

STATEMENT OF: Deputy Jay Zager
CASE NUMBER: PC 08-03-0584

DATE OF STATEMENT: August 28, 2003 - **TIME:** Approx. 1245 hours

INVESTIGATOR: Detective Sgt. Mary Guess

LOCATION: Office of Professional Compliance
Romark Building
3521 W. Broward Blvd.
Fort Lauderdale, FL

The following will be a sworn taped statement, taken by Sgt. Mary Guess of the Broward Sheriff's Office. I am the lead investigator in charge of this internal investigation. You are being questioned as a subject employee in an official investigation by the Broward County Sheriff's Office. This statement will be taken in reference to Case Number PC 08-03-0584. This is in regard to a policy and procedure issue in regarding to distraction from duty. The statement is being taken from Deputy Jay, J-A-Y, Zager, Z-A-G-E-R, CCN number 5512. The statement is commencing on August 28, 2003, at approximately 11:45 am. Also present is his attorney, Mr. Edward McGee, M-c-G-E-E (it's 12:00) 12:00, you're right, sorry, 12:45. This statement is being taken at 3521 W. Broward Blvd., Suite 101, Ft. Lauderdale, FL, the Office of Professional Compliance. Your statement is being recorded.

Q. Deputy Zager, would you state your full name, your classification, your CCN and your current assignment please

A. Sure, it's Jay Howell Zager, Z-A-G-E-R, I'm a deputy sheriff assigned to the BAT Video Unit, the DUI Task Force

Q. Okay have I identified myself as a law enforcement officer and do you understand this

A. Yes I do

Q. Okay as a law enforcement officer I'm empowered to administer oaths, if you could please raise your right hand. Do you swear or affirm the

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statement you're about to give will be the truth, the whole truth and nothing but the truth so help you God?

A. Yes I do

Q. I'd like to inform you that this is an official proceeding and if you knowingly provide false information during this proceeding, that would constitute perjury under Florida State Statutes. Do you understand what perjury is

A. Yes I do

Q. Okay do you have any questions about that

A. No I don't

Q. Okay, Department Policy and Procedure state in regard to 2.2.47, which is insubordination, Employees will promptly obey a supervisor's lawful orders. This includes orders relayed from a supervisor by an employee of the same or lesser rank and a Professional Compliance investigator when conducting an official internal investigation. A lawful order is an order which employees should reasonably believe to be in keeping with the performance of their duties. Insubordination will include disobeying a lawful order and conduct directed at a supervisor which is disrespectful, mutinous, insolent or abusive. These are policies relating to internal investigations. 2.2.43 is official truthfulness. Employees will not make false statements in verbal or written communications, on official matters. And 2.2.3, Professional Compliance employees will cooperate with internal investigations as stated in the Policy and Procedure Manual and

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in accordance with law. Section (b) of section, BSO policy, persons participating in an investigation will not willfully disclose any information obtained from the investigation, before the complaint, document or action becomes public record. Your reverse Garrity Warning, I wish to advise you that you are being questioned as part of an official investigation of the Broward Sheriff's Office. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the constitution of this state and the constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to administrative charges, which could result in your dismissal from the Broward Sheriff's Office. If you do answer neither your statements nor any information or evidence gained by reason of such statement can be used against you in a criminal proceeding. However, the statements may be used against you in relation to subsequent administrative charges. You are entitled to the right to have an attorney, or representative present during questioning and the record will reflect that that's why Mr. McGee is here today. Have you had time to review the statements involving this case

A. Yes I did

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presentations for school age children on the dangers of drinking and driving, things of that nature.

Q. Okay. Are you the only inspector for BSO's machines or are there other inspectors

A. There is Patricia Nanz, N-A-N-Z, she's assigned with me as well

Q. Okay. In regard to that office at the, across from the courthouse, is that a keyed office is it alarmed, how do you get access to that office

A. It is under lock and key, there is an alarm for after hours for the building itself

Q. Okay and essentially are you, are you the person in charge of that office or is there somebody that you report to

A. I report to my immediate supervisor, which is Sgt. Kogod, under the DUI policy I am the officer in charge of that particular I guess we'll call it a sub-unit, so um , but I do have an immediate supervisor. Rarely, um do I see them, I've seen Sgt. Kogod more than any of the sergeants ever before I might add, but

Q. Okay

A. But by and large the supervisors work the midnight shift

Q. Okay now in your absence who would testify as far as to the maintenance of those Intoxylizers

A. Patrician Nanz is qualified and holds a license

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- Q. Is she the only one that, I mean in her absence would there be anybody else or
- A. If we were both unavailable I would imagine the State Attorney's Office would request a continuance on a case
- Q. Okay
- A. Or they could choose to use an affidavit and bring the testimony or the results in, they do have the option of that
- Q. Okay. What is your, what is your assigned work schedule, your routine schedule
- A. I'm routinely assigned to 8:00 am to 4:00 pm
- Q. Okay and that's Monday through Friday
- A. Correct
- Q. Okay, have you, do you have any flexibility in that schedule
- A. As far as changing things
- Q. Coming in an hour late, going, you know working, coming in an hour late, working an hour later or vice versa
- A. I have done that over the years, where I'll work later. For instance like a week or so ago I did a presentation that lasted until 4:30, a quarter to 5:00, something like that. I didn't put in for overtime for that. From time to time I have flexed my schedule but by and large I don't
- Q. Okay what is your understanding of BSO's policy as far as flexing schedules

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A. I understand that

Q. Officially

A. Officially, official policy on that is to my understanding it's not supposed to be done

Q. Okay but is it your understanding that it is done, it's a common practice that it is done

A. It is a common practice that has been done and I imagine will continue to be done. It's a professional organization and that's gonna occur

Q. Okay. Have you ever been instructed by your supervisor, either Sgt. Kogod, and I realize that he's only been in the unit since January, or any prior ones that you had to get their approval before you could flex your time

A. I don't remember talking about flexing time as far as an ongoing basis, since my original supervisor was in the unit, Sgt. Fred Jones

Q. Okay

A. And he was probably the only one where I really spoke to or you know where it was okay to take an hour here, take a few minutes there. But since then by and large I don't think I've had a conversation where I was told not to or, or something along those lines

Q. Okay now did, have you ever been spoken to by any of the other sergeants subsequent to that, either Sgt. Canada, Sgt. Greene or Kogod, in regard to if you wanted to flex those hours or did they even mention if

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you work over one day, just take off early, if you miss your lunch take off early, anything, has that ever come up

A. Over the years, you know I'm sure there's been situations where I have worked late. You know where I may flex something from time to time. It's rare, it's rare, but as far as having a conversation with them, I really, I really can't recall. The only one I can really recall was with Fred Jones from years ago

Q. Okay, all right, did any of them ever speak to you, in particular Sgt. Kogod, did any, did he ever speak to you about anybody saying well you know he's not here at 8:00 in the morning or he's not here at 4:00 in the afternoon, anything about you're not being in the office

A. No it was never expressed to me as a concern from the sergeant's level, from Sgt. Kogod.

Q. Okay. Now you read the memorandum from Sgt. DeMarco on August 7th, where he was, he was given an assignment to follow you, basically to follow you from your home to see what time you came into work. Do you know how that came about, I mean

A. As far as

Q. Why were they concerned that you weren't coming to work on time or at all

A. Well before reading this I had no concern upon hearing the evidence on here, reviewing what the witnesses have said

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Q. Right

A. It seems to me that there's a concern of my future endeavors as a non-BSO employee, and uh essentially it looks like I had to be watched because of that. That's my belief now, before this action took place I had no concern whatsoever

Q. Okay and none of the supervisors, either Sgt. Kogod, is Lt. Bushong still the lieutenant there

A. Um I guess he's been temporarily reassigned

Q. Okay

A. But I guess

Q. Because I don't know who the lieutenant is

A. At this point we don't have a lieutenant

Q. Okay, or Capt. Scheff, none of them ever spoke to you about working, the CSA's are saying that Jay isn't in the office, court liaison is complaining that he's not answering his pages, none of that has ever been discussed

A. I don't recall a statement like that from my current supervisors as far as being on time. There's been nothing noted in my performance reviews over the years for that and um really currently I haven't received anything of that nature

Q. Okay, now on that date Sgt. DeMarco, we're talking about August 7th

A. Yes

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- Q. He wrote in his memo that he responded to your house, and I guess you left somewhere around 8:25
- A. ...25
- Q. ...25, okay, where were you going
- A. I was headed over to go meet Lt. Shirley
- Q. Okay
- A. ...at the Training Division
- Q. Okay and did you go to Training
- A. That's what I did
- Q. Okay. Do you know if Sgt. Kogod was aware that you were meeting with Lt. Shirley
- A. I was working on a private, the answer is I don't, I don't really know whether he knows, I was working on an active project, preparing a DUI class which I wrote the curriculum for, etc. What I did was I had met or spoke to Lt. Shirley before and said I would be coming in. The nature, why I was going there, is I guess your next question
- Q. Well no, I know that you went there because I confirmed that with Lt. Shirley but, I guess my question is did Sgt.... was he aware that you were working on this project
- A. Yes he assigned me this project a few months before and it as starting to come to term
- Q. Okay, what kind, who are you teaching, other deputies

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- A. Well the class that was taught was a class on DUI procedures, etc. to be taught to other law enforcement agencies, the class was today
- Q. Okay so there could have been other agencies there too
- A. Correct
- Q. Okay, do you know who is teaching in your absence
- A. Well I was simply gonna act as the facilitator, the class is today, in fact I was at half the class, and came over here today
- Q. Oh okay
- A. ...for that.
- Q. Okay do you know who is there, who is running that
- A. Sgt. Kogod was, was
- Q. Okay
- A. ...running that
- Q. All right. What time, you got to Training I think around 9:00 o'clock
- A. That's
- Q. According to your daily
- A. According to my daily I wrote 9:00 o'clock on there, um again I don't know you know these are obviously to the best of my recollection when you prepare these
- Q. Okay I didn't take a statement from Lt. Shirley but let me just share with you what she told me, that you got there approximately 9:00 o'clock, you were there maybe 30 minutes to 45 minutes, does that sound accurate

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- A. It sounds right, we were working on, the reason that I was going there was I was in the final stage or I had reached the final stage of preparing a notebook for the class and in fact that's what I had been working on at home, just prior to going there. Spreading out the materials
- Q. Right
- A. Getting them together, collating them, getting them ready for the printer of sorts
- Q. Right
- A. So I brought that over, we designed the book, she assigned artwork to others, etc., that's what, that's what took the time in getting that. That was my focus
- Q. Okay. On that daily I think one of the concerns that Sgt. Kogod mentioned is that you show yourself leaving at 4:00 which would have meant instead of an 8 hour day you worked a 7 hour day
- A. Well I understand, I understand
- Q. Just, I
- A. I understand what you're saying
- Q. That's what I'm asking, for your explanation
- A. Right why I didn't simply put on there, you know I mean sometimes on my dailies I guess you know it's an oversight, I didn't put my 10-8 at 8:00 o'clock on that day.

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Q. Okay when you started or when the daily log, cause I realize that there was a period of time when you were in this unit, you were not completing daily logs that

A. Right most of my time here, I've been doing dailies for I imagine for the year last and a half, maybe two years, something along that nature

Q. Okay did they, did any sergeant explain to you why they wanted a daily done from you

A. Uh Sgt. Greene I believe asked me to do the dailies, first of all she said it was a requirement that I perform a daily

Q. Okay

A. Uh to keep track of what I'm doing, and she did mention at one point that we don't know what you're doing

Q. Right

A. That was what she told me

Q. Okay now when she mentioned that to you, was it because they suspected you weren't doing your job or was it because of the fact that the supervisor works a totally different shift than you

A. The supervisor does work a different shift, I think the concerns have been from the other personnel in my office as to where I am at all times. I haven't always made it a habit of telling them every single place and everything that I'm going to do, work related, such as court, such as doing, meeting with FDLE, such as doing training, etc., etc., etc. So there's times

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when these personnel, the civilians in my office don't know where I am because you know quite frankly conveying that message everyday, every minute, um I mean I am available, I have a pager. So I'm sure that's where the concerns came from

Q. Okay now are those two civilians, have there always been two civilians in there with you

A. Um over the years there have been various personnel in there, they are the ones that have been assigned there. Currently Pat Nanz has been there

Q. But I mean has it always been two CSA's or was there one, not particular those, those two ladies, Eckinger and Nanz, was there always two CSA's assigned to that video room

A. There was always, not always, but since I've been there two CSA's, at one point we've had CSA's, in fact that's how Lani Eckinger started there, on light duty

Q. Okay

A. So there may have been three, but it's designed for two

Q. Okay now they're not allowed to leave, is that correct, do they have to stay there unless they're testifying, I assume

A. By and large they don't have the obligations that I do, the assignments, the projects, etc. and running around, but obviously they do run back and forth to the various BAT's, meet with the sergeant you know, assist in that

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Q. One of the points that I was trying to get out here, did they ever discuss with you, maybe their jealousy in the fact that you have more freedom as a deputy then they have as a CSA

A. Nobody has said, either of the two civilians have said that to me, point blank. Is it a concern or a thought of mine over the years? I'm a sworn deputy, you know, with an assigned vehicle. Obviously with that carries greater responsibilities and to some degree more freedom by virtue of having to do more and perform various functions. Are CSA's going to look at deputies and have a concern about jealousy. You know I'm sure it exists, whether or not that is their thoughts, I can't answer that.

Q. Okay. Do you know what time you left that day

A. As far as, as far as this, well I mean according to this, it looks like I left at 8:25

Q. No, no, I mean what time you left work, I'm sorry

A. Oh

Q. What time you left work, I mean what I'm trying to get at is when you're on the road, you're dispatched to calls, you give them your en route time, you give them the time that you've arrived, and time that you clear, so your times are more accurate on the road because you have a dispatcher giving them. On a daily for somebody in a specialized unit like you, are you estimating times because you're looking at your clock and it's not that accurate

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- A. Essentially these are the best to my recollection. I put them together, typically the next day or the next, over the next few days
- Q. Okay
- A. As far as this particular day, concerning ourselves, would a depo that I took, State v. Sampson
- Q. Right
- A. That I put in here, a lot of times with these depos, when I'm putting down 1600 or 4:00 pm, it may have actually went longer
- Q. Right
- A. Or may have actually went less, I can't recall, I'd have to figure out exactly where this one was
- Q. Okay. When it comes to going into the District 5 office where the Batmobile is, how do you gain access to that building
- A. The blue card
- Q. Okay do you have a key to the door too or just the blue card
- A. Um just the blue card
- Q. Okay and I noted from looking at a couple of your dailies that you often went over there to, obviously you went there a couple of times a week to do your examinations of the machines, but to do spot checks
- A. Correct
- Q. Okay. Would anybody have seen you go in there
- A. Um I

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Q. If you know

A. You know I mean I, I imagine so, I mean I say hello to people and try to be cordial and

Q. I mean do you know, do you know if the CSA's when you come in, if they're looking, I know that it's a busy area and they have a lot of equipment up in the fishbowl there to

A. You know, again it's a hard question to answer, I'm not dodging it

Q. Right

A. I just don't know who seen me and you know

Q. You didn't specifically check in at the fishbowl, in other words

A. No, no, no, the, to get an understanding, I would come in the gate, I guess you would say the, the west gate

Q. Right

A. And just simply drive around, use the blue card to get inside there

Q. Okay how often, how long would you spend there on average, when you were just doing those little spot checks

A. Uh it would vary, depending upon what I was doing, what I was assigned to do, I mean on some on these, after I put together some of the notebooks, I actually assembled them after Training had prepped them, where I may be doing another project, or I was literally doing a spot check on an Intoxylizer

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Q. Okay now when you go into that Batmobile area, is that a locked area, I mean is that something you have a key for and everybody who works at the DUI Task Force has a key for or is it an unlocked office

A. It's a, everybody that has a blue card that's assigned to the DUI Unit so there's another once you get inside, that is an open door. The area that contains the Intoxylizers has a separate key

Q. Okay but the little, once you come into the District 5 office, the door in the hallway that leads to the backroom I guess or where the cells are

A. Yes

Q. That's blue card access too

A. Yes

Q. Oh okay, all right, I didn't know that, I thought it had a key on it, that's why... when you did these spot checks is that something that you would log down or it's not part of your requirement for examining the machines

A. There's nothing in FDLE rules that say, perform a spot check on Intoxylizer, what it is on my behalf, what I've done over the years is I'm looking for any potential problems, and what a spot check is, would you like me to explain?

Q. Right, sure

A. Essentially starting up an Intoxylizer, it takes about 20 minutes or so to warm up, doing a diagnostic check, just checking the diagnostics on it, I would clean, clean the area, lift and clean them, just make sure that they

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are, you know looking good and spotting an potential problems with the arms, that the defendant would blow into, has a tendency to separate where it plugs in. I would be spotting things like that, that's the purpose of it.

Q. Okay does the, and I don't mean to interrupt you, but does the person that does the breathalyzer test, the CSA's, do, are they supposed to be checking for that too when they do the test

A. They don't have the training or the knowledge

Q. Okay

A. ...to do or to look at an Intoxylizer. What I'm just doing is a very, uh, peripheral type exam, meaning it's not even, I wouldn't even want to call it an exam, it's just simply spot checking on the Intoxylizer

Q. Okay were you ordered to do that, or told to do that, or is that something you did on your own

A. That's just something that I've done on my own initiative.

Q. Okay. You already answered this, you and Nanz are the only ones tasked with maintaining the Intoxylizers

A. Correct

Q. Okay. And I'm gonna ask this, it may sound like a ridiculous question but I'm gonna ask it in light of some of the allegations that were mentioned here, have you ever altered any of these machines or you know done anything to them to manipulate any of the test results

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A. No

Q. Okay

A. I, I, it can't be done, there's nothing that I could do to manipulate a test, the test is done, is taken by a defendant

Q. Right, okay. Have you, have you ever had any discussions with any of your commands, it doesn't matter what the ranks is, about any kind of problems with the machines, they're not working right, anything of that nature

A. Of course over the years there has been times when an Intoxylizer will fail. They're continue to fail. They are machines and as such there's gonna be those times when tests are lost as a result of that. And typically it's some sort of an acute situation that would manifest itself into this failure, and simply tests would be lost as a result

Q. Okay. What was their response to that when you told them

A. Well typically when it happens it's more of a, excuse my French, an oh shit situation. Because what that means is that the potential for admissible on those tests from a forensic standpoint is now obviously, we've been compromised because there's no control over the instrument. So they fail, they do fail

Q. Okay what happens when they fail

A. Well the procedure is what I do is I, in most cases I'm notified of it after it happens, sometimes I've been called to say check the Intoxylizer out,

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because a breath technician observed something that was unusual, and I would inspect it and go, I'd confirm it and if the machine was found to be not in compliance with FDLE rules, my procedure is obviously notify the command, notify the State Attorney's Office, so they can prepare to notify those defendants that the tests are now not as reliable

Q. Okay all right, are you aware of any specific misconduct among the breath technicians there, things that they've failed to document in their logs or improper procedures by them

A. Not to my knowledge. Concerning any, any sort of active ongoing, or things, I've seen over the years, that anybody has done anything that would cause a concern

Q. Okay. Have you ever in the past had to report anything that you've seen as far as maybe them not documenting something correctly or not recording information within whatever guidelines FDLE sets for you

A. From time to time, one of my responsibilities is to review the log of every test that a defendant takes, or provides on a breath instrument. Sometimes breath techs will leave a little bit of a data out, I'll just simply return it, have them fill it in. Nothing that's certainly documented, nothing that's been needed

Q. Right. I'm just gonna stop for a second. I just want to flip the tape.

A. Okay

(End of Side A)

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Q. We're on Side 2, I haven't asked you any questions while we were off tape, is that correct

A. No you haven't

Q. Okay. I'm assuming because you are the inspector of the Intoxylizers, you testify to in court for the accuracy and the maintenance of those machines

A. Yes that's the

Q. Maybe accuracy may not be the appropriate word

A. Accuracy, precision, etc., it all means more or less the same

Q. Okay have you ever given testimony that the machine was not accurate or was fallible or anything of that nature

A. Typically if an Intoxylizer fails, as I mentioned the State has a procedure under Brady for releasing that information, to the defendants. So those types of tests normally would not end up at trial. So in most cases what happens is as far as a failed Intoxylizer, there might be a deposition along the lines, just an attorney looking to confirm what actually took place, it's a waste of time because the State is not going to use the test anyway but

Q. Okay. And have you ever offered any of that information that there was something wrong with BSO's machine or they're not accurate to defense attorneys or state attorneys

A. No, no, you know to say that the machines are not reliable on that line, you mean

Q. Yes

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- A. ...to say that there is something inherently wrong with our Intoxylizers
- Q. Or our procedures
- A. Or our procedures, no, there's, there's nothing that I know of that's going on, that's wrong, you know the only thing I can again say is that because they are machines, they do fail and there's nothing I can do about that
- Q. Okay one of the, obviously some of the inference to the distraction from duty is that you may have been conducting some personal business on BSO time. Have you ever done that, and I'm talking about establishing a personal business or actually working in your personal business
- A. No
- Q. Okay have you ever used your BSO computer to conduct personal business on
- A. Not to my knowledge, as far as, well you mean as far as maybe writing a memo on Microsoft Word
- Q. I'm talking about actually like running a business on
- A. No
- Q. Okay, do you have a laptop or do you have a desktop
- A. A laptop
- Q. Okay. I think one of the inferences had to do with some personal financial issues, are you having financial problems
- A. Well I'm, I have yes
- Q. Okay is there anything that you need assistance with

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- A. As far as from a BSO standpoint
- Q. Well you know I mean as far as getting counseling, I don't think they're gonna give you any money
- A. No it's nothing that the Sheriff's Office can you know provide any assistance for
- Q. Okay and I think that came from the garnishment of your wages
- A. Right, that's, correct
- Q. Did that, was that as a result from a business that, I think your wife owned
- A. That's the end result from a business that we had that, that did not do well
- Q. Okay
- A. And um you know it's just culminated to a lot of financial issues later on
- Q. Okay and that was all outside of BSO, not within your scope of working for the Sheriff's Department
- A. Correct it was simply a business dealing with children, and sort of a play group, daycare type of situation
- Q. Okay all right, any of those problems ever create, create a situation where you were distracted from doing your work
- A. No
- Q. Okay you went to court, you did your assigned duties and projects as assigned
- A. Sure, there's nothing but over the years positive, very positive, even when the business, a couple of years ago was having trouble, all my comments

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on evaluations are all stellar as far as my job performance as it relates to court

Q. Okay did any of your past supervisors ever speak to you about you know maybe taking personal phone calls, or if you were having problems referring you to EAP or getting you some help with getting financial advice, anything of that nature

A. No there would be no conversation like that cause quite frankly you know it is a personal financial issue and it hasn't effected me in anything like that, where I would feel I need to seek assistance outside

Q. Okay you never called in sick or, you weren't taking sick time or time off work to take care of these problems were you

A. No, no

Q. Okay. In regard to that business, did you own a business with your wife

A. I did yes

Q. Okay and what I'm getting at is did she, were you just on as a owner or did you actually work in the business with her

A. No, there was nothing for me to do, I don't, she's essentially a pre-school teacher, I can't do that, I'm not licensed as a care provider, etc., so there's nothing for me to do there

Q. Okay. And therefore you wouldn't have had to notify your command that you were involved in employment outside of BSO

A. No I wouldn't

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- Q. Okay
- A. I mean I couldn't imagine putting in a daycare certificate
- Q. Well you know
- A. I understand, yeah I understand
- Q. The point is, is that if you're working outside of BSO you have to fill out that form but if you're just listed as an owner
- A. Right
- Q. ... in a family business, and not actively working in it, that's not required
- A. Right, I was essentially, that was the focus of me being there
- Q. Okay do you currently operate, own or participate in any kind of outside employment
- A. No
- Q. Okay
- A. I am registered under the academy
- Q. As a teacher
- A. As an instructor for the breath test
- Q. Okay, all right. Have you ever discussed, I guess the inference here is providing questionable testimony, have you ever discussed developing a consulting business to do that, to offer your expertise, to attorneys that are involved in that field
- A. I can tell you, you know for many, many years hardly a week goes by where a defense attorney hasn't said to me, hey, when are you going to