

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
NEW YORK DISTRICT OFFICE

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HEARING

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 IN THE MATTER OF: :  
 :  
 CAROLE SMITH, :  
 :  
 Complainant, : EEOC No.  
 : 520-2010-00258X  
 v. :  
 : TSA-007284  
 :  
 JANET NAPOLITANO, SECRETARY, :  
 TRANSPORTATION SECURITY :  
 ADMINISTRATION, :  
 :  
 Agency. :  
 :  
 p-----¼

Tuesday,  
November 30, 2010

Third Floor  
Albany International Airport  
737 Albany-Shaker Road

Albany, New York 12211

The above-entitled matter came on for  
hearing, pursuant to notice, at 10:00 a.m.  
BEFORE:

THE HONORABLE WILLIAM MACAULEY  
Chief Administrative Judge

APPEARANCES:

On Behalf of the Complainant,  
Carole Smith:

CAROLE SMITH, pro se

On Behalf of the Agency,  
Transportation Security Administration:

CHERYL SCOTT-JOHNSON, ESQ.

of: Office of the Chief Counsel  
Transportation Security  
Administration  
U.S. Department of Homeland  
Security

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1	C O N T E N T S				
2					
3	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
4					
5	Carole Smith	8		94	
6					
7	Dorothy Tompkins	140	159	167	169
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9					
10	Linda Hay	181	193	209	211
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12	Matthew Lloyd	214	269	288	290
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P R O C E E D I N G S

11:20 a.m.

JUDGE MACAULEY: I'm William  
McCauley. I am the administrative judge  
assigned to hear this Complaint of Ms. Smith  
against the Transportation Security  
Administration. This case has been assigned  
an EEOC Hearing Number of 520-2010-00258X.

We had a conversation today about  
witnesses, and seeing if the parties could  
resolve the matter. It doesn't appear that  
the parties are able to. Therefore, we're  
proceeding with this hearing.

I've looked at the record, and I  
have rewritten the issues of this case to  
comport with what I believe is at issue here.  
It wasn't quite clear. I'm going to clarify  
it for the parties.

The issues in this case are: Did  
the Agency discriminate against the  
Complainant on the basis of her religion, when  
it subjected her to harassment from

1 approximately March 4th to June 18th, 2009.

2 Also, Did the Agency discriminate  
3 against the Complainant on the basis of her  
4 religion and retaliate against her, when, (a)  
5 it treated her disparately during that time  
6 with respect to her lunches and breaks; on May  
7 5th, when it issued her a reprimand; and on  
8 June 18, 2009--we're all speaking of 2009--  
9 when it terminated her employment.

10 Those are the issues that the  
11 Complainant has brought before me, and I think  
12 those are written in a fashion that is more  
13 understandable, and that's how I'm going to--  
14 that's what this hearing is going to be about,  
15 and that's how I'm going to make a decision on  
16 this case.

17 Any questions?

18 MS. SCOTT-JOHNSON: No questions.

19 JUDGE MACAULEY: Okay. All right.

20 Ms. Smith, you're the Complainant and I would  
21 like you to proceed. How we're going to  
22 proceed is this. You will tell me your story.

1 I would like you to tell your story that is  
2 relevant. That means I don't want your entire  
3 employment history, except that which would  
4 shed light on the Complaint about your  
5 harassment, and the lunch breaks, and the  
6 reprimand, and your termination, and the  
7 reasons why you were terminated. Okay?

8 MS. SMITH: Yes.

9 JUDGE MACAULEY: Your job is to  
10 show that your religion, or reprisal--well,  
11 that you were harassed, that you brought it to  
12 management's attention, and management did  
13 nothing about it, and you continued to be  
14 harassed. You have to show that their  
15 harassment was severe and pervasive--severe  
16 and/or pervasive, that management did nothing  
17 about it, and therefore, the Agency is liable  
18 for that.

19 Also, you have to show what  
20 appears to be, in this case, circumstantially,  
21 that the reasons for your termination are not  
22 credible, and that religion or reprisal played

1 a motivating factor in it. And it appears,  
2 since there's no direct evidence of this, you  
3 have to show this circumstantially.

4 Therefore, your testimony needs to  
5 be limited to establish that. So I don't want  
6 to hear a lot of things that have no relevance  
7 on this, okay, in your narration. Follow me?

8 MS. SMITH: Yes.

9 JUDGE MACAULEY: All right. You  
10 will narrate your story. Ms. Johnson may have  
11 some objection to your narration, and I'll  
12 consider it, and then tell you what to do.

13 MS. SMITH: Okay.

14 JUDGE MACAULEY: Do you have any  
15 questions about how we're going to proceed?

16 MS. SMITH: You just want me to  
17 start in March, then?

18 JUDGE MACAULEY: Yes. You're not  
19 represented. You don't have an attorney to  
20 lead, to, you know, take you through it.

21 MS. SMITH: Right.

22 JUDGE MACAULEY: So you're going

1 to have to do it yourself.

2 MS. SMITH: Okay.

3 JUDGE MACAULEY: Okay?

4 MS. SMITH: Yes.

5 JUDGE MACAULEY: And you got a  
6 taste of it when I asked you questions.

7 MS. SMITH: Right.

8 JUDGE MACAULEY: All right. So--

9 MS. SMITH: Yes, sir. Okay.

10 JUDGE MACAULEY: So why don't you  
11 begin.

12 MS. SMITH: There's been--there  
13 was a personality conflict between Mary  
14 Bagnoli and myself since I started working  
15 here. On March 4th, it escalated to where she  
16 brought my religion into it by filing a  
17 Complaint with our LEO, stating that she was  
18 afraid of me because I was Wiccan. She did  
19 this on March 4th. The harassment actually  
20 began escalating right at March 4th and March  
21 5th, when I called the ombudsman, cause I  
22 needed somebody--I needed to talk to somebody



1 about it.

2 JUDGE MACAULEY: What did you tell  
3 the ombudsman?

4 MS. SMITH: I told her about the  
5 harassment I was dealing with.

6 JUDGE MACAULEY: And what was the  
7 harassment?

8 MS. SMITH: Constantly being  
9 called names, like--and like where I park my  
10 broom today, things like that. And by the  
11 training people downstairs, when Ms. Bagnoli--

12 JUDGE MACAULEY: "Where did I park  
13 my broom?"

14 MS. SMITH: Yes.

15 JUDGE MACAULEY: Who told you  
16 that?

17 MS. SMITH: Joe.

18 JUDGE MACAULEY: Joe who?

19 MS. SMITH: It was--he's--he was  
20 the lead.

21 JUDGE MACAULEY: Joe--oh, you  
22 don't know. Joe Somebody.

1 MS. SMITH: I don't know his last  
2 name. He also said that he was afraid of me  
3 because I would put a hex on him.

4 MS. SCOTT-JOHNSON: Joe who? I'm  
5 sorry.

6 MS. SMITH: I don't know his last  
7 name.

8 JUDGE MACAULEY: He was a TSO  
9 officer?

10 MS. SMITH: He was a lead officer;  
11 yes.

12 JUDGE MACAULEY: Lead TSO. What  
13 is a lead?

14 MS. SMITH: It's in between a TSO  
15 and a supervisor.

16 JUDGE MACAULEY: What authority  
17 does a lead have?

18 MS. SMITH: About the same as a  
19 supervisor almost.

20 JUDGE MACAULEY: Well, how are  
21 they different?

22 MS. SMITH: Well, a lead just kind

1 a supervises us.

2 JUDGE MACAULEY: Tells you what to  
3 do?

4 MS. SMITH: Yes.

5 JUDGE MACAULEY: Can a lead  
6 discipline you?

7 MS. SMITH: Yeah. I guess so.

8 JUDGE MACAULEY: What do you mean,  
9 you guess so? You don't know?

10 MS. SMITH: I don't know. I've  
11 never been disciplined by a lead.

12 JUDGE MACAULEY: Okay. But a lead  
13 does direct you to do things?

14 MS. SMITH: Yes.

15 JUDGE MACAULEY: So Joe, lead TSO-  
16 -

17 MS. SMITH: Yes.

18 JUDGE MACAULEY: --at Albany?

19 MS. SMITH: Yes.

20 JUDGE MACAULEY: Maybe in cross-  
21 examination, Ms. Johnson can clarify his last  
22 name, or with some other witness. Okay.

1 MS. SMITH: "Carm" Sullivan would  
2 know.

3 JUDGE MACAULEY: So "Where did I  
4 park my broom?" Afraid of what?

5 MS. SMITH: He was afraid of me  
6 because i would a hex on him.

7 JUDGE MACAULEY: What else? Who  
8 else abused you?

9 MS. SMITH: Just--

10 JUDGE MACAULEY: On this Wiccan  
11 business.

12 MS. SMITH: Well, I didn't know it  
13 was about the Wiccan thing until--

14 JUDGE MACAULEY: Well, where--

15 MS. SMITH: --after I met with  
16 Matt Lloyd.

17 JUDGE MACAULEY: --did I park my  
18 broom?

19 MS. SMITH: Well, that; yeah.

20 JUDGE MACAULEY: Okay. Afraid of  
21 you because--what? He said, he told you he  
22 was afraid of you putting a hex on him?

1 MS. SMITH: He said he--I over  
2 heard him saying that to another TSO. He was  
3 afraid a me cause he didn't want me to put a  
4 hex on him. He actually--

5 JUDGE MACAULEY: Overheard a  
6 comment to another TSO.

7 MS. SMITH: He even actually came  
8 out one day and asked me if I was a witch.  
9 And at this time, at the time he did that, I  
10 had no idea what Mary Bagnoli had done. I  
11 didn't know anything about the Complaint that  
12 she had filed at that time.

13 JUDGE MACAULEY: This was after--  
14 this was before you went to an ombudsman?

15 MS. SMITH: Yes.

16 JUDGE MACAULEY: Okay. Well, you  
17 were telling me that you had harassment, you  
18 were--okay.

19 MS. SMITH: That's why I went to  
20 the ombudsman.

21 JUDGE MACAULEY: It was before.  
22 What else? Who else harassed?

1 MS. SMITH: Because it seemed like  
2 it was escalating. Michelle Rodriguez.

3 JUDGE MACAULEY: How did she  
4 harass you?

5 MS. SMITH: On, my God. I walked  
6 into a baggage room to work one day, and she  
7 was in there, and she started yelling, "Get  
8 her the "h"--get her the hell outta here, I  
9 don't wanna see her, I don't wanna be around  
10 here. We don't want her here." So I turned  
11 around and walked outta the bag room. I  
12 wasn't--

13 JUDGE MACAULEY: Were there any  
14 supervisors present--okay. She wanted you to  
15 stay away, and she mentioned your religion?  
16 Or she--

17 MS. SMITH: No.

18 JUDGE MACAULEY: Okay.

19 MS. SMITH: No.

20 JUDGE MACAULEY: Did she--how do  
21 you know it had anything to do with your  
22 religion?

1 MS. SMITH: Because I don't know  
2 why else she would say that. I didn't know  
3 any--when I got to talk to Matt Lloyd on March  
4 12th, that's when everything became "uh-huh."  
5 The light bulb went on. I hadn't done  
6 anything to provoke that.

7 JUDGE MACAULEY: Was there  
8 anything else? Is this a one-time instance?

9 MS. SMITH: No.

10 JUDGE MACAULEY: How often?

11 MS. SMITH: There was another  
12 time, we were having a--

13 JUDGE MACAULEY: First, tell me  
14 how often.

15 MS. SMITH: Three or four.

16 JUDGE MACAULEY: Of the same  
17 comment? Any of her comments mention your  
18 religion?

19 MS. SMITH: No.

20 JUDGE MACAULEY: Just--

21 MS. SMITH: Calling me "a snake."

22 JUDGE MACAULEY: Does that have

1 any religious connotation?

2 MS. SMITH: Not in my eyes.

3 JUDGE MACAULEY: Okay. Called you  
4 a snake. What else?

5 MS. SMITH: Told people around me  
6 that I was sitting with at the table, that  
7 they better watch what they say to me, and I  
8 just kind a put that together with what Joe  
9 had said about being afraid of putting a hex.  
10 I didn't know what she was getting at. She  
11 was very sneaky about it.

12 One day, outside of the break  
13 room, I was talking with lead officer Robert  
14 Gould, and him and I was just standing there  
15 talking, and she came up and she started going  
16 like this behind me, and then--

17 JUDGE MACAULEY: Could you  
18 articulate what she was doing. The court  
19 reporter can't pick that up.

20 MS. SMITH: I'm sorry. I'm sorry.  
21 She--

22 JUDGE MACAULEY: Everything's got



1 to be verbal here.

2 MS. SMITH: She started like  
3 making faces behind me, and--and little hand  
4 gestures.

5 JUDGE MACAULEY: And moving her  
6 head from side to side?

7 MS. SMITH: And moving her head  
8 side to side, and then finally, she just  
9 plopped herself in between Rob and I, and she  
10 says, oh, I'm just trying to see what kind a  
11 "shit talk" she's saying today. And I had no  
12 idea.

13 JUDGE MACAULEY: Joe. How many  
14 comments did he make? One?

15 MS. SMITH: Yeah. That's the only  
16 one I knew about.

17 JUDGE MACAULEY: But only to a  
18 TSO?

19 MS. SMITH: Yeah.

20 JUDGE MACAULEY: Not a supervisor?

21 MS. SMITH: No.

22 JUDGE MACAULEY: Okay. Who else?

1 Anybody else make any comments to you in the  
2 presence of a supervisor, related to your  
3 Wiccan religion?

4 MS. SMITH: Not in the presence of  
5 a supervisor; no.

6 JUDGE MACAULEY: Ever?

7 MS. SMITH: Not--no; not that I  
8 recall.

9 JUDGE MACAULEY: Did any of the  
10 supervisors make any comments?

11 MS. SMITH: No. T.J. Gates just  
12 kept reminding me that he was my Pass  
13 supervisor.

14 JUDGE MACAULEY: I'm talking  
15 about--

16 MS. SMITH: I know.

17 JUDGE MACAULEY: --relative to  
18 your religion.

19 MS. SMITH: No.

20 JUDGE MACAULEY: Okay. Go ahead.  
21 Continue.

22 MS. SMITH: I forgot where I was.

1 JUDGE MACAULEY: You went to the  
2 ombudsman.

3 MS. SMITH: Okay.

4 JUDGE MACAULEY: After you went to  
5 the ombudsman, the harassment continued.

6 MS. SMITH: Right. When I went  
7 down to talk to Matt Lloyd on the 12th, I  
8 called the ombudsman--well, actually, when I  
9 first talked to the ombudsman, I e-mailed  
10 Brian Johansson about what was going on, and  
11 told him that I had called the ombudsman. And  
12 I later saw his response to that was--

13 JUDGE MACAULEY: Now isn't it true  
14 that when you talked to the ombudsman, you did  
15 not tell the ombudsman that you were being  
16 harassed due to your religion?

17 MS. SMITH: Not until the 12th of  
18 March.

19 JUDGE MACAULEY: So you had a  
20 second meeting with the ombudsman?

21 MS. SMITH: I called there several  
22 times.

1 JUDGE MACAULEY: All right. So  
2 you went to the ombudsman when?

3 MS. SMITH: March 4th. I started-  
4 -the first time I started talking to her was  
5 towards the end of--was the end of February.

6 JUDGE MACAULEY: What's the name  
7 of the ombudsman?

8 MS. SMITH: Sharon Asarp.

9 JUDGE MACAULEY: Spell it.

10 MS. SMITH: I don't know how--

11 JUDGE MACAULEY: Last name.  
12 What's the name again?

13 MS. SMITH: I get it from her  
14 voice-mail. It sounds like Sharon Asarp.

15 JUDGE MACAULEY: "Asharp"?

16 MS. SMITH: Asarp. Asarp. I have  
17 her number in my other cell phone.

18 JUDGE MACAULEY: Okay. So March  
19 4th, you talked about harassment but you  
20 didn't mention any connection with your  
21 religion; right?

22 MS. SMITH: Right.

1 JUDGE MACAULEY: When's the next  
2 time you went to the ombudsman?

3 MS. SMITH: Was March 12th.

4 JUDGE MACAULEY: What happened  
5 there?

6 MS. SMITH: I--that's when I  
7 called her and told her what Matt Lloyd had  
8 said to me.

9 JUDGE MACAULEY: You talked about  
10 your meeting with Matt Lloyd?

11 MS. SMITH: Yes.

12 JUDGE MACAULEY: And that meeting,  
13 for the record, consisted of what?

14 MS. SMITH: It was about a  
15 Complaint that Mary Bagnoli had filed with him  
16 against me, saying she was afraid a me because  
17 I was Wiccan. And he had asked me to meet  
18 with her, to dispel any of her misconceptions  
19 regarding my religious beliefs.

20 JUDGE MACAULEY: Now you went to  
21 the ombudsman.

22 MS. SMITH: Yes.

1 JUDGE MACAULEY: Why did you go to  
2 the ombudsman?

3 MS. SMITH: Because--well, we were  
4 actually kind of told to, if we had issues,  
5 and--

6 JUDGE MACAULEY: What is the--  
7 what's the level--I don't know what an  
8 ombudsman is.

9 MS. SMITH: She's kind of a go-  
10 between, and kind of a "sounding board."

11 JUDGE MACAULEY: Sounding board?

12 MS. SMITH: Yeah.

13 JUDGE MACAULEY: Well does an  
14 ombudsman have any managerial role?

15 MS. SMITH: No.

16 JUDGE MACAULEY: Is an ombudsman--  
17 when you go to an ombudsman, what's the  
18 effect? A sounding board.

19 MS. SMITH: A sounding board. And  
20 advice.

21 JUDGE MACAULEY: So is there any--  
22 what's the anticipation of the confidentiality

1 between you and the ombudsman in this meeting?

2 Any?

3 MS. SMITH: Yeah. They let you  
4 know it's confidential.

5 JUDGE MACAULEY: It's  
6 confidential.

7 MS. SMITH: Yes.

8 JUDGE MACAULEY: So--

9 MS. SMITH: She would have to ask  
10 my--she had to ask for my permission to call,  
11 when she called Brian Johansson.

12 JUDGE MACAULEY: Did the ombudsman  
13 ask for your permission to speak to  
14 management?

15 MS. SMITH: Yes. She wanted to st  
16 up a meeting with--between myself and Brian  
17 Johansson, to try and work it out.

18 JUDGE MACAULEY: When? When did  
19 she--when did you--when did she ask your  
20 permission to contact management?

21 MS. SMITH: Some time in March. I  
22 don't remember the exact date.

1 JUDGE MACAULEY: And the ombudsman  
2 wanted to set up a meeting?

3 MS. SMITH: Yeah. She just--she--  
4 she's kind of a--sometimes people like myself  
5 have trouble articulating to management what  
6 they're feeling, and she's kind a like the  
7 person who can--kind a helps resolve issues  
8 before they get into full-blown, major issues  
9 like this.

10 JUDGE MACAULEY: You testified  
11 that you gave your permission.

12 MS. SMITH: Yes, sir.

13 JUDGE MACAULEY: What happened  
14 next?

15 MS. SMITH: I went up to meet with  
16 Mr. Johansson.

17 JUDGE MACAULEY: Was the ombudsman  
18 present?

19 MS. SMITH: No.

20 JUDGE MACAULEY: When was the  
21 meeting between you and Johansson?

22 MS. SMITH: I don't remember the



1 exact date either.

2 JUDGE MACAULEY: Approximately.

3 MS. SMITH: The end of March, I  
4 would say. I don't know. I don't really  
5 remember. Nothing happened. So it didn't  
6 seem very important.

7 JUDGE MACAULEY: What went on at  
8 the meeting?

9 MS. SMITH: He just told me how  
10 Mary Bagnoli was the top employee and--

11 JUDGE MACAULEY: Now you had this  
12 meeting. What did you tell Johansson?

13 MS. SMITH: That Mary was  
14 harassing me again and saying things, telling  
15 people I'm doing things that I'm not doing.

16 JUDGE MACAULEY: What did you tell  
17 Mr. Johansson about the nature of the  
18 harassment?

19 MS. SMITH: He knew about it.

20 JUDGE MACAULEY: Okay. Well, you  
21 testified that you had personality conflicts.  
22 What did your religion--did you discuss your

1 religion at this meeting?

2 MS. SMITH: No. I didn't get a  
3 chance to discuss much of anything.

4 JUDGE MACAULEY: Why?

5 MS. SMITH: Because he pretty much  
6 said the meeting was over. I was there maybe  
7 five minutes.

8 JUDGE MACAULEY: So you did not  
9 mention--

10 MS. SMITH: He didn't ask me what  
11 the issues were.

12 JUDGE MACAULEY: And did you tell  
13 him?

14 MS. SMITH: No.

15 JUDGE MACAULEY: So--

16 MS. SMITH: When he said to me  
17 that Mary Bagnoli is a top employee, and he  
18 went on, kind of glorifying her, I knew he  
19 wasn't gonna do anything.

20 JUDGE MACAULEY: Okay.

21 MS. SMITH: So it was a waste of  
22 time.

1 JUDGE MACAULEY: So you made no  
2 mention about your harassment to Johansson at  
3 that time?

4 MS. SMITH: I told him I was being  
5 harassed; yes.

6 JUDGE MACAULEY: Just the word  
7 "harass"?

8 MS. SMITH: Yes. I told him I--it  
9 was starting again, and this time it was  
10 getting--it's worse. It was getting worse.

11 JUDGE MACAULEY: Now you mentioned  
12 to the ombudsman, at your second meeting on  
13 March 12th--or after March 12th--

14 MS. SMITH: Right. I think by the  
15 time I finally got to talk to her, it was  
16 probably the 15th of March.

17 JUDGE MACAULEY: You told the  
18 ombudsman that you were--people were harassing  
19 you by making jokes about your--you and your  
20 religion.

21 MS. SMITH: I told her what  
22 happened between Matt Lloyd and myself. I

1 told her about the meeting with him and how  
2 she--and how he had asked me to explain my  
3 religious beliefs to Mary.

4 JUDGE MACAULEY: And you objected  
5 to that?

6 MS. SMITH: I objected to that.

7 JUDGE MACAULEY: And you objected  
8 to that to the ombudsman?

9 MS. SMITH: Yes.

10 JUDGE MACAULEY: And according to  
11 what you intended, you--how did you leave the  
12 ombudsman? With what impression that you  
13 wanted the ombudsman to take to management?

14 MS. SMITH: She wanted me to file  
15 a discrimination, a complaint then, against  
16 Matt Lloyd, for saying that. And I didn't  
17 want to make things worse for myself. So I  
18 didn't--

19 JUDGE MACAULEY: So what did you  
20 expect the ombudsman to explain to management  
21 for having this meeting with Johansson?

22 MS. SMITH: She was only gonna--

1 she wasn't gonna explain anything. She was  
2 just gonna set up the meeting. She can't take  
3 sides, ombudsman doesn't take sides--

4 JUDGE MACAULEY: I didn't ask who  
5 take sides.

6 MS. SMITH: Right.

7 JUDGE MACAULEY: But--

8 MS. SMITH: She just said that she  
9 would--you know--cause I was kind of afraid to  
10 set it up, or to ask. So she did it.

11 JUDGE MACAULEY: She did it. But  
12 it was a meeting with no explanation of why  
13 you wanted to meet with a member of  
14 management?

15 MS. SMITH: Well, I'm assuming  
16 that she told him I was being harassed; yes.

17 JUDGE MACAULEY: Based on what?

18 MS. SMITH: I don't know. I don't  
19 know what she told him.

20 JUDGE MACAULEY: Just harassed.

21 MS. SMITH: I don't know what she  
22 told him.

1 JUDGE MACAULEY: Okay. And you  
2 had no expectation of what the ombudsman would  
3 tell management?

4 MS. SMITH: No. At that time, I  
5 don't think she wanted me to bring up the  
6 religious issue either, because we didn't  
7 wanna--I didn't want to do anything to  
8 jeopardize my job.

9 JUDGE MACAULEY: All right. So  
10 she discouraged you from bringing up the  
11 religious issue to management and--

12 MS. SMITH: No. She thought I  
13 should. I said I don't wanna cause any more  
14 issues. I just want the harassment to stop.

15 JUDGE MACAULEY: Right. So you  
16 had no expectation that she would discuss your  
17 religious complaint with management at the  
18 time she would contact management for this  
19 mediation meeting?

20 MS. SMITH: I didn't know if she  
21 did--would or not; no. I didn't know.

22 JUDGE MACAULEY: Okay; right.

1       Okay.  So you had this five minute meeting  
2       with Johansson.

3                       MS. SMITH:  Yes.

4                       JUDGE MACAULEY:  You didn't  
5       discuss harassment based on your religion?

6                       MS. SMITH:  Well, he wanted to  
7       know who else was doing it--

8                       JUDGE MACAULEY:  No; no.  Listen  
9       to my question.  You didn't discuss--

10                      MS. SMITH:  No.

11                      JUDGE MACAULEY:  --your--the  
12       harassment--the religious derogatory comments  
13       you were receiving?

14                      MS. SMITH:  No; no.

15                      JUDGE MACAULEY:  What's next?

16                      MS. SMITH:  Well, he just--he  
17       wanted to know who else was, was bothering me,  
18       and I told him that I was starting to become  
19       afraid of--of Michelle Rodriguez.  And he kind  
20       a said:  Michelle?  Little Michelle?

21                      And I'm like yeah--little  
22       Michelle.

1 JUDGE MACAULEY: Okay.

2 MS. SMITH: And that was pretty  
3 much the end because I was--I felt like I was  
4 being "talked down to." Like it didn't matter  
5 what I was saying.

6 JUDGE MACAULEY: All right. So  
7 what happened next?

8 MS. SMITH: I went back down to  
9 work.

10 JUDGE MACAULEY: Okay. Now you  
11 testified that you continued to receive  
12 derogatory comments about your religion.

13 MS. SMITH: Yes.

14 JUDGE MACAULEY: Or comments that  
15 you connected to be about them.

16 MS. SMITH: Yes.

17 JUDGE MACAULEY: And they  
18 escalated; correct?

19 MS. SMITH: Yes, sir.

20 JUDGE MACAULEY: Continued to  
21 escalate?

22 MS. SMITH: The escalation got to



1 where I was segregated. I couldn't even go  
2 into a rest room, if she was in there, and I  
3 didn't know how I was supposed to know if she  
4 was in there.

5 JUDGE MACAULEY: Rodriguez, you're  
6 talking about?

7 MS. SMITH: Bagnoli.

8 JUDGE MACAULEY: Oh, Bagnoli. I  
9 was escorted to my car, to the parking lot,  
10 until I had my hours changed. Then I didn't  
11 come in and leave at the same time as her  
12 anymore. I would come over from the baggage  
13 rooms and have to go to Training, which is you  
14 have to go up through, behind checkpoint, and  
15 all the way down the airport, and down some  
16 more stairs to get to the Training Room.

17 And if Mary Bagnoli was in the  
18 break room, I couldn't--wasn't allowed to go  
19 in and put my stuff into my locker. So I  
20 would have to walk through the airport,  
21 escorted by a supervisor--

22 JUDGE MACAULEY: By a supervisor?

1 MS. SMITH: By a supervisor to the  
2 Training Room with my jacket, my bottle of  
3 water, my newspaper, if I had newspapers.  
4 Everything I had had to come with me to  
5 Training, because I wasn't allowed in the  
6 break room, which is where my locker was.

7 JUDGE MACAULEY: You were not--why  
8 weren't you allowed in the break room?

9 MS. SCOTT-JOHNSON: Because Mary  
10 Bagnoli was in there.

11 JUDGE MACAULEY: So every time  
12 Bagnoli would be in the break room, you'd have  
13 to be escorted, or not allowed to go in in  
14 there?

15 MS. SMITH: Not allowed to go in  
16 there. Not escorted into the break room, just  
17 not allowed to go in there at all. I was not  
18 allowed to go in there if she was in the  
19 lady's room. I'd have to--I'd have to check  
20 first. I'd have to open the door and look to  
21 see if anybody's feet were in the stalls, and  
22 then I could use the rest room. I went--I was

1 called down to take my PSE tests, and I get  
2 down there, and because she's down there, I  
3 had to reschedule my testing for a later date.

4 I was sent over for lunch one time  
5 many times, by my leads.

6 JUDGE MACAULEY: Tell--before I  
7 interrupt you, tell me about your meeting with  
8 Mr. Lloyd back in March. I'd like you to tell  
9 me--I saw the record, and the things that he  
10 suggested. Tell me about the conversation you  
11 had with respect to your Wiccan religion.

12 MS. SMITH: I told him that--that  
13 Wicca is not what she thought. That's not  
14 what Wiccan is, and yes, I do witchcraft; but  
15 that's not--

16 JUDGE MACAULEY: What was--in that  
17 conversation, what did you make clear to Mr.  
18 Lloyd about the nature--did you discuss  
19 harassment with Mr. Lloyd at that time?

20 MS. SMITH: No. I was in shock.

21 JUDGE MACAULEY: Well--

22 MS. SMITH: And angry.

1 JUDGE MACAULEY: Okay; wait. Mr.  
2 Lloyd told you, according to the record--and  
3 I guess even testifying--that Ms. Bagnoli made  
4 a complaint to him that you were putting a  
5 spell on her. Is that correct?

6 MS. SMITH: Yes.

7 JUDGE MACAULEY: Tell me about  
8 that discussion.

9 MS. SMITH: I was dumbfounded as  
10 I--

11 JUDGE MACAULEY: Tell me about  
12 what you told Mr. Lloyd and what Mr. Lloyd  
13 told you, relative to that.

14 MS. SMITH: I just--I looked at  
15 him, I said: You gotta be kidding. And he's  
16 like no--

17 JUDGE MACAULEY: Start from the  
18 whole, give me the whole thing.

19 MS. SMITH: Okay. I went down in  
20 there. Okay. He had asked me--I didn't know  
21 what I was there for. The first thing he  
22 asked me, he was like: Did you go up, up north

1 to go home on your RDOs last week? And I  
2 said--you know--I think it was Monday night.  
3 And I said no, I said I--cause that's way up  
4 to Exit 30.

5 JUDGE MACAULEY: Okay. I  
6 understand that.

7 MS. SMITH: I said the weather was  
8 bad. I said no, I stayed here and went home.  
9 And my home here was--is right off Exit 8 on  
10 the Northway, so--and that's the only way I  
11 knew how to get back and forth to home. So I  
12 said no, I went--I stayed here, home, down  
13 here. And then he says: Oh, you weren't on  
14 the northway at all? And I said yeah. I said  
15 I was on the northway. I said I was right  
16 behind Peter Schoomaker who was here at that  
17 time, and the roads were really, really bad.

18 There was an accident on the on-  
19 ramp. So I was following behind Peter, and we  
20 were just going real slow, because he gets off  
21 at Exit 6 and 7. So I thought if I can just  
22 stay behind him and see his tail lights, then

1 I know I'm okay till I get to Exit 8. Cause  
2 I don't know what the northway is like when  
3 the weather was bad.

4 And I got off at Exit 8, went to  
5 CVS pharmacy, turned left to go to CVS  
6 pharmacy, picked up a prescription, went back  
7 home down on Crescent--it's Clam Steam Road--  
8 and went home. And that's when he told me  
9 that--what she had said.

10 JUDGE MACAULEY: Which was?

11 MS. SMITH: Which was that I had  
12 followed her, and I said--and I was kind a  
13 like "What?" And he said, well, she said that  
14 you followed her, that you waited for her  
15 outside of the parking lot, the employee  
16 parking lot. You waited for her to come out  
17 and then got behind her.

18 JUDGE MACAULEY: Okay. So you  
19 discussed the details that is already in the  
20 record, about you following her.

21 MS. SMITH: That's what he told  
22 me; yeah.

1 JUDGE MACAULEY: Okay. What else  
2 about the nature of your relationship with  
3 Bagnoli relative to your practicing  
4 witchcraft?

5 MS. SMITH: My relationship with  
6 her?

7 JUDGE MACAULEY: Well, she had a  
8 complaint.

9 MS. SMITH: Right.

10 JUDGE MACAULEY: She made a  
11 complaint about you putting hexes on her; is  
12 that correct?

13 MS. SMITH: Hexes on the heater of  
14 her car.

15 JUDGE MACAULEY: Okay. Go ahead.

16 MS. SMITH: He told me that she  
17 said I put a spell on the heater of her car,  
18 and I kind a snickered.

19 JUDGE MACAULEY: Okay.

20 MS. SMITH: And I was like: You  
21 gotta be kidding.

22 JUDGE MACAULEY: Okay.

1 MS. SMITH: That's not what Wiccan  
2 is.

3 JUDGE MACAULEY: Okay.

4 MS. SMITH: We don't do that.

5 JUDGE MACAULEY: And you  
6 explained--what did you tell him with regard  
7 to that?

8 MS. SMITH: I just said we don't--  
9 as Wiccans, we don't do that. That's not  
10 witchcraft, that's folk magic, or voodoo, or  
11 something else. That's not--

12 JUDGE MACAULEY: Okay.

13 MS. SMITH: It might be what  
14 society's perception is--

15 JUDGE MACAULEY: Yeah.

16 MS. SMITH: --but it's not what we  
17 do.

18 JUDGE MACAULEY: Okay.

19 MS. SMITH: It's not. And I told  
20 him that.

21 JUDGE MACAULEY: And what'd he  
22 say?



1 MS. SMITH: And he just didn't  
2 really say too much, and then he said--he  
3 said, well, I think you should go to ICMS.  
4 And that would--then you could dispel any of  
5 her misconceptions regarding your spiritual  
6 beliefs. And I took that to mean that he  
7 wanted me to go and explain it to her--my  
8 religion. And he said no, that's not what it  
9 was. That's not what he--he said no--

10 JUDGE MACAULEY: I'm sorry. Is  
11 that a quote?

12 MS. SMITH: Yes. He said, no,  
13 that's not what I'm asking you to do.

14 JUDGE MACAULEY: He denied--

15 MS. SMITH: He said I'm not--he  
16 said I'm not asking you to explain or defend  
17 your religious beliefs.

18 JUDGE MACAULEY: Okay. So Lloyd  
19 did not send you to mediation?

20 MS. SMITH: He requested--

21 JUDGE MACAULEY: He did not tell  
22 you to mediate this with Bagnoli, to explain

1 your religion.

2 MS. SMITH: Yes, he did.

3 JUDGE MACAULEY: Is that correct?

4 MS. SMITH: He didn't say  
5 "explain."

6 JUDGE MACAULEY: Okay. What's he  
7 say?

8 MS. SMITH: He used the words "to  
9 dispel her misconceptions," which I've looked  
10 up since that time, and dispel means to get  
11 rid of, and misconceptions is the wrong idea.  
12 How can you get rid of the wrong idea without  
13 explaining the right idea?

14 JUDGE MACAULEY: Go to mediation  
15 to dispel her misconceptions?

16 MS. SMITH: Yes.

17 JUDGE MACAULEY: About?

18 MS. SMITH: My religious beliefs.  
19 That was one a the times I got up--

20 JUDGE MACAULEY: Did you comment--  
21 did you comment to him about anything when he  
22 said that?

1 MS. SMITH: I said I'm not gonna  
2 do that. I said I shouldn't have to do that.  
3 I don't have--shouldn't have to defend what I  
4 believe in.

5 JUDGE MACAULEY: Aside from that.

6 MS. SMITH: Comment?

7 JUDGE MACAULEY: Did you add  
8 anything to that? Say anything more to him?

9 MS. SMITH: I said I wasn't gonna  
10 do it.

11 JUDGE MACAULEY: You weren't going  
12 to do it. And that was it?

13 MS. SMITH: And then--and then he--  
14 -no. Then we--I settled down a little bit,  
15 cause I was a little like--"hmm." And then I  
16 told him I didn't trust anybody in Albany to  
17 do the ICMS, to be the--the person, the in-  
18 between. The mediator. Whatever it's called.

19 And I don't. And I still don't.  
20 And--well, there was one that he said, and I  
21 said, well, can I have someone come with me?  
22 And he checked into it, I guess, and they said

1 no, I couldn't, I'd have to do it--be there  
2 by myself. So I said I'm not doing it.

3 JUDGE MACAULEY: At the time you  
4 went to Lloyd, had you suffered any harassment  
5 related to your Wiccan religion before that  
6 time?

7 MS. SMITH: Yes.

8 JUDGE MACAULEY: From Bagnoli?

9 MS. SMITH: No. Not that I was  
10 aware of.

11 JUDGE MACAULEY: Okay. And you  
12 didn't mention the previous instance to Lloyd?

13 MS. SMITH: No.

14 JUDGE MACAULEY: Okay.

15 MS. SMITH: He knew--he knew that  
16 her and I had been at odds for a long time.  
17 He says that I read one of his e-mails to  
18 managers. As you well know, there's a  
19 conflict between us.

20 JUDGE MACAULEY: You just  
21 mentioned there was a conflict between you.  
22 I'm sorry. I didn't get that last phrase.

1 MS. SMITH: No. He--he knew  
2 already that there was conflicts between mary  
3 and I.

4 JUDGE MACAULEY: Okay.

5 MS. SMITH: I think it was common  
6 knowledge, everybody in the airport, that it  
7 was--it's like being in high school again.

8 JUDGE MACAULEY: Okay. So  
9 continue. Oh. The record mentions as a basis  
10 for your termination, that you walked out of  
11 this meeting with Mr. Lloyd twice. Do you  
12 recall that?

13 MS. SMITH: Yes.

14 JUDGE MACAULEY: Okay. Why don't  
15 you tell me about that.

16 MS. SMITH: Okay. The first time  
17 I walked out was when he asked me to dispel  
18 her misconceptions.

19 JUDGE MACAULEY: So you just  
20 walked out?

21 MS. SMITH: I was crying, and  
22 didn't really--I mean, I got up and walked out

1 of his office, but I didn't walk out of the  
2 hallway or anything else. I just kind of  
3 stood out there, took a few deep breaths.

4 JUDGE MACAULEY: So you walked out  
5 of his office but stood on the other side of  
6 his door--

7 MS. SMITH: Just outside and took  
8 a couple deep breaths, and he told me to come  
9 back in, settle down, relax.

10 JUDGE MACAULEY: So how was--how  
11 did you walk out?

12 MS. SMITH: I was sitting by the  
13 door and I just got up--

14 JUDGE MACAULEY: Describe it;  
15 yeah.

16 MS. SMITH: I just got up and  
17 turned around and walked out the door, in  
18 tears.

19 JUDGE MACAULEY: So you started  
20 crying and just got up and walked out?

21 MS. SMITH: Yes. I was  
22 embarrassed.

1 JUDGE MACAULEY: What did he do?  
2 What'd he do?

3 MS. SMITH: He got up from his  
4 desk and came out to the hall, and asked me to  
5 come back in. And re--

6 JUDGE MACAULEY: You were just on  
7 the other side of his door; right?

8 MS. SMITH: Right.

9 JUDGE MACAULEY: Okay.

10 MS. SMITH: And the second time,  
11 he said--you know, our talk was over, and I  
12 was still in tears, and I got up, started  
13 walking out the door, and he called me back in  
14 and said that if I'm working at check point,  
15 to just take a minute, sit down and compose  
16 myself.

17 JUDGE MACAULEY: Well, when you  
18 walked out the second time, what was your  
19 understanding of the meeting?

20 MS. SMITH: It was over. I  
21 thought it was over.

22 JUDGE MACAULEY: So how did you

1 leave his presence?

2 MS. SMITH: Crying again.

3 JUDGE MACAULEY: And just walked  
4 out?

5 MS. SMITH: Yes. And he called me  
6 back, asked me to sit down, take a couple deep  
7 breaths, compose myself before I go back to  
8 check point, so I wouldn't go out with big  
9 puffy eyes, and everything.

10 And about a week after that--

11 JUDGE MACAULEY: So I gather from  
12 the description that you gave me, you didn't  
13 find your leaving him to be any form of  
14 insubordinate conduct?

15 MS. SMITH: No.

16 JUDGE MACAULEY: You were just  
17 upset?

18 MS. SMITH: I was crying. I was  
19 embarrassed.

20 JUDGE MACAULEY: And you began to  
21 cry when he asked you to dispel the  
22 misconceptions about your religion?



1 MS. SMITH: Yes, which actually  
2 was held back, because I was ready to start  
3 crying the minute he told me what she did.  
4 Cause I didn't know why she would do that. I  
5 had no idea, what would make her say that. I  
6 don't know what I did to her.

7 JUDGE MACAULEY: Okay. So let's  
8 go back to the ombudsman. You had more  
9 meetings with the ombudsman?

10 MS. SMITH: Just over the phone;  
11 yes.

12 JUDGE MACAULEY: So you would  
13 confide to the ombudsman--

14 MS. SMITH: Yes.

15 JUDGE MACAULEY: --about what?

16 MS. SMITH: Sometimes if things  
17 were going good, if things started to seem  
18 like they were settling down.

19 JUDGE MACAULEY: Oh, just your  
20 general employment?

21 MS. SMITH: Yes.

22 JUDGE MACAULEY: You raised the

1 harassment about your religion issue with the  
2 ombudsman?

3 MS. SMITH: Yes.

4 JUDGE MACAULEY: And the  
5 ombudsman--

6 MS. SMITH: Told me to file EEOC.

7 JUDGE MACAULEY: Okay.

8 MS. SMITH: And I said I didn't  
9 want to do that. I don't wanna jeopardize my  
10 job. I like what I do, and I didn't want to  
11 get Mr. Lloyd into trouble for something that  
12 Mary Bagnoli was responsible for.

13 JUDGE MACAULEY: But you never  
14 really took these complaints over to  
15 management; right? These complaints about  
16 harassment. You never really--

17 MS. SMITH: The harassment? Yes,  
18 I did. The religious issue; no.

19 JUDGE MACAULEY: The religious  
20 issue; no.

21 MS. SMITH: I was advised by  
22 another officer, who had been here since day

1 one, not to bring that up because it would  
2 just make things worse for me. So I thought  
3 I would just--

4 JUDGE MACAULEY: Who was the  
5 officer?

6 MS. SMITH: Dorothy Tompkins.

7 JUDGE MACAULEY: What'd you tell  
8 her? Who is she, by the way?

9 MS. SMITH: She was my mentor, who  
10 replaced Mary Bagnoli.

11 JUDGE MACAULEY: When did she  
12 become your mentor?

13 MS. SMITH: Oh, I don't remember  
14 when it was. October, maybe.

15 JUDGE MACAULEY: October 0...

16 MS. SMITH: Eight.

17 JUDGE MACAULEY: Okay. What's a  
18 mentor, by the way?

19 MS. SMITH: It's someone who  
20 teaches you the job. It's like an on-the-job  
21 training coach. A job coach.

22 JUDGE MACAULEY: What authority

1 does a mentor have over you?

2 MS. SMITH: None, really.

3 JUDGE MACAULEY: None. Just a  
4 coworker?

5 MS. SMITH: Yeah. Job coach.

6 JUDGE MACAULEY: Not a manager or  
7 a supervisor?

8 MS. SMITH: No.

9 JUDGE MACAULEY: Any impression  
10 that these people are a supervisor?

11 MS. SMITH: No.

12 JUDGE MACAULEY: You had no  
13 impression that she was equipped with any kind  
14 of authority?

15 MS. SMITH: "Dot" Tompkins?

16 JUDGE MACAULEY: Yes.

17 MS. SMITH: No.

18 JUDGE MACAULEY: Okay.

19 MS. SMITH: She was very good.

20 JUDGE MACAULEY: Okay. So this  
21 coworker, she told you what?

22 MS. SMITH: We would--we would

1 talk, and, and she would say--you know, she  
2 told me that they were "out to get me," and  
3 that I had a target on my back. That I needed  
4 to just keep--stay "low key" and not "ruffle  
5 any feathers," so to speak. That if I bring  
6 up the religious issue, it's just gonna make  
7 things worse for me. That's why she never  
8 discussed any of her beliefs there, because  
9 she knew that it would just cause issues for  
10 her.

11 JUDGE MACAULEY: When did you have  
12 the discussion with Tompkins?

13 MS. SMITH: Oh, we had--we worked  
14 together a lot, so at various times. She  
15 would overhear other officers saying things  
16 too, just like Linda Hay would.

17 JUDGE MACAULEY: okay.

18 MS. SMITH: And they would tell  
19 me. It got to the point where Linda and I  
20 wouldn't talk at work anymore; but we would  
21 talk on the phone when she--when we would get  
22 done work.

1 JUDGE MACAULEY: Is it fair to say  
2 that--

3 MS. SMITH: She didn't want to be  
4 seen talking with me.

5 JUDGE MACAULEY: Is it fair to say  
6 that throughout your entire employment, until  
7 you filed this EEOC complaint, you never  
8 brought the attention of the religious nature  
9 of the harassment to any supervisor's  
10 attention?

11 MS. SMITH: No.

12 JUDGE MACAULEY: You never did?

13 MS. SMITH: No. I felt--I thought  
14 it would pass.

15 JUDGE MACAULEY: And none of the  
16 harassment that had a religious connotation to  
17 it, was ever performed in the presence of a  
18 supervisor?

19 MS. SMITH: No. Not that I knew  
20 about. I was in tears more at work than I was  
21 at work. I was being put on the exit lane--

22 JUDGE MACAULEY: Yeah.

1 MS. SMITH: --a lot. Even Mr.  
2 Johansson commented to me one day that I had  
3 been there like forever. And the exit lane is  
4 where most people get fired.

5 JUDGE MACAULEY: Let me ask you:  
6 All this harassment you suffered, I guess it  
7 would be fair to say that the personality  
8 conflicts that you have, and people  
9 complaining about you, I guess--is that true?--  
10 -to management--

11 MS. SMITH: I wasn't aware of it;  
12 but I guess so.

13 JUDGE MACAULEY: No; okay. I take  
14 it back. Never mind. Okay. Why don't you  
15 continue with your narration.

16 MS. SMITH: Okay. Now I'm curious  
17 about who was complaining about me. The only  
18 people that I am aware of, that ever  
19 complained to management about me, were people  
20 that I had complained to management about  
21 first.

22 JUDGE MACAULEY: Bagnoli, for

1 example?

2 MS. SMITH: No.

3 JUDGE MACAULEY: You never  
4 complained about?

5 MS. SMITH: Never complained about  
6 her, except verbally would say "she's got to  
7 leave me alone, it's getting to be too much."  
8 You know. Cause in the first--in the  
9 beginning, it was petty stuff, it was  
10 childish, very childish, and I just kind of,  
11 you know, "blew it off." I didn't pay any  
12 attention.

13 But then, when it escalated is  
14 when I paid attention, and that's when I think  
15 I did complain about her in one of the  
16 complaints, that she was--she was doing it  
17 again, except this time it's more. And--

18 JUDGE MACAULEY: Now you contend  
19 that you have a reprisal basis that you--about  
20 the actions of management, which are the topic  
21 of this case, and you say that you were  
22 retaliated against. How did the Agency--you



1 never opposed--you never brought to the  
2 attention of management that the coworkers  
3 were harassing you on the basis of your  
4 religion; right?

5 MS. SMITH: Right. I didn't know  
6 it was--

7 JUDGE MACAULEY: So what was the  
8 retaliation nature of your complaint?

9 MS. SMITH: I--

10 JUDGE MACAULEY: What were you--  
11 what were they retaliating against you about?

12 MS. SMITH: Well, I reported a  
13 security breach.

14 JUDGE MACAULEY: Okay.

15 MS. SMITH: I reported a--the  
16 actions of Mark Middleton, supervisor, as  
17 possibly causing a security breach, which  
18 would end up being my fault, because I was on  
19 the metal detector. I submitted that to  
20 management, that he was never closing the door  
21 behind him at the gate, which would have left--  
22 -if somebody would a got through there, it

1 would a been on me.

2 JUDGE MACAULEY: Okay.

3 MS. SMITH: And the fact that he  
4 was always--he always walks around, even in  
5 crowded airport, with a big pen sticking out  
6 of his mouth.

7 JUDGE MACAULEY: Okay. We don't  
8 have to go into those details yet.

9 MS. SMITH: And stuff.

10 JUDGE MACAULEY: What other basis  
11 of reprisal? You reported the security  
12 breach.

13 MS. SMITH: Yes.

14 JUDGE MACAULEY: What else?

15 MS. SMITH: Well, according to the  
16 e-mail from--

17 JUDGE MACAULEY: Just list them  
18 first.

19 MS. SMITH: Reprisal because I  
20 went to the ombudsman.

21 JUDGE MACAULEY: Just because you  
22 talked about things with the ombudsman?

1 MS. SMITH: Yes.

2 JUDGE MACAULEY: But nothing--we  
3 don't know--okay.

4 MS. SMITH: That's the impression  
5 I got from the copy of the e-mail that I have  
6 that was sent.

7 JUDGE MACAULEY: Anything else?

8 MS. SMITH: No. I may think of  
9 something when I get home; but right now, I  
10 can't think of anything else.

11 JUDGE MACAULEY: Now you also have  
12 allegations that you were--and those--that's  
13 why you included reprisal--

14 MS. SMITH: Correct.

15 JUDGE MACAULEY: --with regard to--  
16 --well, the lunches--I mean, the luncheon  
17 breaks and being separated from Bagnoli, and  
18 the reprimand and the termination. That you  
19 were being terminated and reprimanded, and the  
20 actions with regard to your disparate  
21 treatment with your lunches and your breaks,  
22 that that had its origin in reporting a

1 security breach--

2 MS. SMITH: No.

3 JUDGE MACAULEY: No? You said--

4 MS. SMITH: That had--that had--

5 being segregated from Mary Bagnoli had its

6 origin in the--her complaining about me

7 because I'm Wiccan.

8 JUDGE MACAULEY: Okay. Well, I

9 hadn't gotten to the--okay. That's the

10 religious thing?

11 MS. SMITH: Correct.

12 JUDGE MACAULEY: Okay. Let's take

13 a five minute break.

14 [A brief recess was taken]

15 JUDGE MACAULEY: All right. Why

16 don't you continue your narration. We left

17 off with the ombudsman, you met with the

18 ombudsman several times, and then you were

19 segregated from Ms. Bagnoli. You complained

20 about that you were treated disparately with

21 regard to lunches and breaks.

22 MS. SMITH: Correct.

1 JUDGE MACAULEY: What is the  
2 nature of your complaint there?

3 MS. SMITH: If I would be sent  
4 over from my work area because it was my break  
5 time, if I went over to the break room and she  
6 was there, I would have to leave. I would  
7 have to go back to work and reschedule a break  
8 for a later time, which sometimes is not easy  
9 to do. Same with lunch. The management was  
10 supposed to schedule it, so that wouldn't  
11 happen, so I wouldn't come over and she would  
12 be there.

13 But it did, a lot, and most of the  
14 time, by the time I would get to either take  
15 my break or take a lunch, I would be all by  
16 myself in the break room. There wouldn't be  
17 anybody there, cause everybody else had  
18 already had their break and their lunch.

19 So I feel I was segregated, not  
20 just from her, but from a lotta people.

21 JUDGE MACAULEY: Well--

22 MS. SMITH: I mean, I would sit in

1 there and there would be nobody in there.

2 JUDGE MACAULEY: And why do you  
3 think this had anything to do with your  
4 religion and not some conflict with Bagnoli  
5 otherwise?

6 MS. SMITH: Because it came from  
7 Matt Lloyd, when she accused me of being  
8 Wiccan and putting a spell on her car.

9 JUDGE MACAULEY: Was there any--in  
10 your conversation with Matt Lloyd, did you  
11 discuss anything other than this incident with  
12 Bagnoli having to do with being a Wiccan?

13 MS. SMITH: No. Nothing else.

14 JUDGE MACAULEY: The conversation  
15 with you and Matt Lloyd was solely having to  
16 do with issues surrounding your Wiccan  
17 religion?

18 MS. SMITH: At first, it started  
19 out as like a friendly conversation, like  
20 asking me if I went up north for my--on my  
21 RDOs, you know, stuff like that, and I said  
22 no.

1 JUDGE MACAULEY: Which had  
2 something to do with your being a Wiccan,  
3 apparently.

4 MS. SMITH: Right. Because  
5 apparently at that time I didn't know that she  
6 had accused me of following her, along with a  
7 100 other cars, on 87.

8 JUDGE MACAULEY: Other than  
9 little--yeah--an introduction to the  
10 conversation , the conversation with you and  
11 Mr. Lloyd had everything to do with her  
12 complaints about your reli--

13 MS. SMITH: Correct.

14 MS. SMITH: --about what your  
15 religious--what her perception about your  
16 religion was, and so on?

17 MS. SMITH: Correct. There was--  
18 there was parts that I didn't understand. I--  
19 when he told me that she said I had followed  
20 her, I asked him if he saw me--if she saw me  
21 in my car, does she know my plate numbers now?  
22 Because I was--and he said no. And I thought,

1 well, if she didn't see me in my car, and  
2 doesn't know my plate numbers, how does she  
3 even know it was me that was behind her?

4 And I kind a joked, and I said:  
5 What'd she do? say I was flying on my broom?  
6 I made a joke. Cause at first, to be honest  
7 with you, I thought it was a joke.

8 And then I became a little scared  
9 of her. She know--you know, if she knows my  
10 car, obviously, and she knew my plate numbers,  
11 obviously, for her to know that it was me--it  
12 was dark, it was a wet, heavy snow. So I  
13 don't understand.

14 And I thought it was--I was in  
15 shock. I was just surprised that it--that he  
16 wasn't joking.

17 JUDGE MACAULEY: If that's the  
18 case, you have--on Exhibit F-7, the directive  
19 to the managers segregating you, which you've  
20 seen, that predated your--did that predate--  
21 when did you have this conference with Lloyd?

22 MS. SMITH: March 12th.



1 JUDGE MACAULEY: 12th. The memo  
2 predates that.

3 MS. SMITH: March 4th.

4 JUDGE MACAULEY: March 4th.

5 MS. SMITH: Yes.

6 JUDGE MACAULEY: Well-

7 MS. SMITH: That's when the harass-  
8 -that's when it started. And I didn't--  
9 that's--at that point, I didn't know why.  
10 Nobody--nobody told me why. All I remember is  
11 Jean Savage came up to me, another TSO, and  
12 she just said do yourself a favor, stay out of  
13 her way. I didn't--I had no idea.

14 JUDGE MACAULEY: The lunch break  
15 thing. How long did it last? The separate--

16 MS. SMITH: Till I--till June  
17 18th, till I was done.

18 JUDGE MACAULEY: You were  
19 terminated.

20 MS. SMITH: Yes.

21 JUDGE MACAULEY: What else do you  
22 want to add about this complaint? Your EEO

1 complaint. There are other issues.

2 MS. SMITH: About the reprisals?

3 JUDGE MACAULEY: Well, no, about  
4 the reprimand and the termination.

5 MS. SMITH: Well, the term--the  
6 letter of termination I thought was bogus.

7 JUDGE MACAULEY: Okay. Why don't  
8 you testify about that.

9 MS. SMITH: There were things on  
10 there that--that I didn't do, and I never had  
11 the chance to re--rebuke them, cause I didn't  
12 even know that--I knew the letter of reprimand  
13 existed, and I didn't--like I didn't sign the  
14 letter of reprimand cause I didn't agree with  
15 it. And I went--wanted to go for a peer  
16 review. And I applied for the peer review,  
17 and there's a copy of an e-mail of great  
18 importance, saying that TSO Smith requested a  
19 peer review but I don't know what it's about,  
20 as soon as I find out, I'll let you know. To  
21 management and to Brain Johansson.

22 So anyway, I requested a peer

1 review--

2 JUDGE MACAULEY: Well, you were  
3 reprimanded because you swore at a supervisor  
4 and threatened to leave a check point.

5 MS. SMITH: I did not swear at a  
6 supervisor. I did not. I don't speak that  
7 way. "Dot," my mentor, "Dot" Tompkins, will  
8 tell you. She knows me. Linda Hay knows me.  
9 That's not the way I talk.

10 JUDGE MACAULEY: Did they witness  
11 the incidents that caused you to be  
12 reprimanded?

13 MS. SMITH: TSO Ga--or STSO Gates--  
14 -

15 JUDGE MACAULEY: No; just answer  
16 my question.

17 MS. SMITH: Did who witness?

18 JUDGE MACAULEY: "Dot" Tompkins  
19 witness the incident?

20 MS. SMITH: No. I was the only  
21 female there that night, which is what I was--  
22 they made a big joke about it, to me, is what

1       they were doing. You have to stay. If you  
2       have to stay till 3:00 o'clock in the morning-  
3       -

4                   JUDGE MACAULEY: Well, did  
5       anybody, any of your witnesses that you're  
6       calling, did they observe the incidents at  
7       issue in the reprimand?

8                   MS. SMITH: No.

9                   JUDGE MACAULEY: No. So--

10                  MS. SMITH: I have--I have their  
11       letters that they wrote for management. They  
12       contradict each other. They're written on  
13       different dates. One letter says that it  
14       happened at the supervisor podium. The other  
15       says it happened at Lane 2, x-ray lane, which  
16       is actually where it took place, where T.J.  
17       Gates and David Brown approached me. And I  
18       had told them that staying late was--I  
19       couldn't stay till 3:00 in the morning. They  
20       wanted--they said 3:00 o'clock in the morning.

21                  And they said, well, you have to,  
22       you can't leave, you're the only female. And

1       they made it funny. And Lead Dave Brown  
2       turned around and said, "Now which one of the  
3       males can I let go home? Which one a you guys  
4       wanna go home?" And I really didn't think  
5       that very funny. I had volunteered to do four  
6       hours that day. I didn't have to volunteer to  
7       do it. I didn't have to be there. But I  
8       volunteered. And then they're telling me that  
9       I have to stay till 3:30, and I can't--and,  
10      oh, and don't be late for work tomorrow,  
11      because if you do you're going to need a  
12      doctor's statement. Tomorrow's a blackout  
13      date.

14                   And I'm like if I stay till 3:30  
15      in the morning, I'm not gonna be here for 9:00  
16      o'clock.

17                   JUDGE MACAULEY: So when you talk  
18      about the letters contradict each other, you  
19      mean these statements made by--

20                   MS. SMITH: The officers.

21                   JUDGE MACAULEY: --various people  
22      that are contained in the Report of

1 Investigation?

2 MS. SMITH: Yes.

3 JUDGE MACAULEY: Okay.

4 MS. SMITH: Yes.

5 JUDGE MACAULEY: Well, I guess  
6 you're going to cross-examine these people;  
7 correct?

8 MS. SMITH: Robert Gould isn't  
9 coming.

10 JUDGE MACAULEY: Okay.

11 MS. SMITH: Neither is Lead Brown.

12 JUDGE MACAULEY: So why should I  
13 disbelieve the issues of this--of reprimand?  
14 Because the locations contradict each other?  
15 Says one officer against another? That the  
16 event took place. Do you see what I'm saying?

17 MS. SMITH: It's not that the  
18 event didn't take place. It's that I did not  
19 swear.

20 JUDGE MACAULEY: Yes?

21 MS. SMITH: And Jack Englehardt  
22 said that he didn't like my attitude, was the

1 reason for the letter of reprimand. That he  
2 didn't like my attitude on the 19th, when he  
3 spoke to me about it.

4 JUDGE MACAULEY: Okay.

5 MS. SMITH: It was nine days  
6 later. I hadn't been dwelling on it. When I  
7 got the letter of reprimand, there was a  
8 number on it for the Employee Assistance  
9 Program, and I thought well maybe I do have--  
10 maybe it is my attitude, maybe I do have an  
11 attitude issue. So I went to EAP, and got  
12 that resolved--got what I was dealing with  
13 resolved.

14 JUDGE MACAULEY: Well, I'm just  
15 talking about the events of the day that  
16 brought on the--

17 MS. SMITH: Yeah. I didn't swear,  
18 and T.J. Gates wrote a thing saying that I  
19 apologized to him, and that it wouldn't happen  
20 again. And I did. I went in and I said if I  
21 was, you know, "outta line," I'm sorry. It  
22 will not happen again. But I did not

1 apologize for swearing, cause I didn't swear.

2 JUDGE MACAULEY: What did you  
3 apologize for?

4 MS. SMITH: For being--if I was  
5 "out of line." And if I was being upset, and  
6 if I was a little rude to him. I apologized.

7 JUDGE MACAULEY: Were you rude to  
8 him?

9 MS. SMITH: Yes. I told him I  
10 didn't think it was fair that I'm the only  
11 female there, and I have to stay till 3:00  
12 o'clock. And when I asked if I could be put  
13 on exit lane, or Tickets, where I could get  
14 off my foot, and--cause I have--I had surgery  
15 on a tendon in my right foot, a few years ago,  
16 and I'm not supposed to stand for any more  
17 than four or five hours at a time.

18 So I said--you know, I asked him,  
19 I said: Can I have exit lane or Tickets, where  
20 I can sit? And they said no, because if you  
21 do that, and a female comes through, then we  
22 need to--that you need to be tapped out and



1       you need--and all. And it was just like  
2       you're the only girl here and that's too bad.  
3       "Too bad for you" kind a thing. And then--and  
4       during that conversation, when, when I was a  
5       little rude to T.J. Gates, he looked at me and  
6       he said: Don't forget, I'm your past  
7       supervisor, which means if I'm--

8                   JUDGE MACAULEY: Well, you're not  
9       complaining that the reprimand was because  
10      you're a woman. You're complaining that the  
11      reprimand was issued because of your religion.

12                  MS. SMITH: No, the--yeah, it was  
13      retal--because of retaliation.

14                  JUDGE MACAULEY: For complaining  
15      about Middleton, and for complaining about the  
16      other--that you went to an ombudsman.

17                  MS. SMITH: Yes. I complained  
18      about--

19                  JUDGE MACAULEY: Well, was it  
20      because of your religion? Was it?

21                  MS. SMITH: I don't know.

22                  JUDGE MACAULEY: You've alleged

1 that it was and--

2 MS. SMITH: I don't--I don't know  
3 why he--all of a sudden, these people started  
4 treating me this way.

5 JUDGE MACAULEY: But you were  
6 just--

7 MS. SMITH: It was my assumption  
8 that it was because of my religion.

9 JUDGE MACAULEY: Because of the  
10 discussion with Mr. Lloyd?

11 MS. SMITH: Yes.

12 JUDGE MACAULEY: Once you had this  
13 discussion, this March discussion with Mr.  
14 Lloyd about your religion, all these things  
15 happened?

16 MS. SMITH: Correct.

17 JUDGE MACAULEY: Well, when I  
18 look--if that's true, were you counseled on  
19 October 27th, 2008, for being out of uniform?  
20 That preceded your discussion with Mr. Lloyd.

21 MS. SMITH: Yes. I forgot my name  
22 tag at home on another shirt, and I was

1 running late.

2 JUDGE MACAULEY: But you were  
3 counseled?

4 MS. SMITH: Correct, and I agree  
5 with, with them. I left my shirt--my pin on  
6 another shirt at home. I actually went to  
7 them and told them I forgot my name tag.

8 JUDGE MACAULEY: Well, then, in  
9 that case, the counseling really didn't have  
10 anything to do with your religion, did it?

11 MS. SMITH: No.

12 JUDGE MACAULEY: And this was a  
13 one-time thing?

14 MS. SMITH: Yes.

15 JUDGE MACAULEY: When you were  
16 working at TSA, how many other probationary  
17 officers were there?

18 MS. SMITH: Oh, I don't remember  
19 how many there were in our class, that were  
20 left. Ten, maybe. Eight. There weren't many  
21 left.

22 JUDGE MACAULEY: So through the

1 year there were eight, two less?

2 MS. SMITH: Yeah. There weren't  
3 many left that I knew of. There was--cause a  
4 lot of 'em left.

5 JUDGE MACAULEY: Okay. At the  
6 time that you were terminated, how many were  
7 there?

8 MS. SMITH: There was--well, there  
9 was Linda, Chastity, Ann Marie. Maybe four.

10 JUDGE MACAULEY: Four. Four  
11 probationaries; right?

12 MS. SMITH: Yeah. Could a been  
13 more. I don't know. I didn't know everybody  
14 that was in my class. It was--there was only  
15 four females in there.

16 JUDGE MACAULEY: Wait a second.  
17 And you started with how many?

18 MS. SMITH: I don't know how many  
19 we ended up with by the time the class was  
20 done.

21 JUDGE MACAULEY: No. How many  
22 were in your probationary class, I guess?

1 MS. SMITH: I don't remember how  
2 many were left in the class by the time it  
3 ended. We had some that left during the  
4 class.

5 JUDGE MACAULEY: Everybody who  
6 left, did they leave voluntarily?

7 MS. SMITH: I don't know.

8 JUDGE MACAULEY: You don't know.

9 MS. SMITH: I don't know.

10 JUDGE MACAULEY: So you can't say,  
11 for sure, that four were with you the entire  
12 time/

13 MS. SMITH: Yeah, because I'd seen  
14 'em.

15 JUDGE MACAULEY: Okay.

16 MS. SMITH: Yeah.

17 JUDGE MACAULEY: And there were  
18 more, at some point?

19 MS. SMITH: I didn't--I didn't  
20 know, cause everybody worked different shifts.

21 JUDGE MACAULEY: Okay. Well, when  
22 it came to your uniform issue--well, you were

1       counseled, and I gather others were counseled  
2       as well?

3                   MS. SMITH:    Yes.

4                   JUDGE MACAULEY:   But I gather--  
5       okay.

6                   MS. SMITH:    I didn't think it was  
7       that big of an issue, since we have another  
8       name badge that we wear with it.

9                   JUDGE MACAULEY:   Okay.  Then in  
10       August 2008, there was a problem with your  
11       cell phone.

12                   MS. SMITH:    Yeah.

13                   JUDGE MACAULEY:   Okay.

14                   MS. SMITH:    I was working in  
15       Baggage, and I had my sister's--it was my  
16       sister's cell phone.

17                   JUDGE MACAULEY:   Okay.

18                   MS. SMITH:    I had it in my pants  
19       pocket, and I had taken it outta my pants  
20       pocket and put it on the counter, cause I  
21       didn't wanna break it when I was lifting the  
22       bags, cause it wasn't my phone.

1 JUDGE MACAULEY: Yes. Yes.

2 MS. SMITH: And Mary, when he saw  
3 it--and she--and she actually told me--she  
4 said: If you're gonna carry that around with  
5 you, put it on vibrate and leave it in your  
6 pocket.

7 JUDGE MACAULEY: Okay.

8 MS. SMITH: And I said, oh, I'm  
9 sorry, I wasn't using it. It was something  
10 that my sister and I had when my mom was ill.  
11 And she let me keep it when I was living down  
12 here, so I wouldn't have to get a phone.

13 JUDGE MACAULEY: So you denied you  
14 used it. You just picked it up, took it out  
15 of your bag?

16 MS. SMITH: Took it outta my  
17 pocket, because when I lift bags, I would  
18 sometimes raise 'em with my knee to get 'em up  
19 on to the table, and I didn't want it to break  
20 in my pocket because it wasn't my phone.

21 JUDGE MACAULEY: Well, you were  
22 verbally counseled about it, right, at the

1 time?

2 MS. SMITH: Yes.

3 JUDGE MACAULEY: And you think the  
4 counseling was unfair?

5 MS. SMITH: No.

6 JUDGE MACAULEY: Okay. That you  
7 understood--don't use your cell phone?

8 MS. SMITH: Right.

9 JUDGE MACAULEY: I guess what is  
10 unfair is that that incident was used as a  
11 basis for terminating you later.

12 MS. SMITH: Right.

13 JUDGE MACAULEY: Other  
14 probationaries counseled about it? Do you  
15 know?

16 MS. SMITH: Oh, I'm sure.

17 JUDGE MACAULEY: But you don't  
18 know--oh, you're sure, because you saw it, or  
19 you're just assuming that?

20 MS. SMITH: No. I'm just  
21 assuming. I'm sorry.

22 JUDGE MACAULEY: Well, that's not



1 fact.

2 MS. SMITH: I know. I know. I  
3 understand.

4 JUDGE MACAULEY: Okay. So you  
5 don't know?

6 MS. SMITH: I don't know. If I  
7 wouldn't a taken it outta my pocket, I  
8 wouldn't a been counseled on it either, so--

9 JUDGE MACAULEY: They didn't want  
10 to see people with cell phones; right?

11 MS. SMITH: Pretty much.

12 JUDGE MACAULEY: Yes. Is that a  
13 big thing here at TSA?

14 MS. SMITH: Everybody carr--

15 JUDGE MACAULEY: With the TSA  
16 officers?

17 MS. SMITH: Everybody carries  
18 their cell phone in their pocket on vibrate.  
19 You can be standing next to somebody and here  
20 the little "bizz, bizz."

21 JUDGE MACAULEY: Right. But they  
22 didn't want to know that you're using it for

1 personal; right? These cell phones--are they  
2 personal cell phones, or--

3 MS. SMITH: Yes.

4 JUDGE MACAULEY: Personal cell  
5 phones.

6 MS. SMITH: Yes.

7 JUDGE MACAULEY: Put it on  
8 vibrate; don't take it out; right?

9 MS. SMITH: Right. That's what I  
10 was told.

11 JUDGE MACAULEY: Is that an issue  
12 that's a "big thing" at TSA?

13 MS. SMITH: I don't know.

14 JUDGE MACAULEY: You don't know.  
15 At least you were told that?

16 MS. SMITH: Right.

17 JUDGE MACAULEY: Okay.

18 MS. SMITH: From that day on I  
19 kept it in my locker. I didn't even put it in  
20 my pocket. I just kept in my locker, in my  
21 purse.

22 JUDGE MACAULEY: In January you

1 were counseled for excessive use of sick  
2 leave. Well, is that a fair counseling?

3 MS. SMITH: I had doctor  
4 statements for each of the days. Thanksgiving  
5 Day, I was actually sent home by management  
6 because I had an abscess under a crown in my  
7 tooth.

8 JUDGE MACAULEY: Well, they didn't  
9 say counseled you for illicit use of it, or  
10 for the fact that it was excessive.

11 MS. SMITH: They counseled me not  
12 even that it was excessive, because the time  
13 that I used was time I had coming. The thing  
14 that they were concerned about is it coincided  
15 with my RDOs.

16 JUDGE MACAULEY: With your what?

17 MS. SMITH: My days off.

18 JUDGE MACAULEY: Oh, they didn't  
19 want you to take a longer break time?

20 MS. SMITH: Right.

21 JUDGE MACAULEY: I see. It  
22 coincided with--

1 MS. SMITH: Right. And that  
2 wasn't even--I didn't even--you should have--  
3 the thing should be in there of when my RDOs  
4 were and when I would call in sick. And each  
5 and every time that I did call in sick, I  
6 brought in a doctor's statement, or a  
7 dentist's statement.

8 JUDGE MACAULEY: Requiring you to  
9 be out?

10 MS. SMITH: Yes. Because I--to  
11 let them know I was really sick. That I--one  
12 time I had to go to a doctor and have my vocal  
13 cords checked, cause I'd woke up with a sinus,  
14 major sinus infection. But I brought doctor's  
15 statements each time.

16 JUDGE MACAULEY: Well, I guess  
17 you're going to ask Mr.--or Carmel Sullivan  
18 that, right, when you call him as a witness?

19 MS. SMITH: Call her. Yes.

20 JUDGE MACAULEY: Call her.

21 MS. SMITH: About the RDOs? Yes.

22 JUDGE MACAULEY: Do you have

1 anything more to add?

2 MS. SMITH: No. I--just that I  
3 didn't do anything to be--warrant the  
4 treatment I was given. The day I was  
5 terminated was a strange day.

6 JUDGE MACAULEY: Wait a second.  
7 On April 10th, it says that you were--you  
8 swore at a STSO.

9 MS. SMITH: Supervisory TSO.

10 JUDGE MACAULEY: And a lead TSO.

11 MS. SMITH: David Brown.

12 JUDGE MACAULEY: I guess you deny  
13 that.

14 MS. SMITH: I denied that. I don't  
15 speak that way. I've been in customer service  
16 my whole life. I don't talk that way.

17 JUDGE MACAULEY: Well, anybody  
18 witness those incidents?

19 MS. SMITH: Rob Gould was there.  
20 He wrote in his statement that yes, I did  
21 raise my voice. And I did. He does not say  
22 anything about swearing. Frank Coleman said

1 that he witnessed it, but I don't know how he  
2 could have, cause he said it happened at this  
3 podium. But he didn't say anything about  
4 hearing swearing either.

5 JUDGE MACAULEY: Neither of these  
6 people are called to testify here.

7 MS. SMITH: No. I didn't know  
8 that I was supposed to call people to testify  
9 on the termination letter.

10 JUDGE MACAULEY: Well, you claim  
11 you were terminated because of your Wiccan  
12 status.

13 MS. SMITH: I mean, I could have  
14 given you a list, a very long list of  
15 witnesses.

16 JUDGE MACAULEY: Yes. I know.  
17 Well, let me ask you: Do you know of any  
18 terminations while you were at TSA of  
19 probationary employees? In other words,  
20 people who did the same things you were  
21 accused of but were retained?

22 MS. SMITH: No.

1 JUDGE MACAULEY: So, in other  
2 words--

3 MS. SMITH: I know--I know one guy  
4 that was--he was part time, mornings, and  
5 there was a lotta days he just didn't show up  
6 or didn't call in or anything.

7 JUDGE MACAULEY: Well, I guess my  
8 question is: Were there any probationary  
9 employees who were retained for worse things  
10 than what you were accused of doing?

11 MS. SMITH: I thought so; yes.

12 JUDGE MACAULEY: Oh, well, who?  
13 And what?

14 MS. SMITH: Chastity Ponce. She  
15 received a letter of reprimand the same time,  
16 same day I did.

17 JUDGE MACAULEY: Okay. But--

18 MS. SMITH: She--she didn't want  
19 to debate hers, because when you're given a  
20 letter of reprimand, you can't work overtime  
21 and you can't do Playbook, and she was  
22 perfectly happy with not being able to do

1 overtime or work Playbook.

2 JUDGE MACAULEY: But she just had  
3 one letter of reprimand. You had a series of  
4 things--

5 MS. SMITH: She had also been  
6 talked about, excessive use of sick time. She  
7 was--she actually used up all her time, and  
8 was, was denied--I think she was denied one  
9 time, when she had to go to a funeral, because  
10 she didn't have any more time left to use.

11 JUDGE MACAULEY: She used more  
12 sick leave than you did?

13 MS. SMITH: Yes.

14 JUDGE MACAULEY: And she got a  
15 letter of reprimand?

16 MS. SMITH: Yes.

17 JUDGE MACAULEY: Well, what else  
18 did Chastity do?

19 MS. SMITH: She'd speak Spanish.

20 JUDGE MACAULEY: Okay.

21 MS. SMITH: At the checkpoint,  
22 with--her and her other friend would just



1 speak Spanish, so nobody else could understand  
2 what they were saying.

3 JUDGE MACAULEY: Is that  
4 disallowed here?

5 MS. SMITH: She was asked to stop  
6 at checkpoint. It's okay if they want to  
7 discuss, you know, have questions, talk back  
8 and forth amongst themselves. It's fine. But  
9 at checkpoint, when there's a lotta people up  
10 there, no. That she wanted to do that.

11 JUDGE MACAULEY: Okay. And they  
12 let her do it?

13 MS. SMITH: Yes.

14 JUDGE MACAULEY: What else?

15 MS. SMITH: Oh, boy.

16 JUDGE MACAULEY: In other words,  
17 my question is--

18 MS. SMITH: She was late. She'd  
19 been late--

20 JUDGE MACAULEY: I guess she's one  
21 of the four people who were retained here when  
22 you were dismissed?

1 MS. SMITH: Correct.

2 JUDGE MACAULEY: Okay. What else?

3 MS. SMITH: What else did she do?

4 JUDGE MACAULEY: Well, I guess  
5 what else did she do she wasn't punished for,  
6 and what else was she punished for that--

7 MS. SMITH: Well, I overheard--I'm  
8 not gonna say this is fact cause I'm not sure--  
9 -but I--

10 JUDGE MACAULEY: I only want to  
11 hear facts.

12 MS. SMITH: Okay. So I don't  
13 know.

14 JUDGE MACAULEY: You don't know.

15 MS. SMITH: Don't know.

16 JUDGE MACAULEY: Well, why do you  
17 say she performed her job worse than you did?

18 MS. SMITH: I'm not saying she  
19 performed it worse than I did. When she was  
20 here--

21 JUDGE MACAULEY: Let me rephrase  
22 my question. I guess what you would allege is

1 that she violated rules--

2 MS. SMITH: Just as many if not  
3 more than I did.

4 JUDGE MACAULEY: --and directives.  
5 Just as many or more than you did?

6 MS. SMITH: Right.

7 JUDGE MACAULEY: And she was  
8 retained?

9 MS. SMITH: Correct.

10 JUDGE MACAULEY: She a Wiccan?

11 MS. SMITH: No; not that I'm aware  
12 of. I never asked her.

13 JUDGE MACAULEY: Anyone else or is  
14 Chastity Ponce--"Ponsay" or Ponce?

15 MS. SMITH: I don't know how to  
16 say it.

17 JUDGE MACAULEY: Okay. Chastity  
18 Ponce, I guess, you find that she--

19 MS. SMITH: She's probably the  
20 only one.

21 JUDGE MACAULEY: --was favored  
22 over you?

1 MS. SMITH: Yes.

2 JUDGE MACAULEY: You're Wiccan;  
3 she's not.

4 MS. SMITH: Right. Apparently,  
5 she was--

6 JUDGE MACAULEY: What?

7 MS. SMITH: No, I'm not gonna--I'm  
8 not--I thought that at one time she had been  
9 counseled about flirting, too, but I'm not  
10 gonna--she had worn her--she would wear her  
11 shirt kind a open, and they told her, a few  
12 times, to button it up.

13 JUDGE MACAULEY: Did she comply?

14 MS. SMITH: Yeah.

15 JUDGE MACAULEY: She complied?

16 MS. SMITH: Yeah.

17 JUDGE MACAULEY: All right.

18 MS. SMITH: When--when it was--  
19 when certain people were around, but--

20 JUDGE MACAULEY: Well, is  
21 flirtatiousness against the rules here at TSA?

22 MS. SMITH: Wearing your shirt

1 unbuttoned, down a certain length, is against  
2 the rules; yes. I mean, appearance is  
3 supposed to be the thing--the key--which is  
4 why I don't understand--they can have these  
5 long fingernails, and do a pat-down.

6 JUDGE MACAULEY: Are there rules  
7 about fingernails?

8 MS. SMITH: I don't know. There's  
9 a poster downstairs in the break room, that  
10 shows what you're supposed to look like,  
11 hygienically, and what you're supposed to be  
12 wearing.

13 JUDGE MACAULEY: So she violated  
14 the rules about appropriate dress and  
15 comportment?

16 MS. SMITH: I felt; yeah. I  
17 think. I mean, I saw it, and I know that  
18 someone had talked to her about it.

19 JUDGE MACAULEY: Anything else you  
20 want to add?

21 MS. SMITH: No.

22 JUDGE MACAULEY: Do you have any

1 cross?

2 MS. SCOTT-JOHNSON: Yes.

3 CROSS-EXAMINATION

4 BY MS. SCOTT-JOHNSON:

5 Q In the beginning of your  
6 testimony, you stated that it almost started  
7 from day one. The harassment started from day  
8 one.

9 A Yes.

10 Q Are you referring to harassment by  
11 Ms. Bagnoli?

12 A Yeah. It was like high school  
13 stuff. Trivial.

14 Q Okay. So now when you started at  
15 TSA, did you know Ms. Bagnoli when you first  
16 started here?

17 A No.

18 Q So you didn't know her before you  
19 got here?

20 A No.

21 Q So--

22 A I knew her, actually, from the

1 final week of class.

2 Q Okay. But I'm talking about when  
3 you started.

4 A No. I didn't know her before I  
5 came to TSA.

6 Q Okay. So from day one, are you  
7 saying that Ms. Bagnoli knew that you were  
8 Wiccan, from day one?

9 A No.

10 Q Okay. From the first time that  
11 you started at TSA, did you tell everybody  
12 that, when you got here, that you were a  
13 Wiccan?

14 A No.

15 Q Did you have conversations with  
16 Ms. Bagnoli in the beginning, and tell her  
17 that you were a Wiccan?

18 A No.

19 Q Okay. So now the alleged  
20 harassment that you're saying that you had,  
21 you reported to the ombudsman, the very first  
22 time that you reported to the ombudsman. It's

1 a fact that you told the ombudsman that you  
2 felt that Ms. Bagnoli, by virtue of the fact  
3 that she kept telling you, that if you didn't  
4 do things right you would be fired--

5 A That's not what she told me.

6 Q Wait. Hold on a second. I'm  
7 asking you what you told the ombudsman. Isn't  
8 it a fact, that when you first called the  
9 ombudsman, you told the ombudsman that you  
10 felt you needed a new mentor because you  
11 didn't think you could learn under Ms.  
12 Bagnoli; correct?

13 A Correct.

14 Q And at that time, the reason why  
15 you said you couldn't learn under Ms. Bagnoli  
16 is because she kept telling you that if you  
17 got things wrong, that you would be fired;  
18 correct?

19 A No. She never said if you got  
20 things wrong, you're going to be fired. She  
21 would say things like "See that--that's a  
22 camera. You can be fired." "See that--that's



1 another camera. They're watching you. You  
2 can be fired." There's--you know--

3 Q Okay, and at the time when she was  
4 saying that to you, she didn't say you can be  
5 fired cause you're a witch; correct?

6 A No.

7 Q You didn't have any problems with  
8 Ms. Bagnoli because--allegedly because you  
9 were Wiccan; correct?

10 A Right.

11 Q You just felt that she was being  
12 stern with you, or telling you, or frightening  
13 you about being fired; correct?

14 A No; she was harassing me.

15 Q Well--

16 A She brought me--she had me go in--

17 Q Okay; wait. Hold on a second.

18 A She had me go into the training  
19 room, the private screening room--

20 JUDGE MACAULEY: No, no, no.

21 MS. SCOTT-JOHNSON: Hold on a  
22 second.

1 MS. SMITH: Oh, okay. I'm sorry.

2 MS. SMITH: Okay.

3 BY MS. SCOTT-JOHNSON:

4 Q I'm asking you specifically what  
5 she was doing--

6 MS. SCOTT-JOHNSON: Wait, before  
7 you do this. When Ms. Johnson asks you  
8 questions, you've just got to listen to the  
9 questions. You have to say "I object to the  
10 question."

11 MS. SMITH: Okay.

12 JUDGE MACAULEY: Take your time.

13 MS. SMITH: Okay.

14 JUDGE MACAULEY: But without an  
15 objection, you listen to her question and  
16 answer it, unless there's an objection or I  
17 say something.

18 MS. SMITH: Okay.

19 BY MS. SCOTT-JOHNSON:

20 Q So the bottom line is what you're  
21 saying was harassment is the fact that she  
22 kept telling you that there were cameras

1 placed, and that you could be fired. Is that  
2 correct?

3 A No. She was--it was more than--

4 JUDGE MACAULEY: No; no. Your  
5 answer is no. She said: Is that correct? No.

6 MS. SMITH: No.

7 MS. SCOTT-JOHNSON: Okay.

8 MS. SCOTT-JOHNSON: Ms. Smith  
9 also, after your cross, you can testify and  
10 clarify your testimony after Ms. Johnson is  
11 done.

12 MS. SMITH: Okay.

13 JUDGE MACAULEY: Otherwise, just  
14 answer the question. When she says, "Is that  
15 correct?" it's yes or no.

16 MS. SMITH: Okay.

17 JUDGE MACAULEY: Let Ms. Johnson  
18 examine you.

19 MS. SMITH: Okay.

20 BY MS. SCOTT-JOHNSON:

21 Q Now you started working at TSA in  
22 June of 2008; correct?

1           A       Correct.

2           Q       Okay. In August of 2008--as of  
3 August 2008, were you having problems with Ms.  
4 Bagnoli at that point in time?

5           A       Not really.

6           Q       Okay. And, in fact, it wasn't  
7 that you were having problems with Bagnoli  
8 from day one; correct?

9           A       Right.

10          Q       Weren't there periods of time when  
11 you and Ms. Bagnoli got along?

12          A       Yes.

13          Q       And you had no problems with Ms.  
14 Bagnoli?

15          A       Yes; that's true.

16          Q       Okay. Now in August of 2008, when  
17 you were counseled by Ms. Winn--correct?

18          A       Correct.

19          Q       So you're admitting that, in fact,  
20 you had your cell phone out of your pocket,  
21 and it was on a table somewhere; correct?

22          A       On a table; yes. Yes, ma'am.

1           Q       Isn't it a fact that, really, the  
2 rules are that you're not supposed to have a  
3 cell phone, at all, upstairs, while you're  
4 working; correct?

5           A       I wasn't upstairs.

6           Q       Okay. When I say--when you're  
7 working, you're not supposed to have a cell  
8 phone, whether you're upstairs or downstairs.  
9 When you're working, you're not supposed to  
10 have a cell phone; correct?

11          A       That's not the way it was  
12 explained to me.

13          Q       Okay. You're definitely not  
14 supposed to talk on your cell phone while  
15 you're on duty; isn't that correct?

16          A       Definitely. Yes. That's correct.

17          Q       As a matter of fact, the only time  
18 that you're allowed to talk on your cell  
19 phone, if you're working during your work  
20 hours, is when you're on a break; correct?

21          A       Correct.

22          Q       Or for your lunch break or--

1           A       Yes.

2           Q       Correct; okay.

3           A       Yes.

4           Q       So that in August of 2008, when  
5 you were counseled by Ms. Winn, there was no--  
6 did that have anything to do with your  
7 religion?

8           A       No, ma'am.

9           Q       Had you had any difficulties with  
10 Ms. Winn?

11          A       No, ma'am.

12          Q       Okay. Now in October of 2008, you  
13 were counseled about your uniform; correct?

14          A       Correct.

15          Q       Okay. And do you recall who the  
16 person was that counseled you about that?

17          A       Carmel Sullivan.

18          Q       Okay. So Ms. Sullivan counseled  
19 you about your uniform?

20          A       I went to her; yes.

21          Q       Okay. Had you had any problems  
22 with Ms. Sullivan as of October of 2008?

1           A       No.

2           Q       Okay.  And as of--in August 2008,  
3           and in October of 2008, those two counselings,  
4           one about your cell phone and one about your  
5           uniform, there were no issues about your  
6           religion at that point in time; correct?

7           A       Correct.

8           Q       Okay.  Now in November of 2008,  
9           you were counseled by Mr. Blankenberger for  
10          leaving your post without permission; isn't  
11          that correct?

12          A       Yes.

13          Q       Okay.  And as of November of 2008,  
14          had you had any issues about your religion at  
15          that point in time?

16          A       No.

17          Q       With anybody?

18          A       No.

19          Q       Okay.  Did you have any issues  
20          with Mr. Blankenberger about your religion at  
21          all?

22          A       No.

1           Q       Okay. Did you have any--were you  
2           in fact counseled by Mr. Mr. Blankenberger  
3           about leaving the checkpoint without  
4           permission?

5           A       He asked me--he asked me where I  
6           went, and I told him that I asked Dave, the  
7           other lead that was there, cause I had to go  
8           to the bathroom quickly, and I didn't have the  
9           time to look for Mr. Mr. Blankenberger. So I  
10          asked a different lead and I went to the  
11          bathroom, to go to the bathroom.

12                   And the--he did talk to me about  
13          coming back from break late, and I think--and  
14          at that time, too, it was because I was in the  
15          rest room.

16                   MS. SCOTT-JOHNSON: But you came  
17          from, back from your break late? You just  
18          explained to him you were at the rest room?

19                   MS. SMITH: I tried to explain it  
20          to him; yes.

21                   BY MS. SCOTT-JOHNSON:

22          Q       In January of 2009, when you were



1       counseled by STSO Carmel Sullivan about  
2       excessive sick leave, had you had any problems  
3       about your religion as of that point?

4             A       No.

5             Q       Did you have any problems with Ms.  
6       Bagnoli as of that point?

7             A       Yeah.

8             Q       Okay. And what were those  
9       problems?

10            A       The problem was--is that she--I  
11       did not find her--I had a hard time learning  
12       anything from her. Like when we were doing--  
13       she was trying to teach me x-ray and stuff,  
14       she wouldn't let me do it. She would it, the  
15       x-ray, instead of like let me have the hands-  
16       on experience doing stuff. She wouldn't let  
17       me do that.

18            Q       But you wanted to do it and she  
19       wouldn't let you do it?

20            A       Right. And I felt very  
21       intimidated by her because she was in a  
22       relationship with the--with the officer, Bill

1       Consodine, that had taught me for the two  
2       weeks, and her, okay, cause she had to go back  
3       to school for a week of baggage training, and  
4       he was her instructor also. And I felt a  
5       little intimidated by that. And I felt--and  
6       the day that she brought me into the private  
7       screening room with Bill, and closed the door,  
8       and made me stand--

9               Q       Wait, wait, wait. Okay.

10              A       --with my back to them and read  
11       the SOP--

12              Q       Just one second.

13              A       --I was done.

14              Q       We're talking about--

15              A       I didn't want her anymore as a  
16       lead.

17              Q       Excuse me. Okay. We're talking  
18       about January of 2009. Okay? We're talking  
19       about that one period of time. We're not  
20       talking about another period of time when they  
21       brought you into a room with the SOP. Did  
22       that occur in January 2009?

1           A       No. That occurred before that.

2           Q       Okay. So now what you're saying  
3 is that you felt intimidated by Ms. Bagnoli  
4 because of her personal relationship with  
5 someone else; is that correct?

6           A       Yeah.

7           Q       Okay.

8           A       Yeah. Because--

9           Q       It had absolutely nothing to do  
10 with your religion at that point?

11          A       No. I don't think she knew about  
12 my religion at that point. Nobody knew about  
13 my religion at that point.

14          Q       Now on March 5th, 2009, there was  
15 a memo by Training Coordinator Nick Moreno--

16          A       Correct.

17          Q       --about negative behavior.

18          A       Correct.

19          Q       And that was about when one of the  
20 other training instructors had told you that  
21 you needed more time on one a the machines; is  
22 that correct?

1           A       Yes.

2           Q       And you felt that that was  
3 incorrect, that you didn't need any more time;  
4 is that correct?

5           A       That's correct.

6           Q       So now, at that time, when Mr.  
7 Moreno wrote that memo about you, that had  
8 absolutely nothing to do with your religion  
9 either, did it?

10          A       I don't know, because that was the  
11 same day that Mary Bagnoli filed the  
12 complaint.

13          Q       Okay. March 5th. So if Mr.  
14 Moreno is speaking to you on March 5th about  
15 needing more time on a particular machine--

16          A       It was--

17          Q       --you're saying that Ms. Smith  
18 filed her--I mean--excuse me--Ms. Bagnoli  
19 filed her complaint on the exact same day.

20                   How is it possible that Mr. Moreno  
21 would talk about you needing more time on a  
22 machine, on the same day that Ms. Bagnoli is

1 making a complaint, and it be related to one  
2 another? I mean, it seems like they're  
3 happening simultaneously, on the same day.

4 A Because on February 22nd, Mary  
5 Bagnoli was my mentor again, when she wasn't  
6 supposed to ever be mentoring me again. Her  
7 significant other, Bill Consodine, assigned me  
8 to mentor with her in Southwest, and I did,  
9 and it was her report--cause she was the last  
10 mentor I worked with, and it was her report  
11 that went to Nick Moreno, and Nick Moreno, if  
12 you look on there, Nick Moreno's memo went to  
13 Matt Lloyd.

14 Why else would it go to Matt  
15 Lloyd?

16 Q Well, let me ask you this, Ms.  
17 Smith. Did you read this Report of  
18 Investigation?

19 A Some.

20 Q Isn't it a fact that Mr. Moreno's  
21 report about you needing more time had  
22 absolutely nothing to do with Ms. Bagnoli? It

1 was another training coordinator that said you  
2 needed more time?

3 \*T2 A The other training coordinator  
4 that said I needed more time was also on OJT  
5 for those machines. So she didn't have the  
6 authority to say that I needed more time  
7 because she was not certified on those  
8 machines yet either. We went to class  
9 together, her and I. So she wasn't certified  
10 yet either.

11 Q Isn't it a fact that there is a  
12 report in the Report of Investigation from  
13 another TSO, not from another trainer, not  
14 from Ms. Bagnoli, that spoke about you needing  
15 more time on the machine?

16 A I don't know.

17 Q So you didn't read--

18 A I didn't see that part.

19 Q Okay. All right.

20 A It it was--

21 Q So what you're saying, is it your  
22 interpretation that Mr. Moreno's report about

1 your needing more time, or that--withdrawn.

2 Mr. Moreno indicated that he had--he made a  
3 report about negative behavior on your part.

4 A Yes.

5 Q Isn't it a fact that Mr. Moreno's  
6 statement about negative behavior had  
7 absolutely nothing to do with Ms. Bagnoli?

8 A It had to do with the fact that I  
9 was being completely harassed and had no idea  
10 why. And then all of a sudden, he comes out  
11 of his office, and I felt like I was attacked  
12 by him and Pamela. Pam Weersma.

13 Q Pam Weersma?

14 A Yes. I felt like I was being  
15 attacked by them. There was both of 'em  
16 there.

17 Q So Pamela Weersma and Mr. Moreno  
18 were talking to you about you needing more  
19 time, more on-the-job training with a  
20 particular piece of equipment; correct?

21 A Yes.

22 Q And you felt that that was

1 harassment?

2 A I felt that the way that they  
3 approached me with it, and spoke to me about  
4 it--yes.

5 Q Okay. But that harassment had  
6 absolutely nothing to do with your religion?

7 A I didn't know that at the time.

8 Q On March 8th--

9 JUDGE MACAULEY: Well, how do you  
10 say it now?

11 MS. SMITH: Because it happened at  
12 the same time.

13 JUDGE MACAULEY: Well, if it's at  
14 the same time--

15 MS. SMITH: And why is his memo  
16 being sent to Matt Lloyd?

17 JUDGE MACAULEY: That's not  
18 unusual?

19 MS. SMITH: No. Matt Lloyd is the  
20 workplace violence person, that Mary Bagnoli  
21 filed the religious complaint to, and that's  
22 who Nick Moreno is sending that information



1 to. Matt Lloyd has nothing to do with  
2 anything else but that.

3 JUDGE MACAULEY: In the chain of  
4 command?

5 MS. SMITH: In the chain--no. It  
6 should have went to management. It should  
7 have went to--yeah--to Jack Englehardt or one  
8 of the managers.

9 BY MS. SCOTT-JOHNSON:

10 Q Do you know what Mr. Lloyd's  
11 actual title is?

12 A AFSD/LEO.

13 Q Okay. So he is the assistant  
14 federal security director--

15 A Slash law enforcement.

16 Q --of law enforcement; correct?

17 A Yes.

18 Q Okay. On March 8, 2009, you were  
19 counseled by Mr. Middleton; correct?

20 JUDGE MACAULEY: Well, why is it  
21 unusual, then, that the memo would have gone  
22 to Lloyd?

1 MS. SMITH: Because we don't  
2 usually have contact with him. It usually  
3 goes through management first, to one of our  
4 managers.

5 JUDGE MACAULEY: He's management.

6 MS. SMITH: No. I mean to--his  
7 office--

8 JUDGE MACAULEY: A performance  
9 manager, not some other manager.

10 MS. SMITH: Correct; correct. We  
11 don't--as TS--

12 JUDGE MACAULEY: Who does Mr.  
13 Moreno report to?

14 MS. SMITH: I don't know.

15 JUDGE MACAULEY: Well, then how do  
16 you know--

17 MS. SMITH: As TSOs, we have very  
18 little contact with Matt Lloyd. He doesn't  
19 counsel us--

20 JUDGE MACAULEY: Well, who do you  
21 have contact with, beyond Moreno?

22 MS. SMITH: Management.

1 JUDGE MACAULEY: Well, that's a  
2 broad--

3 MS. SMITH: Jack Englehardt. Jean  
4 Madison.

5 JUDGE MACAULEY: So if it went to  
6 Madison or Englehardt--

7 MS. SMITH: I wouldn't have  
8 thought anything of it.

9 JUDGE MACAULEY: You wouldn't have  
10 thought anything of it?

11 MS. SMITH: No. Other than the  
12 fact that it's on the very same day.

13 JUDGE MACAULEY: And that's  
14 because of this--well, Mr. Moreno was not  
15 copied on this March 4th memo.

16 MS. SMITH: It doesn't matter.

17 JUDGE MACAULEY: Why?

18 MS. SMITH: Cause Mary Bagnoli  
19 would tell people anyway.

20 JUDGE MACAULEY: Moreno. He's a  
21 supervisor?

22 MS. SMITH: He's right next to the

1 training room.

2 JUDGE MACAULEY: Is he a  
3 supervisor?

4 MS. SMITH: I don't know what he  
5 is. He's the head of the Training Department.  
6 He's not an officer, officer--I don't think.  
7 There's Bob Johnson and Pam are in that office  
8 and he supervises them. And the training room  
9 is right next door and Mary Bagnoli is in  
10 there all the time and--

11 JUDGE MACAULEY: Well, the memo  
12 says "a situation" exists. It didn't talk  
13 about, anything about religion. It's kind of  
14 vague. So why would that have anything to do  
15 with the religious--your religion complaint?

16 MS. SMITH: Just word of mouth.

17 JUDGE MACAULEY: Word of mouth?

18 MS. SMITH: Yes.

19 JUDGE MACAULEY: I guess everybody  
20 talks around here.

21 MS. SMITH: Yes. They do. I was  
22 till hearing things that were going on here,

1 after I was terminated.

2 JUDGE MACAULEY: I guess when you  
3 say that, it's low-level supervisors and TSO  
4 are indiscrete, and they talk about--they  
5 gossip. Is that what you--

6 MS. SMITH: When they live  
7 together, I would imagine.

8 JUDGE MACAULEY: And live  
9 together. Consodine. What's Moreno's  
10 relationship to Consodine?

11 MS. SMITH: They're just all  
12 friends.

13 JUDGE MACAULEY: Same with  
14 Bagnoli?

15 MS. SMITH: Yes.

16 JUDGE MACAULEY: And that Lloyd  
17 doesn't typically get memos of performance, at  
18 least--

19 MS. SMITH: Not that I'm aware of.

20 JUDGE MACAULEY: --of this sort?

21 MS. SMITH: Not that I'm aware of.

22 JUDGE MACAULEY: Okay.

1 MS. SMITH: As far as I could  
2 tell, that was the only one in my file that  
3 went to him.

4 JUDGE MACAULEY: What's Lloyd's--  
5 what is Lloyd's position?

6 MS. SMITH: AFSD/LEO.

7 MS. SCOTT-JOHNSON: Assistant  
8 Federal Security Director, Law Enforcement.

9 MS. SCOTT-JOHNSON: Well, he must  
10 do more than just workplace violence.

11 MS. SMITH: He used to be in  
12 charge of the BDOs.

13 JUDGE MACAULEY: I don't know what  
14 that is.

15 MS. SMITH: Behavioral Detective--

16 MS. SCOTT-JOHNSON: Detection  
17 officers.

18 MS. SCOTT-JOHNSON: --Detection  
19 Officers.

20 JUDGE MACAULEY: Is that his job?

21 MS. SMITH: Not any more.

22 JUDGE MACAULEY: I don't mean now.

1 At the time.

2 MS. SMITH: No. He was the  
3 FSD/LEO.

4 JUDGE MACAULEY: Okay. That's a  
5 manager job; right?

6 MS. SMITH: It's a director--  
7 director.

8 JUDGE MACAULEY: Director.

9 MS. SMITH: Yes.

10 JUDGE MACAULEY: It's a high-level  
11 job, isn't it?

12 MS. SMITH: Yes. He carries a  
13 gun.

14 JUDGE MACAULEY: So it would be  
15 unusual for him to get such a low-level  
16 complaint, I guess is what you're saying.  
17 Yes?

18 MS. SMITH: Yes.

19 JUDGE MACAULEY: And you're just  
20 speculating that it has everything to do with  
21 your Wiccan religion, though--or has anything  
22 to do with your Wiccan religion, aren't you?

1 MS. SMITH: That's just when  
2 everything seemed to fall apart.

3 JUDGE MACAULEY: Okay. It's just  
4 the coincidence that I should--

5 MS. SMITH: Now see, as a Wiccan,  
6 I don't believe in coincidence, though.

7 JUDGE MACAULEY: Well, I'm not  
8 saying it's coincidence. I'm saying the  
9 circumstances suggest.

10 MS. SMITH: Correct.

11 JUDGE MACAULEY: I see. Continue.

12 BY MS. SCOTT-JOHNSON:

13 Q You were verbally counseled by  
14 Mr.--STSO Middleton, on March 8th, 2009, about  
15 checking a pass before it went through the  
16 walk-through metal detector?

17 A Yeah.

18 Q And as of that time, had you had  
19 any problems with Mr. Middleton--

20 A No.

21 Q --involving your religion, at all?

22 A No.



1           Q       Okay.  Are you aware of whether or  
2           not Mr. Middleton knew of your religion?

3           A       No.

4           Q       On March 20th, you were--2009, you  
5           were generally counseled for tardiness; isn't  
6           that correct?

7           A       Yes.

8           Q       And who counseled you on that?

9           A       I don't remember.  I was, I think,  
10          five minutes late.

11          Q       The individual that counseled you,  
12          to your recollection, did you have any  
13          problems with them about your religion?

14          A       No.  I don't even know who it was.

15          Q       Do you recall whether it was any  
16          of the individuals who we've already named  
17          before?  Let's say, for instance, Mr.  
18          Middleton?

19          A       No; it wasn't him.

20          Q       Ms. Bagnoli?

21          A       No.

22          Q       Ms. Winn?

1 A No.

2 Q Mr. Blankenberger?

3 A No.

4 Q Ms. Sullivan. It was none of  
5 those individuals?

6 A I don't think so.

7 Q So this was somebody totally  
8 different from all of those individuals that  
9 had already made complaints about you?

10 A Yeah, because I had called in and  
11 told them I was gonna be a little bit late.

12 JUDGE MACAULEY: I gather what  
13 your allegation is, Ms. Smith, is that you  
14 were targeted for dismissal, and therefore  
15 everything little thing that happened--

16 MS. SMITH: Correct.

17 JUDGE MACAULEY: --is used to  
18 justify your termination. Although--I mean,  
19 that's the point. And management's responding  
20 to that. Is that what you're alleging?

21 MS. SMITH: Yes.

22 JUDGE MACAULEY: Managers and

1 supervisors, and these people are responding  
2 to managers' targeting of you.

3 MS. SMITH: Yes.

4 JUDGE MACAULEY: Is that your  
5 allegation?

6 MS. SMITH: Yes.

7 JUDGE MACAULEY: I see.

8 MS. SMITH: I believe it's easier  
9 to get rid of one person than discipline six  
10 or eight.

11 JUDGE MACAULEY: And the only  
12 circumstance that you presented--or there may  
13 be others--is Chastity Ponce.

14 A Chastity; yeah.

15 Q Where one could derive an  
16 inference of this targetedness.

17 A Yes.

18 JUDGE MACAULEY: All right.

19 Continue, Ms. Johnson.

20 MS. SMITH: Other--other officers  
21 have told me I was targeted.

22 JUDGE MACAULEY: Who told you you

1 were targeted?

2 MS. SMITH: "Dot" Tompkins and--

3 JUDGE MACAULEY: Well, she'll be  
4 here.

5 MS. SMITH: Yeah.

6 JUDGE MACAULEY: Who else?

7 MS. SMITH: And Linda Hay.

8 JUDGE MACAULEY: She's a TSO?

9 MS. SMITH: She could--she would  
10 overhear things. That's why her and I didn't  
11 talk much at work, cause she would kind a like  
12 listen for me and then call me and tell me  
13 stuff.

14 JUDGE MACAULEY: Linda Hay and  
15 Tompkins?

16 MS. SMITH: Yes.

17 JUDGE MACAULEY: Okay. Go ahead,  
18 Ms. Johnson.

19 BY MS. SCOTT-JOHNSON:

20 Q So now in response to the judge's  
21 question, you believe you were targeted by  
22 management on what basis? On the basis that

1       you were a Wiccan?

2               A       Yes.  Yes, ma'am.

3               Q       Well, you were targeted--you  
4       indicated that in August of 2008, you're not  
5       even sure if Ms. Winn knew you were a Wiccan;  
6       correct?

7               A       Right.

8               Q       So you weren't targeted with  
9       respect to the cell phone counseling?

10              A       Nobody knew--nobody knew I was  
11       Wiccan until the end of February, beginning of  
12       March till Mary Bagnoli told everybody.

13              Q       Okay.  So in October 2008, you  
14       weren't being targeted when you were--when you  
15       were counseled about your uniform?

16              A       No.

17              Q       And in November of 2008, you  
18       weren't being targeted when you were counseled  
19       about leaving the post without permission?

20              A       You mean going to the bathroom?

21              Q       Yes.

22              A       No.

1           Q       You weren't being targeted at that  
2 point?

3           A       No; no.

4           Q       In January of 2009, you weren't  
5 targeted when you were counseled about  
6 excessive sick time; correct?

7           A       Everybody was counseled about  
8 that; no.

9                   JUDGE MACAULEY: But I guess your  
10 allegation is that the termination, and the  
11 gathering of all these past instances  
12 justified the targetedness of your  
13 termination?

14                   MS. SMITH: Correct. I guess. I  
15 don't understand what you just said.

16                   JUDGE MACAULEY: In other words,  
17 at the time you weren't targeted, but you were  
18 targeted--

19                   MS. SMITH: I didn't feel  
20 targeted--

21                   JUDGE MACAULEY: --in May of 2009.

22                   MS. SMITH: Right.

1 JUDGE MACAULEY: And the person  
2 issuing this termination, or who made the  
3 decision, decided to use them as a basis of  
4 your termination; right?

5 MS. SMITH: That's the way I feel.

6 JUDGE MACAULEY: That's your  
7 allegation?

8 MS. SMITH: That's the way I feel.

9 JUDGE MACAULEY: Go ahead, Ms.  
10 Johnson.

11 BY MS. SCOTT-JOHNSON:

12 Q The person--when you say the  
13 person, that they decided to use this for you--  
14 -who is that person?

15 A Based on, from what I've read, I  
16 believe it was Patricia Sykes, was the--

17 Q Had you ever met Patricia Sykes  
18 before this?

19 A No, ma'am.

20 Q Did she know you?

21 A I don't know. There's a lotta  
22 people here that I don't know, that I didn't

1 meet.

2 JUDGE MACAULEY: Just answer the  
3 question, Ms. Smith.

4 MS. SMITH: I'm sorry.

5 BY MS. SCOTT-JOHNSON:

6 Q Now are you alleging that none of  
7 the things that are cited here as actually  
8 happening, actually happened after Ms. Bagnoli  
9 made the complaint about you? Are you saying  
10 that the rest of the things that are listed in  
11 your discipline were fabrications?

12 A No.

13 Q Now when Mr. Lloyd spoke to you  
14 about what Ms. Bagnoli said, isn't it a fact  
15 that he just told you that Ms. Bagnoli  
16 complained and said she was afraid of you,  
17 that she didn't say anything about you being  
18 a Wiccan?

19 A Oh, yes, he did.

20 Q Well--

21 A He told me--

22 Q When you--



1           A        I'm sorry.

2           Q        When you think about it, did you  
3 tell him that you believed she was afraid of  
4 you because she knew you were Wiccan?

5           A        No, ma'am.

6           Q        You testified, in response to the  
7 judge's question, that all the people that had  
8 complained about you, you had complained about  
9 harassing you; is that correct?

10          A        I had either complained about  
11 harassing, or I had filed a thing that I had  
12 seen something wrong.

13          Q        Who, in fact, did you complain to  
14 management about, as far as about harassing  
15 you?

16          A        Jack Englehardt.

17          Q        Okay. And what did you tell Jack  
18 Englehardt about who was harassing you?

19          A        I wrote it down in complaint form.

20          Q        Well, tell us now. Tell us now.

21          Q        I told him that Michelle Rodriguez  
22 was harassing me by calling me names, and what

1 she did at the pizza thing that we had going  
2 one night. I told him about the time when she  
3 made a comment--Michelle Rodriguez made a  
4 comment during our briefing, and Mark  
5 Middleton agreed with her, and I told him  
6 about the way Mark [sic] always walks by and  
7 leaves the door open, which is, in my opinion,  
8 a way of getting me fired, because if I go to  
9 close that door and somebody gets through the  
10 metal detector, I can get fired.

11 If I don't close the door and  
12 somebody gets through the door, I can get  
13 fired.

14 Q Okay. Now first of all, you claim  
15 you told him about Michelle Rodriguez.  
16 Specifically, what did you tell him about  
17 Michelle Rodriguez, and when did you tell him  
18 that?

19 A I don't know the exact dates of  
20 when I--

21 JUDGE MACAULEY: When was this  
22 meeting with Mr. Englehardt?

1 MS. SMITH: Excuse me?

2 JUDGE MACAULEY: When was this  
3 meeting with Englehardt?

4 MS. SMITH: I never really met  
5 with him.

6 JUDGE MACAULEY: You told Jack  
7 Englehardt--

8 MS. SMITH: I just handed in--  
9 handed written forms.

10 JUDGE MACAULEY: Oh. The written  
11 complaint forms?

12 MS. SMITH: Right.

13 BY MS. SCOTT-JOHNSON:

14 Q Did you date those forms/

15 A Yes, ma'am.

16 Q And what date--

17 JUDGE MACAULEY: Are these in the  
18 record?

19 MS. SMITH: Yes; they are.

20 MS. SCOTT-JOHNSON: Yes; they're  
21 in.

22 JUDGE MACAULEY: What exhibit?

1 MS. SMITH: I have them in a  
2 separate folder, if you'd like--

3 JUDGE MACAULEY: No; no. Where--  
4 what exhibit are they? Have you looked at  
5 the--do you know what exhibit--we're off the  
6 record.

7 [Discussion off the record]

8 JUDGE MACAULEY: Go ahead.

9 MS. SMITH: It was dated after my  
10 mentoring with Mary Bagnoli. It was a  
11 complaint that I filed about what happened  
12 when I mentored with her, and shortly there  
13 afterwards.

14 BY MS. SCOTT-JOHNSON:

15 Q Okay. So you're saying all the  
16 people that you complained--all the people  
17 that had complained about you, you had already  
18 complained about. Now this report that you're  
19 talking about here is dated March 2009;  
20 correct?

21 A Correct.

22 Q So this is the first time that you

1 ever made any complaint about anybody, as far-  
2 -in response to your--in confirmation of your  
3 statement that the people that you--that  
4 complained about you, you had complained about  
5 already. Okay? In clarification of that,  
6 you're saying that you had complained about  
7 them and those complaints were contained in  
8 the Report of Investigation at--this  
9 particular one at page 249; correct?

10 A Right.

11 Q So that the people that you're  
12 saying you had complained about--

13 A I don't know if that's the first  
14 time I ever complained about Michelle but--

15 Q Okay. So when you say you don't  
16 know whether it's the first time you ever  
17 complained about Michelle, then if you don't  
18 know whether you complained to anybody else,  
19 how are we to know whether or not you  
20 complained to somebody else, if you don't  
21 know?

22 A Well, I'd have to look at the

1 dates on the papers. After two years, I don't  
2 remember the exact dates.

3 Q Okay. So would you do so, and  
4 tell us whether or not you complained about  
5 anybody prior to March of 2009.

6 A [Witness perusing documents]  
7 April 30th. Mark Middleton. April 30th was  
8 Mark Middleton. And obviously Mark and  
9 Michelle are, are friends, so it kind a goes  
10 along with it. Let's see. 4-19. Oh, that's--  
11 --I'm sorry. That's after March.

12 Q So, in essence, the people that  
13 you say you complained about, that had  
14 complained about you, you complained about  
15 them after you found out that they had  
16 complained about you; is that correct?

17 A No.

18 Q You complained about--

19 A No, I--

20 Q But when you did complain about  
21 them, you complained about it after they had  
22 complained about you?

1           A       No.

2           Q       Okay. Well, you took--

3           A       I--when I--my complaints that I  
4       have, that were after the fact, are not  
5       complaints. They are rebuttals to what they  
6       had said about me.

7           Q       So what I'm saying is that at the  
8       time, with all the names that we went through  
9       when we talked about August of 2008, October  
10      of 2008, November of 2008--those people that  
11      had made complaints, you had not made  
12      complaints about; is that correct?

13          A       No.

14          Q       Okay. And none of those people  
15      that we talked about, as far as you know--Ms.  
16      Winn, Mr. Blankenberger, Ms. Sullivan, Mr.  
17      Middleton--none of those people, to your  
18      knowledge, as of the time that they complained  
19      about these--or wrote these counselings, or  
20      these issues, knew about your religion; is  
21      that correct?

22          A       Mark may have.

1 Q And Mark may have--

2 A In May.

3 Q --known about it as early as--

4 A March.

5 Q March of 2009?

6 A Yes. This is going to be a lot  
7 longer than I thought. I'm starting to get  
8 sleepy.

9 JUDGE MACAULEY: Okay. Please  
10 don't--you're on the record. Anything you say  
11 is taken down. Do you have much more?

12 MS. SCOTT-JOHNSON: I'm trying to  
13 remember things that I wanted to rebut, Judge.  
14 Just one second, and I'll let you know.

15 Judge, no, I'm going to let the  
16 other witnesses talk. I'm not going to--I'm  
17 finished with--yes.

18 JUDGE MACAULEY: Nothing else.  
19 Okay. Do you have anything to add, Ms. Smith?

20 In other words, is there any  
21 testimony you want to give in response to the  
22 questions asked by Ms. Johnson?



1 MS. SMITH: I don't even remember-  
2 -I guess not.

3 JUDGE MACAULEY: Okay.

4 MS. SMITH: I think I've said  
5 everything I can say.

6 JUDGE MACAULEY: All right.  
7 We'll break for lunch.

8 [Whereupon, a luncheon recess was  
9 taken.]

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A F T E R N O O N S E S S I O N

[2:18 p.m.]

JUDGE MACAULEY: On the record.

Ms. Tompkins, you are employed by  
TSA?

MS. TOMPKINS: Correct.

JUDGE MACAULEY: And what's your  
position?

MS. TOMPKINS: TSO.

JUDGE MACAULEY: Since when?

MS. TOMPKINS: Two thousand--2002.  
Eight years.

JUDGE MACAULEY: At the Albany  
Airport?

MS. TOMPKINS: Correct.

JUDGE MACAULEY: Consistent, from  
2002 to present?

MS. TOMPKINS: Yes.

JUDGE MACAULEY: Okay. Do you  
know the Complainant, Carole Smith?

MS. TOMPKINS: Yes.

JUDGE MACAULEY: And how do you

1 know her?

2 MS. TOMPKINS: I worked with her.

3 JUDGE MACAULEY: Worked?

4 MS. TOMPKINS: Yes.

5 JUDGE MACAULEY: In what capacity?

6 MS. TOMPKINS: TSO. Carole was a  
7 TSO also.

8 JUDGE MACAULEY: You were  
9 coworkers, then?

10 MS. TOMPKINS: Yes. And mentor.

11 JUDGE MACAULEY: Okay, Ms. Smith,  
12 you can examine the witness.

13 MS. SCOTT-JOHNSON: Judge, is she  
14 going to be sworn, or--

15 JUDGE MACAULEY: Oh, please. Yes.  
16 Will you swear in the witnesses, please.

17 THE REPORTER: Sure. Raise your  
18 right hand, please.

19 WHEREUPON,

20 DOROTHY TOMPKINS

21 WAS CALLED AS A WITNESS BY AND ON BEHALF OF

22 THE COMPLAINANT AND, HAVING FIRST BEEN DULY

1 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MS. SMITH:

4 Q Hi.

5 A Hi.

6 Q You were my mentor; right?

7 A Correct.

8 Q My second and last mentor; right?

9 A Yes.

10 JUDGE MACAULEY: When did you  
11 mentor the Complainant?

12 MS. TOMPKINS: You want a date?

13 JUDGE MACAULEY: As best to your  
14 recollection, please.

15 MS. TOMPKINS: I'd say  
16 approximately a year ago.

17 JUDGE MACAULEY: From when to  
18 when?

19 MS. TOMPKINS: You know, I don't  
20 have those dates.

21 JUDGE MACAULEY: I know. But can  
22 you recall an approximate time.

1 MS. TOMPKINS: I mentored her for  
2 approximately two months.

3 JUDGE MACAULEY: Two months.

4 MS. TOMPKINS: Approximately--  
5 probably a little over a year ago; a year and  
6 a half.

7 JUDGE MACAULEY: So in the fall of  
8 2009?

9 MS. TOMPKINS: Probably; yes.

10 JUDGE MACAULEY: All right.

11 BY MS. SMITH:

12 Q Did you--do you remember us  
13 talking about religion?

14 A Yes.

15 Q Do you remember telling me that I  
16 should leave that subject out of everything,  
17 for my own good?

18 A I don't remember saying that. I  
19 may have but I--

20 Q But to stay "low key"?

21 JUDGE MACAULEY: Ms. Smith, before  
22 you continue, try to ask your questions in a

1 more open-ended fashion. I would prefer.

2 MS. SMITH: Okay.

3 JUDGE MACAULEY: The Agency, I'm  
4 going to direct to do that on their case, and  
5 I know you're not an attorney, and I know you  
6 don't have any practice, or maybe any skill in  
7 examination. But try to say questions that  
8 begin with a who, what, when, where, why, how.  
9 Or what. That way, it's the witness who'll be  
10 testifying, not you.

11 MS. SMITH: Okay.

12 JUDGE MACAULEY: Do you see what  
13 I'm saying? She's your witness. So I would  
14 prefer that you try--you know what I'm saying?  
15 I know it's hard, but I would--you'll--it's a  
16 better way to examine.

17 MS. SMITH: Okay.

18 JUDGE MACAULEY: Okay.

19 MS. SMITH: Maybe I'll go to law  
20 school after this.

21 JUDGE MACAULEY: Well--

22 BY MS. SMITH:

1           Q       Can you just tell about our  
2 working relationship.

3           A       Well, I was your mentor for that  
4 period of time, and I think we had a very good  
5 relationship. You did extremely well as far  
6 as your learning ability.

7           JUDGE MACAULEY: Ms. Tompkins.

8           MS. TOMPKINS: Yes?

9           JUDGE MACAULEY: What, exactly, is  
10 a mentor?

11          MS. TOMPKINS: For every new  
12 employee, they assign someone to that employee  
13 to teach them various positions, as far as the  
14 job is concerned.

15          JUDGE MACAULEY: Do you make  
16 assessments about their ability to work?

17          MS. TOMPKINS: Yes.

18          JUDGE MACAULEY: And do you report  
19 those assessments to anyone?

20          MS. TOMPKINS: Yes.

21          JUDGE MACAULEY: Who?

22          MS. TOMPKINS: The Training

1 Department.

2 JUDGE MACAULEY: And who did you  
3 report to while you were Complainant's mentor?

4 MS. TOMPKINS: I reported them to  
5 the Training Department. There are several  
6 people--

7 JUDGE MACAULEY: To a person? Oh.

8 MS. TOMPKINS: Well, there are  
9 several people working in the Training  
10 Department. I don't know who, ultimately, got  
11 those reports. I don't know.

12 JUDGE MACAULEY: When you say the  
13 Training Department, are you talking to  
14 supervisors in the Training Department?

15 MS. TOMPKINS: Yeah. Well, I  
16 don't know if they're all supervisors, but the  
17 people that do work in the Training  
18 Department.

19 JUDGE MACAULEY: And when you  
20 mentor somebody, I guess you're showing them  
21 job skills.

22 MS. TOMPKINS: Exactly.



1 JUDGE MACAULEY: And what does  
2 that mean as a TSO, or a probationary TSO?

3 MS. TOMPKINS: What does it mean?

4 JUDGE MACAULEY: Well, I mean,  
5 what skills are you teaching?

6 MS. TOMPKINS: I'm teaching them  
7 the whole process.

8 JUDGE MACAULEY: Process. Does  
9 that include interrelationships with other  
10 TSOs?

11 MS. TOMPKINS: No.

12 JUDGE MACAULEY: No. So then  
13 could you define me what exactly you teach  
14 them.

15 MS. TOMPKINS: I teach them the  
16 process involved in doing the job that we have  
17 to do. In other words, there's an X-ray  
18 position. I teach her. I mentor her on X-  
19 ray. There's a mag. People that come through  
20 the metal detector. Body searches. Pat-  
21 downs. Reading tickets. That sort of thing.

22 JUDGE MACAULEY: Okay. Aside from

1 those technical aspects of a TSO, anything  
2 else?

3 MS. TOMPKINS: That I trained her  
4 to do?

5 JUDGE MACAULEY: Yeah.

6 MS. TOMPKINS: No.

7 JUDGE MACAULEY: Okay. So when  
8 you say Complainant performed her job skills  
9 well, that's what you meant?

10 MS. TOMPKINS: Yes.

11 JUDGE MACAULEY: Doing the  
12 technical aspects of--

13 MS. TOMPKINS: Yes; that's  
14 exactly.

15 JUDGE MACAULEY: Okay; go ahead.

16 BY MS. SMITH:

17 Q What problems was I having when  
18 you were mentoring me?

19 A You weren't having--

20 MS. SMITH: I have a hard time  
21 talking to her [sobbing sounds audible]

22 JUDGE MACAULEY: Okay. Could you

1 step outside for just a moment.

2 MS. TOMPKINS: Sure.

3 JUDGE MACAULEY: Thanks.

4 [Witness exits courtroom]

5 MS. SMITH: I know she's putting  
6 her job on the line.

7 JUDGE MACAULEY: She has--okay.  
8 Yes; we're still on the record. Ms. Smith,  
9 your job is to just examine the witness. The  
10 witnesses. She hasn't expressed any hesitancy  
11 in her testimony. Therefore, I don't see any  
12 reason to remind her of anything, or her  
13 rights, or so on and so forth.

14 So I know this is difficult, but  
15 it's going to take us a while if--you know.  
16 You just ask her the salient questions you  
17 need to ask her in order to substantiate your  
18 allegations.

19 MS. SMITH: Well, I'm having a  
20 difficult time wording them.

21 JUDGE MACAULEY: I'll help you.

22 MS. SMITH: I want to know if she

1 ever heard derogatory things said about me.

2 JUDGE MACAULEY: Okay. That's a  
3 perfectly fine question to ask. And where I  
4 see that you'll have a problem asking, I'll  
5 interject. You saw what I just did. All  
6 right?

7 MS. SMITH: Thank you.

8 JUDGE MACAULEY: All right.  
9 However, I'm just there to clarify her  
10 testimony. You know your case, so you know  
11 what questions you want to ask her. But what  
12 you just said is a perfect kind of question  
13 that you probably need to get on the record.

14 You were terminated, you were  
15 reprimanded. I don't know what this witness  
16 knows, exactly. Okay. All right.

17 MS. SMITH: Okay.

18 JUDGE MACAULEY: Could you bring  
19 her in. Thanks.

20 MS. SMITH: Did you ever hear--

21 JUDGE MACAULEY: Well, actually, I  
22 think you should answer--did you observe Ms.

1 Smith to have any problems at TSA while she  
2 was working?

3 MS. TOMPKINS: I never observed,  
4 but she told me that she was having problems.

5 JUDGE MACAULEY: Okay. I would  
6 rather go into what you observed. You never  
7 saw her have any problems on the job?

8 MS. TOMPKINS: Not that I recall.

9 JUDGE MACAULEY: Okay. She told  
10 you had problems. What kind a problems did  
11 she tell you?

12 MS. TOMPKINS: Well, she was  
13 having a conflict with a prior mentor.

14 JUDGE MACAULEY: Who was that?

15 MS. TOMPKINS: Mary Bagnoli.

16 JUDGE MACAULEY: Okay. What kind  
17 of conflict?

18 MS. TOMPKINS: Well, you know,  
19 again, I think it might have been more of a  
20 personal conflict than anything else. But it  
21 seems that Mary was doing the same thing that  
22 I was doing, the same thing that I explained

1 to you that I did with her, and--

2 JUDGE MACAULEY: As a mentor?

3 MS. TOMPKINS: Yes. And Mary  
4 found fault with everything that she did. And  
5 I think there may have been a personal  
6 conflict also.

7 JUDGE MACAULEY: Now this is  
8 because Ms. Smith told you that?

9 MS. TOMPKINS: That's correct.  
10 Well, I think the Training Department may  
11 have. When they came to me and asked me if I  
12 would mentor her, I believe they said there  
13 was a problem between the two of them.

14 JUDGE MACAULEY: Okay. Did you  
15 observe the Complainant to have problems with  
16 other people at TSA?

17 MS. TOMPKINS: Carole?

18 JUDGE MACAULEY: Yes.

19 MS. TOMPKINS: Not that I recall.  
20 Or not that I know of.

21 JUDGE MACAULEY: Ms. Smith, go  
22 ahead.

1 BY MS. SMITH:

2 Q Did you ever hear any other TSOs  
3 say anything derogatory about my work, or  
4 about me, in general?

5 A About your performance?

6 Q About my performance or about just  
7 my--about me, period.

8 A No.

9 JUDGE MACAULEY: About--derogatory  
10 about you.

11 MS. SMITH: Derogatory about me.  
12 About being a target, or anything.

13 JUDGE MACAULEY: Okay. First,  
14 let's ask the general question.

15 MS. SMITH: I'm sorry.

16 JUDGE MACAULEY: Did you, did  
17 anyone talk derogatorily about Ms. Smith to  
18 you?

19 MS. TOMPKINS: As far as her  
20 performance was concerned?

21 JUDGE MACAULEY: No. Just about  
22 her, period.

1 MS. TOMPKINS: I'm sorry?

2 JUDGE MACAULEY: Just about her--  
3 you've already established that her  
4 performance was fine. But did you hear any  
5 derogatory comments about her, including, or  
6 aside from her performance?

7 MS. TOMPKINS: I did hear about  
8 her religion.

9 JUDGE MACAULEY: Why don't you  
10 tell me about it.

11 MS. TOMPKINS: I believe Carole is  
12 a Wiccan.

13 JUDGE MACAULEY: Okay.

14 MS. TOMPKINS: And there was one  
15 occasion where someone came to me and said  
16 that I should be careful, because she was a  
17 witch and she could cast a spell.

18 JUDGE MACAULEY: And who told you  
19 that?

20 MS. TOMPKINS: Joe Moore.

21 JUDGE MACAULEY: who? Joe who?

22 MS. TOMPKINS: Moore.



1 JUDGE MACAULEY: Joe Moore. Is  
2 that the person you referred to?

3 MS. SMITH: Yes, sir.

4 JUDGE MACAULEY: M-o-r-e?

5 MS. TOMPKINS: No. I believe it's  
6 M-o-o-r-e. Double o.

7 JUDGE MACAULEY: Oh, Moore.

8 MS. TOMPKINS: Moore.

9 JUDGE MACAULEY: Sorry. Who is  
10 he? A TSO?

11 MS. TOMPKINS: He's a lead. An  
12 LTSO.

13 JUDGE MACAULEY: Lead TSO. All  
14 right. Anything else?

15 MS. TOMPKINS: No.

16 JUDGE MACAULEY: He's the only  
17 person who made a derogatory comment about her  
18 religion?

19 MS. TOMPKINS: To me.

20 JUDGE MACAULEY: To you, is what  
21 I'm saying.

22 MS. TOMPKINS: Yes.

1 JUDGE MACAULEY: Did you ever hear  
2 people make derogatory comments about Ms.  
3 Smith?

4 MS. TOMPKINS: You know, that's a  
5 very difficult question to answer because--

6 JUDGE MACAULEY: Well, about her  
7 religion. About her religion.

8 MS. TOMPKINS: There were people--  
9 you know, there were people there that talked  
10 about the fact that she was a Wiccan, whether  
11 it was positive or negative.

12 JUDGE MACAULEY: Okay. Any  
13 supervisors?

14 MS. TOMPKINS: Not that I recall.

15 JUDGE MACAULEY: These were all  
16 rank-and-file TSOs?

17 MS. TOMPKINS: Correct.

18 JUDGE MACAULEY: Okay.

19 BY MS. SMITH:

20 Q Did you ever hear any other--  
21 anything else derogatory about me, other than  
22 my religion, like whether I would pass or fail

1 any a my tests?

2 A No.

3 MS. SMITH: I don't know what else  
4 to ask.

5 JUDGE MACAULEY: You were assigned  
6 to mentor her for two months about--in the  
7 fall?

8 MS. TOMPKINS: Approximately.

9 JUDGE MACAULEY: In the fall of--  
10 okay. And did you--I think you testified that  
11 you made an assessment about her performance?

12 MS. TOMPKINS: That's correct.

13 JUDGE MACAULEY: Were you also--  
14 aside from the technical aspects, like how to  
15 handle x-ray, how to do a pat-down, were you  
16 also assigned to observe and make assessments  
17 about how she complied with regulations, and  
18 rules, in general?

19 MS. TOMPKINS: Yes. Well, that's  
20 all part of it; yes.

21 JUDGE MACAULEY: Okay. Such as  
22 wearing her uniform, appearing--coming to work

1 on time, being late, so on and so forth. Is  
2 that a problem with her?

3 MS. TOMPKINS: As far as I was  
4 concerned, it was not.

5 JUDGE MACAULEY: And would you  
6 assess the Complainant relative to other  
7 probationary employees that you had to mentor?

8 MS. TOMPKINS: I think she was  
9 equal to.

10 JUDGE MACAULEY: Equal to?

11 MS. TOMPKINS: Yes.

12 JUDGE MACAULEY: Now when you  
13 stopped being a mentor, did you still observe  
14 the Complainant in the performance of her  
15 work?

16 MS. TOMPKINS: No.

17 JUDGE MACAULEY: No. So you  
18 didn't work with her every day?

19 MS. TOMPKINS: No. I did not.

20 JUDGE MACAULEY: I see.

21 Generally, what do you do as a TSO? The same  
22 things that Ms. Smith did?

1 MS. TOMPKINS: Exactly what I  
2 explained; yeah.

3 JUDGE MACAULEY: Okay. You just  
4 weren't with her at the time?

5 MS. TOMPKINS: At the time?

6 JUDGE MACAULEY: I mean throughout  
7 the year she was a probationary, aside from  
8 your mentoring.

9 MS. TOMPKINS: No; no. I was not  
10 with her at all times; no.

11 JUDGE MACAULEY: Okay. I have  
12 nothing further.

13 Ms. Smith.

14 MS. SMITH: I don't know what else  
15 to ask. You look good.

16 MS. TOMPKINS: Thank you.

17 JUDGE MACAULEY: Do you know a TSO  
18 probationary by the name of Chastity--what's  
19 her name? Chastity.

20 MS. TOMPKINS: Chastity. Chastity  
21 Ponce.

22 JUDGE MACAULEY: Ponce. At the

1 time she was probationary. I don't know where  
2 she is now.

3 MS. TOMPKINS: You know, I do  
4 recall that name. Yes. I believe there was  
5 someone here by that name.

6 JUDGE MACAULEY: Did you ever  
7 mentor her?

8 MS. TOMPKINS: No.

9 JUDGE MACAULEY: No.

10 MS. TOMPKINS: Not that I recall.

11 JUDGE MACAULEY: By your response  
12 to my question, it doesn't seem like you're  
13 that familiar with her.

14 MS. TOMPKINS: No. I don't  
15 remember her, actually. I know she was here  
16 but I--

17 JUDGE MACAULEY: Okay. That's it.  
18 All right. You're dismissed.

19 MS. TOMPKINS: Thank you.

20 MS. SCOTT-JOHNSON: Judge, do I  
21 get a chance to ask her any questions?

22 JUDGE MACAULEY: Oh, I'm sorry.

1 Sorry; sorry. My mistake.

2 CROSS-EXAMINATION

3 BY MS. SCOTT-JOHNSON:

4 Q Ms. Tompkins, prior to your  
5 mentoring Ms. Smith, did you know Ms. Smith?

6 A Yes.

7 Q And how long had you known her,  
8 prior to the time that you mentored her?

9 A Approximately--it's hard to say,  
10 exactly. I don't--I don't know. Six months.  
11 Seven months, maybe.

12 Q Prior to your mentoring her, how  
13 frequently would you say you were in contact  
14 with her with respect to your work? Were you  
15 working the same shifts?

16 A You know, I--we were, at one  
17 point. I'm not sure if she came on the  
18 morning. Did you come on in the--I'm not  
19 sure.

20 JUDGE MACAULEY: I'm sorry. You  
21 just have to answer the question. If you  
22 don't know, your answer is "I don't know."

1 MS. TOMPKINS: Okay. I'm not  
2 positive.

3 BY MS. SCOTT-JOHNSON:

4 Q Just to set a timeline on this,  
5 Ms. Smith's employment with TSA was terminated  
6 in June of 2009. Now you just testified that  
7 you believed that it was approximately a year  
8 ago, or so, that you mentored her, which the  
9 judge tried to put it in a timeframe of  
10 possibly the fall of 2009.

11 Considering the fact that Ms.  
12 Smith was--her appointment was terminated in  
13 June 2009, can you say approximately how close  
14 to the time of her termination that you were  
15 her mentor?

16 A I think she was terminated shortly  
17 after I mentored her, possibly several months.

18 Q Okay.

19 A I mean--

20 MS. SMITH: Excuse me. Can I  
21 object to that. I think--

22 JUDGE MACAULEY: You can object.



1 MS. SMITH: I object.

2 JUDGE MACAULEY: Okay. What's  
3 your objection?

4 MS. SMITH: I just think that she  
5 got the years mixed up.

6 JUDGE MACAULEY: All right.

7 MS. SMITH: Instead of 2009, it  
8 should a been 2008, that she mentored me.

9 MS. SCOTT-JOHNSON: Well, you were  
10 hired in June 2008.

11 MS. SMITH: Right. I was hired  
12 July 2008, started August 2008, was here in  
13 the fall of 2008 when she mentored me.

14 MS. TOMPKINS: But you were  
15 mentored before I mentored you.

16 MS. SMITH: I was mentored for  
17 about a month and a half before she mentored  
18 me.

19 JUDGE MACAULEY: I may have said  
20 2009 but it was 2008.

21 MS. TOMPKINS: Okay.

22 JUDGE MACAULEY: Okay. That's

1 your recollection; right?

2 MS. TOMPKINS: Yes.

3 JUDGE MACAULEY: Fall of 2008.

4 MS. TOMPKINS: Exactly what she's--  
5 -the timeline that she just--

6 MS. SCOTT-JOHNSON: Yes, I'm  
7 sorry. I did say 2009. I meant eight.

8 MS. TOMPKINS: I mean, it's hard  
9 to remember exactly. I mean, you know, time  
10 flies.

11 JUDGE MACAULEY: I understand.

12 MS. SCOTT-JOHNSON: I understand.  
13 I understand.

14 BY MS. SCOTT-JOHNSON:

15 Q Okay. So we're talking about the  
16 fall of 2008. Prior to your mentoring Ms.  
17 Smith, had you heard anything about her  
18 religion, prior to your mentoring her?

19 A Oh, my goodness.

20 JUDGE MACAULEY: Why--where does--  
21 is that significant?

22 MS. SCOTT-JOHNSON: Yes, Judge,

1 because she's--Ms. Smith is claiming that  
2 everybody knew, and what the relationship was,  
3 and how all of this comes from her being a  
4 Wiccan--

5 JUDGE MACAULEY: Well, this--

6 MS. SMITH: Nobody knew until  
7 March 8th about my--or March 5th about my  
8 religion. I never spoke to anybody about it  
9 until that report.

10 JUDGE MACAULEY: She only heard  
11 one comment. I mean, that's--

12 BY MS. SCOTT-JOHNSON:

13 Q Did Miss--from the time that--all  
14 right. Ms. Smith has just said, mentioned a  
15 date, March 2009--I take it you mean in March  
16 of 2009. Between March of 2009 and the time  
17 that Ms. Smith was terminated, did you hear  
18 anything--withdrawn.

19 Did Ms. Bagnoli ever talk to you  
20 about Ms. Smith?

21 A No.

22 Q Did Ms. Bagnoli ever--did you have

1 opportunity to observe interaction between Ms.  
2 Smith and Ms. Bagnoli while you were mentoring  
3 Ms. Smith?

4 A No.

5 Q Have you had opportunity to work  
6 with Ms. Bagnoli at any time during the time  
7 that we're talking about?

8 A Yes.

9 Q In that period of time, did Ms.  
10 Bagnoli say anything derogatory about Ms.  
11 Smith to you?

12 A No.

13 Q Have you heard any other employee  
14 say anything derogatory about Ms. Smith to  
15 you?

16 A About her performance?

17 Q About anything. Other than what  
18 you said about Mr. Moore.

19 A Okay. Not directly to me; no.

20 Q Did you ever tell Ms. Smith that  
21 it was not smart for her to complain--to make  
22 a complaint about her religion, that involved

1 her religion?

2 A A complaint?

3 Q Yes. Did you ever tell her, "I  
4 wouldn't do that if I were you," when she  
5 talked about possibly making a complaint?

6 A I don't recall. I really don't.

7 Q Did you ever advise Ms. Smith to  
8 keep her religion out of conversations?

9 A I may have. I don't recall,  
10 though.

11 Q When the Training Department asked  
12 you to mentor--did they ask you to mentor Ms.  
13 Smith?

14 A They did.

15 Q Okay. When they asked you to  
16 mentor Ms. Smith, did they say anything about  
17 anything, particularly, you had to watch out  
18 for, or did they say anything derogatory about  
19 her performance at the time?

20 A No. The only thing they said was  
21 that she was not getting along with her  
22 mentor, the gal that was mentoring her at the

1 time, and would I assess her performance,  
2 would I mentor her and assess her performance,  
3 which I did.

4 Q Okay.

5 JUDGE MACAULEY: And the gal she  
6 didn't get along with was Bagnoli; right?

7 MS. TOMPKINS: That's correct.

8 BY MS. SCOTT-JOHNSON:

9 Q And did they indicate anything  
10 about why they weren't getting along? Did  
11 they give you any information, or details,  
12 about why they weren't getting along?

13 A No.

14 Q During the time that you were  
15 mentoring Ms. Smith, was it your  
16 responsibility to pay attention to her time  
17 and attendance?

18 A No.

19 Q So if she was having problems with  
20 her time and attendance, or coming in, any of  
21 that, that wouldn't have been for you to note?

22 A No.

1 Q Okay. During the time that you  
2 mentored Ms. Smith, did any of the managers or  
3 supervisors come to you, and make any comments  
4 to you about Ms. Smith and/or her work?

5 A Not that I recall.

6 MS. SCOTT-JOHNSON: I have nothing  
7 further.

8 JUDGE MACAULEY: Anything else?

9 REDIRECT EXAMINATION

10 BY MS. SMITH:

11 Q You said that no other TSO ever  
12 said anything derogatory about me directly to  
13 you?

14 A Directly to me, they did not.

15 Q Did you overhear them between each  
16 other?

17 A Yes.

18 Q I'm sorry?

19 A Yes.

20 Q Do you remember what it was, or  
21 what it was about?

22 A It was about your religion.

1 Q Thank you.

2 JUDGE MACAULEY: But that  
3 commentary was from coworkers?

4 MS. TOMPKINS: Yes.

5 MS. SMITH: Yes. Not management  
6 or supervisors?

7 MS. TOMPKINS: No.

8 JUDGE MACAULEY: Did you ever hear  
9 that commentary made by coworkers, where  
10 supervisors were present?

11 MS. TOMPKINS: No.

12 JUDGE MACAULEY: In other words,  
13 in any of the commentary, could it have been  
14 heard by a supervisor?

15 MS. TOMPKINS: Not that I recall.

16 JUDGE MACAULEY: Okay.

17 RECROSS-EXAMINATION

18 BY MS. SCOTT-JOHNSON:

19 Q Okay. Were any of the  
20 commentaries malicious in nature?

21 JUDGE MACAULEY: I--go ahead.

22 MS. TOMPKINS: You know, it's



1       difficult to answer a question like that. I  
2       mean, I might say yes, when, in fact, they  
3       were not. I mean, it's my opinion only. Are  
4       you asking for my opinion?

5                   JUDGE MACAULEY: Yes.

6                   MS. TOMPKINS: They may have been.

7                   BY MS. SCOTT-JOHNSON:

8           Q       Did Ms. Smith ever tell you that  
9       she--or did you ever recommend to Ms. Smith to  
10      complain to management?

11          A       Oh, my goodness. Again, you know,  
12      I may have. I don't totally recall that; but  
13      I may have. That's the best I can answer it.  
14      I mean, I may have, if I felt that she was  
15      being--I may have.

16          Q       Well, my question is in the time  
17      that you mentored her, did you feel that Ms.  
18      Smith--well, withdrawn. Even as just a  
19      coworker, if you felt Ms. Smith was having  
20      problems as a result--I mean, problems that  
21      were affecting her work, would you recommend  
22      that she go to management?

1 JUDGE MACAULEY: That's  
2 speculative. That's a speculative question.  
3 I don't want to hear it.

4 MS. SCOTT-JOHNSON: All right.

5 BY MS. SCOTT-JOHNSON:

6 Q Did you notice Ms. Smith having  
7 any problems that you felt should have been  
8 brought to management's attention?

9 JUDGE MACAULEY: What relevance is  
10 that?

11 MS. SCOTT-JOHNSON: Severity,  
12 Judge. Severity--

13 JUDGE MACAULEY: Severity--

14 MS. SCOTT-JOHNSON: --of the  
15 allegations, as far as the--her allegations of  
16 harassment. The level to which--you know. I  
17 mean, she's claiming she was harassed.

18 JUDGE MACAULEY: Well, that's a  
19 conclusion. She said she only heard Joe--

20 MS. SCOTT-JOHNSON: Moore.

21 JUDGE MACAULEY: --Moore, and she  
22 overheard other people make some derogatory

1        comments.  What are you asking her now?

2                    MS. SCOTT-JOHNSON:  Whether or not  
3 she observed any actions that should have been  
4 brought to the attention of management.

5                    JUDGE MACAULEY:  She's not a  
6 manager.  So I don't know why you're asking  
7 her that.

8                    MS. SCOTT-JOHNSON:  All right.  
9 I'll withdraw the question, Judge.

10                   MS. SMITH:  I have one more  
11 question.

12                   JUDGE MACAULEY:  Are you done?

13                   MS. SCOTT-JOHNSON:  Yes.  I'm  
14 done.

15                   MS. SMITH:  Okay.

16                   FURTHER REDIRECT EXAMINATION

17                   BY MS. SMITH:

18                   Q        What was your reaction, the day I  
19 was terminated?

20                   A        My reaction was I was shocked.

21                   Q        Why?

22                   A        Because--

1 MS. SCOTT-JOHNSON: Judge, I'm  
2 objecting.

3 JUDGE MACAULEY: You can answer.  
4 You can answer.

5 MS. TOMPKINS: Because I just  
6 didn't know what had happened to create your  
7 termination, and if you'll recall, when you  
8 came out of the room, I was sitting outside  
9 the room and I said to you, Carole, what  
10 happened? what, what--and you said to me--I  
11 think you said I've been released, or  
12 something to that effect.

13 MS. SMITH: I've been terminated.

14 JUDGE MACAULEY: You were shocked--  
15 -because why? Why would that have evoked such  
16 a response?

17 MS. TOMPKINS: Because I didn't  
18 know of anything that--and again, I'm not  
19 management, so I wouldn't know these things.

20 JUDGE MACAULEY: Right.

21 MS. TOMPKINS: But I didn't know  
22 any reason why she would have been terminated.

1 JUDGE MACAULEY: Based on your  
2 mentoring her?

3 MS. TOMPKINS: Yeah. My mentoring  
4 and my knowledge, you know, of her, and  
5 working with her. But again, I'm not a  
6 manager, so I don't know what the reason was.

7 JUDGE MACAULEY: Okay. Anything  
8 else?

9 JUDGE MACAULEY: Nothing.

10 JUDGE MACAULEY: Thank you, Ms.  
11 Tompkins. You're dismissed.

12 [Witness excused]

13 JUDGE MACAULEY: Let's hear the  
14 next one. Is that--Hay, right?

15 MS. SMITH: Yes. This is so hard.  
16 I'm sorry. [Sobbing sounds]

17 JUDGE MACAULEY: You okay?

18 MS. SMITH: I just have to keep  
19 remembering what Salina Fox told me to do.

20 JUDGE MACAULEY: Okay.

21 MS. SMITH: Judge, can we go off  
22 the record.

1 JUDGE MACAULEY: Okay.

2 [Discussion off the record]

3 JUDGE MACAULEY: Back on the  
4 record. Your name is?

5 MS. HAY: Linda Hay.

6 JUDGE MACAULEY: I'm sorry. I  
7 can't read your

8 MS. HAY: I'm sorry. Linda Hay.

9 JUDGE MACAULEY: Yes. Linda Hay.  
10 Okay. And you work for the TSA, I see.

11 MS. HAY: Yes, sir.

12 JUDGE MACAULEY: And what do you  
13 do? What's your job title?

14 MS. HAY: Well, just a security  
15 agent, transport security--

16 JUDGE MACAULEY: Okay. We're here  
17 at a hearing, so I have questions to ask of  
18 you, and then you just respond to my  
19 questions.

20 MS. HAY: Okay.

21 JUDGE MACAULEY: You don't have to  
22 flip your badge.

1 MS. HAY: Oh, I mean--

2 JUDGE MACAULEY: Okay. A, I can't  
3 read your badge--

4 MS. HAY: Sorry; okay.

5 JUDGE MACAULEY: --and two, it's--  
6 you know, I want you to answer my questions,  
7 and just don't--

8 MS. HAY: Okay. Transport  
9 security inspector.

10 JUDGE MACAULEY: Thank you.

11 MS. HAY: Oh, you're a TSI?

12 MS. HAY: Well, no--

13 JUDGE MACAULEY: Thank you.

14 Please.

15 WHEREUPON,

16 LINDA HAY

17 WAS CALLED AS A WITNESS BY AND ON BEHALF OF

18 THE COMPLAINANT AND, HAVING FIRST BEEN DULY

19 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

20 JUDGE MACAULEY: You're a

21 transport security inspector?

22 MS. HAY: Well, yeah, downstairs,

1       like a TSA officer.

2                   JUDGE MACAULEY:   Okay.

3                   MS. HAY:    You're TSO.

4                   JUDGE MACAULEY:   That's the same  
5       as a TSA off--TS--

6                   MS. HAY:    Yes.

7                   JUDGE MACAULEY:   You're a TSO?

8                   MS. HAY:    Yeah.  I mean, when we  
9       sign it, we sign it like TSA, T--and so that's  
10      the reason--I thought she was asking what the  
11      full signature meant.

12                   JUDGE MACAULEY:   Okay.

13                   MS. HAY:    I'm sorry.  I  
14      misunderstood.

15                   JUDGE MACAULEY:   That's all right.  
16      You're a TSO--

17                   MS. HAY:    Yes.

18                   JUDGE MACAULEY:   --and your job is  
19      a transport security inspector.

20                   MS. HAY:    Yes.

21                   MS. SCOTT-JOHNSON:   And how long  
22      have you been that?



1 MS. HAY: Since Carole and I were  
2 in class. July the 20th.

3 JUDGE MACAULEY: 2008?

4 MS. HAY: Yes.

5 JUDGE MACAULEY: Okay. Here, at  
6 the Albany Airport?

7 MS. HAY: Well, we took the class  
8 away from the airport but it was to work here.

9 JUDGE MACAULEY: Okay. So you've  
10 been working here since then?

11 MS. HAY: Yes, sir.

12 JUDGE MACAULEY: uninterruptedly?

13 MS. HAY: Yes, sir.

14 JUDGE MACAULEY: All right. And  
15 you know the Complainant, as you said?

16 MS. HAY: Yeah. Carole. Yeah. I  
17 mean yes, sir.

18 JUDGE MACAULEY: Because you were  
19 in the same class together.

20 MS. HAY: Yes, sir.

21 JUDGE MACAULEY: Training class.

22 MS. HAY: Yes, sir. Well, we

1 worked together, too, you know, after the  
2 class.

3 JUDGE MACAULEY: How closely?

4 MS. HAY: Well, we trained  
5 together we were on the floor together. We  
6 worked in Baggage together.

7 JUDGE MACAULEY: Work every day?

8 MS. HAY: I can't remember if we  
9 were here--I mean, if we had the same  
10 schedule. I know when--

11 JUDGE MACAULEY: Pretty much every  
12 day?

13 MS. HAY: Pretty much, sir.

14 JUDGE MACAULEY: Okay.

15 MS. HAY: But I worked part time  
16 and Carole worked full time.

17 JUDGE MACAULEY: When did you  
18 work? Your hours?

19 MS. HAY: I think I started out  
20 from 1:00 to 6:00. No. 12:00 to 6:00.

21 JUDGE MACAULEY: 12:00 at night?  
22 12:00 in the morning? Afternoon or night?

1 MS. HAY: Let me see. It was at  
2 1:00 or 2:00, I had to be here. It might a  
3 been 1:00 o'clock in the afternoon to 6:00.  
4 I can't really remember, when I started out,  
5 what the hours were.

6 JUDGE MACAULEY: Okay. The  
7 afternoon--

8 MS. HAY: It was either 12:00 to  
9 6:00 or 1:00 to 6:00. I can't--

10 JUDGE MACAULEY: Okay. You worked  
11 in the afternoon?

12 MS. HAY: Yes, sir.

13 JUDGE MACAULEY: All afternoon  
14 together, with Complainant, for most of the  
15 time that she worked here. Is that true?

16 MS. HAY: Well, we might not be on  
17 the different--like she might be downstairs  
18 working, I might be upstairs. But when we  
19 started out, we were pretty much together.

20 JUDGE MACAULEY: When did it sort  
21 of not be so much together?

22 MS. HAY: I can't really remember.

1 I mean--

2 JUDGE MACAULEY: Well, best of  
3 your recollection.

4 MS. HAY: I can't really remember.  
5 I mean, even when we worked together,  
6 we weren't like together. Does that make  
7 sense?

8 JUDGE MACAULEY: Yes. It does.

9 MS. HAY: Okay.

10 JUDGE MACAULEY: You ran into each  
11 other all the time, though?

12 MS. HAY: Yeah.

13 JUDGE MACAULEY: Okay.

14 MS. HAY: I mean, we weren't side  
15 by side. I can't really remember when like  
16 was split up.

17 JUDGE MACAULEY: Okay.

18 MS. HAY: Because again, you know,  
19 she was getting in more hours, so she advanced  
20 farther than I did.

21 JUDGE MACAULEY: Okay.

22 MS. HAY: Okay.

1 JUDGE MACAULEY: Do you have any  
2 questions?

3 MS. SMITH: Yeah.

4 DIRECT EXAMINATION

5 BY MS. SMITH:

6 Q When we went through the class  
7 together, I mean, we were pretty much like--

8 A Yeah; we were good friends.

9 Q Yeah. Went to lunch.

10 A Yes.

11 Q Breaks?

12 A Yes. Well, I don't think we took  
13 any breaks together. Well, just sitting  
14 outside but we--yeah.

15 Q That's what I meant; yeah. Were  
16 either one of us ever late getting back from  
17 break? Or lunches or anything?

18 A One time I think, you know, when  
19 you got late and Mary "got on you," because  
20 you went to the bank.

21 Q Oh, okay; yeah. I had to go to the  
22 bank that day.

1 JUDGE MACAULEY: Mary. Who's  
2 Mary?

3 MS. HAY: Our trainer.

4 JUDGE MACAULEY: Who's--

5 MS. SMITH: It was Mary--it was  
6 Mary Winn.

7 JUDGE MACAULEY: Mary Winn?

8 MS. SMITH: Yeah.

9 JUDGE MACAULEY: Okay.

10 MS. SMITH: Yeah. Yeah, I  
11 remember that day cause I had to go to the  
12 bank.

13 JUDGE MACAULEY: How serious is  
14 that?

15 MS. HAY: Pretty serious.

16 JUDGE MACAULEY: Pretty serious?

17 MS. HAY: Yeah.

18 JUDGE MACAULEY: Being late once?

19 MS. HAY: Well, they told us at  
20 the start, it's like we were working for TSA,  
21 and that we had to be on time, because it's  
22 just like you being at your job.

1 JUDGE MACAULEY: Yes.

2 MS. HAY: If you weren't on--you  
3 know, like you had to be on the floor at that  
4 minute, you take your 15 minute breaks, you  
5 had to be back into the classroom. If you  
6 took lunch, you had to be back.

7 JUDGE MACAULEY: Right.

8 MS. HAY: So it was, you know,  
9 pretty serious. Cause most time, I just  
10 brought my lunch cause I knew I didn't have  
11 time to leave.

12 JUDGE MACAULEY: So being late  
13 five minutes can--is a pretty serious thing?

14 MS. HAY: Being late for one  
15 minute was serious.

16 JUDGE MACAULEY: One minute is  
17 serious?

18 MS. HAY: Yeah.

19 JUDGE MACAULEY: And if you're  
20 late for one minute, what could that get?  
21 What could that ha--what could happen?

22 MS. HAY: Well, you're talking

1 about if the training class, or--

2 JUDGE MACAULEY: Whenever you're  
3 late a minute.

4 MS. HAY: I think--

5 JUDGE MACAULEY: From lunch.

6 MS. HAY: Well, I don't--I think  
7 you get written up. I've never been late, so-  
8 -

9 MS. SCOTT-JOHNSON: You get  
10 written up?

11 MS. HAY: I think. I'm not sure.  
12 Or they verbally give you a verbal warning.

13 JUDGE MACAULEY: But you're under  
14 the impression that if you're late a minute,  
15 you could get written up?

16 MS. HAY: Well, I'm under the  
17 impression if you're late a minute, you get in  
18 trouble. So I don't know what the  
19 repercussions are, but--

20 JUDGE MACAULEY: Okay. Well, I  
21 just wanted to know what your expectations  
22 were.



1 MS. HAY: Yeah. I know to be here  
2 on time, cause they said it's serious.

3 JUDGE MACAULEY: Okay. What's  
4 your next question?

5 BY MS. SMITH:

6 Q Did you know about any trouble  
7 between myself and Mary Bagnoli?

8 A When she started being your  
9 mentor.

10 Q And after?

11 A Well, I know when, what you told  
12 me when you all's men--when she was mentoring  
13 you. Is that what--I mean, I don't know--who  
14 am I supposed to answer to? You?

15 JUDGE MACAULEY: You can go ahead  
16 and look at Ms. Smith. She's asking you  
17 questions. Go ahead and look at her.

18 MS. HAY: Yeah, I mean I didn't--  
19 okay. I didn't know if I had to--I she asked  
20 a question, I had--

21 JUDGE MACAULEY: No, no, no. Just  
22 be yourself. You've having a conversation but

1 I'm going to referee how it's going on.

2 MS. HAY: Okay. You know, when  
3 you said that Mary "got on you," she made you  
4 read the SOP again, and she called Bill in  
5 there, and I forgot--I can't remember what she  
6 told me that you did, but you said it made you  
7 uncomfortable because Bill was our trainer,  
8 and you didn't want him to think less of you.

9 So I know that--

10 JUDGE MACAULEY: Just try to  
11 respond to the question, in its simplest form.

12 MS. HAY: Okay. I know that--I  
13 know--

14 MS. SMITH: You're asking the  
15 wrong person that.

16 JUDGE MACAULEY: Well, that's  
17 okay. Then, I'll--your question was what, Ms.  
18 Smith?

19 MS. SMITH: Were you aware of any--

20 MS. HAY: Okay. Yes.

21 MS. SMITH: --issues between Mary  
22 Bagnoli myself?

1 MS. HAY: Yes.

2 JUDGE MACAULEY: Okay.

3 MS. HAY: So that should be it.

4 JUDGE MACAULEY: That's it.

5 MS. HAY: Okay.

6 JUDGE MACAULEY: You'll get used  
7 to it.

8 MS. HAY: Okay.

9 BY MS. SMITH:

10 Q Did you ever overhear her talking,  
11 and saying things, derogatory, about me?

12 A Not Mary; no.

13 Q Over here. Okay. Other TSOs?

14 A When you say derogatory, do you  
15 mean like--

16 Q Negative.

17 A Well--

18 JUDGE MACAULEY: Nasty.

19 MS. SMITH: Nasty.

20 MS. HAY: Not nasty.

21 MS. SMITH: Unusual?

22 JUDGE MACAULEY: Wait; wait. Hold

1       it.  There's a court reporter.  She can't take  
2       down people when they're all talking together.  
3       When I'm talking, that means don't say  
4       anything.

5                   MS. SMITH:  Yes, sir.

6                   JUDGE MACAULEY:  And you should  
7       wait till she finishes her question.

8                   MS. HAY:  Okay; okay.

9                   JUDGE MACAULEY:  And you wait till  
10      she finishes her answer.

11                  MS. SMITH:  Yes, sir.

12                  JUDGE MACAULEY:  That way, we  
13      won't drive Judy crazy, and we can get through  
14      this.  Go ahead.

15                  MS. HAY:  Okay, sir.  All right.

16                  JUDGE MACAULEY:  Nasty is what  
17      we're talking about, something that's not  
18      nice.

19                  MS. HAY:  Well, you're talking  
20      about when we started in our training class?

21                  MS. SMITH:  Ever.

22                  MS. HAY:  Well, I know sometime,

1       some a the guys got upset because you kept  
2       asking for cigarettes, and they might a said  
3       they didn't like you asking for cigarettes.  
4       But again, they weren't talking directly to  
5       me.

6                   Then something about--when you  
7       used to talk about not having money, and then  
8       one a the guys was gonna kind a give you some  
9       money. Then you come in with a new car, and  
10      he just--this was in the training class. I  
11      don't remember the guy's name.

12                   MS. SMITH: I don't remember.  
13      That was training class?

14                   MS. HAY: Yeah.

15                   BY MS. SMITH:

16                   Q       I mean afterwards, like when we  
17      were working, when you would like--when we'd  
18      have our conversations after work.

19                   A       Can you remind me.

20                   JUDGE MACAULEY: Did you ever hear  
21      anybody talk about her religion at work?

22                   MS. HAY: Not her religion; no.

1 JUDGE MACAULEY: Do you know what  
2 her religion is?

3 MS. HAY: It's Wiccum. Wiccum.

4 JUDGE MACAULEY: Okay. Wiccan.

5 MS. HAY: Yeah. Wiccan.

6 JUDGE MACAULEY: Everybody make  
7 any comments about--you know what a Wiccan--  
8 you know--okay. Let me ask you this.

9 Anybody make any derogatory  
10 comments about her beliefs?

11 MS. HAY: Not about her beliefs;  
12 no.

13 MS. SMITH: About anything else?

14 MS. HAY: Well, I think some  
15 people--like when you got upset on the exit  
16 lane one time, some people just said that you  
17 were saying some bad stuff on the exit lane,  
18 and then--

19 JUDGE MACAULEY: What kind of bad-  
20 -what do you mean by "bad stuff"?

21 MS. HAY: I don't--I don't really  
22 know what happened. I know Carole told me

1 that she--something happened on the exit lane.

2 Carole had to work over--

3 JUDGE MACAULEY: But this is what  
4 Ms. Smith told you.

5 MS. HAY: Yes, sir,.

6 JUDGE MACAULEY: We're asking  
7 about what you observed.

8 MS. HAY: I didn't observe it. I  
9 just listened to Carole.

10 JUDGE MACAULEY: Okay.

11 BY MS. SMITH:

12 Q From anyone else? Like I don't  
13 know--TSO Savage, or any of the other TSOs  
14 down like in the training room?

15 A No, because most people thought we  
16 were friends, and they didn't really talk to  
17 me about you. They just said--

18 Q But you never overheard anything?

19 A No.

20 Q Okay.

21 A The only--like I said, when  
22 something happened--oh, do I stop talking?

1 JUDGE MACAULEY: Go ahead.

2 MS. HAY: Like the exit lane. You  
3 know, I used to try to take up for Carole.  
4 Like if they said: Did you hear what Carole  
5 did about--she got upset on the exit lane and  
6 was using profanity. And I said no, she told  
7 me what happened, and I said that she didn't  
8 do that because, sometimes, like, you know,  
9 gossip would happen, but I don't even  
10 remember--they weren't talking about her, they  
11 were just talking about the incident.

12 JUDGE MACAULEY: Did Mr. Smith  
13 ever use profanity at work?

14 MS. HAY: Just a few times. I  
15 don't really remember a lot.

16 JUDGE MACAULEY: While she was  
17 doing her job?

18 MS. HAY: But--but I mean not  
19 like--I didn't hear it like--I mean, she  
20 wasn't talking--I didn't hear her like out in  
21 work talking like. She'd say sumpin' like,  
22 you know, under your breath like thing.



1 JUDGE MACAULEY: Oh. But she  
2 didn't shout it or anything? Or said.

3 MS. HAY: I never heard her shout

4 JUDGE MACAULEY: You never--okay.  
5 All right. Have any other questions?

6 MS. SMITH: No.

7 JUDGE MACAULEY: Any cross?

8 MS. SCOTT-JOHNSON: Yes.

9 CROSS-EXAMINATION

10 BY MS. SCOTT-JOHNSON:

11 Q Did Ms. Smith ever tell you that  
12 she was having problems with Ms. Bagnoli?

13 A Yes.

14 Q And did she say those problems  
15 were about?

16 A If I remember correctly--and again  
17 I don't remember exact--something about  
18 Carole--again, she talked about her, her and  
19 Bill being together, and I think Mary--I think  
20 Mary misunderstood again. I don't know what  
21 really happened, just from listening to  
22 Carole, that Mary wanted her personal life to

1 be outside of her personal--you know, outside  
2 the work, and wanted her work, what she was  
3 training Carole to do inside here. So she  
4 didn't want Carole to feel like--I mean,  
5 again, I'm not sure exactly, what happened.

6 Q Did you and Ms. Smith work--when  
7 you--after the training classes, did you and  
8 Ms. Smith work the same shift together?

9 A Yeah. We worked--well, not exact,  
10 cause I always left early, and I--did we have  
11 the same days off? I don't remember.

12 MS. SMITH: We did, at first.

13 JUDGE MACAULEY: Okay. You just  
14 answer her questions.

15 MS. SCOTT-JOHNSON: Okay. Just--  
16 yes. Just, just--

17 MS. HAY: I'm sorry; okay.

18 BY MS. SCOTT-JOHNSON:

19 Q During the time that you were  
20 working, and that you knew that at least you  
21 and Ms. Smith were working around the same  
22 time, not necessarily at the same location but

1 working the same time--did Ms. Bagnoli ever  
2 come to you and complain to you about Ms.  
3 Smith?

4 A No. Mary's never complained to  
5 me, personally, about Carole.

6 Q Did Ms. Smith ever complain to you  
7 about any other management officials with  
8 respect to her religion?

9 A I don't remember Carole saying  
10 anything, that somebody was talking about her  
11 religion.

12 Q So did Ms. Smith ever--you just  
13 answered that question but I just want to make  
14 it clear. Ms. Smith never came to you and  
15 said somebody is bothering me because of my  
16 religion?

17 A Not that I remember.

18 Q Or anything of that nature?

19 A No. I didn't--no, I never heard  
20 of that before.

21 Q Did you ever hear any of the  
22 other--other than what you've already

1 testified to, did you hear any of the other  
2 TSOs complain about Ms. Smith with respect to  
3 her religion?

4 A Now you're talking about being a  
5 Wiccan.

6 Q Yes.

7 A No.

8 Q Did you ever see the interaction  
9 between Ms. Bagnoli and Ms. Smith while they  
10 were working together?

11 A Yes.

12 Q Did you ever observe Ms. Bagnoli  
13 chastising or being mean to Ms. Smith?

14 A No.

15 Q Would you say, in your experience,  
16 in the time that you've been working at TSA,  
17 that Ms. Smith was treated any differently  
18 than any other TSO?

19 A I think we were treated the same  
20 as everybody else. I mean, you got some  
21 people that are kind a hard-nosed about your  
22 training but they just--it's just the way they

1 train, it's hard, and you don't take it  
2 personally.

3 Q Did you ever have an occasion to  
4 give Ms. Smith advice about how she should  
5 conduct herself at the job?

6 A Yes.

7 Q What did you say to her?

8 A Just kind a like to "lay low under  
9 the wire," and not--just do what they tell you  
10 to do, and just try to get your two years in,  
11 so you--cause with--under like a probation  
12 period, and not to pay so much attention to--  
13 like if something alle--like if some, maybe  
14 some TSO wasn't working, if she got upset, you  
15 know, like not to be upset about it, because  
16 the more we did, the more we learn. It's not  
17 like--you know--I don't know how to say it  
18 without--you know, like--

19 Q Did you detect, in your experience  
20 of being a TSO, while Ms. Smith was here, did  
21 you detect, personally, that there was any  
22 problem with her work, or her working?

1           A       Who?

2           Q       Ms. Smith.

3           A       No. I think she did okay. Matter  
4 of fact, I think her and Mary was friends  
5 cause she made her something for headaches.  
6 Remember that--that little thing you made for  
7 her headaches? Like that--it's arom--stuff  
8 that you put like stuff in, it makes you smell  
9 good, cause Mary has headaches real bad, and  
10 she gave Mary a gift and Mary took it, and I  
11 thought they was friends again.

12          Q       Were you surprised when Ms.  
13 Smith's appointment was terminated?

14          A       Am I surprised that she--

15          Q       Were you surprised when she was no  
16 longer working there?

17          A       Kind of; yes.

18          Q       Okay.

19                    JUDGE MACAULEY: You were kind a  
20 surprised?

21                    MS. HAY: Well, I was kind a  
22 surprised that--I mean, I thought it was

1 coming, but when she told me, it's like I kept  
2 thinking, okay, they're gonna give her one  
3 more chance, one more chance.

4 JUDGE MACAULEY: Why'd you think  
5 it was coming.

6 MS. HAY: Because it seemed like  
7 Carole kind a kept getting in trouble.

8 JUDGE MACAULEY: She kept getting  
9 in trouble?

10 MS. HAY: Yeah, like not being  
11 where you're supposed to be, or not wearing  
12 your uniform, and she had to be called  
13 upstairs, but you didn't have your uniform  
14 with you.

15 JUDGE MACAULEY: How'd you know  
16 all that?

17 MS. HAY: Cause Carole asked me to  
18 borrow my shirt one day, cause she had to go  
19 upstairs, and she was afraid she'd be written  
20 up, and she wanted to trade shirts with me.

21 JUDGE MACAULEY: She came to work  
22 without her TSA shirt?

1 MS. HAY: We have a polo shirt we  
2 can wear in the Baggage.

3 JUDGE MACAULEY: Yeah.

4 MS. HAY: But when we go upstairs,  
5 we're supposed to always have our dress shirt.  
6 So they call us upstairs to work, they give us  
7 time to change, to go upstairs. But if you  
8 don't have it, it's like you're not being--  
9 your being outta uniform--

10 JUDGE MACAULEY: Right.

11 MS. HAY: --because they can't put  
12 you on the floor, and they don't have nowhere  
13 to put you to work.

14 JUDGE MACAULEY: Right.

15 MS. HAY: So I felt bad because  
16 she was gonna get written up for not having  
17 her uniform. But I couldn't let her use my  
18 shirt because I would get in trouble for doing  
19 that too. So I didn't know what to do.

20 JUDGE MACAULEY: Right.

21 MS. HAY: So then Carole hurt her  
22 foot, and that's the reason I thought maybe



1 she got terminated.

2 JUDGE MACAULEY: Cause she hurt  
3 her foot.

4 MS. HAY: Yeah, because when she  
5 left to go upstairs, she got hurt, and she had  
6 to go to the emergency room, so she didn't go  
7 upstairs.

8 JUDGE MACAULEY: So you're all--  
9 well, okay. So these things mentioned, so  
10 you're not surprised that she was terminated?

11 MS. HAY: Well, yeah, cause--

12 JUDGE MACAULEY: You were hoping  
13 she wouldn't be but--

14 MS. HAY: Well, I just thought--I  
15 knew Carole had lost her mom, and she had a  
16 lotta--you know, like I said, you lose your  
17 mom, and she started work, and she did--she  
18 was having financial trouble, and, you know,  
19 I liked her and I just kept thinking, you  
20 know, she--sometimes, I just think sometimes  
21 people have, have a little period of--you  
22 know--getting situated, I guess.

1 JUDGE MACAULEY: All right.

2 MS. HAY: But I didn't--but it was  
3 some things that--like when Carole told me  
4 certain things, and then you might hear, later  
5 on, that's not what happened. So I don't  
6 know.

7 JUDGE MACAULEY: All right.

8 Anything further?

9 BY MS. SCOTT-JOHNSON:

10 Q Did you observe Ms. Smith being  
11 treated any differently, or any more harsh  
12 than any other TSO?

13 A No. Matter of fact, I thought  
14 they was a little bit more lenient toward  
15 Carole.

16 JUDGE MACAULEY: Who?

17 MS. HAY: I thought management  
18 was, because there was one guy who used  
19 profanity to another officer, and he got  
20 terminated right then and there. But I  
21 thought they was a giving Carole a little bit  
22 more chances.

1 JUDGE MACAULEY: Did you ever see  
2 that, Ms. Smith engage in that same behavior?

3 MS. HAY: In what? The--

4 JUDGE MACAULEY: Using particular  
5 language to a supervisor?

6 MS. HAY: Did I ever see her  
7 saying something to--

8 JUDGE MACAULEY: Yeah. Like the  
9 guy who got terminated.

10 MS. HAY: No. He got terminated  
11 talking to another officer, not, not a  
12 supervisor.

13 JUDGE MACAULEY: Oh, another  
14 officer. And he was terminated for that?

15 MS. HAY: Yes.

16 JUDGE MACAULEY: Did you witness  
17 that?

18 MS. HAY: No. It's just you hear  
19 stuff "through the grapevine."

20 JUDGE MACAULEY: Oh, that's  
21 something you heard "through the grapevine"?

22 MS. HAY: Yeah.

1 JUDGE MACAULEY: Oh. I see.

2 MS. HAY: Like when in the break  
3 room, you hear other people talk about.

4 JUDGE MACAULEY: Yeah. I know.  
5 Okay. Anything else?

6 BY MS. SCOTT-JOHNSON:

7 Q Did you ever observe Ms. Smith get  
8 upset at the check point?

9 A Yes.

10 Q And what was the reaction? What  
11 was the circumstances?

12 A Well, sometimes I think--I think  
13 what I understood from Carole, like you may  
14 have certain people who will stand around  
15 talking, and it seemed like because we may  
16 have been the new ones, we were doing all the  
17 female assist, or maybe the bag checks, or  
18 something like that. Because she kind a had  
19 a idea that the, the--maybe certain people  
20 just kind a stood around and was talking a  
21 little bit more.

22 Q Did you observe her get upset?

1           A       Yes.

2           Q       What did she do when she got  
3       upset?

4           A       She'd just use some profanity.  
5       Not to them, but, you know, like under your  
6       breath stuff.

7           Q       Did you ever see her have an  
8       interaction or altercation with a manager or  
9       supervisor?

10          A       I didn't see it. Just, you know,  
11       when she would tell me stuff about it.

12          Q       Did you have a conversation with  
13       Ms. Smith about an incident that happened in  
14       April of 2009, where they claimed that she  
15       used profanity?

16          A       That--is this about the exit lane?

17          Q       Yes.

18          A       When Carole told me?

19          Q       Yes. Did you have a conversation-

20       -

21          A       Well, yes, she--

22                    JUDGE MACAULEY: No; no. She

1 didn't observe it. It was told to her by  
2 Complainant. So I don't want--

3 MS. HAY: Yeah, Carole said she  
4 apologized.

5 MS. SMITH: Excuse me. No; no.  
6 Can I object to this?

7 JUDGE MACAULEY: Well, I've  
8 already--asking her wh--

9 MS. SMITH: She--she--

10 MS. SCOTT-JOHNSON: Judge, I  
11 believe this TSO--I believe that Ms. Smith  
12 made a--an admission to this TSO, that's  
13 contrary to what she's testified to here, and  
14 that's what I was evoking. That when she and  
15 Ms. Smith were talking, Ms. Smith made an  
16 admission that's contrary to what she has  
17 testified to here.

18 JUDGE MACAULEY: Well, it's not a  
19 sworn statement. I mean--you mean at the time  
20 it happened?

21 MS. SCOTT-JOHNSON: At the time it  
22 happened, she's talking to a friend, she makes

1 an admission that's contrary to what she  
2 claims happened.

3 MS. SMITH: We hardly ever spoke  
4 anymore, her and I, at that point. After  
5 March, we very seldom saw each other or spoke  
6 to each other, at all. Even when I would go  
7 into the break room, if she was in there and  
8 there were other TSOs in there, she wouldn't  
9 talk to me until we got outside. So we very  
10 seldom talked.

11 JUDGE MACAULEY: Go ahead. You  
12 can answer.

13 MS. HAY: If this is about the  
14 exit lane, when I talked to Carole about, you  
15 know, I said Carole, some people told me that  
16 you used profanity, and she--I remember her  
17 telling me she was upset, she was under  
18 stress, and that she apologized to them for  
19 what she did. And she was kind a hoping it  
20 would "blow over." Right? Because again, you  
21 know, I guess--

22 BY MS. SCOTT-JOHNSON:

1           Q       So she admitted that the blowup  
2       did happen, and that she was very upset?

3           A       Yes.

4           Q       Okay.

5                    JUDGE MACAULEY:   What do you mean  
6       by "blowup"?

7                    MS. HAY:   Again, I guess correct  
8       me if I--I remember she just had to work over,  
9       and something about when you worked over, the  
10      planes--they may say you all gotta work over  
11      to 9:00, but all of a sudden, you find out the  
12      plane's not going to come in till another  
13      three hours.   So I think, from what I  
14      understand, they told Carole, or at least  
15      Carole said they told her that it might be  
16      another three hours or--I don't know how long--  
17      -but it seems like I remember the three hours.

18                    Again, I can't swear to that.   But  
19      it's in my mind.   And Carole got upset, and  
20      they said--again, it was just people--

21                    JUDGE MACAULEY:   How did she get  
22      upset?



1 MS. HAY: She started using  
2 profanity in the exit lane.

3 JUDGE MACAULEY: Ms. Smith told  
4 you that?

5 MS. HAY: She just said she got  
6 upset, verbally. And I said: Did you use  
7 profanity? And she said: I was just upset,  
8 under stress. She said: I was overworked. I  
9 was tired.

10 JUDGE MACAULEY: And did she say  
11 she used profanity?

12 MS. HAY: I can't remember if she  
13 told me she used profanity, but she said she  
14 apologized to everybody that she tal--you  
15 know, told, talked to, or yelled at.

16 JUDGE MACAULEY: Anything else?

17 MS. SCOTT-JOHNSON: Nothing.

18 JUDGE MACAULEY: Do you have any  
19 more questions?

20 REDIRECT EXAMINATION

21 BY MS. SMITH:

22 Q I told you that I got upset on the

1 exit lane?

2 JUDGE MACAULEY: No.

3 MS. SMITH: Okay. I'm sorry.

4 JUDGE MACAULEY: You're going to  
5 ask her some more questions?

6 MS. SMITH: Yes.

7 JUDGE MACAULEY: Okay. Your  
8 gestures--

9 MS. SMITH: I'm sorry. Are you--  
10 you're absolutely sure that I told you about  
11 getting upset on the exit lane?

12 MS. HAY: Yes; yes.

13 MS. SMITH: Okay.

14 BY MS. SMITH:

15 Q Are you intimidated by Jack  
16 Englehardt? I mean, are you afraid--are you  
17 sure you're being 100 percent truthful and not  
18 afraid of having something happen to your job,  
19 by speaking?

20 A I'm sure, 100 percent truthful for  
21 what I remember. I'm not fearful of Jack. I  
22 respect him, you know, cause he's a manager.

1 But I won't be scared that I'm gonna say  
2 something that would counteract.

3 Q The only reason I'm asking that is  
4 I just wanted to make sure.

5 A And I would think you would know  
6 me better than that too.

7 Q I just wanted to make--I do.  
8 That's why I asked.

9 MS. SMITH: I don't have anything  
10 else.

11 JUDGE MACAULEY: Anything else?

12 MS. HAY: Can I correct something.  
13 When I was talking about my job, I think I  
14 said TSI. I meant like TSA, to make sure--and  
15 I don't know why I keep holding this badge  
16 out. I guess it's just habit. I just want to  
17 make sure--

18 MS. SCOTT-JOHNSON: Okay; that's  
19 fine. That's fine.

20 RE-CROSS-EXAMINATION

21 BY MS. SCOTT-JOHNSON:

22 Q Did Ms. Smith ever tell you that

1 she complained to management about coworkers  
2 teasing her about being Wiccan?

3 A Carole--she's never told me that  
4 she complained to management about them  
5 complaining--like I said, I never even heard  
6 anything about the religion until this was  
7 going on. I know that she told me about  
8 making complaints, like the sexual harassment  
9 and stuff like that, but

10 Q Sexual harassment?

11 MS. SMITH: Sexual ha--

12 MS. HAY: You know--about Joe.

13 Like starting--people staring at us and--I  
14 know--it's just like on a personal basis; but  
15 never religion. Never have I overheard that.

16 BY MS. SCOTT-JOHNSON:

17 Q Did any of the TSOs come to you  
18 about Carole, with respect to religion, at  
19 all?

20 A Not about religion; no.

21 MS. SCOTT-JOHNSON: Okay. Nothing  
22 further, Judge.

1 JUDGE MACAULEY: You're excused,  
2 Ms. Hay. Thank you.

3 MS. HAY: Okay. I'm sorry if I  
4 overtalked. Carole, sorry to see you under  
5 these circumstances. I wish you good luck;  
6 okay.

7 MS. SMITH: Thanks.

8 WHEREUPON,

9 MATTHEW LLOYD  
10 WAS CALLED AS A WITNESS BY AND ON BEHALF OF  
11 THE COMPLAINANT AND, HAVING FIRST BEEN DULY  
12 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

13 THE REPORTER: Your name, please.

14 MR. LLOYD: Matthew Lloyd. L-l-o-  
15 y-d.

16 JUDGE MACAULEY: You're employed  
17 by?

18 MR. LLOYD: The TSA.  
19 Transportation Security Administration.

20 JUDGE MACAULEY: Your position?

21 MR. LLOYD: I am the assistant  
22 federal security director for law enforcement.

1 JUDGE MACAULEY: How long have you  
2 held that position?

3 MR. LLOYD: Going--going on three  
4 years.

5 JUDGE MACAULEY: You know the  
6 Complainant?

7 MR. LLOYD: Yes.

8 JUDGE MACAULEY: How do you know  
9 her?

10 MR. LLOYD: I know her as an  
11 employee, or former employee of TSA, here at  
12 Albany Airport.

13 JUDGE MACAULEY: All right. Ms.  
14 Smith, go ahead.

15 DIRECT EXAMINATION

16 BY MS. SMITH:

17 Q Can you tell me what the complaint  
18 was that Miss, Mrs. --Ms. Bagnoli filed with  
19 you against me.

20 JUDGE MACAULEY: On or about.

21 MS. SMITH: On or--I'm sorry. On  
22 or about March 4th.

1 MR. LLOYD: On or about March 4th.

2 MS. SMITH: 2009.

3 JUDGE MACAULEY: Do you recall  
4 that?

5 MR. LLOYD: I do recall.

6 JUDGE MACAULEY: Okay.

7 MR. LLOYD: Do you mind if I look  
8 at my notes?

9 JUDGE MACAULEY: I'd rather you--

10 MR. LLOYD: Sure.

11 JUDGE MACAULEY: --testify from  
12 your recollection.

13 MR. LLOYD: Absolutely.

14 JUDGE MACAULEY: If you need to  
15 look at your notes, I'll make that  
16 determination.

17 MR. LLOYD: Very good. Is that  
18 the incident in which she alleged that she may  
19 have been followed by you?

20 MS. SMITH: That's part of it.

21 MR. LLOYD: Okay.

22 BY MS. SMITH:

1           Q       And she felt threatened because  
2 I'm a witch?

3           A       No. She felt threatened because  
4 she believed she was--

5                   JUDGE MACAULEY: Wait, wait.  
6 Wait, wait. What I'd like you to do is, when  
7 she asks a question, you respond to it. If  
8 the question's objectionable, TSA has counsel,  
9 and will object, unless I direct her  
10 otherwise, whether she objects or not. But I  
11 would like you, unless you don't understand  
12 the question, just answer it as it's asked.  
13 Follow me?

14                   MR. LLOYD: Okay.

15                   JUDGE MACAULEY: Yes. Without any  
16 elaboration, unless asked by either Ms. Smith  
17 or by me.

18                   MR. LLOYD: Very good.

19                   JUDGE MACAULEY: Okay. I know  
20 what your experience is here but I just--we  
21 have a few ground rules.

22                   BY MS. SMITH:



1           Q       Okay. I'm just reading your sworn  
2 affidavit that you submitted. It said that  
3 you were made aware that Ms. Bagnoli felt  
4 threatened, and after interviewing Ms.  
5 Bagnoli, you said she was physically afraid of  
6 Ms. Smith and afraid of Ms. Smith because she  
7 was a witch.

8                   JUDGE MACAULEY: Are you asking--  
9 now what's your question?

10                  MS. SMITH: If he remembered that.

11                  JUDGE MACAULEY: Okay. Do you  
12 remember that?

13                  MR. LLOYD: Yes.

14                  MS. SMITH: Okay.

15                  BY MS. SMITH:

16           Q       I'm just going to ask the question  
17 right off the affidavit, cause I don't know  
18 how to word this.

19                   JUDGE MACAULEY: Well, Ms. Smith,  
20 before you just ask the question, the  
21 information in the affidavit is sworn. It's  
22 sworn. So it's evidence.

1 MS. SMITH: Right.

2 JUDGE MACAULEY: Okay?

3 MS. SMITH: Right.

4 JUDGE MACAULEY: So I gather some  
5 of your questions are to either elaborate  
6 what's in the affidavit or to--

7 MS. SMITH: Right.

8 JUDGE MACAULEY: --explain  
9 inconsistencies, or so on and so forth.

10 You don't have to have him repeat  
11 his affidavit, if you want.

12 MS. SMITH: Okay.

13 BY MS. SMITH:

14 Q What is your definition of a  
15 witch?

16 MS. SCOTT-JOHNSON: Objection.

17 JUDGE MACAULEY: Yes. Before you  
18 answer.

19 MS. SMITH: Do you know what--do  
20 you know--

21 JUDGE MACAULEY: Okay. What's  
22 your objection, so I know where we're going?

1 MS. SCOTT-JOHNSON: What's the  
2 relevance of what the definition of a witch  
3 is?

4 JUDGE MACAULEY: Exactly. That's  
5 not--I don't see the relevance of that.

6 MS. SMITH: Okay. Now I don't  
7 know what to ask.

8 BY MS. SMITH:

9 Q When did you realize that this  
10 wasn't a workplace violent issue? Did you  
11 ever come to that conclusion?

12 A After our interview.

13 Q Okay. Did you ever like let me  
14 know that?

15 A At the time, I let you know that,  
16 that we were not going to pursue this as a  
17 workplace violence issue.

18 Q You let--you're sure you let me  
19 know that?

20 A Yes. I am.

21 Q Okay.

22 JUDGE MACAULEY: When you say "at

1 the time," what do you mean by at the time?

2 MR. LLOYD: The time of our  
3 interview on, on March 12th.

4 JUDGE MACAULEY: Okay.

5 MS. SMITH: I don't see that  
6 anywhere in here.

7 JUDGE MACAULEY: Okay. So is that  
8 a question?

9 MS. SMITH: Yeah. I don't see it  
10 anywhere in your report that was sent to--  
11 about the interview of Carole Smith. There's  
12 nothing here, at the end, that said that you  
13 told me that.

14 JUDGE MACAULEY: And that's dated  
15 when?

16 MS. SMITH: That's dated March  
17 12th.

18 JUDGE MACAULEY: Okay. That's his  
19 internal--his report to himself?

20 MS. SMITH: Yes.

21 JUDGE MACAULEY: Okay. Page what?  
22 Just so I know what you're referring to.

1 MS. SMITH: One seven zero.

2 JUDGE MACAULEY: Okay. Is that  
3 true? You didn't mention it at that time?

4 MR. LLOYD: No; that's not true.

5 JUDGE MACAULEY: Now is this  
6 yours, or mine?

7 MS. SCOTT-JOHNSON: It's yours.

8 BY MS. SMITH:

9 Q What about asking me to dispel any  
10 misconceptions and falsehoods about my  
11 religion?

12 JUDGE MACAULEY: Okay. He said  
13 that's not true. You didn't mention that in  
14 your report?

15 MR. LLOYD: I said it wasn't true,  
16 that I didn't tell her that there was no  
17 workplace violence issue.

18 JUDGE MACAULEY: Okay. Did you  
19 mention that in your report?

20 MR. LLOYD: No. I did not.

21 JUDGE MACAULEY: Why?

22 MR. LLOYD: Because the report

1 merely indicates what we spoke about in the  
2 interview and it's as a synopsis, it wasn't  
3 meant to be a complete--it's just a synopsis.

4 JUDGE MACAULEY: Why did you leave  
5 that detail out?

6 MR. LLOYD: Because I thought it  
7 was covered predominantly by the fact that I  
8 said we were moving to an ICMS type of  
9 resolution, which is the Integrated Conflict  
10 Management System, which is a mediation type  
11 of program for personality conflict  
12 resolution.

13 JUDGE MACAULEY: Well, your job is  
14 law enforce--workplace violence, isn't it?  
15 Isn't that what your--a lot of what you do?

16 MR. LLOYD: That's--

17 JUDGE MACAULEY: You manage--  
18 you're manager--you're a manager, becau--one  
19 of your duties is to ensure that there's no  
20 workplace violence?

21 MR. LLOYD: Yes.

22 JUDGE MACAULEY: Okay. And you

1 brought these two in together because you were  
2 concerned about a potential for workplace  
3 violence; right?

4 MR. LLOYD: I was asked to  
5 inquire. I was asked to conduct an  
6 investigation about workplace violence.

7 JUDGE MACAULEY: Okay. And then  
8 after this investigation, you talked to Mary  
9 Bagnoli and then you talked to Ms. Smith;  
10 right? And then you came to a conclusion.

11 MR. LLOYD: Correct.

12 JUDGE MACAULEY: And since  
13 everything about what you do--not everything--  
14 but a significant part of what you do, given  
15 that it has to do with workplace violence,  
16 wouldn't that be a significant detail to put  
17 in your report?

18 MR. LLOYD: That report is bas--is  
19 not a--it's not an official report. It's just  
20 a synopsis.

21 JUDGE MACAULEY: I didn't say it  
22 was official. But it was a synopsis of your

1 discussion, with a conclusion, whether it was-  
2 -there was workplace violence or not; right?

3 MR. LLOYD: At that time; yes.

4 JUDGE MACAULEY: Wouldn't that be  
5 a significant detail, since you brought these  
6 two people together--

7 MR. LLOYD: It wasn't a detail I  
8 decided to put in, into that document.

9 JUDGE MACAULEY: Why not?

10 MR. LLOYD: At the time I don't  
11 know, but I mean, the fact that I moved to, to  
12 recommend ICMS which is the Integrated  
13 Conflict Management System--

14 JUDGE MACAULEY: Right

15 MR. LLOYD: --indicates to me--  
16 cause that's an internal memo to me, not to  
17 anybody else.

18 JUDGE MACAULEY: Right.

19 MR. LLOYD: It's for my  
20 recollection. I knew, based on my interview  
21 of Ms. Smith, that I didn't have a workplace  
22 violence issue.



1 JUDGE MACAULEY: So what was  
2 important, though, is that you wanted them to  
3 go to ICMS mediation to work out, or in part,  
4 if not in part, in whole, to have Complainant  
5 dispel myths, or stereotypes about her  
6 religion. Is that true?

7 MR. LLOYD: No. That's not--  
8 that's not what I said.

9 JUDGE MACAULEY: Why is--why did  
10 you send them to mediation, then?

11 MR. LLOYD: Because they obviously  
12 had a personality conflict--

13 JUDGE MACAULEY: Right.

14 MR. LLOYD: --that had--that may  
15 have had something to do with misconceptions  
16 about religion. But what I said was, is that  
17 sometimes, when you sit down together--and  
18 this is not--

19 JUDGE MACAULEY: Well, I know what  
20 your report says. It's here. So you don't  
21 have to explain that to me. So I don't need  
22 to see what your report said. I just want to

1 know, when the object of this meeting is to  
2 determine about whether there was the  
3 potential for workplace violence, you conclude  
4 there was not, why it wasn't in your report.

5 That's what I want to know.

6 MR. LLOYD: I honestly don't have  
7 an answer for you, other than the fact that--

8 JUDGE MACAULEY: You don't have an  
9 answer for me. I don't understand that.

10 MR. LLOYD: The report is--

11 JUDGE MACAULEY: I want to know--I  
12 just want to know why it's not a detail in  
13 your report.

14 MR. LLOYD: Because that is a fact  
15 that I would remember. The--the details that  
16 I put down in that memo to myself were things  
17 that I wanted to ensure that I would--small  
18 details, that I was sure that I would  
19 recollect, if asked later on. I--once, once--

20 JUDGE MACAULEY: You don't think  
21 you would be asked, if the report ever came to  
22 light, whether you thought there was a

1 workplace violence issue, and whether you  
2 determined at the time, there was or was not?  
3 That's not significant, even though that's  
4 what this meeting was all about?

5 MR. LLOYD: No. That would have  
6 been verbally reported to my FSD or the acting  
7 FSD.

8 JUDGE MACAULEY: But not  
9 sufficient enough to put in your own memo?

10 \*T3 MR. LLOYD: No.

11 JUDGE MACAULEY: And you can't  
12 explain, other than the fact that, I guess,  
13 you don't know why you left it out?

14 MR. LLOYD: I left it out because  
15 it was a determination I knew I had made. I  
16 wasn't gonna forget that. This is a reminder  
17 to myself of the small details of the course  
18 of the inquiry, of my interview with Ms.  
19 Smith.

20 MS. SMITH: Don't you think it--

21 JUDGE MACAULEY: I--

22 [Pause]

1 JUDGE MACAULEY: Well, just to  
2 follow your logic then, since you sent the  
3 Complainant to ICMS--is that what it's called?

4 MR. LLOYD: I didn't send her. I  
5 asked if she wanted to participate--

6 JUDGE MACAULEY: No; no. Well,  
7 recommended.

8 MR. LLOYD: Yeah.

9 JUDGE MACAULEY: That's a decision  
10 that you wouldn't forget either, would you?  
11 Why would you put that in, then, in that case?

12 MR. LLOYD: Because she refused.

13 JUDGE MACAULEY: Well, then you  
14 wouldn't even--you wouldn't forget even more,  
15 because she refused, and that would be in your  
16 mind, even greater; right?

17 MR. LLOYD: Not necessarily.

18 JUDGE MACAULEY: I don't know--she  
19 made an issue of it. A big issue.

20 MR. LLOYD: Yeah; she made an  
21 issue. Big issue.

22 JUDGE MACAULEY: Yeah. She walked

1 out of your office twice.

2 MR. LLOYD: Yes.

3 JUDGE MACAULEY: Well, then why  
4 put that in the report? You'd hardly forget  
5 that incident. Am I right?

6 MR. LLOYD: I couldn't do a  
7 complete--it wasn't--

8 JUDGE MACAULEY: I know. It's a  
9 synopsis.

10 MR. LLOYD: It wasn't my purpose  
11 to do a complete synopsis of all--or a  
12 complete recitation of all the events that  
13 occurred during that meeting. Some, some of  
14 the things I thought that I would remember,  
15 quite easily, and other things I thought would  
16 be best to enshrine. That was all.

17 This, this memo was more for, for-  
18 -for me remembering than for, for anything  
19 else. It was actually put in my calendar, not  
20 as an official report to be sent out. It was  
21 only after it was FOIA'ed that I provided it.

22 JUDGE MACAULEY: What else do you

1 have, Ms. Smith?

2 MS. SMITH: I also am looking for  
3 it. I had a copy of an e-mail that he had  
4 sent to the other management people, telling  
5 them about the witchcraft issue.

6 JUDGE MACAULEY: Well, I don't  
7 know. Just if you have your questions lined  
8 up, I'd just--

9 MS. SMITH: No. I don't have any-  
10 -nothing. It's pretty self-explanatory.

11 [Pause]

12 MS. SMITH: Can I ask one more  
13 thing?

14 JUDGE MACAULEY: You can ask  
15 whatever you want to ask, Ms. Smith.

16 MS. SMITH: Okay.

17 JUDGE MACAULEY: I just would like  
18 you to be a little more prepared.

19 MS. SMITH: Okay. I'm sorry.

20 BY MS. SMITH:

21 Q When you sent management the e-  
22 mail to separate us to the largest extent

1 possible, what did you mean by that?

2 A I meant to--prior--that e-mail was  
3 sent when I found out what was going on, or at  
4 least it was requested that I do an inquiry in  
5 regards. At that time, I hadn't made a  
6 determination whether a workplace violence  
7 issue existed.

8 JUDGE MACAULEY: You're referring  
9 to the March 4th?

10 MS. SMITH: Yes.

11 JUDGE MACAULEY: Okay.

12 MR. LLOYD: So I wanted to ensure,  
13 to the best extent possible, that we didn't--  
14 that we didn't provide an atmosphere where the  
15 two of you would come into conflict. So my,  
16 my--

17 JUDGE MACAULEY: Okay. I guess  
18 you concluded as of march 12th there was no  
19 workplace violence?

20 MR. LLOYD: Correct.

21 JUDGE MACAULEY: And is there a  
22 subsequent memo changing the directives of

1 that March 4th memo?

2 MR. LLOYD: No. I didn't--

3 JUDGE MACAULEY: Why not?

4 MR. LLOYD: Because when the  
5 managers--I had called in the manager, and I  
6 said we don't have a workplace violence issue  
7 here, I'm gonna kick it back to you, based on--  
8 -

9 JUDGE MACAULEY: To whom? Who are  
10 you referring to?

11 MR. LLOYD: Manager John Gazuski  
12 and Jack Englehardt. And I said however you'd  
13 like to proceed, this is an administrative  
14 issue that the managers will deal with, and  
15 you can address it however you usually do and  
16 see fit.

17 JUDGE MACAULEY: Why didn't you  
18 memorialize that, after you made the  
19 determination on the 12th, that no workplace  
20 violence exists? Why didn't you follow it up  
21 in a memo, in an e-mail?

22 MR. LLOYD: Because I didn't know



1 if the managers would want to keep that in  
2 place ,or not, to ensure that there was no  
3 further conflict.

4 JUDGE MACAULEY: Well, you're the  
5 one who issued the memo.

6 MR. LLOYD: Correct.

7 JUDGE MACAULEY: So why--

8 MR. LLOYD: I left it up to them,  
9 verbally.

10 JUDGE MACAULEY: Verbally.  
11 Another verbal. What was the response to  
12 that?

13 MR. LLOYD: I didn't get a  
14 response as to whether they were going to  
15 continue that policy or not.

16 JUDGE MACAULEY: You verbalized  
17 this to Mr. Englehardt and Mr.--what's his  
18 name--Ga--

19 MR. LLOYD: Gazuski.

20 JUDGE MACAULEY: Well, what  
21 exactly did you say to Mr. Englehardt?

22 MR. LLOYD: I told--well,

1 specifically, I recall the conversation with  
2 Mr. Gazuski, if that's okay.

3 JUDGE MACAULEY: Oh. Yeah.

4 MR. LLOYD: I told, I told John,  
5 cause Jack was around and he was in the  
6 doorway for a little while--

7 JUDGE MACAULEY: What is Mr.  
8 Gazuski's job?

9 MR. LLOYD: He's a manager.

10 JUDGE MACAULEY: Does he have a  
11 title?

12 MR. LLOYD: Transportation  
13 security manager. TSM.

14 JUDGE MACAULEY: And what's Mr.  
15 Englehardt's title?

16 MR. LLOYD: TSM.

17 JUDGE MACAULEY: Transportation  
18 security manager.

19 MR. LLOYD: Security manager.

20 JUDGE MACAULEY: Are they of equal  
21 status?

22 MR. LLOYD: Yes.

1 JUDGE MACAULEY: They do the same  
2 things?

3 MR. LLOYD: Yes.

4 JUDGE MACAULEY: They're like co-  
5 managers?

6 MR. LLOYD: Correct.

7 JUDGE MACAULEY: Okay. So you  
8 talked to Mr. Gazuski. What'd you tell him?

9 MR. LLOYD: I said it doesn't  
10 appear that we have a workplace violence issue  
11 here. I'm going to kick it back to the  
12 managers, and you can deal with it however you  
13 see fit.

14 JUDGE MACAULEY: Did you tell him  
15 what you determined, actually?

16 MR. LLOYD: I told him that I  
17 determined that there was no workplace  
18 violence issue. This was a personality  
19 conflict.

20 JUDGE MACAULEY: Oh. Did you  
21 mention anything about the Wiccan business,  
22 which seems to be the only thing you talked

1 about with Ms. Smith; is that correct?

2 MR. LLOYD: Ms. Smith was the one  
3 that brought up Wiccan, in the first place.

4 JUDGE MACAULEY: Didn't you call  
5 her into your office that day to investigate  
6 what Ms. Bagnoli told you?

7 MR. LLOYD: About her following  
8 Ms. Bagnoli home?

9 JUDGE MACAULEY: Yeah.

10 MR. LLOYD: Yes.

11 JUDGE MACAULEY: And wasn't the  
12 conversation solely about following her home,  
13 and what Ms. Bagnoli reported to you about  
14 Complainant and her witchcraft, or to that  
15 effect?

16 MR. LLOYD: I'm sorry. Say that  
17 one more--

18 JUDGE MACAULEY: Following her--  
19 the meeting you had with Ms. Smith, wasn't  
20 that--that was about the accusation that Ms.  
21 Smith followed Ms. Bagnoli home. It also  
22 included a discussion about Ms. Bagnoli's

1 accusation about Ms. Smith putting hexes on  
2 her, on her car, or something to that effect;  
3 is that correct?

4 MR. LLOYD: No. There was no  
5 discussion about hexes or anything else.

6 JUDGE MACAULEY: Did you have a  
7 discussion about her Wiccan religion at that  
8 time?

9 MR. LLOYD: Yes. It was raised by  
10 Ms. Smith, that she was a Wiccan.

11 JUDGE MACAULEY: Okay. Ms. Smith  
12 raised it.

13 MR. LLOYD: Yes.

14 JUDGE MACAULEY: You did not?

15 MR. LLOYD: No.

16 JUDGE MACAULEY: Did you raise her  
17 religion, at all, at that time?

18 MR. LLOYD: I mentioned to her  
19 that--

20 JUDGE MACAULEY: Did you raise it?

21 MR. LLOYD: Yes. I spoke to her  
22 about it at the time.

1 JUDGE MACAULEY: And what did you  
2 say to Ms. Smith?

3 MR. LLOYD: I said it seemed to be  
4 that the, the fact that Ms. Bagnoli said she  
5 was a witch, that seemed to be exacerbating  
6 the situation, and that maybe the ICMS  
7 protocol would be a good venue to dispel any  
8 misconceptions, if she so chose. But the  
9 reason for putting them in ICMS was to resolve  
10 the personality conflict. Whether they wanted  
11 to discuss anything else was up to them, sir.

12 JUDGE MACAULEY: What did you  
13 perceive was going on with Ms. Smith and Ms.  
14 Bagnoli, relevant to Ms. Smith's religion?

15 MR. LLOYD: I think that Ms.  
16 Bagnoli--

17 JUDGE MACAULEY: At the time; not  
18 now.

19 MR. LLOYD: Yeah; at the time. I  
20 think Ms. Smith and Ms. Bagnoli had a  
21 personality conflict, where they--where Ms.  
22 Bagnoli, for whatever reason, perceived Ms.

1 Smith as a threat.

2 JUDGE MACAULEY: Because she's a  
3 witch?

4 MR. LLOYD: No; no. The way it  
5 was described to me at the time, was that--she  
6 didn't describe it that way. She described it  
7 as she felt physically threatened by Ms.  
8 Smith's proximity, and the fact that she was  
9 followed home. She did mention that--that Ms.  
10 Smith was a witch. So I considered that an  
11 exacerbating factor.

12 JUDGE MACAULEY: Do you have any  
13 other questions?

14 MS. SMITH: I think I need to not  
15 say anything.

16 JUDGE MACAULEY: No. I'm not here  
17 as your attorney, Ms. Smith. You're here to  
18 pursue your complaint.

19 MS. SMITH: I just--it's making me  
20 angry, what he's saying.

21 JUDGE MACAULEY: Well, then do you  
22 have--

1 MS. SMITH: When I'm reading  
2 something different.

3 JUDGE MACAULEY: Okay. Then  
4 confront him with what you're reading and then  
5 ask him to explain it.

6 BY MS. SMITH:

7 Q Why did you put it in your  
8 affidavit, that Ms. Bagnoli said she was  
9 physically afraid of Ms. Smith because she is  
10 a witch? Your sworn affidavit. That's what  
11 it says.

12 A She was physically afraid of you  
13 because--

14 Q Because I am a witch.

15 A She was physically afraid of you  
16 based on the two incidences, and the fact  
17 that--that you were a witch. Yes. I  
18 considered that an exacerbating factor.

19 JUDGE MACAULEY: On Ms. Bagnoli's-  
20 -

21 MS. SMITH: So I'm not the one  
22 who--



1 JUDGE MACAULEY: Don't--on Ms.  
2 Bagnoli's part?

3 MR. LLOYD: Yes.

4 BY MS. SMITH:

5 Q So who was the one who brought up  
6 witchcraft?

7 A You did. You said that your  
8 religion was Wiccan.

9 Q I mean in the beginning.

10 A In the beginning of what?

11 Q In the beginning of this entire  
12 thing, on March 4th. Who brought up  
13 witchcraft?

14 A On March 4th. That's when--

15 JUDGE MACAULEY: Now March 4th is  
16 when he issued his directive.

17 MS. SMITH: That's when Mary filed  
18 the complaint, that I was a witch.

19 JUDGE MACAULEY: Okay.

20 MS. SMITH: I just want to know  
21 who--

22 MR. LLOYD: Mary's complaint--

1 MS. SMITH: --who did it first.

2 MR. LLOYD: Mary's com--may I

3 elaborate or--

4 JUDGE MACAULEY: Yes. Well, wait.

5 What's your question?

6 MS. SMITH: I just wanted to know

7 who brought up witchcraft.

8 JUDGE MACAULEY: Who brought up

9 witchcraft on March 4th?

10 MS. SMITH: Yeah, and--and to be

11 involved in this whole thing.

12 JUDGE MACAULEY: Okay. Mr. Lloyd.

13 MR. LLOYD: Ms. Bagnoli.

14 JUDGE MACAULEY: Okay.

15 MS. SMITH: Okay. That's what  
16 makes me confused, because he said it was me.

17 JUDGE MACAULEY: Okay. He did.

18 Okay.

19 MS. SMITH: He just said it was  
20 me, and then he said it was--

21 JUDGE MACAULEY: Ms. Bagnoli on

22 March 4th brought up the fact that

1 Complainant--she thought Complainant was a  
2 witch?

3 MR. LLOYD: Correct.

4 JUDGE MACAULEY: Okay. So Ms.  
5 Bagnoli introduced this issue to you?

6 MR. LLOYD: Yes.

7 MS. SMITH: Thank you.

8 MR. LLOYD: But we weren't--okay.

9 MS. SMITH: That's all I wanted to  
10 clarify.

11 JUDGE MACAULEY: Okay. What's  
12 your next point?

13 MS. SMITH: That's it.

14 JUDGE MACAULEY: That's all?

15 MS. SMITH: Yeah.

16 JUDGE MACAULEY: You have no other  
17 questions for this gentleman?

18 BY MS. SMITH:

19 Q Okay. When I left your office  
20 that day, you said I walked out twice. Right?

21 A Yes.

22 Q When did I walk out the first time?

1           A        I don't have a time.

2           Q        No.  I mean, what was the--what  
3 was the discussion?  What--

4           A        We were talking about ICMS.

5           Q        So we were talking about  
6 dispelling any misconceptions regarding my  
7 religious beliefs--pretty much?

8           A        We were talking about you  
9 resolving your conflict with Ms. Bagnoli.

10          Q        To dispel misconceptions--

11                    JUDGE MACAULEY:  Did you talk  
12 about any other aspect of their conflicts,  
13 aside from anything having to do with Ms.  
14 Bagnoli's issues with her Wiccan religion  or  
15 her witchcraft?

16                    MR. LLOYD:  Yes.  Well--

17                    JUDGE MACAULEY:  What did you  
18 discuss, then, at that meeting with Ms. Smith?

19                    MR. LLOYD:  We discussed the fact  
20 that although their routes may have been  
21 similar, I think you had changed home  
22 locations, and you were taking a new way home?

1 MS. SMITH: Yes.

2 JUDGE MACAULEY: No; no. I'm  
3 asking you the question, so--

4 MR. LLOYD: Oh.

5 JUDGE MACAULEY: You're not here  
6 to seek her advice. So what else did you  
7 discuss, aside from--

8 MR. LLOYD: Okay. We--we  
9 discussed how, how maybe Ms. Bagnoli may have  
10 misconstrued the fact that she was followed,  
11 because Ms. Smith took a new route home.

12 JUDGE MACAULEY: Right. Okay.  
13 Anything else?

14 MR. LLOYD: We discussed that, you  
15 know, obviously there's a lot more going on  
16 here than--than--than just, you know, two  
17 people not getting along, and that ICMS would  
18 be a good venue to discuss that.

19 JUDGE MACAULEY: How did you even  
20 know that, actually, since you didn't discuss  
21 these things? You discussed their conflicts?  
22 You said--

1 MR. LLOYD: Yeah; yeah.

2 JUDGE MACAULEY: --they have  
3 personality conflicts.

4 MR. LLOYD: They had personality  
5 conflicts. I believe Ms. Bagnoli--

6 JUDGE MACAULEY: Well, did you  
7 talk about the conflicts?

8 MR. LLOYD: Yes. Ms. Bagnoli was  
9 in a mentoring position for Ms. Smith, and  
10 apparently was harsh in her review of Ms.  
11 Smith's competencies. That--that Ms. Bagnoli  
12 consistently would tell Ms. Smith that she was  
13 doing something incorrectly, as far as  
14 screening was concerned, but would not  
15 properly offer advice on how to rectify that.  
16 The fact that Ms. Smith, I think, wanted  
17 another mentor, as far as--I don't know if  
18 that's the proper term, to be perfectly  
19 honest.

20 JUDGE MACAULEY: I just want to  
21 know what you discussed. And you actually  
22 discussed these issues in your meeting with

1 her?

2 MR. LLOYD: Yes.

3 JUDGE MACAULEY: Do you have any  
4 follow-up?

5 MS. SMITH: I just don't see it in  
6 the report. I'm just looking through his  
7 report and I didn't see it in there.

8 JUDGE MACAULEY: Okay. Well, ask  
9 him a question then. Why is it not in your  
10 report?

11 MS. SMITH: Okay.

12 BY MS. SMITH:

13 Q Why is it not in your report, and  
14 why is on your affidavit, where it says, Was  
15 there a history of complaints between Ms.  
16 Bagnoli and the Complainant? and you said "I  
17 was not aware of any."

18 JUDGE MACAULEY: Okay.

19 MR. LLOYD: Two questions.

20 MS. SMITH: You just said you were  
21 aware of them--

22 JUDGE MACAULEY: Ask one question

1 at a time.

2 BY MS. SMITH:

3 Q I'm sorry. I want a answer to  
4 that one. You said you were aware that we had  
5 a personality conflict and you talked about it  
6 to us, or obviously to Mary, but not in this  
7 report--

8 JUDGE MACAULEY: Okay, look. Just  
9 ask him a simple question.

10 MS. SMITH: Okay.

11 BY MS. SMITH:

12 Q You just said that you were aware  
13 that her and I had problems?

14 A Correct.

15 Q Personality conflicts. And  
16 according to this in here, it says you were  
17 not aware of any complaints between Ms.  
18 Bagnoli and myself.

19 A Didn't you just say previously?  
20 There's no--I didn't have any indication that  
21 there was a previous history--

22 JUDGE MACAULEY: Okay. Wait a



1 second. She even--okay. Your question is:  
2 Can you explain?

3 MS. SMITH: Yeah. Can you explain  
4 that, because you were just talking about our  
5 previous history, was when she was my mentor.

6 MR. LLOYD: That's what we--

7 MS. SMITH: That you know about.

8 MR. LLOYD: That we just discussed  
9 that in the interview. The interview on the  
10 12th is when you discussed that with me.

11 MS. SMITH: No. I'm sorry; but I  
12 did not. I'm sorry.

13 BY MS. SMITH:

14 Q And--but in your affidavit, when  
15 you're asked if there was a history of  
16 complaints between Ms. Bagnoli and  
17 Complainant, you said you were not aware of  
18 any.

19 A Previous formal complaints? No.

20 MS. SMITH: Okay.

21 JUDGE MACAULEY: Oh, you took it  
22 to mean formal complaints?

1 MR. LLOYD: Yeah. A history of  
2 complaints, like allegations of misconduct.

3 JUDGE MACAULEY: Are all  
4 complaints allegations of misconduct?

5 MR. LLOYD: No.

6 JUDGE MACAULEY: All right. What  
7 else, Ms. Smith?

8 BY MS. SMITH:

9 Q The new route home. You said I  
10 was taking a new route home that night.

11 A That--

12 Q That she said I was following her?

13 A Right.

14 Q Why do you say it was a new route  
15 home? Can you explain that to me because I--

16 A In our conversation, you said you  
17 had changed--

18 Q No, I--

19 A You had changed living--living  
20 locations.

21 Q What I said is I didn't go all the  
22 way up to Exit 30 anymore.

1           A       Right.

2           Q       You said in your thing that I had-  
3       -I denied I was on I-87 at all that night?

4           A       You were unsure whether you were  
5       on I-87 at all; yes.

6           Q       No. That's the only way I knew  
7       how to get home, to my home here.

8                   MS. SCOTT-JOHNSON: Objection,  
9       Judge.

10                  MS. SMITH: Was on I-87.

11                  MS. SCOTT-JOHNSON: She's not  
12       asking a question. She's testifying.

13                  JUDGE MACAULEY: Yes; just ask a  
14       question.

15                  MS. SMITH: I'm sorry. It just--I  
16       just didn't know why he would say that was a  
17       new route home for me when it wasn't. That's  
18       all.

19                  JUDGE MACAULEY: Well, he  
20       concluded that you weren't pursuing her, so--

21                  MS. SMITH: Right. I just--

22                  JUDGE MACAULEY: --I don't know

1 where that part of it's going to go.

2 MS. SMITH: Okay. That's--I'm  
3 done.

4 JUDGE MACAULEY: Totally, with  
5 this witness?

6 MS. SMITH: Yes. I can't think of  
7 anything else.

8 JUDGE MACAULEY: Who made the  
9 decision to keep--to have Ms. Bagnoli escorted  
10 from break rooms? Or to keep these two  
11 separated throughout--afterwards, after this  
12 meeting you had? Ms. Bagnoli and Ms. Smith.

13 MR. LLOYD: Honestly, I don't know  
14 whose decision--

15 JUDGE MACAULEY: Did you?

16 MR. LLOYD: No.

17 JUDGE MACAULEY: Just a second.  
18 I'm looking for something.

19 [Pause]

20 JUDGE MACAULEY: As a conflict  
21 mitigation measure in the termination letter  
22 to Complainant, it says that Ms. Bagnoli is to

1 be escorted to employee parking lot by a  
2 supervisor to ensure her safety.

3 Do you know what that's about?

4 MS. SCOTT-JOHNSON: What page is  
5 that, Judge?

6 JUDGE MACAULEY: 131.

7 JUDGE MACAULEY: I know you didn't  
8 write this but--

9 MR. LLOYD: No, I didn't.

10 JUDGE MACAULEY: Okay. So--

11 MR. LLOYD: I didn't even--I  
12 haven't even read it.

13 JUDGE MACAULEY: It's all right.  
14 Did you make a--well, you had those two  
15 separated for a period of time. You issued  
16 this memo?

17 MR. LLOYD: Correct.

18 JUDGE MACAULEY: Okay. And so  
19 after the memo, after you made a determination  
20 that was no workplace violence, or potential  
21 for it, you just let Mr. Gazuski or Mr.  
22 Englehardt make the decision on what to do?

1 MR. LLOYD: From that point on;  
2 yes.

3 JUDGE MACAULEY: I see. So any  
4 continuation of that is their--was their  
5 decision?

6 MR. LLOYD: Yes.

7 JUDGE MACAULEY: And you weren't  
8 aware of it?

9 MR. LLOYD: Right.

10 JUDGE MACAULEY: Why wouldn't you  
11 be aware of it, since your--part of your job  
12 is management concern with workplace violence  
13 issues and their potential?

14 MR. LLOYD: I didn't follow up  
15 with after that, once I made the determination  
16 that we--it didn't appear that we had a  
17 workplace violence issue.

18 JUDGE MACAULEY: And they didn't  
19 think it necessary for you to be included in  
20 that action, which is to keep Ms. Smith and  
21 Ms. Bagnoli separated?

22 MR. LLOYD: No, they didn't--they

1 didn't confer with me in regards. No.

2 JUDGE MACAULEY: All right.

3 MR. LLOYD: At the time that I  
4 wrote that memo--is it all right if I  
5 elaborate? At the time that I wrote that  
6 memo, I wanted to make--once I became aware of  
7 a possible--a possibility of workplace  
8 violence, or an allegation of wrongdoing, I  
9 wanted to make sure that we took affirmative  
10 steps, right off the bat, to try to mitigate  
11 whatever--you know, to--to mitigate any  
12 possible conflict. So that's why that was  
13 initially written.

14 And whether or not manage--the  
15 managers wanted to continue utilizing that  
16 was, was entirely up to them. I mean, the  
17 fact that--the fact that there was no  
18 workplace violence--

19 [Cell phone sounding]

20 MR. LLOYD: The fact that there  
21 was no workplace violence issue doesn't  
22 necessarily mean that--

1 JUDGE MACAULEY: Hold off.

2 [Cell phone continues sounding]

3 [Pause]

4 JUDGE MACAULEY: Will you read his  
5 answer back, please.

6 [The record was played back by the  
7 court reporter]

8 JUDGE MACAULEY: In a situation  
9 like you had, do you think it's appropriate,  
10 legally, to direct, or even suggest to another  
11 employee to go to mediation to explain their  
12 religion to another employee, which is what  
13 you suggested by this?

14 MR. LLOYD: I said that if she  
15 wanted to avail herself of that opportunity,  
16 that it was a good venue to do that in.

17 JUDGE MACAULEY: Why is that a  
18 good venue, and when somebody has  
19 stereotypical ideas about religion? Why would  
20 you send an employee to a mediation service,  
21 rather than directing the employee otherwise?

22 I mean, in this situation, you had



1 a complaint about Miss--from Ms. Bagnoli, that  
2 she was putting hexes on her, or she--you had  
3 a complaint about Ms. Bagnoli related to her  
4 Wiccan religion. Am I correct?

5 MR. LLOYD: No, I had--no, sir. I  
6 had a--

7 JUDGE MACAULEY: A formal  
8 complaint? I thought we went over this.

9 MR. LLOYD: I had a formal--I had  
10 a formal complaint over the fact that Ms.  
11 Smith followed Ms. Bagnoli home. That was the  
12 substance of her complaint.

13 JUDGE MACAULEY: Right. And you  
14 also had a complaint about raising issues  
15 about her practicing witchcraft; is that not  
16 correct? That Ms. Bagnoli introduced this  
17 topic. Is this not correct?

18 MR. LLOYD: That's correct.

19 JUDGE MACAULEY: That is correct.  
20 And as a consequence, why would you direct two  
21 employees to a mediation service, so one  
22 employee can explain their religion to

1 another, as opposed to correcting--

2 MR. LLOYD: That's not--

3 JUDGE MACAULEY: --the

4 stereotypical views that an employee had, not  
5 even to be bothered by them?

6 MR. LLOYD: Not even to be  
7 bothered by--

8 JUDGE MACAULEY: You directed Ms.  
9 Smith and Ms. Bagnoli to mediation, so Ms.  
10 Smith would--so Ms. Smith could explain  
11 aspects of her religion--

12 MR. LLOYD: No; no.

13 JUDGE MACAULEY: --to the other  
14 employee.

15 MR. LLOYD: No. No, sir. That's  
16 not correct.

17 JUDGE MACAULEY: Doesn't appear  
18 that way to me.

19 MR. LLOYD: I directed them to  
20 utilize--I requested that she avail herself of  
21 ICMS to resolve any conflict that they may  
22 have. I suggested that it might be an

1 opportunity to alleviate any of the  
2 misconceptions that Ms. Bagnoli had about--

3 JUDGE MACAULEY: Why? Why should  
4 that be a concern? If Ms. Bagnoli had a  
5 misconception about her religion, why didn't  
6 you just direct Ms. Bagnoli to ignore that  
7 aspect of Complainant's--of her relationship  
8 with the Complainant?

9 MR. LLOYD: At the time--

10 JUDGE MACAULEY: Yeah; at the  
11 time. Like, for example,--

12 MR. LLOYD: At the time, in  
13 speaking to Miss--

14 JUDGE MACAULEY: --"Ms. Bagnoli,  
15 Ms. Smith's religion has nothing to do with  
16 your job; let it alone." That's the more  
17 appropriate reaction to this. Why would you  
18 even suggest that Ms. Smith deal with  
19 Bagnoli's stereotypical views of her religion?  
20 That's what I want to know.

21 MR. LLOYD: Miss, Miss--Ms.  
22 Bagnoli didn't relate any, any--anything other

1 than that she was afraid that she was a witch.

2 JUDGE MACAULEY: Okay.

3 MR. LLOYD: She didn't--she didn't  
4 indicate any, any hex--discussed hexes or  
5 something like that. She didn't--

6 JUDGE MACAULEY: "I'm afraid this  
7 worker of mine is a witch, this coworker of  
8 mine is a witch." What does that imply to  
9 you? She's obviously referring to a belief  
10 that Ms. Smith had about--

11 MR. LLOYD: At the time I  
12 discussed--at the time Ms. Bagnoli, myself and  
13 Ms. Bagnoli spoke, I indicated, well, I'm, I'm  
14 not dealing with that, I'm dealing with the  
15 fact of whether or not you were followed home.

16 The--the fact that--that--

17 JUDGE MACAULEY: But Ms. Bagnoli  
18 complained to you that Ms. Smith was a witch.

19 MR. LLOYD: And I said we were  
20 not--

21 JUDGE MACAULEY: Okay.

22 MR. LLOYD: We're not--we're not

1 addressing that.

2 JUDGE MACAULEY: Okay.

3 MR. LLOYD: That's not--that  
4 doesn't--that has no relevance.

5 JUDGE MACAULEY: Okay. That's not  
6 in your report, though, is it?

7 MR. LLOYD: But that--my  
8 interview--

9 JUDGE MACAULEY: And when you sent  
10 them to mediation--when you sent them to  
11 mediation, to avail themselves of this about  
12 the religion, you didn't say this is not  
13 important, or this is not relevant, did you?  
14 Did you?

15 MR. LLOYD: Excuse me.

16 JUDGE MACAULEY: You didn't say  
17 that the religious aspect of their conflict is  
18 not relevant, did you?

19 MR. LLOYD: To workplace violence?  
20 I most certainly did say that it wasn't  
21 relevant.

22 JUDGE MACAULEY: No, not to

1       workpla--so this complaint Ms. Bagnoli had  
2       about Complainant being a witch, you just told  
3       me was not related to workplace violence;  
4       right?

5                   MR. LLOYD:   I made the  
6       determination that it was not related to  
7       workplace violence, after I spoke to Ms.  
8       Smith.  At the time--

9                   JUDGE MACAULEY:  Yeah, at the same  
10      time, afterwards, you sent them off to  
11      mediation, so Ms. Smith can explain tenets of  
12      her religion to Ms. Bagnoli.

13                  MR. LLOYD:  No.

14                  JUDGE MACAULEY:  No.

15                  MR. LLOYD:  That's not correct.

16                  JUDGE MACAULEY:  What is correct,  
17      then?

18                  MR. LLOYD:  I suggested that they  
19      utilize the ICMS system to resolve their  
20      personality conflicts.

21                  JUDGE MACAULEY:  Yeah.  And?

22                  MR. LLOYD:  And I suggested also,

1 that if--it would be a good venue for Ms.  
2 Smith to alleviate any misconceptions that  
3 Miss--

4 JUDGE MACAULEY: Why? Why? Why?  
5 Why should that be a good venue? It should be  
6 an irrelevant venue. If Ms. Bagnoli has a  
7 problem with her religion, then she needs to  
8 be corrected that it's not relevant on the job  
9 and to ignore it. Am I correct?

10 MR. LLOYD: Yes. You're  
11 absolutely correct.

12 JUDGE MACAULEY: Yes; right. So  
13 why suggest that they use mediation to--for  
14 Ms. Smith to explain tenets of her religion to  
15 Ms. Bagnoli?

16 MR. LLOYD: That's not what I--  
17 it's not what I suggested, sir.

18 JUDGE MACAULEY: Okay. What did  
19 you suggest again, on the record?

20 MR. LLOYD: On the record, I  
21 suggested that they use ICMS to mit--to, to--

22 JUDGE MACAULEY: I know. The

1 personality I get.

2 MR. LLOYD: Right.

3 JUDGE MACAULEY: The other part,  
4 apparently, I don't. What's the other part  
5 about their religion and ICMS?

6 It would be a good venue to avail  
7 about misconceptions about your religion.

8 I got it. I heard it.

9 MR. LLOYD: Right.

10 JUDGE MACAULEY: You think that's  
11 a good idea?

12 MR. LLOYD: In order to resolve  
13 personality conflicts? Certainly.

14 JUDGE MACAULEY: Oh, so if  
15 someone--

16 MR. LLOYD: If she--if--

17 JUDGE MACAULEY: Let's take the  
18 witchcraft out of it. If someone complains to  
19 you, he's Jewish, and refers to a stereotype  
20 about his Judaism, go to mediation and work it  
21 out? Is that management's response to that?

22 MR. LLOYD: No; that would not be



1 management's response to that.

2 JUDGE MACAULEY: Okay. But  
3 witchcraft takes it into a different thing?  
4 I guess. I guess witchcraft and Judaism are  
5 different in the sense that--what?

6 MR. LLOYD: To be perfectly  
7 honest, sir--

8 JUDGE MACAULEY: Yeah.

9 JUDGE MACAULEY: --at the time, I  
10 wasn't even--I didn't know anything about  
11 witchcraft or Wiccanism.

12 JUDGE MACAULEY: Okay. But you do  
13 understand it was a set of beliefs she had?

14 MR. LLOYD: A set of beliefs; yes.

15 JUDGE MACAULEY: So you would  
16 expect that Ms. Smith would--

17 MR. LLOYD: No, I didn't say that  
18 I would expect it. I said it was a good--

19 JUDGE MACAULEY: You would suggest  
20 that mediation is a good place to avail  
21 themselves of Ms. Bagnoli's misconceptions of  
22 her system of belief.

1 MR. LLOYD: If Ms. Bagnoli is  
2 afraid of Ms. Smith, for whatever reason, then  
3 that is a good venue for that to be resolved.

4 JUDGE MACAULEY: And if Miss--if  
5 it were all about Judaism, you'd do the same  
6 thing? Or some other religion. I guess  
7 that's--

8 MR. LLOYD: Like--like I said,  
9 sir,--

10 JUDGE MACAULEY: If I'm afraid of  
11 his--

12 MR. LLOYD: --I wasn't even aware  
13 that Wiccanism was a recognized religion at  
14 the time. I had to research on it afterwards.

15 JUDGE MACAULEY: What was your  
16 impression at the time?

17 MR. LLOYD: I didn't have an  
18 impression. I just felt that if, if--if they  
19 had a conflict, that ICMS would be a good  
20 venue to resolve it.

21 JUDGE MACAULEY: What's your  
22 impression of witchcraft?

1                   MR. LLOYD: I don't have an  
2 impression of witchcraft.

3                   JUDGE MACAULEY: You don't have an  
4 impression? You expect me to believe that?  
5 you have no impression of witchcraft. What  
6 does that mean? You have no idea. You're a  
7 blank when it comes to that.

8                   MR. LLOYD: I've, I've heard--I've  
9 heard a lotta things about witchcraft, none of  
10 which--I don't know enough about it to believe  
11 any--you know--anything.

12                  JUDGE MACAULEY: So you have no  
13 impression, that when someone says "I'm a  
14 witch," you say--you just draw a blank?

15                  MR. LLOYD: Well, it could be  
16 claimed they're a good witch, or it could be,  
17 you know, the wicked witch of the West. I  
18 don't know enough about it to make a  
19 determination.

20                  JUDGE MACAULEY: But that's what  
21 you would think?

22                  MR. LLOYD: I'm sorry?

1 JUDGE MACAULEY: That's your  
2 impression, though. What did Ms. Smith tell  
3 you about it at your meeting, about Wiccanism  
4 and witchcraft?

5 MR. LLOYD: I believe she said  
6 that her belief system was Wiccanism.

7 JUDGE MACAULEY: Okay.

8 MS. SMITH: No. It's Wiccan.

9 MR. LLOYD: Wiccan?

10 JUDGE MACAULEY: No. I'm not  
11 asking you.

12 MS. SMITH: I'm sorry.

13 MR. LLOYD: That her belief system  
14 was Wiccan. We didn't go into--to much other  
15 than that.

16 JUDGE MACAULEY: Her belief system  
17 is Wiccan, and so as an aside, go to  
18 mediation--as an aside to these personality  
19 conflicts, mediation would be--might be a good  
20 place for you to avail yourself to dispel--so  
21 Ms. Bagnoli can dispel myths about your belief  
22 system. That's what you did. Am I right?

1 MR. LLOYD: That it was an  
2 opportunity for her to do that; sure.

3 JUDGE MACAULEY: Yeah; okay.  
4 Do you have anything else?

5 MS. SMITH: No.

6 JUDGE MACAULEY: Do you have any  
7 cross-examination?

8 CROSS-EXAMINATION

9 BY MS. SCOTT-JOHNSON:

10 Q How did this whole--first of all,  
11 before you were asked to--how did the  
12 situation come to your attention, in the first  
13 place?

14 A I was called down to the  
15 Coordination Center and said--

16 Q By whom? Do you recall?

17 A No.

18 Q Okay. And--

19 A They said you need--you need to  
20 come down and we have an allegation that  
21 possibly falls into the realm of workplace  
22 violence.

1           Q       How long had you been the  
2 workplace violence coordinator? As of the  
3 time that you received that call; if you  
4 recall.

5           A       This was 2009. March of 2009 that  
6 the--

7           Q       No. It wasn't March two thousand-  
8 -wait. Hold on. Yes. It was March of 2009.

9           A       Six months. Eight months.

10          Q       With respect--what was your  
11 function as a workplace violence coordinator?  
12 What was your job? What did the job entail?

13          A       Well, unfortunately, TSA doesn't  
14 have much set down as far as what the job  
15 entails, but as, as needed, I would make a--I  
16 would make inquiries in regards to work--  
17 workplace violence issues that potentially had  
18 the potential for violence, and that fell  
19 into--that could fall into the criminal realm.

20          Q       And what was your responsibility,  
21 once you investigated? Do you have any  
22 disciplinary responsibility or any other

1 further responsibility--

2 A No. My--all I do is make a  
3 determination that I impart to the FSD, either  
4 that I think there's a potential for violence  
5 here, and that, you know, that we, we need to  
6 take further steps, or that at this particular  
7 juncture there is no--you know, I don't  
8 believe this--

9 JUDGE MACAULEY: Did you tell Mr.  
10 Gazuski about Ms. Bagnoli's perceptions of Ms.  
11 Smith's religion?

12 MR. LLOYD: I don't think I did.

13 JUDGE MACAULEY: Now you knew that  
14 they had conflicts, then, as you--

15 MR. LLOYD: I'm sorry?

16 JUDGE MACAULEY: --testified to,  
17 that Ms. Bagnoli and Ms. Smith had personality  
18 conflicts.

19 MR. LLOYD: Yes.

20 JUDGE MACAULEY: And did you  
21 conclude that their personality conflicts also  
22 included a conflict about Ms. Smith's

1 religion, between Ms. Bagnoli and Ms. Smith?

2 MR. LLOYD: I don't think that was  
3 the point of the conflict; no.

4 JUDGE MACAULEY: Well, was it part  
5 of an aspect of the conflict? Apparently--

6 MR. LLOYD: Certainly, it could  
7 have been.

8 JUDGE MACAULEY: --she came to you  
9 and told you about it.

10 MR. LLOYD: I'm sorry?

11 JUDGE MACAULEY: It must be. She  
12 came to you and told you about it; right?

13 MR. LLOYD: Ms. Bagnoli. Yes.

14 JUDGE MACAULEY: Right. Now did  
15 you relay that to manager?

16 MR. LLOYD: To the manager? No.

17 JUDGE MACAULEY: Why not? You--

18 MR. LLOYD: I didn't think it was--

19 -

20 JUDGE MACAULEY: You suggested  
21 that--

22 MR. LLOYD: I didn't think--



1 JUDGE MACAULEY: --Ms. Bagnoli and  
2 Ms. Smith avail themselves in mediation, and  
3 that, you know, Ms. Smith could avail herself  
4 of the opportunity to dispel myths about her  
5 religion. Now--

6 MR. LLOYD: If she so chose.

7 JUDGE MACAULEY: If she so chose  
8 That's fine. But you knew that there was a  
9 conflict about it because you suggested that  
10 mediation'd be a good opportunity for it.

11 Now why didn't you tell Mr.  
12 Gazuski that their conflicts also encompassed  
13 Ms. Bagnoli's preconceptions about her Wiccan  
14 religion? Why didn't you tell Mr. Gazuski  
15 this?

16 MR. LLOYD: I didn't think it was--  
17 -it wasn't relevant. She had made the determ--  
18 -Ms. Smith had made a determination that she  
19 wasn't going to go forward with ICMS, and--

20 JUDGE MACAULEY: Well, the role  
21 wasn't ICMS. The role was: Is there a threat  
22 of potential violence here between these two?

1 Right?

2 MR. LLOYD: Right. And which I  
3 made a determination that it didn't appear  
4 that there was a threat of potential violence.

5 JUDGE MACAULEY: Now you told that  
6 to Mr. Gazuski?

7 MR. LLOYD: Yes.

8 JUDGE MACAULEY: And did you tell  
9 him the details of your investigation?

10 MR. LLOYD: Of my--no. I didn't  
11 go--go into--

12 JUDGE MACAULEY: No. You didn't  
13 go through the details. You just said: Mr.  
14 Gazuski, there's no threat of potential  
15 violence, and the subject was over. No  
16 further discussion. What's this all about,  
17 Mr. Lloyd? No conversation like that?

18 MR. LLOYD: The conversation  
19 centered around the fact that it was my belief  
20 that Mrs. Smith--Ms. Smith did not follow Ms.  
21 Bagnoli, and that there was no basis in fact  
22 for that allegation.

1 JUDGE MACAULEY: Did you tell Mr.  
2 Gazuski they had personality conflicts?

3 MR. LLOYD: Yes. I said they had  
4 a personality conflict.

5 JUDGE MACAULEY: And did you go  
6 into the details of their personality  
7 conflicts?

8 MR. LLOYD: No. I didn't.

9 JUDGE MACAULEY: Why not?

10 MR. LLOYD: It was a very short  
11 meeting, that I was, I was--that I was kicking  
12 it back to them, and that was it.

13 JUDGE MACAULEY: Did Mr. Gazuski  
14 ask about it?

15 MR. LLOYD: I don't believe so.

16 JUDGE MACAULEY: Okay. Go ahead.

17 BY MS. SCOTT-JOHNSON:

18 Q When you received a request, or  
19 the information that there was something that  
20 you needed to investigate, that was occurring  
21 between Ms. Smith and Ms. Bagnoli, what  
22 specifically was the subject matter of that

1 request? What was imparted to you with  
2 respect to--

3 A That one employee had followed  
4 another employee home.

5 Q At that time, was there any  
6 mention about Ms. Smith's religion?

7 A No.

8 Q What was the first thing that you  
9 did after you received that information?

10 A That was in the interview with Ms.  
11 Bagnoli.

12 Q Okay. So now you went into an  
13 interview with Ms. Bagnoli. What did you say  
14 to her and what did she say to you?

15 JUDGE MACAULEY: I don't want him  
16 to repeat testimony that he's already  
17 testified to, so I want your questions to--

18 MS. SCOTT-JOHNSON: Well, Judge,  
19 I'm getting the impression from the questions  
20 that the--

21 JUDGE MACAULEY: Don't get--derive  
22 any impressions from my questions. Okay?

1 That's one assumption you shouldn't make. I  
2 can ask all sorts of questions and that's for  
3 my--that's for me. But I don't want repeated  
4 testimony. You can ask whatever questions you  
5 want, but I don't him to repeat himself again  
6 and again. So the questions have to  
7 supplement what he's already testified to.

8 BY MS. SCOTT-JOHNSON:

9 Q Did Ms. Bagnoli tell you that she  
10 was afraid of Ms. Smith because she was a  
11 witch?

12 A That was--I don't know if she put  
13 it that way. It was certainly an aspect of--

14 Q And when you said it was an aspect  
15 of it, was it your belief that--

16 JUDGE MACAULEY: Actually--and I  
17 also, since Mr. Lloyd is a manager, don't need  
18 to lead Mr. Lloyd.

19 MS. SCOTT-JOHNSON: Well, you let  
20 her do direct examination so--

21 JUDGE MACAULEY: You know, this  
22 person is--she's pro se. I'd have to like

1 change every question that--and she hasn't  
2 even asked that many questions. But you're an  
3 attorney. I'm just saying, I don't want you  
4 to lead this witness. Clear and simple.  
5 Please. Or ask for an exception.

6 MS. SCOTT-JOHNSON: Can I have an  
7 exception, Judge, because I would have  
8 preferred--this was a joint witness--

9 JUDGE MACAULEY: I'm just telling  
10 you that--

11 MS. SCOTT-JOHNSON: --and because--  
12 -I understand, Judge.

13 JUDGE MACAULEY: --if you lead--

14 MS. SCOTT-JOHNSON: I just want to  
15 explain to you.

16 JUDGE MACAULEY: I'm just telling  
17 you, if you lead this witness, it's going to  
18 affect the credibility determinations I make.  
19 So, you know, I'm saying this for the TSA's  
20 benefit.

21 MS. SCOTT-JOHNSON: I'm trying to  
22 clarify--

1 JUDGE MACAULEY: Then you do it in  
2 a way that is not objectionable to me.

3 BY MS. SCOTT-JOHNSON:

4 Q Would you please describe for us  
5 what your intention was with respect to asking  
6 the--Ms. Smith--well, first of all, let me ask  
7 you this. Did you ask--what did you ask--what  
8 did you speak to Ms. Bagnoli about as far as--  
9 well, withdrawn.

10 When did you determine that there  
11 was a personality conflict as opposed to there  
12 being workplace violence? At what point?

13 A During my interview with Ms.  
14 Smith.

15 Q Prior to your interview with Ms.  
16 Smith, did you ask Ms. Bagnoli to engage in  
17 ICMS?

18 A I believe--yes, prior to my  
19 interview with Ms. Smith, I asked Ms. Bagnoli--  
20 --not when--not at--not at the initial outset.  
21 I said--I had asked her if ICMS would be  
22 something that she would like to avail herself

1 of.

2 Q What did Ms. Bagnoli say?

3 A Yes.

4 Q When you discussed that with Ms.  
5 Bagnoli, did you discuss anything about Ms.  
6 Smith's religion to Miss--with Ms. Bagnoli?

7 A No.

8 Q When you asked Ms. Smith whether  
9 she would go to ICMS, was it for the purposes  
10 of her talking about--

11 JUDGE MACAULEY: What purpose?  
12 What purpose?

13 MS. SCOTT-JOHNSON: What purpose--  
14 what was your purpose of asking her if--well,  
15 first of all, was it in order for her--

16 JUDGE MACAULEY: I don't want you  
17 to lead the witness. If it's a yes or no,  
18 you're leading.

19 MS. SCOTT-JOHNSON: What was the  
20 purpose of you asking her to attend ICMS?

21 JUDGE MACAULEY: He already  
22 testified to that a lot. So he already said



1       why. I don't want him to repeat it. I know  
2       what his answer's going to be.

3                       BY MS. SCOTT-JOHNSON:

4               Q       Was Ms. Smith's religion the main  
5       reason--

6                       MS. SCOTT-JOHNSON: Judge, can I  
7       have an exception?

8                       JUDGE MACAULEY: No. I don't him  
9       to repeat testimony, and if he has to, you  
10      obviously--the questions aren't that  
11      significant. So I don't know. I just--you're  
12      going to get him to repeat, and what does that  
13      do? I don't want--

14                      MS. SCOTT-JOHNSON: Because Judge-  
15      -

16                      JUDGE MACAULEY: I don't mean to  
17      impede you but you've got--I don't want him to  
18      repeat the questions that I can sense. And  
19      actually, this witness is here for a very  
20      limited purpose. Although I do have another  
21      question.

22                      Were you consulted--have you ever

1       been consulted with Ms. Smith--after you  
2       talked to Mr. Gazuski, did you ever have  
3       anything to do with her employment,  
4       afterwards?

5                   MR. LLOYD:   No.

6                   JUDGE MACAULEY:  Nothing?

7                   MR. LLOYD:   Nothing.

8                   JUDGE MACAULEY:  After you talked  
9       to Mr. Gazuski, did you have anything to do  
10      with Ms. Smith's employment, subsequent to  
11      that?

12                  MR. LLOYD:   No.

13                  JUDGE MACAULEY:  Were you ever  
14      consulted on her termination?

15                  MR. LLOYD:   No.

16                  JUDGE MACAULEY:  Were you ever  
17      consulted in any further discipline?

18                  MR. LLOYD:   No.

19                  JUDGE MACAULEY:  All right.  So--

20                  MS. SMITH:   May I ask one more?

21                  JUDGE MACAULEY:  Well, let's--no.

22                  MS. SMITH:   Okay.

1 JUDGE MACAULEY: It's not your--

2 MS. SMITH: Okay.

3 JUDGE MACAULEY: So this is a very  
4 limited witness.

5 BY MS. SCOTT-JOHNSON:

6 Q As a result of your investigation,  
7 did it come to your attention, whether or not  
8 there were any other TSOs that practice Wicca  
9 in this airport?

10 A I'm sorry. Say that again.

11 JUDGE MACAULEY: What relevance is  
12 that?

13 MS. SCOTT-JOHNSON: Because Miss--  
14 we're talking about potential comparators and  
15 whether or not she was targeted because she  
16 practiced Wicca. So I want to know whether or  
17 not this is the only person who has practiced  
18 Wicca, and whether or not anybody else felt  
19 that they were targeted, if it has come to  
20 this witness's attention.

21 JUDGE MACAULEY: I'm sorry.

22 Targeted. He wasn't here to target her. A

1 complaint was brought to his attention--

2 MS. SMITH: No--

3 JUDGE MACAULEY: --and this is how  
4 he resolved it. But I don't--he never did an-  
5 -well, except this separation issue. But that  
6 was for a limited time. Apparently the  
7 continuation of the separation was decided by  
8 some other manager. So I don't know what  
9 relevance that question has, at least to this  
10 witness. And actually, targeted--when you ask  
11 that question, it's leading, and I don't want  
12 a leading question.

13 MS. SCOTT-JOHNSON: Ms. Smith has  
14 suggested that because of her religion, she  
15 was treated differently, and she was treated  
16 unfair--

17 JUDGE MACAULEY: She doesn't  
18 suggest it. She's alleged it.

19 MS. SCOTT-JOHNSON: She's alleged  
20 it. And I wanted to know whether or not there  
21 are any other, to this witness's knowledge,  
22 and any other individuals that practice Wicca

1 here?

2 JUDGE MACAULEY: Do you know?

3 MR. LLOYD: I've been told that  
4 there are practicing Wiccans in, in TSA, in  
5 the airport here.

6 JUDGE MACAULEY: Okay. What's  
7 your next question?

8 BY MS. SCOTT-JOHNSON:

9 Q To your knowledge, have any of  
10 them ever raised a complaint about being  
11 treated unfairly because of their religion?

12 A Not to my knowledge.

13 Q You were asked whether you thought  
14 it was appropriate for you to direct Ms. Smith  
15 to ICMS because another employee had a problem  
16 with their religion. What authority do you  
17 have to direct any employee to ICMS?

18 A You can't direct any employee.  
19 You can offer it as an avenue that they can  
20 take. Whether they choose to or not is up to  
21 them.

22 Q Was it Ms. Smith's religion--or

1       what, did you feel, was the main problem  
2       between--after your investigation, what did  
3       you feel was the main problem between Ms.  
4       Bagnoli and Ms. Smith?

5               A       I got the sense that they just  
6       didn't like each other.

7               Q       What part, if any, did you believe  
8       her religion played in that disagreement?  
9       That not liking each other.

10              A       I thought that the majority of the  
11       problem was that--that Ms. Bagnoli had  
12       somehow--or Ms. Smith and Ms. Bagnoli, during  
13       the course of their interaction in the  
14       screening function, just, just didn't get  
15       along. I wasn't going to make a  
16       determination, either way, as to what all the  
17       points of that--that--that conflict was. I  
18       just--you know.

19              Q       After you finished your  
20       investigation, did you ever make an official  
21       report about what you found?

22              A       I--an official report? Verbally,

1 I advised the acting FSD, Patricia Sykes, that  
2 it appeared that we did not have a workplace  
3 violence issue, and that I had--and I had  
4 asked her in regards to ICMS. Ms. Smith had  
5 indicated that she wanted a representative on  
6 her behalf in the room, and I said, well, gee,  
7 you know what? I don't even know if that--I  
8 don't know if it works that way. I'll have to  
9 check. And I stepped out. And I had spoken  
10 to Ms. Sykes in regards, and was referred to  
11 Mr. Galucichek who's the ICMS coordinator, and  
12 he said, well, that's really not how it's set  
13 up. It's supposed to be face to face. You  
14 know, where there's a mediation and the two  
15 individuals that have the conflict, and that's  
16 how it's resolved, more face to face, and that  
17 there's not really a place for a  
18 representative for each party, cause then you  
19 get into a much more elaborate process.

20 So I went back and I told Ms.  
21 Smith that, and she said I'm not in--I'm not  
22 doing it. I said okay.

1 MS. SCOTT-JOHNSON: I have nothing  
2 further.

3 JUDGE MACAULEY: Do you have  
4 anything else, Ms. Smith?

5 MS. SMITH: Just about the--him  
6 being called down to the--

7 JUDGE MACAULEY: Just ask the  
8 question.

9 MS. SMITH: --the Coordination  
10 Center to take care of this complaint.

11 REDIRECT EXAMINATION

12 BY MS. SMITH:

13 Q Does that mean that it was first  
14 filed with the manager? From Mary to a  
15 manager, first of all?

16 A Yeah.

17 Q So management was aware of her  
18 being afraid of me because I was a witch  
19 before you even--

20 MS. SCOTT-JOHNSON: Objection to  
21 what management was aware of.

22 MS. SMITH: They got the complaint



1 first. Am I--am I correct?

2 MR. LLOYD: They had a, an  
3 allegation that you attempted to follow Ms.  
4 Bagnoli home. As to what other--what else  
5 they knew, I don't--I don't know. That's what  
6 I was told.

7 BY MS. SMITH:

8 Q Did you see the written  
9 allegation?

10 A I believe so; yeah.

11 Q And that's all it said?

12 A You know what? I don't recall  
13 what--what the, the--what the--what her  
14 written statement said.

15 Q Okay.

16 A I mean, you should have copies of  
17 it.

18 MS. SMITH: I would just like--  
19 kind a like to see it some day.

20 MS. SCOTT-JOHNSON: I do have one  
21 other questions, Judge.

22 JUDGE MACAULEY: Go ahead.

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RECROSS-EXAMINATION

BY MS. SCOTT-JOHNSON:

Q If you had made a determination that you believed there was workplace violence, what was your responsibility, if you had--

JUDGE MACAULEY: That's not relevant because he--why ask that? It's-- there was no determination. We don't have to pursue that.

During the meeting between you and Ms. Smith, it was reported to management that she walked out of your office twice. Is that true?

MR. LLOYD: Yes.

JUDGE MACAULEY: Okay. Why don't you tell me the circumstances about that.

MR. LLOYD: Ms. Bagnoli was visibly and emotionally upset--

MS. SMITH: Ms. Smith.

MR. LLOYD: I'm sorry. Ms. Smith was visibly and emotionally upset, and she got

1 up and walked out of the office.

2 JUDGE MACAULEY: All right. Is  
3 there anything wrong with that?

4 MR. LLOYD: Well, it makes it a  
5 little difficult to continue the inquiry, the-  
6 -the interview.

7 JUDGE MACAULEY: She was  
8 emotionally upset. Why don't you describe  
9 what that means. What do you mean, she was  
10 emotionally upset?

11 MR. LLOYD: She was in tears. She  
12 got up and she walked out.

13 JUDGE MACAULEY: She was in terms.  
14 She got up and she walked out. Is that  
15 something that you find--you would--how did  
16 she walk out? Just got up and walked out?

17 MR. LLOYD: She got up and walked  
18 out.

19 JUDGE MACAULEY: "I'm leaving"?  
20 Did she say anything as she walked out?

21 MR. LLOYD: "I'm outta here" or  
22 something to that effect.

1 JUDGE MACAULEY: Do you recall  
2 that distinctly? "I'm outta here"?

3 MR. LLOYD: I don't know if that  
4 was the phraseology used.

5 JUDGE MACAULEY: Do you recall her  
6 phraseology?

7 MR. LLOYD: Off the top of my  
8 head, no.

9 JUDGE MACAULEY: That was the  
10 first time?

11 MR. LLOYD: Both times.

12 JUDGE MACAULEY: Both times. Was  
13 there anything to distinguish one from the  
14 other?

15 MR. LLOYD: Separation in time.  
16 Other than that--

17 JUDGE MACAULEY: Other than that.

18 MR. LLOYD: No.

19 JUDGE MACAULEY: Did you find that  
20 that--was there--well, you're a manager. Did  
21 you find that insubordinate?

22 MR. LLOYD: Insubordinate? No.

1 JUDGE MACAULEY: Did you find that  
2 inappropriate? Let's put it this way. Would  
3 you characterize it in any way that you need  
4 to report it, that she walked out of your  
5 office?

6 MR. LLOYD: Well, when I got up  
7 to--I had to follow, physically follow her  
8 out, and I just wanted to make sure that she,  
9 number one, was okay, and number one--and  
10 number two, that she was coming back. I  
11 didn't want her to just leave.

12 JUDGE MACAULEY: Okay. So was  
13 this something that--so was just an emotional  
14 thing?

15 MR. LLOYD: Yes.

16 JUDGE MACAULEY: Why did you  
17 report that to management, that she walked out  
18 of your office twice, then, if it was just an  
19 emotional sort of whatever, while you were  
20 having a discussion with her?

21 MR. LLOYD: Well, I wasn't sure if  
22 it was uncooperative or if it was just

1 emotion.

2 JUDGE MACAULEY: Did you conclude-  
3 -did you make a conclusion on that?

4 MR. LLOYD: Not really. I don't  
5 know--you know, I don't know--I don't know Ms.  
6 Smith well enough to make a categorization,  
7 whether or not she was just be--trying to be  
8 uncooperative.

9 JUDGE MACAULEY: What did you tell  
10 management about the fact that she left your  
11 office twice?

12 MR. LLOYD: That she was un--upset  
13 and that, you know, that I didn't--that--that  
14 I thought it bordered on being uncooperative  
15 cause she refused to come back.

16 JUDGE MACAULEY: Now she did--did  
17 she come back?

18 MR. LLOYD: She came back.

19 JUDGE MACAULEY: Okay. So you  
20 conclude--you made some conclusions about her  
21 behavior while you were interacting with her?

22 MR. LLOYD: Yes.

1 JUDGE MACAULEY: And what did you  
2 conclude? You just said--

3 MR. LLOYD: I concluded that she--

4 JUDGE MACAULEY: --she walked out  
5 twice, and I couldn't decide whether she was  
6 uncooperative or she just didn't know what she  
7 was doing, cause she was emotional.

8 MR. LLOYD: She was emotional, but  
9 I think she had her wits about her. I think  
10 she was--I think she was being a little bit  
11 uncooperative.

12 JUDGE MACAULEY: But you told that  
13 to management, that you thought she was being  
14 uncooperative?

15 MR. LLOYD: Yes.

16 JUDGE MACAULEY: Okay. That's  
17 what I wanted to know.

18 MR. LLOYD: But in the end, she  
19 did cooperate cause she came back to the  
20 office.

21 JUDGE MACAULEY: So why afterwards  
22 did you tell management that you thought she

1 was uncooperative, then, or you thought she  
2 might have been uncooperative?

3 MR. LLOYD: I thought she might  
4 have been uncooperative; yes.

5 JUDGE MACAULEY: Okay. At the  
6 conclusion of the session--

7 MR. LLOYD: I'm sorry. I--

8 JUDGE MACAULEY: Yes. You  
9 understand why I'm a little confused?

10 MR. LLOYD: Okay. Yeah. Okay.  
11 Yes. Yes. You're right. She was emotional.  
12 She got up. I felt she was being a little bit  
13 uncooperative, and I followed her out, to make  
14 sure that she came back.

15 JUDGE MACAULEY: Okay. But you  
16 concluded that she really wasn't  
17 uncooperative, she was just emotional?

18 MR. LLOYD: Yes. I--that's--  
19 that's a good categorization.

20 JUDGE MACAULEY: But on the other  
21 hand, you reported to management that you  
22 thought she was uncooperative.



1 MR. LLOYD: Yes. I did.

2 JUDGE MACAULEY: Okay. So you  
3 concluded that she was really cooperative, she  
4 was just emotional--

5 MR. LLOYD: I, I con--

6 JUDGE MACAULEY: Let me--that she  
7 was just emotional, that's your personal  
8 conclusion, yet you went to management, and  
9 thought, you know, when all's said and done,  
10 I thought she was a little uncooperative.

11 Why?

12 MR. LLOYD: It could a been a  
13 little bit of both.

14 JUDGE MACAULEY: Why even mention  
15 it, then, if you basically concluded that she  
16 was primarily uncooperative--I mean, she was  
17 primarily emotional but really wasn't  
18 uncooperative?

19 I guess I'm confused by your  
20 answer, and I don't understand it.

21 And you're shaking your head.

22 MR. LLOYD: No, and--yes--and

1 thinking back on it, I believe that she, at  
2 the time she was, although emotional, she was  
3 being uncooperative.

4 JUDGE MACAULEY: So you're sort of  
5 changing your testimony somewhat. Finessing  
6 it.

7 MR. LLOYD: No. I'm not finessing  
8 it. Yes, I was unsure at the time.  
9 Ultimately, I think my conclusion is that yes,  
10 she was being uncooperative.

11 JUDGE MACAULEY: Why are you  
12 changing your mind, then? Your testimony is  
13 a little different now, and I want to know  
14 why.

15 MR. LLOYD: Because we've been  
16 going over it quite a bit, and--and as I think  
17 back--

18 JUDGE MACAULEY: And you don't  
19 like the way it was leading; is that it?

20 MR. LLOYD: No, no, no. As I--as  
21 I think back, yeah, I believe that she was  
22 being a little uncooperative. There was no

1 reason for her--I mean, we weren't having--

2 JUDGE MACAULEY: Does she--did--

3 MR. LLOYD: We weren't having a--a  
4 combative conversation.

5 JUDGE MACAULEY: I wasn't implying  
6 that.

7 MR. LLOYD: Right. So there'd be  
8 no reason for her to, to--

9 JUDGE MACAULEY: Right.

10 MR. LLOYD: --be so emotional,  
11 that she would just run out--

12 JUDGE MACAULEY: Well, was she  
13 crying at the time?

14 MR. LLOYD: She was--she was--  
15 yeah; she was crying.

16 JUDGE MACAULEY: She was crying.  
17 And as you admitted, she wasn't being--she  
18 wasn't giving you any attitude, was she?

19 MR. LLOYD: No; not really.

20 JUDGE MACAULEY: You know what I  
21 mean?

22 MR. LLOYD: Yeah. No, no, no.

1 Not--

2 JUDGE MACAULEY: That's a  
3 thumbnail description for somebody who's  
4 borderline rude.

5 MR. LLOYD: No, no, no. No. She  
6 wasn't giving me significant attitude; no.

7 JUDGE MACAULEY: Okay. So she  
8 primarily was emotional. She started crying.

9 MR. LLOYD: Right. And she left  
10 the room and I--

11 JUDGE MACAULEY: What were you  
12 thinking at the time she was crying?

13 MR. LLOYD: I thought that she was  
14 using cry--crying as a pretext for not  
15 continuing our, our--my interview.

16 JUDGE MACAULEY: You didn't think  
17 her crying was sincere?

18 MR. LLOYD: It could have been but  
19 I--at the time I believed that--that she was--  
20 that it was being used a little bit as a  
21 pretext for getting out of the room.

22 JUDGE MACAULEY: And why? Why did

1       you think that?

2                   MR. LLOYD:   I don't know.   It's  
3       just a sense I had.

4                   JUDGE MACAULEY:   Anything further?

5                   MS. SCOTT-JOHNSON:   Yes.

6                   BY MS. SCOTT-JOHNSON:

7           Q        At the time when--now you've  
8       concluded that she--your impression was that  
9       she may have been using the crying to get out  
10      of the room.   At the time, were you  
11      confronting her?   Were you angry with her?  
12      Was there any heated exchange at that point in  
13      time when she was crying?

14                  JUDGE MACAULEY:   He denied that.

15                  MR. LLOYD:   We didn't have a  
16      heated exchange.

17                  JUDGE MACAULEY:   So if you're--if  
18      you think she was using it as a pretext to get  
19      out of the room, how is she not being  
20      cooperative then?   I mean, what would be her  
21      motive for such a pretext?

22                  MR. LLOYD:   Honestly, I'm--that--

1 JUDGE MACAULEY: I mean, I'm  
2 asking you since you're speculating about why  
3 was being uncooperative. What would be her  
4 motive?

5 MR. LLOYD: I don't know.

6 JUDGE MACAULEY: You don't know.  
7 So why think negatively about it as opposed to  
8 just, well, she's emotional?

9 MR. LLOYD: That was just the  
10 impression that I got.

11 JUDGE MACAULEY: But it was  
12 sufficient enough for you to report it to  
13 management?

14 MR. LLOYD: To report it--I put  
15 it--

16 JUDGE MACAULEY: That she was  
17 basically being a little uncooperative with  
18 you.

19 MR. LLOYD: I think that--

20 JUDGE MACAULEY: I say that  
21 because it was used as a basis for her  
22 termination. So that's why I'm wondering why

1       you reported it.

2                   MR. LLOYD:  I put it in my notes.  
3       that was all.

4                   JUDGE MACAULEY:  No.  But  
5       management put it in its termination letter,  
6       and I want to know--they don't put things in  
7       their termination letter--

8                   MR. LLOYD:  Right.

9                   JUDGE MACAULEY:  --unless it's a  
10      basis for termination--

11                  MR. LLOYD:  Correct.

12                  JUDGE MACAULEY:  --and I want to  
13      know why what--why you thought she was being  
14      uncooperative since that's what you conveyed  
15      to management.  And that's why I'm asking you,  
16      why you got that sense, that she was  
17      uncooperative.  But it was just a sense you  
18      got.  But you couldn't speculate as to why  
19      because she wasn't being--she wasn't being  
20      difficult.  She wasn't being insubordinate.

21                  MR. LLOYD:  She didn't--

22                  JUDGE MACAULEY:  She wasn't being-

1 -she wasn't challenging you.

2 MR. LLOYD: She wasn't being--she  
3 didn't want to come back in the room but I  
4 eventually coaxed her back into the room.

5 JUDGE MACAULEY: You coaxed her.  
6 While she was crying? While she was crying?

7 MR. LLOYD: No. I think she had  
8 stopped.

9 JUDGE MACAULEY: Okay. Anything  
10 else?

11 FURTHER RECROSS-EXAMINATION

12 BY MS. SCOTT-JOHNSON:

13 Q At the time that Ms. Smith first  
14 walked out of the room, was the interview  
15 over?

16 A No.

17 Q So you needed to conclude the  
18 interview?

19 A Correct.

20 Q And in order to conclude it, you  
21 needed Ms. Smith to come back into the room;  
22 correct?



1           A       Yes.

2           Q       Okay.  So that Ms. Smith--

3                    JUDGE MACAULEY:  On the other  
4 hand, she didn't say I need to be excused, can  
5 you give me a minute?

6                    MR. LLOYD:  No.

7                    JUDGE MACAULEY:  She didn't.  She  
8 just got up and walked out.  All right.

9                    MS. SCOTT-JOHNSON:  I have nothing  
10 further.

11                   JUDGE MACAULEY:  Do you have  
12 anything?

13                   MS. SMITH:  No, sir.

14                   JUDGE MACAULEY:  Mr. Lloyd, thank  
15 you.  I have no further questions.  You're  
16 excused.  We're off the record.

17                   [Discussion off the record]

18                   JUDGE MACAULEY:  Just let me get  
19 this on the record.

20                   MS. SMITH:  When we--when Eric and  
21 I would be working on Playbook--

22                   JUDGE MACAULEY:  Wait.  Start from

1 the very beginning. You want to call Eric who?

2 MS. SMITH: Blakeman.

3 JUDGE MACAULEY: Blakeman.

4 MS. SMITH: His name is.

5 JUDGE MACAULEY: And what are you  
6 going to elicit from Mr. Blakeman?

7 MS. SMITH: Okay. He's the  
8 behavior detection officer who worked under  
9 Matt Lloyd at the time that this all happened,  
10 who would walk around with me outside during  
11 Playbook and ask me hundreds upon hundreds of  
12 questions about my religion. And--and I don't  
13 know if he was asking me that--

14 JUDGE MACAULEY: One of the  
15 things--one of the things that I may--you  
16 know, you may have been harassed, Ms. Smith,  
17 but you've admitted in your testimony you  
18 never ever complained about religious  
19 harassment to management.

20 MS. SMITH: Right.

21 JUDGE MACAULEY: You've also  
22 admitted, on the record, that management was

1 never present to know about this harassment.

2 In other words, I cannot impute knowledge  
3 because they never saw it. Is that correct?

4 MS. SMITH: As far as I know, yes,  
5 sir. That is.

6 JUDGE MACAULEY: As far as you  
7 know. That's your test--

8 MS. SMITH: As far as I know,  
9 there was never any management around that saw  
10 anything, or overheard anything.

11 JUDGE MACAULEY: Okay. Right.  
12 And you have no evidence that they knew about  
13 this harassment, do you?

14 MS. SMITH: No, sir.

15 JUDGE MACAULEY: No evidence that  
16 they knew. You never ever, at the time, even  
17 at the time of your termination, told them  
18 about your harassment. The only time  
19 management would know about this is at the  
20 time you went to the EEO office; right?

21 MS. SMITH: I didn't have the  
22 opportunity at my termination. They--I tried

1 calling Patricia Sykes and she wouldn't take  
2 my call.

3 JUDGE MACAULEY: Okay. But you  
4 didn't tell them at that time.

5 MS. SMITH: No.

6 JUDGE MACAULEY: And the only  
7 person you talked to was the ombudsman.

8 MS. SMITH: Right.

9 JUDGE MACAULEY: A relationship  
10 that was confidential; correct?

11 MS. SMITH: Correct.

12 JUDGE MACAULEY: So the ombudsman  
13 would not be deemed to be management; is that  
14 correct?

15 MS. SMITH: That's correct.

16 JUDGE MACAULEY: And do you have  
17 any other evidence to introduce that would  
18 change this?

19 MS. SMITH: No.

20 JUDGE MACAULEY: Ms. Smith, you  
21 cannot prevail in your harassment complaint  
22 under Title 7.

1 MS. SMITH: Okay.

2 JUDGE MACAULEY: And I will so  
3 conclude that. And I don't want to bring in  
4 witness after witness to testify about this  
5 harassment.

6 MS. SMITH: Okay.

7 JUDGE MACAULEY: I mean, even if  
8 you establish that, that you were harassed,  
9 hundreds of times, that people made fun you  
10 and your religion, unless you bring it to the  
11 attention of--and no supervisor harassed you;  
12 is that correct?

13 MS. SMITH: That's not correct.

14 JUDGE MACAULEY: Who harassed you  
15 because of your religion that was a  
16 supervisor?

17 MS. SMITH: Oh, I'm sorry. At the  
18 time, I didn't know whether or not it was  
19 because of my religion. So I'm sorry. I  
20 guess no.

21 JUDGE MACAULEY: So the harassment  
22 itself is not actionable because you did not

1 take this to management. Any management. Any  
2 supervisor.

3 MS. SMITH: Not regarding my  
4 religion; no.

5 JUDGE MACAULEY: That doesn't mean  
6 that the other issues wouldn't have a  
7 motivation of an animus based on you're  
8 Wiccan. But as to your first allegation, that  
9 you were harassed and management let it go on,  
10 I cannot find, because you have proffered me  
11 no evidence. You are proffering me no  
12 witness, and I've heard three of them, who are  
13 your best witnesses.

14 So as to Issue 1, you cannot  
15 prevail, and I will so rule against that.

16 MS. SMITH: Yes, sir.

17 JUDGE MACAULEY: All right. So  
18 that leaves us with issues with regard to your  
19 lunch, and the reprimand and the termination.

20 Do you follow me?

21 MS. SMITH: Yes.

22 JUDGE MACAULEY: Okay. Now who

1 will you call?

2 MS. SMITH: Nobody.

3 JUDGE MACAULEY: Nobody.

4 MS. SMITH: I will just cross the  
5 management people that she calls.

6 JUDGE MACAULEY: Okay. It's  
7 twenty to 5:00.

8 So you would rest your case; is  
9 that correct?

10 MS. SMITH: Yes.

11 JUDGE MACAULEY: And your case  
12 will depend on how well you successfully  
13 cross-examine, or I question these witnesses.

14 MS. SMITH: Yes, sir.

15 JUDGE MACAULEY: All right. Every  
16 other witness--does that change your  
17 witnesses? No other witness that I approved  
18 of for Ms. Smith, aside from those managers  
19 she wants to call, will I hear.

20 So everybody else can go. Now  
21 who's left? Johannson, Englehardt, Sykes.  
22 Are you calling Sykes?

1 MS. SMITH: Yes.

2 JUDGE MACAULEY: And who's the  
3 other one?

4 MS. SMITH: Englehardt and  
5 Johansson. That's it.

6 JUDGE MACAULEY: Are any of them  
7 out there? Or I don't know what you want to  
8 do now. Let's take a break. We've been at  
9 it.

10 [A brief recess was taken]

11 JUDGE MACAULEY: We are going off  
12 the record for the day and will resume at 9:30  
13 a.m. tomorrow morning.

14 [Whereupon, at 4:45 p.m., the  
15 hearing was adjourned, to reconvene the  
16 following day at 9:30 a.m., at the same  
17 place.]

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Carole Smith v TSA

Before: EEOC New York District Office

Date: 11-30-10

Place: Albany, NY

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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Court Reporter

**NEAL R. GROSS**

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
NEW YORK DISTRICT OFFICE

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HEARING

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 IN THE MATTER OF: :  
 :  
 CAROLE SMITH, :  
 :  
 Complainant, : EEOC No.  
 : 520-2010-00258X  
 v. :  
 : TSA-007284  
 :  
 JANET NAPOLITANO, SECRETARY, :  
 TRANSPORTATION SECURITY :  
 ADMINISTRATION, :  
 :  
 Agency. :  
 :  
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Wednesday,  
December 1 2010

Third Floor  
Albany International Airport  
737 Albany-Shaker Road

Albany, New York 12211

The above-entitled matter came on for  
hearing, pursuant to adjournment, at 9:45 a.m.  
BEFORE:

THE HONORABLE WILLIAM MACAULEY  
Chief Administrative Judge

APPEARANCES:

On Behalf of the Complainant,  
Carole Smith:

CAROLE SMITH, pro se

On Behalf of the Agency, Transportation  
Security Administration:

CHERYL SCOTT-JOHNSON, ESQ.

of: Office of the Chief Counsel  
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C O N T E N T S

WITNESS                      DIRECT CROSS REDIRECT RECROSS

John Engelhardt              354    399

Brian Johansson              447    457

Patricia Sykes                484

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P R O C E E D I N G S

[9:45 a.m.]

JUDGE MACAULEY: This is a  
resumption of the hearing of Smith against  
the--Carole Smith against the Transportation  
Security Administration.

Who--you want to call Ms. Bagnoli.  
For what reason are you--what are you going to  
ask her? In general.

MS. SCOTT-JOHNSON: Judge--

JUDGE MACAULEY: What are you  
trying to establish, in other words?

MS. SCOTT-JOHNSON: I want to  
establish that none of her concerns had  
anything to do with Ms. Smith's religion.

JUDGE MACAULEY: None of Ms.  
Bagnoli's concerns--

MS. SCOTT-JOHNSON: Concerns had  
to do with Ms. Smith's religion. Number one.  
And number two--

JUDGE MACAULEY: Well, let me  
address that concern. A. I don't see how she



1 figures--I don't know what relevance her  
2 concerns with her religion--I've already made  
3 a ruling on this case in the harassment. I  
4 ruled on the record. Ms. Smith did not  
5 prevail.

6 So her concerns. So the remainder  
7 of my issues have to do with management's  
8 decision and Ms. Bagnoli isn't a manager.

9 So what's your second reason?

10 MS. SCOTT-JOHNSON: The second  
11 reason is that you indicated yesterday, to Ms.  
12 Smith, that one of the remaining issues was  
13 her treatment with respect to her breaks and  
14 whether or not she was unfairly treated with  
15 respect to her breaks.

16 Ms. Bagnoli being the other person  
17 on the side of that, as far as the comparison  
18 with how they were treated, whether or not  
19 there was any difference or disparity in the  
20 treatment of the two of them during the break  
21 situation, as far as her lunch breaks and her  
22 other breaks, I think Ms. Bagnoli can talk to,

1 speak to how she was treated, to show that  
2 there was no disparity. That there was no  
3 focus on Ms. Smith as opposed to--

4 JUDGE MACAULEY: Well, Ms. Bagnoli  
5 couldn't testify to that. That's a question  
6 that you would ask Mr.--whoever assigned those  
7 lunch breaks. Who's the decision maker on  
8 that? Who did that?

9 MS. SCOTT-JOHNSON: Well, other  
10 than what you heard--

11 JUDGE MACAULEY: Mr. Lloyd seemed  
12 to be--was the one who issued the separation  
13 of these two--

14 MS. SCOTT-JOHNSON: Right.  
15 Initially.

16 JUDGE MACAULEY: --and the lunch  
17 breaks--I don't know. I gather that--is that  
18 disputed? You assert what? Ms. Bagnoli was  
19 favored--or you were treated differently than  
20 whom? Other TSAs? Or TSOs?

21 MS. SMITH: Yes, cause I could--I  
22 was not allowed in the break room or in my

1 locker.

2 JUDGE MACAULEY: Yes. Ms. Bagnoli  
3 only, or all of them?

4 MS. SMITH: Just Ms. Bagnoli.

5 JUDGE MACAULEY: Just Ms. Bagnoli.

6 MS. SMITH: Ms. Bagnoli. Yes. As  
7 far as I'm aware. Most of the time, when I  
8 would go on breaks, all the other TSOs would  
9 have already had theirs. So I was kind a--  
10 sometimes even forgot about.

11 JUDGE MACAULEY: Why is it just  
12 Ms. Bagnoli as opposed to the rest of the  
13 TSOs?

14 MS. SMITH: I don't--I didn't know  
15 why until March 12th.

16 JUDGE MACAULEY: You know, but you  
17 don't dispute that you were treated the same  
18 as all the other TSOs, save for Ms. Bagnoli.  
19 Am I right? Ms. Bagnoli was the only person  
20 who was treated most favorably than you and  
21 the other TSOs?

22 MS. SMITH: I would say--

1 JUDGE MACAULEY: And if that's  
2 true, where do you come in?

3 MS. SMITH: I was--I felt  
4 segregated from the other TSOs.

5 JUDGE MACAULEY: In other words,  
6 Ms. Bagnoli is not Wiccan.

7 MS. SMITH: Right.

8 JUDGE MACAULEY: You are.

9 MS. SMITH: Right.

10 JUDGE MACAULEY: But I presume  
11 that the vast majority of other TSOs aren't  
12 Wiccan either.

13 MS. SMITH: She would be allowed  
14 to go on break, like with her--with friends  
15 and coworkers.

16 JUDGE MACAULEY: What does that  
17 have to do with your religion, then?

18 MS. SMITH: And I was not allowed  
19 to do that, because she said in her statement  
20 that she was afraid of me because of my  
21 religion.

22 JUDGE MACAULEY: Well, that speaks

1 to what management's decision was, not what  
2 Ms. Bagnoli--I want to know--this is--Ms.  
3 Bagnoli's not the Agency. I want to hear from  
4 the Agency people who made the decision.  
5 Whether it's true or not isn't relevant to me.  
6 What's relevant is whether she was treated  
7 differently because of her religion.

8 Now presumably, what? these two  
9 were separated. Is that part of the issue,  
10 Ms. Johnson?

11 MS. SCOTT-JOHNSON: Yes.

12 JUDGE MACAULEY: Okay. So I don't  
13 get what you're trying to establish. You can  
14 call--

15 MS. SCOTT-JOHNSON: That there was  
16 no disparate treatment, Judge--

17 JUDGE MACAULEY: Well, then  
18 establish that from the--

19 MS. SCOTT-JOHNSON: --between her  
20 and Ms. Bagnoli.

21 JUDGE MACAULEY: Well, establish  
22 that from the decision maker, not from Ms.

1 Bagnoli. Who made the decision for this?

2 MS. SCOTT-JOHNSON: Initially, Mr.  
3 Lloyd, when he first got the report, and then  
4 afterwards, after the--

5 JUDGE MACAULEY: Engelhardt?

6 MS. SCOTT-JOHNSON: Engelhardt and  
7 Mr. Johansson was part of that as well.

8 JUDGE MACAULEY: Well let's hear  
9 from those two, and then she can cross-examine  
10 as to the reasons why they were separated, and  
11 any other issue.

12 MS. SCOTT-JOHNSON: All right,  
13 Judge.

14 JUDGE MACAULEY: Then that solves  
15 it. Ms. Bagnoli--I don't see where her  
16 contribution is.

17 MS. SCOTT-JOHNSON: All right,  
18 Judge.

19 JUDGE MACAULEY: Yes. Let's hear  
20 from Engelhardt.

21 You're Mr. Engelhardt?

22 MR. ENGELHARDT: Yes. John

1 Engelhardt.

2 JUDGE MACAULEY: All right. Can  
3 you swear the witness in.

4 WHEREUPON,

5 JOHN ENGELHARDT

6 WAS CALLED AS A WITNESS BY AND ON BEHALF OF  
7 THE COMPLAINANT AND, HAVING FIRST BEEN DULY  
8 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

9 THE REPORTER: State your first  
10 name and spell your last name, please.

11 MR. ENGELHARDT: John Engelhardt.  
12 E-n-g-e-l-h-a-r-d-t.

13 JUDGE MACAULEY: What's your  
14 position? You're with TSA?

15 MR. ENGELHARDT: Yeah. I'm with  
16 TSA. I'm the transportation--one of the  
17 transportation security managers here at  
18 Albany.

19 JUDGE MACAULEY: And how long have  
20 you been a TSM?

21 MR. ENGELHARDT: Since March of  
22 2003.

1 JUDGE MACAULEY: is that  
2 uninterrupted?

3 MR. ENGELHARDT: Uninterrupted;  
4 correct.

5 JUDGE MACAULEY: At Albany  
6 Airport?

7 MR. ENGELHARDT: Yes, sir.

8 JUDGE MACAULEY: And you know the  
9 Complainant, Carole Smith?

10 MR. ENGELHARDT: Yes. I do.

11 JUDGE MACAULEY: How do you know  
12 her?

13 MR. ENGELHARDT: She used to be  
14 employed here at TSA at Albany.

15 JUDGE MACAULEY: She under your  
16 management?

17 MR. ENGELHARDT: She's under all  
18 four managers, but, yeah, she was working my  
19 shift; yes.

20 JUDGE MACAULEY: She worked your  
21 shift. So were you like a--she was under your  
22 direct line?



1 MR. ENGELHARDT: No; not direct.

2 JUDGE MACAULEY: No.

3 MR. ENGELHARDT: I'm the security  
4 manager on the afternoon shift.

5 JUDGE MACAULEY: Afternoon shift.

6 MR. ENGELHARDT: The later shift.  
7 I come in at 9:30.

8 JUDGE MACAULEY: She didn't work  
9 on the afternoon shift?

10 MR. ENGELHARDT: Yes.

11 JUDGE MACAULEY: Oh, she did?

12 MR. ENGELHARDT: Yes.

13 JUDGE MACAULEY: So she was under  
14 your--

15 MR. ENGELHARDT: Not directly,  
16 but--

17 JUDGE MACAULEY: Well, I know you  
18 didn't supervise her directly, but she would  
19 be under your hierarchy?

20 MR. ENGELHARDT: Right; correct.

21 JUDGE MACAULEY: Okay. Ms.  
22 Johnson, you can proceed.

## 1 DIRECT EXAMINATION

2 BY MS. SCOTT-JOHNSON:

3 Q As the TSM, what are your  
4 responsibilities with respect to the  
5 screeners?

6 A To make sure that all TSA policies  
7 are being adhered to, screening procedures are  
8 being followed. I handle all the passengers'  
9 claims; most of them. Any misconduct  
10 investigations, I also conduct, to see if  
11 there is misconduct. I oversee all general  
12 counselings, if they're brought to my  
13 attention, again if I'm here, I'm not on my  
14 day off.

15 I'm responsible to ensure that  
16 they're doing their OLC properly, make sure  
17 they're staying up to date on training.

18 I just--just about everything, I  
19 guess, pertaining to the screening operation.

20 Q Do you recall when Ms. Smith first  
21 came to your attention, or when you first knew  
22 anything about Ms. Smith?

1           A       I believe it was soon after she  
2 was hired by TSA.

3           Q       Okay. What if anything came to  
4 your attention about that?

5           A       She came to me and was requesting  
6 to resign.

7           Q       And do you recall when that was?

8           A       That was in 2008.

9           Q       And--

10          A       I believe maybe August or  
11 September. I'm not certain of the date, but  
12 I think somewhere in that area.

13          Q       And what was the circumstances  
14 that caused her to do that?

15          A       She got counseled, general  
16 counseling for leaving out a breathing machine  
17 out of a checked baggage during a search.

18          Q       Okay. And just would you tell us  
19 what happened.

20          A       She came to me and basically said  
21 I've had enough of this, I'm leaving. I can't  
22 do this. I just got counseled. I said okay,

1 I said it's not that big of a deal. It's a  
2 general counseling. I told her, you know, try  
3 to stick it out, "hang in there," it's not a  
4 big thing, you know, we'll get through it.  
5 And that was about it.

6 Q At that point in time, did she  
7 complain to you whether or not she was having  
8 any problems with any of her coworkers, or  
9 supervisors?

10 A The--no. The only thing she may  
11 have--

12 JUDGE MACAULEY: No. Don't lead  
13 the witness. Just ask open-ended questions.

14 BY MS. SCOTT-JOHNSON:

15 Q Do you recall how long after she  
16 had been employed here, that that occurred,  
17 when she came to you about the counseling?

18 A I believe it was only a couple  
19 months.

20 Q What if anything was the next  
21 thing that came to your attention about Ms.  
22 Smith while she was employed here?

1           A       We had an incident at the security  
2 checkpoint.

3           Q       And when was that? If you recall.

4           A       April.

5           Q       Of what year?

6           A       2009.

7           Q       Okay. And what was the incident  
8 that came to your attention?

9           A       We had a late flight that was  
10 going to arrive--or leave Albany, and Ms.  
11 Smith was working at the checkpoint. She  
12 happened to be the only female on duty. She  
13 volunteered to work four hours, and I  
14 instructed my supervisors, due to the  
15 circumstances, and being the only female here,  
16 she may be required to stay a little bit later  
17 cause we have no other options, there's no  
18 other females here, and in order to screen  
19 female passengers we need a female.

20                   There was confrontation up at the  
21 checkpoint with a--my supervisor and my lead,  
22 to the point where they called me. They said

1       that they were "cursed out" and unprofessional  
2       behavior by Ms. Smith. And then that started  
3       my investigation, you know, the day after, and  
4       the day after, until we got, got to the bottom  
5       of it.

6               Q       Okay. So you conducted an  
7       investigation into the incident?

8               A       Yes. I did.

9               Q       And what was the outcome of your  
10      investigation?

11              A       Unprofessional conduct. She  
12      stayed. Matter of fact, she didn't have to  
13      stay because the late flight didn't happen.  
14      So she went home early, as it was. But due to  
15      the conduct and the attitude, and the demeanor  
16      she displayed in front of passengers, and  
17      toward my supervisors, I recommended a letter  
18      of reprimand, and she was given a letter of  
19      reprimand.

20              Q       Who, other than the super--first  
21      of all, who were the supervisors that  
22      complained about her conduct at that time?

1           A        The supervisors that had the  
2           confrontation with her was Gates, T.J. Gates,  
3           and LTSO Brown.

4           Q        Okay. And who, or what else did  
5           you do in terms of your investigation into  
6           what happened at the checkpoint at that time?

7           A        I viewed the video to get who was  
8           there, and who was on duty. I looked at the  
9           staffing sheets and I received statements, or  
10          got statements from everybody that was witness  
11          to the event.

12          Q        Okay. And do you recall who else  
13          was witness to the event?

14          A        There was another LTSO. I don't  
15          know his first name. Gould, his last name is.  
16          There was a TSO on the exit lane, Frank  
17          Coleman. I'm not certain if anybody else--  
18          plus Brown, LTSO Brown and STSO Gates.

19          Q        Okay. Did there come a time when  
20          you became aware of Ms. Smith's religion?

21          A        Prior to this. Probably right  
22          prior to this hearing; yes.

1           Q       Okay. At the time of the incident  
2           that you're referring to, did you know what  
3           Ms. Smith's religion was?

4           A       No.

5                    JUDGE MACAULEY: How did you make  
6           the determination that Ms. Smith committed the  
7           act she was accused of?

8                    MR. ENGELHARDT: Excuse me?

9                    JUDGE MACAULEY: You made the  
10          determination that Ms. Smith committed the act  
11          she was accused of, resulting in her  
12          reprimand. You made the determination.

13                   MR. ENGELHARDT: By statements.

14                   JUDGE MACAULEY: Yeah.

15                   MR. ENGELHARDT: By statements of  
16          eyewitnesses and viewing the video.

17                   JUDGE MACAULEY: And all of those  
18          confirmed that she in fact did that?

19                   MR. ENGELHARDT: Yes.

20                   JUDGE MACAULEY: I see. Any  
21          evidence that would mitigate against a  
22          decision that she did it? No?



1 MR. ENGELHARDT: I don't believe  
2 so.

3 JUDGE MACAULEY: Okay. Go ahead.

4 BY MS. SCOTT-JOHNSON:

5 Q Okay. And I notice that you were  
6 just shaking your head. You have to be  
7 cognizant of the fact that you have to  
8 verbalize everything because the reporter is  
9 taking it down.

10 JUDGE MACAULEY: No, but he  
11 answered it.

12 MS. SCOTT-JOHNSON: Okay. I know  
13 he did but I just want to make sure he doesn't  
14 get into that--

15 JUDGE MACAULEY: You can shake  
16 your head or do anything, as long as there's  
17 a verbal thing coming from it as well.

18 MR. ENGELHARDT: Got you.

19 JUDGE MACAULEY: Okay.

20 BY MS. SCOTT-JOHNSON:

21 Q Now I believe you said that you  
22 recommended a letter of reprimand?

1           A       A letter of reprimand; correct.

2           Q       What was the next thing, if  
3 anything, that came to your attention with  
4 respect to Ms. Smith?

5           A       There was another incident that I  
6 was involved in, where she left her post, her  
7 assigned post in Baggage.

8           Q       Can you tell us when that was.

9           A       September, October. It was later.  
10 It was later in the fall, I believe. I'm not  
11 certain. I don't have the--I could look but  
12 I don't have the dates right in my head.

13          Q       Do you recall whether or not this  
14 second incident that you're referring to  
15 happened before or after the--

16          A       It was after the checkpoint  
17 incident.

18          Q       Okay. Tell us what happened on  
19 this second incident.

20          A       Ms. Smith was assigned to a bag  
21 room to do bag searches. Along with that, she  
22 had an OJT person who was an on-the-job

1       trainer, who's not certified to screen bags,  
2       at all. He was just there, more or less, to  
3       assist loading the bags per se, because they  
4       do it without a monitor, and you gotta be  
5       certified in order to make judgment calls off  
6       the monitor, and he was not. He was brand  
7       new.

8                   There came a point in time that a  
9       supervisor informed me that Ms. Smith left the  
10      bag room and left the uncertified screener in  
11      there, possibly screening bags. We don't  
12      know. What we do know is that the OJT person  
13      called the supervisor and said, listen, I'm  
14      here alone, I know I'm not supposed to be  
15      screening bags.

16                   She--he said "she"--but Ms. Smith  
17      left because she was hungry.

18           Q       And what did you do as a result of  
19      getting that information?

20           A       I called the supervisor and I said  
21      what's going on? find out what's going on.

22           Q       Who was the supervisor?

1           A       The supervisor was STSO Middleton.

2           Q       And what was--what did you do--  
3 after calling STSO Middleton, what did you do  
4 in reference to that information that you had  
5 gotten, that Ms. Smith left the checkpoint?

6           A       Well, he brought to my attention  
7 that he was advised by an LTSO, that Ms. Smith  
8 was in front of the lunch room talking to some  
9 union rep, and there was some conversation  
10 between the LTSO and Ms. Smith about when am  
11 I going on a break for lunch. The LTSO told  
12 her "I'm not your lead, I'm not your  
13 supervisor. I don't know."

14                   She informed STSO Middleton that  
15 she's not in the bag room where she's supposed  
16 to be. She's over here by the lunch room.

17                   At that point Middleton came down  
18 to my office, which is the Coordinator Center,  
19 and I instructed him to go back to the bag  
20 room--by this time I believe Ms. Smith was  
21 back in the bag room--to see what's going on.  
22 What is she doing.

1                   Mr. Middleton, STSO Middleton  
2           reported back to me that he attempted to talk  
3           to her about her performance, and why wasn't  
4           she staying in the bag room, and before he  
5           could have that conversation, Ms. Smith  
6           grabbed her stuff--I don't know if she had  
7           books with her or not--and just walked out of  
8           the bag room.

9           Q           Was there any discipline issued as  
10          a result of that?

11          A           There was a formal investigation  
12          report done by me. All statements were  
13          obtained from anybody involved, and yeah,  
14          there was--there was--at that point, because  
15          of the prior LOR, we do step discipline--

16          Q           When you say LOR, you're referring  
17          to--

18          A           Letter of reprimand she received  
19          for the checkpoint.

20          Q           Okay.

21          A           We also, prior to doing--well,  
22          when we do the investigation, we do a thorough

1 look at the folder to see if there's anything  
2 else in there as far as being on notice,  
3 corrective actions we might have taken, and at  
4 that point a decision was made that--to  
5 probationary status, and due to the discipline  
6 issues that we've had, it was determined,  
7 termination.

8 Q

9 JUDGE MACAULEY: A decision was  
10 made. What is--did you make that decision?

11 MR. ENGELHARDT: No. I do the  
12 investigation report and then it goes to the  
13 deputy FSD.

14 JUDGE MACAULEY: Okay. You said a  
15 decision. So did you have anything to do with  
16 that decision?

17 MR. ENGELHARDT: I recommend it;  
18 yes.

19 JUDGE MACAULEY: You recommend it?

20 MR. ENGELHARDT: Right.

21 JUDGE MACAULEY: So you made the  
22 decision to terminate her?

1 MR. ENGELHARDT: Due to the  
2 investigation; yes.

3 JUDGE MACAULEY: Okay. So that  
4 was your decision; it was accepted?

5 MR. ENGELHARDT: No. My decision  
6 goes upstairs for my supervisor--

7 JUDGE MACAULEY: You made a  
8 recommendation.

9 MR. ENGELHARDT: I did a  
10 recommendation.

11 JUDGE MACAULEY: Okay. All right.  
12 Go ahead.

13 BY MS. SCOTT-JOHNSON:

14 Q What were the things that you took  
15 into consideration before recommending that  
16 Ms. Smith be terminated. I know you spoke  
17 about the two letters of reprimand. But was  
18 there anything else that you considered in  
19 terms of your recommendation?

20 A Her actions, her attitude,  
21 possibly maybe defiance.

22 Q Well, were there any other

1 disciplines that you took into consideration?

2 A Well, we take in the LOR that took  
3 place at the checkpoint; yes.

4 Q Okay.

5 JUDGE MACAULEY: Wait a second.  
6 Let's start from the beginning. Her actions  
7 and attitude. That's pretty general. What do  
8 you mean?

9 MR. ENGELHARDT: Well, the actions  
10 and the attitude that occurred at the  
11 checkpoint. "Cursing out" my supervisors.

12 JUDGE MACAULEY: Oh, at the  
13 checkpoint.

14 MR. ENGELHARDT: That was prior to  
15 this.

16 JUDGE MACAULEY: Well, I don't  
17 know. You just said her attitudes and  
18 actions. I need something more specific.

19 MR. ENGELHARDT: Okay.

20 JUDGE MACAULEY: What do you mean?

21 MR. ENGELHARDT: Checkpoint.  
22 Cursing out my supervisors.



1 JUDGE MACAULEY: At the  
2 checkpoint. Sorry?

3 MR. ENGELHARDT: Cursing out my  
4 supervisors.

5 JUDGE MACAULEY: This is back in--

6 MR. ENGELHARDT: At the  
7 checkpoint.

8 JUDGE MACAULEY: --April--

9 MR. ENGELHARDT: Yes.

10 JUDGE MACAULEY: --of 09?

11 MR. ENGELHARDT: Correct.

12 JUDGE MACAULEY: And you  
13 reprimanded her for that, didn't you?

14 MR. ENGELHARDT: Letter of  
15 reprimand. Correct.

16 JUDGE MACAULEY: Okay. So it was  
17 the two reprimands?

18 MR. ENGELHARDT: One reprimand.  
19 One letter of reprimand. But--

20 JUDGE MACAULEY: One letter of  
21 reprimand that you gave her in April of--April  
22 10, following that incident; right?

1 MR. ENGELHARDT: Correct.

2 JUDGE MACAULEY: Continue.

3 BY MS. SCOTT-JOHNSON:

4 Q Did you do a--prior to your making  
5 a recommendation--or prior to your making a  
6 recommendation, did you review Ms. Smith's--  
7 withdrawn. Prior to making a recommendation,  
8 what, if anything, did you review with respect  
9 to other disciplines of Ms. Smith?

10 A Prior to making any  
11 recommendation, we review the file and her  
12 past work history.

13 Q What did you find in her file and  
14 past work history that--

15 A There was general counselings.  
16 One pertained to leaving her post and not  
17 coming back from break on time. So she was  
18 "on notice" there about leaving and returning  
19 on time, without telling somebody. That was  
20 by LTSO Blankenberger.

21 Q Okay.

22 A That was--that took place at the

1 checkpoint. The prior LOR, the prior  
2 counselings, the prior memos to file that are  
3 also, was also in there. Memos to file or  
4 verbal counselings, we document it, when a  
5 supervisor talks to her about her performance  
6 or her conduct. But it didn't lead up to a  
7 general counseling, it's just a verbal thing  
8 between the two, the two employees, to show  
9 that she was "on notice" by a supervisor about  
10 a particular behavior, or action, or conduct.

11 Q Were there any other things that,  
12 in your review of her file, that you  
13 considered in terms of your recommendation?

14 A There was the general counsel for  
15 the air machine. There was verbal counseling  
16 about cell phone usage. There was a memo in  
17 there from the training coordinator about her  
18 negative attitude and behavior.

19 Q What was that about?

20 A I believe--I don't believe. I  
21 know. Ms. Smith was on OJT, and her mentor  
22 wrote a statement, stating that she had some

1 difficulty with following the SOP pertaining  
2 to bag searches in the bag rooms. Right near  
3 that period of time, she got counseled for  
4 leaving out the machine.

5 JUDGE MACAULEY: Who's the mentor?

6 MR. ENGELHARDT: Mary Bagnoli. At  
7 that point, I had a conversation with the  
8 training coordinator and asked, you know, is  
9 there anything we can do because she's having  
10 some difficulty, Ms. Smith is having some  
11 difficulty grasping the SOP on what she's  
12 supposed to be doing.

13 There was also a thing in there,  
14 they did an evaluation, Pam Wersma--she's part  
15 of the Training Department--and she determined  
16 that she was deficient in at least two areas  
17 and recommended another five hour OJT course.

18 She had a negative attitude when  
19 that was explained to her, said "talk to my  
20 lawyer." That was all in there. "You need to  
21 talk to my lawyer and I'm not going to be  
22 working Baggage anymore because of an injury."

1 That memo was in there too.

2 BY MS. SCOTT-JOHNSON:

3 Q Were there any other things that  
4 you considered, prior to making the  
5 recommendation--termination?

6 A I just--we do--like I say, we do  
7 the step discipline. I looked at everything  
8 she was talked to about, everything she was  
9 counseled for. First-level discipline was the  
10 checkpoint. That was an LOR. And then the  
11 next step, it could be another LOR or could be  
12 more, and in this case it was more. I  
13 recommended termination.

14 Q Did you make a verbal  
15 recommendation for termination or--

16 A No; it's in writing.

17 Q Okay. Is in writing.

18 MS. SCOTT-JOHNSON: Judge, may I  
19 show the witness--

20 JUDGE MACAULEY: I'd rather you  
21 elicit his testimony from his recollection  
22 first.

1 MS. SCOTT-JOHNSON: Well, I  
2 basically want to identify, for the record,  
3 his report that's in the file, and he has not  
4 seen this file, so he has no way of knowing  
5 what I'm referring to by--

6 JUDGE MACAULEY: Well, you can--  
7 well, all right. You're going to ask him  
8 questions about it?

9 MS. SCOTT-JOHNSON: No. I just  
10 want to ask him if this--that's in the Agency  
11 file is the report that he--

12 JUDGE MACAULEY: That's fine.  
13 That's fine.

14 MS. SCOTT-JOHNSON: Okay. Judge,  
15 the record should reflect that I'm showing the  
16 witness a document that appears on Tab 10, and  
17 it starts at page 134. I'm going to ask you  
18 just to look at that and tell me whether  
19 that's the report that you generated--whether  
20 or not that's the reported that you generated  
21 as a result of your review of Ms. Smith's work  
22 record.

1 MR. ENGELHARDT: Yes. That is.

2 MS. SCOTT-JOHNSON: Okay.

3 JUDGE MACAULEY: I'm sorry. 134?

4 MS. SCOTT-JOHNSON: It starts--his  
5 part--

6 JUDGE MACAULEY: 134 starts as a  
7 synopsis.

8 MS. SCOTT-JOHNSON: Yes. Correct.  
9 And continues to--

10 JUDGE MACAULEY: Where's the  
11 beginning of it?

12 MR. ENGELHARDT: Right there.

13 MS. SCOTT-JOHNSON: That's the  
14 synopsis there, and continues--well, I'm going  
15 to ask--

16 JUDGE MACAULEY: You start your  
17 thing following just synopsis? That's an odd  
18 way to start a report.

19 MR. ENGELHARDT: That's the way we  
20 do it in--

21 JUDGE MACAULEY: Synopsis of what,  
22 though?

1 MR. ENGELHARDT: That's a synopsis  
2 of the investigation, and everybody--

3 JUDGE MACAULEY: Well, it doesn't  
4 say that. I mean, I've never seen a memo from  
5 a manager where it just begins Synopsis.

6 MR. ENGELHARDT: Well, this is  
7 what was directed for me to do, so--

8 JUDGE MACAULEY: Can you tell me  
9 what you're showing him.

10 [Ms. Scott-Johnson indicates the  
11 pages to the judge]

12 JUDGE MACAULEY: How come you  
13 didn't direct this synopsis to somebody on a  
14 memo? Is this your--is this a synopsis for  
15 you?

16 MR. ENGELHARDT: This is a  
17 synopsis for the investigation.

18 JUDGE MACAULEY: For the inves--  
19 how come it doesn't identify what the synopsis  
20 is, in a heading or anything?

21 MR. ENGELHARDT: That's the way  
22 we've always done it here.



1 JUDGE MACAULEY: All right.

2 BY MS. SCOTT-JOHNSON:

3 Q Can you tell us what page your  
4 report ends on. If you'd look at the  
5 document, starting at 134, and tell us what  
6 page it ends on.

7 A Well, it ends on, for signatures,  
8 on page 140, but the actual body of the  
9 document ends on 139.

10 Q Do you recall how many incidents  
11 of counseling and/or recommendations, all  
12 told, were considered?

13 A Between the verbal counselings and  
14 the written counselings and the LOR, there's  
15 probably six or better.

16 Q What, if anything, did any of  
17 those counselings have to do with Ms. Smith's  
18 religion? Any of those counselings, or letter  
19 of reprimand--what, if anything, did they have  
20 to do with her religion?

21 A Nothing to do with it.

22 JUDGE MACAULEY: I'm sorry. You

1       said at some point you learned what her  
2       religion--what religion she had? At some  
3       point?

4                   MR. ENGELHARDT: Well I learned  
5       what, what the complaint was here.

6                   JUDGE MACAULEY: No; no. Your  
7       question is yes, at some point you learned  
8       what her religion is; right?

9                   MR. ENGELHARDT: Yeah. I said  
10      that.

11                  JUDGE MACAULEY: And what was her  
12      religion? Well, you say you learned it, so  
13      what did you learn?

14                  MR. ENGELHARDT: Well I learned  
15      what it's called. I have no idea what it is.

16                  JUDGE MACAULEY: Okay. What's it  
17      called?

18                  MR. ENGELHARDT: Wiccan.

19                  JUDGE MACAULEY: Okay. And when  
20      did you learn that?

21                  MR. ENGELHARDT: When I probably  
22      heard about the complaint.

1 JUDGE MACAULEY: Well, when did  
2 you--you mean the EEO complaint?

3 MR. ENGELHARDT: I believe so;  
4 yes.

5 JUDGE MACAULEY: Well, when did  
6 you learn about the EEO complaint?

7 MR. ENGELHARDT: A year ago.

8 JUDGE MACAULEY: A year ago. And  
9 how did you come to learn about it?

10 MR. ENGELHARDT: I believe--I  
11 spoke to somebody. Somebody called me,  
12 investigating it.

13 JUDGE MACAULEY: Okay. An  
14 investigator called you.

15 MR. ENGELHARDT: Right.

16 JUDGE MACAULEY: And identified  
17 there was an EEO complaint?

18 MR. ENGELHARDT: Correct.

19 JUDGE MACAULEY: Okay.

20 BY MS. SCOTT-JOHNSON:

21 Q Did there come a time when you  
22 found out that any of the employees had made

1 a complaint about being fearful of Ms. Smith?

2 A When my supervisor, STSO Jones  
3 informed me that she had to escort a TSO to  
4 the parking lot every night, when she got off  
5 duty.

6 Q And who was the TSO? How did you-  
7 -when and how did you learn this?

8 A Well, when they're leaving work, I  
9 said, well, what's going on? You know, you're  
10 waiting for--Mary Bagnoli was the TSO. And  
11 after sign-out at the checkpoint. So I  
12 happened to be there. I said, What's going  
13 on? What are you waiting for her for? Oh, I  
14 have to escort to the parking lot, to the car  
15 every night, cause she's having a problem with  
16 Carole Smith.

17 Okay.

18 JUDGE MACAULEY: Jones, your  
19 supervisor, told you that?

20 MR. ENGELHARDT: Yes.

21 JUDGE MACAULEY: Who made the  
22 decision to have her escorted?

1 MR. ENGELHARDT: Matt Lloyd, Brian  
2 Johansson. Above me.

3 JUDGE MACAULEY: Above you?

4 MR. ENGELHARDT: Yes.

5 JUDGE MACAULEY: You didn't know  
6 about it?

7 MR. ENGELHARDT: I knew about it  
8 at that point.

9 JUDGE MACAULEY: Okay. Why don't  
10 you tell me about what you knew about this  
11 incident.

12 MR. ENGELHARDT: Shante Jones told  
13 me she has to escort Mary Bagnoli to the  
14 parking lot every night, due to a problem--

15 JUDGE MACAULEY: Jones is below  
16 you.

17 MR. ENGELHARDT: She's my  
18 supervisor.

19 JUDGE MACAULEY: Jones is your  
20 supervisor?

21 MR. ENGELHARDT: One of my  
22 supervisors. Below me. Yes; correct.

1 JUDGE MACAULEY: Okay. One of  
2 your supervisors, below you, had to escort Ms.  
3 Bagnoli, directed by a supervisor above you?

4 MR. ENGELHARDT: Correct.

5 JUDGE MACAULEY: And you were  
6 what, not included in the information?

7 MR. ENGELHARDT: I was included  
8 the next day. I got an e-mail from Matt Lloyd  
9 to the managers. But that night, at 7:00  
10 o'clock, I was not aware of the situation.

11 JUDGE MACAULEY: Okay. You became  
12 aware of a decision the day after it began?

13 MR. ENGELHARDT: The next day, on  
14 an e-mail; correct.

15 JUDGE MACAULEY: Go ahead.

16 BY MS. SCOTT-JOHNSON:

17 Q And what, if anything else, did  
18 you find out about the situation, or the  
19 relationship between Ms. Bagnoli and Ms.  
20 Smith?

21 A We had to keep them apart. That  
22 was in the e-mail. They weren't to work

1 together. And I just made sure that all my  
2 supervisors were aware that that was the  
3 situation, that was the scenario.

4 JUDGE MACAULEY: So you had no--  
5 nothing to do with this--nothing to do with  
6 this practice or policy of keeping them apart,  
7 it sounds like.

8 MR. ENGELHARDT: Other than to  
9 make sure that it took place.

10 JUDGE MACAULEY: Okay. But you  
11 didn't decide about--

12 MR. ENGELHARDT: No.

13 JUDGE MACAULEY: Now didn't you,  
14 at some point, receive a memo from Mr. Lloyd,  
15 to keep them apart beforehand?

16 MR. ENGELHARDT: Ensure that they  
17 stay apart and don't work together.

18 JUDGE MACAULEY: Right. Now that  
19 was a temporary thing at the time, wasn't it?

20 MR. ENGELHARDT: Until--I did that  
21 until further notice.

22 JUDGE MACAULEY: No. When you--

1 right. You received it--I think the memo said  
2 because of "a situation," or we're going to  
3 keep them apart.

4 MR. ENGELHARDT: Okay.

5 JUDGE MACAULEY: That sounds like  
6 a temporary thing to me. Didn't it sound like  
7 it to you when you received it?

8 MR. ENGELHARDT: Well, until I'm  
9 told different.

10 JUDGE MACAULEY: Until you're told  
11 different. But when you received the memo, it  
12 sounds temporary; right? Or at least that's  
13 my impression when I read it. Was it yours?

14 MR. ENGELHARDT: Well, I don't  
15 know if I perceived it as temporary or not.

16 JUDGE MACAULEY: No; no. I'm  
17 sorry. Was it your impression--what was your  
18 impression at the time you received it?

19 MR. ENGELHARDT: It's going to be  
20 done until I'm told different.

21 JUDGE MACAULEY: Okay. Now after  
22 that, did you ever have a conversation with



1 Mr. Lloyd?

2 MR. ENGELHARDT: About that?

3 JUDGE MACAULEY: Yeah.

4 MR. ENGELHARDT: The e-mail?

5 JUDGE MACAULEY: Right.

6 MR. ENGELHARDT: Not really; no.

7 JUDGE MACAULEY: Did you ever have  
8 a conversation with Mr. Lloyd on or about that  
9 time?

10 MR. ENGELHARDT: No.

11 JUDGE MACAULEY: No conversation?

12 MR. ENGELHARDT: No.

13 JUDGE MACAULEY: When you received  
14 the memo, what was your understanding of what  
15 was going on?

16 MR. ENGELHARDT: They're having a  
17 problem.

18 JUDGE MACAULEY: What kind of a  
19 problem?

20 MR. ENGELHARDT: I don't think it  
21 spelled it out in the--in the memo.

22 JUDGE MACAULEY: Well, did you

1 have an understanding, aside from the memo?

2 MR. ENGELHARDT: Apparently it  
3 must have been pretty, pretty serious, if they  
4 have a supervisor escort one of them to the  
5 parking lot, to--

6 JUDGE MACAULEY: No; no. You're  
7 not listening to my question. Could you  
8 repeat it, please.

9 [The record was played back by the  
10 court reporter]

11 JUDGE MACAULEY: Your  
12 understanding was it must have been a serious  
13 problem. But what was your understanding of  
14 the nature of the problem?

15 MR. ENGELHARDT: At the point,  
16 there was no--no understanding of the nature.  
17 I had no idea. I don't know if it was an  
18 outside issue, it was a work issue.

19 JUDGE MACAULEY: At some point,  
20 did you have a fuller understanding of the  
21 issue?

22 MR. ENGELHARDT: Yeah. I'm

1 assuming--

2 JUDGE MACAULEY: And how did you--  
3 how did you learn, more specifically, about  
4 the issue?

5 MR. ENGELHARDT: I'm not certain.

6 JUDGE MACAULEY: You don't know?

7 MR. ENGELHARDT: I don't know.

8 Maybe talking to the supervisor, that they--  
9 one was fearful of the other one.

10 JUDGE MACAULEY: Supervisor being  
11 who?

12 MR. ENGELHARDT: Jones.

13 JUDGE MACAULEY: Jones.

14 MR. ENGELHARDT: STSO Jones.

15 JUDGE MACAULEY: Your subordinate?

16 MR. ENGELHARDT: Correct.

17 JUDGE MACAULEY: And was anything  
18 else ever communicated to you from "on up"?

19 MR. ENGELHARDT: No.

20 JUDGE MACAULEY: You just took  
21 this situation from Jones, and you're a  
22 supervisor?

1 MR. ENGELHARDT: I took the  
2 situation from Matt Lloyd, that to keep them  
3 apart, and that's what I intended to do.

4 JUDGE MACAULEY: Is he your--oh.  
5 So you had a conversation with Lloyd?

6 MR. ENGELHARDT: No. I had an e-  
7 mail telling me to keep them apart.

8 JUDGE MACAULEY: Oh, I see. And  
9 Mr. Lloyd never corrected or elucidated his  
10 memo from that time on?

11 MR. ENGELHARDT: No.

12 JUDGE MACAULEY: Go ahead.

13 BY MS. SCOTT-JOHNSON:

14 Q What was your understanding of  
15 what Mr. Lloyd's role, if any, was in the  
16 situation of keeping Ms. Smith and Ms. Bagnoli  
17 apart?

18 A What was his role?

19 Q Yes.

20 A He was in my chain a command and  
21 he--he was one of my supervisors. He's acting  
22 FSD, at times, here, so--

1 Q Well, when you say--

2 A At that point, I didn't know what  
3 his role was, other than issuing the e-mail to  
4 the, to the managers to keep them apart.

5 Q Did there ever come a time when  
6 you learned what the circumstances were that  
7 caused the e-mail to keep them apart?

8 A Some type of investigation due to  
9 one being scared or nervous or threatened by  
10 the other one. That's about all I know about  
11 it.

12 Q After the e-mail from Mr. Lloyd,  
13 was there any other communication to you, or  
14 what were any other communications to you  
15 about keeping Ms. Smith and Ms. Bagnoli  
16 separate?

17 A I don't recall if there was any.  
18 I don't--I don't believe so, but I--honestly,  
19 I don't recall.

20 Q Did there ever come a time when  
21 you had any conversation with Mr. Lloyd about  
22 what--about his e-mail?

1           A           I don't believe so; no.

2                    JUDGE MACAULEY: Was that unusual?  
3           That situation? That's not an--that strikes  
4           me an unusual situation.

5                    MR. ENGELHARDT: Well, escorting  
6           somebody to the parking lot is unusual; yes.

7                    JUDGE MACAULEY: Yeah. I mean, it  
8           sounds highly unusual to me. A supervisor  
9           having to escort a subordinate to her car, I  
10          guess when she leaves.

11                   MR. ENGELHARDT: But I--

12                    JUDGE MACAULEY: To me, that's a  
13          very unusual office situation.

14                    MR. ENGELHARDT: Yeah, but I'm  
15          not--I wasn't--

16                    JUDGE MACAULEY: Particularly for  
17          a security-oriented operation like TSA. Am I--  
18          -would you agree with me, Mr. Engelhardt?

19                    MR. ENGELHARDT: It's unusual, but  
20          I was not assigned to investigate any of it.  
21          I had other investigations going on.

22                    JUDGE MACAULEY: I didn't say

1 "assigned." You're a manager, though, aren't  
2 you?

3 MR. ENGELHARDT: Correct.

4 JUDGE MACAULEY: So wouldn't that  
5 engender some curiosity about what's going on  
6 with this employee who has to be escorted to  
7 her car every time she leaves?

8 MR. ENGELHARDT: And it did, and I  
9 asked STSO Jones, what are we doing? and  
10 that's when we she told me.

11 JUDGE MACAULEY: Well, why Jones?  
12 She's your subordinate. Why not ask your  
13 superior who ordered this? I got a situation  
14 where I've got an employee who has to be  
15 escorted. What's going on? So I'm--you know--  
16 --"bring me in the loop." Wouldn't that be a  
17 natural question you'd ask?

18 MR. ENGELHARDT: Well, the TSMs  
19 are not always "in the loop" of what our  
20 supervisors' decisions are.

21 JUDGE MACAULEY: Oh. Really?

22 MR. ENGELHARDT: That ain't the

1 way it works; no. We're not always "in the  
2 loop" on decisions, and policies that are  
3 made.

4 JUDGE MACAULEY: Well, I don't  
5 know. If--what's your role as a manager,  
6 again?

7 MR. ENGELHARDT: Security.

8 JUDGE MACAULEY: Security.

9 MR. ENGELHARDT: Screening.

10 JUDGE MACAULEY: Screening.

11 MR. ENGELHARDT: Correct.

12 JUDGE MACAULEY: And you've got an  
13 employee--well, like Ms. Smith and Bagnoli--  
14 they do screenings; right?

15 MR. ENGELHARDT: Correct.

16 JUDGE MACAULEY: And yet you learn  
17 that one of them has to be escorted every day  
18 to her car.

19 MR. ENGELHARDT: And to keep them  
20 apart.

21 JUDGE MACAULEY: And to keep them  
22 apart.



1 MR. ENGELHARDT: That's correct.

2 JUDGE MACAULEY: And you just--  
3 that engenders no curiosity about why we have  
4 such a significant situation with an employee  
5 like that. To me--I don't "get it."

6 MR. ENGELHARDT: I asked STS Jones  
7 and that's what she told me. That's all the  
8 knowledge that I needed.

9 JUDGE MACAULEY: From your  
10 subordinate?

11 MR. ENGELHARDT: Correct.

12 JUDGE MACAULEY: And that these  
13 people have to be--this person has to be  
14 escorted every day, and you just take that as  
15 a matter of fact from your subordinate?

16 MR. ENGELHARDT: Correct.

17 JUDGE MACAULEY: A security  
18 agency.

19 MR. ENGELHARDT: Correct.

20 JUDGE MACAULEY: I don't--okay.

21 Have you got anything else?

22 You're in charge, though, with

1 recommending termination and discipline for  
2 these people, though; isn't that correct?

3 MR. ENGELHARDT: In light of the  
4 investigation, I can recommend; yes.

5 JUDGE MACAULEY: In light of "the"  
6 investigation.

7 MR. ENGELHARDT: Correct.

8 JUDGE MACAULEY: The investigation  
9 over a singular incident in May of 09?

10 MR. ENGELHARDT: One of many  
11 incidents brought into the consideration when  
12 the recommendation is made.

13 JUDGE MACAULEY: Well, how did you  
14 know, then, that that was so unusual, then?  
15 Why even consider it as part of your recom--  
16 did you consider this as part of your  
17 recommendation to terminate her?

18 MR. ENGELHARDT: What? That she  
19 had to be escorted to the parking lot?

20 JUDGE MACAULEY: Right.

21 MR. ENGELHARDT: No.

22 JUDGE MACAULEY: No?

1 MR. ENGELHARDT: That's not in  
2 there.

3 JUDGE MACAULEY: Okay. Just  
4 asking. Although on page 137, this is recited  
5 as part of your synopsis and recommendation.  
6 Am I incorrect? "Conflict management measure.  
7 Bagnoli and Smith are to be kept apart.  
8 Bagnoli is to be escorted to the parking lot."

9 In fact, you did consider it,  
10 didn't you, in making your recommendation?  
11 It's in your synopsis. You reviewed her  
12 personnel file and documentation, and then you  
13 listed it.

14 MR. ENGELHARDT: That there was a  
15 memo in there pertaining to that.

16 JUDGE MACAULEY: Right.

17 MR. ENGELHARDT: It's an  
18 enclosure; correct?

19 JUDGE MACAULEY: No; no. There's  
20 a synopsis at 134, identified that your  
21 recommendation, all the way--it went to 139,  
22 signed by you on 140, or approved by you on

1 140. So I'm presuming that this was part of  
2 your recommendation, recommendation on 139.  
3 Am I right?

4 MR. ENGELHARDT: I don't--I don't  
5 believe that's part of the discipline process;  
6 no.

7 JUDGE MACAULEY: Well--

8 MR. ENGELHARDT: No.

9 JUDGE MACAULEY: --it's part of  
10 your recommendation to discipline her up to  
11 termination.

12 MR. ENGELHARDT: Correct.

13 JUDGE MACAULEY: Right. And you  
14 cited her escort situation as an incident  
15 which you reviewed and determined. Am I  
16 incorrect?

17 MR. ENGELHARDT: That's probably  
18 only because of the e-mail that I got from  
19 Matt Lloyd.

20 JUDGE MACAULEY: No; no. Not  
21 probably. You're the one who made the  
22 recommendation.

1 MR. ENGELHARDT: Yeah.

2 JUDGE MACAULEY: You cited it. So  
3 you must have considered it as part of your  
4 recommendation.

5 MR. ENGELHARDT: Everything in her  
6 file is considered.

7 JUDGE MACAULEY: Okay. So you did  
8 consider it?

9 MR. ENGELHARDT: A small piece.  
10 Small puzzle.

11 JUDGE MACAULEY: Small piece.  
12 That's fine. But I'm asking whether you  
13 consider, you're hedging, and now you're  
14 admitting, well, you know, it's a small piece.  
15 I understand you've got a lot of pieces here.

16 So you did consider that as part  
17 of the recommendation. Am I right?

18 MR. ENGELHARDT: I don't believe  
19 it was the determining factor.

20 JUDGE MACAULEY: I didn't ask you  
21 whether it was a determinant factor. I asked  
22 you--

1 MR. ENGELHARDT: Yes.

2 JUDGE MACAULEY: --did you  
3 consider it?

4 MR. ENGELHARDT: Yes.

5 JUDGE MACAULEY: Yes. Thank you.

6 All right. Anything else?

7 [Pause]

8 BY MS. SCOTT-JOHNSON:

9 Q Did your recommendation have--  
10 what, if anything, did your recommendation to  
11 remove Ms. Smith--your recommendation to  
12 remove Ms. Smith, what if anything, did that  
13 have to do with her religion, her practice of  
14 her religion?

15 A Absolutely nothing.

16 JUDGE MACAULEY: Well, I gather at  
17 the time you didn't know her religion, so I  
18 gather that would follow; right?

19 MR. ENGELHARDT: Yes.

20 BY MS. SCOTT-JOHNSON:

21 Q To your knowledge, was Ms. Smith  
22 treated any differently than--

1 JUDGE MACAULEY: That's a leading  
2 question. It suggests an answer, yes or no.  
3 I've already asked you not to ask those  
4 questions of this witness.

5 BY MS. SCOTT-JOHNSON:

6 Q How was Ms. Smith treated in  
7 relationship to other TSOs?

8 A No different than anybody else.  
9 Treated the same--firm, fair and consistent.

10 MS. SCOTT-JOHNSON: I have nothing  
11 further, Judge.

12 JUDGE MACAULEY: Ms. Smith, have  
13 you got any questions?

14 MS. SMITH: Oh, yeah.

15 JUDGE MACAULEY: Well, then ask  
16 it.

17 CROSS-EXAMINATION

18 BY MS. SMITH:

19 Q Okay. You said that you weren't  
20 made aware of my religion until the EEOC thing  
21 was filed?

22 A Yes.

1           Q       I have a copy of a report that i  
2 submitted to you, telling you what happened to  
3 me on March 12th in Matt Lloyd's office.

4           A       Okay.

5           Q       That I was complaining about it.  
6 And in that report it states that I am Wiccan.

7           Q       Does it have something there that-  
8 -

9                   JUDGE MACAULEY:   Okay.   Look.

10                   MR. ENGELHARDT:   Submitted to me?

11                   JUDGE MACAULEY:   You got a report  
12 you're going to confront him with?

13                   MS. SMITH:   That I submitted to  
14 him.

15                   JUDGE MACAULEY:   Okay.   Identify  
16 the report for the record.

17                   MS. SMITH:   It is--

18                   JUDGE MACAULEY:   Date, what it is,  
19 so on and so forth.

20                   MS. SMITH:   Okay.   It's March 14th  
21 of 2009, and it is Transportation Security  
22 Officer Statement, and on the--



1 JUDGE MACAULEY: Whose statement?

2 MS. SMITH: Mine.

3 JUDGE MACAULEY: Okay. Say that.

4 MS. SMITH: I'm sorry. It's my  
5 statement.

6 JUDGE MACAULEY: And read the  
7 appropriate portion of the report.

8 MS. SMITH: Okay.

9 MS. SCOTT-JOHNSON: Judge, can I  
10 just ask her to identify, cause I believe that  
11 report is in the Agency file.

12 MS. SMITH: Exhibit F-13.

13 JUDGE MACAULEY: That's fine. I  
14 just want it identified. Then confront him  
15 with it and then ask him for the variation.  
16 Why his answer differs from what the report  
17 is.

18 MS. SMITH: Okay. Yeah. Why does  
19 your--

20 JUDGE MACAULEY: No. Read the--

21 MS. SMITH: Okay.

22 The paragraph says: "Then Matt

1 Lloyd stated that Mary Bagnoli stated to him  
2 that she is afraid of me because I am a witch,  
3 Wiccan. Yes. I am."

4 JUDGE MACAULEY: Okay. Now follow  
5 up your question. Did I give you this--you  
6 know.

7 BY MS. SMITH:

8 Q Did I give--did you read this  
9 report? I know I gave it to you, cause I  
10 handed it to you.

11 JUDGE MACAULEY: Okay. Let's  
12 start with--the question is: Did you receive  
13 such a report from me on--

14 MS. SMITH: Okay. Did you receive  
15 this report from me on March 14th, 2009?

16 MR. ENGELHARDT: The best of my  
17 knowledge, I'm not a 100 percent sure, it's  
18 a year ago; but okay. Yes.

19 BY MS. SMITH:

20 Q Okay. So then you were aware of  
21 my religion on March 14th of 2009?

22 A I was aware you were making a

1 statement of a religion that I have no  
2 knowledge of. Okay. Yes.

3 Q Okay. You know I'm a Wiccan but  
4 you don't know about what Wicca is?

5 A I don't know what a Wiccan is.

6 Q Okay. Okay. But you did know  
7 that--okay. That's all right.

8 A To be perfectly honest, for the  
9 record, I--

10 JUDGE MACAULEY: I know. Just  
11 respond to her question. You've got a lawyer  
12 here to clarify your answers.

13 MR. ENGELHARDT: I don't know what  
14 a Wiccan is.

15 JUDGE MACAULEY: You're on cross.  
16 Only respond to the questions asked. I don't  
17 want clarification, unless asked.

18 MS. SMITH: And the next sentence  
19 went along to say that he asked what's--ICMS--  
20 so I could dispel her misconceptions of my  
21 belief system, stating that Wiccan is my  
22 belief system.

1 MR. ENGELHARDT: Okay.

2 MS. SMITH: So you were aware of  
3 it on March 14th, not a year ago. Not just a  
4 year ago--

5 MR. ENGELHARDT: I was aware that  
6 you--you're saying that you're a Wiccan.

7 BY MS. SMITH:

8 Q You were aware of the incident  
9 between Mary Bagnoli stating to Matt Lloyd  
10 that she was afraid of me because I'm Wiccan.  
11 It's right in this--

12 A Okay.

13 Q Okay.

14 A It's been over a year. I mean,  
15 it's hard to recall with nothing in front of  
16 me.

17 Q But you were aware of it?

18 A The memo says that you gave me  
19 that memo and it says I'm aware of it.

20 Q Okay.

21 A Okay.

22 Q And in the memo from Matt Lloyd,

1 that I was reading, I don't read anything in  
2 there that says that Mary Bagnoli was supposed  
3 to be escorted to her car by a supervisor.

4 A I didn't say that. I never said  
5 he said that. It said that STS Jones told me  
6 that. He told me I had to keep you apart.

7 Q Right. So who made the decision  
8 that she had to be escorted?

9 A Not me.

10 Q Okay. Oh, you started out by  
11 saying that I requested to resign?

12 A Correct.

13 Q Were my exact words to you saying  
14 that I felt like I was being made to want to  
15 quit, that people were trying to get me to  
16 quit?

17 A I don't recall your exact words,  
18 but I know I talked you into staying.

19 Q Right. I remember that day. But  
20 I didn't request to resign. I had told you  
21 that I was being made to feel like I was being  
22 made to quit.

1           A       Well--

2           Q       Okay.  And so from that time that  
3           I talked to you about that, that was, you  
4           know, after I'd been here like what?  a month  
5           or two, you said that there was nothing  
6           between that time and until the 4-10 incident.

7           A       No.  That's not true.

8           Q       That's what you just said.

9                    JUDGE MACAULEY:  Okay.  Look.  
10           Okay.  I want you to elicit answers to a  
11           question.

12                   MS. SMITH:  Okay.

13                    JUDGE MACAULEY:  If you want to  
14           get him to--if you want to read a portion of--  
15           what's this, your statement?  or his statement,  
16           or this report on March 14th, read part of the  
17           statement, ask whether it's true or not, and,  
18           you know, then say why.  But you've got to  
19           keep your questions simple, and so he can  
20           respond to it.

21                    MS. SMITH:  Okay.  Okay.  I'm  
22           sorry, sir.

1 JUDGE MACAULEY: That's all right.

2 MS. SMITH: Okay. All right.

3 JUDGE MACAULEY: Why don't you  
4 say, "Isn't it true that--if he says no, then  
5 why--this is written in my report. Why do you  
6 say otherwise?"

7 Do you see what I'm saying?

8 MS. SMITH: Right.

9 JUDGE MACAULEY: Okay. That's how  
10 we do it.

11 MS. SMITH: Okay.

12 BY MS. SMITH:

13 Q Okay. Isn't it true that Mark  
14 Middleton didn't have to call you about what  
15 was happening to me on May 11, when I walked  
16 into the break room?

17 A He didn't have to call me?

18 Q Right.

19 A He called me.

20 Q He was in the break room which is  
21 right next to your office.

22 A Okay. He called me.

1           Q       Okay. I just--things seem to  
2       happen way too fast for him to be able to make  
3       a phone call to someone and chase me out the  
4       door at the same time.

5                   JUDGE MACAULEY: Is that true? I  
6       mean, I--you can't just talk into the record.

7                   MS. SMITH: Okay.

8                   JUDGE MACAULEY: You've got a  
9       witness. You've got to ask him a question.  
10      That's how you build your case.

11                  MS. SMITH: Okay.

12                  JUDGE MACAULEY: You build your  
13      case by the answers he gives you. I don't--  
14      you know.

15                  MS. SMITH: Okay. I--

16                  JUDGE MACAULEY: You just can't  
17      comment.

18                  MS. SMITH: Okay. I submitted a  
19      paper, another thing to you about what had  
20      happened, in my words, and isn't it true that  
21      the time it would take for him to call you on  
22      his cell phone, when he's being called by



1 Dennis Klein . According to Dennis Klein's  
2 statement, he's on the phone to Dennis Klein.  
3 Then he hangs up from him. Then he calls you,  
4 tells you what's going on, and then in the  
5 course of about 15 seconds, follows me back  
6 over to the bag room--

7 JUDGE MACAULEY: What are you  
8 asking him?

9 MS. SMITH: --walking right behind  
10 me.

11 JUDGE MACAULEY: What are you  
12 asking him? I don't understand what he's--

13 MS. SMITH: The time--

14 JUDGE MACAULEY: I know. But he's  
15 got to respond to this, Ms. Smith.

16 MS. SMITH: Okay. See, that's  
17 what I mean. I don't know how to word these.

18 JUDGE MACAULEY: Well, I don't  
19 know what you're getting to.

20 MS. SMITH: Okay. You also stated  
21 in your statement just now, that the date--the  
22 time that I left my assigned post was after

1 the April 10th incident; correct?

2 MR. ENGELHARDT: It was after the  
3 checkpoint incident.

4 BY MS. SMITH:

5 Q Okay. You stated September,  
6 October.

7 A I said I wasn't sure of the dates.  
8 It was later, after April. I know that.

9 Q Okay. But I was terminated in  
10 June, so that was just something that I wanted  
11 to clarify--

12 A Okay.

13 Q --that it couldn't have happened  
14 September/October. And I also want to  
15 clarify. Dennis Klein was the other TSO that  
16 was with me in the bag room that day; correct?

17 A Correct.

18 Q Okay. His start date was the same  
19 date as mine; correct?

20 A I don't know. I don't know his  
21 start date.

22 Q Okay. Cause you said he was new.

1           A       I said he was uncertified.

2           Q       You said he was new.

3           A       OJT, uncertified.

4           Q       Cause he was new.  It's in there.

5       And--

6                    JUDGE MACAULEY:  Is OJT,  
7       uncertified, equivalent to new?

8                    MR. ENGELHARDT:  No; not all the  
9       time; no.

10                   JUDGE MACAULEY:  All right.

11                   MS. SMITH:  Okay.  Well, he said  
12       new.  So he wasn't new.

13                   BY MS. SMITH:

14           Q       Do you remember me being given a  
15       chance to explain what happened that day?

16           A       I believe you wrote a statement  
17       about the incident.

18           Q       But did I get a chance to verbally  
19       explain it?

20           A       I don't recall.

21           Q       Anyone ask me?

22           A       You gave--you submitted a written

1 statement. Apparently somebody must a asked  
2 you; yes.

3 Q Okay. So in order for me to write  
4 a statement, someone has to ask me what  
5 happened?

6 A I didn't say that. I said you  
7 were asked to submit a statement on the  
8 incident that happened in the bag room, which  
9 you did.

10 Q Who asked me?

11 A I'm assuming the supervisor. Or a  
12 lead. Somebody asked you to submit a  
13 statement.

14 Q Well, not to my knowledge. No one  
15 had given me a chance to say what had  
16 happened. Okay. I only have one other  
17 question, and it's about my letter of  
18 reprimand.

19 JUDGE MACAULEY: Which one?

20 MS. SMITH: I only got one.

21 JUDGE MACAULEY: Okay. Oh, the  
22 letter of reprimand. Okay.

1 MS. SMITH: Right.

2 BY MS. SMITH:

3 Q Oh, God, I don't know how to ask  
4 this.

5 JUDGE MACAULEY: Take your time  
6 and relax, and ask it. Just make it simple.

7 MS. SMITH: Okay. I want to know  
8 who signed my name on it.

9 JUDGE MACAULEY: Who signed your--  
10 oh.

11 MS. SMITH: That's not my  
12 signature.

13 JUDGE MACAULEY: Well, you're  
14 going to have to show him something first.

15 MS. SMITH: Okay. This is the  
16 letter of reprimand. I'm sorry about the  
17 writing on the back.

18 JUDGE MACAULEY: Okay. Witness is  
19 showing Mr. Engelhardt this letter of  
20 reprimand. Go ahead.

21 MS. SMITH: The final page with  
22 the signatures.

1 JUDGE MACAULEY: Fine. Present it  
2 to him.

3 MS. SMITH: Okay. That's the one,  
4 the official copy.

5 MR. ENGELHARDT: That's your copy.  
6 That's not the official copy. That is your  
7 copy.

8 MS. SMITH: That was all three  
9 cop--well,--

10 MR. ENGELHARDT: That is your  
11 copy.

12 MS. SMITH: --all three copies  
13 were the same, cause I have--

14 JUDGE MACAULEY: Okay. Look.

15 MS. SCOTT-JOHNSON: Judge, can I  
16 just see what she's showing the witness,  
17 please, so I can identify it, see--instead of  
18 arguing about it on the record, so I--

19 MS. SMITH: I have other forms  
20 with me, that I signed with my signatures on  
21 them.

22 JUDGE MACAULEY: Well, I don't

1 know. I guess what you're going to--

2 MS. SMITH: That do not match.

3 JUDGE MACAULEY: --you need to  
4 show that you've got a copy of the official  
5 reprimand, then.

6 MS. SMITH: Well, yeah.

7 JUDGE MACAULEY: If you're going  
8 to make an issue of this.

9 MS. SMITH: I do. This was my  
10 copy of the reprimand that I was given.

11 JUDGE MACAULEY: Is that in the  
12 record? Is that in the Report of  
13 Investigation?

14 MS. SMITH: Yes.

15 JUDGE MACAULEY: What page? It  
16 should be Bate-stamped.

17 MS. SMITH: It's not.

18 JUDGE MACAULEY: Well, then it  
19 doesn't appear to be part of the record.

20 MS. SMITH: Yes, it is.

21 JUDGE MACAULEY: The record's  
22 Bate-stamped.

1 MS. SMITH: Cause that's--

2 MS. SCOTT-JOHNSON: Hold on; hold  
3 on. Let me see that copy that you have there.

4 MS. SMITH: That one.

5 MS. SCOTT-JOHNSON: Judge, I  
6 believe the copy that she's referring to  
7 appears in the record at page 196.

8 MS. SMITH: I know there were  
9 several copies of it in the--thank you.

10 JUDGE MACAULEY: I see. Okay.  
11 196 shows a--okay. What do you want to show?

12 MS. SMITH: A blank signature;  
13 correct?

14 JUDGE MACAULEY: Well, there's a  
15 blank above your name.

16 MS. SMITH: Correct; okay. That's  
17 it. When I contacted the Freedom of  
18 Information Act, I received--it's No. 113. I  
19 received the letter of reprimand, signed, and  
20 I never signed it. It's not my signature.

21 JUDGE MACAULEY: Okay. Well, you  
22 can't ask--okay. For one thing, you're not



1 under oath. For purposes of this  
2 conversation, you're telling me 196--or 113 is  
3 not your signature.

4 MS. SMITH: Correct.

5 JUDGE MACAULEY: Witness, are you-  
6 -what name is that? Is that Carole Smith?

7 MS. SMITH: That's "Carm"  
8 Sullivan.

9 MS. SCOTT-JOHNSON: Carmel  
10 Sullivan.

11 JUDGE MACAULEY: Oh, Sullivan.  
12 Thank you. This looks the same. Okay.

13 MS. SMITH: I just--I sent this to  
14 a friend a mine that works on the--a police  
15 department, to check it.

16 JUDGE MACAULEY: Okay. I guess the  
17 question you want to ask him is why is there  
18 a difference between 113 and 196; right?

19 MS. SMITH: Right.

20 JUDGE MACAULEY: All right. Why  
21 don't you show both to the witnesses--to the  
22 witness, and ask him to explain why there are

1 two different copies of the reprimand signed.

2 MR. ENGELHARDT: Okay. When a  
3 letter of reprimand is issued--

4 JUDGE MACAULEY: Are you looking  
5 at both of them, Mr. Engelhardt?

6 MR. ENGELHARDT: Yes, I am.

7 JUDGE MACAULEY: And do you see,  
8 there is a difference in that page?

9 MR. ENGELHARDT: There's--Carole  
10 Smith's signature is missing on this page.

11 JUDGE MACAULEY: This page being  
12 196?

13 MR. ENGELHARDT: There's no number  
14 on this but--

15 JUDGE MACAULEY: Okay. Well,  
16 we'll take that as 196, ROI.

17 MR. ENGELHARDT: Right. Correct.

18 JUDGE MACAULEY: Have you any idea  
19 why there is a difference?

20 MR. ENGELHARDT: Yes.

21 JUDGE MACAULEY: Okay. Explain  
22 it.

1 MR. ENGELHARDT: When the letters  
2 of reprimand are issued to the employees, this  
3 is the employee copy. We sign--

4 JUDGE MACAULEY: The unsigned page  
5 is the employee copy?

6 MR. ENGELHARDT: Correct.

7 JUDGE MACAULEY: All right.

8 MR. ENGELHARDT: And what happens  
9 is when we deliver them in the room, the  
10 official document is always signed, that goes  
11 to the HR file. Some, some employees refuse  
12 to sign everything, and it's explained to  
13 them, this is your copy with our signatures.  
14 If you want to sign it, that's up to you; but  
15 that's your copy.

16 JUDGE MACAULEY: Okay. Well, how  
17 is it that Ms. Carole Smith signed the other  
18 copy? Identified at Bate--

19 MR. ENGELHARDT: This is not a  
20 copy. This is the official--no copy stamp.  
21 This is the official HR file.

22 JUDGE MACAULEY: I see. At some

1 point, did she come to sign it?

2 MR. ENGELHARDT: She signed it the  
3 day it was delivered.

4 JUDGE MACAULEY: Did you witness  
5 it? Did you witness her signing it?

6 MR. ENGELHARDT: Yes.

7 JUDGE MACAULEY: Oh, I see. Okay.

8 MS. SMITH: I never signed it.  
9 I'm sorry.

10 JUDGE MACAULEY: Well, whatever.  
11 you're not under oath.

12 MS. SMITH: Okay. I never signed  
13 it. That's not my signature, and I got copies  
14 of other signatures, that I can show that  
15 that's not my signature.

16 JUDGE MACAULEY: Well, he said he  
17 saw you sign it. You say he didn't. You're  
18 not under oath right now. I'm not going to  
19 have a debate on it.

20 MS. SMITH: Okay. That's fine. I  
21 just--I just wanted it on the record--

22 JUDGE MACAULEY: It's on the

1 record.

2 MS. SMITH: --that I did not sign  
3 it.

4 JUDGE MACAULEY: What else do you  
5 have?

6 MS. SMITH: I just--okay.

7 BY MS. SMITH:

8 Q You said that when I left my  
9 assigned post, it was because I was hungry.  
10 Didn't I actually say that it was because I  
11 had to go to the rest room?

12 A I relied on what--who you told  
13 that to, the supervisors that submitted  
14 statements.

15 Q I wasn't--I did--wasn't given the  
16 opportunity to speak to anybody about it.

17 A Is that a question?

18 Q No, I'm just--no; that's a  
19 statement.

20 JUDGE MACAULEY: No; no  
21 statements.

22 MS. SMITH: I'm sorry.

1 JUDGE MACAULEY: Just questions.

2 BY MS. SMITH:

3 Q Who supposedly was it that I spoke  
4 to about it?

5 A I'd have to review the report.  
6 It's been over a year ago. I don't know.

7 Q Okay.

8 JUDGE MACAULEY: Would the  
9 difference have been relevant in this  
10 situation?

11 MR. ENGELHARDT: No.

12 JUDGE MACAULEY: Why not?

13 MR. ENGELHARDT: You don't leave  
14 your post, period.

15 JUDGE MACAULEY: All right.

16 BY MS. SMITH:

17 Q Isn't it true that leads are  
18 telling TSOs that as long as there's someone  
19 else in there and the person on OJT does not  
20 do any bags, if you need to go to the rest  
21 room you don't have to call a lead, if you're  
22 only going to be gone for a minute, or two

1 minutes, to go to the rest room?

2 A I don't believe that to be true at  
3 all; no.

4 Q Okay. Okay. I also have a  
5 question about these two here.

6 JUDGE MACAULEY: These two.

7 MS. SMITH: I'm sorry. These two  
8 statements here, one from Ronald Babbitt and  
9 one from Dennis Klein, No. 143 and 144.

10 JUDGE MACAULEY: Ask your  
11 question.

12 BY MS. SMITH:

13 Q Okay. Dennis Klein says that when  
14 I came back in there, he was alone and he was  
15 gonna do the bags, and put them on the  
16 screener, or on the machine to be screened,  
17 and--

18 JUDGE MACAULEY: Okay; wait a  
19 second. Why don't we do it this way. If you  
20 have a copy, give it to the witness. Let him  
21 read these.

22 MS. SMITH: I'm sorry.

1 MS. SCOTT-JOHNSON: I can only  
2 give him my copy, Judge.

3 JUDGE MACAULEY: Show him your  
4 copy, unless there's writing and you don't  
5 want to--

6 MS. SMITH: Okay. There's Dennis  
7 Klein's statement, that says that he was--

8 JUDGE MACAULEY: Give him both  
9 statements.

10 MS. SMITH: Pardon me?

11 JUDGE MACAULEY: Give him both  
12 statements. Have him read both statements.

13 MS. SMITH: Okay. Would you  
14 please--

15 JUDGE MACAULEY: Mr. Engelhardt,  
16 tell me when you've finished reading them.

17 MR. ENGELHARDT: Okay.

18 [Witness peruses documents]

19 MR. ENGELHARDT: Okay.

20 BY MS. SMITH:

21 Q Did you see any discrepancies in  
22 there?



1 JUDGE MACAULEY: Okay. You've  
2 read both statements of Mr. Babbitt and Mr.  
3 Klein; is that correct?

4 MR. ENGELHARDT: Yes, sir.

5 JUDGE MACAULEY: All right, Ms.  
6 Smith.

7 BY MS. SMITH:

8 Q Did you notice any discrepancies  
9 in there?

10 A No.

11 Q Between them? That Ron Babbitt  
12 said that he was in Delta at the time.

13 JUDGE MACAULEY: Okay. So he says  
14 no discrepancies.

15 MS. SMITH: Right.

16 JUDGE MACAULEY: You appear to see  
17 one.

18 MS. SMITH: I do.

19 JUDGE MACAULEY: Ask the question.  
20 Ron Babbitt says this, Mr. Klein says that.  
21 Isn't that a discrepancy? And have him  
22 answer.

1 MS. SMITH: Okay.

2 BY MS. SMITH:

3 Q Mr. Babbitt says that he was in  
4 Delta when this took place, when I got back,  
5 was going back into the room. He was already  
6 there. He was there. Dennis Klein's  
7 statement says that there were two bags on the  
8 belt and he was alone, and said that he would  
9 need to call a supervisor.

10 A That's when you left, not when you  
11 came back.

12 JUDGE MACAULEY: Okay; wait a  
13 second. Do you understand those two  
14 statements?

15 MR. ENGELHARDT: Yes.

16 JUDGE MACAULEY: Okay. Do they  
17 appear to be--does there appear to be a  
18 discrepancy?

19 MR. ENGELHARDT: No.

20 JUDGE MACAULEY: Why?

21 MR. ENGELHARDT: One person is  
22 talking about when Middleton tried to talk to

1       you after the fact. That's Babbitt. Mr.  
2       Klein is talking about when you originally  
3       left, you left him alone.

4                   MS. SMITH: No. I'm sor--can I  
5       read the part?

6                   JUDGE MACAULEY: Yes.

7                   MS. SMITH: Okay. It says: "She  
8       was going to go to the break room to get  
9       something to eat. She returned--

10                  JUDGE MACAULEY: Yes. Well,  
11       identify--

12                  MS. SMITH: I'm sorry. It's  
13       Dennis Klein's statement, No. 144.

14                  "She returned with a bag of chips.  
15       At that point there were two bags on the  
16       belt." So there were two bags on the belt when  
17       I returned. And he's stating that he would  
18       have to call a supervisor because he was  
19       alone. But yet Ron Babbitt states that he was  
20       there when I returned.

21                  MR. ENGELHARDT: I believe that  
22       Klein was making reference to when you left,

1 he told you he was going to have to call a  
2 supervisor if you left him alone. I don't see  
3 discrepancies. I see he's got his--his words  
4 mixed up. He's got the two bags in the  
5 middle. But he was making reference to when  
6 you left, that he would be forced to call a  
7 supervisor.

8 MS. SMITH: So like he says: "I  
9 grabbed the bags off the belt and lined them  
10 up to be screened. I advised Carole I was  
11 still working, and if she as not going to  
12 screen them, I would have to call a  
13 supervisor." That was when I returned.

14 MR. ENGELHARDT: He's making  
15 reference to when you left.

16 MS. SMITH: That's not my  
17 understanding of what's written. Cause it  
18 says "at that point she would--that point, she  
19 would screen the two bags--

20 JUDGE MACAULEY: Look, I only--

21 MS. SMITH: --but then she was  
22 done.

1 JUDGE MACAULEY: He explained what  
2 his understanding was. I'll weigh the  
3 credibility of it.

4 MS. SMITH: Okay.

5 [Pause]

6 MS. SMITH: I'm sorry. Could I  
7 ask him to read one more?

8 JUDGE MACAULEY: I would like you-  
9 -well--

10 MS. SMITH: No. 144. It just--  
11 it's Mark Middleton's statement, that says  
12 that LTSO Babbitt was present in the baggage  
13 room.

14 JUDGE MACAULEY: Page 144 is not a  
15 statement by Middleton.

16 MS. SMITH: 141. I'm sorry.

17 JUDGE MACAULEY: Show him the  
18 statement so he can read it.

19 MR. ENGELHARDT: It's hard to  
20 read. It's a bad copy.

21 MS. SMITH: I agree. But it does  
22 state that Ron Babbitt was in the bag room

1 with--

2 JUDGE MACAULEY: Wait a second.

3 MS. SMITH: --Mr. Klein.

4 [Pause]

5 JUDGE MACAULEY: It's not the  
6 greatest copy, I admit. Are you familiar with  
7 that statement?

8 MR. ENGELHARDT: Yes.

9 JUDGE MACAULEY: All right. What  
10 do you want to ask him? Isn't it true--

11 MS. SMITH: I want to ask him, is  
12 it true that there obviously was someone in  
13 the baggage room with Mr. Klein when I was  
14 over in the bathroom?

15 MR. ENGELHARDT: Babbitt is making  
16 a statement that he is there when Middleton is  
17 talking to you.

18 MS. SMITH: And Mark Middleton  
19 made the statement that Babbitt was already  
20 there.

21 MR. ENGELHARDT: Prior to you  
22 coming back. Okay. Yes.

1 MS. SMITH: Okay. Thank you. So  
2 Mr. Klein wasn't alone--

3 JUDGE MACAULEY: So what do you  
4 want to draw to that?

5 MS. SMITH: So Mr. Klein was not  
6 left in the bag room alone.

7 JUDGE MACAULEY: Isn't that true?

8 MS. SMITH: Isn't that true?

9 MR. ENGELHARDT: No; that's not  
10 true. Mr. Babbitt was dispatched when we  
11 found that you left the bag room.

12 MS. SMITH: Hmm. Let me see.  
13 Would you like to read 143 again. There's  
14 nothing in there that says--in his statement  
15 that says he was dispatched to the bag room.  
16 Would you like to read it again.

17 MR. ENGELHARDT: I know it doesn't  
18 say that in there.

19 JUDGE MACAULEY: Okay. Then how  
20 do you know that?

21 MS. SMITH: Exactly. Thank you.

22 MR. ENGELHARDT: Because when I

1 called the supervisor to find out what's going  
2 on, he most--he called the lead to find out  
3 did somebody send her on a break. The lead  
4 went to the bag room to find out what was  
5 going on.

6 MS. SMITH: But he didn't put it  
7 in his statement, that he was called to go to  
8 the bag room because there was no one there?

9 MR. ENGELHARDT: I don't think he  
10 was called from the bag room.

11 JUDGE MACAULEY: No; no.

12 MR. ENGELHARDT: He was called to  
13 find out what's going on.

14 JUDGE MACAULEY: But you found  
15 that information because--aside from what is  
16 in the statement; is that correct?

17 MR. ENGELHARDT: Correct.

18 JUDGE MACAULEY: All right.

19 MS. SMITH: Okay.

20 JUDGE MACAULEY: So you relied on  
21 more than just the statements made in  
22 determining whatever punishment you issue; is



1       that correct? For the incident?

2                   MR. ENGELHARDT: Yes.

3                   JUDGE MACAULEY: All right.

4                   MS. SMITH: Okay. I just--I'm  
5       sorry. I'm just reading it over. Mark  
6       Middleton also stated that Babbitt was  
7       present--

8                   JUDGE MACAULEY: If you did, why  
9       didn't you seek a verbal conversation with  
10      Complainant in making your determination as to  
11      the truth of what went on at that time?

12                  MR. ENGELHARDT: Because at that  
13      time, I didn't know what the truth was yet.  
14      I didn't have all the statements and all the  
15      witnesses.

16                  JUDGE MACAULEY: But you didn't  
17      just rely on the statements, did you?

18                  MR. ENGELHARDT: No. I relied on  
19      the protocol here. If there's something going  
20      on in the bag room, we call a supervisor who's  
21      not in the bag room, who calls the lead who's  
22      assigned to that bag room, who's also not in

1 that bag room, and the protocol would be for  
2 that supervisor to tell that lead, go over  
3 there and find out what's going on.

4 JUDGE MACAULEY: Okay. I guess  
5 the question is: Why didn't you elicit any  
6 information from Ms. Smith as to--since she is  
7 the culpable person in this whole incident?

8 MR. ENGELHARDT: I got a written  
9 statements from Ms. Smith.

10 JUDGE MACAULEY: Why didn't you  
11 ask her verbally?

12 MR. ENGELHARDT: I--

13 JUDGE MACAULEY: Since you just  
14 didn't rely on the statements of these people,  
15 of these supervisors and leads. Why didn't  
16 you elicit an oral statement from her to  
17 supplement the written statements you relied  
18 on, apparently?

19 MR. ENGELHARDT: Cause I didn't  
20 see there was a need for it.

21 JUDGE MACAULEY: All right.

22 MS. SMITH: Okay. No. 247 is my

1 statement. Do you want to read it?

2 MR. ENGELHARDT: Ask him.

3 MS. SMITH: No. Do you want to  
4 read it? See if you recall it?

5 JUDGE MACAULEY: No. Don't say  
6 "do you want to read it." Give it to him to  
7 read.

8 MS. SMITH: Okay. Would you  
9 please read that.

10 [Witness peruses the document]

11 MR. ENGELHARDT: Is there another  
12 page? The last letter is "I" and then there's  
13 one of one but I don't--

14 JUDGE MACAULEY: Yes; there's more  
15 to that. Ms. Smith.

16 MS. SMITH: I don't have that.

17 MR. ENGELHARDT: It says one of  
18 one.

19 JUDGE MACAULEY: I see.

20 MR. ENGELHARDT: But it says "I"  
21 and then it stops.

22 JUDGE MACAULEY: 248.

1 MS. SMITH: Oh, yes. This  
2 incident was reported to Ted Calhoun.

3 MR. ENGELHARDT: No; that's not  
4 this. This--that's something different.

5 MS. SMITH: That's 248.

6 MR. ENGELHARDT: This is 247.

7 MS. SMITH: That's 248.

8 MR. ENGELHARDT: This has nothing  
9 to do with the statement.

10 MS. SMITH: Yes; it does.

11 MR. ENGELHARDT: No. You--there's  
12 a letter "I" and "I"--this incident reported--  
13 it doesn't make sense.

14 MS. SMITH: Oh, yeah. I see. Oh.

15 JUDGE MACAULEY: I don't know, Ms.  
16 Smith--

17 MS. SMITH: Last sentence.  
18 The sentence is underneath my signature.

19 JUDGE MACAULEY: Okay. So it  
20 says: "I was then sent to work at checkpoint  
21 in a state of shock."

22 MS. SMITH: Correct.

1 MR. ENGELHARDT: I read it.

2 BY MS. SMITH:

3 Q Okay. Were you aware that I--so  
4 you agree, that you did say that you were sick  
5 of my filing reports?

6 A I don't agree with that at all. I  
7 never said that.

8 Q Okay. But you never asked me  
9 about why I said that.

10 A I don't--

11 JUDGE MACAULEY: Wait. This is a  
12 statement you wrote.

13 MS. SMITH: Correct.

14 JUDGE MACAULEY: Okay. So he  
15 didn't say the statement. You did.

16 MS. SMITH: Right.

17 JUDGE MACAULEY: So I guess you  
18 could say: Isn't it true, Mr. Engelhardt, that  
19 you were sick of me filing reports?

20 MS. SMITH: Right. That's--

21 JUDGE MACAULEY: Is that true?

22 MR. ENGELHARDT: That's not true.

1 JUDGE MACAULEY: Okay.

2 MS. SMITH: Then I was just  
3 wondering why he didn't talk to me about my  
4 saying that.

5 JUDGE MACAULEY: Why didn't you  
6 talk to her about her saying that?

7 MS. SMITH: Or talk to me about  
8 this report at all?

9 MR. ENGELHARDT: I didn't think I  
10 needed to talk to her about it. I already  
11 testified to that.

12 MS. SMITH: Okay. That's all I--

13 JUDGE MACAULEY: That's all you've  
14 got?

15 MS. SMITH: That's all I can think  
16 of.

17 JUDGE MACAULEY: Okay. Do you  
18 have any cross?

19 MS. SCOTT-JOHNSON: No, Judge.

20 JUDGE MACAULEY: I'm sorry.  
21 Redirect, I meant?

22 MS. SCOTT-JOHNSON: No, Judge.

1 JUDGE MACAULEY: All right. I've  
2 got a couple questions.

3 Ms. Smith. She was a  
4 probationary; right?

5 MR. ENGELHARDT: Correct.

6 JUDGE MACAULEY: Now how many  
7 probationaries under your supervision did you  
8 have at the time? Around the time that Ms.  
9 Smith was employed.

10 MR. ENGELHARDT: I'm not sure,  
11 Judge.

12 JUDGE MACAULEY: What if I said  
13 ten?

14 MR. ENGELHARDT: That could be  
15 approximate number.

16 JUDGE MACAULEY: Okay. That seems  
17 accurate?

18 MR. ENGELHARDT: Ten. Sometimes  
19 less.

20 JUDGE MACAULEY: Okay. And of  
21 those ten, about how many did you retain from  
22 her class, I guess, would be the best--

1 MR. ENGELHARDT: They overlap, so-

2 -

3 JUDGE MACAULEY: They overlap.

4 MR. ENGELHARDT: --it's hard to  
5 determine that sometimes.

6 JUDGE MACAULEY: Okay. You have  
7 retained some probationaries that were hired--

8 MR. ENGELHARDT: Oh, quite a few.

9 JUDGE MACAULEY: --in 2009?

10 MR. ENGELHARDT: Yes.

11 JUDGE MACAULEY: Okay. Are you  
12 familiar with a probationary named Chassidy  
13 Ponce, or "Ponsay"?

14 MR. ENGELHARDT: Yes.

15 JUDGE MACAULEY: Who is she?

16 MR. ENGELHARDT: She was a female  
17 TSO here.

18 JUDGE MACAULEY: Okay. Was she a  
19 probationary at the time that Ms. Smith was a  
20 probationary?

21 MR. ENGELHARDT: I believe so.

22 JUDGE MACAULEY: Okay. Isn't it



1 true she had a problematic disciplinary or  
2 performance record?

3 MR. ENGELHARDT: I did not handle  
4 that; but I believe so. Another manager dealt  
5 with that incident.

6 JUDGE MACAULEY: Another manager.  
7 What manager was that?

8 MR. ENGELHARDT: I believe it was  
9 Michael Kilcullen.

10 JUDGE MACAULEY: Kilcul--

11 MR. ENGELHARDT: I'm not certain,  
12 though.

13 JUDGE MACAULEY: And he's a TSM  
14 too?

15 MR. ENGELHARDT: Correct.

16 JUDGE MACAULEY: What's your  
17 understanding of the nature of her problems?

18 MR. ENGELHARDT: I believe it  
19 might have been AWOLs.

20 JUDGE MACAULEY: AWOLs.

21 MR. ENGELHARDT: Late to work.

22 JUDGE MACAULEY: Late to work.

1 MR. ENGELHARDT: There might a  
2 been some performance issues. I'm not--I'm  
3 not familiar with the case.

4 JUDGE MACAULEY: Would AWOLs also  
5 be excessive absences?

6 MR. ENGELHARDT: Yes.

7 JUDGE MACAULEY: Okay. Didn't she  
8 have a problem--

9 MR. ENGELHARDT: Well, they're  
10 different but it's a time-and-attendance  
11 issue.

12 JUDGE MACAULEY: She had time-and-  
13 attendance issues.

14 MR. ENGELHARDT: Correct.

15 JUDGE MACAULEY: Isn't it true Ms.  
16 Ponce used to speak Spanish at checkpoints  
17 when she wasn't supposed to, a violation of  
18 the SOP at the TSA?

19 MR. ENGELHARDT: I don't recall  
20 that.

21 JUDGE MACAULEY: You don't recall  
22 that.

1 MR. ENGELHARDT: We would just add  
2 to that, anybody that was--we would--we'd  
3 encourage them to tell us, so we could use  
4 them for interpreters.

5 JUDGE MACAULEY: No. I know.

6 MR. ENGELHARDT: No, I don't  
7 recall that.

8 JUDGE MACAULEY: But you didn't  
9 manage her; is that correct?

10 MR. ENGELHARDT: She was on my  
11 shift.

12 JUDGE MACAULEY: She was on your  
13 shift.

14 MR. ENGELHARDT: I may have been  
15 on vacation, days off, when the infractions  
16 occurred, and another manager--

17 JUDGE MACAULEY: Would you have  
18 been charged with recommending her retention  
19 or her dismissal?

20 MR. ENGELHARDT: In her case, no.

21 JUDGE MACAULEY: In her case.  
22 That was Mr. Kilcullen?

1 MR. ENGELHARDT: I believe so.

2 JUDGE MACAULEY: All right. I  
3 have no further questions. I have no further  
4 questions.

5 MR. ENGELHARDT: That means i'm  
6 done?

7 JUDGE MACAULEY: You're dismissed,  
8 Mr. Engelhardt. Thank you.

9 MR. ENGELHARDT: Thank you.

10 [Witness excused]

11 JUDGE MACAULEY: Let's take a five  
12 minute break.

13 [A five minute recess was taken]

14 JUDGE MACAULEY: What's Mr.  
15 Johansson? Why are we--he's the one who  
16 recommended Ms. Smith's removal. What's his  
17 role? What are you going to ask him?

18 MS. SCOTT-JOHNSON: Well, Mr.  
19 Johansson was somewhat related to the removal,  
20 in that he assigned or gave Ms. Sykes the  
21 authority to look into it and make a  
22 determination. The other thing is is that he

1 can also testify, just briefly, about the  
2 similar situation you just asked Mr.  
3 Engelhardt about, comparators.

4 JUDGE MACAULEY: Oh. Well, then  
5 let's get him in.

6 WHEREUPON,

7 BRIAN JOHANSSON

8 WAS CALLED AS A WITNESS BY AND ON BEHALF OF  
9 THE COMPLAINANT AND, HAVING FIRST BEEN DULY  
10 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

11 THE REPORTER: State your name and  
12 spell it for me, please.

13 MR. JOHANSSON: Brian. B-r-i-a-n.  
14 Johansson. J-o-h-a-n-s-s-o-n.

15 JUDGE MACAULEY: Good morning, Mr.  
16 Johansson.

17 MR. JOHANSSON: Good morning, sir.

18 JUDGE MACAULEY: You are with the  
19 TSA?

20 MR. JOHANSSON: Yes, sir.

21 JUDGE MACAULEY: And your position  
22 there?

1 MR. JOHANSSON: I'm the federal  
2 security director for this airport and three  
3 others.

4 JUDGE MACAULEY: How long?

5 MR. JOHANSSON: About three years  
6 and three months.

7 JUDGE MACAULEY: This is  
8 uninterrupted?

9 MR. JOHANSSON: Yes, sir. Well, I  
10 was detailed away from this airport for about  
11 90 days in the summer of 2009.

12 JUDGE MACAULEY: Okay. Before  
13 then, though, you were the federal security  
14 director?

15 MR. JOHANSSON: Yes, sir.

16 JUDGE MACAULEY: All right. You  
17 know the Complainant, Carole Smith?

18 MR. JOHANSSON: Yes.

19 JUDGE MACAULEY: All right. How  
20 do you know her?

21 MR. JOHANSSON: She was one of our  
22 employees.

1 JUDGE MACAULEY: Okay. Go ahead,  
2 Ms. Johnson.

3 DIRECT EXAMINATION

4 BY MS. SCOTT-JOHNSON:

5 Q When was the first time anything  
6 related to Ms. Smith came to your attention?

7 A In October of 2008, she sent me a  
8 series of e-mails, asking whether she could do  
9 massages in the airport, and I responded to  
10 those e-mails and tried to--to help her to do  
11 that.

12 Q And I'm sorry. When did you say  
13 that was?

14 A October of 2008.

15 Q Okay. During the time that--from  
16 October of 2008 until the time that you were  
17 on a detail, what if anything else came to  
18 your attention in relationship to Ms. Smith's  
19 employment?

20 A Another employee had submitted a  
21 complaint, or an allegation of workplace  
22 violence, or possible workplace violence, an

1 issue against Ms. Smith, and so I directed our  
2 assistant federal security director for law  
3 enforcement, Matt Lloyd, to conduct an  
4 investigation. He is our designated workplace  
5 violence investigator.

6 Q Mr. Lloyd, is he considered--  
7 excuse me. Withdrawn. What are his other  
8 functions? Are there any other functions that  
9 Mr. Lloyd performs?

10 A Mr. Lloyd's primary function is  
11 criminal investigation and liaison with law  
12 enforcement.

13 Q Who, if anyone, does he supervise?

14 A He does not supervise anybody.

15 Q Who, if anyone, does he manage?

16 A He does not manage anybody.

17 Q After--did there come a time,  
18 after--

19 JUDGE MACAULEY: He has a  
20 managerial title, though, doesn't he?

21 MR. JOHANSSON: Yes, sir. It  
22 does, it does indicate that he is a manager,



1 but his job analysis tool states that it is a  
2 non-supervisory position.

3 JUDGE MACAULEY: I see.

4 MS. SCOTT-JOHNSON: May I ask  
5 something, quickly?

6 JUDGE MACAULEY: Go ahead.

7 MS. SCOTT-JOHNSON: What, if  
8 anything, did you do as a result of getting--  
9 having that information?

10 MR. JOHANSSON: Which information?

11 MS. SCOTT-JOHNSON: That there was  
12 a complaint about workplace violence involving  
13 Ms. Smith.

14 MR. JOHANSSON: Again, I asked Mr.  
15 Lloyd to conduct an investigation, to  
16 determine if he felt that there was, in fact,  
17 a case of workplace violence.

18 BY MS. SCOTT-JOHNSON:

19 Q And what, if anything, did you  
20 find out from Mr. Lloyd after you--regarding  
21 that complaint, after you asked him to look  
22 into it?

1           A       His opinion was there was not an  
2           issue in terms of workplace violence, that it  
3           was really a conflict of personalities between  
4           the Complainant and Ms. Smith.

5           Q       Did he tell you--what, if  
6           anything, did he tell you about what the  
7           complaint involved?

8           A       There were two issues, one a  
9           confrontation in the parking lot, and two, Ms.  
10          Bagnoli believed that Ms. Smith followed her  
11          home, or on the way home, in her car.

12          Q       As a result of what Mr. Lloyd told  
13          you after he conducted his investigation, what  
14          if anything did you do?

15          A       Well, as a result of the initial  
16          allegation, Mr. Lloyd recommended that we  
17          separate the employees to ensure that there--  
18          if there was, in fact, a workplace violence  
19          issue, that it didn't--did not erupt. And so  
20          we initiated that.

21                    During the course of his  
22          investigation, when he determined that it was

1 just a conflict between personalities, he  
2 suggested to Ms. Smith that she avail herself  
3 of our system for dealing with conflict, which  
4 is the Integrated Conflict Management System.

5 It's a voluntary program. She  
6 chose not to avail herself of that. And so as  
7 the manager of all the people here, I felt I  
8 still had to deal with the conflict, because  
9 it is a security distraction, and so I  
10 directed that Ms. Smith, Ms. Bagnoli, not work  
11 on the same shift, and not be allowed to take  
12 breaks at the same time.

13 Q Okay. What if any orders did you  
14 give--what if any information did you give to  
15 the supervisors and/or managers as to what  
16 that conflict was about? Or did you?

17 A I gave none. I just said that  
18 there's a conflict and we were going to deal  
19 with it, is we're going to not have them work  
20 together and not take breaks together.

21 JUDGE MACAULEY: Did you draw any  
22 conclusions of culpability in that conflict?

1 MR. JOHANSSON: I'm not sure I  
2 understand the question, sir.

3 JUDGE MACAULEY: In other words,  
4 you saw that there was a conflict but was any  
5 one employee faulted over another?

6 MR. JOHANSSON: No. I don't think  
7 so. Mr. Lloyd didn't come to that conclusion--  
8 -

9 JUDGE MACAULEY: Did you?

10 MR. JOHANSSON: --nor did I. No,  
11 sir.

12 JUDGE MACAULEY: So the conflict--  
13 so is it true to say that the--both employees  
14 were faulted, or not faulted for the conflict?

15 MR. JOHANSSON: Yes, sir. I think  
16 that's fair to say.

17 JUDGE MACAULEY: All right.

18 BY MS. SCOTT-JOHNSON:

19 Q There came a time when Ms. Smith  
20 was removed from her position; correct?

21 A Yes.

22 Q What if any participation did you

1 have in that decision?

2 A I was detailed away from the  
3 airport at that time, and I directed my  
4 replacement, Ms. Sykes, to handle all  
5 discipline in my absence.

6 Q What if any knowledge do you have  
7 with respect to--

8 JUDGE MACAULEY: Before you  
9 continue, this separation that they had, did  
10 that--did it ever come to an end?

11 MR. JOHANSSON: No.

12 JUDGE MACAULEY: Why not?

13 MR. JOHANSSON: Well, there was no  
14 reason to. I mean, I didn't think that the  
15 conflict was going to resolve itself, and so  
16 it's a very simple thing here, because we have  
17 people who work at our checkpoint and our bag  
18 rooms, and we just schedule them opposite each  
19 other.

20 JUDGE MACAULEY: I gather, since  
21 you kept them apart, that the conflict never  
22 resolved itself?

1 MR. JOHANSSON: I think that's  
2 fair to say.

3 JUDGE MACAULEY: I see. Go ahead.

4 BY MS. SCOTT-JOHNSON:

5 Q What if any knowledge do you have  
6 as to the reasons why Ms. Smith was removed?

7 JUDGE MACAULEY: Actually, you  
8 testified you weren't involved in this  
9 removal; is that correct?

10 MR. JOHANSSON: Yes, sir.

11 JUDGE MACAULEY: Was your opinion  
12 sought?

13 MR. JOHANSSON: No.

14 JUDGE MACAULEY: No  
15 recommendation?

16 MR. JOHANSSON: No.

17 JUDGE MACAULEY: No assessment?

18 MR. JOHANSSON: No.

19 JUDGE MACAULEY: I don't see the  
20 relevance here.

21 MS. SCOTT-JOHNSON: Because I was  
22 going to ask him about comparators, so--

1 JUDGE MACAULEY: Even if you do  
2 ask him about comparator, he had nothing to do  
3 with the determination or the recommendation.

4 MS. SCOTT-JOHNSON: I know. But  
5 does he know what, the reasons why she was  
6 terminated, so that he can--

7 JUDGE MACAULEY: It doesn't  
8 matter. It's hearsay. And he had no personal  
9 observation of the termination or the  
10 discipline which is at issue here.

11 MS. SCOTT-JOHNSON: Well, my thing  
12 is, Judge, is how can he tell you whether or  
13 not there were comparators if he doesn't know  
14 the reasons--

15 JUDGE MACAULEY: I don't know.  
16 That's somebody else. But this witness was  
17 uninvolved in that decision. So why would I  
18 care what his thinking is about comparators?  
19 Ms. Sykes apparently is the person that I'm  
20 more interested in, not Mr. Johansson. It's  
21 not relevant.

22 MS. SCOTT-JOHNSON: I have nothing

1 further, Judge.

2 JUDGE MACAULEY: All right. Do  
3 you have any questions based on this exam--oh,  
4 you called him, so you can have an open-ended  
5 question.

6 MS. SMITH: Okay. I'll try my  
7 best, sir.

8 JUDGE MACAULEY: Although bear in  
9 mind, he had nothing to do with your  
10 termination.

11 MS. SMITH: I know that.

12 JUDGE MACAULEY: This witness  
13 received a reprimand before she was  
14 terminated. Are you familiar with that?

15 MR. JOHANSSON: Only in reviewing  
16 the case before, before today's hearing.

17 JUDGE MACAULEY: Did you have  
18 anything to do with that while you were  
19 federal security director?

20 MR. JOHANSSON: No, sir. Those  
21 are handled below my level.

22 JUDGE MACAULEY: Never got to your



1 attention?

2 MR. JOHANSSON: No, sir. I don't  
3 think I ever knew about that until I was  
4 preparing for this case.

5 JUDGE MACAULEY: All right.

6 MS. SMITH: Okay.

7 CROSS-EXAMINATION

8 BY MS. SMITH:

9 Q Did you know that there were  
10 conflicts between Mary Bagnoli and myself  
11 before?

12 A Yes.

13 Q Okay. But they always--

14 JUDGE MACAULEY: Before what?

15 MS. SMITH: Before March of 2009.

16 MR. JOHANSSON: No.

17 MS. SMITH: No.

18 MR. JOHANSSON: You sent me an e-  
19 mail in March of 2009, alleging that there was  
20 a conflict.

21 MS. SMITH: Okay. Didn't I send  
22 you--I also sent you an e-mail December 9th.

1 JUDGE MACAULEY: He said you sent  
2 him an e-mail.

3 MS. SMITH: In December.

4 JUDGE MACAULEY: Well, before  
5 March.

6 MS. SMITH: Before March, I sent,  
7 I sent you an e-mail, and it is right here,  
8 December 5th, 2008. Would you like to--would  
9 you please read the e-mail.

10 MR. JOHANSSON: Yes.

11 JUDGE MACAULEY: Can you first  
12 tell us where that's found.

13 MS. SMITH: I'm sorry. What page  
14 number is on the bottom of that?

15 JUDGE MACAULEY: Wait. That's  
16 not, you know, necessarily--just advise us as  
17 to what it is.

18 MS. SMITH: It's an e-mail from  
19 me--

20 JUDGE MACAULEY: No; no. The  
21 Bate--is there a Bate stamp on that, below?

22 MS. SMITH: Oh, he's got it.

1 MR. JOHANSSON: It's Exhibit F-14.

2 JUDGE MACAULEY: What page? Does  
3 it say?

4 MS. SMITH: Number.

5 MR. JOHANSSON: Oh. C--I can't  
6 read it. It's--

7 MS. SMITH: Well, I can--188,  
8 Judge.

9 MR. JOHANSSON: Okay. So I  
10 couldn't tell if there was numbers before  
11 that.

12 JUDGE MACAULEY: I see. Okay.  
13 What's your question, Ms. Smith?

14 MS. SMITH: Did you know that  
15 there was friction between Mary Bagnoli and  
16 myself before March of 2009?

17 MR. JOHANSSON: I did not recall  
18 this e-mail, but now that you've shown it to  
19 me, I do recall this, so yes, obviously, it  
20 was in December of 2008.

21 BY MS. SMITH:

22 Q And that's when you assigned me a

1 new mentor; correct?

2 A I didn't do it personally; but  
3 that happened. I don't recall exactly how  
4 that happened.

5 Q Okay. And then you sent--I guess  
6 I don't really have to bring--do you remember  
7 this? I'm not going to bring that up.

8 The e-mail in regards to--okay.  
9 My March 5th e-mail. You remember that?

10 A Yes.

11 Q Okay. Do you remember what your  
12 response to that was?

13 A I don't recall if I responded to  
14 you.

15 Q Correct. But do you remember what  
16 your response was?

17 A To--I believe I sent a note to  
18 Rich Alborn, and basically said I was  
19 frustrated because you had gone outside the  
20 chain of command and that I was not going to  
21 help you anymore.

22 Q Why is the ombudsman outside the

1 chain of command?

2 A Because you didn't give me a  
3 chance to resolve the issue locally.

4 Q That's not the answer. How does  
5 the ombudsman work in to being outside the  
6 chain of command when the ombudsman is just  
7 someone who can't do anything? It's just a  
8 person to talk to.

9 A It's somebody outside of the  
10 airport, and I didn't feel like you had given  
11 me a chance to resolve the issue.

12 Q I didn't know that there was an  
13 issue at that time.

14 A Okay.

15 Q I wasn't aware of Mary Bagnoli's  
16 issue until March 12th.

17 A Okay.

18 Q And this e-mail that I have, if  
19 you'd like to read it--

20 JUDGE MACAULEY: Okay; okay.

21 MS. SMITH: Would you read it.

22 JUDGE MACAULEY: Look. Look. I

1 want you just to ask him questions. His  
2 answer--you can respond to the answer. This  
3 isn't a--you know.

4 MS. SMITH: Okay. I'm sorry.

5 Could you explain to me what you  
6 meant when you said that "since she has  
7 decided to go to the ombudsman, I am not going  
8 to address her issues. She has chosen her  
9 path. There's a lot going on with this  
10 employee--and then it's blacked out because  
11 Freedom of Information wouldn't give me other  
12 names--"has more details and Matt Lloyd is  
13 also involved from a workplace violence  
14 perspective."

15 Can you explain that to me,  
16 because I didn't know what else was--

17 JUDGE MACAULEY: Okay. So I guess  
18 you're asking, Why did you write that  
19 statement.

20 MS. SMITH: Right. Why did you  
21 write that statement?

22 JUDGE MACAULEY: Okay. I asked

1 the question and he needs to respond.

2 MS. SMITH: I'm sorry.

3 MR. JOHANSSON: Mr. Alborn was in  
4 her chain of command. I wanted him to be  
5 aware of this. Since she had written to me  
6 personally. And so I responded to him, and,  
7 yes, I was frustrated, because I don't feel  
8 like she gave Mr. Alborn or me a chance to  
9 resolve this. Instead, she went to the  
10 ombudsman.

11 JUDGE MACAULEY: What's the point  
12 of an ombudsman, actually, at the TSA?

13 MR. JOHANSSON: Well, it's for--  
14 for employees to--to air their--their issues.

15 JUDGE MACAULEY: Okay. And what's  
16 wrong with that?

17 MR. JOHANSSON: There's nothing  
18 wrong with that.

19 JUDGE MACAULEY: Okay. Why did  
20 you take the position you did, because she  
21 happened to go to an ombudsman to, I guess,  
22 talk about her problems?

1 MR. JOHANSSON: I was frustrated.

2 JUDGE MACAULEY: All right.

3 BY MS. SMITH:

4 Q Okay. I guess I don't understand  
5 the part--could you explain what else was  
6 going on with this employee. I don't  
7 understand that either, cause I--you see, I  
8 wasn't aware of anything until March 12th.

9 JUDGE MACAULEY: Who is this  
10 employee you're referring to? The one that's  
11 blocked out?

12 MS. SMITH: No. It says--he's  
13 referring to me. He says there's a lot going  
14 on with this employee.

15 JUDGE MACAULEY: Okay. All right.  
16 So now what's your question?

17 MS. SMITH: I want to know what it  
18 was that was going on with this employee, case  
19 I wasn't aware of anything.

20 JUDGE MACAULEY: What was going on  
21 with Ms. Smith at the time, that caused you to  
22 be frustrated?



1 MR. JOHANSSON: There were several  
2 issues. She had asked me to move to either  
3 Lake Placid or somewhere in that vicinity. I  
4 had created a shift that really was not  
5 necessary, but I created a shift for her at  
6 one of our airports there. I offered her the  
7 opportunity to transfer, because she wanted to  
8 go back to that part of New York, and then she  
9 said no thanks, I don't want to do that. And  
10 so that frustrated me a little bit.

11 And then also at that point, Ms.  
12 Bagnoli had already made the allegation of  
13 workplace violence. That's the a lot of other  
14 things that were going on with this employee.

15 MS. SMITH: Okay.

16 BY MS. SMITH:

17 Q I was not told of the position  
18 that you had arranged for me to have in  
19 Plattsburgh, that you spoke about. That  
20 wasn't done till April; correct?

21 A I don't believe that's correct.

22 Q Okay. Well, if you'll give me a

1 second, I can look it up in here, because I  
2 believe that was in April.

3 JUDGE MACAULEY: Just find it.

4 MS. SMITH: Okay. Well, in June,  
5 June 5th--

6 JUDGE MACAULEY: Wait. Did you  
7 find it?

8 MS. SMITH: No.

9 JUDGE MACAULEY: Okay. Find what  
10 you need. Then confront the witness.

11 MS. SMITH: Okay.

12 [Pause]

13 MS. SMITH: Okay. I have the e-  
14 mail that I sent to you.

15 JUDGE MACAULEY: On what day?

16 MS. SMITH: May 8th of 2009. And  
17 telling him that I was sorry that I could not  
18 accept the transfer to Plattsburgh that he had  
19 worked hard for me to make. This was in May.

20 JUDGE MACAULEY: Okay.

21 MS. SMITH: So the transfer was--  
22 the transfer option was given to me in April.

1 JUDGE MACAULEY: Okay. So you  
2 have a question for him.

3 MS. SMITH: I'm sorry. So why  
4 were you frustrated about it in March--

5 JUDGE MACAULEY: Well, wait. Show  
6 him--do you doubt what that e-mail says?

7 MR. JOHANSSON: No, sir.

8 JUDGE MACAULEY: Okay. So does  
9 that e-mail refresh your recollection?

10 MR. JOHANSSON: Yes, sir.

11 JUDGE MACAULEY: Okay. And so  
12 does that change your answer?

13 MR. JOHANSSON: I was still  
14 frustrated that she'd gone out, outside of the  
15 airport to resolve the issue.

16 JUDGE MACAULEY: Okay. But this  
17 was--this issue happened in May; is that  
18 correct? Or whenever that e-mail says.

19 MR. JOHANSSON: That's the second  
20 part of it. The ombudsman happened prior to  
21 that.

22 MS. SMITH: In March.

1 MR. JOHANSSON: It was in March.

2 JUDGE MACAULEY: Okay.

3 MR. JOHANSSON: I'd gotten a call,  
4 I believe the day before, or maybe this same  
5 day as that e-mail was sent from the  
6 ombudsman.

7 MS. SMITH: So even though the  
8 ombudsman can't do anything--

9 MR. JOHANSSON: No; that's  
10 correct; yeah.

11 MS. SMITH: So you were upset that  
12 I went to speak to somebody about issues?

13 MR. JOHANSSON: That you chose to  
14 use the ombudsman rather than me, because I  
15 felt like I had shown you that I was willing  
16 to listen, that I was sympathetic.

17 BY MS. SMITH:

18 Q But nothing was changing.

19 JUDGE MACAULEY: That's a  
20 question?

21 MS. SMITH: But in this e-mail  
22 that I sent to you, I also told you nothing

1 had been changing.

2 JUDGE MACAULEY: Is that correct?

3 MS. SMITH: Is that correct?

4 MR. JOHANSSON: I don't recall the  
5 exact wording. Yes.

6 MS. SMITH: Okay. Do you  
7 encourage TSA--TSOs to contact the ombudsman  
8 if they need someone to talk to, to relieve  
9 stress, or whatever?

10 MR. JOHANSSON: Yes.

11 MS. SMITH: You don't get  
12 frustrated with them for doing that, do you?

13 MR. JOHANSSON: I ask them to  
14 please allow the chain of command to try to  
15 address it first.

16 BY MS. SMITH:

17 Q So you think it's easier for a TSO  
18 to speak to an FSD than it is to speak to  
19 someone who is--

20 A I believe you found that to be the  
21 case because you and I had traded e-mails for  
22 about nine months at that point.

1           Q       Right.  But I wasn't feeling  
2           comfortable that anything was being done.  So  
3           what I should have done, I guess, was--you  
4           think I should have gone back to you and kept  
5           trying some more?

6           A       Yes.

7                    MS. SMITH:  I don't have anything  
8           else to ask.

9                    JUDGE MACAULEY:  Do you have any--

10                   MS. SMITH:  Oh, yes.  I do.  I'm  
11           sorry.

12                    BY MS. SMITH:

13           Q       Do you recall an e-mail from--I  
14           believe it's Jane Madison--dated April 2nd,  
15           when she told you that I had opted to stay at  
16           Albany?

17           A       I don't recall that e-mail; no.

18           Q       Would you like to see it?

19           A       Yes, please.

20           Q       Would you please read it and I  
21           would--and could you like start from the top  
22           and read your final response down to the

1 beginning, is the way it goes.

2 JUDGE MACAULEY: Which page are  
3 you?

4 MS. SMITH: The bottom page of  
5 that.

6 MR. JOHANSSON: 192.

7 [Witness peruses the document]

8 MR. JOHANSSON: Okay. Yeah. This  
9 was not from Jane Madison.

10 MS. SMITH: Well, I don't know who  
11 it was from but--

12 MR. JOHANSSON: Okay.

13 MS. SMITH: Cause this is what I  
14 got from Freedom of Information, so--

15 JUDGE MACAULEY: Okay; wait a  
16 second.

17 MS. SMITH: --canceled out the  
18 names.

19 JUDGE MACAULEY: Who is blocked  
20 out there, Ms. Johnson.

21 MR. JOHANSSON: That was our--

22 JUDGE MACAULEY: I mean, I don't--

1 I see no reason why the names in this should  
2 be blocked out.

3 MS. SCOTT-JOHNSON: We don't block  
4 these names out, Judge.

5 MS. SMITH: Sir, I got it from the  
6 Freedom of Information this way.

7 JUDGE MACAULEY: Yeah, I know, but  
8 I'm not--this hearing isn't subject,  
9 necessarily, to that.

10 MR. JOHANSSON: Oh, I can tell you  
11 who it was.

12 JUDGE MACAULEY: Oh, fine. Who is  
13 it? This is from you to whom at the top?

14 MR. JOHANSSON: Robert Farrow.

15 JUDGE MACAULEY: F-a-r-o?

16 MR. JOHANSSON: r-r-o-w.

17 JUDGE MACAULEY: r-r-o.

18 MR. JOHANSSON: w.

19 JUDGE MACAULEY: And it's from?  
20 The next line?

21 MR. JOHANSSON: This was a  
22 conversation, an e-mail string between he and



1 I.

2 JUDGE MACAULEY: Okay. So this  
3 individual is Robert Farrow that is blocked  
4 out?

5 MR. JOHANSSON: Yes, sir.

6 JUDGE MACAULEY: I see. And who's  
7 Robert Farrow?

8 MR. JOHANSSON: He was our HR  
9 specialist.

10 JUDGE MACAULEY: HR specialist.

11 JUDGE MACAULEY: So I gather it's  
12 Robert Farrow was e-mailing you "hammer time"?

13 MR. JOHANSSON: Yes, sir.

14 JUDGE MACAULEY: And what did you  
15 take that to be?

16 MR. JOHANSSON: That he indicated-  
17 -or he was asking me if it was time for  
18 disciplinary action.

19 JUDGE MACAULEY: I see. Go ahead.

20 BY MS. SMITH:

21 Q Okay. Could you explain to me how  
22 someone could sneak in for a job interview.

1           A       No. I don't know how that could  
2 happen. Those are his words; not mine.

3           Q       But yet you accepted--cause you  
4 said I already told her that I would not be  
5 allowed--so you accepted this as a way of  
6 attempting to circumvent not only accepted  
7 process but also the chain of command?

8           A       Well, if what he indicated was in  
9 fact what you told him; yes.

10          Q       So I'm lost cause I just can't  
11 understand how somebody could sneak in for a  
12 job interview.

13          A       Those were not my words.

14          Q       No, I know but--

15          A       He's relating what you told him,  
16 to me.

17          Q       But you accepted them as being a  
18 way to circumvent accepted processes in the  
19 chain of command. I don't understand that.

20                   JUDGE MACAULEY: I'm not sure what  
21 relevance all this is to--

22                   MS. SMITH: And--

1 JUDGE MACAULEY: Now Ms. Smith,  
2 what relevance--what are you trying to get at  
3 here?

4 MS. SMITH: I just, I just--I  
5 never said any of this stuff.

6 JUDGE MACAULEY: Well, okay. But  
7 whether you did or not, what relevance does it  
8 have to any of your burdens of proof?

9 MS. SMITH: Okay.

10 JUDGE MACAULEY: What are you  
11 going to try to--

12 MS. SMITH: Okay.

13 JUDGE MACAULEY: What are you  
14 trying to show?

15 MS. SMITH: Okay. I'm sorry.

16 JUDGE MACAULEY: No; no. What are  
17 you trying to show by this questioning?

18 MS. SMITH: That there were things  
19 that were said that I never said.

20 JUDGE MACAULEY: Okay. But let's  
21 say--let's accept that for purposes of this  
22 conversation to be true. What am I to do with

1 it?

2 MS. SMITH: Well, it just seems  
3 that everything changed after March 4th.

4 JUDGE MACAULEY: Okay.

5 MR. JOHANSSON: My response to  
6 the--

7 MS. SMITH: And, and to me,  
8 looking at this--

9 JUDGE MACAULEY: Everything  
10 changed. You mean after your interview with  
11 Mr. Lloyd.

12 MS. SMITH: After march 4th.  
13 Before my interview with March--with Mr.  
14 Lloyd.

15 JUDGE MACAULEY: Okay. Around  
16 this Bagnoli time; right?

17 MS. SMITH: Right; right.

18 JUDGE MACAULEY: Okay. Everything  
19 changed.

20 MS. SMITH: Right.

21 JUDGE MACAULEY: Okay.

22 MS. SMITH: And to me, when I read

1 this, I see "hammer time" as--

2 JUDGE MACAULEY: I understand  
3 what's going on.

4 MS. SMITH: And it says "not yet,  
5 not enough" but how can it not be enough for  
6 disciplinary reason? You know what I mean?

7 JUDGE MACAULEY: Okay. Ask Mr.--

8 MS. SMITH: What isn't--what would  
9 have constituted this to be enough for a  
10 disciplinary issue, or to even be talked to  
11 about it, when, if you're three minutes late  
12 for work you get counseled?

13 But yet trying to circumvent  
14 accepted processes and go through a different  
15 chain of command is not enough to warrant even  
16 counseling?

17 JUDGE MACAULEY: Mr. Johansson,  
18 you don't have to answer that. What is going  
19 on in this chain of memo? Why are you having  
20 this chain of memo with the human resources  
21 specialist?

22 MR. JOHANSSON: Well, he does all

1 of our vacancy announcements. He sets up  
2 interviews. He does all the things for  
3 hiring. So he reported this to me.

4 JUDGE MACAULEY: And what is this  
5 that he reported?

6 MR. JOHANSSON: That he has  
7 alleged in his e-mail that Ms. Smith was  
8 trying to sneak in for an interview for a  
9 position that we had open. At the time she  
10 didn't have the qualifications to, to--she  
11 didn't meet the qualifications of one year on  
12 the job--

13 JUDGE MACAULEY: I see.

14 MR. JOHANSSON: --to be certified  
15 on an internal list.

16 JUDGE MACAULEY: All right.

17 MR. JOHANSSON: She was not on a  
18 cert list.

19 JUDGE MACAULEY: All right. So  
20 this was reported to you?

21 MR. JOHANSSON: Yes, sir.

22 JUDGE MACAULEY: And did you have

1 an understanding that Mr. Farrow thought that  
2 she should be disciplined for this sort of  
3 thing?

4 MR. JOHANSSON: Yes.

5 JUDGE MACAULEY: I see. All  
6 right. Okay. So--

7 MS. SMITH: Okay. Then what would  
8 have consti--I just--but yet you said not yet,  
9 not enough, not enough what?

10 MR. JOHANSSON: There was not  
11 enough there for discipline. It could have  
12 been a misunderstanding of the processes.

13 MS. SMITH: Okay.

14 MR. JOHANSSON: And that was my  
15 response.

16 MS. SMITH: There's nothing else I  
17 have.

18 JUDGE MACAULEY: Nothing else for  
19 this witness?

20 MS. SMITH: Oh. Okay. You said  
21 that Mr. Lloyd doesn't manage anyone; correct?

22 MR. JOHANSSON: That's correct.

1 MS. SMITH: In March of 2009, when  
2 he got the complaint from Ms. Bagnoli--

3 MR. JOHANSSON: Yes.

4 MS. SMITH: --wasn't he, at the  
5 time, a BDO manager?

6 MR. JOHANSSON: No.

7 MS. SMITH: He wasn't?

8 MR. JOHANSSON: No.

9 MS. SMITH: Then that was my  
10 misunderstanding.

11 JUDGE MACAULEY: And would you  
12 explain again, what's a BDO manager.

13 MS. SMITH: Behavior detection  
14 officer. He would manage the behavior  
15 detection officers. And when I wrote the e-  
16 mail--

17 JUDGE MACAULEY: Those are  
18 officers that what? scrutinize people who come  
19 into a airport--

20 MR. JOHANSSON: Yes, sir. That's  
21 correct.

22 JUDGE MACAULEY: --try to see if



1 there's something unusual about them?

2 MR. JOHANSSON: Detect suspect  
3 behavior. Yes, sir.

4 JUDGE MACAULEY: Yeah; okay.

5 MS. SMITH: I was just--I thought  
6 he was in March, still.

7 JUDGE MACAULEY: Okay. Please  
8 don't make extraneous comments.

9 MS. SMITH: Okay.

10 BY MS. SMITH:

11 Q So Mr. Lloyd was assistant FSD at  
12 the time, in March?

13 A That's correct.

14 MS. SMITH: Okay. All right.  
15 That's all I have.

16 JUDGE MACAULEY: Any redirect?

17 MS. SCOTT-JOHNSON: No, Judge.

18 JUDGE MACAULEY: You're dismissed,  
19 Mr. Johansson.

20 MR. JOHANSSON: Thank you, sir.

21 [Witness excused]

22 JUDGE MACAULEY: Is Ms. Sykes the

1 last?

2 MS. SMITH: Yes.

3 JUDGE MACAULEY: If she's out  
4 there--

5 MR. JOHANSSON: I'll get her.

6 JUDGE MACAULEY: --bring her in.

7 MS. SMITH: Your Honor, didn't you  
8 want to speak to Jane Madison also?

9 JUDGE MACAULEY: No.

10 MS. SMITH: Okay.

11 MS. SYKES: Hello, sir.

12 JUDGE MACAULEY: Are you Ms.  
13 Sykes?

14 MS. SYKES: Very well. Thank you.  
15 Yes, sir. I am.

16 JUDGE MACAULEY: Okay. Have a  
17 seat.

18 WHEREUPON,

19 PATRICIA SYKES

20 WAS CALLED AS A WITNESS BY AND ON BEHALF OF

21 THE AGENCY AND, HAVING FIRST BEEN DULY SWORN,

22 WAS EXAMINED AND TESTIFIED AS FOLLOWS:

1 THE REPORTER: State your name for  
2 the record and please spell it for us.

3 MS. SYKES: Patricia Ann Sykes.  
4 Last name S-y-k-e-s. First, P-a-t-r-i-c-i-a.  
5 Common spelling, middle name.

6 JUDGE MACAULEY: Mr. Sykes, good  
7 morning.

8 MS. SYKES: Good morning, sir.

9 JUDGE MACAULEY: Your position is  
10 what?

11 MS. SYKES: I'm the assistant  
12 federal security director for inspections.

13 JUDGE MACAULEY: And how long have  
14 you been that--held that job?

15 MS. SYKES: Two years with title.

16 JUDGE MACAULEY: Two years with  
17 title. December 10. So around December 08?

18 MS. SYKES: Yes, sir.

19 JUDGE MACAULEY: Okay. And you've  
20 held that position uninterruptedly?

21 MS. SYKES: Yes, sir.

22 JUDGE MACAULEY: You know the

1 Complainant, Carole Smith?

2 MS. SYKES: I don't know her  
3 personally.

4 JUDGE MACAULEY: You're aware of  
5 her?

6 MS. SYKES: Yes, sir.

7 JUDGE MACAULEY: And how are you  
8 aware of her?

9 MS. SYKES: As acting FSD in 2009,  
10 I was given a proposal for dismissal. So I  
11 know her by paper review of the paperwork,  
12 supporting paperwork.

13 JUDGE MACAULEY: And you acted on  
14 that proposal?

15 MS. SYKES: Yes, sir. As acting  
16 FSD.

17 JUDGE MACAULEY: Okay. Ms.  
18 Johnson, you can take over.

19 DIRECT EXAMINATION

20 BY MS. SCOTT-JOHNSON:

21 Q Prior to your making a decision on  
22 the proposal with respect to Ms. Smith, what

1 if anything did you know about Ms. Smith?

2 A I colocated with AFSD/LE Matt  
3 Lloyd, our offices--

4 JUDGE MACAULEY: You're co what?

5 MS. SYKES: Colocated, our offices  
6 are colocated.

7 JUDGE MACAULEY: I don't know  
8 what that--colocated.

9 MS. SYKES: We're across the hall  
10 from each other.

11 JUDGE MACAULEY: Oh. You work  
12 together?

13 MS. SYKES: In essence.

14 JUDGE MACAULEY: Yes; okay.

15 MS. SYKES: Yes, sir. And he  
16 mentioned that Ms. Smith had been in his  
17 office and had left a number of times while he  
18 was trying to work the ICMS, and that's a  
19 conflict resolution system that we have, to  
20 resolve some issues that she had.

21 JUDGE MACAULEY: Okay.

22 MS. SYKES: And that's where I

1 knew of her.

2 JUDGE MACAULEY: Of her?

3 MS. SYKES: Yes, sir.

4 JUDGE MACAULEY: Okay.

5 BY MS. SCOTT-JOHNSON:

6 Q What if anything else did you  
7 know, particularly about Ms. Smith's  
8 employment, prior to your receiving the order  
9 to--or the authority to look into the proposal  
10 to remove her?

11 A Nothing. I actually deal with  
12 compliance, and that would have been the  
13 screening component, TSA, here at Albany, and  
14 that's not normally my bailiwick.

15 Q Okay. What if anything did you  
16 review--

17 JUDGE MACAULEY: How was it that  
18 you made the determination, made the  
19 termination determination? Is that because--  
20 why would a proposal for termination be sent  
21 to you?

22 MS. SYKES: As acting FSD, that

1 would be normal procedure.

2 JUDGE MACAULEY: and that was your  
3 job, acting FSD?

4 MS. SYKES: Yes.

5 JUDGE MACAULEY: Thank you. Okay.

6 BY MS. SCOTT-JOHNSON:

7 Q What if anything did you review to  
8 make that determination?

9 A I was given by HR a proposal of  
10 dismissal, and a written termination letter to  
11 review. I reviewed all the facts, of which  
12 there were 13 incidents, and all the  
13 documentation, supporting documentation for  
14 removal, and based on that information, on  
15 paper, the facts, I came to the conclusion  
16 that she should be dismissed.

17 Q And why did you come to that  
18 conclusion?

19 A Well, there were numerous  
20 instances of leaving one's post with no one--  
21 without being tapped out, with no one there to  
22 fulfill the duties in the baggage room, when

1 she was being counseled for having done that  
2 in the baggage room by a supervisor. She once  
3 again left her post. Many, many instances.

4 Now there were things that could  
5 be--she was in a trial period, and things such  
6 as out of uniform, or attendance was an issue,  
7 and that she was joining her sick leave with  
8 her RDOs. It was forming a pattern.

9 And that's something that--you  
10 know, they're issues, but when we get to the  
11 security, level of security, abandoning one's  
12 post, it's very, very egregious. In one  
13 particular case, she left her post in the  
14 baggage room. There was no one who could  
15 operate machinery in that position, took off  
16 without telling management and simply refused  
17 to--made known to a fellow TSO--"I will not be  
18 screening bags anymore." And there were bags  
19 left to be screened. That's egregious.

20 Also, insubordination towards  
21 supervisors, actually swearing at supervisors  
22 and leads, when given instruction.



1 Insubordinate. And also in the paperwork,  
2 instances where the training coordinator, the  
3 LE, where she was being counseled, or trying  
4 to assist her, whether it be OJT or conflict  
5 resolution, leaving the room, leaving the  
6 office when they were trying to work with her,  
7 to help her. Just didn't--didn't support the  
8 mission.

9 Q Prior to your review of Ms.  
10 Smith's situation, how many other removals, if  
11 any, had you participated in?

12 A I had two proposals for removal,  
13 one which I followed through on with a  
14 termination letter, letter of termination, and  
15 another in which the individual decided to  
16 resign prior--rather than be terminated. So  
17 there were three total in the going on four  
18 years in April that I've been here, acting as  
19 FSD, that I was required to do so.

20 JUDGE MACAULEY: In reviewing the  
21 termination proposal, what, aside from the  
22 proposal, did you rely on in making your

1 decision?

2 MS. SYKES: Nothing.

3 JUDGE MACAULEY: Just the proposal  
4 itself?

5 MS. SYKES: I only had the facts  
6 on paper. I didn't know the individual. I  
7 knew nothing other than--

8 JUDGE MACAULEY: All right.

9 BY MS. SCOTT-JOHNSON:

10 Q And when you say the proposal, was  
11 that just the proposal or were there the  
12 supporting documentation--

13 A Supporting documentation.

14 Q Okay. To your knowledge, was Ms.  
15 Smith treated any different than any other TSO  
16 under the circumstances?

17 JUDGE MACAULEY: That's a leading  
18 question. You don't have to answer that.

19 Anything further?

20 MS. SCOTT-JOHNSON: What if  
21 anything--what if any part did Ms. Smith's  
22 religion play in your decision to remove her?

1 MS. SYKES: None.

2 MS. SCOTT-JOHNSON: Okay. Thank  
3 you. I have nothing else, Judge.

4 JUDGE MACAULEY: Do you know what  
5 her religion is?

6 MS. SYKES: I did find out as  
7 being colo--having an office nearby Mr.  
8 Lloyd's. He told me that he was trying to get  
9 ICMS system, the conflict resolution system in  
10 place for her, because she had stated that she  
11 was a Wiccan.

12 JUDGE MACAULEY: So you were aware  
13 at the time what her religion was?

14 MS. SYKES: Yes.

15 JUDGE MACAULEY: Okay. What was  
16 your response to what Mr. Lloyd said?

17 MS. SYKES: I really didn't have  
18 any. I just kind a watched him, and his  
19 concern for, for her, and that he'd like to  
20 have her be part--it was totally voluntary.  
21 She didn't avail herself to the program and he  
22 was disappointed because he thought it might

1 help with a resolution.

2 JUDGE MACAULEY: Do you have any  
3 questions? No questions.

4 MS. SMITH: I'm sorry. No. No,  
5 sir.

6 JUDGE MACAULEY: Are you aware of  
7 a probationary employee named Chassidy Ponce?

8 MS. SYKES: No.

9 JUDGE MACAULEY: Never brought to  
10 your attention?

11 MS. SYKES: No.

12 JUDGE MACAULEY: You don't even  
13 know her?

14 MS. SYKES: Don't even know her. I  
15 didn't know it was a her.

16 JUDGE MACAULEY: What if I told  
17 you she was a probationary employee at the  
18 time that Ms. Smith worked here.

19 MS. SYKES: I had no knowledge of  
20 that.

21 JUDGE MACAULEY: How long were you  
22 acting FSD?

1 MS. SYKES: Probably--it would be  
2 intermittent with AFSD Alborn. A few weeks at  
3 a time here; a few weeks at a time there.  
4 Sometimes it would be four weeks, sometimes  
5 two weeks, throughout the summer that FSD  
6 Johansson was assigned on detail to  
7 headquarters. We'd switch back and forth.

8 JUDGE MACAULEY: Okay. You're  
9 dismissed. Thank you, Ms. Sykes.

10 MS. SYKES: Thank you very much,  
11 sir.

12 [Witness excused]

13 JUDGE MACAULEY: No more  
14 witnesses?

15 MS. SCOTT-JOHNSON: No more  
16 witnesses, Judge.

17 JUDGE MACAULEY: I'll take closing  
18 remarks if--do you wish to make a closing  
19 remark? I'll give you some time to put your  
20 thoughts together, if that's what you'd like.

21 MS. SMITH: Thank you.

22 JUDGE MACAULEY: All right. Do

1 you have closing remarks too?

2 MS. SCOTT-JOHNSON: I'd like to  
3 think about it, but if I do, just very brief,  
4 nothing much.

5 JUDGE MACAULEY: Okay. Well  
6 whatever. How much time do you need, Ms.  
7 Smith?

8 MS. SMITH: Just a couple minutes.

9 JUDGE MACAULEY: Couple minutes.  
10 Okay.

11 MS. SMITH: If you want me, I can  
12 just say now what I want to say.

13 JUDGE MACAULEY: No. I'd rather  
14 you compose yourself and your thoughts. So  
15 I'll give you five minutes.

16 [A brief recess was taken]

17 JUDGE MACAULEY: Okay. You're the  
18 Complainant, Ms. Smith. You can go first.

19 MS. SMITH: Okay. I really don't  
20 have too much to say.

21 I believe that I've proven how  
22 everybody's treatment of me changed after

1 March 4th. I also believe that since there  
2 were no alleged issues, that I had done  
3 anything wrong, from May 11th to June 18th of  
4 2009, I believe that management took advantage  
5 of FSD Johansson being away, because he's  
6 known for giving chances, and getting to the  
7 bottom of things.

8 He would have given me a chance to  
9 explain, and I mean, even as he said, we had  
10 a close working relationship, where I did go  
11 to him with problems, and I believe that they  
12 knew this, and decided that--this Patricia  
13 Sykes doesn't know me from the next TSO. She  
14 never spoke to me. She relied only on  
15 whatever it was that was presented to her,  
16 which I don't even know what was presented to  
17 her, if any of my rebuttals were presented to  
18 her or not.

19 And I just believe that since,  
20 like I said, from May 11th of 2009 to June  
21 18th, things were going pretty smooth. I  
22 didn't--I don't even believe I filed any

1 complaints. I think things--I thought things  
2 were calming down.

3 The only issue that happened was I  
4 twisted my ankle. And I believe that  
5 management here, at Albany, just took  
6 advantage of Brian, or Mr. Johansson being  
7 away, and the fact that Sykes doesn't know me,  
8 and they just thought that it would be a  
9 convenient time for them to terminate me.

10 JUDGE MACAULEY: Is that it?

11 MS. SMITH: And that I believe  
12 that their--that they did this based on the  
13 allegations that were made against me in March  
14 regarding my religious beliefs.

15 They obviously misunderstand my  
16 religious beliefs. And I just feel it was  
17 convenient for them to do it at that time,  
18 rather than waiting for, like I said, FSD  
19 Johansson to return, since he is--does not  
20 practice any religion, he would be the most  
21 unbiased of all of them.

22 And I just think it was a



1 termination of convenience at the time. Time-  
2 wise. I believe it's a lot easier to get rid  
3 of one person than it is to try to educate a  
4 group of people. That's all.

5 JUDGE MACAULEY: All right. Thank  
6 you. Do you have any comment?

7 MS. SCOTT-JOHNSON: Yes, Judge.

8 I believe that the evidence has  
9 established here, Judge, that there was no  
10 discrimination here based on Ms. Smith's  
11 religion. Ms. Smith was removed during her  
12 probationary period because of conduct,  
13 behavior, and her performance.

14 Ms. Smith has indicated she  
15 doesn't know what they reviewed. The Report  
16 of Investigation has not only the letter of  
17 removal, or the termination, the notice of  
18 termination or removal, but it lists every  
19 reason why, and if you review that, Judge, you  
20 can see that there were--not just one  
21 supervisor, not just one manager, but there  
22 was a series, from different managers,

1 different supervisors. STSO Winn. LTSO  
2 Blankenberger. STSO Carmel Sullivan. STSO  
3 Middleton. The training coordinator.

4 It's like almost every person--  
5 almost all the supervisors had problems with  
6 Ms. Smith. She's failed to make any  
7 connection between all of those people, and  
8 her--the fact that she practices Wicca. She's  
9 failed to--she just assumes, or concludes,  
10 that it all had to do with her religion.

11 In fact, as brought out in the  
12 testimony, she started having problems before  
13 anybody even knew she was Wicca. She was very  
14 new, very new, and she was having problems.

15 Yes, initially, of course we  
16 understand that there is a period of time  
17 where you expect a new employee to have  
18 problems. So that's why, in the beginning,  
19 there was no major things about, okay, so you-  
20 -cell phone, all right, she had to learn about  
21 the cell phone. She had to learn about the  
22 uniform.

1                   But then it got to the point where  
2 she was being insubordinate with supervisors,  
3 and while she denies that she cusses, and she-  
4 -and that she used the language that they  
5 claim that she used, even her best friend had  
6 to say yes, I've heard her use those--that  
7 language.

8                   So it is a fact that she had had  
9 problems with the way she conducted herself  
10 with respect to her supervisors and all the  
11 people that were charged with attempting to  
12 help her learn this job.

13                   So Judge, I believe that Ms. Smith  
14 has failed to make any connection between her  
15 religion and her removal. As Ms. Sykes has  
16 indicated, she knew nothing about Ms. Smith.  
17 There was no animosity. There was no reason  
18 to believe that Ms. Sykes would have anything  
19 other than, or use anything other than the  
20 documents that she had before her to make the  
21 determination, and it's the Agency's position  
22 that there was no connection between Ms.

1 Smith's religion and the termination of her  
2 employment.

3           There was no connection between  
4 Ms. Smith's religion and the order from the  
5 FSD that she be separated. It was strictly an  
6 operational workplace violence, they weren't  
7 getting along, there was no workplace violence  
8 but we see that they're not getting along, so  
9 we're going to separate them.

10           There was no onus for them to  
11 treat Ms. Smith any different from any other  
12 TSO, as well as from Mary Bagnoli. It was  
13 just that they should be separate, not that  
14 anyone should be treated any more harsh than  
15 the other, or anyone should be blamed for the  
16 fault of it.

17           So it's the Agency's position that  
18 she's not sustained her burden of establishing  
19 that her religion was the reason why she was  
20 terminated, or the reason why she was treated  
21 any--or that she was treated any differently  
22 as a result of that.

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JUDGE MACAULEY: That's it?

MS. SCOTT-JOHNSON: That's it.

JUDGE MACAULEY: Okay. WE're off  
the record. The hearing's concluded.

[Whereupon, at 12:18 p.m., the  
hearing was concluded.]

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This is to certify that the foregoing transcript

In the matter of: Carole Smith v TSA

Before: EEOC

Date: 12-01-10

Place: Albany, NY

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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**NEAL R. GROSS**

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