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

STATE OF FLORIDA,

Plaintiff,

Case No.: 02-CT-004899 NC

vs.

JANET HENDERSON, et al.,

Defendants.

_____/

DEPOSITION OF: **DONALD PAUL SUERETH**

DATE: Thursday, April 24, 2003

TIME: 4:53 p.m. to 5:49 p.m.

PLACE: South County Administration Center
4000 Tamiami Trail
Venice, Florida

PURSUANT TO: Notice of Taking Deposition by Counsel for Defendants

BEFORE: Heidi L. Hutson, RPR, Notary Public
State of Florida at Large

APPEARANCES: KURT HOFFMAN, Attorney at Law
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(Continued on Page 2.)

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Representing the Plaintiffs

* * * * *

I N D E X

Thereupon,

DONALD PAUL SUERETH,

the Witness herein, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified and said as follows:

DIRECT EXAMINATION

BY MR. HARRISON:

Q. State your name.

A. Donald Suereth.

Q. You work for FDLE?

A. Yes.

Q. For how long?

A. Since September of 1998.

Q. Your current position?

A. I'm an inspector with the alcohol testing program.

Q. Is your title a department inspector?

A. Yes.

Q. How long have you been a department inspector?

A. Well, since September of 1998.

Q. The entire time?

A. Yes. I was in training mode up until January of '99. I was released on my own to be solo in late January of '99.

Q. Before you went to work for FDLE, what did you do?

A. I'm retired with the Gainesville Police Department.

Q. When were you with Gainesville PD?

A. From October 14th of '74 till September of 1998.

MR. HARRISON: Off the record.

(Thereupon, an off-the-record discussion was had.)

BY MR. HARRISON:

Q. Were you involved with breath tests at all with Gainesville Police?

A. Yes, I was.

Q. Were you an operator inspector or--

A. All of the above.

Q. How long were you an agency inspector with Gainesville PD?

A. I became an agency inspector since I believe in '78, approximately '78, and stayed in that position till I left in '98.

Q. For this motion there have been a series of studies or many studies, and I'm going to refer to them and see which ones you know about or had any involvements with. The first one we refer to as a

Sarasota study that was conducted by--in December of 2002 by Deputy Miller and Mr. Haenel was present; are you familiar with that?

A. Oh, yes, uh-huh.

Q. And then we refer to as the Gainesville study where Mr. Miller, Mr. Haenel, and Dr. Goldberger were in Gainesville; are you familiar with that?

A. I thought that was the same one you're talking about. Is that the same one you're talking about, the two you just mentioned?

Q. No. There was kind of a miny test that was done in early December where they just did three tests at an .08 level that Deputy Miller did here in Sarasota, and then they went up to Gainesville with Dr. Goldberger and did a more thorough study that an actual report was prepared?

A. I don't think I'm familiar with the miny study. The one on I believe it was December 12th with Dr. Goldberger is the one I'm familiar with.

Q. Okay. And obviously you were involved with the north Florida study; is that correct?

A. Right.

Q. There was a study that was done at CMI. Are you familiar with that?

A. The gentleman's name is Brian Faulkner. He

emailed me some documents on that, that study.

Q. And then also there was an old study that was referred to in a report that was published in Forensic Science International. Have you seen that publication?

A. That's the one I think one of the--one of the authors was Notebaum (phonetic) or something like that?

Q. Yes.

A. Yes, I'm familiar. I've read that one, yes.

Q. Did you read the Goldberger letter?

A. Yes.

Q. And the CMI one?

A. Yes. I didn't study them for a test, but I did read them.

Q. Do you consider yourself a forensic scientist?

A. No.

Q. What's your education consist of?

A. I have a bachelor's degree with the University of Florida.

Q. What's your bachelor's in?

A. Criminal justice, a minor in forestry.

Q. Do you have any education or training in electronics or the engineering?

A. I have been trained in a certain degree of electronics. I went through the CMI factory school in

Owensboro, Kentucky, and for four months I was trained in electronics in Tallahassee. Primarily my training was the workings on the instrument, taking them apart and putting them back together.

Q. Would the individual electronic components that are in the Intoxilyzer 5000, do you have enough of a knowledge to understand what makes it work or do you just more know what each part does?

A. Well, there's several levels of electronic expertise; one is component and one is board. I'm more in line with the boards. In other words, if the components on a board don't work, then I'll replace the board, not necessarily each individual component, and I don't do a lot of repairs.

Q. So if something's wrong, you'd be more inclined to take out the whole motherboard type thing--

A. Oh, no, just the individual component. There's several boards on there, but I can identify the board and replace the board.

Q. So you'd take out the one board?

A. Uh-huh.

Q. Now, does the board have individual components?

A. Yes, uh-huh.

Q. But the components that make up each

individual circuit board, you would not?

A. No, I wouldn't trace it to that level.

Q. Dealing with the Intoxilyzer 5000 has got an infrared detector, do you understand how that works?

A. Uh-huh.

Q. Can you explain to me how that--how that detects infrared light?

A. Well, it's not so much a detector that detects infrared lights. It's the filters that allow the wavelength of the infrared spectrum to reach the detector, and the detector is a very simple component. It transfers the light energy to electrical energy so that voltage can be measured.

Q. Dealing with the particular motion at hand, have you been asked to render any particular opinion in regard to the Intoxilyzer 5000 as to ambient temperature in the operation range?

A. Have I been asked my opinion? Well, I'm sure I have. I couldn't remember--I couldn't tell you who might have asked me. It's pretty well-known within our circle that I was involved in a study and a major instigator of it.

Q. And how did you become an instigator of the study?

A. Well, I was informed of the Goldberger study.

I began checking around through our--my own agency as to whether or not we had any information on the specifications of ambient temperature that you'll find in the operator's manual.

Q. Now, is there anything wrong with just sticking with the Goldberger study?

A. The questions I asked about how it was conducted did not suit me.

Q. What did you not like about the Goldberger study?

A. Well, for one thing the instruments that were--that were used, there was no mention of any checking of their calibration in the beginning. So that was something that concerned me; how the temperature, ambient temperature was evaluated; how long the side port tubes were; whether or not the simulators were properly calibrated, things like that. I'm not saying that that didn't happen. I'm saying that that information didn't come my way.

Q. So for the north Florida study, was something done different for checking the calibration?

A. Oh, yes.

Q. What was done?

A. Well, I asked permission to begin the study from our program manager, and she thought it was a good

idea, Laura Barfield, and I began developing a protocol. And not being the forensic toxicologist that she is, the protocol that I developed--well, it was pretty ambitious in the beginning, and we had to modify it later on but she liked it, and got input from various sources in our program, and then I started developing the protocol, and it was approved and then we began the study.

Q. So going back to the calibration check, what did you do different than University of Florida?

A. Well, we made sure that the instruments we used were calibrated by a separate entity, an authorized repair facility or in one case the manufacturer.

Q. And how did you go about making sure it was calibrated?

A. We made sure that either an authorized repair facility calibrated them or the manufacturer.

Q. Calibrated right before you did the check?

A. Uh-huh, yes, uh-huh. Well, let me back up. Not necessarily having them calibrated, but having their calibration evaluated. You know, they may not have had to tweak anything. It may have been a perfect piece of equipment when they received it, which would mean that they didn't have to do anything, so we wanted it checked.

Q. So CMI checked the calibration on one

instrument?

A. Yes, uh-huh.

Q. How do you know that?

A. I was told that.

Q. By who?

A. I believe it was Bill Schofield.

Q. Did they provide you any documentation that it had been checked?

A. I believe that documentation would have been sent to Deputy Miller.

Q. If Deputy Miller doesn't have it, who else would have it?

A. It's their instrument. We wouldn't have it. CMI I guess would have it, a copy of it.

Q. Anything that CMI did with that instrument, if a record was made, is that something that Deputy Miller, as being in charge of Sarasota, he ought to have on the side of the instrument?

A. Yes, he or his instrument. He or the agency that owns the instrument.

Q. So whatever CMI did and provided as a result of whatever they did in January should be in that folder for that instrument in Sarasota County?

A. You'd have to speak with Deputy Miller about how he keeps his record. We don't own that instrument.

Q. But dealing with the records for maintenance and testing of an instrument, are the individual agencies supposed to keep records of that information?

A. Well, we don't dictate what agencies keep records of, with limited exception, our forms and their printer cards, you know, things along those lines, but most agencies do keep repair records, and I can't speak for Deputy Miller.

Q. But you would expect an agency to keep, at least for some period of time, something they got back from a manufacturer; wouldn't you?

A. Well, I did. I can't speak for anybody but me.

Q. What did you get from CMI?

A. The instrument.

Q. Did you get any type of report from them?

A. On that instrument?

Q. Yes.

A. We got the report. I was in touch periodically with Bill Schofield about the study that he did with a temperature issue, somewhat what we did, but he had a different factor involved in his. There was a humidity phase that he put the instrument through, and we didn't use humidity.

Q. Was humidity tracked at all in any of your--

A. No. No, we didn't have the time. That will probably be another study.

Q. Was humidity at least kept as a constant or that just wasn't even monitored at all?

A. Wasn't monitored at all.

Q. Now, CMI, they did monitor humidity; is that correct?

A. They did, but my recollection how they did it was at either a very limited temperature or a temperature range. I don't believe it was throughout the entire spectrum of temperatures that they used. That's my recollection of the report, though.

Q. Now, when CMI did their report, did you notice that one of the tests at the .08 level came out at an .086?

A. Goldberger's came out at an .086, and I cannot recall. I think one of CMI's was out as well, but I can't recall what number it was.

Q. Did you talk to Schofield about that .086 as to why--

A. I may have, but I cannot recall that conversation if we did have one.

Q. And just for the report, do you recognize this as--

A. Oh, yes, yes, uh-huh. This looks like what I

have. Okay. I see it.

Q. And there was also an .086 there?

A. I see.

Q. And if you had an .086 in one of your--during an annual inspection, would a machine pass?

A. It depends on the circumstances. The one thing that we have to do when an instrument--to decide whether or not an instrument passes or fails is to attempt to determine the cause. It's one of three things. It's either the calibration equipment that you use. It's either the process that you use to conduct the inspection or it's the instrument. So if you find out it's one of the first two, then of course the instrument--there's no reason to fail the instrument.

Q. Could it also be ambient temperature?

A. Not according to my study.

Q. In your study did ambient temperature ever affect the result of the Intoxilyzer 5000?

A. One thing we learned was that, yes, it did. Yes, it did. One thing we learned, though, however, was it was dependent on how we allowed the instrument to warm up.

Q. How did the warmup procedure affect the result with temperature?

A. Well, when we allowed the instrument to warm

up and then place it in the environmental chamber at anywhere from 40 up through 95, we found that the instrument would give us results, but they were much lower than expected. We were sort of expecting higher results at the higher temperatures, but we didn't see them. And when we allowed the instrument to warm up in the environment that it was already in, for instance, if the environment was already 40 degrees and then we allowed the instrument to warm up, we found that we couldn't get any results at all. But we found there was no problem at all between 50 and 95. It worked any way we used it between 50 and 95 degrees. It worked just fine.

Q. So you didn't have any problems at 95 degrees?

A. No.

Q. In Deputy Miller's notes, he had a couple results at the 95-degree temperature when they were doing the .20 that were I think 184 or something along those lines.

A. I don't recall that.

Q. At 95 degrees under the notes, it started off they had a 191 and a 193 followed by a 184 and a 183, and those numbers didn't ultimately make it into the printed reports.

A. Can I see those?

Q. And then they had ten new numbers that were used.

A. Those are from the breath tube, though. All we were doing was making sure that the instrument would allow a breath test. We were not concerned at all with the results. We found out early on, as a matter of fact I believe it was on the first day, that the simulators were just not designed to do what we were trying to do. The alcohol depleted too rapidly to run consistent tests through the breath tube.

So we weren't concerned at all about those results. What we were concerned about is whether or not the instrument would allow a breath test.

Q. And did you find that as the temperatures got lower, you gradually got a higher result?

A. No. We found out that as the temperatures got lower--again, this is dependent on how we had it warm up. We found out that as the temperatures got lower or as the temperatures got higher, except for within the 50 to 95 range, that the results got lower.

Well, the actual finished version is in color. It's a little easier to see.

Q. I think this one printed out a little bit better. I'm looking here at the Chart C, and it looked

like across the board these were the lower temperatures at 95, and that it seemed to be progressively getting higher across the board if we look at the raw data.

A. Well, again, I said that my statement before was outside the 50 to 95 range.

Q. But I'm saying within that particular range, it seems to be pretty linear that as it gets colder, it's progressively getting at least somewhat higher?

A. Well, all of these results are--well, if you're saying higher but acceptable, I guess that's a true statement.

When you were referring to higher before, I was just mentally thinking outside the range of acceptability.

Q. But I was trying to look here if I can follow the-- Because I'm looking at the .20, it looks like when they were shooting it at--

A. What page are you on, may I ask?

MS. MACK: The one prior to the one you're on.

BY MR. HARRISON:

Q. Page 6.

A. It doesn't look like the one I have here, but I'll take your word for it.

MR. HOFFMAN: Here's Chip's.

MS. MACK: Yeah, but he's not looking at the same graph that you're looking at, Robert.

MR. HARRISON: That's the same graph, I think.

THE WITNESS: Is it?

MS. MACK: Uh-uh.

BY MR. HARRISON:

Q. It's the same one. It's just printed out a little bit different from the fax.

A. Okay. All right.

Q. But unfortunately trying to look at your little linings and follow it over to the legend, I'm trying to find out--the same problem.

MS. MACK: Well, he could at least be looking at the same document that you're looking at.

MR. HARRISON: It's on 6. I'm just trying to find--

THE WITNESS: That looks like what you're looking at right there.

BY MR. HARRISON:

Q. Here we go. There's what I'm looking for. I got an email where I had a clean print, except for the fax, and I can have a better idea of what the legend looked like.

A. Okay.

Q. So when I'm looking here, like, at Chart C, I'm looking at 95 degrees looks like 194, 195, and then the next one we have 90 degrees, 77, you know, and so forth. As the temperature is going down, we're basically going from a 194 to, you know, over about a 205 or so.

A. I understand what you're saying now, yeah. Okay.

Q. What I'm saying is while I'm not saying we're popping out of that acceptable range, but in your test where everything else is being equal, as we lowered the temperature, we were showing an increase in the printout; is that correct?

A. Let me try and equate what's on that graph with the actual data here. The other thing that we don't have here is there's a spreadsheet with the numerical values that are transcribed from the raw note data. Oh, yeah, let me see that.

MS. MACK: Is that something we've marked?

MR. HARRISON: No.

MS. MACK: We need to mark it, then, please.

MR. HARRISON: It was embedded in the Word document.

Ms. MACK: But if he's gonna refer to it, Robert.

A. Okay. At 50 degrees, we have from 195 to 206. We have at 60 degrees from 206 fluctuating off and on to 209 to 210; and from 77 we have pretty stable. From 90 degrees it actually goes down; and then from 95, if I'm reading this correctly and if we are looking at the right line for the right data, it's actually pretty stable at 95.

Q. But basically what I'm looking at while there seem to be some variation--

A. Some have risen just a tad and some have lowered just a tad.

Q. But if we were looking at the-- Let's see what we've got here. The average temperature at 95 was a 195. The average temperature at 90 was a 198. At 77 was a 203. At 60 degrees it was 209, and at 50 degrees I guess it went down. That was one that was the numbers started down low then ended up high, so the average was down to 206.

A. The data certainly speaks for itself.

Q. And so it does appear looking at the data going from 95 to 90 to 77 to 60 that you are having--like from 95 to 60, the only difference in the testing was the temperature; is that correct?

A. Yes.

Q. You're using the same solutions?

A. Well, we were--we were using the same solutions. We weren't necessarily using the same simulator. Solution lot numbers.

Q. But you've got an average--I mean, the average difference when you're at 60 degrees and 95 is from a .209 to a .195, so that's an .014 difference?

A. We may have figured out on another sheet the standard deviation. I don't know if we did or not. That would give us an even better idea.

Q. But if you were dealing with a standard deviation of a .014, that would not be acceptable; is that correct?

A. .0042 is the breakoff.

Q. But the difference between the 60 and 95 is--

A. Well, you're mixing apples and oranges. You can't compare the data at 50 and then again at 60, of course. You got to compare the data at 50 with the data at 50 and then the data at 60 with the data at 60.

Q. Is there a reason why the results at 60 were higher than the results at 77, which were higher than the results at 90, which were higher than the results at 95?

A. I mean, that was one of the whole purposes of the study was to see how the instrument reacted at those various temperatures.

Q. Do you think temperature has any affect--ambient temperature has any affect on the results on the Intoxilyzer 5000?

A. Not between 50 and 95.

Q. What is your explanation for the difference in the results if it's not temperature in these average results from a 195 to a 209?

A. Well, you're never gonna get, regardless of where your temperature is, and certainly I mean the whole reason that we're here, I believe, is because of the recommended temperature from CMI between 68 and 86, as to just how the instrument operates outside that range. That's my perception of why we're here at any rate. And if I could take a look at your form there, any of these analyses is going to pass a department inspection and certainly show that the instrument is working properly. It's well within the range. There's gonna be a fluctuation on any inspection that you do. I've only had maybe three inspections in my four and a half year career where I actually got ten results that were all the same. There is going to be a fluctuation. Depending on--it's very difficult even for electronics to get the exact same amount of molecules from a device and certainly into an instrument.

Q. Dealing with the effect on temperature, if

I'm following you, is it your opinion that the Intoxilyzer 5000 can operate correctly between 68 and 86 degrees?

A. Yes.

Q. Is it your opinion that that range is conservative and it can operate at a greater range?

A. Yes, it is. That's my opinion.

Q. During your study, did you find that the Intoxilyzer ran into some problems if you got the temperature too high or too low?

A. Yes.

Q. So do you agree that there's a limit to the operation, you know, a good operation range for the Intoxilyzer 5000?

A. We found that, yes. We reported it here.

Q. In trying to reach a scientific conclusion, do you ever consult other resources to make your decision?

A. Yes.

Q. Do you consult published periodicals?

A. Well, we formatted our study--

Q. I'm talking in general terms, not necessarily this one.

A. Do I read other published periodicals?

Q. Yes.

A. Yes. As a matter of fact, I've got quite a display of them in my car. A collection of them, I should say.

Q. And in making your opinions, is it appropriate to rely upon published materials for other people in your field?

A. Well, I don't make my opinion based on what someone else wrote when it's my study.

Q. No, I understand you've got your study, but what you can do and what you can't do, I mean, do you look at what other people have done?

A. Oh, absolutely, yes.

Q. And is that appropriate?

A. Sure. I think you're probably negligent if you don't.

Q. And how about what the manufacturer--looking at the manufacturer, is that something--another resource that's appropriate to look at?

A. Yes, and we do.

Q. And in fact, you had the CMI study or report that they did in January; is that correct?

A. No. We didn't get that until much later.

Q. But that's something that you have had and considered; is that correct?

A. Yes. Well, I've read it. You know, there

wasn't any consideration of it when we did our study and wrote our document because we didn't have the information.

Q. But if you had had that at that time, is that something you would have taken into account and considered?

A. Maybe to just review how they did their study and maybe put a new--a new look, a new angle, maybe do something that they didn't do, use it maybe as a pattern.

Q. How about what Dr. Goldberger did, is that something to take into account?

A. Well, my personal opinion about that is I think he had the best intentions, and I think everybody involved had the best intentions, but I think it didn't meet the criteria I envisioned for my study. I don't know if I answered your question or not.

Q. Dr. Goldberger, he's somebody that has worked and done studies or evaluations for FDLE in the past; is that correct?

A. He's evaluated--he used to be involved in our postdistribution analysis for our alcohol reference solutions.

Q. And we talked about earlier about the published article in "Forensic Science International,"

and you said that you had an opportunity to read that?

A. Right, uh-huh.

Q. Are you familiar with that journal?

A. Oh, yes, yes.

Q. Is that a peer reviewed type publication?

A. I don't know. The people that we talked with didn't know the authors of that article. I was given a copy of it, I read it, and that's all I can really say about it.

Q. Did you have any opinion as to the validity of that study?

A. Yes. I--the instrument was evaluated with a gas substance according to that article, and that's something we don't use here. Gas is affected by altitude, barometric pressure. I don't know what compensation they did for that.

Q. So is gas something that wouldn't be appropriate to use in Florida?

A. I didn't say that, but the-- Let me finish what I was going to say. I mean, you asked me a question and I got one more point to make on that.

The other thing is to use an Intoxilyzer 5000 and use gas, the instrument would have to be altered in some way for that to happen, and there's no mention as to how that instrument was altered to accept gas.

Now, as far as whether or not--answering your next question, gas is something that we will use when we adopt the 8000. It will be used in a control test mode before and after a breath test, but the instrument doesn't have to be altered to accept that. It's already there. It's part of the process. We don't have to do anything special.

Q. So if gas is used appropriately, it can be just as accurate as using vapor; is that correct?

A. Sure, and that's--well, not for the Intoxilyzer 5000. You'd have to alter it to do that. There's no way to insert a gas mixture in there without altering the instrument, but I used gas to test--this has nothing to do with the 5000, but we used gas to check the accuracy for hand-held units all the time when I was with the police department. It was much simpler.

Q. Do you know why the manufacturer included the operational range of 68 to 86 degrees?

A. Well, the information I have is that it was to allow the instrument to conform to the conforming products list for the Department of Transportation.

Q. And you, in fact, obtained a letter from the manufacturer to that effect?

A. I have a copy, but I didn't get it from the manufacturer.

Q. Where'd you get that?

A. The alcohol testing program in 1999 or thereabouts.

Q. I'll show you and we'll mark that as Exhibit 1. Do you recognize that?

A. Yes, it's a copy of that letter.

Q. Is that a true and correct copy of what you--

A. It's what I recall that I have.

Q. So that was something that was in the FDLE archives or records that you obtained?

A. Yes, uh-huh. As a matter of fact, when I talked to Bill Schofield on the phone at some point, we had talked a little bit for several weeks, he reminded me of this and that reminded me that I had seen this. I had forgotten about it at that time.

MS. MACK: Is that Number 3?

MR. HARRISON: Oh, do we already have a Number 1?

MS. MACK: Number 1 is the spreadsheets.

CROSS EXAMINATION

BY MS. MACK:

Q. Mr. Suereth, I'm Kerry Mack. Who did you speak with about the article that was in the forensic journal, about the authors of the article that was in the forensic journal? You said you spoke with some

people who didn't know who they were.

A. Oh, Phil Lively with CMI. As I recall, I asked the same of Bill Schofield, the chief engineer. It is my recollection that Dr. Goldberger was asked and he didn't know who those people were. Those are the people that I can recall at the moment.

Q. Do you agree that the journal that the article was published in is a peer review journal?

A. Yes, I do.

Q. A scientific journal that is routinely relied upon by people in that field to formulate opinions?

A. That is the information that I have.

Q. So just because somebody that comes from CMI or Dr. Goldberger doesn't know them that doesn't reduce the peer review status of that article; does it, sir?

A. I would say no.

Q. Okay. The study that you were involved in says that "the following people provided valuable advice and assistance in developing the methods used to conduct this study," and one of them is Laura Barfield, and I'd like you to tell me what she did. What's the valuable advice and assistance that she gave in developing the methods used to conduct the study?

A. Well, Laura Barfield was primarily used to put our information into a format that would be very

similar to the article that you just referred to.

Q. Okay. And Rafael Madrigal, that's an attorney?

A. Yes. Rafael was very beneficial in the wording that we--more cosmetic assistance, formulation of grammar, words, things like that.

Q. That tells me, Mr. Suereth, that he must have seen something and made some draft changes and sent them back to you.

A. That's true.

Q. That's what I translate that to be.

A. Yes.

Q. Where are those drafts? Who has those because nobody's produced them in any of the depositions that we've done today?

A. I would recommend that you contact Mr. Madrigal.

Q. All right. You don't have them?

A. No.

Q. You're the author of the study and you didn't get the drafts that Mr. Madrigal made the changes on?

A. Well, what you have in front of you as a finished product is a result of those draft changes.

Q. Well, I understand that. I want to know where's draft one? What was the changes made to draft

one? Where's draft two? And I'm assuming that there's more than one draft. I don't know that.

A. Well, you might want to contact Mr. Madrigal.

Q. You're my witness, sir, and you were subpoenaed to bring those documents, and I'd like to know where they are.

A. Well, I'm not the custodian of record, and we've discussed this, Ms. Mack.

Q. Okay. So you don't have any of them?

A. I have no records to give you.

Q. You authored an article, but you don't have any of the draft copies; is that right?

A. That is correct. That is correct.

Q. Tell me about Roger Skipper, what's his involvement?

A. Roger is one of our--he's our senior--our senior inspector, and we would periodically contact him and tell him how things were going and give us some insight as to some maybe unexpected event.

Q. Well, what I want to know specifically is the acknowledgments on this draft say or this final report say "the following people provided valuable advice and assistance in developing the methods used to conduct this study." What valuable advice and assistance in developing the methods used to conduct the study was

provided by Roger Skipper, very specifically?

A. Well, I didn't list each little question I asked each person and write down how they assisted us.

Q. Well, can you tell me?

A. I just told you about Roger Skipper.

Q. You told me that he was a regional breath test inspector and he was the senior member and you asked him for some vague advice, and I want the specifics.

A. Well, from what I recall, one of the specifics was--one of the things that we expected was when the temperatures were raised, we expected the ambient temperature to also have an affect of possibly raising the results within the instrument, because the instrument's only capable of heating to a certain extent; and therefore, the ambient temperature in our opinion would also increase the size of the alcohol molecules and thereby possibly raising the results. Well, we didn't see that. So Roger gave us some insight as to why that may not happen. It's an electronic issue. It's the temperature effect on the electronics of the instrument. That's his specialty. So--

Q. Specifically what electronic component is affected by temperature?

A. You'd have to ask Roger Skipper.

Q. Well, didn't he tell you that?

A. Ms. Mack, I'm trying to answer your question as best I can.

Q. I just asked you a question.

A. And I did not--

Q. Did he not tell you what electronic component was affected by temperature?

A. I don't recall any specific electronic component he might have mentioned.

Q. Where does it say in your report here that electronic components of the instrument can be affected by temperature?

A. Didn't say that. Didn't go into that. That wasn't our concern. What we wanted to know was how the instrument in general would react. Would it accept a breath sample at--within a certain range. What we have is the published result.

Q. Warren Sanger: The Florida Department of Law Enforcement, Alcohol Testing Program, Regional Breath Testing Inspector. What valuable advice and assistance in developing the methods to conduct this study did Mr. Sanger provide?

A. Warren--when we were doing more of a clinical study, Warren was actually doing some field research, and he was actually in the environment, the actual cold

weather, working with the instrument. I don't have any information that he provided. It is my understanding that he is in the process of formulating a report, but that really didn't have anything to do with what we actually did.

Q. Then let me ask you this: Did Mr. Sanger provide any valuable advice and assistance in developing the methods used to conduct this study?

A. Advice and assistance.

Q. I guess I just--I don't understand what advice he gave you. Sorry.

A. Well, I'm sorry. I'm sorry you're sorry.

Q. Well, you told me that he was doing some field research in cold weather.

A. Yes.

Q. Did he provide you with that information?

A. Only verbally. We have nothing written.

Q. And where was he doing his field research in cold weather?

A. In Miami.

Q. And do you know where his field research is, his notes?

A. I believe I just mentioned that he is in the--it's my understanding he's in the process of documenting that. I don't know if he's finished yet.

Q. Well, when you talked to him, what is it that stands out in your mind, if anything, about the valuable advice and assistance that he gave to you in developing the methods used to conducts the study?

A. He heated an instrument at one point, I believe it was 60 degrees Centigrade, and found that--I cannot recall which plastic component melted on it, but that's my recollection.

Q. He heated an Intoxilyzer 5000?

A. Uh-huh, yes.

Q. To what temperature?

A. I believe it was 60 degrees Centigrade.

Q. And something melted?

A. That's my understanding.

Q. And how did that assist you in conducting your study?

A. Well, it certainly was a clue for us not to heat the instrument to 60 degrees Centigrade.

Q. What's the equivalent of 60 degrees Centigrade to Fahrenheit?

A. I'd have to figure it out. I believe it's 140 degrees Fahrenheit.

Q. Okay. And that was the valuable advice that Mr. Sanger provided to you?

A. It's pretty valuable.

Q. Did you have any intention when you began your study to go past 110 degrees?

A. Oh, yes, yes, we did.

Q. So Mr. Sanger provided that information to you and you modified the scope of your study; is that based on information he gave you?

A. Yes.

Q. Okay. Everett James from the University of North Florida, what valuable advice and assistance did he provide to you?

A. It was with his permission that we were allowed to use the environmental chamber.

Q. I've forgotten his name. I think Mr. Morrison told us that he's the director of that--I don't know what you call it--program or department.

A. He's the director of the IPTM.

Q. I'm sorry I didn't connect the name. He did tell us his name. And Mr. Morrison I think we've already deposed, so we know what he did.

Now, I want to ask you a question about these--my understanding is that there were two Intoxilyzer 5000s that were involved in your study; is that right?

A. Yes.

Q. And were they both used in the study?

A. Yes.

Q. Throughout the entire study?

A. No.

Q. What happened?

A. The first one--and I don't recall the serial number offhand, we used primarily on the first day and we put the instrument through its paces with an alcohol free solution through the range that we used. We used more incremental ranges with this one than we did the others. We had to tailor our protocol to at least get something accomplished by the end of the week. We weren't expecting that the environmental chamber would take so long to adjust to temperature, and at some point--I believe it's in the notes here of what instrument we used--we just took it out and put the other one in. We had two of them, so we wanted to use two instruments.

Q. The notes that Deputy Miller made, are those the only handwritten notes--

A. Yes.

Q. --that are involved in this study?

A. Yes, I'm not aware of any others.

Q. Where are those originals?

A. In Tallahassee at the alcohol testing program.

Q. So if we asked the records custodian, they'll find them for us; is that it?

A. I would assume so.

Q. Well, who did you turn them over to, sir?

A. Laura Barfield, program manager.

Q. And if there are any other notes, would Ms. Barfield have those as well?

A. I'm unaware of any other notes.

Q. So the report and any of its drafts have been published solely as a result of the notes that Deputy Miller made?

A. Yes, they were the on the scene, real-time recording of the information contained within the report. With the exception of the conclusions at the end, I believe that would be a fair statement.

Q. All right. Who made the selection of the temperature range for the study?

A. I did.

Q. And what did you use as the criterion?

A. Well, we wanted to go--and if memory serves, the original decision was to go, I believe, within 20 degrees either way of the 68 to 86, and my original plan was to--if we're going to do this, try and pinpoint as close--if we're going to have a failure, let's pinpoint as close as we can to the actual degree setting that we

would have the instrument set at, but it was--like I said before, it was quite ambitious. There were too many degree settings in the original plan. We couldn't do it.

Q. Do you agree with the statement that this study proves that you cannot test--adequately test the actual breath tube portion of the machine, and that the only way that you can adequately test this machine is through this--let's see if I can get the right name here--

MR. HARRISON: Simulator port?

BY MS. MACK:

Q. Thank you. Simulator port.

A. Would you repeat that?

MS. MACK: Would you read it back, please?

(The last question was read aloud by the court reporter as follows: Q. Do you agree with the statement that this study proves that you cannot test--adequately test the actual breath tube portion of the machine, and that the only way that you can adequately test this machine is through this--let's see if I can get the right name here.)

A. No, I disagree with that statement.

BY MS. MACK:

Q. Can you adequately test the machine through

the breath testing port the one that somebody who's being subjected to a breath test blows into?

A. Yes.

Q. How did you do it?

A. You can get adequate results within one and possibly two, but we were looking for five at a shot. That you can't do. So you can adequately get an assessment of the alcohol value if you run one and at the maximum two samples through the breath tube, but probably no more than that.

Q. And why is that?

A. The alcohol vapor depletes too much. There's no recirculation.

MS. MACK: I don't have anything else.

MR. HARRISON: You got anything?

CROSS EXAMINATION

BY MR. HOFFMAN:

Q. Only that there was some questions concerning the drafts that were provided, and it's my understanding that there are--there was a draft provided, correct?

A. We submitted a draft to your office via Mr. Haenel. It was one of the first or second--whatever--

MR. HARRISON: It's got a number two after the draft.

BY MR. HOFFMAN:

Q. So for the record, there were some of the drafts before the final product that were submitted to our office?

MR. HARRISON: One draft.

A. Yeah. Nothing changed--nothing changed substantially with the data. It was cosmetic. The drafts consisted of cosmetic changes throughout.

BY MR. HOFFMAN:

Q. The data and the specific numbers that were recorded didn't change?

A. No, they didn't change at all.

MR. HOFFMAN: I don't have anything else.

MS. MACK: Read or waive?

THE WITNESS: Read.

THE COURT REPORTER: Could I have your card?

THE WITNESS: I can get you that, but I need to go out to my car to get it.

THE COURT REPORTER: Okay. It will take me a few minutes to pack up, so if you could do that that would be good. I still need Barfield Number 6, and then we only have two here. Ms. Mack, there's just two exhibits I have for him.

MS. MACK: I only have two.

(Thereupon, the deposition of DONALD PAUL

SUERETH concluded at 5:49 p.m. Reading and signing were not waived and will be handled by Attorney Kurt Hoffman, Counsel for the Plaintiff.)

CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF SARASOTA)

I, the undersigned authority, certify that DONALD PAUL SUERETH personally appeared before me and was duly sworn.

Witness my hand and official seal this 15th day of May, 2003.

Heidi L. Hutson, RPR
Notary Public - State of Florida

HEIDI L HUTSON
MY COMMISSION # DD 059041
EXPIRES: October 14, 2005
Bonded Thru Notary Public Underwriters

DEPOSITION CERTIFICATE

STATE OF FLORIDA)

COUNTY OF SARASOTA)

I, HEIDI L. HUTSON, RPR, being a Notary Public in and for the State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 15th day of May, 2003.

Heidi L. Hutson, RPR
Notary Public in and for the
State of Florida at Large

STATE OF FLORIDA vs. JANET HENDERSON, et al.
Case No.: 02-CT-004899 NC

I have read the foregoing transcript of my deposition given on Thursday, April 24, 2003, and it is true, correct and complete, to the best of my knowledge, recollection and belief, except for the list of corrections, if any, listed below.

CORRECTIONS

Page#	Line#	Description

_____ _____
DONALD PAUL SUERETH DATE

STATE OF FLORIDA)

COUNTY OF SARASOTA)

Subscribed before me this _____ day of _____, 2003.

_____
Notary Public