Closing Argument
Essential Job Functions

- Independently plan and conduct investigations.
- Interview witnesses, subjects and suspects.
- Apprehend subjects who are armed and dangerous.
- Make arrests.
- Be skilled in the use of firearms, explosives and gases.
- Search crime scenes for physical evidence and clues.
- Use substantial ingenuity, resourcefulness, and creative thinking to solve problems.
- Develop and direct quality informants.
- Testify in court.
- Serve warrants and subpoenas.
- Participate in surveillance, raids and undercover assignments.
- Available for substantial irregular, unscheduled overtime duty.
- Analyze and interpret case information.
- Prepare for and present training

Officer Kapche

- Current job function.
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The Pump
Stealth Scheme

FBI Playing Diabetes Doctor

Discrimination

Reject all applicants using injection insulin treatment. No matter how well it's working.
Each applicant’s medical history will be reviewed on a case by case basis as it pertains to the essential job functions of a Special Agent. It is important to the FBI’s mission that the best qualified individuals without regard to… disability… are hired for the Special Agent position.
Applicant

1. Applicant qualified for the job.
   a) met the job's education, training, experience, and skills requirements
   b) could perform the "essential functions" of the job

2. He has a disability.

3. Job withdrawn because of his disability

FBI

1. That it was a business necessity for the FBI to have the ban.
### NEW AGENT PHYSICAL ACTIVITIES

Please indicate if applicant/trainee can perform the following:

1. **Control Techniques:** ☑ Yes ☐ No
   - Subject took down requires grappling in both standing and sitting positions. This drill often includes the fugitive crawl with two trainees restraining a third.

2. **Personal Weapon Attacks utilizing confrontation drills:**
   - a) Full contact boxing ☑ Yes ☐ No
   - b) Kicks ☑ Yes ☐ No
   - c) Flat to elbow strike ☑ Yes ☐ No

3. **Officer Survival Techniques:** ☑ Yes ☐ No
   - This activity stresses live or die drills, weapons disarming and retention.

4. **Carotid Restraint:** ☑ Yes ☐ No
   - This technique is used against violently resisting subjects and requires a take down from the standing position.

5. **Handcuffing:** ☑ Yes ☐ No
   - Actors or students who pose as arrest subjects sometimes resist strenuously.

6. **Break Falls and Shoulder Rolls:** ☑ Yes ☐ No

7. **O* Course to include:**
   - a) Climbing and Vaulting ☑ Yes ☐ No
   - b) Jumping from High Obstacles ☑ Yes ☐ No
   - c) Net rope climbing ☑ Yes ☐ No

8. **Yellow Brick Road:** ☑ Yes ☐ No
   - A 7.2 run - includes rope climbs and obstacles both natural and man-made.

9. **Firearms:** ☑ Yes ☐ No
   - This activity includes long periods of firing from a prone position. Students must also qualify on an obstacle course, which requires shooting from standing, kneeling and prone positions.
Upon completion of your examination of the applicant, are there any findings that would preclude the successful completion of the following physical fitness test?

- Pull-up: (5)  Good To Go
- Push-ups: (35)  Good To Go
- Sit-ups: (50)  Good To Go
- 120 Yard Shuttle Run: (22-25)  Good To Go
- Two Mile Run: (16:30)  Good To Go

Physician Signature: Original signed by JOHN BURPEAU, M.D.

Date: 12/16/04
Concealed Bias

What FBI Told Jeff

FBI’s Concealed Motive

Memo

To: Carolyn Baker, RN
From: James H. Tozer, MD
Subject: JEFFREY SCOTT KAPCHE

FBI Applicant (KAP)

MEMORANDUM

Date: 01/11/2006

Fitness for Duty Program

Request for medical evaluation of fitness for duty

Jeffrey Scott Kapche

RECOMMENDATION: Recommend discontinuation of the hiring process for the SA position by means of insulin dependent diabetes mellitus, incompatible with safe and efficient job performance. Reconsideration would require acceptable record of stability (daily log) over several months using a more dependable means of insulin delivery, namely, an insulin pump, to guard against sudden or subtle insufficiency.
The Pump
FBI Legal See-Saw

But, never both sides at the same time.
FBI Excuses

1st Excuse
Memo: Diabetes Incompatible With Job

2nd Excuse
Jeff’s Diabetes Not Sufficiently Controlled

3rd Excuse
Jeff’s Treatment Is Not Reliable

4th Excuse
Jeff’s Was Too Old

5th Excuse
Jeff’s Treatment Is Not Flexible
1. Was Jeff Kapche qualified for the job of special agent?

2. Does Jeff Kapche have a disability?

3. Did the government withdraw Kapche's job offer because of his disability?

4. Was the FBI's ban on individuals with diabetes treated by injection therapy a business necessity?
<table>
<thead>
<tr>
<th>Limitation of Major Life Activities</th>
<th>Jeff Kapche</th>
<th>Average Person in General Population</th>
</tr>
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<tbody>
<tr>
<td>Constant blood sugar vigilance</td>
<td>YES</td>
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</tr>
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<td>Side effects from insulin</td>
<td>YES</td>
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</tr>
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<td>Adjust exercise for insulin &amp; diet</td>
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</tr>
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<td>YES</td>
<td>NOT LIMITED</td>
</tr>
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<td>Adjust math conversions insulin during illness &amp; exercise</td>
<td>YES</td>
<td>NOT LIMITED</td>
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<td>Carbohydrate counting and insulin calculation</td>
<td>YES</td>
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• No expertise in diabetes.
• No scientific basis for his ban.
• No studies or evaluation of the risk of pumps or injection.
• Knows nothing about Jeff’s injection therapy.
• No objective evidence to support his ban.
• At FBI, non experts overrule medical experts.
• Gave multiple different explanations for rejection of Jeff.
• Was not aware that FBI has a ban.

• Knows nothing about Jeff Kapche.

• Knows nothing about FBI’s claim of business necessity.
• No checks and balances on Yoder.

• She signed rejection letter on Yoder’s decision.

• Rejection was because of diabetes.
FBI ban not a business necessity.

Ban makes no sense at all.

Pen more reliable
<table>
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<th>Reliability Criteria</th>
<th>Insulin Pen</th>
<th>Insulin Pump</th>
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<tr>
<td>Effective Duration</td>
<td>Longer</td>
<td>Shorter</td>
</tr>
<tr>
<td>Covering Meals</td>
<td>Same</td>
<td>Same</td>
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<tr>
<td>Risk of DKA</td>
<td>Less Risk</td>
<td>More Risk</td>
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<tr>
<td>Level Of control</td>
<td>Same</td>
<td>Same</td>
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<tr>
<td>Quality Of Insulin</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>Ease of use</td>
<td>Simple</td>
<td>More Complicated</td>
</tr>
<tr>
<td>Cost</td>
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<td>Access to Supplies</td>
<td>Available Worldwide</td>
<td>Must Be Special Ordered</td>
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• Jeff’s a role model for people with diabetes.

• “A pump is hardware that can go wrong... get wet... can get blocked.”

• FBI refused to talk with him about Jeff as an individual.
• Passed all tests.

• Gave FBI everything it requested.

• Qualified with a disability.

• 15 years of law enforcement experience.

• Diabetes never interferes with Jeff’s work.
• Rejection deeply affected Jeff.

• Jeff had headaches, nausea, sleeplessness and depression.

• FBI’s rejection of Jeff was tearing family apart.
• Jeff Kapche is qualified.

• Jeff Kapche has a disability.

• You never have a vacation from insulin treated diabetes.

• These (Jeff) are the people that show it can be done.
### Limitation of Major Life Activities

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• Jeff Kapche is qualified.
• Jeff Kapche has a disability.
• You never have a vacation from insulin treated diabetes.
• These (Jeff) are the people that show it can be done.
• Neither therapy superior to the other.

• Takes no position on necessity of ban.

• Believes all people with diabetes should be assessed on case by case basis.

• Admits no scientific basis for ban and literature shows pump therapy as more risky.
• Rejected just like Jeff.
• Pump vs. Injections is personal preference.
• Does not like shots and used syringes.
• Did equally well on both therapies.
• Had multiple issues with pump.
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

1. Was Jeff Kapche qualified for the job of special agent?

2. Does Jeff Kapche have a disability?

3. Did the government withdraw Kapche's job offer because of his disability?

4. Was the FBI's ban on individuals with diabetes treated by injection therapy a business necessity?
Rebuttal
Closing Argument
Diabetic Risks Given the Unique Duties of the Special Agent Position

Q. Dr. Crantz, knowing what you know about what FBI special agents do, tell us why it's important that FBI special agents with Type I diabetes need to avoid high and low blood sugars?

A. To me, it's pretty -- probably obvious to everybody. I really don't want a special agent in a critical situation to have a blood sugar that's 280 instead of 100 and have him be in a situation where he may be chasing somebody, may be discharging a weapon. I guess there's a 50/50 chance from the Cox study that he won't be impaired at 270, but there's a 50/50 chance that he will be at a time that I want somebody to be at absolutely, positively peak performance. The same thing goes for low blood sugars. And anything that's going to make it more likely that an agent's blood sugar is within a normal range is to me very important, very critically important.
Medical concerns regarding IDDM relate to requirements of the SA position for unexpected emergency travel to international duty locations to include grueling schedules and austere medical support environments. Tight diabetic control is judged accurately increases the risks of hypoglycemic episodes. Hypoglycemia results in sudden incapacitation and can be life.

(daily log) over several months using a more dependable means of insulin delivery, namely, an insulin pump, to guard against

is negative). Examining physician stated that hemoglobin A1c determination was reported at 6%, indicating that BUAP Kapche was well controlled. Physical examination was otherwise unremarkable.