of the reason for the consensual
4 monitoring was to either identify or develop statements
5 of criminality, and so that would bring that into the
6 forefront to where was it of value and what would be
7 gained or expected from those results.

8 In other words, it would be a balance on -- for
9 doing this with the information that you would be able to
10 obtain or the possibility of obtain be worth the weight
11 of trying to find other avenues to gain that same
12 information.

13 Q Did you conduct this balancing test?

14 A I had conversations with Bill Eubanks who was
15 the assistant special agent in charge of the Chicago
16 division and I think later on at some time or another at
17 least a passing conversation with the special agent in
18 charge of Chicago, Kathleen McChesney, with regard to
19 whether the consensual monitoring should or shouldn't
20 take place. And I don't recall what Kathleen and my
21 conversation really came about, but I know that Bill
22 Eubanks and I in conversations was that my decision was
23 correct and that there were other avenues that Chicago
24 could take before trying to conduct a consensual
25 monitoring utilizing Gamal and that it may outweigh the

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1 benefits of doing that.

2 Q I guess in other words, you decided that the
3 other work that Gamal was involved in outweighed in
4 importance the task that Chicago asked him to perform?

5 MR. LATHAM: Objection, form, leading.

6 THE WITNESS: I don't think that that was
7 the only reason, by any means. I think that in some of
8 the conversations, if I recall correctly, that Chicago
9 may not have looked at their other investigative avenues
10 that they could have utilized to have gained the
11 information in another form or fashion.

12 Q (By Mr. Kalacer) Okay. Just so we have a
13 clear record, let me ask you -- and it may involve the
14 same answer that you just gave, but what were the
15 considerations that went into your decision to disapprove
16 of the request for consensual monitoring?

17 A Was it worth the gain of having Gamal
18 consensually monitored and it coming out through trial or
19 otherwise that Gamal had consensually monitored a friend,
20 number 1. Number 2 is did Chicago take and look at all
21 other avenues investigatively as to whether or not they
22 could get the information through other investigative
23 resources or through other means.

24 To the best of my recollection right now, those
25 were probably at least two of the major things that would

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1 have entered into my decision-making process.

2 Q And so you had a -- how were you first made
3 aware of this request?

4 A If I can recall correctly, Gamal and possibly
5 Ron Patton came in to me and gave me a general rundown of
6 what Chicago was looking for or wanting to do.

7 Q All right. And then you proceeded to, I guess,
8 check on your own avenues?

9 A I think I -- I don't recall. I'm sure that I
10 probably asked a number of questions. Again, I recall
11 calling and talking to Bill Eubanks who was the acting
12 special agent in charge at that time. Because if I
13 recall right, Kathleen was out and that's why I talked
14 to -- to Bill.

15 Q Do you know if the folks from the Chicago
16 office were aware when they made their request of the
17 work that Gamal was doing for you in the Dallas office?

18 A I have no idea. I wouldn't be able to speak
19 for them.

20 Q Okay. But in any event, after listening to
21 Gamal and Ron Patton and after talking to Kathleen
22 McChesney and Bill Eubanks you made your decision; is
23 that right?

24 MR. LATHAM: Object to form.

25 THE WITNESS: To the best of my

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1 recollection, that's probably correct.

2 Q (By Mr. Kaitcer) Was the decision that you
3 made after gathering the information that you talked
4 about earlier?

5 A Bill Eubanks and I both agreed that Chicago
6 probably had other investigative avenues that they could
7 proceed with rather than putting Gamal under consensual
8 monitoring and sending him somewhere else to consensual
9 monitor a friend or an associate or someone else that he
10 knew.

11 Q All right. And that was your decision as the
12 special agent in charge and his supervisor?

13 A Yes, that is correct.

14 Q Read the first paragraph of the paragraph
15 that's number 5, if you would. Well actually just read
16 paragraph 5 which consists of three paragraphs, I guess.
17 I'd like to ask you just a few questions about those.

18 A (Witness complies)

19 Q Do you see in paragraph 5 where it says that
20 the fact of the potential loss of SA Abdel-Hafiz's
21 ability to assist the remaining 55 FBI field offices in
22 gathering intelligence regarding their investigations was
23 not addressed? Do you see that reference there?

24 A Yes, sir, I do.

25 Q Are you familiar -- or what is your

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1 A I think that there was quite a bit of wait
2 within that balance that I was discussing with regard to
3 if Gamal was utilized to conduct a consensual monitoring,
4 particularly a consensual monitoring of an individual
5 that he knew, and it became known within the community,
6 that lack of trust wouldn't go just to Gamal, it would go
7 to the FBI itself also because I had personally a number
8 of different meetings within the mosques themselves.

9 I've probably been to all but one of the
10 mosques within the metroplex here, and many times those
11 conversations were between a IMAM himself and just
12 myself, so you can imagine the devastation that could
13 occur would this have come out, that Gamal had consensual
14 monitored. And for what fruitful evidence that could be
15 maintained, there's quite a weight to that balance
16 itself.

17 Q All right. There's a statement made in
18 paragraph 5 that says in reference to SAC Defenbaugh
19 concurred with SA Abdel-Hafiz that the potential loss of
20 his ability to work within the Muslim community and his
21 security concerns were far too great to pursue the covert
22 recording of any conversation that might take place
23 between SA Abdel-Hafiz and blank. You see where it says
24 that?

25 A Yes, sir.

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1 understanding of that particular statement?

2 MR. LATHAM: Object to form.

3 THE WITNESS: Gamal, as I've previously
4 explained before, was, for lack of a better word, not
5 only an embassy for FBI Dallas who, quite frankly, I
6 think that even after September 11th would prove that our
7 relationship with the Muslim community was better than
8 any other field offices, that Gamal was utilized to
9 garnish those other individuals within the Muslim
10 communities to meet with the FBI, again Louis Freeh had
11 utilized Gamal before to -- for him to meet with the
12 national representatives of the -- of the either Arab
13 and/or Muslim communities.

14 Q (By Mr. Kaitcer) All right. There was an
15 earlier objection so I just want to make sure we clean it
16 up.

17 What was -- what potential loss was the Dallas
18 office concerned about with respect to gathering
19 intelligence as referenced in paragraph 5?

20 MR. LATHAM: Object to form.

21 Q (By Mr. Kaitcer) All right. I'll just
22 rephrase it, then. What were the concerns that were
23 raised in paragraph 5, to your knowledge?

24 MR. LATHAM: Object to form.

25 Q (By Mr. Kaitcer) You can answer.

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1 Q What is your recollection of the reasons why
2 you concurred with Special Agent Abdel-Hafiz with regard
3 to this statement?

4 A One additional area was that when Gamal was a
5 support employee, I believe a translator and if I recall
6 correctly in the New York office, that after one of those
7 trials, there were personal threats against Gamal and his
8 family.

9 Q And what -- this also refers to potential loss
10 of his ability to work within the Muslim community. What
11 did you mean by that?

12 A Same as what I've said before. That his
13 effectiveness would not only have been negative impacted
14 but also those of the FBI itself because of certain areas
15 of conversation or certain conversations that I, as the
16 SAC or other SAC's within the FBI, were having with
17 leaders of the either Arab and/or Muslim communities.

18 Q Now I notice in the next-to-the-last sentence,
19 there's a recital that says however SAC Dallas -- and I
20 guess that's you; is that right?

21 A Yes, sir, that's correct.

22 Q Approves of the meeting if it is overtly
23 recorded with the subject's agreement to record it. Why
24 did you approve of the meeting if it was covertly
25 recorded?

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1 A Well --

2 MR. LATHAM: Objection --

3 Q (By Mr. Kaitcer) I'm sorry. If it was overtly

4 recorded.

5 A Well, because if Chicago found -- and again,

6 this is back probably to the telephone call with Bill

7 Eubanks and I. If they found later on that they couldn't

8 get the information that they thought they needed for

9 whatever their case was, and I'm not familiar with vulgar

10 betrayal but as far as the investigative evidence

11 probably would not be able to speak about it anyway, but

12 that if they felt that they still needed Gamal to have a

13 conversation, that that could be recorded and documented

14 with the agreement of both parties.

15 Q Did Gamal make any statements to you about

16 whether or not he would be willing to father -- to follow

17 your directions with regard to whatever your decision

18 was?

19 MR. LATHAM: Object to form.

20 Q (By Mr. Kaitcer) I'll rephrase that. Did you

21 have any discussions with Gamal about your decision?

22 A Yes, sir.

23 Q What were the nature of that discussion?

24 A I think that when -- there was an agreement, I

25 don't recall who else was or if there was someone else

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1 present, but I -- if I recall correctly, I think that

2 this was when something was being said by someone in

3 Chicago about, you know, Gamal making a statement that

4 Muslims don't monitor or record other agents, something

5 along -- along that line there, and in Gamal and I's

6 conversation I asked him that if I told him to

7 consensually monitor would he do that and he says he was

8 an FBI agent and that he would do anything that I

9 directed him to as long as it was legal.

10 Q I'm sorry. As long as --

11 A It was legal.

12 Q Okay. Were you familiar with the cases that

13 Gamal was working on in the Dallas office?

14 A Individually?

15 Q Well just in general, were you familiar with

16 what he was doing?

17 A Possibly at that time in general I may have

18 known some of the cases he was or wasn't working on. If

19 I can add to that, the focus of the joint terrorism task

20 force was a team effect, so a lot of different

21 assignments would be made within an investigative focus,

22 so there might be four or five agents working on certain

23 avenues or direction.

24 Q All right. And were the cases that were being

25 worked by the Dallas task force that he was on, were

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1 those important cases?

2 A Every case that the FBI in Dallas worked on

3 were important cases, yes, sir.

4 Q As far as you were concerned, were they just as

5 important as the cases Chicago was working on?

6 A Yes, sir.

7 Q Did you ever speak to -- you said you talked to

8 Bill Eubanks, the Chicago, I guess, assistant special

9 agent in charge?

10 A Yes, sir.

11 Q And you talked to Kathleen McChesney who was

12 your counterpart in Chicago; is that correct?

13 A Yes, sir.

14 Q Do you remember talking to anybody else in

15 Chicago about this request?

16 A Not that I can recall, no, sir.

17 Q Did you ever meet Bob Wright, Special Agent Bob

18 Wright?

19 A No, sir, I have not.

20 Q Have you ever talked to him on the telephone?

21 A No, sir, I have not.

22 Q Were you aware that Special Agent Wright was

23 the individual who was spearheading the request that was

24 made to have Gamal do the consensual monitoring?

25 MR. LATHAM: Object to form.

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1 Q (By Mr. Kaitcer) I'll rephrase that. Are you

2 familiar with any of the activities of Special Agent Bob

3 Wright in connection with Gamal?

4 A Yes, sir.

5 Q What are -- how -- what are the familiar with?

6 A I'm familiar with a time where one of the

7 agents on Ron Patton's squad, I believe his name was

8 Jerry Melton, came to me. I believe he came to me with

9 his supervisor, Ron Patton, bothered and distraught

10 because he had finished a -- just finished a telephone

11 call -- conversation with Special Agent Wright and that

12 Special Agent Wright had made a very disparaging remark

13 against Gamal.

14 Q What was the remark that Special Agent Wright

15 made?

16 A That Special Agent Wright had called Gamal a

17 camel jockey.

18 Q Were you concerned about that?

19 A I was extremely upset, I was very concerned

20 because here is a special agent of the FBI whose

21 responsibility is to protect and defend the civil rights

22 of the public, and here's an agent disparaging and make

23 EEO type statements about a fellow agent.

24 Q What do you mean EEO type statements?

25 A Equal economic opportunity, disparaging remarks

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1 that are against the civil rights of an individual. Q
 2 Okay. What did you do after you heard that?
 3 A I brought Gamal into the office, and I don't
 4 recall who else was there if there was other people
 5 there. I recall directing Gamal that if he didn't file
 6 an EEO complaint against Mr. Wright that I would have to
 7 because of my position in the office and because of the
 8 statements that were made by Jerry Melton that I would
 9 not tolerate those by another FBI agent.
 10 Q Okay. Now, did you become aware that Special
 11 Agent Wright was on television in December of, I believe,
 12 2002?
 13 A I don't believe I saw the -- the show or
 14 article. I remember hearing about it, and I vaguely
 15 recall conversations I had with, I believe to the best of
 16 my recollection, possibly Mike Korton during -- either
 17 before or after or during that time, who -- Mike Korton
 18 is the -- one of the media representatives with the
 19 public affairs office of FBI headquarters.
 20 Q Is he out of the FBI Washington office?
 21 A No. Out of our headquarters, not the
 22 Washington field office.
 23 Q Out of headquarters?
 24 A Yes, sir.
 25 Q And that's in Washington, D.C., I guess?

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1 A Yes, sir.
 2 Q And did -- do you remember if you called Mr.
 3 Korton or Mr. Korton called you?
 4 A I would have never called Mr. Korton. Mr.
 5 Korton would have called me.
 6 Q What did Mr. Korton say to you? I guess I
 7 should call him Special Agent Korton, I suppose.
 8 A I don't recall the extent of any conversation.
 9 Q Okay.
 10 A I've had a number of different conversations
 11 with -- with Mike about a variety of different topics.
 12 Q And this, I guess, was several years ago that
 13 this took place?
 14 A Yes, sir.
 15 Q Do you recall that a program aired on ABC where
 16 Special Agent Wright and I guess at that time -- by that
 17 time former Special Agent John Vincent appeared on the
 18 program?
 19 A I did not see that.
 20 Q Okay. Did anyone from ABC attempt to contact
 21 you prior to the airing of that telecast?
 22 A From the one document that you sent to me,
 23 that's obviously the case. I do not recall who it was or
 24 if there was a conversation there, but there obviously
 25 was from the document that you gave me.

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1 Q Okay. Do you recall anyone from Fox talking to
 2 you?
 3 A I've talked to probably every major television
 4 station here in the United States on a variety of topics.
 5 Q All right.
 6 A And with regard to that specifically, quite
 7 honestly I really don't recall.
 8 Q Okay. Let me rephrase that. With regard to
 9 the allegations that Special Agent Wright made on
 10 television, do you recall anyone from the Fox news
 11 network calling you about these allegations prior to the
 12 time they were aired?
 13 MR. LATHAM: Object, form.
 14 THE WITNESS: I don't recall.
 15 Q (By Mr. Kaitcer) And once again, with respect
 16 to ABC, do you recall anyone from ABC news or the ABC
 17 network or PrimeTime ever calling you prior to the airing
 18 of this broadcast?
 19 MR. LATHAM: Object to form.
 20 THE WITNESS: Obviously from the copy of
 21 the e-mail you sent to me, someone from the media had
 22 obviously called me. I recall having -- Mike Korton and
 23 I talked about a number of different things. There's
 24 certain things that he authorized me to say and not to
 25 say, and it's obvious from a -- an apparent press release

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1 that you had showed me, I'm looking to opposing counsel,
 2 and from an e-mail that you had showed me that I had
 3 obviously had some type of conversation with someone
 4 within the media.
 5 Q (By Mr. Kaitcer) Okay. Have you met -- have
 6 you met Mr. Latham before?
 7 A Yes, we have.
 8 Q Okay. And he's the attorney for Fox and ABC
 9 who's sitting here today?
 10 A That's what I understand, yes, sir.
 11 Q Handsome man, isn't he? You don't have to
 12 answer. The jury will get to see him in due time, I'm
 13 sure in any event.
 14 A He can take my place.
 15 Q He could be your stand-in. In any event, as
 16 best you can recall, it's been -- I understand it's been
 17 three or four years, you and Mr. -- Special Agent Mike
 18 Korton and you had a discussion about this broadcast that
 19 was going to air; is that correct?
 20 A Either was going to air, was airing or had
 21 aired. I couldn't tell you when because I don't recall
 22 exactly when, but I know that from the statement that I
 23 obviously made that the decision was mine, somebody at
 24 FBI headquarters would have approved it and for me that
 25 would have been Mike Korton because we knew each other

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1 before that time and after I retired and during the time
2 that I was SAC in Dallas.

3 Q So typically was it your practice to talk to a
4 information officer in the -- in headquarters before you
5 made a statement to the press?

6 A When I was SAC, no. I utilized my press
7 information officer and my legal counsel both, very able
8 individuals, as my consultants on when to have a press
9 release, when not to and if it were with regard to a case
10 that there was going to be adjudication on, that'd be
11 criminal adjudication, that would be in conjunction with
12 the United States attorney's office and their not
13 approval but consent or agreement.

14 Q Who was the legal counsel locally that you went
15 to at that time?

16 A My chief division counsel who's still chief
17 division counsel here, William Jay Gregory.

18 Q Is he the gentleman sitting here today?

19 A Yes. And he is a good-looking man.

20 Q Pardon me?

21 A Yes, sir. And he is a good-looking man.

22 Q I know. I'm surrounded by handsome men here.

23 MR. LATHAM: You guys both are starting to
24 scare me.

25 Q (By Mr. Kaitcer) In any event, you have a

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1 recollection, I guess, in this case of having talked to
2 Special Agent Kortzon?

3 A Yes, sir.

4 Q And that he would have told you what you were
5 authorized to say or given you guidance on what you were
6 authorized to say and not authorized to say?

7 MR. LATHAM: Objection, form.

8 Q (By Mr. Kaitcer) I'll rephrase it, then. What
9 did you and he discuss?

10 MR. LATHAM: Object to form.

11 THE WITNESS: Our discussion, as it
12 normally did, and I can't tell you exactly what we did or
13 did not say or discuss but was normally as to content and
14 form of what could or could not be said with regard to
15 any type of case. Most of the situations that I would
16 have a conversation with Mike over were criminal cases
17 because that's what the FBI does.

18 In this situation, I'm sure that because of the
19 sensitivities and, for lack of a better word, the bureau
20 possibly not having a dog in the fight, but yet they did
21 because I believe that Special Agent Wright was still a
22 special agent of the FBI at that time, that the bureau
23 wanted to make sure that what was said was said
24 truthfully and responsibly.

25 Q (By Mr. Kaitcer) Okay. Did you yourself issue

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1 a written statement to the press?

2 A No, sir. I don't believe I've done anything
3 like that.

4 Q The only thing you can remember is maybe a
5 conversation with someone from ABC; is that right?

6 A I didn't say that, but possibly somebody from
7 the media.

8 Q Somebody from the media, okay. Have you ever
9 told anybody the decision not to perform the consensual
10 monitoring in this case was Gamal's?

11 A I'm sorry. Would you ask that again?

12 Q Did you ever tell anybody that the decision not
13 to perform the consensual monitoring here was Gamal's
14 decision?

15 A It would have never been Gamal's decision. I
16 would have never said that to anyone.

17 Q Whose decision would it have been?

18 A It would have been the special agent in charge
19 of that division that owned that agent who was myself at
20 that time.

21 Q Okay.

22 A May I add something there?

23 Q Yes.

24 A I said owned that agent. I didn't mean that as
25 any type of possession. I meant where the agent was

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1 under the supervision of that division.

2 Q Let me show you what I have marked here as
3 Exhibit Number 90. Have you ever seen that document
4 before?

5 A Yes, sir, I have.

6 Q What is that document?

7 A This is a recommendation that is required for
8 every head of the field division when a special agent
9 applies for any supervisory or promotional position in
10 the FBI.

11 Q And is it signed?

12 A Yes, sir, it is.

13 Q Who signed it?

14 A I did on June 15th, 2000.

15 Q During the time that Special Agent Gamal
16 Abdel-Hafiz worked under your supervision, did you have
17 any problems with him?

18 A No, sir.

19 Q Did you ever have any occasion to question his
20 loyalty to the United States of America?

21 A Never.

22 Q Did you ever have any occasion to question his
23 loyalty to the oath he took as an FBI agent?

24 A Never.

25 Q Was Special Agent Abdel-Hafiz authorized to

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1 talk to the media while he was working in your charge?

2 A No. No special agents -- it was -- it was a
3 pretty strict rule that -- within the division that
4 myself, my ASAC's or primarily the press information
5 officer or our media coordinator would -- would handle
6 all those. There were certain times where we would have
7 agents, for example when we had our evidence response
8 team who went to Tanzania with the Tanzania Kenya
9 bombings, the press requested to speak to some of those
10 agents on what their responsibilities for crime scene
11 were going to -- to be, and we authorized those type.

12 But as a general rule, particularly with regard
13 to investigations, special agents of the FBI knew that
14 leaks were a very grave offense, and talking to the media
15 was something that was not their responsibility in any
16 way, shape or form.

17 Q Was there a difference between the criminal
18 investigation functions of the FBI and the intelligence
19 gathering aspects of the FBI?

20 A Yes, there is.

21 Q Okay. What -- tell the jury briefly what those
22 differences are as far as you're concerned.

23 A Intelligence investigations focus primarily on
24 that avenue, to gain and gather intelligence about an
25 individual or specifically or even more so a group that

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1 is either on the threat list, as I explained before, with
2 the state department or there's some type of focus toward
3 that group. Criminal aspects of any case, which
4 primarily, quite frankly, is -- is why I changed gears
5 when I got to Dallas was to catch people in criminal
6 activity and bring them before the court system.

7 Q Was that what you -- you felt like your primary
8 focus should be?

9 A I have always been, because of my experience,
10 more centered at thwarting terrorism by attacking them
11 and using our jurisprudent system. There is a place and
12 a great gain for certain type of intelligence activities
13 in cases. That again is a balance that has to be
14 decided, and those type of decisions are rarely decided
15 by the special agents in charge, they are decided on a
16 much higher level at FBI headquarters where they have
17 certain mandates, and you -- you as the SAC carry those
18 mandates out to that field division.

19 Q And that goes in line, I guess, with the
20 paramilitary type aspect of the FBI you talked about
21 earlier?

22 A Yes, sir.

23 Q You're the boss, I guess, of the Dallas office,
24 but you also have to take orders from headquarters in
25 Washington?

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1 A Well when you start looking at intelligence
2 cases, Dallas or Chicago wouldn't get the big picture.
3 You're looking at a much further and broader range of --
4 of issues that have national and international and
5 sometimes global perspectives.

6 Q Ron Patton was the supervisor of your
7 international terror -- terrorism squad; is that correct?

8 A At one time, yes, sir, he was.

9 Q Now was it his focus -- was he focused on the
10 intelligence gathering aspect or on the criminal
11 investigation aspect?

12 A Both.

13 Q Mr. Defenbaugh, I appreciate your being here
14 today. I have no further questions at this time,
15 although I may have a few others after Mr. Latham asks
16 you some questions. But thank you very much.

17 A Yes, sir.

18 (Break in proceedings, 2:34 o'clock p.m.)

19 (Proceedings resumed, 2:43 o'clock p.m.)

20 CROSS EXAMINATION

21 BY MR. LATHAM:

22 Q Mr. Defenbaugh, my name is Bob Latham. I
23 represent the media defendants in this case or these
24 cases. You understand that it was Mr. Abdel-Hafiz's
25 attorney who subpoenaed you to be here today, correct?

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1 A Yes, I believe so.

2 Q And you understand that now I have to ask you
3 some questions, have to or get to ask you some questions?

4 A Yes, sir, I'm aware of that.

5 Q You became an SAC, a special agent in charge,
6 for the first time in 1998; is that correct?

7 A Yes, sir.

8 Q So at the time of these -- of the telephone
9 call that is at issue in this case in April of 1999, you
10 had been a special agent in charge for about one year; is
11 that correct?

12 A Special agent in charge of the Dallas division,
13 yes, sir, that's correct.

14 Q You hadn't been special agent in charge of
15 another division prior to that, had you?

16 A No, but I was the inspector in charge of the
17 Oklahoma City bombing case that at its peak had probably
18 approximately 250 agents, so it'd be the size of a small
19 to medium FBI field office.

20 MR. LATHAM: Object to the response of the
21 answer after no.

22 Q (By Mr. Latham) We looked at -- if you'd look
23 at Exhibit 41 that I think should still be before you, I
24 want to go over the hierarchy a little bit. Ronald
25 Patton is the supervisor of or was the supervisor of the

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1 division that Special Agent Abdel-Hafiz was in at the
 2 time; is that correct?
 3 A The squad, yes, sir.
 4 Q And then Fernando Candelario was an assistant
 5 special agent in charge?
 6 A Yes, sir.
 7 Q And you were the special agent in charge?
 8 A Yes, sir.
 9 Q So in the Dallas office, is that the way the
 10 hierarchy worked? It would be Special Agent Abdel-Hafiz
 11 to Ron Patton to Fernando Candelario to you?
 12 A Yes, sir.
 13 Q All right. And then if we look up at the top
 14 of the page, we'll see some other names. Steve Aleo,
 15 Mike Resnick, Chris Hamilton. Do you know who those are,
 16 who those people are?
 17 A Chris Hamilton I've had conversations with.
 18 Mike Resnick I've had conversations with. Steve Aleo I
 19 do not know.
 20 Q Do you know what the designation IOS means?
 21 A Either investigative or intelligence
 22 operational specialist. And I'm guessing here.
 23 Q What does -- does somebody in that position
 24 have any supervisory responsibility over you as a special
 25 agent in charge?

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1 A Not to my knowledge.
 2 Q What does the SSA before Mike Resnick's name
 3 mean?
 4 A Supervisory special agent.
 5 Q Does Mike -- did Mike Resnick at the time have
 6 supervisory responsibility over a special agent in charge
 7 such as you?
 8 A No, sir.
 9 Q He did not?
 10 A No.
 11 Q Who did he supervise? If he's a supervisory
 12 special agent, who did he supervise?
 13 A He supervised at headquarters level programs.
 14 For example, if you have a program saying, for example,
 15 Hisbilla or Hamas which are known international terrorist
 16 organizations, you would have a supervisor at
 17 headquarters that would be programatically looking at the
 18 investigative results and responses of the 56 field
 19 divisions. They would have liason with other
 20 headquarters level individuals up to and including other
 21 departments such as state department. They would have
 22 liason with other governmental entities.
 23 Q I want to ask you about the phrase consensually
 24 monitored. Can you tell me what that phrase means in FBI
 25 parlance?

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1 A Consensual monitoring for FBI terms would be
 2 that one individual, usually either a -- an FBI agent
 3 and/or a source such as an informant or an asset, would
 4 be authorized to consensually, their concept, monitor
 5 conversations.
 6 Q And it's just one party to the conversation
 7 that is giving the consent, correct?
 8 A Yes, sir, that's correct.
 9 Q So when you say consensually monitoring, it's
 10 the FBI agent giving the consent and the subject of the
 11 monitoring doesn't know they're being monitored, correct?
 12 A Yes, sir, that's correct.
 13 Q All right. And you said that one of the
 14 reasons why you, to use the phrase in Exhibit 41,
 15 concurred with Special Agent Abdel-Hafiz on this issue is
 16 because it would be devastating if it came out that he
 17 was consensually monitoring suspects; is that correct?
 18 A In this specific situation and incident because
 19 of all the information that I had at the time, yes, sir.
 20 Q Do you -- have you authorized other people, I'm
 21 not looking for any names, but just in general authorized
 22 consensual monitoring in the past?
 23 A Yes, sir. With special agents -- it was the
 24 special agent in charge responsibility to give that
 25 authorization.

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1 Q Is it done regularly?
 2 A Yes, sir.
 3 Q And there's always sometime when a tape of a
 4 consensually monitored conversation might be played in
 5 court and then the suspect knows that he's been
 6 consensually monitored, correct?
 7 A That's normally the reason and purpose for
 8 consensual monitoring is to obtain evidence of
 9 criminality.
 10 Q Right. And so in consensual monitoring
 11 situations, there's ultimately a breach of some trust all
 12 the time, is there not?
 13 MR. KAITCER: Objection to the form of the
 14 question.
 15 THE WITNESS: You'll have to ask that
 16 again. I'm sorry.
 17 Q (By Mr. Latham) Yeah. In any consensually --
 18 consensual monitoring situation, there's always a breach
 19 of some trust, isn't there?
 20 MR. KAITCER: Object to the form of the
 21 question.
 22 THE WITNESS: Not necessarily.
 23 Q (By Mr. Latham) Isn't it a risk that in any
 24 consensually monitoring situation, once -- once it's been
 25 revealed in a courtroom or wherever that a suspect has

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1 been consensually monitored, that that avenue of -- of
2 data gathering will not be open again?

3 A Yes, sir. That's probably a fair statement.

4 Q All right. Why was -- why was this case
5 anything special, then?

6 MR. KAITCER: Object to the form of the
7 question.

8 Q (By Mr. Latham) Why was this instance
9 anything -- anything out of the norm for Gamal
10 Abdel-Hafiz to -- to record somebody else?

11 A Because of the position that Gamal was being
12 utilized in for the FBI and for FBI Dallas, that if this
13 were to become known, his effectiveness as an agent in
14 that arena for a liaison within the Arab and Muslim
15 communities would have totally been a loss of
16 effectiveness.

17 Q So there was a cultural component of it that it
18 was -- you needed that -- that this would -- that this
19 would be viewed in a certain way in the Arab and Muslim
20 communities?

21 MR. KAITCER: I object to the form of the
22 question.

23 THE WITNESS: In this specific situation,
24 yes, sir, that's correct.

25 Q (By Mr. Latham) For instance, you talked about

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1 community?

2 A Myself personally, no, sir, I have not.

3 Q Have you ever authorized that?

4 A No, sir, I have not.

5 Q Are you aware that that has been done in the
6 FBI?

7 A Yes, sir, I am.

8 Q Why is that any different than a Muslim doing
9 it in a Muslim community?

10 MR. KAITCER: I object to the form of the
11 question.

12 THE WITNESS: I can't discuss cases.

13 Q (By Mr. Latham) Have you ever used somebody
14 who is Catholic to consensually monitor someone who is
15 Catholic?

16 A I have no idea.

17 Q Is there a difference as you perceive it
18 between consensual monitoring someone in the Muslim
19 community versus consensually monitoring someone in
20 another ethnic community, ethnic or religious?

21 A In certain situations, I would say probably no,
22 there's about the same parallels to be derived from other
23 cultures.

24 Q And how about in this situation?

25 A How about in this situation what?

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1 a Korean agent that you got to be a liaison to the Korean
2 community. Did that Korean agent ever consensually
3 monitor anyone in the Korean community?

4 MR. BENSON: I'm going to object to that
5 question. Goes into internal investigation or internal
6 workings of investigations to the extent that the
7 investigations are ongoing or prosecutions resulting from
8 the investigation are ongoing. If this witness knows of
9 any investigations that have been completed and all of
10 the criminal cases derived therefrom have been completed,
11 he can answer to that extent only. Otherwise I'll direct
12 the witness not to answer that question.

13 Q (By Mr. Latham) Can you answer that?

14 A No, sir, I cannot.

15 MR. LATHAM: Just to challenge you on your
16 objection for a moment, I mean, he was able to testify
17 about the parallels between the Korean community and the
18 Muslim community. I think I should be able to ask him
19 about this particular issue.

20 MR. BENSON: You can ask him about

21 parallels in general, but if you want to get into
22 specifics about what a particular agent has done in
23 investigations, I will object to that.

24 Q (By Mr. Latham) Have you ever used a Korean
25 agent to essentially monitor someone in the Korean

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1 Q The situation we're talking about. You said in
2 certain situations.

3 A Well I believe that this speaks for itself,
4 that I wouldn't authorize this one because of that in
5 this situation. I thought you had asked me --

6 Q Right. I'm sorry.

7 A I'm sorry. I thought you had asked me about
8 other situations or other cultures.

9 Q And because of that, you're talking about
10 the -- the Arab Muslim connection or component of this?

11 A From your question the agent agent component.

12 Q My question is, was it the fact that there was
13 an Arab Muslim component to this significant to your view
14 of whether consensual monitoring should -- should be
15 authorized or not?

16 A That wasn't the only foundation for my -- for
17 my reason for making that decision. It was only a part
18 of it.

19 Q But it was a part of it?

20 A Yes, sir.

21 Q Mr. Kaitcer asked you about the any contact you
22 had had with Agent Wright. Were you aware of Agent
23 Wright and Special Agent Abdel-Hafiz working together on
24 a matter in the year prior to this telephone conversation
25 in April 1999?

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1 A Not to my recollection, at this time.
 2 Q If -- and again, in response to Mr. Kaitcer's
 3 question, he asked you if Chicago would know anything
 4 about what Special Agent Abdel-Hafiz was doing. If they
 5 had worked together in the past, they certainly would
 6 have some knowledge of what he was doing, correct?
 7 MR. KAITCER: Object to the form of the
 8 question.

9 THE WITNESS: If you were to tell me that
 10 they had worked together before on other matters, I
 11 wouldn't know what their conversation would have been.

12 Q (By Mr. Latham) Well presumably they would at
 13 least have some indication of what Special Agent
 14 Abdel-Hafiz was doing if they had, correct?

15 MR. KAITCER: Object to the form of the
 16 question.

17 THE WITNESS: I would think so. Most
 18 agents are inquisitive.

19 Q (By Mr. Latham) Now you indicated, and I don't
 20 think you necessarily -- I don't want to put words in
 21 your mouth -- that the subject of the request for
 22 consensual monitoring was a friend of Gamal's, as you
 23 called him. Is that your understanding?

24 A A friend or associate of some type.

25 Q Do you know which of those, whether it was an

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1 associate or a friend?

2 A I don't -- I don't know.

3 Q You testified that you believed that Chicago
 4 had other avenues to pursue to get the same information.
 5 What avenues were those?

6 MR. BENSON: Object to that question.
 7 Gets into the internal workings of an investigation that
 8 I've been advised there are still criminal prosecutions
 9 pending as a result of that investigation. I'll direct
 10 the witness not to answer the question.

11 Q (By Mr. Latham) So you can't tell me what
 12 other avenues of investigation were available?

13 A I've been directed not to answer that question.

14 Q Do you know if this -- if the target of the
 15 consensual monitoring was ever prosecuted, request for
 16 consensual monitoring rather?

17 A I'm sorry. I have no idea.

18 Q Do you know of anyone in the organization that
 19 the target or the request for consensual monitoring
 20 working was prosecuted?

21 A I have no idea. As I explained before, I'm not
 22 even really that familiar with the vulgar betrayal case
 23 or investigation, so I wouldn't be able to answer the
 24 question.

25 Q You -- in response to Mr. Kaitcer's questions,

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1 you talked about that Mr. Abdel-Hafiz did superior work
 2 investigatively and exceptional work in community
 3 relations. Why did you use a different adjective to
 4 describe his work in those separate fields?

5 A Because I was personally familiar with
 6 Abdel-Hafiz's work within the community outreach because
 7 of his assistance to me. Day-to-day investigative
 8 activity would have been left up to his immediate
 9 supervisor to rate, rank and attest to his performance.

10 Q You talked about a disparaging racial remark
 11 that you understand was attributable to Bob Wright; is
 12 that correct?

13 A Yes, sir.

14 Q And I believe your testimony was that Mr.
 15 Wright had called Special Agent Abdel-Hafiz a camel
 16 jockey, correct?

17 A That's what I was told by Jerry Melton, yes,
 18 sir.

19 Q And you're sure that -- those words?

20 A Those are the words I recall Jerry Melton
 21 telling me.

22 Q Do you know what the result of the EEO
 23 investigation was -- let me back up.

24 You testified that you advised Special Agent
 25 Abdel-Hafiz to file an EEO case or you would against

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1 Agent Wright, correct?

2 A Yes, sir, that's correct.

3 Q Do you know if Special Agent Hafiz, Abdel-Hafiz
 4 did file an EEO complaint against --

5 A Yes, sir, I do.

6 Q Do you know what the results of that EEO case
 7 were?

8 A Only after you told me when we had met.

9 Q You understand that there was a finding of no
 10 discrimination?

11 A That's what I understand, yes, sir. That's
 12 what you told me.

13 Q Mr. Kaitcer asked you about the conversation
 14 with the -- with the media, and I just want to make sure
 15 your testimony is clear that you remembered a telephone
 16 conversation with the media sometime in the time frame
 17 around December of 2002 but don't recall any specifics of
 18 it; is that correct?

19 A Yes, sir, that's correct.

20 Q So you couldn't tell what you said in that
 21 conversation or what the member of the media said in that
 22 conversation, correct?

23 A Not specifically, no, sir.

24 Q Could you say generally?

25 A Generally one from the document that you showed

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1 me and the e-mail that he showed me was that the
2 responsibility for consensual monitoring within the
3 Dallas division at that time was my decision.
4 Q Do you recall what words you specifically used?
5 A No, sir, I do not.
6 Q And you don't know who you talked to or what
7 organization they were with, correct?
8 A In all sincerity I do not recall.
9 Q Let me show you what's been hand -- what's been
10 marked as -- previously in this case as Exhibit 11A, and
11 I'll tell you what, I think -- this might be marked as a
12 separate Exhibit but I believe maybe the last page of it
13 is Exhibit 12.

14 For the moment, the -- I want to direction your
15 attention to page 5. And by the way, Mr. Defenbaugh, if
16 you need to -- I don't mean to shortcircuit your review
17 of that. If you want to take a moment, go through it,
18 you're -- you're welcome to, but I want to ask you
19 specifically about the first paragraph on page 5.

20 I don't think we ever put a date on the
21 telephone conference that is at issue in this case, April
22 15th, 1999. And my question to you, were you aware that
23 there was a telephone call on that date that had Special
24 Agent Wright and Special Agent John Vincent in the
25 Chicago office, Mark Flessner, Steve Chanenson and Joe

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1 Ferguson from the U.S. Attorney's Office for the Northern
2 District of Illinois as well as Special Agent
3 Abdel-Hafiz, were you aware that there was a telephone
4 call?

5 A I'm sorry. Can I review the document first?

6 Q Sure. Absolutely. Have you had a chance to
7 look at the document?

8 A Yes, sir.

9 Q Okay. Have you ever seen the document before?

10 A To the best of my recollection, this is the
11 first time I've seen this document.

12 Q If you look at Exhibit 41, that's the other
13 document before you -- I'm sorry, it's the one that was
14 already in evidence. Exhibit 41 is the one that was
15 written by Mr. Abdel-Hafiz and approved by you among
16 others, correct?

17 A Yes, sir.

18 Q All right. In the -- there's a reference
19 underneath there, it says reference and gives a -- some
20 numbers, serial 747, and then it goes down and talks
21 about referenced communication does not completely
22 reflect the conversations which took place via telephone
23 and goes on from that.

24 Before approving Exhibit 41, Mr. Abdel-Hafiz's
25 version of the telephone call, did you go back and look

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1 to -- to see what the previous referenced communications
2 being talked about was?

3 A No, sir. That's why I have supervisors.

4 Q But before placing your initials on this, you
5 didn't go back and look to see what -- what it was that
6 Mr. Abdel-Hafiz was essentially countering in this -- in
7 this EC, do you -- did you?

8 A No, sir.

9 Q And that would not be part of your standard
10 procedure?

11 A No, sir.

12 Q When's the first you heard about a telephone
13 call between Special Agents Wright and Vincent of the
14 Chicago office, three members of the U.S. attorney's
15 office and Mr. Abdel-Hafiz?

16 A I do not recall.

17 Q Do you recall how you heard of it?

18 A I don't recall hearing it.

19 Q So as you sit here today, you're not aware that
20 there was a telephone call?

21 A There obviously was from the communication
22 you've just given me. I don't recall hearing about it at
23 all.

24 Q All right. Well, in the -- in Exhibit 41, the
25 document that you were copied on and, in fact, approved,

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1 Isn't that telephone call referenced at the bottom of the
2 first page?

3 A Could you show -- or tell me where I should be
4 looking?

5 Q The very last -- the second-to-the-last
6 sentence on the bottom of the first page it says, The
7 subsequent conversation which took place on April 15th,
8 1999, between Special Agent Abdel-Hafiz, SSA Ronald
9 Patton, SA Robert Wright, SA John Vincent, assistant U.S.
10 attorneys Mark Flessner, Steve Chanenson and Joe
11 Ferguson.

12 A Yes, sir.

13 Q Is that the first you had heard that there was
14 such a telephone conversation?

15 A Probably.

16 Q You were not on that telephone conversation,
17 correct?

18 A No, sir. I've never talked to an EEOC in
19 Chicago about this.

20 Q So you don't know what was said or what wasn't
21 said in that conversation, do you?

22 A I have no idea, no, sir.

23 Q And if somebody called you from the media or
24 otherwise to ask you what was said in the conversation,
25 you wouldn't have anything to offer, would you?

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1 A No, sir, I would not.

2 Q And if somebody on that telephone call
3 expressed opposition or reluctance to consensually
4 monitoring a suspect in a terrorism investigation, that
5 opposition or reluctance or resistance could not have
6 come from you, could it?

7 MR. KAITCER: Objection, form.

8 THE WITNESS: I'm sorry. I don't
9 understand your question.

10 Q (By Mr. Latham) Yeah. If somebody on that
11 telephone call of April 15th, 1999, expressed resistance,
12 reluctance, opposition to consensually monitoring a
13 suspect in a terrorism investigation, that opposition or
14 resistance could not have come from you, could it?

15 MR. KAITCER: Objection, form.

16 THE WITNESS: No, sir. I wasn't on the
17 conversation.

18 Q (By Mr. Latham) Right. And have you ever made
19 any attempt to discern who said what in that
20 conversation?

21 A No, sir.

22 Q You were aware before the broadcast that Mr.
23 Kaitcer referenced in December of 2002 that Agents Wright
24 and Vincent were publicly discussing what went on in that
25 telephone conversation and being critical of Special

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1 Vincent were being publicly critical of Mr. Abdel-Hafiz,
2 do you?

3 MR. KAITCER: Objection, form.

4 THE WITNESS: That's my understanding,
5 yes, sir. Critical of I think not only Abdel but of the
6 FBI and its procedures and policies.

7 Q (By Mr. Latham) Right. And accusing the FBI
8 of essentially not doing everything they could to
9 investigate terrorism. Is that -- was that essentially
10 their accusation?

11 A It seems to be my recollection that that was
12 part of it, yes, sir.

13 Q Have you ever spoken to -- or let me back up.
14 Do you know of a -- an agent in the Tampa office of the
15 FBI named Barry Carnody?

16 A For some reason the name's familiar. I'm not
17 sure I did the Tampa inspection back in the '80s. For
18 some reason the name's familiar. I don't know from
19 where.

20 Q Are you aware that Barry Carnody was making an
21 allegation against Special Agent Abdel-Hafiz to the
22 effect that he had refused to record a Muslim, to
23 consensually monitor a Muslim suspect in an
24 investigation?

25 MR. KAITCER: Objection, form.

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1 Agent Abdel-Hafiz, correct?

2 MR. KAITCER: Objection, form.

3 THE WITNESS: If my memory serves me
4 correctly, I vaguely remember some of that. I don't know
5 if I recall ever seeing the actual videotaping or the
6 media publications with regard to those objections or
7 remarks by -- and I don't know this Vincent agent either.

8 Q (By Mr. Latham) You don't know Agent Vincent?

9 A No, sir.

10 Q Were you aware of a press conference that Agent
11 Wright and others held in Washington, D.C. in the spring
12 of 2002 being critical of this incident?

13 A Possibly.

14 Q When's the first, as you sit here today -- and
15 I'm not looking for a specific date, but what's the first
16 time you were aware that -- we'll just start with Agent
17 Wright, that Agent Wright was being publicly critical
18 of -- of this incident and Mr. Abdel-Hafiz?

19 A If I had to give a conjecture, it would
20 probably be a conversation with Mike Kortan.

21 Q And do you know what occasioned that
22 conversation?

23 A No, sir, I don't.

24 Q You wouldn't -- you don't have any reason to
25 dispute the fact, do you, that Agent Wright and Agent

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1 THE WITNESS: I'm sorry. I do not recall.

2 Q (By Mr. Latham) Other than the allegations
3 that came out of this incident and the allegations of
4 Agents Wright and Vincent were that, among others, the
5 broader FBI issues that you discussed was that Special
6 Agent Abdel-Hafiz had refused to consensually monitor a
7 Muslim suspect, correct?

8 MR. KAITCER: Objection, form.

9 Q (By Mr. Latham) That's what they were
10 alleging?

11 A I believe that was the gist of most of their
12 allegations, yes, sir.

13 Q Are you aware of any other time when -- when an
14 agent of the federal government made a similar allegation
15 against Special Agent Abdel-Hafiz that came to your
16 attention?

17 A No, sir.

18 Q We have the -- we've got Exhibit 11A and 12 and
19 Exhibit 41. Did you ever write up any memorandum or
20 written report regarding this incident or this request
21 from the Dallas office?

22 A Not that I recall.

23 Q Let me have you look at Exhibit 41 which is the
24 electronic communication authored by agent Abdel-Hafiz.
25 I believe your testimony in response to Mr. Kaitcer's

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1 questions was that you read these before signing them,
 2 correct?
 3 A Yes, sir.
 4 Q In paragraph 5, will you agree with me that
 5 Agent Abdel-Hafiz in writing this admitted that he in the
 6 April 15th, 1999, conversation with the people in Chicago
 7 wanting him to consensually monitor did not address the,
 8 quote, loss of ability to assist in -- not quoting
 9 anymore -- to assist other field offices in gathering
 10 intelligence?
 11 A I counted five. Are you -- the numerical page
 12 2, number 5 --
 13 Q Yes.
 14 A -- paragraph?
 15 Q Yes.
 16 A I'm sorry. What was your question?
 17 Q Yeah. The question is, will you agree with me
 18 that that was not an issue that Special Agent
 19 Abdel-Hafiz, at least from this document, raised in the
 20 April 15th, 1999, telephone conversation with the people
 21 in Chicago who wanted him to consensually monitor this
 22 target?
 23 A I'm sorry. What was not the issue? I hate to
 24 ask a question with a question --
 25 Q We'll just start over.

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1 A I don't understand.
 2 Q Looking at paragraph 5 of Exhibit 41, will you
 3 agree with me that Special Agent Abdel-Hafiz in the April
 4 15th, 1999, telephone call with the people in Chicago who
 5 wanted him to consensually monitor a target did not raise
 6 the issue of his loss of effectiveness in other
 7 intelligence gathering?
 8 A Well it says the fact of the potential loss of
 9 SSA Abdel-Hafiz's ability to assist the remaining 55 FBI
 10 field offices in gathering intelligence regarding their
 11 investigation was not addressed.
 12 Q Do you have any reason to disagree with that?
 13 A I don't have a reason to challenge it.
 14 Q So although that may have been the basis for
 15 your decision on this, as you call it, it was not the
 16 basis for any reluctance or resistance that Special Agent
 17 Abdel-Hafiz expressed in the April 15th, 1999, telephone
 18 call based on this document, correct?
 19 MR. KAITCER: Object to form.
 20 THE WITNESS: I'm having a difficult time
 21 because -- and I apologize. I don't -- I wasn't on the
 22 April 15th telephone conference. So I can't answer the
 23 question, I guess is my point.
 24 Q (By Mr. Latham) Well, you -- I'm asking you
 25 about a document that you read and approved and put your

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1 signatures on.
 2 A Okay.
 3 Q And my question is in looking at paragraph 5,
 4 although the loss of Special Agent Abdel-Hafiz's ability
 5 to gather intelligence may have been a basis for your
 6 decision or your view of this matter, it was not
 7 something, at least looking at paragraph 5, that was
 8 expressed by Special Agent Abdel-Hafiz in the April 15th,
 9 1999, telephone call as a reason to be resistant or
 10 reluctant to the idea of consensual monitoring?
 11 A I apologize. I don't mean to be dense here. I
 12 wasn't on the telephone conversation, that April 15th
 13 telephone conversation, so I can't answer that with the
 14 exception of what's said here is I don't challenge it.
 15 Q All right. Did you ever have any conversations
 16 with Special Agent Abdel-Hafiz and say, hey, why didn't
 17 you tell them in that telephone call that you'd lose your
 18 effectiveness?
 19 MR. KAITCER: Objection, form.
 20 THE WITNESS: I don't recall having any
 21 conversation of that type.
 22 Q (By Mr. Latham) In the next paragraph
 23 underneath that -- and again, this is written by Special
 24 Agent Abdel-Hafiz, he says that you, SAC Defenbaugh,
 25 concurred with Special Agent Abdel-Hafiz. Is that --

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1 doesn't that indicate that a decision was already made
 2 that you concurred in?
 3 MR. KAITCER: Objection, form.
 4 THE WITNESS: Can you ask the question
 5 again? I'm sorry.
 6 Q (By Mr. Latham) Sure. Doesn't the use of the
 7 word concurred indicate that a decision was already made
 8 and you concurred?
 9 A I agree.
 10 Q Okay. On the next page, you state that SAC
 11 Dallas, being you, approve of the meeting if it is
 12 overtly recorded with the subject's agreement to the
 13 recording. Do you know what Chicago's view of that
 14 suggestion was?
 15 A I don't recall. It may have been discussed
 16 between Bill Eubanks and I, but I -- I do not recall.
 17 Q Would you have any reason to dispute the fact
 18 that Chicago didn't want it overtly recorded because they
 19 thought that not only would it not be productive but it
 20 would be counterproductive, allow for self-serving
 21 statements to be made, that sort of thing?
 22 MR. KAITCER: Objection, form.
 23 THE WITNESS: I would think that it would
 24 be counterproductive. I mean, we're on tape and we know
 25 what we're going to say.

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0077

1 Q (By Mr. Latham) Right.

2 A Or want to know what we're going to say.

3 Q So that wasn't really a -- an option that was

4 seriously considered or being put forward?

5 A I don't know if it was considered seriously by

6 Chicago or not.

7 Q But you would have not thought that it would be

8 much of an option, correct?

9 A If I was personally the SAC of Chicago?

10 Q Yes.

11 A I wouldn't have agreed to that.

12 Q All right. You see some handwriting on that

13 last page? Do you know if that handwriting was there

14 when you approved this document or not?

15 A I'm going to say I don't know, but I would tend

16 to doubt that because it shows my initial with it going

17 out. I would think that any other handwriting put on

18 would be put on afterwards. This would be a

19 communication that would be an official document,

20 official communication so therefore it would stand upon

21 itself.

22 Q Did you ever have a -- have you ever seen this

23 handwriting before?

24 A I have no idea.

25 Q Did you ever have occasion to ask Special Agent

PAGE 78

0078

1 Abdel-Hafiz why he put in his writeup on this incident

2 that Chicago advised him not to meet with the suspect

3 when Chicago was saying they still wanted him to meet

4 with the suspect?

5 MR. KAITCER: I object to the form.

6 THE WITNESS: I'm sorry. Where is that

7 located?

8 A (By Mr. Latham) Let me -- let me --

9 MR. BENSON: I'll join the objection too.

10 Q (By Mr. Latham) If you look at the end of

11 paragraph 4 -- by the way, do you know Tim Gossfeld? Is

12 that name familiar?

13 A I have no idea who he is.

14 Q The end of paragraph 4, Special Agent

15 Abdel-Hafiz writes, SSA Gossfeld concurred with both SSA

16 Patton and SA Abdel-Hafiz and advised SA Abdel-Hafiz not

17 to meet with blank at all. And then if you look at the

18 handwriting, it says SSA Gossfeld respected SSA Patton

19 and SA Abdel-Hafiz's opinion and request that SA

20 Abdel-Hafiz not meet with blank but that SSA Gossfeld did

21 not specifically direct or advise Special Agent

22 Abdel-Hafiz to not meet with the suspect.

23 Are you aware of that discrepancy between

24 Chicago and Agent Abdel-Hafiz's recollection?

25 A I'm sorry. I have no idea.

PAGE 79

0079

1 Q All right. I just have one question about

2 Exhibit 90 which is your recommendation letter.

3 A Yes, sir.

4 Q It appears that -- looking at the last sentence

5 that this is a recommendation for a legal attache in

6 Amman which is in Jordan; is that correct?

7 A Yes, sir.

8 Q Do you know what happened to the recommendation

9 that Special Agent Abdel-Hafiz be promoted to that

10 position in the country of Jordan?

11 A I have no idea.

12 (Break in proceedings, 3:24 o'clock p.m.)

13 (Proceedings resumed, 3:26 o'clock p.m.)

14 Q (By Mr. Latham) Mr. Defenbaugh, I think this

15 was essentially covered in Mr. Kaitcer's questions, but

16 again, I want to be clear. You didn't have anything to

17 do with any statement that the FBI put out around the

18 time of the broadcast on ABC, did you?

19 A Is this the statement that you had showed me

20 when we met?

21 Q Yes.

22 A No, I did not because my name was misspelled,

23 so I probably would have been able to catch that.

24 Q You didn't see it, you didn't write it, you

25 didn't have anything to do with it?

PAGE 80

0080

1 A No, sir. I believe I was -- I think I was

2 retired at that time.

3 Q And actually, I -- I mean, I phrased that in a

4 negative way. Did you see -- did you see the document

5 before it went out, the FBI statement?

6 A The first time I saw the document was when you

7 showed it to me.

8 Q That would not have been before it went out,

9 correct?

10 A That is correct, yes, sir.

11 MR. KAITCER: Better be careful. I'm

12 gonna send that one in to Buchmeyer.

13 Q (By Mr. Latham) Did you have anything to do

14 with writing or drafting the document?

15 A The first time I saw the document was when you

16 showed it to me, no, sir.

17 MR. LATHAM: Object to the responsiveness

18 of the answer before no, sir.

19 Q (By Mr. Latham) And did you speak to anybody

20 with the understanding that you were providing

21 information to go into some sort of official FBI

22 statement to go to the press on this issue?

23 A No, sir. I was retired at the time.

24 Q You testified about the loss of -- potential

25 loss of effectiveness of Special Agent Abdel-Hafiz out of

0081

1 the Dallas office if he consensually monitored this
2 suspect. What Muslim sources would have been compromised
3 by Special Agent Abdel-Hafiz cooperating with the Chicago
4 investigation?

5 MR. BENSON: I'll object to the question.
6 I'm not allowing the witness to testify as to any sources
7 and any investigation. The witness is directed not to
8 answer the question.

9 Q (By Mr. Latham) What investigations were
10 underway or anticipated in the April 1999 time frame that
11 would have been compromised by Special Agent Abdel-Hafiz
12 cooperating with Chicago's request?

13 MR. BENSON: I'll object to the question
14 and instruct the witness not to answer the question as it
15 gets into specifics of particular investigations.

16 Q (By Mr. Latham) Is there any terrorist or
17 supporter of terrorism that sits in prison today as a
18 result of Special Agent -- as a result of the case
19 Special Agent Abdel-Hafiz was working on out of the
20 Dallas office in April 1999?

21 A Would you ask that question again?

22 Q Yes. Is there any terrorist or supporter of
23 terrorism that sits in prison today as a result of
24 Special Agent Abdel-Hafiz's work in April 1999 out of the
25 Chicago office?

0082

1 A Out of the Chicago office?

2 Q I'm sorry. Out of the Dallas office.

3 A Out of the Dallas office? Probably.

4 Q Can you name one?

5 A I think I can name three. The Elashi brothers,
6 I believe that Gamal assisted in portions of that case
7 who -- the case was INFOCOM. It was started and opened
8 by myself. The Elashi brothers were arrested while I was
9 still SAC. They've since been convicted, and I
10 believe -- I know for a fact that two were sentenced. I
11 believe the other Elashi brother, and I could be wrong on
12 this, was convicted and then immediately extradited or
13 kicked out of the country.

14 It wouldn't have been -- and again, go back to
15 the team effort for those cases, but I think if my memory
16 serves me correctly that Gamal worked on parts of that
17 case.

18 Q Other than two or potentially three Elashi
19 brothers, can you name somebody else? Anybody else?

20 A I don't know the answer to that. Can't think
21 of any right now.

22 Q What did Special Agent Abdel-Hafiz do with
23 regard to the Elashi brother case?

24 MR. BENSON: I'll object to the question
25 as it gets into methods and techniques used by

0083

1 Investigators in a terrorism investigation and direct the
2 witness not to answer the question.

3 Q (By Mr. Latham) Did he testify at the trial of
4 those -- at the time suspects or detainees?

5 A I don't know.

6 Q Did you?

7 A No, I did not.

8 Q Where was the -- where was the trial?

9 A In the Northern District of Illinois. I
10 believe it was in Dallas.

11 Q Northern District of Illinois?

12 A Excuse me. I'm thinking back to -- Northern
13 District of Texas in Dallas. Excuse me.

14 Q Do you know what year the trial was?

15 A I think it was last year, if I recall
16 correctly.

17 Q What investigations in the 55 other field
18 offices of the FBI in April '99 would have been
19 compromised by Special Agent Abdel-Hafiz's cooperation?

20 MR. BENSON: I'll object to the question
21 as it gets into specifics on investigations to the extent
22 that those investigations are currently pending or have
23 criminal prosecutions that are currently pending.

24 To the extent the witness knows for a fact that
25 the investigations and the prosecutions are completed he

0084

1 may answer the question. Otherwise, I'll instruct him
2 not to answer the question.

3 Q (By Mr. Latham) Can you answer the question?

4 A I cannot answer the question.

5 Q Mr. Defenbaugh, in fairness to you, you may
6 very well not have seen these documents but let me know
7 if you -- if you have. They're the letters that went
8 back and forth between my office and -- and the FBI or
9 DOJ personnel with regard to your deposition. Have you
10 seen those before?

11 A I have seen them. I haven't read them or
12 reviewed them.

13 Q If you'll look at paragraph 1 where we
14 requested to examine you regarding the loss of
15 effectiveness of Mr. Abdel-Hafiz, and that's in Exhibit
16 91 and then Exhibit 92 is a letter coming back from John
17 Parker which copied the two gentlemen from the FBI here
18 today, and I believe there was a limited grant of
19 authority to testify on paragraph 1, and maybe this isn't
20 for you to clarify but maybe Mr. Benson or Mr. Gregory,
21 but is it the FBI's position that he is not going to be
22 able to testify regarding the matters in paragraph 1 at
23 this point?

24 MR. BENSON: The matters of paragraph 1
25 that go into specifics of investigations, no, he will not

0085

1 be authorized to testify as to those. The general
2 subject matter of paragraph 1 I believe he's testified
3 extensively to both on direct and cross today.

4 MR. LATHAM: Well, he did testify
5 extensively on direct which is why I want an opportunity
6 to cross and --

7 MR. KAITCER: Just a minute. If we're
8 gonna have this discussion we're gonna go off the record
9 because I'm sitting here paying for it, and I'm not gonna
10 pay, Bob, for your discussions with John and Jay about
11 why you don't like their objections. So we're gonna do
12 this off the record or move on to a question that doesn't
13 have anything to do with Exhibits 91 and 92.

14 MR. LATHAM: Well, I think I -- I think
15 I'm entitled to get them to clarify their objections on
16 the record, Jeff, with all due respect, so that's all I'm
17 doing. I'm not getting into an argument. We're not
18 gonna argue our positions, I'm just asking for
19 clarification before we move on.

20 MR. BENSON: Was there any objection that
21 I made to your questions that you don't understand? I'll
22 be glad to clarify it if that's the case. I thought my
23 objections were fairly clear. If it either involved
24 ongoing investigation, pending criminal prosecutions or
25 investigative methods and techniques.

0087

1 A I'm sorry. I do not recall.

2 Q Did you ever say to Special Agent Abdel-Hafiz
3 when he came to you with -- with this request from the
4 Chicago office, quote, if you don't want to do it, you
5 don't have to do it?

6 A I don't recall ever saying something like that.

7 Q Mr. Defenbaugh, you got into this a little bit
8 on Mr. Kaitcer's questions. You talked about your --
9 your own ties to the Arabic and Muslim community. Do you
10 remember that testimony?

11 A Yes, sir.

12 Q And I'm not getting into -- don't want to get
13 into specific investigations, but you testified that you
14 meet with various IMAMS and leaders of that community; is
15 that correct?

16 A Yes, sir, that's correct.

17 Q In your current job in the private sector, do
18 you work for any mosques or anybody in the Arabic Muslim
19 community?

20 A I work for no one within the mosques. I am
21 under retainer with one company where the owner is of
22 Muslim faith.

23 Q Since opening your business, have you performed
24 any security services or other services that your company
25 performs for mosques or others in the Arab Muslim

0086

1 Q (By Mr. Latham) Mr. Defenbaugh, do you know
2 anybody named Susan Curtis?

3 A Susan Curtis. I believe so.

4 Q How do you know her?

5 A I don't know. I've heard the name.

6 Q She was employed in some capacity by the FBI.
7 Do you know if you've ever spoken to her?

8 A I don't know.

9 Q Do you know if you ever spoke to her about this
10 incident of the telephone call with Chicago making a
11 request of Special Agent Abdel-Hafiz?

12 A I don't recall.

13 Q You don't have any special recollection of
14 speaking to her, though, do you?

15 A No, sir.

16 Q Did you talk to anybody -- did you understand
17 that at the time of the ABC broadcast, which I'll
18 represent to you was in December of 2002, that Special
19 Agent Abdel-Hafiz was in Saudi Arabia?

20 A I believe that he was the assistant LEGAT
21 there.

22 Q Did you talk to anybody that you knew with the
23 embassy or the FBI in Saudi Arabia at or about the time
24 of that broadcast with regard to -- with regard to this
25 request out of the Chicago office?

0088

1 community?

2 A Not mosques. I have presently one owner of a
3 company who is of the Muslim faith.

4 Q Yeah. I got that presently in the last answer
5 too. What I'm asking is since you opened your business
6 in 2002, have you worked for others in the Arab Muslim
7 community including mosques?

8 A One other individual I served as a security
9 consultant, yes, sir. But not a member of the mosque or
10 of any of the mosques.

11 Q Were you aware that Special Agent Abdel-Hafiz
12 was, if I'm using the wrong word you're welcome to
13 correct me, but terminated or put on leave by the FBI?

14 A Yes, sir, I am aware of that.

15 Q And what is the proper word just so I -- we
16 don't spar on that?

17 A Terminated.

18 Q Okay. And you understand that he was
19 terminated as a result of allegations of insurance fraud,
20 correct?

21 MR. KAITCER: Objection to form.

22 THE WITNESS: I'm not sure of the exact
23 reasons why.

24 Q (By Mr. Latham) What was your understanding as
25 to why he was terminated?

PAGE 89 SHEET 12

0089

1 A I'm not trying to be unreasonable. I remember
2 Gamal showing me the letter. I don't recall its content.
3 Q Special Agent Abdel-Hafiz showed you about a 10
4 page letter of termination?

5 A It was a volume, yes, sir.

6 Q It laid out a lot of --

7 A I don't know if it was 10 pages or not.

8 Q It laid out a lot of facts.

9 MR. KAITCER: Objection, form.

10 THE WITNESS: From what I recall, it
11 was -- the only thing I can say is it's the kind of
12 standard letter that you get from the FBI when they're
13 getting ready to terminate you for you to give a
14 response.

15 Q (By Mr. Latham) Were you still with the FBI at
16 this point or not?

17 A No, sir, I was not.

18 Q For what purpose was Mr. Abdel-Hafiz meeting
19 with you, then?

20 A Gamal was wanting me to review the letter and
21 give him my opinion of whether or not he was going to be
22 terminated.

23 Q Were you friends with Mr. Abdel-Hafiz?

24 A I think we were associates. I wouldn't call us
25 friends.

PAGE 91

0091

1 Q Did anything in that termination letter or his
2 subsequent termination have to do with any television
3 broadcast by ABC or Fox?

4 A I have no idea.

5 Q Did you see anything that would indicate to
6 you, lead you to believe that it did?

7 A I don't recall.

8 Q When you were with the FBI, would you have kept
9 an agent on duty who had profited from an insurance fraud
10 and kept the profits from that fraud believing that they
11 were obtained by fraud?

12 MR. KAITCER: Objection to the form of the
13 question.

14 THE WITNESS: Those decisions would not be
15 mine. They would come from our headquarters, so I can't
16 answer your question on a hypothetical basis.

17 Q (By Mr. Latham) Would it be consistent or
18 inconsistent with FBI policy as you know it to keep an
19 agent on the payroll who had profited from an insurance
20 fraud and kept those profits even while believing that
21 they were obtained by fraud?

22 MR. KAITCER: Objection to the form of the
23 question.

24 THE WITNESS: I'm having a hard time here.
25 I don't understand. I really don't. Are you giving me a

PAGE 90

0090

1 Q Do you stay in touch with him?

2 A Since the last time that -- here a couple weeks
3 ago that he was asking whether or not the -- I would
4 testify here, I hadn't talked to Gamal for probably a
5 year.

6 Q Do you exchange e-mails?

7 A I can't recall the last e-mail that we -- we
8 had, so probably not within a year anyway.

9 Q Do you exchange e-mails, though? You have each
10 others e-mail addresses?

11 A Yes, we do. Yes, sir.

12 Q And did you comment at all on -- in response to
13 Mr. Abdel-Hafiz's approach to you with regard to this --
14 this possible or potential termination by the FBI?

15 A What was your question? I'm sorry.

16 Q Yeah. Let me -- it was pretty inartful. Let
17 me start over.

18 When Mr. Abdel-Hafiz came to you with -- with
19 this letter that indicated he'd be terminated from the
20 FBI, did you have any comment to him in any way?

21 A I commented that from my experience and the
22 office of professional responsibility and having seen
23 enough of those letters that they were putting him on
24 notice that they were going to terminate his employment
25 and they probably would.

PAGE 92

0092

1 hypothetical situation here?

2 Q (By Mr. Latham) I'm asking you a question
3 whether that would be consistent or inconsistent with
4 AB -- with -- let me start over.

5 Would that be consistent or inconsistent with
6 FBI policy?

7 MR. KAITCER: Objection to the form of the
8 question.

9 THE WITNESS: I don't know what the FBI
10 policies are today. When I was in OPR and when I was a
11 special agent in charge employed by the FBI, if there was
12 an agent who committed a criminal fraud and it was
13 determined to be factually true and that agent
14 participated in that fraud, that, in my personal opinion
15 when I was the SAC, would have been a terminable offense.

16 Q (By Mr. Latham) Were you aware of any
17 polygraph test that Special Agent Abdel-Hafiz took?

18 MR. KAITCER: Object as to form.

19 THE WITNESS: I don't recall.

20 Q (By Mr. Latham) Do you have any knowledge
21 about how Special Agent Abdel-Hafiz did on any polygraph
22 test?

23 MR. KAITCER: Object as to form.

24 THE WITNESS: I don't recall because I
25 don't know if he did.

PAGE 93

0093

1 Q (By Mr. Latham) Were you surprised when he was
2 terminated?

3 MR. KAITCER: Object as to form.

4 THE WITNESS: Probably not because of
5 those type of letters and from my experience that when
6 the FBI puts you on notice, you have 10 days to either
7 quit or they're going to terminate your employment.

8 Q (By Mr. Latham) Mr. Defenbaugh, you -- you
9 mentioned your -- on many points in response to Mr.
10 Kaitcer's questions your involvement with the Oklahoma
11 City bombing case, correct?

12 MR. KAITCER: Object as to form.

13 THE WITNESS: I'm sorry?

14 Q (By Mr. Latham) You mentioned in response to
15 Mr. Kaitcer's questions your involvement in the Oklahoma
16 City bombing case, correct?

17 A Yes, sir.

18 Q Do you think that as you sit here today you
19 might be more sensitive to criticism and cause for the
20 discipline of a -- of an FBI agent than other FBI agents?

21 MR. KAITCER: I object as to form.

22 THE WITNESS: I don't understand your
23 question.

24 Q (By Mr. Latham) Do you think that -- well, in
25 the latter stages of your service as SAC in Dallas, there

PAGE 95

0095

1 and tribulations that they go through. I think I've
2 always been sensitive to that, although I've not been
3 censored.

4 MR. LATHAM: And just to be clear, John, I
5 take it you're not gonna let me ask any follow-up
6 questions on -- on that issue or the Oklahoma City
7 bombing case?

8 MR. BENSON: To the extent that they are
9 encompassed within your paragraph 2, no, I will not.

10 Q (By Mr. Latham) Were you aware that the FBI
11 director, Louis Freeh, testified before Congress that
12 there was a cultural defect in the FBI when it comes to
13 following commands?

14 MR. BENSON: I'm going to object to the
15 question. I believe that quote is contained in paragraph
16 2 of your request of February 24th which you were denied
17 the authority to question this witness about. The
18 witness will be directed not to answer that question or
19 any other questions along that line.

20 MR. KAITCER: Just for the record, I want
21 to also object as to the form to the extent that I have
22 to.

23 MR. LATHAM: I'll pass the witness. Thank
24 you, Mr. Defenbaugh.

25 REDIRECT EXAMINATION

PAGE 94

0094

1 were some questions raised about following the chain of
2 command with regard to the Oklahoma City bombing case,
3 correct?

4 MR. BENSON: I'm going to object to the
5 question. In Mr. Parker's letter dated February 28,
6 2006, he specifically denied you the authority to get
7 into the questions in paragraph 2 of your letter dated
8 February 24th, and that's exactly what you're getting
9 into now. The witness will not answer that question or
10 any questions along that line.

11 MR. LATHAM: Public information.

12 MR. BENSON: Whether it's public
13 information or not, you were specifically not authorized
14 to get into that because we deemed it not relevant to
15 these proceedings.

16 Q (By Mr. Latham) Mr. Defenbaugh, I'll go back
17 to the original question that Mr. Benson didn't ask.

18 Do you think that you may be more sensitive
19 than other FBI agents to criticism of an FBI agent not
20 following the chain of command and calling for discipline
21 of that FBI agent?

22 MR. KAITCER: I object as to form.

23 THE WITNESS: Although I've never been
24 censored, I think that I've always been very sensitive to
25 the street agent and the work that they do and the trials

PAGE 96

0096

1 BY MR. KAITCER:

2 Q Let me show you what I have marked as Exhibit
3 Number 3 -- 93. Have you seen that document before?

4 A Yes, sir.

5 Q Okay. Can you identify it for me, please, sir?
6 Hold on a second. Let me make some copies. Go off the
7 record real quick.

8 (Break in proceedings 3:51 o'clock p.m.)

9 (Proceedings resumed, 3:52 o'clock p.m.)

10 Q (By Mr. Kaitcer) Mr. Defenbaugh, I asked you
11 have you ever seen Exhibit 93 before?

12 A Yes, sir, I have.

13 Q When did you see -- can you identify what
14 Exhibit 93 is?

15 A It is a response, e-mail message from me to
16 Ganai.

17 Q Okay. Now I'm not real good on e-mails. In
18 fact, there's a question -- I better not say it.

19 In any event, it appears that this e-mail
20 reflects that Ganai sent you a message on November the
21 21st, 2003; is that correct?

22 A Yes, sir.

23 Q And it appears that there's a response sort of
24 in bold; is that correct?

25 A Yes, sir.

0097

1 Q And this is a little bit different than e-mails
2 I'm familiar with, but did you respond to this e-mail?
3 A Yes, sir. When I'm in a hurry, I don't want to
4 rewrite so I'll put my response in the middle of what the
5 question is so I can send the e-mail.
6 Q Okay. And when did you send this response?
7 A November the 23rd, 2003, at 10:41 a.m. central
8 standard time.
9 Q And is your particular response in bold?
10 A Yes, sir, it is.
11 Q And what was your response?
12 A Yes, Gamal, I did tell them that and I know
13 that FBI headquarters or FBIHQ, excuse me, told them the
14 same.
15 Q And then did you electronically sign it?
16 A Best comma Danny.
17 Q And what did you tell Gamal that you had --
18 what question were you responding to?
19 A That the decision not to record was made by you
20 as FBI headquarters indicated.
21 Q Okay. And you is you Danny Defenbaugh; is that
22 right?
23 A Yes, sir.
24 Q And was this the document that you said you
25 used to refresh your memory?

0098

1 A This and the document that Mr. Latham had
2 given -- or showed me when he -- he and I talked.
3 Q And, in fact, did you use -- is this document
4 the reflection of what your memory was at the time it was
5 created?
6 MR. LATHAM: Object to form.
7 THE WITNESS: Yes. You faxed it to me and
8 this refreshed my memory.
9 Q (By Mr. Kaitcer) Okay. And does this document
10 accurately reflect the memory -- your recorded
11 recollection of what went on regarding ABC?
12 A Says regarding ABC, so the answer would be yes.
13 MR. KAITCER: Pass the witness.
14 RECROSS EXAMINATION
15 BY MR. LATHAM:
16 Q If you didn't know what media person you spoke
17 to, how do you know they were with ABC?
18 A I don't recall.
19 Q November 2003 would have been almost a year
20 after the broadcast at issue. Is it your testimony that
21 you remember the conversation almost a year after the
22 broadcast at issue but forgot it sometime between that
23 year and today?
24 A Probably, because during that time there were
25 probably conversations between Mike Korton and I.

0099

1 Q During that time being November 2003?
2 A Yes, sir.
3 Q Do you think you were remembering specifically
4 the conversation or that your thoughts were triggered by
5 statements that Mike Korton was making to you?
6 MR. KAITCER: Objection as to form.
7 THE WITNESS: Probably from statements by
8 Mike, I'd imagine.
9 Q (By Mr. Lathan) Mr. Defenbaugh, you mentioned
10 your -- your own ties to -- when you were with the FBI to
11 the Arab Muslim community in Dallas. Would you agree
12 with the statement that recording of a Muslim by a Muslim
13 is the ultimate act of betrayal?
14 MR. KAITCER: Objection as to form.
15 THE WITNESS: I don't think so. I think
16 the ultimate act would be a Muslim killing a Muslim.
17 Q (By Mr. Lathan) Is it viewed as an act of
18 betrayal in the Muslim community?
19 A I don't know the answer to that. I'm not
20 Muslim.
21 MR. LATHAM: Thank you, sir.
22 MR. KAITCER: Thank you very much. I have
23 no further questions.
24
25 (END OF PROCEEDINGS, 3:57 o'clock p.m.)

0100

CORRIGENDUM

2 The witness, DANNY A. DEFENBAUGH, states he wishes
3 to make the following changes or corrections in his
4 testimony as originally given:

4	PAGE/LINE	CHANGE	REASON
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19 STATE OF TEXAS)
20 COUNTY OF)
21 Subscribed and sworn to before me by the said
22 witness, _____, on this the _____
23 day of _____, 2006.
24
25

(Signature of the Witness)

NOTARY PUBLIC FOR THE STATE OF
_____, COUNTY OF _____
My Commission Expires: _____

0103
1 Mr. H. John Benson, Jr., Assistant General
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4
5 Mr. Wilbur M. Gregory, Jr., Chief Division
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6 Federal Bureau of Investigation
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7 Dallas, Texas 75220-5220
8
9 That the amount of time used by each party at
the deposition is as follows:
10
11 Mr. Jeffrey N. Kaitcer, 01:18
Mr. Robert P. Latham, 00:09
Mr. H. John Benson, Jr., 00:00
Mr. Wilbur M. Gregory, Jr., 00:00
12
13 I further certify that I am neither counsel
for, related to, nor employed by any of the parties in
the action in which this proceeding was taken, and
further, that I am not financially or otherwise
14 interested in the outcome of the action.
15
16 Further certification requirements pursuant to
Rule 203 of TRCP will be certified to after they have
occurred.
17
18 Certified to on this _____ day of March 2006.
19
20
21 Robin G. Ladd, CSR NO. 3763
REPORTING RESOURCES, INC., #117
22 P. O. Box 101118
Fort Worth, Texas 76185
(817) 341-8100
23 My Commission Expires:
12-31-06
24
25

0102
1 NO. 067-203396-03
2 GAMAL ABDEL-HAFIZ) IN THE DISTRICT COURT
3 VS.)
4 ABC, INC., ABC NEWS, INC., ABC)
5 NEWS HOLDING COMPANY, INC.,) TARRANT COUNTY, TEXAS
6 DISNEY ENTERPRISES, INC.,)
7 WFAA-TV, L.P., WFAA OF TEXAS,)
8 INC., BELO CORP., CHARLES)
9 GIBSON, BRIAN ROSS, ROBERT) 67th JUDICIAL DISTRICT
10 WRIGHT, AND JOHN VINCENT)
11
12 CERTIFICATE
13
14 I, ROBIN G. LADD, Certified Shorthand Reporter
in and for the State of Texas, hereby certify pursuant to
15 the Rules and/or agreement of the parties present to the
16 following:
17
18 That this deposition transcript is a true
19 record of the testimony given by the witness named
20 herein, DANNY A. DEFENBAUGH, after said witness was duly
21 sworn by me;
22
23 That the deposition transcript was submitted on
the _____ day of March 2006, to MR. DANNY A. DEFENBAUGH
for examination, signature and return to REPORTING
RESOURCES, INC. on or before April 10, 2006;
24
25 That pursuant to information made a part of the
record at the time said testimony was taken, the
following includes all parties of record:
26
27 Mr. Jeffrey N. Kaitcer, Attorney for Plaintiff
LOE, WARREN, ROSENFELD, KAITCER, HIBBS &
WINDSOR
4420 West Vickery Boulevard
Fort Worth, Texas 76107
28
29 Mr. Robert P. Latham, Attorney for Defendants
ABC, Inc., et al
JACKSON WALKER
901 Main Street, Suite 6000
Dallas, Texas 75202

0104
1 FURTHER CERTIFICATION PURSUANT TO RULE 203
2
3 The original deposition was/was not returned to
the deposition officer on _____, 2006;
4 If returned, the attached Changes and Signature
page contains any changes and the reasons therefor;
5 If returned, the original deposition was
delivered to MR. JEFFREY N. KAITCER, Custodial Attorney;
6 That \$ _____ is the deposition officer's
charges to the Plaintiff for preparing the original
deposition transcript and any copies of Exhibits;
7 That the deposition was delivered in accordance
with Rule 203.3, and that a copy of this certificate was
served on all parties shown herein and filed with the
8 Clerk.
9 Certified to by me this _____ day of March
2006.
10
11
12 Robin G. Ladd, CSR NO. 3763
REPORTING RESOURCES, INC., #117
13 P. O. Box 101118
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