

LEXSEE 2009 DEPO TRANS LEXIS 6669

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EMANUEL GIORGIO and HELAINE GIORGIO, Husband and Wife, Plaintiffs, vs.
BRUCE R. ROSENBLUM, M.D., and BRUCE R. ROSENBLUM, M.D., P.C., et al., De-
fendants.

DOCKET NO. MON-L-2652-06

SUPERIOR COURT OF NEW JERSEY, MONMOUTH COUNTY, LAW DIVISION

2010 Depo. Trans. 45540; 2009 Depo. Trans. LEXIS 6669

August 26, 2009

Expert Witness Deposition

VIEW OTHER AVAILABLE CONTENT RELATED TO THIS DOCUMENT: Other: Deposition Tran-
script(s); Trial Transcript(s)

COUNSEL: [*1] MARC G. BRECHER, ESQ., Wapner Newman Wigrizner & Brecher, Philadelphia, Pennsylvania,
On behalf of Plaintiffs.

PETER LA GREGOR, ESQ., Orlovsky Moody Schaaf & Gabrysiak, West Long Branch, New Jersey, On behalf of
Defendant Gibbons.

WILLIAM JEFFREY, ESQ., Amdur Maggs & Shor, Eatontown, New Jersey, On behalf of Defendant Rosenblum.

MICHAEL P. MC GRATH, ESQ., Garrity Graham Murphy Garafola & Flynn, Montclair, New Jersey, On behalf of
Defendant Atlantic Diagnostic.

RICHARD J. BOLGER, ESQ., Orlovsky Grasso Bolger Mensching Halpin & Daley, Toms River, New Jersey, On
behalf of Defendant Shah.

KARIN J. WARD, ESQ., Ruprecht Hart & Weeks, Millburn, New Jersey, On behalf of Defendant Schlesinger.

EXPERT NAME: GERALD M. LA PORTE

TITLE: DEPOSITION OF GERALD M. LA PORTE

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TEXT: 5

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2 P R O C E E D I N G S

3 Whereupon,

4 GERALD M. LA PORTE

5 was called as a witness and, having first been duly

6 sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. BRECHER:

9 Q Please state your name for the record.

10 A First name is Gerald, G-e-r-a-l-d, last

11 name, LaPorte, L-a-P-o-r-t-e.

12 Q Mr. LaPorte, my name is Mark Brecher, and

13 I represent the Plaintiffs in this action, Emanuel

14 and Helaine Giorgio. You are here today in the

15 capacity of an expert witness. You have written a

16 report on behalf of one of the Defendants in this

17 case, and we're here to take your deposition, which

18 is a pretrial proceeding, which I have the right to

19 ask you questions and receive your answers under

20 oath.

21 Three simple instructions for today. One

22 is all your answers, as you can imagine, must be

23 oral. Two, let me finish the question before you

24 give your answer. And three, don't answer the

25 question unless you understand my question. If you

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2 don't understand it, ask me to [*3] repeat it, I will

3 rephrase it, do whatever it takes for you to

4 understand the question.

5 Mr. LaPorte, what is your home and what is

6 your business address?

7 A I'm sorry, what is my -- can you say that

8 again?

9 Q Home address and your business address.

10 A My home address is in Reston, Virginia,

11 and the business address -- I operate out of my home

12 with regards to this particular business. The main

13 office is located in Lansing, Michigan.

14 Q And could you give me the address.

15 A Yeah. Well, it's a P.O. Box, 80225 in

16 Lansing, Michigan. And the ZIP code there, 48908.

17 And my personal address, I mean, if you really need

18 that, that's fine, but I prefer not to put that on

19 the record.

20 Q What is your date of birth?

21 A [TEXT REDACTED].

22 Q And I have your CV, so I'm not going to go

23 through it line by line -- just a couple of

24 questions about it, though.

25 A Can I just make sure, Mr. Brecher? Did
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2 you -- I sent an updated CV. I just want to make
3 sure that you have that updated CV.
4 Q I have the original CV that went to --
5 with the [*4] report, unless counsel, do you want to --
6 do you have another CV that's more recent than this?
7 MR. MC GREGOR: I don't know which one
8 is --
9 THE WITNESS: I e-mailed one, I believe it
10 was yesterday or the day before, because my
11 employment has changed. I changed positions in
12 March of '09 this year.
13 MR. BRECHER: Okay. Well, I don't have
14 that, I don't think counsel has it.
15 MR. MC GREGOR: Sorry.
16 BY MR. BRECHER:
17 Q Let's just go through this, and I'm
18 certainly going to get to that issue.
19 A Okay.
20 Q But let's just focus initially on your
21 education. You went to college at the University of
22 Windsor?
23 A Correct.
24 Q In college, did you study or take any
25 courses in dating ink?
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2 A I did not. For my undergraduate degree, I
3 did not.
4 Q Yes. And did you do any type of work in
5 your undergraduate degree in document analysis?
6 A I did not. But, of course, my
7 undergraduate degree involved quite a bit of
8 chemistry, which that correlates to the type of work
9 that I do.
10 Q Then I see that you received a bachelor [*5] of
11 commerce in business administration in 1992?
12 A That's correct.
13 Q And that was also at the University of
14 Windsor?
15 A Correct.
16 Q And for that period of education, when you
17 were getting your bachelor of commerce in business
18 administration, did you do any coursework in ink
19 dating?
20 A No.
21 Q Did you do any courses in document

22 analysis?

23 A I did not.

24 Q Between -- and it's probably in your CV,
25 but just bear with me. Between 1992 and 1994, when
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2 you started your master's program, what kind of --
3 what did you do with yourself?

4 A It was a master's of -- I was pursuing a
5 master's of science in forensic science.

6 Predominantly the courses that I took revolved
7 around various aspects of forensic science, in
8 chemistry, which applies to different areas of the
9 forensic sciences. That was the bulk of my
10 coursework.

11 Q And you ended up getting a master's of
12 science in forensic science in 1994?

13 A That's correct.

14 Q And did any of that course involve ink
15 dating?

16 A It did not involve the actual methodology
17 [*6] of doing ink dating, but it was certainly discussed.
18 We took it in some of our -- we talked about it in
19 some of our courses, with regards to question
20 document examination in general. But not
21 intensively did I study, you know, how -- the
22 methodology that's used.

23 Q And document analysis, was that part of
24 your studies when you got your master's of science
25 in forensic science?

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2 A It was a small part of it, yeah. I mean,
3 I took 52 semester hours. You know, and there were
4 various courses in forensic science in general that
5 did address some areas of questioned document
6 examination.

7 Q If you were going to give a percentage of
8 your coursework getting your master's of science,
9 how much -- what percentage would you attribute to
10 document analysis?

11 A Very small. I mean, you're using the term
12 "document analysis," but document analysis, in terms
13 of using analytical equipment, the day-to-day work
14 that I do, in terms of chromatography, spectrometry,
15 understanding chemical aspects, scientific -- the
16 scientific approach to examining documents, that
17 would translate to probably, [*7] you know, a very large
18 percentage of my coursework.

19 But with regards to your question, I
20 guess, I don't know if you're asking specifically
21 with regards to documents, it would be a very, very
22 small percentage.

23 Q Now, let's start with your current
24 employment, and let's work backwards.

25 A Okay.

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2 Q Currently -- you said you had a job change
3 in March. Where are you currently employed?

4 A I'm currently employed with the United
5 States government at the Department of Justice.

6 Q And when did you begin that position?

7 A March of 2009.

8 Q And where do you work -- where do you work
9 out of?

10 A I work out of Washington, D.C., and my
11 title there is forensic policy program manager.

12 Q And what do you do in that capacity?

13 A Typically, I provide expert analysis and
14 advice on agencywide programs or issues of national
15 impact relating to forensic science. I manage
16 various programs and research programs that are
17 directly related to the field of forensic science.

18 Q In this current position that you've been
19 doing since March of 2009, [*8] is that a full-time
20 position?

21 A That is, yes. That's a full-time
22 position.

23 Q And what's your -- the exact office
24 address?

25 A The exact office address is 810 Seventh
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2 Street Northwest, Washington, D.C.

3 Q And in that capacity, are you involved
4 with document or questioned document analysis?

5 A My position now -- I guess the best way to
6 describe it would be more administrative. So
7 actual -- conducting actual case work, I no longer
8 do that in this position.

9 Q Do you know if the Department of Justice
10 uses ink dating as part of their protocols in
11 criminal investigations?

12 A I guess first and foremost, I just want to
13 make it clear for the record that I'm not here on
14 behalf of the Department of Justice. I'm here on
15 behalf of Riley Welch LaPorte & Associates. I can't

16 speak on behalf of the Department. That's not my --
17 that's not what I'm here for.

18 So I can't say anything about the
19 Department of Justice. Where I work right now, we
20 do not conduct forensic examinations.

21 Q Do you know if the Department of Justice
22 conducts ink-dating [*9] analysis in either their civil
23 investigations or their criminal investigations?

24 A I can tell you that -- well, of course,
25 Department of Justice is primarily criminal
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2 investigations. But I can tell you that the
3 agencies within the Department of Justice, such as
4 the Federal Bureau of Investigation, the Drug
5 Enforcement Agency, ATF, those organizations
6 typically will submit any ink analysis requests to
7 the Secret Service, if they're nontax-related
8 matters.

9 If they're tax-related matters, then they
10 will go over to Internal Revenue Service in Chicago.
11 So the Secret Service laboratory primarily conducts
12 those examinations.

13 Q And when you say your position is
14 administrative, can you give a little more
15 clarification to that.

16 A I guess as a forensic policy program
17 manager, I manage different types of programs. I'm
18 involved in the community and also, too, there's a
19 very -- I don't know if you're familiar or aware,
20 but there's been a report that's been issued by the
21 National Academies of Sciences back in February of
22 2009 that was -- that talked about the -- improving
23 [*10] the forensic sciences and getting rid of
24 methodologies that are not reliable in the
25 scientific world or in terms of forensic science.

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2 So that's a large part of my job, is
3 administering -- or, you know, attending to those
4 issues, making policy decisions.

5 Like I said, you know, talking about
6 managing different programs that relate to research
7 in the forensic sciences.

8 So what I do is, there may be several --
9 just to give you an example so you understand this.
10 There's several institutions, whether they're
11 universities or forensic laboratories, that are
12 doing research in a particular area, and I will

13 actually -- we provide the funding to those people,
14 and then I manage and oversee these programs.

15 Q You used the term "forensic sciences."

16 Define for me the term "forensic sciences."

17 A Well, forensic sciences, obviously, is a
18 discipline, forensic coming from the word meaning
19 to -- I guess applications of science that apply to
20 legal issues. That's really what forensic science
21 is.

22 The scientific part of it or the science
23 part of it, obviously, there's [*11] a broad spectrum of
24 sciences, anywhere from biology and chemistry and
25 physics. So there are, you know, literally at least
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2 a dozen or so subdisciplines within the forensic
3 sciences.

4 One of those is questioned document
5 examination.

6 Q And how would you define the area of
7 questioned document -- what does that entail?

8 A Well, a questioned document is a document
9 where there is a question about it, if you will, and
10 that is whether it's authentic, whether the
11 signature on that document was prepared by the
12 person who, in fact, that name belongs to,
13 determining whether a document was prepared on its
14 purported date, how it was produced, where it may
15 have originated from, those types of things.

16 Q How does someone become a questioned
17 document examiner?

18 A Well, there's -- I won't say there's
19 various routes, but the route that I took, I guess
20 would be the appropriate way to answer this
21 question, is that I spent -- I've been in the field
22 of forensic science for about 15 years. I've worked
23 in different capacities.

24 I spent a few years working in a medical
25 [*12] examiner's office, doing autopsies, going out to
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2 crime scenes and collecting evidence. I spent two
3 years working in forensic toxicology, 3-1/2 years
4 working as a drug chemist, a forensic drug chemist.

5 And then I spent eight years with the
6 United States Secret Service. And when I started
7 with the Secret Service is when I -- I guess
8 primarily is when I started focusing in on the
9 issues of documents.

10 And at the Secret Service, I went through
11 an intensive one-year training program, and we
12 studied issues related to documents, how paper is
13 manufactured, how inks are manufactured, how
14 documents are prepared, the different types of
15 printing processes that can be used, anything from a
16 laser printer to an inkjet printer.

17 So I went through all of those studies,
18 and that encompassed a regimented program of oral
19 exercises, where we would either pass or fail. We
20 went through mock trials. I attended outside
21 seminars. So that was -- that was sort of the basis
22 of my training.

23 And then there's an ongoing continuing
24 education, if you will, too.

25 Q What was the position you [*13] held prior to
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2 the position you've now taken with the Department of
3 Justice?

4 A I was the chief research forensic chemist
5 at the United States Secret Service prior to my
6 position with the Department of Justice.

7 Q Was there any gap in employment between
8 your position with the Secret Service and the
9 Department of Justice?

10 A Just Saturday and Sunday. So I left on
11 Friday, I started on Monday.

12 Q Was that a position that you were
13 recruited for or was that a position that you
14 applied for?

15 A That was a position that I was recruited
16 for and applied for. And it was a promotion.

17 Q And when you worked for the United States
18 Secret Service, was that a full-time position?

19 A Yes, sir.

20 Q And describe for me your relationship with
21 the company Riley Welch & LaPorte.

22 A I started working with Riley Welch &
23 LaPorte -- first of all, I started working with them
24 back around February or March of last year. I
25 received permission from the United States Secret
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2 Service to work on cases that were -- that did not
3 have a criminal nature, they [*14] were civil cases.

4 So I was not -- I'm not permitted to
5 work -- and I have the same agreement with my
6 current employer now, and that is I can't engage in

7 cases that have any criminal background or there's
8 criminal negligence to them.

9 So once I received permission from the
10 Secret Service to do that type of work, I then took
11 that on, like I said, probably in the spring of last
12 year is when I started doing cases. And I've been
13 doing that since.

14 I do that work --

15 Q Is that the --

16 A I'm sorry, yes. That was the spring of
17 2009.

18 Q So you just started doing that type of
19 work for Riley Welch & LaPorte in -- earlier this
20 year, in earlier 2009?

21 A Correct. Yeah, I'd say as opposed to
22 spring, I'd say the winter is really -- the late,
23 late winter is when I -- I got permission, I
24 believe, from the Secret Service in January or so,
25 somewhere around that time, and then started doing
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2 cases. I can't remember the first one, but
3 somewhere around March maybe.

4 Q And how many hours a week do you work in
5 matters from Riley Welch & LaPorte?

6 [*15] A That varies. Unfortunately, sometimes
7 it's a -- it can be 10 to 15 hours a week on top of
8 my full-time employment.

9 I would say on average, maybe about 10
10 hours a week.

11 Q Do you get particular assignments from
12 them, or do people -- just tell me -- describe for
13 me how you get work from Riley Welch & LaPorte.

14 A I get -- most of them are referrals from
15 other questioned document examiners throughout the
16 country, and actually I do a lot of international
17 cases as well.

18 There's international arbitration cases
19 that I've worked on. So those are typically
20 referrals from other questioned document examiners
21 that do not have expertise in ink analysis. I would
22 say that's primarily how I get -- how I get retained
23 in cases.

24 And, of course, my primary expertise is in
25 chemistry and ink dating. I'm not a handwriting
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2 examiner. I don't do handwriting examinations. I'm
3 not qualified to do that sort of thing.

4 Q Have you testified in court in matters
5 that you have worked on for Riley Welch & LaPorte?

6 A I have, yes. I've been -- I'm sorry.

7 I've been deposed [*16] --

8 Q Let me finish the question.

9 A Okay. I'm sorry, go ahead.

10 Q How many times have you actually appeared
11 in court testifying in a matter from Riley Welch &
12 LaPorte?

13 A Been deposed once prior to this, and then
14 also had another -- it's an international -- it was
15 an international tribunal that I testified for. And
16 those are the only times that I've testified for
17 Riley Welch LaPorte & Associates.

18 In criminal proceedings with the United
19 States Secret Service and my previous employment,
20 probably 55, 60 times I've testified. And those, of
21 course, have all been criminal proceedings.

22 Q Now, I think you said that your emphasis
23 is in chemistry and ink dating?

24 A Correct.

25 Q While at the Secret Service, did that
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2 agency date ink?

3 A Do you mean -- when you say "date ink,"
4 what type of methodology are you referring to?

5 Q Well, why don't you describe for me the
6 different methodologies that you're aware of to date
7 ink.

8 A Okay. There are -- first, there's two
9 different approaches to trying to determine whether
10 a document [*17] is authentic based on the ink analysis.

11 The first one is called the -- is an
12 approach, it's called a static approach. And that
13 is to determine when the ink was first commercially
14 available. And how we would do that at the United
15 States Secret Service is we would analyze the ink,
16 compare that with a standard collection of writing
17 inks and determine whether that ink was available on
18 the purported date.

19 So, for example, if you had a document
20 dated 2004, signed and dated in 2004, and you
21 determined that the ink wasn't first commercially
22 available until 2006, that would indicate that the
23 document was not authentic with respect to its date.

24 The second approach is to identify dating
25 tags or materials that are placed in inks that would
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2 not have been available on that purported date.
3 And then the third approach, that we most
4 commonly would use or that's most commonly used in
5 laboratories throughout the world and at the Secret
6 Service, was a method where we would analyze a
7 volatile solvent called phenoxyethanol. And based
8 on the fact that an ink dries over a certain period
9 [*18] of time, we would determine the level of
10 phenoxyethanol present and if that was consistent
11 with a document that was purported to be a certain
12 age.

13 Q Now, is there any other way that you're
14 aware of to date ink?

15 A Yeah, there are other ways to date inks.
16 Of course, there's the method that's been issued --
17 or that was used to issue the report by Mr. Speckin,
18 which is relative aging and accelerated aging.
19 Those methods are not -- and I won't even say
20 they're controversial anymore. Those are just not
21 acceptable methods that are used within any
22 government laboratory in the world.

23 Q Any other methodology used to date ink?

24 A To date inks themselves? No. When we're
25 talking about modern inks, no. Those are really the
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2 primary methods.

3 Q When you were at the Secret Service, did
4 you ever use any of the methodologies that you just
5 described to date ink?

6 A Yeah, we used the first three that I
7 discussed. Obviously, the library approach, the
8 identification of a component or a dating tag that
9 was in a pen, and then we used the phenoxyethanol
10 approach.

11 [*19] Q And is there testimony that has been
12 recorded in a court of law where you have testified
13 that using the volatile component to test ink was
14 scientifically reliable?

15 A There is testimony -- there's been
16 testimony -- there are a few laboratories that use
17 it. The Canada Border Services Agency uses the
18 methodology. And I know that -- I believe that --
19 well, I'm not sure what happened in their legal
20 system, but I know that that laboratory uses it.

21 I know there are two laboratories in
22 Germany that use that methodology, and then there's
23 a private examiner here in the United States that

24 uses that methodology as well.

25 And as far as I know, there's been no

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2 rulings that have said that -- or have indicated

3 that the testing is not reliable. I do have a

4 case -- go ahead.

5 Q My question is, did you ever testify in

6 your career that ink dating involving

7 2-phenoxyethanol was not scientifically reliable?

8 A No, I have not. I do have a trial that's

9 coming up in October, a criminal trial, where that

10 methodology was utilized. But no, to this date, I

11 have not -- I have not [*20] testified on a case like

12 that.

13 Q Again, listen to my question.

14 A Okay.

15 Q My question was, have you ever testified

16 in your career that using 2-phenoxyethanol was not a

17 scientifically reliable method to date ink?

18 MR. MC GREGOR: Objection.

19 THE WITNESS: Was there an objection?

20 MR. MC GREGOR: You can answer.

21 THE WITNESS: No, I have not testified

22 that it's not reliable. There are certain

23 situations where that methodology -- where I

24 wouldn't endorse that methodology, but then

25 there's -- we had certain criteria that we used at

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2 the Secret Service for doing those types of cases.

3 But no, I have not testified making an

4 overarching statement to 2-phenoxyethanol -- and for

5 the sake of the court reporter, we can call it PE.

6 But I have not testified that PE is not a reliable

7 methodology, once again as an overarching statement.

8 I've published a paper on it, and then

9 there's also some -- there's a lot of modern

10 research in that area, too.

11 Q Do you believe that -- and again, I'll use

12 your terminology, PE ink dating is scientifically

13 reliable? [*21]

14 A I believe that there are certain

15 situations where it would be amenable, but I will

16 certainly admit or disclose the idea that there are

17 a lot of uncertainties when a document is prepared

18 as to how it's stored, the type of ink that's being

19 used. And then there's variables within inks and so

20 forth that could have a significant impact on the

21 conclusions that you draw.

22 I would say that it would be very safe
23 to -- if you were going to utilize that methodology,
24 to issue a qualifying statement. And then once
25 again, it really depends on the situation.

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2 And if I can, just to expound on this
3 point, is there are times when -- for example, a
4 diary entry would be a perfect example. And someone
5 purports to have a series of diary entries, and they
6 were done in the same ink and it was done over a
7 period of, say, five years.

8 Now, if those diary entries were created
9 all at the same time and one were to conduct a
10 phenoxyethanol or a PE analysis, you would expect
11 different levels of PE to be detectible based on the
12 different dates.

13 Now, if the levels of PE were the [*22] same for
14 the past five years, then that certainly wouldn't
15 indicate that it was created, you know, as somebody
16 would -- you know, as somebody would say, over its
17 purported range of dates.

18 So there are certainly situations that a
19 PE analysis would be amenable. And then there are
20 other situations where it's not amenable.

21 Hopefully that's clear and not confusing.

22 Q Let me just try to clarify a couple of
23 points. And again, when -- is it fair for us to say
24 for the rest of the deposition, when we're referring
25 to phenoxyethanol testing, we can just refer to it
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2 as PE testing?

3 A I think that would be better for everybody
4 all around.

5 Q So I thought from your prior testimony you
6 had stated that the Secret Service did PE testing
7 while you were there.

8 A We did. And like I said, there were
9 certain -- we had a list -- we had criteria, I would
10 say, that were established for the types of cases.

11 And I guess to make this really clear is
12 if -- when I was at the Secret Service, if we were
13 given a document with a single signature and a date
14 and somebody [*23] said was that signature created on that
15 purported date, that would not be a situation that I
16 would recommend PE be used, because there's nothing
17 to compare it against. So that would be a

18 situation -- and that ink could dry at a certain
19 rate, it could dry fast.

20 But for the most part there, now, one
21 could make indications, could render a qualified
22 opinion, you know, if they chose to. But I would
23 say there's -- when you have a single document like
24 that, then we don't understand the storage
25 conditions, there's just a host of variables that
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2 are -- that are difficult to -- there's a lot of
3 assumptions that would have to be made.

4 Q Again, what would be the situation where
5 PE testing would be scientifically reliable?

6 A Once again, my opinion would be, in a
7 situation where you have documents that were
8 purported to have been created at different dates,
9 okay, so we have three documents, and somebody says
10 that they're -- and they're dated 2002, 2005 and
11 2007, and they're all done with the same ink.

12 Then you do the PE analysis, and you find
13 a relatively high level of [*24] PE in the 2007 document,
14 a similar level of high PE in the 2005 document and
15 a similar high level of PE in the 2002 document.
16 That would indicate maybe they were created
17 contemporaneously, those three documents, and not on
18 the purported date.

19 Q And under those circumstances, you would
20 find PE testing to be scientifically reliable?

21 A Yeah, yeah, of course. There's a lot of
22 research out there that has validated it.

23 But once again, what I'm trying to make
24 clear here is that there are some -- there are
25 certainly some situations where, as a document
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2 examiner and doing a scientific analysis, you don't
3 have all of the known facts.

4 So sometimes there has to be assumptions,
5 and you would have to make those assumptions clear
6 when issuing a report and when testifying to those
7 results.

8 So if you said to me, okay, Gerry, we've
9 got three documents over a period of -- we have
10 three different periods of time that they're dated,
11 they all have the same high levels of
12 phenoxyethanol. Is that definitive that those
13 documents were created contemporaneously? No, I
14 [*25] would have to qualify the opinion and say that the

15 evidence suggests that, and it's indicative.

16 Q Would you be able to say under those
17 circumstances within a reasonable degree of
18 scientific probability those documents were created
19 at the same time?

20 A That statement is absolutely -- that is a
21 wrong statement. Scientific probability -- it's a
22 statement that if you're not a scientific person,
23 you don't understand, it's just a lot of words.

24 When you say reasonable scientific
25 probability, what does that mean? Probability
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2 involves statistics and involves a percentage. So
3 if you say "probability," then you have to indicate,
4 well, is that 95 percent probable or 99 percent
5 probable, or is it 50 percent probable?

6 So that's an inaccurate statement. But I
7 would not -- I would not use terminology like that.

8 There is generally accepted terminology in
9 the questioned document community that can be used
10 to render opinions. There's an ASTM, or American
11 Society of Testing Materials, standard that uses
12 terminology like that.

13 But what you just said to me, that --
14 [*26] that's not a statement that makes sense. It's
15 misleading to the court and it's misleading to your
16 submitter. So, you know, what is a reasonable
17 level?

18 Q And what is the standard? I'm sorry.
19 What is the standard that you're referring to?

20 A There's a standard, and I don't have the
21 number offhand, but essentially, what it is is, it's
22 a scale of conclusions. And if you imagine just a
23 spectrum, and at one end you have no conclusion --
24 or we'll say that your conclusion is definitively
25 eliminating something, and then at the other end
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2 you're definitively including something.

3 In the middle would be inconclusive, so
4 you can't say one thing one way or the other. And
5 then if you look at gradations in that scale, going
6 up, it would be indications, probable and highly
7 probable. So that would be your -- you know, how
8 you would gauge a stronger opinion.

9 So highly probable would be something, you
10 know, once again, we don't have a statistic to it,
11 but it would be something where there is just a

12 limiting factor that precludes you from saying that
13 from the certainty conclusion. [*27]

14 And you can go the other way using that
15 same gradation, indications, probable and highly
16 probable. It's considered a nine-point scale. And
17 you can use that -- typically you -- handwriting
18 people use that for rendering handwriting
19 conclusion. But the standard does have it -- it's
20 listed as something that can be used by other -- by
21 questioned document examiners for other types of
22 document evidence.

23 Q Don't document examiners use standard
24 deviations in determining the likelihood that -- of
25 a particular point?

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2 A That's -- there's not -- I mean, I guess
3 I'd like to ask you to be more specific, but, I
4 mean, what you're asking, no, is -- the answer is
5 no, there isn't -- depending on what you're talking
6 about. Questioned document examination -- there's a
7 large gamut of the types of examinations that can
8 take place. And not everything has an attached
9 statistic to it.

10 As a matter of fact, I'm not -- I'm sorry,
11 go ahead.

12 Q When you use the term "highly probable" --
13 can you put a percentage on what you mean by highly
14 probable.

15 A No, it's difficult [*28] to put a number on
16 that. What it means, though, is that, you know,
17 it's based on your knowledge, training and
18 experience. But it's a very strong opinion.

19 I don't want to mislead you by putting a
20 number on it, but, you know, it would probably be
21 something like over 95 percent. You know, you're
22 almost certain but there's some limiting factor
23 that's precluding you from going to certainty.

24 Q And when you use the term "probable," what
25 percentage would you put on the term "probable"?

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2 A That's difficult because that then becomes
3 almost like a range, and once again, it's really
4 based on your experience and then the situation at
5 hand. It's really contingent on other evidence
6 within the document as well, too.

7 So it's -- I just can't say that -- I
8 can't give you a number, because it would be unfair.

9 I mean, it would just be misleading.

10 Q Have you ever testified that ink dating
11 using PE method gave strong probability -- you the
12 ability to give an opinion to a strong probability?

13 MR. MC GREGOR: Objection to the form.

14 You can answer.

15 THE WITNESS: [*29] I can answer? I'm sorry, I
16 can't --

17 MR. MC GREGOR: Unless I tell you not to
18 answer, you can answer any time I object.

19 THE WITNESS: Okay. No, I have never
20 provided -- I've never testified to that, no.

21 BY MR. BRECHER:

22 Q So if I hired you, for example, to do an
23 analysis using the PE method and I wanted you to --
24 and your conclusion was that using the PE analysis,
25 the purported date was not correct, is there any
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2 circumstance that you could imagine that you could
3 come into court and say that to a degree of
4 scientific certainty, this entry was not written on
5 its purported date using the PE analysis?

6 MR. MC GREGOR: Objection to the form.

7 THE WITNESS: I'm hearing an objection?

8 MR. MC GREGOR: Yes, I just objected to
9 the form. Unless I say, you know, I am instructing
10 you not to answer, you can go ahead. In New Jersey,
11 you can answer after objections.

12 THE WITNESS: Okay. Okay. I'm sorry.

13 It really depends on the situation.

14 Depends on how level those phenoxy levels are -- or
15 how high the PE levels are and how old the document
16 is purported [*30] to be.

17 But I could scale -- I think it would be
18 feasible to scale that conclusion, depending on the
19 circumstance.

20 As well, if there's some other finding in
21 addition to the ink analysis, like if there was some
22 sort of alteration or something like that, that may
23 factor into the conclusion.

24 But yes, I would say that depending on the
25 situation, depending on the levels of
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2 phenoxyethanol, you could say highly probable or
3 probable or indications. You could scale them. It
4 would depend on your experience as well and, you
5 know, once again, the number of documents that are

6 involved.

7 If it's something that's -- where there's
8 a whole host of documents that were purported to be
9 created at different dates and they all show that
10 there's contemporaneous preparation.

11 So yeah, there's -- depends on what you're
12 concluding to.

13 BY MR. BRECHER:

14 Q Have you ever testified in a court of law
15 that using PE testing that -- to a degree of
16 scientific certainty, that the entry was not written
17 on its purported date?

18 A No, I have not. Not in a court of law. [*31]

19 Q In a deposition?

20 A No, I have not.

21 Q In front of any type of tribunal?

22 A No, I have not.

23 Q Is anything that you're working on now
24 from Riley Welch & LaPorte involving PE testing of
25 ink?

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2 A Not -- nothing that I'm working with
3 currently, no. I'm involved in a case where
4 somebody else is doing some PE testing, but not --
5 not me in particular.

6 Q Are you -- is it your intention to comment
7 upon the PE testing in that situation?

8 A Actually, no, that's -- that's ongoing, so
9 I don't want to -- without commenting further. But
10 no, that's -- I've been retained for a different
11 issue.

12 Q The method developed by Valery Aginsky,
13 what method is that?

14 A It's Valery Aginsky. It's the PE method
15 that we're discussing here.

16 Q Now, I went to your Web site, the Web site
17 for Riley Welch & LaPorte, and on that Web site
18 there's a section called "INK DATING." Are you
19 familiar with that?

20 A I am, yes.

21 Q Now, on the Web site, it states at the
22 very top, "Age Determination of Ink," and it
23 states -- and it's basically -- [*32] I'm -- it seems to
24 be an advertisement or a solicitation for people to
25 retain Riley Welch & LaPorte to use that agency to

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2 use PE testing for ink dating. Is that a fair -- an

3 unfair assumption?

4 A It's a methodology that can be used, yes.

5 I have the equipment to do it. I have the knowledge

6 to do that type of testing. But I am -- I would say

7 that I'm very cautious in the types of cases where I

8 do that type of testing.

9 Q Now, in this portion of your Web page, it

10 says "Mr. Gerry M. LaPorte," and I assume that's

11 you; correct?

12 A That's correct.

13 Q "Has extensive experience" in -- "as a

14 forensic chemist with both current and past ink

15 dating" methodologies.

16 A Yes.

17 Q Is that a correct statement?

18 A Yes.

19 Q And then it goes on to say, "Mr. LaPorte

20 has conducted extensive research in this area, as

21 well as being trained by Dr. Valery Aginsky in his

22 specific ink dating methodologies." Is that a

23 correct statement?

24 A Well, I don't know if -- that's something

25 that has to be changed obviously. But I don't know

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2 if I could say [*33] I've been trained by Valery Aginsky.

3 Dr. Aginsky and I are colleagues, and we've

4 communicated probably for the past seven or eight

5 years, discussing the methodology and so forth. And

6 he has -- I've actually witnessed the procedure that

7 he utilizes. But I don't know if it would be

8 correct to say that I'm trained by him. I was

9 trained by the Secret Service.

10 Q On this -- are you the only one at Riley

11 Welch & LaPorte that does ink dating?

12 A Yes, I am.

13 Q So this portion of the Web page is

14 focusing on your background to do ink dating as

15 opposed to somebody else at Riley Welch & LaPorte?

16 A Yes. And to be honest with you, I've

17 never actually seen that Web page. I mean, I've

18 never gone to that part of it so I'm not extremely

19 familiar with that area.

20 But yeah, what you're saying, though, is

21 not inaccurate.

22 Q Okay. Now, I'm just going to read from

23 the Web page. It starts out, "Age Determination of

24 Ink." And there's bullet points down this Web page.

25 First bullet point, "effective and reliable methods

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2 to chemically date ink entries."

3 Is it your [*34] opinion that PE testing is
4 effective and reliable method to chemically date
5 ink?

6 A It can be, certainly, yes, if it's used in
7 the proper context. And like I said, there are
8 certain situations where I would -- I would be very
9 cautious on rendering conclusions.

10 But yeah, there are -- and I think I've
11 explained that. Yeah, there are certain situations
12 where it's a reliable methodology. It's -- there's
13 a lot of literature in this area that supports the
14 PE method.

15 Q The second bullet point is "other ink
16 entries are not necessary for comparison."

17 Is that a correct statement?

18 A That -- that statement for me, that's a
19 case-by-case scenario. If I had a document that was
20 purported to have been prepared in 1972 and has an
21 extremely high level of PE, that might be a
22 situation.

23 If I have a document that was, you know,
24 in the 2000s, then that might not be the ideal
25 situation.

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2 So it's -- once again, it's all -- this --
3 and I explain this to people when I -- to potential
4 clients or inquiries, when those are made, that
5 there are certain circumstances [*35] that could possibly
6 be used to render a feasible conclusion. But not
7 all situations.

8 Q So it would be incorrect as a blanket
9 statement to state that other ink entries are not
10 necessary for comparison using the PE method?

11 A Once again, it depends on the situation.
12 And then also it may depend on if there's other
13 things that are going on with the document. If
14 there's other aspects or other indications that the
15 document might not have been prepared on the
16 purported date, then I would use those
17 corroboratively.

18 I don't want to come across here as not
19 trying to answer your question. I'm trying to be
20 very forthcoming. But the fact of the matter is, it
21 really depends on the case and the issues that are
22 at hand and the questions that are being proposed.

23 Q The third bullet point is "age is
24 determined by analyzing volatile components, not dye
25 components."

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2 Is that a correct statement?

3 A Yes, that's correct for the PE testing,

4 yes.

5 Q There's a bullet point that says "This
6 method was also subjected to stringent testing
7 (using 'blind' samples) [*36] by the Government of Israel
8 and found 100% accurate."

9 Is that a correct statement?

10 A That's a correct statement, and that was
11 done by Dr. Aginsky, yes. And I actually spoke with
12 the Israeli government when those tests were done.

13 You know, as far as I know, that's an
14 accurate statement. I didn't -- I wasn't involved
15 in that testing. But like I said, I do -- I have
16 seen the results from that.

17 Q And do you consider the PE testing to be
18 100 percent accurate?

19 A 100 percent accurate? No. Once again, it
20 really depends on the situation at hand and the
21 conclusion you're drawing. When you say "100
22 percent accurate," do you mean that, you know, can I
23 make a conclusion or can one make a conclusion
24 definitively? Not all the time.

25 Q The next bullet point says "The method was
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2 successfully subjected to testing by this firm on
3 two occasions in 2001."

4 Is that a correct statement?

5 A I wasn't with the firm in 2001, so that --
6 I don't know where that -- what they're referring to
7 in that statement.

8 Q The next bullet point says "The [*37] Canadian
9 Customs & Revenue Laboratory has conducted
10 validation studies of the Aginsky Method (which are
11 ongoing) and has used a modification of the method
12 in over 100 cases."

13 Is that a correct statement?

14 A Well, first of all, the Canada Customs
15 Revenue Agency was renamed Canada Border Services
16 Agency, CBSA.

17 As far as I know, that number -- I'm not
18 exactly sure of the number.

19 I know at one time, when I spoke with a

20 representative from CBSA, they had done over 70
21 cases. And the methodology that they use there is
22 called the modified Aginsky. That's what they term
23 it. It's just a slight modification of the Aginsky
24 procedure.

25 I can't speak on behalf of that laboratory
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2 and what they do now and so forth. But, I mean,
3 last I spoke with them, probably four or five months
4 ago, they were still utilizing that procedure.

5 Q The next bullet point says "November 21,
6 2002, Hong Kong Ruling on Ink Dating."

7 Do you know what that's referring to?

8 A I believe so, yes. What Hong Kong ruling
9 was this? Does it have a date?

10 Q It says "November 21, 2002."

11 [*38] A Yeah, I think I know which case that is.
12 I wasn't involved in that --

13 Q What case is that?

14 A Well, I wasn't involved in that case, but
15 that was the will of a very wealthy person in China.
16 And then there were some issues that were presented,
17 that that wasn't purported to be a genuine document.
18 So there were some dating issues that took place
19 with that document. But I don't know a lot about
20 the case. I know of the ruling.

21 Q What was the ruling?

22 A I believe that -- I believe that
23 Mr. Speckin was in tremendous trouble in that case
24 because, from what I understand, there was -- and I
25 don't know all the logistics about this case. You'd
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2 be better off to ask Mr. Speckin. But there was a
3 document that was submitted for analysis with a
4 known age, because people were suspicious of
5 Mr. Speckin's work. And they provided him some
6 information about that document, and he came to the
7 wrong conclusion.

8 And from what I understand, the judge
9 disallowed Mr. Speckin from testifying. I'm not
10 exactly sure on all the logistics about that case.
11 That was my understanding of [*39] it.

12 Q Why does the Riley Welch LaPorte Web site
13 focus on the Hong Kong ruling on ink dating, then?

14 A Because Dr. Aginsky was involved in that
15 case as well.

16 Q On the same side as Mr. Speckin?

17 A I'm not sure if it was the same or a
18 different side. I really don't know.
19 Q And are you aware that the appellate court
20 overruled the judge's ruling in that case?
21 Specifically Mr. Speckin's ink-dating analysis.
22 A I'm not aware of that ruling, and I -- I
23 wouldn't even comment on it, because I'd be curious
24 to see what -- why it was overruled.
25 Q And your testimony is that even though
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2 this Web site page refers to you and your background
3 and you're the only one doing ink dating at Welch
4 Riley & LaPorte, that you've never read this Web
5 page before?

6 MR. MC GREGOR: Objection to form.

7 THE WITNESS: I've seen the Web page, but
8 I'm not -- there's a lot of things that were on that
9 Web page that were there before I started with the
10 company.

11 Obviously, I wasn't there in 2001 or 2002,
12 so there's a lot of the -- those types of issues
13 that I'm [*40] just not -- you know, like I said, I wasn't
14 there.

15 But I make -- I make my own decisions
16 about when documents come in and what I determine to
17 be feasible for ink analysis. That has nothing to
18 do with the rest of the company.

19 I -- I'm basically the sole decisionmaker
20 when it comes to an ink-dating case. It doesn't --
21 if I don't think it's feasible for ink analysis,
22 then I don't take the case.

23 BY MR. BRECHER:

24 Q Did anybody prior to you coming on board
25 at Riley Welch & LaPorte do ink dating?

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2 A Dr. Aginsky was there. We were --
3 Dr. Aginsky was with the firm, it used to be Riley
4 Welch & Aginsky, and he was with the firm for a very
5 short period of time when I was there. And then he
6 left. He left afterwards and went out on his own.
7 He has his own dating laboratory.

8 Q And that all took place between early this
9 year and now?

10 A Yeah. Most of it took place in early this
11 year, we'll say in the first six months of '09.

12 Q And does Riley Welch & LaPorte have an
13 actual forensic laboratory?

14 A Each of us -- I have a laboratory set up
15 in [*41] my residence. I have a thin layer chromatography
16 equipment, I have a video spectral comparator, I
17 have an ESDA, I have a gas chromatograph. I have
18 kind of all the appropriate solvents and so forth.
19 So yeah, I have that.

20 And then each of the others have their own
21 laboratory set-up as well.

22 Q What is your employment relationship to
23 Riley Welch & LaPorte?

24 A Originally, I was hired to essentially --
25 obviously, since I have a full-time job, it's not --
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2 this was not -- it wasn't intended to be a full-time
3 position, which it was for Dr. Aginsky.

4 But when I was hired, I -- I guess my
5 primary duties were to assist in overflow cases that
6 Dr. Aginsky couldn't handle, basically for time
7 constraints.

8 But since that time, I have now become a
9 partner with the company.

10 Q So now you're -- when did you become a
11 partner with the company?

12 A I believe that was just a few months ago,
13 I would say. I can't remember exactly the date, but
14 it may have been like June sometime, May.

15 Q And who are your partners?

16 A Tom Riley and Tom Welch.

17 Q Is [*42] there any other partners?

18 A No. There's other people that are -- that
19 work for the firm as well, but we are the three
20 primary partners.

21 Q And what is the percentage of your income
22 that comes from Riley Welch & LaPorte compared to
23 your Department of Justice job?

24 A First of all, I think I need to step back.
25 I've been saying that I started with the company
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2 this early part of this year. That's incorrect. It
3 was the early part of last year. I'm just thinking,
4 it was 2008 when I joined on.

5 But in 2008, I guess for -- just to be
6 perfectly frank, my salary with the government was
7 120,000, my salary with Riley Welch was 90,000.

8 Q And are you a salaried -- were you on
9 salary at that time before you became a partner?

10 A No, no, I wasn't on salary. I get

11 essentially -- half of the proceeds of my retainer
12 rate, my hourly rate go back to the company, and
13 then half go to me.

14 Q What is your hourly rate?

15 A \$ 400 per hour.

16 Q And what is -- does that include testing
17 and analysis?

18 A Yes, yeah. It's for all -- you know, all
19 the work that's [*43] included.

20 Q And when you -- for today what is your fee
21 for deposition?

22 A You know, I honestly don't know. I think
23 it might be 450. I'm not exactly sure. I -- I know
24 it doesn't sound right, but I really don't keep
25 track of this stuff, because I have a full-time job.
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2 We have a secretary that takes care of all this
3 stuff.

4 I basically report to her my hours. I
5 know we have a billing schedule and a fee, and I
6 think it's 450, though. I don't even know, to be
7 honest.

8 Q And of that 450, you keep half and half
9 goes to Riley Welch & LaPorte?

10 A Yeah, well, I believe for the -- our
11 agreement is, for a deposition or for trial, I would
12 keep the extra 50, so I would get 200 plus the 50
13 because this is my own time that -- and I have to
14 take time off of work for this as well. So that --
15 so I will get 250 and then 200 would go back to the
16 company, yes.

17 Q And what is the fee for testifying in
18 court?

19 A Same thing, deposition or court. I
20 believe it's the same thing.

21 Q And this is a day normally you would be
22 working with the Department of Justice? [*44]

23 A Yeah, I'm on leave today, yes.

24 Q Did you take this as a vacation day or a
25 personal day?

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2 A I did. Yeah, it's a personal day. So
3 yeah, my -- I don't take a lot of vacation days
4 because when I do, I have to do this sort of thing.

5 Q So again, is it your testimony that since
6 working at Riley Welch & LaPorte, you have not
7 conducted ink-dating analysis using the PE method?

8 A No, I never said that. I said I've never
9 testified to that. But yeah, I've conducted -- I've
10 done it in a couple cases, yes.

11 Q When you say "a couple," could you give me
12 an exact number.

13 A Two, three? I'm not exactly sure. I'd
14 have to go to all my records.

15 Q And did any of those situations end up in
16 a deposition or a courtroom?

17 A No, no, I have not testified with regards
18 to PE analysis with a Riley Welch LaPorte case.

19 Q Did you ever write a report in any of the
20 situations?

21 A Yes, I have.

22 Q And what were your conclusions about PE
23 testing in those reports?

24 A I believe that the reports that I've
25 issued have been inconclusive. I can't [*45] -- I can
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2 tell you for certain that I have not issued a report
3 making a conclusion that an entry or entries were
4 backdated or not produced on their purported date
5 based on PE testing. They have been inconclusive
6 reports.

7 Q And can you tell me which side retained
8 you, the side that their perspective was that they
9 didn't want it to be on the purported date or the
10 side that motivation was that it was on its
11 purported date?

12 A No. I can say that -- I'll tell you this,
13 first of all, I don't recall which side. I've
14 worked for both sides. Whoever hires me, I'm not --
15 obviously I don't pick a side to work on.

16 And in one case, I know that it would have
17 been in the client's favor had I found -- had I made
18 a conclusion, but I did not.

19 Q And while at the Secret Service, did you
20 ever testify that ink dating using the PE method was
21 scientifically reliable?

22 A No, I have never testified on a -- at the
23 Secret Service with regards to a PE case, no, I have
24 not.

25 Q And again, just -- did you ever testify
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2 while employed at the Secret Service that ink [*46] dating
3 using a PE test was not reliable?

4 A That it was not reliable? Once again,

5 I -- I've never made the overarching statement that
6 it's not reliable or that it is reliable. There are
7 certain circumstances when it can be used, could be
8 used. There are other circumstances when it
9 probably should not be used.

10 I have never made any overarching
11 statements one way or the other. I've never
12 testified to that. I've published on this very
13 topic, and I've never made any overarching
14 statements even in my publication.

15 Once again, you know, it's case dependent.
16 Really depends on the circumstances, depends on the
17 information that's provided to you. If there's a
18 lot of uncertainty to how the document was stored,
19 how it was prepared, where it's been for -- you
20 know, for X amount of time before you received it,
21 then there's too many assumptions that might have to
22 be made.

23 Q Does ink dating using PE involve heat?

24 A Yes, it can. Yeah, there's a heated and
25 unheated sample that you would test.

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2 Q Does ink dating using the PE method
3 involve the rate of extraction? [*47]

4 A Yes, it can. Yes.

5 Q And does ink dating using the PE test use
6 percent of extraction?

7 A Yes, it can. What you're -- what's going
8 on here or what you're trying to -- I guess
9 what's -- I don't want to mislead or connote that
10 what you do for PE testing is the same thing that
11 you can do for another type of testing, like for
12 dyes. These are two completely different animals
13 that we're talking about.

14 So I just want to make sure -- I just want
15 to make sure that the record is accurate, that I
16 agree that those are methodologies that are used for
17 phenoxyethanol. Not for any other dating, but for
18 phenoxyethanol.

19 Q In lay terms, just tell us how you date
20 ink using the PE method.

21 A I mean, the first thing that you have to
22 do is determine whether there is PE present. So
23 there's a methodology that's used, that you can use,
24 to detect the PE.

25 After you determine that there is PE

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2 that's present, then you can determine whether it's
3 fully dried or not. And that is so you subject --
4 you do an analysis of the ink plugs to determine the
5 amount of phenoxyethanol [*48] that's present, and then do
6 an analysis of the ink plugs after they have been
7 heated, to see how much of the phenoxyethanol has
8 been driven off.

9 Q And explain the heating process.

10 A The heating process is done, you heat the
11 microplugs or the inks at about 70 degrees Celsius.
12 And then, like I say, the theory behind it is that
13 if the ink is fresh, then you will drive off more
14 PE.

15 And that is -- what I like to compare it
16 to is if you painted a wall and you walked into the
17 room, it would smell very strong. What that is is
18 there's vapors and so forth, there's solvents in
19 those paints.

20 Now, as -- as that -- as time goes by and
21 that wall dries, then there's less solvents that are
22 in the air that you can detect.

23 So the idea is that when you heat it, you
24 drive off more solvent if it's fresh. It means
25 there's more solvent that's clustered up in the ink.

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2 Q And how are the concepts of rate of
3 extraction and percent of extraction utilized in the
4 PE methodology?

5 A Well, it's the same idea. I mean, like I
6 said, the percent would be how much -- how [*49] much is
7 driven off, how much phenoxyethanol is driven off.

8 And then also, too, if -- there's the weak-solvent
9 and the strong-solvent approach, which is if you
10 extract something in a weak solvent and then extract
11 something in a strong solvent, then as that -- if
12 that ink is aged, then you would detect differences
13 that way.

14 But that's -- those aren't necessarily
15 methods -- I mean, those are published methods and
16 so forth. But I have never gotten to that point,
17 because my findings have been inconclusive with my
18 Riley Welch LaPorte tests that I have done.

19 And that's the methodology that
20 Dr. Aginsky uses.

21 Q Is there anywhere on the Riley Welch &
22 LaPorte Web site where you indicate that when you
23 have done ink-dating analysis using the PE method,
24 that every single time you do that, you have been --

25 you have had inconclusive findings?

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2 MR. MC GREGOR: Objection to form.

3 THE WITNESS: No, that's -- like I said,

4 I've only done it in two or three instances. I'm a

5 very cautious scientist, so there are certain

6 circumstances -- if there's a situation where

7 somebody [*50] wants -- where the request is, you know,

8 there's a signature on a piece of paper and was it

9 created on that purported date, there's other tests

10 that I do in conjunction with the dating test as

11 well. So I -- if I have other evidence that

12 corroborates my findings, then I can render -- I

13 could render a conclusion.

14 And once again, if I have a series of

15 documents, and I haven't really been -- I haven't

16 really had a situation like this with Riley Welch

17 LaPorte, where I have a series of documents that

18 were purported to have been created over a series of

19 years, and somebody suspects that they were just

20 done all at once. I haven't had that situation yet.

21 BY MR. BRECHER:

22 Q And forgive me if I've asked you this

23 before, but have you ever testified, either at a

24 deposition or in a tribunal or a courtroom, that --

25 where you have come up with a definitive conclusion

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2 when you've dated ink using the PE methodology?

3 MR. MC GRATH: Now, I object to this

4 because you've asked this man the same question

5 three times and he repeatedly said he has not

6 testified in court on PE analysis. [*51]

7 MR. MC GREGOR: Agreed.

8 BY MR. BRECHER:

9 Q You can answer, Mr. LaPorte.

10 A I can answer? Is that correct?

11 Q Yes.

12 A Oh, no, I've not testified in trial on a

13 case with phenoxyethanol making an overarching

14 statement like that, no. Sure.

15 Q And in the last question, I was not asking

16 you for an overarching statement about the

17 methodology. I'm talking about a specific analysis

18 that you've done on a specific ink, where you

19 testified that -- where you have come to a

20 conclusion, other than inconclusive, regarding an

21 ink -- ink analysis using the PE method.

22 A Not that I'm aware of.

23 Q What is your understanding of the
24 methodology used by Erich Speckin to date ink?

25 A Can you be more specific when you say what
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2 is my understanding? I mean --

3 Q Well, what -- you've criticized
4 Mr. Speckin's methodology in this particular case?

5 A Well, let me say that I've criticized the
6 methodology. It's not Mr. Speckin's methodology.
7 It's the methodology in general. So just to be
8 clear, I'm not -- I'm not here to criticize
9 Mr. Speckin. [*52] I'm here -- I will undoubtedly -- I am
10 very critical of the methodology, just to make that
11 clear.

12 Q What is your understanding of relative
13 aging and accelerated aging testing on ink?

14 MR. MC GREGOR: Objection to form.

15 BY MR. BRECHER:

16 Q You can answer.

17 A Well, the theory behind it is that if an
18 ink -- if one makes an entry and then that ink dries
19 over a certain period of time, that it becomes --
20 the theory is that it becomes more difficult to
21 extract the older it is.

22 So there are -- Mr. Speckin purports that
23 there's a way to measure that extractability. I
24 disagree. The rest of the scientific community
25 disagrees with that. But that's -- I mean, that's
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2 my understanding, if you will, or sort of the basic
3 tenet of what goes on here.

4 Q Other than Mr. Speckin, is there anyone
5 else that you're aware of who uses the same
6 methodology?

7 A There's only one other person in the
8 world, and that's Dr. Albert Lyter. Nobody else in
9 the world uses this methodology.

10 So you've got two people that use a
11 methodology. If it was determined to be [*53] reliable,
12 then everybody would be using the methodology.

13 Q How does the methodology used by Mr. Lyter
14 or Speckin differ from the methodology using PE to
15 test the age of ink?

16 A It's two completely different concepts.
17 The methodology that Speckin and Lyter use is based
18 on the extractability of the dyes and the

19 components. The PE method actually measures a
20 solvent using a -- one of the most generally
21 accepted -- not one of the most, but the most,
22 generally accepted method or instrument, if you
23 will, to detect those components. And that is gas
24 chromatography mass spectrometry. Highly accurate
25 instrument able to detect quantities of components
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2 at a very small level.

3 It's used in forensic laboratories all
4 over the world, use it for various types of testing
5 such as drug testing, for poisons in people's
6 bodies.

7 And as an example, they probably used that
8 method to detect the propofol in the Michael Jackson
9 case. It's a generally accepted procedure -- or
10 instrument. So it's -- like I said, it's very, very
11 accurate.

12 So the methodology for measuring PE
13 [*54] incorporates that tool or that instrument.

14 Q Do both methods, the PE method and the
15 accelerated aging method, use heat?

16 A Yes.

17 Q Do both methodologies use percent of
18 extraction?

19 A I'm sorry, just to go back on your
20 question, they use heat but they do use different
21 temperatures. I believe that Mr. Speckin uses 100
22 degree C, phenoxyethanol uses 70 degrees C or 80
23 degrees C, depending on the person conducting the
24 analysis.

25 100 degrees Celsius has been found to be
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2 too high of a temperature for inks. That's been
3 reported in the literature. But I believe that
4 Mr. Speckin still uses that temperature. I'm sorry,
5 your second question?

6 Q My question -- do both the accelerated
7 testing and the PE testing use percentage of
8 extraction?

9 A Yes. But they measure different
10 materials.

11 Q And does the accelerated aging and the PE
12 testing both use rate of extraction?

13 A Yes, but they measure different -- you
14 know, different materials, different components.

15 Q Is it your testimony that the accelerated

16 aging with rate of extraction and [*55] percentage of
17 extraction is not scientifically valid, no matter
18 how precise it's performed?

19 MR. MC GREGOR: Objection to the form.

20 THE WITNESS: I'm sorry, can you repeat
21 that question?

22 BY MR. BRECHER:

23 Q My question is, is it your testimony today
24 that the accelerating aging with rate of extraction
25 and percentage of extraction is not scientifically
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2 valid, no matter how properly that methodology is
3 followed?

4 MR. MC GREGOR: Objection to form by
5 McGregor.

6 THE WITNESS: Are you referring to PE also
7 or are you incorporating that into your statement?

8 BY MR. BRECHER:

9 Q No. No. Is it your position that
10 accelerated aging with rate of extraction and
11 percentage -- percent of extraction is not
12 scientifically valid, no matter how carefully that
13 testing is performed?

14 A Yes, absolutely. Absolutely.

15 Q Do you agree that you can't induce age in
16 ink using heat?

17 A If you do it correctly. 100 degrees
18 Celsius is not -- like I said, there's actually been
19 at least a recent publication, I believe back in
20 June or July, that discusses [*56] this issue. And we
21 believe that heating at too high of a temperature
22 actually breaks down other products within the ink.

23 So it's -- but yes, so that -- with the
24 proper -- the proper heating and depending on what
25 you're measuring, and depending on the components.
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2 The problem with -- the issue, though, when you heat
3 a sample for phenoxy -- when you're doing the PE
4 procedure, is that we know what temperature to heat
5 it so that -- because we know all the logistics
6 about PE in general, or sort of all the chemistry
7 behind the PE.

8 The problem is, when you use it in other
9 approaches, you're heating up the -- simply you
10 don't know what's happening to everything else and
11 you don't know exactly what's measuring -- what
12 you're measuring. There are dyes that are involved

13 in the degradation process, when you heat them up.
14 And because there are so many different types of
15 dyes that are used in inks, that the dyes break down
16 differently as well.

17 So there's a lot of unpredictability when
18 you use it for things that you don't know that
19 you're measuring, if that makes any sense.

20 [*57] Q And what is the proper heat level?

21 A Well, we've determined, at least with
22 phenoxyethanol, that it's around 70 degrees or 80
23 degrees Celsius. Still trying to work out the exact
24 temperature and what seems to be best. But I think
25 the general consensus is in the direction of 70

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2 degrees C.

3 Q Are you personally aware of any
4 publications which support the proposition that
5 accelerated aging with rate of extraction and
6 percentage of extraction is a scientifically valid
7 methodology to date ink?

8 A For -- specifically to answer your
9 question, with reference to the methodology that was
10 utilized by Mr. Speckin, right? This is not
11 phenoxyethanol. Because when you talk about -- we
12 discussed that rate of extraction and accelerated
13 and aging and so forth. Those are things that can
14 be used for PE testing. So I just don't want to
15 confuse the issue. Correct?

16 Q Well, let me rephrase the question. Are
17 you aware of any publications that support
18 Mr. Speckin's methodology to date ink and conclude
19 that that is a scientifically reliable methodology
20 to date ink?

21 A I am [*58] aware of publications that discuss
22 that the -- that discuss that this is an accepted
23 methodology. Those are very outdated. And then
24 some of them include publications by Mr. Speckin.

25 But there's no -- there has been no

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2 extensive publication, I would say, within the past
3 10 years that talks about -- or that even addresses
4 the issue of validity, because it was shown in the
5 late '90s that this wasn't really a valid procedure.

6 At the time all the researchers were
7 saying we need to do more work before we issue --
8 before we do this and issue conclusions in a court
9 of law.

10 And there's been no work that's supported
11 the theory that this is a reliable method.

12 Q Can you name me any of the publications
13 that stand for the proposition that the Speckin
14 method is scientifically reliable.

15 A Yeah. There was a method -- or there's a
16 publication by Brunelle and Speckin, Richard
17 Brunelle and Erich Speckin, on accelerated aging, I
18 believe that was in the International Journal for
19 Forensic Document Examiners. I'm not sure on the
20 exact date. It might have been the late '90s. [*59]

21 I mean, to be perfectly frank, that was a
22 self-serving article because both of them utilized
23 that methodology at the time.

24 But that's actually -- that article, in my
25 opinion, was not a rigorously -- is not a rigorous
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2 study. All it talks about is whether the study --
3 whether the idea of accelerated aging is acceptable.
4 They say that it is, but they don't provide any --
5 they just talk about cases that they have worked.
6 They don't provide any data to support that
7 proposition.

8 Q Any other publication that you're aware of
9 that stands for the proposition that the Speckin
10 methodology is scientifically valid to date ink?

11 A No, and just to be clear, there are
12 publications that talk about the theory of it, and
13 that -- the theoretical aspect that it could be a
14 feasible method. But -- so to my knowledge, there
15 are no publications that have actually done rigorous
16 studies with this on more than one or two inks.

17 Q Are you aware of law enforcement agencies
18 in the United States who have retained Mr. Speckin
19 to -- to have him perform his methodology to date
20 ink?

21 [*60] A I -- I'm not aware of that. I would say
22 that that's -- I'll refrain from comment on that.
23 But no, I'm not aware of that. And if somebody is
24 doing that, then I hope people aren't going to jail
25 over this.

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2 Q Do you know if law enforcement agencies in
3 the United States have retained Mr. Speckin to
4 conduct ink-dating analysis using his methodology?

5 MR. MC GREGOR: Objection; asked and
6 answered.

7 THE WITNESS: I can tell you that the two
8 primary law enforcement agencies in this country
9 that conduct ink dating are the Internal Revenue
10 Service and the United States Secret Service.
11 United States Secret Service does work for FBI, ATF,
12 DEA, several state and local agencies on a regular
13 basis. IRS does the same thing.

14 If somebody -- if there's some -- if
15 there's a small police agency out there that's using
16 this type of dating, I'm not familiar with it. I'm
17 not saying that it's not happening.

18 BY MR. BRECHER:

19 Q Are you aware of court decisions which
20 have upheld Mr. Speckin's methodology as being
21 scientifically valid?

22 A I'm not -- you know, I'm not [*61] as familiar
23 with the legal literature as you. But I am
24 certainly aware that there have been some decisions
25 in the past, I'm not sure of which courts and which
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2 states and so forth, where the argument has been
3 accepted.

4 I don't know the details of those cases.
5 I don't know if there were other experts on the
6 other side or if this was just an issue where the
7 individual -- where there was one expert that was
8 hired and there was nobody else to render other
9 facts.

10 So I don't know the details about those.

11 Q Have you ever testified on the other side
12 of a case where Mr. Speckin is doing ink-dating
13 analysis?

14 A Yes.

15 Q And what case is that or what cases are
16 those?

17 A I know that he was on the other side in
18 the case of the prosecution of Jose Padilla, the
19 alleged dirty bomber that was going to -- he was
20 prosecuted for terrorist charges. I believe
21 Mr. Speckin was on the side at that time -- or on
22 the other side, for Mr. Padilla.

23 Q What side was that?

24 A I guess the defense.

25 Q And as far as you know, in that particular
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2 [*62] case, was he allowed to testify using his scientific
3 methodology to date ink?

4 A I believe they didn't let him testify, no.
5 That's -- I'm not familiar with that -- with what
6 happens.
7 Because in government cases, typically,
8 we're shielded from all that information, for
9 specific reasons. So I never really knew anything
10 about what was going on on the other side. I just
11 knew that Mr. Speckin was hired on the other side,
12 he actually came over to the Secret Service and we
13 examined the documents together. But I'm not sure
14 of all the details on that.

15 I know there was another case that he was
16 on the other side, and that was in -- I don't
17 remember the matter, but it was in the state of
18 Kentucky, and it was a multiple homicide case.

19 And I know that he did testify in that
20 particular case because, I believe, that the
21 prosecutors went from Kentucky to Michigan to
22 question Mr. Speckin during the trial.

23 There was an issue about how much he was
24 charging, and the judge didn't warrant it feasible
25 to fly him out to Kentucky and pay him some
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2 exorbitant rate to testify [*63] in a particular case.

3 I don't know all the details. And once
4 again, I was shielded from that particular case and
5 what he testified to and what happened.

6 From what I understand, though, I had --
7 well, I hadn't heard anything after, and I don't
8 know exactly what he testified to. I'll leave it at
9 that.

10 I think those are the only two criminal
11 cases where he's been on the other side.

12 Q Now, in this case, the Giorgio case, did
13 you test any of the ink samples using the Aginsky
14 method or the PE method?

15 A No, I did not.

16 Q Did you -- were you requested to do that
17 kind of analysis?

18 A No, I was not.

19 Q Did you offer to do that kind of analysis?

20 A I honestly don't remember the details of
21 the case. I believe that I was -- I have my notes
22 here, but I think my -- my conversations with
23 Mr. Schaaff were to evaluate this methodology. So
24 there were no other requests to conduct any other
25 testing with regards to --

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2 Q I'm sorry. Did you tell Mr. Schaaff that
3 we could corroborate or not corroborate the
4 purported date on this document by [*64] doing the PE
5 methodology?

6 MR. MC GREGOR: Objection by Mr. McGregor,
7 and I'm going to instruct you not to answer.

8 I think that's work product. Discussions
9 between him and the attorney.

10 I'm going to instruct you not to answer,
11 Mr. LaPorte.

12 THE WITNESS: Okay.

13 BY MR. BRECHER:

14 Q If you had wanted to, could you have done
15 a PE analysis on these documents?

16 A The -- to be perfectly honest, I don't
17 know all the details about this case. I don't know
18 what's purported to be an authentic entry or
19 anything like that. I really don't know. And that
20 was --

21 Q What do you know about this case?

22 A I really don't know a lot about the case
23 at hand and what the issues are. I know that when I
24 spoke with Mr. Schaaff -- well, I guess I'm not
25 going to -- I probably shouldn't talk about that.

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2 That's privileged.

3 MR. MC GREGOR: Don't mention any
4 discussions.

5 THE WITNESS: Okay. All I can say is that
6 I don't -- I really don't know what's at hand in
7 this particular case. Like I don't know the details
8 about what allegations were made [*65] and so forth.

9 BY MR. BRECHER:

10 Q My question to you, though, is very
11 simple. If you wanted to do a PE analysis on either
12 the undated letter or the office notes that you
13 analyzed in this matter, could you do it?

14 A Once again, it depends on -- well, there's
15 a few factors that are involved here. First of all,
16 it depends on how long -- how old the document --
17 how old we really, really know the documents are.
18 That would be the first question.

19 So I realize that I see some '04 dates on
20 here and so forth. But I really need to know how
21 long -- like once the lawyer gets them or once
22 there's a time period that we know for certain, I
23 would have to know that.

24 Because the PE testing essentially really
25 is only good for about 18 months, two years at the
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2 most. And as it gets older, then it becomes a
3 little more -- then there's a lot more uncertainty
4 to the conclusion that you can draw. So it would
5 really depend on that.

6 Also, too, there are inks that are on
7 different types of paper. I believe there was like
8 the Gibbons signature on the one document, and that
9 [*66] document didn't have a date. We could have figured
10 out the date of that document, though, easily.

11 But once -- it's not really -- it's not
12 feasible to compare the ink from one document to the
13 other.

14 And then also, too, because there are
15 different inks that are being used on the document,
16 that may not render itself to -- you know, to doing
17 the appropriate testing and coming up with a
18 reliable conclusion.

19 So, you know, once again, just a lot of
20 different factors that are going on here. And these
21 are questions that -- these are questions that I
22 would normally -- you know, I would normally kind
23 of -- I would ask, you know, the potential -- the
24 submitter to determine whether this type of testing
25 would be feasible for not.

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2 Q In your prior answer, I believe you said
3 on the undated letter, you could figure out the
4 dating of the signature pretty easily?

5 A No, I meant the date of the -- even though
6 the letter doesn't have a date, but it was -- I
7 would assume that that letter was sent at a certain
8 time or that you could get at least the date of when
9 that letter [*67] purportedly should have been done.

10 Q How could you do that? How would you go
11 about doing that?

12 A Well, it's letterhead, and I'm just
13 assuming that it was sent from one place to another.
14 There's a statement up here that says via guaranteed
15 delivery, so somebody sent that, I'm assuming, via
16 FedEx or UPS or something like that. So shouldn't
17 there be a date on there?

18 Q But that's the way you could figure out
19 the way that it was dated if there was an actual
20 FedEx invoice, something to that effect?

21 A Well, I can't speculate, but yeah, there
22 was a letter that was sent out apparently from
23 somebody to, I guess, Emanuel Giorgio. When did
24 Giorgio get it?
25 Yeah, there's are things that it doesn't
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2 take a forensic scientist to figure out.
3 Q Do you have the Gibbons office notes or a
4 copy of his office notes in the materials in front
5 of you?
6 A I do not. I only have -- I only have the
7 two documents that were labeled 3A and 4A.
8 Q Right. And that's what I'm referring to.
9 The one document has notes from 11/17 to 12/18.
10 A Yes, yes.
11 Q And [*68] one document is the undated letter.
12 A Yes.
13 Q Okay. So have those in front of you
14 because the next series of questions will be about
15 those documents.
16 A Okay.
17 Q And I assume you have your report. And
18 did you review your report before today's
19 deposition?
20 A Yes, I did.
21 Q Now, let's look at the -- referencing the
22 November 18 entry, on the document that you referred
23 to as Q 3A.
24 A Yes. Yes, I have that.
25 Q Okay. So on the Q 3A document, there is
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2 an entry which just says 11/18.
3 A Okay.
4 Q Now, Mr. Speckin writes in his report that
5 the initials at the bottom of the 11/18 entry is in
6 a different ink from the bottom of the 11/18 entry.
7 Do you believe that statement?
8 A I believe that I put that in my report,
9 correct?
10 Q Please answer my question.
11 A I apologize. Yes, I agree with that.
12 Q And how did you arrive at that conclusion,
13 that the initials below the 11/18 office entry is
14 different from the ink used in the body of that
15 entry?
16 A I conducted a test using a method, using
17 thin layer chromatography. [*69] And I compared that

18 ink -- is that -- D.G., I assume those initials are?

19 Q It looks that way.

20 A Yeah, I'll say that's what it appears to
21 be, D.J. or A.G., I don't know, but it appears to be
22 DG. And I conducted TLC analysis to compare that
23 with the 11/17 and the 11/18 entries. And it was
24 determined to be a different ink.

25 Q Just briefly describe -- what is

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2 chromatography and what's TLC?

3 A TLC is thin layer chromatography.

4 Essentially, it's a method that's used to separate
5 components in reference to inks, to separate the
6 different components that are present in inks.

7 A good example would be, you know, if you
8 had a soda, a Diet Coke or something like that, and
9 we know that there's a lot of different components
10 in there. There's caffeine, there's sugar, there
11 are different types of flavors and so forth.

12 And so the methodology would be to
13 separate all of those different components. So
14 that's the basis of thin layer chromatography.

15 Q Does the conclusion that you draw in your
16 report, that the initials below the 11/18 entry is
17 in a different ink [*70] from the 11/18 entry, does that
18 conclusion corroborate that the 11/18 entry was made
19 at the same time as the initials below that entry?

20 A That -- that doesn't mean -- that doesn't
21 mean anything. I mean, it's a different ink.
22 That's all I can say. I have five different pens
23 laying on my desk. So as far as utilizing that to
24 make a conclusion, to me that would be improper.

25 You could use -- you know, people have
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2 access to different types of inks or different types
3 of pens. Who knows if somebody wrote the 11/18
4 entry and then walked over to another room and then
5 initialed it at that point? I -- who knows?

6 So in response to your question, though,
7 it doesn't -- it doesn't corroborate anything. All
8 it is is it's -- very clearly it's a different ink
9 than what was used for the 11/18 entry.

10 Q In your analysis of the ink used in the
11 body of the 11/18 office note, was there any
12 indication that the ink in that particular pen was
13 running out of ink so that whoever was making the
14 entry had to go to a different pen?

15 A No, again, I can't say that. There's
16 nothing obvious [*71] at the end of that entry that would
17 show that the ink was running out.

18 Q In your report, you state that the ink
19 used for the signature and the body of the 11/18
20 through 12/20 -- 12/1 entry matches the ink used in
21 the initial below the 11/18 entry; is that correct?

22 A Yeah, we should make that clear, though,
23 when we use the conclusion batch, it doesn't
24 necessarily mean that they're the same. I just want
25 to make that clear for everybody that we adhere to
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2 that standard. And what match means when we use
3 that terminology is that we couldn't differentiate
4 the inks based on the testing that we conducted.

5 But by no means does it indicate that it
6 was the same pen or anything like that.

7 Q But the ink used to write the 11/18
8 through the 12/1 entry does match the same ink used
9 for the initials below the 11/18 entry, according to
10 your report?

11 MR. MC GREGOR: Objection to form.

12 THE WITNESS: Correct.

13 BY MR. BRECHER:

14 Q And how did you arrive at that conclusion?

15 A Did the thin layer chromatography test.

16 Q Does the fact that the ink of the 11/18
17 [*72] through 12/1 entry matches the ink used for the
18 initials below the 11/18 entry mean that those
19 entries are made at the same time?

20 A No, there's no -- you can't draw that
21 conclusion. Once again, it's just there's just --
22 there's a fact here, and that is, you know, that
23 they -- they are potentially the same inks. But
24 that's all you -- that's all I could say.

25 That doesn't mean they were done at the
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2 same time, at a different time. It doesn't --
3 doesn't really mean anything with regards to timing.

4 Q Now, you concluded that the ink used for
5 the 12/18/04 entry also matches the ink used for the
6 initials below the 11/18 entry?

7 A Correct.

8 Q And does the fact that the ink used for
9 the 12/18/04 entry matches the ink used for the
10 initials below the 11/18 entry mean to you that
11 those entries were made at the same time?

12 A No. Once again, I can't draw that
13 conclusion about timing just based on the fact that
14 we have matching inks.

15 Q As a document examiner, is it your
16 expectation that someone would sign the bottom of it
17 office note at the same time that [*73] they wrote the
18 office note?

19 MR. MC GRATH: Objection. The question is
20 beyond the scope of his expertise.

21 MR. MC GREGOR: Joined by McGregor.

22 MR. MC GRATH: That was an objection by
23 McGrath.

24 BY MR. BRECHER:

25 Q You can answer, Mr. LaPorte.

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2 A I think I know what your question was.
3 Can you say it one more time just to make sure I'm
4 clear?

5 Q Is it your expectation as a document
6 examiner that a person's signature or initials below
7 a dated entry are all made at the same time?

8 MR. MC GREGOR: Objection by McGregor.

9 THE WITNESS: I can't really answer that
10 question. People do things for different reasons.
11 No, I guess we'll say in the normal course of
12 writing things, I guess that wouldn't be expected.

13 But it's not -- there could be a valid reason for
14 that. I don't know. Now you're kind of -- you're
15 asking a question that's really going beyond my
16 scientific expertise; right?

17 BY MR. BRECHER:

18 Q Well, when you're -- when you look at a
19 document, you don't leave your common sense outside
20 your office, do you? I mean, when someone [*74] writes a
21 dated note and then that note is initialed, isn't it
22 your expectation as a document examiner that they
23 were both done at the same time?

24 MR. MC GREGOR: Objection. He's here for
25 scientific testimony.

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2 THE WITNESS: I mean yeah, it could be.
3 I've written things -- I know for a fact I've done
4 things in the office where I've written stuff and
5 then either I forgot to sign and somebody comes back
6 and says oh, you forgot to sign this, and you sign
7 under here, and I use -- you know, I use a different
8 pen or I use the same pen. There's just a lot of

9 different scenarios.

10 But yeah, I mean, I'm not trying to avoid
11 your question. I'm just saying that there are a
12 variety of scenarios that could take place. It's
13 not -- it's not a matter of common sense or lack of
14 common sense. It's just a matter that different
15 things happen in offices all the time.

16 BY MR. BRECHER:

17 Q Do you draw any conclusions that the
18 entries on the office notes of Dr. Gibbons of
19 11/17/04 to 12/18/04, given the fact that it takes
20 place over the course of a month, where only two
21 different [*75] kinds of inks were used?

22 A Absolutely not. That's -- you know, I'm
23 not a doctor, but I've been in my doctor's office.
24 And I know my doctor walks around with at least
25 three or four pens in his pocket. They have pens
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2 laying around all over the place.

3 So no, actually, if you ask me, I mean,
4 when you have entries that are dated over different
5 time periods and you have different pens, that's not
6 an unusual thing at all.

7 Q Now, drawing your attention to the undated
8 letter, in terms of timing of an entry, first of
9 all, it's your conclusion that the ink used on the
10 signature matches the -- well, what does that match
11 on the office note entry?

12 A The signature matched the written entries
13 on Q 3A for the 11/17 and 11/18 entries, the top two
14 notations.

15 Q And as a document examiner, what
16 conclusions do you draw from the fact that the ink
17 on the undated letter matches the ink used on the
18 11/17/04 and the 11/18 entry?

19 A You just drew the conclusion for me. I
20 would say that the ink used on the letter matches
21 the ink on the Q 3A. It doesn't mean they were done
22 [*76] contemporaneously. It doesn't mean they were done
23 at different times. I mean, you can't make that
24 conclusion. It's the same. It's a matching ink.

25 Q As a document examiner, what do you --
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2 what do you take of the fact that there is no --
3 it's been proven that there is no company called via
4 guaranteed delivery? What does that -- as a
5 document examiner, what does that -- what does that

6 mean to you in terms of the authenticity and the
7 dating of this document?

8 MR. MC GRATH: Objection; beyond the scope
9 of his report, beyond the scope of his expertise.
10 McGrath.

11 MR. MC GREGOR: Joined by McGregor.

12 BY MR. BRECHER:

13 Q You can answer.

14 A I can't answer?

15 Q You can.

16 A I can. Well, I mean, I don't know what
17 that means. I don't know if somebody is saying that
18 it's via a guaranteed delivery, in terms of UPS,
19 FedEx, certified mail, or if that's a company,
20 Guaranteed Delivery. I don't know what that -- I
21 mean, if -- if somebody tells you that that's a
22 company, Guaranteed Delivery, and that company never
23 existed, then, you know, that's one thing. Once
24 [*77] again, you don't need to be a forensic document
25 examiner to figure that out.

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2 Q What does that mean?

3 A Well, I don't -- if the company never
4 existed and somebody says it's a company, well, then
5 that doesn't make sense. I mean, that's common
6 sense. But I don't know what that statement means.
7 I don't know if somebody is putting that on their
8 letterhead to say that it's going to be a
9 guaranteed -- in quotes, guaranteed delivery, which
10 means that I don't know, you can track it somehow,
11 as opposed to not being sent through the mail.

12 Q As a document examiner, what is the
13 significance to you that this letter is undated?

14 A Oh, that has -- that has no significance.
15 I mean, I don't know what the protocols and
16 procedures are in the office when they send out a
17 letter. Maybe somebody forgot to put the date in
18 there when they sent it. Once again, it's just a
19 lot of -- once again, you know, we talk about
20 these -- you shrugged when I said about making
21 scientific conclusions. But, you know, there's a
22 lot of -- a lot of explanations to why a date is
23 missing in a letter.

24 [*78] Q Is it a fair statement that you concluded
25 that the -- you saw original ink on Dr. Gibbons's

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2 signature on the undated letter?

3 A Yes, yes.

4 Q In the document that you examined?

5 A Yes, that was original ink, certainly.

6 Q As a document examiner, what was the

7 significance, if any, to you that you saw the

8 undated letter with original ink signature?

9 MR. MC GRATH: Objection to the form of
10 the question in that it exceeds the scope of his
11 report and the scope of his expertise.

12 You may answer the question.

13 MR. MC GREGOR: Joined by McGregor.

14 THE WITNESS: Once again, it doesn't mean
15 anything to me. You know, either somebody had a
16 Word document and they deleted the date out of there
17 and forgot to put it on there, or they don't
18 normally put a date on there. If it's -- I don't
19 know if it was sent UPS. Maybe they used the date
20 from the UPS package when that's gone, or the FedEx,
21 some sort of courier.

22 So again, I don't -- you know, that's not
23 something that -- it depends on what the story is
24 behind why there's not a date.

25 BY MR. BRECHER:

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2 [*79] Q But this question is not about the date.

3 It's the fact that there's an original signature on
4 this document. What was the significance to you, as
5 a document examiner, that the original signature was
6 on this undated document?

7 A Once again --

8 MR. MC GREGOR: Same objection. McGregor.

9 THE WITNESS: I mean, once again, it's
10 irrelevant, I mean, whether it's an original
11 signature on a dated document or original signature
12 on an undated document.

13 Even if it wasn't an original signature
14 and it was a copy, somebody may have kept the
15 original in their office.

16 So the answer to your question is it
17 doesn't -- depending on why the date is missing and
18 if there's a reason for that, then it doesn't really
19 matter.

20 BY MR. BRECHER:

21 Q Just the fact that there's an original
22 signature on this document, what is the significance
23 to you as a document examiner?

24 MR. MC GREGOR: Objection; asked and
25 answered.

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2 MR. MC GRATH: It's also argumentative.

3 McGrath.

4 BY MR. BRECHER:

5 Q You can answer.

6 A The only conclusion is that it's [*80] an

7 original signature, period.

8 Q Is it your expectation that a letter with

9 an original signature, normally the person on the

10 recipient end gets the original signature, as

11 opposed to the copy, which is kept back by the

12 sender?

13 MR. MC GREGOR: Objection to form.

14 McGregor.

15 THE WITNESS: That depends on office

16 policy. Maybe they send a copy and they keep the

17 original. Maybe they send the original and keep the

18 copy. That could vary from office to office.

19 BY MR. BRECHER:

20 Q If in this file every other time that

21 Mr. -- Dr. Gibbons wrote a letter, the only thing in

22 the file was a copy of his signature, but on this

23 particular document, it has his original signature,

24 what would you take from that?

25 MR. MC GREGOR: Objection.

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2 MR. MC GRATH: I object to the form of the

3 question. Not only is it argumentative, it assumes

4 things that are not accurate. And it's beyond the

5 scope of the witness's expertise and beyond the

6 scope of his report.

7 You may answer the question.

8 MR. MC GREGOR: Joined by McGregor, same

9 reasons.

10 THE WITNESS: [*81] I mean, well, first of all,

11 I haven't had an opportunity to see all of the other

12 documents within the file, so I don't -- I don't

13 know.

14 Secondly, is it possible that somebody

15 made a copy and the copy uses a black -- obviously a

16 black writing ink and they can't -- they can't

17 discern the original versus the copy and then they

18 accidentally put the copy in there when they were

19 supposed to keep the original, or they were supposed

20 to send the original?

21 So that -- that could be a possible

22 explanation as well.

23 BY MR. BRECHER:

24 Q Going back to the office entries, is there
25 any significance to you as a document examiner that
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2 every time Dr. Gibbons signs or initials his
3 entries, the signatures are different?

4 A I'm not a handwriting examiner, so I can't
5 opine on that. That's definitely beyond my
6 expertise.

7 Q If you look at the undated letter, it
8 refers to the fact that Dr. Gibbons states that
9 "we've been unable to reach you by phone," and you
10 compare that to the office note entries of 11/18
11 through 12/1, where it states "multiple phone calls
12 to the [*82] Giorgios unanswered."

13 As a document examiner, does that mean to
14 you that the letter was sent after December 1st?

15 MR. MC GREGOR: Objection. He's an ink
16 examiner, and it's beyond the scope of his report.

17 You can answer.

18 That was by McGregor.

19 THE WITNESS: I'm sorry, I'm just reading
20 this just because I want to get the context out of
21 it. If you'll allow me.

22 BY MR. BRECHER:

23 Q Sure.

24 A I'm sorry, now can you repeat your
25 question?
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2 Q The fact that the undated letter refers to
3 telephone calls which have not been returned, and
4 the office note entry of 11/18 through 12/1 also
5 refers to unanswered phone calls.

6 As a document examiner, does that mean to
7 you that the letter was written after December 1st?

8 MR. MC GREGOR: Same objection. McGregor.

9 THE WITNESS: No, I can't -- I can't say
10 that with any certainty. I mean, it's possible that
11 the -- that somebody still continued to try -- to
12 call and they sent the letter in between that date.
13 Doesn't necessarily mean after December 1st.

14 For example, somebody may have called
15 [*83] three times on 11/18 and 11/19, sent the letter out
16 and then continued to try and then they put it in
17 their notes, all the way up to December 1st.

18 So no, that -- from the standpoint of
19 trying to draw conclusions about when that signature

20 was made, if it was done before or after December
21 1st, you can't -- as a document examiner, you can't
22 say one way or the other.

23 BY MR. BRECHER:

24 Q As a document examiner, looking at the
25 office note entries of 11/18 through the December
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2 1st entry --

3 A Yes.

4 Q -- what do you make of the fact that --
5 well, first of all, as a document examiner, does it
6 look to you, as a document examiner, that something
7 is written over the 1?

8 A You're talking about in the first, of
9 December 1st?

10 Q Yes.

11 A It looks like a -- it looks like a mark on
12 top of a mark. I don't know if I'd say something
13 was written over above it, and what it was. I mean,
14 I can't say if that -- you know, if somebody is
15 drawing a 1 and then they come back up on it or they
16 touch up an area, for whatever reason, because
17 something was unclear. [*84] That's a very subtle
18 marking.

19 Q I know you're not a handwriting expert,
20 but when you look at the D-e-c, does that appear to
21 you to be initially written as a 12?

22 MR. MC GREGOR: Objection. McGregor.

23 THE WITNESS: No, I can't -- I can't
24 answer that question. That's beyond my expertise.

25 BY MR. BRECHER:

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2 Q What does it mean to you, if anything,
3 that Dr. Gibbons writes December, where everywhere
4 elsewhere he's talking about numbers he actually
5 writes out the number?

6 MR. MC GREGOR: Objection. He's not a
7 handwriting expert, as counsel has said. McGregor.

8 THE WITNESS: I can answer, is that
9 correct?

10 BY MR. BRECHER:

11 Q You can answer.

12 MR. MC GREGOR: You can answer.

13 THE WITNESS: I mean, I -- I do it
14 sometimes, sometimes you -- for whatever reason, if
15 you're -- and this is beyond -- this is -- once
16 again we'll go back to kind of a common sense-type

17 thing.

18 But, you know, sometimes you write,
19 depends on how you're writing, and then you write
20 December or you write 12. I can't -- I wouldn't
21 make any conclusions from [*85] that.

22 BY MR. BRECHER:

23 Q As a document examiner -- do you see the
24 line underneath the 11/18 entry?

25 A Yes.

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2 Q As a document examiner, do you take -- is
3 there any significance to you that the line is
4 written above the initials following the 11/18
5 entry?

6 A No. That's -- no, that doesn't --
7 somebody -- you know, sometimes when you make
8 written notations and then you draw a line to
9 conclude it. Where you put the initials, that -- I
10 don't gather any -- I don't get any significance
11 from that.

12 Q Does the December 1st entry look altered
13 to you?

14 A Altered in what fashion?

15 Q Written after the fact, written at a later
16 time?

17 A No. I mean, I can't say -- no, the answer
18 is no. It's inconclusive. I can't say one way or
19 the other when it was written.

20 Q And did you come to any conclusions in
21 your analysis as to when the documents, the office
22 note entries of 11/17/04 to 12/18/04, did you come
23 to any conclusion when those documents were written?

24 A No, I did not.

25 Q Did you come to any conclusion when

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2 Dr. [*86] Gibbons signed the undated letter that has "via
3 guaranteed delivery" on it?

4 A No, I did not.

5 Q Do you have a basis to disagree with
6 Mr. Speckin's report that states the 11/18 entry was
7 not written on its purported date or at any time in
8 2004 or early 2005?

9 A Absolutely. I mean, that's the crux of my
10 report.

11 Q And why do you disagree with that
12 statement?

13 A Well, first and foremost, the methodology

14 that was used to make that determination was -- is
15 not a reliable, generally accepted method in the
16 scientific community or in the forensic document
17 examiner -- examination community.

18 Secondly, there were a series of errors
19 that I believe that he made when he -- when he used
20 his methods or when he applied that method. That
21 would be the two primary reasons.

22 Q What were the series of errors that you're
23 referring to?

24 A The first one was that typically, when --
25 when you do a chemical examination of a document,
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2 you analyze -- you do what's called an analysis of
3 the paper itself, it's called a paper blank. And
4 that's to understand if there's [*87] any contributing
5 factors or any components, chemical components, in
6 the paper that could result in an erroneous
7 conclusion.

8 There's a lot of fluorescent components
9 that are added to paper and so forth.

10 I didn't see any paper blanks that were
11 removed from that document. I didn't see any
12 evidence of the paper blanks in the analysis that
13 was conducted by -- it wasn't Mr. Speckin, but
14 somebody else's name was on those notes. That was
15 the major -- that's one error.

16 And then also, the biggest error in all of
17 this is that typically, when you're making a
18 measurement and then drawing conclusions from those
19 measurements, you have to know that your
20 instrumentation and all the other tests that you're
21 doing are reliable on that particular day. It's
22 called quality control, quality assurance.

23 Everybody in the country, you know,
24 everything from manufacturing a pen to a car, that
25 there's quality control. And that's to understand
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2 that if there is something wrong with your equipment
3 that day or if there's something wrong with your
4 analysis, if there's some sort of contaminant, [*88] that
5 you can detect that and then sort of fix it, if you
6 will.

7 And that -- I didn't see any evidence of
8 any quality control procedures in Mr. Speckin's
9 notes.

10 And really, what's the fundamental problem

11 with all of this is that there are quantitative
12 measurements that are being made, which means
13 they're generating some sort of number. And there's
14 no -- there's no basis of whether that number is
15 accurate or not. And that's -- that's my -- that's
16 a very, very big criticism of this methodology
17 that's been used.

18 Besides the fact that the methodology has
19 been shown not to be reliable. But secondly, not
20 only is somebody using a methodology that's not
21 reliable. Now they're not doing it right. I mean,
22 to sort of top that off.

23 Q Any other criticisms?

24 A No. I mean, with regards to -- with
25 regards to those entries. Now, with the Q 4A, with
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2 the signature, as I had mentioned in my -- or as I
3 reported in my report, there was that -- the letter
4 was produced with toner, typically from laser
5 printers or photocopiers. And there was significant
6 toner contamination [*89] in the ink, which would -- I
7 don't want to say undoubtedly, but there's a very
8 high probability that that toner in the ink would
9 cause -- could result in significant erroneous
10 conclusions.

11 Also, too, the paper that was used -- and
12 if there was any relative comparison between the
13 Gibbons signature on the 4A and then the other
14 entries, those are two different types of paper that
15 are being used.

16 The one paper, the letter, we'll say, was
17 a very highly calendared, glossy paper. And those
18 types of paper don't retain ink very well. It just
19 dries at completely different rates than it would
20 with just a regular piece of standard copy paper.

21 So there were those errors as well when
22 you refer to Q 4A.

23 Q Any other criticisms?

24 A I believe that's it.

25 Q Who has -- who can you cite to me who has
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2 found Speckin's methodology unreliable?

3 A Well, once again, I had to issue that in
4 my report. I had provided those publications. But
5 there were two of them in particular. There was a
6 publication by Hicks Champod, and she's out of --
7 she's out of Switzerland. [*90] And she did a study in

8 1993.

9 And then there was another study that
10 followed up from that, Anderman and Neri -- and
11 Anderman is Swiss. And they concluded as well that
12 this methodology was unreliable.

13 As well, there was a recent paper, a
14 recent publication, I believe in the July -- this is
15 either the June or July issue of this year in the
16 Journal of Forensic Science that states right up in
17 the beginning that this methodology is very
18 controversial, and the paper revolved around using
19 the PE method. And that was a paper out of Germany.

20 Ask then also, too, we've -- when I was at
21 the Secret Service, we did some testing using this
22 methodology as well, just to sort of try it out.
23 And we found it unreliable as well. It's just --
24 it's too -- there's too many variations within inks
25 to account for.

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2 There are even -- there are inks that have
3 this reverse-aging effect, and that is they appear
4 to be older when they're actually fresher. And so
5 there is that -- you know, there's those types of
6 inks as well. And it's difficult to predict which
7 inks those are.

8 [*91] Q Was your -- was the study done at the
9 Secret Service published?

10 A No, we did -- it was an internal -- it was
11 an internal study. We did it back in -- it was
12 either late 2001 or early 2002, right around that
13 time period. Because we --

14 Q Is there any documentation of that study?

15 A No, I don't have any documentation. I
16 mean, we knew about the methodology, and the
17 theoretical aspect of it makes sense, so there is
18 some theory behind it.

19 But the practical application is just --
20 is just completely unreliable. And then actually,
21 what we started to learn, though, was that -- that
22 all these variations can cause erroneous results.
23 And that was something that Anderman and Neri found
24 out too, is that the methodology is just too
25 unreliable. This isn't even a contentious issue

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2 anymore. This issue has been resolved, and that is
3 nobody uses it. Like I said, there's only two
4 people left in the world that use it.

5 My prediction is within the next couple
6 years, we're not going to be talking about this
7 issue anymore.

8 Q You mentioned the Hicks article in 1993,
9 [*92] the Anderman article in 1998 --

10 A Yes.

11 Q -- the June/July article in the Journal of
12 Forensic Science --

13 A Yeah, and that --

14 Q -- is there any other article --

15 A That article was by -- I'm sorry, just so
16 we have -- so you know the article that I'm talking
17 about in the June/July issue of the Journal of
18 Forensic Science, was by Bugler, B-u-g-l-e-r. And
19 there's been some criticism by another person as
20 well, and her name is Celine Weyerman, and she's
21 actually -- she did a thesis -- she did a PhD thesis
22 on ink dating. She's from the University of
23 Lausanne in Switzerland. And a lot of her
24 criticisms of this methodology are in that thesis,
25 which, I believe, is published as well.

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2 Q Where?

3 A I'm not sure. I know you can get a copy
4 of her thesis. I believe you can get it online.

5 Q Where? Tell me how to get it online.

6 A I would say Google Celine, and then it's
7 Weyerman, W-e-y-e-r-m-a-n, University of Lausanne,
8 Switzerland, or UNIL.

9 Q But was that published in a peer-reviewed
10 journal or any type of journal, as far as you know?

11 [*93] A That's a thesis that came out of the
12 University of Lausanne. That's better than a
13 peer-reviewed journal. It's a very -- they have a
14 very strict peer-review process there before a
15 thesis is published. And it was PhD.

16 Q Okay. Any other articles or publications
17 you can refer me to that Mr. Speckin's methodology
18 is scientifically unreliable?

19 A Yeah, there are actually -- there have
20 been some articles written on this. But I don't
21 want to -- I don't want to mislead and say that they
22 have -- they have just been articles that have been
23 critical of the methodology.

24 I don't have them offhand, but some people
25 have written -- and I don't want to say like long

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2 scientific articles, but, you know, they have
3 prefaced, you know, doing a study that they have --
4 you know, that this method that's utilized is not a
5 reliable method.

6 Also, too, I'm part of the European
7 Document Experts Working Group, and we have a
8 subgroup in there, and it's -- it's an ink group.
9 We collaborate with different laboratories around
10 the world.

11 We have the Netherlands Forensic
12 Institute, [*94] Canada Border Services Agency, United
13 States Secret Service. We have some representatives
14 from Australia. We have a representative from the
15 Berlin lab and a representative from the Bavaria
16 lab. And then there's a couple other countries.
17 Sweden. It's the federal police force in Sweden.

18 We came together four or five years ago,
19 all determined that we would like to at least be
20 studying and researching the same methodology. And
21 everybody came to the conclusion, and it was a
22 consensus by far, that this is not the reliable
23 methodology and that we would -- the community would
24 start focusing on PE analysis. And that's what's
25 happened since.

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2 Q Was that published anywhere?

3 A No, that was not. That's -- you just have
4 to take my word for that.

5 Q And the articles that you refer to as
6 other articles criticizing the methodology, could
7 you give me any of the authors or publications where
8 those articles could be found.

9 A No. I can certainly -- I believe that I
10 could be able to find some of them. I don't know if
11 I have them offhand, but I know, you know, we've --
12 [*95] I've read this a number of times as well.

13 MR. BRECHER: I would ask counsel to
14 produce those articles.

15 Mr. LaPorte, that's all I have. Thank
16 you.

17 THE WITNESS: All right. Thank you.

18 MR. MC GREGOR: Hold on. Some other
19 people might have some questions for you.

20 EXAMINATION

21 BY MR. MC GRATH:

22 Q Mr. LaPorte, I'm Michael McGrath. I just
23 want to make sure I understand something. When you
24 were asked questions earlier about the Web site, did

25 you have anything to do with putting those entries
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2 on that Web site?

3 A No. That Web site was created before I
4 joined the firm.

5 Q Okay. And at that time, Dr. Aginsky was
6 with the firm?

7 A Correct.

8 MR. MC GRATH: I think I have one other
9 question, just a moment. No, that's all the
10 questions I have. Anybody else?

11 THE WITNESS: Thank you.

12 MR. MC GREGOR: I don't have any
13 questions.

14 (Whereupon, at 4:13 p.m., the deposition
15 was concluded.)

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2 I HEREBY CERTIFY that I have read this
3 transcript of my deposition and that [*96] this transcript
4 accurately states the testimony given by me, with
5 the changes or corrections, if any, as noted.

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8 X

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12 Subscribed and sworn to before me this day of

13 , 20 .

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18 Notary Public

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22 My commission expires: .

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2 C O N T E N T S

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4 WITNESS	EXAMINATION
5 GERALD M. LA PORTE	
6 by Mr. Brecher	5
7 by Mr. McGrath	104

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13 E X H I B I T S

14 (NONE)

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2 C E R T I F I C A T E O F N O T A R Y P U B L I C & R E P O R T E R

3

4 I, CARMEN SMITH, the officer before whom the

5 foregoing deposition was taken, do hereby certify

6 that the witness whose testimony appears in the

7 foregoing deposition was duly sworn; that the

8 testimony of said witness was taken in shorthand and

9 thereafter reduced to typewriting by me or under my

10 direction; that said deposition is a true record of

11 the testimony given by said witness; that I am

12 neither counsel for, related to, nor employed by any

13 of the parties to the action in which this

14 deposition [*97] was taken; and, further, that I am not a

15 relative or employee of any attorney or counsel

16 employed by the parties hereto, nor financially or
17 otherwise interested in the outcome of this action.

18

19

20 Notary Public in and for the

21 District of Columbia

22

23 Commission Expires: MARCH 14, 2013

24

25