

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 6:08-CR-176-ORL-28

FRANK AMODEO,

Defendant.

MAY 14, 2009

**Transcript of Proceedings
HEARING ON SENTENCING
Day 3**

**Before The Honorable JOHN ANTOON II
United States District Judge**

APPEARANCES:

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produced with computer-aided transcription.

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P R O C E E D I N G S

THE COURT: Good morning. Your research indicates that I have discretion.

MR. SLAUGHTER: That's correct.

THE COURT: Does the government's research indicate the same?

MS. CREAM: Essentially, Your Honor, yes. I would point the court though to United States versus Ortega which is an Eighth Circuit case, 270 F.3d 540, from 2001. In that case the Eighth Circuit affirmed the exclusion of the government's polygraph evidence which the government wanted to submit to support an obstruction of justice enhancement, and in so doing the Eighth Circuit noted that there continued to be a great deal of dispute about the reliability of polygraph examinations and that most courts of appeals that have considered the issue of the admissibility of polygraph evidence at sentencing had upheld refusals to admit such evidence, and it collects cases from the Sixth, Second and Ninth Circuits.

THE COURT: In that case did the government as a part of its plea agreement require the defendant to submit to polygraph?

MS. CREAM: I believe it did. Let me just double check.

I don't think the opinion directly addresses that

1 issue. I did note, however, that the Supreme Court touched
2 on that issue in United States versus Scheffer at 523 U.S.
3 303, that's the 1998 case in which the Supreme Court found
4 that the exclusion of polygraph evidence in court martial
5 cases was appropriate. And in so doing the Supreme Court
6 commented on the defendant's argument that because the United
7 States often used polygraph for personnel examinations and
8 disciplinary proceedings, and also used it with some
9 regularity as a tool in criminal investigations, that the
10 government therefore essentially conceded the reliability of
11 such evidence. And the Supreme Court said that that was just
12 not the case, that the use, the use of polygraphs by the
13 government in those contexts differed in character and
14 carried a much less severe consequence than use of polygraphs
15 as evidence in court proceedings and, therefore, it did not
16 invalidate the government's concern about the reliability of
17 polygraph evidence.

18 MR. SLAUGHTER: Your Honor, when a federal judge
19 is sitting in the sentencing hearing, the district court may
20 consider any information, including reliable hearsay.
21 Obviously this would be hearsay. The question you have to
22 determine is is it reliable. And I would also state that not
23 only did they require a polygraph in this case, they required
24 a polygraph in the John Debets case where the court was able
25 to review the polygraph of John Debets as to whether he was

1 molested as a child.

2 My witness, Dick Keifer, headed up the FBI's
3 polygraph unit for the entire United States. He examined
4 20,000 polygraphs for the FBI. He did 2,000 himself. He did
5 quality control of several cabinet level posts. And he also
6 set up the polygraph physiological research institute at the
7 University of Virginia while he was with the FBI. This is a
8 man who trained and has written and set the standards for the
9 polygraph, the federal polygraph guidelines. I think I
10 should be allowed to make a record because we are talking to
11 the person at ground zero of today's polygraph research and
12 you're going to hear one of the top polygraphists in the
13 country if you let me put on his CV and background. This is
14 not a schlock that we got down the street. He was with the
15 FBI for I think 24 years. He may even have been stationed
16 right here in Orlando. But when it comes to polygraphs, he
17 was the head of the FBI's department.

18 THE COURT: Okay. Let me have the cases you
19 referred to, Miss Cream.

20 MS. CREAM: Yes, Your Honor. I'd also like to
21 point out United States versus Thomas, which is the Sixth
22 Circuit, 167 F.3d 299, and in that case the Sixth Circuit
23 upheld the exclusion of polygraph evidence at sentencing, and
24 in so doing it noted that the defendant took a private
25 polygraph test administered by an examiner hired by his

1 family and did not inform the government of his test results
2 until after he had taken the examination. The Sixth Circuit
3 said that they had repeatedly held that unilaterally obtained
4 polygraph evidence is almost never admissible under 403
5 because there's simply nothing at stake for the defendant
6 when he takes a polygraph examination, the results of which
7 will only be given to the government if he passes.

8 MR. SLAUGHTER: Your Honor, I would cite U.S.
9 versus Padilla which is an F. Supp. case in the Southern
10 District of Florida that permitted polygraphs to be used.
11 The question there is whether we gave Mr. Gold enough notice.
12 These polygraphs were administered in April --

13 MR. GOLD: Your Honor, I'm not going to argue
14 notice at this point. I think we're beyond all that.

15 THE COURT: I think the case that Miss Cream just
16 cited did go to notice. But if you're telling me --

17 MR. GOLD: No, no, I'm talking about notice for
18 today's hearing that he was going to testify. I'm not
19 talking about notice to the government -- I may have
20 misunderstood Mr. Slaughter. I thought he's talking about
21 notice for Mr. Keifer to be here today.

22 MR. SLAUGHTER: What I was saying was that he,
23 Mr. Gold was given these tests both before Mr. Amodeo entered
24 the plea, and this all had to do with Mr. Amodeo testifying
25 wanting to tell his side of the story, and I gave him these

1 before the actual plea agreement was done. And then he and
2 Mr. Sands putting it in the sentencing memorandum and the
3 results have been fighting over a stipulation of that
4 portion.

5 MR. GOLD: I think we're talking apples and
6 oranges though. The objection I originally had to notice was
7 the fact that Mr. Keifer was going to be called and I didn't
8 know about it. I'm withdrawing that. The issue in the
9 Thomas case, I believe, and some of the other ones was the
10 issue of notice to the government before the polygraph
11 examination was taken. Did we get it before the plea? Yes.
12 But I think the cases talk about notice to the government
13 before the exam was given and that's the situation we have
14 here. I know that's the situation in Thomas. And so I think
15 we've got two different types of notice issues.

16 THE COURT: Okay. I understand.

17 Here's an Eleventh Circuit case, U.S. versus
18 Piccinonna that says that polygraph results are not per se
19 inadmissible.

20 MR. GOLD: Your Honor, I'm sorry to interrupt,
21 but when you get to the point where you've read those, I have
22 just a couple other comments to make.

23 THE COURT: Mr. Gold, do you have any objections
24 as to the qualifications of the defense witness as a
25 polygrapher?

1 MR. GOLD: No, I don't, Your Honor. Before the
2 court makes a ruling though, there are a couple other things
3 that I would like to say that concern me about the
4 reliability of the polygraph, not so much because of Mr.
5 Keifer, but because of Mr. Amodeo, and that is we've heard
6 from Mr. Amodeo that because of his disorder as he kept
7 referring to it, and I think it's been borne out in the
8 testimony, that his recollection is not trustworthy, and so
9 anything he said to Mr. Keifer may very well not be
10 trustworthy.

11 The other thing is, you know, we got these
12 polygraph exams sometime after I think May 13, which was the
13 date of the last polygraph. On May -- actually, May 9 was
14 the last polygraph. The date of the report was the 13th.
15 The day before the last report.

16 THE COURT: This is '08.

17 MR. GOLD: Yes, sir.

18 The day before the last report was written was
19 the date Dr. Danziger testified that he found Mr. Amodeo to
20 be bipolar with I think manic and psychotic issues as well.
21 Now, this is before the report was actually written.
22 Thereafter he was declared incompetent. He wound up going
23 into a mental hospital. And after that, there was no way
24 that the United States was going to do a polygraph and trust
25 its reliability. So did we have the opportunity? Yes. But

1 after all the psychiatric issues and the fact that we were
2 constantly told by counsel they were adjusting his meds, you
3 know, Mr. Amodeo had swings, we just weren't going to submit
4 him to a polygraph at that point.

5 THE COURT: Well, it appears to me that I have
6 discretion in this area, notwithstanding a long held view of
7 appellate and trial courts both in the federal system and in
8 the Florida judicial system disfavoring admission of
9 polygraph results. I don't ever recall having received in
10 evidence for any purpose the results of a polygraph
11 examination over objection. The times that I've received
12 them have been pursuant to stipulation by the parties. But
13 this is a different situation in many respects. This isn't a
14 jury proceeding, it's a proceeding before the court. It's a
15 proceeding before the court where all kinds of facts have
16 been presented. The sentencing hearing itself is already
17 protracted and likely to become more protracted because of
18 the information being put before the court, including the
19 very information that's the subject of this polygraph,
20 including the polygraph examination and the results
21 themselves have been referred to in the material. I think
22 because of the more relaxed procedure and burden of proof in
23 a sentencing hearing, the polygraph results are less likely
24 to be the sole focus of the issue. In other words, I think
25 that I am able to put that in some sort of context, including

1 the context you just described for the court, Mr. Gold, the
2 fact that the defendant was going through a period of
3 instability sufficient enough for a psychiatrist to recommend
4 treatment and about that time I think he was found
5 incompetent. But here is a situation where the government
6 has suggested that it would require a polygraph as a part of
7 its plea agreement, by that I mean by entering into the plea
8 agreement the government would reserve the right to subject
9 the defendant to a polygraph.

10 MR. GOLD: I believe that was only on the assets
11 though, I don't think it was on the underlying case itself.
12 And I don't know that there's a distinction that the court
13 wants to draw, but I think it needs to be pointed out to the
14 court.

15 THE COURT: Okay. I am concerned about making
16 sure that the government, to the extent it wants to subject
17 the defendant to a polygraph exam if I allow this in, has the
18 ability to do so. I'm not going to say that one side can do
19 it and the other side can't. And I don't think you've had
20 adequate notice as to the request to admit these results.
21 And I understand your reluctance to going forward with the
22 testing earlier, but if you want to do that, I'll give you
23 the opportunity. But I'm going to allow the results in, and
24 I'm doing it because of the uniqueness of this case and how
25 the sentencing and preparation for the sentencing have gone

1 forward.

2 MR. GOLD: Your Honor, we'll have to give it I
3 think some thought. My initial reaction is I really don't
4 want to delay sentencing and if we go forward with a
5 polygraph from the government's perspective, I don't know how
6 fast it can be done. I also don't know on any given date
7 what Mr. Amodeo's mental state will be. So, for example, if
8 I bring someone down, his meds might not be regulated
9 properly, it could get put off forever.

10 THE COURT: Have you had a chance to talk to Mr.
11 Keifer about any of this?

12 MR. GOLD: No, I haven't.

13 THE COURT: Have you talked to him about the
14 ramifications of the subject taking medication?

15 MR. SLAUGHTER: Oh, yes, this was discussed at
16 great length with Mr. Keifer. And there were days that he
17 was either somnambulistic, so either depressed that we
18 couldn't work with him, or there was a day where, I mean Mr.
19 Keifer would have to tell you, you know, I would talk to Dr.
20 Danziger and say he's taking Depakote and he seems to be
21 okay, is it okay to polygraph him; and he says, yeah, go
22 ahead. If he seems okay, polygraph him. But Mr. Keifer will
23 tell you that they have methodologies for rooting out fakery,
24 they have methodologies for rooting out sociopaths or
25 psychopaths, that that all comes into the science part of

1 this, and he's prepared to discuss Daubert and prepared to
2 discuss the scientific physiological part of these tests.

3 THE COURT: I'm concerned about language in a
4 case I don't think either of you cited, it's the Henderson
5 case from the Eleventh Circuit. It talks about Piccinonna
6 and it views Piccinonna as restricting, quote, the use of
7 polygraph evidence in this circuit to only two contexts. A
8 district court may admit polygraph evidence when the parties
9 stipulate in advance as to the test circumstances and scope
10 of its admissibility, or to impeach or corroborate the
11 testimony of a witness at trial. However, this rule does not
12 preempt or limit in any way the trial court's discretion to
13 exclude polygraph expert testimony on other grounds under the
14 rules of evidence.

15 MR. SLAUGHTER: Your Honor, it did say
16 corroborate and we're in a unique situation here at
17 sentencing and of what the court is allowed, I mean what the
18 court is allowed to hear at the time of a sentencing is quite
19 amazing. They can take into consideration for upward
20 departures, downward departures. I mean you have wide
21 discretion here. And I think it would be imperative for you
22 to hear the background of Mr. Keifer to make the
23 determination of whether or not his test and his methodology
24 and his knowledge fit Daubert or not.

25 THE COURT: Okay. You can proceed with your

1 qualification of the witness.

2 MR. GOLD: Your Honor, one very brief issue
3 before I forget. I talked to Mr. Sands about this, I haven't
4 talked to Mr. Slaughter about it, but yesterday Mr. Amodeo
5 testified that he told Mr. Slaughter before he filed the
6 bankruptcies, and I think Mr. Slaughter would be prepared to
7 say on the record that that's not his recollection.

8 MR. SLAUGHTER: Well, my recollection is that the
9 first time I heard about the bankruptcy was from Mr. Gold,
10 and this woman named had tried to call me and I didn't take
11 the phone call. And somewhere along the line Mr. Amodeo may
12 have said that Jody Jayman had gone to see Miss Green, but it
13 didn't translate to me that he was proposing to go into any
14 kind of bankruptcy. And when I heard about it, I was
15 shocked, because it totally impacted all of the civil cases
16 that we had been working on. So maybe Mr. Amodeo told me
17 Jody Jayman had gone to see Miss Green, but that didn't link
18 up with me about anybody was going to go into a bankruptcy or
19 she was -- they were getting advice on some of these other
20 issues.

21 THE COURT: Miss Green is the bankruptcy lawyer?

22 MR. SLAUGHTER: Bankruptcy lawyer with whom I've
23 never spoken. So his recollection, he may have said Jody
24 Jayman had talked to Green, but I wasn't told ahead of time
25 that bankruptcy was being filed on Mirabilis's part because I

1 mean we were floored when we heard it, and I heard it from
2 Mr. Gold.

3 THE COURT: Okay.

4 MR. SLAUGHTER: Mr. Keifer.

5 Whereupon:

6 RICHARD W. KEIFER,

7 called as a witness, having been first duly sworn according
8 to law, testified as follows:

9 BY MR. SLAUGHTER:

10 Q. Mr. Keifer, in a slow voice, tell us your full name
11 and spell your last name.

12 A. My name is Richard W. Keifer. Keifer is spelled K E I
13 F E R.

14 Q. And would you tell the court and jury what your
15 educational background -- the court. I'm sorry.

16 A. My educational background is I'm a graduate of Indiana
17 University of Pennsylvania and a graduate of the University
18 of Virginia.

19 MR. GOLD: Your Honor, I'll stipulate to his
20 credentials.

21 MR. SLAUGHTER: Well, they are going to go into
22 the Daubert issue, so I think we should not, I mean I can
23 move along on the credentials of college and that kind of
24 stuff, but when we get to the polygraph stuff, he needs to
25 develop that so he passes the, he can show the court he can

1 pass the Daubert test.

2 Q. Before you joined the FBI, what did you do?

3 THE COURT: Well, you were telling me you took a
4 graduate degree at University in Virginia; in what?

5 THE WITNESS: It's in instructional design.

6 Q. And then later you went back to the University of
7 Virginia?

8 A. Yes. With the advanced polygraph studies program.

9 Q. And you were working for what entity at that time?

10 A. I was a supervisory special agent for the FBI when I
11 did that.

12 Q. And were you instrumental in setting up that school?

13 A. That was my assignment and I set that, the school up,
14 and I attended the school also.

15 Q. Before you went to the FBI, did you serve in the
16 military?

17 A. I was a naval officer for three years.

18 Q. And where were your duty stations?

19 A. The U.S.S. Coral Sea, it's a carrier, and AE 39, an
20 ammunition ship primarily west coast in operations off
21 Vietnam.

22 Q. And after you got out of the service what did you do?

23 A. I became a stockbroker and then I went into the FBI.

24 Q. And where were your duty stations at the FBI?

25 A. Originally entered the FBI in the Tampa division, I

1 served in the Ft. Myers and Sarasota resident agencies. I
2 was transferred to New York City for eight years. I then was
3 transferred to Alexandria, from Alexandria to headquarters
4 for about 12 years, and my final transfer was Orlando.

5 Q. Headquarters being Washington, D.C.?

6 A. Yes.

7 Q. And then where?

8 A. To the Orlando RA, resident agency.

9 Q. How long did you serve here in Orlando?

10 A. About a year and a half.

11 Q. Would you tell the court when you began working as a
12 polygraphist and what schooling?

13 A. In 1981 I attended the United States Army Military
14 Police school which is a 14 week course preparing you to do
15 polygraph examinations. It's now known as the Defense
16 Academy of Credibility Assessment.

17 After attending that school, I was interned by
18 other special agents. Since that time I have maintained my
19 education through attending various seminars as well as
20 lecturing in numerous seminars on polygraph.

21 Q. And so how many years while you're with the FBI was
22 your primary duty as a polygraphist or the group supervisor
23 for the polygraphists?

24 A. 15 years.

25 Q. And would you tell the court, as the supervisor of the

1 polygraphists of the FBI, did you supervise all of the
2 polygraphers in the FBI nationwide?

3 A. Yes. Initially as a supervisor you had 15 agents
4 nationwide that you supervised. The supervisor included
5 evaluations and review of all their work product prior to a
6 final decision being made. Later I was promoted to become
7 the unit chief or the national polygraph program manager
8 where I had supervision over all, I think there were around
9 58 examiners in the country then. During the course of that,
10 the numbers of tests we would review and I was involved in
11 was approximately 20,000.

12 Q. Did there come a time when you were involved with the
13 quality control of testing of high government officials?

14 A. Yes. The FBI headquarters unit did all the testing
15 for any sensitive or high level matter. I've participated in
16 tests with cabinet level officials, with United States
17 Attorneys, with special agents of the FBI, attorneys from the
18 Department of Justice.

19 Q. When you came to Orlando, did you also function as a
20 polygraphist?

21 A. Not in the FBI. I was there about a year and a half,
22 they already had somebody in place in Tampa, so I did
23 investigations prior to my retirement.

24 Q. And after you left the FBI, were you involved in an
25 association known as the American Polygraph Association?

1 A. Yes. I've been a member, I believe, since the mid
2 Eighties. That's a professional organization of polygraph
3 examiners nationwide. Ultimately I became the president of
4 the association and chairman of the board.

5 Q. Now, are you familiar with the case of known as
6 Daubert?

7 A. Yes.

8 Q. Could you tell the court what steps that your
9 profession has taken to come into compliance with the Daubert
10 requirements?

11 A. Well, the first step is the education and
12 professionalizing the examiners themselves. Another step is
13 the development of standards for conducting tests. The third
14 would be the, you know, the encouragement in having agencies
15 conduct polygraph research.

16 Q. Now, have you participated in setting up standards for
17 federal polygraphists to be in compliance with Daubert?

18 A. Yes. When I was both working at the FBI and the
19 president of the American Polygraph Association, I saw the
20 need to develop written standards of practice. Through my
21 efforts I primarily wrote them, of course, I had committees
22 of people working with me. They were approved and passed.
23 They were also sent to the American Society of Testing and
24 Materials, they were implemented at that organization. I was
25 given an award for that by the ASTM group.

1 Q. What does the ASTM group stand for?

2 A. That's the association -- American -- Association of
3 Standards Testing and Materials.

4 Q. And are those standards that you helped to write used
5 by federal agents in conducting polygraphs today?

6 A. They are implemented by all agencies, I believe, who
7 use polygraph. Any member of the association has to conduct
8 his tests using these standards.

9 Q. Earlier this morning when I asked you who you had
10 tested, I think you told me you had tested terrorists?

11 A. I've had a broad experience. I've tested terrorists,
12 defectors, cabinet level officers, white collar criminals,
13 general criminals, informants, internal tests.

14 Q. Any Assistant U.S. Attorneys?

15 A. On occasion.

16 Q. Any FBI agents?

17 A. On occasion, yes, sir.

18 Q. And before an FBI agent would go out on a secret, what
19 I call black -- what is that term?

20 A. Well, we don't use what you're referring to as black
21 ops, but when we had certain highly sensitive cases where we
22 need selected individuals to conduct those investigations, we
23 would polygraph them first before they were allowed on the
24 team.

25 Q. And was that at the behest of the director of the FBI?

1 A. Yes.

2 Q. And during the time that you were head of the
3 polygraphists in the FBI, did you have contact with the head
4 of the FBI?

5 A. Indirectly.

6 Q. I mean memos going back and forth on the polygraph
7 methodology.

8 A. Yes. All the reports went up through the criminal
9 division to the director involving sensitive cases.

10 Q. Now, I'm going to come back more to the science, but
11 just for the court and for anybody that's listening, what is
12 a polygraph?

13 A. Well, a polygraph is a recording device. It
14 simultaneously records your blood pressure, your pulse rate,
15 your respiratory patterns, your skin conductance, its sweat
16 gland activity. It can also record movements.

17 Q. And how are these things tested? How do you
18 physically do it?

19 A. Well, physically, you know, you have a, the polygraph
20 now is a computerized sensor box. The various attachments
21 are attached to the sensor box and then physically attached
22 to the person so that you can measure the changes that are
23 going on. The whole polygraph is premised on the theory that
24 you will undergo autonomic responses to certain types of
25 questions. The theory behind that is this: People will

1 react and pay attention to the stimulus that has the greatest
2 significance to them.

3 I use this example when I test a person. If you
4 were driving down the highway with your wife in a car or
5 you're returning home from a party in which alcohol was
6 served and the radio's on softly, your wife is talking,
7 you're listening to something, and all of a sudden on the
8 radio you hear the Supreme Court today in a stunning
9 announcement, immediately your attention goes to that
10 announcement from where it was. You probably reach down to
11 turn the volume up on the radio so you can hear it. You did
12 this automatically.

13 Now, at that instance you bent over to turn up
14 the radio, you also pulled the wheel of the car over and you
15 swerved. When you righted the car, you heard a siren.
16 Immediately your attention went to that siren. You looked in
17 the mirror, you saw a flashing blue light, your attention is
18 now at that light, and automatically without thinking you
19 look down at the speedometer and saw your speed. Your body
20 is going to undergo physiological changes based on all that,
21 all those stimuli.

22 Q. So if you, that person at that time were attached to a
23 polygraph machine, it would be reacting?

24 A. You can measure those changes. And also, if this
25 hypothetical officer goes after somebody else, you also

1 relieve, relax, take a deep breath. There you're responding
2 to stress, your attention goes to that thing that is most
3 significant at the moment. And that's what we do in a
4 polygraph test with the formulation of different types of
5 questions.

6 Q. Okay. Let's talk about the questions. What type of
7 questions do you ask?

8 A. There are three types of questions you ask on a
9 polygraph. There are relevant questions which go to the
10 issue to be resolved but which you do not know the answers.
11 There are irrelevant questions or neutral questions where you
12 do know the answers. For example, is today Thursday might be
13 asked on a test. And then there are comparison questions
14 asked. And the comparison question technique is the
15 technique of highest validity, it's used by all agencies, and
16 it's a technique I used in this matter.

17 What that technique does is say on its simplest
18 matter, based on this theory that your attention is going to
19 go to those things that are most important to you, if you
20 have been accused of stealing money from the office, a
21 comparison question would theoretically be along the lines
22 of, look, I know you told me you didn't do this and that you
23 appear to me to be an honest person, you know, before this
24 allegation came up, did you ever steal anything in your
25 entire life. And most people are going to say no. And maybe

1 in the back of their minds are thinking of some change they
2 took from their parents' dresser, maybe a magazine, maybe a
3 piece of food. But there's a little ambiguity in that
4 question that will cause some mental focus and some reaction
5 by the person, actually the person who's telling the truth.
6 Here's the reason.

7 If you compare the comparison question against
8 the relevant question, you're looking for the relative
9 difference in the size of those reactions. If I ask you on
10 an offense for which you could be, you know, theoretically
11 maybe go to jail or be arrested, and you did it, your
12 psychological attention, that's going to be the most salient
13 question on that test. If you didn't do it, you'll have some
14 arousal to that question, but you're going to be more
15 concerned about the comparison question technique. And the
16 bottom line on it is the job of the examiner to come up with
17 a comparison question that's significant enough to draw the
18 innocent person's attention to it.

19 The polygraph, let me go over the levels of
20 accuracy that I believe on it, and these are substantiated by
21 numerous research studies that I can have printed here, but
22 my own experience and experience of others. I believe that
23 the polygraph is probably about 95 percent accurate with
24 people who are being deceptive. With people who are
25 truthful, the polygraph is less accurate, it's probably

1 around 85 percent. It's what we call a false positive. It's
2 a person who shouldn't react reacts.

3 There are numerous reasons for that, and
4 basically it's this: They'll come into a polygraph
5 situation, let's just say by the time somebody would get to
6 me now in private practice, or when I was in the FBI, who did
7 not commit a crime, who was innocent or was telling the
8 truth, by the time they have maybe been charged or charges
9 are pending and they've hired an attorney and, you know,
10 maybe they had to tell their boss, maybe people don't believe
11 them, the neighbors, for whatever reason, they are at a
12 higher level of general nervous tension. And the higher that
13 is, the more likely you can have an error. That's why this,
14 the hypothesis that you see around it's called the friendly
15 polygrapher syndrome.

16 Q. That was discussed in the Sixth Circuit court case.

17 A. Okay. Let me explain what goes on there. And I
18 disagree with the fundamental hypothesis of the friendly
19 polygrapher and it's been pretty much discounted by
20 statistics of individual examiners.

21 Here's the friendly polygrapher syndrome:
22 They're going to say if I do a test for a defense attorney
23 that, you know, if the guy passes, you do a report; if he
24 fails, nothing's ever said to anybody on it. The hypothesis
25 says that person doesn't have anything to fear, therefore

1 they're not going to react on that polygraph. And I take
2 issue with that. And this is based on the experience and
3 number of tests I do.

4 When a person comes into the room for polygraph,
5 let me tell you, everybody is at an enhanced level of general
6 nervous tension. Okay. Nobody comes in there and sitting
7 calmly because they don't know if it works or it doesn't and
8 they have a lot that rides on that test. If the person is
9 telling the truth, if I'm selected to do a polygraph, it's
10 probably because there aren't many other avenues of proof
11 available in the case. So their hopes are up. They need it.
12 Their anxiety is up. They want to pass that test. And so
13 there's enough psychological stimulus to get them to respond
14 on those questions.

15 Now, when a deceptive or guilty party comes in to
16 take that test, they also have a lot of reasons to be aroused
17 enough for that test. For example, they don't want to be
18 caught in a lie to their attorney. Okay. Because inwardly
19 they feel he might not do his best job for them on the stand.
20 He may increase his fee. There may be a plea agreement
21 that's thrown out. There are a lot of things that enter into
22 a person's psyche when they come in for the test. I've not
23 found in practice that somebody sits there calmly and just
24 because it's for a defense attorney passes a test. I don't
25 think there's any validity to that concept at all.

1 Q. When you were with the FBI, what percentage of people
2 showed no deception or passed?

3 A. Okay. My personal statistics were half the people
4 passed and half the people flunked the test that I gave.
5 Interestingly enough, that same statistic applies to my
6 private practice. To me that says people really don't know
7 one way or the other, in the types of cases I get involved
8 in, whether the person's telling the truth, and that's just
9 the way it works out.

10 Examiners who have different caseloads, types of
11 patterns may have different, you know, statistics on that,
12 but that's what mine's been throughout my career.

13 Q. Now, could you tell the court what is your polygraph
14 test sequence? How do you conduct it?

15 A. Well, the first part of a polygraph is to get advised
16 by the attorney and briefed on the case facts on a test. A
17 lot of times they will have, you know, proposed questions for
18 you on the test, and the important part of the test is
19 identifying the issues to be tested and then formulating the
20 questions. The sequence of the test is this: A person comes
21 in for pretest interview, and a pretest interview can last an
22 hour, it could be longer. You're getting background
23 information for identification purposes. You're getting
24 medical information so you can conduct the test. You're
25 making observations of this person to just see how they're

1 reacting in general. You're going over the allegations in
2 detail. You're formulating the questions together in advance
3 so they're all reviewed with the examinee.

4 And then you are conducting a practice test which
5 is simply, it's a numbers test. You have them lie on a
6 number and repeat that lie to you. What this does is allows
7 a person to sit in the chair with the attachments on him and
8 orient to the process because, you know, there's a lot of
9 novelty the first time you have a blood pressure cuff on your
10 arm, you're asked to sit still, you're asked to, you know,
11 breathe normal patterns, and so there's some tension there.
12 And that gets dissipated during that test.

13 It also gives me a look at what a low level lie
14 may look like. Everybody responds a little differently.
15 Some people may be on some medication that can effect one of
16 the channels on the polygraph, maybe breathing if they have
17 asthma and they've taken medication for that. Or people take
18 blood pressure medications. So you need to be aware of it.
19 But the polygraph does not, it's not absolute measures. On
20 the polygraph chart itself, you're looking for relative
21 comparisons. So even if a person's on blood pressure
22 medication, which tends to suppress their overall reactivity,
23 when you're comparing that to another question, you can see
24 the differences. Some are more obvious than others, but --
25 all right. That's the pretest interview.

1 And then you go into the testing phase.

2 Q. Do you try to put them in an unfriendly environment or
3 a --

4 A. Professional environment.

5 Q. Professional environment. And are you dressed much as
6 you are today?

7 A. Yes.

8 Q. And do you, when you're doing the pretest interview,
9 are you doing it much as you did when you're conducting a
10 field interview with the FBI?

11 A. It's a standard process. I do it the same.

12 Q. Now, how were the tests that you give, how do you
13 score them? Is there a database that they are compared
14 against?

15 A. Okay.

16 Q. And how many questions do you generally ask?

17 A. All right. Let's go over the database first
18 evaluation. There's -- the method of evaluating polygraph
19 charts is called numerical evaluation, and different levels
20 of response are rated differently. There's a three point
21 scale, you know, where it may be the differences are
22 apparent, the differences may be great, and so you decide
23 through yourself by experience which ones means how much.
24 You decide the value system for it. There are certain cutoff
25 points where you can make a decision. Those cutoff points

1 have been determined by the research studies into the
2 technique. In other words, if you get so many points on this
3 scale, you can make a decision with a high degree of
4 confidence that the person's telling the truth. There can be
5 an inconclusive range where you don't have enough points to
6 tell one way or the other. Or the range may include
7 deception.

8 Currently there's also two computer algorithms
9 that are used to evaluate that data, one by John Hopkins
10 Applied Physics Laboratory which has been in use since the
11 late Nineties, and another called OSS 3 which was developed
12 by personnel down at the Department of Defense Polygraph
13 Institute. They read data and they give you absolute values
14 and probabilities of whether or not they think it's deceptive
15 or not.

16 Q. Now, are their findings put into a computer program
17 that you utilize?

18 A. Yes. After I do my exams and evaluate them, I will
19 look as a reliability check at one of those computer
20 algorithms.

21 Q. Either the one by Johns Hopkins or the one by the
22 Department of Defense?

23 A. Yeah, one or both.

24 Q. Now, in your work with the FBI and your work with the
25 National Association of Polygraphists, especially as its

1 president, did you become familiar with Daubert and the
2 factors of admissibility of polygraphs?

3 A. Yeah, in a layman's sense.

4 Q. And can you tell the court and jury what efforts have
5 been made to insure that this is, that polygraphs are based
6 upon a scientific basis?

7 A. Well, one, you're only supposed to use a validated
8 technique, one that's been supported and replicated by
9 research. That's the first thing. So you know you're
10 dealing with a test that works.

11 Number two, there are required levels of
12 education to become an examiner. There are required levels
13 of continuing education to maintain your competency.

14 Q. And what about the theory of technique that's
15 subjected to peer review?

16 A. Yes.

17 Q. And publication?

18 A. Yes. That goes back to the research that is
19 published.

20 Q. Now, in your curriculum vitae which do you have it
21 there in front of you?

22 A. Yes.

23 Q. This is defense exhibit 44, Your Honor.

24 Do you list your educational and general
25 background on page three?

1 A. Yes.

2 Q. And do you list your polygraph training and continuing
3 education on page four and five?

4 A. Yes and six.

5 Q. Is there any of the continuing training or continuing
6 education mentioned in this CV that we have not already
7 discussed?

8 A. I think since I last gave you this I've attended
9 additional seminars.

10 Q. But I mean I'm seeing here the John F. Reed school of
11 interview and interrogation. The University of Utah
12 detection of deception workshop. The Delta College, Saginaw,
13 Michigan one week seminar on polygraph fundamentals and
14 techniques. American Polygraph Association annual seminars,
15 '83, '91, 2001, 2004, 2006, 2007. Did you participate in
16 those seminars?

17 A. Yes.

18 Q. And have you written -- and also you have clinical
19 testing of sexual offenders, one week testing; where was
20 that?

21 A. That was conducted over in St. Petersburg by a
22 polygraph school there where we brought in a leading expert,
23 Eric Holden, in that area to put on the school for one week.

24 Q. Are you certified as an polygraph examiner?

25 A. I was.

1 Q. For how many years?

2 A. '81 through '96.

3 Q. And does your curriculum vitae set out all the
4 different jobs and positions you've held throughout your FBI
5 career?

6 A. It does.

7 Q. And does it set out the lectures and training that you
8 have provided?

9 A. It does.

10 Q. And on page eight and nine, are these lectures and
11 training that you've given and been a moderator or a speaker
12 at?

13 A. Yes.

14 Q. Have you spoken to the CIA?

15 A. Yes.

16 Q. To the Department of Justice professional office of
17 professional responsibility?

18 A. Yes.

19 Q. Have you taught at the FBI academy?

20 A. Yes.

21 Q. Have you taught at the Florida Polygraph Association?

22 A. Yes.

23 Q. International Association of Chiefs of Police?

24 A. Yes.

25 Q. Did you teach and help design the curricula for the

1 law enforcement polygraph course at the FBI academy?

2 A. Yes.

3 Q. Did you work and participate in polygraph analyses at
4 the National Security Agency?

5 A. Yes.

6 Q. United States Attorney's conference?

7 A. Yes.

8 Q. And lecturing on public corruption?

9 A. Yes.

10 Q. University of Central Florida, use of polygraph in
11 death investigations?

12 A. Yes.

13 Q. And the Western Regional Joint Drug Task Force,
14 polygraph of informants, did you lecture at that?

15 A. Yes.

16 Q. Have you been declared an expert witness in any
17 federal courts?

18 A. Yes.

19 Q. How many times?

20 A. I think three.

21 Q. Have you testified in this court in front of Patricia
22 Fawsett?

23 A. I have.

24 Q. Have you testified in Mississippi federal court?

25 A. Yes.

1 Q. Were you qualified as an expert?

2 A. Yes.

3 Q. In the State of Florida have you been qualified as an
4 expert to testify on polygraph results?

5 A. Yes.

6 Q. On how many occasions?

7 A. In state court?

8 Q. Yes.

9 A. Three or four.

10 Q. Have you been qualified to give expert testimony in
11 federal court in Georgia, Northern District of Georgia?

12 A. Yes.

13 Q. What about in the Middle District of Florida, Ocala
14 Division, in front of Judge William Terrell Hodges?

15 A. Yes.

16 Q. Have you received any awards and recognitions?

17 A. I have. They're listed there. I mentioned one
18 before, the latest would, I don't know if it's on there or
19 not, is the Baxter Award for, you know, contributions to the
20 profession.

21 Q. And that was in August of 2007?

22 A. Yes.

23 Q. That honors individual or group that advances
24 polygraph profession through tireless dedication and
25 standardization of polygraph principles and practices?

1 A. Yes.

2 Q. Now, you mentioned earlier that you received an award
3 for helping to set standards for federal polygraphers?

4 A. That's correct.

5 Q. And what award is that?

6 A. There's an ASTM award there.

7 Q. And that was in July of 2000?

8 A. Yes.

9 Q. And it was for the physio -- psychophysiology for
10 authorship of E 3026-00. Are those the standards you set up?

11 A. They're the standards, yes.

12 Q. And it's the guide for PPD examinations of practice?

13 A. Yes.

14 Q. And that was essentially for federal polygraphers?

15 A. It's for everybody.

16 MR. SLAUGHTER: Your Honor, I'd move his
17 curriculum vitae in evidence, 44.

18 THE COURT: It's received in evidence as 44 for
19 the defendant.

20 MR. SLAUGHTER: Would you like to see a copy,
21 Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. SLAUGHTER:

24 Q. Have there been study on the accuracy of polygraphs?

25 A. Yes, there have.

1 Q. And just for the record, if you could tell us what
2 studies are, what the results have been for -- and these
3 would be studies that are published for guilty subjects and
4 for innocent subjects?

5 A. Okay. I have a table here of the validity of
6 examiner's decisions, nine studies before me. And I also
7 have a synopsis.

8 THE COURT: Your Honor, what I was wondering is
9 if at lunchtime we can just put them in as a bulk piece of
10 evidence that are articles about the scientific validity of
11 polygraphs.

12 MR. GOLD: Your Honor, I haven't seen any of
13 these articles. I mean I don't oppose the CV, but to put in
14 documents in bulk that we've never seen I would object to.

15 THE COURT: Okay. I will take it up later after
16 the government has had a chance to review the exhibit.

17 Q. Now, when did you conduct the examination of Mr. Frank
18 Amodeo?

19 A. I conducted several examinations. The first one was
20 on April 10, 2008.

21 Q. And the second one?

22 A. April 15, 2008. Also conducted examinations on April
23 24 and May 9, 2008.

24 MR. SLAUGHTER: Just one moment, Your Honor.

25 Q. Do you have the tests up there?

1 A. I have copies of all of them here.

2 Q. Do you have my copies?

3 A. Just mine.

4 MR. SLAUGHTER: Just one moment, Your Honor. I'm
5 looking for my set of the tests.

6 MR. GOLD: At some point I'd like to see copies
7 of the tests. I've never been provided the actual tests.

8 THE COURT: We're close to time for a break. I
9 try to break every 90 minutes for Mr. Rolland's benefit and
10 so we'll take a 15 minute recess, then we'll go to the noon
11 hour. I will break at 12. And then I have a telephone
12 meeting with the circuit executive at one o'clock, I think it
13 shouldn't last more than 15, 20 minutes.

14 (BRIEF RECESS.)

15 THE COURT: You may proceed, Mr. Slaughter.

16 MR. SLAUGHTER: Your Honor, I would like to move
17 into evidence the actual reports and Mr. Gold was opposed to
18 that, exhibit 45.

19 MR. GOLD: Your Honor, I am opposed to the
20 reports. He can certainly testify to his conclusions, but
21 I'm not going to stipulate to the actual reports going into
22 evidence.

23 MR. SLAUGHTER: I think they should come into
24 evidence, Your Honor.

25 THE COURT: Are they marked for identification

1 now?

2 MR. SLAUGHTER: They're marked for identification
3 and I mean one way to get around it, the first part is --

4 THE COURT: Well, there's not an objection to his
5 opinion, so why don't you proceed with that and I'll reserve
6 ruling on the reports.

7 MR. SLAUGHTER: Well, Your Honor, before he gives
8 his opinion, he would have to tell the court what that test
9 was for, so it's written on the report, so he would need to
10 read what was set out and given to him and then he tested as
11 a result of that. I mean just reading the --

12 THE COURT: Mr. Slaughter, there is no objection
13 to his giving his opinion and I'm not going to rule on the
14 admission of the reports until he's done that.

15 BY MR. SLAUGHTER:

16 Q. Do you have the exhibit? What number is it?

17 A. Yes, I do. Exhibit 45.

18 Q. And where was that test administered?

19 A. In your offices.

20 Q. And had you spent time with me to learn as much as you
21 could about the issues involved in this case?

22 A. Yes, we did.

23 Q. Were you aware that Mr. Amodeo suffered from
24 bipolarism?

25 A. Yes, I was.

1 Q. And was it important for you in the testing process to
2 know whether or not he was taking his medication?

3 A. Yes, it was.

4 Q. And did you take into account each time that you
5 tested him whether or not he had taken his medication?

6 A. Each time I tested him I asked him if he did, and then
7 I would also, you know, just observe his general behavior.

8 Q. Were there days that you sent him home?

9 A. Yes.

10 Q. And why was that?

11 A. Sometimes he would be in a high state of agitation and
12 simply couldn't sit still.

13 Q. And other days, any other conditions that you noticed?

14 A. When I thought he was in a testable condition, I
15 tested him.

16 Q. And besides your talking to me, did you talk to Mr.
17 Amodeo?

18 A. Yes, I did.

19 Q. And did you receive some e-mails and documents from me
20 prior to these tests to familiarize yourself with some of the
21 issues?

22 A. Yes. We reviewed numerous documents.

23 Q. Now, with reference to the test administered on April
24 10 of 2008, what was the purpose of that test?

25 A. The purpose would be found in the summary.

1 Q. All right. Would you read the summary to the court?

2 MR. GOLD: Your Honor, I'm going to object to him
3 reading out of the report. I mean either he's got a
4 recollection of what he did or he doesn't.

5 MR. SLAUGHTER: Your Honor, is this a gotcha
6 thing with your memory? I mean the best evidence would be
7 this is what he was tested on and then he was tested. Now,
8 is Mr. Keifer supposed to remember every little detail of all
9 four tests? That would be ludicrous. The best evidence of
10 what they were testing on would be --

11 THE COURT: Well, all the objection is is that
12 there's no predicate to refresh his recollection. If he
13 doesn't recall all the minutiae, then you can refresh his
14 recollection.

15 Q. Let me ask you this: Do you recall all of the facts
16 set forth in the summary on 4-10-08 test?

17 A. Yes, now that it's in front of me.

18 Q. You do recall it?

19 A. Yes.

20 Q. Would you tell the court what the issues were?

21 A. Well, the issues were whether or not Mr. Amodeo had
22 a --

23 MR. GOLD: Your Honor, objection. I believe he's
24 reading from the report again.

25 THE WITNESS: No, no, no, no.

1 THE COURT: Just deliver the report back to Mr.
2 Slaughter.

3 THE WITNESS: On the first report, the test dealt
4 with Mr. Amodeo's hiring of legal and accounting experts to
5 give him opinions on whether what he was doing was legal and
6 proper or not, and in the course of that, whether or not Mr.
7 Amodeo provided them with all the material facts so they
8 could make their decisions.

9 Q. And do you remember which particular transaction it
10 was that you were testing on?

11 A. No, not off the top.

12 Q. If I show you this, would this refresh your
13 recollection?

14 A. Sure.

15 Q. Does that refresh your recollection?

16 A. Yes. I have a somewhat imperfect understanding of all
17 these facts, but at the time I fully understood what I was
18 testing on.

19 Q. What was the transaction that he was asking for
20 professional help?

21 A. I believe they were attempting to get guidance on the
22 legality of dividing up the companies and that from that
23 where the payroll tax liability went and who should pay it
24 and when.

25 Q. And do you recall whether they were purchasing a

1 company in Detroit, Michigan that had a tax liability?

2 A. Yes. That was the Presidion companies.

3 Q. What questions did you ask Mr. Amodeo?

4 A. I asked him whether or not he withheld material facts
5 from the Holtz team. We had previously defined the Holtz
6 team and Mr. Amodeo wrote down all the members of it, so by
7 reference he had those various members.

8 I asked him --

9 Q. What was his answer?

10 MR. GOLD: Your Honor, if he's going to refresh
11 his recollection, I at least want to know that that's what
12 he's doing, that he's reading from it.

13 THE COURT: Would you deliver all those reports
14 to -- do you still have the reports there?

15 THE WITNESS: Pardon?

16 THE COURT: What is it you're looking at?

17 THE WITNESS: These are my reports.

18 THE COURT: Give those to Mr. Slaughter, please.

19 BY MR. SLAUGHTER:

20 Q. Do you recall what his answers are without looking at
21 the test?

22 A. Yes or no depending on the question. But if you ask I
23 asked a certain question, I can answer that.

24 Q. Did you ask him did you deliberately conceal any
25 material facts from the Holtz team or others present at the

1 December 21 meeting? Do you remember his answer?

2 A. That's my recollection. His answer was yes.

3 Q. What?

4 A. Oh. No. I'm sorry. I'm getting confused.

5 Q. B. On December 21, 2004, it says, did you authorize a
6 full disclosure of the company records to the Holtz team and
7 others present. What was his answer?

8 A. Yes.

9 Q. Number C. Did you deny access to information from
10 Sunshine companies to any member of the Holtz team or others
11 present on the December 21 meeting?

12 A. No. Or yes, I believe. Say that again. You know,
13 this was an extremely complex case and recollection of the
14 facts of the case.

15 Q. Did you deny access --

16 A. No. The answer was no.

17 Q. And, D, did any member of the Holtz team or others
18 present at the December 21 meeting ever tell you there was
19 anything wrong or illegal with the purchase of the Sunshine
20 companies?

21 A. No.

22 Q. And what was your evaluation and how did you evaluate
23 Mr. Amodeo's answer?

24 A. My evaluation was that the recorded responses were not
25 indicative of deception to those questions and I believe I

1 used a Polyscore algorithm to corroborate or support my
2 decision and also showed the reflection that it was not
3 indicative of deception.

4 Q. Now, in your world as a polygrapher, are there answers
5 to questions that are, you can't make a determination whether
6 they're being deceptive or not?

7 A. Yes.

8 Q. And what are they called?

9 A. They're called inconclusive.

10 Q. Did you have any inconclusive answers from Mr. Amodeo?

11 A. No.

12 Q. Did the four tests that you gave him, were these the
13 only four tests that you gave?

14 A. They were the only four tests.

15 Q. No other tests or any questions were held back?

16 A. No other tests nor do I know of anybody else who ever
17 tested him.

18 Q. The second test was dated 4-15, and there's a very
19 long factual background to these four questions. Do you
20 recall the factual background of these four questions?

21 A. Yes. On the second test Mr. Amodeo outlined and wrote
22 out what, in fact, was the Presidion plan.

23 Q. And do you recall what the Presidion plan was?

24 A. Not in any detail.

25 Q. Would it help you if you read this?

1 A. I could read it, yeah.

2 Okay.

3 Q. You've read it all?

4 A. It would take me a while to memorize it, so I'm just
5 going to --

6 Q. Don't just skim it. Read it so you can tell us that
7 you recall it.

8 A. All right.

9 MR. SLAUGHTER: Your Honor, I really think that
10 this should be able to come in because this is what the
11 summary of what Frank Amodeo told him what the Presidion plan
12 is, and to ask Mr. Keifer to recall all of the details of the
13 Presidion plan from memory over a year later I think is
14 unfair. This is a, would be a statement from Mr. Amodeo,
15 although it's hearsay, but this is what he believed the
16 Presidion solution, the Presidion plan was. He's testified
17 to that. He's been cross examined on this. And Mr. Keifer
18 should be able to either read it or we put it into evidence
19 so it's clear exactly what the Presidion plan is because it's
20 relatively complex. It's an entire page.

21 MR. GOLD: Judge, his inability to remember what
22 was in those tests I think goes to his credibility, and I
23 think we're entitled to know what he remembers and what he
24 doesn't.

25 MR. SLAUGHTER: Your Honor --

1 THE COURT: We're interrupting him. He's
2 reading.

3 THE WITNESS: Okay.

4 BY MR. SLAUGHTER:

5 Q. Do you recall what the Presidion plan was?

6 A. Yes.

7 Q. What was it?

8 A. As I recall, the Presidion company was having problems
9 with their workers compensation insurance and if it lapsed,
10 all the workers who they were doing the payroll for would not
11 use them, so they faced a severe loss of business. And so
12 the owners of the company then came to Mr. Amodeo to help
13 work that out.

14 One of the things that Frank wanted to do was to
15 obtain a new workers compensation policy. This would retain
16 their base of business. And then he was going to -- you
17 know, so the business wouldn't be disrupted. And in the
18 course of doing that, he wanted to start repaying, I believe,
19 the IRS out of the monies, some of the monies that were being
20 managed. And he was also going to try to improve the
21 business, to, you know, through efficiencies and
22 consolidations. In general, I think that's what he was
23 doing.

24 Q. Do you recall him saying that they were going to use
25 tax monies to --

1 MR. GOLD: Objection. He's answered the
2 question. This is also leading.

3 Q. Do you recall, with a yes or no, whether or not he was
4 going to use any of the government tax monies to improve the
5 efficiencies of Mirabilis, and whether or not he was going to
6 pay all of the tax monies that were due?

7 A. I think that was part of it and that's why he got the
8 experts to, you know, to say, yes, you can do that.

9 Q. You asked him the following questions: In his
10 representative capacity as your forensic account at any
11 time --

12 MR. GOLD: Objection. He can ask him what the
13 questions were, if he can't remember.

14 MR. SLAUGHTER: Your Honor, this is the absolute
15 point of being ridiculous.

16 THE COURT: Well, let me tell you why I don't
17 think it's ridiculous, Mr. Slaughter. You're offering his
18 opinion. The first one I guess has come in without
19 additional objection, but I don't know, I don't know whether
20 the government is going to have objection to the opinion. If
21 I receive the report in evidence ahead of time, then I may
22 be, technically speaking, receiving material that I shouldn't
23 have otherwise. It's only -- the reports are only relevant
24 to his opinion, and you know a lot of times the reports
25 themselves contain material that is otherwise inadmissible,

1 notwithstanding the 702 opinion itself being admissible. So
2 I don't know what's in the report. You do. And maybe your
3 view that it's ridiculous is correct, but I don't know. I am
4 playing by the rules. Can't say that it is because I don't
5 know what's in the report.

6 Q. I'm going to ask you if you remember the exact wording
7 of the four questions that were asked or would it help you to
8 refresh your recollection.

9 A. It helps me to refresh because on an annual basis I'm
10 doing over 200 tests, many of these are very complex, and I
11 rely on my written product to refresh my memory on each one
12 of them.

13 THE COURT: Now, Mr. Gold, I don't know whether
14 you're going to continue to object and I don't know the basis
15 of the objection. If it's just to make it difficult, I'm
16 sure it's not, but if that's part of it, there's another
17 exception to hearsay and that is that it's prior recollection
18 recorded. He knew at the time what he asked and he recorded
19 it and it can come in on that basis. So if it's, you know,
20 if your objection goes to the -- well, let me tell you, I
21 don't think your objection that his inability to remember the
22 questions verbatim goes to his credibility. I reject that
23 objection, overrule it. On the other hand, if you've had a
24 chance to look at this and your objection goes beyond that
25 and is based on there being material in the report that would

1 not otherwise be admissible, then I'll hear that objection.
2 But I don't want to waste a lot of time on this.

3 MR. GOLD: I don't either, but I think if he has
4 been prepared to testify, he would have reviewed this
5 material in advance, he would have been able to answer these
6 questions without doing nothing more than reading in the
7 report. And the court has to judge his credibility and his
8 opinion. No matter how many he's done during the course of
9 the year, I'm assuming he would have been prepared to testify
10 today other than just read his report. So I am concerned
11 when it comes to a witness's credibility, their memory and
12 ability to recall certain things goes to credibility.

13 THE COURT: I think it's important that there be
14 a precise recitation of the questions asked if he's then
15 going to give an opinion as to the truthfulness of the
16 question. I do not believe that your objection is well taken
17 to the extent that it goes to his credibility. I don't think
18 any of us -- well, maybe some of us can -- but I don't think
19 I could, would want to make a representation as to a lengthy
20 statement or question without having a chance to look at it.

21 So I'm going to allow him to look at the question
22 and say what the question was. I don't know what else is in
23 the report. If you have other objections beyond that, please
24 raise them.

25 MR. SLAUGHTER: Your Honor, then are you going to

1 led him read the actual question and the answer?

2 THE COURT: Yes. Unless there's some other
3 objection.

4 THE WITNESS: On this test, first question I
5 asked was in his representative capacity as your forensic
6 accountant, did you tell Laurie Holtz about the Presidion
7 plan as previously described?

8 Answer. Yes.

9 Question B. In his representative capacity as
10 your attorney, did you tell Richard Berman about the
11 Presidion plan as previously described?

12 Answer. Yes.

13 C. Did Laurie Holtz ever tell you that any part
14 of the Presidion plan as described was illegal and criminal?

15 Answer. No.

16 D. Did Richard Berman ever tell you that any
17 part of the Presidion plan was illegal or criminal?

18 Answer. No.

19 Q. What were your findings?

20 A. My findings were these responses were not indicative
21 of deception. Again, I did a reliability check with
22 Polyscore and found a probability of deception was less than
23 one percent.

24 MR. SLAUGHTER: Your Honor, I would resubmit the
25 actual summary under past recollection recorded because

1 there's a lot of details in there that these questions refer
2 to and the court has already heard Mr. Amodeo testify and
3 this is what, the exact wording of what he told Mr. Keifer is
4 in this summary. The rest of the summaries are much shorter,
5 but this is a very lengthy one on the test he just reported
6 to you. So I would ask that it come in as past recollection
7 recorded.

8 MR. GOLD: Your Honor, to the extent that that's
9 what he's trying to do, I mean technically, and I'm not going
10 to raise this, technically under past recollection recorded
11 the document doesn't come in, it would have to be read in.
12 To save the court time and everything else, I will allow that
13 page to come in for the court's reference.

14 THE COURT: Thank you, Mr. Gold.

15 BY MR. SLAUGHTER:

16 Q. What's the next test that you performed with Mr.
17 Amodeo?

18 A. That test was on April 24.

19 Q. And do you recall that test?

20 A. Yes, I do.

21 Q. And do you recall what the test was for?

22 A. Yes. It was regarding whether or not he committed
23 mail fraud or wire fraud.

24 Q. In his mind?

25 A. Yes.

1 Q. And do you recall what the questions were?

2 A. Yeah. I recall that we used language from the
3 statutes phrase for Frank in the formulation of questions
4 about whether or not he was involved in a fraud or -- I'm not
5 sure what the second question was without looking at it. It
6 would be related to that.

7 MR. SLAUGHTER: Your Honor, under past
8 recollection recorded, can I have him read the two questions
9 and the answers?

10 THE COURT: Yes, sir.

11 Q. Do you have them?

12 A. Yes. During -- question A. During the period between
13 June 2005 and December 2005, were you aware of a plan by the
14 Presidion corporation or any of Presidion's subsidiaries to
15 defraud the IRS or evade payment of taxes?

16 Answer. No.

17 Question B. Are you aware of any plan, whether
18 through fraudulent representations, promises or premises, to
19 deprive any customer of the Presidion PEOs of property, money
20 or services?

21 Answer. No.

22 Again, my opinion and recollection, it's not
23 indicative of deception; again, supported by a different
24 computer algorithm, OSS 3.

25 Q. And the final test was on May 9, 2008. Do you need to

1 refresh your recollection?

2 A. Yes.

3 Q. Let me ask you, it's pretty complex stuff. Is your
4 recollection refreshed?

5 A. Yes.

6 Q. What was this test for?

7 A. Once the workers compensation insurance was canceled
8 for Presidion, Mr. Amodeo had been in contact with a company
9 called Sunz to provide that coverage. That coverage was
10 then, was not given to Presidion but was given to Mirabilis
11 which was the company that Frank had organized. They
12 received the --

13 Q. They being?

14 A. Mirabilis received monies from the PEOs including the
15 collection of the workers compensation funds, which they then
16 used, I believe he said that there was an overpayment of the
17 workers compensation funds which he was going to use, I
18 believe, to pay the tax liabilities.

19 MR. SLAUGHTER: Your Honor, can we move in the
20 four questions as past recollection recorded into evidence?

21 MR. GOLD: Well, Judge, he just testified to them
22 anyway.

23 THE COURT: Motion's granted.

24 Q. Go ahead and read the questions and the answers and
25 your findings.

1 A. Okay. Question A. To your knowledge, was Sunz being
2 paid with trust fund monies between August '06 and May '07?

3 Answer. No.

4 Did you or -- question B. Did you or are you
5 attempting to defraud the government?

6 Answer. No.

7 When you negotiated a settlement of the
8 collateral account with Sunz, were those monies, to your
9 knowledge, workers compensation overpayments?

10 Answer. Yes.

11 Did you use the Sunz proceeds for the direct or
12 indirect benefit of the IRS?

13 Answer. Yes.

14 Again, my evaluation was no deception and, again,
15 it was reliability checked and indicated it was non-deceptive
16 also.

17 Q. With reference to the four tests that you testified
18 about, can you tell the court whether or not you believe
19 these are what you call clean tests?

20 A. These are clean tests.

21 Q. And what does that mean?

22 A. That means I used the standard procedure. I asked, I
23 thought, good questions. And the results were scorable.
24 There was not a problem in evaluation of the data.

25 Q. Now, as a polygraphist, do you take into account

1 whether somebody is a psychopath or a sociopath?

2 A. Yes. You try to take in as much information as you
3 can on anybody.

4 Q. And is there any way to test a psychopath or a
5 sociopath?

6 A. Yeah. People falsely assume that they can't be tested
7 because they have no conscience, but basically when you go
8 back to salience, what's important to a person causes a
9 reaction, and to a sociopath what's important is not being
10 caught and so they respond on a polygraph so that you can
11 detect them. There have been studies done by Raskin and
12 O'Hare at the, in British Columbia in prison there, and
13 sociopaths respond on a polygraph at the same levels as the
14 general population. So they can't beat a test by that
15 condition.

16 Q. One day after the last test was administered Mr.
17 Amodeo was declared incompetent. Are you aware of that?

18 A. No, I wasn't.

19 Q. Does that have any impact on your -- incompetent as
20 being bipolar. Does that have any impact on your decisions
21 as to whether or not he was being truthful or deceptive?

22 A. No. He was taking medication for it. I thought that
23 he knew when he was telling the truth and when he wasn't, so
24 I don't see that it had any effect.

25 Q. Now, the controlled questions that you would use with

1 Mr. Amodeo, could you give us an example of a controlled
2 question where you would know what the result was going to
3 be?

4 A. Well, in Frank's case, since he had been disbarred
5 once for activity, I believe I used as a control on one of
6 them, other than that one instance, you know, prior to the
7 year 2000, did you ever do anything else for which you could
8 have been disbarred.

9 Q. And his answer was?

10 A. His answer was no.

11 Q. And that was the answer you were looking for?

12 A. Yes.

13 Q. Because you thought it would be a purposeful or a lie?

14 A. I thought it would be a lie or cause him significant
15 mental processing to, you know, recall what he had done and
16 what he hadn't done.

17 Q. And so then when you -- that would be one of your
18 control questions. And then when you test on the questions
19 that you asked him, the four or five, you would compare that
20 to a controlled question?

21 A. I would compare it to a relevant question, one of the
22 questions on one of these tests.

23 Q. The relevant questions being?

24 A. The ones we just read.

25 Q. So when he said no, that indicated deception?

1 A. It indicates a response, his response for various
2 reasons.

3 Q. The control question. When he said no, that would
4 show deception?

5 A. Yeah. The correct way of stating that is he reacted
6 on the question. I don't know for sure if it was because of
7 deception or mental processing.

8 Q. But, and then that would be compared to the relevant
9 questions?

10 A. Relevant questions.

11 Q. On each of the four examinations did you change the
12 control questions?

13 A. Yes.

14 Q. And do you recall some of the other control questions
15 you asked?

16 A. A general one would be, you know, prior to a certain
17 date did you ever lie to somebody that trusted your word.
18 Did you ever cheat anybody in a business deal? Questions
19 along those lines.

20 Q. And his reaction was?

21 A. Well, there would have been enough so that I can
22 conclude he was truthful in the relevant issues. In other
23 words, there would have been response there. There has to be
24 response to them for me to make a decision.

25 Q. Now, a couple final questions. How many federal

1 agencies use polygraphs?

2 A. I can give you the names. FBI, Secret Service, NIS,
3 Air Force, NRO, CIA, DIA, DCIS, ATF. I think IRS may still
4 use them.

5 Q. NSA, National Security Administration?

6 A. Yes. Yes.

7 Q. Any others?

8 A. Not that I can recall right now.

9 Q. And during the time that you were with the FBI, did
10 you teach or conduct seminars for those agencies?

11 A. Yes.

12 Q. And did you work at the schools that taught them?

13 A. Yes.

14 Q. How much were you paid for this examination?

15 A. Examinations, I think a thousand dollars a test.

16 Q. So approximately \$4,000?

17 A. Yes.

18 MR. SLAUGHTER: That's all the questions I have.

19 Q. Oh, a couple more. Do you generally do work for
20 defense lawyers here in town?

21 A. Yes.

22 Q. And you've done a number for my office?

23 A. Yes.

24 Q. What would you say the pass rate is at my office?

25 A. It's not greater than 50 percent, I know that.

1 Probably less.

2 Q. And would that be because they're being truthful --

3 MR. GOLD: Objection.

4 Q. Let me ask -- is your test results and opinion for
5 sale?

6 A. Absolutely not.

7 MR. SLAUGHTER: That's all I have.

8 MR. GOLD: Do you want me to start, Your Honor,
9 and go to noon?

10 THE COURT: Yes, sir.

11 CROSS EXAMINATION

12 BY MR. GOLD:

13 Q. Good morning, Mr. Keifer, again, I should say.

14 A. Hello.

15 Q. All right. You've been retired from the FBI for about
16 13 years?

17 A. Yes.

18 Q. And since that time you have not worked for the
19 government doing polygraphs at all?

20 A. The federal public defender I do work for.

21 Q. Okay. Now, that's a defense group that is not a
22 prosecutive agency?

23 A. Yes.

24 Q. And so your practice is primarily for criminal defense
25 lawyers?

1 A. Yes.

2 Q. Now, you said that you have done other work for Mr.
3 Slaughter. Over the last ten years how many polygraphs do
4 you think you've administered for either Mr. Slaughter or his
5 partner, Mr. Leventhal?

6 A. Maybe 30 to 50.

7 Q. And now you said before you performed the first
8 examination you spoke with Mr. Slaughter, correct?

9 A. Correct.

10 Q. And because that's important for you to familiarize
11 yourself with as many facts as you possibly can?

12 A. Yes.

13 Q. And the documents that Mr. Slaughter gave you to
14 review, do you recall what they were?

15 A. Well, there were e-mails, there were some defense
16 exhibits, I believe. There was factual summaries of the
17 case.

18 Q. Prepared by who?

19 A. Either Mr. Slaughter or Mr. Amodeo. There was a lot
20 on a computer, we would look at it on a screen.

21 Q. Now, I think at the break you told me you looked at
22 about an inch or so worth of documents?

23 A. I have an inch or so of documents. I don't know how
24 much I looked at in total.

25 Q. Before you came up with the actual questions, in

1 familiarizing yourself with the case, how many hours did you
2 spend with Mr. Slaughter?

3 A. At least four hours.

4 Q. And at that time he told you what he believed the
5 facts to be?

6 A. That's correct.

7 Q. All right. Now, he told you that he was on medication
8 for the bipolar disorder, correct?

9 A. Correct.

10 Q. Did he tell you that there were days that Mr. Amodeo
11 had problems with attention?

12 A. I don't recall him saying that specifically, but I
13 mean with the interviews with Frank, I could see that was
14 happening.

15 Q. All right. And even during the interviews then there
16 were times he had problems focusing his attention?

17 A. The problem with the way Frank is is you holding his
18 attention. You have to have the ability to keep him on
19 point.

20 Q. And during these tests then there were many times you
21 had to keep him on point?

22 A. Yes.

23 Q. This was what we would call a unilateral test, isn't
24 it?

25 A. I don't know what that means.

1 Q. Well, you were aware that the United States was
2 involved in this matter?

3 A. Correct.

4 Q. The government was not or any representatives was not
5 present at the polygraph exam?

6 A. Correct.

7 Q. You're given no input by the United States on the
8 exam?

9 A. Correct.

10 Q. You didn't call and ask for any input?

11 A. No, I didn't.

12 Q. You didn't ask us for any input into the questions to
13 be posed?

14 A. That's correct.

15 Q. Or the relevant facts?

16 A. Correct.

17 Q. And the United States then never approved the
18 questions that were actually asked?

19 A. Correct.

20 Q. So as I understand it, initially you and Mr. Slaughter
21 are the ones who drafted the questions?

22 A. Correct.

23 Q. And then at some point in time you gave them to Mr.
24 Amodeo who then made some changes to the questions?

25 A. Well, you always review in advance with the examinee

1 the questions to be asked, okay, and so to make sure we
2 covered the issues, there may have been some changes in the
3 wording, but essentially those questions are what was
4 formulated by Mr. Slaughter and myself.

5 Q. All right. And Mr. Amodeo knew that if he failed the
6 exam it wouldn't be turned over to the government?

7 A. I suppose.

8 Q. The exam, first exam was administered about a year and
9 a half after the facts alleged in the indictment?

10 A. Yes.

11 Q. And you'd agree that the farther away in time from the
12 events that the exam is given, the less reliable the results?

13 A. No.

14 Q. Now, Mr. Slaughter asked you about a neutral setting,
15 whether it was done in a neutral setting, and you said it was
16 done in a professional setting.

17 A. Yes.

18 Q. Now, there's a difference, isn't there?

19 A. No.

20 Q. In other words, a neutral setting would be, for
21 example, if you had an office, it would be done in your
22 office. That would be a neutral setting, wouldn't it?

23 A. And also professional.

24 Q. Well, are you saying it would be a neutral office if
25 the exam was performed in the office of the United States

1 Attorney?

2 A. No.

3 Q. Or in the office of the subject's defense lawyer, is
4 that considered neutral?

5 A. In terms of turf it may be. I'm referring more to how
6 the exam was conducted and not the place at where it's
7 conducted.

8 Q. So you would agree that Mr. Slaughter's office was not
9 a neutral site?

10 A. That has no bearing on the test.

11 Q. All right. The last two exams were performed in
12 offices where Mr. Amodeo was?

13 A. Correct.

14 Q. That wasn't exactly what we would call a neutral site
15 either, was it?

16 A. The neutral site, I'm trying to explain to you, it
17 could have been done in the U.S. Attorney's Office. It
18 depends on the conduct of the examination in a professional
19 manner, not the place where it's conducted.

20 Q. Don't the training manuals for federal agencies
21 suggest that you do it in a neutral environment?

22 A. No, not to my knowledge.

23 Q. Now, you would agree that the room where the exam was
24 conducted is important, isn't it?

25 A. Yes.

1 Q. All right. It should be free of any distractions?

2 A. Yes.

3 Q. And that would include things like pictures or
4 photographs?

5 A. No. No.

6 Q. Ringing phones?

7 A. I disconnect the phone in the office.

8 Q. Well, there were other offices within Mr. Slaughter's
9 suite, were there not?

10 A. The office I was in had a table, it had three chairs,
11 it had a book shelf with a lot of law books on it, and there
12 were no pictures or there may have been one picture on a wall
13 of a landscape scene.

14 Q. What else was in that office?

15 A. Maybe some file boxes in a corner, that's all.

16 Q. Now, when you did examinations at the FBI, the room
17 contained basically a table and a couple chairs, one for you
18 and one for the subject, correct?

19 A. They were interview interrogation rooms that we used.

20 Q. And they were what you would consider very sparse or
21 Spartan, were they not?

22 A. Yes.

23 Q. And one of the reasons you did that was to avoid any
24 distractions for the subject?

25 A. Yes.

1 Q. All right. So the room at Mr. Slaughter's office was
2 not done the same way that you did it at the FBI in terms of
3 the type of room that you used?

4 A. Yes.

5 THE COURT: Okay. We're going to break now and I
6 will see you all back here at 1:30.

7 (LUNCH RECESS.)

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AFTERNOON SESSION

THE COURT: You may proceed, Mr. Gold.

CONTINUED CROSS EXAMINATION

BY MR. GOLD:

Q. Mr. Keifer, the fees that you've discussed, the thousand dollars per polygraph, does that also include the preparation time?

A. Yes.

Q. So no matter how many hours you put in, it's a thousand dollars?

A. Roughly for a day's worth of work, yeah.

Q. Now, over lunch did you have any discussions with Mr. Slaughter about this case?

A. None.

Q. Did he give you a copy of the indictment in this case over lunch?

A. Yes.

Q. Can you tell me how that came about?

A. I asked for it so I could refresh myself on the case.

Q. Now, you know having testified in previous cases that once you're tendered for cross examination you're not supposed to talk to the lawyer for the person that put you on, isn't that true?

A. That's true.

Q. So in this case --

1 MR. SLAUGHTER: Excuse me. He didn't talk to me
2 about the indictment. I don't have the indictment and I
3 didn't give him the indictment.

4 MR. SANDS: I will represent that he asked the
5 defense table for the indictment and I said I had a copy.

6 BY MR. GOLD:

7 Q. He said that he did.

8 So despite knowing that, you went ahead and asked
9 the defense team for a copy of the indictment?

10 A. Yes.

11 Q. All right. Let's talk about the polygraphs at Mr.
12 Amodeo's office. Can you describe -- well, I think you
13 started to describe the room at Mr. Amodeo's office, did you
14 not?

15 A. No. I had previously described the room at Mr.
16 Slaughter's office.

17 Q. Tell us about the office at Mr. Amodeo's.

18 A. It was a conference room, a long table.

19 Q. What else was in there?

20 A. Chairs.

21 Q. Any pictures, any books, anything else?

22 A. I don't recall books. There may have been pictures on
23 the wall.

24 Q. Again, it wasn't like what you had at the FBI?

25 A. No.

1 Q. Now, when you were at the FBI, you generally used
2 monitoring equipment for the polygraphs, did you not?

3 A. Referring to what?

4 Q. Well, for example, closed circuit television or
5 two-way mirrors?

6 A. Yeah. If they were available, we would use them.

7 Q. Now, there was no closed circuit television or two-way
8 mirrors at either Mr. Slaughter's or at Mr. Amodeo's?

9 A. That's correct.

10 Q. And at the FBI you had audiotaping equipment, didn't
11 you?

12 A. That's correct.

13 Q. And videotaping equipment?

14 A. That's correct.

15 Q. And you used that equipment?

16 A. That's not correct.

17 Q. Well, you used it sometimes, didn't you?

18 A. Yes.

19 Q. And you didn't have any audiotaping equipment with you
20 at either Mr. Slaughter's office or Mr. Amodeo's office?

21 A. I did.

22 Q. You didn't use it?

23 A. No.

24 Q. You didn't have any videotaping equipment with you?

25 A. No.

1 Q. Now, normally it would be helpful to have the
2 subject's attorney monitor the prepolygraph interview, isn't
3 that true?

4 A. No.

5 Q. You've never had that happen?

6 A. No.

7 Q. You don't think it's helpful so that they could let
8 you know if there was discrepancies in the subject's version
9 of the events?

10 A. I would concede that's been helpful, but in practice
11 it's just not done.

12 Q. Now, question formulation is very important, isn't it?

13 A. Yes.

14 Q. And during the pretest Mr. Amodeo gave you his version
15 or spin of the facts, didn't he?

16 A. Yes.

17 Q. And you have no idea if those facts are accurate?

18 A. No.

19 Q. And you have no idea if he left out any information?

20 A. No. At the time the case was developing, he kept
21 bringing in boxes of information.

22 Q. Mr. Amodeo did?

23 A. Yes.

24 Q. Was Mr. Slaughter present?

25 A. He had the information.

1 Q. Well, when Mr. Amodio brought in those boxes, how many
2 of them did you look through?

3 A. I would only look at what was given to me, what was
4 deemed relevant.

5 Q. Okay. So Mr. Amodio is the one that determined what
6 was relevant for you to look at?

7 A. He and Mr. Slaughter and myself.

8 Q. Now, when you question a subject on a polygraph, one
9 of the things you're supposed to do is that you should be
10 asking them about their direct involvement, isn't that true?

11 A. That's one type of question, yes.

12 Q. Those questions weren't used in any of these exams,
13 were they?

14 A. I think when I asked him if he attempted to defraud
15 the government, I think it may go to direct involvement.

16 Q. Well, that is a very vague question, isn't it?

17 A. Not to an attorney.

18 Q. Well, he's not an attorney any more, is he?

19 A. Well, he successfully graduated from law school at one
20 time, so --

21 Q. So you didn't put a timeframe on it, did you, that
22 question?

23 A. Let me look.

24 Q. If you could look at your report.

25 A. Yes, I did. I said during a period between June 2005

1 and December 2005 were you aware of a plan by Presidion Corp.
2 or any of Presidion's subsidiaries to defraud the IRS or
3 evade payment of taxes.

4 MR. SLAUGHTER: Your Honor, could you ask Mr.
5 Keifer to speak up? I'm having trouble hearing him.

6 Q. Mr. Keifer, which exam are you referring to?

7 A. I'm referring to the exam on 4-24.

8 Q. Didn't you also on May 9 ask did you or were you
9 attempting to defraud the government?

10 A. Yes, I asked that.

11 Q. That's also a rather vague question, isn't it?

12 A. It's a broad question, yes, it is.

13 Q. And it has no time limits on it, does it?

14 A. No, it doesn't.

15 Q. And you would agree that when you -- that those two
16 questions really go to somebody's intent rather than what
17 they did?

18 A. Yes. It's not a specific act, it goes to their
19 understanding of what a fraud might be.

20 Q. Well, and it also doesn't talk about specific facts.
21 Isn't that what the polygraph is designed to do, is to get to
22 the facts?

23 A. Yes.

24 Q. So when you ask a question relating to intent, it's
25 inherently more unreliable than a question that deals with a

1 fact, is it not?

2 A. I don't know that for a fact.

3 Q. You would not agree that when you ask somebody about
4 their intent it's far more subjective than a fact --

5 A. It is more subjective.

6 Q. And when you get training for polygraphs, isn't one of
7 the things they teach you that those type of questions should
8 be avoided, intent questions, because they're not as
9 reliable?

10 A. In general, if you have a specific question, you
11 should ask that.

12 Q. So the answer is yes to my question?

13 A. Yes.

14 Q. Now, you would agree that a subject should be in good
15 physical and mental condition at the time of the exam?

16 A. A testable condition, yes.

17 Q. And if he has a serious mental or emotional problem,
18 he shouldn't be tested?

19 A. Yes.

20 Q. Now, you said that you knew that he was bipolar and on
21 Depakote, correct?

22 A. Correct.

23 Q. Now, before the first test, did you go to test Mr.
24 Amodeo and then have him cancel it?

25 A. Before the first test?

1 Q. Yes, sir.

2 A. No.

3 Q. How many times did you try and schedule polygraph
4 exams where you had to cancel because he wasn't testable?

5 A. One time.

6 Q. Now, did Mr. Slaughter discuss with you the fact that
7 Mr. Amodeo can cycle between manic and depressive states
8 within a very short period of time?

9 A. Yes.

10 Q. Did Mr. Amodeo tell you that?

11 A. He described his condition to me.

12 Q. When you were testing him, did you look for those
13 cycles?

14 A. Yes.

15 Q. How would you be able to know the difference between
16 the two?

17 A. One is his general level of activity, his ability to
18 basically sit still and listen and follow directions, and
19 when he could do that, I thought that was indicative that he
20 was in a testable state. When he would be in a state of
21 vegetation, when we didn't do the test, it's pretty apparent.

22 Q. Were there times during any of the exams themselves
23 that his state changed within the timeframe of the test?

24 A. No.

25 Q. You never saw that happen?

1 A. Not during the examination itself, no.

2 Q. Did it happen during the pretest?

3 A. No.

4 Q. I'm sorry?

5 A. Only on the one that we didn't do, I saw it coming on
6 and then we just stopped the test.

7 Q. Now, when you have a bipolar subject, isn't it
8 advisable to get medical clearance?

9 A. To get what?

10 Q. Medical clearance from like a doctor or psychiatrist.

11 A. It's not required, no.

12 Q. It's advisable, isn't it? Isn't that what you teach?

13 A. I don't teach that. I don't know for sure.

14 Q. In any event, you didn't speak with any of Mr.
15 Amodeo's psychiatrists?

16 A. I did, but it was between tests.

17 Q. Now, do you know the effect Depakote has on the human
18 body?

19 A. It's an inhibitor of various reactivity levels.

20 Q. What do you mean by that?

21 A. In other words, when a person's out of control, he's
22 at a high level of excitement. The Depakote, you know,
23 basically subdues their reactivity.

24 Q. You don't know, I mean Mr. Amodeo told you that he was
25 taking this Depakote?

1 A. Yes.

2 Q. You have no idea whether he had taken his prescribed
3 dose?

4 A. I took his word for it.

5 Q. And he was the only one upon whom you could rely on
6 that information?

7 A. Yes.

8 Q. And if he gave you information that was incorrect,
9 that would be important for you to know?

10 A. Yes.

11 Q. Now, did you go through all of the general questions
12 with Mr. Amodeo about all his previous medical history?

13 A. There was a general rundown of his medical history.

14 Q. Well, let me ask you some questions and tell me if I
15 get to one that's not a standard question.

16 A. Okay.

17 Q. You asked him about his general physical condition?

18 A. Right.

19 Q. You asked him whether he had been in a hospital over
20 the past two years for anything serious?

21 A. No.

22 Q. Isn't that one of the standard questions you folks
23 usually ask?

24 A. I asked him whether they're under a care of a
25 physician, a psychiatrist or a psychologist. I tell them to

1 tell me all the illnesses they have. I tell them to give me
2 the dosage of the medications they have. And is there any
3 reason they don't think they can take the test.

4 Q. Did you ask him about his previous psychiatric care?

5 A. He indicated he had been under the care of a physician
6 for bipolar condition.

7 Q. Did you ask him specifically about his blood pressure?

8 A. At one point in time I noticed on his charts that his
9 heart was skipping a beat.

10 Q. My question is before you gave him the test, in your
11 pretest interview, did you ask him about his blood pressure?

12 A. I don't recall. I just asked him to tell me what the
13 problem, what problem or medication they may have.

14 Q. Did you ask him if he had any problems with his pulse
15 rate?

16 A. No.

17 Q. Did you ask him how many hours of sleep he had the
18 night before?

19 A. I usually ask that.

20 Q. Well, you usually ask it. Do you remember asking that
21 of Mr. Amodeo before each of the tests?

22 A. Yes.

23 Q. Did you ask him whether this was a, before the first
24 test, whether this was his first polygraph exam?

25 A. Yes.

1 Q. Did you ask him whether he had done anything to
2 prepare himself for the polygraph?

3 A. Yes.

4 Q. What did he tell you?

5 A. He told me he didn't do anything to prepare for it.

6 Q. He didn't read any literature or anything like that?

7 A. That's what he told me.

8 Q. Now, you gave four different exams, correct?

9 A. Correct.

10 Q. Within a month's time?

11 A. Correct.

12 Q. That's unusual, isn't it?

13 A. Yes.

14 Q. How many other subjects have you ever given four tests
15 in a month's time?

16 A. None.

17 Q. Have you ever given three tests in a month's time?

18 A. Yes.

19 Q. How many occasions?

20 A. Probably three times.

21 Q. Now, would you agree that a polygraph technique starts
22 to lose its accuracy after a person's been tested twice?

23 A. No.

24 Q. Especially by the same examiner?

25 A. No.

1 Q. Is there literature out there that would disagree with
2 you?

3 A. No.

4 Q. Now, I notice that the first report you had you signed
5 and dated it April 11, 2008, which was the date of the first
6 test.

7 A. First test I believe was the 10th.

8 Q. But all the others were dated, signed by you and dated
9 May 13, the date of the last exam?

10 A. That's probably when I got around to typing them all
11 up.

12 Q. I mean as a matter of practice, don't you normally
13 give the exam and try and write it up like you did after the
14 first one, almost immediately?

15 A. Well, I try to get it done as soon as I can.

16 Q. Now, before the second, third or fourth exams, did Mr.
17 Slaughter tell you that he was having problems dealing with
18 Mr. Amodeo?

19 A. It was generally acknowledged that, you know, Mr.
20 Amodeo, you know, he had a problem a little bit controlling
21 him, but --

22 Q. Before the fourth exam did he tell you that Mr. Amodeo
23 had been acting in a peculiar and erratic fashion?

24 A. No.

25 Q. Or that there was concern at that time that he wasn't

1 able to consult with his attorneys?

2 A. No, I don't recall.

3 Q. Now, the last report you wrote on May 13 was for the
4 May 9 examination, correct?

5 A. Yes.

6 Q. And I believe you said that before you wrote the
7 report you were not aware that the day before you wrote the
8 report Dr. Danziger diagnosed him with bipolar mania with
9 psychotic features.

10 A. I think I was aware of that.

11 Q. This morning didn't you say you weren't aware of that?

12 A. No. I had had a conversation in between the exams
13 with Dr. Danziger. I was aware he had been diagnosed. I
14 didn't know exactly what the formal diagnosis was.

15 MR. SLAUGHTER: Excuse me, Your Honor. Mr. Gold
16 misstated the fact in that cross examination question. The
17 question I asked him was he aware that he was declared
18 incompetent the next day.

19 MR. GOLD: Okay. I'm sorry.

20 BY MR. GOLD:

21 Q. All right. So then the question is before you wrote
22 your report, did you know that Dr. Danziger had diagnosed him
23 with bipolar disorder mania with psychotic features?

24 A. I don't recall the mania with psychotic features. I
25 know we had a brief conversation where he told me he

1 diagnosed him as bipolar. It was not a detailed
2 conversation.

3 Q. And it's your testimony today that knowing that
4 approximately three days after your exam that he was
5 diagnosed with bipolar disorder mania with psychotic features
6 would not have affected the results of the test?

7 A. Repeat that. I'm not certain I understand that
8 question.

9 Q. Well, this morning you said that regardless of Dr.
10 Danziger's diagnosis the day before, it would not have
11 affected the validity of the test.

12 A. I don't know that the bipolar condition affects
13 whether a person knows whether they're telling the truth or
14 not.

15 Q. What about psychotic features?

16 A. I don't know what those features might be.

17 Q. Well, you would agree that somebody who's diagnosed as
18 psychotic in any form complicates your ability to get an
19 accurate reading on a polygraph?

20 A. That's correct.

21 Q. And so what you're saying is if Dr. Danziger said that
22 there was mania with psychotic features, that that,
23 regardless what the feature was, that would not have affected
24 your opinion as to the validity of the test?

25 A. Based, based on what I knew at the time and based on

1 his behavior in the room, he seemed rational. He seemed
2 coherent. He was responsive. And I didn't see anything
3 unusual in the reaction patterns. So I can't really say if
4 he was being affected by anything. It looked normal to me.

5 Q. Did either Mr. Slaughter or Dr. Danziger ever tell you
6 that during that timeframe they considered him to be
7 delusional?

8 A. No.

9 Q. Now, were you ever told that Dr. Danziger's opinion
10 also said he was so psychotic and grandiose that he lacked
11 the ability to make reasonable and rational decisions with an
12 attorney and was not competent to proceed?

13 A. I didn't hear that.

14 Q. And you're saying that that would not affect your
15 opinion as to the validity of the test on May 9?

16 A. Any, any condition that affects a person's ability to
17 understand or perceive the events around him accurately has
18 an effect on the outcome of the test. Okay. There are
19 various conditions that can affect the outcome of the test.
20 The conditions are what acts a person performs and what their
21 belief was about a certain event. That becomes, you know, a
22 truth to that person.

23 Q. Even if it's not true?

24 A. Even if it's not true.

25 Q. Now, did Mr. Slaughter or Mr. Amodeo tell you that Mr.

1 Amodeo had not been truthful with Dr. Krotenberg, his
2 psychiatrist?

3 A. No, I never heard that.

4 Q. Would that have been important for you to know?

5 A. All history that reflects on a person's honesty and
6 mental condition is helpful.

7 Q. Now, when you were with the FBI, I think you said one
8 of the things you did was you were involved in quality
9 control so to speak?

10 A. Yes.

11 Q. And what that meant is that after one of your
12 polygraphers did a polygraph, somebody was always there to
13 review it before giving a final opinion, is that correct?

14 A. It would always be sent back to headquarters, yes.

15 Q. Now, in this case, did anyone review your polygraph
16 results?

17 A. No.

18 Q. So when you said earlier this morning that you did
19 this the same way you generally did at the FBI, what you're
20 telling me now is this is another way in which you didn't
21 follow the manner in which you performed at the FBI?

22 A. It didn't undergo a formal quality control.

23 Q. Now, despite your belief and your training, there's
24 still some folks in the academic community who disagree with
25 the validity of polygraphs, isn't that true?

1 A. That's true.

2 Q. And you yourself have never conducted any research
3 into the effects of bipolar disorder on a polygraph exam?

4 A. No, I haven't.

5 Q. Now, there are such studies, aren't there?

6 A. I'm sure there are -- no. On the effects on a
7 polygraph? I'm not aware of any studies of the affects on a
8 bipolar on a polygraph.

9 Q. You're not aware of any studies that say that
10 polygraph examinations of persons with personality disorders
11 is only 72 percent reliable?

12 A. I've never seen that.

13 Q. Have you ever seen a report by P.E. Crewson titled A
14 *Comparative Analysis of Polygraph With Other Screening and*
15 *Diagnostic Tools* that was done for the Department of Defense?

16 MR. SLAUGHTER: Your Honor, he's not asking the
17 question properly. He's got to say is that a recognized
18 professional in the field and do you recognize that
19 particular article as a recognized person.

20 THE COURT: Well, he's just asking him if he's
21 aware of it now. If he wants to introduce it, your objection
22 will be considered.

23 Q. I'm just asking you if you're aware of that study.

24 A. Who is the author?

25 Q. Crewson.

1 A. I'm not aware.

2 Q. Now, let's talk about the first test that you did
3 substantively. Did he tell you that the attorneys and
4 professionals, between 50 and a hundred professionals told
5 him that it was legal not to pay payroll taxes?

6 A. That it was legal?

7 Q. Legal not to pay payroll taxes.

8 A. No, he never said that.

9 Q. So, as a result, that wasn't one of the questions you
10 asked him?

11 A. Well, I asked him if he disclosed everything to them.
12 On the second test --

13 Q. Well, but wait a minute. Let's stop there. You're
14 saying what he disclosed to them. I'm saying what they said
15 to him. Did he tell you that 50 to a hundred professionals
16 told him it was legal to not pay payroll taxes?

17 A. No.

18 Q. Now, on the second test I believe that you said that
19 Mr. Amodeo wrote out the summary for you.

20 A. Yes, he did.

21 Q. So that was his version or spin on the facts, wasn't
22 it?

23 A. It was his version.

24 Q. Now, the report talks about Presidion, Nexia and PBS,
25 does it not?

1 A. Which report are you referring to?

2 Q. The second one still.

3 A. 4-15, yes.

4 Q. He did not tell you about the Sunshine companies, did
5 he?

6 A. I was aware of the Sunshine companies.

7 Q. You would agree that in your report it says nothing
8 about the Sunshine companies?

9 A. No, not in that report. It does in the first report.

10 Q. Or their relationship to Presidion Corp.?

11 A. I'm aware that the Sunshine companies were, you know,
12 it states it in the first report their relationship to
13 Presidion and then they became a, you know, they were renamed
14 again.

15 Q. Did Mr. Amodeo tell you about an April 2006 meeting
16 which Laurie Holtz asked whether there was any reason to
17 believe that the taxes were not being paid?

18 A. Laurie Holtz asking?

19 Q. At a meeting whether there was any reason to believe
20 that the payroll taxes were not being paid. In other words,
21 indicating that up to then he didn't know about those payroll
22 taxes being paid.

23 A. I don't recall.

24 Q. And you weren't shown a video clip of that?

25 A. Was this a video meeting?

1 Q. It was a meeting that was videoed, yes. It wasn't
2 shown to you?

3 A. No. I think I recall one from December that was
4 shown.

5 Q. Now, let's talk about the third test. You discussed
6 Presidion and Presidion subsidiaries, and you talk about the
7 time period between June of '05 and December '05, correct?

8 A. Correct.

9 Q. Did Mr. Amodeo tell you that Presidion corporation
10 itself had nothing to do with payroll taxes?

11 A. Yeah, I knew that.

12 Q. Well, but you're testing him to see if he was aware of
13 a plan by Presidion Corp. to defraud the IRS of the payment
14 of taxes?

15 A. Or any of their subsidiaries.

16 Q. Did he tell you that the subsidiaries had been sold as
17 of July of '05?

18 A. I'm sure he did.

19 Q. So there were no Presidion subsidiaries as of July of
20 '05?

21 A. If they're sold, I assume that's correct.

22 Q. So despite the fact that Presidion Corp. wasn't doing
23 payroll taxes and the subsidiaries was sold by July of '05,
24 you're asking him about it through the end of December,
25 correct?

1 A. Yes.

2 Q. Did he tell you that it was his company, Wellington,
3 that owned the PEOs at that time?

4 A. I was aware that, I believe, that on the initial sale
5 of the Sunshine companies that Wellington purchased them.

6 Q. You did not ask him a single question about
7 Wellington, did you?

8 A. No.

9 Q. In any of the reports or any of the tests?

10 A. No.

11 Q. Now, on the third exam there was a question that we've
12 touched on briefly about are you aware of any plan where
13 fraudulent representations, promises or premises to deprive
14 any customers of the Presidion PEO of money, property or
15 service, correct?

16 A. Correct.

17 Q. He didn't show you the contracts of those customers
18 which showed that the customers were told that those payroll
19 taxes would be paid over to the IRS, did he?

20 A. I saw contracts, I'm not sure that clause.

21 Q. Well, nobody pointed it out to you as being relevant,
22 did they?

23 A. No. But I think it's taken into account with the
24 wording in the question.

25 Q. You mean the vague wording?

1 A. Fraudulent representation should cover that.

2 Q. Now, the fourth exam. Your first question talked
3 about was Sunz being paid with trust fund monies between
4 August '06 and May of '07.

5 A. Yes.

6 Q. Having read the indictment now, although you said you
7 were familiar with the facts earlier, you know that May of
8 '07 had nothing to do with the indictment, correct?

9 A. When I did the test in May I didn't know about the
10 indictment, I don't think.

11 Q. But somebody thought that that time period was
12 relevant, didn't they?

13 A. Yes.

14 Q. And that was Mr. Amodeo?

15 A. Yes.

16 Q. In fact, now as you sit here, you realize that that
17 timeframe is not relevant?

18 A. I still don't know that it's not.

19 Q. Well, the question was not asked was Sunz being paid
20 with trust fund monies between December of '04 and August of
21 '06?

22 A. That's true.

23 Q. He didn't tell you about that?

24 A. That's true.

25 Q. And you didn't ask him?

1 A. We went through who was being covered by the insurance
2 policies and various time periods and who was in control
3 during various time periods. We thought the relevant time
4 period for him being involved was that August through May.

5 Q. So Mr. Amodeo thought it was relevant?

6 A. Yes.

7 Q. And you didn't have enough facts at that time to know
8 for yourself that it was relevant?

9 A. No.

10 Q. You relied on Mr. Amodeo to tell you what was
11 relevant?

12 A. Can I put that in context?

13 Q. Go ahead.

14 THE COURT: You need to answer the question first
15 and then you may put it in context in way of explanation of
16 your answer.

17 THE WITNESS: Repeat your question, Randy.

18 Q. If you could please repeat it. Read the question
19 back.

20 THE COURT: You relied on Mr. Amodeo to tell you
21 what was relevant.

22 THE WITNESS: Both Mr. Amodeo and Mr. Slaughter.

23 Q. Now, the last question, did you use the Sunz proceeds
24 for the direct or indirect benefit of the IRS. That was one
25 of the questions you asked him?

1 A. Yes.

2 Q. That's one of those intent questions too, isn't it?

3 A. No, I think it's more specific.

4 Q. Well, doesn't that talk about his state of mind,
5 whether he was using them for a certain purpose?

6 A. He was using them for the direct or indirect benefit
7 of the IRS.

8 Q. In his mind. It went to his intent, didn't it?

9 A. Well, use is a term that is more than intent. It
10 means, in fact, he did do that.

11 THE COURT: There's a big difference between
12 saying did you pay the money to the IRS and did you intend it
13 to be for the benefit. One would be a whole lot more
14 specific than the other.

15 THE WITNESS: Right. And that was his intent.
16 That's an intent question.

17 BY MR. GOLD:

18 Q. All right. And did he tell you relating to this money
19 that he had hid his receipt of it from the government?

20 A. No.

21 Q. Did he tell you that he hid the receipt of that money
22 from his lawyers?

23 A. No.

24 MR. GOLD: I have no further questions, Your
25 Honor.

REDIRECT EXAMINATION

BY MR. SLAUGHTER:

Q. Mr. Keifer, when you take a polygraph examination, or you give a polygraph examination, what is the purpose?

What's the purpose of a polygraph?

A. The purpose of the polygraph is to resolve issues, to find out if a person's telling the truth or lying about any specific issue.

Q. And aren't you trying to find out whether that person --

MR. GOLD: Objection to leading.

Q. With a yes or no. Aren't you trying to find out whether the test, the person you're examining believes what they're saying is truthful or not?

MR. GOLD: Objection. It's still leading.

MR. SLAUGHTER: Your Honor, it asks for a yes or no answer.

MR. GOLD: It's not a proper question for redirect.

THE COURT: Well, let me just ask, why do you take a polygraph test or why do you give a polygraph test.

THE WITNESS: I give a polygraph test to determine whether or not a person is telling the truth about any issue.

Q. Is it important to you that that person believes that

1 he is telling the truth?

2 A. Yes. Those type of questions. What goes on here is
3 if a person knows he is lying to a question, he will react.
4 If a person believes he's telling the truth to a question, he
5 won't. So a person's belief about his acts are relevant to
6 evaluating the examination.

7 Q. Let's talk about when you tested Mr. Amodeo on each of
8 these four occasions. Did he seem to be, know where he was?

9 A. Yes.

10 Q. Did he know, did he appear to know the date, who was
11 present and things of that nature?

12 A. Yes.

13 Q. Oriented to time and space?

14 A. Yes.

15 Q. Did you detect any indication whatsoever during those
16 times on those days that he was delusional?

17 A. No.

18 Q. I couldn't hear you.

19 A. No.

20 Q. Did you feel that when you were testing him his
21 mindset was to cooperate with you and that he wanted these
22 tests for production to somebody?

23 A. Yes.

24 Q. Do you believe that he wanted to pass these tests?

25 A. Yes.

1 Q. Do you believe that what he said in answers to your
2 questions he was being truthful?

3 A. Yes.

4 Q. Is that a yes?

5 A. Yes.

6 Q. As to all of the questions in the four tests?

7 A. Yes.

8 Q. Now, Mr. Gold asked you does it make any difference of
9 whether he's in a room with two chairs or whether he's in a
10 room with three chairs which were at my office. Would that
11 make any difference to the validity of this test?

12 A. No.

13 Q. Would the office, the room in my office, was that a
14 fairly sterile office?

15 A. Yes.

16 Q. The room where you did the exams in Mr. Amodeo's
17 office, was that a fairly sterile office?

18 A. Yes.

19 Q. Can you envision how the difference between being at
20 the FBI headquarters and my office could make any difference
21 in the outcome of the test?

22 A. I test in a lot of different locations. I've tested
23 in prisons, I've tested in churches, I've tested in FBI
24 offices, I've tested in my office, I've tested in your
25 office. One of the standards that I help promulgate was that

1 a test should be free from distractions that would, you know,
2 take away from the validity of the test. So you can do a
3 good test in any of those circumstances as long as it's
4 relatively free from distractions.

5 Q. And in my office, do they put a sign on the door?

6 A. Yes, they do.

7 Q. No one comes in?

8 A. No.

9 Q. Now, Mr. Gold asked you about lawyer being present
10 during the pretest. That's when Mr. Amodeo would go in the
11 room with you and sit down and talk with you, correct?

12 A. Correct.

13 MR. GOLD: Objection, Your Honor. The question
14 was were you monitoring it.

15 BY MR. SLAUGHTER:

16 Q. All right. Was he monitoring it?

17 A. No.

18 Q. Have I ever monitored it?

19 A. No.

20 Q. And why not?

21 A. There's no way for you to do so.

22 Q. But the question is why wouldn't you want the attorney
23 to monitor it.

24 A. It doesn't matter to me. It doesn't matter to me. I
25 just -- they have to stay out of the polygraph examination

1 because the examination involves me trying to condition the
2 examinee to be in a testable state, and, you know, experience
3 is lawyers tend to have too many questions in there that
4 diverts people from the direct conduct of the test. Anybody
5 in the room during a test is going to be a distraction to the
6 examinee. They may look to you for all the answers, they may
7 be afraid to answer some questions because of your presence.
8 I don't know of a single polygraph where an attorney has been
9 in the room during the examination and I don't know of
10 anywhere they've even been monitored by the attorney.

11 Q. Now, Mr. Gold asked you about the quality control
12 check that you said you didn't have on these, but you did
13 have a quality control check, didn't you?

14 A. I had a formal one, I phrased it as a reliability
15 check using the computer algorithm.

16 Q. And that is a quality --

17 A. It's a form of quality control.

18 Q. And it measured it against logarithms?

19 A. Algorithms.

20 Q. And against other previous tests, something like an
21 MMPI comparison?

22 A. It has its own internal measuring devices where it
23 measures the data.

24 Q. Do you have any question in your mind that if you send
25 the charts of Mr. Amodio's four tests to anybody that is a

1 qualified polygraphist that they would take issue with the
2 conclusions that you reached?

3 A. None.

4 Q. Did you feel it was necessary to have this looked at
5 by one of your peers?

6 A. Not until we did it. I knew that if you were going to
7 go to admission in court we would take, you know, take that
8 step.

9 Q. You mean in front of a jury?

10 A. In front of a jury.

11 Q. Do you recall actually talking to Dr. Danziger?

12 A. Very, very briefly.

13 Q. And was one of the questions your concern about the
14 impact of the Depakote on Mr. Amodeo?

15 A. Yeah. The effect of the Depakote and the effect of,
16 you know, when you're in a bipolar state, you know, what is
17 truth to you at that time, what do you believe.

18 Q. And you were given the go-ahead as to the testing if
19 you felt that he was in a non-bipolar state?

20 A. Yes.

21 Q. In each of the four occasions did he appear to be
22 completely under control?

23 A. Yes.

24 Q. Now, Mr. Gold asked you about from one test to a
25 second test to a third test to a fourth test, he said by the

1 time you do the third or the fourth the novelty's worn out
2 and maybe the person can become comfortable with you and
3 figure out what it is he has to say or do to make it appear
4 as if he's being truthful.

5 A. Yeah. It is theorized that people habituate to
6 continued testing. That's not the fact if you're doing your
7 job correctly. If I'm in there testing him and it is not a
8 friendly environment, it's an objective environment, it's
9 professional. Frank at each test as this case was unfolding,
10 you know, kept wanting more and more to show to the
11 government that he was being truthful, so he was certainly
12 alert on each of those tests, and any examination of the
13 recorded data of the charts, his blood pressure, heart rate,
14 will show that he was stimulated enough to be tested.

15 Q. Would you agree with me that there are a lot of issues
16 in this case?

17 A. Yes.

18 Q. And what is your practice and procedure of the number
19 of questions that you will ask in any particular setting?

20 A. In any given polygraph test you are limited to four
21 relevant questions, and so you make the decision, you know,
22 how many tests you're going to give in a given day or, you
23 know, how many issues, and then over time pursue them.

24 Q. And is that the reason that there were four different
25 settings because we were covering so much ground?

1 A. Yes.

2 Q. And do you think that the four different settings
3 dissipate from the validity of your test conclusions?

4 A. No.

5 Q. Did I ever tell you what the purpose of these tests
6 were?

7 A. You're his defense counsel. I assumed you were going
8 to use them to, you know, to help him.

9 Q. Did I tell you whether I had turned them over to the
10 government?

11 A. Yeah, you said you were.

12 Q. And do you know if that was prior to the indictment?

13 A. I'm not sure when you turned them over.

14 MR. SLAUGHTER: That's all the questions I have.

15 MR. GOLD: May I follow up with a couple, Your
16 Honor?

17 RECROSS EXAMINATION

18 BY MR. GOLD:

19 Q. You said that you used as a reliability check the
20 computer, correct?

21 A. Yes.

22 Q. You did that at the FBI too, didn't you?

23 A. Not at the time.

24 Q. But you said that when you were going to potentially
25 use these as admissible testimony before a jury you were

1 going to have it double checked?

2 A. Yes.

3 Q. But because it's the court you think it's less
4 necessary to have it double checked than it would be in front
5 of a jury?

6 A. No. The only reason it wasn't done was over time and
7 a decision hadn't been made as to trying to get it admitted,
8 simply a function of time.

9 Q. Now, you said that it was theorized that there may be
10 a problem with multiple tests to a subject, correct?

11 A. Yes.

12 Q. Doesn't that mean that there is literature out there
13 that discusses that?

14 A. There may be literature, but there are no studies.

15 Q. My question to you earlier was there was literature to
16 that effect, and you said no.

17 A. I was thinking of studies.

18 Q. And the examinations that Mr. Slaughter said he was
19 going to turn over to the government was after the fourth
20 one, wasn't it?

21 A. No.

22 Q. It was before the first one he said he was going to
23 turn them over?

24 A. I believe he was in negotiations before the fourth one
25 was done.

1 Q. So before the fourth one you knew that he had passed
2 three and that those three would be turned over to the
3 government?

4 A. I'm not sure at what sequence he did that.

5 Q. So you're saying that Mr. Slaughter, if Mr. Amodeo
6 would have failed, that he would turned them over?

7 A. That he what?

8 Q. That Mr. Slaughter, if he had flunked the test, that
9 he would have turned them over?

10 A. I don't think he would do that.

11 MR. SLAUGHTER: One question here.

12 RE-REDIRECT EXAMINATION

13 BY MR. SLAUGHTER:

14 Q. When he was asking about literature, you said you're
15 not aware of any studies that go to the fact of multiple
16 tests. Do you understand the question?

17 A. Yes. There is literature in that people have written
18 opinions on it. There is no studies on that point.

19 MR. SLAUGHTER: That's all the questions I have.
20 May he be excused, Your Honor?

21 THE COURT: No.

22 Mr. Keifer, do you ever watch the Seinfeld show?

23 THE WITNESS: I have watched it.

24 THE COURT: There was one episode where George
25 Constanza tells Jerry, just remember, Jerry, it's not a lie

1 if you don't believe it, and that brings me to my question to
2 you about delusions. I think you've covered it, but if
3 someone is suffering from delusions and believes that
4 something has happened that hasn't happened, and then is
5 subjected to a polygraph examination and answers that that
6 event really did occur, they would test, all other things
7 being equal, they would test as being truthful, right?

8 THE WITNESS: Yes, they would, Your Honor.

9 THE COURT: Now, I have a couple more questions
10 really going back to the last series of questions from Mr.
11 Gold and Mr. Slaughter. Is there literature, and by that I
12 mean more than just studies, regarding the testability of
13 someone who is suffering from bipolar disorder, including
14 with psychotic features and with delusions?

15 THE WITNESS: I'm not aware of any related to the
16 polygraph. And I'm aware of the general policy of not
17 testing people who have, are affected by a mental defect,
18 okay, meaning, we use the example all the time that, look, if
19 a person's out of touch with reality, you know, they can
20 believe that the cow jumped over the moon and you can test
21 them on it and it looks like, you know, they don't react as
22 though it's a lie. And so you don't know for a fact how in
23 touch a person is with reality in some cases. You try to
24 formulate questions that, you know, they were saying or
25 appropriately are direct and specific acts because people

1 would remember them. But at the time I did these tests, we
2 didn't have that knowledge of what exactly was going on so
3 that -- to formulate a critical question like that. And so
4 the best I could do would be to ask questions about what
5 happened, or at least in his mind what happened. And, you
6 know, he didn't react like he was lying, which I said, and I
7 concluded he was truthful on it. There is the possibility
8 that if some of those questions he actually believed didn't
9 happen or did happen, it could affect some of the tests.

10 THE COURT: I want to ask you a couple questions
11 about how you formulated the questions and I haven't been
12 involved in a case as an attorney using a polygraph examiner
13 for many years and I'm sure that the science has evolved
14 dramatically since then. But when I was involved with that
15 sort of thing and the few times that I used a polygraph
16 examiner or had one used against me, the questions always
17 seemed to be very concise and to the point, all the
18 questions. I've never seen, before today, a predicate of a
19 long factual scenario and then questions as to whether that
20 was true or not or that was somebody's intent or not. Is
21 that unusual? Have you done that before frequently?

22 THE WITNESS: This is the most complex polygraph
23 I was ever involved in due to trying to figure out what was
24 going on with the funds flow, the creation of companies, who
25 said what to whom, when. At the time we did the polygraph,

1 we really didn't know all of that. We knew he was being
2 investigated. And so to try to get to the bottom of it we
3 had to use more general questions. You know, usually the
4 test will be about a specific act or acts.

5 THE COURT: So more consistent with my experience
6 that you wouldn't have this long paragraph that's referenced
7 in the questions?

8 THE WITNESS: You could have a paragraph, a
9 statement of facts that maybe half as long as that, just a
10 summary of the case facts.

11 THE COURT: But even with that summary, the
12 questions generally do not refer back to the summary, they
13 are specific questions about, ordinarily about acts that were
14 done or undone, isn't that right?

15 THE WITNESS: Yes.

16 THE COURT: Okay.

17 MR. SLAUGHTER: Your Honor, it might help if I
18 explain why I had these done.

19 THE COURT: Well, we're through with Mr. Keifer?

20 MR. SLAUGHTER: Yes.

21 THE COURT: Mr. Keifer, you're free to go.

22 At some point I'm going to let you all give a
23 summary and I'll let you do that.

24 MR. SLAUGHTER: It might be a good time right
25 now. I never told Mr. Gold why I had this done and had these

1 questions. It might be helpful.

2 These polygraphs were not done by Mr. Amodeo to
3 say, hey, I didn't do anything wrong. We had been working
4 with Mr. Gold for over a year. There were some things that
5 happened including putting the company into bankruptcy and
6 the use of the Sunz money and Frank kept saying and he had
7 entered into this earlier plea agreement that he didn't want
8 to go forward with, and all he wanted to do was tell his side
9 of the story. And so these were areas that there was
10 contention between Mr. Gold and Mr. Amodeo, not whether what
11 he did was right or wrong.

12 If you look at them, they're very specific like
13 when you bought the Sunz company, did you, and they did due
14 diligence, did you turn over all of the information to Holtz
15 and those people, did you prevent them from seeing
16 everything, and the answer was no, no, no. Because there was
17 an issue going on with Mr. Gold and the agents and Mr. Amodeo
18 and myself as to whether or not he believed that the first
19 monies he received were stolen monies.

20 And then the questions about the Sunz, when he
21 took the money from the Sunz, he negotiated with the Sunz, he
22 believed that that money was money that was out of workers'
23 comp payment and not trust funds. And then he was going to
24 use that money and he did pay off a tremendous amount of
25 money to lawyers to bring lawsuits, and all of their

1 contracts say that the money was to go to the government.
2 And so all he wanted to do was show and make them believe
3 that he did it with the right intentions, but they took it
4 the wrong way. I mean he could have gotten on a boat and
5 floated off to Jamaica, but he wanted to show them.

6 So these were, the areas that were picked were
7 areas where he was trying to make them believe what he was
8 telling them was the truth. He's never not said, hey, what I
9 did is I did nothing wrong. He was saying, look, at the time
10 these people were telling me, nobody -- nobody was telling me
11 stop. And he wanted to make them understand that that was
12 true. That's all. And that's what I want you to understand
13 when you review this and come to your formal equation of
14 sentencing, that these polygraphs were done really to resolve
15 some issues between Mr. Amodeo and Mr. Gold of their
16 perceptions of four events and not to say he wasn't guilty.
17 So that's why there were four different questions and they
18 span a whole panoply of different issues. But nowhere in
19 here does it say I never intended to cheat the government.
20 There was points in time --

21 THE COURT: One of those questions is exactly
22 that.

23 MR. SLAUGHTER: Well, it covered a period of time
24 in which he believed from what the attorneys and accountants
25 were telling him that what he was doing was legal. There was

1 a point in time that he later learned that it was illegal and
2 still continued to do it.

3 THE COURT: Anything else, Mr. Slaughter or Mr.
4 Sands?

5 MR. SLAUGHTER: Your Honor, we have a Dr. Choras
6 who is at Harvard and couldn't come down and we wanted to ask
7 him about the experience at Harvard and he still deals with
8 Mr. Amodeo now and I thought it might be helpful to the court
9 to hear that, number one, he's compliant with his drugs and
10 compliant with what he's supposed to be doing with reference
11 to the medication, etcetera. But it would have to be done
12 over the phone because we couldn't get him here.

13 MR. GOLD: This is the first I'm hearing of it.
14 I haven't seen any of the reports since his release from
15 McLean.

16 THE COURT: Would you stipulate that he's taking
17 his drugs as prescribed by Dr. Choras.

18 MR. GOLD: I'm not even sure Dr. Choras could say
19 that. He could say that he believes he is based on Mr.
20 Amodeo's representations, but short of watching Mr. Amodeo
21 take pills every day, I don't think even he could say that.

22 MR. SLAUGHTER: Your Honor, this is a trained
23 psychotherapist, he's talking to him several times a week and
24 he would clearly know in talking to him if he was not being
25 compliant. Plus it's part of the requirement that Judge

1 Kelly put in on his release when he turned himself in.

2 THE COURT: What if any objection is there to the
3 doctor testifying by telephone?

4 MR. GOLD: Your Honor, I'll stipulate that we
5 don't have any reason to believe he's not complying, if that
6 helps.

7 MR. SLAUGHTER: If they'll stipulate to that,
8 that's fine, Your Honor.

9 THE COURT: Okay.

10 MR. SLAUGHTER: I don't have any more witnesses.

11 MR. GOLD: Do you want us to begin calling our
12 witnesses, Your Honor?

13 THE COURT: If you're ready.

14 MR. GOLD: I am.

15 THE COURT: Okay.

16 MR. GOLD: United States would call Edie Curry.

17 Whereupon:

18 EDITH CURRY,
19 called as a witness, having been first duly sworn according
20 to law, testified as follows:

21 THE COURT: Ma'am, what is your full name?

22 THE WITNESS: Edith Curry.

23 THE COURT: That's C U R R Y?

24 THE WITNESS: Yes, sir.

25 THE COURT: You may inquire.

DIRECT EXAMINATION

BY MR. GOLD:

Q. Miss Curry, before we get started, as I understand it you're completely deaf in your left ear but you have hearing in your right ear?

A. I have some hearing in my right ear. I need to be looking at you.

Q. But you read lips as well?

A. Yes, sir. So if you ask something while I'm looking here, I may not hear you.

THE COURT: Thank you for letting me know.

Q. Miss Curry, could you please tell us where you live?

A. Richmond, Virginia.

Q. How long have you lived there?

A. Ten years.

Q. What's your husband's name?

A. Tom Broadhead.

Q. Could you tell us a little bit about your educational background?

A. I have an undergraduate degree in accounting and business administration, I have a master's in finance and I have a juris doctorate from University of Akron. I'm a licensed attorney in Ohio, licensed in the state of Ohio.

Q. And could you give us just a thumbnail sketch of your work background or experience I should say.

1 A. I worked in finance for 25 years before I went to law
2 school. I went to law school starting in 1993, finished in
3 1997, finished and passed the bar in 1997.

4 Q. You'll have to speak up a little bit.

5 A. I was in finance for 25 years, accounting and finance
6 for 25 years. I went to law school in 1993, finished in
7 1997, sat for the bar in '97.

8 Q. Tell us some of the companies that you've worked for.

9 A. I worked for U.S. Air during the U.S. Air and Piedmont
10 merger, I was director of accounting. I worked for Hughes
11 Aircraft, I was director of accounting. I worked for Nestle
12 in Solon, Ohio, I was director of accounting and assistant
13 treasurer. And I worked at Capital One where I was assistant
14 general counsel for four years.

15 Q. In addition, have you ever done consulting work?

16 A. Yes, sir. After I left Capital One in 2002, I
17 believe, 2002 or 3, I started my own company with a few
18 employees from Capital One, ex-employees of Capital One
19 called Brookmeade, B R O O K M E A D E, Group.

20 Q. Are you an expert in the uniform commercial code?

21 A. No.

22 Q. Have you ever told anybody that you were?

23 A. No. I'm familiar with the uniform commercial code. I
24 used it when I was at Nestle, but expert, no.

25 Q. Did there come a time when you met a person by the

1 name of Frank Amodeo?

2 A. Yes, sir.

3 Q. Do you see him present in the courtroom today?

4 A. Yes, sir.

5 Q. Could you just point him out and tell us what he's
6 wearing?

7 A. He's in a red striped tie, a blue striped shirt and
8 blue suit to my right.

9 MR. GOLD: May the record indicate that she's
10 identified Mr. Amodeo?

11 THE COURT: The record will so reflect.

12 THE WITNESS: I'm sorry.

13 THE COURT: The record will so reflect.

14 BY MR. GOLD:

15 Q. When did you first meet Mr. Amodeo?

16 A. I think 2003 I was introduced to him by my brother,
17 older brother.

18 Q. Who is your older brother?

19 A. Robert Curry.

20 Q. At that time what was Mr. Curry, your brother, doing
21 for a living?

22 A. He had his own consulting company as well, consulting
23 firm, or I believe he had his own consulting firm at that
24 time.

25 Q. What was it called?

1 A. I think if was called RSC Consulting.

2 Q. At that time when you first met Mr. Amodeo, did you go
3 to work with him in any capacity either as an employee or as
4 a consultant?

5 A. No, sir.

6 Q. Did there come a time where you did become a
7 consultant for Mr. Amodeo?

8 A. No. I became a consultant for Presidion corporation
9 or Presidion Solutions I think was actually who retained me,
10 who retained Brookmeade Group, but Frank Amodeo introduced me
11 to Presidion Solutions or Presidion corporation.

12 Q. Had you ever been a consultant for Matrix or Matrix
13 Network or Matrix Network Orlando?

14 A. No, sir.

15 Q. Now, can you -- by the way, regarding Mr. Amodeo, are
16 you presently engaged in litigation with Mr. Amodeo?

17 A. Yes, sir.

18 Q. Is that case before this court?

19 A. Yes, sir.

20 Q. Now, without going into any real details, if you could
21 just tell us the basic nature of that lawsuit.

22 A. A year after I left Mirabilis Ventures and Nexia
23 Strategy Corporation I was served a, I believe trade secret
24 and accused of stealing my intellectual property from
25 Presidion -- from Mirabilis Ventures and Nexia Strategy

1 Corporation. I was served at a conference in Scottsdale,
2 Arizona by a pro --

3 MR. SLAUGHTER: Is this necessary to get all this
4 part? You asked for a brief summary of the litigation and I
5 know where she's going with this.

6 THE COURT: I'll afford the government some
7 latitude because we have, I've certainly afforded the defense
8 that.

9 Q. I'm sorry. You may continue.

10 A. Thank you. I was at a professional conference in
11 Scottsdale, Arizona. I observed Aaron Bates who was then
12 general counsel or who I knew to be general counsel of AQMI
13 Strategy and Mirabilis and Nexia at some point, Matt Moqua
14 who was general counsel at Common Paymaster when I knew him,
15 Yaniv Amar, and a process server from Alabama served me with
16 a lawsuit, I think, September 12 of 2007.

17 Q. What were you doing at that time?

18 A. We were speaking at a -- Frank Hailstones, another
19 former executive and I were speaking at a professional
20 conference in Scottsdale, Arizona.

21 Q. Is that Mr. Moqua back there who you're talking about,
22 in the last row with the blue tie and blue shirt and jacket?

23 A. Yes, sir. Except he was wearing a Hawaiian shirt and
24 khaki pants and waving the Orlando Sentinel where they had a,
25 Mirabilis had issued a press release the day that they filed

1 the lawsuit saying that I had stolen, I had absconded with
2 assets and stolen 220 million dollars.

3 Q. Did there come a time where you were formally engaged
4 to do some consulting work for Mr. Amodeo or one of his
5 companies?

6 A. At the time Brookmeade Group was retained it was by
7 Presidion Solutions and the length of that engagement went
8 November, I want to say 11 maybe of 2004 and ended sometime
9 mid January of 2005. And then -- and the terms of that
10 agreement were Presidion Solutions were to pay my fee over a
11 12 month time period, and after five months, they defaulted
12 on their payments in May, I believe, of '05. And that's when
13 I was approached by Bob Pollack and Jim Sadrianna and Frank
14 Amodeo to work for Nexia Strategy Corporation and Mirabilis
15 Ventures. So it was June, I think, of '05.

16 Q. Let's go back to when you were working for, you were a
17 consultant for Presidion Solutions.

18 A. Yes, sir.

19 Q. Did you have any contact with Mr. Amodeo?

20 A. Oh, all the time. Yes, sir.

21 Q. Did you have meetings with Mr. Amodeo?

22 A. Yes, sir.

23 Q. What were you initially engaged to do at that time?

24 I'm talking about the November '05 to January '05 period.

25 A. Very specific. I was retained to negotiate with, at

1 that time, four secured creditors of Presidion Solutions.

2 Q. Could you pull the microphone just a little closer to
3 you?

4 A. I'm sorry. Is that better?

5 Q. Yes.

6 A. I apologize. I was retained at that time to
7 negotiate, renegotiate the terms of four secured creditor
8 agreements to facilitate an acquisition or a resolution of
9 some tax problems that they had. And it was Bob Gaines,
10 Robert Gaines and Fred Sandlin and the Mercator Group and
11 Hendricks, but I ultimately only renegotiated two. The other
12 two were left to Craig Vanderburg and Mr. Amodeo, I believe.

13 Q. All right. Did you ever meet with Mr. Amodeo and
14 members of Presidion regarding the negotiations?

15 A. Yes, sir. Absolutely. Probably between November and
16 January at least a dozen times. And talked on the phone
17 probably every other day.

18 Q. Now, when is the first meeting that you recall with
19 this group?

20 A. In mid November.

21 Q. Do you remember the date?

22 A. I want to say the 17th, I think, in Jupiter.

23 Q. Who was there?

24 A. Initially it was Craig Vanderburg and Jim Baiers,
25 Chris O'Connor, I believe, or I might have met him in Troy,

1 Michigan. But Chris O'Connor. I met Chuck Kirkpatrick. I
2 can't remember specifically if Frank was there, but a
3 gentleman, Jack Duval was there who was working for Frank,
4 and I think that was it.

5 Q. Did there ever come a time where you had a meeting
6 with Mr. Amodio in which the unpaid Sunshine company payroll
7 taxes were discussed?

8 A. Oh, absolutely, because part of my negotiations, I was
9 -- Bob Gaines and Fred Sandlin both had a secured note of
10 about three million dollars each, I think it was six million
11 total, 6.1 million, something like that, and the goal was to
12 allow them the, have them agree to have Frank or AQMI or
13 someone acquire the companies and restructure Presidion
14 Solutions or Presidion because at that time I think it was 13
15 million dollars of unpaid payroll taxes that Craig Vanderburg
16 had accrued.

17 So Gaines and Sandlin, who were members of the
18 board during that time period, there was liability I was told
19 that they had for being members of the board and allowing
20 that much in accrued, payroll taxes to accrue under their
21 watch. And there was debate back and forth between who was
22 responsible and how it happened. And so they had, their
23 secured position was they owned, they had not only stock in
24 Presidion tied up or Presidion Solutions, I can't remember
25 exactly what, but they also had personal guarantees from, I

1 believe, I know Craig Vanderburg for sure and I can't
2 remember whether it was, if Baiers also had a personal
3 guarantee as well, but I know there was a personal guarantee
4 for Craig Vanderburg. And Bob Gaines through his attorney,
5 Pat McGee, had actually initiated suit against Vanderburg,
6 and I think Baiers maybe, but I can't remember off the top of
7 my head.

8 Q. Did you ever have any meetings where Mr. Amodio and
9 Mr. Vanderburg were present where there was a discussion
10 about whether it was criminal to use payroll taxes?

11 A. Actually, yes, because I was under the impression that
12 non-payment of payroll taxes, of trust fund taxes, was in
13 itself a criminal offense, and I was corrected and told that
14 you can collect it, this is from Craig Vanderburg who pointed
15 out to me that he was president of the or headed up the
16 National Association of Employment Professionals accounting
17 division, their trade association's accounting division, and
18 I remember him pointing at me and saying my balance sheet is
19 bullet proof, it's bullet proof because it was not, it was
20 not criminal to not pay payroll taxes. You could collect
21 them. If you failed to remit them, that was a civil, that
22 was a fine, but if you took the money that you collected and
23 used it for something other than payroll taxes, that's when
24 it became criminal. And I was astounded to find that out,
25 but that's what he told me.

1 THE COURT: Who told you that?

2 THE WITNESS: Craig Vanderburg, the then
3 president and CEO of the professional employment organization
4 which he had been doing, I believe his e-mail address, or
5 either his or John Burcham's, was PEO king. So I -- they
6 were the experts at PEO.

7 Q. Was Mr. Amodeo present for that discussion?

8 A. Oh, absolutely.

9 Q. Did Mr. Amodeo ever discuss with you his tax strategy
10 regarding the Sunshine companies?

11 A. Yes. Because that had to be communicated to Gaines
12 and Sandlin in their, in the negotiations because Gaines and
13 Sandlin weren't to give up their six million dollar secured
14 position if they didn't feel that what was going to happen
15 was to their benefit. So what was communicated to me by Mr.
16 Amodeo and then subsequently communicated to Bob Gaines and
17 Fred Sandlin and Pat McGee, and we had several meetings, we
18 had probably three meetings with Frank Amodeo and Pat McGee
19 and myself and Bob Gaines was also present during this
20 negotiation time period, but the original plan, because Mr.
21 Amodeo held himself out to be a bankruptcy expert, was that
22 the whole issue with Presidion and why their 13 million
23 dollars in unpaid payroll taxes accrued was because they had
24 very high salaries and there were expensive cars and they
25 were using the money in ways that was not appropriate and

1 that he was going to implement an austerity program where he
2 was going to bring the salaries more in line, he was going
3 to --

4 Q. This is Mr. Amodeo you're talking about?

5 A. Mr. Amodeo was going to take over, pull Sunshine
6 companies out, put them in bankruptcy or prepare them for
7 bankruptcy, and then approach the IRS for negotiation, a
8 negotiated strategy, you know, here's what we're going to do,
9 we're going to carve out some of the fat, we're going to
10 reduce the exorbitant salaries, we're going to stop the
11 bleeding of excess money and funds, and we're going to turn
12 this company around. And because Bob Sandlin and Fred Gaines
13 believed that, they agreed to reduce their three million
14 dollars each in the secured position in exchange for stock in
15 the new, in the company. And they believed we were going to
16 remove Vanderburg and Baiers.

17 Q. Why was that important?

18 A. Because Bob Gaines and Fred Sandlin believed they were
19 not ethical or not appropriately running the company, and
20 they believed, at least their claims to me were that the,
21 they were responsible for some parts of the expenses for
22 insurance being high, but the non-payment of payroll taxes,
23 their words, their belief, was, happened on Craig
24 Vanderburg's and Jim Baiers' watch. And because during that
25 time, and I want to say it started in 2003, it might have

1 been 2002, but there was also a criminal investigation, IRS
2 CID investigation into Presidion because they believed, if I
3 remember the letter correctly, that John Burcham was using
4 Presidion or Presidion Solutions to launder money for his
5 father-in-law, Jack Russo. So this ongoing CID investigation
6 was happening. So it was all this flurry of bad things.

7 And also at that time some insurance agents had
8 been indicted, I want to say Justin Sierra, just they had,
9 Bob and Fred believed that they had just not run the company
10 appropriately. So it was important to them to have the old
11 management removed and new management put in.

12 Q. Was part of the tax strategy regarding Sunshine that
13 you were told to stop paying payroll taxes?

14 A. No. That was the problem, that they had stopped
15 paying payroll taxes.

16 Q. Was part of the strategy that Mr. Amodeo told you, was
17 it going to be to use the payroll taxes for other purposes?
18 In other words, not only not pay them, but to then take them
19 and not use them, was that part of the strategy?

20 A. No, that was never the strategy communicated to me,
21 that to solve the 13 million dollars of non-payroll tax
22 payment that was already accrued on the books, that the
23 solution would be to take more payroll tax money and use it
24 for other things other than paying the payroll taxes. My
25 understanding was that they were going to reduce expenses and

1 figure out ways, improve sales and get new clients and get
2 better insurance programs and use the reduction of expenses
3 to pay this huge sum of money that was due.

4 Q. Was Mr. Holtz involved in any of these meetings?

5 A. The first time I remember meeting Laurie Holtz was
6 December, the end of December of 2004.

7 Q. Did you at any time tell Mr. Amodeo that it was legal
8 to not pay the payroll taxes?

9 A. I may have mocked Craig Vanderburg saying, you know,
10 my balance sheet is bullet proof and that it's legal to, you
11 know, it's not illegal to collect it and not pay it because I
12 just found it so absurd, but I did not ever give him advice
13 in that capacity.

14 Q. Did you ever tell him that it was legal to stop paying
15 payroll taxes and then use them for other purposes?

16 A. No, sir.

17 Q. When you first met Mr. Amodeo, were you aware that he
18 was a disbarred attorney?

19 A. When I first met him? I believe, yes. I knew he had
20 a felony conviction. I can't remember whether the first
21 time. Probably within the first month or two I think I did
22 know.

23 Q. From whom did you learn that he had a felony
24 conviction, was it from him or someone else?

25 A. It might have been from him or my brother, but I

1 believe it was from Frank.

2 Q. Now, in relation to the Sunshine, was Mr. Amodeo
3 supposed to have access to the checkbook?

4 A. No. In fact, it was very specific. Jim Sadrianna, I
5 had met Jim Sadrianna at that time who was working for Matrix
6 and Jim Sadrianna was an attorney, a certified public
7 accountant, and also I was told worked at the IRS and had a
8 history with Frank Amodeo, had several years of working with
9 Frank, and I had also met Woody Johnson, Jim Sadrianna, Bob
10 Pollack who was a board certified psychiatrist, but I
11 remember being sure that Frank could never have access to the
12 checkbook. Frank would never have access to the money. In
13 his words, Frank's words, were to protect him from himself.

14 Q. After that initial meeting where you may have mocked
15 Mr. Vanderburg, did you ever, after that point in time, tell
16 him that it was legal to not make tax payments?

17 A. I was not retained in that capacity. I mean I never
18 worked for him as an attorney. It was not my place. He was
19 surrounded by other folks and he held himself out to be the
20 expert. That wasn't my place to say that, so, no.

21 Q. Were you ever present in any meeting with Mr. Amodeo
22 and Mr. Holtz where Mr. Holtz told him that it was okay to
23 not make the tax payments?

24 A. No. They were very specific in wanting, Frank wanted
25 documentation, you know, write this memo, give me this

1 briefing. He had several people, Larry Haber, several people
2 were writing and drafting those, Richard Berman at that time,
3 and Vanderburg was, again, Craig Vanderburg was, you know, he
4 was the accounting expert because he had served for seven
5 years on the board. And there were also several account,
6 sorry -- Presidion corporation was a public company and they
7 had outside auditors, I believe UHY was their outside
8 auditors, and they had several big law firms as well that
9 Frank consulted with that, you know, I was either coming in
10 and out of the meetings when he was having those
11 conversations in 2004.

12 Q. Do you know whether anybody was making the payments
13 for the Sunshine company taxes after December 10 of 2004?

14 A. I don't -- oh. If anyone was making -- I'm sorry, ask
15 that question again.

16 Q. Well, do you know whether anybody from Presidion or
17 Sunshine or anybody was making payments for the Sunshine
18 company taxes?

19 A. My understanding was there was going to be meetings
20 that Frank had set up with the IRS, Judy Berkowitz I believe
21 her name was at the time, to negotiate a payment strategy,
22 and it was Hans Beyer was retained to draft the bankruptcy
23 schedules in preparation for, I believe Frank, and I can't
24 remember, Dan Myers, but someone was certainly meeting with
25 the IRS to discuss strategies. Whether they were actually

1 paying them, I assume they were because they had engaged the
2 IRS in active negotiations.

3 Q. Now, were the Sunshine liabilities supposed to be paid
4 to the IRS?

5 A. Sunshine liabilities. That was the plan. That was
6 either, you know, here's money, we're going to negotiate, at
7 that time I think it was 13 million.

8 Q. I guess my question isn't clear.

9 A. Okay.

10 Q. Did you come to know that approximately 8.9 million
11 dollars was paid to AQMI --

12 MR. SLAUGHTER: Your Honor, Mr. Gold is leading
13 now. I've been quiet for a while, but this is getting to a
14 really important issue.

15 THE COURT: I will allow him to ask the question
16 of whether she's aware of this.

17 Q. Are you aware whether payments were made to AQMI?

18 A. Yes, sir.

19 Q. What was your --

20 A. During that time period.

21 Q. What was your understanding as to where those payments
22 were supposed to go?

23 A. They were to be given to the -- Fred and Bob, Bob
24 Gaines and Fred Sandlin were really unhappy with how
25 Presidion Solutions had been run, and I remember

1 conversations in late December because the negotiations broke
2 down, they didn't feel that things were moving like they
3 should have, and I remember conversations where money was
4 supposed to be taken from Presidion Solutions and given, I
5 believe, to Rachlin, Cohen and Holtz and held in trust to
6 pay, or to use to negotiate with, and I think it was, I want
7 to say nine or ten million dollars, I can't remember exactly
8 the number, but a substantial sum of the money with the idea
9 that Frank would approach the IRS and say we have, here's ten
10 million, you can accept that in payment of the 13, or we put
11 it in bankruptcy and you get nothing. That was my
12 understanding.

13 So I knew there had been conversations of some
14 amount of money being taken away from the control of
15 Presidion or Presidion Solutions, the bad guys to quote Bob
16 and Fred, and used to resolve this issue, or Fred and Bob
17 weren't going to reduce or give up their security claim.

18 Q. Did Mr. Amodeo or anybody else tell you that that nine
19 or ten million was going to be for Mr. Amodeo's consulting
20 fees?

21 A. Mr. Amodeo discussed his consulting fees and how his
22 consulting fees were \$10,000 an hour and he had other clients
23 and got actual money. There was conversations that he was,
24 Frank's fees as I understood it or AQMI's fees as I
25 understood it was he was supposed to get whatever he reduced

1 of the tax liability, half that as the fee, so if he got the
2 IRS to accept ten million instead of 13 million, he got half
3 the savings, I think, was my understanding.

4 Q. My question was is that money that was supposed to go
5 to Rachlin and Cohen, was that meant for his fees?

6 A. After the IRS was paid, not before the IRS was paid.
7 My understanding was nothing happened fee-wise until the IRS
8 was settled, until that problem was resolved.

9 Q. Did Mr. Amodeo ever tell you of a secret agreement
10 that he had with Craig Vanderburg about, no, they were really
11 going to be consulting fees and not for taxes for Sunshine?

12 A. No. At that time Mr. Amodeo was telling me how he was
13 trying to figure out how to get Craig Vanderburg and Jim
14 Baiers out of the company without them making a big to do,
15 brouhaha.

16 Q. Did you -- now, you said you stopped working in
17 approximately January of '05?

18 A. My contract was settled. I mean I had achieved the
19 goals of my consulting agreement with Presidion Solutions and
20 I think it was January of '05. 15th I think is when the
21 documents actually passed.

22 Q. When did you come to work with Mr. Amodeo?

23 A. June of '05, when Presidion Solutions defaulted on the
24 note.

25 Q. What was your engagement to be at that time?

1 A. General consulting, but more importantly, to set up,
2 he wanted to acquire companies, use Mirabilis as an equity
3 group and as he acquired companies, he was going to move the
4 accounting and finance functions up to Richmond, Virginia and
5 that I would manage those.

6 Q. So how much time did you spend in Orlando versus
7 Virginia?

8 A. Oh, maybe two days a month in Orlando.

9 Q. And what were you doing up in Virginia?

10 A. I was looking for space to set up the call center. I
11 was meeting with the economic development commission of the
12 commonwealth. I was meeting with senators. I was, you know,
13 trying to find employees. I was moving forward to set up the
14 call center.

15 Q. Did you ever become a member of the board of directors
16 of any Amodeo company?

17 A. I became a member of the board of directors in the
18 first board meeting for Mirabilis Ventures, I believe, was
19 November 1 or around the 1st of November, 2005.

20 Q. Okay. Was that still the same timeframe you were only
21 coming down two days a month?

22 A. Absolutely. Yes, sir.

23 Q. And how long did you wind up working in that capacity?

24 A. You mean as a consultant for Mirabilis and Nexia?

25 Q. Yes, ma'am.

1 A. Through, I believe my termination agreement was
2 October 31 of 2006.

3 Q. Did there come a time where you actually left the
4 company before that?

5 A. Yes. Yes.

6 Q. When was that?

7 A. There was, it was February 28 of 2006.

8 Q. Why did you leave the company at that time?

9 A. Because there was a conference call held by Mr. Amodeo
10 at noon on February 28 of 2006 with 300 employees present
11 where he made demands and accusations that I believed were
12 unreasonable.

13 Q. What had happened over that weekend?

14 A. I had been contacted about a week prior to that by
15 Brian Fisher, and Brian Fisher was in charge of heading up I
16 wouldn't say third-party processor, but Cadent or community
17 health systems insurance processing, claims processing, and
18 Brian was frustrated because the phone systems weren't
19 working against insurance regs. If you process insurance,
20 you're supposed to have phones so that people can call in and
21 get claims benefit information. And Brian had tried through
22 normal channels to get that problem resolved and was getting
23 nowhere and was getting stonewalled and was frustrated and
24 contacted me and said as a member of the board could you
25 please help me get the phones to work. And he had contacted,

1 we had a -- there was an, ISI was the computer phone group
2 that was headed by Jim Vandevere reporting through Bob
3 Pollack to Frank and he had been trying to get Jim Vandevere
4 to fix the phones and that wasn't working. So prior to that
5 week I was calling Vandevere and saying what's going on. He
6 was saying it's just the cable and it was never getting
7 fixed. So that Friday I called Frank on the phone and told
8 him this is ridiculous, I need to get this fixed before the
9 regulators find we're in non-compliance. We've got to start
10 running this like a real company. So with his knowledge I
11 contacted Vandevere and found out who the vendor was and
12 called the vendor to go in and look at what was wrong with
13 the phones. And it was a Friday, Saturday, Sunday.

14 So the vendor called me on Saturday morning and
15 said this has been sabotaged. This is ridiculous. No one
16 should have implemented the phone systems like this. It was
17 almost like they were designed not to work is what he said to
18 me. And I said can you get it fixed? We need to be up and
19 running by Monday morning. This is ridiculous.

20 One of Jim Vandevere's direct reports, a
21 gentleman by the name of Smith Bryce, when Vandevere left to
22 wherever he went for the weekend, Smith Bryce was in charge
23 with channeling the information he said, so he would talk to
24 the vendor, he was on site because I was in Richmond and this
25 was down somewhere in South Florida, and he would work with

1 the vendor and then work with Brian Fisher and try to get,
2 find out what the real problem was. And there was one point
3 where the president of the company, the vendor, called me and
4 said, Lynn Chineyfelt (ph) his name was, he called me at home
5 and said this is ridiculous, whoever is working for you that
6 did this should be reprimanded because how the phone system
7 was implemented is completely inexcusable.

8 Q. Was this for a company called Cadent?

9 A. Yes, sir.

10 Q. Had Mr. Amodeo discussed his plans with you about
11 Cadent?

12 A. No. That we were acquiring or in the process of
13 acquiring, had just acquired Cadent. But during that weekend
14 Mr. Amodeo knew I was trying to get the phone systems to work
15 and at one point Smith Bryce, the direct report of Jim
16 Vandevere, told me that I was not to contact, I did not have
17 authority to contact any supplier or vendor without going to
18 him. And I pointed out to Mr. Bryce, I said I'm a member of
19 the board, do not question my authority again, so we got the
20 phones working.

21 Q. Let me ask you a question. Was there any discussion
22 that you recall about throwing Cadent into bankruptcy?

23 A. No, sir. Not at all. That was not the plan. I mean
24 as discussed with both Brian Fisher and myself, not at all.
25 In fact, we were tasked with, there was going to be a whole

1 regulated industry thing which was health insurance because
2 that's how, that was part of the austerity program for the
3 PEOs was we're going to have to have a captive insurance
4 carrier and do all the processing ourselves. No.

5 So I was all really proud of myself that I got
6 the phones fixed on Monday morning and Brian and I were doing
7 the woo-hoo, this is great, we finally have a situation
8 resolved. And then Frank Amodeo mandated that everybody gets
9 on a conference call at noon and he says that, you know,
10 people in Richmond were acting outside of their authority and
11 we were going to get our tasks every two weeks in Common
12 Paymaster and if anyone questioned his authority he would
13 picket our houses and paper them, if we questioned him he
14 would paper us with such a flurry of litigation. It was
15 bizarre. So we hung up from that phone call and I called
16 Frank Hailstones -- I called Mr. Amodeo and he refused to
17 take my calls, for a week he refused to take my calls, so I
18 then called Frank Hailstones and said nothing's worth this,
19 I'm leaving.

20 THE COURT: Mr. Gold, I need to give Mr. Rolland
21 a break, so we'll be in recess for 15 minutes.

22 MR. GOLD: I only have another probably 15
23 minutes at the most.

24 (BRIEF RECESS.)

25 THE COURT: You may continue, Mr. Gold.

1 BY MR. GOLD:

2 Q. We left off when you were talking about saying to Mr.
3 Hailstones there was no reason to continue, I guess.

4 A. Yes. I wanted to leave the company.

5 Q. Did there come a time when you went back to the
6 company?

7 A. Yes, sir.

8 Q. When was that?

9 A. After I was approached by Laurie Holtz and by Frank
10 Hailstones and by Mr. Amodeo to return. In fact, Mr. Amodeo
11 flew up to Richmond to talk to me and say I needed to come
12 back and work for the company.

13 Q. Where did he meet with you?

14 A. In my living room. He flew to my home.

15 Q. And then you worked until the end of October you said
16 of '06?

17 A. I worked until Mr. Amodeo withdrew funding and shut
18 down the Richmond offices in -- well, I got notice I think in
19 September, and then ultimately the final negotiation was
20 August, I'm sorry, October 31 I think was my last day.

21 Q. The entire time that you worked there, who made the
22 financial decisions?

23 A. It was Mr. Amodeo's company and Mr. Amodeo made the
24 decisions.

25 Q. Now, prior to your testimony today, did you get an

1 opportunity to look at an April 18, 2006 videotape of a
2 meeting?

3 A. Yes, sir, I did.

4 Q. Did you see in there that there was a discussion of
5 payroll taxes of 144 million dollars?

6 A. Mr. Paul Glover -- I'm sorry. Yes, sir, I did.

7 Q. All right. Now, the meeting that we're talking about,
8 could you put it in context for us?

9 A. We had brought on, Mirabilis had brought on a new
10 chief operating officer, Fernando Simo, a new chief financial
11 officer, Paul Glover. There had been a flurry of
12 acquisitions and Paul Glover was brought on board to, as the
13 chief financial officer to assimilate the acquisitions and
14 get good financial statements in preparation for an audit by
15 I believe James Moore and Company at that time for Mirabilis
16 Ventures.

17 Q. How did the 144 million dollars come up?

18 A. There was a binder prepared and Mr. Glover started the
19 meeting with Laurie Holtz, myself, Frank Hailstones, I think
20 Mr. Holtz's son, Steve Holtz and Sharmila Khanorkar who was
21 also from Rachlin, Cohen and Holtz, and Fernando Simo. A
22 binder had been put together of the status of the financial
23 situation of all of the recently acquired companies and --

24 Q. Recently acquired by whom?

25 A. Well, that was the odd thing. There were frequently

1 changes, so Mirabilis may acquire a company, and then Frank
2 would decide to put it into AQMI, into his company, or there
3 was a lot of fluid movement of companies. It's -- so we
4 don't know exactly who acquired all of them at that time. I
5 mean it was fluid. Some were acquired by Wellington or AQMI
6 or Titanium or whomever and they were put together with, the
7 theory was to put in one call center or one payroll
8 processing or one accounting function which was supposed to
9 be in Richmond, Virginia. So Paul Glover said that he had
10 met with Frank Amodeo and decided what companies were where
11 and now we were putting together a plan to assimilate and
12 integrate and find good financial statements. I mean prepare
13 reasonable financial statements.

14 Q. What triggered the discussion of the 144 million?

15 A. Presidion Solutions was a company that Presidion Corp.
16 had at that time, I believe at that time, and I can't
17 remember if it was Frank's company yet or was about to become
18 Frank's company or Frank was buying it, I can't remember
19 exactly the date of that happening, but there was
20 conversation, we had bought a PEO shell called AEM, '06, the
21 prior year from Fred Sandlin, so that John Burcham wouldn't
22 acquire it. So Frank bought a PEO shell and wanted to hold
23 it for future acquisition or whatever it was. And there was
24 discussion, there was a plan to move, once Craig and Jim
25 Baiers were out of Presidion Corp. or Presidion Solutions, to

1 move the PEO processing into this shell company AEM. So
2 there was all sorts of angst and there was, the accounting
3 system didn't work up in Troy and there was Lawson and there
4 was all sorts of issues going on. So Paul was brought in, I
5 believe, in February.

6 Q. Paul Glover?

7 A. Paul Glover was brought in several months earlier and
8 was tasked with getting his arms around the financial
9 statements and preparing, you know, statements for all these
10 companies and coming up with a plan. So before anything
11 moved from Presidion Solutions to AEM, the requirement was
12 that it was reconciled and accurate. So that was a painful
13 four hour meeting where Mr. Glover started by the first at
14 least 40 minutes saying he met with this company that we had
15 acquired and their accountants were idiots, and he met with
16 this company and they were idiots, and he met with these and
17 they were stupid and he met with these and this was a mess.
18 So he spent a lot of the front of the meeting explaining that
19 all the accounting systems, all the companies we had ever
20 acquired were unreliable and not good. And he said, and so I
21 believe Frank Hailstones and Fernando Simo was responsible
22 for integrating the PEO, moving the PEO business into the,
23 into AEM or Mirabilis HR I think it was doing business as,
24 and there were questions about what were we getting from
25 Presidion Solutions, was it accurate or was it reliable, and

1 he said no. And so we were, you know, trying to decide what
2 the plan was to make sure that before we got anything it was
3 accurate.

4 Q. Did Mr. Holtz ask any questions about the accuracy or
5 the payment of the taxes?

6 A. Well, yes. He said something to the effect of if
7 those boys aren't doing what they should be doing because
8 there had been a long history of Vanderburg and Baiers not
9 doing things appropriately, he said I don't want to take on a
10 huge, all the contracts or all the clients of the PEOs if
11 they haven't paid their payroll taxes, if they haven't done
12 what they should be doing.

13 Q. Was there any discussion of whether anyone knew if the
14 payroll taxes had been paid?

15 A. Anyone knew -- there had -- at that meeting?

16 Q. Yes. Did that question come up?

17 A. The payroll taxes had been paid. I believe that
18 question was asked directly of Paul Glover.

19 Q. By whom?

20 A. Probably by Laurie Holtz, I think.

21 Q. Okay.

22 A. But prior to that meeting, that was April of '06,
23 prior to that meeting, at least March and April, and
24 certainly in January, we had been given, we, the executive
25 had been given, I remember Dan Myers passing me in the

1 hallway saying we're negotiating with the IRS, things are
2 looking great. And Kevin Monroe had given me a letter, Kevin
3 Monroe Consulting was a CPA firm that I believe Frank Amodeo
4 owned either in AEM or Wellington or something, and there was
5 a letter they had investigated and they were accurate on
6 their payroll taxes. And when Paul deadpanned, well, the
7 number was 144 million or whatever number he came up, there
8 was no credibility with that number because he had just spent
9 20 minutes telling us what a disaster the records were. So
10 I'm trying to reconcile what he's telling me with other
11 certified public accountants in the company saying, you know,
12 things are going well.

13 Q. The negotiations that you spoke about, negotiations
14 for which payroll taxes?

15 A. My understanding of all negotiations with the Internal
16 Revenue Service at that time were to the original Presidion
17 Solutions or Sunshine companies to the original 13 million
18 dollar pop.

19 MR. GOLD: If I can have just one second, Your
20 Honor.

21 THE COURT: Yes, sir.

22 MR. GOLD: Your Honor, I have no further
23 questions.

24 THE COURT: Okay.

25 CROSS EXAMINATION

1 BY MR. SANDS:

2 Q. Good afternoon, ma'am. You mentioned at the outset of
3 your direct testimony that you had been speaking at a
4 professional conference in Arizona when you were served with
5 some papers, is that correct?

6 A. I was a guest lecturer, yes, sir.

7 Q. What were you lecturing on?

8 A. I believe it was to, with a conference group called
9 MIS, which didn't stand for Management Information Systems,
10 but it was for internal auditors on their anti fraud or
11 Sarbanes-Oxley internal audit programs.

12 Q. Now, you do consider yourself to be an expert with
13 regard to Sarbanes-Oxley and anti fraud compliance, correct?

14 A. I had been billed that by the Joel Kramer, the head of
15 the management information systems program.

16 Q. In fact, you have a company that specializes in
17 providing that service, don't you?

18 A. I have a company that advertises that service, yes,
19 sir.

20 Q. What is the name of that company?

21 A. P A L A X A R. Palaxar.

22 Q. Does Laurie Holtz actually sit on the board of
23 directors of any company that you're involved with now?

24 A. No, sir.

25 Q. Let's go back to 2003 or 2004. I think you indicated

1 on your direct examination that you met Frank Amodeo in 2003,
2 is that correct?

3 A. I think so, yes, sir. Or early 2004.

4 Q. Okay. I was going to try to refresh your
5 recollection. If the Sunshine companies plan was actually
6 going through in December of 2004, do you think that you
7 actually would have met Frank Amodeo in 2003 or 2004?

8 A. I think it was -- I think it was summer of 2004, if I
9 remember.

10 Q. I take it then that you met Frank Amodeo several
11 months less than a year before the actual completion of the
12 transfer of ownership of the Sunshine companies?

13 A. There was a period of time where my brother and my --
14 well, my brother was working I believe with Matrix or working
15 in that circle and my husband was also working with, I can't
16 remember whether it was 2003 or 2004, but don't remember
17 directly meeting Frank until I think it was summer of 2004.

18 Q. Now, who introduced you to Mr. Amodeo?

19 A. My brother. My older brother.

20 Q. And what if any connection did he have at that time to
21 Mr. Amodeo?

22 A. I believe Mr. Amodeo was asking him to, in fact I
23 think that was it, to come to work for Matrix. I think Bob
24 was working or wanting to work for Matrix.

25 Q. What is your husband's name again?

1 A. My husband is Tom Broadhead.

2 Q. And what if any connection did he have at that time to
3 Mr. Amodeo?

4 A. I think he was also doing work for Bob, but I don't
5 know whether it was -- he was also doing work with Matrix.
6 He was doing some work while he was waiting at his
7 non-compete after he left Capital One.

8 Q. All right. Now, when you first met Mr. Amodeo, did he
9 tell you at that time about his criminal background?

10 A. I can't remember if it was the first meeting or
11 shortly thereafter, but yes. I remember it being early in
12 the relationship.

13 Q. He told you not only that he had been an attorney but
14 that he was a disbarred attorney, correct?

15 A. I don't remember that. I remember the felony
16 conviction. I don't remember the disbarred until later.

17 Q. Well, do you remember him telling you that he had
18 actually been disbarred for mishandling a client's money?

19 A. I remember him saying that he did time and was on
20 supervised probation for a felony conviction. I don't
21 remember the disbarment conversation early on.

22 Q. Did Mr. Amodeo tell you anything at any point in time,
23 and again let's focus on the last part of 2004, regarding his
24 mental health history?

25 A. He would introduce himself as a megalomaniac.

1 Q. In fact, didn't you regularly refer to him as the
2 royal one, little Caesar, Caesar, and exchange correspondence
3 with other employees at Mirabilis in which he was referred to
4 as the emperor?

5 A. I did refer to him as little Caesar because I said in
6 one of the early meetings that he looked like little Caesar
7 on the Little Caesar's pizza box. In fact, teased him and
8 said I wanted him to stand up and say pizza, pizza because of
9 his striking resemblance to the little Caesar on the pizza
10 box.

11 Q. Isn't it a fact that he was also referred to as the
12 emperor?

13 A. He referred to himself as -- wait a minute, wait a
14 minute. Bob Pollack and he, in fact, it was Jim Sadrianna
15 bought him the Darth Vader mask because he was a Star Wars,
16 everything was Star Wars, and Bob Pollack, everything was
17 Star Trek. So Bob Pollack would be speaking in Klingon and
18 Frank would be wearing his Darth Vader mask in meetings, so
19 there was a lot of jest that happened.

20 Q. This is Dr. Pollack?

21 A. Yes, sir.

22 Q. The licensed psychiatrist?

23 A. Yes, sir.

24 Q. What, to your understanding, was the relationship
25 between Mr. Amodeo and Dr. Pollack?

1 A. They had a very close business and personal
2 relationship.

3 Q. What if any doctor patient relationship were you able
4 to discern between Dr. Pollack and Mr. Amodeo?

5 A. I don't know that that would have been disclosed to
6 me, that they had a doctor patient relationship, but Dr.
7 Pollack often commented that he had breakfast with, every
8 Sunday with Frank, that he was a psychiatrist. Dr. Pollack
9 often offered advice to people who worked there on various
10 issues that they may be having with, for example, I was, my
11 husband's ex-wife had brought a custody dispute that was very
12 painful and ugly and I had brought some of the documents to
13 Bob and said how do I deal with this, help me with this, so,
14 you know, that was my understanding of Bob Pollack.

15 Q. Didn't you understand that there were mental health
16 issues with regard to Mr. Amodeo as early as 2004?

17 A. Did I understand there were mental health issues with
18 Mr. Amodeo as early as 2004? Be more specific on --

19 Q. Well, didn't you testify already on direct examination
20 that Mr. Amodeo said that he needed to protect himself from
21 himself?

22 A. He said he shouldn't have access to a checkbook is
23 what he said.

24 Q. And what did he mean? How did he explain that to you?

25 A. How did he explain that to me? Couldn't budget. He

1 just would spend money.

2 Q. And did that make sense to you in the context of your
3 relationship or your knowledge of Mr. Amodeo?

4 A. Did that make sense to me? Sure. There are lots of
5 people that say don't let me near a checkbook. I don't view
6 that as odd. And it's not his expertise, or at least he said
7 it wasn't his expertise.

8 Q. You mentioned in direct examination that you became
9 involved with Presidion corporation directly through
10 Brookmeade, is that right?

11 A. They were with whom I contracted, yes, sir.

12 Q. And, again, what was the terms of your contract with
13 Presidion?

14 A. I believe it was a retainer and I think it was
15 \$25,000, and then half of whatever I got the principal
16 reduced of the secured creditor note. In fact, originally it
17 was 30 percent. So, for example, if there was a three
18 million dollar secured note, the principal that was owed, and
19 I got them to reduce the principal amount to two million, I
20 would get, originally, 30 percent of the one million
21 reduction of the principal.

22 Q. And what was your understanding of the financial
23 arrangement that Mr. Amodeo had with Presidion?

24 A. I didn't know that. I just knew he was retained by
25 Presidion to solve the tax controversy because he was a

1 bankruptcy and tax expert.

2 Q. And did you understand that solving the tax
3 controversy involved, at least in December of 2004, a
4 transfer of ownership of the Sunshine companies away from
5 Presidion corporation to a company controlled by Mr. Amodeo?

6 A. I remember it being discussed at that time. I
7 remember discussing that they would be put in bankruptcy. I
8 don't know if at that time that they would be sold to him --
9 there was so many different plans between November and
10 December, but my distinct recollection of the conversations
11 with Fred and Bob were that they would be put in bankruptcy
12 or that that would be a proposal.

13 Q. Now, did you have discussions with a gentleman by the
14 name of Chris O'Connor during the course of the planning for
15 the tax planning with regard to what was going to be done for
16 the Sunshine companies?

17 A. No, because I wasn't -- there were conversations with
18 Chris O'Connor regarding what -- there were leases and
19 various receivables that were due to the two secured
20 creditors, building leases and things, and there were a
21 couple disputes on whether or not the receivables were
22 actually on the books of Presidion. It appeared they had
23 written them off and I said if you had written off the
24 receivables, I'm not going to negotiate that as a settlement
25 issue. So there were discussions about that. And then --

1 yeah. That was pretty much it I think.

2 Q. Let me step back from that for a moment. What was
3 Chris O'Connor's position at Presidion?

4 A. It changed. I believe it was senior vice president of
5 operations when I knew him.

6 Q. Isn't it a fact that you caught Mr. O'Connor in a
7 number of lies, including the fact that he was falsely
8 denying that he was the CFO?

9 A. He did represent to me that, yes, he did represent to
10 me that he had never been a chief financial officer and then
11 I found documents in, looking through the stuff for Bob, Fred
12 and Bob, that he was in fact at one point a chief financial
13 officer. That's true.

14 Q. Isn't it true that you actually thought that Chris
15 O'Connor was lying to you, this wasn't an innocent mistake,
16 that he had actually lied to you?

17 A. Well, I asked him directly, have you ever been a chief
18 financial officer and he said no, so, yes, he did lie to me.
19 I did make that statement, yes, sir.

20 Q. Wasn't it true also that Mr. O'Connor was blaming Mr.
21 Vanderburg for not paying the employment taxes that had
22 accrued at the Sunshine companies?

23 A. Mr. O'Connor blamed anyone who wasn't in the room. He
24 had blamed -- I had heard he had blamed Mr. Vanderburg, I had
25 heard him blame Mr. Burcham, and I had heard him blame Mr.

1 Baiers at various times depending on who was present in the
2 room.

3 Q. Isn't it also true that Mr. Vanderburg had admitted
4 during this time period using fraudulent letters of credit to
5 capitalize insurance?

6 A. He admitted during this time -- no, he didn't admit
7 during this time.

8 Q. When did he admit that?

9 A. I don't know that he admitted that to me. I was
10 present during a conversation with Mr. Amodeo and Mr. Berman
11 about Strategic Bank Corp. and Vanderburg and Baiers having
12 to go to New York for a meeting and that they were charged,
13 it was like 2.5 million dollars, but Mr. Vanderburg never
14 admitted directly to me that the letters of credit were
15 fraudulent. I had heard that from Mr. Amodeo.

16 Q. So you heard it indirectly from Mr. Amodeo that Mr.
17 Vanderburg had admitted this?

18 A. No. I had heard from Mr. Amodeo that he had uncovered
19 fraudulent letters of credit from Strategic Bank Corp. and
20 that he was retaining Mr. Berman to pursue litigation to
21 recover them.

22 Q. Well, did Mr. Amodeo also tell you that Mr. Vanderburg
23 had admitted this when he confronted him?

24 A. I don't remember that.

25 Q. Do you recall being interviewed back on May 21 of 2007

1 at the U.S. Attorney's Office by Mr. Gold and Special Agents
2 McCabe and Smith?

3 A. I'm sorry. Ask that question again, sir.

4 Q. Do you recall being interviewed at the U.S. Attorney's
5 Office on May 21, 2007?

6 A. Yes.

7 Q. Okay. And do you recall at that time being asked
8 questions about this matter generally and indicating to the
9 agents that Mr. Vanderburg had used fraudulent letters of
10 credit to capitalize the insurance and he had admitted this
11 when confronted by Amodeo?

12 A. That was my understanding or Mr. Amodeo would not have
13 been able to --

14 MR. GOLD: Object, Your Honor. I don't think
15 that's inconsistent with what she said. If he's trying to
16 impeach her, that's got to be something different.

17 MR. SANDS: If he could read back the record, I
18 think it is inconsistent. I don't think she had said that
19 Amodeo had told her that he had admitted this when confronted
20 by Amodeo.

21 THE COURT: Just go on. Ask your next question.

22 BY MR. SANDS:

23 Q. Isn't it -- what was your general opinion of Mr.
24 Vanderburg with regard to his honesty?

25 A. I believed he could not be trusted.

1 Q. Isn't it true that you actually called him filth, a
2 walking liability, in an e-mail to Mr. Berman on June 30,
3 2005?

4 A. If you have something to refresh my memory, perhaps.

5 Q. Sure.

6 THE COURT: What are you trying to show, Mr.
7 Sands, that she had a low opinion of Mr. Vanderburg?

8 MR. SANDS: Trying to show, Your Honor, that
9 there were a number of different people involved in this, as
10 I've been showing all along, including Mr. Vanderburg --

11 THE COURT: She isn't saying that she didn't say
12 that.

13 MR. SANDS: Well, I'm perfectly willing to move
14 forward.

15 THE COURT: She said he couldn't be trusted.
16 That's not a whole lot different from saying he's a walking
17 liability.

18 MR. SANDS: Thank you, Your Honor.

19 Q. In connection with the Sunshine companies sale in late
20 2004, did you ever have any discussions with Mr. Holtz about
21 monies that Mr. Amodeo was being paid?

22 A. I don't recall that. I don't recall why I would have
23 cause to speak to Mr. Holtz about that.

24 Q. Did you have any discussions with Mr. Holtz in
25 December of 2004 regarding the Sunshine companies sale?

1 A. I remember being present at a meeting. Actually I
2 think that's the first time I met Laurie Holtz was in a
3 meeting December 21 of 2004. I think that's the first time I
4 met him. Which, if my memory serves me, was two weeks after
5 the Sunshine companies sale had been signed.

6 Q. Isn't it true that you had knowledge that Mr. Holtz
7 had reviewed the transaction pertaining to the 14 million
8 dollars in fees received by Amodeo for the PSI acquisition
9 but that you're not sure what he actually reviewed?

10 A. No, that's not -- no.

11 Q. Do you recall, again, you recall meeting with the
12 agents of the government and Mr. Gold at the U.S. Attorney's
13 Office on May 21 of 2007, do you not?

14 A. Yes.

15 Q. Do you recall at that time indicating to the agents
16 that over the period of a weekend Curry had knowledge that
17 Holtz reviewed the transaction pertaining to the 14 million
18 received by Amodeo for the Presidion Solutions acquisition.
19 Curry does not know what specific documents Holtz reviewed.

20 A. Okay. You're combining things. What I remember was
21 Laurie Holtz, Frank Amodeo was banking at I believe Janney
22 Montgomery Scott and they were going to throw him out of the
23 bank for money, I think it was for money laundering, for
24 whatever transactions were going on there, and there were
25 documents or there were questions that Janney Montgomery

1 Scott had asked about certain transactions that went through
2 Janney Montgomery Scott, and Laurie said, well, let's respond
3 to the questions, let's pull all the documents and put them
4 together because we don't want you thrown out of the bank if
5 there's no cause to do that. So Laurie spent the weekend
6 with Frank at his home and I think at Gentry's or at a
7 restaurant and not only prepared those documents or assisted
8 Shane Williamson preparing those documents, but also drafted
9 a narrative of the Sunshine companies' story draft to be
10 circulated.

11 Q. Now, when are you saying that that was actually
12 prepared?

13 A. That June, I think it was June of '05. Was it June of
14 '05? Or '06? Had to be '06, I think. June of '06, I think.

15 Q. Now, my understanding then is what you're saying is
16 that Mr. Amodeo needed to have some sort of a financial
17 background check that was done by Mr. Holtz?

18 A. No, that was not my understanding. My understanding
19 was that Mr. Amodeo needed some forms filled out from Janney
20 Montgomery Scott to answer some questions. I don't know that
21 it was an investigation or an audit or anything. My
22 understanding was it was just paperwork that needed to be
23 completed to answer questions that they had.

24 Q. And was it your understanding that as an upshot of
25 that investigation that Mr. Holtz had actually reviewed

1 paperwork that indicated that Mr. Amodeo had received 14
2 million dollars in fees?

3 A. Yes.

4 Q. As a result of the sale of PSI?

5 A. I didn't know that. It was 14 dollars in fees.

6 Q. You mean 14 million dollars?

7 A. I'm sorry. 14 million dollars. I didn't know what
8 the 14 million was from because Frank often said he had other
9 clients, so I never knew, I couldn't tell you what the 14
10 million was for.

11 Q. Now, isn't it also true that as of December of 2004
12 when the Sunshine companies plan was going through that your
13 husband was actually owed a debt by Mr. Amodeo and or Matrix?

14 A. Yes.

15 Q. How much was he owed?

16 A. I believe \$220,000.

17 Q. And what was the \$220,000 debt for?

18 A. Tom had advanced to Matrix \$120,000, I think the year
19 before, and then another \$20,000 for payroll to a company
20 they were working on, KVN, and then unpaid salary.

21 Q. So he --

22 A. So there was a promissory note of I think it was
23 \$220,000.

24 Q. So there was an advancement of money of \$140,000?

25 A. Tom loaned money, yes.

1 Q. And the additional money was unpaid salary?

2 A. Yes, sir.

3 Q. Isn't it true that in December of 2004, when this deal
4 is going through, Mr. Amodeo actually paid your husband
5 \$150,000 to pay off that debt?

6 A. No. I believe it was a hundred thousand dollars.

7 Q. Again, you recall meeting at the U.S. Attorney's
8 Office back in 2007, correct?

9 A. Yeah. But right now -- it was either 100 or 150.
10 Right now I think it was a hundred thousand.

11 Q. If you said 150 back then, you just think it was
12 incorrect?

13 A. No. There was two payments, one of a hundred and one
14 of 150,000. I can't remember which one came first, but there
15 were two payments.

16 Q. Where did Mr. Amodeo get that \$150,000 to pay your
17 husband back in December of 2004?

18 A. He told us he had clients.

19 Q. Well, isn't it true that you understood that Mr.
20 Amodeo basically had three sources of income, those three
21 sources of income being the 14 million dollars in fees he got
22 through the Sunshine companies planned sale, and in addition
23 to that he had additional income then from AQMI and from the
24 disposition of a workers' comp insurance policy?

25 A. I don't know that I would know all the sources of

1 Frank Amodeo income. I know what he said, he often said he
2 was able to charge \$10,000 an hour and that he had large
3 fees, but I don't know that I knew exactly specifically who
4 got what or what the arrangements of the contracts were.

5 Q. So I just want to make clear though, it was not your
6 understanding in December of 2004, when the Sunshine
7 companies plan was going through, that the \$150,000 or a
8 hundred thousand dollars that was being paid by Mr. Amodeo to
9 your husband was coming out of the monies he was getting in
10 December from Presidion corporation pursuant to that plan?

11 A. No, I don't believe I did, because there was several
12 companies that he was working with at the time. He had
13 Matrix and Trafalgar and AQMI and Wellington, so there were
14 several clients and companies he had going on.

15 Q. Now, when Mr. Vanderburg in connection with the
16 Sunshine companies plan indicated to you that he thought you
17 could collect trust fund taxes and it wouldn't be criminal
18 not to pay them, you didn't believe him at that time, did
19 you?

20 A. That was not my understanding, that you could use
21 payroll trust fund taxes for anything other than to pay the
22 IRS.

23 Q. Did you write any memos, send any e-mails, prepare any
24 legal memoranda documenting your disagreement with that
25 position?

1 A. I didn't have to because Richard Berman and Mr. Amodeo
2 were in the room at the time that comment was made and it,
3 you know, enough people heard that.

4 Q. Enough people heard him say it.

5 A. Uh-huh.

6 Q. What I'm asking you, ma'am, is if you wrote any legal
7 memoranda, sent out any e-mails.

8 A. I wasn't retained to do that. I didn't feel it was
9 appropriate at the time. I wasn't there as legal counsel. I
10 wasn't there to offer legal opinion. I was there as a
11 consultant. And when I could roll my head to the tax and
12 bankruptcy expert, Mr. Amodeo, who was in charge of dealing
13 with the tax controversy, or with Mr. Berman, who was
14 retained as counsel for Mr. Amodeo, I felt my duty was done.

15 Q. Now, you said to tax and bankruptcy expert, you're
16 talking about Mr. Amodeo, the gentleman who you knew at that
17 point in time was a disbarred ex-felon, correct?

18 A. I knew at that time was holding himself out as a tax
19 and bankruptcy expert.

20 Q. Well, I'm asking you, at that point in time you knew
21 that he was a disbarred ex-felon, isn't that true?

22 A. I certainly knew it was true he was an ex-felon. I
23 don't know if at that time I knew he was disbarred.

24 Q. Did you go out and consult with a criminal attorney to
25 find out if Mr. Vanderburg's theories were correct?

1 A. No. Because Mr. Berman and Mr. Amodeo believed his
2 theories were not correct.

3 Q. Isn't it true that in the entire course of this case
4 with all of the e-mails that were sent back and forth and
5 memoranda that were written, you never wrote a single e-mail,
6 never sent out a single memorandum addressing the issue of
7 whether it is legal or illegal not to pay trust fund taxes
8 over to the government, did you?

9 A. No, I did not do that.

10 Q. Notwithstanding the fact that Craig Vanderburg, the
11 PEO king, had made this statement back in December 2004 when
12 you were coming up with this plan for the sale of the
13 Sunshine companies?

14 A. When who was coming up with the plan for the Sunshine
15 companies?

16 Q. Well, who was coming up with the plan?

17 THE COURT: I'd ask you to move off that line of
18 questioning. She's made it clear both on direct and on cross
19 several times that she did not believe it was her
20 responsibility to give tax advice and she's explained that
21 she was relying on others, including Mr. Amodeo, who was
22 charging \$10,000 an hour for his expertise.

23 MR. SANDS: I will, Your Honor.

24 Q. Stepping forward now from December of 2004, when did
25 you actually become an employee or become a member of the

1 board of directors of Mirabilis?

2 A. I became an employee in June of 2005, I believe. I
3 would say late June. I'm not sure exactly when.

4 Q. When did you first become a member of the board of
5 directors?

6 A. First official board meeting of Mirabilis that I
7 attended and was a member of was November of 2005.

8 Q. Well, when did you actually become a member? I didn't
9 ask you when you first attended a meeting. When did you
10 become a member of the board of directors?

11 A. November of 2005.

12 Q. And this is of Mirabilis Ventures, Inc.?

13 A. Yes, sir.

14 MR. SANDS: May I approach, Your Honor?

15 THE COURT: Yes, sir.

16 MR. SANDS: Could I have this marked as the
17 defendant's next in order?

18 MR. GOLD: Your Honor, may I see what he's --

19 MR. SANDS: Yes, yes.

20 Q. I'd like you to take a look at that document which has
21 been marked for identification purposes as defendant's
22 exhibit 57. Do you recognize your signature on that
23 document?

24 A. No. I don't sign my documents Edie Curry, I sign E.L.
25 Curry.

1 Q. So what you're claiming is that document wasn't signed
2 by you?

3 A. I don't sign things Edie Curry.

4 Q. Okay. I just want to get for the record that that
5 document was not signed by you.

6 A. No.

7 Q. That document indicates, does it not, that there was a
8 board of directors meeting back in January of 2005?

9 A. That's what this document says.

10 Q. And do you have any idea who would have signed that
11 document on your behalf?

12 A. No, I don't.

13 Q. Did you have any involvement with Mirabilis before the
14 latter part of 2005 -- when was it?

15 A. June of 2005.

16 Q. Did you have any involvement with Mirabilis prior to
17 June of 2005?

18 A. Absolutely. I was copied on several e-mails and
19 contacted and talked to, you know, involved in some of the
20 conversations to keep Fred Sandlin's and Bob Gaines'
21 agreements current because as part of the agreement that they
22 understood for taking stock in Presidion in lieu of their six
23 million dollars in secured debt that Craig Vanderburg and Jim
24 Baiers would be removed and so there was e-mails and copies,
25 you know, things going on from Bob Pollack and, so I was

1 notified, I was given information, that was my involvement.

2 Q. But to your knowledge, you were not the secretary and
3 treasurer of Mirabilis Ventures as of January 2005?

4 A. No, not as of January 2005.

5 Q. When you did become involved with Mirabilis later on
6 that year, who at that point in time was on the board of
7 directors?

8 A. I know Frank Amodeo signed board of directors meeting
9 minutes in February of '05 as the sole director and sole
10 shareholder, I know for both Mirabilis and Nexia I think
11 later that year. And then when I joined in June of 2005, Jim
12 Sadrianna was president. I can't remember if the board had
13 convened. My understanding was the first official board
14 meeting of Mirabilis Ventures was in November, when the board
15 was seated was November of 2005. And it was Bruce Walco and
16 Bob Pollack and Jason, it was Jason Carlson, I think, and
17 myself. I can't remember exactly who all was there, but I, I
18 believe was November.

19 Q. What if any knowledge at that point in time -- well,
20 let me step back. What if any knowledge did you have about
21 the earlier acquisition in 2005 of the PBS book of business
22 by an Amodeo company?

23 A. Are you talking about Professional Benefits Solutions?

24 Q. Yes.

25 A. I wasn't involved in the PEO stuff past that, past the

1 conversations with Fred and Bob.

2 Q. Okay. Were you, after you became involved with
3 Mirabilis, what was your involvement, if any, with PEO
4 operations?

5 A. My involvement was in April, I believe, of 2005, might
6 have been March of 2005, I was copied on an e-mail from Craig
7 Vanderburg to, I believe, Frank Amodeo that said Fred Sandlin
8 is getting back in the PEO business again, and Frank Amodeo
9 called me and asked me to contact Fred Sandlin to see if he
10 was, in fact, setting up a PEO to do a, quote, end around on
11 Presidion. And I did contact Fred Sandlin who said that he
12 had this PEO shell called AEM and that John Burcham, after he
13 had, after Mirabilis had bought the stock of Presidion from
14 John Burcham and removed John Burcham from the president or
15 chief operating officer of Presidion, that John Burcham
16 contacted Fred Sandlin to buy the shell and compete with his
17 former company. So Frank Amodeo authorized me to buy that,
18 finalize that transaction of obtaining the PEO shell AEM from
19 Fred and giving it to, I can't remember the buyer, whether it
20 was Mirabilis or one of Frank's companies, but that's what I
21 did.

22 Q. What was your understanding in the second half of 2005
23 of the ownership of the PEO business that had been run
24 through PBS previously?

25 A. I don't know. It would change, it was so, and I

1 wasn't involved in the PEOs directly. I was involved in
2 setting up the call centers and, you know, running Virginia.
3 I was not involved in the PEO stuff.

4 Q. Well, what was your actual title within the Mirabilis
5 organization at that time?

6 A. Which week? It changed frequently.

7 Q. Well, tell me how it changed over the course of time.

8 A. Often times I didn't know. In fact, our pictures were
9 on magnets on the white board in Frank's office and they
10 changed, so I would read the Nexia list, a publication, and
11 find out that my title had changed from senior vice president
12 to regional manager to president, so it was very fluid.

13 Q. Well, isn't it true also that you were the head of the
14 audit committee?

15 A. For a month. It was one month from February. I think
16 the audit committee was set up in, I believe the audit
17 committee was set up in the March board meeting. We had a
18 meeting in April.

19 Q. Again, for the judge's clarification, when you say
20 March, you mean March of 2006?

21 A. March of 2006. We had a board meeting in, I believe
22 we had that meeting, there was a meeting April 21. Then
23 there was a May board meeting. And then, then there was a
24 meeting of the class A shareholder in June that suspended all
25 other board meetings so there was not another board meeting

1 past May.

2 Q. Could you just tell me what different positions you
3 held within Mirabilis, to the best of your knowledge?

4 A. Okay. To the best of my knowledge, but this may not
5 be consistent with the documentation that may exist somewhere
6 within Mirabilis because I didn't often get that notice, at
7 times I was treasurer, on the board, I was vice president. I
8 was president. I was on the risk committee. Then there was
9 another title called, I can't remember, it was like
10 ombudsman. I can't remember. But the titles varied.

11 Q. Weren't you actually at one point in time inspector
12 general?

13 A. That was it. Thank you. Inspector general. I was an
14 inspector general.

15 Q. So at different points in time you're on the audit
16 committee and you were the inspector general of the
17 committee, correct?

18 A. No, that's not correct. At times I was given that
19 title.

20 Q. What did you actually do for the company?

21 A. I was retained to set up a call center in Richmond,
22 Virginia, which I did. I found a building and negotiated
23 with the commonwealth to get, you know, tax concessions,
24 which I did of 4.3 million dollars, and consideration for
25 training and, you know, trying to put the patchwork together.

1 Q. How much were you paid?

2 A. \$180,000 a year.

3 Q. Wasn't the original plan actually to move the PEO
4 business up to Richmond, Virginia and you did some
5 politicking to try to help get that done?

6 A. All the accounting. I don't know if it was all the
7 PEO business, but professional employment organization is
8 simply payroll processing, so it was to move all the payroll
9 processing.

10 Q. So the plan was that you really were going to have an
11 involvement with the PEO businesses, correct?

12 A. The plan was to get a payroll and call center
13 processing, be it for the companies acquired, it was
14 accounting and payroll.

15 Q. What was the source of the company's income so far as
16 you knew it in the second half of 2005?

17 A. In the second half of 2005. That is right when I
18 joined. Frank Amodeo's fees. Frank was the secured
19 creditor.

20 Q. Frank Amodeo's fees from what?

21 A. From his clients.

22 Q. What clients?

23 A. I don't know. He wouldn't tell us. In fact, to that
24 very point, after that February 28, 2006 conference call led
25 by Mr. Amodeo, there was an e-mail sent by Tessah on behalf

1 of Frank that said when we, both my husband and I had asked
2 Tessah where this came from, we were told that we had
3 interrupted -- I had interrupted -- I'm paraphrasing here --
4 I had interrupted Frank's plans, that he only tells people
5 what they need to know and, you know, to follow orders. So
6 you don't challenge Frank.

7 Q. What income did you know about that Mr. Amodeo had?
8 Let me step back. You knew he had the 14 million from the
9 Sunshine companies sale, correct?

10 A. I didn't say that. I said I knew he had clients and
11 fees. Where they came from or what the contractual
12 arrangements were, I know what he claimed, but did I witness
13 it with these two papers? No.

14 Q. But you knew from conversations with Mr. Holtz that as
15 part of his financial review of Mr. Amodeo's financial
16 condition that Mr. Amodeo had received 14 million dollars in
17 fees --

18 MR. GOLD: Objection. Asked and answered.

19 THE COURT: Sustained.

20 Q. What other sources of income did you know about?

21 MR. GOLD: Objection, Your Honor. I think we've
22 plowed this ground.

23 THE COURT: Sustained.

24 Q. What sources of income did you think that Mirabilis
25 had other than Mr. Amodeo's contributions?

1 A. I don't believe there are any other than as the
2 secured creditor. We were buying distressed companies and
3 trying to make those work.

4 Q. So it was your understanding with regard to the latter
5 half of 2005 that Mirabilis was existing completely
6 dependently on whatever contributions were being made by Mr.
7 Frank Amodeo?

8 A. I didn't know what other companies. I wasn't involved
9 in the other companies that were acquired or part of that to
10 see what their financial contributions were.

11 Q. During the period that you were employed by Mirabilis,
12 how many companies were actually acquired by Mirabilis?

13 A. I believe the number was between 60 and 80.

14 Q. And how much money was spent to acquire all of these
15 companies?

16 A. I don't know.

17 Q. Did you ever inquire?

18 A. Yes. I inquired frequently.

19 Q. Did you write memos about it?

20 A. Yes.

21 Q. Did you confront Frank Amodeo about it?

22 A. Yes.

23 Q. What did you ask him?

24 A. How are you doing this?

25 Q. What did he tell you?

1 A. He had clients.

2 Q. You knew as of April of 2006 that Mr. Glover was
3 claiming that there was 144 million in tax liability, don't
4 you?

5 A. I know Mr. Glover was saying that all the accounting
6 systems were garbage and that he couldn't rely on any
7 numbers, that's what I knew.

8 Q. Ma'am, didn't you sit in a meeting in April of 2006 in
9 which Mr. Glover indicated that there was a 144 million
10 dollar tax liability?

11 A. I was in a meeting when Mr. Glover made that
12 statement, prefaced by 20 minutes of Mr. Glover stating why
13 none of the accounting systems were reliable.

14 Q. Were you aware that there were tax returns that had
15 been filed showing tax liabilities in the tens of millions of
16 dollars at that point in time?

17 A. No, because it wasn't a Mirabilis company that was
18 filing those.

19 Q. You never bothered to look to see what were on those
20 tax returns?

21 A. It wasn't a Mirabilis company, and the last time I
22 overstepped my boundaries with Mr. Amodeo was not a good
23 result. So when that statement was made and it was a Mr.
24 Amodeo company, I left that to Mr. Amodeo and his accountants
25 and certified public accountants he had retained to deal with

1 that.

2 Q. What was Mr. Glover's position in the company at that
3 point in time?

4 A. Chief financial officer.

5 Q. So what you're telling the court right now is that you
6 didn't believe the chief financial officer of the company
7 when he told you that there was a 144 million dollar unpaid
8 payroll tax liability in April of 2006?

9 A. I'm saying when the chief financial officer made that
10 statement about a company that was not a Mirabilis company,
11 it was an Amodeo company, and when it was prefaced by 20 or
12 40 minutes of all the accounting systems are unreliable, I
13 believed that to highlight the issue that we were trying to
14 resolve which was to get good financial statements on a solid
15 accounting platform so we knew what the facts were.

16 Q. Well, in fact, in direct examination didn't you say
17 that you thought there was no credibility to his statement?

18 A. I'm saying I didn't know what to believe. On the one
19 hand he was saying everything was a wreck, and on the other
20 hand we have these numbers that were outrageous, which didn't
21 comport with what I was being told by Dan Myers who is also a
22 certified public accountant working for Mr. Amodeo saying
23 there was no tax liability at all at these companies. So I
24 didn't have enough facts to make a good judgment.

25 Q. So are you saying, ma'am, that you didn't say on

1 direct examination that there was no credibility to Mr.
2 Glover's statement?

3 A. Yeah, I had trouble reconciling that with what I had
4 been told, absolutely.

5 Q. So you did believe that there was no credibility to
6 his statement at that time?

7 A. Right. I didn't -- yes, there was no credibility to
8 his statement.

9 Q. Okay. What steps did you take at that point in time,
10 after having heard from the chief financial officer of the
11 company that there's a 144 million dollar payroll tax
12 liability and determining on your own that he has no
13 credibility, what did you do to determine what the true facts
14 were?

15 A. Well, understand that that liability statement was not
16 for a Mirabilis company. So what we came up with, Laurie
17 Holtz and Frank Hailstones and myself and Sharmila Khanorkar
18 if that was her last name, was to audit, was to gather the
19 records and find out whose belly button to push to get some
20 answers.

21 Q. Ma'am, didn't you understand AEM was a Mirabilis
22 company, was it not?

23 A. AEM I understood at that time was a shell that was
24 doing business or just starting up as Mirabilis HR, but was
25 not, didn't have clients in it.

1 Q. Didn't you know that, in fact, AEM had been managing
2 the book of business throughout the second half of 2005?

3 A. No, sir, I didn't know that.

4 Q. Did you ever bother to familiarize yourself with any
5 of the contracts that the company was entering into with
6 PEOs?

7 A. No. And when I made the inquiry for contracts or
8 things that were at the board, particularly statements of the
9 board, I was told I had to go to Mr. Amodeo for those
10 contracts. So when I did inquire about things that were not
11 Mirabilis companies, I was not given that information,
12 because, quote, it was none of my business.

13 Q. And did you --

14 A. Unquote.

15 Q. Did you terminate your employment with the company
16 right at that moment?

17 A. But it wasn't a Mirabilis issue. If it was an AQMI
18 issue or a Wellington issue, this is like me resigning from
19 GM because Ford is doing something I don't like.

20 Q. Did you actually believe, ma'am, that the acquisition
21 of 80 plus companies was being financed solely by private
22 funds from Frank Amodeo?

23 A. And other capital investors he told us.

24 Q. Now, you didn't mention that before. What other
25 capital investors did he tell you?

1 A. That's what he said. He didn't tell us about any, he
2 just said other capital investors.

3 Q. Did you ever read any of the legal memoranda that were
4 produced by or for the company articulating the potential
5 penalties that could apply for the non-payment of payroll
6 taxes?

7 A. I was copied on several memos.

8 Q. Do you recall which ones you were copied on?

9 A. Do I recall which ones I was copied on? Probably some
10 stuff in 2004, end of 2004, 2005.

11 Q. Let me see if I can refresh your recollection. Do you
12 recall any memos written by a legal associate of Mr. Berman's
13 by the name of Elena Wildermuth?

14 A. I may. I don't recall. I may. Since that wasn't my
15 area of expertise, I wasn't, I, you know, was just copied on
16 stuff.

17 MR. GOLD: Your Honor, I'm not objecting to
18 anything, I just have a question of the court and Mr. Sands.
19 Miss Curry is from Virginia. I don't know whether we're
20 going to be able to finish her, but my preference, if the
21 court could bear with us to get her so she doesn't have to
22 come back next week or the week after, if we could
23 accommodate her it would be great. If he's going to go on a
24 whole lot longer than that and we can't, we can't.

25 THE COURT: Before you go on a whole lot longer,

1 I want to know what your point is. Is your point to -- I
2 don't get it. What are you trying to establish here on your
3 cross examination?

4 MR. SANDS: Your Honor, I'm simply trying to
5 establish that there is a massive state of denial within this
6 company about what's going on and these are people who were
7 brought in with excellent credentials, who are not doing the
8 things that they need to do in order to provide sound advice
9 to Mr. Amodeo.

10 May I have just a moment, Your Honor?

11 MR. SLAUGHTER: Your Honor, are we going to
12 continue tomorrow?

13 THE COURT: No, we're not going to continue
14 tomorrow, but I want to know how much longer you want to
15 spend with this witness. That's why I asked what is the
16 purpose of this lengthy cross examination.

17 MR. SANDS: Your Honor, I did not intend for it
18 to be too lengthy and I have gone through most of what I
19 needed to go through.

20 THE COURT: How much longer will you take?

21 MR. SANDS: I have to talk to my client for just
22 a moment.

23 (DISCUSSION OFF THE RECORD.)

24 MR. SANDS: I'm just going to check with the
25 government, Your Honor.

1 (DISCUSSION OFF THE RECORD.)

2 MR. SANDS: Your Honor, may I explain? In an
3 effort to try to get the witness out and try to comply with
4 my client's wishes as well, there is, as we've already talked
5 about, an April 18, 2006 meeting which there has been some
6 discussion about, some testimony was referenced in the
7 sentencing memorandum. Mr. Amodeo has no desire to force the
8 witness to sit through the entire conference, which is how
9 long?

10 MR. GOLD: I believe it's four hours.

11 THE COURT: On one hand you're making a case that
12 the defendant has been taken advantage of by others who are
13 supposed to be directing things.

14 MR. SANDS: Right.

15 THE COURT: And now, you know, I'm here watching
16 what goes on in court and it seems that it's inconsistent
17 with that because he's directing counsel in great detail, it
18 appears to me. Now, what is it you want to do? Do you want
19 to put on, go back to the video that we played earlier?

20 MR. SANDS: No. It's not our argument that Mr.
21 Amodeo who is bipolar and has manic episodes which the court
22 has seen isn't --

23 THE COURT: I won't say they're manic.

24 MR. SANDS: Our argument instead is simply that
25 Mr. Amodeo was not fully competent to be able to make

1 rational decisions and relied upon experts who did him no
2 great service in the course of this company.

3 THE COURT: To the extent that you want to make
4 that point with this witness, at least about the subjects
5 that you've covered, I don't know to do more is to just
6 replot the same field. You've done that.

7 MR. SLAUGHTER: Judge, could I say something?
8 Number one, he's not controlling, but as you
9 know, we have an obligation, and he may be going to prison
10 for a long time, and we're trying to comply with what he
11 thinks the facts are. But I do know the facts on that
12 meeting are not as this witness has --

13 THE COURT: Well, you can play it later to the
14 extent that we have not played it up until now.

15 MR. SLAUGHTER: That's what we're trying to do.
16 Let her go if we can play it later. And we will have it set
17 up so you can hear it.

18 THE COURT: That's fine.

19 MR. SANDS: Because the tape is the best evidence
20 to begin with. It doesn't make much sense for me to be
21 arguing back and forth about what's on the tape, I agree with
22 that, and I'm not go to do that.

23 THE COURT: Good. We're on the same page then.

24 MR. SANDS: All right. With that being said, I
25 just have a couple of more questions and we'll get you out.

1 Q. What is ESAC (ph)?

2 A. It's, I believe, it's an employment, it's a
3 certification of PEOs, certification agency or something like
4 that.

5 Q. And was it in connection with the certification of
6 PEOs that this -- strike that.

7 Do you recall that in connection with ESAC there
8 was a problem with All Staff's certification in 2006?

9 A. I remember being told that Laurie Holtz and I and
10 Larry Haber had to drive up to Washington, D.C. to attend a
11 meeting, a ESAC board meeting which was our first experience
12 with that, because All Staff, an acquisition, had claimed to
13 be ESAC certified and that was wrong and we were local and
14 could we drive up to go to that meeting and just say, look,
15 we just acquired them, you know, if there's a violation we'll
16 go back and we'll work on that. So Larry Haber, I believe
17 Laurie Holtz and myself and I can't remember whether Tom
18 Broadhead went or not, he may have, but I can't remember, so
19 we went and we met with Rufus, I can't remember his last
20 name, but Rufus of the ESAC organization and pled our case
21 saying this was an acquisition, it's new. And then we were
22 given I think 60 days, 30 or 60 days I think to get
23 compliant.

24 So I came back, I forwarded that information to
25 the appropriate people and followed up several months later

1 and -- or followed up saying has this been complied with, and
2 the last communication I got was an e-mail from Larry Haber
3 saying that Frank Amodeo had changed plans, he couldn't share
4 that with me, but I need to discuss it with Frank, and I
5 approached Frank and said do you need me to do anything more
6 with this, and he said he had handled it and I was to go off
7 the project.

8 Q. Do you recall going to a hearing on May 26, 2006 with
9 Laurie Holtz in connection with ESAC?

10 A. That's what I'm talking about. That's that board
11 meeting. It wasn't a hearing, it was a board meeting.

12 Q. And at the board meeting were any -- strike that. At
13 the board meeting on May 26, 2006, was there any discussion
14 of the fact that there were unpaid payroll taxes by Presidion
15 or Mirabilis?

16 A. No.

17 Q. You don't recall any discussion of unpaid payroll
18 taxes?

19 A. Other than the original -- if there was discussion, I
20 don't remember specifically. What I remember was ESAC
21 certification on All Staff's website that was not
22 appropriate. But to the extent that there would have been
23 any conversation about unpaid payroll taxes, it would have
24 been relating to the 2004 Presidion Solutions or the original
25 tax problem dating back to '04.

1 Q. Am I correct in stating that it was your understanding
2 that Mr. Amodeo's role in Mirabilis was going to be broker to
3 deals?

4 A. What time period are you talking about?

5 Q. I'm talking about the time period commencing with your
6 involvement with the company.

7 A. No, that was not my understanding.

8 Q. Was it your understanding that he would have no
9 control of the company once it was acquired and no access to
10 the funds of the company?

11 A. No. It was my understanding that he would not have
12 access to the checkbook, but not that he would have no
13 control.

14 Q. Was it your understanding that he was to have no
15 involvement in the company as a way to protect himself from
16 himself?

17 A. Not no involvement in the companies, no.

18 Q. And you don't recall having said those three
19 statements to the agents and Mr. Gold at your meeting at the
20 U.S. Attorney's Office?

21 A. What three statements specifically?

22 Q. You believed that Mr. Amodeo's role was to broker
23 deals. You believed that he would have no control of the
24 company once it was acquired and no access to the funds of
25 the company. You believed he was to have no involvement in

1 the companies as a way to protect himself from himself.

2 A. You're talking about Mirabilis? What company are you
3 asking about?

4 Q. What company were you talking about when you had the
5 discussion with the U.S. Attorney's Office?

6 A. Mirabilis. The only one I was involved in which was
7 Mirabilis and Nexia.

8 Q. Is that is a correct statement about Mirabilis and
9 Nexia?

10 A. That was my understanding at the time.

11 MR. SANDS: I'm nearly finished, Your Honor.

12 Q. Ma'am, do you recall attempting to purchase an
13 insurance company in March of '05 by the name of Osaba
14 Insurance Company located in Savannah, Georgia?

15 A. I remember Bob Pollack and I forget who else, they
16 wanted to buy Asaba, that was the plan. There was
17 consideration or they were thinking about purchasing an
18 insurance company as part of the PEO consolidation or cost
19 cutting measures.

20 Q. What was your understanding where the money was going
21 to come from to make that acquisition?

22 A. My understanding was there were going to be capital
23 investors.

24 Q. What was your involvement in that?

25 A. They had asked me if I would -- I remember filling out

1 an application if I would be a part of that if it ever got
2 approved, so they asked me to fill out an application.

3 Q. And, in fact, you filled out an application with the
4 state of Ohio department of insurance?

5 A. I might have. I think it was --

6 MR. GOLD: Your Honor, objection. I don't see
7 the relevance of this line of inquiry.

8 MR. SANDS: Your Honor, the only relevance to
9 this line of inquiry is the time period. It's early in 2005,
10 she said she hadn't become involved with Mirabilis until
11 later in 2005. I'm just trying to establish continuity of
12 involvement that goes beyond the work that Brookmeade had
13 been doing on the original Sunshine companies plan. I have
14 no further questions about that area.

15 THE COURT: Okay.

16 Q. Just a few final questions. Do you recall telling Mr.
17 Gold and the agents at the U.S. Attorney's Office back in
18 your meeting in 2007 that you believe there were three
19 sources of money for Amodeo, it's fees from Presidion
20 Solutions which were approximately --

21 MR. GOLD: Objection. Asked and answered.

22 THE COURT: Sustained.

23 Q. You mentioned the work that Mr. Holtz had done with
24 regard to providing information to a bank so that Mr. Amodeo
25 could maintain accounts there?

1 A. Yes, sir.

2 Q. Do you recall exactly what information was actually
3 provided to the bank?

4 A. I was never privy to that.

5 Q. Do you recall what the upshot was of that production
6 of information in terms of whether he was allowed to stay at
7 the bank or not?

8 A. I believe he was allowed to stay at the bank, but I'm
9 not sure.

10 Q. Were you ever issued any stock yourself in Mirabilis?

11 A. No. I was told I was issued stock, but it turns out I
12 wasn't really.

13 Q. Do you know if there were authorizations made to issue
14 stock to you?

15 MR. GOLD: Objection, Your Honor. Relevance.

16 MR. SANDS: The relevance here, Your Honor, is
17 Mr. Amodeo has indicated the same thing with regard to him,
18 that he was, had stock authorized. There was a dispute about
19 whether Mr. Amodeo really had stock in the corporation or not
20 and his credibility I think was attacked by Mr. Gold with
21 regard to whether or not he had stock or not, and Mr.
22 Amodeo's explanation was that he, the stock had been
23 authorized but it had not been issued to him. All I'm trying
24 to establish through this witness is that she had exactly the
25 same experience.

1 THE COURT: Overruled.

2 Q. You may answer.

3 A. I'm sorry. Your question again.

4 Q. Let me rephrase the question.

5 A. Thank you.

6 Q. Do you recall having stock authorized but not issued
7 to you from Mirabilis?

8 A. I recall being told by Frank Amodeo that he had
9 authorized that I was a tenured shareholder and that he as a
10 class A shareholder had made that authorization. I later
11 found out when I was leaving the company that that was an
12 untrue statement.

13 Q. Did you ever receive any financial statements from Mr.
14 Glover as CFO?

15 A. I received draft financial statements from Mr. Glover
16 and from Dan Myers.

17 Q. Did you ever receive any final financial statements
18 from them?

19 A. No. I was leaving the company at that point.

20 Q. And what if anything did the draft financial
21 statements show you with regard to deficiencies in the
22 payment of payroll taxes?

23 A. There were none.

24 MR. SANDS: May I have just a moment, Your Honor?

25 THE COURT: Yes, sir.

1 BY MR. SANDS:

2 Q. One last question. The insurance company we were
3 talking about with regard to the potential acquisition in
4 early 2005, do you recall what the proposed purchase price
5 was?

6 A. No.

7 Q. Does 16 million dollars ring a bell?

8 A. No, sir.

9 MR. SANDS: May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 Q. I'd like to show you what's been marked for
12 identification as --

13 MR. GOLD: Can I see what it is, please?

14 Q. I'm showing you what's been marked for identification
15 purposes as defense exhibit 58. Do you recognize the
16 documents that comprise that exhibit?

17 A. This -- yes. This must be the document that I filled
18 out for Ohio that I sent to Bob Pollack because that's my
19 fax, that's the header, Brookmeade Group, that I faxed it.
20 Yeah, absolutely. So this was the biographical affidavit I
21 filled out for the potential acquisition or the involvement
22 with Asaba Insurance.

23 Q. Who was the potential owner going to be?

24 A. I can't remember. I don't remember what the structure
25 was. This was probably the third or fourth of these that,

1 there was Beacon and Asaba, there were a couple runs at this,
2 so I can't remember what the final structure was going to be.

3 Q. Was it going to be run through Mirabilis do you think
4 or through some other company?

5 A. It must have been at that time through Mirabilis, but
6 that also changed frequently, so I don't know what the
7 final -- I don't remember what the original structure was. I
8 remember filling this out and then maybe a week or two later
9 it fell through. Nothing materialized.

10 MR. SANDS: All right. I'd move for the
11 admission of defense exhibit 58 into evidence.

12 MR. GOLD: I don't have any objection.

13 THE COURT: 58 is received in evidence for the
14 defendant.

15 MR. SANDS: Nothing further, Your Honor.

16 MR. GOLD: No redirect.

17 THE COURT: I have a couple questions just
18 because I didn't hear at the beginning. You said something
19 about a newspaper, somebody bringing you a newspaper at the
20 very beginning of your testimony.

21 THE WITNESS: When Mirabilis and Nexia filed a
22 lawsuit against me personally and Palaxar claiming that I
23 absconded with the assets of Mirabilis and that I made off
24 with 220 million dollars, they released a press release that
25 made the front page of the Orlando Sentinel saying anti

1 fraud, something like anti fraud company absconds with
2 assets. So they filed the lawsuit on a Friday, they released
3 the press release to the newspaper, and on Saturday morning,
4 it was either Saturday or Sunday's Orlando Sentinel, that
5 made the headlines. I guess it had to be Saturday's paper.
6 And so on Monday morning Mr. Bates, Mr. Moqua, Yaniv Amar,
7 and a process server from Georgia flew from, one from Georgia
8 and three from Orlando to Scottsdale, Arizona to confront me
9 and Mr. Hailstones in front of 40 internal, heads of internal
10 audit waving the newspaper in this registration of the hotel
11 saying what did you do with the money, how dare you --

12 THE COURT: Okay. I understand now. And
13 somebody in the courtroom did that?

14 THE WITNESS: Mr. Moqua had the newspaper saying,
15 look, you made the front page of the Orlando Sentinel. He
16 was at that time general counsel for Mirabilis or -- no, no,
17 it was Aaron Bates and Scott Goldberg, he was one of the
18 attorneys that had filed the suit or was working with the law
19 firm that has that lawsuit against Palaxar. Yes, sir.

20 THE COURT: Okay. Thank you, ma'am. You may
21 step down.

22 MR. GOLD: Your Honor, may I have a minute or two
23 with Mr. Sands and Mr. Slaughter?

24 THE COURT: Please.

25 (DISCUSSION OFF THE RECORD.)

1 MR. SANDS: Your Honor, may I be heard?

2 THE COURT: Yes, sir.

3 MR. SANDS: We may be able to reach an agreement,
4 I think that there's a good chance we can, that would obviate
5 the need for any further testimony from the government.

6 MR. GOLD: Except for about maybe five minutes
7 worth on the some of the substantial assistance stuff or
8 less.

9 MR. SANDS: We're in a situation with our client
10 where we try whenever we can not to make him make an
11 immediate snap judgment in the courtroom about releasing
12 significant rights, which is one of the things that we would
13 be doing if we make an agreement with the government with
14 regard to some of these issues. What we'd like to do is have
15 the ability to talk with him about it over the night at
16 least. And also be able to talk to the government.

17 THE COURT: Here's what we will do. I can't
18 proceed tomorrow with this case, but I will be able to be
19 back with you on Tuesday. If that's your agreement that
20 that's all you're going to do, what I would want from you on
21 Tuesday is a summation of how all of this information you've
22 provided me is relevant to the issues that were framed at the
23 beginning of the case, and you can present whatever case law,
24 whatever you want, and make your 3553 arguments and have
25 everything done, allocution and everything, and then leave it

1 for me to sentence the following week because you've given me
2 a lot, and I don't think it's fair to either side for me to
3 just move right into sentencing without having looked at
4 exhibits and consider arguments.

5 MR. SANDS: Your Honor, that's exactly what Mr.
6 Amodeo wants. I think as part of this what we might be able
7 to do, and what, we didn't want to even attempt to do with
8 the problems we've had with the video with a witness here, is
9 stipulate to maybe redacted portions of two tapes and then
10 Your Honor can just watch them, if you so choose, at your
11 leisure during that break, along with the other evidence.

12 THE COURT: How long are the tapes?

13 MR. SANDS: Well, the problem is one of the tapes
14 is --

15 THE DEFENDANT: Twenty minutes before the meeting
16 from what she said today, and 40 minutes, and the meeting is
17 40 minutes.

18 MR. SANDS: Right. So about an hour and 40
19 minutes. It is, Your Honor, as you have heard, there are
20 some key meetings that take place April 18 and April 19 of
21 2006 in which people are really talking about assuming
22 control, about the company, people are talking about what
23 they know at the company.

24 I recognize that this is not a case about these
25 other people, Mr. Amodeo is being sentenced here, but it is

1 important for us in terms obviously of the downward departure
2 argument that we be able to make our argument to the court
3 about given his psychological condition, he could have been
4 influenced by other people, as referenced to some extent by
5 the psychiatric testimony as well. And that is the reason,
6 and I'm sorry, I didn't mean to beat a dead horse, but that's
7 one of the reasons why we have continued to kind of belabor
8 this point. And that is one of the reasons why we think it
9 would be helpful for the judge to be able to actually see the
10 conference that is being referred to in the testimony of this
11 last witness because you can judge for yourself what's being
12 said by Mr. Glover, for example, and how the various
13 participants are reacting to it.

14 MR. SLAUGHTER: I can synopsise it very quickly.
15 He did not say the accounting is a mess. He said it's on
16 five different systems, they're trying to integrate them.
17 But then he says when asked are the taxes not being paid, and
18 he says, no, they're not being paid. How much is it?
19 144,000 dollars. And nobody in the room bats an eye. And
20 then Laurie Holtz says, geez, I've been negotiating with the
21 IRS and here to think that this money would be going out
22 while I'm negotiating with the IRS, and then later in the day
23 he says I'm not going to go to the meeting. So you're
24 talking about, at the most --

25 THE COURT: You meant 144 million.

1 MR. SANDS: Right.

2 MR. SLAUGHTER: And they don't even bat an eye.
3 I think Mr. Gold would agree, if any one of us had been in
4 the room, the chairs would be on the floor and we'd be
5 calling 9-1-1

6 MR. SANDS: This is, again, a case that had also
7 begun with the cavalier statement by one of the major
8 participants that you don't need to pay taxes.

9 THE COURT: Okay. If I receive the tapes in
10 evidence I will listen to them in your presence because I
11 want you all to know that I looked at them.

12 MR. SLAUGHTER: We will have them done so they
13 can be put on that so everybody can hear them and you can
14 hear them well.

15 THE COURT: That's fine. Now, that's one hour 40
16 minutes for that. Mr. Gold's going to put on testimony
17 for --

18 MR. GOLD: Maybe five to ten minutes. I mean,
19 I've been pretty accurate when I've said that I was going to
20 be brief.

21 THE COURT: I'm going to write down 30 minutes.

22 MR. GOLD: I think you're talking about cross
23 examination, not direct, Your Honor.

24 THE COURT: No. I haven't gotten to cross
25 examination yet. So if you all stick to that schedule, then

1 you should be finished with the evidence by lunch on Tuesday.
2 I can't go over, I'm in Atlanta the next day so I can't.

3 MR. SANDS: Would that include your listening to
4 it in our presence?

5 THE COURT: Yes. So I want you to tell me
6 whether I can get everything done, including your arguments.

7 MR. GOLD: Are we also going to address the legal
8 issues on the calculation of the guidelines, too?

9 THE COURT: I want to address everything,
10 including allocution, and that's not going back over the
11 facts.

12 MR. SANDS: I've done that at length, Your Honor,
13 already.

14 THE COURT: So if you all think we can do that on
15 that Tuesday, the next day that I would have giving myself
16 time to go over this would be the following Tuesday. So that
17 would be, we would next meet on Tuesday, and they we would
18 get back together the following Tuesday, the 26th.

19 MR. SANDS: I don't mean to belabor, I just want
20 to make sure I understand. This coming Tuesday we would put
21 in whatever remaining evidence we have, you'd listen to the
22 tape, we would make the arguments that we're going to make
23 based on the evidence, and that wouldn't involve
24 recapitulating the evidence to you, it would simply involve
25 applying the evidence to the guidelines factors, etcetera,

1 correct?

2 THE COURT: Right.

3 MR. SANDS: And we need to do that in the morning
4 on Tuesday.

5 THE COURT: Well, I'm giving you all day to get
6 it done.

7 MR. SANDS: I think that is definitely doable.

8 MR. GOLD: I have just one minor housekeeping
9 issue to clear up. Yesterday or the day before there was
10 some discussion about the government exhibit numbers and I
11 may have misspoken at the time, but I just wanted to make the
12 record clear because I know your courtroom deputy had some
13 questions. The exhibits that we had moved in were two,
14 five, six, seven, eight, and it should have been nine because
15 it turned out there were two sevens, so if the court wants I
16 can describe quickly what they were just for the record.

17 Two was the deposit confirmation request.

18 Five was the Supreme Court of Georgia opinion.

19 Six was the letter from Mr. Amodeo to Mr. Hirsh.

20 Seven was the financial statement of Mr. Amodeo.

21 Eight was the minutes of the Mirabilis joint
22 meeting of directors and shareholders on February 15 of '05.

23 And number nine was the memo from Matt Porter to
24 everybody about the fact that there were at least in there a
25 listing of the 7202 charges.

1 THE COURT: Before we close, you make sure that
2 they're marked correctly.

3 MR. SLAUGHTER: One more housekeeping. Are you
4 in court Monday here?

5 THE COURT: Monday I will not be here. I'll be
6 in Tampa.

7 MR. SLAUGHTER: My question is maybe Darlene
8 could let us come in and make sure we've got the tapes so
9 that they'll play.

10 THE COURT: Yes. She'll be happy to do that.

11 MR. GOLD: And if I could get copies just so we
12 can hear them in advance, too.

13 (HEARING RECESSED.)

14

15 I certify that the foregoing is a correct
16 transcript from the record of proceedings in the
17 above-entitled matter.

18

19 s/ Anthony Rolland

20 ANTHONY ROLLAND

21

22

23

24

25