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26 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

27 In the Matter Of,

28 Case No. 14F-001-AAG

29 TOM HORNE, Tom Horne for Attorney
30 General Committee (SOS Filer ID 2010
31 00003); KATHLEEN WINN, Business
32 Leaders for Arizona, (SOS Filer ID 2010
33 00375)

34 **DEFENDANTS' REPLY TO YCAO'S**
35 **RESPONSE TO DEFENDANTS'**
36 **MOTION TO STRIKE TESTIMONY**

37 **INTRODUCTION**

38 The perjury by FBI Agent Brian Grehoski cannot be dismissed by speculating that
39 Grehoski was merely confused and there were other possible explanations for why
40

1 Grehoski was mistaken about the erroneous information regarding what Greg Tatham
2 told them. The sequence of events show a deliberate pattern of lies with each set of lies
3 deliberately created to cover up the previous, discredited lies.

4 Prior to the hearing Agent Grehoski discovered he had a problem. He and Agent
5 Mason's 302 report, made 41 days after the interview of "huge" witness Greg Tatham,
6 contained a statement as to what Tatham told the FBI at odds with Mr. Tatham's recently
7 revealed recording of his interview with the FBI. [The 302 summary is YCAO Exhibit
8 34, the audio recording is Horne-Winn Exhibit 14]. The statement was significant
9 because it would have refuted Ms. Winn and Mr. Horne's major defense. It was then the
10 cover up began and then that the perjury began to take form.

13 **THE FIRST SET OF LIES**

14 These are the lies that are in the 302 report by Agent Mason [YCAO Exhibit 34].
15 When this report was written Agents Grehoski and Mason were not aware Tatham had
16 recorded their conversation.

18 The report that the FBI wrote summarizing the interview was critically incomplete
19 and inaccurate in two respects: 1) There was no reference to the fact that Tatham told the
20 FBI that Tom Horne consults with many people on his real estate transactions, and 2) it
21 stated that Tatham had indicated Kathleen Winn was not involved in the real estate
22 transaction when in fact they had never mentioned Winn's name to them.

24 The summary completely misrepresented what Tatham had told the FBI. Whereas
25 Tatham hardly ruled out Ms. Winn's involvement, the FBI wrote a report that stated that
26 Tatham had in fact said definitively that Winn was not involved. And of course they
27 wrote this phony summary not realizing that there was an audio recording of the
28

1 conversation and thus believing that Tatham would not have evidence to rebut their
2 summary.

3 When Defendants disclosed in advance that Tatham had an audio recording that
4 did not match up with their summary of the interview, Grehoski knew in order to protect
5 the first lies, which were, in his words, “huge”¹ to his case, he had to create a scenario to
6 explain the discrepancy.
7

8 **THE SECOND SET OF LIES**

9 Grehoski was prepared with his explanation before he testified at the hearing. He
10 did it by coming up with a second call that day where Grehoski claims that Tatham told
11 them that Winn was not involved in the real estate transaction. He was adamant in his
12 testimony about there being only two calls and remembering what was said about Winn
13 in the first call. At that time he was not aware, and neither were Defendants, that Tatham
14 had also taped the first call, and that call was completely nonsubstantive with no mention
15 of Winn at all. Having an opportunity to listen to the second recording overnight, he
16 comes back the next day to testify again with a new lie that will protect the validity of the
17 previous lies, where he had gotten caught with the two recorded tapes.
18
19
20

21 **THE THIRD SET OF LIES**

22 Grehoski ‘s new set of lies, which he tries to corroborate with field notes by
23 Mason with the highly questionable “2:39 p.m.” written at the top which conveniently
24 matched up with his testimony that there had been an initial 8-10 minute unrecorded call
25 followed by the recorded 15 minute call. [Horne-Winn Exhibit 14]. This “phantom
26
27

28 ¹ Transcript, p. 765.

1 call”, which preceded the 15 minute call², is where Grehoski claims the Winn
2 information is given to both agents at the same time while they are talking with Tatham
3 on Mason’s cell phone. Specifically, Grehoski testified that he and Agent Mason “both
4 vividly remember asking him specifically about Kathleen Winn” during this call.
5 [Transcript, p. 764].
6

7 Here is Agent Grehoski further on this point: “and then on the 31st, as I said we
8 had our initial conversation at approximately 1:00 o’clock followed by a gap, and then
9 subsequently later on we had the second conversation.” [Transcript, pp. 745-746]. And
10 again here:
11

12 Q. [by Jack Fields] So it’s your testimony today that there were two conversations
13 on May 31st that you participated in....

14 A. [by Agent Grehoski] That’s correct.

15 Q. With Mr. Tatham.

16 A. Yes.

17 Q. How long do you think the first one was?
18

19 A. It was brief. I believe the second call was longer because there was more
20 detail in it. The first call was a shorter one. As I stated, he was not at his office.
21 He wasn’t near the information he needed to answer our questions in any great
22 detail. So it would have to have been—if that one we listened to was 15 minutes,
23 I’m guessing the previous one was maybe 8 to 10 minutes tops.

[Transcript, pp. 747-748].

24 The problem for Agent Grehoski is there was no second call on May 31, 2012.
25 Mason’s telephone records, which all three parties received after the hearing, show that
26

27 ² Agent Grehoski clearly claims in his testimony that the phantom 8-10 minute call was
28 the “previous” call. [Transcript, p. 747].

1 there were three calls between the FBI and Tatham. The first call, on May 30, was a
2 voice message. The second call, later on May 30, is Horne-Winn Exhibit 25, and is a
3 nonsubstantive call resulting only in a call scheduled for the next day.

4 The third call happens on May 31 and is Horne-Winn Exhibit 14. The audio
5 recordings of the two calls contain no mention of Winn. And there are no other calls—
6 the phone records clearly show that Grehoski's third set of lies with a created "phantom"
7 call is also a lie. Agent Grehoski claimed that for some reason, even though they had
8 agreed the day before that Tatham would call them, that he and Mason actually remember
9 calling Tatham ³. But this is not so, the phone records indicate that Tatham called Merv
10 Mason at 1:03 p.m. on May 31, just as he said he would. And this call lasted 15 minutes
11 according to the phone records, the precise length of the recorded call that is Horne-Winn
12 Exhibit 14. The 15 minute call indicated on the phone records is indeed the Horne-Winn
13 Exhibit 14 call.
14
15
16

17 Agent Grehoski also claimed that between the phantom call on May 31 and the 15
18 minute call, he and Mason had a discussion about interrogation techniques ⁴. But the
19 phone records show this too is made up. And the "cover up" lies prove the willfulness of
20 their actions.
21

22 ///

23 ///

24 ///

26 _____
27 ³ Transcript, pp. 741-42.

28 ⁴ Transcript, p. 743.

1 **IT IS OBVIOUS FROM THE ACTUAL CONVERSATION IN THE 15 MINUTE**
2 **CALL THAT THERE WAS NO PRECEDING CALL, AGENT GREHOSKI'S**
3 **TESTIMONY NOTWITHSTANDING**

4 YCAO dismisses the assertion that the actual discussion that occurred during the
5 15 minute phone call (Horne-Winn Exhibit 14) shows that there was no preceding call as
6 "opinion." [Response, p. 4]. But this is hardly just opinion. We would respectfully
7 request that this Court listen to the initial part of the 15 minute call one more time. For
8 the reasons stated in our Motion, the inescapable conclusion from listening to the actual
9 call is that there was no preceding "8-10 minute call⁵" as Agent Grehoski claimed. And
10 the phone records confirm this beyond any doubt.

11
12 **YCAO's ALTERNATIVE THEORIES**

13 The alternative theories YCAO offers for Agent Grehoski's inaccurate testimony
14 don't hold any water. YCAO claims that "Special Agent Grehoski could have simply
15 misremembered the precise sequencing of telephone calls, questions and answers."
16 [Response, p. 4]. But this is not a matter of forgetting "sequencing," it is a matter of
17 "vividly" remembering a call that never happened.

18
19 YCAO also speculates that perhaps Kathleen Winn's name was mentioned in the
20 phone message left on May 30, 2012. To start with, this explanation was not even
21 offered by Agent Grehoski. It's not even clear that he was with Agent Mason when
22 Agent Mason left the phone message. And lastly, it is highly unlikely that Agent Mason
23 would have just blurted out Kathleen Winn's name in a short, introductory phone
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25
26
27

28 ⁵ Transcript, p. 747.

1 message. At a minimum, that would be extremely poor police work, because it would tip
2 the interviewee off as to what the FBI wanted to ask about.

3 YCAO also claims that Agent Grehoski “was called to reconstruct the sequence of
4 events nearly two years later, with only Special Agent Mason’s notes to guide him.
5 Mistakes are possible under those circumstances.” [Response, p. 4]. But that
6 “explanation” is not at all consistent with Agent Grehoski’s testimony. There was no
7 confusion or hesitancy in his claims. Instead, he testified that both he and Agent Mason
8 “both vividly remember” the phantom call.
9

10
11 Lastly, YCAO asserts that “Agent Grehoski had no reason to commit perjury.”
12 [Response, p. 4]. But actually, he did. We have seen the extreme lengths Agent
13 Grehoski went to in order to try to make a case here. And this is what he said about the
14 importance of what he claims Tatham said:

15
16 And an answer like that [that Winn was not involved] from Mr. Tatham is
17 huge to our case, because they’re claiming she was involved, and here is his
18 go-to guy. If you look down the page, all the conversations there, run all
19 the deals by him on the bottom. Mr. Tatham said Mr. Horne runs all his
deals by him, and Mr. Tatham said to his knowledge Kathleen wasn’t
involved. So that stood out in our minds.

20 [Transcript, pp. 764-65]. By his own admission, it was critically important to Agent
21 Grehoski that he keep this lie alive. And he also did not want it to look as if he had made
22 a critical mistake if it were shown that he “remembered” a statement by a witness that the
23 witness never made. These were reasons enough.
24

25 **STRIKING TESTIMONY AS A REMEDY**

26 YCAO claims that striking testimony is inappropriate. In arguing this, they knock
27 down an argument that Defendants never made. That is, we never argued that this Court
28

1 is required to strike testimony. Instead, we argued that this Court should exercise its
2 discretion to do so. Even the case YCAO cites supports the argument that this is within
3 the Court's power. *Stockwell v. Stockwell*, 2010 S.D. 79, ¶ 24. 790 N.W.2d 52, 61 (S.D.
4 2010) ("While a finder of fact may reject a witness's testimony when that witness has
5 testified falsely, it is not required to do so.")

6
7 **CONCLUSION**

8 YCAO claims that "[t]here are many other alternative possibilities" other than
9 Defendants' claim that Agent Grehoski committed perjury. And yet, they fail to identify
10 a single believable one. The issue here does not just involve getting a detail in a
11 conversation wrong. It involves the FBI inaccurately summarizing an interview they did
12 not know was recorded, to the detriment of Defendants, and then "vividly remembering"
13 a conversation that never took place after the FBI was called on their grossly misleading
14 summary. Striking the testimony of Agent Grehoski is an appropriate sanction and
15 remedy.
16
17

18 RESPECTFULLY SUBMITTED this 21st day of March, 2014.
19



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ORIGINAL OF THE FOREGOING e-filed
this 21st day of March, 2014, to:

Honorable Tammy Eigenheer
Administrative Law Judge
ARIZONA OFFICE OF ADMINISTRATIVE
HEARINGS
1400 West Washington Street, Suite 101
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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter Of,)
) Case No 14F-001-AAG
TOM HORNE, Individually, Tom Horne for)
Attorney General Committee)
(SOS Filer ID 2010 00003); KATHLEEN)
WINN, Business Leaders for Arizona,)
(SOS Filer ID 2010 00375))
)

ARIZONA OFFICE OF ADMINISTRATIVE HEARINGS
1400 West Washington Street
Suite 101
Phoenix, Arizona
February 12, 2014
8:39 a.m.

BEFORE: HONORABLE TAMMY EIGENHEER, ADMINISTRATIVE LAW JUDGE

PREPARED BY:

CHAPMAN AND ASSOCIATES

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Wendell Chapman, R.P.R.

Phoenix, AZ 85020

Certified Reporter No. 50091

(602) 252-2927

1 according to the tape, supposed to take place?
 2 A. 1:00 o'clock.
 3 Q. And a meeting -- I believe you just testified
 4 a meeting did take place at 1:00 o'clock?
 5 A. Approximately 1:00 o'clock we did speak with
 6 Mr. Tatham; that's correct.
 7 Q. Okay. Now, the 1:00 o'clock meeting, do you
 8 recall -- or a phone conference, do you recall that
 9 phone conference?
 10 A. Yes, I do.
 11 Q. Who initiated that phone conference at
 12 1:00 o'clock?
 13 A. We -- we -- we initiated that conversation, to
 14 the best of my recollection, and I conferred with
 15 Special Agent Mason, and his recollection was the same,
 16 that we called Mr. Tatham at approximately
 17 1:00 o'clock.
 18 Q. Okay. Now, the tape indicates that Tatham
 19 says, "Well, I'll call you back."
 20 And Mason says, "Okay. That would be fine.
 21 Why don't you do that?"
 22 Do you remember hearing that on the tape?
 23 A. I do.
 24 Q. Okay. Was there anything -- another reference
 25 to who would call who in that tape?

1 called him. We ended up calling him. There may have
 2 been a little phone tag going on. I'm not sure.
 3 My recollection and Merv's recollection was we
 4 ended up calling him. And that first conversation,
 5 Mr. Tatham said -- basically, we had a brief
 6 conversation where we talked about --
 7 Q. When you're talking about that first
 8 conversation, are you talking about the conversation
 9 the next day?
 10 A. The conversation on May 31st at approximately
 11 1:00 o'clock --
 12 Q. And I'm going to stop you again.
 13 A. Yeah.
 14 Q. On May 31st, would that have been this
 15 conversation that I just played for you, or would it
 16 have been the next day?
 17 A. This would have -- May 31st would have been
 18 the next day. This conversation we just heard would
 19 have been on the 30th, and that was Merv setting up the
 20 1:00 o'clock conference call for the following day.
 21 Q. Did the 1:00 o'clock conversation take place?
 22 A. It did. It was approximately --
 23 Q. Was it on time?
 24 A. Yes, approximately on time, around
 25 1:00 o'clock, approximately. I don't know the exact

1 A. It sounds like -- and I may have to hear the
 2 last -- very tail end of it again. But Mr. Tatham
 3 said, "Well, why don't I call you?"
 4 And then what I thought I heard Agent Mason
 5 say was, "Okay. We'll call you," or it may have been,
 6 "You call me." So we may have to play the tail end of
 7 that one more time.
 8 Q. Well, let's play the tape again. It's a
 9 two-minute tape, one and a half minutes.
 10 (The recording was played.)
 11 Q. BY MR. FIELDS: What is your understanding of
 12 the arrangements after listening to the tape again?
 13 Who was to call who?
 14 A. Well, it's -- I believe Mr. Mason said, "Okay.
 15 Give me a call at 1:00," which seems to be consistent
 16 with what he had just previously said when Mr. Tatham
 17 said, "I'll call you."
 18 And if you want to play -- maybe play that
 19 last second again.
 20 (The recording was played.)
 21 THE WITNESS: Yeah, so it sounds to me as if
 22 at the end Mr. Tatham says, "I can give you a call,"
 23 and Merv says, "Okay. Give me a call. Give me a call
 24 then."
 25 The following day, my recollection is we

1 time.
 2 Q. Okay. Tell us about what you recall about
 3 that conversation?
 4 A. My recollection is we called Mr. Tatham, and
 5 we basically described to him the information we were
 6 looking to ascertain, which was his participation in
 7 the purchase and/or sale of the property owned by
 8 Mr. Horne at 7th Ave and McDowell and the property at
 9 Sun City West. And we also wanted to know his
 10 knowledge of -- if Kathleen Winn was involved with this
 11 purchase and/or sale of those properties.
 12 And then what he advised was -- he wasn't at
 13 his office, or he wasn't near the information that he
 14 needed to properly answer some of those questions, and
 15 he asked if he could call us back, which we said that
 16 would be fine.
 17 And after we hung up the phone, Special Agent
 18 Mason and I had a conversation about what we had just
 19 talked to Mr. Tatham about.
 20 And in discussing it, we thought maybe next
 21 time we speak with him we should ask a much broader
 22 question. Instead of targeting specifically was
 23 Ms. Winn involved in that sale, we asked a broader
 24 question, was anybody else involved in the sale.
 25 Q. Now, the first conversation, let me lead you

1 back to that again. When the contact took place, was
2 Mr. Tatham -- did he express to you where he was?

3 A. He expressed that he was not near his office
4 or was not in his office and not where he could access
5 any files that he may have pertinent to what we wanted
6 to address with him.

7 Q. Did you notice anything about -- did you make
8 any judgment about whether he was on his cell phone,
9 based upon the tone, or whether he was out in the open
10 or in an office or anything, any indication of that?

11 A. I don't recall that, but I recall that it was
12 the cell phone number that I believe Merv called.

13 Q. So he did express that he wasn't at his office
14 at that point?

15 A. That's what was relayed to us.

16 Q. Okay. So that was approximately 1:00 o'clock,
17 give or take a little bit of time?

18 A. That's correct.

19 Q. How much leeway are we talking about when we
20 say give or take a few minutes?

21 A. Maybe 5, 10 minutes. It's unclear to me. In
22 speaking with my partner, he didn't recall. But maybe
23 we played a little phone tag. Sometimes Mr. Tatham was
24 difficult to get ahold of, as I recall.

25 As I think I stated yesterday, Special Agent

1 Mason was primarily dealing with Mr. Tatham, which is
2 why Mr. Tatham called Agent Mason back on the 30th to
3 set this up, because Agent Mason had called him
4 initially.

5 Mr. Tatham called Merv back and said, "Hey,
6 you know, thanks for calling me back." And then we set
7 something up for 1:00.

8 All of that coordination for those telephone
9 conversations and interviews was done by Mr. Agent
10 Mason, and that's what the first recording indicates
11 from the 30th.

12 And then on the 31st, as I said, we had our
13 initial conversation at approximately 1:00 clock,
14 followed by a gap, and then subsequently later on we
15 had the second conversation.

16 Q. Okay. And that was all on -- that was on the
17 31st?

18 A. That's correct.

19 Q. So when Mr. Tatham asserts that there were
20 only four contacts with you, what is your opinion about
21 that opinion, about that statement?

22 A. Well, in my understanding as to what he
23 testified to, there was a conversation we had at the
24 gate of his house, which is true.

25 When we showed up the first night to speak

1 with his wife, Amy Rezzonico, we encountered him at the
2 gate outside his house, and we had a brief exchange.

3 There was nothing substantive about that
4 conversation, but ultimately his wife consented to an
5 interview. We went into his house and did an interview
6 with Ms. Rezzonico. So I do recall speaking with him
7 at the gate.

8 And the other thing that is always fresh in my
9 mind is, when we saw him come out of the house, and you
10 have to picture the way his house is set up, there was
11 a gate that was locked in a courtyard, and then there's
12 two entrances to his residence.

13 We had no way of getting into the courtyard to
14 get to the entrances to knock. So we were actually
15 outside when Mr. Tatham just happened to come out, and
16 so we addressed him as Mr. Rezzonico, not knowing that
17 he went by Mr. Tatham, and he was very agitated with us
18 about that.

19 So we apologized subsequently and moved on.
20 So that was the first conversation I recall with him.

21 Q. And then was there any other that you
22 participated in prior to the May 30th conversation?

23 A. Not to my knowledge, no.

24 Q. On the May 30 -- excuse me -- May 31st
25 conversation, were there any prior to the May 31st

1 conversation?

2 A. Not that I recall.

3 Q. That you participated in?

4 A. Correct.

5 Q. So it's your testimony today that there were
6 two conversations on May 31st that you participated
7 in --

8 A. That's correct.

9 Q. -- with Mr. Tatham?

10 A. Yes.

11 Q. How long do you think the first one was?

12 A. It was brief. I believe the second call was
13 longer because there was more detail in it. The first
14 call was a shorter one.

15 As I stated, he was not at his office. He
16 wasn't near the information he needed to answer our
17 questions in any great detail. So it would have to
18 have been -- if that one that we listened to was 15
19 minutes, I'm guessing the previous one was maybe 8 to
20 10 minutes tops.

21 Q. Okay. The -- and then the last contact that
22 you had with Mr. Tatham was when?

23 A. The last contact I had was approximately two
24 weeks ago when we attempted to re-interview him to
25 capture on tape the information we had from our first

1 two interviews on the 31st.
 2 Q. Why were you attempting to contact Mr. Tatham?
 3 A. A couple weeks ago?
 4 Q. No, no, no. Let me back up.
 5 Why were you attempting to contact Mr. Tatham
 6 initially?
 7 A. It had been put out by Mr. Winn and
 8 Ms. Horne's attorneys that the reason they were
 9 communicating with each other was over the purchase
 10 and/or sale of the properties at 7th Ave and McDowell
 11 or Sun City West.
 12 Q. You're talking about Horne and Winn
 13 communicating with each other?
 14 A. That is correct. It was put to us that the
 15 purpose for all of the phone conversations at those
 16 times related to the sales of those properties and that
 17 Ms. Winn was giving advice because of her expertise in
 18 real estate and real estate financing.
 19 Q. And so you contacted Greg Tatham because?
 20 A. We contacted Greg Tatham as -- I'm not sure
 21 where we heard it, but we heard that he was involved in
 22 that real estate transaction.
 23 And so in interviewing Mr. Tatham we were
 24 trying to ascertain if he had any knowledge whatsoever
 25 of Kathleen Winn assisting in any way in either of

1 those transactions.
 2 Q. Was there any other reason for you to contact
 3 Mr. Tatham except for that?
 4 A. There was no other reason for us other than to
 5 find out if he had any knowledge of her assistance in
 6 those matters.
 7 Q. Would it be sound investigative techniques for
 8 you to contact Mr. Tatham for the purpose of finding
 9 out if specifically Kathleen Winn had participated in
 10 that real estate transaction and not asking him that
 11 question?
 12 A. It would have made no sense to not ask that
 13 question. So we specifically asked the question,
 14 because that was what we were looking to to ascertain,
 15 is if he had any knowledge whatsoever of her
 16 participation.
 17 Q. There's a document that's before you. Looks
 18 like it's -- can you tell us what the front and the
 19 back are?
 20 A. Yeah. If you look at the front sheet, which
 21 is this typed printed sheet, that is a cover sheet that
 22 is associated with this document.
 23 And if you look at the detail section, it
 24 says, "Document 1-A added to caption matter. Items in
 25 the 1-A include Greg Tatham interview notes."

1 A 1-A envelope in the FBI is just a little
 2 envelope that goes in the case file where we pull up
 3 and put our notes or any exhibits that we may have
 4 shown somebody during the course of an interview so we
 5 can reconstruct the interview if we need to from the
 6 notes and exhibits. And so that is just a cover sheet
 7 stating that the notes had been put into the case file.
 8 And then the second sheet is a scanned image
 9 of the handwritten notes taken by Special Agent Mason
 10 on May 31st. This is his handwriting.
 11 As I stated yesterday, when we had these calls
 12 with Mr. Tatham, I was driving my car, and Mr. Mason
 13 was sitting in the passenger seat. We were using his
 14 phone. It was on speakerphone. And he was the one
 15 taking notes of these two interviews.
 16 Q. Were these the notes -- could you see him
 17 taking notes?
 18 A. I did see him taking notes.
 19 Q. Was this a document you could see him making?
 20 A. It appears to be, yes.
 21 Q. I'm sorry?
 22 A. It appears to be yes.
 23 Q. Okay.
 24 A. At the top of this document it says, "Tatham."
 25 Item Number 1, 1515, part of the transaction. I think

1 it says tell us.
 2 And Mr. Mason's handwriting is like a lot of
 3 people's handwriting, mostly legible to the person that
 4 wrote it. But that was one of the first things we
 5 wanted to talk to him about.
 6 And Item Number 2 says, "Was KW involved?"
 7 And KW in all of our notes is an abbreviation
 8 for Kathleen Winn. And then we had our brief
 9 conversation with Mr. Tatham. The call ended, as I
 10 said. And then Mr. Tatham called us back.
 11 And if you look in the upper right-hand
 12 corner, at approximately 2:39 p.m., Agent Mason made
 13 the note that this is when the information was coming
 14 in.
 15 And if you listen to the second -- or the very
 16 first tape that was presented, that 15-minute tape, it
 17 starts out with Agent Mason saying, "Hold on a second.
 18 I've got to get my stuff." And you can hear him going
 19 through his notebook. And he was turning to this page
 20 in his notebook.
 21 And what he did was, because this was a
 22 continuation of the previous phone call, he added notes
 23 to the existing notes. So this one page of notes
 24 represents the information from both telephone
 25 conversations.

1 basis is these notes; is that correct?

2 A. No. The basis is our recollection, and then
3 these notes are a refresher on some other items. But
4 we both vividly remember asking him specifically about
5 Kathleen Winn.

6 Q. Well, if he vividly remembered that, wouldn't
7 he be here?

8 A. Mr. Debus, I already told you --

9 Q. Let's go back to the notes. Do these notes
10 make any reference to Mr. Tatham saying that Kathleen
11 wasn't involved in this transaction?

12 A. No. It makes note that we asked the question,
13 and we both heard the answer. That's our recollection.
14 That's what's in the 302.

15 Q. But the reason you were talking to Mr. Tatham
16 was to find out whether Kathleen was involved in this
17 transaction, right?

18 A. That's correct.

19 Q. And you didn't include it in your notes what
20 the answer to this question was? It's not here, is it?

21 A. The answer is our recollection. We asked him
22 specifically -- we wrote down the question we asked
23 him, and Mr. Mason and I discussed the interview after
24 we talked to him the first time, and then that's why we
25 decided to ask the second question.

1 A. Mr. Debus, these notes are to help draft a
2 report, which we drafted, and the report --

3 Q. Answer the question, please. Is there
4 anything about this huge statement that Tatham made in
5 your notes?

6 A. Yeah.

7 Q. What?

8 A. Was Kathleen Winn involved. We knew the
9 answer.

10 Q. You put a question, is there anything about
11 Tatham's answer, this huge answer in these notes where
12 you say --

13 A. Not in the notes.

14 Q. -- Mr. Tatham said or anything like that?
15 Nothing here, is there?

16 A. Not in the notes. We didn't need it. These
17 notes helped us write our report. I stand by it.

18 Q. So the FBI policy of making a 302 in five
19 days, must be a reason for that, isn't there?

20 A. I'm sure there is.

21 Q. Well, isn't the reason that you might remember
22 in five days, might have less memory in 10, even less
23 in 30, and no memory in 40, but you're saying you
24 basically violated a policy and wrote this summary 40
25 days later based on your memory, right?

1 Q. When were these notes made?

2 A. These notes were made on May 31st, 2012.

3 Q. And then 40 days later you and Mr. Mason are
4 discussing it, looking at these notes, and you say,
5 "Well, we asked that question, and our recollection is
6 that he said she wasn't involved."

7 But there's nothing in this note anywhere that
8 reflects that, correct?

9 A. The notes say we asked the question, and we
10 vividly remembered the answer because it was important
11 to our case.

12 The only reason we called Mr. Tatham was to
13 find out if Kathleen Winn was involved. That's why we
14 asked the question.

15 And an answer like that from Mr. Tatham is
16 huge to our case, because they're claiming she was
17 involved, and here is his go-to guy. If you look down
18 the page, all the conversations there, run all the
19 deals by him on the bottom.

20 Mr. Tatham said Mr. Horne runs all his deals
21 by him, and Mr. Tatham said to his knowledge Kathleen
22 wasn't involved. So that stood out in our minds.

23 Q. There's not a single word or mention of that,
24 this big, huge statement you got from Tatham, nothing
25 about that in your notes, correct?

1 Not a note, like you told the reporters --

2 MR. FIELDS: I'm going to object.

3 Q. BY MR. DEBUS: -- based on your memory?

4 MR. FIELDS: If he can get to a question and
5 kind of stop and let him answer it, that would be good.

6 Q. BY MR. DEBUS: Yeah, you based this on your
7 memory?

8 A. Yeah.

9 Q. Okay.

10 A. Absolutely.

11 Q. Okay.

12 A. And I stand by it.

13 Q. Well, I know you do.

14 MR. DEBUS: Would you bring up the summary,
15 please?

16 Q. BY MR. DEBUS: I want you to look -- what
17 exhibit is this, 14?

18 MR. LASOTA: 34, State's 34.

19 Q. BY MR. DEBUS: State's 34.
20 Do you see that?

21 A. I do.

22 Q. Take a look at the second paragraph.
23 What interview did that come from?

24 A. That came from one of these two interviews,
25 the phone interviews.