

CONVERTINO v. UNITED STATES DEPARTMENT OF
JUSTICE

JONATHAN TUKEL

April 24, 2009

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April 24, 2009

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

RICHARD CONVERTINO,

Plaintiff,

vs.

Case No. 07-CV-13842-DT

Hon. Robert H. Cleland

UNITED STATES DEPARTMENT OF

JUSTICE,

Defendant.

The Deposition of JONATHAN TUKEL,
Taken at 801 West Ann Arbor Trail, Suite 233,
Plymouth, Michigan,
Commencing at 9:05 a.m.,
Friday, April 24, 2009,
Before Viola Newman, CSR-4320, RPR.

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Page 2	1 APPEARANCES: 2 3 STEPHEN M. KOHN 4 ERIK J. SNYDER 5 Kohn, Kohn & Colapinto 6 3233 P Street NW 7 Washington, D.C. 20007 8 202.342.6980 9 Appearing on behalf of the Plaintiff. 10 11 LENORE M. FERBER 12 Convertino & Associates 13 801 West Ann Arbor Trail, Suite 233 14 Plymouth, Michigan 48170 15 734.927.9900 16 Appearing on behalf of the Plaintiff. 17 18 JONATHAN E. ZIMMERMAN 19 JEFFREY M. SMITH 20 SCOTT A. RISNER 21 U.S. Department of Justice 22 20 Massachusetts Avenue NW 23 Washington, D.C. 20530 24 202.514.2395 25 Appearing on behalf of the Defendant.
Page 3	1 ALSO PRESENT: 2 Peter Fu 3 Richard Convertino 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 4	1 TABLE OF CONTENTS 2 WITNESS PAGE 3 JONATHAN TUKEL 4 5 EXAMINATION 5 6 BY MR. KOHN: 7 EXAMINATION 288 8 BY MR. SMITH: 9 10 EXHIBITS 11 EXHIBIT PAGE 12 (Exhibits attached to transcript.) 13 14 DEPOSITION EXHIBIT 1 61 15 DEPOSITION EXHIBIT 2 65 16 DEPOSITION EXHIBIT 3 93 17 DEPOSITION EXHIBIT 4 106 18 DEPOSITION EXHIBIT 5 164 19 DEPOSITION EXHIBIT 6 182 20 DEPOSITION EXHIBIT 7 189 21 DEPOSITION EXHIBIT 8 203 22 DEPOSITION EXHIBIT 9 225 23 DEPOSITION EXHIBIT 10 262 24 25
Page 5	1 Plymouth, Michigan 2 Friday, April 24, 2009 3 9:05 a.m. 4 5 JONATHAN TUKEL, 6 was thereupon called as a witness herein, and after 7 having first been duly sworn to testify to the truth, 8 the whole truth and nothing but the truth, was 9 examined and testified as follows: 10 MR. KOHN: Steven M. Kohn, K-O-H-N, 11 attorney for Mr. Convertino. 12 MR. SMITH: Jeffrey M. Smith for the 13 Department of Justice, representing the Defendant, 14 Department of Justice. 15 MR. ZIMMERMAN: Jonathan E. Zimmerman for 16 the Department of Justice. 17 MR. RISNER: Scott Risner for the 18 Department of Justice. 19 MR. FU: Peter Fu, Department of Justice. 20 EXAMINATION 21 BY MR. KOHN: 22 Q. Would you state your name and address for the record? 23 A. Jonathan Tukul, 4948 Browning Drive, Orchard Lake, 24 Michigan 48323. 25 Q. Where do you currently work?

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<p>1 A. U.S. Department of Justice, United States Attorney's 2 Office, Eastern District of Michigan. 3 Q. And how long have you worked there? 4 A. I began June 4th, 1990. 5 Q. And where did you go to law school? 6 A. University of Michigan law school. 7 Q. And what year did you graduate? 8 A. 1988. 9 Q. And what was your first job? 10 A. After law school? 11 Q. Yes. 12 A. I was an associate at the law firm of Honigman, 13 Miller, Schwartz & Cohn. 14 Q. And how long did you stay there? 15 A. Approximately two years. 16 Q. And why did you leave? 17 A. I was offered a job at the Department of Justice. 18 Q. And then what was the next job you took? 19 A. I was an assistant U.S. attorney for the Eastern 20 District of Michigan. 21 Q. And how long did you hold that job for? 22 A. Till the present. 23 Q. Are you a licensed attorney? 24 A. Yes. 25 Q. In what states?</p>	<p>1 A. No. 2 Q. Are you on any type of medication or anything that 3 would make you not remember things? 4 A. No. 5 Q. Have you reviewed any documents in preparation for 6 today's deposition? 7 A. Yes. 8 Q. And what are they? 9 A. I reviewed some handwritten notes that I had, I 10 reviewed some transcripts, I reviewed some 11 correspondence, I reviewed some e-mail messages. 12 Q. Have you brought those documents with you today? 13 A. I have not. 14 MR. KOHN: Do you have the documents that 15 he used? 16 MR. SMITH: I think they're all documents 17 that have been produced. 18 MR. KOHN: Including, he referenced 19 handwritten notes? 20 MR. SMITH: I'm pretty certain that the 21 handwritten notes have been produced. Is that right? 22 MR. RISNER: That's correct. There was one 23 note that hadn't been previously produced but we 24 produced that to you earlier this week, one page. 25 MR. SMITH: I thought it was several pages.</p>
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<p>1 A. Michigan. 2 Q. Have you ever conducted a civil deposition? 3 A. Yes, I did. 4 Q. Have you ever been deposed civilly? 5 A. I don't think so. 6 Q. Are you familiar with the rules governing depositions? 7 A. Somewhat. 8 Q. Briefly, if I ask you a question but you don't 9 understand it, you're free to ask me to rephrase it or 10 just tell me you didn't understand it and I can 11 rephrase it. 12 A. All right. 13 Q. There's no judge here, so objections may be raised on 14 the record, but you can still answer the question, so 15 if your attorney says objection, form, but if your 16 attorney instructs you not to answer a question, well, 17 then you may want to listen to your lawyer or listen 18 to me, but that's -- if he instructs you not to 19 answer, you don't have to answer, we'll take it up 20 with the court. 21 Do you understand you're under an 22 obligation to tell the complete truth? 23 A. Yes. 24 Q. Is there anything today that will interfere with your 25 ability to tell the truth?</p>	<p>1 MR. RISNER: Several pages, sorry. 2 BY MR. KOHN: 3 Q. And who was with you when you reviewed these 4 materials? 5 A. The gentlemen you see here and one other Department of 6 Justice lawyer I believe. I also reviewed some on my 7 own. 8 Q. And what did you review on your own? 9 A. Those same materials. 10 Q. Do you have them in your own personal possession? 11 A. I have them at my office. 12 Q. So someone gave you copies of your transcripts with 13 the OIJ that you have personal possession of? 14 A. Yes. 15 Q. Who gave you those? 16 A. The Department of Justice. 17 Q. And when did they give you them? 18 A. In the last several weeks at one time. 19 Q. I understand you had hired a private attorney? 20 A. Correct. 21 Q. Does that attorney have anything in his or her control 22 or possession at their office? 23 A. I don't know. 24 Q. Have you asked them? 25 A. No.</p>

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<p>1 Q. Do you have anything at your home related to 2 Mr. Convertino or the leak? 3 A. I have correspondence with the attorney. 4 Q. When is the last time you looked at materials you have 5 at home and searched them? 6 A. Not recently. I couldn't tell you. 7 Q. Did anyone inform you you were supposed to search your 8 personal possessions in preparation for today's 9 deposition? 10 MR. SMITH: Objection, form. 11 You can answer. 12 A. I don't think so, but what I have, other than my 13 attorney-client correspondence is identical to what I 14 reviewed at the office -- or it's a subset of what I 15 reviewed at the office. 16 BY MR. KOHN: 17 Q. Might be identical but you have it at your home. Is 18 that your own personal stuff or is it Department of 19 Justice documents you've taken home with you? 20 A. It's copies of some of those same e-mails that we 21 talked about. 22 Q. Okay. But my question is, did you take United States 23 Department of Justice documents and bring them home 24 and convert them for your own use, or are they 25 documents that you have got and now they're your</p>	<p>1 BY MR. KOHN: 2 Q. When is the last time you've looked at every piece of 3 paper in your personal possession, at home or anywhere 4 else you may put personal things related directly or 5 indirectly to Mr. Convertino or anything about him? 6 A. In the last several weeks. 7 Q. And can you give me right now off the top of your head 8 an inventory of what those documents were? 9 A. Not exactly. 10 Q. And you said that some of them were correspondence 11 with your attorney? 12 A. Yes. 13 Q. And are you asserting a privilege on those documents? 14 A. Yes. 15 Q. Do you know if any of that correspondence is not 16 privileged because it was turned over to the justice 17 department? 18 MR. SMITH: Objection, calls for legal 19 conclusion. 20 You can answer. 21 A. Could you repeat that? 22 BY MR. KOHN: 23 Q. Do you know if any of your correspondence with your 24 attorneys was turned over to the justice department? 25 MR. SMITH: Same objection.</p>
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<p>1 documents at home, which are they? 2 A. I'm not sure I understand the question. 3 MR. KOHN: Okay. You have documents 4 related to this case at your home. 5 I'm now requesting that they all be 6 produced, every single one of them, and if there's a 7 privilege log, I'd like the log. Do we have a problem 8 with that? 9 MR. SMITH: We can discuss it later. 10 MR. KOHN: Well -- 11 MR. SMITH: Right now this is a deposition, 12 not a -- 13 MR. KOHN: I was going to go off -- oh, no, 14 I'm going to say it actually on the record, because we 15 did a specific notice for this witness wanting to get 16 his personal materials. I was informed earlier this 17 week that essentially they were produced. I'm now 18 hearing from this witness he didn't even look at this 19 stuff or make a search of his home. 20 MR. SMITH: He just said it's the same 21 stuff. 22 MR. KOHN: How does he remember that? And 23 I need a privileged log and I'd like them produced. 24 MR. SMITH: You can ask him how he 25 remembers it.</p>	<p>1 A. I turned no correspondence over to the justice 2 department, if that's what you mean. 3 BY MR. KOHN: 4 Q. But do you know if your attorneys did? 5 A. There were letters between my attorney and the justice 6 department, those were turned over, but that -- 7 Q. Now, how many lawyers -- 8 A. Those were sent to the justice department. 9 Q. -- who represented you personally? 10 A. James K. Robinson. 11 Q. And what's his firm? 12 A. Cadwalader Wickersham & Taft. 13 Q. Who referred you to that firm? 14 A. I knew Jim Robinson from before. 15 Q. In what capacity? 16 A. The firm where I worked, upon graduation from law 17 school he was a partner there at the time. 18 Q. What was the name of that firm again? 19 A. Honigman, Miller, Schwartz & Cohn. 20 Q. Did you keep in touch with him? 21 A. I would see him from time to time, I wouldn't say we 22 kept in touch. 23 Q. Did the Honigman firm refer you over to him? 24 A. No. 25 Q. When's the last time you had any communications with</p>

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<p>1 anyone from the Honigman firm? 2 A. I couldn't tell you, it's been a long time. 3 Q. Do you know Mr. Herschel Fink? 4 A. I knew him when I worked there. 5 Q. How did you know him when you worked there? 6 A. He was a partner in the law firm. 7 Q. And what was your relationship with him then? 8 A. I had known he was a partner in the law firm. 9 Q. Have you ever spoken to Mr. Fink in your entire life, 10 yes or no? 11 A. Yes. 12 Q. And what was the nature of those communications? 13 A. The last time I remember seeing Mr. Fink was 14 approximately 1990 and I saw him at the hardware 15 store. 16 Q. So it's your testimony right now you've not seen 17 Mr. Fink since 1990? 18 A. In person? 19 Q. Yes. 20 A. I think that's correct. 21 Q. Are you aware that that's the law firm that's 22 representing Mr. Ashenfelter? 23 A. I read that in the paper. 24 Q. That's the only way you know that is from reading it 25 in the paper?</p>	<p>1 journalist privilege? 2 A. No. 3 Q. You didn't go up on Westlaw and look at a case or 4 LexisNexis? 5 A. No. 6 Q. And so we could -- is there a way to search in your 7 office -- where do you do computerized legal research? 8 A. At work. 9 Q. What computer do you use to do that? 10 A. There's one in my office. 11 Q. And you're testifying now under oath that you did not 12 do a Westlaw, Lexis or some type of Internet search 13 for the cases related to the journalistic privilege. 14 Is that your testimony, yes or no? 15 A. Well, explain what you mean by do research. 16 Q. In other words, look up a case, like see a case in the 17 brief talking about the journalist privilege and then 18 look it up. 19 A. Oh, I may have done that. 20 Q. Do you remember which cases you've looked up? 21 A. No. 22 Q. When you did that, did you take an official leave from 23 the United States Department of Justice and submit a 24 leave slip so you didn't bill the justice department 25 for the time or did you bill the taxpayer for the time</p>
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<p>1 A. Well, I've seen -- I've seen things filed in court. 2 Q. What have you seen filed in court? 3 A. I've seen some of the legal briefs. 4 Q. Which ones? 5 A. I couldn't tell you. 6 Q. Have you followed the legal briefs on whether 7 Mr. Ashenfelter might be required to disclose his 8 source? 9 A. Yes. 10 Q. Have you made copies of those briefs? 11 A. What do you mean by make copies? 12 Q. I mean, did you just look at them online or did you -- 13 okay. Do you have a copy of any of those briefs? 14 A. I don't think so. 15 Q. Did you ever have a physical copy of them? 16 A. Well, I think, because it's difficult to read 17 documents online I probably printed them and after I 18 was finished reading, I threw them away. 19 Q. I would like you to search again for those documents, 20 anything that might still exist. 21 Did you, when you read those documents, 22 make any notes on them, underline anything, make any 23 type of notes? 24 A. No. 25 Q. Did you conduct any research on your own about the</p>	<p>1 you did looking at these briefs and doing that 2 research, yes or no, which is it? 3 MR. SMITH: Objection to the form because 4 it was an either or question, not a yes or no 5 question. 6 BY MR. KOHN: 7 Q. Okay. I'd like to know, did you submit leave slips 8 when you at work reviewed the legal briefs related to 9 the Ashenfelter compel motion? 10 A. I think there's an assumption in your question which 11 is not correct. I said I printed them. I typically 12 do legal reading at the gym when I'm exercising, and 13 so things that I print out I take and I put on a 14 bookrack and -- 15 Q. So you printed them at work? 16 A. Yes. 17 Q. So when you printed -- when you looked it up online, 18 printed it at work, did you take personal leave to do 19 that work? 20 A. No. 21 Q. Did you charge the taxpayer for the paper that you 22 printed those briefs on, yes or no? 23 A. I know of no such requirement by the Department of 24 Justice. We're permitted to use diminimus copies of 25 papers and computers and things.</p>

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<p>1 Q. And you're allowed to do personal legal research at 2 work? 3 A. Yeah, it's part of my job to do legal research at 4 work. 5 Q. Okay. So looking up this -- you viewed this as part 6 of your job, looking up the Ashenfelter compel 7 motions? 8 A. No, it was something I was interested in. We're 9 allowed to do legal research to keep current. 10 Q. And in terms of the legal research you did, what type 11 of service do you use, like is it Westlaw, Lexis or 12 what are the computerized legal research services 13 available to you? 14 A. We have both. 15 Q. Which one do you typically use? 16 A. Lexis. 17 MR. KOHN: I would -- I'm going to make a 18 request now, we can discuss it further but on the 19 record that I would like his Lexis and Westlaw 20 accounts downloaded and searched and a cross reference 21 done for all cases cited in any of the briefs filed in 22 the Ashenfelter compel and just to see when he may 23 have accessed and printed those. 24 MR. SMITH: As you say, we can discuss it 25 later.</p>	<p>1 A. Bill Sauget. 2 Q. And what -- did he have any notes or anything written 3 on it when he dropped it off? 4 A. No. 5 Q. And you threw that away? 6 A. After I finished it, yes. 7 Q. Do you know where he got it from? 8 A. No. 9 Q. Do you know if he printed it at work? 10 A. I have no idea. 11 MR. KOHN: And I'm going to make a similar 12 request for his computer. I want to get his legal 13 research that he has done and if it's -- I don't know 14 if you're able to but I'd also like to know if he 15 accessed like the ECF, I don't know if you can track 16 that, but every time he accessed the ECF on the motion 17 to compel. 18 MR. SMITH: We'll discuss it later. 19 BY MR. KOHN: 20 Q. Who else did you talk about it with? 21 A. Talk about what? 22 Q. The Ashenfelter motion to compel. 23 A. I don't recall talking about it with anyone else. 24 Q. Did you ever talk about it with Mr. Ashenfelter? 25 A. No.</p>
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<p>1 BY MR. KOHN: 2 Q. So it's your testimony that you have discarded every 3 piece of paper related to your research on the 4 Ashenfelter motion to compel? 5 A. Correct. 6 Q. And when did you discard all this paper? 7 A. When I finished reading whatever I was reading. 8 Q. When you -- in terms of the Ashenfelter motion to 9 compel, have you discussed that motion with any 10 person? 11 A. Yes. 12 Q. Who? 13 A. I know I've discussed it with Bill Sauget. 14 Q. Anybody else? 15 A. I don't recall. 16 Q. Tell me about your conversations with Mr. Sauget about 17 it. 18 A. It's -- it's a topic of conversation from time to 19 time. Someone would say did you see there was a 20 motion filed and I would look at it or someone would 21 drop it off and I would look at it. 22 Q. Oh, so someone actually dropped these things off to 23 you? 24 A. I think there was one time someone dropped one off. 25 Q. And who dropped it off to you?</p>	<p>1 Q. When is the last time you spoke with Mr. Ashenfelter? 2 A. I don't recall, it's been a while. 3 Q. Do you remember what the topic of the conversation was 4 last time you spoke to him? 5 A. Yes. 6 Q. And what was it? 7 A. I think. The last time I believe I spoke to him was 8 last fall. There was a trial going on, I went over to 9 observe some of the proceedings, and after I was there 10 he came into the courtroom. They were waiting for a 11 note from the jury and he asked, just sort of in 12 general, what is the note about. 13 Q. What trial was that? 14 A. There were two defendants, one was named Dawn Hannah 15 and the other was Darren Hannah. 16 Q. Do you know what perjury is? 17 A. Yes. 18 Q. Could you please tell us for the record what perjury 19 is? 20 MR. SMITH: I'm going to let him answer the 21 question based on his personal understanding. 22 BY MR. KOHN: 23 Q. Based on your personal understanding, what is perjury? 24 A. There's several different statutes. Perjury -- I 25 think, I can't tell you the exact definition of</p>

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<p>1 perjury.</p> <p>2 Q. Okay. Would you agree with me that it would include</p> <p>3 lying under oath?</p> <p>4 A. That's certainly an element. I don't know if that is</p> <p>5 the entire offense.</p> <p>6 MR. SMITH: I just want to say, I'm going</p> <p>7 to leave -- he can answer as to his own understanding.</p> <p>8 He's not representing, you know, what the law is.</p> <p>9 MR. KOHN: Absolutely. I want to get this</p> <p>10 witness's understanding of his obligation to tell the</p> <p>11 truth since he's been sworn under oath.</p> <p>12 MR. SMITH: Okay. As long as you</p> <p>13 understand.</p> <p>14 MR. KOHN: Yes, it's not a legal</p> <p>15 conclusion, not binding on a court in terms of matter</p> <p>16 of law.</p> <p>17 BY MR. KOHN:</p> <p>18 Q. I'm looking at your personal understanding. What</p> <p>19 about misleading, if someone asks you a question under</p> <p>20 oath and you give a misleading answer, do you think</p> <p>21 that constitutes perjury or not?</p> <p>22 A. My personal understanding of the law?</p> <p>23 Q. Yes.</p> <p>24 A. I think that's a very complicated legal question.</p> <p>25 There's a supreme court case called Applebaum which</p>	<p>1 concern that someone else out there in the world, an</p> <p>2 investigator, policeman, someone from the inspector</p> <p>3 general's office, somebody thought, they thought you</p> <p>4 committed perjury?</p> <p>5 A. I'm not sure what you mean by a concern. Can you --</p> <p>6 Q. Okay. Have you ever thought that someone else thought</p> <p>7 you committed perjury?</p> <p>8 MR. SMITH: I'm going to object on</p> <p>9 relevance but you can answer the question if you're</p> <p>10 able to.</p> <p>11 A. Repeat it once more please.</p> <p>12 BY MR. KOHN:</p> <p>13 Q. Okay. Have you ever formed the opinion that another</p> <p>14 person thought you committed perjury?</p> <p>15 MR. SMITH: Same objection.</p> <p>16 A. Have I ever formed the opinion. I don't know that I</p> <p>17 formed the opinion.</p> <p>18 BY MR. KOHN:</p> <p>19 Q. Did you ever think that someone may have thought you</p> <p>20 committed perjury?</p> <p>21 A. Yes.</p> <p>22 Q. And who was that?</p> <p>23 MR. SMITH: Same objection.</p> <p>24 A. The -- well, you first of all or your client, and the</p> <p>25 agents from the inspector general's office.</p>
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<p>1 deals with that question.</p> <p>2 Q. And when's the last time you looked at that decision?</p> <p>3 A. It's been a while. I had brief in the Sixth Circuit</p> <p>4 sometime in the last several years that dealt pretty</p> <p>5 extensively with that issue.</p> <p>6 Q. Misleading as perjury?</p> <p>7 A. Well, perjury as such and that was an issue.</p> <p>8 Q. What if someone asks a question and you give an</p> <p>9 incomplete answer, is that perjury?</p> <p>10 A. I would say it's the same answer that I gave about</p> <p>11 Applebaum.</p> <p>12 Q. Complex?</p> <p>13 A. It's a complex legal question.</p> <p>14 Q. Now, you said lying was one element in your</p> <p>15 understanding of perjury. What else do you have to</p> <p>16 prove to show perjury?</p> <p>17 A. My understanding?</p> <p>18 Q. Yeah.</p> <p>19 A. I think for the actual perjury statute, you have to</p> <p>20 have two witnesses and it has to be a material matter.</p> <p>21 Q. Have you ever been concerned, I'm not saying you did</p> <p>22 it, but a concern that someone may think you committed</p> <p>23 perjury?</p> <p>24 A. I'm not sure I understand the question.</p> <p>25 Q. Have you personally in your own mind ever had a</p>	<p>1 BY MR. KOHN:</p> <p>2 Q. What made you think that the agents from the inspector</p> <p>3 general's office thought you committed perjury?</p> <p>4 MR. SMITH: Same objection.</p> <p>5 You can answer.</p> <p>6 A. My interactions with them.</p> <p>7 BY MR. KOHN:</p> <p>8 Q. Now, what's obstruction of justice?</p> <p>9 MR. SMITH: Same thing goes. This is his</p> <p>10 personal understanding, it's not necessarily the law.</p> <p>11 A. Yeah.</p> <p>12 BY MR. KOHN:</p> <p>13 Q. I understand. What's obstruction of justice?</p> <p>14 A. In my opinion, it's a very broad concept, not amenable</p> <p>15 to snippet definitions.</p> <p>16 Q. Can you give me just a broad definition of it?</p> <p>17 A. Well, there's many, many different scenarios for</p> <p>18 obstruction of justice.</p> <p>19 Q. Okay. Let me ask another one. If the federal</p> <p>20 government's conducting an investigation and someone</p> <p>21 takes steps to impede it, might that be considered</p> <p>22 obstruction of justice?</p> <p>23 A. It might be considered that, yes.</p> <p>24 Q. Okay. And are you familiar with the obstruction of</p> <p>25 justice statutes?</p>

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1 A. Many of them.
 2 Q. Have you ever worked on a case in which obstruction of
 3 justice was an element of the crime?
 4 A. Yes.
 5 Q. Have you ever -- again, same question, have you ever
 6 thought that someone else thought you may have
 7 obstructed justice?
 8 A. I don't know that I can answer what's -- what someone
 9 else might have thought.
 10 Q. I'm talking about what you thought. Did you ever
 11 think this person thinks I might have obstructed
 12 justice?
 13 MR. SMITH: Objection, relevance.
 14 A. Again, as to that question, I don't think I can form
 15 an opinion as to what someone else might have been
 16 thinking.
 17 BY MR. KOHN:
 18 Q. I'm now going to ask you to -- did you -- are you
 19 aware that Mr. Ashenfelter has pled the 5th Amendment
 20 as to who his sources are?
 21 A. Yes.
 22 Q. Have you read those briefs?
 23 A. Yes.
 24 MR. SMITH: I was going to say can you be
 25 more specific as to which briefs. I guess he

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1 understands you.
 2 BY MR. KOHN:
 3 Q. This would be the briefs in the motion to compel
 4 Mr. Ashenfelter and Mr. Convertino, correct?
 5 A. Yes.
 6 Q. After reviewing those briefs what crimes are your --
 7 I'm just looking for speculation here, your best
 8 guess, what crimes you think Mr. Ashenfelter could
 9 have a good case he violated?
 10 MR. SMITH: Objection, calls for
 11 speculation.
 12 You can answer if you can.
 13 A. Could you --
 14 BY MR. KOHN:
 15 Q. I'm going to repeat that. You read his briefs, you
 16 know about the case, correct? You've read about the
 17 Convertino case?
 18 A. Yes.
 19 Q. You know about the motion to compel, correct?
 20 A. Yes.
 21 Q. You were interviewed by the inspector general,
 22 correct?
 23 A. Yes.
 24 Q. So you have a general understanding of the facts
 25 surrounding that are known of the Plymouth Free Press

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1 publication about Mr. Convertino, correct?
 2 A. Could you repeat that last part once more?
 3 Q. You have a general understanding of what's in the
 4 public domain --
 5 A. Yes.
 6 Q. -- concerning the Plymouth Free Press article?
 7 A. Yes.
 8 Q. And you've now testified that you've read some of the
 9 motions or papers related to Mr. Ashenfelter's
 10 invocation of the 5th Amendment, correct?
 11 A. Yes.
 12 Q. Okay. Based upon all of that information I'm asking
 13 for your best assessment of what crimes you believe
 14 Mr. Ashenfelter legitimately committed? In other
 15 words, not just pure speculation like could have, you
 16 know, jaywalked. Like what do you think he did?
 17 MR. SMITH: Objection, calls for
 18 speculation.
 19 If you're able to answer it, please go
 20 ahead.
 21 A. I believe in one of those briefs there was a lengthy
 22 list of possible statutes that Mr. Ashenfelter's
 23 attorney stated they thought could have been
 24 committed.
 25 BY MR. KOHN:

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1 Q. And which ones do you think he did?
 2 A. I have no idea.
 3 Q. What's your best guess?
 4 MR. SMITH: Objection, calls for
 5 speculation.
 6 A. I'm not sure what you mean by best guess.
 7 BY MR. KOHN:
 8 Q. Which ones -- do you think it was an espionage act,
 9 you think it was possession of stolen property, which
 10 one do you think he did?
 11 A. I don't know.
 12 Q. Who did you talk to about -- anyone you talked to
 13 about Mr. Ashenfelter's invocation of the 5th
 14 Amendment?
 15 MR. SMITH: Objection to form.
 16 You can answer if you understand the
 17 question.
 18 A. Could you rephrase that?
 19 BY MR. KOHN:
 20 Q. Who have you spoken to about Mr. Ashenfelter's
 21 invocation of the 5th Amendment?
 22 MR. SMITH: If anyone.
 23 A. I recall speaking to Ken Shadwell about it.
 24 BY MR. KOHN:
 25 Q. What else?

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1 A. I remember speaking to Bill Sauget about it.
 2 Q. And what did you talk about with Ken Shadwell?
 3 A. I just remember Ken Shadwell bringing it up and saying
 4 in his opinion it's -- it's a strong argument.
 5 Q. And anything else? Do you know why he brought it up
 6 to you?
 7 A. We work together, we work a couple offices apart from
 8 each other.
 9 Q. Does he know this is something that you're thinking
 10 about a lot?
 11 MR. SMITH: Objection, calls for
 12 speculation.
 13 You can answer if you can.
 14 A. I don't know what Mr. Shadwell knows.
 15 BY MR. KOHN:
 16 Q. How about Bill Sauget?
 17 MR. SMITH: What's the question?
 18 BY MR. KOHN:
 19 Q. Same question. Tell us about when you talked about
 20 Mr. Ashenfelter's invocation of the 5th Amendment.
 21 A. Mr. Sauget mentioned it within the past two weeks.
 22 Q. What did he say?
 23 A. I think he said that there was something about it in
 24 the newspaper.
 25 Q. Did he give you any documents?

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1 A. I don't recall.
 2 Q. Do you know why he told you about it?
 3 A. Because it's been a subject of interest throughout the
 4 office.
 5 Q. Who else has interest in it?
 6 A. I don't know.
 7 Q. How do you then know it's a subject of interest
 8 throughout the office if you only know these two
 9 people?
 10 A. I've heard that other people talk about it in the
 11 office. I have not spoken to anyone else.
 12 Q. Who's told you that other people talk about it in the
 13 office?
 14 A. Bill Sauget.
 15 Q. And what has he said about that?
 16 A. Some people talk about it in the office.
 17 Q. Did you listen to any tapes of your interviews with
 18 the inspector general?
 19 A. No.
 20 Q. Have you ever -- have you ever seen the draft
 21 inspector general reports?
 22 A. Explain to me what you mean by draft.
 23 Q. Have you ever seen the inspector general's report on
 24 the leak?
 25 A. Not the final report.

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1 Q. Have you seen drafts of the report?
 2 A. I believe I've seen drafts.
 3 Q. And who showed them to you?
 4 A. They were sent to my attorney, who shared them with
 5 me.
 6 Q. And do you have any copies of these drafts?
 7 A. No, those were all done under a nondisclosure
 8 agreement which required the return of the drafts.
 9 MR. KOHN: Was that nondisclosure agreement
 10 produced, do you know?
 11 MR. SMITH: I don't know off the top of my
 12 head. It would have been several years ago, but the
 13 drafts I believe were produced.
 14 MR. KOHN: Is it possible to look that up?
 15 MR. SMITH: I don't know whether we'll be
 16 able to find it today or not.
 17 MR. KOHN: Okay. That's fine.
 18 BY MR. KOHN:
 19 Q. Who have you talked with about coming here to testify
 20 today?
 21 A. What do you mean?
 22 Q. Have you -- who have you discussed the fact that
 23 you're coming here and testifying with?
 24 A. All of these gentlemen, one other attorney from the
 25 Department of Justice whose name I don't recall, my

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1 wife. I believe that's all. I don't recall anyone
 2 else.
 3 Q. And do you know who else from the Department of
 4 Justice has testified in this case?
 5 A. I don't know.
 6 Q. Have you heard anything from anybody about what other
 7 witnesses have said at depositions?
 8 A. No.
 9 Q. When did you first meet Mr. Ashenfelter?
 10 A. I couldn't tell you exactly, I don't recall.
 11 Q. Was it before or after you started working for the
 12 justice department?
 13 A. After.
 14 Q. And how did you meet him?
 15 A. He was one of the reporters who regularly covered the
 16 federal court beat.
 17 Q. And did you interact with him?
 18 A. Explain what you mean by interact.
 19 Q. Did you ever talk to him?
 20 A. Sure.
 21 Q. To the best of your recollection, how many
 22 conversations have you had with Mr. Ashenfelter?
 23 A. During what time period?
 24 Q. Ever.
 25 A. I couldn't tell you that --

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<p>1 Q. Was it --</p> <p>2 A. -- I don't recall.</p> <p>3 Q. Well, do you think it was more than 100?</p> <p>4 A. No.</p> <p>5 Q. In your entire life you've never had more than 100</p> <p>6 conversations with Mr. Ashenfelter?</p> <p>7 MR. SMITH: Asked and answered, objection.</p> <p>8 You can answer again.</p> <p>9 A. I don't think so.</p> <p>10 BY MR. KOHN:</p> <p>11 Q. And did you ever have him over your house?</p> <p>12 A. No.</p> <p>13 Q. Were you ever over his house?</p> <p>14 A. No.</p> <p>15 Q. Did you ever have lunch with him?</p> <p>16 A. No.</p> <p>17 Q. A cup of coffee?</p> <p>18 A. No.</p> <p>19 Q. Did you ever sit down and give him an interview?</p> <p>20 A. Well, he wrote an article about me when I was going to</p> <p>21 Washington to do a detail for the Deputy Attorney</p> <p>22 General. He did interview me, but we didn't sit down.</p> <p>23 It was all done over the phone.</p> <p>24 Q. Okay. What was the origin of that article?</p> <p>25 A. He called me up one day and said, I hear you're going</p>	<p>1 Q. And did you give him any leads to follow for the</p> <p>2 article, like names of people to call, anything like</p> <p>3 that?</p> <p>4 A. No.</p> <p>5 Q. And did you keep a copy of that article?</p> <p>6 A. I have a copy of every article involving every case</p> <p>7 I've worked on and it's tucked in with that.</p> <p>8 Q. Okay. So if we wanted to see articles written by</p> <p>9 Ashenfelter about any case you've ever been involved</p> <p>10 in, we could get that document and look at it and see?</p> <p>11 A. What document?</p> <p>12 Q. Whatever book you have with all these articles.</p> <p>13 A. It's a file, but yeah, I don't even know if there are</p> <p>14 any in there by him, but if there are, that's where</p> <p>15 they'd be.</p> <p>16 Q. And where's that file kept?</p> <p>17 A. In my basement.</p> <p>18 Q. And did you put the leak story in it?</p> <p>19 MR. SMITH: Objection to form.</p> <p>20 You can answer if you are able to.</p> <p>21 A. I don't recall.</p> <p>22 BY MR. KOHN:</p> <p>23 Q. Did Mr. -- did Mr. Ashenfelter tell you how -- what</p> <p>24 triggered him to do this article about you?</p> <p>25 A. Yes, I think I mentioned, he said that he had heard</p>
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<p>1 to Washington. I said, that's true, and he said, how</p> <p>2 come no one's written anything about it, and I said,</p> <p>3 it didn't really strike me as something all that</p> <p>4 significant, and he said, I'd like to do something</p> <p>5 with it, is that okay.</p> <p>6 Q. And what did you say?</p> <p>7 A. I said, yeah, if you want to.</p> <p>8 Q. And then what happened?</p> <p>9 A. He asked me some questions, we talked over a period of</p> <p>10 a couple days and he wrote an article.</p> <p>11 Q. Has -- this is an article about what?</p> <p>12 MR. SMITH: Objection to form.</p> <p>13 BY MR. KOHN:</p> <p>14 Q. I mean, he wrote an article. What was the subject</p> <p>15 matter of the article?</p> <p>16 A. It was sort of like a semi biographical piece saying,</p> <p>17 local Department of Justice employee going to</p> <p>18 Washington.</p> <p>19 Q. Has any other journalist ever written a biographical</p> <p>20 piece about you?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Did you find that article flattering?</p> <p>23 A. I actually found it embarrassing.</p> <p>24 Q. But you cooperated with him in writing it?</p> <p>25 A. Yes.</p>	<p>1 that I was going to Washington to do this job and</p> <p>2 people had talked about it.</p> <p>3 Q. When you were going to Washington, what -- did -- did</p> <p>4 you move to Washington?</p> <p>5 A. Well, I did and the plan was that my entire family was</p> <p>6 going to, we had our house for sale, but my children</p> <p>7 were very young at the time and they stayed, it was</p> <p>8 during the summer. They wanted me in Washington</p> <p>9 sooner rather than later, so I went with the plan that</p> <p>10 after they sold the house, they would move.</p> <p>11 Shortly after I got there I was working</p> <p>12 with the deputy attorney general who was Larry</p> <p>13 Thompson at the time. He announced he was leaving the</p> <p>14 justice department, and with the family situation, I</p> <p>15 ended up just deciding to come back to Plymouth. It</p> <p>16 was easier that way.</p> <p>17 Q. So my question is was the job in D.C. a promotion or a</p> <p>18 detail?</p> <p>19 A. It started out it was really a promotion but I was</p> <p>20 working on a detail, and I had the option of</p> <p>21 converting from civil service to Schedule C political</p> <p>22 appointee but that never occurred, and it was a</p> <p>23 detail, it was a one-year detail, and when Mr.</p> <p>24 Thompson left, I exercised my option to end the</p> <p>25 detail.</p>

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<p>1 Q. Do you know Ann Coulter?</p> <p>2 A. I do.</p> <p>3 Q. How do you know her, from what?</p> <p>4 A. Law school.</p> <p>5 Q. Are you friends with her?</p> <p>6 A. Yes.</p> <p>7 Q. Have you ever discussed Richard Convertino with Ann</p> <p>8 Coulter?</p> <p>9 A. No.</p> <p>10 Q. Did you ever provide her any information whatsoever</p> <p>11 about the Koubriti case?</p> <p>12 A. No.</p> <p>13 Q. Did you ever provide her any information whatsoever</p> <p>14 about any Department of Justice matter?</p> <p>15 A. What do you mean by provide her?</p> <p>16 Q. Give her stuff about anything to do with the</p> <p>17 Department of Justice.</p> <p>18 A. You're talking about particular cases?</p> <p>19 Q. Anything.</p> <p>20 A. Well, I don't know what anything means.</p> <p>21 Q. DOJ matters.</p> <p>22 A. Well, let me say it this way. She's a legal analyst,</p> <p>23 she writes about legal issues. I sometimes discuss my</p> <p>24 understanding of legal issues with her without talking</p> <p>25 about specific cases, if that's what you mean.</p>	<p>1 was going to write an article about Mr. Convertino?</p> <p>2 A. What time frame are you talking about?</p> <p>3 Q. January, maybe December or January -- December 2003,</p> <p>4 January 2004.</p> <p>5 A. Did you say non-DOJ people?</p> <p>6 Q. Yes.</p> <p>7 A. The answer's no.</p> <p>8 Q. Did you -- when the article came out, did you notice</p> <p>9 that there was an announcement of it on Fox News?</p> <p>10 A. No.</p> <p>11 Q. Getting back with Mr. Ashenfelter, have you ever</p> <p>12 provided him any information whatsoever on background?</p> <p>13 A. Explain what background means.</p> <p>14 Q. Means you give him information, background on a matter</p> <p>15 that he's not supposed to use in the newspaper or cite</p> <p>16 to you. You're just essentially giving him a heads up</p> <p>17 on a matter.</p> <p>18 MR. SMITH: Objection to form.</p> <p>19 You can answer if you're able to.</p> <p>20 A. When you say a matter, are you talking about specific</p> <p>21 cases?</p> <p>22 BY MR. KOHN:</p> <p>23 Q. Anything, anything.</p> <p>24 A. I recall, I believe it was Mr. Ashenfelter, once was</p> <p>25 told there was a reporter, it was either</p>
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<p>1 Q. And did you communicate with Ann Coulter, have</p> <p>2 communications with her in the August of 2003 through</p> <p>3 January 2004 time frame?</p> <p>4 A. Say the dates again.</p> <p>5 Q. August of 2003, January 2004 time frame, did you have</p> <p>6 any communications with her?</p> <p>7 A. On any subject?</p> <p>8 Q. Yeah.</p> <p>9 A. I don't recall.</p> <p>10 Q. Did you tell her or send her an e-mail or anything to</p> <p>11 alert her to the fact that the Plymouth Free Press was</p> <p>12 going to do an article about Mr. Convertino?</p> <p>13 A. No.</p> <p>14 Q. Are you aware that she works for Fox News?</p> <p>15 A. I don't believe she does. I don't believe she ever</p> <p>16 did.</p> <p>17 Q. Do you know what network she works for?</p> <p>18 A. I don't believe she works for a network. I'm sorry.</p> <p>19 MR. SMITH: I was going to object on</p> <p>20 foundation grounds but --</p> <p>21 BY MR. KOHN:</p> <p>22 Q. Have you ever had any communications with Fox News?</p> <p>23 A. No.</p> <p>24 Q. Did you make any person who's not a DOJ employee, any</p> <p>25 person in the whole world, aware that Mr. Ashenfelter</p>	<p>1 Mr. Ashenfelter or Mr. Shepherdson, there was a murder</p> <p>2 in a suburban community which was believed to be drug</p> <p>3 related. The chief of police of that community said</p> <p>4 that he was going to send it to the Department of</p> <p>5 Justice as a possible death penalty case. Someone</p> <p>6 called me and said, is this a potential death penalty</p> <p>7 case and I remember providing that.</p> <p>8 Q. And you did that on background, in other words, like</p> <p>9 your name wasn't used but you gave them that</p> <p>10 information on background?</p> <p>11 MR. SMITH: Objection to form.</p> <p>12 BY MR. KOHN:</p> <p>13 Q. In other words, did you -- at the time you gave that</p> <p>14 information to the journalist, did you know if your</p> <p>15 name was going to appear as the source of that</p> <p>16 information?</p> <p>17 A. I think I did.</p> <p>18 Q. And did it appear as the source?</p> <p>19 A. I don't recall, but --</p> <p>20 Q. So you did not ask or say, this is on background,</p> <p>21 don't use my name?</p> <p>22 A. No, I believe what I did was explain as best I could</p> <p>23 my understanding of the federal death penalty statute</p> <p>24 and say, if a law enforcement agency asks us to look</p> <p>25 at a case, we will look at it and evaluate it.</p>

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1 Q. Okay. But at the time you had the conversation were
 2 you providing this information understanding that you
 3 were going to be quoted as some type of expert or
 4 department spokesperson or were you just giving him
 5 the information because it's just information but you
 6 didn't -- but you didn't want to be quoted, like, you
 7 know, Mr. Tukul, Assistant United States Attorney,
 8 U.S. Department of Justice, you understand the
 9 difference here?
 10 A. I didn't really follow the whole question.
 11 Q. Okay. I'm trying to say --
 12 A. I thought there were several questions in there.
 13 Q. I'm trying to say background means -- and I'm not
 14 trying to say there's something wrong with this, but
 15 when you give a journalist information on background,
 16 you're giving them information which might be 100
 17 percent legitimate, but you just don't want your name
 18 associated with it when it goes into print.
 19 A. I did --
 20 MR. SMITH: There's no question pending.
 21 BY MR. KOHN:
 22 Q. That's my definition. And this conversation you had,
 23 did you give it to the journalist on background or did
 24 you anticipate that you'd be quoted in the newspaper?
 25 A. I didn't know what they would do, but I was willing to

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1 be quoted saying if a law enforcement agency brings us
 2 a case and asks us to look at it to determine if there
 3 are potential federal criminal charges, we will
 4 evaluate it.
 5 MR. SMITH: I just wanted you to let him
 6 finish.
 7 BY MR. KOHN:
 8 Q. Okay. And are there rules concerning who can speak on
 9 the record to the press, you know, and identify
 10 themselves as a United States Department of Justice
 11 employee?
 12 MR. SMITH: Are you talking specifically
 13 about --
 14 BY MR. KOHN:
 15 Q. Press rules.
 16 MR. SMITH: -- press rules at the U.S.
 17 Attorney's Office in Plymouth or some broader?
 18 BY MR. KOHN:
 19 Q. Where you worked. Did you know that?
 20 A. What time frame are you talking about?
 21 Q. Since you've worked there.
 22 A. Yes, there are. There are Eastern District of
 23 Michigan rules and there are U.S. attorney general
 24 rules -- or Department of Justice general rules.
 25 Q. Under those rules could you have been quoted in this

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1 article as an official Department of Justice
 2 spokesperson?
 3 A. As to that it was a local media representative and it
 4 was simply saying, we will listen to any information
 5 that a law enforcement agency brings us, yes, I could.
 6 Q. Next question, did you ever speak to any journalist in
 7 your entire life off the record?
 8 A. Explain what you mean by off the record.
 9 Q. Well, where you go to the journalist and say this is
 10 off the record.
 11 A. No.
 12 Q. Your entire life you've never done that?
 13 A. Not that I recall.
 14 Q. How many times have you spoken to Mr. Shepherdson?
 15 A. Numerous times.
 16 Q. Was it at one point almost once a day or something?
 17 MR. SMITH: Objection to form.
 18 BY MR. KOHN:
 19 Q. I mean, was there a time in your life when you spoke
 20 to him almost once a day?
 21 A. There was a time where we spoke frequently, yes.
 22 Q. And never once during that entire series of
 23 conversations you ever -- you asked him to keep
 24 something off the record?
 25 MR. SMITH: Objection to form.

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1 You can answer.
 2 A. My relationship with Mr. Shepherdson was more that I
 3 found out information from him than I was telling him,
 4 which is the primary reason that I spoke with him.
 5 BY MR. KOHN:
 6 Q. I understand, but as you spoke to him was this for
 7 attribution to be published in the newspaper?
 8 A. Sometimes.
 9 Q. All these con -- sometimes but sometimes it was not?
 10 A. Sometimes he would call me up to tell me something.
 11 He would say, such and such happened in court, what do
 12 you think about that case. It so happens that at that
 13 time we did not have a very good policy of how
 14 information about what was going on in court came to
 15 senior staff and it was a very effective way of
 16 finding out what was going on in court.
 17 Q. And on -- my question is during all of these
 18 conversations did you have any understanding with
 19 Mr. Shepherdson that some of the stuff you said to him
 20 would not be used in a newspaper or at least
 21 attributed to you?
 22 A. No.
 23 MR. SMITH: Objection to form.
 24 You've already answered.
 25 BY MR. KOHN:

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<p>1 Q. Did -- how many times did he put your name in the 2 newspaper with all these conversations, how many times 3 did he quote you? 4 A. I don't know. 5 Q. But that would be in this file you have, we could look 6 at all your quotes in the newspaper? 7 A. My file is about cases that I personally litigated, 8 worked on. 9 Q. So would you answer questions about cases you aren't 10 working on? 11 A. At times when I was first assistant that was one of my 12 responsibilities. 13 Q. No, with Mr. Shepherdson, you'd give him information 14 or answer questions about cases you weren't working 15 on? 16 A. If I was the first assistant and he had a specific 17 case related question and it was something which was 18 permissible, I would answer. 19 Q. So every time you spoke -- in 2003 and 4, about how 20 many conversations did you have with Mr. Shepherdson? 21 A. I don't recall. 22 Q. Was it over 100? 23 A. I don't recall that. 24 Q. When it was on a daily basis what was that time frame? 25 A. I wouldn't say it was always on a daily basis. I</p>	<p>1 A. Not in terms of those specific dates. 2 Q. But if you said it kind of started around sometime in 3 '02 and '03? 4 A. Right, but then I left for a while. 5 Q. Okay. And when did you come back, September? 6 A. Right. 7 Q. Okay. Let's talk September. When you came back 8 through the time period that the article in the 9 Plymouth Free Press was published, were you having 10 communications with Mr. Shepherdson on an almost daily 11 basis? 12 A. I don't know if that was the case throughout that 13 period but at some point in that period, yes. 14 Q. And during these communications did you talk about the 15 Koubriti case, yes or no? 16 A. I don't recall. 17 Q. And during this time period did you ever talk about 18 Mr. Convertino with Mr. Shepherdson, yes or no? 19 A. I don't recall that. 20 Q. I want to get back to this I don't recall. Wasn't the 21 Koubriti case a big thing between September 2003 and 22 January 2004? 23 A. Not during that entire time period. 24 Q. But during that time period, wasn't that a major case 25 of sorts?</p>
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<p>1 think that's a mischaracterization. 2 Q. Okay. But there was a time when it was on a daily 3 basis? 4 A. It was on an approximate daily basis. 5 Q. Okay. During what time period? 6 A. I don't recall exactly when that started. 7 Q. Best guess. 8 A. 2002, 2003. 9 Q. And when did it end? 10 A. Through the years, after I was no longer first 11 assistant it declined, and then he moved to Washington 12 and we rarely speak now. 13 Q. Okay. And when did he leave to Washington? 14 A. I can't tell you the exact day. 15 Q. Best guess. 16 A. Within the last two years. 17 Q. Was this daily or almost daily communication in place 18 between the -- between August of 2003 and January 19 2004? 20 A. Repeat that please. 21 Q. Was this daily or almost daily communication with 22 Mr. Shepherdson in place, happening, between August of 23 2003 and January, including January 2004? 24 A. I don't recall that. 25 Q. You don't remember?</p>	<p>1 A. Yes. 2 Q. And you had daily or almost daily contact with a 3 journalist during that time period, yes or no? 4 A. Yes or no what? 5 Q. Did you have daily or almost daily contact with a 6 journalist during that time period? 7 A. Yes. 8 Q. And you are now testifying that you cannot remember if 9 you discussed the Koubriti case during that time 10 period with that journalist. I'm giving you an 11 opportunity to correct this testimony right now or let 12 it stand that you can't remember, what is it? 13 A. Are you saying did I ever discuss the Koubriti case 14 with him? 15 Q. During that time period did you discuss the Koubriti 16 case with him? 17 A. Even one time? 18 Q. Yes. 19 A. Oh, yeah. 20 Q. More than one time? 21 A. I don't recall how many times. 22 Q. Give me your best guess on how many times. 23 MR. SMITH: With David Shepherdson? 24 BY MR. KOHN: 25 Q. David Shepherdson, best guest.</p>

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1 A. I couldn't tell you that.
 2 Q. More than once?
 3 A. You have to understand, Mr. Shepherdson would call and
 4 would say things to me. I wouldn't necessarily
 5 respond to what he was saying.
 6 Q. How many times did he call about the Koubriti matter
 7 during that time period?
 8 A. Well, I think you also have to understand, he wouldn't
 9 really call about any particular matter. He would
 10 call and say, this is going on in the courthouse,
 11 there's these other things going on, you know.
 12 Q. And how many times during that time period did he call
 13 in which the subject of the call related to the
 14 Koubriti matter?
 15 A. I couldn't tell you that. I don't --
 16 Q. But more than once?
 17 A. I suspect it was more than once.
 18 Q. A lot of times, multiple?
 19 A. I don't recall but I believe that probably around the
 20 time of the December hearing there were probably
 21 several calls.
 22 Q. Do you keep a log or a diary --
 23 A. No.
 24 Q. -- of any sort?
 25 A. No.

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1 Q. Do you have a personal calendar, a personal calendar
 2 where you put notations in it?
 3 A. Yes.
 4 Q. Do you know if that was turned over to the Department
 5 of Justice Office of inspector general?
 6 A. I don't know.
 7 Q. Do you know if it was turned over to the lawyers here
 8 today?
 9 A. I don't know.
 10 Q. Okay. Do you still have that calendar?
 11 MR. SMITH: For what time period?
 12 BY MR. KOHN:
 13 Q. The time period of 2003 all the way through now.
 14 A. Well, I have some, but I doubt I have anything going
 15 back that far.
 16 Q. I'm interested now also just in terms of contacts and
 17 communications you may have had so I'm just going
 18 to -- and I'll discuss that.
 19 A. Well, back up, I'm not sure I understood your
 20 question. When you say calendar, I calendar meetings.
 21 Q. Yeah, I'd like to take a look at that.
 22 A. Okay. I mean, I understand your question, but --
 23 Q. Do you keep time records?
 24 A. No. Well, not billable hour records if that's what
 25 you mean. We fill out something called a USA 5.

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1 Q. Is there any log kept of phone calls that you make or
 2 that come in to you through the office?
 3 A. Not that I know of.
 4 Q. Now, I understand -- did you ever speak to
 5 Mr. Ashenfelter about Mr. Convertino?
 6 A. Yes.
 7 Q. And when was that?
 8 A. The day of that hearing in December he called me.
 9 Q. Tell me what happened, where did he call you, at home
 10 or at work?
 11 A. We spoke at home. I don't recall exactly where he
 12 called me.
 13 Q. And so you -- did he have your home phone number?
 14 A. I believe he had my cell phone number because he had
 15 it from when he wrote that article about me.
 16 Q. And so he called you on your cell or did he call you
 17 on your home line?
 18 A. I'm sure he didn't call me on my home line because I
 19 don't think he had that. He may have left me a
 20 message at the office or he may have called on my
 21 cell.
 22 Q. Okay. So at home, what time of the evening, if it was
 23 in the evening, was this call made?
 24 A. I don't recall the exact time. It was after baths and
 25 kids went to bed.

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1 Q. What time do they usually go to bed?
 2 A. Well, at the time they were very young. I don't know,
 3 7:30 or 8:00 I would guess.
 4 Q. So sometime after 8:00 p.m. you received a call from
 5 Mr. Ashenfelter at home?
 6 MR. SMITH: Objection, foundation.
 7 A. I think the call might have been earlier and I was
 8 busy and I called him back.
 9 BY MR. KOHN:
 10 Q. Okay. So you had a discussion and approximately how
 11 long was this discussion?
 12 A. I don't recall that.
 13 Q. Was it more than 15 minutes do you think?
 14 A. At this point I really don't recall.
 15 Q. Was it two hours? Do you have any idea --
 16 A. No, it would not have been two hours.
 17 Q. How about one hour?
 18 A. I don't think so.
 19 Q. 30 minutes, what's your best guess?
 20 A. Something in that vicinity.
 21 Q. And during this telephone conversation you talked
 22 about Mr. Convertino?
 23 A. Well, he brought up the subject because he was asking
 24 about the hearing that day.
 25 Q. In regards to Mr. Convertino, what do you remember of

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1 the conversation?
 2 A. I recall that it was his impression that it was the
 3 beginning of the -- it was the beginning of the
 4 undoing of that case.
 5 Q. That's what he said to you?
 6 A. Words to that effect.
 7 Q. And what did -- how did you respond to that?
 8 A. I told him that I thought that was a premature
 9 conclusion and you can't ever tell what a judge is
 10 planning to do and I would not -- I would not reach
 11 that conclusion at that time.
 12 Q. And then what else was said during this conversation?
 13 A. We discussed things that had gone on in the office
 14 during the time I was gone and cases that were
 15 pending.
 16 Q. What types of things did you discuss that had gone on
 17 in the office?
 18 A. What cases were going on, what cases seemed
 19 significant. I'd been gone -- as I said, we learned a
 20 lot of information from reporters telling us what they
 21 observed in court at the time. I mean, that was well
 22 understood throughout the office.
 23 Q. So at 8:00 p.m. you're having a chat with him at home
 24 about what's been going on in the office --
 25 A. Well --

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1 Q. -- the day after the hearing -- was this the day of
 2 that hearing or the day after?
 3 A. I think it was the day of.
 4 Q. So on the day of that hearing related to the Koubriti
 5 case where he thought the Koubriti case might be
 6 undone, you guys are having an nice friendly chat
 7 about what's going on in the office, correct?
 8 MR. SMITH: Objection, argumentative, asked
 9 and answered.
 10 You can answer it.
 11 BY MR. KOHN:
 12 Q. That's what was going on?
 13 A. Well --
 14 MR. SMITH: Same objection.
 15 A. -- at the time, first of all, it was a very long day
 16 and at the time I had at home a two-year-old and a
 17 less than one year old and my wife was expecting our
 18 third child, and after a long day and baths and
 19 putting kids to sleep, it was actually just sort of
 20 pleasant to talk to an adult and he happened to call
 21 me.
 22 BY MR. KOHN:
 23 Q. And what else do you remember talking about
 24 Mr. Convertino?
 25 MR. SMITH: Objection to the form.

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1 A. In that conversation?
 2 BY MR. KOHN:
 3 Q. Yes.
 4 A. I don't think we talked about anything else because I
 5 didn't think it was appropriate to talk about
 6 specifics like that, but I did want him to understand
 7 that I didn't think it was the undoing of that case.
 8 Q. Did you think it -- did he ask you if it could lead to
 9 the undoing?
 10 A. He didn't really ask, he -- that was his opinion.
 11 Q. Did you tell him, well, maybe but it's too early to
 12 tell?
 13 A. That's exactly basically what I told him.
 14 Q. Now, this call occurred 10 days after Mr. Convertino
 15 was given his OPR referral letter, correct?
 16 MR. SMITH: You can answer if you know.
 17 A. I don't know the date.
 18 BY MR. KOHN:
 19 Q. Well, wasn't that hearing on or about December 12th,
 20 2003? Does that ring a bell?
 21 A. That sounds familiar.
 22 Q. And didn't you -- didn't the letter get sent to
 23 Mr. Convertino about his OPR on December 2nd, 2002?
 24 A. I'm not sure of the dates.
 25 Q. I'm sorry, December 2nd, 2003?

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1 A. I'm sorry, could you repeat the full question?
 2 Q. Do you remember that his referral to the OPR, meaning
 3 when he got the letter being told he was under an OPR
 4 investigation, that was on or about December 2nd,
 5 2003, correct?
 6 A. I think that's right.
 7 Q. And that hearing was on or about December 12th, 2003,
 8 correct?
 9 A. On or about.
 10 Q. So this call at eight -- with an adult at 8:00 p.m. at
 11 your house was about 10 days after Mr. Convertino was
 12 given the OPR charge, correct?
 13 A. Right.
 14 Q. And you knew that Mr. Convertino was given that
 15 charge, correct?
 16 A. Yes.
 17 Q. And now you're talking to Mr. Ashenfelter at home
 18 about Mr. Convertino, correct?
 19 MR. SMITH: Objection, asked and
 20 answered --
 21 BY MR. KOHN:
 22 Q. Yes or no?
 23 MR. SMITH: -- several times.
 24 A. I don't think that's what I was doing.
 25 BY MR. KOHN:

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<p>1 Q. But you were talking about -- Mr. Convertino came up 2 in the conversation, didn't he? 3 A. He brought it up in the case. I discussed my 4 conclusion about what the effect on the case was. 5 Q. Now, this friendly conversation about what was going 6 on in the office, did any of that also include 7 Mr. Convertino? 8 A. I don't believe so. 9 Q. So you talked about the hearing, somehow Convertino 10 came up and then you started talking about what's 11 happening in the office but none of that talk 12 concerned anything to do with Mr. Convertino, correct, 13 yes or no? 14 A. I think that's correct. 15 Q. Did you also talk about personal things during that 16 phone call? 17 A. What do you mean by personal things? 18 Q. You know like how your kids are doing, that type of 19 thing? 20 A. I don't think we talked about my kids. We talked 21 about what I had done in Washington and why I had come 22 back from Washington. 23 Q. And did you consider if every single thing you said 24 during that conversation word for word was published 25 in the newspaper, would you have been surprised?</p>	<p>1 Q. Yes. 2 A. Ever? 3 Q. Yeah. 4 A. In person on phone? 5 Q. Yes. 6 A. Yes. 7 Q. How many times? 8 A. I couldn't tell you that, I don't recall that. 9 Q. How about from your home, did you ever talk to him? 10 A. I don't think so. 11 Q. You don't think so but you could have? 12 A. Well, I don't recall. 13 Q. Is it I don't recall but no, or I don't recall but it 14 could have happened? 15 MR. SMITH: Objection, form. 16 A. It's I don't recall. 17 BY MR. KOHN: 18 Q. Okay. Now, after the article appeared in the 19 newspaper about Mr. -- and this is the article from 20 January, published on January 16th or 17, 2004, do you 21 know the article I'm talking about? 22 A. Yes. 23 Q. After that article appeared in the paper, did 24 Mr. Ashenfelter ever contact you about, one, to find 25 out who the source of that article was -- excuse me,</p>
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<p>1 A. Yeah. 2 Q. So during that conversation you did have an 3 expectation that at least some of the things you were 4 talking about would not be put into print, correct, 5 yes or no? You can explain. 6 A. I would say no with the explanation that I believed 7 that very little of what we talked about was 8 newsworthy. 9 Q. How many other times -- okay. This was a December 10 2003 call, have you ever spoken to Mr. Ashenfelter at 11 your home before? 12 A. I believe when I was leaving for Washington he called 13 me several times writing that piece. I don't know if 14 they were at home. I remember being on the cell 15 phone, because I remember one of them I was at the 16 48th District Court, which is a local district court, 17 filing something there. 18 Q. After your conversation with Mr. Ashenfelter on or 19 about December 12th, did you ever talk in your entire 20 rest of your life to Mr. Ashenfelter at home again? 21 A. I don't recall doing so. 22 Q. After the article appeared about Mr. Convertino on or 23 about January 16th or 17, 2004, did you ever again 24 talk to Mr. Ashenfelter, yes or no? 25 A. Ever?</p>	<p>1 to find out anything in the office, like discussions, 2 internal office discussions, et cetera, about that 3 article? 4 A. No. 5 Q. Did he ever call you about any of the subject matters 6 in the article? 7 A. You're talking about subsequent to it appearing? 8 Q. Yeah, after the article. Did he ever call you up 9 about say Marwan Farhat? 10 A. No. 11 Q. Did he ever call you up about the Makalda matter after 12 the article? 13 A. I don't believe so. 14 Q. Did he ever call you after that article about 15 Mr. Convertino? 16 A. I don't believe so. 17 Q. Did he ever call you to tell you about anything to do 18 with what was going on in -- whether he was going to 19 have to divulge any sources? 20 A. No. 21 Q. I'm going to show you a document we're going to mark 22 as Exhibit 1 and this is the article. 23 A. Okay. 24 MARKED BY THE REPORTER: 25 DEPOSITION EXHIBIT 1</p>

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<p>1 10:08 a.m. 2 MR. KOHN: And for the record I'm showing 3 the witness a document marked as Exhibit 1 which is 4 the January -- it's dated January 17, 2004, the 5 headline, Terror Case Prosecutor is Probed on Conduct 6 by David Ashenfelter. 7 BY MR. KOHN: 8 Q. Do you see this document? 9 A. I do. 10 Q. And when we've been talking about the Ashenfelter 11 article or the article about Mr. Convertino, is this 12 the article you understood? 13 A. Yes. 14 Q. Now, I want you to look at this article please and 15 tell me what in this article Mr. Convertino -- 16 Mr. Ashenfelter, after January -- on or after January 17 17, 2004, ever called you up about to talk to you on 18 or off the record, confidential or not? 19 MR. SMITH: Do you want him to read the 20 entire article? 21 BY MR. KOHN: 22 Q. Yeah, I want you to go through it. 23 A. I will do that. Is your question anything that's in 24 this article that he ever subsequently asked me about? 25 Q. Yes. That's what I want to know and thank you for</p>	<p>1 Q. Would he ever come by the office? 2 A. He was by the office sometimes. 3 Q. When he would come by the office did he ever talk to 4 you? 5 A. I don't know what coming by the office means. We used 6 to have a policy where we would leave press releases 7 in the lobby, people would come and pick up press 8 releases. I remember seeing him there once or twice. 9 I don't know that he came to speak to people after 10 that. 11 Q. Did he ever come by and just say hello to you? 12 A. No, and the setup of our office wouldn't allow that 13 anyhow. 14 Q. How about at the courthouse, did you ever see him at 15 the courthouse? 16 A. Sure. I mean that's how I knew him. 17 Q. And when you would see him there, would you say hello? 18 A. Generally. 19 Q. Would you sometimes have some chit-chat with him, you 20 know, how are things going? 21 A. Yes. 22 Q. Do you know what his favorite baseball team is? 23 A. No. 24 Q. Do you have a favorite baseball team? 25 A. Plymouth Tigers.</p>
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<p>1 rephrasing that. 2 MR. SMITH: I think it'll take him a few 3 minutes to read the article. 4 MR. KOHN: Okay. We can go off the record, 5 sure. 6 (Recess taken at 10:09 a.m.) 7 (Back on the record at 10:19 a.m.) 8 BY MR. KOHN: 9 Q. Mr. Tukul, have you had an opportunity to read Exhibi 10 1, the Ashenfelter article? 11 A. Yes. 12 Q. And upon review of that can you tell me which parts of 13 that article -- the subject matters in there you had 14 conversations with Mr. Ashenfelter after January 17, 15 2004? 16 A. I don't recall having conversation with him as to any 17 of this. 18 Q. Okay. Thank you. Now, I want to call your -- now 19 when you say any of this, what do you mean by any of 20 this? 21 A. Any of the content of that article. 22 Q. I want to again go back to your relationship with 23 Mr. Ashenfelter. Can you remember the circumstances 24 of your first meeting with him? 25 A. Not specifically.</p>	<p>1 Q. Do you know if he has any children? 2 A. I don't know. I don't know anything about his 3 personal life. 4 Q. Did you ever talk to him about your personal life? 5 A. I certainly did when we -- when he was writing that 6 article when I was going to Washington. 7 MARKED BY THE REPORTER: 8 DEPOSITION EXHIBIT 2 9 10:22 a.m. 10 BY MR. KOHN: 11 Q. Do you recognize this document? 12 A. Yes. 13 Q. And what is this? 14 A. That is the article that Mr. Ashenfelter wrote about 15 me when I was going to Washington. 16 Q. Did you cooperate with him on this article? 17 A. I spoke to him about it, if that's what you mean. 18 Q. I'm going to call your attention on page two -- 19 A. Can I have a chance to read the whole thing please? 20 Q. Oh, please, absolutely. 21 A. Okay. I've read it. 22 Q. Okay. Is this the article that he wrote about you? 23 A. Yes. 24 Q. And my question is, did you fully cooperate with this 25 article, the writing of this article, I mean giving</p>

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<p>1 him information for this article? 2 A. I answered the questions he asked me. 3 Q. If you look on page two, it mentions this Bloomfield 4 Hills attorney? 5 A. Yes. 6 Q. Who's he, who is him (sic)? 7 A. He's a friend of mine. 8 Q. And who gave Mr. Ashenfelter his name? 9 A. I don't know. 10 Q. Do you think that Mr. Ashenfelter knew before he 11 started writing this article that this lawyer had 12 information about you? 13 A. I think he probably knew that, he knew that we were 14 friends. 15 Q. How did he know you were friends? 16 A. It's a well-known fact. Mr. Pizitowski (phonetic) 17 who's referred to in the article is a very well-known 18 criminal defense attorney who's a former assistant 19 U.S. attorney. 20 Q. So I assume then you told him you were married and had 21 two children? 22 A. Right. 23 Q. And did you share with him also your political 24 beliefs? 25 A. I don't know if he asked me that or if someone else</p>	<p>1 surprise me, it was a Republican administration and it 2 was probably something he had asked, but if I didn't 3 tell him, it's not a secret. A lot of people could 4 have told him that. 5 Q. And in terms of -- did you tell him that you came to 6 the attention of the Attorney General through your 7 membership in the Federalist Society? 8 A. Yes. 9 Q. And did you tell him that you used to work for the 10 National Republican Congressional Committee? 11 A. Yes. 12 Q. And the National Republican Senatorial Committee? 13 A. Yes. 14 Q. Now, you said the position you were going to was -- at 15 this time was a detail? 16 A. It was set up as a detail. 17 Q. Okay. So therefore it was a career civil service 18 position at the time, correct? 19 A. Correct, with the opportunity to convert it if I 20 wanted to at some point. 21 Q. So what would your political leanings have to do with 22 your selection for a civil service position? 23 MR. SMITH: Objection to form. 24 You can answer. 25 A. Well, number one, I wasn't making relevancy objections</p>
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<p>1 told him that. 2 Q. Lifelong Republican, I'm looking on page two of the 3 document where it says you're a lifelong Republican. 4 A. Yeah, I know, I saw that, but something just occurred 5 to me about this, because this is a web version 6 article and I don't think this is identical to the 7 print article, because the print article made 8 reference to Ann Coulter. 9 Q. So the print article may have more substance in it? 10 A. Yes. And I definitely did not discuss Ann Coulter 11 with him so someone had -- had brought that up with 12 him, and the same person or persons may have brought 13 up lifetime -- lifelong Republican, I don't -- I don't 14 know. 15 Q. Did you tell him you had a friendship with Ann 16 Coulter? 17 A. I did not. 18 Q. Did you ever ask Ms. Coulter how it came that she was 19 identified in the article? 20 A. Did I ever ask Ann how? 21 Q. Yeah. 22 A. No. 23 Q. What about, did you tell them you were a lifelong 24 Republican? 25 A. I don't know, I mean, I don't recall. It wouldn't</p>	<p>1 to the questions he asked me. He was asking me 2 biographical questions and I answered. Number two, it 3 is very common in Washington for, I'm talking 4 Department of Justice in Washington, for jobs which 5 are slotted as political positions, as are all but I 6 believe one of the jobs in the department -- in the 7 deputy attorney general's office, to be filled by 8 detailees. 9 BY MR. KOHN: 10 Q. So it's your -- 11 A. So detailees can fill political positions. So I don't 12 know if that answers your question, but -- 13 Q. Okay. It does, if that's your understanding. And 14 you've asked -- and I have a question. 15 When you went and took this job and you 16 went to Washington, did anyone ever talk to you about 17 the Koubriti case? 18 A. When I went to Washington? 19 Q. Yeah, when you were in this position and I'm -- were 20 you ever actually the associate deputy attorney 21 general, yes or no? 22 A. Well, there was more than one, but I was Associate 23 deputy attorney general. 24 Q. Okay. So, I'm just talking all the technicalities. 25 So you were that, but on a detail, that was your</p>

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1 position?
 2 A. That's right. That's right.
 3 Q. Okay. So when you were in that position did anybody
 4 ever talk to you about the Koubriti case?
 5 A. Not that I recall. I was not working on those types
 6 of issues.
 7 Q. Did you ever try to apply to become U.S. Attorney for
 8 the Eastern District?
 9 A. Pardon?
 10 Q. Did you ever apply to become the U.S. Attorney for the
 11 Eastern District?
 12 A. Yes.
 13 Q. When was that?
 14 A. 2000.
 15 Q. And is there an application for that somewhere?
 16 A. I don't know if it still exists. There was.
 17 Q. And were you offered the position?
 18 A. No.
 19 Q. And now going back, so it's your testimony that during
 20 your time period as the associate deputy attorney
 21 general, you were never -- no one ever talked to you
 22 about the Koubriti case?
 23 A. That's my best recollection.
 24 Q. Did the name Richard Convertino ever come up while you
 25 were in that position?

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1 A. I think David Nahmais brought it up once.
 2 Q. Okay. What did he bring up?
 3 A. It was -- I don't remember the specifics. It was at
 4 the very end of my detail there. Everyone knew I was
 5 coming back and I think he just said, you know,
 6 there's something going on with that case in your
 7 office.
 8 Q. What did you say in response?
 9 A. Nothing. I didn't really -- I didn't know much about
 10 the case. I had followed it in the papers. Before I
 11 left I was a line assistant. I had no supervisory
 12 involvement or role in that case.
 13 Q. Did you ever hear -- do you know Eric Straus?
 14 A. Yes.
 15 Q. Is he a friend of yours?
 16 A. Yes.
 17 Q. Did you ever hear him make statements while the case
 18 was -- you know, before the jury verdict, you know,
 19 during the preparation phase of the case or the trial
 20 phase of the case, words to the effect that he thought
 21 the case was bad?
 22 A. Tell me the time frame again you're asking about?
 23 Q. Any time up until the jury returned its verdict.
 24 A. I don't recall ever hearing that.
 25 Q. Or words to the effect that he hopes the case is lost?

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1 A. I'm sure he never said that.
 2 Q. Or he thinks the case will go down the tubes?
 3 A. I'm sure he never said that. That would have stood
 4 out.
 5 Q. Or he hopes that Convertino gets in trouble for the
 6 case?
 7 A. Never.
 8 Q. Did you ever talk to Eric -- let me -- when you say
 9 you're friends, have you ever socialized with
 10 Mr. Straus?
 11 A. Occasionally.
 12 Q. Are you both members of the Federalist Society?
 13 A. He's not a member.
 14 Q. Does he attend meetings?
 15 A. He may have come to a meeting or two.
 16 Q. Have you ever been to his house?
 17 A. No.
 18 Q. Has he ever been to your house?
 19 A. He was at my house once I think. I know he was there
 20 once. I think that was the only time.
 21 Q. And what about after work, have you ever --
 22 A. Occasionally.
 23 Q. How about -- I'm sorry.
 24 A. We socialized a lot more when we were younger and
 25 didn't have kids. Now everybody gets home because

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1 they have family responsibilities.
 2 Q. Did you kind of start working at the office at a
 3 similar time that he started?
 4 A. He was there a little bit before me.
 5 Q. And what about lunch, you ever have lunch with him?
 6 A. Very occasionally. He tends to eat in.
 7 Q. Okay. And now with Mr. Straus, did you ever talk to
 8 him about the newspaper article, Exhibit 1?
 9 A. I'm looking at 2.
 10 Q. 1 is the -- I'm sorry.
 11 A. The Ashenfelter piece?
 12 Q. Yes, Exhibit 1. Ashenfelter-Convertino, not
 13 Ashenfelter-Tukel.
 14 A. Right. I know we talked about it shortly after it
 15 came out.
 16 Q. How about before it came out?
 17 MR. SMITH: Whether he talked about the
 18 article before it came out?
 19 BY MR. KOHN:
 20 Q. Yeah, about that Ashenfelter was doing an article.
 21 A. I don't think so.
 22 Q. What about -- when you talked to -- and after, what
 23 did you talk about this article after it came out?
 24 MR. SMITH: Objection to form.
 25 You can answer.

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1 A. I remember talking about it with him the day it came
 2 out or the day after it came out.
 3 BY MR. KOHN:
 4 Q. What do you remember of that conversation?
 5 A. Did you see that article that came out.
 6 Q. Did you ever talk with him about who the source was?
 7 A. I think we did.
 8 Q. Did he ask you whether you were the source?
 9 A. I don't think he ever asked me like that.
 10 Q. Did you ever ask him?
 11 A. No.
 12 Q. Is the reason you didn't do that because you each knew
 13 who the source was --
 14 A. No.
 15 Q. -- you didn't need to ask?
 16 A. No.
 17 Q. And when he asked about who the source was, what did
 18 you say?
 19 MR. SMITH: Objection, foundation.
 20 You can answer.
 21 A. I don't think he ever asked like that, the way you're
 22 asking.
 23 BY MR. KOHN:
 24 Q. Did he ever ask you who you thought the source was?
 25 A. I don't think he ever asked it quite like that. I

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1 think he said there was a lot of stuff floating
 2 around. Do you think he heard -- he meaning
 3 Mr. Ashenfelter, heard these different things that
 4 were floating around.
 5 Q. And what did you say in response to that?
 6 A. I don't know.
 7 Q. Did you agree with him?
 8 A. About what?
 9 Q. That there was a lot of stuff floating around.
 10 A. I was not aware of that, but I had not been in the
 11 strike force at the time of the Koubriti trial and he
 12 had. I had never laid eyes on or heard of Marwan
 13 Farhat, he had. So he seemed to know more of things
 14 like that than I did.
 15 Q. Did you ask him what these things floating around
 16 were?
 17 A. Are you talking about any specific time frame or just
 18 ever?
 19 Q. Just in that conversation, when he said these things
 20 were floating around the office, did you ask him what
 21 was floating around?
 22 A. He's mentioned things to me that were floating around.
 23 Q. Tell me, what were they?
 24 A. They're not necessarily things related to this.
 25 Q. Yeah.

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1 A. You're talking about things --
 2 Q. Oh, no. I'm talking context of this article, trying
 3 to determine who the source or sources may have been.
 4 A. Well, I mean we talked -- and you're talking now after
 5 the article came out?
 6 Q. Yes. Yes.
 7 A. I know we talked about the Shishani stuff because
 8 Shishani had been his case.
 9 Q. What did you talk about that?
 10 A. I don't recall the specifics. I mean, I think it was
 11 repeating what we had talked about during the OPR
 12 referral process.
 13 Q. Did any discussion go on who may have been the source
 14 on the Shishani materials?
 15 A. Not specifically like that.
 16 Q. Who would have known about the Shishani incident that
 17 was reported in the press?
 18 A. I need to take a look again and see what it says.
 19 Q. Yeah, take a look.
 20 A. The pretrial services officer, I believe Mr. Straus,
 21 and it's possible the three agents who had been
 22 assigned to the case but I don't recall specifically
 23 what they told me about that.
 24 Q. And you?
 25 A. Yes. Well, at what time frame?

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1 Q. Before the article came out.
 2 A. Well, once the OPR, yes.
 3 Q. So you knew about it through the OPR and Straus knew
 4 about it and the pretrial services officer would have
 5 known some of it?
 6 A. Uh-huh.
 7 MR. SMITH: Objection, compound. I mean
 8 are you asking him to --
 9 BY MR. KOHN:
 10 Q. I'm going to -- okay. Yeah, because actually we've
 11 done the old thing where you have to say yes, you
 12 can't do a nonverbal communication.
 13 A. Sorry.
 14 Q. That's okay. I'll just go back and repeat myself.
 15 So Mr. Straus knew it, correct?
 16 A. And we're talking about --
 17 Q. Shishani?
 18 A. Yes, and we're talking about during the OPR referral
 19 period, right?
 20 Q. We're talking about actually before January 16, 2004.
 21 A. Okay.
 22 Q. Okay. So Mr. Straus knew about it?
 23 A. Yes.
 24 Q. You knew about it?
 25 A. Yes.

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1 Q. Now, let's look at --
 2 A. And the pretrial service officer and possibly the
 3 three agents and Jeff Collins and Alan Gershel would
 4 have known as well because they were involved in the
 5 OPR preparation process.
 6 Q. And now let's go and look at the -- have you
 7 identified where that is in the article?
 8 A. What?
 9 Q. The Shishani matter.
 10 A. It's the fifth paragraph down.
 11 MR. SMITH: Sixth.
 12 A. One, two, three, four, five, sixth paragraph down and
 13 then I think it's mentioned maybe again. No, I guess
 14 that's the only reference to it.
 15 BY MR. KOHN:
 16 Q. And going back to the reference in there, you
 17 mentioned the three agents?
 18 A. Yes.
 19 Q. Why would the three agents have known about
 20 Mr. Convertino's conversation with the pretrial
 21 services employee?
 22 A. I think I said I'm not sure if they did, they might
 23 have. There was a time where I interviewed those
 24 three agents because they somehow -- I heard that they
 25 had information that they thought might be relevant.

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1 Q. Did you keep notes of that interview?
 2 A. I did.
 3 Q. And during the course of that interview did you tell
 4 them what the allegations were against Mr. Convertino?
 5 A. I don't think there were allegations at that time.
 6 Q. And other than that, do you remember discussing any
 7 other aspect of this article with Mr. Straus?
 8 A. At any time?
 9 Q. Yeah, after the article came out.
 10 A. After the article came out. I don't have any specific
 11 recollections of that.
 12 Q. Now, did Mr. Straus ever give -- tell you who he
 13 thought the leak or -- the leakers or the leaker might
 14 be?
 15 A. I think his thought from what he said is that there
 16 were these different things that were heard and put
 17 together.
 18 Q. But he didn't put a name to the different things that
 19 were heard and put together, like who might be saying
 20 that?
 21 A. No.
 22 Q. And again, did you ever provide Mr. Straus any
 23 speculation or opinion whatsoever as to who the
 24 sources or source may have been?
 25 A. I don't think so. But I do recall there was

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1 speculation early on, and I think including
 2 Mr. Straus, that perhaps Mr. Convertino himself had
 3 been the source of some of this.
 4 Q. And how did you learn about that speculation?
 5 A. I think I heard it from him.
 6 Q. And what did you say when he said that?
 7 A. I don't recall any specific comments.
 8 Q. Has anyone in the office ever asked you if you were
 9 the source?
 10 A. I don't think anyone's ever asked me in those words.
 11 Q. And have you ever asked anyone in the entire office
 12 whether they were the source?
 13 A. No.
 14 Q. In your last answer you said in those words. What do
 15 you mean by in those words?
 16 MR. SMITH: You're going back two answers.
 17 MR. KOHN: Two questions, we can read it
 18 back.
 19 A. You're going to have to read it back.
 20 MR. KOHN: Can you read back the question
 21 and answer from when he said in those words?
 22 (The following portion of the record was
 23 read by the reporter at 10:42 a.m.:
 24 "Question. Has anyone in the office ever
 25 asked you if you were the source?"

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1 Answer. I don't think anyone's ever asked
 2 me in those words.")
 3 BY MR. KOHN:
 4 Q. Okay. What do you mean by in those words?
 5 A. Meaning words to that effect were you the source, were
 6 you involved in that, something like that.
 7 Q. Did they ever like ask you indirectly, more like in an
 8 more indirect way trying to probe whether you were the
 9 source or knew who the source was?
 10 A. I don't think so.
 11 Q. Now, going back to Mr. Sauget --
 12 A. Yes.
 13 Q. -- did you interview him related to the Makalda matter
 14 for the OPR referral?
 15 A. I spoke to him, I'm not sure I'd call it an interview.
 16 Q. Did you take notes of that interview?
 17 A. There was --
 18 MR. SMITH: Objection to form. He just
 19 said he didn't call it an interview.
 20 BY MR. KOHN:
 21 Q. Or notes when you spoke to him?
 22 A. Well, I spoke to him on more than one occasion, but
 23 specifically referring to the portion that's in the
 24 OPR referral, I didn't take notes.
 25 Q. And can you remember during your interview process

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1 with him or just when you were talking with him about
 2 it, what -- how did -- what did he say happened at
 3 the -- at that sentencing hearing?
 4 A. I believe he said that he got to court in Ann Arbor
 5 and there was something in a case file that he had not
 6 been expecting or some sort of a motion or something.
 7 Q. And then what did he tell you?
 8 A. I can't recall that right now. I'd have to look back
 9 at the OPR referral to try and...
 10 Q. Did he tell you that he was surprised about what
 11 happened at the hearing?
 12 A. There was something about being surprised involved.
 13 Q. Did you -- did you ever talk to -- strike that.
 14 Did you ever again after 2000 apply to the
 15 U.S. attorney?
 16 A. No.
 17 Q. Do you have -- do you have any concerns that if you
 18 are identified as the person who leaked the
 19 information to the Plymouth Free Press that it could
 20 harm your career?
 21 A. Of course.
 22 Q. Now, in this -- I'm going to call your attention again
 23 to Exhibit Number 2.
 24 A. All right.
 25 Q. So according to this you worked on the staff, it says,

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1 to be of a congressman?
 2 A. Yes.
 3 Q. And you also worked for the National Republican
 4 Congressional Committee?
 5 A. Correct.
 6 Q. And the National Republican Senatorial Committee?
 7 A. Yes.
 8 Q. How much time did you actually spend working on either
 9 for congressman or senate or house related type of
 10 activities?
 11 A. You want that broken down or just an aggregate?
 12 Q. Yeah. It says here the next three years, is that
 13 correct?
 14 A. Yeah, that's correct.
 15 Q. That was a three-year stint?
 16 A. A three-year stint.
 17 Q. And how much of that was in the congressman's office
 18 versus these other two offices?
 19 A. Approximately -- I worked for the congressman from --
 20 I graduated college in May of 1982, started working
 21 for the congressman probably in August. I stayed
 22 there until I think July the next year and I did that
 23 for about a year, did the senatorial committee for
 24 about a year and then I went to law school.
 25 Q. Do you know anything about Senator Charles Grassley?

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1 A. A little bit.
 2 Q. What do you know about him?
 3 A. He was elected in 1980, he's from Iowa, he's a
 4 Republican. I believe that he grew up as a farmer and
 5 entered politics as a second career.
 6 Q. When you were in the position of associate deputy
 7 attorney general, in your detail or whatever as
 8 reflected in Exhibit 2, did his name ever come up in
 9 any discussions at all?
 10 A. It may have. I'm trying to remember what his position
 11 was. It was a Republican controlled senate at the
 12 time so he would have been chairman of something but I
 13 don't remember.
 14 When I was in the Deputy Attorney General's
 15 Office it was very well delineated who had
 16 responsibilities for what and in terms of really the
 17 political on-the-hill legislative type of things, I
 18 wasn't really involved in that and so it would have
 19 been unusual for me really to hear nuts and bolts,
 20 putting together legislation, legislatures' names
 21 coming up.
 22 Q. What was your function when you served as deputy
 23 attorney general?
 24 MR. SMITH: Associate deputy attorney
 25 general.

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1 BY MR. KOHN:
 2 Q. Associate deputy attorney general. What did you do?
 3 A. My responsibilities?
 4 Q. Yeah.
 5 A. I had oversight authority for the Bureau of Alcohol
 6 Tobacco and Firearms which had only recently become a
 7 Department of Justice agency, there were a lot of
 8 transition issues, and then subsumed in all that was
 9 everything involving firearms and firearms laws, which
 10 I didn't know a whole lot about.
 11 I mean, there were things I had
 12 responsibility for on paper that I never really did
 13 much with. Do you want to hear those too?
 14 Q. No, just what you were actually working on.
 15 A. Working on. ATF; recommendations for death penalty
 16 cases to the attorney general and the deputy attorney
 17 general; the computer crimes and intellectual property
 18 section of the department. I'm sure there's a couple
 19 others but I'd have to think for a few minutes.
 20 Q. Were you aware at any time while you worked there that
 21 Senator Grassley had placed holds on some Department
 22 of Justice nominees?
 23 A. No, I don't think so.
 24 Q. Have you ever been made aware that?
 25 A. No, my recollection is that the hold process is

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1 confidential and so that doesn't get -- no one finds
 2 that out.
 3 Q. When -- are you aware that there did come a time that
 4 staff representatives from the finance committee or
 5 people who worked for Senator Grassley had asked to
 6 talk with Mr. Convertino?
 7 A. Did you say did I ever learn that?
 8 Q. Yeah.
 9 A. Yes.
 10 Q. Okay. In relationship to -- were you in -- okay.
 11 When did you leave Washington?
 12 A. I don't remember the exact date. It was early
 13 September.
 14 Q. Okay. Early, so before or after Labor Day, do you
 15 know?
 16 A. I think it was -- I think Labor Day was on a Monday
 17 and I think I finished that week. But it could have
 18 been a week either way.
 19 Q. Do you remember that there was any type of controversy
 20 related to Senator Grassley and Rick Convertino right
 21 at that time when you were coming back in?
 22 A. You mean in Washington?
 23 Q. In Washington or in Plymouth.
 24 A. Well, I took a week off before I got back to Plymouth.
 25 I don't -- I mean -- I was transitioning out of

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1 Washington and I had a week off before I came back to
 2 Plymouth.
 3 Q. Did you have any involvement over the Butch Jones
 4 death penalty matter when you were an associate?
 5 A. No, I think --
 6 MR. SMITH: Associate deputy attorney
 7 general.
 8 BY MR. KOHN:
 9 Q. Associate deputy attorney general.
 10 A. No, I think that case was much older than that, and I
 11 would have been recused from it anyhow. There was
 12 actually a Plymouth case that came up while I was
 13 there and I did not handle that for that reason.
 14 Q. Did Ann Coulter, do you think she had anything to do
 15 with your getting a job in D.C.?
 16 A. Ann?
 17 Q. Yes.
 18 A. I don't know. It's -- I mean, if someone had called
 19 her for a reference she might have --
 20 Q. Have you ever used her for a reference?
 21 MR. SMITH: You kind of cut off his answer.
 22 She might have, was there more to that answer?
 23 A. I mean, she knows a lot of people. If people, you
 24 know, those types of jobs, networking is important.
 25 If someone had called her to say, who is this guy, she

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1 would have answered I'm sure. I never asked her to,
 2 if that's what you're saying.
 3 BY MR. KOHN:
 4 Q. Do you know if she's ever done that for you any time
 5 in your career?
 6 MR. SMITH: Served as a reference?
 7 BY MR. KOHN:
 8 Q. Yeah.
 9 A. I've never listed her as a reference. I personally
 10 think she's too controversial to use for that.
 11 Q. Are you currently looking for a job outside of the
 12 justice department?
 13 A. No.
 14 Q. Getting back to Senator Charles Grassley, so when you
 15 returned to work in Plymouth did you learn of anything
 16 going on between Rick Convertino and Senator Grassley?
 17 A. Can I just back up to your last question?
 18 Q. Sure.
 19 A. A colleague and I were just accepted to teach in the
 20 fall as a part-time position. I've never taught
 21 before, but I understood your question to mean
 22 full-time employment.
 23 Q. Okay. Did you apply for that job?
 24 A. We jointly applied.
 25 Q. And what is the -- what's the university or college?

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1 A. University of Michigan.
 2 Q. At the law school?
 3 A. Law school.
 4 Q. And so that'll be in the fall?
 5 A. Correct.
 6 Q. In regards to Senator Charles Grassley, what was your
 7 understanding when you came back from the detail of
 8 Mr. Convertino and Senator Grassley?
 9 A. Could you --
 10 Q. Did you know there was any relationship anything going
 11 on between Convertino and Grassley?
 12 A. Well, I think I had heard that there was a controversy
 13 about his testimony.
 14 Q. Tell me who you heard that from.
 15 A. I think I heard that from Alan Gershel.
 16 Q. What did he tell you?
 17 A. There was controversy about his testimony.
 18 Q. What else did he say about it?
 19 A. I don't recall any specifics, but it was something to
 20 do with whether he had gotten clearances to appear or
 21 something like that. It was a very formal process at
 22 the Department of Justice.
 23 Q. And did you -- what was your comment on that?
 24 A. I had none. I didn't -- I didn't know anything about
 25 it.

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1 Q. And do you know if the Department of Justice was
2 communicating with Senator Grassley about Rick
3 Convertino?
4 A. At what time?
5 Q. After -- from September 2003 through January 17, 2004.
6 A. At some point I learned that.
7 Q. How'd you learn that?
8 A. There were some letters that -- or -- well, there was
9 at least one letter that was written, there may have
10 been more than one.
11 Q. What was this?
12 A. There was a letter from Senator Grassley, I don't
13 remember to whom it was addressed, asking about
14 Mr. Convertino and whether he was being reassigned or
15 something to that effect.
16 Q. Did you see that letter?
17 A. Yes.
18 Q. And did you help write a response to it?
19 A. I don't remember, I may have. My recollection is
20 there was a conference call involving some people in
21 the DAG's office with whom I had recently been working
22 and I think they were -- nothing in the Department of
23 Justice gets written by any one person. They were
24 having input, I think they were seeking our input.
25 Ultimately, anything that goes to a member of congress

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1 gets signed off by the Office of Legislative Affairs
2 but I think they were putting together a working
3 response.
4 Q. Office of Legislative Affairs?
5 A. Right.
6 Q. And who from the DAG's office?
7 A. I remember Stuart Levy.
8 Q. Anybody else?
9 A. I don't remember anyone else. It would be fairly
10 typical in any DAG meeting that there's going to be a
11 whole bunch of people.
12 Q. And have you had other contacts with Mr. Levy?
13 A. Well, I had worked with him that summer.
14 Q. Was he also an associate deputy attorney general?
15 A. He was the Principal Associate Attorney General.
16 MR. SMITH: Associate deputy attorney
17 general or --
18 A. Principal associate deputy attorney general or as they
19 would refer to it, PA-DAG. Which means when
20 Mr. Thompson left, he became the acting deputy
21 attorney general for a short period of time.
22 BY MR. KOHN:
23 Q. Okay. So there's a -- and what do you remember about
24 this conference call?
25 A. That there was a letter from Senator Grassley -- I

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1 mean, yeah, a letter from Senator Grassley and they
2 wanted to know about this -- is there a reassignment
3 going on, is a secretary in our office being
4 reassigned, what are the facts.
5 Q. Do you remember about when that happened?
6 A. In the fall.
7 Q. Okay. Now, did there come a time when you were asked
8 to do some type of review about Mr. Convertino and --
9 which ultimately led to the OPR referral?
10 A. Not exactly.
11 Q. Okay. How did your involvement in putting together
12 what would ultimately become the OPR, how did that
13 originate?
14 A. Bob Cares had prepared a memo which he brought to Alan
15 Gershel and myself and the memo had to do with Marwan
16 Farhat and it documented some history. At the time,
17 this was the fall of 2003, we had formed a
18 counterterrorism unit at some point shortly after
19 9/11, 2001. Bob Cares was the chief of that. It had
20 something to do with Mr. Cares having wanted to use
21 Marwan Farhat as a witness in one or more cases and
22 that -- that never happened, and then Mr. Cares
23 learned somehow that there had been a significant
24 motion for reduction of Mr. Farhat's sentence by
25 Mr. Convertino and he brought that to our attention

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1 with that memorandum.
2 Q. And did he attach to that memo like e-mails?
3 A. There were a couple of attachments to it, one or two
4 e-mails. I mean, it wasn't a huge memo but there were
5 definitely one or two e-mails attached to it.
6 MR. KOHN: And once -- I'm going to show
7 you a document I'll now mark as Exhibit Number 3.
8 MARKED BY THE REPORTER:
9 DEPOSITION EXHIBIT 3
10 10:59 a.m.
11 BY MR. KOHN:
12 Q. And I'm going to ask you if you could please take a
13 look at that and tell me -- I'm going to have two
14 questions. First, if you have ever seen this before;
15 and second, if to the best of your recollection this
16 was one of the documents attached to the Cares memo.
17 MR. SMITH: Read it with those questions in
18 mind but let him then ask the questions before you say
19 anything.
20 BY MR. KOHN:
21 Q. Thank you.
22 A. Okay. Ask me the questions please.
23 Q. First of all, have you ever seen any of these e-mails
24 before?
25 A. Before this memo has been given to me --

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<p>1 Q. Yes.</p> <p>2 A. -- when Bob Cares gave it to me?</p> <p>3 Q. Yes.</p> <p>4 A. Never.</p> <p>5 Q. And did Mr. Cares provide you these documents?</p> <p>6 A. Yes.</p> <p>7 Q. Can you remember about when that happened?</p> <p>8 A. It was the first week I was back from Washington.</p> <p>9 Q. Okay. So he brought this issue to your attention?</p> <p>10 A. Well, actually I was in Alan Gershel's office and he</p> <p>11 was bringing it to Alan's attention, and, you know, I</p> <p>12 was sort of new on the job and I think everyone forgot</p> <p>13 about me, but since I was there, he gave it to me</p> <p>14 also.</p> <p>15 Q. And what happened next?</p> <p>16 A. I know Alan and I talked about it. I assume we talked</p> <p>17 about it with Bob Cares also, but I don't really</p> <p>18 recall that. Considered what was being told to us.</p> <p>19 Q. And how did that then lead into something to do with</p> <p>20 Mr. Convertino, like what was the follow-up to that?</p> <p>21 A. I can tell you events that happened, I'm not certain</p> <p>22 about the time frame --</p> <p>23 Q. Okay.</p> <p>24 A. -- the time line at this point.</p> <p>25 Q. So what happened next with the Cares memo?</p>	<p>1 Q. Who obtained a copy of the transcript of the</p> <p>2 sentencing to the best of your knowledge?</p> <p>3 A. Mr. Gershel ordered it.</p> <p>4 Q. So he got it. Who else got a copy?</p> <p>5 A. I'm not sure.</p> <p>6 Q. You got a copy?</p> <p>7 A. I think I did. I either had --</p> <p>8 Q. You think you did or did you get copy of that</p> <p>9 transcript --</p> <p>10 A. Well, I --</p> <p>11 MR. SMITH: Let him finish the question</p> <p>12 before you start answering, and also please let him</p> <p>13 finish his answer before you ask the next question.</p> <p>14 MR. KOHN: Thank you.</p> <p>15 BY MR. KOHN:</p> <p>16 Q. Just saying, question, to the best of your</p> <p>17 recollection did you obtain a copy of that sentencing</p> <p>18 hearing?</p> <p>19 A. Me personally?</p> <p>20 Q. Yes.</p> <p>21 A. I don't know if I ever had my own copy. The office</p> <p>22 had received a copy, Alan had it and I had access to</p> <p>23 it.</p> <p>24 Q. Did you ever read the transcript?</p> <p>25 A. Yes.</p>
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<p>1 A. I can't tell you exactly what happened next.</p> <p>2 Q. Okay. So --</p> <p>3 A. But I can tell you things that happened.</p> <p>4 Q. Okay. Tell me what happened.</p> <p>5 A. Okay. Mr. Gershel and I were thinking about talking</p> <p>6 to Mr. Convertino about this and finding out what had</p> <p>7 happened, because the allegation here, either in this</p> <p>8 memo or the implication from what we found out, was</p> <p>9 that a motion had been made to reduce Mr. Farhat's</p> <p>10 sentence and at that time that required approval from</p> <p>11 Mr. Gershel.</p> <p>12 We were thinking about whether we should</p> <p>13 ask to schedule a meeting and how we should do that or</p> <p>14 if we should do that, and Mr. Convertino sent either</p> <p>15 us or me, meaning either myself and Mr. Gershel or</p> <p>16 just me a memo asking for a meeting.</p> <p>17 Q. Okay.</p> <p>18 A. And that led to a meeting.</p> <p>19 Q. And then what happened?</p> <p>20 A. We met.</p> <p>21 Q. And then what happened after -- you met and then what</p> <p>22 happened?</p> <p>23 A. We met, we discussed the case. At some point</p> <p>24 Mr. Gershel ordered the transcript of the sentencing</p> <p>25 and --</p>	<p>1 Q. Did you ever make a notation on the transcript?</p> <p>2 A. No.</p> <p>3 Q. Now, did you ever make a copy of the transcript?</p> <p>4 A. I don't recall.</p> <p>5 Q. Okay. Going back, so you ordered the transcript.</p> <p>6 A. I did not order it, Mr. Gershel ordered it.</p> <p>7 Q. And then you read it?</p> <p>8 A. At some point I read it.</p> <p>9 Q. And then in terms of my question, this genesis of what</p> <p>10 eventually led to your writing the OPR letter?</p> <p>11 A. Okay.</p> <p>12 Q. Okay. So now you have the transcript, what -- you had</p> <p>13 a meeting with Mr. Convertino.</p> <p>14 A. Right.</p> <p>15 Q. What are you talking about with Mr. Gershel and</p> <p>16 Mr. Collins concerning Mr. Convertino?</p> <p>17 A. We were not -- we were not getting answers, I don't</p> <p>18 believe, about what the approval process had been for</p> <p>19 Mr. Farhat's sentence and it led to subsequent</p> <p>20 meetings.</p> <p>21 Q. And then what?</p> <p>22 A. After the meetings?</p> <p>23 Q. Yeah.</p> <p>24 A. I mean, at some point two things happened. One, we</p> <p>25 decided to take a look at other cases of</p>

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<p>1 Mr. Convertino's in which there had been a motion to</p> <p>2 reduce the sentence to see if there had been approval</p> <p>3 given in those, and we decided to make an OPR referral</p> <p>4 on it.</p> <p>5 Q. Now, who appointed you to undertake this job?</p> <p>6 A. I think it was Jeff Collins.</p> <p>7 Q. Okay. Tell me about that, what did he say to you or</p> <p>8 was it presented to him and he appointed you?</p> <p>9 A. Yeah, I don't think it was as formal as all that, but</p> <p>10 Mr. Gershel and I met with him, we discussed what had</p> <p>11 occurred in our meetings. I think one of the things</p> <p>12 that occurred was that Mr. Collins had sent a memo or</p> <p>13 e-mail to Mr. Convertino saying that he needed to meet</p> <p>14 with us to discuss that, and we reported back what the</p> <p>15 results of that had been and I think that there was</p> <p>16 then a decision between the three of us that this</p> <p>17 needed to go to OPR.</p> <p>18 Q. Okay. So that -- I think that meeting was on or</p> <p>19 about -- I think it was like October 10?</p> <p>20 A. Which meeting?</p> <p>21 Q. The meeting you just testified to where you met with</p> <p>22 Mr. Convertino. I think that was in October.</p> <p>23 A. There were three meetings.</p> <p>24 Q. Okay. Do you remember the dates?</p> <p>25 A. Not really without looking at my notes. I mean, I</p>	<p>1 Q. Okay. In any event, do you remember -- do you</p> <p>2 remember the time frame of this conference call about</p> <p>3 responding to Senator Grassley's letter?</p> <p>4 A. It was in the fall.</p> <p>5 Q. It was sometime in the fall. Do you know if that</p> <p>6 meeting happened before or after there was a decision</p> <p>7 that what was going on -- that there might be a</p> <p>8 referral to OPR with Mr. Convertino?</p> <p>9 A. I don't know.</p> <p>10 Q. Was there any discussion at that meeting that you</p> <p>11 alerted the people in Washington that there might be</p> <p>12 an OPR issue related to Mr. Convertino?</p> <p>13 A. In other words, when we were having the conference</p> <p>14 call --</p> <p>15 Q. Yes.</p> <p>16 A. -- with the DAG's office --</p> <p>17 Q. Yes.</p> <p>18 A. -- about the Senator Grassley letter?</p> <p>19 Q. Yes.</p> <p>20 A. I don't recall that.</p> <p>21 Q. Would that be the type of information in your mind it</p> <p>22 would be important for the DAG's office to know about?</p> <p>23 A. Very likely.</p> <p>24 Q. Why?</p> <p>25 A. They don't like surprises.</p>
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<p>1 think I remember the dates on two but I would need to</p> <p>2 see my notes --</p> <p>3 Q. Okay. What were the two dates?</p> <p>4 A. The first was I believe September 23rd.</p> <p>5 Q. Okay.</p> <p>6 A. And I believe the next was October 10.</p> <p>7 Q. Yeah, and the third one?</p> <p>8 A. I don't know.</p> <p>9 Q. Okay. Which of these meetings was the one that you</p> <p>10 came out of thinking that it was an OPR referral was</p> <p>11 going to happen?</p> <p>12 A. I'm not sure.</p> <p>13 Q. And do you know in terms of time sequence how much</p> <p>14 time went between that October 10th meeting and that</p> <p>15 third meeting?</p> <p>16 A. I would know if I looked at my notes.</p> <p>17 Q. Do you have a copy of those?</p> <p>18 A. Not with me.</p> <p>19 MR. KOHN: Do you have a copy?</p> <p>20 MR. SMITH: I don't believe we have them.</p> <p>21 They definitely were produced.</p> <p>22 MR. KOHN: Yeah.</p> <p>23 (Discussion off the record at 11:07 a.m.)</p> <p>24 (Back on the record at 11:08 a.m.)</p> <p>25 BY MR. KOHN:</p>	<p>1 Q. And did you ever inform the DAG's office that there --</p> <p>2 do you have a recollection of ever informing the DAG's</p> <p>3 office that there was in fact going to be or already</p> <p>4 had been an OPR referral?</p> <p>5 A. Well, that's two questions.</p> <p>6 Q. Okay.</p> <p>7 A. I don't know if we told them that there was going to</p> <p>8 be but -- well, I don't really know if we ever told</p> <p>9 them that, but when the referral was being put</p> <p>10 together and finalized I was told to send it to the</p> <p>11 executive office of the U.S. attorneys and that</p> <p>12 happened. I don't know if that also got communicated</p> <p>13 to the Deputy Attorney General's Office or not.</p> <p>14 Q. Who told you to send it to the executive office of</p> <p>15 U.S. attorneys?</p> <p>16 A. Jeffrey Collins.</p> <p>17 Q. Do you know why he did that?</p> <p>18 A. I don't know why.</p> <p>19 Q. Do you know what need to know the executive office</p> <p>20 had?</p> <p>21 A. I don't know specifically.</p> <p>22 Q. You just sent it off?</p> <p>23 MR. SMITH: Objection to form.</p> <p>24 You can answer.</p> <p>25 BY MR. KOHN:</p>

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<p>1 Q. What did you send to the executive office of U.S. 2 attorneys? 3 A. I sent them a draft. 4 Q. So the draft of -- 5 A. An OPR referral. 6 Q. So that was done before there was a referral? 7 A. Correct. 8 Q. Did they have input into the referral? 9 A. The executive office? 10 Q. Yes. 11 A. In terms of content? 12 Q. Yes. 13 A. I don't recall. I mean, I think the reason it was 14 sent to them was to give them that opportunity. 15 Q. And you wrote the referral, isn't that true? 16 A. I wrote the majority of it. 17 Q. Isn't it true that you wrote it and then Mr. Collins 18 just signed it? 19 A. No. He edited it and there were discussions 20 throughout, certainly with Mr. Gershel and I think 21 with Mr. Collins, about content and how it was being 22 put together. 23 Q. Did the executive office of U.S. Attorneys provide you 24 any input into anything to do with the content of the 25 letter?</p>	<p>1 Q. Now, were there any other communications with Main -- 2 were there any other communications between you and 3 Main Justice before the formal letter was sent to OPR? 4 A. Me personally? 5 Q. Yeah. 6 A. No. 7 Q. Do you remember the date of the formal referral to 8 OPR? I know it was in the November, do you remember 9 that date? 10 A. No. 11 Q. Okay. I'll tell you what, from my notes here, if I 12 was to tell you it was November 3, does that sound 13 about right? 14 A. That sounds right. I was going to say 2nd or 3rd. 15 Q. This sending of the draft to the executive office, 16 how -- about how much time was that done before 17 November 3rd? 18 A. Perhaps a week to 10 days. 19 Q. Now, in terms of the letter to Senator Grassley, you 20 talked about this conference call, do you know how 21 much time, you know, between the conference call and 22 the letter to Senator Grassley? 23 A. I think the letter from Senator Grassley was first. 24 Q. Yeah, and then back to Senator Grassley, so there'd be 25 a letter from Grassley, a conference call and then a</p>
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<p>1 A. I don't recall. 2 Q. Who was your point of contact at the executive office? 3 A. I did not really have a point of contact. I believe 4 Mr. Collins had a point of contact and my recollection 5 from looking at the documents was that it was sent to 6 a gentleman by the name of Ken Blanco. 7 Q. And did you ever talk to Mr. Blanco? 8 A. Have I ever? 9 Q. Yeah. 10 A. I think I did when I was in Washington. 11 Q. So you knew him at that time? 12 A. I wouldn't say that. I think I was introduced to him 13 once in the hallway. 14 Q. So that office is in Main Justice? 15 A. The AUSA's office is in Main. It was at the time, I 16 don't know where they are now. 17 Q. And so he got it, did you talk to him or anyone in 18 that office about what you -- was there oral 19 communications between you and the executive office of 20 U.S. Attorneys? 21 A. You mean after this draft was sent to them? 22 Q. Yeah. 23 A. Not that I recall. 24 Q. Did they ever send you something back? 25 A. Not that I recall.</p>	<p>1 letter to Senator Grassley. 2 A. Yeah -- 3 MR. SMITH: Is that a question? 4 BY MR. KOHN: 5 Q. Do you know how much time expired between your 6 conference call and the letter to Senator Grassley? 7 A. I'm not sure I ever even saw the letter from Senator 8 Grassley. That would have been the Office of 9 Legislative Affairs, so, no, I don't know. 10 Q. But what about the letter to, the response to Senator 11 Grassley? Did you ever see that? 12 A. Right, but -- I don't know. 13 Q. And at that conference call was there a discussion -- 14 were they going over the contents of the letter with 15 you? 16 A. I don't think so. 17 Q. Are you aware or ever made aware whether anyone from 18 the Office of Legislative Affairs was provided 19 information concerning the OPR referral? 20 A. I don't know that. 21 Q. Did you ever provide information to anyone from 22 legislative affairs to the -- about the OPR referral? 23 A. The only way it would have been in that conference 24 call is if someone was sitting in on that and if that 25 subject came up.</p>

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1 MARKED BY THE REPORTER:
 2 DEPOSITION EXHIBIT 4
 3 11:16 a.m.
 4 BY MR. KOHN:
 5 Q. And Exhibit 4 is a November 13, 2003 letter from
 6 William Moschella to Senator Charles Grassley, dated
 7 November 13, 2003. Do you see this?
 8 A. Yeah, can I just have a chance to --
 9 Q. Please.
 10 (Discussion off the record at 11:17 a.m.)
 11 (Back on the record at 11:19 a.m.)
 12 A. All right.
 13 BY MR. KOHN:
 14 Q. Okay. Now, looking at -- does this letter help
 15 refresh your recollection as to the dates that
 16 Grassley communicated with the Attorney General and
 17 the Attorney General's Office had communicated with
 18 him?
 19 A. No.
 20 Q. Okay. And looking at this letter and just -- you
 21 know, I'm just going to be under the assumption that
 22 the dates here are correct. It says -- do you see
 23 this where it says that the letter came into the
 24 attorney general on November 10, 2003?
 25 A. Yes.

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1 Q. And then this letter is dated November 13, 2003?
 2 A. Right.
 3 Q. So would it be safe, I mean, to assume that this phone
 4 conference you were on was sometime between the 10th
 5 and the 13th?
 6 A. I don't think so because it makes reference to an
 7 October 14th letter to Mr. Collins which was
 8 specifically about personnel in the Plymouth office.
 9 Q. And now my question for you is the phone call -- I
 10 understood your testimony, and I could be corrected,
 11 that you were called in because there was a letter to
 12 the attorney general?
 13 A. No, I don't believe so. There was a letter from a
 14 senator which needed to be responded to, I don't know
 15 which one it was.
 16 Q. Okay. So at the time of -- if at the time of that
 17 phone conference there had been an OPR sent or about
 18 to be sent concerning Mr. Convertino, in standard
 19 operating procedure in your mind would that be the
 20 type of information the DAG's office should be made
 21 aware of so they're not surprised or you know,
 22 blind-sided?
 23 MR. SMITH: Objection to form.
 24 You can answer it if you understood the
 25 question.

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1 A. I don't know of any specific procedures or policies.
 2 I would have brought it to their attention because in
 3 my opinion it would have been something they would
 4 have known of. It is also possible the way the
 5 bureaucracy there works that if it had already been
 6 brought, it would have been brought to their attention
 7 some other way. Most likely through EOUSA.
 8 BY MR. KOHN:
 9 Q. But again, I understand you have a specific
 10 recollection, but in terms of your understanding of
 11 your job and your duties and what's expected of you,
 12 it would be something that you would have called to
 13 their attention?
 14 A. Yes.
 15 Q. Now, after that interaction did you have any other
 16 interaction with the Attorney General's, you know,
 17 Office or whatever that is? Is that the DAG?
 18 A. No, the DAG is the Deputy.
 19 Q. Okay. The DAG, the attorney general, you know,
 20 that -- I don't know, what do you call the whole thing
 21 in Washington there, the attorney general and his --
 22 his direct little unit?
 23 A. The attorney general is usually referred to as OAG,
 24 Office of Attorney General.
 25 Q. And then there's the DAG?

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1 A. Deputy attorney general or ODAG, Office of deputy
 2 attorney general.
 3 Q. Do you remember whether the OPR matter to your
 4 knowledge was ever again called to the attention of
 5 the OHE or the DHE?
 6 A. Yes.
 7 Q. Okay. When was that?
 8 A. I don't know the exact date. Someone told me to fax a
 9 copy of it to the attorney general's office.
 10 Q. Okay. Someone told you to fax a copy of it. What was
 11 it?
 12 A. The OPR referral.
 13 Q. And who was the someone who told you this?
 14 A. I don't recall who told me to do it. I know that it
 15 was sent to Jeffrey Taylor in that office.
 16 Q. Do you know Mr. Jeffrey Taylor?
 17 A. I know him from my days in Washington.
 18 Q. Your days in Washington congressional or when you had
 19 the detail?
 20 A. Detail.
 21 Q. Did you talk to Mr. Taylor?
 22 MR. SMITH: You mean ever?
 23 BY MR. KOHN:
 24 Q. No, about this referral matter.
 25 A. At some point I did.

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1 Q. Tell me about that conversation.
 2 A. My recollection is that we were told to send it twice.
 3 Once it went unredacted, the second time I --
 4 Mr. Taylor called me on the telephone and said scrub
 5 it of anything sensitive, and that was done and then
 6 that was sent.
 7 Q. Did he tell you why he wanted it scrubbed?
 8 A. He did not.
 9 Q. Did he tell you what he was going to use it for?
 10 A. No.
 11 Q. Did the request come from him or did it come from
 12 someone else in your office who told you to do it?
 13 A. I don't recall that.
 14 Q. So how did this request get communicated?
 15 A. I don't know.
 16 MR. SMITH: Objection, asked and answered.
 17 BY MR. KOHN:
 18 Q. Okay. So what you remember is -- all right. Let's
 19 break it down.
 20 So in terms of the time sequence, is the
 21 letter you're sending, is that the November 3rd letter
 22 that you wrote to OPR or is it the letter that --
 23 December letter that was written to Convertino? Do
 24 you remember which letter?
 25 A. That we were sending to the attorney general's office?

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1 Q. Yeah.
 2 A. It would be the OPR referral.
 3 Q. So that would be the one on November 3rd?
 4 A. Yeah, but once it was sent in a redacted form.
 5 Q. Yeah. Okay. So let's talk about the first time you
 6 sent it off in an unredacted form. Did that go to
 7 Mr. Jeffrey Taylor?
 8 A. Yes.
 9 Q. Okay. And how do you know that it was supposed to go
 10 to Mr. Taylor?
 11 A. I don't know.
 12 Q. Okay.
 13 A. Someone told me to send it to him.
 14 Q. When someone told you to send it was that someone from
 15 your office or someone from Washington?
 16 A. I don't recall that.
 17 Q. When someone told you to send it to him, did you ask
 18 why?
 19 A. No.
 20 Q. Did they tell you why?
 21 A. I don't think so.
 22 Q. Where was -- where was the letter being stored at the
 23 time you made the copy?
 24 A. In the safe in my office.
 25 Q. So you took it out of the safe and faxed it?

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1 A. I probably had an assistant do the actual faxing, but,
 2 yeah.
 3 Q. What assistant?
 4 A. Could have been one of probably two or three.
 5 Q. Did you tell them not to read the letter or make any
 6 precautions when you handed it to them to fax?
 7 MR. SMITH: Objection to form, compound.
 8 A. I don't recall making any restrictive comments on it.
 9 BY MR. KOHN:
 10 Q. Okay. So it got faxed to Mr. Taylor?
 11 A. Right.
 12 Q. Okay. And then as I understand your testimony the
 13 next thing you remember is a phone call from
 14 Mr. Taylor to you?
 15 A. Correct.
 16 Q. Okay. To the best of your recollection today tell me
 17 what Mr. Taylor said to you.
 18 A. My recollection is that some time had gone by and that
 19 Mr. Taylor hadn't ever really looked at the first one,
 20 but it had some disclaimer on the top that says it may
 21 contain grand jury material or something for which
 22 disclosure is restricted, and he says something like,
 23 it looks like you have some grand jury stuff in there,
 24 redact that. He used the word scrub, scrub that, and
 25 any other sensitive information and resend it.

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1 Q. Okay. Did you ask him why he wanted it scrubbed?
 2 A. No.
 3 Q. Did he tell you why he wanted it scrubbed?
 4 A. He may have, I don't know.
 5 Q. But you don't remember now?
 6 A. I don't recall specifically.
 7 Q. Did he tell you that -- and did you in fact scrub it?
 8 A. Yes.
 9 Q. And then did you fax it to him?
 10 A. I scrubbed it with Alan Gershel.
 11 Q. Okay.
 12 A. And then we -- and then I fax -- and then I had it
 13 faxed.
 14 Q. And did you tell Mr. Gershel about this request from
 15 Mr. Taylor?
 16 A. Well, he knew because we were scrubbing it together.
 17 Oh, you mean was I the one who communicated that to --
 18 Q. In other words, when you took it to him, did you tell
 19 him why you were scrubbing it and the origin of that?
 20 A. I don't know if he knew that already or if I was the
 21 one who told him that.
 22 Q. So at the time you were scrubbing it he understood it
 23 was going to be scrubbed and sent to Mr. Taylor at the
 24 attorney general's office?
 25 A. Right.

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<p>1 Q. Did he ask you to determine what use they were going 2 to make of this letter? 3 A. I don't -- I don't think so. 4 Q. Now, when you scrubbed it, did you -- do you remember 5 what you deleted? 6 A. I remember specifically -- 7 MR. SMITH: Objection to the word deleted. 8 I think he redacted it. 9 BY MR. KOHN: 10 Q. Or scrubbed. 11 MR. SMITH: Redacted. 12 BY MR. KOHN: 13 Q. Yeah, redacted. 14 A. I remember specifically taking out Mr. Farhat's 15 Hezbollah association. 16 Q. And what about -- did it say on the letter that it was 17 directed to OPR and it concerned Mr. Convertino? 18 A. I'm sure it did because I think that was how it had 19 been written and I don't think any of that was taken 20 off. 21 Q. Did you have any concern whatsoever that the attorney 22 general's office may use this for a political purpose? 23 A. No. 24 Q. Did you have any concern whatsoever that they may 25 provide this document to the United States congress?</p>	<p>1 provided to senator Grassley? 2 A. I wouldn't say it was my understanding. I would say 3 it was my assumption. 4 Q. Okay. Did you talk to anybody in your office about 5 whether the OPR letter could be sent to the attorney 6 general's office? 7 A. No. 8 Q. Did you talk to anybody in your office about whether 9 the scrubbed version of the OPR referral could be 10 given to the attorney general for use with a member of 11 congress? 12 A. Can you explain to me what you mean by the use of the 13 word could? 14 Q. Could, in other words, that they might take the letter 15 you just faxed and somehow either give it to or use it 16 in communications with congress. Did you -- my 17 question is did you talk to like Collins or an ethics 18 officer about whether that -- whether you could -- 19 A. You mean permissibly within the law? 20 Q. Permis -- exactly. 21 A. No. 22 Q. Did you communicate -- call anyone at OPR to seek 23 guidance as to whom you could send a copy of the OPR 24 referral letter to? 25 A. No.</p>
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<p>1 A. When you say did I have concern -- 2 Q. Yes? 3 A. -- did I think that that would happen -- 4 Q. Yeah. Did you -- 5 A. -- or did I think that that was not something that 6 should happen? 7 Q. Thank you very much. Did you think they may use this 8 letter to provide to members of congress, yes or no? 9 A. I thought they were planning to show it to senator 10 Grassley. 11 Q. And what was your basis for believing they were going 12 to show it to senator Grassley? 13 A. Because this correspondence with senator Grassley had 14 been taking place. 15 Q. And this means Exhibit Number 4? 16 A. And associated redactions that we talked about. 17 Q. But the thing you were just pointing to was Exhibit 4, 18 the letter? 19 A. Correct. 20 Q. My question is, so in your mind at the time you faxed 21 it you understood that this redacted or scrubbed 22 version may be provided to senator Grassley, correct? 23 A. Repeat it once please. 24 Q. At the time you faxed the scrubbed version it was your 25 understanding that the scrubbed version may be</p>	<p>1 Q. And did you in fact fax the scrubbed version of that 2 letter to the attorney general's office? 3 A. Yes. 4 Q. And did that happen in or about the month of November 5 2003, do you remember? 6 A. I don't remember but I believe that the document I 7 produced had a fax cover sheet with it that should 8 show that. 9 Q. Did that communication to the attorney general's 10 office occur before the leak or, excuse me, before 11 Mr. Ashenfelter published his story in the newspaper? 12 Did you fax the letter to the attorney general's 13 office before the article appeared in the Plymouth 14 Free Press, Exhibit Number 1? 15 A. Yes. 16 Q. And did you fax that letter to the attorney general's 17 office before you had your conversation with 18 Mr. Ashenfelter on December -- on or about December 19 12, 2003? 20 A. I don't know. 21 Q. Did you know that the OPR referral letter should be 22 kept confidential, yes or no? 23 A. When you say should -- 24 Q. Yeah. Did you understand that there was a requirement 25 that the OPR referral that you wrote up, Collins</p>

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1 signed, on or about November 3, 2003, was required to
 2 be kept strictly confidential?
 3 A. I'm not sure I knew in terms of statutes or
 4 regulations but I assumed that.
 5 Q. Yet you willfully faxed it to the attorney general's
 6 office, knowing that it might be given to a member of
 7 congress, correct?
 8 MR. SMITH: Objection, argumentative, asked
 9 and answered.
 10 You can answer if you can.
 11 A. I was directed to fax it to the attorney general who
 12 is the head of my agency, so I did.
 13 BY MR. KOHN:
 14 Q. And in terms of the redacted version, who directed you
 15 to do that, Mr. Smith or who?
 16 A. Who's Mr. Smith?
 17 Q. Excuse me, who directed you --
 18 MR. SMITH: Are you asking whether I
 19 directed him?
 20 BY MR. KOHN: No, no, not you. I just said
 21 the name wrong, don't worry.
 22 BY MR. KOHN:
 23 Q. Who directed you to redact a copy of the referral
 24 letter?
 25 A. Jeffrey Taylor.

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1 Q. Is Jeffrey Taylor your boss, yes or no?
 2 MR. SMITH: You mean now or --
 3 BY MR. KOHN:
 4 Q. No, at that time. Was Jeffrey Taylor your boss?
 5 A. Arguably.
 6 Q. Oh, you didn't report to the U.S. Attorney?
 7 MR. SMITH: Objection, argumentative.
 8 BY MR. KOHN:
 9 Q. Did you report to the U.S. Attorney for the Eastern
 10 District, yes or no?
 11 A. Directly.
 12 Q. And who did the U.S. Attorney for the Eastern District
 13 of Michigan report to?
 14 A. Deputy attorney general.
 15 Q. And who's that?
 16 A. At the time?
 17 Q. Yeah.
 18 A. I don't know. It would depend on exactly when this
 19 took place. I don't think there was a deputy attorney
 20 general when Mr. Thompson resigned, I came back to
 21 Plymouth, I think there was an interim, later James
 22 Colme became the deputy attorney general.
 23 Q. So did either Mr. Thompson, the interim or Mr. Colme
 24 act or direct you to send that redacted version, yes
 25 or no?

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1 A. Well, I don't think that can be answered yes or no.
 2 Q. Why not?
 3 A. Well, first of all, Mr. Thompson was no longer in
 4 office so he couldn't direct me to do anything. The
 5 office in which he had held reported to the attorney
 6 general. Mr. Taylor was on the staff of the attorney
 7 general. I felt that I reported to him.
 8 Q. Did anyone from the staff of the attorney general ever
 9 give you -- prior to -- ever like write your
 10 performance reviews?
 11 MR. SMITH: Objection to form.
 12 BY MR. KOHN:
 13 Q. Okay. You -- so while you were working on
 14 Mr. Convertino's OPR referral you understood that you
 15 were reporting both to Mr. Collins and to the -- and
 16 to the staff of the attorney general, correct?
 17 A. No.
 18 Q. On matters related to whether the OPR referral letter
 19 should be kept confidential, you understood you were
 20 reporting to the staff of the attorney general, isn't
 21 that true?
 22 A. No.
 23 Q. You understood that the staff of the attorney general
 24 could instruct you to make, at will, giving you no
 25 justification, to make the OPR referral on

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1 Mr. Convertino not confidential, correct?
 2 MR. SMITH: Objection to form.
 3 You can answer if you understand the
 4 question.
 5 A. I'm going to have to hear the question back.
 6 BY MR. KOHN:
 7 Q. Okay. Let me just rephrase it.
 8 A. Okay.
 9 Q. You willfully, in other words, no one forced you, you
 10 did it on your own volition, knowingly sent the fax to
 11 the staff of the attorney general of Mr. Convertino's
 12 OPR referral, correct?
 13 A. I don't think that's correct.
 14 Q. You were forced to do it?
 15 A. I was ordered to --
 16 MR. SMITH: Objection.
 17 BY MR. KOHN:
 18 Q. Yeah?
 19 A. I was ordered to do it.
 20 Q. So when Mr. -- what was the name of that individual
 21 again?
 22 A. Jeffrey Taylor.
 23 Q. Jeffrey Taylor got on the phone and said, I order you
 24 to do this?
 25 MR. SMITH: Objection, argumentative.

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1 You can --

2 BY MR. KOHN:

3 Q. Did Jeffrey Taylor get on the phone and order you to

4 do it, yes or no?

5 A. My understanding from my years of --

6 Q. That's not my question. Did he order, did he say I am

7 instructing you to do this?

8 MR. SMITH: Will you let him answer the

9 question please?

10 MR. KOHN: It's a yes or no and then he can

11 explain.

12 MR. SMITH: I don't think the question can

13 be answered yes or no, but you can ask him if it can

14 be.

15 BY MR. KOHN:

16 Q. Can the question be answered yes or no?

17 A. Not in my opinion.

18 Q. Okay. Then let's go to the next one. Did you tell

19 Mr. Collins that you were going to fax this letter,

20 the OPR report?

21 A. I'm sure I did. Everything involving all of the OPR

22 matters I kept Mr. Collins completely informed of.

23 Q. And did you in your mind -- if they had asked you --

24 if the staff of the attorney general had said, would

25 you please leak the referral to the Plymouth Free

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1 Press, would you have leaked it, yes or no?

2 A. No.

3 Q. You would have been -- what if the staff of the

4 attorney general called you up and said, would you

5 please fax the redacted version of the referral letter

6 to Mr. Ashenfelter, would you have complied with that

7 request, yes or no?

8 A. Not without an explanation.

9 Q. And the explanation was, we're ordering you to do it.

10 A. I -- I would not have taken that as satisfactory.

11 Q. If they said, in our discretion we've decided this is

12 the appropriate use of this letter?

13 MR. SMITH: Objection to form.

14 You can answer if you --

15 A. Hypothetically?

16 BY MR. KOHN:

17 Q. Yes.

18 A. I think I would have required them to come up with a

19 justification or do that themselves. What they were

20 asking me for was to give them for their own internal

21 use a Department of Justice document which I felt I

22 had no right to withhold from them.

23 Q. So it's your testimony that if the staff of the

24 attorney general in your supervisory chain of command

25 asked you or ordered you to provide the redacted

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1 version of that referral letter regarding

2 Mr. Convertino to Mr. Ashenfelter, you would have

3 refused to comply with that instruction unless they

4 gave you sufficient justification? Is that your

5 testimony?

6 A. Yes.

7 Q. Okay. So -- but you -- you were willing to fax the

8 exact letter to the staff of the attorney general,

9 knowing it might be turned over to a United States

10 senator, isn't that true?

11 A. Yes.

12 Q. And once turned over to the United States senator,

13 what would be the restrictions on what that senator

14 could do with that document?

15 MR. SMITH: Objection, calls for a legal

16 conclusion I believe.

17 You can answer if you know -- have any

18 knowledge of that.

19 A. There's an expression that I don't particularly like

20 that became famous during the campaign last year

21 called, above my pay grade. I considered that

22 decision to be above my pay grade. The attorney

23 general's office asked for it and it was a Department

24 of Justice document. I gave it to them, what use they

25 made of it would be up to them.

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1 BY MR. KOHN:

2 Q. Okay. Thank you. Based on your experience with

3 Capitol Hill, you worked there I know, other than

4 working there or in and around congress for three

5 years, did you have any other interactions with

6 members of the congress or legislative activities?

7 A. Ever?

8 Q. Yeah.

9 A. Not that I recall.

10 Q. Well, based on your experience, whatever it -- you

11 know, at least those three years and your knowledge,

12 if a document's given to a senator, do you believe

13 there's a chance that that senator may leak it out to

14 the press?

15 A. Yes.

16 Q. When you faxed the letter to Mr. Taylor -- is that his

17 name Jeffrey Taylor?

18 A. Yes, and it's spelled T-A-Y-L-O-R.

19 Q. When you faxed it to him did you give him any

20 instruction as to limitations on how he could use the

21 document?

22 A. No.

23 Q. Did he ask you for any guidance as to potential

24 limitations on use of the documents?

25 A. He asked me to scrub it of grand jury material and

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1 anything that he called sensitive.
 2 Q. Do you believe that the fact that Mr. Convertino was
 3 the subject of an OPR investigation was sensitive, yes
 4 or no?
 5 A. I'm sure it was but Mr. Taylor already knew that.
 6 Q. So -- but -- and he also knew what the grand jury
 7 information was. He had the unredacted version,
 8 correct?
 9 MR. SMITH: Objection.
 10 BY MR. KOHN:
 11 Q. Correct?
 12 A. Yes.
 13 Q. I mean he had the unredacted version and he asked you
 14 to take away anything that was sensitive, correct?
 15 MR. SMITH: Objection, asked and answered.
 16 You can answer one more time.
 17 BY MR. KOHN:
 18 Q. Right? Okay. I just --
 19 A. Yes.
 20 Q. Okay. And you met with Mr. Gershel and together you
 21 reviewed the referral to take out sensitive
 22 information, correct?
 23 A. Right, but our review was to take out what we thought
 24 could affect ongoing cases.
 25 Q. Okay. Did the affect ongoing cases definition of

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1 sensitive, did that come from Mr. Taylor or was that
 2 based on your discussion with Mr. Gershel?
 3 MR. SMITH: Objection. It was an either or
 4 but there are other possibilities.
 5 BY MR. KOHN:
 6 Q. Okay. Where did you come up with that definition of
 7 sensitive information?
 8 A. I think that was my and Mr. Gershel's working
 9 assumption.
 10 Q. Okay. So when you -- did you call OPR to determine
 11 what their definition of sensitive information was?
 12 MR. SMITH: You can answer.
 13 A. OPR had not given me any definition of sensitive.
 14 BY MR. KOHN:
 15 Q. Okay.
 16 A. That was Mr. Taylor's words.
 17 Q. Okay. But did you call OPR to determine what they
 18 might consider sensitive information in that letter,
 19 yes or no?
 20 A. No.
 21 Q. Did you talk to Mr. Collins to determine what he may
 22 think sensitive information was in that letter, yes or
 23 no?
 24 A. Very likely.
 25 Q. Okay. So when you scrubbed the letter for sensitive

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1 information did you delete all reference to the fact
 2 that Mr. Convertino was the subject of an OPR
 3 referral?
 4 A. I would have to review the letter to be sure.
 5 Q. So today you don't remember if you scrubbed it in that
 6 fashion?
 7 A. Correct. Not specifically.
 8 Q. What about generally?
 9 A. I don't think I did but I would have to look at it to
 10 be certain.
 11 Q. Okay. I'm going to show you a document that's under
 12 protective order so I'm not going to introduce it onto
 13 the record. I'm only going to show it to you for
 14 purposes of refreshing your recollection and then you
 15 can answer the question.
 16 And for the record, this is a document
 17 subject to Protective Order DOJ Number 20,341 through
 18 20,353 and I'll show it and this is not for -- this is
 19 only for the purpose of refreshing the witness's
 20 recollection.
 21 So don't talk about the contents of this
 22 document on the record, it's just to refresh your
 23 recollection. I will show it to counsel first.
 24 MR. SMITH: Let me see it first.
 25 MR. KOHN: Okay.

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1 MR. SMITH: There's no question pending
 2 though.
 3 BY MR. KOHN:
 4 Q. This is to refresh your recollection as to whether you
 5 scrubbed the fact that Mr. Convertino was the subject
 6 of an OPR referral from the letter you faxed up to --
 7 MR. SMITH: Why don't you let him look at
 8 it and then reask the question.
 9 MR. KOHN: Sure.
 10 A. I really can't answer the question without getting
 11 into the content.
 12 MR. SMITH: Okay. What do you want to do?
 13 MR. KOHN: Nothing. I want to come back to
 14 that.
 15 THE WITNESS: You want to talk about it --
 16 MR. SMITH: I want to talk to you.
 17 MR. KOHN: Okay. Just so you know I'll
 18 probably --
 19 THE WITNESS: Can we just take a break
 20 anyhow?
 21 MR. KOHN: Yeah, we'll just take a break
 22 but what I will probably do is stuff that -- and there
 23 might be other things subject to a protective order so
 24 I am going to put that in another category and we may
 25 do a separate piece of this where I have to use those

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1 exhibits.
 2 MR. SMITH: And then put that part of the
 3 deposition under protective order?
 4 MR. KOHN: Under, yeah. Anything that
 5 might be under that. So see if that works.
 6 (Lunch recess at 11:51 a.m.)
 7 (Back on the record at 12:48 p.m.)
 8 BY MR. KOHN:
 9 Q. Okay. I'd like to call your attention to the time
 10 period of November 2003. In that time frame did you
 11 consider the fact that your office was going to or had
 12 made a referral of Mr. Convertino to OPR strictly
 13 confidential, yes or no?
 14 A. What do you mean by strictly confidential?
 15 Q. Okay. Now, I'll give you my next question. During
 16 that time period of November 2003 did you consider the
 17 fact that your office was either going to or had
 18 already communicated an OPR referral about
 19 Mr. Convertino, was that a matter that you had
 20 considered sensitive?
 21 A. Yes.
 22 Q. When you were asked by a representative of the U.S.
 23 attorney general's office to fax you a copy of your
 24 OPR referral and delete from it sensitive material,
 25 did you delete the fact that there -- you know,

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1 Mr. Convertino's name from the document you sent?
 2 MR. SMITH: I think that's asked and
 3 answered but you can go ahead and answer it again.
 4 A. No.
 5 BY MR. KOHN:
 6 Q. Same time frame, same basic question but did you
 7 also -- did you delete the fact that a referral had
 8 been sent to OPR, in other words, you blacked out
 9 OPR's address?
 10 A. I don't believe so.
 11 Q. If somebody -- based upon your memory of what you sent
 12 to the attorney general's office after you made the
 13 deletions of sensitive information, if someone had
 14 reviewed that document could they have inferred that
 15 Mr. Convertino was going to be the subject of an OPR
 16 investigation?
 17 MR. SMITH: Objection to the tense.
 18 You can answer.
 19 A. Yes.
 20 BY MR. KOHN:
 21 Q. Now, when -- you testified earlier that you spoke to
 22 Mr. Ashenfelter on the phone on or about December
 23 12th, correct?
 24 A. Yes.
 25 Q. And to be very clear on the time frame, that was after

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1 you sent the OPR referral letter with the deletions
 2 for sensitive information to the attorney general's
 3 office, correct?
 4 A. Yes.
 5 Q. So when you spoke to Mr. Ashenfelter, you had already
 6 made one communication to someone outside of the
 7 Plymouth United States Attorney's Office in which the
 8 fact that Mr. Convertino was going to be the subject
 9 of an OPR investigation was not considered sensitive
 10 enough to be kept -- to be redacted, correct?
 11 MR. SMITH: Objection, argumentative and
 12 compound.
 13 You can answer.
 14 A. I'm going to have to ask you to repeat it.
 15 BY MR. KOHN:
 16 Q. Okay. I'll say this. So at the time when you spoke
 17 to Mr. Ashenfelter on December 12th, 2003, in your
 18 mind you'd already made a determination that the mere
 19 fact of the referral to OPR was not sensitive, isn't
 20 that true?
 21 A. No.
 22 Q. And you understood at the time you spoke to
 23 Mr. Ashenfelter on or about December 12, 2003, in your
 24 mind it would be appropriate for the fact that
 25 Mr. Convertino was referred to OPR to be disclosed to

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1 senator Charles Grassley, isn't that true?
 2 A. No.
 3 Q. What steps did you take to prevent the attorney
 4 general's office from transmitting the letter you
 5 communicated to them -- I'm talking about the one that
 6 you took out the sensitive information, from being
 7 sent to senator Charles Grassley?
 8 A. None.
 9 Q. Have you ever heard the phrase in reference to
 10 Mr. Convertino by anybody that he had gone,
 11 quote-unquote, off the reservation?
 12 A. I think it's in his civil complaint.
 13 Q. Have you read his civil complaint?
 14 A. Yes.
 15 Q. And when did you read that?
 16 A. Whenever it came out.
 17 Q. Did you make a copy of it?
 18 A. I don't think so.
 19 Q. Did you show it to anybody?
 20 A. No, I think it was shown to me.
 21 Q. By who?
 22 A. Our civil division probably, I don't know exactly.
 23 Q. Other than seeing it in his complaint, had you ever
 24 heard anyone in the office use words to that effect in
 25 reference to Mr. Convertino?

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<p>1 A. I think one of the memoranda that Mr. Convertino said 2 to me quoted those words but I had not heard anyone 3 orally speak those words. 4 Q. What was your own personal opinion of Mr. Convertino 5 in the late 2003, early 2004 time frame? 6 A. I didn't particularly know him very well. 7 Q. Would it be true during that time period you did not 8 like him? 9 A. I knew of his reputation and he was someone I declined 10 to socialize with, but -- if that's dislike, yes. He 11 had invited me to a party at his house in December of 12 2001, a Christmas party, which I couldn't attend 13 anyhow because we had a new baby at home, and I 14 just -- he was not someone I wanted to socialize with. 15 Q. Was there any -- do you know if there was anyone else 16 in the office who also didn't want to socialize with 17 Mr. Convertino? 18 A. I don't know. I mean, he had a reputation as being a 19 polarizing figure so it wouldn't surprise me but I 20 cannot think of specific names. 21 Q. How about Mr. Eric Straus, do you know how he felt 22 about Mr. Convertino during that time? 23 A. 2002-2003? 24 Q. Actually the time period that I'm focused on is from 25 about September 2003 through January and including</p>	<p>1 Q. Yeah. 2 A. During what time frame? 3 Q. September 2003. 4 A. He was a deputy assistant attorney general in the 5 criminal division. 6 Q. Did you have any interaction with him? 7 A. Yes. 8 Q. And what was that? 9 A. One of my responsibilities in the deputy attorney 10 general's office was reviewing death penalty 11 litigation. That fell within his jurisdiction also 12 and we were on the attorney general capital case 13 review committee together. 14 Q. And when you returned to Plymouth did you have any 15 communications with him? 16 A. No. He left shortly thereafter because he became a 17 United States attorney in Atlanta. 18 Q. In September 2003, that time period, did you ever hear 19 Mr. Nahmais make any negative comments concerning 20 senator Grassley? 21 A. No. 22 Q. Did anyone ever tell you that Mr. Nahmais had made 23 statements such as Grassley's not our friend? 24 A. I've seen writings of Mr. Convertino's that said that. 25 No one told me that.</p>
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<p>1 January 2004. 2 A. I don't know specifically. 3 Q. Did he ever say anything that could be interpreted as 4 a negative -- representing some type of negative 5 opinion concerning Mr. Convertino? 6 A. I don't recall during that time period that he did. 7 Q. Have you ever heard him during any time period make a 8 negative comment about Mr. Convertino? 9 A. Well, subsequent to the full review that was conducted 10 by Craig Moreford, I think there were some negative 11 comments about the conduct of the case. 12 Q. What about Mr. Convertino personally? 13 A. Personally no. 14 Q. And when you say a polarizing figure, was the office 15 in some way polarized in its opinions of 16 Mr. Convertino? 17 A. I don't think it's correct to say that the office was. 18 I think there were some law enforcement agents who 19 absolutely loved him and I think there were some who 20 did not. And my impression, because again, this is 21 mostly reputation, is that there was not a lot of 22 middle ground. 23 Q. You mentioned earlier in your testimony something with 24 Mr. Nahmais, and who is he? 25 A. David Nahmais?</p>	<p>1 Q. Marwan Farhat, who's he? 2 A. He was an individual who had been a defendant in a 3 case. 4 Q. And what -- do you know what service -- in the time 5 period before the publication of that -- of Exhibit 1, 6 the article in the Plymouth Free Press about 7 Mr. Convertino, tell me what you knew about 8 Mr. Farhat. 9 A. I'm sorry, you have to tell me the time frame again. 10 Q. Prior to the publication of the Plymouth Free Press 11 article about Mr. Convertino, the Exhibit Number 1, so 12 that would be prior to January 17, 2004, what did you 13 know about Marwan Farhat? 14 A. All I knew is what I had learned in the course of 15 preparing the OPR referral. 16 Q. And tell me what you knew, tell me what you remember. 17 A. Well, I -- I had gotten that memo from Bob Cares. I 18 heard that he had spent, he meaning Mr. Farhat, had 19 spent a lot of time walking around unrestricted in the 20 U.S. Attorney's Office and I don't recall anything 21 else specifically right now. 22 Q. Do you know what -- at the time did you know what 23 services he was rendering for the United States? 24 A. No. 25 Q. At the time do you know what agencies he was providing</p>

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1 information to?
 2 A. I'm going to have ask you again what time frame you're
 3 talking about.
 4 Q. September --
 5 A. Are we always going to stick with this time frame,
 6 unless you tell me otherwise?
 7 Q. I don't know if I can actually say that per se, but
 8 for this question specifically I'm talking about in
 9 September -- actually these questions are everything
 10 you knew before that article came out --
 11 A. Okay.
 12 Q. -- about Mr. Farhat, because after the article came
 13 out is a different story. We want to know what
 14 happened before, what you knew.
 15 A. Okay.
 16 Q. So before the article came out did you know what
 17 agencies he had provided information to?
 18 A. I knew that he had worked with the FBI.
 19 Q. Do you know who with the FBI he was working with?
 20 A. As to none of this do I have first-hand knowledge, I
 21 had been told these things.
 22 Q. Did anyone tell you who in the FBI he had been working
 23 with?
 24 A. Bob Pertuso.
 25 Q. Anyone else?

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1 A. Kevin Tias (phonetic).
 2 Q. Did you ever talk to Kevin Tias about Mr. Farhat?
 3 A. Never met him in my life.
 4 Q. You never met Kevin Tias?
 5 A. No.
 6 Q. When you were writing the OPR referral did you make
 7 any effort to speak with Kevin Tias before you
 8 finished the product?
 9 A. I don't think so.
 10 Q. Are you aware that Mr. Tias worked for the FBI?
 11 A. I was told that.
 12 Q. And were you told he may have information related to
 13 the cooperation and assistance he was giving to the
 14 United States?
 15 A. I don't think so.
 16 Q. Did you think he might have that information?
 17 A. I don't think so.
 18 Q. Pardon?
 19 A. I don't think so.
 20 Q. Then so it never entered your mind that Mr. Kevin Tias
 21 would know -- that's your testimony, that you don't
 22 think he would know the level of assistance he was
 23 providing --
 24 MR. SMITH: Objection, form.
 25 BY MR. KOHN:

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1 Q. -- or the type of assistance?
 2 MR. SMITH: Same objection.
 3 A. I thought the question was did I think that he had
 4 information.
 5 BY MR. KOHN:
 6 Q. Okay. Did you think Mr. Tias had information
 7 concerning the level -- the type of assistance
 8 Mr. Farhat had provided to the United States?
 9 A. The way it was presented to me, my understanding was
 10 that Mr. Pertuso was the lead agent and was the person
 11 with the more significant knowledge.
 12 Q. And who told you that?
 13 A. I think it was Mr. Convertino.
 14 Q. And did you talk to Mr. Pertuso about Mr. Farhat?
 15 A. I did not.
 16 Q. Was one of the issues concerning Mr. Farhat related to
 17 a recommendation -- reference a 5K1.1 motion?
 18 A. In his own personal sentencing?
 19 Q. Yes.
 20 A. And what is a 5K1.1 motion.
 21 Q. Well, at the --
 22 MR. SMITH: You can ask him his
 23 understanding.
 24 BY MR. KOHN:
 25 Q. Yeah, your understanding.

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1 A. At that time, the guidelines were mandatory. Since
 2 the Supreme Court has issued a series of rulings they
 3 no longer are. At that time Section 5K1.1 of the
 4 guidelines was a mechanism by which the United States
 5 Attorney or whatever DOJ component was prosecuting the
 6 case could make a motion asking the court to reduce a
 7 defendant's sentence for cooperation.
 8 Q. Okay. And in order to know the validity of a 5K1.1
 9 motion, do you think it would be important to know the
 10 level of cooperation that the individual who's the
 11 subject of the motion was providing to the United
 12 States?
 13 MR. SMITH: Objection to form.
 14 You can answer.
 15 A. For whom to know that?
 16 BY MR. KOHN:
 17 Q. Well, for anyone reviewing the validity of a 5K1.1
 18 motion on behalf of an individual.
 19 Should they know the level of cooperation
 20 that individual was giving to the United States in
 21 order to make a determination as to the validity or
 22 the soundness of such a motion?
 23 MR. SMITH: Same objection.
 24 A. Well, a sentencing judge should certainly know that,
 25 the probation department should certainly know that.

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1 BY MR. KOHN:
 2 Q. In terms of their recommendations --
 3 A. Yes.
 4 Q. -- or decision.
 5 What about you when you were drafting the
 6 OPR, do you think it would have been helpful
 7 information to know precisely how much cooperation he
 8 was giving to the United States?
 9 MR. SMITH: He being Mr. Farhat?
 10 BY MR. KOHN:
 11 Q. No, he being -- he being Mr. Farhat.
 12 A. In other words, would it have been useful for me in
 13 preparing the OPR referral to know what level of
 14 cooperation?
 15 Q. Yes.
 16 A. Mr. -- that was not the focus of what I was doing.
 17 The focus of what I was doing was whether or not the
 18 motion itself had been authorized --
 19 Q. Okay.
 20 A. -- not whether it was justified.
 21 Q. Now, you knew at the time you obtained the information
 22 to draft the OPR referral that Mr. Farhat was helping
 23 out the United States in some way, correct?
 24 A. I was told that.
 25 Q. By who?

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1 A. Mr. Convertino.
 2 Q. But also you reviewed information that pretty much
 3 confirmed that, didn't you?
 4 A. Specifically what?
 5 Q. Didn't you look at documents?
 6 A. I'm not sure what you're referring to.
 7 Q. Okay. We'll get back to it.
 8 A. Okay.
 9 Q. Did you know prior to the Plymouth Free Press
 10 publishing his name in the newspaper that the Plymouth
 11 Free Press might publish Mr. Farhat's name in the
 12 newspaper in relationship to Exhibit Number 1?
 13 A. I think so.
 14 Q. Okay. And when you found that out, before the article
 15 was published, did you know that Mr. Farhat was a
 16 cooperating witness or a confidential informant for
 17 the United States, yes or no?
 18 MR. SMITH: Objection, compound.
 19 A. I don't -- I didn't know that then because I don't
 20 know if that's true now. I mean, confidential
 21 informant and cooperating witness are technical
 22 defined terms and I don't know what his status was.
 23 BY MR. KOHN:
 24 Q. Did you know beyond the technical defined terms
 25 whether, prior to this newspaper article being

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1 published, that Mr. Farhat was working in some
 2 capacity for the United States at the request of law
 3 enforcement officials of the United States, yes or no?
 4 A. I had been told that.
 5 Q. When you -- and in fact, you also knew that
 6 Mr. Farhat's cooperation was such that he could never
 7 testify in court, correct?
 8 A. I don't think that that's a question that could be
 9 answered yes or no.
 10 Q. Okay. But did you have information that the type of
 11 assistance Mr. Farhat was providing the United States
 12 was consistent with his maintaining his identity
 13 completely confidential, including not appearing as a
 14 witness in court?
 15 MR. SMITH: Objection to form.
 16 You can answer.
 17 A. I don't think so. I don't think that's correct.
 18 BY MR. KOHN:
 19 Q. Weren't you provided information that Farhat was
 20 not -- well, let's -- okay. I'm going to show you a
 21 document, I'll make it easy. This is, again, look at
 22 Exhibit Number 3.
 23 Now, you testified earlier today that this
 24 was one of the documents provided in September of 2003
 25 when you were reviewing allegations by Mr. Cares,

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1 C-A-R-E-S, correct?
 2 A. Yes.
 3 Q. So did you read this when you were preparing
 4 allegations?
 5 A. Yes.
 6 Q. Okay. And if you look here, don't you see that part
 7 of the controversy between Mr. Cares and
 8 Mr. Convertino dealt with Mr. Convertino's insistence
 9 that Mr. Farhat not testify in open court?
 10 A. Yes.
 11 Q. So you knew that at least at some point there was an
 12 interest in Mr. Convertino, in keeping his identity
 13 confidential to the extent that he not testify in
 14 court, isn't that true?
 15 A. Yes, but that's not what you asked before.
 16 Q. Okay. I'm not -- I'm just trying to find out what you
 17 knew and when.
 18 And in fact for whatever reason, at least
 19 as of September 2002, Mr. Cares wanted to use
 20 Mr. Farhat in some, it looks here like a RICO
 21 investigation, isn't that true?
 22 A. Yeah, you know, I'm looking at this and you mentioned
 23 2002 and I'm not sure why it says 2002. I mean, I
 24 think this was all 2003.
 25 Q. I think -- maybe to help, I think what happened is

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1 this was presented to you in 2003 because of the
 2 sentencing but these were then attached to what was
 3 sent up, the earlier controversy.
 4 A. Oh, that's possible because it's September so I
 5 assumed it was -- okay. What was your question?
 6 Q. My question was you understood that Mr. Cares wanted
 7 to use him for a RICO investigation.
 8 A. Uh-huh.
 9 Q. And if you see here where it says consensual phone
 10 calls?
 11 A. Where are you?
 12 Q. On page one of Exhibit 3, we're looking at the Cares
 13 e-mail, consensual phone calls?
 14 A. Yes.
 15 Q. Wouldn't consensual phone calls generally be made by
 16 someone whom the target of the phone calls didn't know
 17 was working for the government?
 18 A. That's usually the idea, yeah.
 19 Q. But then in this document, again we're looking at Bob
 20 Cares's memo, then it says possibly trial testimony.
 21 Do you see that?
 22 A. Yes.
 23 Q. So if Mr. Farhat was used at trial his identity may be
 24 publicly exposed, correct?
 25 A. Yes.

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1 Q. Now, let's look at Mr. Convertino's memo, second
 2 paragraph, it says, it was always understood by the
 3 FBI and me that Farhat would not testify. Do you see
 4 that?
 5 A. Yes.
 6 Q. As a general matter in your office, aren't informants
 7 or cooperating witnesses put into two general
 8 categories, those that you might expect might testify
 9 in open court but informants who will never -- or you
 10 don't anticipate they will ever testify, isn't that
 11 true?
 12 MR. SMITH: Objection to form.
 13 You can answer.
 14 A. In criminal cases the terms are source who won't
 15 testify and cooperating witness who will.
 16 BY MR. KOHN:
 17 Q. And could a source also be considered a confidential
 18 informant?
 19 A. Confidential informant is sort of a lazy shorthand
 20 that blurs the distinctions. And now under the
 21 current attorney general guidelines there is no such
 22 distinction anymore.
 23 Q. But at the time Mr. Farhat was in the category of
 24 someone -- in the time meaning at least as of 2002
 25 whose concern over his identity was such that the

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1 United States had, according to Mr. Convertino, had
 2 agreed that they would not make him testify, isn't
 3 that true?
 4 A. According to what this says that's true. I don't know
 5 how he was opened, I don't know which form he signed,
 6 I don't know what promises were made to him.
 7 Q. When you learned that his name would appear in the
 8 Plymouth Free Press, did you attempt to learn any of
 9 those things you just mentioned?
 10 MR. SMITH: Objection, foundation.
 11 MR. KOHN: Okay. The witness just gave an
 12 answer where he listed a couple things he didn't know.
 13 Could you read that back please?
 14 (The following portion of the record was
 15 read by the reporter at 1:15 p.m.:
 16 "According to what this says, that's true.
 17 I don't know how he was opened, I don't
 18 know what forms he signed, I don't know
 19 what promises were made to him.")
 20 BY MR. KOHN:
 21 Q. When you learned before Mr. Farhat's name was put on
 22 the front page of the Plymouth Free Press that his
 23 name would -- likely would be in the paper, did you
 24 take any steps to determine how he was opened?
 25 MR. SMITH: Same foundation objection as to

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1 the would or likely would.
 2 BY MR. KOHN:
 3 Q. Did you take any steps to determine how he was opened?
 4 A. No.
 5 Q. Any attempt to determine what type of forms he signed?
 6 MR. SMITH: Objection to form.
 7 You can answer.
 8 A. No.
 9 BY MR. KOHN:
 10 Q. Any attempt to determine what promises were made to
 11 him?
 12 MR. SMITH: Same objection.
 13 A. I think later there were attempts made to do that.
 14 BY MR. KOHN:
 15 Q. I'm talking about before the article was published.
 16 A. No.
 17 Q. How important is it to keep the identity of a
 18 confidential source confidential?
 19 A. Are you speaking about a source or a cooperating
 20 witness or both generically?
 21 Q. Well, let's talk -- start with -- if a cooperating
 22 witness is acting in a confident -- is still
 23 confidential, in other words, they're doing stuff and
 24 their identity has not yet been publicly revealed as a
 25 cooperating witness how important is it to keep that

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1 identity confidential?
 2 A. It's very important.
 3 Q. Okay. If you're a confidential informant, and again
 4 you're doing what confidential informants do and your
 5 identity has not yet been exposed, how important is it
 6 to keep that identity confidential?
 7 MR. SMITH: I object because he's already
 8 said that confidential informant is what he considers
 9 to be a lazy shorthand and he talked about sources --
 10 MR. KOHN: I understand --
 11 MR. SMITH: -- but if you want him to
 12 answer the question he can try, if he can.
 13 BY MR. KOHN:
 14 Q. As the way the term confidential informant was used in
 15 the U.S. Attorney's Office in or about January 2004,
 16 how important would it be to keep that confidential
 17 informant's identity confidential?
 18 A. It's always very important but it's understood, and if
 19 it is a cooperating witness which is almost always
 20 going to be the case in any sort of drug
 21 investigation, in fact I think it's probably routinely
 22 the case in drug investigations, they are cooperating
 23 witnesses and are told that they might have to testify
 24 because the nature of making tape recordings and doing
 25 things like that is you may have to authenticate

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1 those.
 2 Q. But at least in September 2003 the promise given to
 3 Mr. Farhat at least as recorded by Mr. Convertino was
 4 that he would not have to testify, isn't that true?
 5 A. That's what this says, yes.
 6 Q. So what was the official name in your office for a
 7 cooperating witness that was not expected to ever
 8 testify in court, what did you call that person?
 9 A. It could depend if they are truly a cooperating
 10 witness in which they're not receiving consideration
 11 in a case and that would be called a source.
 12 Q. Okay.
 13 A. And if someone is cooperating in a case because
 14 they're hoping to get some sort of consideration, that
 15 would most usually be referred to as a cooperating
 16 defendant.
 17 Q. Okay. Cooperating defendant. And what if someone was
 18 both cooperating in their own case but also
 19 cooperating for other cases they had no relationship
 20 with, what are they called then?
 21 A. There's probably no uniform description of that and
 22 different agencies will do it different ways. Some
 23 will actually open them as a registered cooperating
 24 witness and some will just -- they take their
 25 cooperation, if it works, they get some sentence

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1 consideration and if not, you know, they're not given
 2 those -- they don't sign the formal agreement that a
 3 cooperating witness would.
 4 Q. Okay. And for all these people, if they're acting --
 5 if they're in the process of being confidential and
 6 acting in a confidential capacity how important is it
 7 to preserve that confidentiality?
 8 A. It's important.
 9 Q. And if that confidentiality is inadvertently exposed
 10 could it be life threatening to those people?
 11 A. Certainly, depending on the type of case.
 12 Q. And when you reviewed the allegations against
 13 Mr. Convertino in the September-October 2003 time
 14 frame, were you aware that Mr. Farhat was still
 15 providing assistance to the United States?
 16 A. I don't know.
 17 Q. But according to this memo, Exhibit 3, the line under
 18 the September 12th, 2002 line, it states that he had
 19 already provided more assistance than was expected or
 20 anticipated. Do you see that?
 21 A. I do but you asked if he was continuing a year later
 22 and I don't know the answer to that.
 23 Q. So your testimony, to be very clear here, that in the
 24 September -- okay, between September 2003 and before
 25 this article was published, Exhibit Number 1, you did

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1 not know if Mr. Farhat was still working with the
 2 United States government in some capacity on cases or
 3 did you know he was?
 4 A. I'm sorry, I'm going to have to ask you to repeat
 5 that.
 6 Q. Sure. Between September 2003 and the time that the --
 7 and say the minute before the article, January 17,
 8 2004, that article was published, did you know if
 9 Mr. Farhat was still providing help to the United
 10 States?
 11 A. No, I did not know.
 12 Q. And so when you reviewed the controversy over the
 13 sentence recommended by Mr. Convertino, you did not
 14 inquire as to the status of Mr. Farhat?
 15 MR. SMITH: Objection, foundation.
 16 MR. KOHN: I just want to know that.
 17 MR. SMITH: I know that you do but I still
 18 have an objection.
 19 MR. KOHN: Sure.
 20 A. I'm going to have to ask you to repeat that.
 21 BY MR. KOHN:
 22 Q. So when you wrote up your OPR allegations that related
 23 to Mr. Farhat, you are testifying now that you did not
 24 know the current status of Mr. Farhat?
 25 A. I don't recall if I knew or not.

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<p>1 Q. Okay. When thinking back to it, hindsight, do you 2 think you should have taken some steps when you 3 learned that Mr. Farhat's name was going to be in the 4 paper to try to mitigate the potential harm that could 5 be caused by the disclosure of his identity? 6 MR. SMITH: Objection, foundation. 7 You can answer. 8 A. I think it would have been a good idea in hindsight. 9 BY MR. KOHN: 10 Q. Have you ever been subject to any type of reprimand or 11 discipline for failing to take steps upon learning 12 that a potential confidential source was about to be 13 publicly exposed? 14 MR. SMITH: Objection, same foundational 15 objection. 16 You can answer. 17 A. No. 18 BY MR. KOHN: 19 Q. Are you aware that because of that article, what was 20 in that article, Mr. Farhat was shot at -- or excuse 21 me, his house was shot at within a day or two of the 22 article appearing? 23 MR. SMITH: You can -- I mean you can 24 answer based on your knowledge. 25 BY MR. KOHN:</p>	<p>1 Q. And you took no action upon learning that? 2 A. I took no action with regard to trying to do anything 3 to protect his security, if that's your question, yes. 4 Q. Now, based on the relationship you had developed with 5 Mr. Ashenfelter, do you think you were in a position 6 to talk to Mr. Ashenfelter about the wisdom of 7 printing that person's name, Mr. Farhat's name? Maybe 8 run the story without actually using the specific 9 name? 10 A. I don't know. I don't think so. 11 Q. Do you know or have any information that 12 Mr. Convertino talked to Mr. Ashenfelter and tried to 13 convince him not to use the name? 14 A. I read that in his complaint. 15 Q. And do you know whether Mr. Convertino's attorney 16 Mr. Sullivan attempted to talk to Mr. Ashenfelter to 17 convince him not to use the name? 18 A. I don't have any knowledge of that. 19 Q. Did the thought enter your mind when you learned from 20 Mr. Ashenfelter that Mr. Farhat's name would be in the 21 paper that maybe you could just politely ask him, 22 maybe you don't want to run that name? 23 MR. SMITH: Objection, foundation. 24 A. Could you repeat it? 25 BY MR. KOHN:</p>
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<p>1 Q. Yeah, do you know that? 2 A. Well, I obviously have no personal knowledge and I 3 have heard otherwise. 4 Q. And did you know that he had to be removed from the 5 United States shortly after the article was published? 6 A. I don't have personal knowledge of it but I have heard 7 otherwise. 8 Q. You've heard otherwise, that he didn't leave the 9 United States? 10 A. No, that he -- 11 MR. SMITH: Objection, argumentative. 12 You can answer if -- I mean, what's the 13 question. 14 BY MR. KOHN: 15 Q. Okay. Do you know what investigations he was helping 16 on at the time that article was published, yes or no? 17 A. No. 18 Q. Do you know how the publication of that article 19 interfered with those investigations, yes or no? 20 A. No. 21 Q. When you learned that his name was going to appear in 22 the paper, were you surprised? 23 A. That his name was appearing? 24 Q. Yeah. 25 A. Yes.</p>	<p>1 Q. When you learned from Mr. Ashenfelter that 2 Mr. Farhat's name was going to be in the newspaper, 3 did the thought even enter your mind to maybe just ask 4 Mr. Ashenfelter, hey, maybe you just -- why don't you 5 just not run that name? 6 MR. SMITH: Same objection. 7 A. I don't think it did enter my mind. 8 BY MR. KOHN: 9 Q. Have you ever been directly or indirectly responsible 10 for the exposure of the identity of a confidential 11 source? 12 A. No. 13 Q. Do you know anyone in the Department of Justice who is 14 responsible for the exposure of a confidential source? 15 A. Yes. 16 Q. Who? Strike that. 17 Is that a serious offense in your mind, 18 exposing the identity of a confidential source? 19 A. Well, when you say offense, do you mean a criminal 20 offense? 21 Q. Could it be criminal to expose the identity of a 22 confidential source? 23 A. Probably under some circumstances it could. 24 Q. And even if it's not criminal what about just work 25 performance, a performance type of infraction,</p>

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<p>1 exposing a confidential source? 2 A. I assume it could, yes. 3 Q. If you were the manager and a subordinate of yours 4 exposed a confidential source what do you think you'd 5 do? 6 A. I don't know. I remember one instance it happened in 7 our office and nothing really happened. 8 Q. So -- okay. And did you -- did you know about that 9 incident where nothing really happened at the time 10 when Mr. Ashenfelter told you that Mr. Farhat's name 11 was going to appear in the newspaper? 12 A. I probably did. It didn't occur to me. 13 Q. Do you have any -- since this happened, do you have 14 any idea whatsoever to the negative impact to law 15 enforcement caused by Mr. Ashenfelter's putting that 16 name in that newspaper article? 17 MR. SMITH: Can you read that question back 18 to me? 19 (The requested portion of the record was 20 read by the reporter at 1:27 p.m.: 21 "Question. Do you have any -- since this 22 happened, do you have any idea whatsoever 23 to the negative impact to law enforcement 24 caused by Mr. Ashenfelter's putting that 25 name in that newspaper article?")</p>	<p>1 thug and they don't care if he got beaten up, words 2 like that? 3 A. Some of that. 4 Q. From who? 5 A. Bob Cares. 6 Q. What did he say? 7 A. That he was a thug. 8 Q. And he didn't care about the exposure? 9 A. I don't remember him saying that. 10 Q. Do you remember words, he didn't care if he got beat 11 up? 12 A. I don't think so. 13 Q. But what was the context of Bob Cares telling you he 14 was a thug? 15 A. I don't remember that. 16 Q. Did you tell Mr. Cares in that conversation that it 17 was very important to keep the identity of 18 confidential informant's confidential? 19 A. Well, this was after the fact. 20 Q. Did you tell him that? 21 A. I don't think I needed to tell him that. I think he 22 knew that. 23 Q. What about Eric Straus, did he ever tell you he 24 thought Farhat was a thug? 25 A. I don't think he used that word.</p>
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<p>1 MR. SMITH: Objection to form. 2 You can answer. 3 MR. KOHN: Okay. I can rephrase it if 4 you'd like. 5 MR. SMITH: Okay. 6 BY MR. KOHN: 7 Q. Do you know the impact on law enforcement activities 8 caused by the exposure of Mr. Farhat's identity in the 9 January 17, 2004 Plymouth Free Press article? 10 A. Not firsthand, no. 11 Q. So you have researched the law on exposure of 12 confidential leaks by newspaper reporters, you follow 13 the Ashenfelter motion to compel, but you did not 14 undertake any type of review to the damage caused to 15 the United States by exposing Mr. Farhat's identity. 16 Isn't that the case? 17 MR. SMITH: Objection, compound, 18 argumentative. 19 You can answer to the extent that you 20 understand it and are able to. 21 A. I'm not really sure what you mean by conduct research. 22 BY MR. KOHN: 23 Q. Okay. There have been comments by various -- okay. 24 Have you ever heard anyone say they didn't 25 care about the exposure of Farhat's identity, he was a</p>	<p>1 Q. Do you find it strange when Cares on the one level was 2 being very aggressive trying to get help from 3 Mr. Farhat which apparently was denied and then turns 4 around and says, he's just a thug, do you find 5 anything strange about that? 6 A. I'm going to have to ask you to repeat that because I 7 was looking at the memo. 8 Q. Okay. In your mind when Cares called Mr. Farhat a 9 thug, did you find anything strange about the fact 10 that Cares had previously attempted to get his 11 assistance on a RICO case? 12 A. No. 13 Q. So if an informant or source or cooperating witness is 14 a thug, does that make them any less entitled to 15 having their confidentiality strictly protected? 16 MR. SMITH: Objection to the term entitled. 17 I mean, what's -- 18 BY MR. KOHN: 19 Q. Well, should your office keep confidential sources 20 identities confidential even if that source is a thug, 21 yes or no? 22 A. Yes. 23 Q. When you were sending your OPR referral to the 24 attorney general's office, it included the name of 25 Mr. Farhat in it, didn't it?</p>

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1 A. I'm pretty sure it did.
 2 Q. So you understood that there was a likelihood that the
 3 attorney general's office would provide the name of
 4 that source to senator Charles Grassley, isn't that
 5 true?
 6 A. Well, I don't know that I understood that. I assumed
 7 that that was a possibility.
 8 Q. And you also previously testified that once something
 9 is given to a senator or a congressman, there's a
 10 likelihood it could get provided to or leaked to the
 11 press, isn't that true?
 12 MR. SMITH: Objection, asked and answered
 13 as the premise of your question states.
 14 MR. KOHN: Yeah, okay.
 15 MR. SMITH: You can answer it one more
 16 time.
 17 BY MR. KOHN:
 18 Q. You previously testified that you understood that when
 19 something's given to a senator or congressman there's
 20 a likelihood that that representative will release it
 21 to the press either through a leak or give it to the
 22 press?
 23 MR. SMITH: Separate objection as to
 24 likelihood.
 25 A. I was going to say I don't know that there's a

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1 likelihood. It increases the chance, sure.
 2 BY MR. KOHN:
 3 Q. So again, when you sent -- when you were asked to
 4 delete sensitive information from your referral you
 5 did not delete the name of someone who is working in
 6 your office or through your office in a confidential
 7 way, isn't that true?
 8 A. That's true.
 9 Q. Prior to the publication of this article, Exhibit
 10 Number 1, search your memory as deep and as far as you
 11 can and I have a question for you, did you say
 12 anything to Mr. Ashenfelter which in any way could be
 13 interpreted that there was some type of OPR
 14 investigation related to Mr. Convertino, yes or no?
 15 And if you want time to think that and
 16 really search your memory as hard as you can, we can
 17 take a break and you can think through that or you can
 18 answer it now.
 19 MR. SMITH: I object to the form, but you
 20 can answer it if you understand it.
 21 A. I'm not sure I understand.
 22 BY MR. KOHN:
 23 Q. Okay. I'm going to repeat it. I would like you, on
 24 this particular question, to search your memory as
 25 absolutely hard as you can, to really go back in time

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1 and try to remember, and the question is simple, might
 2 you have said anything to Mr. Ashenfelter which could
 3 have led Mr. Ashenfelter to believe that there was an
 4 OPR investigation related to Mr. Convertino?
 5 MR. SMITH: Can you read it back from might
 6 please, Might you have said?
 7 (The following portion of the record was
 8 read by the reporter at 1:35 p.m.:
 9 "Might you have said anything to
 10 Mr. Ashenfelter which could have led
 11 Mr. Ashenfelter to believe that there was
 12 an OPR investigation related to Mr.
 13 Convertino.")
 14 MR. SMITH: I think that's a
 15 nonobjectionable question which the witness -- you're
 16 asking him to do the best he can to answer.
 17 MR. KOHN: Yes.
 18 A. Not that I recall.
 19 MR. KOHN: I'm going to show you a document
 20 which we'll mark as Exhibit 5.
 21 MARKED BY THE REPORTER:
 22 DEPOSITION EXHIBIT 5
 23 1:36 p.m.
 24 BY MR. KOHN:
 25 Q. This is the December 2nd OPR referral. Do you

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1 recognize this document?
 2 A. Can I review it?
 3 Q. Please.
 4 A. Okay.
 5 Q. If I -- I'd just like to ask you a question on another
 6 matter before we get to this.
 7 A. Okay. Do you want me to stop reading?
 8 Q. Yeah. Let's try to say it right, my client may have
 9 to help me once again, but, question. Is the
 10 answer -- okay, I'm now talking about the legal
 11 definition or -- in other words, your understanding of
 12 what may or may not constitute perjury, okay?
 13 My question is, if you give an answer, I do
 14 not recall or I cannot recall, is that in your mind a
 15 safe harbor for being charged with the crime of
 16 perjury?
 17 A. No.
 18 Q. Okay. Now --
 19 MR. SMITH: Again, that's his personal
 20 understanding.
 21 A. That's my personal understanding. Although it is an
 22 obvious case specific determination.
 23 BY MR. KOHN:
 24 Q. And what does that mean?
 25 A. Well, everything -- it depends on the facts of the

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1 case. If someone says -- my understanding of the law
 2 is if someone says I do not recall and they do and you
 3 can prove that, that could constitute perjury.
 4 Q. But then if they say I do not recall but they were
 5 mistaken, then it might not be perjury?
 6 A. Correct. It is -- it turns on the intent.
 7 Q. Okay.
 8 A. That's my understanding.
 9 Q. Okay. Okay. If you could please review the
 10 document --
 11 A. All right.
 12 Q. -- I'm going to ask you some questions on that.
 13 (Off the record at 1:37 p.m.)
 14 (Back on the record at 1:39 p.m.)
 15 A. I'm assuming you don't care if I review the
 16 attachment.
 17 BY MR. KOHN:
 18 Q. No, I'm not asking about the attachment right now.
 19 And you -- what was your role in the
 20 drafting of this document?
 21 A. Something came in from OPR which I believe was
 22 identical text, it was just addressed to Jeff Collins
 23 and it said something to the effect of communicate
 24 this to Mr. Convertino, which we did by putting it on
 25 our letterhead.

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1 Q. When you looked at what OPR had put together, the
 2 communication back and you -- so it's your testimony
 3 it came back from OPR and did any of these five -- the
 4 way they worded these five charges strike you as not
 5 being valid?
 6 A. What do you mean by valid?
 7 Q. Or -- in other words, the type of thing that you
 8 should be charging an OPR offense on? I mean, did you
 9 have a -- did you yourself have an issue with the --
 10 with whether Mr. Convertino should be charged with
 11 everything set forth here?
 12 MR. SMITH: At the time he received --
 13 MR. KOHN: Yeah.
 14 MR. SMITH: -- saw the letter from OPR?
 15 BY MR. KOHN:
 16 Q. In other words, you got it back, your testimony is you
 17 pretty much took what OPR had, you put it into this
 18 document and then sent it off to Mr. Convertino.
 19 MR. SMITH: I don't know that he said he
 20 did it.
 21 BY MR. KOHN:
 22 Q. Okay. Had Mr. Collins sign it and send it off.
 23 My question is, since your testimony is
 24 that the numbers one through five here came from OPR,
 25 and essentially -- I'm assuming -- and again these

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1 aren't facts that -- I'm just assuming here that you
 2 sent the referral up and they did something and sent
 3 the letter back to you, correct?
 4 A. Well, not to me.
 5 Q. Okay. To Collins?
 6 A. Yeah.
 7 Q. And when they sent the letter back, they -- the
 8 wording of numbers one through five was OPR's wording
 9 correct?
 10 A. I believe the wording of the entire letter was OPR's
 11 wording other than putting it on Eastern District of
 12 Michigan letterhead.
 13 Q. Okay. I'm mostly concerned with numbers one through
 14 five but I understand your testimony.
 15 So my question is when you read one through
 16 five was there anything in there, the way they worded
 17 it, that you thought in your mind may not constitute
 18 an appropriate OPR referral?
 19 A. I thought that was their decision to make. As I look
 20 at it now and I don't recall what I thought at the
 21 time, it seems to me that some of the language is
 22 slightly different than what had been sent to them.
 23 Q. I would like to call your attention to the last
 24 sentence on paragraph number one where it says, also
 25 allegedly failed to obtain supervisory authorization

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1 for a 5K1.1 motion made orally to the court.
 2 A. Right.
 3 Q. Do you see that?
 4 A. Yes.
 5 Q. Are 5K1.1 motions made from time to time orally to the
 6 court?
 7 A. It's unusual.
 8 Q. But does it happen?
 9 A. I guess it probably happens. It's unusual.
 10 Q. Okay. So if one is made orally to the court, then
 11 there may not be in that context a signed supervisory
 12 authorization, correct?
 13 A. I'm sorry, could you repeat that?
 14 Q. If one is made orally to the court, a signed
 15 supervisory authorization may not exist for that
 16 motion?
 17 A. That's probably right.
 18 Q. And in fact do you have any knowledge other than this
 19 one allegation, either directly or just through
 20 hearsay in the office, that any other AUSA ever made
 21 an oral motion to a court for a 5K1.1 motion in which
 22 they did not have specific supervisory authorization?
 23 A. Have I ever heard that?
 24 Q. Yes.
 25 A. Or had I heard it as of that date?

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1 Q. Well, have you ever heard that that's happened in
 2 other cases other than this one with Mr. Convertino?
 3 A. I think I have.
 4 Q. Okay. And where have you heard it?
 5 A. Somewhere in the office, I couldn't tell you.
 6 Q. Someone said that, told you that?
 7 A. I think so.
 8 Q. Prior to December 2, 2003, had anyone told you that?
 9 A. I don't think so, but remember, I was not in a
 10 supervisory position at that time or for most of that
 11 time.
 12 Q. In looking at number two, failure to obtain
 13 supervisory authorization for the 5K1.1 motions, do
 14 you remember who you spoke to about number two?
 15 A. Mr. Convertino and Mr. Corbet.
 16 Q. Did you ever subsequently talk to Mr. Gershel about
 17 it?
 18 MR. SMITH: Subsequent to what?
 19 BY MR. KOHN:
 20 Q. After writing this at any point?
 21 MR. SMITH: Well, he didn't write this
 22 document.
 23 BY MR. KOHN:
 24 Q. Okay. Did you ever talk to Mr. Gershel about number
 25 two?

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1 A. Did I ever speak to him?
 2 Q. Yeah.
 3 MR. SMITH: About the allegations in number
 4 two.
 5 A. Oh, sure. He was helping me draft the OPR referral.
 6 BY MR. KOHN:
 7 Q. Did he ever tell you that he had given authorization
 8 to Mr. Corbet to essentially handle the 5K1.1 motions?
 9 A. I don't recall him saying that.
 10 Q. What did Mr. Corbet tell you about number two?
 11 MR. SMITH: About the information in number
 12 two?
 13 MR. KOHN: Yeah.
 14 A. I would have to look at my notes to be sure.
 15 BY MR. KOHN:
 16 Q. And were these three cases here part of a larger
 17 prosecution?
 18 A. Yes.
 19 Q. And weren't all of the defendants pretty much treated
 20 in the same way in that prosecution?
 21 A. I think they -- well, other than these three? You
 22 mean --
 23 Q. These and the others.
 24 A. I don't really know what happened with the others.
 25 Q. At the time you wrote this you didn't look and see

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1 what type of 5K1.1 motions were filed for everybody
 2 else?
 3 A. I don't remember if I did or not.
 4 Q. Did you discuss this with Mr. Convertino?
 5 A. I think we tried to and this was one of the cases he
 6 did not want to discuss with us.
 7 Q. I would like you to look at number three, the savage
 8 beating of the doctor and Mr. Farhat?
 9 A. Okay.
 10 Q. Okay. I'm going to ask you some questions about that.
 11 Did you do any type of review about the circumstances
 12 behind this savage beating of a doctor?
 13 A. What do you mean?
 14 Q. What did you look into about that beating and
 15 Mr. Farhat's relationship to it?
 16 A. I don't remember how that first came to my attention.
 17 I did speak -- if you look on page two and it is the
 18 end of paragraph three, quoting, further it is alleged
 19 that you told a local policeman that the assault had
 20 been taken into consideration, and it goes on, that's
 21 the end of the quote?
 22 Q. Yeah.
 23 A. I did speak to him.
 24 Q. How did you know the identity of that policeman?
 25 A. I don't remember how I found that out but somehow I

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1 did, and I can tell you his name and it's someone who
 2 I knew before.
 3 Q. Oh, someone who -- and what did he tell you?
 4 A. Basically what was said here and some more.
 5 Q. Okay. Can you please give me the name of that person?
 6 A. James Kiefer, K-I-E-F-E-R.
 7 Q. Are you sure that Kiefer was the police officer on the
 8 case or was he just in the Dearborn Police Department
 9 and had information on the case?
 10 MR. SMITH: Objection to form.
 11 A. I'm going to -- I'm not sure I understand the
 12 distinction.
 13 BY MR. KOHN:
 14 Q. Was Kiefer a policeman specifically working that
 15 beating case, it was like his case, or was Kiefer a
 16 policeman in the local police department who maybe had
 17 information about it?
 18 MR. SMITH: Objection to form.
 19 You can answer.
 20 A. I think at the time that Mr. Kiefer was assigned to a
 21 federal task force and so I don't think he was
 22 assigned as the officer in charge of that case. He
 23 may well have been relating other information to me
 24 but my recollection is he also brought documents.
 25 BY MR. KOHN:

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1 Q. Okay. Did you reach out to the officer assigned to
2 the case?
3 A. I don't believe so. I can't recall what the name is,
4 if I heard the name I might know.
5 Q. And the documents he brought to you, do you remember
6 if they had a CC to a certain FBI agent on those
7 documents?
8 A. I think he brought me a -- an investigator's report
9 and I think it was just an investigator's report with
10 some notes.
11 Q. Okay. Now, who else did you get information --
12 A. There was some more information from Mr. Kiefer
13 though.
14 Q. Okay. What other -- other than Mr. Kiefer, where else
15 did you gather information about this incident of the
16 savage beating of a doctor?
17 A. I think I talked to -- I think I talked to an FBI
18 agent who had knowledge of it. I don't remember who
19 that was.
20 Q. Which agent, do you --
21 A. I don't remember the name.
22 Q. Was it the case agent who was actually working on it,
23 Mr. -- Mr. Pertuso?
24 A. No.
25 Q. So you didn't speak to the case agent from the FBI

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1 working on the case and you didn't speak to the -- you
2 did not speak to Mr. Pertuso --
3 A. Wait, wait, wait.
4 Q. Who was the --
5 MR. SMITH: Let him ask the question and
6 then I can object and you can answer.
7 A. Okay.
8 BY MR. KOHN:
9 Q. To the best of your knowledge who was the FBI case
10 agent working on matters related to the savage beating
11 of the doctor?
12 A. I don't recall his name. I think it was someone on
13 the health care squad.
14 Q. And did you talk to him about this case?
15 A. I think I did but I'm not certain because I can't
16 recall his name.
17 Q. But you did not talk to Mr. Pertuso?
18 A. No.
19 Q. Do you know what Mr. Pertuso's relationship was with
20 Marwan Farhat?
21 A. I have no firsthand knowledge of that.
22 Q. Didn't you testify earlier that he was the main FBI
23 agent handling him?
24 A. I testified that that is how it appeared to me from
25 what Mr. Convertino presented to me but I don't know

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1 and I don't believe I ever asked.
2 Q. Okay. Did you talk to anyone else about Mr. Farhat?
3 A. In terms of what?
4 Q. This incident, the savage beating of a doctor.
5 A. It's possible I talked to the AUSA who had that case
6 because I think that doctor was a cooperating witness
7 in another case but I'm not certain.
8 Q. What did you know about the doctor who was beaten?
9 MR. SMITH: You can answer.
10 A. At what time?
11 BY MR. KOHN:
12 Q. At this time, December 2nd. You said he was a
13 cooperating witness in another case?
14 A. I don't think I knew that then.
15 Q. Okay. Do you know how the government came to learn
16 that Mr. Farhat had been involved in that beating of
17 the doctor?
18 MR. SMITH: You mean the United States
19 government --
20 MR. KOHN: Yeah.
21 MR. SMITH: -- as opposed to the local
22 government?
23 A. I think at one time I did know and I don't recall what
24 that is and I'm pretty sure I discussed that with
25 Mr. Kiefer.

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1 BY MR. KOHN:
2 Q. And do you know that -- including do you know how the
3 Dearborn police came to learn that Mr. Farhat was
4 involved in the beating of the doctor?
5 A. I think I did at one time when I talked to Mr. Kiefer
6 but I don't recall that.
7 Q. Does this refresh your recollection, do you know that
8 Mr. Farhat signed a Kastigar letter related to the
9 beating of the doctor?
10 A. I don't know that today. I don't know if I ever did
11 know that.
12 Q. And do you know if before Mr. Farhat signed that
13 Kastigar letter the police had -- the Dearborn police
14 had actually arrested an innocent person on that
15 beating charge?
16 A. State that again.
17 Q. Are you aware that the Dearborn police had arrested an
18 innocent person on the beating charge initially?
19 A. If -- I may have at one time, I don't know now.
20 Q. And are you aware that the doctor had made a -- an
21 identification -- yeah, had identified the wrong
22 person as a -- you know, made an eyewitness
23 identification of the wrong person in that case? Did
24 you --
25 A. I may have then, I don't now.

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1 Q. And when you say -- and are you aware that -- on the
 2 basis of the Kastigar, Mr. Farhat admitted to his
 3 participation -- of the Kastigar letter that
 4 Mr. Farhat then admitted to his participation in the
 5 beating? Were you ever aware of that?
 6 A. I don't know if I was ever aware of it. I'm not aware
 7 of it now.
 8 Q. And are you aware that as a result of that statement
 9 in the Kastigar the innocent person was released from
 10 confinement?
 11 A. Again, I don't know today and I don't --
 12 Q. And --
 13 A. I don't know that today and I don't know when I knew
 14 that.
 15 Q. And didn't Mr. Convertino tell you there was a
 16 Kastigar and that you were free to arrest Mr. Farhat
 17 at any time if you got information about him in that
 18 beating independent of the Kastigar?
 19 A. No.
 20 Q. And didn't Mr. Convertino --
 21 A. He told me something different than that.
 22 Q. Did he tell you, we know his address and you can
 23 arrest him whenever you want?
 24 A. He said, there's nothing in there, there's nothing
 25 that took place that can stop him from being charged,

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1 you can go ahead and do that, but I have no
 2 recollection of any mention of Kastigar or any issue
 3 relating to that.
 4 Q. But when he said that to you, did he also say, as long
 5 as you have independent information to charge him?
 6 A. No. When I say no issue relating to that, that would
 7 be the issue.
 8 Q. Okay.
 9 A. That was not said.
 10 Q. And do you know whether the information the Dearborn
 11 police had was also related to the disclosures of
 12 information from the Kastigar letter that Mr. Farhat
 13 had signed?
 14 A. I don't know how the Dearborn police develop their
 15 case as I sit here today. It would surprise me if
 16 they had information from a Kastigar letter because
 17 that's a federal procedure.
 18 Q. Are you aware if Mr. Farhat passed a polygraph
 19 concerning the doctor beating?
 20 A. Not today. I don't know if I ever was.
 21 Q. Looking at number one did you talk to Kevin Tias?
 22 A. I've never spoken to Mr. Tias.
 23 Q. So then the answer would be in terms of getting
 24 information or your investigation number one, you
 25 never spoke to him?

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1 A. I have never spoken to Mr. Tias.
 2 Q. At the time you -- this letter, as of December, excuse
 3 me, 2nd, 2003, did you have any information that Kevin
 4 Tias knew the level and extent of the cooperation of
 5 Mr. Farhat?
 6 A. Could you repeat that?
 7 Q. As of December 2nd, 2003, did you know that Kevin Tias
 8 was an FBI agent who had a lot of knowledge about the
 9 level of cooperation and assistance Mr. Marwan Farhat
 10 was providing to the United States?
 11 MR. SMITH: Objection, compound.
 12 A. As of that first meeting I had with Mr. Convertino,
 13 which I think was September 23rd, he mentioned Kevin
 14 Tias's name. It was a new name to me. As I said, the
 15 way it came across to me and I can tell you, I mean,
 16 ordinarily when you have two agents assigned to the
 17 case, one knows more about it than the other, one is
 18 lead and one is assisting. It seemed to me from what
 19 I was being told that Mr. Pertuso was the lead agent
 20 so I would assume that he was the one who had more
 21 information but I don't know specifically what you're
 22 asking.
 23 BY MR. KOHN:
 24 Q. But you knew that Mr. Tias -- you had specific
 25 knowledge prior to December 2nd, 2003 that Mr. Tias

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1 had information regarding the level of cooperation of
 2 Marwan Farhat?
 3 A. No. I had been told that by Mr. Convertino. I didn't
 4 know Kevin Tias, I had never met Kevin Tias. Until
 5 Mr. Convertino mentioned his name to me, I had never
 6 heard of him.
 7 Q. If you could please look at number five on this
 8 letter. Do you know a Mr. Jim Brennan?
 9 A. Yes.
 10 Q. And who is he?
 11 A. He's an FBI agent.
 12 Q. And do you know what his relationship was to the
 13 Makalda case?
 14 A. Do I know today or did I know then?
 15 Q. Did you know then?
 16 A. I don't think so.
 17 Q. Did you ever speak to Mr. Brennan about matters
 18 related to the Makalda matter -- strike that.
 19 In -- when you were investigating what
 20 became charge number five on Exhibit 6, did you talk
 21 to Mr. Brennan?
 22 A. I don't think so.
 23 Q. Now, do you see the word blind-sided in number five?
 24 A. Yes.
 25 Q. What investigation did you undergo or did you take to

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<p>1 determine whether Mr. Convertino had actually 2 blind-sided the -- Mr. Sauget in that matter? 3 A. I spoke to Mr. Sauget, I believe Mr. Gershel had 4 information about that also and I think I -- I think I 5 saw one or two memoranda that were in files relating 6 to that. 7 Q. What did those memoranda say? 8 A. I don't specifically recall. It's not something I 9 reviewed prior to today. 10 MR. KOHN: Okay. Were you aware -- okay. 11 I'm just going to show a document and ask him if he's 12 ever seen this before. 13 MARKED BY THE REPORTER: 14 DEPOSITION EXHIBIT 6 15 1:59 p.m. 16 BY MR. KOHN: 17 Q. And have you ever seen this document before? 18 A. Can I read through it? 19 Q. Please. 20 A. Okay. 21 Q. Okay. In looking at this document, have you ever seen 22 this document before? 23 A. I am pretty sure I have. 24 Q. And when you were doing the preparing the OPR 25 referral, were you provided a copy of this?</p>	<p>1 Mr. Convertino had an interest in Makalda as a 2 witness, correct? 3 MR. SMITH: Object to the term well known. 4 BY MR. KOHN: 5 Q. Was it known to Mr. Sauget -- strike all that. 6 Did you understand that Mr. Sauget knew at 7 the time before the sentencing hearing in this case 8 that Convertino may want to use Makalda as a witness? 9 A. I'm sorry, I'm going to have to ask you to repeat 10 that. 11 Q. Sure. Okay. This says that there was a sentencing 12 hearing on January 16th, 2003? 13 A. Right. 14 Q. What I'm saying is do you understand that before that 15 sentencing hearing Sauget understood that 16 Mr. Convertino may want to use Makalda as a witness in 17 the case before Judge Rosen? 18 A. Yes. 19 Q. Okay. And then what's your understanding? So, okay, 20 what happened, tell me your understanding. 21 A. Okay. I'm not sure about the time line. 22 Q. Okay. 23 A. But Mr. Convertino wanted to use Makalda as a witness. 24 Q. Okay. 25 A. There were threats made regarding Mr. Sauget by</p>
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<p>1 A. I was at least shown a copy of it, yeah. 2 Q. Were you the source of any information whatsoever that 3 Ashenfelter put in the article, Exhibit Number 1? 4 A. No. 5 Q. Now, in regard to this document, Exhibit Number 6, if 6 you look at page four do you see reference under 7 paragraph number four, do you see reference to USA Jim 8 Brennan? 9 A. I do. 10 Q. So at the time you were preparing the OPR referral you 11 would have known that Mr. Brennan had some type of 12 involvement in this case, correct? 13 A. Correct. 14 Q. Did you ever talk to Mr. Brennan about this matter? 15 A. No. 16 Q. Now, if you also look on page one, it says that -- I'm 17 looking at the second sentence, it says, during the 18 pendency of the prosecution, that would be the 19 prosecution of Makalda, Assistant United States 20 Attorney Convertino of the strike force expressed an 21 interest in losing Makalda as a witness in a trial 22 scheduled to commence before Judge Rosen. Do you see 23 that? 24 A. Yes. 25 Q. So you knew -- I mean, it was well known that</p>	<p>1 Mr. Makalda in the county jail. There was some sort 2 of a meeting at which the authorization to use 3 Mr. Makalda as a witness was discussed with 4 Mr. Convertino, Mr. Sauget and Mr. Gershel and that a 5 decision was made that given Mr. Makalda's history, he 6 could not be used as a witness. 7 Q. And then what happened? 8 A. Then it was something to the effect of when Mr. Sauget 9 got to Ann Arbor for sentencing, the defense attorney 10 was asking about a 5K1.1 motion for Mr. Makalda and 11 Mr. Sauget said, he didn't cooperate, and was told by 12 the defense attorney, no, he's been cooperating with 13 Mr. Convertino. 14 Q. And how did Mr. Sauget respond to this statement at 15 the hearing? 16 A. According to Mr. Sauget, he stated on the record facts 17 that are set forth in this memo that would have been 18 available to impeach Mr. Makalda's testimony if 19 Mr. Makalda in fact ever did testify. 20 Q. Okay. This meeting that you've testified to between 21 Gershel, Sauget and Convertino, where did you get 22 information about that? 23 A. From Mr. Sauget and from Mr. Gershel. 24 Q. Would it surprise you to learn that Mr. Sauget came 25 here and testified and there was no such meeting?</p>

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1 MR. SMITH: Objection to the form.
 2 A. My understanding could be wrong. I told you that this
 3 was my understanding. I don't know the time line.
 4 BY MR. KOHN:
 5 Q. Okay.
 6 A. But I believe that Mr. Sauget, and perhaps it was a
 7 different meeting, but there was some discussion from
 8 what I'm told by Mr. Sauget involving himself,
 9 Mr. Convertino and Mr. Gershel where the use of
 10 Mr. Makalda was discussed.
 11 Q. Okay. Exactly, and at that meeting, to help recollect
 12 it, there was no decision not to use him in the
 13 terrorism trial. It was still an open question.
 14 A. So are you saying --
 15 MR. SMITH: I object because that's not a
 16 question, that's a statement. You're not testifying.
 17 BY MR. KOHN:
 18 Q. What I am saying is you testified to a meeting,
 19 correct?
 20 A. I am testifying --
 21 MR. SMITH: Let him ask a question.
 22 BY MR. KOHN:
 23 Q. You testified that there was a meeting between
 24 Gershel, Convertino and Sauget.
 25 A. I testified that I was told that.

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1 Q. By Mr. Sauget of this meeting?
 2 A. Correct, and I think Mr. Gershel also.
 3 Q. Okay. And you testified I guess that both Gershel and
 4 Sauget told you that as a result of that meeting there
 5 was a decision that Mr. Convertino was not going to
 6 use Mr. Makalda as a witness.
 7 A. Oh, well, okay, that might have been a surmise on my
 8 part. I think that what Mr. Sauget actually said when
 9 he told me about this was that when it was discussed
 10 that Mr. Makalda had talked about killing Mr. Sauget,
 11 that that was understood by him and Mr. Gershel to
 12 mean they couldn't use him but I'm not sure that was
 13 ever expressed in words, if that's what you're getting
 14 at.
 15 Q. And did they tell you why -- this -- killing him, did
 16 Mr. Makalda ever say he would kill Mr. Sauget?
 17 A. I don't know what Mr. Makalda said.
 18 Q. Well, didn't --
 19 A. You're asking me by first-hand knowledge what he told
 20 him?
 21 Q. What were you told? Did Mr. Sauget tell you that
 22 Mr. Makalda said he would kill him, yes or no?
 23 A. I don't know what exact words Mr. Sauget used. That
 24 was his -- that was the impression he conveyed to me.
 25 Q. Wasn't the words of Mr. Makalda, he was going to take

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1 care of the bitch ass prosecutor?
 2 A. I think in that context that means kill.
 3 Q. Okay. You stated that Mr. Convertino blind-sided
 4 Mr. Sauget, correct?
 5 A. I don't know if I used that word in the referral or if
 6 that is the choice of words that OPR put in what they
 7 sent back.
 8 Q. Are you aware that Mr. Convertino never told
 9 Mr. Sauget that he would not use Mr. Makalda? Are you
 10 aware of that?
 11 A. I'm not aware of what he said or didn't say.
 12 Q. Did you ever ask Mr. Sauget to his -- say, Mr. Sauget,
 13 did Convertino tell you he wasn't going to use
 14 Makalda? Did you ask that question?
 15 A. Mr. Sauget presented it in a way in which
 16 Mr. Convertino said something like, is this written
 17 down anywhere and -- and Mr. Sauget to my
 18 understanding took that as, if it's not written down I
 19 might go ahead and use him, and Mr. Sauget took
 20 exception to that and expressed that. That's my
 21 understanding of what happened.
 22 Q. Do you think Mr. Convertino blind-sided Mr. Sauget
 23 based on the facts that you know of the Makalda
 24 matter, yes or no?
 25 A. I don't have enough of a recollection of all of the

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1 facts to really know.
 2 MARKED BY THE REPORTER:
 3 DEPOSITION EXHIBIT 7
 4 2:11 p.m.
 5 A. I assume you want me to review this?
 6 BY MR. KOHN:
 7 Q. You can just look at it. My question is quite simple,
 8 do you remember getting a copy of this document at the
 9 time you were reviewing or drafting the OPR on
 10 Mr. Convertino?
 11 And for the record Exhibit 7 is the
 12 transcript of the sentencing hearing of Mr. Makalda
 13 from January 16, 2003. Do you remember being shown a
 14 copy --
 15 A. Yes.
 16 Q. -- or getting a copy of this?
 17 A. Well, I remember being shown it anyhow.
 18 Q. Okay. To the best of your knowledge, who in the U.S.
 19 Attorney's Office had a copy of Exhibit Number 7?
 20 A. I was shown it by Mr. Sauget.
 21 Q. Did anyone else have a copy of this document?
 22 A. I don't know.
 23 Q. Did he -- do you know if you -- or maintained a copy
 24 of it yourself?
 25 A. I don't think I did. I think, I mean, I've been told

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1 that Mr. Gershel had some sort of additional file he
 2 was keeping involving Mr. Makalda with another
 3 memorandum so he may have.
 4 Q. Now, I want to be very specific here. Today do you
 5 know whether or not in between -- you know, between
 6 September 2003 and the date that the article appeared
 7 in the Plymouth Free Press whether you had a copy of
 8 Exhibit Number 7 if you can remember?
 9 A. I don't know that.
 10 Q. Did you ever provide any documents whatsoever, ever,
 11 to Mr. Ashenfelter in any context?
 12 A. I don't think so. I take it back. I gave him a
 13 photograph of myself for that article that he wrote.
 14 He asked for a photograph, I gave him that.
 15 Q. Okay. Other than that, do you remember ever in any
 16 case ever giving Mr. Ashenfelter a document?
 17 A. No.
 18 MR. KOHN: Why don't we -- let's take a
 19 10-minute break, afternoon break.
 20 MR. SMITH: Okay.
 21 MR. KOHN: Thanks.
 22 (Recess taken at 2:15 p.m.)
 23 (Back on the record at 2:25 p.m.)
 24 BY MR. KOHN:
 25 Q. Do you know someone in the deputy attorney general's

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1 office, Mr. Margolis?
 2 A. Yes.
 3 Q. Who is he?
 4 A. David Margolis.
 5 Q. And what's his role?
 6 A. He is an associate deputy attorney general and I
 7 believe he is the only nonpolitical person in the
 8 office. He's one of the senior most people in the
 9 Department of Justice.
 10 Q. And what's -- what does he do? So he was one of the
 11 same -- like at the same level you were at?
 12 A. Well, he was nonpolitical. He stays from
 13 administration to administration, he had been doing it
 14 a lot longer and he had different responsibilities.
 15 Q. But you were also one of the associate deputy attorney
 16 generals?
 17 A. Yes.
 18 Q. Okay. So what was his function? He was there when
 19 you were there.
 20 A. Yes.
 21 Q. Okay. What was his function, what did he do?
 22 A. You mean his responsibilities?
 23 Q. Yeah.
 24 A. Gosh, I don't know exactly. I couldn't -- I mean, I
 25 once had a list that said what everyone's

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1 responsibilities were, I can't tell you right now.
 2 Q. Did you ever discuss Mr. Convertino with him?
 3 A. At what time?
 4 Q. At any time.
 5 A. I don't believe so.
 6 Q. Do you know what responsibility -- what -- do you know
 7 if he ever had any involvement in the OPR on
 8 Mr. Convertino?
 9 A. I don't know but one of his responsibilities was to
 10 deal with OPR issues from all the agencies, not
 11 just -- not just attorneys, DEA, FBI.
 12 Q. So did you ever talk to him about Mr. Convertino's
 13 OPR?
 14 A. No.
 15 Q. Did you ever talk to him about the Koubriti case?
 16 A. I don't think so.
 17 Q. Do you have any knowledge as to what Mr. Margolis's
 18 involvement was in matters related to Mr. Convertino?
 19 A. No.
 20 Q. And do you know Judge Rosen?
 21 A. Yes.
 22 Q. Is he a member of the Federalist Society?
 23 A. I don't know -- I don't know if he pays dues. He is
 24 certainly a supporter and he has been to -- to
 25 meetings.

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1 Q. And was he at meetings that you attended?
 2 A. I'm sure he was.
 3 Q. Did you ever talk to Judge Rosen on anything
 4 whatsoever to do with the Koubriti case outside of,
 5 you know, him sitting as a judge, like at a Federalist
 6 Society meeting or after work or anything like that?
 7 A. You mean other than in his chambers or in his
 8 courtroom?
 9 Q. Yeah.
 10 A. No.
 11 Q. What about Mr. Convertino, did you ever have a contact
 12 with Judge Rosen about Mr. Convertino outside of his
 13 chambers or the courtroom?
 14 A. There was one conversation that I recall.
 15 Q. Okay. Tell me what you remember.
 16 A. I'm trying to remember the year, I think it was 2005,
 17 it was a Saturday in November, a group of friends and
 18 I were watching the Michigan/Ohio State game at a bar,
 19 just a football game. Just so happened that Judge
 20 Rosen and his son walked in and ended up sitting with
 21 us. And he said at some point in the conversation,
 22 these were a group of assistant U.S. attorneys, that a
 23 complaint that Mr. Convertino had filed against him
 24 with the 6th Circuit had recently been dismissed.
 25 Q. That's all he said?

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<p>1 A. That's all he said.</p> <p>2 Q. Do you remember Judge Rosen -- getting any information</p> <p>3 that Judge Rosen called into the U.S. Attorney's</p> <p>4 Office in the Eastern District after the Plymouth Free</p> <p>5 Press article, Exhibit Number 1 was published, seeking</p> <p>6 information about matters that were in that article?</p> <p>7 A. No.</p> <p>8 Q. In regard to Mr. Rosen -- Judge Rosen --</p> <p>9 A. Can I back up and clarify something?</p> <p>10 Q. Yes.</p> <p>11 A. There was a time, but it was in chambers, that Judge</p> <p>12 Rosen I think asked to see the OPR referral. I think</p> <p>13 he asked Craig Moreford who got it from me but I can</p> <p>14 -- and I can't remember if I was there or not, but as</p> <p>15 I understood your question is that was exempted.</p> <p>16 Q. Okay. Well, my question was about a phone call after</p> <p>17 the article.</p> <p>18 A. Yeah, I know nothing about --</p> <p>19 Q. Was this in-chambers discussion before or after the</p> <p>20 article appeared in the Plymouth Free Press?</p> <p>21 A. After.</p> <p>22 Q. Do you know if a copy of the OPR referral was provided</p> <p>23 to the judge?</p> <p>24 A. After the article?</p> <p>25 Q. Yes.</p>	<p>1 BY MR. KOHN:</p> <p>2 Q. To the best of your recollection, like what triggered</p> <p>3 it? Were you talking about the Koubriti case or other</p> <p>4 people talking about Rick?</p> <p>5 A. No, it was five or six people, acquaintances more than</p> <p>6 friends, sitting around watching a football game and</p> <p>7 in pops Judge Rosen and as we're watching football, he</p> <p>8 brings it up.</p> <p>9 Q. Did you make any statements, like, glad to hear that,</p> <p>10 or something like that?</p> <p>11 A. No, I'm not even sure that I was aware that there had</p> <p>12 been such a filing. I think they're not public.</p> <p>13 Q. Have you ever heard of something known as the Butch</p> <p>14 Jones letter?</p> <p>15 A. Yes.</p> <p>16 Q. And what was that?</p> <p>17 A. It was a letter written by Butch Jones.</p> <p>18 Q. Concerning what matter?</p> <p>19 A. Concerning the witness Hmimssa.</p> <p>20 Q. Related to the Koubriti case?</p> <p>21 A. Yes.</p> <p>22 Q. And I think there was some testimony earlier about the</p> <p>23 phone call you had with Mr. Ashenfelter on or about</p> <p>24 December 12, 2003?</p> <p>25 A. Yes.</p>
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<p>1 A. I think it was.</p> <p>2 Q. Do you know who did that?</p> <p>3 A. I think it was Mr. Moreford.</p> <p>4 Q. Do you know what steps he undertook to determine</p> <p>5 whether that referral could be provided to the court?</p> <p>6 A. I'm not sure what you mean by could be.</p> <p>7 Q. In other words, do you know what steps Mr. Moreford</p> <p>8 took to determine --</p> <p>9 A. I'm not even sure Mr. Moreford is the one who provided</p> <p>10 it. I remember -- I'm pretty sure that was provided</p> <p>11 to Judge Rosen, I don't remember by whom or how so I</p> <p>12 don't know what steps were taken.</p> <p>13 Q. Do you know if Judge Rosen also asked for</p> <p>14 Mr. Convertino's rebuttal to the OPR charges?</p> <p>15 A. I have no knowledge of that.</p> <p>16 Q. Do you know if your office provided a copy of the</p> <p>17 rebuttal?</p> <p>18 A. I don't think we ever had the rebuttal.</p> <p>19 Q. Just going back to the -- when you had the interaction</p> <p>20 with Judge Rosen in the bar, what -- what was</p> <p>21 occurring in the conversation that caused him to the</p> <p>22 best of your recollection to bring up this 6th Circuit</p> <p>23 filing by Mr. Convertino?</p> <p>24 MR. SMITH: Objection, speculation.</p> <p>25 You can answer it, if you know.</p>	<p>1 Q. And we talked about there was a discussion about a</p> <p>2 hearing that occurred the day of that --</p> <p>3 A. Right.</p> <p>4 Q. -- you know, it was the evening. Was that hearing</p> <p>5 related to the Butch Jones letter?</p> <p>6 A. I think that was the purpose for the hearing.</p> <p>7 Q. Based on your under -- knowledge of the Butch Jones</p> <p>8 letter matter, what was your own assessment as to the</p> <p>9 seriousness of -- or the significance of that letter?</p> <p>10 A. Not very significant.</p> <p>11 Q. And why did you have that opinion?</p> <p>12 A. I didn't think it was material to any of the issues</p> <p>13 that had gone on at trial. I had a better defined</p> <p>14 sense of that back then, but I remember thinking it</p> <p>15 was not material, it would not effect the verdicts and</p> <p>16 I can't, right now as we sit here, walk you through</p> <p>17 the entire legal analysis but it seemed to me it was</p> <p>18 something that should have been provided but was</p> <p>19 harmless error.</p> <p>20 Q. And when you had the discussion with Mr. Ashenfelter</p> <p>21 on the evening of the 12th or there -- on or about the</p> <p>22 12th, did you state that to him, give him --</p> <p>23 A. Well, not like I just said it.</p> <p>24 Q. But you told Mr. Ashenfelter you didn't think it was a</p> <p>25 big deal?</p>

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1 A. I said I don't read too much into -- into any comments
 2 that you think the judge made. I don't think that
 3 that's -- that's significant and I don't -- you know,
 4 I don't believe that's the undoing of the case, which
 5 was what his take was.
 6 Q. And that's what you told him that evening?
 7 A. To that effect.
 8 Q. Now, I want to call your attention now to the phone
 9 calls you had with Mr. Ashenfelter before the article
 10 appeared. Did -- during any of those calls did
 11 Mr. Ashenfelter ask you any questions about whether
 12 Mr. Convertino had made unauthorized trips to Turkey?
 13 A. I don't recall him asking that.
 14 Q. Did you ever provide a copy of the OPR referral
 15 letters to Eric Straus?
 16 A. I showed it to Eric Straus. I showed it to Eric
 17 Straus, Craig Moreford and Joe Capone. On December
 18 12th Judge Rosen said we needed to do a complete
 19 review. One of the first things we did was put Eric
 20 in charge of that, he was the deputy chief of what was
 21 then called the counterterrorism unit, and then
 22 shortly thereafter Mr. Moreford was brought in to
 23 assist, and at some point I printed that for them and
 24 showed it to them because there were facts in there
 25 that I thought they needed to be aware of.

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1 Q. Okay.
 2 A. I don't -- I don't know if I gave them printed copies
 3 to have or if I just showed it to them and kept it.
 4 Q. What instructions did you give Mr. Moreford concerning
 5 the confidentiality of the information contained in
 6 the OPR document you either showed him or maybe gave
 7 him?
 8 A. I don't think I gave him any.
 9 Q. In terms of Mr. Straus, what instructions did you give
 10 Mr. Straus in terms of the confidentiality of the
 11 information in the OPR referral that you either showed
 12 him and or gave him?
 13 A. I don't think I gave him any.
 14 Q. And did those communications occur before or after the
 15 publication of the article in the Plymouth Free Press?
 16 A. Before.
 17 Q. Can you describe for me the training that you received
 18 in the Department of Justice concerning the Privacy
 19 Act?
 20 A. I don't believe I've had any formal training.
 21 Q. Can you please describe to me the training you've had
 22 in the Department of Justice concerning
 23 confidentiality of OPR matters?
 24 A. I don't believe there is any formal training in that
 25 regard.

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1 Q. In regard to the Privacy Act, tell me to the best of
 2 your recollection up until January 17, 2004, precisely
 3 what you remember of any formal or informal training,
 4 instruction, counseling, guidance that you were given
 5 concerning the requirements of the Privacy Act?
 6 A. Did you say training or instruction?
 7 Q. What I'm trying to say -- I'm using your -- I don't
 8 want to use the word training as like a formal,
 9 sitting at a training watching. I'm now using a much
 10 more expanded concept.
 11 A. You're including on-the-job training?
 12 Q. If you picked it up and read it yourself on your own
 13 initiative, no. If you were given a document by a
 14 superior and you looked it over, yes. If you attended
 15 a seminar and it came up for 15 minutes, yes. It
 16 doesn't have to be the focus of an all-day seminar.
 17 MR. SMITH: Answer whatever you think might
 18 fit in there and he can decide what he thinks is
 19 responsive.
 20 BY MR. KOHN:
 21 Q. Coming back let me just restate the question. Can you
 22 tell me any formal or informal training or guidance
 23 you were provided by the U.S. Department of Justice or
 24 the Privacy Act prior to January 17, 2004?
 25 A. There was an instance where there was a -- there was

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1 a -- there was a note that I need to look at to really
 2 refresh my memory.
 3 Do you have the one regarding the second
 4 OPR referral? You know what I'm talking about? There
 5 was an OPR referral that I made sometime in January.
 6 There were --
 7 Q. January of what year?
 8 A. 2004. A blogger named Debbie Schlusel (phonetic) and
 9 she had information regarding a case that was going on
 10 in the office, the assistant who was assigned to it,
 11 and contemporaneous with that there was the Butch
 12 Jones letter and the hearing on December 12th.
 13 Sometime after that hearing, I received information
 14 that a legal assistant in the office was trying to get
 15 leave records for one of the AUSAs who had testified
 16 at that hearing and I sent some e-mails to try and
 17 find out what was going on with that and -- which I
 18 did and I provided all that, and in that I called our
 19 civil chief at the time, Michael Wicks, and asked him
 20 without using names, let me give you a hypothetical
 21 scenario. Someone's trying to obtain leave records of
 22 someone, is that a violation of the Privacy Act, and
 23 he said, maybe. You know, it was typical legal
 24 answer, maybe. I said, could we say it's possibly a
 25 violation of the Privacy Act, and he said yes, you can

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<p>1 definitely say it's possibly, and I sent e-mails out</p> <p>2 indicating that.</p> <p>3 That I believe is the full extent of any</p> <p>4 knowledge, training or discussion I had with regard to</p> <p>5 the Privacy Act.</p> <p>6 Q. Okay. Do you feel that in some way you're being</p> <p>7 persecuted because people -- about this leak?</p> <p>8 MR. SMITH: Objection.</p> <p>9 You can answer it if you're able to.</p> <p>10 BY MR. KOHN:</p> <p>11 Q. Strike that. Do you think you're being scapegoated</p> <p>12 about the leak to the Plymouth Free Press? Do you</p> <p>13 feel that sometimes?</p> <p>14 A. I'm not sure what scapegoated means.</p> <p>15 Q. Do you think people are putting the blame on you, that</p> <p>16 maybe they have the blame but they're putting it on</p> <p>17 you for this leak? Do you ever feel that way?</p> <p>18 A. I don't --</p> <p>19 MR. SMITH: I object to the vagueness of</p> <p>20 the question but you can answer it to the best of your</p> <p>21 ability.</p> <p>22 A. Yeah, I don't -- I don't think -- I'm not really sure</p> <p>23 I understand the question.</p> <p>24 BY MR. KOHN:</p> <p>25 Q. Okay. You testified very -- at the beginning of the</p>	<p>1 A. I don't think so.</p> <p>2 Q. So at the time you wrote up what became charge number</p> <p>3 five in the OPR referral you had not reviewed this</p> <p>4 letter?</p> <p>5 A. I don't believe so.</p> <p>6 Q. Had you pulled the case file on Mr. Makalda at the</p> <p>7 time you drafted the information for charge number</p> <p>8 five?</p> <p>9 A. Like I said, I think with Mr. Makalda I think there</p> <p>10 were two different files. I think Mr. Gershel had</p> <p>11 something and I think Mr. Sauget had something. I</p> <p>12 think I saw all of Mr. Sauget's but I don't know. I</p> <p>13 don't know if I saw -- I believe I saw a memorandum in</p> <p>14 Mr. Gershel's but I don't know if I reviewed the whole</p> <p>15 thing.</p> <p>16 Q. What about the file related to -- this was to</p> <p>17 Mr. Corbet and the case he was working on. Did you</p> <p>18 pull that file and look and see what type of</p> <p>19 representations had been made?</p> <p>20 A. No, I wasn't even aware that Mr. Corbet had a file.</p> <p>21 Q. Well, you were aware that Mr. Corbet was assisting on</p> <p>22 the Koubriti case with Mr. Convertino --</p> <p>23 A. Yes.</p> <p>24 Q. -- and Mr. Corbet's his supervisor --</p> <p>25 A. Yes.</p>
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<p>1 deposition that you thought some of the IG</p> <p>2 investigators maybe thought you weren't being truthful</p> <p>3 about the leak. Do you remember that testimony?</p> <p>4 A. Well, I said I was concerned about it.</p> <p>5 Q. Yeah, concerned about it, okay. My question for you,</p> <p>6 do you think that you -- that these -- that other</p> <p>7 people in the Department of Justice may have either</p> <p>8 hidden their actions or done things that are making</p> <p>9 you a potential scapegoat for the leak?</p> <p>10 A. I think that's possible.</p> <p>11 MR. SMITH: I'm going to object to that</p> <p>12 last question as calling for speculation.</p> <p>13 MR. KOHN: Okay.</p> <p>14 MR. SMITH: The answer can stay on the</p> <p>15 record.</p> <p>16 MARKED BY THE REPORTER:</p> <p>17 DEPOSITION EXHIBIT 8</p> <p>18 2:46 p.m.</p> <p>19 MR. KOHN: I'm going to show the witness a</p> <p>20 document we've marked as Exhibit 8.</p> <p>21 A. Did you want me to review this?</p> <p>22 BY MR. KOHN:</p> <p>23 Q. Yeah, if you could please review that.</p> <p>24 A. All right.</p> <p>25 Q. Have you ever seen this letter before?</p>	<p>1 Q. -- of Mr. Convertino at the time?</p> <p>2 A. Yes.</p> <p>3 Q. And you understood that during the course of the</p> <p>4 controversy about the Makalda matter, the people in</p> <p>5 the Koubriti case had an interest in Makalda and</p> <p>6 Sauget essentially was wrapping up a prosecution on</p> <p>7 Makalda, correct?</p> <p>8 A. Yeah, but Mr. Corbet's position was always that he had</p> <p>9 not been involved in any of the discovery so I would</p> <p>10 have had no reason to even think that he had anything</p> <p>11 like this.</p> <p>12 Q. Okay. Well, Mr. Convertino may have been in</p> <p>13 possession of a file related to Mr. Makalda as it</p> <p>14 related to the terrorism case, correct?</p> <p>15 MR. SMITH: He may have been?</p> <p>16 BY MR. KOHN:</p> <p>17 Q. Well, are these type of documents put in some type of</p> <p>18 file in the office?</p> <p>19 A. Well, normally they would be put in the file relating</p> <p>20 to Mr. Makalda. Since it was Mr. Sauget's case, I</p> <p>21 would have expected everything pertaining to it would</p> <p>22 be in Mr. Sauget's file.</p> <p>23 Q. Even if it's a different United States attorney on a</p> <p>24 different case?</p> <p>25 A. Well, that's --</p>

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<p>1 MR. SMITH: Objection to the form. 2 You can answer. 3 A. That's the whole point of the issue was I was led to 4 believe that there shouldn't be any cooperation going 5 on with anyone other than Mr. Sauget because that had 6 been resolved, so there wouldn't be other documents. 7 Normally if there's going to be someone prosecuted by 8 assistant A and cooperating with assistant B they will 9 coordinate their efforts. This to me was being 10 explained as almost the opposite of coordination. 11 BY MR. KOHN: 12 Q. But you understood that the Rule 35 would be filed 13 after the plea that was entered by Mr. Sauget. Isn't 14 a Rule 35 after to reduce a sentence -- 15 MR. SMITH: Objection, compound. 16 BY MR. KOHN: 17 Q. -- already made? 18 A. I'm not sure I understand what you're saying. 19 Q. What's a Rule 35 motion? Isn't it -- 20 A. It's just like a 5K1.1 except that it's brought within 21 a year of sentencing. 22 Q. Okay. So when a sentencing occurs that Sauget did, he 23 did the sentencing and he got a sentence, correct? 24 A. Right. 25 Q. But there was a discussion --</p>	<p>1 behalf if he would agree to testify for the 2 government. Do you see that? 3 A. Yes. 4 Q. Do you have any reason to think that Mr. Corbet was 5 lying to Mr. Mokov (phonetic) when he told him that? 6 MR. SMITH: Objection, foundation. 7 BY MR. KOHN: 8 Q. Or strike that question. 9 Did you ever ask Mr. Gershel if he had 10 given Mr. Corbet authority to make a representation to 11 Makalda's counsel that if Makalda agreed to testify 12 for the government that he was authorized to follow 13 Rule 35? 14 A. Are you asking me if I did that in the preparation of 15 the OPR referral? 16 Q. Yes. 17 A. I don't believe I would have asked that in that 18 specific way because I was working on that referral 19 with Mr. Gershel and had he done anything like that, I 20 would have expected him to catch it and say, oh no, I 21 already authorized that. 22 Q. Do you remember a time when Mr. Convertino was 23 presented with a position of being a permanent duty 24 AUSA? 25 A. No, that did not happen.</p>
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<p>1 MR. SMITH: Objection to the premise that 2 the AUSA does the sentencing. 3 BY MR. KOHN: 4 Q. Obviously. And there was a discussion before that 5 sentencing hearing that Mr. Makalda may be used as a 6 witness in another case sometime after, correct? 7 A. Right. 8 Q. So therefore, if he was used as a witness or became 9 some type of cooperating informant or witness in 10 another case, it would be a Rule 35 being filed, not a 11 5K1? 12 A. If he was authorized to do that and if a Rule 35 13 motion was filed, yes, that would have been the case, 14 but from what I was told that was never authorized so 15 I had no reason to think there would be correspondence 16 or pleadings relating to Rule 35. 17 Q. And if you could please look at Exhibit 8, second 18 paragraph -- 19 A. All right. 20 Q. -- of Exhibit 8. Look where it begins April 21, 2003. 21 Do you see that? 22 A. Yes. 23 Q. On April 21, 2003, you and I spoke by phone and you 24 specifically told me that you had authority from 25 Mr. Gershel to make a Rule 35 motion on Mr. Makalda's</p>	<p>1 Q. Was there ever discussion of removing Mr. Convertino 2 from the position he had in the office in or about 3 September-October 2003? 4 A. Yes. 5 Q. And what -- and he wanted to get a new position, 6 correct? 7 A. Correct. 8 Q. And what was this new position? 9 A. It was discussed that he would be in charge of 10 handling duty court. 11 Q. And when -- who did you talk about presenting this new 12 position, you know -- in other words, when you -- 13 before you told Mr. Convertino that this might be 14 presented to him as an option, who did you discuss it 15 with in the office? 16 A. Well, first off, I don't think we ever discussed it 17 with Mr. Convertino, but Jeffrey Collins, Alan Gershel 18 and some people at the Department of Justice. 19 Q. And yourself, you were part of the discussion? 20 A. Well, I didn't discuss it with myself but I was a 21 party to that. 22 Q. Okay. When you were having the discussions did anyone 23 talk about how they thought Convertino would react 24 should he be offered this type of position? 25 A. I'm sorry, I think Mr. Corbet was -- Mr. Corbet was</p>

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<p>1 included in those discussions as well. 2 Q. Did anyone discuss how Convertino may react with being 3 presented with that position? 4 A. I think Mr. Corbet reacted pretty strongly. 5 Q. And what did he say? 6 A. I think he said he won't like it. 7 Q. And based upon what you know of Mr. Convertino, how 8 did you expect him to act, respond to it? 9 A. I thought he probably wouldn't like it either. 10 Q. And did you think that if that actually went 11 through -- did you recommend or did you want it to 12 happen? 13 MR. SMITH: Objection, compound. 14 BY MR. KOHN: 15 Q. Okay. Strike that. 16 Did you at some point believe that 17 Mr. Convertino in this time period should be made 18 that -- given that position you just testified to? 19 A. Well, it was a long, drawn-out discussion. I mean, 20 there were a lot of things that went into it. There's 21 something called EARS, E-A-R-S. I can't tell you 22 exactly what that stands for but it's something, 23 evaluation and something. It's an evaluation that's 24 done by the executive office of U.S. attorneys at 25 three or four-year intervals of office of each U.S.</p>	<p>1 A. The position was to handle arraignments, which are 2 normally done on a rotating basis a week at a time and 3 to make it a permanent position, and I don't know -- 4 the proposal never went that far -- 5 Q. Who -- I'm sorry. 6 A. The proposal never went that far so we never rounded 7 out what would have filled the rest of his time and 8 what else he would have done. 9 Q. Who came up with the idea to give him that position? 10 A. I don't know where that came from. 11 Q. Was it Collins, do you remember? Was he the one that 12 said, oh, let's have a good idea, let's put him in 13 charge of arraignments? 14 A. I don't remember who came up with the idea. 15 Q. But do you think it was Collins, of all the people do 16 you think it was Collins who came up with it, yes or 17 no? 18 MR. SMITH: Objection, asked and answered. 19 You can answer one more time. 20 A. I don't remember. 21 BY MR. KOHN: 22 Q. What about Gershel, did he come up with it? 23 MR. SMITH: Same objection. 24 A. I don't remember. 25 BY MR. KOHN:</p>
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<p>1 Attorney's Office. There had been one recently done 2 in Plymouth which was highly critical of the organized 3 crime strike force, so that was part of it. 4 There was the whole issue of what appeared 5 to be the unauthorized plea agreement or sentencing 6 agreement with Mr. Farhat. There was discussion with 7 Mr. Corbet -- Mr. Corbet on his own initiative sent a 8 memorandum to Mr. Convertino, which he also copied me 9 on, telling him not to take action in any cases in 10 order to avoid further difficulties without specific 11 written approval from Mr. Corbet. 12 Part of what Alan Gershel and I and I think 13 Jeff Collins did was to meet with Mr. Corbet to say, 14 what's behind this, what's -- what's the level of 15 trust here, are you confident in him, you know, what's 16 going on. And he said he was confident in him if he 17 was closely supervised and we asked him specifically, 18 there was a sensitive case going on involving some 19 wire taps, if he would be comfortable leaving him in 20 control of those cases in Mr. Corbet's absence and 21 Mr. Corbet said no, and that's what sort of led to the 22 discussion of well, his supervisor doesn't seem to 23 have confidence in him, what do we do. 24 Q. And what was the position being -- what was the 25 position you came up with?</p>	<p>1 Q. Did you come up with it? 2 A. I don't remember but I don't think so. 3 Q. Did you -- when someone first presented it, did you 4 agree with it or disagree when it was first proposed? 5 A. Well, I, you know, my best recollection is it was an 6 initial idea to deal with the short term while there 7 was this question involving Mr. Corbet's confidence 8 and trust in Mr. Convertino and what we do in the 9 interim till we get that resolved somehow. 10 Q. And what was Mr. Corbet's position on this idea? 11 A. Well, I think I said that he didn't think 12 Mr. Convertino would like it. I don't know if he 13 thought, notwithstanding that, it would be a good 14 idea. 15 Q. Did he tell you that? 16 A. What? 17 Q. Did he say, notwithstanding Mr. Convertino's reaction 18 he supported it? Did he tell you that? 19 A. I don't think he told me one way or the other. 20 Q. Did -- during that time did anyone make a reference 21 that this type of thing might get Convertino to resign 22 his position? 23 A. No, that was not the -- 24 Q. Did you ever -- 25 MR. SMITH: Can he finish?</p>

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1 A. That was not the point of it.
 2 BY MR. KOHN:
 3 Q. Did you, between September 2003, January 17th, 2004,
 4 did you form an opinion that Mr. Convertino should
 5 be -- should leave the U.S. Attorney's Office?
 6 A. No.
 7 Q. Did you want Mr. Convertino to leave the office?
 8 A. No. Although you just jogged my memory on something,
 9 Mr. Convertino mentioned at one of the
 10 meetings with Mr. Gershel and me that he had been
 11 planning to leave anyhow.
 12 Q. How did you react to that? Did you think that was
 13 good news?
 14 A. I was really indifferent to it, frankly.
 15 Q. Did you ever hear of the public integrity section?
 16 A. Yes.
 17 Q. And who are they?
 18 A. They are a section within the criminal division of the
 19 Department of Justice.
 20 Q. Did you ever provide any information whatsoever to the
 21 public integrity section about Mr. Convertino?
 22 A. Yes.
 23 Q. And what did you provide to them?
 24 A. I can't tell you specifically. I met with Mr. Noel
 25 Hillman, who at the time was the head of the section.

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1 He was in our office on another case and I met with
 2 him and discussed some issues with him. It was at the
 3 same time that Mr. Moreford was becoming involved and
 4 Mr. Moreford quickly took over that function.
 5 Q. What -- did you provide Mr. Noel Hillman with a copy
 6 of the OPR documentation?
 7 A. I don't think so, but I'm not certain.
 8 Q. And did you understand at the time that the public
 9 integrity section would be looking into matters such
 10 as a potential indictment of Mr. Convertino?
 11 A. Well, I thought they would conduct an investigation.
 12 Q. And is that the unit within the -- did you know that
 13 to be the unit of the Department of Justice that would
 14 pursue a criminal charge if one was ever to be filed?
 15 A. Not necessarily.
 16 Q. But would it be among them? Is that their function?
 17 A. It's a potential one that could.
 18 Q. Does the public integrity section, if they are to file
 19 a charge against somebody, do they do civil charges
 20 also or is it pretty much all criminal?
 21 MR. SMITH: If you know.
 22 BY MR. KOHN:
 23 Q. If you know.
 24 A. I don't know that, but well, they are in the criminal
 25 division so my assumption would be they bring criminal

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1 charges.
 2 Q. And what do you remember Noel Hillman asking you
 3 about?
 4 A. It was a very short meeting, they had a lot of other
 5 business that they were in town working on, and I
 6 think he said, we'll get back to you or something like
 7 that.
 8 Q. And what's the best of your recollection of the
 9 information you provided to Mr. Hillman?
 10 A. I believe it related to Mr. Farhat's departure from
 11 the United States.
 12 Q. So the meeting with Mr. Hillman was after the article
 13 appeared in the Plymouth Free Press?
 14 A. The Ashenfelter article?
 15 Q. Yes.
 16 A. And it was also after an article appeared in the
 17 Plymouth News regarding Mr. Farhat's departure.
 18 MR. KOHN: Okay. What I'm going to ask is
 19 on this particular document that it's under protective
 20 order so to move to a protective order provision of
 21 the transcript.
 22 (Discussion off the record at 3:07 p.m.)
 23 (Back on the record at 3:15 p.m.)
 24 BY MR. KOHN:
 25 Q. I want to -- I want to call your attention to

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1 Mr. Keith Corbet and you've made some testimony about
 2 some remarks you've attributed to him.
 3 A. Yes.
 4 Q. How long was Mr. Corbet Mr. Convertino's supervisor?
 5 A. I would have to estimate.
 6 Q. What's your estimate?
 7 A. Well, I mean, I'm going to have to like sort of walk
 8 you through it to try and estimate. I think
 9 Mr. Convertino came to the office around 1995 and I
 10 think he started in the drug unit. I think he was in
 11 the drug unit for two years maybe and then he went to
 12 the strike force, and so from whatever point he went
 13 to the strike force thereafter Mr. Corbet was his
 14 supervisor.
 15 Q. So like from 1997?
 16 A. Approximately. Could have been a little earlier, I
 17 don't --
 18 Q. Did you look at Mr. Convertino's personnel file when
 19 you were drafting up this OPR referral?
 20 A. I've never seen it. I don't even know if we keep
 21 those in our office.
 22 Q. Do you know how Mr. Corbet rated Mr. Convertino
 23 continuously while he was under his supervision?
 24 A. No.
 25 Q. Would it surprise you to learn that the ratings were

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<p>1 all at the very highest level?</p> <p>2 A. It would not surprise me at all.</p> <p>3 Q. And were you aware that Mr. Corbet worked very closely</p> <p>4 with Mr. Convertino willingly on major cases?</p> <p>5 A. I know that they worked on a number of cases together.</p> <p>6 Q. And are you aware that Mr. Corbet -- do you remember a</p> <p>7 meeting -- you've testified about a meeting that you</p> <p>8 had or discussions with Mr. Corbet in say late</p> <p>9 September or early October 2003 concerning</p> <p>10 Mr. Convertino?</p> <p>11 A. Well, I think there were two meetings --</p> <p>12 Q. Okay.</p> <p>13 A. -- or three even.</p> <p>14 MR. SMITH: Okay. Wait for him to ask a</p> <p>15 question.</p> <p>16 A. Okay. I thought that was the question. I'm sorry.</p> <p>17 BY MR. KOHN:</p> <p>18 Q. Do you remember ever telling Mr. Corbet that the truth</p> <p>19 has little meaning?</p> <p>20 A. No. In fact I did not tell Mr. Corbet that at all and</p> <p>21 he completely twisted that.</p> <p>22 Q. So you're aware that Mr. Corbet wrote a memo in which</p> <p>23 he said that you said that the truth has little</p> <p>24 meaning, correct?</p> <p>25 A. That's correct. I think he sent it to me.</p>	<p>1 Q. Okay. And you're saying that you thought, what were</p> <p>2 your words, he was intentionally misleading?</p> <p>3 A. In that context.</p> <p>4 Q. And he put that in writing?</p> <p>5 A. Yes.</p> <p>6 Q. And do you know a Mr. Bruce Orr?</p> <p>7 A. Yes. Well, I know who he is.</p> <p>8 Q. Who is he?</p> <p>9 A. He's either the chief or the deputy chief of the</p> <p>10 organized crime and racketeering section.</p> <p>11 Q. In where, the eastern district?</p> <p>12 A. No, Washington.</p> <p>13 Q. So Mr. Corbet writes -- and Mr. Corbet put that</p> <p>14 allegation against you in a written memo sent up to</p> <p>15 Washington, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you believed that was not truthful, that Corbet</p> <p>18 essentially lied about that, correct?</p> <p>19 MR. SMITH: Objection, compound question.</p> <p>20 BY MR. KOHN:</p> <p>21 Q. Correct?</p> <p>22 A. I'm going to have to ask you to repeat it.</p> <p>23 Q. You believed that Corbet was lying when he accused you</p> <p>24 of saying, quote, the truth has little meaning?</p> <p>25 A. Mr. Corbet is known for his exaggerations.</p>
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<p>1 MR. SMITH: That's correct that he's aware</p> <p>2 of it.</p> <p>3 A. Yeah, that's correct, right.</p> <p>4 BY MR. KOHN:</p> <p>5 Q. And did you write a rebuttal memo?</p> <p>6 A. I may have sent him an e-mail, I don't recall.</p> <p>7 Q. And do you think Mr. Corbet was lying when he accused</p> <p>8 you of saying, quote, the truth has little meaning?</p> <p>9 A. I think he was intentionally misleading in that</p> <p>10 context, I do.</p> <p>11 Q. Did you write an OPR on Mr. Corbet?</p> <p>12 A. No.</p> <p>13 Q. Did you make a referral -- if a -- now, Mr. Corbet was</p> <p>14 a senior assistant United States attorney at the time?</p> <p>15 A. There is no such classification within the office. He</p> <p>16 had a lot of years of service.</p> <p>17 Q. Okay. And a lot of responsibility?</p> <p>18 A. He was a supervisor.</p> <p>19 Q. And all types of security clearances?</p> <p>20 A. I don't know what his clearance level was.</p> <p>21 Q. But would he have various security clearances to the</p> <p>22 best of your knowledge?</p> <p>23 A. Well, I can tell you that I think at the time it was a</p> <p>24 requirement that all strike force attorneys have a top</p> <p>25 secret clearance.</p>	<p>1 Q. And you made -- did you file -- no, forget a formal</p> <p>2 OPR, any type of complaint against Mr. Corbet for him</p> <p>3 making that statement?</p> <p>4 A. Definitely not a complaint. I think I --</p> <p>5 Q. Have you -- I'm sorry.</p> <p>6 A. I think I discussed it with him.</p> <p>7 Q. Okay. Have you ever said to anybody words to the</p> <p>8 effect that the truth has little meaning?</p> <p>9 A. That discussion was about a particular context and in</p> <p>10 the particular context I was telling him that I think</p> <p>11 something was accepted wisdom and whether what he is</p> <p>12 saying is true or not, he's swimming upstream to</p> <p>13 convince other people because it is the accepted</p> <p>14 wisdom. He translated that into the truth has little</p> <p>15 meaning.</p> <p>16 MR. KOHN: Can you read back the witness's</p> <p>17 last answer please?</p> <p>18 (The following portion of the record was</p> <p>19 read by the reporter at 3:22 p.m.:</p> <p>20 "That discussion was about a particular</p> <p>21 context and in the particular context I was</p> <p>22 telling him that I think something was</p> <p>23 accepted wisdom and whether what he is</p> <p>24 saying is true or not, he's swimming</p> <p>25 upstream to convince other people because</p>

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1 it is the accepted wisdom. He translated
 2 that into the truth has little meaning.")
 3 BY MR. KOHN:
 4 Q. If the accepted wisdom is not true, can it ever be
 5 considered true?
 6 MR. SMITH: Objection to form.
 7 BY MR. KOHN:
 8 Q. Strike that.
 9 Do you -- if there's an accepted wisdom in
 10 the office about something that is not true and it's
 11 about an important fact, don't you have a duty to
 12 correct it or do you just go along with the lie?
 13 MR. SMITH: Objection to form.
 14 A. I don't think I really understand your question.
 15 BY MR. KOHN:
 16 Q. Okay. If an accepted truth in the office like at work
 17 on a material matter is not true and you know it not
 18 to be true, should you just accept it?
 19 A. Well --
 20 MR. SMITH: Objection to form.
 21 A. -- are we speaking hypothetically or are we talking
 22 about that specific point that was at issue?
 23 BY MR. KOHN:
 24 Q. I'd like to talk in terms of your -- first, values as
 25 to your concept of truth and then we can talk about

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1 the instance.
 2 Okay. My question for you is straight up.
 3 If the accepted wisdom in an office you know not to be
 4 true, is it your belief that you should just accept it
 5 anyway, yes or no?
 6 A. Okay. First of all, I'm pretty sure that that
 7 discussion was not about something within our office
 8 but it was about something at the justice department
 9 in Washington, but -- I'm sorry, I don't remember the
 10 rest of your question.
 11 Q. Okay. So the DOJ in Washington has an accepted
 12 wisdom, they have a belief in something, the U.S.
 13 Attorney's Office should just, you know, okay, just go
 14 along with it?
 15 MR. SMITH: Objection to form.
 16 A. Well, I don't really think that's capable of being
 17 answered.
 18 BY MR. KOHN:
 19 Q. And wasn't the context of this about what truly
 20 happened, the truth about the Koubriti trial?
 21 A. I think it was about whether there was proper
 22 consultation between the counterterrorism section and
 23 Washington and the U.S. Attorney's Office.
 24 Q. And for someone like Mr. Convertino whose career may
 25 hinge on what the truth was on certain factors, do you

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1 think you should just accept the correct -- the
 2 wisdom -- the accepted wisdom and ignore the truth?
 3 MR. SMITH: Objection to form.
 4 BY MR. KOHN:
 5 Q. That's my question for you.
 6 MR. SMITH: Objection to form. You can
 7 answer if you're able to.
 8 A. Are you saying should I accept it or should it be
 9 accepted by people who have the ability to influence
 10 it?
 11 BY MR. KOHN:
 12 Q. Let's say if I -- accepted by people who have the
 13 ability to influence it.
 14 A. No, it should --
 15 MR. SMITH: Same objection.
 16 A. If something in fact is not true and people who have
 17 the ability to fix it can, they should.
 18 BY MR. KOHN:
 19 Q. And so was it incumbent upon those in the Eastern
 20 District who knew the truth to push as hard as they
 21 could in Washington to make sure that they understood
 22 what really happened?
 23 A. I think that was what Mr. Corbet was attempting to do
 24 through that memorandum.
 25 Q. And but -- well, but you didn't think that was the

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1 right thing to do.
 2 A. I didn't say that. I had no knowledge of what the
 3 truth actually was so I could not weigh in on it.
 4 MR. KOHN: Just so the record's clear,
 5 let's introduce the memorandum that we've been talking
 6 about and I will have you identify it.
 7 MARKED BY THE REPORTER:
 8 DEPOSITION EXHIBIT 9
 9 3:27 p.m.
 10 MR. KOHN: I'm going to ask the witness if
 11 Exhibit 9 is the memo we've been testifying about that
 12 was written by Corbet.
 13 A. I think so. I haven't finished reading it.
 14 BY MR. KOHN:
 15 Q. Okay. Sure. Is this the memo we've been talking
 16 about?
 17 A. I think so.
 18 Q. I'd like to call your attention to the first sentence,
 19 which reads, I have been advised by JONATHAN TUKEL
 20 that the truth concerning my conduct and that of
 21 Richard Convertino during the terrorism trial has
 22 little meaning, since the perception in Washington,
 23 D.C., is that we did something improper and it is an
 24 accepted fact. Did you say words to that effect to
 25 Mr. Corbet?

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1 MR. SMITH: Objection, asked and answered.
 2 You can answer.
 3 A. I don't think I used words to the effect of the truth
 4 does not matter -- or I'm sorry -- words to the effect
 5 that the truth concerning my conduct and that of
 6 Richard Convertino during the terrorism trial has
 7 little meaning. I don't think I used words like that.
 8 BY MR. KOHN:
 9 Q. Did you attempt to convey -- although you may not have
 10 used these exact words, did you attempt to convey to
 11 Mr. Corbet the essential, you know, what's being --
 12 strike that.
 13 In other words, my question is although you
 14 may not have used these exact words did you in fact
 15 tell Mr. Corbet words to these effect concerning the
 16 reality of where Washington, D.C., was at vis-a-vis
 17 the terrorism trial?
 18 MR. SMITH: Objection to form. You can
 19 answer.
 20 A. I believe that I conveyed to him there was an accepted
 21 fact that certain things had gone on.
 22 BY MR. KOHN:
 23 Q. And that at this point it was not worth trying to
 24 change that perception, correct?
 25 MR. SMITH: Objection to form.

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1 You can answer.
 2 A. I don't think I'm saying that it's not worth trying,
 3 I'm saying that I think it's probably unlikely to
 4 succeed.
 5 BY MR. KOHN:
 6 Q. And looking at -- is it true that -- did you hear that
 7 Vice President Dick Cheney had received a complaining
 8 letter or a call from a senator and that Cheney had
 9 made representations that there were rogue prosecutors
 10 in Plymouth?
 11 A. What?
 12 Q. Did you hear that Dick Cheney had made a
 13 representation that there were rogue prosecutors in
 14 Plymouth?
 15 A. What time frame are you talking about?
 16 Q. This time frame.
 17 A. I've never heard anything like that until you just
 18 said it.
 19 Q. If you can please -- if you could look at the exhibit
 20 which is the December 2nd letter?
 21 MR. SMITH: 5?
 22 MR. KOHN: Yeah, if I can just see it for a
 23 second and I'll show you what I'm looking at.
 24 BY MR. KOHN:
 25 Q. Did you ever make a representation that Mr. Farhat was

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1 a member of Hezbollah?
 2 A. Yes.
 3 Q. And where did you get that information from?
 4 A. That was from Eric Straus I believe. I don't think I
 5 said member, I think I said associate.
 6 Q. Okay. Did you --
 7 A. Because my understanding from both Mr. Straus and Mike
 8 Leibson is that when a search warrant was conducted at
 9 Mr. Farhat's house a Hezbollah flag was seized by law
 10 enforcement agents.
 11 Q. And do you know if Mr. Farhat was providing assistance
 12 on terrorism related matters at the time of the
 13 Plymouth Free Press article?
 14 A. I don't know.
 15 Q. Okay. I'd like to call your attention to a meeting
 16 you had, you -- I believe that you, Mr. Gershel and
 17 Mr. Convertino attended on or about October 10, 2003.
 18 A. Okay.
 19 Q. Do you recall such a meeting?
 20 A. I recall three meetings and I believe one was on
 21 October 10th.
 22 Q. Okay. Now, I don't want to get hung up on the
 23 specific date of the meeting. As I understand the
 24 three meetings occurred fairly close in time?
 25 A. Within about a month of each other.

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1 Q. Okay. So if you remember something happening at a
 2 meeting but you think it was maybe one of the other
 3 ones and not the October 10th one, let me know.
 4 A. All right.
 5 Q. Our information is it was at the October 10th meeting
 6 but --
 7 A. So we're talking substance, not dates?
 8 Q. Yeah.
 9 A. All right.
 10 Q. Do you remember at -- in or about the October 10, 2003
 11 a meeting between you, Gershel and Tukul discussing --
 12 A. I think you mean Convertino, right?
 13 Q. Yeah, Convertino, Gershel and yourself discussing the
 14 Farhat sentencing hearing?
 15 A. Well, I think we discussed it at more than one
 16 meeting.
 17 Q. Okay. So you did meet with Mr. Convertino and talk
 18 about that sentencing hearing with Mr. Farhat?
 19 A. Yes.
 20 Q. Do you remember having a copy of the transcript of
 21 that sentencing hearing?
 22 A. At the meeting or in general?
 23 Q. In general.
 24 A. We ordered a copy of the transcript. I'm not certain
 25 when we got it.

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1 Q. When you say we, who's the we?
 2 A. Well, Mr. Gershel took the steps to order it and
 3 obtain it.
 4 Q. Do you remember either you or Gershel showing
 5 Mr. Convertino a copy of that sentencing hearing
 6 transcript at one of those meetings?
 7 A. I don't specifically recall it, but I have notes from
 8 those three meetings and that could help me.
 9 Q. Okay. Why don't we just go off the record for a
 10 moment.
 11 (Discussion off the record at 3:34 p.m.)
 12 (Back on the record at 3:37 p.m.)
 13 MR. KOHN: Back on the record now.
 14 BY MR. KOHN:
 15 Q. What I'd like to do now is walk you through the time
 16 sequence from before and immediately after the
 17 publication of the article, Exhibit Number 1.
 18 A. Okay.
 19 Q. Which is the Plymouth Free Press article and
 20 Mr. Convertino. When is the very first time you heard
 21 from anybody that Mr. Ashenfelter may be doing a story
 22 about Mr. Convertino?
 23 A. It was a day or two before the story came out.
 24 Q. And who did you hear that from?
 25 A. I think I heard it from Gina Balaya, our press person,

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1 I think there were a couple of other people. I
 2 received a call.
 3 Q. Okay. Now, again, if you can't get -- so would it be
 4 your testimony the very first person who informed you
 5 that Mr. Ashenfelter may be doing a story on
 6 Convertino was Gina Balaya?
 7 A. I can't tell you precisely who the first person was.
 8 Q. Okay. Then who else may it have been?
 9 A. I don't really recall that.
 10 Q. So let's go, what do you remember about Gina Balaya
 11 and what she said to you?
 12 A. She came into Alan's office to say that there have
 13 been a number of calls to people in the office talking
 14 about this proposed story.
 15 Q. Did she say what the subject matter of the story was?
 16 A. I think she said that it had to do with an OPR
 17 referral.
 18 Q. And she also mentioned Mr. Convertino?
 19 A. Yes.
 20 Q. Did she mention anything else about what it was about?
 21 A. I'm not --
 22 Q. Did she mention any -- give any other facts about what
 23 Mr. Ashenfelter was looking into or what he might be
 24 writing with a story about?
 25 A. I don't recall that.

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1 Q. Okay. So you were already in the office with
 2 Mr. Gershel when she came into the office?
 3 A. Right.
 4 Q. Did -- based upon your perceptions of what happened in
 5 the office, do you believe that Mr. Gershel already
 6 knew of Mr. Ashenfelter's inquiries or he was also
 7 learning for the first time when she came in?
 8 MR. SMITH: Objection, calls for
 9 speculation.
 10 A. I don't know.
 11 BY MR. KOHN:
 12 Q. Okay. Did Mr. Gershel at the meeting indicate that he
 13 already knew this?
 14 A. I don't think he indicated.
 15 Q. Okay. Did he -- in other words, did he make any
 16 statements, verbal or nonverbal, which would indicate
 17 that he knew that Ashenfelter was doing the story?
 18 MR. SMITH: Objection. That's the same
 19 question.
 20 You can answer.
 21 A. He made no verbal statements.
 22 BY MR. KOHN:
 23 Q. And when Gina Balaya presented it, did she present it
 24 as like a follow-up or as like new information?
 25 A. New information.

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1 Q. Okay. So after she made that statement what happened
 2 next?
 3 A. Well, I think she said that there were other calls
 4 though.
 5 Q. Okay. Did you ask to who or any information?
 6 A. Either that or she offered it up.
 7 Q. Okay. And what did she say?
 8 A. I think she said there were calls to other people.
 9 Q. Did she tell you who those other people were?
 10 A. I think she might have said Bill Sauget, she may have
 11 said someone else and I don't recall who.
 12 Q. And then what did she say if anything that you
 13 remember?
 14 A. I don't remember.
 15 Q. And did you say anything at the meeting?
 16 A. I think we said we don't -- we won't have a comment on
 17 that.
 18 Q. That's what -- and who said that, you or Mr. Gershel?
 19 A. I think that was like a mutual statement.
 20 Q. Okay. And then what happened next?
 21 A. She left.
 22 Q. And did you then discuss this with Mr. Gershel?
 23 A. I think I said, where's he getting this from.
 24 Q. And what did Mr. Gershel say?
 25 A. He said, I don't know.

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1 Q. And then what was said?
 2 A. I think that was it. We were meeting about something
 3 else so I assume we resumed with where we were.
 4 Q. At that meeting was -- was there a discussion about
 5 letting Mr. Convertino know this was happening?
 6 A. I don't think so. I don't think he was in the office
 7 at the time. I think he had left for Washington. I
 8 don't -- I'm not sure.
 9 Q. But did you like give him a call, give him a heads up,
 10 any discussion about alerting Mr. Convertino to this
 11 impending article?
 12 A. I don't think so.
 13 Q. Was there any discussion, since you knew calls were
 14 coming into the office about issuing like an
 15 interoffice memo like, no one's permitted to talk
 16 about an OPR matter?
 17 MR. SMITH: Objection to form.
 18 A. Did you say was there any discussion?
 19 BY MR. KOHN:
 20 Q. Yeah, with Mr. Gershel.
 21 A. I don't think so.
 22 Q. Was there a way, did you do like an interoffice e-mail
 23 where you could type out an e-mail, press a button and
 24 it would go to the office?
 25 A. You could, yes.

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1 Q. Did anyone do a -- when you learned of that, do you
 2 know if Mr. Gershel said, well, let's tell everyone if
 3 these calls are coming in to keep their mouths shut,
 4 let's send out a memo?
 5 A. He didn't say that.
 6 Q. Did you recommend it?
 7 A. I didn't think of it.
 8 Q. To the best of your knowledge did anyone type out an
 9 e-mail and send it out to everyone in the office to
 10 remind them that they should not be talking to
 11 reporters about OPR matters?
 12 MR. SMITH: Objection, argumentative, asked
 13 and answered.
 14 Go ahead.
 15 A. No.
 16 BY MR. KOHN:
 17 Q. What happened next? Was there a discussion that
 18 this -- right at that time did either you or
 19 Mr. Gershel say, let's talk to Mr. Collins about it?
 20 MR. SMITH: Objection, compound question.
 21 Just answer the last question.
 22 BY MR. KOHN:
 23 Q. Okay. I'll rephrase it. At that meeting do you
 24 remember a discussion about informing Mr. Collins
 25 about what Ashenfelter was doing?

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1 A. I don't remember and it's possible that Gina had
 2 already informed him. I -- I don't know.
 3 Q. Do you remember anything else about that meeting
 4 related to the information you had gotten about
 5 Mr. Ashenfelter and his -- the story he was working
 6 on?
 7 A. I'm not sure I understand.
 8 Q. In other words, you've provided testimony about your
 9 recollection about what occurred at that meeting when
 10 Gina came in and made the presentation. Do you
 11 remember anything else happening at that meeting?
 12 A. About that?
 13 Q. Yes, concerning the article.
 14 A. I don't.
 15 Q. Okay. And what's the very next thing you remember
 16 occurring about the article?
 17 A. I went back to my office and I think there was a
 18 message for me.
 19 Q. And what did you do?
 20 A. I called back.
 21 Q. And who was the message from?
 22 A. Mr. Ashenfelter.
 23 Q. And then what happened? You called him back, what
 24 happened?
 25 A. He discussed -- he said something to the effect of,

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1 there's a story coming out or will you talk about a
 2 story, if there's an OPR referral of Mr. Convertino.
 3 Q. And then what did you say?
 4 A. I said no.
 5 Q. And then what else was discussed?
 6 A. I don't remember the specifics. I don't remember if
 7 he talked about specific -- specific facts that might
 8 be in the story or if it was just more general.
 9 Q. And so -- so, but you remember him telling you
 10 either -- other information about what might be in the
 11 story?
 12 A. He may have done that, I'm not sure.
 13 Q. The best of your recollection, can you remember what
 14 he told you might be in the story?
 15 A. I don't remember if he told me this or if I've heard
 16 this from other people, but I think he talked about
 17 Farhat and I think he talked about Makalda.
 18 Q. Anything else?
 19 A. I don't think so.
 20 Q. What did you tell him?
 21 A. I told him we will not comment on that story.
 22 Q. And then what happened?
 23 A. That was it.
 24 Q. And what, you just hung up?
 25 A. Yeah.

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<p>1 Q. And then who did you tell about this phone call with 2 Mr. Ashenfelter? 3 A. I think I went back and told Mr. Gershel. 4 Q. And what did he say? 5 A. He said, do you think we should send -- send an e-mail 6 to someone in Washington. 7 Q. And what did you say? 8 A. I said, that's probably a good idea. 9 Q. And who did you want to send it to? 10 A. I'm sorry? 11 Q. Who did he want to send it to in Washington? 12 A. I think he said OPR. 13 Q. And you said that was a good idea and then what 14 happened? 15 A. I think I sent an e-mail to OPR. 16 Q. Who did? 17 A. I think I did. 18 Q. And did you show it to Mr. Gershel before you sent it? 19 A. I don't know, it's possible, wouldn't surprise me. 20 Q. When you were discussing sending an e-mail to OPR in 21 Washington, did it come up to send an e-mail to 22 anybody else? 23 A. No. 24 Q. What about an e-mail to Mr. Convertino? 25 A. That did not come up.</p>	<p>1 Q. Okay. And then what do you remember? 2 A. I think that's it. 3 Q. Did you ever have another interaction or a meeting 4 with Mr. Collins or Mr. Gershel about this incident? 5 A. We may -- we probably met with Mr. Collins. 6 Q. Okay. What do you -- what do you remember about a 7 meeting with Collins? 8 A. I think we just stuck our heads in his office and 9 said, you know, this is going on. 10 Q. And what did he say? 11 A. I think he said he knew. 12 Q. And do you remember anything else? 13 A. No. 14 Q. Did anyone else who had been contacted by 15 Mr. Ashenfelter come and tell you what was going on? 16 A. I don't think so. I think they contacted -- I think 17 they may have contacted Gina. 18 Q. Did Gina ever come back and tell you or give you more 19 information? 20 A. That day? 21 Q. Yeah. 22 A. I don't think so. 23 Q. And what's the next thing you remember happening? Did 24 you have any more conversations with Mr. Ashenfelter 25 after the one you've just testified to regarding the</p>
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<p>1 Q. Or to anyone in the office? 2 A. I'm not sure where Mr. Convertino was at the time. I 3 mean -- 4 Q. Could he be reached by e-mail? 5 A. I assume. I'm trying -- I don't know if he was on 6 detail or not. I assume, if we would have thought of 7 that, we could have found a way to contact him. 8 Q. Okay. So you went back and talked to Mr. Gershel, 9 Mr. Gershel recommended an e-mail to Washington, you 10 wrote the e-mail and sent it off, is that -- 11 A. Correct. 12 Q. -- what happened? 13 A. Yes. 14 Q. So when we find that e-mail that would indicate the 15 day within a matter of hours that you learned -- that 16 you had your first contact with Mr. Ashenfelter, 17 correct? 18 A. About that, yes. 19 Q. And it would also indicate when you -- that meeting 20 happened that Gina came in on, it would all have been 21 the same day? 22 A. Should be. 23 Q. Okay. What do you remember next? 24 A. I think there was a reply from OPR but I don't 25 remember when that came.</p>	<p>1 newspaper story? 2 A. No. 3 Q. Did you have -- did you ever ask anybody to contact 4 Ashenfelter on your behalf, like a third party 5 intermediary, ever? 6 A. Meaning me personally? 7 Q. Yeah, sort of like, I don't want to talk to him, but 8 why don't you give him this information, asking a 9 third party to relay information to Mr. Ashenfelter. 10 MR. SMITH: Objection to form. 11 A. What kind of information? 12 BY MR. KOHN: 13 Q. Any type of information, ever. 14 A. No. 15 Q. Have you since this lawsuit was filed by 16 Mr. Convertino, have you ever had any indirect 17 communications with Mr. Ashenfelter through a third 18 party, through your attorney, through anybody, where 19 you sent a message or got any information to 20 Mr. Ashenfelter? 21 A. No. 22 MR. SMITH: Objection to form. 23 BY MR. KOHN: 24 Q. Okay. So now as I understand it, what's the next 25 thing happened vis-a-vis the story in the Free Press</p>

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Page 242	1 or any information or interactions concerning 2 Ashenfelter and that story, what's the next thing you 3 remember? 4 MR. SMITH: Objection, form. 5 A. Yeah, I don't understand the question. 6 BY MR. KOHN: 7 Q. Okay. You testified that you believe you stuck your 8 head into Mr. Collins's office, told him about -- as I 9 understand, you told him about the Ashenfelter call 10 and had the impression he already knew about it? 11 A. Right. 12 Q. Okay. What happened next? 13 A. I'm not sure anything happened next. 14 Q. So the newspaper article then came out? 15 A. A day or two later. 16 Q. Okay. When did you first -- did you see the article 17 online or when it came out in the actual newspaper? 18 A. Actual newspaper. 19 Q. On the day it came out in the print? 20 A. Yes. 21 Q. Did you buy it? 22 A. It's delivered to the -- to my house. 23 Q. Okay. And did you read the article? 24 A. Yes. 25 Q. And what was your reaction to reading the article?	Page 244	1 just go off the record while you do that, and again, 2 if you would like to mark it while you go through it, 3 this is the information that you believe was not true. 4 Okay. 5 Off the record. 6 I'm sorry, did you want to say something on 7 the record? 8 A. Yeah. 9 Q. Okay. Let's go back on the record. 10 A. Are you asking me what I think now is not true or back 11 then what is not true? 12 Q. I think the question is now. As I understood it -- 13 let me just -- when you first read it I understood 14 your testimony that you weren't struck by something 15 being not true. Okay. Just -- strike it all. Let me 16 just go. 17 When you first read the article, did you 18 think anything in it was not true? 19 A. Okay. Now I can look at that and -- 20 Q. Okay. And then my second question would be, upon 21 reflection is there anything in it that you think is 22 not true. So as you read that, think of those two 23 questions, the day you read it and upon reflection, 24 okay? 25 A. Okay.
Page 243	1 A. I'm not sure what you mean. 2 Q. How did you react when you read the article? 3 A. I read it. I'm not really sure what you mean. 4 Q. I mean, were you -- did you have no reaction? It was 5 just news and move on with my day? 6 A. I was surprised by it. 7 Q. What made you surprised? 8 A. It was not the sort of thing I would expect to see 9 coming out in the newspaper. 10 Q. What do you mean by that? 11 A. Usually internal Department of Justice things don't 12 end up in the newspaper. 13 Q. And did you think at that time -- when you -- did you 14 read the whole article? 15 A. Yes. 16 Q. Was anything to your knowledge in that article not 17 true? 18 A. I think there are a couple things upon reflection that 19 were not true. 20 Q. At the time -- the day you read it, did you think 21 anything in the article was not true? 22 A. I'm not sure. 23 Q. Okay. Let's look at Exhibit Number 1 and if that 24 helps you I'd like to know upon reflection what you 25 think is not true in the article and I guess we can	Page 245	1 MR. KOHN: Let's go off the record. 2 (Discussion off the record at 3:56 p.m.) 3 (Back on the record at 4:02 p.m.) 4 MR. KOHN: If we can go back on the record. 5 BY MR. KOHN: 6 Q. Have you had an opportunity to examine Exhibit Number 7 1? 8 A. Yes. 9 Q. And my question is can you -- is there anything when 10 you read the article -- in looking at that, when you 11 read the article back in -- when it came out, that 12 struck you as not being accurate? 13 A. Well, I mean, I don't have a specific recollection of 14 what I thought when I read it. 15 Q. Okay. 16 A. But I think at the bottom of page one where it says, 17 withheld evidence that defense lawyers could have used 18 to attack the credibility of Hmimssa's trial 19 testimony, I don't think that's correct. 20 Q. Anything else? 21 A. I assume you're not asking about comments from 22 Mr. Convertino? 23 Q. No. 24 A. My understanding, I don't think it's correct at the 25 bottom of page two that Collins removed Convertino and

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<p>1 Corbet from the case in early September, just days 2 before Convertino and Hmimssa testified before the 3 senate financial committee in Washington about 4 document fraud. 5 Q. Okay. 6 A. On page two in the middle it says, Farhat, an illegal 7 immigrant from Lebanon with two prior weapons 8 convictions spent nine months in custody awaiting 9 trial in the drug case before Convertino arranged his 10 release in December 2001 to become an informant in the 11 terrorism case. I knew nothing about him having been 12 released. 13 Q. My question is actually whether it's true or not. 14 A. Yeah, I don't know whether that's true or not. 15 MR. SMITH: I think the question was 16 whether there was something that he knew to be untrue. 17 MR. KOHN: Yeah. 18 BY MR. KOHN: 19 Q. Go ahead. 20 A. Next paragraph: Farhat spent hundreds of hours at the 21 U.S. Attorney's Office translating Arab tapes seized 22 in a flat where three terror defendants lived. 23 Not that sentence but the one that follows: 24 Officials said he also frequented bars in Dearborn to 25 pick up information for terrorism investigators. I</p>	<p>1 A. I remember calling Eric Straus and asking him if he'd 2 seen it. 3 Q. And what -- and why did you choose to call him on 4 that -- this would be on the 17th of January? 5 A. Uh-huh, yes. 6 Q. Why him versus anybody else? 7 A. He was a friend of mine and he was involved in the 8 case. 9 Q. And you -- and did you reach him -- 10 A. I think so. 11 Q. -- on the phone? 12 A. I think so. 13 Q. What did he say? 14 A. I don't remember if he'd seen it or not. 15 Q. And what's the next thing you remember happening? 16 A. I'm not sure what you mean. 17 Q. Vis-a-vis this article, what's the next thing you 18 remember? 19 A. It was over the weekend, I don't think anything 20 happened. 21 Q. Okay. When you came back to work on Monday did 22 anything happen regarding this article? 23 MR. SMITH: Objection, Monday was Martin 24 Luther King Day. 25 BY MR. KOHN:</p>
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<p>1 don't think that was in the OPR referral. 2 MR. SMITH: That's not his question. 3 BY MR. KOHN: 4 Q. My question is not whether it was in the OPR 5 referral -- 6 A. Oh, it's just whether it's correct information? 7 MR. SMITH: Whether it's false, whether 8 it's something that you know to be false. 9 A. Oh, well. When -- then when you were asking me about 10 the part about withheld evidence that defense lawyers 11 could have used to attack the credibility of Hmimssa, 12 you were asking about the truth or falsity of that 13 statement? 14 BY MR. KOHN: 15 Q. Yes. So do you want to change your testimony? 16 A. Yeah, I do. I don't know if that's true or not. 17 Q. Okay. And I also understand that you don't need to 18 comment on the information that's attributed to either 19 Mr. Convertino or from Mr. Solomon. You don't need to 20 comment on that. 21 A. I don't know that any of it is incorrect if that's 22 your question. 23 Q. Okay. Okay. Great, thanks. Now, so you read the 24 article. What is the next thing you remember doing in 25 relationship to this article?</p>	<p>1 Q. Okay. So the day after, the next work day when you 2 came into the office. 3 A. I'm sure something did but I don't really remember 4 what it was. 5 Q. In terms of this article, what's your next 6 recollection? Like did somebody call you into a 7 meeting to talk about it, was there a discussion over 8 lunch or something that happened about this article 9 that you recall, the next thing? 10 A. At some point Alan and I discussed that we should 11 refer it to someone to find out what happened and we 12 did that. 13 Q. And tell me about the discussion you had with Alan 14 about referring it to somebody. 15 A. Can't remember if it was e-mail or oral but he said, 16 you know, shouldn't we do something about that and I 17 said, yeah, we should, and I began working on another 18 OPR referral which included that. 19 Q. Okay. Going back to your testimony, so I think your 20 testimony was just -- can you read back his testimony? 21 (The following portion of the record was 22 read by the reporter at 4:08 p.m.: 23 "Question. And tell me about the 24 discussion you had with Alan about 25 referring it to somebody.</p>

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1 Answer. Can't remember if it was e-mail or
 2 oral but he said, you know, shouldn't we do
 3 something about that" --)
 4 MR. KOHN: Stop right there.
 5 BY MR. KOHN:
 6 Q. When you said he said shouldn't we do something about
 7 that, was that Mr. Gershel?
 8 A. Yes.
 9 MR. KOHN: And then if you can read back
 10 again, following from where you just left off so we
 11 get the identities down.
 12 (The requested portion of the record was
 13 read by the reporter at 4:08 p.m.:
 14 "Answer. Can't remember if it was e-mail
 15 or oral but he said, you know, shouldn't we
 16 do something about that and I said, yeah,
 17 we should, and I began working on another
 18 OPR referral which included that.")
 19 BY MR. KOHN:
 20 Q. So was that you then -- yeah, we should was the way
 21 you responded to him?
 22 A. Yes.
 23 Q. Okay. I just wanted to clarify that. And then you
 24 typed up an e-mail?
 25 A. It became a second OPR referral and there were other

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1 matters involved in it and I began working on that.
 2 Q. And do you know was that ever sent to OPR?
 3 A. It was sent to OPR.
 4 Q. And what were the other matters included in it?
 5 A. It was that thing about the Privacy Act that I told
 6 you involving someone's leave records, it was matters
 7 about Debbie Schluskel talking about matters involving
 8 someone in the office and what her work schedule was
 9 and her leave policy was. May have been something
 10 else too, I don't recall.
 11 Q. Do you know if there ever was an OPR or an IG
 12 investigation opened up about the leave record matter
 13 or the Debbie Schluskel matter?
 14 A. I don't believe there was.
 15 Q. Okay. Do you remember Mr. Corbet sending an e-mail
 16 and saying, if you don't call for an investigation,
 17 I'm going to, or words to that effect?
 18 A. To me?
 19 Q. To you or Mr. Gershel or Mr. Collins.
 20 A. I think there was one from Mr. Kozar.
 21 Q. Okay. What do you remember from him?
 22 A. I think it was forwarded to me by Mr. Gershel and it
 23 said, did you see the article over the weekend,
 24 shouldn't we do something about that, and Alan -- I
 25 think that's what prompted the conversation with me.

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1 Alan forwarded that and said, shouldn't we do
 2 something, and we agreed to do so and it came to
 3 include those other matters.
 4 Q. Okay. And do you remember ever -- did you ever talk
 5 with anyone employed by the United States Department
 6 of Justice who expressed agreement with what was in
 7 the article?
 8 A. I'm not sure what you mean.
 9 Q. In other words, someone said like, I agree with the
 10 article?
 11 A. Agree?
 12 Q. With what's in the article.
 13 A. You mean the factual accuracy of it?
 14 Q. Yeah, yeah.
 15 A. I don't -- I don't think I ever heard anyone say that.
 16 Q. Did you ever hear anyone express a sentiment that it
 17 was a good thing that this information got out?
 18 A. No.
 19 Q. Do you believe that the publication of this material
 20 harmed Mr. Convertino's reputation?
 21 A. That's -- that's difficult for me to assess. I mean,
 22 there's been lot of things that have gone on with
 23 Mr. Convertino's career.
 24 Q. But at the time when this came out on January 17th,
 25 2004, do you think the publication of this information

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1 harmed Mr. Convertino's reputation?
 2 A. I'm sure it probably did.
 3 Q. Did you ever get -- hear any feedback from defense
 4 attorneys about this article?
 5 A. There were comments in the article by defense
 6 attorneys. I don't think I ever heard any from them
 7 directly. Jim Thomas who was a defense attorney
 8 months before had asked me about an OPR referral.
 9 Q. And what did he ask you about that?
 10 A. He said, was there an OPR referral, we hear there was.
 11 Q. And what did you tell him?
 12 A. I said, we can't talk about that.
 13 Q. What about after the article came out, did any defense
 14 attorney give you information that they were happy to
 15 see this or this was -- you know, can't wait till
 16 Convertino's taken down or something like that?
 17 A. I don't think so.
 18 Q. And what about, did you ever hear any comments from
 19 any judges about this article?
 20 A. I don't think I heard anything from any judges.
 21 Q. What about from anyone in Washington, D.C., anyone
 22 from the justice department in Washington, D.C.?
 23 A. No.
 24 Q. What about Ann Coulter, did you ever talk to her about
 25 it?

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1 A. No.
 2 Q. What about Mr. Shepherdson, the reporter you've had a
 3 lot of contact with, did you ever talk about this
 4 article with him?
 5 MR. SMITH: Objection to form.
 6 You can answer it.
 7 A. Mr. Shepherdson called me that weekend, I don't know
 8 if it was the day of the article or the day after the
 9 article.
 10 BY MR. KOHN:
 11 Q. And what did he say in that phone call?
 12 A. He said, I had heard things like that before.
 13 Q. And then what did you say to him?
 14 A. Not much. It was the weekend and I was really -- I
 15 was not focused on talking to him. I don't think I
 16 talked to him for very long but he said, I have been
 17 hearing things like this, or something to that effect.
 18 Q. Did you report that conversation to anybody?
 19 A. I'm pretty sure I told the inspector general agents.
 20 Q. And what else did you say in that -- so he called you
 21 at home. Was that on your cell or your --
 22 A. On my cell phone.
 23 Q. And do you remember what else he said? Did he tell
 24 you that he would not have written such a story --
 25 A. No.

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1 Q. -- because it's underhanded?
 2 A. No.
 3 Q. Did he indicate that he had information but decided
 4 not to run the story?
 5 A. No, not in those types of words.
 6 Q. Did he indicate to you that he knew -- that -- called
 7 you up and told you he knew that you had provided him
 8 this type of information before?
 9 A. No.
 10 Q. Had you provided Mr. Shepherdson any information about
 11 Mr. Convertino ever?
 12 A. No.
 13 Q. Did you tell Mr. Shepherdson about the OPR?
 14 A. Did I tell Mr. Shepherdson about --
 15 Q. Yeah.
 16 A. Before it was printed?
 17 Q. Yes.
 18 A. No.
 19 Q. Knowing -- do you -- you have an opportunity right now
 20 to change the testimony you've prior given concerning
 21 whether you were the leak or a source for that
 22 article.
 23 MR. SMITH: Okay. I just -- that's not a
 24 question.
 25 BY MR. KOHN:

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1 Q. Okay, yeah. You have an opportunity, I'm giving you
 2 that opportunity right now to amend your testimony and
 3 simply admit that you were a source for the story that
 4 Mr. Ashenfelter wrote on January 17, 2004, Exhibit
 5 Number 1, an opportunity to correct the record, change
 6 your testimony, simply admit to that. Are you willing
 7 to do it right now?
 8 A. No.
 9 Q. And do you -- okay. I'm now asking you a question in
 10 your personal capacity, I'm not looking for you as a
 11 professional U.S. attorney, some -- you as a person,
 12 an individual, given what you thought of and knew of
 13 Mr. Convertino, were you just a little happy that
 14 this -- that some truth about Mr. Convertino got out
 15 that could take him off his high horse?
 16 MR. SMITH: Objection to form.
 17 You can answer.
 18 A. No, I actually thought it set back the work I had been
 19 doing on the OPR referral.
 20 BY MR. KOHN:
 21 Q. Well, you knew that that OPR referral was never going
 22 to go anywhere, isn't that true? I mean, you knew
 23 when someone looked it over that he wasn't going to
 24 get whacked by OPR, correct?
 25 MR. SMITH: Objection to form.

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1 You can answer.
 2 A. Did I think that OPR would do something based on that
 3 referral?
 4 BY MR. KOHN:
 5 Q. That's not my question. My question is actually based
 6 on that referral you had a strong suspicion that OPR
 7 would do nothing --
 8 A. No.
 9 Q. -- against Mr. Convertino, isn't that true?
 10 A. No, that's false.
 11 Q. So you actually -- and you thought that if OPR wasn't
 12 going to do something about it, well, the Plymouth
 13 Free Press will?
 14 MR. SMITH: Objection --
 15 BY MR. KOHN:
 16 Q. Isn't that true?
 17 MR. SMITH: Objection to form.
 18 A. No.
 19 BY MR. KOHN:
 20 Q. Do you remember having any discussions with Eric
 21 Straus about who was the leaker?
 22 MR. SMITH: I believe this has been asked
 23 and answered, objection.
 24 MR. KOHN: Was it asked and answered?
 25 MR. SMITH: I believe so but go ahead and

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1 answer it.
 2 A. Not specifically.
 3 BY MR. KOHN:
 4 Q. Did you at some point take possession of
 5 Mr. Convertino's computer?
 6 A. There was something involving computers. There was
 7 something involving computers. I believe that that
 8 was actually the agents assigned to the public
 9 integrity section and that we offered our -- they
 10 asked for and we gave our IT manager to assist them in
 11 that.
 12 Q. And was Mr. Convertino's computer placed in your
 13 office?
 14 A. The hard drives were placed in my safe.
 15 Q. And did you have access to all of his computer hard
 16 drives and e-mails and materials?
 17 A. The hard drives were in my safe. I would have no idea
 18 how to do anything with any of that. There were
 19 receipts signed and initialed and dated. I showed
 20 them what I considered the best practice of how to log
 21 evidence in and authenticate it, someone ultimately
 22 came and took it and that was the end of it.
 23 Q. Do you know after the article on the OPR referral
 24 appeared on January 17th, 2004, do you know if any
 25 other judge in Plymouth or elsewhere asked to be shown

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1 a copy of the referral?
 2 A. Did the judges ask?
 3 Q. Did any other judge -- I think there's been testimony
 4 about Judge Rosen. Did any other judge ask to obtain
 5 a copy of the OPR referral?
 6 A. I'm not aware of any.
 7 Q. In regards to Mr. Butch Jones do you have knowledge as
 8 to whether he was able to use the fact that he
 9 produced that letter and his testimony or actions in
 10 the terrorism trial to escape the death penalty?
 11 A. There was -- there was an e-mail or two from
 12 Mr. Corbet I think or -- yeah, I'm sure there was an
 13 e-mail from Mr. Corbet involving Butch Jones on the
 14 death penalty and whether something was used or not
 15 used, I -- I don't think it was the letter. I don't
 16 know the answer to that. I've seen something to that
 17 effect.
 18 Q. Was that the department you worked in when you were up
 19 in the attorney general's office?
 20 A. When I was --
 21 MR. SMITH: Objection to form. The
 22 department he worked in was the Department of Justice.
 23 BY MR. KOHN:
 24 Q. Yeah, was that the piece of the pie that you had when
 25 you were up in Washington about death penalty

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1 referrals?
 2 MR. SMITH: Objection to form.
 3 A. I made the recommendations for the deputy attorney
 4 general and the attorney general. By statute those
 5 all have to be made personally by the attorney
 6 general, but there's a big bureaucracy that makes
 7 recommendations to him. I was part of that.
 8 I'm almost positive that the Butch Jones
 9 matter had been resolved prior to me getting there and
 10 even if it wasn't I had no involvement in it when I
 11 was there.
 12 MR. SMITH: Okay.
 13 BY MR. KOHN:
 14 Q. Have you ever been accused of misconduct?
 15 A. What do you mean?
 16 Q. Were you ever the subject of a misconduct complaint?
 17 MR. SMITH: You mean as an AUSA?
 18 BY MR. KOHN:
 19 Q. Yeah, within the Department of Justice.
 20 A. Yes.
 21 Q. Were those matters kept confidential?
 22 A. Well, are you talking about a formal written
 23 complaint?
 24 Q. Yeah.
 25 A. I mean, I recently -- there was a mistake that I made

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1 in a case that I was involved in. I brought it to
 2 everyone's attention, went to the court and got it
 3 corrected. I mean, there was no complaint filed
 4 against me because I did that. Is that what you're
 5 talking about?
 6 Q. No, I'm talking about like an OPR type or any type of
 7 proceeding which might be -- like looking at you,
 8 whether you engaged in some type of misconduct?
 9 A. I've had one or two OPR complaints, I've had one or
 10 two Bar complaints. I believe those were all
 11 confidential, but I don't really know.
 12 Q. But to the best of your knowledge they were kept
 13 confidential?
 14 A. I think so.
 15 Q. Do you know if the copies of any of those complaints
 16 were sent to the attorney general's office for their
 17 review?
 18 A. You mean at the time?
 19 Q. Yeah.
 20 MR. SMITH: If you know.
 21 A. I would have no idea.
 22 MR. KOHN: Just off the record for a
 23 moment?
 24 (Discussion off the record at 4:23 p.m.)
 25 (Back on the record at 4:28 p.m.)

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<p>1 MR. KOHN: Just for the record, I've shown 2 the witness a document that's Bates stamped DOJ. It's 3 his -- it's what was believed to be his notes and the 4 Bates stamp DOJ 5005961, 5961 A, 5961 B, 5961 C, 5962 5 D, 5961 E, 5962 -- or actually it looks like 5961 F 6 and then 596 -- 5962 through 5969. I think when I 7 said 5962 D, actually it's a 1, it's 5961 D, but I'm 8 going to put these aside since they're under a 9 protective order and come back to them if we need to. 10 BY MR. KOHN: 11 Q. I'm going to call your attention, do you remember at 12 one of the meetings and I'm going to call it the 13 October 10th meeting but one of those three meetings, 14 the issue of the Farhat sentencing coming up? 15 A. It was at least one of the meetings. 16 Q. Okay. And I'm going to show you a document we're 17 going to mark as Exhibit 10 if you can just put that 18 aside for now. 19 A. I was just trying to -- now that I see what you're 20 asking to refresh, to see if there was anything here. 21 MARKED BY THE REPORTER: 22 DEPOSITION EXHIBIT 10 23 4:30 p.m. 24 MR. KOHN: And I'm showing the witness 25 Exhibit 10. Exhibit 10 is a two-page document, the</p>	<p>1 A. Well, I see you've underlined the part about congress. 2 We asked him about that congress question and what 3 that was a reference to. 4 Q. You did ask him that? 5 A. Yes. 6 Q. And what did he say? 7 A. He said, it wasn't congress. We said, what was it, 8 and he said, it wasn't congress. What was it? He 9 said, it's a private -- private organization. We 10 said, really, what private organization. Steve 11 Emerson's organization. 12 Q. Did you find that response credible? 13 A. I don't know. 14 Q. Well, what was your reaction to that response? If you 15 read this it says, they asked me to go testify in 16 front of congress -- reading page 20 lines 20 and 17 21 -- Rick Convertino asked me if I was willing to do 18 that. Did you find what you just -- how you 19 articulated Mr. Convertino's response credible in 20 terms of your questions you had about this? 21 A. I didn't really evaluate it that way. 22 Q. How did you evaluate his response? 23 A. I didn't. I just sort of remembered it and later I 24 was interviewed by the Public Integrity investigators 25 and told -- excuse me -- them the exact same thing and</p>
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<p>1 cover page for the Marwan Farhat sentencing and one 2 page, page 20 from that transcript. 3 I believe the witness has already testified 4 that he had actually -- he had seen a copy of this. 5 He was not quite sure if he had a personal possession 6 of the copy. 7 BY MR. KOHN: 8 Q. I think that was your testimony. 9 A. I'm sorry, I missed that. 10 Q. I think you've testified that you've seen -- 11 A. Yeah, right. 12 Q. -- this document. 13 A. Right. 14 MR. SMITH: The full document. 15 MR. KOHN: Right. 16 MR. SMITH: Not this two-page version. 17 BY MR. KOHN: 18 Q. Did you remember at one of the meetings either 19 providing Mr. Convertino with a copy of it or showing 20 him the sentencing transcript? 21 A. No. 22 Q. Did you ever ask Mr. Convertino to respond to anything 23 that was said at that sentencing hearing? 24 A. Respond to me? 25 Q. Yeah, like answer questions about what he did or said.</p>	<p>1 they already knew that. 2 Q. What did they know? 3 A. They knew that there was something with Steve Emerson 4 Q. Did you do any other discussion with Mr. Convertino 5 about this transcript page -- 6 A. No. 7 Q. -- about the conflicts? 8 A. No. 9 Q. Why did you ask Mr. Convertino questions about the 10 information, about going to congress on page 20 of the 11 transcript? 12 A. I don't remember if I asked that or if Alan asked 13 that, but I don't know. Probably because there had 14 been talk about congress before. 15 Q. And was that the prior congressional hearing -- the 16 hearing that Mr. Convertino testified to in front of 17 Judge -- in front of senator Grassley? 18 A. Correct, and the whole question of whether that had 19 been approved and all that. 20 Q. Did the information contained in this transcript raise 21 any concerns to either you or in your perception 22 Mr. Gershel? 23 A. What do you mean? 24 Q. In other words, was -- do you detect that Mr. Gershel 25 had any issues were raised concerning what was</p>

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1 presented in this transcript?
 2 A. I don't know.
 3 Q. Did it raise issues for you?
 4 A. It really didn't. I don't think I even wrote it down
 5 in my notes. I just remember it because later, when I
 6 was interviewed by the Public Integrity people I told
 7 them this, and one of them was out of the room and the
 8 other one came back and the first agent related to the
 9 second agent what I had just told them and they said,
 10 Steve Emerson, and they nodded at each other. They
 11 obviously had known something about Steve Emerson
 12 before.
 13 Q. Did you know anything about who Mr. Steve Emerson was
 14 when Mr. Convertino gave you the information he gave
 15 you?
 16 A. After 9/11 I had heard of Steve Emerson.
 17 Q. Do you do any follow-up questions to Mr. Convertino
 18 based on the answer he gave you?
 19 A. No, I don't think so.
 20 Q. Did you think that the answer he gave you was
 21 responsive to your question?
 22 A. Yeah, I asked him what he meant and he explained to me
 23 what it meant.
 24 Q. Who interviewed you from public integrity?
 25 A. That time when we were talking about Steve Emerson?

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1 Q. Yes.
 2 A. Dan Cook was one. I don't know who the other was. It
 3 may have been -- I don't remember his name, he was a
 4 supervisor from St. Louis I think. I'm not certain.
 5 Q. And do you --
 6 A. Dan Cook was definitely one.
 7 Q. Did you ever see a 302 produced concerning that
 8 interview?
 9 A. Never seen any written recordings of interviews with
 10 me from public integrity.
 11 Q. Was that interview with you recorded or just on paper?
 12 A. On paper.
 13 Q. How many interviews did you do with public integrity?
 14 A. I'm not sure.
 15 Q. More than one?
 16 A. Possibly. I'm not certain.
 17 Q. Did you provide them information relevant to whether
 18 they were going to indict Mr. Convertino?
 19 MR. SMITH: Objection to form.
 20 A. Did I provide public integrity information?
 21 BY MR. KOHN:
 22 Q. Yeah.
 23 A. I don't think there was any such information at the
 24 time.
 25 Could you -- I'm not sure I understood the

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1 question. Could you ask that again?
 2 MR. KOHN: Could you read back?
 3 (The following portion of the record was
 4 read by the reporter at 4:36 p.m.:
 5 "Question. Did you provide them
 6 information relevant to whether they were
 7 going to indict Mr. Convertino?
 8 MR. SMITH: Objection to form.
 9 Then you said, did I provide public
 10 integrity information?
 11 You said yeah.
 12 I don't think there was any such
 13 information at the time. Could you -- I'm
 14 not sure I understood" --)
 15 A. Well, yeah, I'm not sure I understood the question. I
 16 provided them information. What use they were going
 17 to make of it, I don't know, that was up to them. If
 18 you're asking did I say you should use this to indict
 19 him, no, I did not say that.
 20 BY MR. KOHN:
 21 Q. Did anyone from there ever there ask you any opinion
 22 whatsoever about a potential indictment?
 23 A. No.
 24 Q. Why were computer hard drives related to
 25 Mr. Convertino's computer saved in your office safe

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1 and not say with the FBI or some other entity?
 2 MR. SMITH: Objection to form. Also
 3 objection because it calls for speculation.
 4 You can answer if you know.
 5 A. I'm not sure. I'm not sure as we sit here who took
 6 those, if it was EOUSA who sent someone out to do that
 7 or if it was the FBI, and I believe that for sometime
 8 until those hard drives were taken out and put in my
 9 safe, they had been sitting in our information
 10 technology specialist's office with other computers,
 11 and she had marked which ones they were, which one or
 12 ones they were.
 13 BY MR. KOHN:
 14 Q. When this came up at the -- one of the meetings, I'm
 15 looking at the transcript of the Farhat -- do you
 16 remember having put a yellow sticky on page 20 and
 17 either handing Mr. Convertino a copy of the transcript
 18 with a yellow sticky on it so he could turn it to page
 19 20?
 20 A. No.
 21 Q. Now, you were interviewed by the Office of inspector
 22 general regarding the leak?
 23 A. Yes.
 24 Q. Okay. Tell me about your interviews and what happened
 25 with the OIG, okay?

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<p>1 MR. SMITH: That's an awfully broad 2 question. 3 BY MR. KOHN: 4 Q. Yeah, okay. How many times were you interviewed? 5 A. Three. 6 Q. And what happened at the -- I mean, just tell me what 7 happened at the first interview. 8 A. I can't separate them out in my mind that way. I 9 think it started late and we didn't get finished. 10 Q. And then you carried on to another day? 11 A. I think so. 12 Q. And then did it just carry on to a third day or did 13 they call you back? 14 A. Well, one day they had asked for some things and I 15 found some additional documents so I took that to 16 them, and then we went to another interview and then 17 they asked for a third one. 18 Q. And were you represented by counsel during these 19 interviews? 20 MR. SMITH: You mean did he have a lawyer 21 there? 22 BY MR. KOHN: 23 Q. Yeah. 24 A. No. 25 Q. Did you ever review the transcript -- you testified</p>	<p>1 You've testified about contacts with 2 Jeffrey Taylor, correct? 3 A. Yes. 4 Q. Did you have any other contacts with him? 5 MR. SMITH: About anything? 6 BY MR. KOHN: 7 Q. About Mr. Convertino or the leak -- 8 MR. SMITH: Objection, form. 9 BY MR. KOHN: 10 Q. -- or the OPR referral? 11 A. No. 12 Q. Stuart Levy, do you know who he is? 13 A. Yes. 14 Q. And -- 15 MR. SMITH: He was already testified about. 16 BY MR. KOHN: 17 Q. Okay. Any additional information concerning 18 communications you had with Mr. Levy on anything to do 19 with Mr. Convertino? 20 A. Mr. Levy once told me when I worked in the Deputy 21 attorney general's office that he had had a case with 22 Mr. Convertino. 23 Q. And other than that, was there any other discussions 24 about Mr. Levy and Mr. -- related to Mr. Convertino? 25 A. Mr. Levy was very proud of the fact that he took over</p>
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<p>1 you reviewed the transcripts? When you reviewed -- 2 did you review the transcripts contemporaneously or 3 did you just review them now in preparation for this 4 testimony? 5 A. Just now in preparation. 6 Q. When you reviewed those transcripts did you find 7 anything that was inaccurate? 8 A. Not that I recall. 9 Q. Do you stand -- 10 MR. SMITH: You mean inaccurate 11 transcription? 12 BY MR. KOHN: 13 Q. I'm not talking about -- 14 MR. SMITH: Or you mean if he made a 15 mistake -- 16 BY MR. KOHN: 17 Q. Yeah, if you made a mistake you'd like to correct. 18 A. I don't think so. 19 Q. So you would stand by the truthfulness of everything 20 you said to the inspector general? 21 A. Yes. Understanding that there are details that I 22 don't remember today as well as I did then. 23 Q. Okay. I'm going to ask -- I'm going to have some 24 names here, I'd like you to tell me if you ever talked 25 to them about Mr. Convertino.</p>	<p>1 the case on appeal and secured a reversal. He was 2 defense counsel. 3 Q. And I'm just going to ask to strike as nonresponsive. 4 But my question is did you have any other 5 discussions with Mr. Levy concerning the matters we're 6 talking to here about Mr. Convertino, the OPR, the 7 Plymouth Free Press, those type of matters. 8 A. No. 9 MR. SMITH: Objection to form. 10 A. I'm sorry. 11 BY MR. KOHN: 12 Q. Did you -- did Mr. Levy -- did you share -- did you 13 share any criticisms of Mr. Convertino with Mr. Levy? 14 A. No. 15 Q. Did you say words like, yeah, I don't like that guy -- 16 A. No. 17 Q. -- something like that? 18 You've testified about Mr. Margolis I 19 believe? 20 A. Yes. 21 Q. John Richter? 22 MR. SMITH: Richter. 23 A. Richter. Don't really know him, I spoke to him on the 24 phone a couple of times. 25 BY MR. KOHN:</p>

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<p>1 Q. About Mr. Convertino?</p> <p>2 A. No.</p> <p>3 Q. Anything about Mr. Convertino?</p> <p>4 A. I don't think so.</p> <p>5 Q. Will Moschella?</p> <p>6 A. I don't think I've ever spoken to him at all.</p> <p>7 Q. And that's assistant attorney general for legislative</p> <p>8 affairs?</p> <p>9 A. I think that's right.</p> <p>10 Q. Do you know that person?</p> <p>11 A. I know the name.</p> <p>12 Q. Do you know why he would have a need to know about</p> <p>13 Mr. Convertino's OPR referral?</p> <p>14 A. I'm assuming it's because he was the director of the</p> <p>15 Office of Legislative Affairs. There were questions,</p> <p>16 those letters we talked about from senator Grassley,</p> <p>17 and it would be Mr. Moschella's job to do the final</p> <p>18 signoff on any response to those.</p> <p>19 Q. Faith Burton?</p> <p>20 A. I know the name and I know she was someone high up in</p> <p>21 justice, I don't know exactly what her position was.</p> <p>22 I've never spoken to her.</p> <p>23 Q. Perhaps at the time special counsel for legislative</p> <p>24 affairs? Does that ring a bell?</p> <p>25 A. Those titles don't mean anything.</p>	<p>1 MR. KOHN: Let's go off the record so I --</p> <p>2 yeah.</p> <p>3 MR. SMITH: Are we on the record or off?</p> <p>4 MR. KOHN: Okay. On the record.</p> <p>5 BY MR. KOHN:</p> <p>6 Q. You testified that Mr. Ashenfelter called you on your</p> <p>7 cell phone, correct?</p> <p>8 A. When?</p> <p>9 Q. On or about December 11, 2003.</p> <p>10 A. No, I don't think so. I think he called me at my</p> <p>11 office and I returned his call from my cell phone.</p> <p>12 Q. Okay. And has Mr. Ashenfelter ever called you on your</p> <p>13 cell phone?</p> <p>14 A. When he was doing that biographical piece about me, he</p> <p>15 did.</p> <p>16 Q. And what about -- have you ever called him on your</p> <p>17 cell phone?</p> <p>18 A. I did that day. I may have returned a call or two</p> <p>19 from him through that phone, I don't know.</p> <p>20 Q. And in 2000 -- between, and the months I'd be looking</p> <p>21 at would be November 2003 through January 17, 2004.</p> <p>22 Do you know what cell phone service you were using?</p> <p>23 MR. SMITH: You mean what company?</p> <p>24 BY MR. KOHN: Yeah.</p> <p>25 A. Sprint.</p>
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<p>1 Q. Okay. Other than reading the article, Exhibit Number</p> <p>2 1 on the day it came out, have you seen -- ever</p> <p>3 searched for that article on the Internet?</p> <p>4 A. I may have, I don't know.</p> <p>5 Q. Did you ever notice that that article was reprinted</p> <p>6 anywhere, like, you know, like in a -- you know, like</p> <p>7 people talk about it on the radio or on television,</p> <p>8 things like that?</p> <p>9 MR. SMITH: Objection to form.</p> <p>10 A. You mean did I find it in multiple places on the</p> <p>11 Internet?</p> <p>12 BY MR. KOHN:</p> <p>13 Q. Yeah, like you're driving in -- like the day it came</p> <p>14 out, do you know if it was also reported on the local</p> <p>15 radio or television?</p> <p>16 A. I don't remember it being, but I don't know.</p> <p>17 Q. Did you discuss that article with any of your friends?</p> <p>18 A. Other than what we've talked about?</p> <p>19 Q. Yeah.</p> <p>20 A. No.</p> <p>21 Q. What about a -- was it ever discussed -- anything to</p> <p>22 do with Mr. Convertino ever discussed at a Federalist</p> <p>23 Society meeting?</p> <p>24 A. No. Mr. Convertino once asked about coming to a</p> <p>25 Federalist Society meeting with me but he never came.</p>	<p>1 BY MR. KOHN:</p> <p>2 Q. Would you be willing to request from Sprint all of</p> <p>3 your and your wife's cell phone call receipts from</p> <p>4 September -- from November 2003 through January</p> <p>5 inclusive of 2004 to be produced?</p> <p>6 A. I would discuss it with -- with counsel.</p> <p>7 Q. Okay. My question is right now today would you</p> <p>8 agree -- your counsel may come back and say you don't</p> <p>9 have to do it or don't do it, but I'm asking for you,</p> <p>10 would you agree to go and do whatever you need to do</p> <p>11 with Sprint and the telephone company to get every</p> <p>12 cell phone record of all calls coming in and all calls</p> <p>13 coming out of your personal cell phones that were</p> <p>14 under your control and direction, I'm assuming</p> <p>15 yourself and your wife, but like maybe you had two</p> <p>16 cell phones or whatever, but every cell phone that was</p> <p>17 under your personal control or your family's control</p> <p>18 between -- I'll just put the dates, October 1, 2003</p> <p>19 through January 31, 2004, would you be willing to do</p> <p>20 that, get them all for us and produce them?</p> <p>21 MR. SMITH: Objection to form.</p> <p>22 A. Who's us?</p> <p>23 BY MR. KOHN:</p> <p>24 Q. Counsel for Mr. Convertino, and we would accept those</p> <p>25 under a protective order so we would not be able to</p>

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1 disclose any of those numbers.
 2 MR. SMITH: Of course this is all
 3 hypothetical but go ahead and answer.
 4 A. Yeah, I'm not certain at this point.
 5 MR. KOHN: Okay. Why don't we go off the
 6 record for a moment?
 7 (Discussion off the record at 4:48 p.m.)
 8 (Back on the record at 4:52 p.m.)
 9 MR. KOHN: Back on the record.
 10 BY MR. KOHN:
 11 Q. When you met with the inspector general did you give
 12 them any -- did they ask you what you thought about
 13 Mr. Convertino on a personal level?
 14 A. I think they might have.
 15 Q. And what did you tell them?
 16 A. I think I said I don't particularly care for him.
 17 Q. And did you say anything else about Mr. Convertino to
 18 them like about how you felt about him personally?
 19 A. I don't think so.
 20 Q. And did the inspector general's Office ask you to do
 21 anything in terms of to determine whether you were
 22 telling the truth or not about the leak?
 23 MR. SMITH: I mean, I object just because
 24 you have the transcripts so you're just -- it's just a
 25 memory test for him. You're not actually searching

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1 for new information or --
 2 BY MR. KOHN:
 3 Q. Okay. Let me just then -- have you ever asked a
 4 criminal defendant to undergo a polygraph?
 5 A. I may have early in my career, not recently.
 6 Q. When's the last time you did?
 7 A. Well, I don't know that -- I mean, I have cases where
 8 they've been done where the FBI did it without me
 9 asking, I think without me asking, with poor results
 10 and that was as a result of those types of things.
 11 Q. Okay. But going back to that, do you -- does your --
 12 does the United States Attorney's Office, do people
 13 there use polygraphs?
 14 A. Some do, some don't.
 15 Q. What position -- and you were the first assistant or
 16 something? What was your position over there?
 17 A. I was first assistant.
 18 Q. And did you take any steps to have United States
 19 Attorneys not use polygraphs?
 20 A. No.
 21 Q. Did you take any steps to have FBI agents not use
 22 polygraphs?
 23 A. Well, what do you mean by steps?
 24 Q. Okay. Let me say this. Do you have a concern about
 25 the reliability of polygraphs?

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1 A. Yes.
 2 Q. Okay. Given that concern and given your -- and
 3 what -- and did you have a management position in the
 4 U.S. Attorney's Office?
 5 A. I didn't have a policymaking position in that sense.
 6 Q. Did you make any recommendations about the use of
 7 polygraphs?
 8 A. That is a technique that is most commonly used by law
 9 enforcement agencies. In cases in which I work, if
 10 agents talk about doing it, we talk about the possible
 11 benefits and the possible downsides.
 12 Q. But would you permit, if an agent says that he were
 13 going to use a polygraph in a case you were involved
 14 in, would you say okay or would you prevent them from
 15 using it?
 16 A. I probably wouldn't prevent them from using it, it
 17 depends on the circumstance though. It depends on
 18 what they're trying to do.
 19 Q. And are you aware that polygraphs have a tremendous
 20 beneficial impact far behind the little things that
 21 just go up and down? I mean -- strike that.
 22 Are you aware that polygraphs can be used
 23 as a source for an interrogation and assist in an
 24 interrogation of a person as opposed to just reading
 25 results off a chart?

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1 MR. SMITH: Objection to form.
 2 If you understand it you can answer it.
 3 A. I don't really understand it.
 4 BY MR. KOHN:
 5 Q. Okay. When someone takes a polygraph do you
 6 understand that there can be a printout of a reaction
 7 to various questions?
 8 A. Yes.
 9 Q. Do you also understand there's a part of the polygraph
 10 where the person who sat and was given the test is
 11 asked questions about the results?
 12 A. I'm going to have to ask you to repeat that.
 13 Q. In other words, there's a part of a polygraph process
 14 that includes an interrogation of the subject. Are
 15 you aware of that?
 16 A. Yes.
 17 Q. And are you aware that the inter -- that the --
 18 sometimes the results of the polygraph are useful to
 19 assist in the interrogation of the subject?
 20 A. It depends who you ask.
 21 Q. But do you understand that in some cases the results
 22 of the polygraph are useful and have produced
 23 beneficial information as a result of the
 24 interrogation of the subject --
 25 MR. SMITH: Objection to form.

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1 BY MR. KOHN:
 2 Q. -- yes or no?
 3 MR. SMITH: And also I think it's asked and
 4 answered, but please answer it if you can.
 5 A. I'm not familiar with what you're talking about.
 6 BY MR. KOHN:
 7 Q. Okay. Then let me try to make it clear.
 8 A. I understood what you're talking about.
 9 Q. Okay.
 10 A. I'm not familiar with the concept you're talking
 11 about.
 12 Q. Okay. Well, I have a lot of experience in polygraphs
 13 just to let you know and the polygraphers I've worked
 14 with have told me that it's the post-examination --
 15 post-examination interrogation that is the most useful
 16 part of the process. Do you think there's truth to
 17 that?
 18 MR. SMITH: Objection to your testimony.
 19 MR. KOHN: Yeah.
 20 MR. SMITH: Do you think there's truth to
 21 whether polygraphers have told him that?
 22 BY MR. KOHN:
 23 Q. No, strike that.
 24 My question is, do you understand that
 25 after the physiological polygraph examination is

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1 administered the person who took the test is subject
 2 to an interrogation?
 3 MR. SMITH: Is that your understanding?
 4 A. I don't know that that's uniformly true.
 5 BY MR. KOHN:
 6 Q. Okay. In the cases in which that happens, where
 7 there's a post-physiological test interrogation, what
 8 is your understanding of the usefulness of the
 9 physiological component in the interrogation process?
 10 Do you under --
 11 A. I don't think I have such --
 12 MR. SMITH: Objection to form.
 13 A. I don't think I have such an understanding.
 14 BY MR. KOHN:
 15 Q. Okay. What is your understanding about polygraphs?
 16 MR. SMITH: Objection to the vagueness of
 17 that question.
 18 BY MR. KOHN:
 19 Q. What do you know about them?
 20 MR. SMITH: Same objection.
 21 A. That they're inadmissible in evidence, that there's
 22 scientific dispute as to their validity and from what
 23 I would say I have learned interacting with law
 24 enforcement agents, that they question the value of
 25 them.

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1 BY MR. KOHN:
 2 Q. But now what about the post-polygraph examination
 3 interrogation, is that admissible in evidence?
 4 A. I don't know.
 5 Q. You do not know -- how many years have you been in law
 6 enforcement related activities?
 7 MR. SMITH: Objection, argumentative.
 8 You can answer.
 9 A. 18.
 10 BY MR. KOHN:
 11 Q. So if you question a subject about the results of the
 12 polygraph and the subject then gives you answers,
 13 including say a confession, is that confession
 14 admissible?
 15 A. I think it depends on the circumstances.
 16 MR. SMITH: Also objection to the extent it
 17 calls for a legal conclusion.
 18 BY MR. KOHN:
 19 Q. Okay. So getting back to a polygraph, you have not
 20 enforced any policy on law enforcement agents that
 21 work for you as to whether they would use or not use
 22 polygraphs in any given case, correct?
 23 A. I have no ability to make or enforce such a policy.
 24 Q. Have you informed any -- the law enforcement agents
 25 that have worked under your -- on cases that you're

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1 involved in that if they do a polygraph you will not
 2 use the results no matter what?
 3 MR. SMITH: You can answer.
 4 A. I don't think the results are usable, they're not
 5 admissible.
 6 BY MR. KOHN:
 7 Q. Well, any part --
 8 MR. SMITH: I guess it's vague in terms of
 9 what you mean by use the results.
 10 BY MR. KOHN:
 11 Q. Have you ever done research on polygraphs on your own?
 12 MR. SMITH: Objection, relevance.
 13 A. Talking with agents.
 14 BY MR. KOHN:
 15 Q. Have you ever looked into like how to pass a
 16 polygraph?
 17 A. No.
 18 Q. Could you please -- okay. If it is not admissible,
 19 why would an agent today administer a polygraph?
 20 MR. SMITH: Objection, calls for
 21 speculation.
 22 Answer if you have any knowledge of that.
 23 A. I don't know. I think different agents probably would
 24 have different reasons.
 25 BY MR. KOHN:

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1 Q. Would you ever submit to polygraph on any matter
2 whatsoever, no matter what?
3 MR. SMITH: Objection to form.
4 A. Yeah, I can't answer that question.
5 BY MR. KOHN:
6 Q. So might there be some theoretical situation for which
7 you would agree to be polygraphed?
8 A. Well, I believe there are some regulations that might
9 require, for security clearance, that one do so. I'm
10 not certain but I think that might be a possibility.
11 Q. Okay. Putting that aside, would it be your testimony
12 under oath today, would you -- that you would -- would
13 you ever voluntarily submit to a polygraph?
14 MR. SMITH: Under any circumstances?
15 BY MR. KOHN:
16 Q. Under any circumstances, yes or no?
17 A. I can't imagine what all the circumstances would be.
18 I can't answer that, it's too speculative.
19 Q. So there might be a circumstance where you would agree
20 to a voluntary polygraph, correct?
21 A. You mean if someone was being held at gunpoint and
22 they said, unless you take this we're going to kill an
23 innocent person?
24 Q. No, I'm saying a voluntary polygraph, might there be a
25 circumstance for which you would take a voluntary

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1 polygraph, yes or no?
2 A. I don't know.
3 Q. Would you agree to take a polygraph on whether or not
4 you were the person who leaked information to
5 Mr. Ashenfelder, yes or no?
6 A. That's not a question I would answer without
7 consulting with counsel.
8 Q. Would you agree -- assuming hypothetically that your
9 counsel said, yes, if it's up to us, you should do the
10 polygraph and just be done with the -- in other words,
11 it's not admissible in court, that's where we are,
12 we're in the a civil court here and just do it to
13 resolve these matters, would you follow -- would you
14 then take that polygraph?
15 MR. SMITH: I object to the hypothetical
16 where you're giving him legal advice.
17 BY MR. KOHN:
18 Q. Okay. Strike that.
19 Assuming your counsel said it was
20 completely up to you would you do it, yes or no?
21 MR. SMITH: Same objection.
22 A. I don't know what that means.
23 BY MR. KOHN:
24 Q. In other words, if your counsel said, the decision to
25 take a polygraph in this case was your personal

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1 decision, would you agree to take it, yes or no?
2 A. It would depend on a lot of factors.
3 Q. What are those factors?
4 A. I'm not going to get into that, that's potentially
5 attorney-client privileged things that you're asking
6 about. I will not say anything that might waive
7 attorney-client privilege.
8 MR. KOHN: Okay. Okay. We're done.
9 MR. SMITH: Okay. I just have a couple
10 quick questions.
11 EXAMINATION
12 BY MR. SMITH:
13 Q. Okay. You testified earlier about sources and
14 cooperating witnesses. Who opens a source or a
15 cooperating witness, is it an attorney, AUSA or an
16 agent or can it be either?
17 A. It has to be an agent.
18 Q. Okay. What agents can do it, what agencies?
19 A. I probably couldn't tell you all of them. Certainly
20 FBI can, DEA can, ICE can. I don't know about some of
21 the smaller agencies.
22 Q. But as an AUSA you can't?
23 A. Correct.
24 Q. Okay. Were you aware in the time frame of December
25 2003, January 2004 that it would be improper to leak

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1 OPR related information to a reporter?
2 A. Repeat that please.
3 Q. Were you aware in the time frame of December 2003 to
4 January 2004 that it would be improper to leak OPR
5 information to a reporter?
6 A. Yes.
7 Q. Do you believe based on your experience that other
8 attorneys in your office would have had that awareness
9 as well?
10 A. I would think they would assume that, yeah.
11 Q. What about --
12 MR. KOHN: And I'm just going to object to
13 the form of those questions.
14 BY MR. KOHN:
15 Q. What about support staff?
16 A. I would assume that also.
17 MR. SMITH: Okay. I have no other
18 questions.
19 MR. KOHN: Okay. Thank you.
20 THE WITNESS: Thank you.
21 (The deposition was concluded at 5:08 p.m.
22 Signature of the witness was not requested by counsel
23 for the respective parties hereto.)
24
25

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1 CERTIFICATE OF NOTARY
2 STATE OF MICHIGAN)
3) SS
4 COUNTY OF OAKLAND)
5

6 I, VIOLA NEWMAN, a Notary Public in
7 and for the above county and state, do hereby
8 certify that the above deposition was taken before
9 me at the time and place hereinbefore set forth;
10 that the witness was by me first duly sworn to
11 testify to the truth, and nothing but the truth;
12 that the foregoing questions asked and answers made
13 by the witness were duly recorded by me
14 stenographically and reduced to computer
15 transcription; that this is a true, full and correct
16 transcript of my stenographic notes so taken; and
17 that I am not related to, nor of counsel to either
18 party nor interested in the event of this cause.
19

20
21 _____
22 VIOLA NEWMAN, CSR-4320, RPR
23 Notary Public,
24 Oakland County, Michigan
25 My Commission expires: December 4, 2013