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IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

CASE NO. 2006 CF 017774 NC

STATE OF FLORIDA,

Plaintiff,

vs.

RYAN GARY LUBBECKE,

Defendant.

VIDEO CONFERENCE DEPOSITION OF JANINE ARVIZU

January 4, 2013
12:01 a.m. Mountain Time
110 Twelfth Street, Northwest
Albuquerque, New Mexico

PURSUANT TO THE NEW MEXICO RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: KATE DARBY WALLACE
ATTORNEY FOR PLAINTIFF

REPORTED BY: CHERYL ARREGUIN, RPR
New Mexico CCR No. 21
Kathy Townsend Court Reporters
110 Twelfth Street, Northwest
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A P P E A R A N C E S

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I N D E X

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JANINE ARVIZU

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. WALLACE:

Q. Hello.

A. Hello.

Q. It's kind of funny, the way the camera is set up, because the way you're looking is over there, but the way --

A. Oh.

Q. -- it seems to be set is opposite.

A. Okay.

Q. So it's fine. I'm just trying to figure out how I need to --

A. Where I'm looking.

Q. -- feel like we're communicating with each other.

My name is Kate Wallace, and I'm the prosecutor on this case.

And Mr. Sohn is present in the room, and he's kind of off camera, but he's present.

And I think we already did a sound check, and all the sound is working fairly well.

So I'm going to ask you some questions

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1 regarding your anticipated testimony in the Ryan
2 Lubbecke case, and I just want to start with a little
3 bit of your background.

4 I received a copy of your CV from Mr. Sohn,
5 and it doesn't have a date on it, but it is -- let's
6 see -- it's approximately three pages long, and I
7 received it from him in November.

8 Do you recall providing him with a copy of
9 your CV around that same time?

10 A. Yes, I did.

11 Q. Okay.

12 Are there any changes that have happened in
13 the six weeks or so since you provided it to Mr. Sohn?

14 A. No.

15 Q. No?

16 Any additions, things to take off, any -- any
17 changes at all?

18 A. No.

19 Q. Okay.

20 Now, I understand your background is primarily
21 in the field of chemistry and standards; is that right?

22 A. Yes, chemistry and quality assurance,
23 analytical lab --

24 Q. What is -- I'm sorry.

25 A. I --

1 Q. There's a little bit of a delay on there.

2 A. Sorry.

3 Q. What is the difference between quality
4 assurance and standards?

5 A. Standards is a -- is a term that's used in the
6 quality assurance field to mean a lot of different
7 things, so I would need a little bit more context about
8 what you need for standards.

9 But I suspect what you may be referring to
10 is -- there are what's called quality standards that --

11 Q. Right.

12 A. -- are essentially consensus standards that
13 are developed by the technical community in a particular
14 area to establish a universal standard of practice
15 essentially for a discipline.

16 And so when I refer to national standards or
17 international standards, things like ISO 17025, that's
18 an international standard for testing laboratories.
19 That's -- that's the standard.

20 Quality -- did you ask for quality assurance
21 or quality just in general?

22 I'm sorry. I --

23 Q. I think I'm just trying to -- I'm trying to
24 understand the different terms and how they're used.

25 A. Okay.

1 Q. I tried to do a little bit of research online
2 before the deposition, and some of the definitions --
3 they kind of -- they're self referential, and they're
4 not really helpful to somebody like me, who doesn't have
5 a science background.

6 A. Sure.

7 Quality assurance as applied to the field of
8 analytical testing is a -- a term that refers to the
9 practices that you put in place in a laboratory to
10 control the measurement system. So quality control
11 practices are things like a special sample that you
12 introduce to test, controls that you put in place to
13 control the equipment that you use and the
14 instrumentation that you use.

15 Quality assurance, in addition to including
16 quality control, also includes quality assessment, so
17 you not only put in place these practices, but you also
18 routinely evaluate and assess your performance. So
19 you're putting in place the means of identifying
20 problems and of addressing problems when they occur,
21 because you're not just measuring things, you're also
22 monitoring them.

23 Q. Now, you said these are consensus standards
24 that are developed by a specific technical community.

25 In this case, it's going to focus mainly on

1 toxicology, but is there -- is there some kind of agency
2 or some kind of internationally recognized board that
3 creates these standards or decides to adopt standards or
4 to reject them? I mean, who ultimately makes the
5 decision about these -- these standards?

6 A. There are a variety of different standards
7 that are developed and used in the quality assurance
8 arena, and it's not like there's a single universal
9 standards god, if you will, that -- that releases these
10 things.

11 Probably the most universally applicable body
12 is ISO, the International Standardization Organization,
13 because there are -- there are countries that
14 participate all across the world. Their goal is to
15 essentially to -- to adopt standards that are
16 universally applicable. So it's probably the most
17 worldwide standard.

18 There are also standards that are developed
19 within an individual country. For example, in the field
20 of forensic toxicology, the Society of Forensic
21 Toxicology and American Academy of Forensic Science,
22 SOFT and AAFS, have jointly, in 2006, published a
23 standard, if you will, it's called -- well, I -- I don't
24 have the actual title in my head, but it's guidelines
25 for forensic toxicology labs. They're known as the SOFT

1 guidelines.

2 That is something that would be referred to as
3 a quality standard that is more narrowly applicable just
4 to forensic toxicology laboratories.

5 Q. Okay. I think I've got a basic understanding
6 of the terminology. I'll probably ask for a few more
7 definitions as we go, so I'm --

8 A. That's fine.

9 Q. -- sure I'm understanding your answers, but I
10 think -- I think those were -- that was everything I
11 wanted to ask regarding that.

12 Do you have a specific background yourself in
13 forensic toxicology?

14 A. I do not.

15 Q. Have you ever worked as a toxicologist?

16 A. No.

17 Q. When you were working in the field of
18 chemistry before you went into standards and quality
19 assurance, what kind of chemistry were you mainly
20 focused on?

21 A. It's called analytical chemistry.

22 Q. What is that?

23 A. Analytical chemistry is the field that deals
24 with making qualitative and quantitative measurements on
25 unknown samples, the "what's in it" and "how much is in

1 it" questions.

2 Q. Okay.

3 A. So the qualitative is the "what is it"
4 question, and quantitative is "how much of it is
5 present." And that, in general, is the field of
6 analytical chemistry, the techniques and the methods for
7 making those kinds of measurements.

8 Q. Can you give me an example of something that
9 that's used for? I mean, like a practical application
10 for analytical chemistry?

11 A. Oh, goodness. Yes.

12 Q. Just so I can understand what it is.

13 A. Sure.

14 Analytical chemistry is used in the
15 environmental industry to test the drinking water that
16 you drank this morning.

17 Q. Okay.

18 A. It's used in the field of pharmaceuticals to
19 test whether or not you're giving your child a lethal
20 dose or a therapeutic dose of a medicine. It's used in
21 manufacturing to make sure that materials being used in
22 construction meet specifications.

23 So it has very broad applicability.

24 Q. And that makes sense. That makes sense.

25 Okay.

1 So that was your background in chemistry.

2 When did you make the move into standards and
3 quality assurance?

4 A. It's -- it's not so much a transition of
5 making a move, because the field of analytical chemistry
6 is, in large measure, driven and controlled by quality
7 assurance and -- and standards, because it's important
8 that you understand the -- the quantitative confidence
9 that you can have in any given result and -- and so
10 they're really intrinsically tied.

11 It's more a -- a change of focus from actually
12 making the measurements and performing the analysis to
13 addressing the quality assurance and quality control
14 associated with those measurements.

15 Q. And you're currently employed by Consolidated
16 Technical Services, Incorporated, according to your CV.

17 A. No. That's my -- that was a company that I
18 was the president of, and I -- since I stopped the
19 operation of that -- gosh, it's been probably a -- more
20 than a decade ago -- I've been just working as an
21 independent consultant.

22 Q. Okay.

23 A. Same work, it's just as an independent
24 consultant.

25 Q. The way that it is phrased on your CV is

1 "Senior Technical Consultant, Consolidated Technical
2 Services, Incorporated, Independent Contractor, 1992 to
3 the present."

4 So --

5 A. Correct.

6 Q. -- I assumed by that that you were presently
7 employed by that company.

8 A. I'm sorry. That's --

9 Q. Is that incorrect?

10 A. I may not have made that clear.

11 That's what the reference to independent
12 contractor is. It's --

13 Q. Okay.

14 A. The work that's described in that has been
15 from -- during that whole period, initially during my
16 work for Consolidated Technical Services, but the work
17 continued even after I closed the corporation as an
18 independent consultant.

19 Q. So now, essentially, you're self-employed.

20 A. Correct.

21 Q. Okay.

22 Now, I understand that you have been retained
23 by the defense in this case to analyze some documents
24 and perhaps provide some opinions regarding laboratory
25 work that was done; is that correct?

1 A. That's correct.

2 Q. And when were you first contacted by the
3 defense in this case?

4 A. I'd have to go back and check my records. I
5 don't remember. It was last year sometime, but I'm
6 sorry, I just don't remember.

7 Q. And what is the billing rate or the billing
8 agreement that you have with the defense?

9 A. I bill my time at \$150 an hour regardless of
10 whether I'm reviewing records or traveling or providing
11 testimony.

12 Q. So that's a blanket hourly rate --

13 A. Correct.

14 Q. -- that you have.

15 A. Correct.

16 Q. Okay.

17 And how much have you billed up to this point
18 in the case, if you know?

19 A. I haven't submitted an invoice yet.

20 Q. Do you have an idea of how much the bill is at
21 this point, based on the work that you've already
22 provided?

23 A. I'd have to be operating off my memory,
24 because I don't have my time sheets with me.

25 It's probably -- it's less than a day's work,

1 though, less than an eight-hour day, I would estimate.

2 Q. That's up until this point?

3 A. To this point, correct.

4 Q. Okay.

5 A. So --

6 A. If I understand correctly, I'm billing you for
7 this, not -- not them; is that correct?

8 Q. I am not sure about that. I don't --

9 A. That's the way I've always done it in Florida,
10 I always have --

11 Q. Okay.

12 A. -- billed -- if you're the one that subpoenas
13 me, then I bill you.

14 Q. You're probably right about that. Billing is
15 not my specialty.

16 A. Okay.

17 Q. So I'm not 100 percent certain about that.

18 But one way or another, of course, you'll be
19 paid for your time.

20 So including today's deposition, you think
21 you're right around eight hours or a little bit under an
22 eight-hour workday?

23 A. Yes, yes.

24 Q. Okay. Okay.

25 And what materials have you reviewed in order

1 to form your opinions in this case?

2 A. I reviewed the discovery that was provided to
3 me by Mr. Sohn in this case. And it includes the
4 discoverable materials provided by FDLE for the testing
5 that they performed, it includes the materials provided
6 by the University of Florida for the testing that they
7 performed, and it includes some materials from the
8 Florida Highway Patrol.

9 Q. Okay.

10 And I see you've got -- looks like about three
11 big binders sitting there in front of you.

12 Is that the discovery material?

13 A. It is, yes.

14 Q. Okay.

15 Have you generated any reports yourself
16 regarding this case?

17 A. No. I have not been asked to do so yet.

18 Q. Okay.

19 Do you believe you're going to be asked to do
20 so in the future?

21 A. I'm not really good at predicting the future.

22 Q. None of us are really. Okay.

23 Is it common in your consultation practice for
24 you to generate reports regarding your findings?

25 A. It's highly variable. I sometimes will just

1 meet with the client and discuss it and explain the
2 relevant issues. Sometimes I testify without ever
3 being -- having been asked to do a report. Sometimes
4 I'm asked to do a report before my testimony.

5 It seems like when I testify in federal court
6 I -- I do a very complete report usually. I'm asked to
7 do that. But oftentimes in state courts I testify without
8 having prepared a report.

9 Q. I'm going to assume, though, that you've
10 spoken to Mr. Sohn regarding your opinions in this case.

11 A. Yes, I have.

12 Q. Okay.

13 When did you speak with him regarding your
14 opinions?

15 A. I believe it was last week, but I'm not -- I'd
16 have to check again. I'm sorry. But it was within the
17 last -- it was since Christmas.

18 Q. Okay. That's a good landmark.

19 And you said that the materials that you've
20 reviewed have been documents provided that came from
21 FDLE, University of Florida and Florida Highway Patrol.

22 A. That's correct.

23 Q. And that's -- I mean, I've seen them myself,
24 and I've provided most of them, I think, so it's a
25 pretty voluminous amount of documents.

1 A. It's about this many.

2 Q. Yeah. Right there. Yeah. That's a pretty
3 good heap.

4 Is there -- was there anything that you
5 focused on more than anything else, or -- I mean, was it
6 all the documents together that you were focusing on?

7 Perhaps that's not a very good question on my
8 part.

9 Did that --

10 A. I'm having a hard time --

11 Q. Okay.

12 A. -- understanding -- I -- what I focused on.

13 Maybe it would help if I describe the process
14 that I go through.

15 Q. Sure.

16 A. When -- whenever I'm asked to do a data
17 quality assessment of -- of any report that's issued by
18 a laboratory, what I'm doing as an auditor is
19 essentially trying to reconstruct the entire analytical
20 process to understand the conditions and the controls
21 that were in place and the practices that were followed
22 and the results that were obtained from the very initial
23 collection of the evidence all the way through its
24 handling and processing and analysis and ultimately
25 reporting.

1 So it's reconstructing that entire analytical
2 process.

3 That's why I'm struggling with the what am I
4 focusing on question.

5 Q. Probably a better question on my part would
6 have been just to describe the work that you've done in
7 this case. That would -- that --

8 A. Okay.

9 Q. -- would probably be a little better.

10 A. Okay.

11 Well, that's what I did.

12 Q. Okay.

13 A. I -- I collected the materials and tried to
14 reconstruct the entire analytical process. And it's
15 essentially an after-the-fact determination, because the
16 sample was originally collected in 2006, and so now, in
17 2013, we're trying to go back and understand exactly
18 what happened in the laboratory in 2006 and what
19 happened in the field and paying particular attention to
20 those things that have the potential to influence the
21 quality of the results.

22 Q. Okay.

23 A. And there are three big picture areas that a
24 data quality assessment considers.

25 The first --

1 Q. What are those?

2 A. The first is sample integrity.

3 The second is the scientific validity of the
4 method.

5 And the third -- I'm trying to give you some
6 time to take notes.

7 The third is whether that method was reliably
8 performed in practice.

9 Q. Okay.

10 So the validity of the method itself and then
11 how the method was utilized --

12 A. Correct.

13 Q. -- by a scientist.

14 A. Correct.

15 Q. Okay. Okay.

16 So those -- are those three things that you
17 would look at really in any kind of case, or is that
18 something that was very specific to the nature of this
19 case and the blood sample that you were -- I hesitate to
20 say you were analyzing the blood sample, since you've
21 never actually seen it -- but the blood sample analysis
22 you've been asked to review?

23 A. That general process is the process that I
24 follow in a wide variety of disciplines, whether they're
25 toxicology or DNA or gunshot residue. The process of

1 ensuring sample integrity, the scientific validity of
2 the method and the reliable performance of that method
3 is independent of the particular field of application.

4 Q. Have you done work in cases that involve some
5 of those other forensic areas --

6 A. Yes.

7 Q. -- that you just mentioned? For example, DNA?
8 I think you mentioned ballistics or gunshot residue?

9 A. Gunshot residue, yes.

10 Q. And just to stay focused on this case, because
11 it involves forensic toxicology, how many other cases
12 would you say you've participated in -- done similar
13 work that you've done in this case?

14 A. How many?

15 Q. For any area of toxicology.

16 A. Oh, I -- I got excited, because I actually
17 paid attention, and I think I testified a couple of
18 dozen times in forensic toxicology cases, but I don't
19 know how many I've reviewed. A lot more than that. I
20 typically review more -- a lot more than I ever testify
21 in.

22 Q. Over a hundred, would you say, at this point?

23 A. I -- I'm -- I'm an auditor. I'm reluctant to
24 give estimates.

25 Q. Sure.

1 A. But far in excess of the two dozen that I've
2 testified in, certainly.

3 Q. Okay.

4 And we're talking about forensic toxicology --

5 A. Correct.

6 Q. -- specifically.

7 A. Specifically.

8 Q. Okay.

9 A. And that includes both blood alcohol and drugs
10 or other compounds present in forensic biology samples.

11 Q. Okay.

12 Now, I'm -- I'd like to go through the three
13 areas of focus that you described, starting with sample
14 integrity.

15 Have you formed any opinions, based on your
16 review of the documents in this case, as it relates to
17 the integrity of the blood sample?

18 A. Yes.

19 Q. What is that opinion?

20 A. There are quite a number of concerns regarding
21 the integrity of the blood sample in this case, such
22 that as a user of the laboratory results -- or I would
23 recommend to a user of the laboratory results that they
24 should not consider the final result necessarily to be
25 representative of a sample collected from -- and you

1 pronounced his name different than I've heard, but the
2 client, Lub- -- I --

3 Q. Lubbecke.

4 A. Lubbecke? Okay.

5 Q. Lubbecke.

6 A. Then I've been pronouncing it wrong in my head
7 all this time.

8 Q. I've been pronouncing it wrong for several
9 years myself.

10 A. Okay.

11 But there is not a clearly documented evidence
12 in the paper trail that indicates that the results were
13 obtained from a blood sample that unambiguously was
14 derived from the original collection from Mr. Lubbecke
15 on July 15th of 2006.

16 Q. So I think just to rephrase, so I'm
17 understanding what you're telling me, you have a doubt
18 as to whether or not the blood sample actually came from
19 Mr. Lubbecke's body.

20 A. My concern is that there are inconsistencies
21 and omissions in the record that describe the evidence
22 that was tested.

23 Analytical samples should not be fungible
24 during the analytical process. If you receive a given
25 quantity of sample, there should be a very predictable

1 path that it follows in terms of how much is expended
2 during the course of testing and how much is left over
3 and remains untested.

4 And there were problems with that in -- in
5 this case.

6 There were also problems with how -- how it
7 was identified to unambiguously identify that tube and
8 distinguish it from all the other tubes that are out
9 there.

10 Q. Okay.

11 A. I can --

12 Q. So did I -- I mean, did I state your concern
13 correctly, that you have a concern or a doubt based on
14 the paperwork that you've received that the sample came
15 from Mr. Lubbecke's body as opposed to somebody else's
16 body?

17 A. That is -- that is a concern. Yes.

18 Q. What other -- just focusing again on sample
19 integrity, what other concerns do you have regarding the
20 blood sample?

21 A. There are custody issues. And from my
22 perspective as a -- as an auditor and an analytical
23 chemist, my concern speaks to the need to unambiguously
24 collect, identify, control and ensure that you know
25 everything that happened to that sample.

1 Anybody who used it, anybody who touched it,
2 anybody who extracted samples should be documented. We
3 should be able to reconstruct that to know that nobody
4 ever inadvertently or intentionally let anything else
5 into or out of that sample.

6 And there was no -- there were custody gaps.
7 There was no record that some of the analysts who -- who
8 indicated that they tested this sample ever actually had
9 custody of the sample.

10 Q. Well, I think I'm -- I'm trying to focus at
11 this point on the initial collection of the sample from
12 Mr. Lubbecke.

13 A. Oh, okay.

14 Q. And maybe I'm not being very clear in my
15 questioning. I'm probably not.

16 What -- can you point specifically to
17 something in the documents, or more than one thing, that
18 causes you to have a concern about the actual collection
19 of the blood sample from Mr. Lubbecke in the field?

20 A. Okay. There was -- there was limited
21 documentation available, what I will call
22 contemporaneous collection information. That is a
23 record prepared by the individual who actually collected
24 the sample.

25 That's typically something that you will see

1 where they will document the lot number of the tube and
2 the expiration date of the tube and the date and the
3 time of the blood draw and reference any procedure that
4 they used and sign off that they were the one who
5 collected the sample.

6 That kind of a contemporaneous record was not
7 included in the materials that I reviewed.

8 In addition, in the -- in the Florida Highway
9 Patrol custody record, it indicates that it was -- the
10 sample was collected on July 15th at just about midnight
11 and it -- it was placed in what I presume to be an
12 evidence refrigerator, it's called, placed in EPR on
13 July 17th at 9 o'clock in the morning.

14 That's like 31 hours later. That's a long
15 time later. And it begs the question of -- of its --
16 its custody into that -- during that period. And --

17 Q. Did you -- I mean, you said EPR, and you said
18 you presumed that that meant refrigeration --

19 A. Yes. I presume that that means an evidence
20 refrigerator.

21 It was submitted to -- let's see. It was
22 submitted to evidence July 15th at 11:59 p.m. It was --
23 and it was not placed in a refrigerator until July 17th
24 at 9 o'clock in the morning.

25 Q. Okay.

1 A. 9:10.

2 And it was -- the only reason I really know
3 that the sample was collected on July 15th at 4:25 in
4 the afternoon was essentially a secondary record, not a
5 contemporaneous record, but somebody else making a note
6 of the time that the sample was collected. So I don't
7 ever have any real contemporaneous records documenting
8 the actual collection of the sample.

9 Now --

10 Q. What was the secondary record that you just
11 referred to that's not contemporaneous with the
12 collection of the sample?

13 A. My recollection is that that was a laboratory
14 record based on documentation that they had received.

15 Q. Okay.

16 So what I've heard you say so far, and perhaps
17 I've missed a few things, is that the chain of custody
18 regarding when it went to refrigeration is incomplete.

19 Is that -- is that accurate or not?

20 A. It -- no. The issue is the custody record
21 that we have starts at 11:59 p.m. on July 15th. That's
22 the Florida Highway Patrol's evidence property document.
23 It's a two-page document.

24 Q. Okay.

25 A. It doesn't start until midnight, and the

1 sample was collected, if I can trust that secondary
2 reference, at 4:25.

3 So I don't know who had custody of it, under
4 what conditions between the time it was collected and
5 when it went to -- I don't know who had custody before
6 it was submitted to evidence and received by somebody
7 called TSF-2-A.

8 Q. Okay.

9 So what is your concern about what could have
10 happened to that blood sample in those intervening hours
11 that would have affected the outcome of the results?

12 A. Even which blood sample it is. The --

13 Q. Okay.

14 A. The identity of -- like I said, samples should
15 not be fungible. The identification of that sample is
16 described on the Florida Highway Patrol document as item
17 number F-37-06-0213-001. And that's the same item
18 number that there's a custody sheet that follows.

19 What that tells me is that I should expect
20 that particular item number to follow the sample all the
21 way through the process. I should be able to know that
22 that's the item number that was mailed to FDLE and later
23 mailed to the University of Florida and every step of
24 the process to know that it didn't change along the way.

25 Q. Changed as in be substituted with some other

1 blood sample from another source?

2 A. Correct, correct. Yeah. You've got -- you
3 can't ever -- as a laboratory analyst, you can't ever
4 assume, oh, it must be the same sample. You have to
5 rely on a unique sample identification number.

6 When --

7 Q. And that actually leads into what my next
8 question was going to be.

9 What could they have done, just at this point
10 focusing on the very early point in the investigation --
11 what could law enforcement have done better that would
12 have set your concerns to rest and made you feel certain
13 that we're dealing with the same blood sample that came
14 from Mr. Lubbecke all the way through this process?

15 A. Assign a unique identifier, affix that
16 identifier to the tube and in all the -- the derived
17 records related to that sample.

18 Q. Okay.

19 Is there anything else other than unique
20 identifier?

21 A. No. That's -- well, I have -- I don't know
22 how they made -- how they did the draw, again, because
23 of no contemporaneous record, so I can't have any --
24 draw any conclusions as to whether that was adequate.

25 But there -- we'll get to an issue that comes

1 up a little bit later. We don't know it at this point.
2 But there was -- this was what's called an underfilled
3 tube. The sample volumes are an issue later down the
4 line.

5 Q. Okay. We'll get to that here in a minute, I
6 think.

7 Now, again, related to sample integrity, are
8 there any other concerns that you have, apart from this
9 chain of custody gap that we've already discussed?

10 A. There are subsequent chain of custody gaps.
11 Do you want to go through those now, too?

12 Q. Sure.

13 A. Okay.

14 Q. Okay.

15 A. The Florida Highway Patrol had that nine-digit
16 identifier that I gave to you earlier. That's how they
17 identified this sample, uniquely identified this sample.
18 They mailed it to FDLE in July.

19 And then if you go to the custody records for
20 FDLE -- let's see. On July 21st -- I'm reading from
21 their chain of custody record. "On July 21st, 2006, the
22 following item was received from" -- and then there's a
23 US Postal Service certified mail number that's real
24 long -- "of the Florida Highway Patrol - Venice - Troop
25 F. Item 1, one item containing converted item

1 identified as sme stc T, one blood kit with two vials."

2 You know, I've been looking at these records
3 from Florida for many, many years. I've never seen a
4 blood sample identified in that manner.

5 What happened is I don't have any way of
6 knowing incontrovertibly that this sample that they
7 identify as sme stc T is the same sample that Florida
8 Highway Patrol identified as F-37-06-0213.

9 Q. Okay. So FDLE isn't using the same identifier
10 for the blood kit as FHP is using.

11 A. Yeah. And I don't expect FDLE to assign the
12 same identifier. They have their own system for
13 assigning a unique identifier. But there should be a
14 record documenting the receipt of the record with the
15 identifier that correlates to FHP so that they can
16 essentially have a lookup table that says FHP's number F
17 blah, blah, blah is the same thing as our number
18 such-and-such.

19 Q. And we're missing that.

20 A. We're missing that. That's correct.

21 Q. Okay.

22 And anything else regarding chain of custody
23 gaps?

24 A. The analysts who had chain of custody -- who
25 were documented as having chain of custody in toxicology

1 were the -- the -- Monica Filegar, who is a blood
2 alcohol analyst.

3 Q. Um-hum.

4 A. Their -- the custody records we receive, which
5 were apparently described as the complete custody
6 records, did not include custody by the people who
7 performed the drug toxicology testing in this case,
8 LeAndra Higginbotham, for example.

9 Q. Okay.

10 So is it -- do you -- what kind of concern
11 does that create for you, that they're not -- they're
12 not maintaining that --

13 A. That they're not maintaining chain of custody?

14 Q. Well, not chain of custody, but if I'm
15 understanding right, the -- is it the identifier number
16 that is not being used consistently or --

17 A. Once FDLE got it into their laboratory and
18 assigned it a number, whatever --

19 Q. Right.

20 A. -- the sample was, they assigned it a number
21 20060102588, they used that number consistently.

22 Q. Right.

23 A. The link is lost between Florida Highway
24 Patrol and FDLE.

25 Q. Okay.

1 Well, that I understood, but I think where I
2 might have gotten a little bit lost is the chain of
3 custody gaps within FDLE --

4 A. Okay.

5 Q. -- from one analyst to the next, that there
6 was no complete chain of custody.

7 A. Yeah. In FDLE's chain of custody records,
8 they describe the fact that this blood kit was released
9 and Monica Filegar had it and then she checked it back
10 into evidence and then it was returned to the
11 contributor.

12 So their records -- and under their own
13 procedures, their records should describe everybody who
14 takes physical possession of that sample, so we know
15 when it's gone to the lab for testing or back into
16 evidence for storage or to a different section of the
17 lab for testing or back into storage. Those should all
18 be documented to know who is doing what to that sample
19 when.

20 Q. Doesn't that record document that, though,
21 that it's the analyst, Monica Filegar, who is taking
22 custody of the item?

23 A. And as far as blood alcohol, they're --
24 they're covered. They're -- there's a consistent record
25 for the -- for the custody of that sample and transfer

1 to the blood alcohol laboratory.

2 What there isn't is transfer to the other
3 analysts who were responsible. They don't do this all
4 on -- they each have to pull -- how am I going to
5 explain this.

6 There's a tube of blood, and Monica Filegar
7 takes out a quantity that she tests, caps it back, and
8 then somebody else at a later date comes along and
9 removes the cap and pulls out what they need for a
10 different kind of test.

11 Q. Are you referring to LeAndra Higginbotham
12 at --

13 A. She was one of them. There was --
14 (Discussion off the record.)

15 Q. (BY MS. WALLACE) Do you mean LeAndra
16 Higginbotham when you say someone else came along and
17 removed blood from the vial?

18 A. My recollection -- and I'll have to go back
19 and look to the actual bench sheets -- was somebody else
20 actually prepared the blood. LeAndra had signed off as
21 an instrument analyst, not the prep. I -- but yeah.
22 A -- essentially a different -- a different analyst had
23 possession of it in the drug toxicology section than
24 Monica Filegar in the blood alcohol section.

25 Q. And the identity of that person is not

1 documented in the bench notes.

2 A. It is documented in the bench notes. It's not
3 documented on the custody transfer.

4 When -- when you transfer custody of a sample,
5 you're essentially documenting the fact that you
6 received it, that it was in its appropriate condition.
7 You're verifying the quantity, how many tubes of what
8 volume and so forth.

9 And that's what's missing here, that that --
10 verifying that I gave you this sample, and you're
11 verifying that that's the same sample you received.
12 That's what never happened beyond the blood alcohol
13 section. It didn't happen in -- in the toxicology
14 section.

15 Q. So just so I'm clear, we know the name of the
16 person who handled the sample, prepared it for
17 Dr. Higginbotham to do her analysis, but we don't know
18 how much blood that person took to prepare the sample?
19 Is that -- that not -- no?

20 A. No. It's --

21 Q. Okay.

22 A. The lab's own procedures require that they
23 maintain custody records to know who is responsible for
24 protecting that sample. It's more than --

25 Q. Okay.

1 A. -- just who used it, but they're accountable
2 and responsible for protecting the integrity of that
3 sample while it's in their custody.

4 So we know it was transferred to Monica
5 Filegar, and we know that she transferred it back to
6 evidence, and we have no record of anybody else
7 accepting the responsibility for that sample.

8 Does that make sense?

9 Q. No, it doesn't, because to me, evidence has
10 accepted responsibility for the sample, the evidence --

11 A. Oh.

12 Q. -- section when --

13 A. Oh. They --

14 Q. -- Monica Filegar returned it to them.

15 A. Yes, they did.

16 Q. Okay.

17 A. But no person whoever did any of the drug
18 testing ever accepted responsibility for the sample.
19 That's my problem.

20 Q. Okay.

21 So are you saying that the paperwork makes it
22 appear as though Monica Filegar checked the sample back
23 in and the sample just stayed there?

24 A. Correct.

25 Q. Nobody else took it after that point?

1 A. Correct.

2 Q. Okay.

3 A. Correct.

4 Q. I understand now.

5 A. Sorry. That was painful.

6 Q. That's okay.

7 So -- but in the bench notes, you can tell who
8 took the sample; is that right?

9 A. In the bench notes -- well, do you have these
10 records here in front of you? Can --

11 Q. I have some of them. I didn't bring
12 everything, because I just didn't know. That's why we
13 did this on video.

14 A. Oh.

15 Q. If you can show -- if you can put the record
16 up in front of the camera, and I can just see what
17 you're looking at, I think that might help.

18 A. Oh, okay.

19 All right. Let me -- I wonder how close to
20 the camera I'll have to be.

21 Am I too close? Too far?

22 Q. I'm -- you're --

23 MR. SOHN: Little too close.

24 MS. WALLACE: Little too close.

25 Now it's a little too far.

1 MR. SOHN: That's too far.

2 MS. WALLACE: Yeah.

3 MR. SOHN: In between.

4 And move to the right.

5 MS. WALLACE: And to -- try to your right.

6 Okay.

7 MR. SOHN: There you go.

8 MS. WALLACE: Oh.

9 MR. SOHN: Too far back a little bit.

10 MS. WALLACE: Perfect. Right there. Okay.

11 I don't know --

12 THE WITNESS: Okay.

13 This you'll see -- right here, there's a list
14 of sample numbers.

15 MS. WALLACE: Um-hum.

16 THE WITNESS: These are the FDLE sample
17 numbers that on this date was prepared by a person. And
18 I'm --

19 MS. WALLACE: Okay.

20 THE WITNESS: -- trying to look from behind so
21 it's kind of -- but --

22 MS. WALLACE: That's all right.

23 THE WITNESS: -- this does include --

24 Mr. Lubbecke's sample is identified here as Lubbecke and
25 the sample ID number that FDLE assigned.

1 MS. WALLACE: Okay.

2 THE WITNESS: So I have documentation -- this
3 is a contemporaneous record that they prepare at the
4 time that they're preparing the basis analysis.

5 MS. WALLACE: Okay. All right.

6 THE WITNESS: Okay?

7 MS. WALLACE: Okay.

8 THE WITNESS: In this one --

9 MS. WALLACE: So --

10 THE WITNESS: -- that I was just showing you,
11 now that I can see it --

12 MS. WALLACE: Right.

13 THE WITNESS: -- it -- I'll describe it so you
14 can find it later if you wanted. It's the basis drug
15 analysis form for batch ID 3392.

16 And --

17 MS. WALLACE: Okay.

18 THE WITNESS: One, two, three, four, five,
19 six, seven -- there are ten unknown samples that were
20 analyzed in this batch. That's very common, very
21 acceptable, that you run an entire set of these -- no,
22 10 -- 11. Sorry. Very acceptable practice.

23 And it looks like the person who prepared the
24 aliquot of the sample that's identified as
25 Mr. Lubbecke's sample was SLH. And those are LeAndra

1 Higginbotham's initials.

2 MS. WALLACE: Okay.

3 THE WITNESS: So I have a record that shows
4 that this person had a tube that had this number on it,
5 that they identified as Mr. Lubbecke's sample, and she
6 was prepping that sample, but I don't know -- I don't
7 have a record that she ever went and took custody of it
8 from evidence or took custody of it from Monica, who had
9 it earlier.

10 Q. (BY MS. WALLACE) So the problem is we don't
11 know where Dr. Higginbotham obtained that sample from?

12 A. We don't have a record that she accepted
13 custody, that she accepted responsibility for protecting
14 the integrity of that sample.

15 Q. Well --

16 A. Labs -- laboratories simply can't have a
17 situation where they have all the samples sitting there
18 in evidence or in some sample central location and
19 analysts just go pull things out and analyze them. They
20 have to be able to know what's where at any given time
21 and under what conditions and controlled by whom.

22 And part of that keeping track is signing out
23 custody so you know where that sample is at any given
24 point in time.

25 Q. But isn't that what that document shows, that

1 Dr. Higginbotham took custody of that sample?

2 A. That's not the purpose of this document, and
3 that's -- she's not -- when you -- when you sign off on
4 custody, you're accepting responsibility for protecting
5 the integ- -- documenting the condition in which you
6 received it and that it's your responsibility to keep it
7 in that condition until you transfer it to the next
8 person.

9 That's not the purpose of this. This is
10 simply that she's documenting that she prepared an
11 aliquot from that sample. I have no idea where that
12 sample was, in whose custody between when she prepared
13 the aliquot and when Monica had that sample.

14 Q. But --

15 A. There's no way to know.

16 Q. Um-hum. Okay.

17 And there are no other documents that fill in
18 those gaps for you that were provided by FDLE?

19 A. No. I review a lot of FDLE records, and they
20 very -- they usually have very complete custody records,
21 that you can see every transfer in and out of the
22 sample. It was -- it was a surprise to me to see this
23 big gap in -- in custody for this sample.

24 Q. Okay.

25 A. They're all --

1 Q. I guess --

2 A. Their procedures -- their own procedures
3 require that they document internal custody transfer in
4 exactly the same way you expect custody transfers to be
5 documented in the field.

6 Q. Right. Okay.

7 A. So you make sure you know you're handing over
8 the thing you think you really are.

9 Q. Right.

10 So -- I guess for me, you know, not being an
11 expert in this field -- to me, if there's a piece of
12 paper that we've just looked at here that says that
13 Dr. Higginbotham, you know, prepared an aliquot and she
14 had possession of this item, then that tells me she had
15 possession of it.

16 So I guess I don't see what the problem is, so
17 to speak, in terms of the integrity of the sample, if
18 this document tells us, even if it's not the most -- you
19 know, the most convenient or direct way for the
20 paperwork to tell us about the chain of custody, but if
21 this paperwork tells us that she had the item on a
22 specific date and she did certain tests with it, then
23 how does that create a problem for the outcome of her
24 testing?

25 A. Again, it's -- it's just the ambiguity of is

1 this the -- according to her own custody records, that
2 sample was never released to her. It -- according to
3 their own custody records, if -- like you do evidence
4 audits of evidence rooms, and you see what's all in
5 there -- these samples were supposed to be in there, and
6 they weren't.

7 It means --

8 Q. Okay.

9 A. -- that they had an uncontrolled management of
10 their evidence, if you will.

11 Q. Okay.

12 And I think you said a moment ago that this is
13 unusual for FDLE, that usually these gaps are filled in
14 in their custody reports?

15 A. That's certainly been my experience with
16 FDLE -- review of data from FDLE labs.

17 Q. What is your experience with FDLE? How many
18 other times have you reviewed documents that have come
19 from their laboratories?

20 A. Dozens, over quite a few years.

21 Q. Okay.

22 That's not just in the area of forensic
23 toxicology, but that's in the area -- other lab areas --

24 A. Yes.

25 Q. -- like DNA --

1 A. Most --

2 Q. -- you mentioned before?

3 A. It was DNA. Most of them have been probably
4 blood alcohol. I did a succinyl monochole case in
5 Pensacola that -- a variety of different things in FDLE
6 labs.

7 Q. Have you ever visited any of the laboratories
8 in person?

9 A. I visited the Orlando laboratory in a DNA case
10 that was many years after the fact.

11 Q. Okay.

12 A. I didn't go into the laboratory. They brought
13 us records to a conference room.

14 Q. Have you ever visited Dr. Higginbotham's lab
15 in Tallahassee?

16 A. I have not.

17 Q. Okay.

18 Have you ever met her in person?

19 A. No.

20 Well --

21 Q. Okay.

22 A. I haven't met her, but I did see her
23 testify -- part of her testimony in a case in Key West,
24 if I recall correctly.

25 Q. Is that the only other case that you've had in

1 common with her, so to speak, or have there been others?

2 A. That may have been the only -- I don't -- I'm
3 not really sure, but I just remember that one.

4 Q. Okay.

5 Were there any other chain of custody gaps at
6 FDLE, apart from the one that we've just talked about?

7 A. For each test that was performed, the basis,
8 the THC, that -- the ELISA testing, the immunoassay
9 testing that was done by the lab -- none of that has
10 custody transfers, only the alcohol.

11 Q. Okay.

12 Is there any explanation as to why this is
13 being documented for the alcohol testing but not for the
14 other testing?

15 A. No.

16 Q. No? Okay.

17 Any other problems regarding sample integrity?

18 A. Yes. One of the sig- -- one of the issues
19 that's something that we commonly review deals with the
20 quantity of blood that's present, so you can essentially
21 track it through the process.

22 Q. Okay.

23 A. And in this case, there were two tubes that
24 were collected, an A tube and a B tube, and in her -- in
25 her alcohol record that Monica Filegar prepared on

1 August 1st of 2006, she documented that the A tube was
2 approximately three-quarters full and that the B tube
3 had a volume that she estimated at one-half a
4 milliliter.

5 Now, the reason that that's important is
6 because these tubes are -- are designed for a nominal
7 fill volume of 10 milliliters. That mean 10 plus or
8 minus .7. If they're operating as they were designed
9 to, with the seal hasn't been compromised, you know, the
10 vacuum is good, everything's working as it should, they
11 should collect 10 mils of blood.

12 But she documented that one of them was only
13 three-quarters full and the second tube only had a half
14 a milliliter. Well, then you can -- so she estimated
15 7.5 mils was present in tube A.

16 If you -- if you go through the analytical
17 testing that was done by FDLE, they used a total of
18 7.1 milliliters to conduct their testing. They used 3
19 mils, 1 mil, 3 mils and 0.1 mils. There were four
20 separate sets of tests that were performed.

21 And when I say 7.1 mils, implicit in that is
22 that the tube would have had to have more than that in
23 it, because that's a measured quantity that you pull out
24 of the tube with what's called a volumetric pipette, and
25 you can't -- if there was 1 milliliter -- exactly

1 1 milliliter in the tube, you would not be able to
2 withdraw exactly 1 milliliter. That's not the way they
3 operate. You can't pull it to dryness, essentially.

4 So the fact that their own records documented
5 that they used 7.1 milliliters is really important, and
6 the reason is because when they completed their testing
7 at FDLE on this A tube, they sent both tubes to
8 Dr. Goldberger's lab at University of Florida.

9 When his lab received the tubes, they
10 documented them as the A tube containing 3 milliliters
11 of blood. And I've forgotten -- I'd have to look up
12 whether they said a half a mil for the second tube. But
13 nobody ends up ever using the second tube, so it doesn't
14 become important.

15 So what we've got is a situation where FDLE
16 estimated seven-and-a-half mils in the tube, and they
17 used 7.1 mils, and then they sent it to Dr. Goldberger's
18 lab, and they estimated 3 milliliters in the tube, and,
19 in fact, when they did their testing, they withdrew 2
20 milliliters for three different tests, 1 mil, 1 mil -- 1
21 mil, one-half mill and one-half mil. A total of 2 mils
22 was used.

23 Q. So what I -- what I hear you say --

24 A. So it doesn't add up.

25 Q. The math doesn't add up.

1 A. Yeah.

2 Q. So basically the FDLE didn't have
3 3 milliliters in tube A to send on to Dr. Goldberger,
4 but he documents that that's how much was in the tube.

5 A. That's correct.

6 Q. Okay.

7 A. That's correct.

8 Q. Can you -- can you tell from the records if
9 the error is on FDLE's part or on Dr. Goldberger's part?

10 A. Unfortunately, I can't.

11 Q. Okay.

12 A. Yeah. That -- that's the kind of
13 investigation, frankly, that you would need to do to try
14 to figure this out, and there's -- the problem is that
15 they didn't -- the only documentation of sample volume
16 was on Monica, on her first receipt of the tube, and
17 then when Dr. Goldberger receives it.

18 The only reason that I know how much they used
19 is because I got copies of their prep logs that describe
20 what their practices were to use a 3 mil sample volume,
21 for example.

22 Q. Okay.

23 Any other problems regarding sample integrity?

24 A. No. I think that's it. I think that's it.

25 Q. Okay.

1 We've been going for about an hour now.

2 Do you need to take a break or anything like
3 that?

4 A. I'm fine if you want to keep going.

5 Q. I'm fine. I just wanted to make sure that --
6 Do you -- are you okay?

7 MR. SOHN: I'm good.

8 MS. WALLACE: If anybody needs a break, of
9 course, just --

10 THE WITNESS: Okay.

11 MS. WALLACE: -- pipe up.

12 Q. The second thing that you mentioned as a major
13 area of focus is the scientific validity of the method
14 used.

15 A. Right.

16 Q. Were there any concerns on your part regarding
17 that?

18 A. Yes.

19 Q. Okay. Tell me one of them.

20 A. The -- the discoverable materials that were
21 provided in this case included what I'll call summary
22 reports of the laboratory's validation studies.

23 Q. Okay.

24 A. And method validation is a process that
25 analytical laboratories go through to -- before they

1 ever start using a method to run unknown samples, to
2 essentially test the method and see how well it works.
3 And that way they can determine whether or not the
4 method is appropriate for its intended use or not.

5 And method validation as a prerequisite to
6 running unknown samples is a mandatory requirement of
7 every national and international standard that I've
8 looked at. It's -- it's just scientifically necessary.
9 It's an essential element of -- of the scientific
10 process.

11 And so one of the things that was requested in
12 the discovery was a copy of their validation studies,
13 you know, their --

14 Q. Can I stop you just for a second?

15 A. Sure.

16 Q. When you say "their," are you talking about
17 FDLE or University of Florida?

18 A. Both.

19 Q. Okay. Okay.

20 A. Okay. So what -- what we got in terms of
21 discovery was not actually the data, but a summary
22 report prepared by the lab. As an auditor, sure, I'd
23 always rather have the data, but at least I got a copy
24 of what they described as their -- their conclusions of
25 their -- of their validation study.

1 And there are a number of problems.

2 For example -- maybe I need -- do I need to
3 put this -- can I describe it for you, or should I put
4 it up in front of the camera again?

5 Q. Why don't you describe it for me, and we'll
6 see how that goes.

7 A. Okay.

8 One of the things that we received from FDLE
9 is a document entitled Base Drug Analysis Procedure for
10 the 5973N Mass Selective Detector Revalidation Summary
11 Report. It's dated March 1st, 2004.

12 Q. All right.

13 A. And so this document describes their process
14 for testing their method and determining whether it's
15 appropriate for use on a whole variety of target
16 analytes and determine the accuracy and the precision
17 and detection limit and all those kinds of things.

18 Now, the problem in this case is that -- I
19 need to go to the lab report.

20 I've got alcohol. I need the drug one. Here
21 we go.

22 The laboratory reported results on
23 August 31st, 2006, and their results included a total of
24 five compounds that are described as identified in the
25 specimen. They analyzed and reported THC, carboxy-THC,

1 which is the inactive metabolite, alprazolam, benzo --
2 benzoylecgonine, which is a cocaine metabolite, and
3 morphine.

4 Each of those five things was identified in
5 the spectrum in their report, in the sample in their
6 report. They -- that essentially -- they're reporting
7 the results of a qualitative analysis, what's in it, but
8 they did no quantitative analysis, no -- no reporting
9 whatsoever as to the quantity of these things that were
10 present.

11 Now, the problem is that if you'll look
12 through the laboratory's validation studies that they
13 provided to us, they did not include analytes that they
14 reported results for. So they did not include --
15 benzoylecgonine, the cocaine metabolite, that they
16 reported as identified in the specimen was not one of
17 the compounds that they had validated in their
18 validation study.

19 So they were reporting --

20 Q. So that --

21 A. -- a result without using -- without having a
22 scientifically validated method.

23 Q. So that calls the results into question --

24 A. It does.

25 Q. -- at least as to that one compound?

1 A. It does.

2 Q. And which compound is that again?

3 A. That's the cocaine metabolite.

4 Do you have the report there?

5 Q. I do have that here.

6 Is that the --

7 A. It's the fourth one down.

8 Q. Benzoylecgonine?

9 A. Yes.

10 Q. Sorry.

11 For the court reporter, I'll spell that. It's
12 B-E-N-Z-O-Y-L-E-C-G-O-N-I-N-E. Okay.

13 A. Okay. And there's a similar problem with
14 respect to the laboratory's validation for morphine,
15 because in the results that were reported, they reported
16 results from a derivatized method, and the validation
17 does not appear to have been done on a derivatized,
18 which is functionally a completely different method.

19 Q. So if I understand you correctly, you're
20 saying that they did not validate their own methods for
21 testing for these two particular compounds.

22 A. That's correct.

23 Q. Okay. Glad I got one right.

24 This is why we're lawyers and not scientists.

25 MR. SOHN: So noted.

1 Q. (BY MS. WALLACE) Is there any -- any other
2 problems that you had regarding the scientific validity
3 of their methods?

4 A. I -- I think that's about it. I may come back
5 to something, but I think that's about it.

6 Q. Were there any problems with scientific
7 validity as it related to University of Florida's
8 testing?

9 A. We did not get validation data from the
10 University of Florida. And their -- their analytical
11 procedures in Florida are written to -- at University of
12 Florida are written to a much more complete and -- and
13 rigorous standard than FDLE's are. It has more specific
14 criteria in it that must be met, for example.

15 So that's the kind of information that usually
16 comes out of a validation study. But we did not receive
17 a validation study in the materials that we received
18 from the University of Florida.

19 MS. WALLACE: Mr. Sohn, is that something that
20 you wanted? I mean, is that something -- because I
21 thought that we had gotten to the point where I had
22 given you everything that you wanted.

23 MR. SOHN: I thought you did, too. We'll
24 touch base on that.

25 MS. WALLACE: Okay. All right.

1 Q. Is there -- I'm going to go a little bit on a
2 tangent here, a little bit. Mr. Sohn and I have gone
3 back quite and forth quite a bit about the documents I
4 was providing and whether or not it was everything that
5 he wanted.

6 Was there anything else that you had wanted
7 that you didn't receive, besides the validation study
8 from University of Florida?

9 A. You know, I think -- I think both of these
10 labs made a really good effort to get us all the
11 materials, and I think we pretty much got everything
12 that we asked for, if it --

13 Q. So --

14 A. -- if it existed. I, obviously, don't expect
15 them to produce something that didn't exist.

16 Q. Sure.

17 But just to the question, was there anything
18 that you asked for, apart from University of Florida's
19 validation study, that you didn't receive?

20 A. I'm looking at my edited discovery list here.

21 The only things that we didn't receive were
22 things that I have to assume did not exist.

23 Q. What were those things?

24 A. Things like contamination control procedures.

25 Q. From which lab?

1 A. Either lab.

2 Q. You didn't receive that from either FDLE or
3 University of Florida?

4 A. No.

5 Let's see, what else did I not get.

6 The -- the evidence collection procedure that
7 was -- that we requested was the ones that were in
8 effect at the time that this evidence was collected,
9 and --

10 Q. Is that Florida Highway Patrol?

11 A. Yes, that's Florida Highway Patrol, correct.

12 And they -- they sent us their manual that
13 went into effect in 2011, and then they went through
14 another round of requests, and the next time they sent
15 us policies that they called 12.01, 12.02 and 12.03,
16 but, again, these were all revisions that were released
17 years after the work in this case.

18 So I think they just didn't understand that we
19 wanted the versions that were in effect in 2006, if they
20 had any in effect at that time.

21 Q. Okay.

22 Anything else that you're missing that you
23 would -- that you would ask for?

24 A. Any field record -- contemporaneous field
25 records if they existed related to --

1 Q. And again, that's FHP?

2 A. That is -- that would be FHP, yeah, the agency
3 responsible for the original collection.

4 The request was field records related to
5 evidence collection, and it goes on and on. Essentially
6 everything between initial collection and receipt by the
7 lab.

8 Q. Anything else that you're missing?

9 A. You know, we reasked for the custody records
10 again, trying to make sure that we didn't miss anything
11 for -- for FDLE's toxicology, for LeAndra and the other
12 tox analysts. But they just resubmitted the same set
13 that we got the first time, so I presume that that's a
14 complete set.

15 No contamination surveys.

16 I think that's it.

17 Q. Okay.

18 So we talked about the validation studies for
19 FDLE. We don't have the validation studies for
20 University of Florida.

21 Were there any other concerns that you had
22 regarding scientific validity in this case?

23 A. No. Simply the fact that the methods had not
24 been validated prior to their use.

25 Q. And then the last area that you mentioned as

1 being an area of concern is how the methodology was used
2 by the scientists.

3 Were there concerns that you had in this case
4 in that area?

5 A. Yeah. The biggest issue was probably the fact
6 that it wasn't possible to determine whether the
7 laboratory's results were what's called traceable.

8 Q. What does that mean?

9 A. Traceability is a term that we use in
10 analytical chemistry because we identify unknowns by the
11 comparing them to the response that we get for known
12 samples. And so the traceability of the measurement
13 depends on using known samples of known and documented
14 origin and purity.

15 So the instrument doesn't tell us that a
16 sample is alprazolam. You have to run a known standard
17 and get its response, and that traceability of that
18 standard is what's required.

19 It's kind of like -- you're probably -- when
20 there's an E. coli outbreak in hamburger, they can trace
21 back all the places that that -- that hamburger lot got
22 shipped.

23 It's the same kind of thing for reference
24 materials used in chemistry laboratories. The lot
25 numbers are identified, and as long as you can prove

1 that that lot was received and stored and handled
2 appropriately, then it's traceable back, in our case, in
3 the United States here, to NIST, National Institute of
4 Standards and Technology.

5 In some case, the controls that they used were
6 simply identified with a date and an analyst's initials.
7 That's generally not sufficient to uniquely identify and
8 make it traceable.

9 In some cases, the reference materials that
10 were used were simply identified by their target
11 concentration of, for example, 500 nanograms per mil.

12 When you receive these -- a lot number -- a
13 lot of these reference materials, they have a lot
14 number, the list of analytes, the target concentrations,
15 the acceptance ranges, the uncertainty, all that kind of
16 information, and as long as you can track that lot
17 number, then it's traceable.

18 But they didn't appear to document the lot
19 number of the materials they used always at the time
20 they used them. In some cases, they did.

21 Q. Well, where -- and just -- I'm going to try
22 and say back what I think I've heard you say, because
23 that one was kind of a difficult concept for me.

24 A. It is.

25 Q. I'll be honest with you. Traceable.

1 So what you're -- what you're saying is these
2 laboratories -- how do I want to say this -- that we
3 don't know where their reference standards are coming
4 from --

5 A. Yes.

6 Q. -- in terms of the instrument recognizing a
7 compound as being alprazolam?

8 A. Or any other material, yeah. The only way you
9 know --

10 Q. Just --

11 (Discussion off the record.)

12 Q. (BY MS. WALLACE) Just to use alprazolam as an
13 example.

14 A. Yes. Alprazolam is just an example.

15 Every compound that you identify you run a
16 reference material of known origin and purity that
17 should be traceable back to NIST, all the way back to
18 the National Institute of Standards and Technology, so
19 that you can draw that conclusion with confidence.

20 Q. Which compounds -- and we'll just start with
21 FDLE. Which compounds are not traceable?

22 A. It's not on a -- well, how do I explain it.

23 For example, the -- that form that I showed
24 you a little bit earlier -- let's see if I can find one
25 on there.

1 Can I come up to the --

2 Q. Sure.

3 A. -- camera again?

4 Okay.

5 Q. Little further away.

6 Okay. I remember this document. Okay.

7 A. Okay?

8 Here I'm talking about measuring out 3 mils of
9 blood for each standard and blank, and the source of the
10 standards is just identified as October, '05 V.

11 And from that I can't -- it's not a specific
12 lot that describes exactly which analytes are present in
13 that standard, at what concentration, from what source.

14 Q. Okay.

15 A. And this next one under it is similar. It
16 just identifies it as 51506 and then somebody's
17 initials.

18 Q. So the problem is they're not documenting the
19 lot numbers from NIS (sic)?

20 A. It's the -- yeah. The lot numbers that are
21 traceable to NIST.

22 Q. Okay.

23 And is NIS the only source of these reference
24 standards, or are there any other manufacturers, so to
25 speak?

1 A. That's actually a good question, but I need to
2 clarify something. They don't actually buy these
3 reference standards from NIST. Typically they buy them
4 from reference material providers who certify them as
5 traceable back to NIST. There's a secondary
6 certification process, if you will.

7 Q. Okay.

8 A. But as long as all those lot numbers are in
9 sync, you can make it traceable.

10 Q. So for those -- the compounds that you just
11 indicated on that report, which compounds were those?
12 Or is that --

13 A. It's a long list. It's --

14 Q. Okay.

15 A. And I -- that's part of the problem. I don't
16 know what all the compounds were. But it's a -- it's a
17 couple of dozen anyway.

18 Q. Okay.

19 Were there any specific compounds or drugs
20 that were identified by FDLE that don't have these lot
21 numbers, these traceable lot numbers associated with
22 them?

23 A. The one I showed you was their basis test, and
24 that was the one that they used to report the results
25 for the cocaine metabolite and for morphine. So that's

1 the test that was used to report those two results.

2 Q. Okay.

3 But there -- are there no lot numbers for any
4 of the report -- or the results that they reported or
5 just for those two drugs?

6 A. When they say they spike in a low
7 concentration standard, it has every single target
8 analyte present at that low concentration. So it's a
9 mixed standard. So there will be cocaine and heroin and
10 a whole bunch of other things present in that sample.

11 Q. Okay.

12 A. It won't have heroin, because that's not
13 amenable to this analysis, but their list is things
14 like -- in addition to morphine, methamphetamine,
15 oxycodone, codeine, cocaine, a long list of things.

16 And so when they -- that one reference to a
17 low concentration standard should have every one of
18 these compounds present at that low concentration.

19 Q. Okay.

20 So -- now, I'm sorry to belabor this, and I'm
21 just trying to -- I'm just really trying to understand
22 traceability.

23 The problem as it relates to FDLE and the
24 report that we're just looking at there, is there no --
25 there are no lot numbers associated for these compounds,

1 so we don't know how FDLE's instruments identify these
2 compounds in the blood sample?

3 A. No.

4 Q. Is that not --

5 A. Not quite. You're close.

6 Q. Okay.

7 A. It's that we don't know that the known
8 standard that they introduced to the instrument and said
9 this is morphine -- we don't know where that standard
10 came from.

11 Q. I got it. Okay.

12 Is this -- I mean, a minute ago we talked
13 about other documents that you would have liked to have
14 received.

15 Is this -- would this fall into that category,
16 as well, traceability reports or documents?

17 A. If they had been providing lot numbers that we
18 could link, then there could have been a certificate of
19 analysis associated with that lot number. But without
20 the number, I've got nothing to look up.

21 I can look these things up from the
22 manufacturer's sites with lot numbers. I can go to the
23 reference material manufacturer sites, enter the lot
24 number and find the certificate of analysis for that
25 standard.

1 Q. Okay.

2 A. Ooh, and here we're using standard as a
3 different way, a different -- this is the other way to
4 use the term "standard" in the analytical chemistry.

5 Q. And this -- that's the one I'm actually
6 familiar with, so nice to slightly be back on familiar
7 ground.

8 Were there, apart from the traceability issue,
9 any other problems that you had regarding the way that
10 their scientific methods were used, either of the
11 laboratories?

12 A. Let's see.

13 There were -- there were record-keeping issues
14 that made it very difficult for an independent reviewer
15 to determine actually who did what to a given sample,
16 because there were people who ran the immunoassay screen
17 that were not identified. I have initials. It looks
18 like A something. I can't really tell. AE maybe.

19 So we don't know who that was, what their
20 qualifications were, you know, nothing about that
21 person.

22 In addition, in some other cases --

23 Q. Can I stop --

24 A. Sure.

25 Q. -- before you go on?

1 So does this relate in some sense to the chain
2 of custody issues that you were describing earlier? We
3 just don't know who is touching the samples at what
4 time?

5 A. That's -- that's correct, because I -- I have
6 a document that says that somebody with the initials
7 that look like AE seems to have run this sample, but we
8 don't -- we don't know anything more about them.
9 LeAndra Higginbotham did review that data, but she
10 didn't run it, she didn't perform the testing.

11 Q. Okay.

12 All right. And I interrupted you before. You
13 were going on to another concern that you had regarding
14 the methodology used --

15 A. Okay.

16 Q. -- or how the methodology was used.

17 A. Was used.

18 Can I -- let's see. There are several -- I'm
19 going to look and see if I can find some places here.

20 That same issue happens on several of the
21 other tox methods where a person whose first name starts
22 with a D -- and it looks like maybe DKM? H? I'm not
23 really sure. Another person was involved.

24 It's common to have multiple analysts involved
25 in testing, but you need to be able to distinguish who

1 did exactly what, who -- who performed which physical
2 manipulations, which extractions. And they do that in
3 large measure on these bench sheets, but I don't know
4 who the second person is.

5 I only got LeAndra's resume. When we -- when
6 we asked for the -- well, maybe that's something that we
7 didn't get. We asked for the resumes of the people
8 involved. We didn't get resumes for the AE person or
9 the DKH person, you know, that kind of thing.

10 Q. Okay.

11 A. So I don't know who those people are.

12 Q. Okay.

13 Any other problems with how the methods were
14 used, apart from this documentation problem that we're
15 talking about?

16 A. You know, the -- the kind of testing that was
17 performed by FDLE that is only reporting the
18 identification and not the quantity is significantly
19 less demanding than quantitative testing. The -- the
20 one thing you have to get absolutely right on
21 qualitative testing like this is the issue of
22 contamination control.

23 Q. Okay.

24 A. And because if you have a process that allows
25 samples to be cross-contaminated through carryover

1 between glassware or equipment or on the instrument,
2 then you can misinterpret a signal as being present in
3 the sample when it was really introduced through
4 contamination.

5 Q. Right.

6 A. So the fact that they don't have any
7 contamination control procedures specifically means that
8 it's -- it's more difficult to have confidence in
9 results that are present at very low levels, as is the
10 case here.

11 Q. Okay.

12 And they did not provide the contamination
13 control procedures to you, so you don't know what the
14 procedures are, or if they exist in the first place?

15 A. When they were -- when that -- in response to
16 that, they provided the materials we got, the quality
17 manual documentation, the standard operating procedures,
18 which are essentially silent on the subject of
19 contamination control.

20 Q. Okay.

21 And I assume that it would be a -- a normal
22 laboratory practice to have some kind of procedures for
23 contamination control.

24 A. Yes, especially if you're doing low-level
25 trace level work. It's not so much an issue when you

1 have -- when all you're running is very concentrated
2 high-level bulk materials. That's not as much of an
3 issue. But when you're reporting trace results, it is.

4 Q. Okay.

5 Are there any other concerns that you had in
6 the area of how methods were used by either of these two
7 labs?

8 A. I think that's pretty much it.

9 The -- the documentation, the amount of
10 contemporaneous documentation that was available for the
11 samples at this time, as I already indicated, was
12 largely insufficient for us to be able to go back after
13 the fact and try to figure out where the -- for example,
14 the volume inconsistency could have appeared, at what
15 point was there -- was there a point when there was a
16 problem introduced or not.

17 We just really can't tell, because that --
18 those contemporaneous records aren't -- aren't there.

19 So no. I think that pretty well covers it.

20 Q. Okay.

21 Apart from these different topics we've
22 already discussed, were there any other concerns that
23 you had regarding any of the work that was done in this
24 case.

25 I know that's a big question, it's kind of a

1 catchall, because we've talked about a lot in detail.

2 A. Um-hum.

3 Q. So I just wanted -- was there anything else
4 that we haven't already discussed that you consider
5 problematic in the work done in this case?

6 A. I will mention that I did not look at the
7 alprazolam data simply because -- since it was present
8 at -- at normal therapeutic levels, it didn't seem
9 material. So I didn't even bother to waste my time
10 looking at it.

11 Generally, if it's a prescribed medication
12 that is present at therapeutic levels -- normal
13 therapeutic levels, I don't even bother to waste my time
14 looking at it. So I'll just qualify by saying that of
15 the materials that I received I just didn't even look at
16 that.

17 Q. And what would you look at? I mean, what --

18 A. Well --

19 Q. -- materials would you have looked at --

20 A. That -- that --

21 Q. -- if alprazolam had been an issue for you?

22 A. If it had been an issue.

23 The same materials.

24 Q. That's a terrible question.

25 A. The stud- -- I would have looked at the prep

1 records and the instrument data and the validation
2 studies and all the same kind of materials.

3 Q. Okay.

4 So the compounds that you focused on were the
5 other compounds that were identified in Mr. Lubbecke's
6 blood, the cocaine metabolite, the THC, morphine --
7 there's one other one, a fourth one.

8 A. Correct.

9 Q. Those are the ones you focused your analysis
10 on.

11 A. That's correct.

12 Q. Okay.

13 And you didn't -- you didn't -- you said you
14 didn't waste your time on the alprazolam because it was
15 within normal therapeutic levels?

16 A. Yes.

17 Q. Okay.

18 Any other concerns that you had regarding the
19 laboratory work done in this case?

20 A. I think that's about it.

21 Q. Okay.

22 And I just had a couple of other -- other
23 little questions.

24 Have you ever had any cases before involving
25 Dr. Goldberger?

1 We talked about Dr. Higginbotham, but I didn't
2 ask you about Dr. Goldberger.

3 A. You know, I've read some testimony that he's
4 given, and I don't know in what cases. It -- I don't
5 know that I've ever actually seen him testify or if he's
6 ever testified on the same cases that I have. I just
7 don't know.

8 Q. Okay.

9 A. You know, I only know while I'm there in the
10 courtroom, and what comes before or after me I don't
11 always have any idea.

12 Q. But nothing comes to mind in terms of other
13 cases you had in common with him.

14 A. Not really, no. I'm -- I just know I've --
15 I've read some of his testimony, but I don't recall what
16 case that was for.

17 Q. Okay.

18 And I think you said you recalled one case
19 that you had in common with Dr. Higginbotham that was
20 in --

21 A. It was in Key West, Florida, because --

22 Q. Okay.

23 A. -- I remember that courtroom so well. And
24 it -- the attorney in that case -- the defense attorney
25 that I was testifying for was Richard Hersch,

1 H-E-R-S-C-H.

2 Q. Okay.

3 A. I don't remember the client's name, but he was
4 the attorney.

5 Q. Okay.

6 Have you -- I'm sorry?

7 MR. SOHN: That's okay.

8 Q. (BY MS. WALLACE) Have you ever visited the
9 University of Florida's toxicology laboratories?

10 A. No, I have not.

11 Q. Okay.

12 And I think we covered this kind of in
13 passing.

14 You've testified before in court, obviously,
15 since you've become -- in -- since you've become a
16 consultant in this area; is that correct?

17 A. Yes, ma'am.

18 Q. Can you estimate for me how many times you've
19 testified in court?

20 A. Many --

21 Q. I know you don't like estimates.

22 A. Many dozens.

23 Q. Okay.

24 A. I've testified in a lot of state courts, in
25 federal courts, in Denver and El Paso and Philadelphia.

1 I've testified internationally, testified in military
2 hearings and horse racing hearings.

3 Q. That sounds like an interesting story, but
4 since we've already been going pretty long this
5 afternoon, I'm not going to ask.

6 I know you mentioned the one prior case that
7 you had in Florida where you testified in Key West.

8 Any other cases that you've testified in in
9 Florida?

10 A. Several, yes.

11 Q. Okay.

12 A. Do you -- do you want me to try to --

13 Q. Do you know approximately how many?

14 A. I don't. I've testified in Orlando a couple
15 of times and in Pensacola, although I think I went to a
16 little town next to there, because the venue was moved.
17 Some little town next to Pensacola.

18 Q. Okay.

19 A. And there's -- on the East Coast, there's a
20 town that starts with an M. Florida Tech is there.

21 Q. So --

22 A. I don't know.

23 Q. -- there's maybe -- maybe a dozen times in
24 Florida?

25 A. Maybe a dozen times in Florida, yeah. A

1 couple of times in Key West, I think. No, maybe just
2 one. I don't know.

3 Q. Have you ever testified in Sarasota County
4 before?

5 A. I don't think so. I lectured once in
6 Sarasota, but I don't think I've testified in Sarasota.

7 Q. Okay.

8 Now, we're going to work on trying to get some
9 of these other documents that you said that you would
10 have liked to have seen, if they exist in the first
11 place.

12 But apart from those documents, do you have
13 any plans in the future to review any additional
14 paperwork or information related to this case?

15 A. I don't know of any additional paperwork or
16 information, so no.

17 Q. Okay.

18 If you do review anything or if anything comes
19 along that changes your opinions that you've provided in
20 your testimony here today, will you let me know about
21 that, let Mr. Sohn know about that?

22 A. Yes, ma'am.

23 Q. Okay?

24 Okay. I think that's all the questions that I
25 had.

1 Mr. Sohn, do you have anything?

2 MR. SOHN: I've got a couple.

3 MS. WALLACE: Do you want to move over here
4 just so you guys can see each other?

5 MR. SOHN: Janine, does it matter if you can
6 see me or not?

7 THE WITNESS: No. I can hear you just fine.

8 MR. SOHN: Okay.

9 EXAMINATION

10 BY MR. SOHN:

11 Q. Just one or two questions to try to clarify a
12 couple points.

13 You talked about the lack of method validation
14 for morphine and benzo, the metabolite in cocaine,
15 correct?

16 A. Yes.

17 Q. Okay.

18 Did you find any issues concerning the lack of
19 validation for THC or the metabolite of THC?

20 A. In -- in the case of THC, I got the same kind
21 of a document, which was a -- a summary document that
22 was dated March 9th, 2005, and it wasn't clear that --
23 again, that that was the same procedure that was used to
24 analyze these samples.

25 Q. So my question is based on what you've

1 received and what you reviewed, do you see any evidence
2 that the method for testing for THC and the metabolite
3 was properly validated by FDLE?

4 A. No.

5 Q. Can you say it was at this point or was not?

6 A. I'm sorry. I don't understand the question.

7 Q. Let me rephrase that.

8 Can you testify, based on what you reviewed,
9 that FDLE properly validated their method for testing
10 for THC and metabolite of THC?

11 A. No, I can't.

12 Q. So if they -- if FDLE's report confirmed the
13 presence of five controlled substances -- you already
14 indicated you didn't even waste any time dealing with
15 alprazolam or Xanax; is that correct?

16 A. That's correct.

17 Q. So as to the remaining four substances that
18 were found in the sample, is it your opinion --
19 professional opinion that FDLE, based on what you
20 reviewed, did not properly validate their methods for
21 testing on all four of those remaining substances?

22 A. Correct.

23 Q. Okay.

24 And just one final point here.

25 When you were talking about the reliability of

1 the method used in dealing with traceability, you
2 explained when dealing with benzo -- and I'm not going
3 to try to pronounce the whole name -- and morphine --
4 you know what I'm talking about?

5 A. Yeah.

6 Q. -- that the reports that you received from
7 FDLE did not properly reflect any lot number so that you
8 could trace those back to the manufacturer?

9 A. That's --

10 Q. Is that correct?

11 A. That's correct.

12 Q. Does that also apply to the remaining two
13 substances, THC and the metabolite of THC?

14 A. Let me look real quick, make sure.

15 Q. Okay.

16 A. Same thing.

17 Q. Okay.

18 So at this point, the records you've reviewed
19 from FDLE regarding the lack of lot numbers and lack of
20 traceability, that would cause defects as to
21 traceability for all four substances, of course,
22 excluding alprazolam?

23 A. That's --

24 Q. Is that correct?

25 A. That is correct.

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Q. Okay.

Okay. That's all I wanted to clear up.

Nothing further.

MS. WALLACE: All right.

And nothing further by the State.

Thank you so much for your time this
afternoon.

THE WITNESS: Thank you.

MR. SOHN: Thanks, Janine.

(Proceedings adjourned at 1:37 p.m. Mountain
Time.)

1 IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
2 IN AND FOR SARASOTA COUNTY, FLORIDA

3 CASE NO. 2006 CF 017774 NC

4 STATE OF FLORIDA,

5 Plaintiff,

6 vs.

7 RYAN GARY LUBBECKE,

8 Defendant.

9 REPORTER'S CERTIFICATE

10 I, CHERYL ARREGUIN, RPR, New Mexico CCR No. 21, DO
11 HEREBY CERTIFY that on January 4, 2013, the deposition
12 of JANINE ARVIZU was taken before me at the request of,
13 and sealed original thereof retained by:

14 For the Plaintiff:
15 KATE DARBY WALLACE
16 Assistant State Attorney
17 OFFICE OF THE STATE ATTORNEY
18 TWELFTH JUDICIAL CIRCUIT
2071 Ringling Boulevard
Fourth Floor
Sarasota, Florida 34237-7000

19 I FURTHER CERTIFY that copies of this certificate
20 have been mailed or delivered to all counsel and parties
21 to the proceedings not represented by counsel appearing
22 at the taking of the deposition.

23 I FURTHER CERTIFY that examination of this
24 transcript and signature of the witness were required by
25 the witness and all parties present. On _____,

1 2013, a letter was mailed or delivered to JANINE ARVIZU
2 regarding obtaining signature of the witness, and
3 corrections, if any, were appended to the original and
4 each copy of the deposition.

5 I FURTHER CERTIFY that the recoverable cost of the
6 original and one copy of the deposition, including
7 exhibits, to KATE DARBY WALLACE is \$_____.

8 I FURTHER CERTIFY that I did administer the oath to
9 the witness herein prior to the taking of this
10 deposition; that I did thereafter report in stenographic
11 shorthand the questions and answers set forth herein,
12 and the foregoing is a true and correct transcript of
13 the proceeding had upon the taking of this deposition to
14 the best of my ability.

15 I FURTHER CERTIFY that I am neither employed by nor
16 related to nor contracted with (unless excepted by the
17 rules) any of the parties or attorneys in this case, and
18 that I have no interest whatsoever in the final
19 disposition of this case in any court.

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CHERYL ARREGUIN, RPR
New Mexico CCR No. 21
License Expires: 12/31/2013

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State of Florida vs. Ryan Gary Lubbecke

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I, JANINE ARVIZU, do hereby certify that I have read the foregoing pages of my testimony as transcribed, and that the same is a true and correct transcript of the testimony given by me in this deposition, taken on January 4, 2013, except for the changes made.

 JANINE ARVIZU

 DATE

1 DATE DELIVERED/MAILED _____ RETURN BY _____

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3 Arvizujs@aol.com

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5 Deposition of: JANINE ARVIZU
6 Date Taken: January 4, 2013

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In most instances, witnesses are provided 30 days from the receipt of this letter to read and sign the transcript. Failure to read and sign within this time will result in the original transcript being filed without the signature page.

Your immediate attention to this matter will be appreciated. If you have any questions, please call us at 505-243-5018.

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KATHY TOWNSEND COURT REPORTERS

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