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REPORTER'S RECORD

VOLUME 2 OF 2 VOLUMES

TRIAL COURT CAUSE NO. 1682012

THE STATE OF TEXAS ) COUNTY COURT AT LAW

)

V. )

NUMBER SEVEN

)

)

DONALD ANDREWS ) HARRIS COUNTY, TEXAS

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HEARING

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On the 28th day of July, 2010, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Pam Derbyshire, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

1 APPEARANCES

2

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

2 THE COURT: On the record Cause No.  
3 1682012, State of Texas versus Donald Andrews.

4 When we broke Ms. Culbertson was subject  
5 to cross-examination.

6 Please proceed.

7 CROSS-EXAMINATION (CONTINUED)

8 BY MS. PALMER:

9 Q Ms. Culbertson, yesterday you talked about  
10 problems with the HPD crime lab.

11 A That is correct.

12 Q So these problems that you discussed  
13 yesterday on the witness stand, did you ever inform  
14 me as the Deputy Chief of the Misdemeanor Division  
15 of these problems?

16 A No, I did not.

17 Q Okay. Any problems with the Bat Vans that  
18 you discussed yesterday, did you ever inform me as  
19 the Deputy Chief of the Misdemeanor Division of  
20 these problems?

21 A I don't recall if I did or not.

22 Q Okay. Any of the problems you mentioned  
23 yesterday, did you ever inform any district  
24 attorneys in Harris County of these problems?

25 A Again, I don't recall.

1 Q So you don't remember if you told anybody  
2 at the DA's office about any problems with the HPD  
3 crime lab?

4 A No, I don't recall.

5 Q Okay. The issue with filing the IAD  
6 complaint against Irma Rios. Did you ever inform me  
7 of that?

8 A As an IAD investigation, once it's filed,  
9 its confidential, and I'm not allowed to discuss  
10 that with anybody.

11 Q Once you left HPD, did you tell me that?

12 A No, I did not.

13 Q Did you ever tell any district attorneys  
14 in Harris County about that investigation?

15 A No, I did not.

16 Q Okay.

17 A George Wong talked to the Houston Police  
18 Department, the Chief of Police, Charles McLeland.

19 Q Did you ever inform me of that?

20 A No, I did not.

21 Q Did you ever inform any assistant district  
22 attorneys in Harris County of that conversation?

23 A Not that I recall, no.

24 Q How long have you worked at Lone Star  
25 College?

1           A     Approximately two months.

2           Q     And how did you get the job at Lone Star  
3 College?

4           A     I applied for the position. I  
5 interviewed, and they hired me.

6           Q     Who did you interview with?

7           A     I interviewed with Charlotte Hudson, Vicki  
8 Amsey, Wendy Jasper Martinez, and Larry Stewart.

9           Q     When did this interview take place?

10          A     I don't recall the exact date.

11          Q     What month?

12          A     The best I can recall is in April sometime.

13          Q     April, 2011?

14          A     Correct.

15          Q     Where did the interview take place?

16          A     At Lone Star College.

17          Q     At Lone Star College, what is your job  
18 title?

19          A     My title with the college is staff.

20          Q     And what is your job description?

21          A     I am a technical supervisor for the breath  
22 testing program.

23          Q     Who do you work with at Lone Star College?

24          A     I work with Vicki Amsey and George Wong,  
25 Charlotte Hudson, and then Larry Stewart and Frank

1 Mitchell work in the law enforcement academy.

2 Q Who is your direct supervisor?

3 A My direct supervisor is Wendy Jasper  
4 Martinez.

5 Q And you mentioned that you're a technical  
6 supervisor, as well. What are your duties in that  
7 role?

8 A As a technical supervisor, I am  
9 responsible for the maintenance and proper operation  
10 of the Intoxilyzer 5000. I am the custodian of  
11 records for records generated by our Intoxilyzer  
12 5000, and I make sure the operators maintain and  
13 fill out their documents properly; and I also repair  
14 the instrument and come to court as needed.

15 Q Do you teach a class at Lone Star College?

16 A I will.

17 Q But you haven't yet?

18 A Not yet.

19 Q What class will you teach?

20 A The breath test operators' course.

21 Q How long is that course?

22 A It's a week-long course.

23 Q How often will you be teaching that  
24 course?

25 A Right now we've discussed having the

1 course six times a year.

2 Q How long did you work at the Houston  
3 Police Department?

4 A Approximately four and a half years.

5 Q And what was your job title at the Houston  
6 Police Department?

7 A It was criminal specialist.

8 Q What were your duties in that position?

9 A In addition to being a technical  
10 supervisor, I was also an analyst in the toxicology  
11 section where I analyzed blood, urine, and liquor  
12 samples for the presence of alcohol.

13 Q So what were your specific duties at HPD  
14 in regards to breath testing?

15 A I was technical supervisor, and the duties  
16 were the same as they were, that I mentioned  
17 previously, for Lone Star College.

18 Q You have the same duties now that you did  
19 at HPD in regards to breath testing?

20 A That's correct.

21 Q At HPD, what were your duties to do blood  
22 testing?

23 MR. LEWIS: Object to relevance.

24 THE COURT: Overruled.

25 A I would receive evidence that was



1 submitted and analyze it. I would report the  
2 findings via our online system and file the report  
3 and then, again, testify as needed.

4 Q (By Ms. Palmer) And regarding the blood  
5 testing, you originally conducted blood alcohol  
6 testing, right?

7 A That is correct.

8 Q When did you accept the job at Lone Star  
9 College?

10 A I don't remember the exact date. It was  
11 late April, early May.

12 Q When did you give notice at HPD that you  
13 would be leaving?

14 A I gave two weeks notice at HPD.

15 Q If you left on May 13th, you gave notice  
16 two weeks prior to that?

17 A Correct.

18 Q Did you tell anyone at Harris County's  
19 District Attorney's office where you would be  
20 working after you left HPD?

21 A No, I did not.

22 Q Why not?

23 A Because from previous coworkers leaving --  
24 Janno Chu leaving in January and George Wong leaving  
25 in March -- I remember Ms. Rios, on both of those

1 occasions, saying that we were not -- to not notify  
2 y'all, that she would take that responsibility.

3 Q Did you know if she did notify anyone at  
4 Harris County District Attorney's office that you  
5 were leaving or where you were going?

6 A I have no knowledge of that.

7 Q When you turned in your notice, were you  
8 specifically told by Ms. Rios to not tell anybody  
9 from the DA's office where you were going?

10 A No.

11 Q What gave you the impression -- you said  
12 Ms. Rios said you can't tell anybody where you're  
13 going. When did she say this?

14 A She didn't say that. That was based on  
15 two previous conversations with her after my  
16 coworkers left.

17 Q Okay. So it was your understanding that  
18 you shouldn't tell anybody where you're going?

19 A Based on my conversation with her in the  
20 past regarding my two coworkers leaving, yes, that  
21 is correct.

22 Q You realize that the DA's office relies on  
23 you for your past blood testing and full breath  
24 testing, right?

25 MR. LEWIS: Objection; relevance.

1 THE COURT: Are we going to get to the  
2 breath test in this case?

3 MS. PALMER: There is a lot of background  
4 that's important.

5 THE COURT: You may be unhappy with her  
6 conduct, but there is only one thing and one  
7 thing only she is here for, which is about the  
8 breath test given to this gentlemen in Bat Van  
9 5.

10 MS. PALMER: Respectfully, it's more  
11 important than that.

12 Let me make clear for the record, I am not  
13 unhappy with this witness. It's important that  
14 the State knows the truth about what's going on  
15 in the Houston Police Department crime lab.

16 From yesterday's direct examination and  
17 cross-examination, this witness is acting as a  
18 whistle-blower with regard to HPD.

19 THE COURT: Approach the bench.

20 Ms. Culbertson, could you wait in the  
21 hallway.

22 (Discussion off the record)

23 THE COURT: All right. Back on the  
24 record.

25 Ms. Palmer, please proceed.

1 MS. PALMER: Thank you.

2 Q (By Ms. Palmer) So when you left HPD that  
3 meant that there were no technical supervisors  
4 working at the Houston Police Department crime lab,  
5 right?

6 A That is correct. All three of us quit in  
7 about a four-month time span.

8 Q And after you left, you were still  
9 subpoenaed for court?

10 A That is correct.

11 Q But you left HPD because of integrity  
12 reasons -- scientific integrity reasons, right?

13 A Based on the part of the crime lab, yes.

14 Q Okay. And you came to court on those  
15 subpoenas?

16 A Yes.

17 Q And when you came to court on those  
18 subpoenas, you were no longer working for HPD at  
19 that time, right?

20 A That is correct.

21 Q So at any time did you tell any of the  
22 prosecutors that there were problems at HPD?

23 A No, not that I can recall.

24 Q Okay. And you knew that you wouldn't --  
25 if there was a problem and you were reporting that

1 at that time after you left HPD, you knew that there  
2 couldn't be any retaliation for that?

3 A I wouldn't necessarily agree with that.  
4 I'm still doing the same job I was doing, just for a  
5 different agency. And everyone works together, and  
6 everyone talks. I'm not going to go that far to say  
7 there would be no retaliation.

8 Q Okay. What is your educational  
9 background?

10 A I have a bachelor of science degree in  
11 biology from the University of North Texas. I have  
12 a bachelor of chemistry, bachelor of science in  
13 analytical chemistry from the University of  
14 Michigan.

15 Q Who was in charge of the breath testing  
16 program in the State of Texas?

17 A That would be the scientific director. At  
18 this time, that is Mack Cowan.

19 Q And supervises you as a technical  
20 supervisor, right?

21 A That is correct.

22 MS. PALMER: May I approach?

23 THE COURT: Yes, ma'am.

24 Q I know you're familiar with these. I just  
25 want to show -- gosh, you have so much up here --

1 but State's Exhibit 24.

2 What is that?

3 A This appears to be a copy of the Texas  
4 breath alcohol testing regulations.

5 Q And you're familiar with those?

6 A Yes.

7 Q And if you will turn to page -- I think  
8 it's 11 -- 10. I'm sorry. Page 10.

9 That talks about the role of the  
10 technical supervisor, right?

11 A That is correct.

12 MS. PALMER: Okay. I'm going to tender to  
13 opposing counsel State's Exhibit 24.

14 MR. JOHNSON: No objections

15 THE COURT: Be admitted.

16 (State's Exhibit 24 offered and admitted  
17 into evidence)

18 Q (By Ms. Palmer) I won't go through  
19 everything; but basically on Page No. 10, it talks  
20 about the certification process and what you do as a  
21 technical supervisor, right?

22 A Correct.

23 Q And it talks about in these rules and  
24 regulations that Mack Cowan, as scientific director  
25 of the State of Texas of the breath testing program,

1 he's kind of your supervisor in that role, right?

2 A Yes. With respect to the breath testing  
3 program, I answer to Mack Cowan.

4 Q So even now that you're at Lone Star  
5 College, Mack Cowan is still scientific director and  
6 supervises you as a technical supervisor, right?

7 A That is correct.

8 Q Okay. Did you -- have you talked to him  
9 before?

10 A Yes, I have.

11 Q On few or many occasions?

12 A Many.

13 Q Did you have communications with him about  
14 your concerns with the Houston Police Department  
15 crime lab?

16 A Absolutely.

17 Q When?

18 A Numerous occasions throughout the years.

19 Q When, specifically, if you remember -- let  
20 take this year. Have you talked to Mack Cowan about  
21 your concerns with the Houston Police Department  
22 crime laboratory this year?

23 A Yes, I have.

24 Q Okay. Can you tell us when?

25 A The last communication I had with him

1 prior to leaving HPD was April 27th I sent him an  
2 e-mail in regards to the BAT vans and three  
3 instruments that I had just removed from the BAT  
4 vans because the BAT vans were overheating.

5 Q In these e-mails, are they just talking  
6 about the breath testing program?

7 A Yes, because that's all Mack Cowan is  
8 responsible for, is the breath testing program.

9 Q What did you tell him specifically?

10 Can I look at it? Do you mind?

11 A I don't have a problem.

12 Q Okay. I'm usually the one with the  
13 Exhibits here, but okay.

14 So on April 27th of 2011, you sent  
15 Mack Cowan an e-mail discussing the Bat Vans at HPD  
16 and the problems with them?

17 A Correct.

18 Q Okay. Did you talk to him before then?

19 A Yes, on numerous occasions throughout the  
20 years when we've had problems with the breath  
21 testing program, in general, he would have been  
22 either contacted directly or he would have been  
23 carbon copied on an e-mail where I was discussing  
24 the problem with my supervisor.

25 Q Now, this test that we're here on in this



1 case was on May 20th, 2010.

2                   Were there problems with the BAT vans  
3 at that time?

4           A     Yes, there were.

5           Q     What were the problems?

6           A     The problems with BAT vans consisted of  
7 either AC, air-conditioning units not working,  
8 officers not leaving the air-conditioning units on,  
9 the inverters were not supplying correct power to  
10 the instrument such that when the air-compressor  
11 kicked on or compressor kicked on for the  
12 air-conditioning unit, it would cause a short power  
13 fluctuation. It would cause the breath testing  
14 instrument to reset itself.

15          Q     Did you tell anyone about these problems?

16          A     Absolutely.

17          Q     Who did you tell?

18          A     These problems were discussed extensively  
19 with Officer Paul Lassalle and supervisors.

20          Q     Did you tell Mack Cowan?

21          A     Yes, I did.

22          Q     When did you tell him?

23          A     I don't have the exact dates, but I have a  
24 whole lot of e-mails here. I'm sure I could find  
25 it.

1 Q In 2010, do you remember discussing it  
2 with him then?

3 A Yes.

4 Q In 2009 do you remember discussing it with  
5 him then?

6 A Yes, I believe the first problems we had  
7 with BAT vans were in the summer of 2009.

8 Q Okay. And can we go back to when the BAT  
9 vans were implemented at HPD. You were working at  
10 HPD then, right?

11 A Yes, I was.

12 Q It's my understanding Janno Chu was the  
13 technical supervisor who mainly set up the BAT vans  
14 at HPD, right?

15 A He took the lead because he is more of an  
16 electronics guru than myself, but I did assist in  
17 the inspection of the BAT vans.

18 Q You said yesterday you all work as a team.

19 A That's correct.

20 Q So in setting up the BAT vans, what was  
21 the technical supervisor's role at HPD in setting up  
22 these BAT vans?

23 A Well, the technical supervisor is  
24 responsible for placing the instrument into service,  
25 so we're the only people that can do that. So we

1 would -- before the first van rolled out, so to  
2 speak, we placed an instrument into the van and went  
3 through normal checks of the instruments most  
4 importantly inspections. And I did that several  
5 times to ensure there weren't going to be any  
6 problems from fire or anything like that.

7 Q So the Bat Van, the first prototype was  
8 implemented in August, 2008, right?

9 A I believe that might have been when we  
10 received it or when it was built-out.

11 I really -- I don't have those  
12 records with me, unfortunately; but I recall putting  
13 a Bat Van or instrument into the Bat Van around  
14 December of 2008.

15 Q Okay. Taking that date, when was the  
16 first time you experienced any problems with the BAT  
17 vans?

18 A That would have been in the late spring,  
19 early summer of 2009, when the temperature started  
20 to heat up and that's when we really started  
21 noticing problems with the AC units.

22 Q Just describe those problems for us.

23 A When we went to do inspections at the BAT  
24 vans, either the AC units would not be on -- and  
25 that would be as a result of the AC unit not

1 functioning at all -- or the operators forgetting to  
2 leave the air-conditioning unit on.

3 Q Okay. What did you do when you noticed  
4 these problems?

5 A We would notify Officer Paul Lassalle  
6 because he was the person in charge of the BAT vans.

7 Q Did you notify anybody else?

8 A Initially, no.

9 The first couple times it happened,  
10 we worked with Paul Lassalle. After a couple times  
11 of notifying him, he acted like it was no big deal.  
12 Then we notified his supervisor, Lieutenant Paul  
13 Follis.

14 Q Did you notify K.K. Alexander, your  
15 supervisor, of these problems at that time?

16 A Absolutely.

17 Q Did you notify Irma Rios, the director of  
18 the crime lab of the problems?

19 A Absolutely.

20 Q Did you notify Mack Cowan of these  
21 problems?

22 A Yes, we did.

23 Q So in the spring, summer 2009 that's the  
24 first time where Mack Cowan was notified of problems  
25 with the BAT van with the temperature?

1           A     Yes.

2           Q     What was his response?

3           A     We performed our inspection and he wanted  
4 us to work it out with Officer Lassalle and get the  
5 BAT vans fixed.

6           Q     What was the response of Ms. Rios?

7           A     Essentially, the same thing, try to work  
8 it out and try to get them fixed.

9           Q     Were you able to do that?

10          A     We worked with Officer Lassalle  
11 extensively trying to get the AC problems fixed, as  
12 well as the problems with the power fluctuation; and  
13 he would assure us that the vans were fixed. He  
14 acted like it was no big deal, and he would say,  
15 "The problem is fixed," then we would come out and  
16 see the same problem and then, you know, this  
17 continued throughout the year.

18                   Once it got cooler we didn't see  
19 temperature problems as much, but still the  
20 fluctuations with the power and that continued the  
21 entire time.

22          Q     These problems that you're discussing with  
23 the temperature and power fluctuations, did you  
24 notify anyone from the Harris County's District  
25 Attorney's office of those problems?

1           A     No.

2           Q     Did you work with anyone from the Harris  
3 County District Attorney's office in establishing  
4 the BAT vans or in getting them up and running in  
5 2009?

6           A     No.

7           Q     Did you ever communicate with Brent Mayer  
8 when he was the vehicular crimes division chief on  
9 the BAT vans?

10          A     We might have discussed the BAT vans, but  
11 I don't recall any specific conversations on what we  
12 talked about.

13          Q     Do you remember telling him of any  
14 problems with these vans?

15          A     Not that I can recall.

16          Q     At any time?

17          A     Not that I can recall.

18                   I know of all the DA's I talked to  
19 Brent fairly often when he was a DA , but I can't  
20 remember any specific conversations on that.

21          Q     I know that you have participated in  
22 no-refusal weekends in your time at the Houston  
23 Police Department.

24          A     Yes, ma'am.

25          Q     Did you work with the police officers when

1 you were out there?

2 A What do you mean "work with"?

3 Q Well, when you would go to no-refusal  
4 weekends, were you getting paid to do that?

5 A No.

6 Q So you were just there to learn?

7 A Yes. I find that in my job it makes it  
8 easier for me to testify and more credible as a  
9 witness when I can say that I have seen intoxicated  
10 persons and not just read about intoxication in a  
11 book.

12 Q At these no-refusal weekends, there would  
13 be police officers present, right?

14 A That is correct.

15 Q There would be prosecutors from the Harris  
16 County District Attorney's office present, right?

17 A That is correct.

18 Q Did you tell any of them about the  
19 problems that you're talking about with the BAT vans  
20 with HPD?

21 A No, I did not.

22 Q When you filed the IAD complaint against  
23 Irma Rios, what was the specific allegations --  
24 because we talked about problems, in general; but  
25 what were the specific allegations?

1           A     Well, there were many.

2                     And I should say -- I don't think I  
3 got to finish this yesterday, but my complaint was  
4 filed as a result of another complaint that had been  
5 filed against Ms. Rios.  Another person in the crime  
6 laboratory filed a complaint against her.  This  
7 person named me as a witness in that statement; and  
8 anyone who is familiar with IAD investigations, if  
9 your name is mentioned, you have to come in and  
10 write a statement.  So I wrote a statement in  
11 response to the initial complaint.

12                     I received a call from the sergeant  
13 working that case; and she said based on what I said  
14 in my statement, her lieutenant was probably going  
15 to call me and ask me to come in and file a separate  
16 complaint.  A few days later I received a call from  
17 intake, and they did ask me to come and file a  
18 separate complaint.

19           Q     Is that the only complaint that you filed  
20 against Irma Rios?

21           A     Yes.

22           Q     What specifically was alleged in that  
23 complaint?

24           A     There were many things that were alleged.  
25 Most of it dealt with her -- for lack of a better



1 word -- tactic in managing her employees.

2 Q Did anything in that complaint have to do  
3 with breath testing?

4 A Yes.

5 Q What?

6 A In August -- I believe it was August -- or  
7 late July, early August, 2010, a breath test  
8 operator by the name of Rudy Farias was operating  
9 the BAT vans and he failed to check the temperature  
10 of the simulator prior to running tests. And he  
11 admitted this to me via text. I, therefore,  
12 suspended Officer Rudy Farias.

13 The Captain over Officer Farias, Carl  
14 Driscoll, got very angry and agitated about this and  
15 essentially questioned me as to why I suspended him  
16 instead of questioning his officer as to why he  
17 didn't perform the procedure as he's required to do.

18 Q Let me stop you right there real quick so  
19 I can get clarification.

20 As a technical supervisor, do you  
21 have the authority to suspend an Intoxilyzer  
22 operator?

23 A Absolutely. It's in the regulations you  
24 handed me.

25 Q That are in evidence right now?

1           A     That is correct.

2           Q     Okay. Please go on about this incident.

3           A     After that, we received an order from Irma  
4 Rios to no longer suspend any breath test operators.

5           Q     What's the date on that? Do you remember  
6 when that happened?

7           A     When she ordered us?

8           Q     Yes.

9           A     It was around September of 2010.

10          Q     Okay. And when you suspended Officer  
11 Farias, when was that?

12          A     It was late July, early August.

13          Q     Okay.

14          A     So we were ordered by the crime laboratory  
15 director to not suspend anymore breath test  
16 operators for any reason. And this put us in a very  
17 hard position because, on one hand, we had received  
18 a direct order from our supervisor to not do this;  
19 on the other hand, if an operator makes a mistake  
20 and needs to be -- needs corrective action and I  
21 don't do it, I'm derelict of my duties as a  
22 technical supervisor.

23                    At that point we contacted Mack  
24 Cowan, and we discussed the problem with him. And  
25 he brought to our attention that we have the power

1 not only to suspend an operator, but also to  
2 inactivate the operator.

3           The difference between the two is  
4 essentially, in a suspension, the operators can  
5 appeal that suspension to the scientific director.  
6 In inactivation , the investigation is conducted by  
7 DPS and the operator doesn't have the chance or the  
8 opportunity to appeal that decision.

9           After that, in December of 2010,  
10 Officer Thibeaux ran a test in the BAT van. He  
11 failed to look at a simulator temperature. In fact,  
12 the simulator, when we went to the BAT van, it  
13 wasn't even on. He didn't even check to see if it  
14 was on. He was inactivated for failure to check  
15 simulator temperature.

16           Q     Okay.

17           A     After that there was a couple civilian  
18 breath test operators who had some issues that  
19 needed corrective action and we were discussing with  
20 Irma about inactivating these people, at which point  
21 she ordered us to no longer inactivate anyone and  
22 threatened my coworker George Wong with an IAD of  
23 insubordination if we did.

24           Q     When was that?

25           A     That was in January.

1 Q January, 2011?

2 A That is correct.

3 Q Is that one of the reasons that  
4 precipitated you leaving HPD?

5 A Yes, because I did not want to have to  
6 choose between a pay check and doing my job  
7 correctly.

8 Q And you mentioned yesterday that George  
9 Wong talked to the Chief of Police, Chief  
10 McClelland?

11 A On his very last day of employment because  
12 -- people who are familiar with the police  
13 department, we're a paramilitary organization. You  
14 have to go through ranks. You can't go talk to the  
15 Chief because you want to talk to the Chief. That's  
16 the reason why we don't step of bounds and talk to a  
17 DA about problems in the crime lab. We're not  
18 allowed to. If that was discovered, we would be  
19 disciplined.

20 Q But you realize it's problematic if a  
21 prosecutor presents evidence in a case, that it's  
22 problematic.

23 I hate to use problematic twice in  
24 one sentence. I know that's incorrect, but if we  
25 present a test, a breath test that's invalid or

1 there's a problem with it, you realize that's wrong,  
2 too?

3 A Correct.

4 And, again, all this lead up to us  
5 leaving the department because we could no longer  
6 choose between a pay check and integrity.

7 Q Okay. You mentioned some evidence  
8 technicians who had problems.

9 A That is correct.

10 Q The evidence technician Jorge Gomez or  
11 George Gomez is the evidence technician in this case  
12 with this defendant. Did you have any problems with  
13 him?

14 A I don't recall ever having to discipline  
15 him, no.

16 Q Okay. I want to show you State's Exhibit  
17 No. 12. Are you familiar with that?

18 A Yes, I am.

19 Q What is it?

20 A This is a memo or document from the Texas  
21 Department of Public Safety certifying this  
22 particular Intoxilyzer, Model No. 5000, serial  
23 number 68-013715 to be used in breath alcohol  
24 testing?

25 Q When was this? Do you know?

1           A     This is November, 2009.

2           Q     You were working at HPD when this  
3 happened?

4           A     That is correct.

5           Q     Okay. I want to talk about one specific  
6 Intoxilyzer instrument, and I'm going to show you  
7 what's already been admitted State's 13 through 21.

8                     Could you look at those for me?

9           A     Yes.

10          Q     Okay. Now, all of these, State's 13  
11 through 21, all have the same serial number, right?

12          A     That is correct.

13          Q     If you look at State's Exhibit 10, does  
14 that have the same serial number?

15          A     Yes, it does.

16          Q     Okay. I want to talk about State's 13  
17 through 21.

18                     Can you describe for the Court what  
19 these records indicate to you occurred with this  
20 instrument during this snapshot period of time?

21          A     Okay. Before I testify to these records,  
22 I want to make it clear I am no longer the custodian  
23 of these records. As a technical supervisor, we can  
24 only testify to records that -- in which we're  
25 custodian of records.

1                   In addition to that, I know these  
2 records have not been maintained the entire time by  
3 a technical supervisor. I know these records have  
4 been in the hands of at least three other people not  
5 affiliated with the breath alcohol testing program.  
6 I cannot testify to the validity of these records.

7           Q     I'm not asking you -- because they've been  
8 admitted into evidence, so I'm not asking you to  
9 sponsor them. We'll talk about the records in a  
10 minute, but if you can look at those records, and --  
11 what you're saying is you can't say that's all of  
12 the records during that time having to do with that  
13 instrument, right?

14           A     I can't say these records have not been  
15 tampered with. I cannot say they are a true and  
16 accurate copy of the originals.

17           Q     Okay. By looking at these records -- do  
18 you mind if I look at it?

19                                 Because State's Exhibits 19, 20, and  
20 21 actually have your name on them, right?

21           A     That is correct. They do.

22           Q     Can you describe for the Court what they  
23 mean, what these records mean, starting with State's  
24 Exhibit 19?

25           A     Assuming that these have not been tampered

1 with or altered in any way?

2 Q Of course.

3 A These are tests I run on Intoxilyzer 5000,  
4 serial number 68-013715. State's Exhibit 19 is a  
5 practice test in which I conducted and I checked the  
6 acetone detection system in this instrument.

7 State's Exhibit 20, again, with the  
8 same assumption, is a RFI test that I did to test  
9 the RFI circuitry in this instrument.

10 State's Exhibit 21, again, with the  
11 same assumption is showing a solution change that I  
12 conducted.

13 Q How often would you do a solution change  
14 when you were technical supervisor at HPD on one  
15 instrument?

16 A At least once per calendar month.

17 Q Okay. And how often would you do a  
18 practice test on an Intoxilyzer instrument when you  
19 were at HPD?

20 A We check the RFI and acetone checks system  
21 once per calendar month.

22 Q If it was done more often than that on  
23 this particular instrument, what would be the  
24 reason?

25 A The reason could be that someone reported



1 a problem and we went to try to diagnose the problem  
2 or see if we could recreate the problem.

3 Another example would be if the --  
4 for whatever reason the solution ran low and we need  
5 to change out the solution we will go and replace  
6 that.

7 Q Okay. Do you know of any -- let me give  
8 you a serial number, if you can remember; and if you  
9 trust me telling you it was in BAT Van No. 5 on  
10 May 20th, 2010.

11 Do you remember any specific problems  
12 with this instrument at that time, or would you have  
13 to look at your record?

14 A I would need an HPD maintenance record on  
15 these instruments before I can testify to that.

16 Q Okay.

17 A Specifically.

18 Q Let's talk about the records that you're  
19 talking about. You say that you cannot testify as a  
20 custodian of records because, clearly, you're not at  
21 HPD anymore?

22 A That is correct.

23 Q When you were at HPD as the technical  
24 supervisor -- and for a lot of the time there were  
25 two other technical supervisors -- how would you

1 keep and maintain the records there?

2 A The records were maintained in a filing  
3 cabinet in the laboratory which is limited access.

4 Q Who had access to that?

5 A To the laboratory or records?

6 Q To the filing cabinet.

7 A George, Janno, and myself all had a key to  
8 the filing cabinet.

9 Q George Wong and Janno Chu and Amanda  
10 Culbertson were the only people who had access to  
11 that cabinet?

12 A Unless the cabinet was left open and one  
13 of the lab personnel could have access to it; but,  
14 again, it was a limited access facility as required  
15 by DPS.

16 Q Was it ever left open?

17 A I don't recall.

18 Q Did Irma Rios have access to those  
19 records?

20 A Yes, she did.

21 Q Did anyone else have access to those  
22 records?

23 A Again, if they did, it would only be  
24 people that were allowed to be in the laboratory.

25 Q K.K. Alexander?

1           A     Could have, yes.

2           Q     Okay.  When you say anyone in the  
3 laboratory, are you referring to administrative  
4 assistants?  Anyone in the laboratory could have  
5 access to these records?

6           A     Only certain personnel were allowed back  
7 into the crime laboratory.  There were certain  
8 personnel who did not have access, no.

9           Q     Who did have access to the crime  
10 laboratory at that time, mainly by title, if you  
11 could tell us?

12          A     Criminalists, criminal specialists,  
13 laboratory manager, and laboratory director.

14          Q     Somebody like Theresa Clark who is  
15 administrative assistant, she did not have access?

16          A     I don't recall if she had access or not,  
17 but -- I want to clarify that not even all  
18 criminalists or criminal specialists had access to  
19 the laboratory.  For example, firearms, which that  
20 section is part of the laboratory; however, they are  
21 on the 24th floor.  They didn't have access to the  
22 laboratory.  They have to have someone let them in.

23          Q     Okay.  Well, when you left HPD, did you  
24 turn your records over to anyone?  The plan was to  
25 turn them over to Lee Anne Spino, the technical

1 supervisor taking over in my place. Prior to my  
2 leaving, it was a Sunday, my last week there,  
3 Ms. Spino sent me an e-mail requesting I box up all  
4 2009, 2010, and 2011 records to date and have them  
5 there for her so I could sign them over to her.

6           When she came -- I believe it was a  
7 Tuesday of that week -- I was going to sign over the  
8 records, she didn't want to take them. Then we went  
9 to the instruments. I signed over all the  
10 instruments to her. She was supposed to come back  
11 later in the week and get the records.

12           That Friday, my last day at HPD, I  
13 would -- I had to go around and turn in my ID, get  
14 this formed signed and final paperwork. In the  
15 morning the records were there; however, after I  
16 went to turn in my ID and came back, the three  
17 banker boxes were gone. I went in to turn in  
18 another form to Ms. Rios on the 24th floor, and I  
19 saw three banker boxes on the 24th floor and I saw  
20 the IT person, Hector Sustaita, showing the  
21 administrative assistant, Cassandra McClintock, how  
22 to scan the records into a PDF file.

23           Q     So Cassandra McClintock, what is her title  
24 and position at HPD?

25           A     I'm not sure of her exact title, but she

1 serves as an administrative assistance.

2 Q At the crime lab?

3 A That is correct.

4 Q And the IT man you're describing, where  
5 does he work?

6 A He works on 24th floor, but he is  
7 officially part of the crime lab.

8 Q Is he assigned to IT or assigned to the  
9 crime lab?

10 A He is our IT guy within the crime lab.

11 Q Okay. So as of now, nobody outside the  
12 crime lab has -- up to now in your story, nobody  
13 outside the crime lab has touched those records,  
14 right?

15 A Other than a certified operator, that is  
16 correct.

17 Q Okay. Do you know what happened to the  
18 records after that point?

19 A No, I do not.

20 Q Do you know if those records left the  
21 crime lab?

22 A No, I do not.

23 Q So what you do have knowledge of, those  
24 records never left the crime lab area?

25 A Well, they went to the 24th floor, which

1 is the crime lab management type area. And the  
2 records should not be out of custody -- care,  
3 custody, and control of a technical supervisor.  
4 They should only be handled by people officially  
5 affiliated with the breath testing program, which  
6 Ms. Rios, Mr. Sustaita, and Ms. McClintock are not  
7 certified breath test operators and in no way  
8 affiliated with the breath testing program.

9 Q Those rules are up to scientific director  
10 Mack Cowan?

11 A That is correct.

12 Q Did you tell Mack Cowan that this was  
13 going on?

14 A No, I did not, not that day. It was my  
15 last day, and I was busy trying to check out.

16 Q But even now, because you're still a  
17 technical supervisor, have you reported that to him?

18 A No. I don't believe I have, no.

19 Q So, specifically, the problems with the  
20 BAT vans that you're detailing have to do with the  
21 air-conditioning and the electrical supply; is that  
22 right?

23 A That is correct.

24 Q Right now at Lone Star College you're the  
25 area 32 technical supervisor? You're one of three,

1 right?

2 A That is correct.

3 Q What law enforcement agencies do you work  
4 with?

5 A We work with Harris County. We work with  
6 some smaller police departments, such as Jersey  
7 Village, Hedgewick Village, Baytown, La Porte, some  
8 other agencies, as well. Those are the main ones.

9 Q In your position right now as a technical  
10 supervisor with Lone Star College, would you certify  
11 an Intoxilyzer instrument being in a breath alcohol  
12 testing van?

13 A It would depend on the van.

14 Q Because, in fact, you're a technical  
15 supervisor for Harris County, right?

16 A That is correct.

17 Q And they have a breath alcohol testing  
18 van, right?

19 A That is correct.

20 Q Have there been any problems with that  
21 van?

22 A No, there hadn't. Not that I've seen.

23 Q What have been your duties with regard to  
24 that van?

25 A I have inspected that van, I believe,

1 three times now or been involved in the inspection.  
2 I might not have been the primary person conducting  
3 the test, but I was present when the inspection was  
4 being conducted. Every time the AC was on, the van  
5 was cool.

6 In fact, we have a thermometer, a  
7 digital thermometer in the van with a display.  
8 There's -- also the officers have been instructed  
9 not to use the instrument if it goes beyond a  
10 certain temperature; and, again, every time I've  
11 been in the van, the temperature has been where it's  
12 supposed to be.

13 Q So yesterday when Mr. Johnson asked you if  
14 the BAT vans are, in theory, a good idea; but in  
15 practicality they are not, that's not really the  
16 case, is it?

17 A It depends on the operators and how -- not  
18 just the operators, but how the supervisors and how  
19 management allow the program to be run.

20 Like I said, we haven't had any  
21 problems with the Harris County BAT van. They have  
22 been instructed to only operate it under certain  
23 temperatures; and as far as I can tell, they adhere  
24 to that.

25 The HPD personnel who have been



1 allowed to operate the vans have, according to Paul  
2 Lassalle, been trained to operate the vans. They  
3 know not to operate the vans when the ACs are hot or  
4 -- excuse me. When the vans are hot and the AC is  
5 working, but apparently they continue to do so. So,  
6 yes, in theory, it's a great idea; but, again, it  
7 depends on who is in control of the environmental  
8 conditions at the time.

9 Q Did you file any other IAD complaints when  
10 you were at the Houston Police Department.

11 A There was one other complainant that was  
12 filed on, I guess, my behalf. It was not something  
13 I wanted to file, but it was filed on my behalf.

14 Q What did that concern?

15 A That was personal, and it has no relevance  
16 to this case.

17 Q So you won't tell the Court what that IAD  
18 complaint had to do with?

19 MR. LEWIS: Object to relevance.

20 THE COURT: Does it have anything to do  
21 with breath testing or BAT vans?

22 MS. CULBERTSON: No, ma'am.

23 THE COURT: Sustained.

24 Q (By Ms. Palmer) I'm just concerned --  
25 does it have anything to do with any police officers

1 that handled driving while intoxicated cases?

2 A Yes, it did.

3 Q Okay. Is it something that you would feel  
4 more comfortable talking to the Judge about?

5 MR. LEWIS: Object to relevance. It  
6 doesn't have anything to do with the breath or  
7 blood testing. They can talk to her afterward.  
8 It's not relevant here.

9 THE COURT: That's not exactly what I  
10 asked her. Can you tell me an idea of what  
11 it's about?

12 MS. CULBERTSON: Not in front of all these  
13 people. I can write it down for you.

14 MR. LEWIS: May we approach the bench?

15 THE COURT: Yes, ma'am.

16 MR. LEWIS: Can we go off the record?

17 (Discussion off the record)

18 THE COURT: Please proceed.

19 MS. PALMER: Thank you.

20 Q (By Ms. Palmer) Ms. Culbertson, any of  
21 the problems that you say you discussed about BAT  
22 vans, do you think they could compromise the breath  
23 tests in the BAT vans?

24 A Potentially, yes.

25 Q How so?

1           A     Well, for example, if you go -- if an  
2 officer takes his suspect or subject to a BAT van  
3 and the instrument is not working, then there goes  
4 their chance to prove they were under at the time,  
5 so, yes.

6           Q     Do you think that a valid test will print  
7 out or happen with the problems that you're  
8 describing?

9           A     A valid test?

10                     You can get a valid test from the van  
11 if it's working.

12           Q     Do you think even if there was a valid  
13 test, considering the problems you're describing,  
14 there's a question with that test?

15           A     I think that it would be logical to think  
16 there could be a problem with that test, yes.

17           Q     What would the problems be with that test?

18           A     Again, I'm not an electronics person or  
19 software engineer, but the instrument does if it  
20 gets hot, if there are electrical components -- I  
21 don't know if that has an effect upon the source cod  
22 or any part that would do any sort of calibration.

23           Q     In July of last year I came to your office  
24 at the crime lab with another prosecutor, Aaron  
25 Burdette and we met with Janno Chu about a case

1 dealing with the BAT vans.

2 Do you remember -- you weren't there;  
3 but y'all talk all the time, so I set up the meeting  
4 and Janno was there. Do you remember that or  
5 hearing about that?

6 A No, I don't recall that.

7 Q Okay. And then in October of last year, I  
8 met with you and Janno and George and K.K. Alexander  
9 and Ms. Rios, right?

10 A Correct.

11 Q Do you remember that?

12 A Yes.

13 Q And at no time during that meeting did any  
14 problems with the BAT van or blood testing or the  
15 crime lab, in general, arise, did they?

16 A No, that meeting was called to work out  
17 problems that the DA's were having in communicating  
18 with us.

19 Q And that meeting basically had to do with  
20 protocol on getting an answer on extrapolation and  
21 getting results, right?

22 A That is correct.

23 Q Okay. Have you spoken to any defense  
24 lawyers about your concerns with the Houston Police  
25 Department crime lab?

1           A     I might have.

2           Q     Who?

3           A     I don't recall any specifics right now or  
4 specific conversations.

5           Q     You might have. Well, did you talk to  
6 them this year?

7           A     Quite possibly, yes.

8           Q     Who did you talk to?

9           A     Well, I've talked to several defense  
10 attorneys this year, so -- but I don't know who I've  
11 had conversations with about what. I can't recall.

12          Q     Who did you talk to?

13          A     Who have I talked to this year?

14          Q     Yes.

15          A     I've talked to Dane Johnson and Jordan  
16 Lewis and Tyler Flood and his assistant Mark  
17 Theissen. I've talked to Ross Palmie. I've talked  
18 to Christian Samuelson.

19          Q     Did you talk to any of them about problems  
20 with the BAT vans at HPD?

21          A     I might have.

22          Q     You're saying you don't remember?

23          A     I don't remember. I could have. I might  
24 not have. I don't know. I really don't know.

25          Q     Well, you remember definitely that you've

1 never talked to a prosecutor about these problems;  
2 but your memory is unclear when it comes to defense  
3 lawyers?

4 A Well, as mentioned before, that when I was  
5 working at HPD crime lab, we aren't allowed to go  
6 outside the chain and talk about these problems.

7 Q If you're not allowed to go outside the  
8 chain for a prosecutor, you're not allowed to go  
9 outside the chain for defense attorneys, are you?

10 A I wasn't with HPD at the time.

11 Q You're not at HPD now, so have you talked  
12 to Dane Johnson about problems with BAT vans?

13 A Probably yesterday.

14 Q Did you talk to Jordan Lewis about  
15 problems with BAT vans?

16 A Yes.

17 Q In fact, you met with him in the witness  
18 room for how long?

19 A I don't recall.

20 Q Have you talked to Mark Thiessen about  
21 problems with the BAT vans?

22 A I don't recall.

23 Q And the other lawyers you named -- Tyler  
24 Flood, have you talked to him about problems with  
25 BAT vans?

1           A     I might have discussed it with him.

2           Q     When?

3           A     It would have been after I left HPD.

4           Q     So sometime in the last two months you've  
5 had a conversation with Tyler Flood about the  
6 problems with the BAT vans?

7           A     Possibly.

8           Q     And this is the same time frame where you  
9 were subpoenaed to court, you had conversations with  
10 me, or other prosecutors and you never told us about  
11 the problems with the BAT vans?

12          A     What I told y'all was I was no longer  
13 custodian of those records, and I should not be  
14 subpoenaed on any HPD breath test case. And I  
15 actually informed Lee Anne Spino of problems with  
16 BAT vans. She was well-aware of the problems when  
17 she struck a deal with you to continue to have me  
18 testify on BAT van cases because she didn't want to  
19 testify to them because she knew about the problems.

20          Q     You told her about the problems with the  
21 BAT vans, but you did not tell any district  
22 attorneys in Harris County about problems with BAT  
23 vans, right?

24          A     It's possible. I don't recall exactly  
25 what I talked to Tyler Flood about, as I explained

1 earlier.

2 Q Well, it's possible -- you said earlier  
3 you never talked to a prosecutor about the problems  
4 with the BAT vans; is that true?

5 A To the best of my recollection, except for  
6 maybe Brent Mayer, yes.

7 Q When did you talk to Brent Mayer about the  
8 problems with the BAT vans?

9 A I don't know. 2008, 2009. I don't know.

10 Q What problem specifically did you talk to  
11 him about?

12 A I don't remember specifics.

13 MR. LEWIS: Can counsel let the witness  
14 answer? She's speaking over.

15 THE COURT: Let her answer, but I'm going  
16 to allow her to ask the question.

17 A I don't remember specifics. I said it's  
18 possible.

19 Q (By Ms. Palmer) Have you spoken to any  
20 lawyers about the problems with the BAT vans at HPD?

21 A Yes, ma'am.

22 Q Who?

23 A I've talked to Ursula Williams in HPD's  
24 crime lab -- HPD, Houston Police Department about  
25 the problems.



1 Q When?

2 A Prior to my leaving when she wanted to  
3 know why I was leaving.

4 Q What date?

5 A I don't have dates.

6 Q What months?

7 A It would have been April of this past  
8 year.

9 Q April, 2011?

10 A Yes, ma'am.

11 Q Have you spoken with anybody from Lone  
12 Star College about the problems with the BAT vans at  
13 HPD?

14 A Absolutely.

15 Q Who?

16 A Everyone that I work with.

17 Q Can you please tell us who that is?

18 A Vicki Amsey, George Wong, Charlotte  
19 Hudson, Wendy Martinez and Larry Stewart.

20 Q Have you spoken to any elected officials  
21 about the problems with the BAT vans?

22 A Specifically, no. About BAT vans, no.

23 Q Have you spoken to any elected officials  
24 about problems at HPD?

25 A Directly?

1 Q Yes.

2 A No, not directly.

3 Q Indirectly?

4 A A letter was sent to the city council  
5 regarding Irma's testimony to city council about  
6 backlog issues within the crime lab.

7 Q When was that?

8 A January of this year.

9 Q Who was the letter from?

10 A It was from myself.

11 Q And did it have your name on it?

12 A No, it didn't.

13 Q So you wrote an anonymous letter to City  
14 Council about Irma Rios?

15 A Yes, because, again, if we got caught  
16 going outside the chain, we would get reprimanded.

17 Q Who did you deliver that letter to?

18 A It was mailed. I didn't mail it. It was  
19 mailed for me, and it was mailed to every member of  
20 City Council plus the Mayor.

21 Q What specifically did the letter say?

22 A It talked about how the numbers that  
23 Ms. Rios represented to City Council in order to  
24 obtain further funding for more employees was  
25 misleading.

1 Q Do you have a copy of the letter?

2 A Not with me today, no.

3 Q Can you get me a copy of the letter?

4 A I can, yes.

5 Q After you left the Houston Police  
6 Department, was there any time lapse before you went  
7 to Lone Star College?

8 A A weekend.

9 Q Okay. So when -- you're at Lone Star  
10 college. Are you getting paid here to testify  
11 today?

12 A I'm still receiving my salary.

13 Q From Lone Star?

14 A Yes, I am.

15 Q Okay. So are you receiving any other  
16 payment for being here today?

17 A No, I'm not.

18 Q Are you receiving any promise to pay from  
19 the defense?

20 A No, I'm not.

21 Q Any promise to pay from any corporation or  
22 anyone for being here today?

23 A No, I'm not.

24 Q Have you had discussions with the defense  
25 lawyer in this case about testifying for the defense

1 in DWI cases?

2 A From these gentlemen?

3 Q From the Johnson law firm.

4 A For future cases, no, I haven't.

5 Q Have you had any discussions with any  
6 defense lawyers about testifying as a defense expert

7 --

8 A Yes, I have.

9 Q -- in DWI cases?

10 A Yes, I have.

11 Q Who?

12 A I have spoken with Mr. Tyler Flood about  
13 that and Ross Palmie about that.

14 Q When did you speak to Tyler Flood about  
15 that?

16 A After leaving HPD.

17 Q What month? What year?

18 A June, July of this year.

19 Q Did you review with Mr. Flood things that  
20 you would be able to testify about the HPD crime  
21 lab?

22 A No. The case that Mr. Flood was in  
23 contact with me about was not an HPD case.

24 Q Okay. What law enforcement agency was it?

25 A It was a Sheriff's department case.

1 Q Sheriff's department case from when?

2 A I don't remember the year. I don't know.

3 Q So is there a Sheriff's department case  
4 from when you were a technical supervisor in area  
5 32?

6 A No, it's not even a breath test case.  
7 It's a blood case.

8 Q Okay. So you would provide testimony?

9 MR. LEWIS: Objection; relevance;  
10 speculation.

11 THE COURT: What's the question.

12 MR. LEWIS: She's asking--

13 THE COURT: Let her appropriate the  
14 question.

15 MS. PALMER: I'll move on. Thank you.

16 Q (By Ms. Palmer) How did you get to court  
17 yesterday?

18 A I was driven here by an investigator who  
19 works for the DA's office.

20 Q Who is that?

21 A Carly Gilfrey.

22 Q Since you were driven here, you didn't  
23 have to pay for parking, right?

24 A That's correct.

25 Q How did you get here today?

1           A     I drove today.

2           Q     I want to show you State's Exhibit 25.  
3 Are you familiar with that?

4           A     Yes, I am.

5           Q     What is it?

6           A     It's a document showing where the HPD  
7 crime lab is accredited by ASCLD laboratory in  
8 certain areas of forensic science.

9           MS. PALMER: I'd offer State's Exhibit 25.

10          MR. LEWIS: No objection.

11          THE COURT: Admitted.

12                 (State's Exhibit 25 offered and admitted  
13 into evidence)

14          Q     (By Ms. Palmer) Now, as ASCLD lab is the  
15 American Society of Crime Laboratory Directors and  
16 ASCLD actually provides accreditation for different  
17 labs in the United States, right?

18          A     That's correct.

19          Q     Now, the people from ASCLD come to the  
20 Houston Police Department crime lab and conduct an  
21 investigation or look into your lab?

22          A     They perform audits of the laboratory.

23          Q     When did they do that?

24          A     I know they came in person in 2007, spring  
25 of 2007; and they might have been there one other

1 time. I don't recall.

2 Q Were you there at the time that they had  
3 an onsite visit? Were you working there?

4 A I had just started. I had been there a  
5 couple months for the first inspection, and I don't  
6 recall if I was there then or if they came back.

7 Q And you realize that ASCLD is the  
8 accreditation agency for laboratories in America,  
9 right?

10 A That is correct.

11 Q Did you ever talk to them about the  
12 problems with the crime lab?

13 A Well, probablily specifically about breath  
14 testing, no, because breath testing is not an  
15 accredited forensic science yet in ASCLD.

16 Q Did you talk to them about problems with  
17 the HPD crime lab?

18 A Well, the first time they came around in  
19 2007, I had just been there two months and hadn't  
20 seen any problems.

21 Q You could write anonymously to the Houston  
22 City Council. Did you write a letter or contact  
23 ASCLD about any problems with HPD crime lab?

24 A No, I did not.

25 Q You say that today you are receiving your

1 salary from Lone Star College; but you're here  
2 testifying on an HPD case, right, or about an HPD  
3 case?

4 A I was ambushed with a subpoena yesterday  
5 when I was testifying on another HPD case; and,  
6 yeah, I'm here testifying because I don't really  
7 want to be held in contempt of court or have a writ  
8 filed on me, so I'm here.

9 Q When you first started at Lone Star  
10 College, were you getting paid to come and testify  
11 here in court? Were you receiving your salary from  
12 Lone Star College?

13 A The initial discussion was that either I  
14 wouldn't receive pay because of what appeared to be  
15 quite a few cases I would have to come on, or that I  
16 would have what would amount to a negative comp time  
17 balance I would have to make up.

18 After our legal department got  
19 involved with it, they discovered that it's written  
20 in the college's rules, I guess, that any legal  
21 subpoena that we were served with we would be  
22 expected to go to court and still receive salary.

23 Q So when you left HPD, didn't you tell Irma  
24 Rios that your job is to only testify on old blood  
25 cases that you analyzed, right?



1           A     That is correct because I am no longer the  
2     custodian of records for breath test cases.

3           Q     So you told her you're not supposed to be  
4     testifying on breath test cases?

5           A     I told Irma Rios I was not the custodian  
6     of records.

7           Q     Well, you told Carly Gilfrey that?

8           A     Yes, I did.

9           Q     And -- but when you worked at HPD you just  
10    got paid a salary, right?

11          A     Correct.

12          Q     You didn't get paid to testify?

13          A     No.

14          Q     But after you left HPD and you're at Lone  
15    Star College, didn't you submit an invoice to HPD  
16    for your testimony?

17          A     For my time. Yes.

18          Q     For your time being in court?

19          A     That is correct.

20                         Because at the time I didn't know if  
21    I was getting paid, and it is -- I spoke to an  
22    attorney about this; and if the State called me as  
23    an expert witness they needed to retain me just like  
24    anyone else would.

25          Q     Who did you talk to about that?

1           A     I don't recall. I don't recall their  
2 name.

3           Q     Did you talk to a defense lawyer about  
4 that?

5           A     I don't recall who it was.

6           Q     Okay. But you contacted me on May 20th --  
7 it was a Friday -- and you said that you had spoken  
8 to some attorneys and that you demanded payment,  
9 didn't you?

10          A     I didn't demand payment, no; and I have  
11 witnesses to that conversation as well.

12                     No, I did not demand payment.

13          Q     You said you needed to be paid and you  
14 wouldn't testify unless you were paid, right?

15          A     That's not what I said at all.

16          Q     Okay. Well, we're here to talk about a  
17 breath test case; and I've showed you the slip.

18                     Are you here today saying that this  
19 -- there's a problem with this test?

20          A     I'm not testifying to this document  
21 because I can't authenticate it. I'm not saying  
22 anything about this record. I was called here. I  
23 got subpoenaed. I didn't know anything about this  
24 case when I walked through that door yesterday  
25 because I was testifying on another case. I was

1 served a subpoena in the hallway with no notice, and  
2 I came in here and I'm answering the questions that  
3 are asked of me.

4 Q Sure.

5 So can you say anything about Donald  
6 Andrews, the defendant in this case, and his breath  
7 test on May 20th, 2010?

8 A No, I can't.

9 Q But you were the technical supervisor or  
10 one of three at HPD at the time?

11 A That is correct.

12 Q But you're not saying that there's -- or  
13 are you saying that there's some problem -- there  
14 could have been a problem with the test?

15 A I'm not testifying to this record because  
16 I am no longer the custodian of records and I know  
17 that at least three people who should not have been  
18 in contact with this record were in contact with  
19 this record and I cannot validate or authenticate  
20 this record.

21 Q Okay. Forget the record because it's been  
22 admitted. I'm not asking you to sponsor the record.

23 This man right here, the defendant in  
24 this case submitted to a breath specimen or  
25 Intoxilyzer specimen in BAT van No. 5 on May 20,

1 2010. You were one of three technical supervisors  
2 at HPD at that time.

3 Do you know of any problems that  
4 could have invalidated this test?

5 A There were problems with the BAT van as  
6 stated previously. Also, as stated previously, I  
7 would need maintenance records to refer to specifics  
8 around that time period.

9 Q Now you've contacted me recently since  
10 you've been at Lone Star College and said a few  
11 tests were invalidated because an operator wasn't  
12 certified at the time, right?

13 A That's correct.

14 Q And you know that I looked up those cases  
15 and we dismissed those cases, right?

16 A I don't know the disposition of those  
17 cases.

18 Q But you recognize it's really important to  
19 contact the prosecutor and not rely on false  
20 evidence to prosecute somebody, right?

21 A That is correct.

22 Q So is there any reason that you know of,  
23 as one of the three technical supervisors at HPD on  
24 May 20th, 2010, that the State of Texas should not  
25 rely on the breath test that was given by this man

1 right here in BAT van No. 5?

2 A Again, I would need maintenance records;  
3 and I cannot testify to that test, so --

4 Q I'm not asking you to testify to a  
5 document or anything. I'm asking you from your  
6 memory, if there was a problem with a breast test on  
7 May 20th, 2010, as one of the three technical  
8 supervisors, what would you have done?

9 A If there was a problem, we would have  
10 notified the DA's office.

11 Q Did you do that in this case?

12 A I don't recall.

13 Q You don't recall?

14 A We handle approximately 4,500 to 5,000 of  
15 those slips a year.

16 Q Okay. How many times did you notify the  
17 DA's office that there was a problem with a test  
18 during your time at HPD?

19 A I don't remember.

20 Q Did you ever notify the DA's office of a  
21 problem with a test -- breath test during the four  
22 and a half years you were at HPD?

23 A Yes, we did.

24 Q How often?

25 A I don't know.

1 Q Few or many times?

2 A Those are all relative terms, so --

3 Q More than 10?

4 A I don't know.

5 Q You don't know?

6 A I don't recall, no.

7 MS. PALMER: Pass the witness.

8 THE COURT: Not sure where we are, Mr.

9 Lewis or Mr. Johnson.

10 MR. LEWIS: I'll be on redirect if that's  
11 all right?

12 THE COURT: Your redirect.

13 REDIRECT EXAMINATION

14 BY MR. LEWIS:

15 Q Ms. Palmer talked to you a lot about  
16 whether you informed the DA of problems with these  
17 vans.

18 As far as chain of command, who were  
19 you supposed to notify when you noticed problems  
20 with BAT vans?

21 A My supervisor.

22 Q Who is that?

23 A K.K. Alexander.

24 Q Did you do that?

25 A Yes, I did.

1 Q What happened from there, if you know?

2 A Either Irma was notified or the Captain  
3 was notified or Paul Lassalle was notified. It just  
4 depended on what the problem was at the time and  
5 what the situation was.

6 Q Now, given your interactions with Ms.  
7 Ramos and the Captain and Paul Lassalle, did you  
8 have any reason to worry about retaliation if you  
9 went outside the chain of commands to point out  
10 these problems?

11 A Yes.

12 Q Why was that?

13 A Because we in the crime lab -- not just  
14 myself, but others -- had witnessed that type of  
15 behavior from Ms. Rios before. In fact, the initial  
16 IAD investigation filed by my coworker that I  
17 mentioned previously, that was one of the main  
18 points of her complaint was retaliation.

19 Q Whose job is it in the HPD crime lab to  
20 act as liaison between the police department and  
21 DA's office to make the DA's office gets word of  
22 these problems?

23 A The crime laboratory.

24 And that's Ms. Rios.

25 Q Ms. Rios -- excuse me.





1 machines from service?

2 A Yes, I removed the instruments from  
3 service on -- give me one second.

4 On April 21st, 2011.

5 Q Okay. Why did you remove those from  
6 service?

7 A Can I read over this?

8 Q Sure.

9 A In the memo that I drafted that was sent  
10 to Captain Driscoll via K.K. Alexander and via Irma  
11 Rios, these three strips were removed because in two  
12 of them the air-conditioner was on but was blowing  
13 warm air; and in the third one the air-conditioner  
14 was not on.

15 Q Those conditions lead to overheating  
16 problems with the instruments?

17 A Yes. The memo goes on to say that all  
18 instruments were displaying problems with equipment  
19 where instruments were being outside of operating  
20 temperature.

21 Q To your knowledge does CMI publish storage  
22 -- suggestions or requirements for storage of these  
23 units when they are not in use?

24 A Yes.

25 Q Based on what you've seen, do the BAT vans

1 as implemented by the Houston Police Department  
2 satisfy those storage requirements?

3 A Well, I would actually have to correct you  
4 on that. I would say that if the instrument is on  
5 in the van and the van is functional and ready to be  
6 taken out at any given time, that would constitute  
7 an operational condition as opposed to a storage  
8 condition.

9 A storage condition would be where  
10 the instrument was off and not available for use.  
11 The temperatures as published by CMI, the  
12 manufacturer of the intoxilyzer, operating  
13 conditions are 68 degrees Fahrenheit to 86 degrees  
14 Fahrenheit, which is 20 to 30 degrees Celsius. And  
15 storage conditions are 32 degrees Fahrenheit to 140  
16 degrees Fahrenheit, which is zero to 60 degrees  
17 Celsius.

18 Q In your experience with HPD BAT vans, were  
19 those storage and operation requirements being met  
20 by the HPD BAT vans?

21 A In my opinion, no.

22 Q Now, you testified -- we'll come back to  
23 that in a second.

24 I wanted to talk to you just briefly  
25 to clarify. You mentioned at one point you

1 suspended Officer Farias. I wanted to clarify. You  
2 suspended him as a breath test operator, not as a  
3 police officer, correct?

4 A That's correct.

5 Q It wouldn't be within your authority to  
6 suspend him as an officer?

7 A No.

8 Q Who besides the technical supervisor has  
9 the authority to suspend a breath test operator?

10 A The scientific director.

11 Q Now, after you were ordered not to suspend  
12 anymore breath test operators, you spoke to the  
13 scientific director, correct?

14 A That is correct.

15 Q And he confirmed that it was your job to  
16 prevent these people from operating these machines  
17 if they are not doing it correctly?

18 A Absolutely. In fact, he's the one that  
19 brought up: If you see a problem and don't correct  
20 it, your in derelict of your duties as a technical  
21 supervisor.

22 Q So at any point after that, as far as you  
23 remember, do you remember inactivating -- I believe  
24 it was the same Officer Thibeaux that was involved  
25 in this case, correct?

1           A     I'm not sure who was involved in this  
2 case. I haven't really looked at any records or  
3 anything like that. You know, I came into this kind  
4 of ambush.

5           Q     Let's talk about that for a second.

6                     Did you and I have any conversation,  
7 whatsoever, before you took the stand yesterday.  
8 No.

9           A     No.

10          Q     Did anybody at our firm, besides my  
11 process server, confirm what you were going to talk  
12 about or what you would be testifying about?

13          A     No. I had no clue. I was blindsided by  
14 the subpoena in the hallway.

15          Q     And you're not being -- nobody from our  
16 firm has paid you or made any promise to pay you for  
17 your time?

18          A     No.

19          Q     All right. Now, can you recall having to  
20 suspend or inactivate Officer Thibeaux?

21          A     Yes.

22          Q     I'm sorry. when I say "suspend or  
23 inactivate," that means you pulled his certificate  
24 to perform breath tests, correct?

25          A     That is correct. And, yes, I do recall

1 doing that.

2 Q What was the reason for that?

3 A The reason for that was because Officer  
4 Thibeaux failed to look at the temperature or the  
5 thermometer on the simulator and verify it was at  
6 operating temperature.

7 Q Given the issues that you've seen,  
8 particular to the BAT van, is -- I know they are  
9 always supposed to check the thermometer. Would you  
10 agree it would be even more important, given the  
11 conditions you've seen in the BAT vans?

12 A Absolutely. And both of the officers,  
13 Farias and Officer Thibeaux, if they ran these tests  
14 in the BAT vans, had they actually checked the  
15 temperature, they would have seen it was out. That  
16 clearly shows it is important.

17 THE COURT: I have a question.

18 Would the machine still print out a proper  
19 test even if the temperature was too high or  
20 wasn't between the range you stated?

21 MS. CULBERTSON: If the instrument was too  
22 hot, it would not print out a test; but if the  
23 simulator is too hot, the temperature in the  
24 simulator is too hot or cold, depending on what  
25 the temperature was, you may or may not get a

1           valid test.

2           THE COURT: Even if it wasn't in the range  
3           that you had set as a technical supervisor, it  
4           would still print out like there was a valid  
5           test slip?

6           MS. CULBERTSON: For the simulator there  
7           is a threshold range plus or minus point 01  
8           away from point 08. The simulator should read  
9           around point 08 at the specified temperature.  
10          There is a window between point 07 to point 09.  
11          Depending on how hot it is in the van, how much  
12          higher than the 34 degrees, it is possible that  
13          it could still be within the range of what's  
14          allowed for the value but still be too hot as  
15          the thermometer.

16          THE COURT: I understand that.

17          My question is: Would it then print out a  
18          proper breath slip?

19          You could possibly get a breath slip, but  
20          the value of the simulator would not be reading  
21          correctly.

22          For example, if I run a test on the  
23          solution on day one and the temperature in the  
24          van is fine and the instrument -- simulator  
25          read point 08. The next day if that van got

1 too hot, depending on the temperature, that  
2 simulator solution could be reading point 09,  
3 which is still in its allowed limits. We know  
4 that's not the correct value because the day  
5 before it was point 08. It didn't magically  
6 gain point 09; therefore, the concentration,  
7 that increase in temperature would cause  
8 corresponding entries in some simulators  
9 depending on how hot the van was.

10 It is still possible to get a valid test,  
11 but have the simulator at the wrong temperature  
12 and an incorrect value coming from the  
13 simulator.

14 THE COURT: What you're saying, then, is  
15 the reading you got from the person would be  
16 incorrect?

17 MS. CULBERTSON: I can't say that. It  
18 would depend. That is separate from the  
19 simulator. That would be more based on the  
20 instrument temperature, not the simulator  
21 temperature.

22 The simulator acts like an independent  
23 person blowing into the instrument.

24 THE COURT: If you see the breath test  
25 slip in this case, can you tell if there were

1 any of those problems?

2 MS CULBERTSON: I can't tell if there was  
3 any overheating issues with the instrument or  
4 not, without seeing records before or after  
5 that I couldn't say if there was a problem with  
6 the simulator overheating or not.

7 THE COURT: Okay. Go on.

8 Q (By Mr. Lewis) Just to clarify. The  
9 thermometer on the simulator is not connected to the  
10 machine in such a way that that's -- that's not one  
11 of the things the machine checks to decide whether  
12 it's going to give a valid result?

13 A Correct.

14 The simulator is a separate device,  
15 if you will, next to the instrument. The only  
16 connection are the two tubes, for lack of a better  
17 term, two tie-on tubes that connect such that the  
18 air can be pulled through there and vapor can be  
19 pulled off the simulator. There is no electrical  
20 connection in which the instrument can tell what the  
21 simulator is reading.

22 Q Okay. So if the officer fails to check  
23 that thermometer, the simulator solution -- the  
24 temperature of the simulator solution could be  
25 outside the range for a valid test, but the machine



1 still believe it was dealing with a valid test?

2 A It would, again, depend on how hot the van  
3 was. Obviously, if it's 200 degrees inside the van  
4 just prior, then the concentration of that simulator  
5 solution or vapor is going to be such that it  
6 wouldn't fall within the allowed range.

7 However, again, depending on the  
8 temperature, it could still be too hot -- the  
9 simulator could be too hot, giving a false high  
10 reading on the simulator but it could still be  
11 within plus or minus the 01 range, so you would get  
12 a valid test.

13 Q You talked about at one point that you got  
14 a temperature error on one of the machines and you  
15 had to remove it from service. What did you mean by  
16 that?

17 A On the three BAT vans that I removed from  
18 service prior to leaving HPD, two of them had an  
19 error message displayed that said "temperature  
20 failed" and the other instrument said "temperature"  
21 and had a reading of 52 degrees Celsius.

22 These are all cases that the  
23 instruments were too hot. The temperature that says  
24 "temperature 52 degrees Celcius," it's referencing a  
25 reading of a sample change where it should be a

1 temperature of 45 and 48 degrees Celsius. So the  
2 instrument was telling the person, in this case  
3 myself, that it was too hot.

4 Q Now, you mentioned that -- let's talk  
5 about the records just briefly.

6 Do the breath test regulations  
7 promulgated by DPS and the by scientific director  
8 permit the sort of handling that you saw of those  
9 records?

10 A I don't recall verbatim or I don't have  
11 the regulations memorized word for word, but I know  
12 through my training and experience and my dealing  
13 with DPS that those records are to be guarded just  
14 like any other piece of evidence and that not  
15 everybody can have access to those. Not everyone  
16 should be dealing with those records. It should be  
17 the -- someone certified or affiliated -- officially  
18 affiliated with the program.

19 Q Is that for chain of command and security  
20 reasons?

21 A That is correct.

22 Q Chain of custody and security reasons?

23 A Correct.

24 Q All right. Now you testified that Mr. Chu  
25 sort of took lead on installing the intoxilyzer

1 5000s in the BAT vans?

2 A Yes.

3 Q Prior to that were you or any of the other  
4 technical supervisors consulted about what sort of  
5 specifications those BAT vans would need?

6 A Paul Lassalle did contact us regarding,  
7 like, the amps or whatever the instrument pulled.  
8 And, again, Jano took the lead on that because he's  
9 more into watts and amps and things like that.

10 Q We did pull information off or pull  
11 information from the manufacturer that stated what  
12 electrical requirements were needed for the  
13 instruments. And Officer Lassalle assured us that  
14 those requirements would be met.

15 Q In your experience with those vans, since  
16 the Intoxilyzers were installed, did the  
17 specification of the van satisfy what the equipment  
18 needed?

19 A In my opinion, no.

20 When -- there were several cases when  
21 we went to run inspection on the van and we would be  
22 in the middle of doing an inspection and it would  
23 overheat. The AC unit would kick on or compressor  
24 would kick on and pull that extra power which would  
25 cause the instrument to reset itself, just as if

1 someone hit a reset switch on the back of the  
2 instrument. I've never seen that happen outside of  
3 the BAT vans.

4 Q You testified yesterday and again earlier  
5 today that in theory the BAT van program could work,  
6 and it seems to be working at the Harris County  
7 Sheriff's office.

8 With the implementation that you have  
9 seen from HPD for their BAT van program, are these  
10 BAT vans providing a satisfactory environment for  
11 the reliable operation of the Intoxilyzer 5000?

12 A In my opinion, no.

13 Q During the month of May, 2010, were the  
14 HPD BAT vans presenting the sorts of problems that  
15 you've discussed here today?

16 A Again, specifically, if you want to talk  
17 specific dates, I'd have to look at the records.

18 I know we started experiencing  
19 problems with the ACs, air-conditioning units when  
20 it started to get warm out, the months of April, May  
21 through the summer months; but if there's a specific  
22 problem that you're asking about, I would have to  
23 refer to the records.

24 Q Just generally speaking, based on your  
25 experience with the HPD BAT van program, would you

1 have cause for concern about the validity -- not  
2 validity but reliability and accuracy of a BAT van  
3 breath test given during the spring or summer?

4 A You have the records. I believe you did  
5 an open reports request. I think there are many  
6 e-mails and memos that document that concern of not  
7 just me but all three of us with generating tests in  
8 these BAT vans. Otherwise, we wouldn't have been  
9 fighting.

10 We wanted these BAT vans to work just  
11 as much as anyone else. I think the e-mails and  
12 memos that you have document where we're trying to  
13 make these BAT vans work. But, yes, I believe our  
14 concern is well-documented in those e-mails and  
15 memos.

16 Q Were you satisfied with HPDs response to  
17 those concerns in terms of attempting to cure them?

18 A Absolutely not. I was really disappointed  
19 with not only Paul Lassalle but Captain Driscoll  
20 almost -- just dismissive tone when we came to him  
21 with problems regarding the BAT vans. They acted  
22 like it was no big deal and it was very concerning;  
23 and, you know, it was very sad to see.

24 MR. LEWIS: Pass the witness.

25 THE COURT: Anything further?

1 MS. PALMER: No, Your Honor.

2 May this witness be excused?

3 MR. LEWIS: Yes.

4 THE COURT: Thank you for your time.

5 MR. LEWIS: We call George Wong.

6 Is he here?

7 GEORGE WONG,

8 having been first duly sworn, testified as follows:

9 THE COURT: Can you step out in the  
10 hallway for one second.

11 MS. PALMER: Based on what Ms. Culbertson  
12 said, I think the State of Texas under Article  
13 26 of the Code of Criminal Procedure, as an  
14 Assistant District Attorney, I have to respond  
15 to the allegations that she said. I'd ask the  
16 Court for more time.

17 (Discussion off the record)

18 THE COURT: All right. I understand  
19 defense wishes to call Mr. Wong as their next  
20 witness.

21 The State has approached and asked for a  
22 continuance; is that correct?

23 MS. PALMER: That is correct.

24 THE COURT: I'm going to grant the State's  
25 motion for continuance.

1           We need to decide when we're coming back  
2           so I can swear him to return.

3           Mr. Wong come up, please. We are going to  
4           continue this matter. You're not going to  
5           testify today. What I'd like to do is swear  
6           you to return on August 15th.

7           MR. WONG: We are required to attend  
8           training. I do not remember if it is the 15th.

9           (Discussion off the record)

10          THE COURT: We will contact you if we  
11          need you again.

12          Thank you, sir.

13          (Proceedings concluded)

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REPORTER'S CERTIFICATE

STATE OF TEXAS )

COUNTY OF HARRIS)

I, SANDRA L. POWELL, Official Court Reporter in and for the County Criminal Court at Law Number 7, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is \_\_\_\_\_ and will be paid by Harris County District Attorney.

/S/ Sandra L. Powell

\_\_\_\_\_  
Sandra L. Powell, CSR  
Texas CSR 8561



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Expiration: 12/31/12  
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