

Mark Flessner - 2/21/2006

1 NO. CC 096 204518 04
2 GAMAL ABDEL-HAFIZ,) IN THE DISTRICT COURT
3)
4 vs.)
5)
6 FOX ENTERTAINMENT GROUP,) TARRANT COUNTY, TEXAS
7 INC., FOX BROADCASTING)
8 COMPANY, FOX NEWS, INC., FOX)
9 NEWS NETWORK, INC., FOX NEWS)
10 NETWORK, L.L.C., FOX NEWS)
11 HOLDINGS, INC., AND BILL)
12 O'REILLY,) 96th JUDICIAL DISTRICT

8 ORAL DEPOSITION OF
9 MARK FLESSNER
10 February 21, 2006
11 Volume 1

11 ORAL DEPOSITION OF MARK FLESSNER, produced as a
12 witness at the instance of the Defendant, and duly
13 sworn, was taken in the above-styled and numbered
14 cause on the 21st day of February, 2006, from 1:07
15 p.m. to 3:16 p.m., before NICOLE M. DeBARTOLO,
16 Certified Shorthand Reporter in and for the State of
17 Illinois, reported by Stenograph Machine, at the
18 office of Sonnenschein Nath & Rosenthal, 8000 Sears
19 Tower, 233 South Wacker Drive, Chicago, Illinois,
20 60606, pursuant to the Texas Rules of Civil Procedure
21 and the provisions stated on the record or attached
22 hereto.

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24

Page 1	Page 3
NO. CC 096 204518 04 GAMAL ABDEL-HAFIZ,) IN THE DISTRICT COURT vs.) FOX ENTERTAINMENT GROUP,) TARRANT COUNTY, TEXAS INC., FOX BROADCASTING) COMPANY, FOX NEWS, INC., FOX) NEWS NETWORK, INC., FOX NEWS) NETWORK, L.L.C., FOX NEWS) HOLDINGS, INC., AND BILL) O'REILLY,) 96th JUDICIAL DISTRICT ***** ORAL DEPOSITION OF MARK FLESSNER February 21, 2006 Volume 1 ***** ORAL DEPOSITION OF MARK FLESSNER, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and numbered cause on the 21st day of February, 2006, from 1:07 p.m. to 3:16 p.m., before NICOLE M. DeBARTOLO, Certified Shorthand Reporter in and for the State of Illinois, reported by Stenograph Machine, at the office of Sonnenschein Nath & Rosenthal, 8000 Sears Tower, 233 South Wacker Drive, Chicago, Illinois, 60606, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.	1 DEPOSITION OF MARK FLESSNER 2 taken February 21, 2006 3 EXAMINATION BY PAGE Mr. Babcock 5 4 Mr. Kaitcer 48 5 EXHIBITS 6 PAGE 7 Exhibit No. 11A 31 Exhibit No. 40 42 8 Exhibit No. 41 66 Exhibit No. 42 26 9 Exhibit No. 47 11 Exhibit No. 48 11 10 Exhibit No. 49 28 Exhibit No. 50 28 11 Exhibit No. 51 29 12 13 14 15 16 17 18 19 20 21 22 23 24
Page 2	Page 4
1 APPEARANCES 2 FOR THE PLAINTIFF: MR. JEFFREY N. KAITCER (via telephone) 3 LOE, WARREN, ROSENFELD, KAITCER & HIBBS, P.C. 4420 West Vickery Boulevard 4 P.O. Box 100609 Fort Worth, Texas 76185-0609 5 FOR THE DEFENDANTS: 6 MR. CHARLES L. BABCOCK (via telephone) JACKSON WALKER, L.L.P. 7 901 Main Street Suite 6000 8 Dallas, Texas 75202 9 FOR JOHN VINCENT AND ROBERT WRIGHT: MR. TODD HUTTON (via telephone) 10 JUDICIAL WATCH, INC. 5735 Pineland Drive 11 Suite 275 Dallas, Texas 75231 12 FOR THE WITNESS: 13 MR. JOHN S. KOSKI SONNENSCHN NATH & ROSENTHAL 14 8000 Sears Tower 233 South Wacker Drive 15 Chicago, Illinois 60606 16 ALSO PRESENT: Mr. Gamal Abdel-Hafiz (via telephone) Mr. John Vincent 17 18 19 20 21 22 23 24	1 THE VIDEOGRAPHER: Here begins Tape No. 1 in the 2 videotaped deposition of Mark Flessner in the matter 3 of Gamal Abdel-Hafiz versus Fox Entertainment Group, 4 Inc., et al. in the District Court, Tarrant County, 5 Texas, 96th Judicial District, Cause No. 096 2045 18 6 04. 7 This deposition is being held at 233 South 8 Wacker, Chicago, Illinois on February 21st, 2006 at 9 approximately 1:09. 10 My name is Walter Cwik, and I'm a certified 11 legal video specialist from the firm of Legalink. 12 The court reporter today is Nicole DeBartolo in 13 association with Legalink. 14 Will counsel please introduce themselves for 15 the record. 16 MR. KAITCER: My name is Jeff Kaitcer. I 17 represent the plaintiff Gamal Abdel-Hafiz. 18 MR. BABCOCK: And this is Charles Babcock of the 19 law firm of Jackson Walker representing all of the 20 defendants with the exception of Mr. Vincent and 21 Mr. Wright. 22 MR. HUTTON: This is Todd Hutton in Dallas. I 23 represent Mr. Vincent and Mr. Wright, and we are 24 observing and monitoring these proceedings subject to

Page 5 1 our challenge to the Texas jurisdiction in this 2 matter. 3 MR. KOSKI: And this is John Koski of the firm of 4 Sonnenschein Nath & Rosenthal, LLP. I'm counsel for 5 the witness. 6 THE VIDEOGRAPHER: Will the court reporter please 7 swear in the witness. 8 MARK A. FLESSNER, 9 called as a witness herein, having been first duly 10 sworn, was examined upon oral interrogatories and 11 testified as follows: 12 EXAMINATION 13 BY MR. BABCOCK: 14 Q Would you state your name, sir? 15 A My name is Mark Flessner. 16 Q Mr. Flessner, how are you employed? 17 A Who is asking questions? 18 Q I'm sorry. This is Chip Babcock asking 19 questions. 20 A I am a partner in the law firm of 21 Sonnenschein Nath & Rosenthal, LLP. 22 Q And how long have you been a partner in that 23 law firm? 24 A Not quite three years.	Page 7 1 firm in Chicago for about ten months, maybe not even 2 ten months, about eight months. I can't remember the 3 name of it because it was the labor department of 4 Schiff Hardin & Waite, and they ultimately went back 5 to Schiff Hardin & Waite and -- Covar & Nelson 6 (phonetic), something or something. I don't remember 7 what it was. 8 At any rate, then, from there I went to the 9 Department of Justice in Chicago, and I was a federal 10 prosecutor with the Department of Justice from 1987 11 until the year 2000, at which point I became a 12 partner of the law firm of Altheimer & Gray in 13 Chicago, and I was at Altheimer & Gray until July of 14 2000, at which point I came to Sonnenschein and have 15 been a partner here ever since. 16 Q All right, sir. When you were with the 17 Department of Justice, would you tell us what your 18 job consisted of, what did you do for them? 19 A Well, the -- the way the office in Chicago is 20 structured is that you go through various divisions. 21 For the first three years I was in the civil 22 division, and I did primarily tort defense work and 23 money laundering, civil money laundering work. 24 Then I went to what they call the criminal
Page 6 1 Q And could you describe for us the nature of 2 your practice? 3 A I am a trial lawyer, litigator. I do -- you 4 want to know the kinds of litigation I do? 5 Q If you wouldn't mind, yes, sir. 6 A I do all major complex commercial litigation, 7 white collar criminal defense, and government 8 regulatory and government investigations. 9 Q All right, sir. And I'm sure as an attorney 10 you're licensed to practice law. In what states are 11 you licensed? 12 A Illinois. 13 Q Could you describe for us your educational 14 background, please? 15 A Yes. I have a Bachelor of Arts from the 16 University of Illinois at Urbana-Champaign, I have a 17 Masters of Divinity from University of Notre Dame, 18 and I have a Juris Doctorate from DePaul University 19 College of Law. 20 Q When did you graduate from law school? 21 A 1986. 22 Q Could you describe your work experience 23 following your graduation from law school? 24 A Yes. I was briefly at a labor litigation	Page 8 1 receiving appellate division for about a year, year 2 and a half, and you do criminal appeals and do sort 3 of intake work to give you training for the criminal 4 prosecutions. 5 From there I went to major crimes, which was 6 a more white collar prosecution. From there I went 7 to the -- it's called OCDETF is the acronym, and I 8 think it's called Organized -- Organized Crime and 9 Drug Task Force or something. It was major -- major 10 drug cases, and from there I went to special 11 prosecutions, in which I did public corruption and 12 terrorism investigations. 13 Q When did you go to special prosecutions -- 14 A Oh, boy. 15 Q -- and terrorism? 16 A You know, Mr. Babcock, I don't know. It 17 would have been in the early 90s, say '93 or 4, but I 18 really, without having, you know, my personnel file 19 or something, I couldn't tell you exactly. 20 Q Okay. No, that's fair enough. Thank you. 21 And could you give us a little -- a sense 22 obviously -- well, maybe not obviously. Were you 23 acting as an attorney for the Department of Justice 24 when you were in the special -- special prosecutions

Page 9 1 and terrorism division? 2 A Yes. 3 Q All right. And can you give us a sense as an 4 attorney what -- what you did generally with respect 5 to the cases that you handled? 6 A Sure. I primarily worked with the FBI, but 7 there were other agencies that I would work with, 8 like IRS or INS, as well. And I would work with the 9 agents to investigate and develop criminal 10 prosecutions, and then we would put them together and 11 file an indictment with the -- return an indictment 12 from the grand jury and -- and prosecute the case -- 13 Q All right. 14 A -- or have it pled out, depending on what 15 happened. 16 Q All right, sir. While you were with -- and 17 this took place all in Chicago, did it not? 18 A Yes. 19 Q All right, sir. While you were with the 20 United States Attorney's Office, the Department of 21 Justice in the special prosecutions and terrorism 22 division, did you have an occasion to work on an 23 investigation that had a code name of Vulgar 24 Betrayal?	Page 11 1 Exhibits 47 and 48 and tell me when you have gotten 2 those? 3 (Exhibit Nos. 47 and 48 tendered to the 4 Witness.) 5 A I have 47 and 48. 6 Q All right, sir. Thank you. 7 47 is merely the notice of this deposition, 8 and we all appreciate your appearing to testify in 9 this proceeding. 10 I want to turn to Exhibit 48, which I will 11 represent to you is a transcript of an interview that 12 you gave on December 6th of 2002 to ABC News. And my 13 question is, do you recall being interviewed by ABC 14 News in a -- in a taped -- videotaped proceeding? 15 A Yes, I do. 16 Q Would you take it -- the opportunity to look 17 at Exhibit 48 and tell me if there is anything in 18 there that at the time you gave this interview to ABC 19 News you thought was untrue; in other words, you told 20 them something that was false? 21 MR. KAITCER: I object to the form of the 22 question. 23 THE COURT REPORTER: Who is that? 24 MR. KAITCER: I'm sorry, this is Jeff Kaitcer,
Page 10 1 A Yes, I did. 2 Q And I know there are certain restrictions on 3 things you can and can't say, but was there a public 4 proceeding incident to the Vulgar Betrayal 5 investigation that related to a civil forfeiture? 6 A Yes, there was a civil forfeiture case filed 7 against the QLI assets and assets of Mohammed Salah 8 and maybe one other entity. I don't remember exactly 9 who all made claims for it in I think that was 1998. 10 Q All right. 11 A And that was done with my approval. 12 Q All right, sir. And can you just give us a 13 sense of what, in this context, the civil forfeiture 14 proceeding would consist of, what were the steps? 15 A Well, it -- the steps were that the Justice 16 Department here in Chicago through the civil division 17 filed a complaint seeking forfeiture for certain 18 assets that with we had alleged had been tainted as a 19 result of material support of terrorism, specifically 20 Hamas, and we seized those assets, and then there was 21 civil litigation, which I believe is still pending in 22 front of Judge Andersen. 23 Q All right, sir. Thank you. 24 If the court reporter would hand you	Page 12 1 and I object to the form of the question. 2 THE COURT REPORTER: Thank you. 3 THE WITNESS: Mr. Babcock, I mean, your 4 representation that this is a transcript of the 5 interview, if taken that is true, the question is did 6 I say anything in the interview that was false, the 7 answer to that is no. 8 BY MR. BABCOCK: 9 Q All right. Thank you. Let me ask you to 10 turn to Page 9 of the transcript. The Bate number at 11 the bottom is ABC Hafiz 169. 12 A Okay. I'm there. 13 Q And down at the -- under it says Mark 14 Flessner, it says, I was a prosecutor for 12 years. 15 The Bureau was there to assist us as it -- as it 16 assists the prosecutors in the Department of Justice. 17 Do you see where I'm reading from? 18 A I do. 19 Q And did I read it correctly? 20 A Yes, you did. 21 Q All right. What -- what did you mean that 22 the Bureau is there to assist the prosecutors? 23 A Well, in the context of this case, the 24 prosecutors and the Bureau worked -- I don't know if

Page 13 1 you would say hand in hand, but worked together to -- 2 to create a case. Ultimately, the prosecutor, the 3 one who is going to -- going to put the case on trial 4 before a court of law had to know what evidence was 5 admissible and what evidence was not admissible and 6 -- and what were the elements of the crimes that 7 needed to be proved. 8 So it was in every case I can think I worked 9 in that the prosecutor would ultimately make the call 10 as to how the investigation was being directed in 11 order to prove the case that was at hand. 12 Q All right. And in the -- in the case of the 13 Vulgar Betrayal investigation, who was the lead 14 prosecutor in that matter? 15 A Robert Wright. 16 Q I'm sorry, not the agent, but the prosecutor? 17 A On prosecutor, excuse me. That was me, Mark 18 Flessner. 19 Q All right, sir. And the -- and the FBI agent 20 who was the lead was Mr. Wright? 21 A That's correct. I misspoke. 22 Q That's quite all right. 23 Speaking of Mr. Wright, if you would turn to 24 Page 17 of the transcript, the Bate number is ABC	Page 15 1 I said. 2 BY MR. BABCOCK: 3 Q All right, sir. 4 A But I don't have a specific memory of saying 5 that. 6 Q Fair enough. We -- I think we've got a 7 videotape of it, but let me ask you this: As of 8 December 6th of 2002, did you believe that Mr. Wright 9 was an extraordinarily hard worker? 10 A Yes. 11 MR. KAITCER: Objection as to form and leading. 12 THE WITNESS: The answer is yes. 13 BY MR. BABCOCK: 14 Q All right. And as of that date, did you 15 believe that he was very bright? 16 A Yes. 17 MR. KAITCER: Objection, form and leading. 18 BY MR. BABCOCK: 19 Q And did you tell ABC in this taped interview 20 as represented by the transcript that he was very 21 bright? 22 MR. KAITCER: Objection, form and leading. 23 THE WITNESS: As it says here, yes. 24 BY MR. BABCOCK:
Page 14 1 Hafiz 177, tell me when you get there? 2 A I'm here. 3 Q All right. You'll see the interviewer is 4 asking you about Bob Wright, and would that be the 5 same Robert or Bob Wright who is the lead FBI agent 6 on the Vulgar Betrayal investigation? 7 A Correct. 8 Q All right, sir. And if you turn the page, 9 you tell ABC some things about Mr. Wright, correct? 10 A I haven't read this in some time, but I 11 can -- I'm sure you're accurate if you just give me a 12 second. 13 Q All right. Let me just pick out a few of the 14 things you told ABC. Did you tell them that 15 Mr. Wright was an extraordinarily hard worker? 16 You'll see that down in the middle of the page. 17 A Yes. 18 MR. KAITCER: I object to the form of the 19 question. 20 (Discussion had off the written record.) 21 THE WITNESS: To answer your question, 22 Mr. Babcock, again, taking your representation this 23 is a complete and accurate transcript of the 24 interview, then that's what it says, and that's what	Page 16 1 Q All right. And as of December -- I keep 2 losing my date here -- as of December 6th, 2002, did 3 you believe that he was extremely organized? 4 MR. KAITCER: Objection, form and leading. 5 THE WITNESS: Yes. 6 BY MR. BABCOCK: 7 Q And did you tell ABC that? 8 MR. KAITCER: Objection, form and leading. 9 THE WITNESS: Again, as reflected here, yes. 10 BY MR. BABCOCK: 11 Q All right, sir. Thank you. 12 And did you tell ABC that -- that Mr. Wright 13 did a fantastic job in his investigation? 14 MR. KAITCER: Objection, form and leading. 15 THE WITNESS: Is that reflected someplace -- oh, 16 I see it down here below. Again, given the accuracy 17 of this document, yes. 18 BY MR. BABCOCK: 19 Q All right, sir. And as of December 6th, 2002 20 when you gave this interview, tell us whether or not 21 you believe that as of that time that Mr. Wright did 22 a fantastic job with respect to the Vulgar Betrayal 23 investigation? 24 MR. KAITCER: Objection, form and leading.

Page 17 1 THE WITNESS: Yes. 2 BY MR. BABCOCK: 3 Q All right, sir. Has your opinion about 4 Mr. Wright changed between the date of the interview, 5 December 6th, 2002, and today? 6 A With respect to his work ethic and as 7 described here, no, it has not changed. 8 Q Thank you. If you will turn to Page 22 of 9 the transcript, Bate number ABC Hafiz 182, you may 10 have to actually look at the page before it to see 11 that it's you that's speaking. 12 A Yeah, I'm there. 13 Q Okay. Great. Thanks. 14 There is a -- about two-thirds of the way 15 down the page you speaking. It says, quote, The 16 agent refused, based on religious reasons. What he 17 said was it was against his religion to record 18 another Muslim. I was dumfounded by that response. 19 Do you see where I'm reading from? 20 A I do. 21 Q All right, sir. And were you speaking about 22 Gamal Abdel-Hafiz with respect to the agent you're 23 referring to there? 24 A Yes.	Page 19 1 being dumfounded accurately describes it. 2 BY MR. BABCOCK: 3 Q All right, sir. We're going to get into some 4 documents in a minute that have been produced to us 5 by the Department of Justice and the FBI, but did you 6 complain or raise the issue of Mr. Abdel-Hafiz -- 7 Mr. Abdel-Hafiz's refusal to record this terrorism 8 suspect with other people in the Department of 9 Justice? 10 A Yes. 11 Q Can you tell us what you did in that regard? 12 A Again, I don't remember precisely, but my 13 recollection is I pursued two avenues, one of which 14 was to complain through the bureaucracy in the FBI, 15 specifically up to Kathleen McChesney, who was the 16 Special Agent in Charge at the time, and I also 17 complained through the chain of command in the U.S. 18 Attorney's Office here in Chicago and the Department 19 of Justice, which would have gone up through the U.S. 20 Attorney Scott Lassar at the time, and then beyond 21 that I'm not sure exactly how far beyond that it 22 went. 23 Q All right. Let me -- let me take the last 24 thing you talked about first. Your complaint up
Page 18 1 Q And can you tell us whether -- whether or not 2 Mr. Abdel-Hafiz refused, based on religious reasons, 3 to record, secretly record another Muslim? 4 MR. KAITCER: Objection, form; objection, 5 leading. 6 THE WITNESS: Well, that's what he said to us 7 over the telephone. 8 BY MR. BABCOCK: 9 Q And "he" being Abdel-Hafiz? 10 A Abdel-Hafiz, yes. 11 Q All right. I've heard it pronounced nine 12 different ways. I'm going with Mr. Kaitcer's 13 pronunciation -- 14 A Okay. 15 Q -- figuring since he represents him, he might 16 know, but I could be wrong about that. 17 A Okay. 18 Q What was -- what was your reaction to -- to 19 Mr. Abdel-Hafiz saying that he would not secretly 20 record another Muslim? 21 A I think he -- 22 MR. KAITCER: Objection, form. 23 MR. BABCOCK: Excuse me? 24 THE WITNESS: The description that I gave here of	Page 20 1 through the U.S. Attorney's Office through the U.S. 2 Attorney himself Scott Lassar and -- and beyond, was 3 that complaint oral or was it in writing or both? 4 A My recollection, and I do not -- my 5 recollection is that I believe I wrote a memo, but I 6 do not precisely recall sitting at my computer doing 7 so, but I can tell you this is the kind of thing that 8 would have normally generated -- generated a memo 9 that would have gone up through the chain, but I just 10 can't -- I can't exactly remember doing that, but 11 that is my belief that that's what happened. 12 Q All right. 13 MR. KAITCER: Objection as to responsiveness. 14 MR. BABCOCK: Thank you. 15 BY MR. BABCOCK: 16 Q And if you wrote this memo, do you recall who 17 it would have been directed to, Mr. Lassar or someone 18 else? 19 A It would have been -- 20 MR. KAITCER: Objection, form; objection, 21 leading. 22 MR. BABCOCK: Go ahead. 23 THE WITNESS: -- Scott Lassar or -- or one of his 24 chief -- I believe it was -- my memory is it was to

Page 21 1 Scott. 2 BY MR. BABCOCK: 3 Q All right, sir. Did you -- did you complain 4 to anybody above Mr. Lassar in the U.S. Attorney 5 chain of command? 6 A Well, he was the U.S. Attorney at the time. 7 There would have been no one above him. 8 Q All right, sir. Thank you. 9 With respect to the first avenue that you 10 talked about, you said you complained in the FBI to 11 the Special Agent in Charge Kathleen McChesney. Was 12 that oral or was that in writing or both? 13 A I do not -- again, my memory is very fuzzy on 14 this, but I -- I know I had -- I'm pretty certain I 15 had conversations with Kathleen about this. Kathleen 16 and I talked about this case with some regularity, 17 and I -- my memory is that she was given a copy of 18 whatever memo was drafted, and frankly, I'm not sure 19 that I actually drafted the memo, as I think about 20 this more. I think someone else who was in the room 21 may have assisted or drafted the memo, but there 22 was -- my memory is that there was some memo that was 23 drafted to -- to confirm the -- what happened. 24 Q All right, sir. You say you had	Page 23 1 interview, then I did. 2 Q All right, sir. And I will represent to you 3 that it is, and -- and there are plenty of lawyers 4 around to challenge me if I'm wrong about that. 5 Can you -- can you elaborate on why it's not 6 an FBI agent's option to decide not to pursue a 7 criminal investigation? 8 A Well, I was not a FBI agent, but I worked 9 with the FBI for almost 13 years, 12½ years, more 10 than 12½, and the FBI is a -- almost a paramilitary 11 organization in which they -- they're charged to 12 prosecute -- you know, investigate cases, prosecute 13 cases, defend the Constitution of the United States. 14 They -- in my entire experience with the 15 Department of Justice, I had never heard, nor was I 16 ever aware, nor did I experience with the exception 17 of this case an agent refusing to participate in an 18 assignment or investigation for some religious or 19 philosophical reason. It just was not an option -- 20 MR. KAITCER: Objection. 21 THE WITNESS: -- that was ever -- ever 22 communicated to me in any way. 23 MR. BABCOCK: All right, sir. Thank you. 24 BY MR. BABCOCK:
Page 22 1 conversations with the FBI Special Agent in Charge 2 Kathleen McChesney. Can you tell me what 3 conversations you had with Ms. McChesney about this 4 subject? 5 A Precisely no. I can only tell you that I 6 would have related to her what happened, but I can't 7 in any more detail than that. 8 Q Okay. Thank you very much. 9 If you will turn on Exhibit 48 to Page 23, 10 Bate numbered ABC Hafiz 183, and the quotation from 11 yourself, the first three sentences, would you read 12 that for the record out loud, please. 13 A It -- it -- it's not an agent's option 14 to decide -- to decide -- it looks like there's a 15 typo there -- to decide not to pursue a criminal 16 investigation. That's -- that's -- they don't have 17 that choice. When they are told to assist in a 18 criminal investigation, that's what they do. It's 19 not -- it's not an organization that allows for 20 philosophical differences. 21 Q Did you tell that to ABC on December 6th of 22 2002? 23 A Again, Mr. Babcock, if this -- if this 24 transcript is an accurate transcript of the	Page 24 1 Q Turn to Page -- well, the Bate number is 186 2 down at the bottom. 3 A Okay. 4 Q And it's quoting you as saying, It was a key 5 link. It was a huge break in the investigation, but 6 ultimately, it didn't pan out to anything because of 7 the agent's refusal to cooperate. 8 What were you talking about there? 9 A I'm referring to the -- well, it's everything 10 we're talking about here. The -- Mr. Abdel-Hafiz had 11 been approached by a witness who was to testify 12 before the grand jury regarding the money laundering 13 and charity investigation, and we had asked him to 14 talk to the individual, the potential grand jury 15 witness, and to record the conversation to assist us 16 to find out why he wanted to talk to an FBI agent 17 about it -- about a potential appearance before the 18 grand jury. That would have been an important break 19 in the investigation to determine whether or not he 20 was going to be truthful, to be -- to be completely 21 accurate, or whether or not he was going to 22 potentially perjure himself before the grand jury. 23 The agent's refusal, Abdel-Hafiz's refusal 24 to participate in that undercover operation was a

Page 25 1 fairly significant setback to the investigation. 2 Q All right, sir. We've talked a little bit 3 about this telephone call where Mr. Abdel-Hafiz 4 refused to participate in the secret recording of the 5 terrorism suspect. Can you tell us whether or not 6 you were on that telephone call? 7 A I was on the telephone call. It was -- it 8 was in my office on my office phone. 9 Q All right, sir. Turn to Page 29, Abdel-Hafiz 10 189 is the Bate number on Exhibit 48. And down near 11 the bottom of your quote there, it says, I am 12 troubled by an agent who disobeys the rules and 13 regulations for a personal belief. 14 Again, assuming the transcript is correct, 15 did you tell that to ABC? 16 A Yes. 17 Q And why were you troubled about 18 Mr. Abdel-Hafiz's disobeying the rules and 19 regulations for a personal belief? 20 A Well, I -- it's just not the way it worked. 21 In -- law enforcement cannot operate in a manner in 22 which agents choose to or not to investigate a crime 23 because of their personal beliefs. 24 Their obligation is to investigate	Page 27 1 A Yes, I see that. 2 Q And was there ever any mention of Special 3 Agent Abdel-Hafiz doing this secret monitoring in a 4 mosque? 5 A No. 6 Q Where -- where was the secret monitoring -- 7 secret monitoring or secret taping to take place? 8 A Well, we had as -- we had suggested a number 9 of places. As the conversation developed, initially 10 Agent Abdel-Hafiz said he would not wear a wire on 11 his person against another Muslim, and so I -- they 12 were going to meet -- I mean, we hadn't arranged a 13 location at that point. 14 Then I said, fine, if it's the fact that you 15 won't wear a wire on your body, what was known, I 16 think probably is still known as a body wire, we will 17 set up a hotel room, we'll rent a hotel room, we'll 18 put a camera, and we'll bug it, and you won't have to 19 have a -- a wire on your body, we can do it that way, 20 and he refused to do that as well, but at no time was 21 there ever discussion to go into a mosque. That 22 simply was never on the radar screen, and the 23 political environment at the time never even would 24 have permitted that.
Page 26 1 violations of the law, and they don't -- it's like a 2 soldier. A soldier doesn't get to decide whether or 3 not to, you know, conduct an assignment. They are 4 instructed to do so, and they are -- that's what they 5 have to do. 6 It's simply -- it is that kind of an 7 organization which requires the sort of obedience 8 within the law that -- that that agent should have 9 followed. 10 Q All right, sir. There is another exhibit, if 11 the court reporter would hand you Exhibit 42, which 12 has the Bate number USDJ 175 on the bottom. 13 (Exhibit No. 42 tendered to the Witness.) 14 A I'm looking at it right now. 15 Q All right. If you will look at the -- well, 16 first of all, have you ever seen this Exhibit 42 17 before? 18 A I do not believe so. 19 Q All right. Look at the last sentence. At 20 the bottom it says, The SAC advised that had the 21 consensual monitoring been requested for any location 22 other than a mosque, Special Agent Abdel-Hafiz would 23 have supported the proposal. 24 Did you see where I'm reading from?	Page 28 1 Q All right, sir. Let me ask you if the court 2 reporter can hand you Exhibit 49. 3 (Exhibit No. 49 tendered to the Witness.) 4 A I have 49. 5 Q All right, sir. I will again represent to 6 you that this is a true and correct transcript of a 7 news broadcast on March 4th, 2003 called The O'Reilly 8 Factor which is on the Fox News cable channel, and do 9 you recall being a guest on that program? 10 A I do, yes. 11 Q All right, sir. Did you tell Mr. O'Reilly or 12 the Fox News people anything that was false? 13 A No, I did not. 14 Q And looking at the quotes that are attributed 15 to you, again, assuming that I have provided you an 16 accurate transcript of that videotaped program, are 17 the things that you related on that program, are they 18 true? 19 A Yes. 20 (Exhibit No. 50 tendered to the Witness.) 21 Q Take a look at Exhibit 50, if you would. And 22 I will tell you that this is a true and correct copy 23 of a broadcast, The O'Reilly Factor where Bill 24 O'Reilly is the host, and I don't see that you were a

Page 29 1 guest on that program, but I could be wrong, and I 2 guess tell me with or without reference to this 3 document whether you believe you were a guest on that 4 program? 5 A I believe I was only a guest on The O'Reilly 6 Factor once. 7 Q All right, sir. 8 A So if I was on the 4th, I couldn't have been 9 on the 5th as well. 10 Q All right, sir. I don't -- I don't think you 11 were. I haven't looked at the program, but you're 12 the one testifying. Mr. Kaitcer concurs in my -- in 13 that judgment. So we'll leave that exhibit. 14 (Exhibit No. 51 tendered to the Witness.) 15 Q Look at Exhibit 51, if you would. This is, I 16 will represent to you, a transcript of a -- of a 17 third O'Reilly Factor program dated March 6th, 2003, 18 and I don't believe you were a guest on that program 19 either. I think that honor belonged to Mr. Vincent, 20 but confirm that for me, if you would? 21 A Again, it's my recollection, Mr. Babcock, 22 that I only appeared on that show -- I mean, if you 23 have a tape that can prove me wrong, prove me wrong, 24 but my recollection is that I only appeared on The	Page 31 1 MR. KAITCER: Objection, form; objection, 2 leading. 3 THE WITNESS: Essentially it is. I can't say 4 it's verbatim, but it's substantively accurate, yes. 5 BY MR. BABCOCK: 6 Q All right, sir. Can you tell us whether or 7 not Mr. Vincent was on that -- on that conference 8 call as well? 9 A Mr. Vincent was in the room, yes. 10 Q All right. And you say he was in the room. 11 Does that mean he could or could not hear what was 12 being said? 13 A Yeah, it was on a speaker phone. There were 14 five or six people, four or five people in the room, 15 and it was on a speaker phone. My office was of the 16 size that everyone in the room could -- could hear 17 it. 18 Q All right, sir. Fair enough. 19 (Exhibit No. 11A tendered to the 20 Witness.) 21 Q Let me ask you to turn to a document that has 22 been previously marked as Exhibit 11A. And it is a 23 document that is produced to us by the United States 24 Department of Justice, although it has some
Page 30 1 O'Reilly Factor once. 2 Q Right. And I think -- we can't prove you 3 wrong. I think all our information proves you 4 correct on that. 5 If you will look at Exhibit 51, this is 6 Mr. Vincent speaking down at the bottom of Page 1, 7 carrying over to Page 2, it's Bate numbered FOX 216. 8 And it says the following, read along with me, make 9 sure I'm reading it correctly: At that conference 10 call U.S. Attorney Mark Flessner asked Agent Gamal if 11 he would use a wire to record the conversation that 12 potentially was going to take place. At that time, 13 Gamal refused. U.S. Attorney Mark Flessner pressed 14 him and asked him why he wouldn't, and Gamal said he 15 wouldn't understand, it's a cultural thing. At that 16 time Flessner pushed further and finally Gamal said a 17 Muslim does not record another Muslim. 18 Did I read that correctly? 19 A You did, sir. 20 MR. KAITCER: Objection as to form. 21 BY MR. BABCOCK: 22 Q And is Mr. Vincent's recitation essentially 23 what you recall from that telephone conference call 24 that you were on?	Page 32 1 redactions in it. It's dated April 16th, 1999, and 2 it's from Chicago, drafted by Agent Wright, and to 3 Dallas National Security and a number of other 4 people. Do you have it yet? 5 A I have it, yes, sir. 6 Q Have you ever seen this document before? 7 A Other than today I -- I do not believe I 8 have, but you know, it's -- you know, there were 9 hundreds and hundreds of 302s produced in this 10 investigation, so I -- I can't -- I just can't tell 11 you for sure. 12 Q Okay. Fair enough. 13 A It's very possible I saw the original 14 document in its entirety, but I just can't remember. 15 Q All right. There is a -- if you'll turn to 16 Page 5, and it's Bate numbered USDJ 118? 17 A Yes. 18 Q And it's the third full paragraph. It says, 19 AUSA Flessner explained the significance of the 20 contact made by blank, and the potential significance 21 of a contact with redacted as yielding: (1) possible 22 evidence of mens rea or knowledge of wrongdoing, and 23 (2) lines of inquiry that would possibly constitute 24 an obstruction of justice violation. SA Abdel-Hafiz

Page 33 1 was asked by the Chicago AUSAs whether he would be 2 willing to meet with redacted and record the 3 conversation by wearing a body recorder. Special 4 Agent Abdel-Hafiz was told that the recording would 5 protect him and in addition provide the best possible 6 evidence for the case. 7 Do you recall participating in a telephone 8 conversation on a conference call where you said 9 these things? 10 A Yes. 11 MR. KAITCER: Object to the form; objection, 12 leading. 13 THE WITNESS: Yes, the answer is yes. 14 BY MR. BABCOCK: 15 Q All right. Going on, it says, Special Agent 16 Abdel-Hafiz related that he would be willing to meet 17 with redacted -- and the redacted things appear to be 18 names, would you agree with me? 19 MR. KAITCER: Objection, form; objection, 20 leading. 21 THE WITNESS: I believe it's the name of the 22 potential witness. 23 BY MR. BABCOCK: 24 Q All right. Or anybody else, but that he did	Page 35 1 Speaking of the devil, Mr. Abdel-Hafiz has 2 just walked in the room. 3 Forgetting about my sidebar and 4 Mr. Abdel-Hafiz coming here, do you recall that -- 5 what I just read was a part of the telephone 6 conversation between you and the others on the 7 telephone call with Agent Abdel-Hafiz? 8 MR. KAITCER: Objection, form; objection, 9 leading. 10 THE WITNESS: Essentially, yes, that is correct. 11 BY MR. BABCOCK: 12 Q And you say essentially yes. Is there any -- 13 anywhere where your memory differs from what is on 14 this Exhibit 11A which I've just read to you? 15 A No, I think it's accurate. I just don't -- I 16 just don't think it's verbatim. 17 Q All right. The next paragraph says, Special 18 Agent Abdel-Hafiz asked why it was necessary to 19 record a conversation with redacted. AUSA Flessner 20 explained that it was necessary to protect the agent 21 to assure that any false representations about what 22 the agent said or did in the conversation could be 23 disproved. 24 Do you recall that being said on this
Page 34 1 not want to wear a body recorder or consent to any 2 other type of consensual recording. When the AUSA 3 asked for an explanation, Special Agent Abdel-Hafiz 4 stated that the recording would be subject to 5 discovery at a later time, and that could possibly be 6 learned in the Muslim community in Dallas and 7 elsewhere that he was doing this. He expressed that 8 disclosure would create a grave safety issue for 9 himself and his family. 10 When AUSA Flessner told Special Agent 11 Abdel-Hafiz that any safety risks would be addressed 12 by the FBI, Special Agent Abdel-Hafiz responded that 13 he did not trust the FBI to protect him or his 14 family. 15 When asked by AUSA Chanenson why he thought 16 would he face safety risks, Special Agent Abdel-Hafiz 17 responded that the secret recording of a conversation 18 between Muslims is regarded in the Muslim culture as 19 the ultimate act of betrayal. 20 When the AUSA Flessner asked why it was any 21 different from reducing a conversation with a 22 criminal subject to a FD-302 and testifying about the 23 conversation, Special Agent Abdel-Hafiz related that 24 it was a cultural matter that we wouldn't understand.	Page 36 1 telephone conference? 2 MR. KAITCER: Objection, form; objection, 3 leading. 4 THE WITNESS: Yes, I do, Mr. Babcock. 5 MR. BABCOCK: Thank you. 6 BY MR. BABCOCK: 7 Q And could you explain for me how recording a 8 conversation with a terrorism suspect would protect 9 the agent? 10 A Well, let me -- let me first qualify that. I 11 didn't say that the potential witness was a terrorism 12 suspect. I said he was a potential witness for the 13 grand jury. 14 Q Okay. Thank you. 15 A But any recording of a conversation would 16 disabuse those later who were to hear of the 17 conversation about whether it was a he said/she said 18 type of thing because we would have -- we would have 19 the recording. We would know exactly what was said 20 and by whom and when. 21 So it -- it -- a recording, undercover 22 recording obviously is the best way and the most 23 accurate way to make sure that you have an accurate 24 record of the conversation because if an agent were

Page 37 1 to just to, then, after the conversation write down 2 what he remembered being said, it wouldn't be as 3 complete and accurate as the recording would be 4 obviously. 5 Q Fair enough. Thank you. 6 The next paragraph references a 3:30 p.m. 7 telephone conference between the Chicago AUSA's and 8 SSA Patton regarding the same subject matter as the 9 10:00 a.m. call. Do you recall what -- what 10 transpired on that 3:30 telephone conference? 11 A No, I do not. 12 Q Okay. It says, then, that Scott Lassar, 13 United States Attorney for the Northern District of 14 Texas was briefed about the reluctance of Special 15 Agent Abdel-Hafiz -- 16 MR. KAITCER: Chip, you said -- you said -- I 17 think you said Northern District of Texas. It says 18 Northern District of Illinois. 19 MR. BABCOCK: Let me back up. You got me out 20 of -- out of sync being here taking a Chicago 21 deposition. Let me strike that and ask this 22 question. 23 BY MR. BABCOCK: 24 Q The -- the Exhibit 11A goes on to say that	Page 39 1 record a conversation -- an agent had been approached 2 about a potential grand jury appearance by a 3 potential witness, and that we had requested the 4 agent meet with the grand jury witness and discuss 5 whatever it is he wanted to discuss and to record the 6 conversation, the agent refused to do so. 7 Q You say here that this person that Agent 8 Abdel-Hafiz was -- Strike that. 9 Exhibit 11A describes the person that 10 Special Agent Abdel-Hafiz was to record but refused 11 was a prime target of the Vulgar Betrayal matter. 12 Can you tell us whether that is accurate or not? 13 A You know, I don't remember that. Is that -- 14 is that what it says? 15 Q Yes, take a look at Page 6. 16 A Oh, I see it. Okay. Well, I mean if he was, 17 he was. I just don't remember -- there were a lot -- 18 there were a lot of targets of this investigation. I 19 just don't remember exactly that person being a prime 20 target, but if that's what it was at the time, then 21 it was. 22 Q All right. The very last sentence of Exhibit 23 11A says that both USA Lassar and SAC -- and what 24 does SAC stand for again?
Page 38 1 Scott R. Lassar, United States Attorney for the 2 Northern District of Illinois, was briefed about the 3 reluctance of Special Agent Abdel-Hafiz to record a 4 possible meeting that he might have with a prime 5 target of the Vulgar Betrayal matter. 6 Did I read that correctly? 7 A Yes, sir. 8 Q And was the United States Attorney for the 9 Northern District of Illinois briefed about this 10 matter? 11 A Yes, sir. 12 MR. KAITCER: Objection, form; objection, 13 leading. 14 MR. BABCOCK: Go ahead. 15 THE WITNESS: He was, yes. 16 BY MR. BABCOCK: 17 Q And who participated in that briefing? 18 A I know I was there. I believe AUSA Steve 19 Chanenson was there, and I -- I'm less certain, but I 20 believe AUSA Joe Ferguson was also there. 21 Q All right. And what did -- what did you tell 22 the United States Attorney for the Northern District 23 of Illinois about this matter? 24 A Well, that we had had an opportunity to	Page 40 1 A Special Agent in Charge. 2 Q -- McChesney agreed that the FBI should 3 pursue the effort to obtain this evidence. 4 Did I read that correctly? 5 A Yes, you did. 6 Q And what is your understanding of after this 7 telephone conversation and after all the 8 conversations that you were a party to was the 9 position of the U.S. attorney and the Special Agent 10 in Charge McChesney? 11 A Both Kathleen and Scott backed our position 12 that this was an important lead in the investigation 13 and should be pursued, and that we should continue to 14 seek the cooperation of Special Agent Abdel-Hafiz and 15 the Texas field office -- or the Dallas field office. 16 Q All right, sir. If you'll turn to the next 17 page of Exhibit 11A, it's got -- it says, To: 18 Dallas; From: Chicago; Re:, and it has got a number 19 dated April 16th, 1999. And then it has -- it says 20 lead; Set Lead; Dallas; at Dallas Texas. Do you know 21 what that "Lead", "Set Lead" business means? 22 A A lead would be one field office, this being 23 the Chicago field office, sending to the Dallas field 24 office, the FBI field office, to request assistance.

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1 Q All right. And the first paragraph says, The
 2 Dallas division has requested to have Special Agent
 3 Gamal Abdel-Hafiz inform redacted to tell redacted
 4 that Abdel-Hafiz is willing to meet with redacted
 5 regarding the Chicago grand jury and its
 6 investigation. It is further requested that Special
 7 Agent Abdel-Hafiz meet with redacted in Dallas and
 8 consensually monitor the meeting.
 9 "Consensually monitor" means what?
 10 A A consensually monitored conversation is
 11 consented by one of the individuals in the
 12 conversation; in this case would have been Special
 13 Agent Abdel-Hafiz. Not consensually by all parties.
 14 It only has to be consented to by the law enforcement
 15 officer.
 16 Q I see. Okay. And then presumably in this
 17 instance the suspect or the target or whatever you
 18 want to call him wouldn't not know about the fact
 19 that he is being monitored?
 20 A Not presumably, he absolutely would not know.
 21 Q And then it says in 11A, Should redacted
 22 prefer to conduct the conversation with Special Agent
 23 Abdel-Hafiz on the telephone, Chicago requests that
 24 redacted be called at his residence after work hours,

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1 and that the conversation also be consensually
 2 monitored.
 3 Did I read that correctly?
 4 A Yes.
 5 Q And was that your request and the U.S.
 6 Attorney's and the Special Agent in Charge
 7 McChesney's request to Dallas and to Special Agent
 8 Abdel-Hafiz?
 9 A Yes.
 10 MR. KAITCER: Objection, form; objection,
 11 leading.
 12 THE WITNESS: Yes, we wanted the conversation
 13 recorded.
 14 BY MR. BABCOCK:
 15 Q All right. And what was the result of that
 16 request?
 17 A It was denied.
 18 Q Was the conversation with this witness or
 19 target, whatever you may want to call him, ever
 20 consensually monitored, secretly recorded?
 21 A No.
 22 (Exhibit No. 40 tendered to the Witness.)
 23 Q Turn to Exhibit 40, if you would, and this is
 24 a document that's been produced to you by the United

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1 States Department of Justice under Bate number 124.
 2 It's dated May 17th, 1999.
 3 And my first question to you is going to be
 4 whether you've ever seen this before?
 5 A Again, Mr. Babcock, as I said, there were
 6 hundreds of --
 7 Q Sure, I understand.
 8 A -- 302s produced in this case, which in due
 9 course would have been produced to me, but I -- the
 10 answer is I just don't know. I don't recall.
 11 Q All right. Fair enough. On the first page
 12 of Exhibit 40, it says that, The Chicago Division and
 13 the U.S. Attorney's Office for the Northern District
 14 of Texas are both of the opinion that an overtly --
 15 overtly reported meeting between Special Agent
 16 Abdel-Hafiz and redacted would be unproductive and,
 17 in fact, possibly detrimental to the Vulgar Betrayal
 18 investigation.
 19 Can you tell us what the facts were with
 20 respect to your opinion in the U.S. Attorney's Office
 21 about the possibility of Special Agent Abdel-Hafiz
 22 overtly recording a meeting between him and the
 23 suspect?
 24 MR. KOSKI: For the record, you substituted Texas

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1 for Illinois again, but with that correction, the
 2 witness can respond.
 3 MR. BABCOCK: Sorry. It's a bad habit.
 4 THE WITNESS: My recollection is that Special
 5 Agent Abdel-Hafiz said the only circumstance under
 6 which he would record the conversation with a meeting
 7 with the -- with the potential grand jury witness
 8 would be if he could disclose to the witness that he
 9 was recording -- that the agent was recording the
 10 conversation.
 11 I really, without even consulting with my
 12 colleagues, unilaterally rejected that idea because I
 13 did not want the -- I didn't want a prepared or a
 14 statement which could ultimately do us harm. I
 15 wanted to find out what the truth was and what the
 16 actual witness wanted. I didn't need any kind of
 17 exculpatory statement or planned statement that could
 18 have ultimately harmed the investigation. I wanted
 19 to know what it is exactly he wanted to find out from
 20 the agent and what his curiosity was about the status
 21 of the grand jury investigation.
 22 BY MR. BABCOCK:
 23 Q All right. And -- and having been involved
 24 in your line of work for a number of years, I have a

1 pretty good sense of why you thought an overt
2 recording might provoke a self-serving statement, but
3 could you explain that for us?
4 MR. KAITCER: Objection, form; objection,
5 leading.
6 MR. BABCOCK: He doesn't like my personal homily,
7 so I'll -- I'll restate the question.
8 BY MR. BABCOCK:
9 Q Would you explain for us why you thought an
10 overt recording might provoke a self-serving
11 statement from the witness?
12 A Well, clearly if the witness knew that he was
13 being recorded for later use, that No. 1, he -- it
14 was virtually certain that he would not inculcate
15 himself into any of the targeted violations that we
16 were investigating. In fact, the likely scenario
17 would be he would exculpate himself and give a story
18 that he wanted to report to derail the investigation.
19 In my experience, I -- I never once agreed
20 to have an overt recorded conversation with a target
21 or a potential witness to give the witness a free
22 rein as to just to give exculpatory statements. That
23 would never prove to be fruitful.
24 Q All right, sir. Sticking here with Exhibit

1 40, the next paragraph on Page 2, it says based upon
2 the -- Strike that.
3 It says, Based upon the suspicious activity
4 linking, and there's a lengthy redaction, the Vulgar
5 Betrayal matter, Chicago suspects that a covertly
6 recorded interview of redacted could be productive
7 from an investigative standpoint.
8 Was that your view at the time of this memo?
9 MR. KAITCER: Objection, form; objection,
10 leading.
11 THE WITNESS: Yes.
12 BY MR. BABCOCK:
13 Q Going forward and reading the memo, it says,
14 Chicago suspects that a covertly recorded interview
15 of redacted could be productive from an investigative
16 standpoint. Dallas is requested to reconsider
17 proceeding with the covert recording, if, at any time
18 in the future, the perceived problem of consensually
19 monitoring a Muslim seeking advice regarding a major
20 U.S. government criminal investigation is overcome.
21 Was -- were you the one requesting Dallas to
22 reconsider?
23 A I mean, I don't remember specifically,
24 Mr. Babcock, asking for reconsideration. We -- we

1 pressed them repeatedly to -- to go down the path of
2 the covert recording, but to have a specific memory
3 of a decision and then reconsider, I don't remember
4 that.
5 Q All right, sir. Just a few more questions
6 and I think I'm going to be true to my prediction of
7 an hour or less of questioning.
8 Did you have occasion while you were the
9 Assistant U.S. Attorney in the Northern District of
10 Illinois to work with Special Agent Vincent?
11 A Yes.
12 Q And if -- and what was -- what was your
13 experience with Special Agent Vincent in terms of his
14 competence, integrity, just his overall abilities on
15 the job?
16 A I think I'm on the record as saying that
17 already, and Mr. Vincent is sitting here in the room,
18 but Mr. Vincent was a very -- is -- I guess was
19 because he's retired -- a very fine FBI agent.
20 He was -- if Bob was the lead agent on this
21 massive investigation, John was his co-equal or
22 right-hand man. He was -- came to the investigation
23 with a lot of years of terrorism experience. I was
24 not an experienced terrorism prosecutor at the time,

1 and he brought a lot of wisdom, depth, and insight
2 into the investigation.
3 MR. BABCOCK: Mr. Flessner, thank you so much for
4 your time. I'm afraid that your -- your turn in the
5 barrel is not over because Mr. Kaitcer may have some
6 questions. Perhaps Mr. Hutton will, but -- and I
7 might have some follow-up, but I'll pass the witness
8 for now, and if you-all want to take a break now or
9 at any time just holler out at us.
10 MR. KOSKI: We can -- we can -- we can continue
11 here.
12 MR. BABCOCK: Great. Thank you.
13 EXAMINATION
14 BY MR. KAITCER:
15 Q Mr. Flessner, my name is Jeff Kaitcer.
16 A Hello, Mr. Kaitcer.
17 Q How are you doing today?
18 A I'm fine. Thank you. How are you?
19 Q We're having Chicago-type weather down here.
20 It's very foggy and wet and a little chilly, but
21 we'll live.
22 A It's beautiful and sunny here, Mr. Kaitcer.
23 Q Well, my ex-wife lives in Chicago. That's
24 not enough to make me want to go back.

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1 A I'm not going there. 2 MR. BABCOCK: We'll have no comment on that. 3 BY MR. KAITCER: 4 Q In any event, you and I have never met, have 5 we? 6 A Not to my knowledge. 7 Q I represent Special Agent Gamal Abdel-Hafiz, 8 who is here today with me. Let me ask you some brief 9 questions. 10 Obviously, you're an attorney, so you know 11 what a deposition is? 12 A I do. 13 Q What did you do to prepare yourself for this 14 deposition? 15 A Not much. I was -- when I was on a 16 conference call earlier this morning, I was given a 17 stack of documents which I maybe spent 5 minutes 18 looking, perusing, but I did not have an opportunity 19 to read. I talked a little bit with the firm's 20 general counsel a couple of times, cumulatively 21 probably less than ten of minutes. I think that's 22 about it. 23 Q Have you talked to Mr. Babcock or any other 24 attorneys acting on behalf of either Fox or ABC?	1 Q Yes, sir. 2 A Yes. 3 Q Do you have Exhibit No. 50 in front of you? 4 A Give me a minute, please. 5 Q Certainly. 6 A Yes. 7 Q The first page of Exhibit No. 50, it is Bates 8 stamped FOX 209 on the bottom, do you see that? 9 A Yes. 10 Q There is a statement made about two-thirds of 11 the way down there and the statement says, according 12 to FBI Agent Robert Wright and former federal 13 prosecutor Mark Flessner, Hafiz declined to secretly 14 tape a Saudi citizen named Yassin Kadi who was 15 suspected of financing Usama bin Laden. 16 Did I read that statement correctly? 17 A You did. 18 Q Is that statement truthful? 19 MR. BABCOCK: I'll just interpose an objection 20 here. We have been prevented by the government from 21 learning who it was that Mr. Abdel-Hafiz was asked to 22 secretly tape. So to the extent that they have 23 asserted a State Secrets Privilege, we will, too, but 24 that doesn't mean you can't answer, I'm just
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1 A I met with Mr. Babcock prior to the 2 contemplation of this deposition. I'd have to look 3 at my calendar, but it seems to me it's well over 4 four weeks ago, but I don't know exactly when it was. 5 It's within 2006, but it's not in the last three or 6 four weeks. 7 Q Where did that meeting take place? 8 A Here in Chicago in my office. I wasn't -- it 9 was one of the conference rooms in -- here at 10 Sonnenschein. 11 Q And what was discussed at that meeting? 12 A He basically went over what we went over here 13 today, and he asked me to sign an affidavit to that 14 effect, and I said I needed to run that by the 15 general counsel of the firm, and I did, and it was 16 decided that a deposition would be a more appropriate 17 forum. 18 Q Have you spoken with anybody else? 19 A About this deposition? 20 Q Yes. 21 A No. 22 Q Do you have the exhibits there in front of 23 you? 24 A I do. The ones that I've reviewed earlier?	1 asserting that objection. 2 MR. KOSKI: Let's go off the record a second so 3 we can confer here. 4 THE VIDEOGRAPHER: We're going off the record at 5 2:08. 6 (Recess was taken.) 7 THE VIDEOGRAPHER: We are going back on the 8 record at 2:11. 9 MR. KOSKI: I'll just make a statement rather 10 than rereading the prior question. Given my 11 understanding that the government has invoked the 12 secrets privilege with respect to this information, 13 I'm going to instruct the witness not to answer the 14 question until such time as we have confirmation that 15 that information can be disclosed by him. 16 BY MR. KAITCER: 17 Q Are you going to follow your attorney's 18 instruction, Mr. Flessner? 19 A I am, sir. 20 Q Okay. Well, let me ask you this: Did you 21 tell Bill O'Reilly that Hafiz declined to secretly 22 tape a Saudi citizen named Yassin Kadi who was 23 suspected of financing Usama bin Laden? 24 A I have not have a conversation with

Page 53 1 Mr. O'Reilly that was not recorded on national 2 television. 3 Q Okay. 4 A So whatever conversations I've had with 5 Mr. O'Reilly, you probably have seen a transcript of. 6 Q Did you make any statements to anybody that 7 Hafiz declined to secretly tape a Saudi citizen named 8 Yassin Kadi? 9 MR. KOSKI: Well, I object to the form of that 10 question because it's broad enough to encompass 11 Mr. Flessner's conversation with others in the 12 government. Do you mean others in the media? 13 MR. KAITCER: All right. Others in the media, 14 I'll let him do that one, too. Let me ask -- let me 15 ask -- let me get this done, too. 16 BY MR. KAITCER: 17 Q Are you refusing to answer that question? 18 MR. KOSKI: Well, I'll instruct -- I'll instruct 19 the witness not to answer it because I think -- for 20 the same reasons previously articulated. 21 THE WITNESS: I'll follow the instruction. 22 BY MR. KAITCER: 23 Q Thank you, Mr. Flessner. 24 Now, did you tell anyone in the media that	Page 55 1 Q You had known -- you knew who he was, right? 2 A Yes, I certainly knew who he was. 3 Q Okay. And he was considered then and 4 possibly is still considered as a terrorism suspect, 5 as Mr. Babcock put it? 6 MR. KOSKI: I'll raise my same objection and 7 instruct the witness not to answer. 8 BY MR. KAITCER: 9 Q Is that your response, Mr. Flessner? 10 A Yeah, I can't answer that question. 11 Q Okay. Did Mr. Vincent know who Hafiz was 12 requested to secretly tape? 13 A I don't know what Mr. Vincent knew. 14 Q Was Yassin Kadi considered an important 15 figure in this investigation by you? 16 A The status of Mr. Kadi I think is probably 17 not public information. He was one of many, many, 18 many people who -- to whom I gave attention in the 19 investigation. 20 Q Okay. Now, when Mr. Babcock was asking you 21 about terrorism suspects, you, I think, corrected him 22 and indicated that the particular person you were 23 talking about was not necessarily a -- Hafiz 24 allegedly refused to record was not a prime suspect,
Page 54 1 Hafiz declined to secretly tape a Saudi citizen named 2 Yassin Kadi? 3 A I have no recollection of ever identifying 4 any of the potential witnesses, and I believe that 5 information was not -- I don't know how that 6 information was disclosed to the media. 7 Q Okay. Do you know whether or not Robert 8 Wright told Bill O'Reilly that Hafiz declined to 9 secretly tape a Saudi citizen named Yassin Kadi? 10 A No, I have no way of knowing that. 11 Q Now, Yassin Kadi was a fairly well known 12 individual to the Department of Justice in 1999, was 13 he not? 14 MR. KOSKI: Well, I'll object to the -- to that 15 question. I'm not sure how the witness can answer it 16 without getting into the concerns I've previously 17 articulated. 18 BY MR. KAITCER: 19 Q You going to follow your attorney's 20 instructions, Mr. Flessner? 21 A Well, I don't -- when you say the Department 22 of Justice, he was known by me, if that -- if I'm -- 23 embody me to the Department of Justice. I -- I 24 really don't.	Page 56 1 is that right? 2 MR. BABCOCK: Object to the form. 3 MR. KAITCER: You can answer it. 4 THE WITNESS: I'm -- I'm trying to think of how 5 to answer it. My answer is that the -- the word 6 "target" in a criminal investigation is a term of 7 art, and it means, under the Department of Justice 8 guidelines, that it is in the judgment of the 9 prosecutor that individual is going to be charged. 10 We were looking at a lot of people and a lot 11 of transactions, hundreds of thousands if not 12 millions of banking transactions in which many people 13 were involved. We had not designated anyone under 14 the term of art "target" at that stage. 15 BY MR. KAITCER: 16 Q Okay. Did this individual that Hafiz did not 17 want to record, was he ever a target to your 18 knowledge? 19 A I can't answer that, Mr. Kaitcer. I'm sorry. 20 I couldn't remember your name. 21 Q Kaitcer. 22 A Kaitcer. I'm sorry. 23 Q That's all right. Since you and I have never 24 met, I don't expect you to remember my name or how to

Page 57 1 pronounce it. 2 You indicated you had a lot of respect for 3 Special Agent John Vincent, is that correct? 4 A Yes. 5 Q And did he have a greater knowledge of who 6 the targets were and where the investigation might 7 lead than you did? 8 A Well, again, you're misunderstanding the term 9 "target". The -- the way -- 10 Q You're right. I'll start over. Let me -- 11 let me rephrase that. 12 A Okay. 13 Q Did Mr. Vincent have a greater sense of who 14 might be important to an investigation, because he 15 worked on it every day, than you did? 16 MR. BABCOCK: Object to the form. 17 MR. KAITCER: You can answer. 18 THE WITNESS: I don't know how to answer. I 19 don't know the answer to that question. 20 BY MR. KAITCER: 21 Q You're aware that Mr. Vincent appeared on the 22 Bill O'Reilly show on March 6th, 2003 shortly after 23 you did, you aware of that? 24 A Well, I am now. I'm not sure I knew at the	Page 59 1 A Yes. 2 MR. BABCOCK: Actually, it says, We don't really 3 know. 4 BY MR. KAITCER: 5 Q I'm sorry, it says, We don't really know. We 6 didn't talk to the man. 7 Do you see where it says that? 8 A I do. I understood the first time. 9 Q Do you -- no, I'm just trying to clear it for 10 Mr. Babcock. 11 Do you have any information that would lead 12 you to believe that the guy that you wanted to -- 13 Special Agent Abdel-Hafiz to record was, in fact, 14 important? 15 A I'm -- the only reason I'm hesitating, 16 Mr. Kaitcer, is because the way you phrased the 17 question. It was a very important part of the 18 investigation, and part of the investigation died 19 because of Agent Abdel-Hafiz's refusal to cooperate. 20 But so -- so the answer is I do understand how 21 important it was. I don't -- I don't -- I guess I 22 disagree with your -- your emphasis on the 23 individual. I'm more concerned about the event. 24 Q You're concerned about the event. What event
Page 58 1 time. 2 Q Okay. 3 A I don't remember knowing it. 4 Q You have Exhibit 51 in front of you? 5 A I'm trying to find it here. Hold on a 6 second, please. Yes. 7 Q And this is a document that was produced to 8 us by Fox Network that is a transcript of a -- a 9 portion of The O'Reilly Factor television show that 10 took place on March 6th, 2003. Do you see that on 11 the first page? 12 A That's what it says. 13 Q If you would look at the page that's Bates 14 stamped FOX 218? 15 A Sure. 16 Q And you see where Mr. O'Reilly asks 17 Mr. Vincent, Now, how important was the guy you were 18 trying to get? 19 Do you see that about the fourth paragraph 20 down? 21 A Yes. 22 Q Mr. Vincent's response was, Well, we really 23 don't know. We never did talk to the man. 24 Do you see where it says that there?	Page 60 1 is that? 2 A The event of -- of recording -- 3 Q Okay. 4 A -- one or more individuals with respect to 5 the grand jury investigation. 6 Q Well, let's talk about the issue of the 7 recording. You mentioned that -- I think you 8 mentioned that the FBI is almost like a paramilitary 9 organization, isn't that right? 10 A Yes. That's my description of it. I'm not 11 sure they would describe themselves the same way. 12 Q Okay. Now, you didn't work for the FBI, did 13 you? 14 A No. I worked for the Department of Justice, 15 and the FBI is a -- is an arm of the Department of 16 Justice, but I was not a -- I did not belong to the 17 FBI. 18 Q And you were not in the position to give 19 orders to individual FBI agents, were you? 20 A Well, again, I think you're misconstruing 21 how -- the nature of the relationship. The 22 Department of Justice works together. The prosecutor 23 and the agents work together to investigate and 24 prosecute cases. Ultimately, the person responsible

Page 61 1 for the prosecution is the Assistant United States 2 Attorney, which ultimately -- which in this instance 3 was me. 4 So did I ask individual agents, direct 5 individual agents to do specific things within the 6 investigation, and frankly within every investigation 7 I worked on, the answer to that is yes. Could an 8 agent say no, I never, with this exception, ever 9 recall that ever happening. 10 Q Well, isn't it true that as you observed the 11 FBI as a paramilitary type of organization -- and 12 aren't there individuals to whom Special Agent 13 Abdel-Hafiz is directly responsible in the chain of 14 command? 15 MR. KOSKI: Let me object to the form. Do you 16 mean within the chain of command at the FBI? 17 MR. KAITCER: Yes, within the chain of command at 18 the FBI. 19 THE WITNESS: Certainly he had supervisors. 20 BY MR. KAITCER: 21 Q Okay. And do you know who those supervisors 22 were? 23 A I -- I know I talked with at least one of 24 them, but their names escape me. Ron Patton, I	Page 63 1 Q And if his superiors at the Dallas office 2 ordered him not to perform the requested monitoring, 3 then he would be obliged to follow that direct order, 4 would he not? 5 MR. BABCOCK: Object to the form. 6 MR. KAITCER: You can answer it. 7 THE WITNESS: That's not my recollection of what 8 happened. What happened was, based on my 9 conversations, both within the -- with Agent 10 Abdel-Hafiz, I believe -- am I correct in saying his 11 supervisor is Ron Patton, is that -- do I have that 12 name correct? 13 MR. KAITCER: I believe so. 14 THE WITNESS: -- and other people within the FBI 15 and U.S. Attorney's Office was the decision was left 16 up to him, and they did not -- his superiors did not 17 issue orders one way or the other, that they let him 18 make the decision. I was never made aware, if your 19 question is, that he was ordered not to participate 20 in the investigation. 21 BY MR. KAITCER: 22 Q Okay. 23 A I -- I pressed that pretty firmly, I'm 24 confident.
Page 62 1 believe, was his supervising agent, and there's a SAC 2 with whom I do not recall specifically having 3 conversations; however, I'm sure there was 4 information communicated back and forth. I don't 5 know if that was done through Kathleen or how it 6 was -- I just don't remember. 7 Q Well, the SAC, which would be the Special 8 Agent in Charge, was, for the Dallas office, was 9 Danny Defenbaugh, isn't that right? 10 A Yes. Okay. You're better with names than I 11 am. 12 Q And isn't it true that in the FBI hierarchy, 13 Special Agent in Charge Defenbaugh has just as much 14 rank, if you will, as Special Agent Kathleen 15 McChesney in the Illinois office? 16 A They were both SACs. I think the -- I'm sure 17 the Chicago office is much bigger. I don't know how 18 you would rank them in that regard. 19 Q But Special Agent Abdel-Hafiz was assigned to 20 the Dallas office and was required to follow the 21 orders of his superiors in that office, was he not? 22 A Presumably he was charged with following the 23 orders of Mr. Defenbaugh, Special Agent -- SAC 24 Defenbaugh, yes.	Page 64 1 Q Who did you press it with? 2 A With the agents in Chicago and in Dallas. 3 Q Which agents in Dallas did you press it with? 4 A I know I had a conversation with Mr. Patton. 5 I'm trying to remember if I had a conversation or 6 someone in my office or the FBI hierarchy in Chicago 7 had a conversation with Mr. Defenbaugh. I know he 8 was in the loop on this. I just don't know exactly 9 how -- how it was communicated with him. 10 Q Okay. Look at Exhibit No. 42, if you would. 11 Do you have that in front of you, Mr. Flessner? 12 A I do. I found it. 13 Q There is a statement contained in that 14 exhibit in the last paragraph. It says, Based upon 15 his knowledge of the subject's background in the case 16 as well as the location, SA Abdel-Hafiz recommended 17 against, while suggesting an alternative plan. 18 Ultimately, the decision was made by management at 19 the Dallas office and Chicago agreed to abide by that 20 decision. The Dallas Special Agent in Charge and 21 other supervisors concurred with Special Agent 22 Abdel-Hafiz's request not to conduct the consensual 23 monitoring. 24 Did I read that correctly, sir?

Page 65 1 A I believe you did. 2 Q Does that comport -- does this particular FBI 3 statement comport with your recollection of the 4 events, at least the part that I just read to you? 5 A No, it doesn't. 6 Q Okay. 7 A Special Agent Abdel-Hafiz never -- well, 8 he -- he did not suggest an alternative plan other 9 than doing an overt recording. There was no 10 alternative plan involving a covert recording, which 11 was the only acceptable way to do it. 12 Q But an overt recording is an alternative 13 plan, is it not? 14 A No, it wasn't. It wasn't. It was not an 15 alternative plan. 16 Q Were you made aware of any of the cases that 17 Special Agent Abdel-Hafiz was working on in the 18 Dallas office? 19 A No, I wasn't. 20 Q Were you aware of the importance of his 21 gathering intelligence in the Arab community to the 22 FBI? 23 A I was not privy to any of Mr. -- or Special 24 Agent Abdel-Hafiz's cases in Dallas.	Page 67 1 Q What is a 302? 2 A A 302 is a report of investigation. It's on 3 FBI form 302. This is a -- this is -- looks like a 4 internal FBI form reporting within the Bureau. 5 Q Okay. If you could, while you've got 41 in 6 your hand, don't lose it, look at Exhibit 11A? 7 A Okay. 8 Q And this is also not a 302, is that correct? 9 A No, this is not. If I -- I may have 10 mistakenly referred to this as a 302, but it's not a 11 302 either. 12 Q Okay. These particular exhibits, 41 and 11, 13 are what you call ECs. Is that electronic 14 communications? 15 A Yeah -- well, you know, I don't really know 16 how they labeled them, but that sounds right. 17 MR. KOSKI: Let me interrupt for one second. 18 Both these documents say at the bottom "subject to 19 protective order". Is that a protective order in 20 this case? 21 MR. KAITCER: Yes, that's a -- and Chip can 22 correct me if I'm wrong, but there is a protective 23 order in this case, but it's such that we can use it 24 for legitimate usages in the case, and we're not
Page 66 1 Q Is it conceivable that Special Agent 2 Abdel-Hafiz was working on other matters for the FBI 3 such that it would have compromised those particular 4 investigations if he were to become involved in 5 wearing a wire as y'all call it? 6 MR. KOSKI: I'll object to foundation, but the 7 witness can answer. 8 THE WITNESS: Anything is conceivable. That's 9 not what was communicated to me at the time. 10 BY MR. KAITCER: 11 Q Okay. Well, look at Exhibit No. 41, if you 12 would, please. 13 A Sure. 14 Q Have you ever -- do you have it in front of 15 you? 16 A I don't -- I was never given 41. 17 Q Do you have it in front of you now? 18 A No, I do not. 19 MR. KOSKI: We're looking. Hold on one second. 20 (Exhibit No. 41 tendered to the Witness.) 21 THE WITNESS: Okay. I have 41 in front of me. 22 BY MR. KAITCER: 23 Q Is this what y'all refer to as a 302? 24 A No, this is not a 302.	Page 68 1 supposed to disseminate it outside of the necessity 2 of using it in the case. 3 MR. KOSKI: But if there's no objection, then 4 I'll designate this whole transcript as subject to 5 whatever protective obligations exist including that 6 order, and if somebody wants to get me a copy and 7 then for some reason it should be so not designated, 8 we can address that later, but at least for the time 9 being let me make that direction. 10 MR. KAITCER: Sure. I think -- Chip can correct 11 me, but I think these documents were given to us from 12 the FBI subject to the protective order with the 13 understanding we would just use them for legitimate 14 purposes in this litigation. 15 MR. KOSKI: Fair enough. 16 MR. BABCOCK: It's -- it's a little more 17 complicated than that, not much. They -- they gave 18 us an initial set of documents without any 19 restrictions. Exhibit 11 was produced in a more 20 redacted form than Exhibit 11A is. Then there was a 21 second production of which 11A was a part of, and you 22 can tell any document from the second production 23 because it has at the bottom "subject to protective 24 order", and there was an agreed -- what is referred

Page 69 1 to in the order itself as a Privacy Act Order that 2 was entered by Judge Lynn with the consent of all the 3 parties to the litigation. So Mr. Kaitcer is correct 4 in that the documents may be freely used for the 5 purposes of the litigation, although, not for other 6 purposes. 7 MR. KOSKI: Okay. Thank you. 8 BY MR. KAITCER: 9 Q Anyway, with that understanding, if we could 10 go back to Exhibit No. 41, Mr. Flessner, you haven't 11 seen 41 before, is that right? 12 A Again, I don't have any recollection of it, 13 but it's entirely possible that I have seen it. I 14 just don't -- don't recall. 15 Q Okay. Are you aware of the significance of 16 notations on these communications especially where 17 with regard to where it says "approved by"? 18 A No. 19 Q Okay. Well, this particular exhibit, Exhibit 20 41, indicates that it was drafted by Special Agent 21 Abdel-Hafiz and approved by Danny Defenbaugh, 22 Fernando Candelario, and Ronald Patton. Do you see 23 that on the first page? 24 A I see the names, sure.	Page 71 1 assistance in the Vulgar Betrayal investigation. 2 A Okay. I see. And you see that in the 3 "Synopsis" in 41? 4 Q It's -- the response is 41. 5 A Okay. 6 Q 11A contains the Chicago request for this 7 consensual monitoring -- 8 A Okay. 9 Q -- isn't that right? 10 A Okay. Yes, apparently, yes. 11 Q And these are not orders, these are requests, 12 isn't that correct? 13 A Again, these are -- these are internal FBI 14 documents. So you really need to talk to someone 15 within the chain of command of the Bureau to figure 16 out how this whole process works. 17 Q So in fact, you mentioned early on that you 18 were not an FBI agent, so you don't really know 19 whether or not a request is considered an order, do 20 you? 21 MR. BABCOCK: Object to the form. 22 MR. KAITCER: You can answer. 23 THE WITNESS: I don't -- I would have no 24 understanding as to how internally the FBI would work
Page 70 1 Q Okay. Do you see there appear to be initials 2 next to their names? 3 A Yes. 4 Q Do you have any idea about what the 5 significance is of those initials? 6 A No. I mean, I can guess, but your -- your 7 assumptions are as -- probably as meaningful as mine. 8 Q Well, not necessarily because I'm not an AUSA 9 or former one. I'm just asking if you knew what the 10 significance was of initials on the "approved by" 11 portion of the document? 12 A No, I don't. 13 Q Now, this document appears to be a response 14 to Chicago's request for the Dallas Division's 15 assistance in the Vulgar Betrayal investigation, is 16 that right? 17 A I'm just looking at it now, but I see -- I 18 see the conversation referred to, yes. 19 Q Okay. And now, the Chicago request, I guess, 20 is documented by Exhibit 11A, is that right? 21 A I'm not -- I'm not sure. Where do you -- how 22 do you -- how do you reference that? 23 Q On 11A, the first page where it says 24 "Synopsis", it says, To request Dallas Division	Page 72 1 in that regard? 2 BY MR. KAITCER: 3 Q Okay. You understand what an order is, don't 4 you? 5 A I have an understanding of what an order is. 6 Q Working as an AUSA, did you have the 7 authority to order Special Agent Abdel-Hafiz to do 8 anything? 9 A Well, again, you misunderstand the nature of 10 the relationship between the prosecutor's office and 11 the Bureau. It was not adversarial, and it was not 12 hierarchical. They worked together to pursue a 13 common goal, which would be to investigate and 14 prosecute crimes. I was not an FBI agent, I was not 15 an FBI supervisor, I did not have a pure authority to 16 order anybody in the FBI to do anything. 17 Q Okay. 18 A But I sim- -- I did on every occasion that I 19 can ever recall instruct FBI agents to conduct 20 certain parts of certain investigations to prove the 21 case, and every case that was complied with that I 22 have -- to repeat myself, I have no memory of ever 23 having an FBI agent refuse a request to pursue an 24 investigative lead.

Page 73 1 Q Okay. A request you're talking about, not an 2 order? 3 A Well, I mean, it's -- it's the words that you 4 want to use, which are fine. It's just that I think 5 the way you describe it misconstrues the nature of 6 the relationship. 7 Q Well, they're actually not my words, they're 8 the words of some of the defendants in this case. 9 Special Agent Abdel-Hafiz has been accused of 10 refusing to obey orders to conduct covert recording. 11 To your knowledge, he wasn't ordered to do anything, 12 was he? 13 MR. BABCOCK: Object to the form. 14 MR. KAITCER: You can answer. 15 THE WITNESS: I was not privy to any 16 conversation. I don't know what he was ordered to do 17 with -- by whom, by Mr. Defenbaugh or by Mr. Patton, 18 I don't know. 19 BY MR. KAITCER: 20 Q Fair enough. Now, if you would look at 21 Exhibit 48 -- no, I'm sorry, I shouldn't jump around 22 like that. Let's talk about Exhibit 41 and get that 23 out of the way. Turn, if you will, to Page 2 of 24 Exhibit 41.	Page 75 1 intelligence regarding their investigations was not 2 addressed. 3 Do you see where it says that? 4 A I see where it says that, yes. 5 Q Did anyone make you aware of that particular 6 perspective following the issuance of this electronic 7 communication of April 21st, 1999? 8 A I believe I've told you what Special Agent 9 Abdel-Hafiz told me as to why he would not 10 participate in the recording of the potential 11 witnesses or witness, and he did not at any time tell 12 me that his ability to -- or I have no memory of him 13 telling me his ability to gather information, I don't 14 know what 55 FBI field offices he is talking about, 15 would be hindered by that. I do remember him talking 16 about safety, though, I remember that. 17 Q Well, in any event, this communication 18 appears to have been sent on April the 21st, 1999, 19 but you were not made aware of it or the Dallas 20 office's position that's referenced in this 21 communication, were you? 22 A I don't remember that, no. 23 Q Pardon me? 24 A I don't remember having a discussion about
Page 74 1 A Yes, sir, I'm there. 2 Q Okay. If you will read Paragraph 4, it 3 recites that, It was also explained that there 4 existed a huge potential for Special Agent 5 Abdel-Hafiz to lose his ability to gather 6 intelligence from the Arab community if it were known 7 in the community that he had recorded a conversation 8 between himself and another Muslim seeking advice. 9 Do you see where it says that? 10 A Yeah, I think it says advise, not advice, but 11 yes. 12 Q Maybe that was a typo, I don't know, seeking 13 advice. In any event, were you ever told by anyone 14 in the Chicago office in response to this electronic 15 communication dated April 21st, 1999 that this 16 explanation was given? 17 A I don't recall this explanation ever being 18 given to me. 19 Q Okay. And Paragraph 5 says, During the 20 teleconference of April 15th, 1999 between Chicago 21 agents and AUSAs and Dallas Agent Abdel-Hafiz and his 22 supervisor Ronald Patton, the fact of the potential 23 loss of Special Agent Abdel-Hafiz's ability to assist 24 the remaining 55 FBI field offices in gathering	Page 76 1 that, no. 2 Q Now, if we could, do you have Exhibit 8 -- 3 I'm sorry, 48 handy, Mr. Flessner? 4 A 48? 5 Q Yes. 6 A Have I seen that yet? 7 Q That's the transcript of your interview with 8 ABC News. 9 A Okay. I've got it. 10 Q Probably the biggest one there. 11 A Yeah, I have it. 12 Q If you would look at the page Bates stamped 13 168? 14 A Okay. 15 Q You have a discussion there between you and 16 the interviewer, and you're talking about basically a 17 difference between the criminal investigation portion 18 of the work you were doing and the, I guess, 19 intelligence arm or the intelligence gathering 20 portion of either the FBI or possibly the U.S. 21 Attorney's Office. I don't know exactly how that 22 works. 23 But my question is: Was there a difference 24 between the criminal investigation portion of the

Page 77 1 Bureau and the intelligence gathering portion of 2 the Bureau? 3 A Yes, those were two distinct -- I'm thinking 4 of the word divisions, but they had specific names. 5 I can't remember. Groups. 6 Q Okay. And so your -- your role and your job 7 was to develop evidence for criminal investigations, 8 right? 9 A Yes, but this was a hybrid, a unique 10 investigation. You'll have to remember this is 11 pre-Patriot Act and pre-9/11. So the ability -- or 12 there was -- there was a mechanism by which 13 intelligence information could be thrown over the 14 wall to the criminal investigators, and that's what 15 was supposed to be happening in this case internally 16 within the Bureau, but it was -- it wasn't as fluid 17 as it is now. 18 Q Okay. Back then there was a definite, I 19 guess, demarcation between criminal investigations 20 and intelligence gathering, right? 21 A Oh, there still is. 22 Q There still is? 23 A Right. 24 Q So would it be safe to say that the policy	Page 79 1 intelligence branch or someone in the intelligence 2 branch of the Department of Justice to shut the 3 investigation down? 4 MR. BABCOCK: Object to the form. 5 BY MR. KAITCER: 6 Q Were you not? 7 A That's not accurate. 8 Q Okay. Tell me what is accurate, then. 9 A What's the question? About what? 10 Q How was it not accurate? 11 A There was never a decision -- I was never 12 told by anyone from the Department of Justice to shut 13 the investigation down. That did not happen. 14 Q Okay. Do you know who did shut the 15 investigation down? 16 A Well, the investigation -- my understanding 17 is I left the office -- the U.S. Attorney's Office in 18 March of 2000. My understanding is the investigation 19 was temporarily closed in the fall of 2000 and was 20 resurrected, and it resulted in indictments of three 21 individuals which are now pending in the United 22 States District Court for the Northern District of 23 Illinois for Judge Amy St. Eve presently. 24 Q Who is the judge?
Page 78 1 considerations that underlie the criminal 2 investigation portion would not necessarily be the 3 same policy considerations that underlie the 4 intelligence gathering portion? 5 MR. KOSKI: I'll object to foundation, but the 6 witness can answer. 7 THE WITNESS: I think that's an accurate 8 statement. 9 BY MR. KAITCER: 10 Q And I'll represent to you, Mr. Flessner, that 11 the way I got this information is reading your 12 interview just last night, and the -- apparently what 13 you were identifying is some problems between one 14 branch of either the Bureau or the Department of 15 Justice and another? 16 A I'm glad someone understood. 17 Q And in looking at that, it appears that you, 18 too, were a part of a I don't know if I would 19 initially call it a paramilitary organization, but an 20 organization which certainly had its chain of command 21 and its structure, isn't that right? 22 A I think the Department of Justice definitely 23 has a chain of command and structure, yes. 24 Q Okay. And you were instructed by I guess the	Page 80 1 A Amy St. Eve. 2 Q Turn, if you would, to the -- maybe this is a 3 more accurate depiction of what your position is 4 about what happened. If you would turn to Page 200 5 of Exhibit 48. Are you there, Mr. Flessner? 6 A I am, I am, I'm sorry. I was just looking at 7 it. 8 Q Okay. If you would read the portion that's 9 near -- well, there's a marking, someone went ahead 10 and marked this for us, which is pretty helpful. It 11 says 020802. Read that statement that you made to 12 the ABC interviewer, if you would? 13 A Starting at 020802, is that where you want me 14 to begin? 15 Q Yes. 16 A When it became clear to me that this case was 17 not going to be supported by the FBI and the 18 department -- and the Justice Department, and I had 19 spent probably five -- my 500th hour in a meeting 20 about bureaucracy and why we can't do or why we can't 21 do that, that just caused me to make a decision, 22 then, to move on. 23 Q Okay. What were you referring to in that 24 statement?

Page 81 1 A What happened was that the -- the -- there 2 was internal fighting within the Bureau between the 3 intelligence community and the criminal investigators 4 with respect to how and what information was going to 5 be disclosed to the criminal investigation unit, my 6 team, for purposes of prosecution. And the -- again, 7 this was pre-Patriot Act and pre-9/11, and there was 8 a lot of internal coveting of -- of each his own 9 territory, and that caused a great deal of 10 bureaucratic problems with the investigation. 11 We, as I've indicated here in the interview, 12 we spent many, many, many, many hours trying to work 13 out those bureaucratic problems, and I felt like that 14 never became resolved, and I felt like the 15 investigation was not going to move forward in my 16 lifetime as a prosecutor, and so I made my own 17 decisions with my life. 18 Q And look at Page 191, if you would? 19 A Sure. 20 Q Let me know when you're there. 21 A I am there. 22 Q If you look at the line that begins at 23 012717, read that sort of cluster of information that 24 you gave the ABC interviewer?	Page 83 1 seek approval from main justice, yes. 2 Q And if you didn't get that approval from the 3 people above you, you weren't allowed to do the thing 4 you wanted to do, isn't that right? 5 A Well, yeah, I mean, there were -- some things 6 a Line AUSA would have authority to some types of 7 investigative tools, a Line AUSA would have authority 8 to initiate on his own. Others required DOJ 9 approval, others required court approval. 10 Q Now, you're not a -- you're not in the FBI, 11 as you said, you were never an FBI agent, right? 12 A I think we've established that, sir. 13 Q Were you -- are you familiar with the rules 14 and regulations in the FBI for agents? 15 A Barely. I would have no reason -- 16 Q Pardon me? 17 A Barely. I would have -- other than 18 anecdotally or just discussions with people, I would 19 have no real understanding of that. 20 Q You have no personal knowledge or any real 21 understanding of the rules and regulations that 22 govern FBI agents, right? 23 A Well, again, I worked with FBI agents on a 24 daily basis for almost 13 years, and I still have
Page 82 1 A And every time we asked for the smallest 2 thing it became a huge issue. It went -- it went 3 clear up to the, you know, the highest levels of the 4 Chicago FBI office, then to the FBI in Washington, 5 and the answer was -- always came back down, no, you 6 can't do that. 7 Q Thank you, Mr. Flessner. 8 Is this also sort of part and parcel of the 9 problems you were describing earlier about the 10 investigation, criminal investigation portion versus 11 the intelligence gathering portion of the Bureau and 12 the Department of Justice? 13 A Yes. 14 Q Okay. And when the answer came back down 15 from wherever it came back down, as you're referring 16 to in this particular segment, you were expected to 17 follow the directions in that answer, were you not? 18 A Well, certain things within the department 19 had to be approved. For example, I couldn't go out 20 and get a Title 3 without getting permission from the 21 Department of Justice and getting approval of court. 22 Sounds like that's no longer the case these days, but 23 there was a time when -- when all those things were 24 tightly regulated. So those things were -- I had to	Page 84 1 friends that I see, but I never had cause to sit down 2 and read the policies and regulations of the Bureau 3 except in a case in which there was a problem, and I 4 did in this case have to get some familiarity with 5 it, but I would not in any way say I'm familiar with 6 that -- with those procedures. 7 Q Well, turn to Page 189 of Exhibit 48, please. 8 A Okay. 9 Q The last statement, full statement on there 10 says I -- and this is your statement to the ABC 11 interviewer. It says, I am troubled by an agent who 12 disobeys the rules and regulations in -- for a 13 personal belief. 14 Is that what it says there? 15 A Yes. 16 Q Is that what you told the ABC interviewer? 17 A Yes. If this is an accurate transcript, 18 that's what I said. 19 Q You have no personal knowledge of any rules 20 and regulations that Special Agent Abdel-Hafiz 21 disobeyed, do you? 22 A I don't think that's accurate, sir. 23 Q All right. Then tell me what rule of 24 that Special -- what rule of the FBI did Special

Page 85 1 Agent Abdel-Hafiz disobey? 2 A Special Agent Abdel-Hafiz said to me and my 3 colleagues that he -- it was against his religion for 4 a Muslim to record a Muslim. And it is my 5 understanding, and it certainly was made clear to me 6 when I became a member of the Department of Justice, 7 that my personal beliefs were not to interfere with 8 my duties, which was to uphold the laws and the 9 Constitution of the United States. So his religious 10 belief that it was -- that he was not to record a 11 Muslim was not relevant to the investigation. 12 This was a very important key part to a very 13 large, in fact, at the time I believe it was the 14 largest money laundering terrorist investigation in 15 the country, and he refused to cooperate in that, for 16 religious beliefs is what he said to us, and that to 17 me is a disobeying of the rules and regulations of 18 this office. 19 Q I'm going to ask you again, Mr. Flessner, 20 what rule and regulation of conduct of FBI special 21 agents did he disobey? 22 MR. KOSKI: I'll object. That's been asked and 23 answered. 24 MR. BABCOCK: Object to the form. I'll join that	Page 87 1 MR. BABCOCK: Object to the form. 2 THE WITNESS: Again, I was never told that. I 3 told you what I was told as to why it wasn't going to 4 be done. 5 BY MR. KAITCER: 6 Q If you would turn to Page 183 of Exhibit 48, 7 if you look at the bottom of 183, top of 184? 8 A Okay. 9 Q You make the comment, In my experience in 10 more than 12 years I've never known an agent to say I 11 will not participate in this investigation. 12 A That's correct. 13 Q Okay. That's not an accurate statement, is 14 it? 15 A I believe it is. Do you have some 16 information that I'm not aware of? 17 Q Well, Special Agent -- Special Agent 18 Abdel-Hafiz said he would not participate. He said 19 he would be happy to either talk to the -- this 20 suspect or this particular person of interest or that 21 he would advise that person that he or she was being 22 recorded and do it in that fashion. So he didn't 23 refuse to participate, did he, he just didn't do 24 exactly what you wanted him to do --
Page 86 1 objection. 2 BY MR. KAITCER: 3 Q You're refusing to answer that question? 4 A I think I've already answered that, sir. I 5 don't know how to say it better than I've already 6 said it. 7 Q Let me ask you this question: If the 8 decision had been made to do the recording, as you 9 have requested, would Special Agent Abdel-Hafiz have 10 needed his Agent in Charge's signature to approve the 11 recording? 12 MR. BABCOCK: Object to the form. 13 MR. KAITCER: You can answer. 14 THE WITNESS: I do not know all of the niceties 15 of what forms need to be signed. 16 BY MR. KAITCER: 17 Q Do you know if there is a -- an FBI rule or 18 regulation that requires a Special Agent in Charge to 19 approve of any covert reporting? 20 A It sounds right, but I do not know as I sit 21 here. 22 Q And are you aware that Special Agent in 23 Charge Danny Defenbaugh specifically ordered him not 24 to make such a recording?	Page 88 1 MR. BABCOCK: Object to the form. 2 BY MR. KAITCER: 3 Q -- isn't that right? 4 MR. BABCOCK: Same objection. 5 THE WITNESS: No, that's not right, sir. 6 BY MR. KAITCER: 7 Q Special Agent Abdel-Hafiz didn't say that he 8 would be happy to interview the person and then 9 testify to that interview later if necessary? 10 A That's not a meaningful participation in 11 the -- in the investigation. As I've explained to -- 12 Q Let me ask you this question, then. Did 13 Special Agent Abdel-Hafiz tell you he would be happy 14 to interview this particular individual and testify 15 about it later if need be? 16 A Again, that's not where the investigation was 17 headed. 18 Q Did he -- 19 MR. KOSKI: Mr. Kaitcer, Mr. Kaitcer, I'm sorry. 20 That's at least twice now you've interrupted the 21 witness, and I think particularly because we're doing 22 this telephonically, and also, just because it's good 23 practice in a deposition, we need to have both 24 parties finish their statements before we, you know,

Page 89 1 next interrupt each other. 2 MR. KAITCER: All right. I'll try to do better. 3 BY MR. KAITCER: 4 Q I think the question, Mr. Flessner can be 5 answered yes or no. Did Special Agent Abdel-Hafiz 6 tell you that he would interview this particular 7 individual and testify about it later if need be? 8 MR. KOSKI: And I'll object to that as asked and 9 answered, but the witness can respond. 10 THE WITNESS: Again, I can't answer that yes or 11 no, and the reason I can't answer it yes or no is for 12 every thing that I've already said. 13 I was not interested in Special Agent 14 Abdel-Hafiz's opinions about what my investigation 15 where my investigation should go or how it should be 16 conducted. That offer -- if I may just finish. 17 MR. KAITCER: Sure. Go ahead. 18 THE WITNESS: That offer -- I don't remember 19 exactly what he said about that, but that offer, if 20 that offer was made, was not a meaningful offer. It 21 would not have assisted us in any meaningful way, 22 because it only would have allowed the potential 23 grand jury witness, if you will, that's what I'm 24 going to identify them as, as giving them information	Page 91 1 Q This individual, either you or Special Agent 2 Wright or Special Agent Vincent, didn't just pick up 3 the phone and call up Special Agent Abdel-Hafiz and 4 say, hey, we have this guy we want you to talk to? 5 A No, no. 6 Q That's not how it went, was it? 7 A No. He was contacted by the -- by the 8 potential witness, and he informed us that he had 9 been contacted. That, of course, was his obligation 10 as an FBI agent to communicate that information. 11 Q And he brought this information to your 12 attention? 13 A Well, no, he did not, sir. What he did is he 14 told us that the individual had approached him. The 15 individual was already on our radar screen. 16 Q Okay. Let me talk to you, if you look at 17 Page -- back to Exhibit No. 48, if you will look at 18 the page that is Bates stamped 173. 19 A I am there. 20 Q Now, I'm trying to get a brief picture of 21 what the discussion is here. The interviewer asked 22 you if -- what you were doing, you were on a -- sort 23 of a money trail and a money laundering trail, right, 24 you weren't necessarily doing counterterrorism, is
Page 90 1 which I did not want them -- I could not allow them 2 to have to continue to conduct an undercover 3 investigation. 4 BY MR. KAITCER: 5 Q In fact, far from not wanting to participate 6 in the investigation, wasn't it Special Agent 7 Abdel-Hafiz who brought this individual up on your 8 radar screen to begin with? 9 A No, that's not true. 10 Q It is not? 11 A It is not true. What happened is he did, I 12 believe, inform Agent Wright through some electronic 13 communication that this individual had approached 14 him, and the individual's name I believe was in the 15 system under Vulgar Betrayal, and that's how the 16 whole issue arose as to, yes, we're now going to 17 pursue this covert investigation, but he did not 18 bring -- initially bring the individual on our radar 19 screen. 20 Q Okay. Well, you didn't know about this 21 particular person and then contact Special Agent 22 Abdel-Hafiz about trying to talk to him, did you? 23 A I'm sorry, could you repeat that? I didn't 24 know what? I didn't hear that.	Page 92 1 that a fair characterization? 2 A I'm -- your -- I'm not sure what your 3 question is. Are you referring me to something in 4 the transcript, or are you asking me a separate 5 question? 6 Q I'm referring right now to a separate 7 question than this is what you're talking about in 8 terms of the transcript here? 9 A If -- I haven't read this page, but if the 10 question is what was the nature of the investigation, 11 the nature of the investigation was that there was 12 individuals and institutions both within and out the 13 United States who were raising and laundering money 14 that was ultimately being used in the support of 15 terrorism mostly but not exclusively to disrupt the 16 Middle East peace process and in support of Hamas. 17 Q Right. And the interviewer -- understanding 18 that, the interviewer says, Any opportunities to 19 trace the money prior to 9/11 that might have made a 20 difference -- I'm sorry, that might have made some 21 difference. What was your response? 22 A Do you want me to read what I said, or do 23 you want me to -- 24 Q Please.

Page 93 1 A What's your question? 2 Q Go ahead and read what your response was to 3 that question. 4 A Okay. 5 Q That's on Page 173. 6 A Thank you. 7 I don't think so. I mean, it's very -- 8 everyone wants to speculate about, you know, how 9 could we have -- what could we have done or what 10 should have been -- or what could have been done. 11 It's impossible to know had the investigation gone 12 forward, you know, how far it could have ultimately 13 touched people, but I have no reason to believe that 14 ultimately it would have impacted 9/11 one way or the 15 other. 16 Q And when you say, It would have ultimately 17 impacted 9/11 one way or the other, "it" was the 18 investigation that you were doing? 19 A Yes. I think my answer is, what I'm saying 20 here is, I'm -- certainly was not in a position, I 21 don't remain in a position to hope that I could have 22 prevented by this investigation 9/11. 23 MR. KAITCER: Right. And -- let me take a quick 24 break here. I may be done here in a just a minute,	Page 95 1 A I'm not saying one way or the other. I mean, 2 I don't know. I can't -- I think it is presumptuous 3 and naive to suspect that my investigation, our 4 investigation, the Bureau's investigation would stop 5 9/11. I'm not in any way suggesting that. I mean, 6 that shouldn't be, you know, taken away from this 7 interview. 8 MR. KAITCER: Okay. Thank you. Let me just 9 check my notes and see if there is anything else I 10 need to go over with you. 11 MR. KOSKI: While you're looking, the 12 videographer informs me we have approximately five 13 minutes left on this videotape. 14 MR. KAITCER: Okay. I may be -- I don't know if 15 you want to change now. I don't have five minutes of 16 questions left. I don't know if Chip does or not. 17 MR. BABCOCK: Not unless you ask a doozy. 18 MR. KAITCER: I don't think it's going to be a 19 doozy. I always wish I had one, but there's usually 20 not. 21 THE WITNESS: I bet I could talk for five 22 minutes. You want me to try? 23 MR. KAITCER: You're a trial lawyer, right? 24 THE WITNESS: That's right.
Page 94 1 Mr. Flessner. I'm going to run down to the little 2 lawyer's room. 3 THE VIDEOGRAPHER: We're going off the record at 4 3:05. 5 (Recess was taken.) 6 THE VIDEOGRAPHER: We are going back on the 7 record at 3:09. 8 BY MR. KAITCER: 9 Q Mr. Flessner, if you would turn to Page 175 10 of Exhibit 48? 11 A Okay. 12 Q There's on the previous page, on 174, there's 13 a discussion of the 15 of 19 hijackers being Saudi, 14 and they had money, and there was cash flow, and they 15 had bank accounts, and there were wire transfers, et 16 cetera. Do you see where all that discussion is on 17 Page 174? 18 A Yes. 19 Q Now, 175, the interviewer asks you, That's 20 what you were investigating, people like that, those 21 19 hijackers prior to 9/11, right? What was your 22 response to that, at least down to line 011321? 23 A Again, you want me to read it, Mr. Kaitcer? 24 Q Please.	Page 96 1 MR. KAITCER: Shouldn't be a problem. 2 Okay. Just a couple of quick questions, and 3 then we'll see if we need to change it. 4 BY MR. KAITCER: 5 Q When you were on Mr. O'Reilly's show, and I 6 believe that the transcript of that is -- let me see 7 if I can find that transcript where you were 8 testifying. 9 MR. KOSKI: 49. 10 BY MR. KAITCER: 11 Q 49. If you would look at the portion that is 12 Bates stamped 105, are you there Mr. Flessner? 13 A I am. 14 Q Mr. O'Reilly asks you a question, Bottom 15 line, though, and your response was, Bottom line, is 16 he said, I would not record another Muslim. That is 17 against my religion. 18 That is what you said on the radio -- I'm 19 sorry, on the television program, is that correct? 20 A If that's -- if the transcript is accurate, 21 yes. 22 Q Do you have a present recollection that 23 that's Special Agent Abdel-Hafiz's words verbatim, or 24 is that just your interpretation of them?

Page 97	Page 99
1 A I don't have a verbatim recollection of it	1 CHANGES AND SIGNATURE
2 now.	2 PAGE LINE CHANGE REASON
3 Q Okay. So --	3
4 A I do have a verbatim -- I know he said a	4
5 Muslim does not record another Muslim. I remember	5
6 that specific sentence.	6
7 Q Do you remember -- I'm sorry. I didn't mean	7
8 to cut you off. Did you have any more you wanted to	8
9 add to that?	9
10 A In the general -- I don't know if it was	10
11 invocation or the general communication was that that	11
12 was against his religion. Whether or not he said	12
13 that exact phrase precisely as it is recounted here,	13
14 I do not recall that.	14
15 Q Okay. Do you remember verbatim the statement	15
16 "that is against my religion"?	16
17 A Again, what I just said was that that	17
18 information was communicated somehow. I do not have	18
19 the specific recollection he used those five words.	19
20 Q Okay. And the last question I need to ask	20
21 you is, during that particular telephone conference,	21
22 did Special Agents Vincent and Wright participate	22
23 with you in that conference?	23
24 A They were not -- they were present in the	24
Page 98	Page 100
1 room. They did not -- I have no recollection of them	1
2 speaking during the conversation.	2
3 Q Did they tell you to try to get Special Agent	3
4 Abdel-Hafiz to say something or to -- did they say	4
5 something like, Push him, make him say it? Did they	5 I, MARK FLESSNER, have read the foregoing
6 say anything like that?	6 deposition and hereby affix my signature that same is
7 A No, no, sir, that did not happen. That --	7 true and correct, except as noted above.
8 that would not have been appropriate, and that would	8
9 never have happened.	9
10 MR. KAITCER: I have no further questions at this	10 MARK FLESSNER
11 time. Thank you, Mr. Flessner.	11
12 THE WITNESS: You're welcome.	12 THE STATE OF ILLINOIS)
13 MR. BABCOCK: No further questions.	13 COUNTY OF _____)
14 MR. KAITCER: What about Mr. Hutton?	14 Before me, _____, on
15 MR. HUTTON: I'm over and out.	15 this day personally appeared MARK FLESSNER, known to
16 MR. KAITCER: Okay.	16 me to be the person whose name is subscribed to the
17 MR. KOSKI: We will reserve our right to read and	17 foregoing instrument and acknowledged to me that they
18 sign the transcript, and I guess that we're off the	18 executed the same for the purposes and consideration
19 record.	19 therein expressed.
20 THE VIDEOGRAPHER: This marks the end of Tape	20 Given under my hand and seal of office this
21 No. 1 and concludes the deposition of Mark Flessner.	21 _____ day of _____, 2006.
22 We're going off the record at 3:16.	22
23 (End of proceedings, 3:16 p.m.)	23
24	24 NOTARY PUBLIC IN AND FOR THE STATE OF ILLINOIS

Page 101 1 NO. CC 096 204518 04 2 GAMAL ABDEL-HAFIZ,) IN THE DISTRICT COURT 3 vs.) 4) 5 FOX ENTERTAINMENT GROUP,) TARRANT COUNTY, TEXAS 6 INC., FOX BROADCASTING) 7 COMPANY, FOX NEWS, INC., FOX) 8 NEWS NETWORK, INC., FOX NEWS) 9 NETWORK, L.L.C., FOX NEWS) 10 HOLDINGS, INC., AND BILL) 11 O'REILLY,) 96th JUDICIAL DISTRICT 12 13 14 15 16 17 18 19 20 21 22 23 24 REPORTER'S CERTIFICATION DEPOSITION OF MARK FLESSNER February 21st, 2006 I, NICOLE M. DeBARTOLO, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following: That the witness, MARK FLESSNER, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness; That the deposition transcript was submitted on to the witness or to the attorney for the witness for examination, signature, and return to me by ; That the amount of time used by each part at the deposition is as follows:	Page 103 1 FURTHER CERTIFICATION UNDER RULE 203 TRCP 2 The original deposition [was / was not] returned 3 to the deposition officer on _____. 4 If returned, the attached changes and Signature 5 page contains any changes and the reasons therefor; 6 If returned, the original deposition was 7 delivered to _____, Custodial 8 Attorney; 9 That \$ _____ is the deposition 10 officer's charges to the Defendant for preparing the 11 original deposition transcript and any copies of 12 exhibits; 13 That the deposition was delivered in accordance 14 with Rule 203, and that a copy of this certificate 15 was served on all parties shown herein on and filed 16 with the Clerk. 17 Certified to by me this _____ day of 18 _____, 200_. 19 20 21 22 23 24 NICOLE M. DeBARTOLO, CSR, RPR Illinois CSR No.: 084-004127 Expiration Date: 5-31-07
Page 102 1 Mr. Babcock - 53 MINUTES 2 Mr. Kaitcer - 1 HOUR: 4 MINUTES 3 That pursuant to information given to the 4 deposition officer at the time said testimony was 5 taken, the following includes counsel for all parties 6 of record: 7 Mr. Kaitcer, ATTORNEY FOR PLAINTIFF 8 Mr. Babcock, ATTORNEY FOR DEFENDANTS. 9 I further certify that I am neither 10 counsel for, related to, nor employed by any of the 11 parties or attorneys in the action in which this 12 proceeding was taken, and further that I am not 13 financially or otherwise interested in the outcome of 14 the action. 15 Further certification requirements 16 pursuant to Rule 203 of TRCP will be certified to 17 after they have occurred. 18 Certified to by me this _____ day of 19 _____, 200_. 20 21 22 23 24 NICOLE M. DeBARTOLO, CSR, RPR Expiration Date: 5-31-07	