

IN THE COUNTY COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 3382-XCK

THE STATE OF FLORIDA,

Plaintiff,

vs.

NANCY PRESS,

Defendant.

DEPOSITION OF:	Laura Barfield
TAKEN AT THE INSTANCE OF:	Defendant
DATE:	Friday, December 19, 2008
TIME:	Commenced at 10:50 a.m. Concluded at 1:28 p.m.
LOCATION:	2729 Fort Knox Boulevard Tallahassee, Florida
REPORTED BY:	Kimberly S. Bartholomew Court Reporter

ACCURATE STENOGRAPHY REPORTERS, INC.
2894-A REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308 (850)878-2221

APPEARANCES:

REPRESENTING STATE:

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Miami, Florida 33125

REPRESENTING DEFENDANT:

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HERSCH & TALISMAN, P.A.
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PUBLIC DEFENDER'S OFFICE
BY: GEORGE CHRISTOPHER PALAIDIS, ESQUIRE
and TARA KAWASS, ESQUIRE
1500 NW 12th Avenue, Suite 900
Miami, Florida 33136

ALSO PRESENT:

LINTON EASON, Assistant General Counsel, FDLE
MATT OLSZEWSKI, TSRP Coordinator

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23

MR. CATALANO: Would you swear in the witness,

24

please?

25

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1 Thereupon,

2 LAURA BARFIELD

3 was called as a witness, being of lawful age and being
4 first duly sworn, was examined and testified on her oath
5 as follows:

6 * * * * *

7 DIRECT EXAMINATION

8 BY MR. CATALANO:

9 Q Would you please state your name and current
10 occupation?

11 A Laura Barfield. I am currently employed with
12 the Florida Department of Law Enforcement as the Alcohol
13 Testing Program manager.

14 Q Just a brief background. How long have you
15 been with FDLE doing this job?

16 A Doing this job?

17 Q Yes.

18 A Since July of 2001. I've been with FDLE since
19 December of 1994.

20 Q I had suffered through the Muldowny motions a
21 couple years ago where you told us your whole background
22 and experience except for things you've done since then.

23 Nothing has changed, right? You told us all about your
24 history in the old days?

25 A Yes.

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1 Q Okay. I'm not going to go through that then.

2 We are here to ask you a lot of questions
3 about Intoxilyzer 8000's and so forth; but, first I want
4 to ask you some questions about Sandra Veiga.

5 Did you personally participate in the decision
6 to hire her to do that job that she was doing?

7 A Yes.

8 Q And how did she come to meet you? How did she
9 get the job?

10 A She applied for the job.

11 Q Where was she from? At the time she applied
12 was she from Miami or Fort Lauderdale?

13 A Yes. She lived in that area.

14 Q Okay. Did you personally interview her for
15 the job?

16 A Yes.

17 Q And did you approve her for the job?

18 A There was a panel, but I was on the panel;
19 and, yes, I did recommend her for the position.

20 Q Okay. Did you know that the job she was
21 taking would be a job that reported directly to you?

22 A Yes.

23 Q Because you were her next level supervisor,

24 right?

25 A Yes, I was her supervisor.

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1 Q The whole time she had that job, right?

2 A Yes.

3 Q Okay. Who was the person directly above you
4 during those last two years?

5 A My supervisor is Ed Spooner, and I believe he
6 has been my supervisor for at least two years.

7 Q Now, when she was hired did you participate in
8 her training?

9 A Yes.

10 Q Okay. And you have other inspectors around
11 the state that were doing department inspections at that
12 time, right, when you hired her?

13 A Yes.

14 Q Who else did you have around the state at that
15 time? George Venturi, right?

16 A George Venturi, Roger Skipper, Dwight Hackney
17 Matt Myatt, Don Surratt (phonetic). Maggie Geddings was
18 in training at the same time as Sandra Veiga.

19 Q Any others?

20 A I think that's it.

21 Q Okay. Was she hired to take the position that
22 was vacated upon Warren Sanger leaving?

23 A Yes.

24 Q And when she started how long did you have her
25 in training before you let her go do annual inspections

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1 on her own?

2 A I believe it was nine months if not longer. I
3 can look up the specific dates --

4 Q Approximately?

5 A -- but I don't have that. Approximately nine
6 months.

7 Q And were there any written evaluations of her
8 during that period of time of the training?

9 A Yes.

10 Q And did she pass all of her evaluations?

11 A Yes.

12 Q Were you the author of those evaluations?

13 A Some of them, yes.

14 Q Okay. Not knowing how you work at FDLE; but,
15 people that work for you, do you do monthly, quarterly,
16 annual? What kind of evaluations do you do in writing
17 on people like Roger Skipper, George Venturi? What do
18 you do normally?

19 A Those would be -- I believe you are talking
20 about work plan evaluations, and those were done
21 semi-annually.

22 Q So she worked for you before she was

23 terminated about, what, two and a half years
24 approximately?

25 A I don't think that long.

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1 Q But the records are clear, we have records,
2 she worked about two years then?

3 A About two years.

4 Q Okay. You did at least four, maybe five of
5 those evaluations?

6 A Yes.

7 Q Did she always pass?

8 A Yes.

9 Q Is there a pass/fail or is there an A, B, C,
10 D? What is the scale?

11 A Exceeds, achieves or below.

12 Q And what did she get on every evaluation?

13 A Either achieves or exceeds.

14 Q Did you ever have any problems with her where
15 she was not doing her job properly?

16 A No.

17 Q Until this came alive.

18 A No.

19 Q Did you ever discuss with her about what
20 happens in the middle of a monthly or annual inspection
21 if one were to interrupt the power, ever?

22 A I know we've discussed that at staff meetings.

23 Q Before the firing?

24 A Yes.

25 Q And what was said at these staff meetings
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1 about that issue?

2 A That if you lose power during an inspection
3 that you document the fact that you lost power, that the
4 instrument was in compliance to that point; and, you
5 repeat the inspection.

6 Q And make notes about the fact that it
7 happened, right?

8 A Correct, on the field notes document which is
9 an internal document.

10 Q Okay. Do you have any memos or documents that
11 you know of that exist at FDLE where there is a record
12 of you talking or training people to do that when the
13 power goes out?

14 A No, there would be no record. It was all
15 verbally done during staff meetings, face-to-face
16 conversation.

17 Q No doubt she knew that if power was
18 interrupted it had to be documented, right?

19 A Yes.

20 Q You are one hundred percent sure?

21 A Yes. And my other inspectors are aware of it
22 as well and routinely record that when it happens.

23 Q Did you train her on the fact that these
24 machines and devices are used as evidence in court and
25 that we have to be real careful to make sure we are fair

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1 and honest and polite and all that?

2 A Definitely.

3 Q Okay. So there is no doubt Sandra Veiga knew
4 that pulling the plug in the middle of an inspection,
5 whether it is passing or failing, and not documenting it
6 was contrary to the instructions she received from her
7 supervisor?

8 A Yes.

9 Q Have you personally ever pulled the plug
10 during an inspection, intentionally interrupted power?

11 A I have never done a department inspection so
12 the answer would be no.

13 Q How about any testing you've done on these
14 devices?

15 A I have never pulled a plug on any instrument I
16 have done testing on.

17 Q Since all this blew up and turned into this
18 problem we have in Miami have you done any test on an
19 Intoxilyzer to see what happens when you pull the plug?
20 When I say pull the plug I mean interrupt power. Have
21 you tried --

22 A I already know what happens.

23 Q What happens?

24 A It loses all of its information because

25 nothing is saved until the report prints. At that point

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1 when an agency inspection report or department
2 inspection report prints, that's when the information is
3 saved into the flash memory.

4 Q So if you have power interruption after two
5 hours or so working on an annual and you have power
6 interruption five seconds before you print it's all
7 gone?

8 A Correct.

9 Q And is it kept in any internal memory?

10 A No.

11 Q Is there any way of going back that you know
12 of to get that information?

13 A There is not.

14 Q Okay. Have you talked to FDLE about whether
15 or not there is log inside the Intoxilyzer that keeps
16 track of the fact that there was an inspection done but
17 didn't finish because of power interruption?

18 A Have I talked with FDLE?

19 Q No, I mean CMI. I'm sorry.

20 A I have talked to CMI.

21 Q Who did you talk to and what did they say?

22 A Until the point that it goes from the random

23 memory into the flash memory, until that point it's not
24 saved. Nothing is saved. It's not retrievable. You
25 can't get it.

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1 Q What is the event that causes it to go from
2 ram to flash?

3 A The printing of the report, that's the final
4 step.

5 Q The beginning of the printing?

6 A Yes. That is my understanding, the beginning
7 of the printing. When it says printing of report it is
8 sending the information to the printer and sending it to
9 flash memory.

10 Q And the flash memory is where it's kept so
11 that it can be uploaded to Tallahassee?

12 A Correct. Once uploaded it's no longer on the
13 flash memory.

14 Q And there is no hard drive or spinning drive
15 or anything like that in the Intoxilyzer, right?

16 A No.

17 Q Now, Ms. Veiga, when is the first you heard
18 about this issue with her allegedly interrupting power?

19 A On July 24th.

20 Q Who called you?

21 A Kevin Millan.

22 Q Officer Kevin Millan, Miami Beach Police?

23 A Yes.

24 Q And what did he tell you?

25 A He said that he was having a conversation --
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1 and this is based on my recollection of what happened
2 and what was told to me.

3 He said that he was having a conversation with
4 Sandra that he had lost power during one of his agency
5 inspections, that he had documented on the agency
6 inspection report, as he should, and that he repeated
7 the inspection because one did not exist.

8 And apparently she was saying things to him
9 like, well, you didn't need to do that, you didn't need
10 to document it because no one would ever know and
11 proceeded to say things like she turned the instrument
12 off when the department inspection is not going in
13 accordance with the rules, and it was things to that
14 nature.

15 Q Okay. I need to know the difference between
16 singular and plural. Did Kevin relay she had done this
17 plural; in other words, more than once or just once, or
18 do you remember?

19 A To my recollection it was just once.

20 Q What did you do about that when he told that
21 you?

22 A I proceeded to get in touch with Kim Valezquez

23 because Kevin Millan said it was a Miami-Dade
24 instrument. The key contact that I have there at the
25 Miami-Dade Police Department is Officer Kimberly

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1 Valezquez. And I ended up speaking --

2 Q How quickly after you got that phone call from
3 Kevin did you call Kim?

4 A I'm not positive, but I definitely talked to
5 her by the end of that evening.

6 Q Same day?

7 A Yes.

8 Q Were you troubled by this?

9 A Yes. But not from a reliability perspective.
10 From an employee contact perspective I was very
11 troubled.

12 Q Okay. Did you pick up the phone and call
13 Sandra and ask her if that was true that day?

14 A No.

15 Q Why not?

16 A I did not. Because the next step would be for
17 me to have our internal affairs or executive
18 investigation section look into the conduct of a member.
19 My responsibility is to report it to them, they do the
20 investigations.

21 Q With what you were told did you believe that
22 to be a serious violation of the rules and how you

23 wanted things done.

24 A It's not a violation of the rules, but it is
25 definitely a violation of how things should be done.

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1 Q Did you feel that was criminal what she was
2 doing?

3 A I don't have an opinion on that.

4 Q Okay. Do you understand that there are
5 Statutes against evidence tampering?

6 A Yes, I do.

7 Q Now, you are the boss of this implied consent
8 program. If you were to take --

9 Ms. Press blew into a machine in Miami. She
10 is the named Defendant in this case. If you were to go
11 to Miami and grabbed the machine she blew in and then
12 start beating it with a shoe and hitting it with a
13 hammer so that no one could use it again or play with
14 it, do you understand that that might be a crime because
15 you are tampering with evidence?

16 A I don't know. I would suppose that would be.

17 Q And --

18 A Or could be.

19 Q Well, do you want people tampering with your
20 Intoxilyzers?

21 A Of course not.

22 Q It is certainly wrong whether it's a crime or

23 not, you know that, right?

24 A Yes.

25 Q Did you ask Kevin what machine this was done
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1 to?

2 A No. I asked Kim.

3 Q Did Kevin know what machine or just knew what
4 agency?

5 A He just knew what agency.

6 Q When you called Kim what did she say?

7 A She said that she talked with Kevin and that
8 she had been discussing it with Officer -- Actually, I
9 think it's PSA Espinoza.

10 Q He is a PSA.

11 A And PSA Ley.

12 Q L-E-Y.

13 A And trying to kind of confirm what was told to
14 her. And that she said it was instrument 80-000883
15 which I will referred to 883. I asked her how she knew
16 that; and, she said that is the only instrument that has
17 been inspected by Sandra without Kim or Pablo Espinoza
18 present.

19 Q Okay.

20 A And we had discussions where I told her to
21 remove it from service and do an agency inspection on
22 it. And that I would have her send it to me and that I

23 was going to do a department inspection on it.

24 Q You yourself?

25 A Well, it was done in my presence.

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1 Q The reason why you wanted that to be delivered
2 all the way to the big boss was?

3 A I wanted it to be present when it was
4 inspected so that I could testify in court that it met
5 the requirements or it did not meet the requirements.

6 Q Are you aware that the problem with 883 was
7 apparently Ms. Veiga couldn't get the .20 solution to
8 pass?

9 A Yes, that's what was related to me.

10 Q Do you know why?

11 A Yes, I know why.

12 Q Why?

13 A She had a problem with her .20 simulator.

14 Q Wasn't she trained in how to fix a problem
15 with a .20 simulator?

16 A Yes.

17 Q Then why didn't she do that?

18 A That is something you'll have to ask her.

19 Q Well, we have a lot of questions for her. You
20 can imagine.

21 Now, did you ever report this to anybody with
22 law enforcement authority like police officers with

23 Metro-Dade Police other than Kim?

24 A Yes. I sent a letter out to all agencies that
25 have instruments that are serviced by Ms. Veiga as well

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1 as the State Attorney's Office.

2 Q Now, I made a whole bunch of public records
3 requests and I've got everything. I don't have that
4 letter. Do you have a copy of the letter?

5 A I can get you a copy of that letter.

6 Q Is that the letter to Sergeant John Harris?

7 A Yes.

8 Q Okay. I have the letter and I don't think it
9 goes to all police agencies. Let me see here.

10 This is the letter dated July 29th to Sergeant
11 John Harris. Is that it?

12 A Yes.

13 Q Now, granted my copy is a pdf that is cut off
14 at the bottom but I have seen other copies. I don't
15 remember seeing all police agencies.

16 A This was sent by e-mail to all police agencies
17 that have Intoxilyzers. Not to all agency inspectors,
18 but to at least one agency inspector at an agency that
19 has an instrument.

20 So it was not sent to all law enforcement
21 agencies in Broward, Dade or Monroe Counties, but those
22 that have breath instruments.

23 Q Which I happen to know those departments
24 because I deal with them. So you have e-mail addresses
25 for your key contacts at all those departments?

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1 A Yes.

2 Q Now, at the Beach or Key it would be Kevin

3 Millan?

4 A Yes.

5 Q At Metro, Kim Valezquez?

6 A Yes.

7 Q Coral Gables, Danny Smith?

8 A Yes.

9 Q City of Miami Pedro Beltran?

10 A Yes.

11 Q Drew Patterson, Highway Patrol?

12 A Yes.

13 Q I'm trying to think who else.

14 A Nancy Perez would be Hialeah Police

15 Department.

16 Q Who else, can you think? Homestead, did they

17 have one?

18 A Homestead is Thomas Surman.

19 Q Pine Crest, South Miami would be?

20 A South Miami?

21 Q Riseberg (phonetic)?

22 A Yes. And Cora Mann at North Miami Beach.

23 Q Right, Cora. These are your people that are
24 your monthly inspectors from the departments that have
25 machines, right?

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1 A Yes.

2 Q Now, you have e-mail addresses that are valid
3 for all these people?

4 A Yes.

5 Q Did you get any rejects on that e-mail?

6 A Yes.

7 Q From who?

8 A I spelled Mr. Espinoza's last name wrong so I
9 had to fix the S to a Z or the Z to an S or something
10 like that.

11 Q But Kim would have gotten it anyway?

12 A Yes.

13 Q I happen to know they work together.

14 A Yes.

15 Q So it didn't matter because Kim got it?

16 A Well, Kim and Kevin's letters were faxed to
17 them as well.

18 Q This letter is dated July 29th, 2008. Did you
19 e-mail it the same day?

20 A I believe so. Within a day or two. At the
21 most the next day.

22 Q At the most. Now, there is two ways to send a

23 letter by e-mail. One is what I call the cut and paste
24 into the e-mail; and, the other is to attach it as Word
25 or pdf or something else. How did you send it?

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1 A It was an attachment.

2 Q Did these fine folks have the ability to open
3 attachments?

4 A Yes.

5 Q And have you communicated with all these
6 people by e-mail before?

7 A I have not.

8 Q Was there a cover memo or anything that went
9 with this?

10 A No.

11 Q Do you keep those e-mails? The outbound
12 e-mails, do you have them?

13 A I have a copy of it, yes.

14 Q Here is the problem. I made a public records
15 request of FDLE and they gave me a whole bunch of
16 e-mails, but I didn't see the e-mails that you sent out.

17 A It's just one.

18 Q Did you blind copy or did you publicly copy
19 each person?

20 A Publicly.

21 Q So that would be an e-mail that would show all
22 the people you sent it to with their name and their

23 e-mail address at the top?

24 A I don't know if it's their name or just their

25 e-mail address.

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1 Q Okay. How do I get that e-mail?

2 A I can get you a copy.

3 Q Before we leave can I have one?

4 A Sure.

5 Q I appreciate it.

6 A Okay.

7 Q When I made that public records request a
8 couple months ago were you consulted about all this,
9 about all the Sandra Veiga memos and documents?

10 We didn't talk to you, but we talked to
11 someone at FDLE that handles it. Were you consulted?

12 A It depends on who you were talking to. If you
13 were talking to the people over in executive
14 investigations, no, I was not consulted.

15 Q But you remember -- We met before once, right,
16 for the Muldowny stuff in Miami?

17 A Yes.

18 Q And I didn't make a big impression because we
19 only chatted, I think I only asked you a few questions
20 and we hardly had a chance to talk, right?

21 A Yes.

22 Q Okay. My name is kind of unique, a little

23 different than Hersch. It's Catalano. There is not
24 many lawyers named Catalano.

25 Do you remember being consulted about a public
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1 records request for all e-mails about Sandra Veiga
2 coming from a guy named Catalano from Miami?

3 A No.

4 Q So what I would like, I would like to see that
5 so I can see who it went to and when. The question I
6 also have is, is this something you could produce now
7 during a quick break because this is the most important
8 thing I want to ask?

9 A Yes.

10 Q Could be take a break?

11 A Sure.

12 MR. CATALANO: We're taking a break for a
13 minute.

14 (Thereupon, a break was taken off the record
15 from 11:10 a.m. to 11:18 a.m.)

16 BY MR. CATALANO:

17 Q Okay. Very nice getting this. Ms. Barfield,
18 you were kind enough to supply me with one, two, three,
19 four, five, six pieces of paper?

20 A Yes.

21 MR. CATALANO: Could I mark these?

22 (Thereupon, Defendant's Exhibits 1 through 6

23 was marked for identification.)

24 MR. CATALANO: Let the record reflect that our
25 very nice court reporter labeled the documents.

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1 BY MR. CATALANO:

2 Q If you could tell me using Exhibit 1, Exhibit
3 2, Exhibit 3, could you tell me what is Exhibit 1?

4 A Exhibit 1 is the letter -- the Sergeant John
5 Harris letter was an attachment to the contact people I
6 had for Miami, Broward and Monroe Counties for the State
7 Attorney's Offices.

8 Q Can you recognize the names on the list --
9 This is your way of saying you sent the Sergeant John
10 Harris letter dated July 29th as an attachment to these
11 people, correct?

12 A Yes.

13 Q Who is on that list, please?

14 A Jennifer Reinhard; I don't remember her first
15 name down in the Keys, but the last name is Mena.

16 Q It's Griska Mena?

17 A Griska, yes. Casey Simpson I believe would be
18 one of them. Brad Sturges, Paunece Hodgerson, Patrick
19 Trese and Lee Cohen.

20 Q And Pat Trese is the man on the phone right
21 now, right?

22 A Yes.

23 Q And Lee Cohen is the Chief of County Court for
24 the State Attorney in Broward, correct?

25 A Yes.

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1 Q And Griska Mena was a prosecutor in Key Largo
2 in the Keys, right?

3 A She was, yes.

4 Q She still is.

5 A Okay.

6 Q I'm going to trial Monday with her.

7 A Okay.

8 Q At lease until the new State Attorney. We
9 don't know.

10 So there is no doubt you communicated with
11 Monroe, Dade and Broward State Attorneys and let them
12 know about the John Harris letter. On August 1st you
13 did that, correct?

14 A Yes, that's correct.

15 Q Did you ever get any responses from any of
16 those Assistant State Attorneys?

17 A Yes.

18 Q And were they e-mail responses or phone calls?

19 A Phone calls.

20 Q So you sent this August 1st. Did you speak to
21 Mr. Trese?

22 A I believe I did. Maybe not on that day, but I

23 know I have spoken with him regarding the issue because

24 I could not provide that much information.

25 Q Now, you know Pat Trese, you have done

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1 business with him before, right?

2 A Yes.

3 Q And you know his voice, right?

4 A Yes.

5 Q And you know where he works and how to reach
6 him, right?

7 A Yes.

8 Q I bet you even have his cell number, don't
9 you?

10 A I may.

11 Q Maybe?

12 A I think I do, yeah.

13 Q Jennifer Reinhard, did you know her?

14 A I only know her from telephone conversations.

15 Q But she was at the Miami State Attorney,
16 correct, the way you understood it?

17 A Yes.

18 Q Lee Cohen, you've done business with him
19 before, right?

20 A Yes.

21 Q He has been around for a long time. He is the
22 Chief State Attorney for the Broward State Attorney's

23 Office for county court issues, right?

24 A He is the County Court Chief, I believe.

25 Q Let's talk about Pat. I used to be a

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1 prosecutor, now I am a defense lawyer. If I received as
2 a prosecutor the John Harris letter dated July 29th I
3 would have had questions. I mean, I would have called
4 and said what is going on.

5 Did Pat call you or did you call Pat Trese, if
6 you remember?

7 A I don't remember.

8 Q Okay. Did he have questions about what was
9 going on?

10 A Yes. Quite a few people had questions
11 including some of the law enforcement agencies that were
12 sent it.

13 Q What did you tell Pat Trese?

14 A That I could not tell him that much, it was
15 under investigation.

16 Q You put a line in here which I appreciate that
17 said that some prosecutors may consider the inspection
18 incident to be such that it should be revealed to
19 defense counsel during the course of prosecutions
20 involving this instrument. Right? You wrote that in
21 the letter, didn't you?

22 A Yes.

23 Q What were you trying to tell Pat to do? Were
24 you dropping a hint that maybe they need to tell the
25 defense lawyers there is a problem but I can't tell you

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1 all the details right now? Is that what you were doing?

2 A Basically, yes. But it wasn't just for
3 prosecutors, it was for defense attorneys who would get
4 a copy of that letter as well.

5 Q Now, of course it's not your job to
6 communicate with defense lawyers unless it's for like a
7 depo today, right?

8 A Right. But I do. If they call me I'll talk
9 to them.

10 Q The State Attorney is prosecuting the case,
11 not FDLE?

12 A Correct.

13 Q There is no doubt it's not your job to try to
14 find all the defense lawyers who have cases with machine
15 883, right?

16 A Of course not.

17 Q Have you ever heard of a case called Brady vs.
18 Maryland?

19 A Yes.

20 Q Called Brady issues. What do you understand
21 that to be? What do you think it means? Don't worry,
22 you're not going to get in trouble for this.

23 A If you have information that is considered I
24 believe it's exculpatory that it should be provided to
25 the defense.

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1 Q What do you think the purpose of that is?

2 A So that you are not hiding anything.

3 Q To be fair, right?

4 A Yes.

5 Q Do you believe that this kind of information
6 should have been disclosed to the defense, that there
7 was a problem with Sandra Veiga and the 883 machine?
8 You did at the time, didn't you?

9 A Well, I mean, that is not my decision to make.
10 I sent it to the people who I knew to send it to; but,
11 there is not much information. At the particular point
12 in time we're at there is not a lot of information for
13 anybody nor could it be provided.

14 Q What did you tell because I can imagine the
15 phone calls you got if -- When I was chief prosecutor I
16 would have called you and said tell me what is going on,
17 I need to know because I have to go to court tomorrow
18 and I have got these cases.

19 What did you tell Pat Trese in Dade?

20 A That there is an executive investigation that
21 Sandra is involved in; and, as soon as I can provide
22 more information I will.

23 Q What did he ask you about that? Did he ask
24 you something like what do you mean executive
25 investigation?

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1 A I'm sure I explained, you know, executive
2 investigation is like a police department's internal
3 affairs. But I could not provide information to them.

4 Q Did you also tell them that she was suspended
5 or being suspended at that time? I'm talking about plus
6 or minus a day.

7 A I don't know if I went into all of that.

8 Q When you sent this letter out was a decision
9 made yet to suspend her and have these police
10 departments deal with somebody else like Dwight Hackney
11 or George Venturi? Or when was that made?

12 A Yes. Sandra was placed on administrative
13 leave with pay on July 28th.

14 Q She was actually put on administrative leave
15 with pay the day before you wrote this letter, right?

16 A Yes.

17 Q So she was told to go home, right?

18 A Yes.

19 Q Not to come to work and not to do any work,
20 right?

21 A She was escorted out of the building.

22 Q And I saw a whole bunch of memos about like

23 turn in your keys, but that was later.

24 Did you make it clear to her on July 28th that
25 you are not to do any FDLE business with Intoxilyzers

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1 until further notice?

2 A I had no discussions with Sandra on July 28th.
3 That was handled by executive investigations.

4 Q But she was clearly no longer working for you,
5 she was suspended, right?

6 A She was employed --

7 Q And getting a paycheck.

8 A -- and getting a paycheck, but she was to not
9 do any sort of FDLE business.

10 Q Did she stay out of the building from that
11 point forward?

12 A With the exception of possibly going into the
13 common area, she was not allowed in the building.

14 Q And the only thing she has done since then is
15 come back to give a statement and/or pick up some of her
16 personal things and leave off things, maybe?

17 A I believe, yes.

18 Q But no business? No business, right, at all?

19 A She was not to be conducting business.

20 Q Do you know if she did conduct any business
21 after July 28th?

22 A I have some ideas that discussions were had

23 with some of the agency inspectors, but I don't have any
24 true proof of that.

25 Q Like what kind? Meaning Sandra was talking to
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1 them?

2 A Yes. Not all of them.

3 Q What did she --

4 A I don't know what she was saying.

5 Q I feel like a gossip columnist. Tell me all.

6 Who said what to who? What did you hear, even if it was

7 rumors, and who did you hear it from?

8 Obviously you were irritated, I can tell by
9 the look on your face, because Sandra was talking to
10 people. What did she talk to people about and what came
11 back to you from whom?

12 A Exactly what she was discussing with them I do
13 not know. It had something to do with the investigation
14 and her wanting to figure out what was being
15 investigated.

16 And after she found out what she was being
17 investigated for, that would have been after the
18 interview with executive investigations, I'm fairly
19 positive she had a conversation with at least one person
20 in Miami.

21 Q Who is that?

22 A That would have been Louie Taborda.

23 Q Who is a City of Miami police officer and a
24 really nice guy, right?

25 A Yes, he is.

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1 Q Okay. What came back to you on that?

2 A Just that she was discussing the issue with
3 him and about how it wasn't fair and, you know, it
4 wasn't true and things like that.

5 Q Okay. Was she criticizing you, Laura
6 Barfield?

7 A I have no idea. If she was I don't know.

8 Q Did anything else come back to you of any
9 conversations she had with any other people?

10 A Not any other people, no.

11 Q Did you do anything about that after you heard
12 that?

13 A I notified executive investigations.

14 Q You told them what you learned?

15 A Just that she had been communicating with
16 people contrary to what she had been told to do.

17 Q And Louie Taborda told you this?

18 A No. I got this hearsay through I don't even
19 remember, some sort of grapevine.

20 Q Did you write any memos or documents, e-mails?

21 A No. I just picked up the phone and called
22 executive investigations.

23 Q So you understood that when she was suspended
24 she was told to be quiet and not discuss this with
25 anybody, right?

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1 A She was to have no contact with any of the
2 people she regulated.

3 Q And Louie Taborda clearly would have been one
4 of those people, right?

5 A I believe so, yes.

6 Q And so you reported that apparently she was
7 communicating with people?

8 A Yes.

9 Q Do you know what happened after you did that?

10 A No.

11 Q So back to this memo here. What else did you
12 tell Pat Trese or Jennifer or anybody in the Miami State
13 Attorney's Office?

14 A I don't specifically remember exact
15 conversations; but, just that it was under investigation
16 and that they were going to have to wait until the
17 investigation is done.

18 That is to protect Ms. Veiga. She has rights
19 that were explained to me and that I could not
20 communicate anything until it came out from executive
21 investigations. I don't remember particularly what was
22 said.

23 Q So you are following the procedure to protect
24 the employee's rights as far as employment, right?

25 A I've tried to do that all along, yes.

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1 Q That is part of working for government, right?

2 A Yes.

3 Q You have rights if you got fired tomorrow,
4 too, right?

5 A Correct.

6 Q Okay. Who else called you or who else did you
7 speak to besides Pat Trese?

8 A I believe I talked with Paunece Hodgerson out
9 of the Key West area. She wanted to know more. I told
10 her I couldn't let her know what was going on but that
11 once I could let them know that they would know.

12 Q Did you have like a basic speech you gave
13 everyone when they called?

14 A Yes.

15 Q It was let's get to the gist of this. There
16 is an internal investigation into Sandra Veiga, right,
17 you told them that, all of these people?

18 A Yes.

19 Q And you told them I can't talk about all the
20 details, right?

21 A Correct.

22 Q You told them that she was suspended, right?

23 A Yes.

24 Q And you told them it had something to do with

25 Intoxilyzers, right, and her work on Intoxilyzers,

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1 right?

2 A Her conduct.

3 Q Her conduct?

4 A Yes. It was her conduct and not reliability.

5 Q Her conduct. But this is not like she had sex
6 with somebody in the parking lot. You could get fired
7 for that, too, at FDLE, couldn't you? Don't answer
8 that.

9 But you understand there is other things you
10 can do other than work-related conduct that can get you
11 fired, right?

12 A Yes. Under FDLE policy it can be non-work
13 related conduct as well.

14 Q But you made this clear it was work-related as
15 to her work dealing with Intoxilyzers, right?

16 A Probably something to that effect, yes, but as
17 generic as I could possibly be.

18 Q I am going to look at the list here. You
19 remember having this conversation with Hodgerson down in
20 the Keys, right?

21 A Yes.

22 Q Pat Trese out of Miami, right?

23 A Yes.

24 Q And how about Lee Cohen, I've got to believe
25 he called you?

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1 A Lee didn't call me right away. I believe I
2 talked to him a little while later.

3 Q What is a little while, a week, week and a
4 half?

5 A I don't remember. At least.

6 Q Was it more than four weeks?

7 A I don't know.

8 Q But he did call you?

9 A I have talked to him since then.

10 Q Okay. How about Griska Mena, did you ever
11 talk to her?

12 A No.

13 Q Did you talk to Jennifer Reinhard about this?

14 A I may have talked to Jennifer.

15 Q So there is no doubt in early August, 2008
16 Jennifer Reinhard and/or Pat Trese from the Miami State
17 Attorney's Office knew of this letter and knew there was
18 a problem of some kind, just didn't know details, right?

19 A Unless their e-mail wasn't working.

20 Q Okay. But when you talked to Jennifer and/or
21 Pat were they responding because they read the letter
22 and the questions were related to this letter to John

23 Harris?

24 A I assumed so.

25 Q Because you know --

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1 A It could have been information supplied to
2 them from other parties involved.

3 Q Like maybe someone from Metro --

4 A I don't know.

5 Q -- or BSO might have called them and told
6 them, right?

7 A Not BSO. It would have been Miami Beach or
8 Miami-Dade.

9 Q Now, looking at this, Christopher Matson, he
10 is a Game & Fish person, right?

11 A Yes. That instrument is located in the Keys.
12 His e-mail address, I had difficulty with his e-mail
13 address.

14 Q And, Nancy Perez, you also had to send that
15 again because apparently her e-mail address might not
16 have been right?

17 A Either her e-mail address wasn't right or I
18 sent to Manny Mantalvo and -- Maybe it was just Manny
19 Mantalvo that I sent it to.

20 Q What about Danny Smith, you have a separate
21 e-mail from him at City Beautiful?

22 A I think I had the e-mail address wrong.

23 Q Do you know if Danny got that?

24 A Or I may have left him off the list. I don't

25 know.

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1 Q Did Danny ever call you?

2 A Yeah, because the original e-mail it was

3 DSmith@CoralGables.com and the correct one is

4 PD.CityBeautiful.net.

5 Q Do you know if he got the Beautiful.net one?

6 A I received that system administrator message

7 back on some of them on the first e-mail. I did not

8 after I sent this CityBeautiful one.

9 Q So, in other words, you got the bounces so
10 then you tried to get the correct addresses and follow
11 up. We all do this.

12 A Right.

13 Q We send out the bang list and there is always
14 going to be one or two that changed or didn't get it,
15 right?

16 A Right.

17 Q So you did this follow up to make sure these
18 people got this stuff, right?

19 A Yes.

20 Q And the only thing attached was the letter
21 dated July 29th, 2008 to John Harris, right?

22 A Correct.

23 Q By the way, did you speak to John Harris or

24 just write him a letter?

25 A I just wrote him the letter. He is Kim

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1 Valezquez's supervisor.

2 Q Have you ever met him?

3 A Yes, I have.

4 Q Now, Blasco is in the Keys. He happens to be
5 the Sheriff's Deputy that does the maintenance in the
6 Keys. Did you ever talk to Deputy Blasco?

7 A I don't remember.

8 Q And who is Madina@sheriff.org?

9 A Marmilly Madina. She is an agency inspector
10 at Broward Sheriff's Office. She is not to my knowledge
11 actively -- She is not actively used as an agency
12 inspector right now.

13 Q Do you know Franca and Pat at BSO?

14 A Yes.

15 Q Nice people, right?

16 A Yes.

17 Q That is an easy question.

18 Do you know if they ever got the e-mail
19 because Pat and Franca make it sound like they have
20 trouble pushing buttons and turning on the computer? Do
21 you know if they got this?

22 A I don't know. I know I had to resend Franca

23 because I typed her name wrong.

24 Q And you have David Chang from the Miami
25 Police. Did you ever hear from him?

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1 A No, I don't believe so.

2 Q But definitely Kim Valezquez got this letter,
3 right?

4 A Yeah. I sent that to her by fax as well.

5 Q Okay. Who else did you fax?

6 A Kevin Millan, Kim Valesquez, Pablo Espinoza
7 and Lazaro Ley.

8 Q Are there any return e-mails from any of these
9 people we've been discussing that would be verification
10 that they got this? In other words, they wrote back and
11 said, thanks, Laura, I got it or anything like that that
12 would show you they clearly got it?

13 A I believe I got something back from Nancy
14 Perez. She said to call her, and I called her. She
15 wanted to talk about it. She is with Hialeah P.D. I
16 told her the same spiel. It can't be discussed right
17 now. It does involve Sandra. It does involve an
18 internal investigation. I probably used that language
19 because of the police departments, and that more
20 information would come later.

21 Q All right. What I'm going to do is these
22 Exhibits 1 through 6 before we leave we'll make a copy

23 if that is okay and give them to the court reporter to
24 attach to the transcript. Thank you again.

25 Now, do you have any other e-mails to Pat
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1 Trese or anybody at the Miami State Attorney's Office
2 about the Sandra Veiga problems? I found some that you
3 were writing back and forth later; but, at the beginning
4 do you have anymore?

5 A No.

6 Q What was your intent when you sent this out?
7 Were you intending to warn them that there is a
8 potential problem and you'd better get ready? What was
9 your intent?

10 A To notify them of the issue that was going on
11 as best I could.

12 Q Now, have you listened to the voice recordings
13 of the statements taken by Joe Demma of FDLE of the key
14 witnesses in this case? Have you listened to it?

15 A I don't think so.

16 Q Okay. You were involved in the actual
17 termination of her, right?

18 A No.

19 Q You were put on notice of it, right?

20 A I was simply informed. Once I did my internal
21 inquiry form and sent it over to internal investigations
22 or executive investigations I am no longer involved.

23 I was told to send Sandra an e-mail saying you
24 are still employed, you are still under my supervision.
25 This is what you can do, this is what you can't do. She

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1 had to notify me by e-mail each day, which of course she
2 didn't do, every day, and that was my only involvement
3 with her. Limited conversations with her only dealing
4 with job-related issues which there were none so they
5 should have been very little, and that was it.

6 I was not a part of terminating her. I was
7 not a part of sending any of the letters. After she was
8 terminated, meaning after the predetermination
9 conference and the final action letter came out, that
10 was when everything really got released to the public
11 meaning public records requests. After that I went down
12 and cleaned out her office, and that was it. I've had
13 no contact with her.

14 Q Have you hired her replacement yet?

15 A No.

16 Q Are you looking or are you going to wait until
17 her appeal is over?

18 A I will not wait for her appeal to be over;
19 but, I mean, her appeal may be over.

20 Q I've been told it's either January 5th, 6th or
21 7th. Are you testifying in that hearing?

22 A Yes.

23 Q It's going to be here in Tallahassee and
24 people are going to appear by speakerphone?

25 A That's my understanding.

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1 Q You understand Craig Rockenstein is the lawyer
2 representing FDLE in that?

3 A Yes.

4 Q Have you talked to Craig about this?

5 A Yes.

6 Q Have you ever talked to her lawyer,

7 Mr. Richard Caldwell?

8 A Yes, I have.

9 Q At length or just briefly?

10 A Just briefly.

11 Q Did he try to question you about what was
12 going on?

13 A No.

14 Q What did he tell you?

15 A I was calling him based on a public records
16 request that he had made that I needed clarification on
17 what he was asking for.

18 Q And what was he asking for?

19 A Logs. And I was confused by what he said. He
20 wanted what was on the Internet.

21 Q Okay. So you have been asked to testify at
22 her final hearing in early January?

23 A Yes.

24 Q Did you get a subpoena?

25 A I don't think so.

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1 Q Okay. I know you are not the lawyer that
2 handles this; but, do you understand that is what people
3 have a right to do when they are terminated and they
4 contest it?

5 A Yes.

6 Q Okay. Are you advertising to replace her
7 right now?

8 A I have advertised, yes.

9 Q Where are you advertising?

10 A Out of Ft. Myers.

11 Q In the Ft. Myers newspaper?

12 A No, it's internal. Internally advertised
13 position. Internal FDLE.

14 Q So you are letting other FDLE employees know
15 that there is an opening.

16 A Yes.

17 Q What does that job pay, do you know?

18 A I don't know.

19 Q Now I asked you -- Apparently I have the tape
20 or CD or DVD or whatever it is. Joseph Demma, have you
21 met him?

22 A Yes.

23 Q He is a police officer, right? Are you aware
24 of that?

25 A He is a Special Agent.

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1 Q Which makes him a law enforcement officer,
2 right?

3 A Yes.

4 Q Like a state police officer, right?

5 A Yes.

6 Q Okay. He took the tape recorded statements of
7 Sandra Veiga, Kim Valezquez, Lazaro Ley, Kevin Millan.
8 Am I missing anybody? I think that's it. He took tape
9 recorded statements of them under oath. You've never
10 listened to those?

11 A I don't believe I listened to his tapes.

12 Q But you read the file so you know he
13 summarized them in his determination that she should be
14 terminated, right?

15 A Yes.

16 Q Are you aware that Sandra Veiga is basically
17 calling all of them a bunch of liars and saying that is
18 not true?

19 A Yes.

20 Q And are you aware that they are not -- they
21 all are swearing under oath that they are telling the
22 truth?

23 A Yes.

24 Q Okay. These are dumb questions, and I'm not
25 saying this is what happened, but I want to know this

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1 because I want to know under oath. Is this some great,
2 pardon the Hillary Clinton quote, vast conspiracy to get
3 rid of Sandra Veiga?

4 A No.

5 Q Okay. You understand that she is basically
6 dropping the hint that you created a conspiracy with the
7 people at Miami Beach Police and the people at
8 Metro-Dade Police to get rid of her and that she didn't
9 do all these things?

10 A That I am conspiring?

11 Q She is making it sound like you are like the
12 master conspirator.

13 A I am not aware of that, no.

14 Q Let me ask you a question. What are you going
15 to do with her if the appellate process says she gets
16 her job back? Are you going to let her do this job
17 again?

18 A No.

19 Q It would be chaos, wouldn't it?

20 A Let me clarify that. She will not be under my
21 supervision in this program area. If she gets her job
22 back she will be somewhere else at FDLE. She cannot

23 come back to this particular position.

24 Q Why is that?

25 A Because it's my opinion that she does not have
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1 any credibility anymore.

2 Q She is tainted, isn't she?

3 A Yes.

4 Q And you understand because you have been to
5 court how judges and courtrooms work, right?

6 A Yes.

7 Q Once something like this happens it would very
8 hard for her to go back and do inspections and have
9 anyone even trust anything that she says, right?

10 A Correct.

11 Q Even if this whole thing was a conspiracy.
12 That's her position.

13 So I have to ask you to make sure. Did you
14 conspire with these people, the Metro-Dade Police and
15 the Miami Police, to make up falsehoods to get her fired
16 because you wanted to get rid of her?

17 A No.

18 Q Now you understand I'm not saying this is
19 true. I just have to ask the questions. That is what
20 she is basically dropping the hint.

21 Did you ever offer her to take a lie detector
22 test?

23 A No.

24 Q You yourself.

25 A No.

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1 Q Do you know if anyone at FDLE did that?

2 A I do not know.

3 Q Have you ever had any dealings with Kevin
4 Millan that you thought were improper or you didn't
5 believe him or you didn't trust him, there was something
6 that bothered you about what he was doing, anything like
7 that?

8 A No.

9 Q How about the same with Kim Valezquez or Pablo
10 Espinoza?

11 A No.

12 Q So all these police offices and PSA's involved
13 in this investigation, you have no bones to pick with
14 any of them, right?

15 A No.

16 Q They've all been perfectly polite to you and
17 done what you thought was proper work?

18 A Yes.

19 Q Now I am going to switch to another subject.

20 MR. HERSCH: Could we take a break, please?

21 (Thereupon, a break was taken off the record
22 from 11:46 a.m. to 11:52 a.m.)

23 MR. CATALANO: Pat, we're ready to start

24 again. Are you ready?

25 MR. TRESE: Yes, I'm ready.

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1 MR. CATALANO: I don't have much more
2 questions, but I want to go into a couple other
3 areas.

4 BY MR. CATALANO:

5 Q What I want to know is, when you train someone
6 to do annual inspections there seems to be two ways you
7 can do it. You can do one machine at a time or
8 something we call wrestling tag team. Do you know what
9 I mean? When you line them up and do one part of one
10 test and then go to the next machine and then the next.
11 Kind of a different situation.

12 Now, if you were going to do an annual
13 yourself, and you know how to do it, right?

14 A I know how to do them, yes.

15 Q If you were going to be an annual inspector,
16 if you had just one machine you would just go through
17 the procedure right through it on that one machine,
18 right?

19 A Yes.

20 Q How long do you think that would typically
21 take if you just did one machine and nothing else and no
22 interruptions?

23 A I believe it takes about two hours.

24 Q Now, apparently one way Ms. Veiga was doing

25 this is she would bring in all these machines and line

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1 them up on a huge conference table and she would start
2 with machine one, then machine two, three. First she
3 would do the .00's and then the mouth alcohol and so
4 forth in that order. Is that a violation of any of your
5 rules?

6 A No.

7 Q Okay. Let's talk about mouth alcohol. How do
8 you train the people to do the mouth alcohol test if
9 they are doing let's say ten machines? How do you train
10 them to do it?

11 A Well, you are going to do your alcohol free
12 subjects before you put mouth alcohol in your mouth.
13 You're going to need to do all your alcohol free
14 subjects first.

15 Q Which means you would be blowing in just lung
16 air with no booze, right?

17 A Right.

18 Q Okay. You go down the line of all ten and you
19 blow into the machine; and, one would expect 000 on all
20 machines, right?

21 A That is the expected result, yes.

22 Q That is usually what happens, right?

23 A I would hope so.

24 Q Then you go to mouth alcohol, right?

25 A Yes.

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1 Q How do you train them to do that?

2 A Swish some mouth alcohol in your mouth and
3 then provide samples into the instrument.

4 Q Okay. But how often do we swish and how many
5 machines before we reswish did you train them to do, or
6 did you train them?

7 A They don't have to swish every single
8 instrument because they have already done that. But if
9 they don't have the taste or the alcohol in their mouth
10 anymore they should swish some more.

11 Q Why is that?

12 A So they have mouth alcohol.

13 Q Let's say they swish, machine one, machine two
14 and machine three, and machine three does not register
15 mouth alcohol.

16 A They would swish again and try it again.

17 Q Nothing wrong with that procedure?

18 A No. The rules specifically allows for that.

19 Q Why not check machine four before you reswish
20 to make sure it's not the problem with machine three?

21 In other words, you swished, did one and two,
22 no problems, it passed. The machine said, hey, there is

23 mouth alcohol here. You get to machine three and it
24 doesn't register mouth alcohol. Instead of reswishing
25 why not go right to machine four and see if it registers

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1 with machine four?

2 A Because that is a different instrument. You
3 are not evaluating the instrument that didn't register.
4 You need to swish more mouth alcohol, create that
5 scenario and retest on three. That's the proper,
6 scientific way to do it.

7 Q Okay. Is it proper scientific method to take
8 the mouth alcohol solution and instead of swishing just
9 rub it on your lips and on the front of your gums? Is
10 that the appropriate way to do it?

11 I agree it's funny. Do you think that's funny
12 or improper or what?

13 A Well, as long as you create the mouth alcohol
14 situation. The alcohol, if you rub it on your lips it's
15 going to absorb into your oral cavity. If you rub it on
16 your gums it will, too.

17 Q Have you ever heard of anybody doing it that
18 way?

19 A No, I have not.

20 Q Have you trained anyone that it is okay to do
21 it that way?

22 A I have not, no.

23 Q Okay. Is it the proper way to do that?

24 A Well, if you want to be technical the rule

25 which is the form, Form 36 for department inspections --

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1 Q I want to be technical.

2 A -- says rinse. Rinse the mouth with mouth
3 alcohol. I think that rubbing it on your lips and
4 putting it on your gums is really not rinsing your mouth
5 with it. That is the technical.

6 Q Okay. Do you know of any agency or department
7 inspector that is doing the lip rubbing and gum rubbing
8 instead of the swishing?

9 A I'm not aware of that.

10 Q And that did catch you by surprise, didn't it?
11 If somebody was doing that would that be a surprise?

12 A A little bit. I just -- Yeah, I hadn't heard
13 that one.

14 Q Do you know of any reason why someone would
15 rub lips and gums instead of swishing mouth alcohol?

16 A Yeah, they don't like the way it tastes.

17 Q And how does it taste?

18 A It tastes pretty nasty.

19 Q Okay. Let's talk about swishing and spitting
20 it out. Are they supposed to put it in the mouth, swish
21 and spit or swallow or what? What are they supposed to
22 do?

23 A They can do either one.

24 Q Okay. What is the strength of the alcohol
25 that they are swishing with?

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1 A It's approximately six percent.

2 Q And how is that versus rum that is 90 proof?

3 A It's about a little bit less than the strength
4 of a beer.

5 Q So is that a rather strong solution?

6 A No.

7 Q It's rather weak you are saying?

8 A Yes.

9 Q But are they supposed to be consuming
10 alcoholic beverages while they are doing these tests?

11 A Well, probably not.

12 Q Okay. When this whole thing came up about her
13 and unplugging machines and all that there was a follow
14 up by Mr. Demma that I saw in the investigation where he
15 was asking questions about verifying that she logged
16 into machines on certain days. Were you involved in any
17 of that?

18 A Yes.

19 Q What was the purpose of all that?

20 A Well, it's something that I had not thought
21 about was the log-in records. Why that slipped my mind
22 I don't know. But I was looking at log-in records for

23 other instruments and I was like, you know, I probably
24 should look at them for 883.

25 So I called Inspector Demma and said, you
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1 know, we may have some additional information I didn't
2 provide to you and do you want it. He said, well, the
3 investigation is over but go ahead and do a memo.

4 So I went through my interpretation of the
5 log-in records based on the conversations that were had
6 or the testimony, I'm not going to listen to it, but
7 what Mr. Demma said, and wrote up a summary of the
8 log-in records.

9 Q And that was basically catching her in some
10 other lies, right?

11 A I believe so. I'm not positive on that
12 because I didn't listen to that testimony. I did listen
13 to Sandra's predetermination hearing testimony.

14 Q Was that on tape or transcribed?

15 A It was on a -- I think it's on a CD.

16 Q You heard it with ear phones or something with
17 speakers?

18 A Yes.

19 Q And what did you learn from that, that there
20 might be an issue here?

21 A No. And my memo was before I listened to her
22 predetermination hearing, the memo that we are

23 discussing about log-in records.

24 Q It looks to me like a follow up investigation
25 to catch some other things that maybe she said that may

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1 not have been true. Is that basically what this was
2 about?

3 A I think that -- not that it was written for
4 that intent; but, I believe that based on talking with
5 Inspector Dema that some of that did occur.

6 Q So basically she said some things that the
7 logs did not -- said were the opposite, right?

8 A Correct.

9 Q And that alone would be lying in an FDLE
10 investigation, right?

11 A Correct.

12 Q And we all know that can get you fired, too,
13 right?

14 A Yes.

15 Q You are not allowed to lie to me today, right?

16 A No.

17 Q We expect all our FDLE employees, all of them,
18 even the janitor to be honest and truthful, right?

19 A Yes.

20 Q Because we are taxpayers and we gave you these
21 jobs and we want you to be honorable and fair, right?

22 A Yes.

23 Q Okay. Is there a new software being developed
24 or a new program that would do something more about
25 keeping track of logging in and logging out?

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1 A Yes.

2 Q What is going on? Do tell.

3 A Right now we are in rule drafting so there are
4 software revisions going on with rule drafting. And we
5 have inquired with the manufacturer as to whether if you
6 push -- Escape escape takes you into the main menu. If
7 you press 2 you have to enter a password and you are in
8 the agency inspector level. To kind of record if they
9 went to I for inspection test or if they went to D for
10 diagnostic test or something like that to kind of show
11 what they are doing within that.

12 I'm not positive yet what can be recorded, but
13 we have inquired on that to provide more information.

14 Q Is that as a result of what happened here with
15 Sandra Veiga?

16 A No, that was going on before. That was going
17 over before this came up.

18 Q Before all this came up were you ever put on
19 notice that any inspector whether it be one of your
20 people, a department inspector or an agency inspector
21 was ever pulling a plug during an inspection because
22 something was failing and not documenting?

23 A Not intentionally, no.

24 Q Unintentional can happen?

25 A Right.

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1 Q Power can go out, the plug could get knocked
2 over by a sloppy defense lawyer walking through or
3 something. That can happen.

4 I'm talking about intentionally pulling the
5 power because like your .20 is not passing or something
6 is not passing and then not noting it or making notes.

7 A I have not received any sort of notification
8 on anyone intentionally pulling the plug.

9 Q If you got a phone call -- I'm going to pick
10 on Sarasota just because I love it over there -- you got
11 a phone call from somebody whether it be George Venturi
12 or somebody that we think the guy in Sarasota that is
13 doing the monthlies, the sheriff, is pulling the plug
14 when he has issues and not recording it, what would you
15 have done about that?

16 A We would open an investigation. We would
17 conduct that investigation because it's not an internal
18 employee and document our findings.

19 Q Because you can take someone's permit away,
20 right?

21 A Yes.

22 Q But you have to give them some due process,

23 right?

24 A Correct.

25 Q You do have the power to permit and then pull
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1 permits back, right?

2 A Yes.

3 Q You are the actual person that makes those
4 decisions at the end, right?

5 A With legal counsel, yes, I do.

6 Q Ms. Barfield, when does the Intoxilyzer go
7 into standby mode in the breath BTO level? Does that
8 make sense?

9 A If you are not using an instrument, say you
10 turn it on, it powers up and say you conduct a breath
11 test using yourself, is it working; and, then you no
12 longer use it, I believe it's two minutes, five minutes,
13 something like that it will go into standby mode. I can
14 look up the exact time, it's in the curriculum.

15 Q And then what happens?

16 A It will go into standby mode and the display
17 says instead of ready mode it says standby mode. In
18 order to bring it out of standby mode you have to push
19 the start test button. And it does its own internals
20 and does a diagnostic and then it will go into ready
21 mode.

22 Q Is that also when you are in agency inspector

23 mode?

24 A No. You can't do an agency inspection in

25 standby mode I don't believe. It won't work. It won't

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1 record it.

2 Q Is there any documentation to verify that or
3 explain that?

4 A No.

5 Q Is this something you've learned from talking
6 to CMI or working on machines yourself?

7 A Using the instrument ourselves.

8 Q And the software, there is new software being
9 worked on right now?

10 A Yes.

11 Q And what is it going to give us that we don't
12 have now? Is it a log I'm going to see on the
13 Tallahassee web site that shows log in, log out?

14 A Yeah. The log0in records that you see now may
15 have more information. For example, the date and time
16 and the person are recorded right now based on an
17 instrument. And what we may see are multiple rows,
18 December 19th at 12:01 Laura Barfield, and there may be
19 either -- I'm not positive on the presentation, but
20 there may be like a C or an I or the letter of where
21 they were in the menu. And the menu items are in the
22 curriculum so you could see from other information what

23 was going on.

24 Q Right now as it exists with the software we've
25 had for the last year or so, if Pablo Espinoza by

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1 himself is doing a monthly inspection on a Metro machine
2 down there, he logs in to do an inspection but doesn't
3 do it, is there a record of that?

4 A Yes.

5 Q What is the record?

6 A There is a log-in record that he logged into
7 that menu.

8 Q And if he shuts it down will that log-in
9 record say?

10 A Yes.

11 Q Right now?

12 A Yes. The log-in record would be there because
13 it physically occurred before he turned the instrument
14 off.

15 Q Okay. And how is that different than Sandra
16 Veiga who may have logged in, got through the
17 maintenance all the way up to .20 apparently, have
18 trouble with the .20 and pulled the plug? Should there
19 be a log-in record of her doing that?

20 A There won't be a log-in. There will be the
21 log-in that she began the inspection at a certain time
22 or she did something at a certain time. It's not going

23 to say that she was doing an inspection. Then there

24 would be another log-in record after that.

25 MR. CATALANO: Who wants to go next?

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1 I may have some more questions, but I think
2 you've answered pretty much what I need to do know.
3 So I'm going to let these really wonderful lawyers
4 sitting next to me ask some questions.

5 CROSS EXAMINATION

6 BY MR. HERSCH:

7 Q Ms. Barfield, did you know Ms. Veiga prior to
8 her applying for a position with FDLE?

9 A I did not.

10 Q Okay. You told Mr. Catalano that the
11 interruption of power issue had been discussed at staff
12 meetings?

13 A Yes.

14 Q When?

15 A Staff meetings used to be held quarterly. I
16 wouldn't know the exact date. Many times I'll just
17 bring up things that are occurring to reiterate what is
18 going on and what is expected. But I don't have the
19 exact date or dates.

20 Q When you say staff meeting, who is present at
21 a staff meeting?

22 A Myself, the legal counsel, all of the

23 inspectors unless something causes them not to be there.

24 Q You are talking about department inspectors?

25 A Yes. Sometimes my boss, Mr. Spooner, and
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1 sometimes my director.

2 Q So at some time you have these meetings
3 quarterly?

4 A We used to. We do not anymore.

5 Q Since when?

6 A I don't remember the exact date. It's about a
7 year since we had a staff meeting like we used to meet
8 quarterly. It's been at least a year.

9 Q So it's been at least a year that your agency,
10 your department inspectors, have been aware of the
11 phenomenon of being able to -- or of the device not
12 recording a failed inspection or recording results if
13 the power is interrupted?

14 A Well, they were aware of it before that.

15 Q Okay.

16 A I simply was reiterating where to document it
17 and the fact that it should be documented.

18 Q How long have you been aware that if the power
19 is interrupted what has occurred in the device up to
20 that point would not be recorded to flash?

21 A Since we began using the instrument.

22 Q Is it in your curricula in any fashion?

23 A No.

24 Q Why not?

25 A The power of suggestion turning it off -- I
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1 mean, most people aren't going to turn it off while they
2 are doing an inspection. They want to get through with
3 the inspection. If you make that public knowledge then
4 it is almost like the lesser of two evils is not tell
5 them about it. For right now.

6 Q So in other words, I guess what I'm hearing
7 you say is you didn't want to tell your agency
8 inspectors that interrupting the power would cause
9 whatever had been going on in the device to not be
10 recorded to the flash because you were afraid they were
11 going to do that?

12 A I would not want them to do that, that's
13 correct. That's not why it's not in there. It's not in
14 there because I didn't put it in there. I just didn't
15 think to put that in there. I don't think I would put
16 it in there, though, like that.

17 Q You have told us that it has inadvertently
18 happened and you have nothing in your curriculum which
19 would tell someone what to do if it did inadvertently
20 happen; is that correct?

21 A They are to document all occurrences, that is
22 in their curriculum.

23 Q Well, is it designated or defined as an

24 occurrence in any curriculum?

25 A Well, when we get to that part of the

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1 curriculum --

2 MR. CATALANO: Pat, did we lose you?

3 (Thereupon, a brief break was taken off the
4 record at 12:09 p.m.)

5 MR. CATALANO: We lost you. We are going to
6 start over again. We got disconnected.

7 BY MR. HERSCH:

8 Q Who else has always known since the start of
9 your use of this device that by interrupting the power
10 you could cause the information not to write to flash?

11 A I don't know.

12 Q Well, do you have department inspectors who
13 are involved in the initial approval and evaluations
14 that were aware of this?

15 A All of the inspectors are aware of it.

16 Q Is all of your department inspectors aware of
17 it because they share this knowledge with you, knowledge
18 on this instrument?

19 A Yes.

20 Q So it has not been any secret with your
21 department inspectors that power interruption would
22 cause information not to write to flash?

23 A If the report hasn't printed, correct.

24 Q Okay. Do you know if agency inspectors are
25 aware of this?

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1 A Not to my knowledge they are not.

2 Q Did you have any directives to your department
3 inspectors not to provide your agency inspectors with
4 this information?

5 A No.

6 Q Okay.

7 A I mean, not -- if an agency inspector were to
8 call and say, hey, my power went out, where do I
9 document that, of course we tell them you document it on
10 the reinspection report because they won't have an
11 inspection report.

12 The power went out on previous inspections so
13 they are always taught to document it. They are taught
14 in class to document it. But they are not taught to
15 turn off the instrument to hide results. They are not
16 taught that nor would that ever be added to the
17 curriculum.

18 Q Fine. My question is, your department
19 inspectors have never been instructed to tell your
20 agency inspectors --

21 MR. TRESE: Could I interrupt. Richard, I
22 can't hear you at all and I would like to. Is

23 there a way --

24 MR. CATALANO: We turned the phone around.

25 Let's see how that works.

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1 MR. TRESE: Thank you very much.

2 BY MR. HERSCH:

3 Q You have indicated that you believe there have
4 been inadvertent power interruptions by agency
5 inspectors. How many times are you aware of that
6 occurring?

7 A I'm only aware of a couple. They would not
8 call me, though.

9 Q They would call your department inspectors?

10 A Correct.

11 Q And then they would learn pretty quick when
12 they check the web site the inspection that didn't write
13 doesn't show up on the server, correct?

14 A Possibly.

15 Q When you say the agency inspectors don't know
16 about this phenomenon, what do you base that upon?

17 A You asked if I was aware if they know. I
18 don't know if they know or not. They are not told that.
19 They are not taught that. That is more what I meant by
20 that answer.

21 Q Is it anywhere in any documentation that FDLE
22 has produced about the Intoxilyzer 8000 since you've had

23 one, since the entire program has ever considered an
24 Intoxilyzer 8000, that informs the public, courts or
25 defense attorneys that there will be data not written to

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1 flash if you pull the plug?

2 A No.

3 Q You indicated -- I'm not going to go over the
4 same thing Michael did but I want to follow up a little
5 more closely.

6 You indicated that the problem Ms. Veiga had
7 on the 883 was with her .20 simulator.

8 A That was my understanding, yes.

9 Q From whom?

10 A From the people providing the information that
11 was given to me.

12 Q And who are they?

13 A Kevin Millan, Kim Valezquez. Those would be
14 the two main people that I talked to on the phone.

15 Q Now, was it a problem with the simulator or
16 that she could not get appropriate readings on the .20
17 testing?

18 A My opinion would be it would be with the use
19 of her -- her use of that simulator.

20 Q You were not present, correct?

21 A No.

22 Q You did not see her do the testing?

23 A No.

24 Q You don't have the simulator, do you?

25 A Yeah.

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1 Q Your department has it. Did you test the
2 simulator?

3 A No.

4 Q So how do you know it was the simulator as
5 opposed to the instrument?

6 A Because she remedied the problem with the
7 simulator on her repeat inspection which shows it's not
8 the instrument.

9 Q So in other words, she tried it again and she
10 got the machine to give her the numbers that she needed
11 for the inspection?

12 A No. She made adjustments and she got
13 appropriate readings. You can't make readings come out
14 of an instrument.

15 Q But you can keep trying until you get the
16 readings.

17 What adjustments did she make? I mean, how do
18 you know she made adjustments to the simulator?

19 A I said that's my opinion. I don't know that
20 definitively because I wasn't there.

21 Q And you base your opinion upon your belief
22 that if the machine ultimately gave you appropriate .20

23 readings therefore it had to be something other than the
24 machine?

25 A It's based on my knowledge and experience and
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1 use of the devices and knowledge of the instrument.

2 Q That's a nice fall back. In this particular
3 instance what was done to the simulator that would have
4 made the device give appropriate .20 readings?

5 A You would have to ask Ms. Veiga that. I was
6 not present.

7 Q So you don't know what occurred?

8 A No. I've given you my opinion.

9 Q The letter that you sent to Sergeant John
10 Harris about the 883 doesn't say anything about
11 information not writing to flash or that Ms. Veiga is
12 believed to have destroyed what could be exculpatory
13 evidence in criminal cases, does it?

14 A That is correct.

15 Q Okay. Why?

16 A Because that is what I was legally advised to
17 put in the memo to protect Ms. Veiga.

18 Q By whom?

19 A Legal advisors.

20 Q Who?

21 A I had several.

22 Q Whom?

23 A Mr. Eason, Ms. Traxler, upper chain of
24 command. Maybe all the way up to the Commissioner. I
25 don't know if he read it or if just his people in the

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1 office did.

2 Q Did you get a written opinion --

3 MR. CATALANO: Pat, are you there? We must
4 have lost him.

5 (Thereupon, a brief break was taken off the
6 record at 12:16 p.m.)

7 BY MR. HERSCH:

8 Q The advice that you were given that you
9 couldn't tell the agency inspectors that you had a
10 department inspector who had potentially destroyed
11 evidence of failed inspections was given to you by whom?

12 A I don't remember who gave me that advice.

13 Q Well, you told us that you did not put that
14 information in the memo to Sergeant Harris because you
15 were told -- you had legal advice who told you that you
16 couldn't?

17 A Legal advice was given to me to write that
18 memorandum.

19 Q Okay. So why does the memorandum not say what
20 the problem is?

21 A Because that was their decision.

22 Q Whose decision?

23 A The legal advisors and the people with FDLE.

24 Q Did the legal advisors write that letter?

25 A I don't think they wrote it. I think we all
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1 wrote it together.

2 Q Were there drafts that were sent between you
3 and legal?

4 A I don't -- Maybe. I don't remember.

5 Q Okay. Well, who is responsible for giving you
6 the advice telling the agency inspectors that there may
7 have been failed inspections hidden by Ms. Veiga? Who
8 is responsible for giving you that advice?

9 A Nobody gave me that advice.

10 Q Okay. So I'll ask again. Why is your memo so
11 vague such that anybody who receives it would not know
12 that there may be failed inspections that were not
13 documented in your records?

14 A To protect Ms. Veiga.

15 Q From what?

16 A From the investigation that was going to
17 proceed and from the possibility of her losing her job.

18 Q In her initial statement, the statement given
19 to her of the reasons for her dismissal, they clearly
20 told her the very same information. So why would it be
21 protecting her?

22 A They didn't tell her in her first initial

23 letter saying that she was being placed on
24 administrative leave, they didn't put the reasons why in
25 there.

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1 Q Can you identify for me what provisions
2 indicate that you were not allowed, what regulatory
3 administration statutes or anything else, adhere to this
4 situation that would not allow you to tell the agency
5 inspectors that you had a department inspector that had
6 hidden failed inspections?

7 A No.

8 Q Now, you knew that this document was going to
9 be distributed amongst the defense community, correct?

10 A Yes.

11 Q Is that why you made it so vague?

12 A No.

13 Q When you talked with the State Attorney's
14 Office in this case did you tell them that there may be
15 failed inspections that had been hidden by Ms. Veiga?

16 A I don't think so.

17 Q Okay. Why not?

18 A Because that information was not investigated
19 yet.

20 Q So you had not yet investigated sufficiently
21 to determine whether there were other failed inspections
22 at that time, correct?

23 A No. I don't conduct the investigation. The
24 investigation is conduct by a completely different
25 section.

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1 Q So is that yes that you at that time were
2 unaware of how many machines Ms. Veiga had ditched
3 failed inspections on?

4 A I knew of one. That's it.

5 Q Okay. Had you done any investigation to
6 determine whether she had done it on other instruments?

7 A Not then, no.

8 Q So for all you knew at the time that you sent
9 out that memo every bit her work was then suspect, was
10 it not?

11 A It possibly could be I suppose.

12 Q But you didn't inform anybody -- Is it your
13 testimony that you did not inform anybody of that?

14 A I informed executive investigations.

15 Q When you spoke with Paunece Hodgerson down in
16 the Keys or Jennifer Reinhard, did you inform them that
17 this whole thing was based upon the fact that there had
18 been an inspection that may have -- a failed inspection
19 that may have been hidden by Ms. Veiga?

20 A I don't remember if I went into detail like
21 that or not.

22 Q They are lawyers. They didn't question you

23 about what is going on with the 883, what is the

24 problem?

25 A They wouldn't have known it was 883.

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1 Q I'm sorry?

2 A They wouldn't have known it was 883.

3 Q Didn't they get Sergeant Harris' letter?

4 A Does that say 883 in it?

5 Q Yeah, like in the first sentence.

6 A Okay. Then they would know it was 883.

7 Q And is it your testimony you got no questions
8 about what was wrong with the 883?

9 A I did get questions. I've already said I got
10 questions.

11 Q You indicated to Mr. Catalano there had been
12 no discussions with Sandra Veiga -- that you had no
13 discussions with Sandra Veiga on July 28th at the time
14 that she was asked to leave. Do you recall that
15 statement?

16 A I don't believe I did have conversations with
17 Sandra on July 28th.

18 Q Did you have conversation with Sandra prior to
19 July 28th with regard to the issues of her failing -- or
20 I'm sorry, pulling the plug on a device?

21 A No.

22 Q Did you do it after July 28th?

23 A I have had no conversations with Ms. Veiga
24 regarding this incident.

25 Q You indicate here that she talked to some
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1 agency inspectors, something to do with the
2 investigation and what was being investigated. I
3 believe you identified that as occurring prior to the
4 date of the investigative interviews.

5 Are you aware of her contacting agency
6 inspectors prior to that time?

7 A I'm not positively aware of that, no. And I
8 don't know what time frame it would be. This is
9 speculation based on things that have been said to me
10 during the course of the entire thing. I don't remember
11 when they occurred, in what timeline, what was going on
12 at that point; but, I believe she talked to at least one
13 person.

14 Q Whom?

15 A I already said, that was Louie Taborda.

16 Q I think you identified that discussion as
17 after the interviews. Who are you aware of her speaking
18 with prior to the interviews?

19 A No one.

20 Q Do you recall the date of the interviews?

21 A I don't remember. That would be in the
22 report. I don't remember the exact date of the

23 interviews.

24 Q I have got an FDLE internal investigation
25 report dated on the 22nd, and he did his interviews on

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1 August 5th.

2 MR. CATALANO: Just to make it easy, I
3 listened to the tapes, they are all on the 5th.

4 BY MR. HERSCH:

5 Q You are not aware who she talked to prior to
6 the 5th?

7 A I don't know. I don't know who she talked to
8 after the 5th.

9 Q Well, you are told that she talked to Taborda,
10 correct?

11 A I believe. It's speculation, and I prefaced
12 those answers with that, that I wasn't positive but I
13 believe that that happened.

14 Q Don't get excited. Why do you believe that?

15 A Because of these rumors that were flying
16 around from down there all over the place.

17 Q Who told you that?

18 A I don't remember.

19 Q You indicated to Mr. Catalano that you talked
20 to Mr. Caldwell?

21 A I have spoken to Mr. Caldwell once.

22 Q Tell us the complete conversation if you

23 would.

24 A I don't remember the exact conversation. He
25 sent a public records request. He was asking for

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1 several items. Mr. Rockenstein forwarded the request to
2 me because he believed I had some of the information. I
3 had to call Mr. Caldwell to find out what exactly he was
4 wanting. What did he mean by these few items that he
5 had listed. I got clarification from him and sent him
6 the information that he was requesting.

7 Q What was he requesting?

8 A The rules, the forms, the logs is what he
9 called it but he was talking about the tests which are
10 on the Internet so I told him they were on the Internet.
11 I said that I would be more than happy to provide them
12 if you would like; but, he said that he would get those
13 off the Internet. And I think I might have sent him a
14 copy of the operation's manual and the curriculum.

15 Q The operation's manual, is that your policy
16 manual?

17 A That is our internal alcohol testing program
18 operation's manual.

19 Q Any other policy manuals or internal manuals
20 that you have for your employees?

21 A The FDLE policy and procedures.

22 Q That applies to everyone, though, at FDLE?

23 A Yes.

24 Q As far as the alcohol testing program, your
25 people work off of the operation's manual?

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1 A Well, it's the FDLE policies in combination
2 with the operation's manual.

3 Q Michael was asking you about testing mouth
4 alcohol on machines; in other words, swish, test machine
5 one, two, three and four until you get a machine that
6 says no mouth alcohol and then you swish again.

7 A That is not how I said you should do it. They
8 are trained -- You can tell when you have alcohol in
9 your mouth. You can feel the vapors coming off. So
10 when you don't feel it anymore you might want to swish
11 again; otherwise, you're going to get the incorrect
12 response for the test that you want because you haven't
13 created the correct situation.

14 Q So you don't have a problem with people -- In
15 other words, the human mouth alcohol detector trumps the
16 machines mouth alcohol detector? Is that what you're
17 telling me? The human being determines when they have
18 enough mouth alcohol and then they stop and get more?

19 A Well, you can tell when you have mouth alcohol
20 or alcohol in your mouth.

21 Q If someone were doing several machines at one
22 time and came to a machine and got a -- did not get a

23 mouth alcohol signal and did not go to the next machine
24 to determine if that machine detected mouth alcohol, do
25 you see any problem with that?

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1 A No.

2 Q Why?

3 A You would retest the instrument that didn't
4 give you the appropriate response. The first question
5 should be do I still have mouth alcohol.

6 Q How do you know --

7 A Have I not created the right scenario to get
8 the correct response.

9 Q So why wouldn't you go to another device
10 sitting right next to it to determine whether that
11 machine measures mouth alcohol or not?

12 A Because that is not the correct way you would
13 do it. You are not addressing the instrument that is
14 not giving the response you're looking for. The first
15 question you have is did I create the right situation to
16 get that response. The answer is probably no.

17 Q In other words, you don't think that your
18 inspectors need to do anything objective to determine
19 whether it's the instrument or the lack of mouth
20 alcohol?

21 A That is objective. You are objectively
22 testing it. You are putting more mouth alcohol solution

23 in your mouth so you know you are going to create the
24 right scenario and you provide a sample into the
25 instrument.

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1 Q So you've got one instrument that tells you
2 that you don't have mouth alcohol in your mouth. You
3 just add more mouth alcohol without testing that
4 scenario, that situation of how much mouth alcohol you
5 have there on another independent device, you just
6 accept that because the machine said there is not enough
7 mouth alcohol to trip me that there isn't?

8 A That would be your first hypothesis, yes. And
9 you would test that on the device that did not give you
10 the correct response.

11 Q The first hypothesis is if I load enough mouth
12 alcohol on my mouth I'll be able to get a mouth --

13 A You're either going to get the correct
14 response or you're not.

15 Q It depends on whether your instrument is
16 actually reading it sufficiently and where it determines
17 there is mouth alcohol.

18 A You sufficiently determine by retesting that
19 instrument and getting the correct response that it's
20 appropriately identifying mouth alcohol.

21 Q You said, and this is what I was puzzled
22 about, that that was the scientific method.

23 A I didn't say that.

24 Q Yeah. You said the scientific method is to
25 not go further?

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1 MR. TRESE: I didn't hear it that way.

2 MR. HERSCH: Well, I don't care what you
3 heard, sir. The record will show what it is.

4 BY MR. HERSCH:

5 Q Do you recall saying --

6 A I said the scientific way to do it would be to
7 retest the instrument that didn't give you the
8 appropriate work. I said nothing about scientific
9 method.

10 Q So that would not be the scientific method to
11 not objectively test your stimulus on another device to
12 determine whether it's your stimulus, in this instance
13 the mouth alcohol in the mouth, to determine whether it
14 is the device or your stimulus? You're telling me it's
15 the scientific method not -- Are you telling me it's the
16 scientific method not to objectively test the same
17 scenario on a different device?

18 A No, that would not be how you address a
19 non-appropriate response from the device you are
20 currently using.

21 The appropriate thing would be to put more
22 mouth alcohol solution in your mouth so that you know

23 you have that particular scenario created and provide
24 the sample into the instrument. It's not keep going
25 down the line. Well, if you got mouth alcohol, if you

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1 didn't get it on the next instrument did that tell you
2 that this instrument is not working? That didn't tell
3 you anything. You have got to work on the one that
4 didn't give you appropriate response before you continue
5 on. That's definitely how you would do it.

6 Q You indicated that there was a memo on the
7 log-in records on some subsequent investigation that you
8 did on Ms. Veiga's actions with these devices. Do you
9 have that with you?

10 MR. HERSCH: Do we have that?

11 MR. CATALANO: I think I do. I just remember
12 reading it, but I have a huge packet here. It was
13 a follow-up kind of thing.

14 A It would have been provided with the internal
15 investigation information. However, I do have a copy of
16 it if you would like one.

17 BY MR. HERSCH:

18 Q I would like to see it before we finish. If
19 Michael can find it. That is fine.

20 MR. CATALANO: You can find it faster, I'm
21 convinced, because I've a lot of stuff here that is
22 not your stuff.

23 THE WITNESS: It's in my office. I can go get

24 it.

25 MR. CATALANO: Can we take a break for a

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1 minute and get it?

2 MR. HERSCH: Or we can continue and get it in
3 a bit. We'll come back to it.

4 MR. CATALANO: Let's let her get it and take a
5 short break.

6 Five minute break, Pat.

7 (Thereupon, a break was taken off the record
8 from 12:32 p.m. to 12:35 p.m.)

9 BY MR. HERSCH:

10 Q Have you done an analysis of any other log-in
11 records besides these which are detailed in your
12 August 30 memo?

13 A I have not.

14 Q When Michael was talking with you about the
15 new software, you indicated that it does -- it may do or
16 you intend for there to be more detail on the log-ins.
17 What else do you intend for the new software to do?

18 A After having used the instrument for a couple
19 of years now we know we have sufficient memory where --
20 and this was before all of this came up -- we will be
21 able to save an inspection, whether it is departmental
22 or an agency inspection, after the completion of each

23 set of tests. For example, you get through the .00's,
24 it will save; then you get through the .05's and it will
25 save. So you'll get everything up to that point. You

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1 get through the .08's, it will save there.

2 Now, if you are in the middle of the .08's it
3 will not save those .08's that may have already been
4 conducted. But that way we will have a report from an
5 inspection from its inception. So after each test it's
6 going to save the results of that test.

7 Q So this will guard against the ill of
8 inspectors pulling the plug? It may not. I mean, is
9 that what this fix is for?

10 A No. It's to save the results of an inspection
11 regardless of what happens be it power failure or what
12 so that we have it.

13 However, it takes a huge amount of memory to
14 do that because you are saving at each step and it's
15 saving that block at that point. So you have like
16 several little temp files is my understanding.

17 Q Okay. It saves it to flash so that when you
18 transmit there will be something to transmit up.

19 A Right.

20 Q What else? By the way, when did you decide to
21 do that?

22 A When we started rule revision back at the

23 beginning of this year.

24 Q Okay. What else are you asking the new
25 software to do?

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1 A Agency inspections will be with all dry gas.
2 The log-in records --

3 Q So agency inspectors will now have to have dry
4 gas canisters for .08's, .20's, .05's?

5 A Well, the concentrations will change. It will
6 be .04 and .08 and a .16.

7 Q All right. What else?

8 A I believe. If I have that correctly. But
9 there will be different concentrations. Similar, but
10 different.

11 Q What else?

12 A Off the top of my head I do not remember.

13 Q I noticed that you do not have as much
14 information on your web site as you did prior to
15 December 9th. Are you aware of that?

16 A Yes. The 2006 information has come off.

17 Q Why?

18 A Space. Strictly space.

19 Q Why space?

20 A Our web site is huge.

21 Q How many gigabytes does it hold?

22 A I don't know. The web master said can you

23 make it a little bit smaller. Well, the '06's can come
24 off.

25 Q Can someone obtain '06 now?

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1 A Oh, yeah. With a records request you can get
2 the '06 information.

3 Q Is it only the inspections and the subject
4 test that have been removed?

5 A I don't know. We were talking about removing
6 all of the '06 stuff.

7 Q Right. But what about correspondence and --

8 A Oh, no, all of that would stay on.

9 Q What about other independent testing, the
10 event testing, DOT testing and things of that nature?

11 A That is still on there.

12 Q Okay. The DOT testing from the summer of 2007
13 where you sent the Florida updates, updated software
14 with a couple of instruments to Condi (phonetic), are
15 his results and his reports on the web site in its
16 entirety?

17 A Everything I got from him is. The entire
18 report is.

19 MR. CATALANO: Are you still there, Pat?

20 MR. TRESE: Yes.

21 MR. CATALANO: You are beeping sometimes.

22 BY MR. HERSCH:

23 Q What about his raw data, is that there?

24 A I don't have raw data.

25 MR. TRESE: I couldn't hear you.

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1 BY MR. HERSCH:

2 Q What about his raw data? In other words, how
3 he did the test, what he did, the particular results on
4 each of the tests.

5 A I don't have that.

6 Q Do you have access to it? Would he provide it
7 to you?

8 A I would have to ask him for it.

9 Q Do you know how to get it and can you get it
10 if you want?

11 A I know Mr. Hyman has it so there has to be a
12 way to get it.

13 Q Have you done additional testing of the 8000
14 or any testing of the 8000 for its ability to act on
15 early measure volume?

16 A Yes.

17 Q Where are your results?

18 A In my office.

19 Q Are they posted on the web site?

20 A No.

21 Q What would your testing be called?

22 A Volume checks.

23 Q Are there dates that you did that?

24 A There would be. I don't know what the dates
25 are.

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1 Q What would identify this in my public records
2 request in order to obtain it?

3 A Any testing done by the department on the
4 volume measurement.

5 Q What is your knowledge of whether the memory
6 of the Intoxilyzer 8000 would contain a power interrupt
7 log or a sequencing log?

8 A I have no knowledge of that.

9 Q Have you consulted with the CMI on that?

10 A I have consulted with CMI on the processes of
11 saving data and how that works. Nothing about power
12 interruption logs came up.

13 Q So whether there is a power interrupt log
14 within the device you do not have any knowledge of that?

15 A No, I have not been told there is a power
16 interrupt log.

17 Q Have you been told there is not?

18 A No.

19 Q If that changes would you let us know?

20 A Sure.

21 Q Subsequent to the Adkins' decision -- Do you
22 know what I'm referring to when I talk about the Adkins'

23 decision?

24 A Yes.

25 Q Okay. What correspondence and/or information
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1 or discussions have you had with CMI about the issues
2 therein?

3 A In accordance with what the court required
4 FDLE to provide -- Well, not required FDLE --

5 Q You sent them a letter --

6 A I sent CMI a letter asking questions about the
7 filters based on what the courts were questioning, and I
8 got a response back from CMI.

9 Q You got a letter from them on September 25?

10 A I don't know the date of it, but it's on the
11 web site.

12 Q Do you know whether it's true or not?

13 A Whether it's true?

14 Q Yeah. Have you done any type of testing to
15 determine whether in fact those are the wavelengths for
16 the filters that are used in the Intoxilyzer 8000
17 uniformly throughout the state?

18 A As I testified in Orange County, the filters
19 haven't changed. I have not done any testing.

20 Q So you have not done any independent
21 verification as to the assertions in the CMI letter?

22 A Only the fact that it provides accurate,

23 reliable results and the testing associated with that.

24 Q Is that a yes?

25 A I have done testing, yes.

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1 Q Okay. But you have not done anything to
2 actually confirm that the wavelengths being used are
3 uniform throughout the state and are the ones that are
4 detailed in the CMI letter?

5 A Only through the testing that is ongoing and
6 that goes on each and every day the instrument is used.
7 If the filters weren't correct I wouldn't be getting
8 numbers.

9 Q The question was whether the same -- And I'm
10 talking about filters, but let's talk about the
11 wavelengths -- whether the same micron levels are
12 present in all of the machines throughout Florida as
13 were in the DOT tested instruments?

14 A They are the same.

15 Q How do you know?

16 A CMI has told me they are the same. They have
17 not changed that part.

18 Q Okay. The only way you know that is through
19 CMI representations?

20 A Yes.

21 Q Anything under oath from them?

22 A No. I have the letter that speaks for itself

23 which is what the court wanted.

24 Q Any independent -- Well, they won't come to
25 court here.

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1 Any independent verification that FDLE has
2 done to determine whether in fact the assertions of CMI
3 are true?

4 A Only the testing that goes on every day to
5 show that it is providing accurate and reliable results.
6 You have to use the filters to get a number. It's
7 properly doing that.

8 Q Well, you can use different micron levels to
9 get a reading for Ethanol, can't you?

10 A No. Not with this instrument.

11 Q Why not?

12 A Because you are going to shift the wavelength.
13 It's not going to be looking for the same wave.

14 Q Well, assuming that your software for the
15 particular instrument and the calibrations that are done
16 to it are uniform, that might be true. But you don't
17 actually know whether that is true except by CMI's
18 assertions, correct?

19 A And my own testing. The testing that is done
20 every day.

21 Q Is there anything else from CMI that you have
22 received in response to any issues raised in the Adkins'

23 decision?

24 A That is the only information to my knowledge
25 that I have.

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1 Q Okay. If anything else comes up will you let
2 us know?

3 A Yes.

4 Q I mean directly. I mean not posting it
5 obscurely on the web site; but, I mean within the
6 context of this deposition.

7 My question is, if anything arises that would
8 more fully answer the questions we have asked will you
9 provide that to us directly?

10 A Yes. I was going more towards I don't know if
11 information might have been provided to the state that I
12 don't have.

13 Q Other than the volume studies that you did,
14 the volume checks that you did, is there anything else
15 that has been done to address the volume anomalies on
16 this device?

17 A The change in the software from version 26 to
18 27.

19 Q Okay. About a year ago I asked you whether
20 you thought it odd that there were a higher number of
21 purge fails that followed a VNM indication from the
22 device than following a non-warning subject test. You

23 indicated to me at that time that you did not believe
24 that it would be mechanical but that it would be
25 software. Have you done any follow-up on that? Do you

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1 understand my question?

2 A I understand your question. I don't remember
3 saying that it was software. I think that was your
4 opinion. I believe it to be the subject.

5 Q You think it to be the subject?

6 A (Witness hods head.)

7 Q How so?

8 A Volume not met and that trend tend to be the
9 person is stopping and starting and stopping and
10 starting and stopping and starting. If they stop and
11 start at a certain point they can cause the instrument
12 to purge fail as well.

13 Q On that reading, correct? On that particular
14 subject test?

15 A Well, purge fails come after the reading.

16 Q How does that occur and why would it cause the
17 instrument to not purge appropriately?

18 A Well, it depends on the timing of it. But if
19 it's still providing a sample, and it would have to be,
20 you know, within split seconds; but, they are adding
21 more alcohol when it's trying to get it out. But they
22 can only do that for a few seconds, otherwise, you are

23 going to get an improper sample which we also see in the
24 data.

25 Q You told me last December you do not believe
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1 it would be mechanical. There wouldn't be a mechanical
2 reason for this to occur.

3 A I don't remember saying that. But another
4 opinion I have is that it could be the mouth piece is
5 still on. The mouth piece is still on the breath tube
6 and that can cause purge fails after. Is that what
7 you're saying?

8 Q That happens more on a VNM than it does a
9 regular subject test?

10 A Well, that was your opinion that it happens
11 more on VNM's than not. But that can cause a purge fail
12 after subject samples, yes, it can.

13 Q Why would leaving the mouth piece on be more
14 prevalent after VNM than after straight subject test?

15 A My opinion isn't going to that correlation.
16 I'm not sure that your statements and your assertions on
17 that correlation are more VNM purge fails than there are
18 not.

19 Q Well, assume for a second there are more VNM
20 purge fails than not. Why would leaving the mouth piece
21 on be, in your opinion, the response or the reason for
22 that phenomenon?

23 A My opinion didn't go to that. My opinion goes
24 to the fact that if you leave the mouth piece on you can
25 get a purge fail after subject samples.

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1 Q Do you have anything to show us to make us
2 believe that the mouth piece is left on more often on a
3 VNM than it is on non-VNM?

4 A No.

5 Q And it's your belief that on a VNM that
6 someone is blowing at the wrong time?

7 A When you get volume not met messages with most
8 of the videos that I have looked at when this occurs the
9 subject is stopping and starting providing their sample
10 constantly through the delivery time that's allowed.
11 That could have something to do with it was my point.

12 Q Okay. But you don't know for sure if that is
13 what it is, if that phenomenon exists that you have more
14 purge fails when you have a VNM?

15 A I don't know.

16 Q Prior to July 24th of 2008 had you had any
17 other problems with Ms. Veiga?

18 A No.

19 Q Okay. Had you had any reason to believe that
20 she wasn't doing her job in an appropriate fashion?

21 A I don't know what you mean by appropriate
22 fashion.

23 Q Not following the appropriate procedures and
24 policies of FDLE and the alcohol testing program.

25 A Maybe shortly before that.

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1 Q How shortly?

2 A A couple weeks.

3 Q In what fashion?

4 A I was looking into something that you are
5 already aware of.

6 Q What?

7 A I had heard that she had opened an instrument,
8 not that she is not allowed to, by rules she is allowed
9 to open instruments; however, it's our policy not to
10 open them up. And I had recently found out that she may
11 have opened Kevin Millan's instrument.

12 Q How recently did you find that out?

13 A It was within a couple weeks.

14 Q A couple weeks of what?

15 A Of all of this stuff happening.

16 Q Subsequent to this? Well, when you say this
17 stuff happening --

18 A The July 24th.

19 Q So subsequent to July 24th you learned of
20 that?

21 A Yes.

22 Q Okay. So my question was prior to July 24 you

23 really didn't have any indication at all that she had
24 been doing anything wrong?

25 A Not as far as procedural, no. Other than some
ACCURATE STENOGRAPHY REPORTERS, INC.

1 new information that was coming out that I hadn't
2 corroborated yet.

3 Q What do you know, what did you know, and when
4 did you know it?

5 A Well, we have had this discussion so this
6 isn't new. I had this in my last depo.

7 Anyway, I believe it was brought up the
8 beginning of July, the end of June, somewhere around
9 there.

10 Q Okay. By whom and how?

11 A By Kevin Millan. He told me that he was
12 concerned about something and that, you know, Sandra had
13 opened the instrument and he hadn't seen another
14 department inspector opening the instrument, that type
15 thing. Was it okay. I said, well, it's not a rule
16 violation; however, we don't open instruments. It's
17 just our policy.

18 Q Okay. If you do open an instrument what are
19 you supposed to do?

20 A We don't open instruments. What happened in
21 this particular incident, she ended up having to send it
22 back to the repair facility. We don't have the proper

23 tools and the proper setting to open instruments and

24 then close them back up so they can be used.

25 Q Anything else besides that?

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1 A At the same time, the same conversation,
2 possibly some information concerning how she was
3 treating some of her agency inspectors.

4 Q Be more specific, please.

5 A Making them bring their instruments to her at
6 her demand.

7 Q You didn't like that?

8 A No. She shouldn't be doing that. That is not
9 providing service.

10 Q How is it determined whether an instrument is
11 going to be brought to FDLE or not?

12 A A lot of times it will be worked out between
13 the two inspectors, the department inspector and the
14 agency inspector. Many times after repair the
15 instrument comes back directly to the department.

16 And I don't mind, it wasn't that I minded that
17 she was having them come to FDLE per se, it was that she
18 was demanding them to bring it on a certain day, at a
19 certain time.

20 Q Okay. So there is no specific directive from
21 Tallahassee to your department inspectors on when you
22 would have an 8000 brought to an FDLE facility for

23 annual testing?

24 A No.

25 Q Okay.

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1 A That's acceptable.

2 Q Okay. I'm not suggesting it's not. But you
3 have no directives on that, either written or oral?

4 A No.

5 Q That would be between the department inspector
6 and the agency inspector?

7 A That's correct.

8 Q Okay. And there is no directives on how they
9 determine when that is supposed to be done or whether it
10 should be done in that fashion?

11 A No.

12 Q Okay. So you received your complaint about
13 that as well?

14 A Yes, and that she was calling her agency
15 inspectors her secretaries. So I had some possible
16 employee relation issues to work with her on. That was
17 it. But that was all at the same time shortly that I
18 was looking into when this all came up. The July 24th
19 power instrument issue.

20 Q So you have got the complaints of they are
21 making us take the instruments to FDLE on specific dates
22 and times. We are being referred to as secretaries.

23 And what else?

24 A Some unbecoming -- possible unbecoming
25 conduct. This came up after. I found out about this

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1 after the July 24th instrument power issue.

2 Q What did you learn then?

3 A Her relationship with Danny Smith and things
4 that were going on at Mr. Smith's agency in his parking
5 lot.

6 Q Has this ever been put into writing or
7 detailed in any FDLE memorandum or documentation?

8 A No. It has not been investigated.

9 Q What is the source of that information?

10 MR. HERSCH: Actually, I would like to take a
11 break for a minute. Could I have a minute?

12 (Thereupon, a break was taken off the record
13 from 12:57 p.m. to 1:07 p.m.)

14 BY MR. HERSCH:

15 Q We are back from our five minute break.

16 When we left we were discussing the fact that
17 you had alluded to a matter you learned of subsequent to
18 July 24th involving FDLE Inspector Veiga and Agency
19 Inspector Smith from Coral Gables.

20 A Yes.

21 Q Could you be a little bit more specific about
22 that?

23 A I found out they were having arguments in the
24 parking lot of his agency.

25 Q Okay.

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1 A And I found that to probably be not
2 appropriate. I would have addressed it directly with
3 Ms. Veiga but she really wasn't an employee at that
4 time. She was an employee but --

5 Q She was suspended?

6 A Right.

7 Q And you did not believe that public arguments
8 between your agency and department inspectors was
9 appropriate?

10 A Correct.

11 Q Okay. Anything else that you have learned
12 prior to July 24th or subsequent to July 24th about Ms.
13 Veiga that we haven't discussed up to this point?

14 A That's pretty much it. It had to deal with
15 personnel type issues that would be addressed directly
16 with Ms. Veiga.

17 Q Okay. Were those subsequent to the 24th that
18 you learned of them?

19 A Yes.

20 Q And how did you learn of them?

21 A I don't remember if it was from my Department
22 Inspector Dwight Hackney or if it was from -- I think it

23 might have been from him, but I'm not positive.

24 Just rumblings going on after the

25 investigation started. Agencies began rumbling about

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1 certain things.

2 Q And because you and I may draw a line as to
3 whether it is of evidentiary or Brady significance, I am
4 going to ask you to detail what those were, the
5 rumblings if you were.

6 A Well, they are the things that I have already
7 brought out. Some of the rumblings were a lot of the
8 women agency inspectors didn't like the way Sandra
9 treated them. Not all of the women inspectors, but some
10 of them. That is all I can think of right now.

11 Q Okay. If you think of anything else would you
12 let us know?

13 A Sure.

14 Q Okay. I have already asked you, as I do
15 traditionally, if you think of anything which would more
16 fully answer the questions we have asked or will ask of
17 you today, would you let me know?

18 A (Witness nods head.)

19 Q Is that a yes?

20 A That's a yes.

21 Q And if you do not have an opportunity to read
22 this deposition prior to any hearing or trial would you

23 let Mr. Trese know?

24 A Yes.

25 MR. HERSCH: Okay. I don't believe I have any
ACCURATE STENOTYPE REPORTERS, INC.

1 further questions for you.

2 MR. PALAIDIS: I have just a few questions.

3 CROSS EXAMINATION

4 BY MR. PALAIDIS:

5 Q About those incidents that were prior to
6 July 22nd, you know, her issues with calling inspectors
7 secretaries and things like that.

8 A Yes.

9 Q Did you ever disseminate that information in
10 any way, shape or form to anyone at the Miami State
11 Attorney's Office?

12 A No.

13 Q Was it ever documented in any way, shape or
14 form?

15 A No.

16 Q Okay. And I am just kind of cleaning up from
17 stuff I heard from before.

18 I have got a question as far as machines.
19 Now, ideally you mentioned that one of the issues was
20 her having the inspectors bring the machines to the
21 facility that she was at to have them manually tested?

22 A Yes. Well, the issue was demanding that they

23 bring it on a certain day at a time and not working with
24 their schedule, not bringing it to MROC.

25 Q As far as testing, I guess my concern is when
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1 you are testing the machine and you are testing it in
2 the room it is going to work in where people under
3 suspicion of DUI are brought to that room and they are
4 blowing into that machine, would testing the machine in
5 that room be more appropriate than testing it in a
6 foreign room where it's actually being used?

7 A With the Intoxilyzer 8000 that is no longer an
8 issue based on all of the quality control testing that
9 is done with the breath test itself. So that is no
10 longer an issue.

11 With the 5000 you would want to preferably
12 test it in its location. Moving an Intoxilyzer 5000 we
13 didn't run control tests or diagnostic tests, it would
14 be more of an issue. The 8000 is a mobile instrument
15 designed to be used in a mobile setting and it is not an
16 issue.

17 Q So if the machine is having issues, though,
18 with a certain room that it is in at a police station,
19 wouldn't testing it in that room at that police station
20 be more prudent than taking it out of that room?

21 A No, because the control testing and the
22 diagnostic testing that occur with the subject test

23 before they provide their breath samples and after will
24 show you that the environment would not be suitable or
25 is suitable or something like that.

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1 Q Okay.

2 A At that point in time, and that is very
3 important.

4 Q Okay. As far as the e-mail that you had sent
5 out that had the Sergeant John Harris letter, and you
6 e-mailed that out on August 1st, I know it went to
7 certain parts of the Miami State Attorney's Office, you
8 stated that you spoke with Pat Trese and Jenn Reinhard
9 at some point concerning that e-mail.

10 A Yes.

11 Q Okay. And I know you weren't too specific as
12 far as how soon they got back to you in response to that
13 e-mail. Could you be more specific?

14 A I believe I talked with them very -- with one
15 or both of them -- very shortly after the e-mail went
16 out.

17 Q What is shortly?

18 A Within a day or two at the most.

19 Q Okay. I have got a question as far as the
20 machine in regards to these power outages.

21 My understanding -- I mean, you start
22 unplugging a computer or a laptop, you do it a few times

23 here and there, you're going to have damage to the
24 machine on the inside to the software, that sort of
25 thing. Is this not going to cause that kind of problem

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1 to the Intoxilyzer 8000?

2 A No. If you are going to have damage to the
3 software, for example, it will not successfully complete
4 the diagnostic tests. Diagnostic checks, one of the
5 checks that are conducted tests the track sum of the
6 software programming. If there is damage the track sum
7 will change.

8 Q But what if that is effected as well by the
9 power outages, its own diagnostic check? The software
10 that conducts the diagnostic check, what if that is also
11 effected by the power outages?

12 A Right, but it is looking for a specific
13 number. The power outages aren't going to change that
14 number that it is looking for.

15 Q But like you have a laptop or a computer, it
16 becomes unplugged once in a while, it crashes because of
17 the power. It's been described to me as basically
18 you're hanging someone over a cliff, when you pull the
19 plug it's like dropping them off the cliff and you are
20 going to have some kind of damage to your computer.
21 That doesn't happen on the Intoxilyzer 8000?

22 A No. You would see it in its diagnostic

23 checks.

24 Q How do you know that? Is that in CMI

25 literature?

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1 A Well, I know the extent of the diagnostic
2 checks. It checks voltages and currents; it checks the
3 software; it checks the memory; it checks temperatures;
4 it checks everything before it allows tests on it. And
5 it also does the control test to show that the
6 calibration wasn't effected either.

7 Q Is that diagnostic check, is that part of the
8 machine itself or is that just a separate machine that
9 you can plug in and it runs the diagnostic check?

10 A No. The instrument is checking its internal
11 parameters.

12 Q Okay. What I'm trying to get at and
13 understand, what if the diagnostic check itself is
14 effected by the power outages? What if it is damaged by
15 the power outages?

16 A Then it won't conduct it, it will fail it.

17 Q So it's automatically going to know?

18 A Yes.

19 Q Okay. And you mentioned earlier that power
20 outages and noting them, things like that, that had come
21 up in some of the staff meetings you had quarterly,
22 correct?

23 A Yes.

24 Q I think you also said that nothing was ever
25 written down or anything like that for these meetings,
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1 it's just something that you may have heard that was
2 happening or issues that may have come up, that's when
3 it was brought to everyone's attention at the staff
4 meetings, right?

5 A Yes, that would be an example.

6 Q Okay. Then were power outages and them not
7 being noted, was that coming up? Were you hearing about
8 that and that is what prompted you to bring it up at the
9 staff meeting?

10 A No. Basically that field notes document, it's
11 an internal document that we record quite a bit of
12 information on, I was constantly having to go back over
13 that document because the department inspectors were
14 mainly not recording the notification versus contact;
15 and, the notification box that is checked is when the
16 agency inspector notifies the department inspector
17 during an agency inspection. It's part of a rule so
18 it's very important they do it correctly. I was having
19 to correct them based on what they wrote.

20 So and so called me and it's failing its .20
21 during the inspection. I'm like, well, that should be
22 an agency inspection notification.

23 I would constantly be going over that form;
24 and, you know, you are recording everything that goes on
25 during your inspection or recording everything that goes

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1 on during the agency inspection that they told you.

2 And so that's mainly why we were going over
3 the form, not because they are saying, oh, we are having
4 power outages.

5 Q Because it seemed earlier when you spoke about
6 it like the actual topic of noting a power outage during
7 an inspection, that had come up in the staff meeting?

8 A We have discussed power outages.

9 Q Specifically?

10 A Yes.

11 Q And did you hear specifically about instances
12 of that occurring and people not knowing?

13 A My recollection of at least one meeting was an
14 inspector asked that question, when I have a power
15 outage I'm supposed to be writing this on this form or
16 on the report. I said, I don't care where you write it,
17 you can write it on both, but it better be written down.
18 Preferably you'd write it on the field notes. That is
19 what came out of my mouth.

20 If they wrote it on the inspection report I'm
21 not going to dock them, you know, because that is one of
22 their work plans is to properly fill out paperwork. If

23 they wrote it on the report and not the field notes I
24 wouldn't dock them for that because at least they
25 recorded it on one of those documents.

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1 Q Who brought that to your attention, that
2 question?

3 A I don't remember.

4 Q Was it an agency inspector?

5 A No. It would only be department inspectors.

6 Q Okay. And that was the extent of it, you
7 haven't heard about this issue occurring at any --

8 A No.

9 Q -- throughout the State of Florida?

10 A No. My inspectors, I read every field note
11 document that comes through the office and occasionally
12 I'll see where it has been documented lost power,
13 complied to that point, restarted the inspection with no
14 problems. So, I mean, they are recording it on the
15 field notes.

16 MR. PALAIDIS: Okay. I don't have anything
17 else.

18 MR. CATALANO: I just want to follow up on a
19 couple things. It's my deposition and I am the
20 king today.

21 REDIRECT EXAMINATION

22 BY MR. CATALANO:

23 Q Who are the women inspectors that were
24 complaining that they didn't like the way Sandra Veiga
25 was treating them? Was it Franca and Pat from Broward?

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1 A Actually, they were the two not complaining.

2 Q Who were the women complaining, do you
3 remember?

4 A I know a couple.

5 Q Who are they? Sorry, you are going to have to
6 answer this.

7 A And I would say complaining might be a strong
8 word for my answer I'm going to give you.

9 Q Bringing it to your attention.

10 A Right. Well, it was brought to my attention
11 not from these people, that's why I'm kind of a little
12 leary. Ms. Perez noted the conflict --

13 Q Tension between them?

14 A Tension is a good word. Ms. Valezquez,
15 Officer Valezquez -- Actually, probably they are both
16 officers. Officer Valezquez, Officer or maybe it's
17 Detective Coreman, she did not seem to have as much
18 tension or conflict.

19 The two with Broward Sheriff's Office that you
20 named, I believe -- or maybe it was Franca who didn't
21 have a problem, maybe Pat Nance (phonetic) might have
22 had a little bit of tension or conflict.

23 Q Well, I asked them in a deposition --

24 A I can't remember.

25 Q I asked them in a deposition about a month ago
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1 did you have any issues or problems with Sandra Veiga.
2 You know, I have to ask these questions. They said they
3 had no problems, they liked her. They talked about her
4 kid and small talk. You know when they do these
5 inspections they are sitting around bored for a long
6 time, too, right? The agency people.

7 A Yes.

8 Q You are aware they have nothing to do while
9 they're sitting there watching this?

10 A Yes.

11 Q The last thing I want to ask you is, you were
12 nice enough to save me from having to dig this out.
13 This is the follow-up memo you wrote dated August 30th?

14 A Yes.

15 Q I caught most of what was going on here, but I
16 want to make sure I understand.

17 Wasn't there some issue, help me get this
18 straight, that she said something in her statement that
19 the log didn't verify?

20 A Yes.

21 Q Can you point me to which one? I remember
22 that, but I don't remember as I look at it again now.

23 Can you help me, please?

24 A From my recollection she stated that she had
25 power failures that day. That would be noted by the

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1 first log-in, and then having the subsequent log-in
2 after that where they all three were started again.
3 However, 883 has an additional log-in compared to the
4 other two.

5 Q Which just doesn't make any sense, does it?

6 A Not when she also stated in her testimony that
7 they were all done at the same time. Now, obviously
8 they probably will be off by maybe a few minutes as you
9 are progressing, but there weren't -- there is an
10 additional log-in for 883.

11 Q So when you saw this, this caught your
12 attention, right?

13 A Yes.

14 Q And keep in mind that Joe Demma is not an
15 expert in how the machines work, right?

16 A Right.

17 Q So somebody had to explain to him that this
18 doesn't make sense what she just said, right?

19 A Well, I also did say, although not definitive
20 because we don't know, it's not logging where she is at;
21 but, the extra log-in for 883 versus the other two does
22 throw some red flags, and the fact it is finished much

23 later.

24 MR. CATALANO: Go ahead.

25

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23 deducing.

24 Q What other reasons would there be for those
25 log-ins to appear in that fashion?

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1 A That's a good question because she is doing a
2 department inspection, she is going to be logging in to
3 do a department inspection and not anything else.

4 Q What if somebody is doing an agency
5 inspection, is there a reason they would log in multiple
6 times?

7 A Yes.

8 Q Why?

9 A After the inspection is over if they can't get
10 the results to upload they are going to have to re-go in
11 to that particular menu which is going to cause a log-in
12 record and that will create multiple log-ins.

13 Q Now, when I look at an agency inspection and
14 there is a time up at the top, is that the time it is
15 completed or the time that it commences?

16 A The agency inspection time is the time it's
17 completed.

18 Q So I would be able to tell then about log-ins,
19 the log-ins would then give me more information as to
20 whether it occurred when they tried to transmit or
21 whether it occurred prior to the --

22 A Yes.

23 Q -- sometimes prior to completion?

24 A You could deduce some of that information,

25 yes.

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1 Q I'm sorry, that time is when it is completed?

2 A The agency inspection time on the report is
3 the time it is completed.

4 MR. HERSCH: Thank you. Thank you for
5 allowing me to interrupt.

6 MR. CATALANO: Okay. I have nothing else.

7 CONTINUED REDIRECT EXAMINATION

8 BY MR. CATALANO:

9 Q Have you understood all of the questions
10 today?

11 A I believe so, yes.

12 Q Have you had adequate time to answer them?

13 A Yes.

14 Q Has everyone, even Mr. Hersch, been polite to
15 you?

16 A Yes.

17 Q Including Mr. Trese, was he polite to you?

18 A Yes.

19 Q If called to testify at a trial or hearing or
20 if Stuart Hyman was grilling you in Orlando again would
21 your testimony be consistent with what you told us today
22 under oath?

23 A Yes.

24 MR. CATALANO: Read or waive?

25 THE WITNESS: I would like to read if it is
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1 transcribed.

2 CROSS EXAMINATION

3 BY MR. TRESE:

4 Q Laura, once you were made aware of what I'm
5 going to call the 883 situation, in addition to
6 forwarding that after you had collected that information
7 to the Internal Affairs Division if you will, did you
8 also make an independent assessment about the impact
9 these allegations were going to have with respect to the
10 accuracy and reliability of subject samples in Monroe,
11 Dade and Broward County?

12 A Yeah.

13 Q That's implicit I would imagine, but I just
14 want that to be clear.

15 I mean, you also in addition to collecting
16 that information you were making an assessment. What
17 was that assessment based on?

18 A It would be based on the data -- The
19 assessment was really on 883 itself, the instrument that
20 I was pretty positive that this happened on; and, I have
21 to say it that way because at that point in time the
22 investigation wasn't concluded.

23 Q Let me interrupt you for one second.

24 What was the assessment that you had made in
25 terms of accuracy and reliability?

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1 A Well, I had the instrument removed from
2 service and an agency inspection conducted; and, it was
3 fine, it complied with the requirements. And then I had
4 the instrument brought up to Tallahassee and a
5 department inspection was conducted in my presence by my
6 Jacksonville inspector, Matt Myatt, and it complied with
7 the requirements.

8 And then I had the instrument sent to an
9 authorized repair facility for calibration just as a
10 courtesy service for the Miami-Dade Police department.

11 The instrument was providing accurate and
12 reliable results. This is not a reliability issue, this
13 was an employee performance issue.

14 Q Can you explain just a little bit more why it
15 is not a reliability issue?

16 A Well, you can look at each breath test itself
17 conducted on the instrument; and, meeting the
18 requirements of Form 37 shows that that test is reliable
19 on that instrument as well as the agency inspections
20 conducted by Miami-Dade Police Department shows that the
21 instrument is providing accurate and reliable results;
22 and, all of that is independent of Ms. Veiga.

23 Q That would apply to a Coral Gables instrument,
24 a FHP instrument, a Miami Beach instrument, any agency,
25 that would be the analysis that you would be utilizing,

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1 correct?

2 A Correct.

3 Q And I would assume that you had conversations
4 with me and other State Attorneys as this information
5 became available about the impact of accuracy and
6 reliability and that possibility, you know, as
7 information was coming in?

8 A Yes.

9 MR. TRESE: I have nothing further. Thank you
10 very much.

11 MR. CATALANO: Nice talking to you. Now we'll
12 end the deposition.

13 (Thereupon, the taking of the deposition was
14 concluded at 1:28 p.m.)

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1 REPORTER'S DEPOSITION CERTIFICATE

2

3 I, KIMBERLY S. BARTHOLOMEW, Professional
4 Court Reporter, certify that I was authorized to and
5 did stenographically report the deposition of Laura
6 Barfield, the witness herein; that a review of the
7 transcript was requested; that the foregoing pages
8 are a true and complete record of my stenographic
9 notes of the deposition by said witness; and that
10 this computer-assisted transcript was prepared under
11 my supervision.

12 I further certify that I am not a
13 relative, employee, attorney or counsel of any of
14 the parties, nor am I a relative or employee of any
15 of the parties' attorney or counsel connected with
16 the action.

17 DATED this 9th day of January, 2009.

18

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22

KIMBERLY S. BARTHOLOMEW,
Professional Court Reporter

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ACCURATE STENOGRAPHY REPORTERS, INC.

23 Under penalties of perjury, I declare that I have
24 read by deposition transcript, and it is true and
25 correct subject to any changes in form or
substance entered here.

Date

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ACCURATE STENOGRAPHY REPORTERS, INC.
2894 Remington Green Lane
Tallahassee, Florida 32308
(850) 878-2221

January 9, 2008

Ms. Laura Barfield
FDLE
2729 Fort Knox Boulevard
Building 2, Suite 1200
Tallahassee, Florida

Re: State of Florida vs. Nancy Press
Deposition of Laura Barfield

Dear Ms. Barfield:

This letter is to notify you that your deposition taken on December 19, 2008 in the above-styled case has been transcribed.

Please contact our office at the above telephone number to make arrangements to come in to read and sign your deposition. If we do not hear from you within 30 days, the original errata sheet will be forwarded on to the appropriate party without your approval and signature.

Thank you for your cooperation in this matter.

Sincerely,

Kimberly S. Bartholomew
Court Reporter

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