

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

MATTHEW FLOETER,

Plaintiff,

vs.

CASE NUMBER: 6:05-CV-400-ORL-22-KRS

THE CITY OF ORLANDO,

Defendant.

**PLAINTIFF'S COMBINED EMERGENCY MOTION FOR SANCTIONS FOR  
SPOILIATION OF EVIDENCE AND MOTION TO  
STRIKE PLEADINGS AND DEFENSES<sup>1</sup>**

**COMES NOW** the Plaintiff, MATTHEW FLOETER, by and through his undersigned counsel and pursuant to Federal Rule of Civil Procedure 37, hereby respectfully requests that below-mentioned sanctions be imposed against the Defendant for its spoliation of critical evidence and that the defendant's pleadings and defenses be stricken in this cause and asserts the following:

1. In this cause of action, the Plaintiff has claimed sexual harassment and hostile working environment and the Defendant filed its Answer on June 22, 2005 wherein it asserted an affirmative defense pursuant to *Faragher v. City of Boca Raton*, 510 U.S. 17 (1993) that the Plaintiff had failed to internally complain about the harassing conduct. (Defendant's Answer, Document 22, at p. 4) In its answer and throughout this litigation

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<sup>1</sup> The report and letter showing Defendant lost or destroyed the relevant evidence was not provided to the undersigned until December 15, 2006. It is the undersigned's position this is an emergency motion because of Defendant's egregious conduct in providing the subject report and letter demonstrating Defendant "lost" and/or destroyed critical evidence was not provided until **after** the discovery deadline and **after** "other" motions were to be filed and Motion for Summary Judgment has been filed and is pending at this moment.



Defendant has specifically denied the existence of any pornographic materials from Uvalle on computers to this Court.

2. On March 27, 2006, Plaintiff filed his Motion to Compel Production of Documents and Motion to Compel Entry Upon Land (Document 29) wherein he sought in paragraph 15 “A copy of all emails with sexually explicit or pornographic materials emailed from the computer of Lt. Uvalle to anyone from 2000 to present.”

3. On April 14, 2006, this Honorable Court granted Plaintiff’s Motion in pertinent part with regard to paragraph 15 and over the Defendant’s objection. (Order/Document 37). The Court’s Order held that emails of this nature would be relevant to Plaintiff’s claim.

4. The defendant subsequently responded in its Amended Response to Plaintiff’s First Request to Produce on May 1, 2006 by stating “...Defendant has no documents in its custody, possession, or control that are responsive to this request”. (Defendant’s Amended Response attached hereto as Exhibit “A” ).

5. On September 5, 2006, Plaintiff took the sworn deposition of Lt. William Fawbush, an employee of the defendant who stated under oath that he had routinely both sent and *received* pornographic emails from Lt. Uvalle. Copies of said emails from Lt. Uvalle would therefore be stored upon Lt. Fawbush’s computer as well as Lt. Uvalle’s computer. (Fawbush Deposition attached in pertinent part as Exhibit “B”)

6. On September 5, 2006, Plaintiff took the sworn deposition of Lt. Brian Gilliam, an employee of the defendant who stated under oath that he had both sent and received pornographic emails from Lt. Uvalle. Copies of said emails from Lt. Uvalle



would therefore be stored upon Lt. Gilliam's computer as well as Lt. Uvalle's computer. (Gilliam Deposition in pertinent part attached as Exhibit "C").

7. On August 15, 2006 at the scheduled mediation in this cause, plaintiff advised the defendant that he possessed several pornographic emails which had been downloaded and sent from Lt. Uvalle's computer. Armed with that information, the defendant filed its Motion to Compel Production of Documents on September 5, 2006 seeking, *inter alia*, production of "e-mails, recordings, video", over the objection of the Plaintiff.

(Document 46, p. 1)

a. The Plaintiff responded by asserting that the City was already in possession of said documents and asserted that "Defendant continued to deny the existence of any of this evidence; continued to refuse to provide Plaintiff with similar evidence which Plaintiff is convinced Defendant is in possession of, or was in possession of; and continued to tell this court no such evidence exists; until Defendant was confronted with the evidence at mediation." (Document 49, p. 4).

b. This Honorable Court then issued its Order dated September 29, 2006 directing the Defendant to respond and state whether or not "the City currently possesses the documents.... (Document 53)

c. On October 4, 2006, the Defendant filed its Reply to Plaintiff's Response and specifically denied possessing the documents in question (paragraph 4). The Defendant also asserted that "***On May 1, 2006, the City, after a long and exhaustive search of Lieutenant Uvalle's computer,*** (emphasis added) amended



its Response...stating that the City had no documents in its custody, possession or control..." (Document 57, p 4)

d. As a result of these representations by the Defendant (which as demonstrated below are not credible given that the computer in question was lost), the Court then ordered that the Plaintiff produce Lt. Uvalle's e-mails in his possession and further assessed costs of \$150 against the Plaintiff. (Document 58).

8. On or about December 15, 2006, undersigned counsel received a Security Audit Report dated December 20, 2005 ("the Report") from the Internal Affairs Department of the City of Orlando which has attached to it a letter dated June 9, 2006 ("the Letter") from the Technologies Management Section (attached hereto as Composite Exhibit "D"). The Letter indicates on December 20, 2005 that legal counsel for the defendant requested that Lt. Uvalle's computer and other computer hard drives be analyzed. During the analysis, Lt. Uvalle's computer was allegedly lost "whereabouts unknown". According to the Letter, the loss of the computer was reported on December 30, 2005, or January 3, 2006.

9. Significantly, and five to fifteen days **prior** to the "loss" of Lt. Uvalle's computer, the defendant took the deposition of Plaintiff Matthew Floeter on December 15, 2005. In his deposition, Plaintiff gave testimony that he did not complain to his immediate supervisor about being sexually harassed because his supervisor (Lt. Uvalle) was consistently viewing pornographic images on his City of Orlando computer and



disseminating them to Plaintiff and others in command. (Floeter Deposition in pertinent part attached hereto as Exhibit "E")

10. The Plaintiff has been prejudiced by the Defendant's misleading discovery response stating that it had no pornographic emails in its possession. In fact, the defendant does possess said materials; or did possess the materials; however, either by design or gross negligence tantamount to being intentional inaction Defendant cannot or will not locate them. If the defendant had forthrightly fulfilled its discovery obligations and stated that the records did exist and original computer records/hard drive in question were "lost", then Plaintiff could have availed himself of the opportunity to investigate the disappearance of the computer and attempt to locate it prior to the discovery cut-off date.

11. Because of the Defendant's misleading discovery response and statements to this Court the Plaintiff is left without recourse to challenge the Report (of the Defendant) which indicates that the analyst was unable to locate pornographic emails on Lt. Uvalle's computer current hard drive. As a result of the concealment of the original computer's disappearance, Plaintiff cannot investigate what, if any, efforts were made to locate the computer. Similarly, the Plaintiff cannot now investigate the plausibility of the defendant's claim that the original computer is/was indeed "lost". Of equal importance, the report specifically indicates that pornographic emails and images were in fact being disseminated on the computers and were seen on hard drives notwithstanding Defendant's denials of the same to Plaintiff and this Court.



12. During the discovery process, the defendant instructed its employees to refuse to answer questions about the existence of “the Report” which detailed the loss of Lt. Uvalle’s original computer. On November 13, 2006, the Plaintiff took the deposition of Dwain Rivers, an employee of the defendant who supervises Internal Affairs and who was in a unique position to know the contents of any documents and/or reports concerning pornographic materials. Mr. Rivers refused to acknowledge the existence of the Report due to an ongoing investigation. (Rivers Deposition in pertinent part attached hereto as Exhibit “F”). Thereafter, and on or about December 6, 2006, the defendant completed its investigation and said Report became public record and was later able to be obtained by counsel for the Plaintiff. However, and because the Report and Letter were strategically made available only after the discovery cut-off date, Plaintiff was left without any discovery recourse under Federal Rule of Civil Procedure 26.

#### **MEMORANDUM OF LAW**

“Spoliation” is the “intentional destruction, mutilation, alteration, or concealment of evidence”. BLACKS LAW DICTIONARY 1437 (8<sup>th</sup> Ed. 2004). Although federal law controls spoliation sanctions, the Court’s opinion may be “informed by state law, as long as its consistent with federal law, because federal law in the Eleventh Circuit does not set forth specific guidelines on spoliation. *Flury v. Daimler Chrysler Corp.*, 427 F.3d 939 (11<sup>th</sup> Cir. 2005) Generally, spoliation of evidence is established when the party seeking actions proves (1) that the evidence existed at one time (2) that the alleged spoliator had a duty to preserve the evidence; and (3) that the evidence was crucial to the



movant being able to prove its *prima facie* case or defense. *Optawave Co., v. Nikitin*, 2006 WL 3231442 (M.D. Nov. 7, 2006)(granting sanctions for spoliation of evidence for similar conduct). In order for sanctions to be imposed for spoliation of evidence, it is generally incumbent upon the Plaintiff to demonstrate that the Defendant has acted in bad faith by its failure to preserve evidence. *See Bashir v. Amtrak*, 119 F.3d 929 (11<sup>th</sup> Cir., 1997). Importantly, in *Bashir*, the Eleventh Circuit noted that while there was no explanation for the destruction of the evidence (a speed recording device on a train), there was no motive for its destruction and the plaintiff had no other supporting evidence whatsoever that the train was traveling at excessive speed. The Court then expressly stated that there may be cases where a “wholly unexplained loss of evidence might in other circumstances warrant an inference of bad faith.” *Bashir* at 932.

In this case, the circumstances, taken in their totality, clearly show the Defendant’s bad faith. The first and most telling component of this inference of “bad faith” demonstrating Defendant’s intent is in the Defendant’s explanation, or lack of it, for the loss of the evidence in question. The Defendant, boldly, and without explanation, simply reports that the records do not exist. As set forth above, this is an inaccurate and misleading statement given the content of the Technologies Management Report and Letter that the computer is/was “lost”. Likewise, the report shows the Defendant was in the possession of pornographic emails and images although the Defendant specifically told this Court it was not. Furthermore, and unlike in *Bashir* where the Court found no bad faith because the spoliating party had no motive to destroy the evidence, here the



Plaintiff has a quantum of corroborating evidence which would indicate that the spoliated e-mails were supportive of his (Plaintiff's) case. Because the Plaintiff has in his very possession some pornographic e-mailings from this computer, and because deponents Fawbush and Gilliam have testified that hundreds of such e-mails would be found on the hard drive of this computer, it is clear that the e-mails would be extremely detrimental to the Defendant's case and its *Faragher/Ellerth* defense as suggested by this Court in its Order dated April 14, 2006. Thus, the Defendant has ample motive for its failure to preserve the evidence and "lose" the computer.

Florida definitely recognizes a duty to preserve evidence *after* a lawsuit has been filed. *Silhan v. Allstate Ins. Co.*, 236 F. Supp. 2d 1303 (N.D. Fla. 2002). "[A] party does have an affirmative responsibility to preserve any items or documents that are the subject of a duly served discovery requests." *Silhan*, citing *Strasser v. Yalamanchi*, 783 So.2d 1087, 1093 (Fla. 4DCA 2001) Here, on December 15, 2005 the deposition of Plaintiff was taken. On December 16, 2005 Plaintiff propounded Request for Production on Defendant seeking the pornographic emails and images which Plaintiff and others had seen on Uvalle's computer or had received from Uvalle or had been sent by Uvalle. According to the Legal Request Letter dated June 9, 2006 (attached hereto as part of Composite Exhibit "D") from Vernon Green, Information Security Administrator for Defendant, on December 20, 2005, Defendant initiated a "computerized audit" of Uvalle's computer. On December 30, 2005 or January 3, 2006, before the audit of Uvalle's computer, Green discovered Uvalle's computer (original) was changed and



“whereabouts unknown”. Not only did Defendant have a duty to preserve the evidence of Uvalle’s computer, but also, this is strong evidence that Defendant intentionally destroyed, or lost the evidence to prevent Plaintiff from obtaining these pornographic images which inundated the work place from Uvalle and others in command. In fact, in *Silhan*, the Court emphatically stated “One type of spoliation of evidence claim occurs when a party, during litigation, destroys or loses evidence that is vital to the opposing party, and such losses should then be treated by the Court as a discovery violation which is subject to a variety of discretionary sanctions.”

In assessing the Defendant’s bad faith, it is noteworthy that none of the other computers being examined were “lost” and only the very computer that is central to the Plaintiff’s claim is now “whereabouts unknown”. The Technologies Management Report indicates that the City of Orlando computers are serialized by asset number. Thus, the question arises: how can a computer; a fairly large item, which has been segregated from other computers for the purpose of analyzing its hard drive, and bears an “asset number”, suddenly become “lost”? A more accurate description of events would be to employ the saying that the computer and its damning contents have “gone missing on purpose”--that is, destroyed. Moreover, and critical to this issue is the timing of the “loss” of the computer which is telling with regard to bad faith. In short, the Defendant was placed on notice that this computer would be central to the Plaintiff’s case on December 15, 2005 (deposition of Plaintiff) and December 16, 2005 (request for production from Plaintiff). Within five to fifteen days, the computer and its contents were inexplicably missing.



Further compounding the evidence of the Defendant's bad faith are the apparent misrepresentations which have been propounded in pleadings in this cause. The Defendant has repeatedly made misleading representations to Plaintiff and this Court that these e-mails "do not exist" and "never existed". The clear import of this representation is that there are no such e-mails on Lt. Uvalle's computer; never were, and the Plaintiff's assertions to the contrary are false. In addition, the Defendant, in its efforts to seek production of some these very e-mails from the Plaintiff without producing the same, has represented in response to this Court's Order on May 1, 2006 that it undertook a "*a long and exhaustive search of Lieutenant Uvalle's computer....*" This assertion appears to be untrue "on its face" in that if the computer was "lost" during the time period in question or on January 3, 2006 before the audit was performed on it, how can Defendant have done "*a long and exhaustive search of Lieutenant Uvalle's computer?*" In the lengthy exchange of pleadings which accompanied the Defendant's Motion to Compel Production and in light of this Court's specific Order, it was clearly incumbent upon the Defendant to come forth and advise the Court that the subject computer and hard drive were "lost" or that the original computer itself was not in existence. In short, the pleadings themselves manifest a showing of bad faith. As a final note and adding insult to injury, the Defendant, in making these pronouncements, successfully and unfairly sought attorneys' fees and sanctions against the Plaintiff for not producing evidence Defendant already had in its possession (or at least had knowledge as to the what



happened to the evidence), by claiming it was “not in possession of any pornographic images” while in fact, Defendant was in blatant violation of the discovery rules and misleading this Court.

In *Telectron, Inc., v. Overhead Door Corp.*, 116 F.R.D. 107 (S.D. Fla. 1987), involving a similar willful destruction of evidence that were subject to discovery requests in a complex antitrust case, the district court defaulted the defendant upon finding that corporate counsel for the defendant ordered the destruction of all the pricing documents he believed would be damaging to the corporate defendant. Because of Seventh Amendment concerns and the public policy that cases should be decided upon consideration of the merits of the case, the court in *Telectron* held that default should be used in ‘flagrant cases’ in which it is demonstrated that the failure to produce ‘materially affect[s] the substantial rights of the adverse party’ and is ‘prejudicial to the presentation of his case. Quoting *Helmach Products Corp. v. Roth (Plastics) Corp.*, 814 F. Supp. 560, 572 (E.D. Mich. 1992)(defaulting the defendant who destroyed documents intentionally to prevent fair adjudication of the dispute)

The actions of the defendant have clearly prejudiced the Plaintiff in the preparation of his case and ‘materially affected the substantial rights of Plaintiff. *Telectron, supra*. By “losing” Lt. Uvalle’s computer, the defendant has failed to preserve evidence which is critical to the Plaintiff’s claim. This is particularly so since the City has now sought to dismiss the Plaintiff’s claim by alleging a *Faragher* defense, alleging that Plaintiff did not immediately report the sexual harassment (or hostile work environment) to his



superiors. In his sworn deposition, the Plaintiff testified that he did delay in so reporting because his immediate superior, Lt. Uvalle, and others in command were heavily involved in disseminating pornographic emails and he (Plaintiff) did not have an avenue for complaint due to the sexually charged atmosphere in the office. Given the nature of the defense, Lt. Uvalle's computer and the emails he sent and received was the most critical piece of physical evidence in the case since it would have demonstrated Plaintiff's fears were reasonable. Clearly, the defendant would have been well-aware of this given that it has asserted *Faragher* in its Answer to the Complaint.

In *Flury v. Daimler Chrysler Corporation* 427 F.3d 939 (11<sup>th</sup> Cir., 2005), the Eleventh Circuit utilized dismissal as a sanction for the spoliation of critical evidence. In that case, the Plaintiff had failed to preserve critical evidence and, in upholding the dismissal, the Court gave great weight to both the critical nature of the evidence which was not preserved and the fact that the party knew about the importance of the evidence. *Flury at* 945. These two factors are also present in the instant case. Lt. Uvalle's computer e-mailings are central to the Plaintiff's ability to ward off the Defendant's *Faragher* defense and prove his hostile work environment claim. In short, there is very little other physical evidence to support the Plaintiff's claims of the complete nature of the work environment with respect to the emails and pornographic images being disseminated therein. Secondly, the Defendant most certainly knew of the significant nature of the evidence since it pled *Faragher* as an affirmative defense prior to its failure to preserve



the evidence and the “loss” of this evidence occurred *after* this lawsuit was filed; *after* Plaintiff was deposed and *after* Plaintiff propounded discovery requesting this evidence.

The defendant’s spoliation of this evidence has undermined the Plaintiff’s case and as a sanction, the Plaintiff now seeks to have the Defendant’s Answer stricken, or alternatively to have Defendant’s Fifth and Sixth Affirmative Defenses stricken and also to have Defendant’s Motion for Summary Judgment stricken. Additionally, the Plaintiff seeks attorney’s fees and the refund of the \$150 costs previously assessed against him, an amount of costs of attorneys fees and costs to be later determined by the Court for Plaintiffs’ counsel being forced to file the various motions to obtain discovery and any other appropriate sanctions.

**WHEREFORE**, the Plaintiff prays that the aforesaid Motion be granted and that the Defendant be sanctioned accordingly.

**CERTIFICATE OF GOOD FAITH COMPLIANCE**

Pursuant to Local Rule 3.01(g), counsel for the Plaintiff certifies that a good faith effort has been made to resolve the pending issue with opposing counsel, and that opposing counsel has indicated that (s)he opposed the Plaintiff’s Motion.

Respectfully submitted,

s/Frank Todd Allen, Esquire  
Frank Todd Allen, Esquire  
Florida Bar Number 0033464  
Attorneys for the Plaintiffs  
The Allen Firm, P.A.  
605 East Robinson Street  
Suite 130  
Orlando, Florida 32801  
Telephone: (407) 481-8103  
Facsimile: (407) 481-0009  
E-mail: allenf551@aol.com



**CERTIFICATE OF SERVICE**

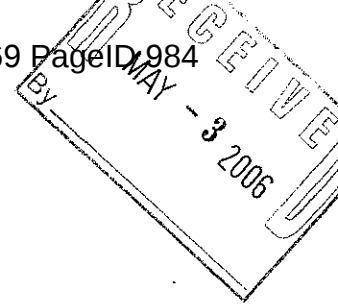
**I HEREBY CERTIFY** that on the 22nd day of December, 2006, I electronically filed the foregoing Plaintiff's Combined Motion for Sanctions for Spoliation of Evidence and Motion to Strike Pleadings and Defenses, with the Clerk of the Court, by using the CM/ECF system, which will send a Notice of Electronic Filing to the following: Wayne L. Helsby, Esquire, Robert E. Blanchfield, Esquire, and Bona M. Kim, Esquire, Allen, Norton & Blue, P.A., 1477 West Fairbanks Avenue, Suite 100, Winter Park, Florida 32789 and Michael H. LaFay, Esquire, NeJame, LaFay, Barker & Tumarkin, P.A., One South Orange Avenue, Suite 304, Orlando, Florida 32801.

s/Frank Todd Allen, Esquire  
Attorney



**EXHIBIT A**





IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

MATTHEW FLOETER,

Plaintiff,

vs.

CASE NO.: 6:05-cv-400-ORL-22KRS

THE CITY OF ORLANDO

Defendant.

DEFENDANT'S AMENDED RESPONSE  
TO PLAINTIFF'S FIRST REQUEST TO PRODUCE

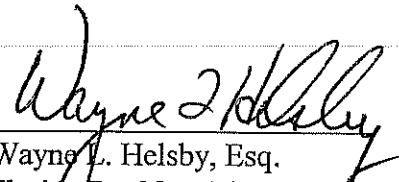
COMES NOW, Defendant THE CITY OF ORLANDO, by and through its undersigned counsel and pursuant to this Court's Order on April 14, 2006, hereby responds to Plaintiff's First Request to Produce and states the following:

1. In response to Request to Produce No. 9, Defendant has no documents in its custody, possession, or control that are responsive to this Request as narrowed by the Court.
2. In response to Request to Produce No. 11, Defendant maintains that it forwarded these documents to Plaintiff's counsel on February 22, 2006. If Plaintiff needs additional copies of them, Defendant will produce them for inspection and/or copying at a time convenient for all parties. The only additional document in response to this Request is a document entitled "Orlando Police Department 7.04 Employees Attending Course Report for All Employees," which Defendant has attached to this Response.
3. In response to Request to Produce No. 12, Defendant has no documents in its custody, possession, or control that are responsive to this Request as narrowed by the Court.



4. In response to Request to Produce No. 15, Defendant has no documents in its custody, possession, or control that are responsive to this Request.

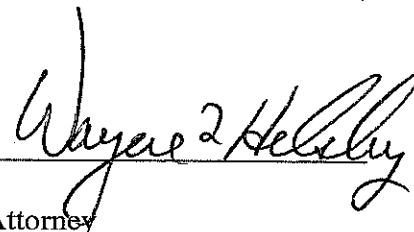
Respectfully submitted,



Wayne L. Helsby, Esq.  
Florida Bar No.: 362492  
Robert E. Blanchfield, Esq.  
Florida Bar No.: 0361800  
ALLEN, NORTON & BLUE, P.A.  
1477 W. Fairbanks Ave., Ste. 100  
Winter Park, FL 32789  
(407) 571-2152  
(407) 571-1496 Facsimile  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendant's Response to Plaintiff's First Request to Produce has been furnished by U.S. Mail to: Frank T. Allen, Esq., The Allen Firm, P.A., 605 East Robinson Street, Ste. 130, Orlando, Florida 32801, and Michael H. LaFay, Esq., Nejame, Harrington, Barker, et. al., 1 South Orange Avenue, Ste. 304, Orlando, Florida 32801, this 1st day of May 2006.

  
Attorney



4/26/2006  
 13:48:36

Orlando Police Department 7.04  
 Employees Attending Course Report  
 For All Employees

ED0220R  
 PAGE: 1  
 DRENNISON

Course LABOR - LABOR LAW  
 Course Completed Between 3/07/2002 and 3/08/2002  
 Sorted by Last Name

Number	Employee - Name	Supervisor	Rank	Compl Date	Recert Date
1421	BEAL, ROBERT, A,	Weaver, Karin	CIVMANAGER	3/08/2002	
2581	BERNAL, EUGENIO,,	McCoy, Michael	SW DPTYCHF	3/08/2002	
7906	BOWMAN, CARTER, R,	Rooney, Paul	SW LT	3/08/2002	
8959	BOYENS, EDWARD, C,	O'Dell, Jeffrey	SW LT	3/08/2002	
1387	BRENNAN, ROBERT, A,	McCoy, Michael	SW DPTYCHF	3/08/2002	
1966	CARTER, GARY, J,	White, Sonja	SW LT	3/08/2002	
1897	DAVIS, TIMOTHY, A,	Thames, Randolph	SW LT	3/08/2002	
3938	DEGROFF-BERRY, CHE	Rooney, Paul	SW CAPTAIN	3/08/2002	
2524	DEMINGS, JERRY, L,		CHIEFPOLIC	3/08/2002	
4866	DEMINGS, VALDEZ, B,	McCoy, Michael	SW DPTYCHF	3/08/2002	
1115	DRISCOLL, DEBORAH,	Ellis, Dotson	SW LT	3/08/2002	
5140	ELLIS, DOTSON, J,	Demings, Valdez	SW CAPTAIN	3/08/2002	
5267	FAWBUSH, W SHAWN, W	O'Dell, Jeffrey	SW LT	3/08/2002	
4534	FOY, THOMAS, J,	White, Sonja	SW LT	3/08/2002	
5490	FREEMAN, LEE, ANN,	Permaul, Natasha	CIV LEGAL	3/08/2002	
7879	FULMER, ROBERT, I,	Goltz, Jeffrey	SW LT	3/08/2002	
1961	GAUNTLETT, PETER, S		SW DPTYCHF	3/08/2002	
2223	GOLTZ, JEFFREY, W,	McCoy, Michael	SW CAPTAIN	3/08/2002	
8922	GREGORY, ROBERT, W,		SW CAPTAIN	3/08/2002	
7521	HARRIS, TAUNYA, D,	Rintoul, Bryan	CIV COMMUN	3/08/2002	
6039	HOLLOWAY, MICHAEL,	Gauntlett, Peter		3/08/2002	
8449	INGS, SAMUEL, B,	Demings, Valdez	SW CAPTAIN	3/08/2002	
1121	JORDAN, MICHAEL, DO	McCoy, Michael		3/08/2002	
4515	KELLEY, JANICE, M,	Gauntlett, Peter	SW CAPTAIN	3/08/2002	
8981	KOWALSKE, DAVID, L,	Rooney, Paul	SW LT	3/08/2002	
9316	MCCOY, DANNY, T,	Rooney, Paul	SW LT	3/08/2002	
3355	MCKINLEY, ROBERT, L	Weaver, Karin	CIVMANAGER	3/08/2002	
1706	MILLER, PAMELA, J,	Thames, Randolph	SW LT	3/08/2002	
7905	MULLOY, WILLIAM, A,	Rooney, Paul	SW LT	3/08/2002	
6902	O'DELL, JEFFREY, M,	Bernal, Eugene	SW CAPTAIN	3/08/2002	
7619	O'GRADY, JOHN, P,	White, Sonja	SW LT	3/08/2002	
4110	POE, NORMAN, L,	Rintoul, Bryan	CIV COMMUN	3/08/2002	
4567	RINTOUL, BRYAN, JAM	Weaver, Karin	CIVMANAGER	3/08/2002	
1466	RIVERO, REINALDO, L	O'Dell, Jeffrey	SWRESERVE	3/08/2002	
1282	ROBINSON, CHARLES,	Demings, Valdez	SW CAPTAIN	3/08/2002	
7621	ROONEY, PAUL,,	Bernal, Eugene	SW CAPTAIN	3/08/2002	
3801	SALAZAR, MARY ANN,	O'Dell, Jeffrey	SWRESERVE	3/08/2002	
4489	SAMOCKI, LAWRENCE,	Beal, Robert A	CIVMANAGER	3/08/2002	
9204	SERVANTES, JAYNE, V	Rintoul, Bryan	CIV COMMUN	3/08/2002	
1939	SMITH, FRANK, D,	Ellis, Dotson	SW LT	3/08/2002	
4079	SMITH, MONTILEE,,	Beal, Robert A		3/08/2002	
8928	STROBRIDGE, ROBERT	O'Grady, John	SW LT	3/08/2002	
3160	THAMES, RANDOLPH, P	Gauntlett, Peter	SW CAPTAIN	3/08/2002	
1136	UVALLE, VICTOR,,	White, Sonja	SW LT	3/08/2002	
2486	VELAZQUEZ, R., DIAN	Beal, Robert A	CIVMANAGER	3/08/2002	
8920	WEAVER, KARIN, N,	McCoy, Michael	SW DPTYCHF	3/08/2002	
6382	WELTER, TIM, J,	Goltz, Jeffrey	CIV FISCAL	3/08/2002	
4849	WHITE, SONJA, J,	Gauntlett, Peter	SW CAPTAIN	3/08/2002	
1137	WILLIAMS, ALFRED, E	White, Sonja	SW LT	3/08/2002	



05/01/2006 10:57

4/26/2006  
13:48:36Orlando Police Department 7.04  
Employees Attending Course Report  
For All EmployeesED0220R  
PAGE: 2  
DRENNISONCourse LABOR - LABOR LAW  
Course Completed Between 3/07/2002 and 3/08/2002  
Sorted by Last Name

Number	Employee	Name	Supervisor	Rank	Compl Date	Recert Date
1012	ZWIEG, LARRY, G,	Demings, Valdez	SW CAPTAIN	3/08/2002		

Number of Employees Listed: 50



**EXHIBIT B**



ORIGINAL

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

CASE NUMBERS: 6:05-cv-400-ORL-22KRS  
6:05-cv-854-ORL-22KRS  
6:05-cv-852-ORL-22KRS  
6:05-cv-853-ORL-22KRS  
6:05-cv-855-ORL-22KRS

MATTHEW FLOETER, ANDREW MORESCHI,  
ALEX FABERLLE, SHAWN HAYDEN and  
KEVIN EASTERLING,

Plaintiffs,

vs.

THE CITY OF ORLANDO,

Defendant.

-----

Orlando, Florida

September 5, 2006

1:20 p.m.

DEPOSITION OF:

WILLIAM SHAWN FAWBUSH

Marge Raeder Court Reporter, Inc.  
999 Douglas Avenue/Suite 3307  
Altamonte Springs, FL 32714  
407/774-6611 • Fax 407/774-4490



1 MR. BLANCHFIELD: -- quick unrelated issue.

2 [Whereupon, a recess was taken, after which  
3 the following transpired:]

4 BY MR. LaFAY:

5 Q Lieutenant Fawbush, have you sent or received  
6 via e-mail pictures, videos or photos of unclothed or  
7 partially clothed persons --

8 A Yes.

9 Q -- at the Orlando Police Department?

10 A Yes.

11 Q Who did you send that to?

12 A I don't recall. I mean --

13 Q Lieutenant Uvalle?

14 A Oh, yeah.

15 Q Who sent it to you?

16 A Uvalle has. Gosh, a number of people; all  
17 right.

18 Q About how many times in --

19 A Hundreds.

20 Q Okay. And when you say hundreds, does that  
21 -- would that include Lieutenant Uvalle?

22 A He's in the mix. Yeah. Or he was in the  
23 mix.

24 Q Is it -- is it tickled that there's a -- a  
25 list of persons that you just click on and it just goes



1 out and disseminates to those same persons --

2 A No. I --

3 Q -- each time?

4 A If I send anything to anybody, I personally  
5 click on --

6 Q Okay.

7 A -- who I send it to.

8 Q So we would say approximately a hundred or  
9 more times with regard to Lieutenant Uvalle?

10 A Oh, I don't know. As far as receiving and  
11 sending, a combination probably.

12 Q Okay.

13 A I mean, over years.

14 Q Do you recall any specific videos,  
15 photographs or pictures?

16 A No. Not specific, no.

17 Q And would it be fair to categorize or call  
18 these e-mails in which it had videos, photos or  
19 pictures to be of a pornographic nature?

20 A Probably a portion of them, yeah. You could  
21 say that.

22 Q Do you recall specifically a video depicting  
23 a dog and a female, a woman?

24 A No. I don't remember any animals.

25 Q And do you recall a photo display of the



## **EXHIBIT C**



ORIGINAL

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

CASE NUMBERS: 6:05-cv-400-ORL-22KRS  
6:05-cv-854-ORL-22KRS  
6:05-cv-852-ORL-22KRS  
6:05-cv-853-ORL-22KRS  
6:05-cv-855-ORL-22KRS

MATTHEW FLOETER, ANDREW MORESCHI,  
ALEX FABERLLE, SHAWN HAYDEN and  
KEVIN EASTERLING,

Plaintiffs,

vs.

THE CITY OF ORLANDO,

Defendant.

Orlando, Florida

September 5, 2006

1:55 p.m.

DEPOSITION OF:

BRIAN GILLIAM

Marge Raeder Court Reporter, Inc.  
999 Douglas Avenue/Suite 3307  
Altamonte Springs, FL 32714  
407/774-6611 • Fax 407/774-4490



1 Q What knowledge did you have about Bill Moore?  
2 Let me -- let me strike that.

3 Do you know a person by the name of Bill  
4 Moore?

5 A Yes.

6 Q How do you know him?

7 A He worked for me as an economic crimes  
8 detective prior to him going to MBI.

9 Q What knowledge do you have about Bill Moore  
10 coming over and working on Lieutenant Uvalle's  
11 computer?

12 A He worked on Uvalle's computer. I think he  
13 even worked on my computer. He was -- he's very good  
14 with computers.

15 Q What knowledge do you have about Bill Moore  
16 deleting files from Lieutenant Uvalle's computer?

17 A I -- he worked on his computer and he  
18 made it so that Victor could -- could navigate with it  
19 and go other places with it. I don't know much about  
20 what he did with it.

21 Q Do you have any knowledge about Bill Moore  
22 deleting files from Lieutenant Uvalle's computer?

23 A Deleting files? No, sir.

24 Q What knowledge do you have during the time  
25 that you were a sergeant about e-mails featuring



1 unclothed or partial -- partially clothed persons  
2 coming from Lieutenant Uvalle's computer?

3 A We got -- I got them from Uvalle's and I got  
4 them from other people.

5 Q Was one of the other persons Lieutenant  
6 Fawbush?

7 A Probably.

8 Q Did you -- did you understanding that you  
9 were the recipient of them, did you also see or have  
10 occasion to see such e-mails featuring videos, photos  
11 and pictures of naked persons on Lieutenant Uvalle's  
12 computer?

13 A I don't recall exactly. I know I got them on  
14 my computer. I don't -- and I may have.

15 Q Did you send any out yourself?

16 A Yes.

17 Q Who did you send them to?

18 A I sent them to Shawn Hayden and some people  
19 outside of the agency. And maybe some people in the  
20 agency.

21 Q Were the -- was the main person who was  
22 sending them to you Lieutenant Uvalle?

23 A I wouldn't say the main person. No.

24 Q Who would you say it was?

25 A I don't think there was any main person.



1 Some of it came from a guy down in south Florida who's  
2 a friend of Moreschi's. A lot of the stuff came from  
3 there. Some of it came from Uvalle. Some of it came  
4 from Shawn. I mean, I wouldn't say there was a main  
5 person in there.

6 Q Okay. Did you send -- did you send any of  
7 the pornographic e-mails received by you to any other  
8 persons in the unit other than Shawn Hayden?

9 MR. BLANCHFIELD: I'm going to object, only  
10 that I don't think he testified to the word  
11 pornographic.

12 MR. LaFAY: Okay. Well, excuse me. I'll  
13 rephrase.

14 BY MR. LaFAY:

15 Q Would it be fair to describe these e-mails  
16 featuring unclothed or partially clothed persons as  
17 pornographic in nature?

18 A Some of it I would say, yes.

19 Q Did you send any of these pornographic  
20 e-mails to any other persons in the unit other than  
21 Shawn Hayden?

22 A I'm sure I did.

23 Q Did you ever send any to Matt Floeter?

24 A I don't remember if I had Matt's home e-mail  
25 or not. So I -- I don't remember. I know I -- I know



## **COMPOSITE EXHIBIT D**





# CITY OF ORLANDO

## Security Audit Report

**To:** John Matelski, Deputy Chief Information Officer  
Mark Crain

**From:** Vernon Greene, Information Security Administrator

**Date:** 20 December 2005

**Subject:** Legal Request

### Policy in Effect (List all affected policies)

*City of Orlando policy* , *Section* , *Paragraph*

### Directive

I have been directed by Legal (JL) to locate and document emails for the following officers, including employee number and assets assigned to them:

• Victor Uvalle	#1136	a0500454
• Shawn Hayden	#5834	a0201659
• Matthew Floetter	#2965	a0001824*
• Alex Faberlle	#11315	a0100137
• Kevin Easterling	#8279	a0001103*
• Anthony Moreschi (also known as Tony)	#6265	a0001852*
• Barbara Jones	#4586	a0001447 and a0400358

Names of the officers included in this document and details of this audit may not be released to anyone other than those needed to facilitate the request due to pending litigation.

This transmission may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is **STRICTLY PROHIBITED**. If you received this transmission in error, please immediately contact the sender and destroy the material in its entirety, whether in electronic or hard copy format. Thank you.

The names of the officers are documented here for the purpose of collecting the necessary information and may

### Participants

- Legal (JL)
- Information Security (VG)
- Systems & Networks (Used to collect and recover data) (BJ), (GW)
- Operations (CK)

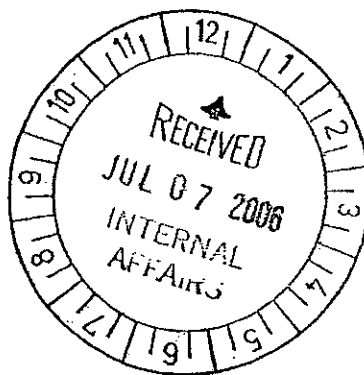


## INITIAL NOTICE OF INQUIRY

IR # 06-63

Name: Michael J. Mc Coy  
 Title: Chief of Police  
 Name: Investigator Jose Vicente  
 Date: June 9, 2006 Time and Date of Violation: September 18 through September 24, 2003  
 Violation No./Title: 300-24 Unauthorized Use of City Equipment  
 Applicable, Equipment #: Various  
 Inquiry has been made concerning: Detective Kevin Easterling of Unit #: 67614  
 Emp. #: 7646 8279 Syorn ☒ Reserve ☐ Civilian ☐  
 Inquiring Party Mr. Dwain Rivers in-house ☒  
 Race of Inquiring Party: M/B citizen ☐  
 Location of Occurrence: I Address: 100 S. Hughey Avenue  
 Home Phone: \_\_\_\_\_ Business Phone: 407-246-2470

Setting forth the following circumstances: It is alleged that Detective Easterling used city property to access unauthorized materials via the Internet.



Attach Supplements

Jose Vicente *Jose Vicente* Investigator Internal Affairs Section  
 Rank/Position Bureau

Employee originating this INOI must address the original copy to the Chief of Police, the copy to the Bureau Commander. Place each in a sealed envelope marked inquiry and forward to



Actions taken by the ISO

- 051221 Requested the restoration of email from the 2005 backup tapes of which we back up quarterly  
Restored information was collected and given to me for storage as well as physical tapes
- 051221 - 051227 Performing localized email capture  
Was only able to capture locally stored email of those persons with the Lotus Notes Client  
Uvalle collection from asset a0500454  
Jones collection from asset a0400358
- 060103 Resuming data collection  
Lotus Notes Administrator Bowers advises me that a request for Barbara Jones Lotus Notes ID was made by CSSA Ketteler.  
After asking CSSA Ketteler the reasoning for requesting the Lotus Notes ID for Barbara Jones and she advised me that Barbara's computer suffered a hard-drive crash.  
I advised the CSSA to deliver the dead hard-drive to my office.
- 060104 Receipt of hard-drive  
CSSA delivers hard-drive along with copy of work order  
Reviewing emails to meet criteria requested by legal
- 060113 Break for personal leave
- 060120 Pete Spurgeon receives 10 copies of DED hard drives from Daly & Cindy and stores for me.  
Each hard drive is marked with a green label identifying the asset number from which it comes from.
- 060130 Received hard drives from Pete Spurgeon to me at 0930 hours. Please note that based on the information of what machines each user possesses, it would appear that I have not received hard drives for Uvalle, Hayden, Faberille and Jones.  
Data-mining initiated by myself  
A0001783  
Deleted content recovered from drive  
Adult content found in  
    "iNotes Web Access" folder, dated 29 May 2003, from 0719 to 0729 hours.  
No profile attached to content found that would indicate who retrieved the file  
Profiles associated with this asset  
    HAL07895  
    HIR12271  
    MAS11766  
    RAN04451  
    RUT10044  
    THO10766  
Recovered Notes NSF files  
    Dathomas.nsf (not reviewed yet)
- A0001718  
Deleted content recovered from drive  
Adult content found in  
    Browser cache  
No profile attached to indicate who retrieved the file  
Profiles associated with this asset  
    PEN08459  
    WIL04570  
    GRI12463
- A0001334  
Deleted content recovered from drive  
Light adult content found in  
    Browser cache  
No profile attached to indicate who retrieved the file
- A0001824 (Assigned to Floetter)  
A Lotus Note folder was present, but no content exists
- 060203 Temporary reassignment  
Secured hard drives and notes until audit can continue.



060306 Restart of search

Data-mining initiated

A0001852 (Assigned to Moreschi)

Deleted content recovered from drive

Heavy adult content found

"LDVPScan" folder, dated 18 September 2003, from 0923 hours.

Adult humor content found

"LDVPScan" folder, dated 18 September 2003 through 24 September 2003.

Profiles associated with this asset

BEA14639

BRA04587

BUR12073

CHA13299

ELL14773

FAB11315

HAY05834

LOP12145

MOR06265

NAM12909

RAN04451

060309 Search ended

060310 Start of search

Data mining initiated

A0001103 (Assigned to Easterling)

Deleted content recovered from drive

Light adult content found under Easterling profile

Browser cache

Profiles associated with this asset

CAR12272

EAS08279

HAL07895

KET11544

MAL11765

RAN04451

RUH07608

060321 Start of search

Data mining initiated

Evidence drive crashes at 1128 hours

Evidence drive is restored at 2130 hours

A0001831

Deleted content recovered from drive

Light adult content

Browser cache

Profiles associated with this asset

BEA14639

BRU08439

FAW05267

GRA11576

HAL07895

HER10211

POL08575

RAN04451

SMI107600



**Items in possession**

- 6 PS Lotus Backup Tapes
  - Tape cartridges (which can only be access through a specific model IBM tape drive)
- 1 Western Digital hard drive (p/n : 165140-001)
  - Reference: copy of hard drive picture attached
- 1 Laptop hard drive (MK4019GAX)
  - Obtained from Barbara Jones' laptop



060321 Evidence drive backed up secured until search restarts  
060321 Search ended  
060327 Start of search  
Data mining initiated

A0001673

Deleted content recovered from drive  
Extreme adult content  
Browser cache  
Profiles associated with this asset  
BRA04587  
BRU08439  
GRA11576  
MAS12274  
RAN04451

060327 Drives secured searches stopped  
060330 Break for personal leave  
060404 Search resumed

A0001840

Recovered Notes .NSF file for Henry Wilson, but contents were empty  
Deleted content recovered from drive  
No adult content found  
Profiles associated with this asset  
LEO13871  
AND11324  
NAM12909  
WIL02604  
RAN04451

060406 Search suspended

Two hard drives are remaining to scan and will resume April 25, 2006 to be completed by close of business April 26, 2006.

060426 Search resumed

A0001815

Deleted content recovered from drive  
Some adult content found  
Profiles associated with this asset  
BRO03028  
BRU08439  
GLI01233  
POW01915  
RAN04451  
RUT10044



**To:** John Matelski, Deputy Chief Information Officer

**From:** Vernon Greene, Information Security Administrator

**Date:** June 9, 2006

**Subject:** Legal Request

---

On December 20, 2005, at the request of Attorney Jody Litchford, Vernon Greene initiated a computerized audit of the following officers, Victor Uvalle, Shawn Hayden, Matthew Floetter, Kevin Easterling, Anthony Moreschi, and Barbara Jones.

Due to the nature of this particular audit and the fact that the people being audited were sworn officers, the transmission of this document and its finding has been copied to only my superior, John Matelski, who is the Deputy Chief of Information, Jody Litchford, the attorney requesting the documentation and Internal Affairs.

Additional persons used to execute the retrieval of information were, Gary Wade, Lotus Notes Administrator (responsible for collecting any backups of email that may be present on Lotus Notes servers), Bill Jacobus (responsible for pulling all backup tapes and forwarding the information to me), Cindy Ketteler and Daly Mulero (collected and duplicated the hard drives used to perform searches).

Vernon began the audit on December 21, 2005 by requesting all email from the 2005 backup tapes of which TM backs up quarterly. Any information that was retrievable was forwarded to the Security Server and the physical tapes were brought to Vernon Greene, keeping them out of rotation, which would have been eventually destroyed or erased.

Vernon performed a remote search on both Uvalle's asset (A0500454) and Jones' asset (A0400358) for a local copy of email which would be present if they used a Lotus Notes client. Vernon was able to collect a copy of Uvalle's email and copy it to the Security server for later viewing, but was unable to retrieve any information from Jones' computer (later identified as a laptop).

The audit collection process had stopped and resumed on January 3, 2006, where Vernon was advised by Melody Bowers (Lotus Notes Administrator) that a request was made to get a copy of Barbara Jones Lotus Notes ID, by Cindy Ketteler. After questioning the reasoning for this request Vernon was advised by Cindy Ketteler that Jones' hard drive had crashed and that Cindy was merely setting up Lotus Notes for Jones again. Vernon initially thought that it was "convenient" for this hard drive to crash while he was collecting and reviewing emails for content pertaining to the request. Still, he asked Cindy Ketteler to bring the damaged hard drive to his office in then hopes that he could restore the drive as he has done to others in the past.

During an update with Jodi Litchford, he advised that one hard drive was damaged and that he came to learn that Uvalle's computer was also changed, whereabouts unknown. Vernon mentioned that the search would move quicker and without threat of accidentally damaging hard drives or computer reassignments if duplicates were made of all the computers in question. On Vernon's return from personal leave January 30, 2006, he received ten hard drives from Security Officer, Pete Spurgeon that were collected by both Daly Mulero and Cindy Ketteler. Each hard drive was marked with a green label identifying the computer assets



**Security Officer's Closing Remarks**

To date, the projects or tasks that have interfered with the steady progression of this audit where, OPD Access Control Management and troubleshooting, Primrose review, Ernest Page equipment seizure and public records request, Daisy Lynam's laptop theft (later recovered as misplaced), Intelligence Internet resolution, policy and procedure development and daily information protection routine followed by scheduled personal leave April 6, 2006. As noted in notes above, there was an unforeseen hardware failure when the evidence drive crashed (logical drive error).

All drives have been reviewed and have produced the fact that adult content existed on several of the computers. However, there was no substantial evidence indicating an individual person responsible for downloading. In regard to email accounts, only a few of those listed in this report had what we call "fat clients", the Lotus Notes application installed. The rest, if they had email at all utilized "iNotes", which is the Internet version of Lotus Notes. Of the available email files reviewed, I found nothing to meet the requested criteria.

As mentioned above, there was a hard drive removed from Barbara Jones' laptop by CSSA and surrendered to me as damaged. The CSSA's did receive a helpdesk call to replace the failed drive, which they did. I requested the damaged drive be brought to me in hopes of possible recovery.

I was asked on 24 April 2006 to narrow the search down to Uvalle's email, which was done in the earlier part of the search and yielded no results. I have rescanned the mail again and the result remains the same.



that they come from. Vernon still had not received any working hard drives from Uvalle's, Hayden's, Fabrelle's or Jones' computers or laptops.

Vernon began the data-mining portion of his audit which consists of retrieving deleted data, email searches, keyword searches, profile identification, Internet history review and picture or video retrieval. The first hard drive he evaluated was A0001783.

From asset A0001783, Vernon was able to recover partially deleted information from this computer's hard drive and found some adult content on the drive, located in an iNotes<sup>1</sup> web access folder dated May 29 2003, from 0719 to 0729 hours, but the associated profile (sign-on) information was not recovered making it difficult to isolate whose iNotes account was used to view, send or receive the adult content. The same can be said about asset A0001718 and A0001334, where some adult content was recovered, but not enough information was restored to indicate or implicate the profile that viewed it. Also there were no Lotus Notes clients installed on these computers, which means that if email was sent or received by the users of these computers it would have had to been sent via iNotes. In addition, there were no other email applications such as Outlook or Eudora on these devices.

On the hard drive that was assigned to Floetter, asset A0001824, a Lotus Notes folder was present, but it did not have anything in it. It would appear that the Lotus Notes client was simply uninstalled, but does not explain missing data that would have been left behind, such as the DATA folder in Lotus Notes which holds the profile (NSF) of the intended user. Unfortunately, there was still no way to prove whether this was a malicious act.

Relating to Moreschi's computer (asset #A0001852), heavy adult content was found in a folder labeled "LDVPScan", dated September 18, 2003 0923 hours. The folder name is identified as a virus scanning folder and is located in the root directory of the computer and not under Moreschi's profile, meaning anyone - or a system process such as an anti-virus application - could have placed that folder on the computer.

Deleted content was also recovered off of Easterling's computer (asset A0001103), where some adult content was found under his profile, meaning the device would have had to been logged in under his signon - however, it would be difficult to prove from a legal standpoint that he did it.

Asset A0001673 revealed extreme adult content recovered in the browser cache (Internet History), but no specific profile was used. A0001815 revealed some adult content, but no specific profile was used.

Asset A0001840 revealed no adult content, but did have a Lotus Notes email profile for a Henry Wilson, but the contents of the email were empty.

On April 24, 2006 I was asked to focus on Uvalle's email of which I rescanned with nothing to add to the report.

---

<sup>1</sup> iNotes is a web based version of Lotus Notes



New ▾	Reply ▾	Forward	Move ▾	Add Sender...	Print	Delete	Close
-------	---------	---------	--------	---------------	-------	--------	-------

**From:** Vic Uvalle/OPD/Orlando

**To:** Barbara J Jones/OPD/Orlando@Orlando, Charles H Jones/OPD/Orlando@Orlando, Alex V Faberlle-Perez/OPD/Orlando@Orlando, Shawn D Hayden/OPD/Orlando@Orlando, Kevin D Easterling/OPD/Orlando@Orlando, Lloyd J Randolph/OPD/Orlando@Orlando, Drew A Bishop/OPD/Orlando@Orlando, Chris J Hall/OPD/Orlando@Orlando, Carmen S Wilson/OPD/Orlando@Orlando, Matthew R Floeter/OPD/Orlando@Orlando, Craig S Dudley/OPD/Orlando@Orlando, Brian M Donohue/OPD/Orlando@Orlando, David S Allmond/OPD/Orlando@Orlando, Tony Moreschi/OPD/Orlando@Orlando

**Date:** Thursday, August 19, 2004 07:20PM

**Subject:**

Sergeants and Detectives of the UC unit and SCU unit

Please take a minute to inspect your work desk and area related to any poster or pictures depicting obscene gestures, behavior or any wording to that effect. These items are unprofessional and shall be removed from your work area.



## **EXHIBIT E**



IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

**COPY**

MATTHEW FLOETER,  
Plaintiff,

vs.

CASE NO.: 6:05-cv-400-ORL-22KRS

THE CITY OF ORLANDO,  
Defendant.

Orlando, Florida  
Thursday, December 15, 2005  
9:16 a.m.

A P P E A R A N C E S:

FRANK T. ALLEN, ESQUIRE  
The Allen Firm, P.A.  
605 East Robinson Street, Suite 130  
Orlando, Florida 32801

and

MICHAEL H. LAFAY, ESQUIRE  
NeJame, LaFay, Barker & Tumarkin, P.A.  
One South Orange Avenue, Suite 304  
Orlando, Florida 32801

Appearing on behalf of the Plaintiff

WAYNE L. HELSBY, ESQUIRE  
ROBERT BLANCHFIELD, ESQUIRE  
Allen, Norton & Blue, P.A.  
1477 West Fairbanks Avenue, Suite 100  
Winter Park, Florida 32789

Appearing on behalf of the Defendant

Also Present: Lt. Victor Uvalle

DEPOSITION OF:

MATTHEW FLOETER



1 basis, you had experienced these physical touchings from  
2 Sergeant Barbara Jones, which were unwelcome by you, correct?

3 A. Yes, sir.

4 Q. And I want to know, during that time frame, did you  
5 complain about those to anyone in your chain of command?

6 A. Not other than the detectives that were involved in  
7 the unwanted touching.

8 Q. You talked to the other detectives that you  
9 mentioned here about those physical touchings?

10 A. Right. Right.

11 Q. But you didn't go to someone in the chain of  
12 command above Sergeant Jones and complain about these physical  
13 touchings?

14 A. Not at that time, sir.

15 Q. And that's the time I'm talking about.

16 A. Okay. And I'm saying, not at that time, my answer  
17 would be.

18 Q. And my question to you is: Why didn't you?

19 A. Why didn't I? Well, let me get into that. You  
20 have -- you're going to complain on one of Lieutenant Uvalle's  
21 best friends about sexual harassment.

22 You've got Lieutenant Uvalle watching pornographic  
23 videos on his computer, which everyone can see. He's  
24 e-mailing pornographic videos to the prior supervisor, Brian  
25 Gilliam, who would watch them, in plain view, on the desk.



1 You're talking career suicide.

2 I mean, you want to vacillate over something like  
3 that? I've got 15, 16 years in the Drug Enforcement Division.  
4 All my time invested in this. Now I'm going to go to somebody  
5 and complain about something that I don't even want to be  
6 around? And you've got my commander is watching porno and  
7 racial porno and different things. How is that going to be  
8 received?

9 You got an e-mail on other captains and other  
10 lieutenants within the police department, pornographic videos.  
11 He's e-mailing Brian Gilliam before that. So I'm going to go  
12 in there and I'm going to say, hey, this is happening? He's  
13 going to say, get out of here.

14 She's 100 pounds. You know, five-foot tall. She's  
15 my sergeant. I've got to be -- you know, I just want to go to  
16 work and I want to do my job. Like I've done the years  
17 before.

18 So you've got this whole -- you know, if you will,  
19 the whole fabric within the police department that the sex and  
20 all this sexual nature and all these things going on that are  
21 permissible. So I'm going to go complain?

22 I just wanted it to end. I just couldn't take it  
23 anymore. I was going home with knots in my stomach. I was  
24 stressed out. This is my supervisor that is running a drug  
25 deal that I'm undercover at.



1 In October of 2003, I had to shoot a suspect under  
2 Lieutenant Uvalle's command and save two police officers.  
3 Where was my sergeant's mindset going to be? On grabbing me  
4 or asking me out, or focused on what the situation is at hand?  
5 That I'm a proven drug enforcement cop and that I need her  
6 mind to be right or his mind to be right, not worried about if  
7 she can date me or not.

8 Q. Okay.

9 A. I mean, I could go on and on and on. But you're  
10 bringing up, you know, why didn't you go to somebody? Well,  
11 I'm telling you. The whole four corners of the office,  
12 nonstop sex.

13 I've never received any pornographic videos or  
14 never did anything like that. But that's accepted by the  
15 upper command. It's the culture of the Orlando Police  
16 Department. And all you have to do is subpoena that stuff.  
17 You'll see it.

18 So I'm sorry I went off on a tangent, but you're  
19 saying this, and this is important to me and all the other  
20 guys. They see it. It's rampant.

21 Q. Let me circle back, then, and ask you, before I go  
22 on to some of the other things you raised. We talked about  
23 the conduct that you alleged that Sergeant Jones had engaged  
24 in of a physical nature between October of '03, when she came,  
25 and, roughly, January and February of '04. Okay? What else,



**INTERNAL AFFAIRS SECTION  
STATEMENT TRANSCRIPT**

**STATEMENT OF:** Detective Mathew Floeter

**STATEMENT TAKEN BY:** Investigator Jose Vicente

**LOCATION TAKEN AT:** OPH-Internal Affairs

**DATE:** September 8, 2006

**RE:** IR06-63

**ALSO PRESENT:** No Others Present

**STATEMENT BEGINNING TIME:** 0710 HOURS

---

**Q:** Detective Floeter there are certain things you should be aware of prior to being asked any questions...this interview is an official investigation assigned to Internal Affairs by the Chief of Police...

Are you now on duty?

**A:** Yes.

**Q:** This interview does not concern you as a principal...you are here merely as a witness... Department regulations require you to answer my questions and to be completely truthful...I now order you to answer the following questions...I also order you not to discuss any facet of this investigation with anyone except your Legal Representative...Union Representative, or Internal Affairs...this order remains in effect until relieved by competent authority or the investigation becomes public record. Please raise your right hand. Do you swear or affirm that the statement you are about to give is the truth, the whole truth and nothing but the truth?

**A:** Yes I do.

**Q:** And Detective Floeter just for the record um, please state your complete name and your current assignment?

**A:** My complete name is Matthew Robert Floeter and I'm assigned to the Undercover Drug Enforcement Section of the Orlando Police Department.

**Q:** And Detective Floeter what is your uh, police experience?

**A:** Uh, approximately eighteen years at the Orlando Police Department.

**Q:** In what capacity, sir?



Re\_ FW\_ This is crazy!!! FW\_ Diva Milkshake\_\_\_\_WOW - Header I.txt  
Return-Path: <Vic.Uvalle@ci.orlando.fl.us>  
Received: from vmail.ci.orlando.fl.us (vmail.ci.orlando.fl.us [198.190.151.26])  
by arq.net (8.9.3/8.9.0) with SMTP id JAA12941  
for <efloeter@arq.net>; Mon, 22 Mar 2004 09:57:40 -0500  
From: Vic.Uvalle@ci.orlando.fl.us  
Received: from OrlMail2.ci.orlando.fl.us ([198.190.149.11])  
by vmail.ci.orlando.fl.us (SAVSMTP 3.1.2.35) with SMTP id M2004032209581901481  
for <efloeter@arq.net>; Mon, 22 Mar 2004 09:58:19 -0500  
~~Subject: Re: FW: This is crazy!!! FW: Diva Milkshake...WOW~~  
To: efloeter@arq.net  
X-Mailer: Lotus Notes Release 5.0.11 July 24, 2002  
Message-ID:  
<OFDCDAE4AC.1AB4E45D-ON85256E5F.0052149F-85256E5F.0052293A@ci.orlando.fl.us>  
Date: Mon, 22 Mar 2004 09:57:23 -0500  
X-MIMETrack: Serialize by Router on OrlMail2/Orlando(Release 6.0.2CF2|July 23, 2003)  
at  
03/22/2004 09:57:25  
MIME-Version: 1.0  
Content-type: multipart/mixed;  
Boundary="0\_\_=0ABBE4CCDFC1920F8f9e8a93df938690918c0ABBE4CCDFC1920F"  
Content-Disposition: inline  
X-UIDL: 1b63d0307f4e174b4d91471cfec0d93b



Fw: I love the holidays - Header Information.txt

Return-Path: <vic.Uvalle@ci.orlando.fl.us>

Received: from navgw.ci.orlando.fl.us (mailinternet.ci.orlando.fl.us  
[198.190.151.26] (may be forged))

by arq.net (8.9.3/8.9.0) with SMTP id NAA32640  
for <efloeter@arq.net>; Mon, 6 Jan 2003 13:34:36 -0500

From: vic.Uvalle@ci.orlando.fl.us

Received: from OrlMailSvc.ci.orlando.fl.us ([10.1.129.198])  
by navgw.ci.orlando.fl.us (SAVSMTP 3.0.0.44) with SMTP id M2003010613335202800  
for <efloeter@arq.net>; Mon, 06 Jan 2003 13:33:52 -0500

X-Mailer: Lotus Notes Release 5.0.11 July 24, 2002

MIME-Version: 1.0

Subject: Fw: I love the holidays

To: <efloeter@arq.net>

Message-ID:

<OFFBE2D431.7032F89C-ON85256CA6.005826C3-85256CA6.0065DDB2@ci.orlando.fl.us>

Date: Mon, 6 Jan 2003 13:33:54 -0500

X-MIMETrack: Serialize by Router on OrlMailSvc/Orlando(Release 5.0.11 |July 24,  
2002) at

01/06/2003 01:33:56 PM

Content-type: multipart/mixed;

Boundary="0\_\_=0ABBE635DFCBA0538f9e8a93df938690918c0ABBE635DFCBA053"

Content-Disposition: inline

X-UIDL: 1f58104b3fb9563516c221967cc94093





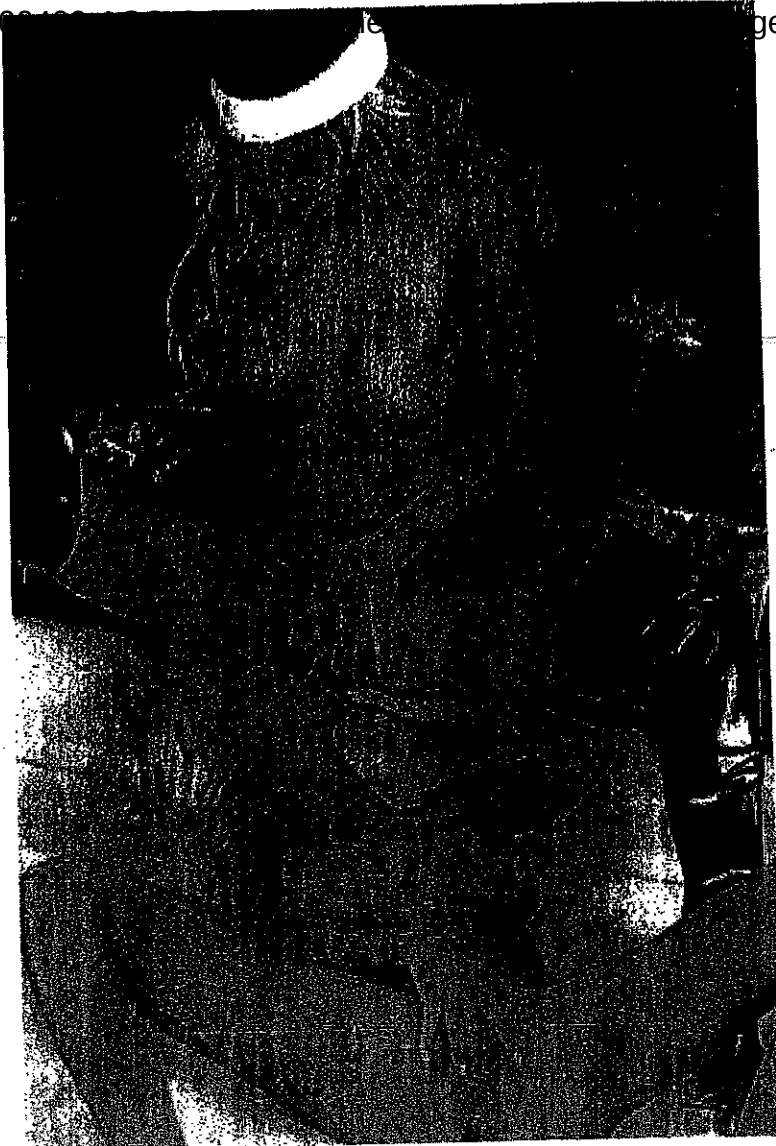
















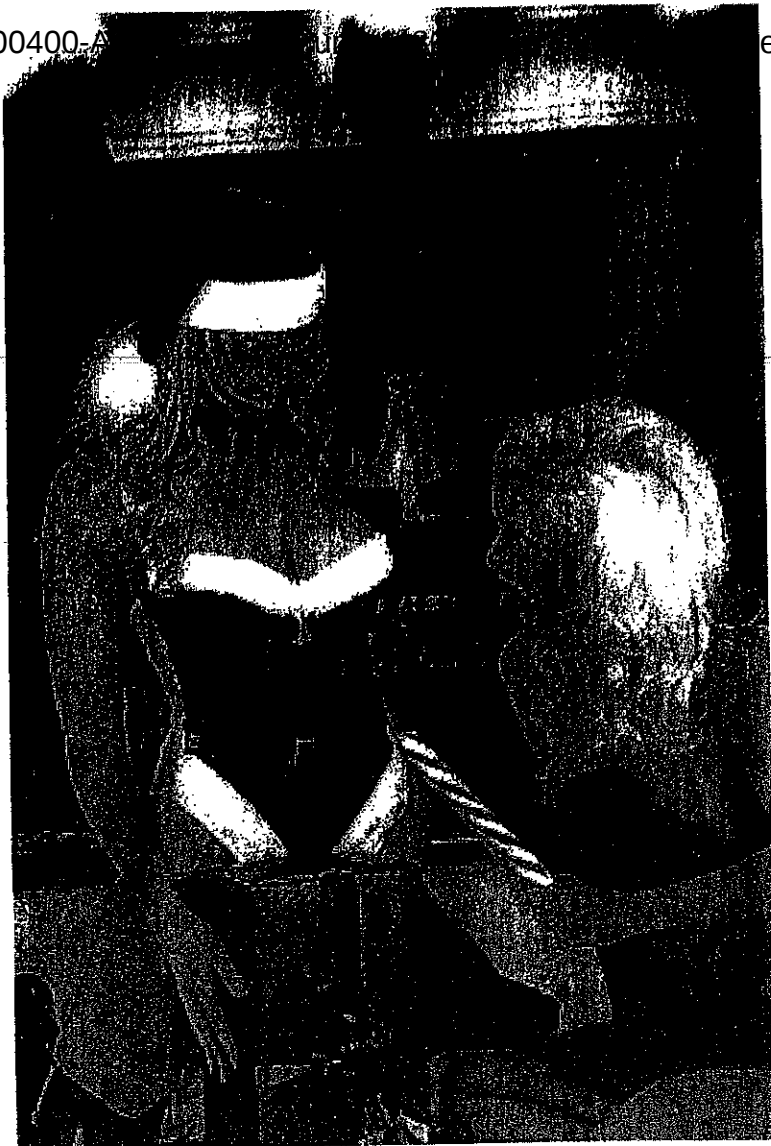














Sent: Tuesday, December 17, 2002 7:13 PM  
Subject: I love the holidays

>

> (See attached file: xmas1.jpg)(See attached file: xmas2.jpg)(See attached  
file: xmas3.jpg)(See attached file: xmas4.jpg)(See attached file:  
xmas6.jpg)(See attached file: xmas7.jpg)(See attached file: xmas8.jpg)(See  
attached file: xmas9.jpg)

(See attached file: xmas1.jpg)(See attached file: xmas2.jpg)(See attached  
file: xmas3.jpg)(See attached file: xmas4.jpg)(See attached file:  
xmas6.jpg)(See attached file: xmas7.jpg)(See attached file: xmas8.jpg)(See  
attached file: xmas9.jpg)

(See attached file: xmas1.jpg)(See attached file: xmas2.jpg)(See attached  
file: xmas3.jpg)(See attached file: xmas4.jpg)(See attached file:  
xmas6.jpg)(See attached file: xmas7.jpg)(See attached file: xmas8.jpg)(See  
attached file: xmas9.jpg)

(See attached file: xmas1.jpg)(See attached file: xmas2.jpg)(See attached  
file: xmas3.jpg)(See attached file: xmas4.jpg)(See attached file:  
xmas6.jpg)(See attached file: xmas7.jpg)(See attached file: xmas8.jpg)(See  
attached file: xmas9.jpg)

---



ddaniel@brenntag.com,  
jmfreson@ashland.com, bhappel@brenntag.com,  
12/20/2002 09:59 AM rick.kistler@cibasc.com,  
bmckie@gmzinc.com, noverbey@deeksandco.com,  
AM vschlade@toyocolor.com,  
fschneid@scholle.com, jschoa@kromacorp.com,  
tschoa@kromacorp.com,  
nstubbers@deeksandco.com, bill.teto@cibasc.com,  
Roy.Morgan@flintink.com

cc:

Subject: Fw: I love the

holidays

HAPPY HOLIDAYS!!!!!!!!!!!!!!

----- Forwarded by Jeff Ammer/FlintInk on 12/20/2002 10:58  
AM -----

From: Dan Shannon at Lebanon-088 on 12/19/2002 09:07 AM EST

To: Jeff Ammer/FlintInk@FlintInk, Hobert Baker/FlintInk@FlintInk,  
Jonathan Bernblum/FlintInk@FlintInk, Jason  
Cockerham/FlintInk@FlintInk, Bobbie Coomer/FlintInk@FlintInk, Keith  
Coomer/FlintInk@FlintInk, Philip Ernest/Flint Ink Corp.@FlintInk,  
Chad Lane/FlintInk@FlintInk, William Merrill/FlintInk@FlintInk, Steve  
Proper/FlintInk@FlintInk, SSHORT6347@CS.COM, Charles  
Taulbee/FlintInk@FlintInk, Dave Whalen/FlintInk@FlintInk

cc:

Subject: Fw: I love the holidays

----- Forwarded by Dan Shannon/FlintInk on 12/19/02 09:08 AM -----

From: "brincobill96" <brincobill96@cinci.rr.com> on 12/18/02 06:23 PM

To: "Dan Shannon" <dshannon@flintink.com>, "Don King"  
<donkin@uasinc.com>, "Bud May" <MAIways01@aol.com>

cc:

Subject: Fw: I love the holidays



---

**From:** <Vic.Uvalle@ci.orlando.fl.us>  
**To:** <efloeter@arq.net>  
**Sent:** Monday, January 06, 2003 1:33 PM  
**Attach:** xmas1.jpg; xmas2.jpg; xmas3.jpg; xmas4.jpg; xmas6.jpg; xmas7.jpg; xmas8.jpg; xmas9.jpg  
**Subject:** Fw: I love the holidays

---

----- Forwarded by Vic Uvalle/OPD/Orlando on 01/06/03 10:59 AM -----

Shawn Fawbush

To:  
Jeff.Odell@ci.orlando.fl.us,  
12/31/02 08:23 AM  
Vic.Uvalle@cityoforlando.net  
cc:  
  
Subject: Fw: I love the  
holidays

----- Forwarded by Shawn Fawbush/OPD/Orlando on 12/31/2002 08:23 AM -----

BHAPPEL@brenntag.

com To:  
Shawn.Fawbush@cityoforlando.net,  
BradHogan@ClearChannel.com,  
qlfawbus@SGSINTL.com  
12/23/2002 09:29 cc:  
  
AM Subject: Fw: I love the  
holidays

----- Forwarded by BRET A HAPPEL/Brenntag Mid-South/BrenntagInc on  
12/23/2002 09:30 AM -----

Jeff.Ammer@flinti

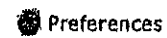
nk.com To: abbf@fuse.net,

11/29/2006





Logout



Preferences



Help

Shawn D Hayden

Welcome Mail ▾ Calendar ▾ To Do List ▾ Contacts ▾ Notebook ▾

**20**  
Friday  
Aug 20, 2004  
10:44AM**Inbox**

New ▾ Reply ▾ Forward Refresh Move ▾ Delete Mark Read ▾

	Who	Date	Size	Subject
Inbox	Charles H Jones	05/04/2004	27363	
Drafts	Barbara J Jones	04/20/2004	155626	Investigative Supplement
Sent	Shawn Fawbush	04/12/2004	1031764	: Evil Twin Cat
All Documents	Shawn Fawbush	03/30/2004	493825	Fwd: Fw: Never Pass Out
Trash	Vic Uvalle	03/30/2004	1167850	Aren't you glad that you z
	Vic Uvalle	03/30/2004	186574	Possible Spam: Holy Splir
	Vic Uvalle	03/12/2004	134586	The Good, the Bad and th
	Shawn Fawbush	03/03/2004	168684	Fwd: FW: Police Answerin
	Shawn Fawbush	02/27/2004	32308	Signs You're Getting Old
	JAS10479	02/23/2004	385204	Possible Spam: Fwd: Clez
	Vic Uvalle	02/10/2004	855838	FW: Where my change
	Vic Uvalle	02/10/2004	2973638	Ammo Bearer



**From:** Vic Uvalle/OPD/Orlando  
**To:** shawn.hayden@cityoforlando.net  
**Date:** Friday, March 12, 2004 11:37AM  
**Subject:** The Good, the Bad and the Ugly

---

(See attached file: The\_Good.jpg) (See attached file: The\_Bad.jpg) (See attached file: The\_Ugly.jpg)

Attachments: (Click the filename to launch)

The\_Good.jpg

The\_Bad.jpg

The\_Ugly.jpg





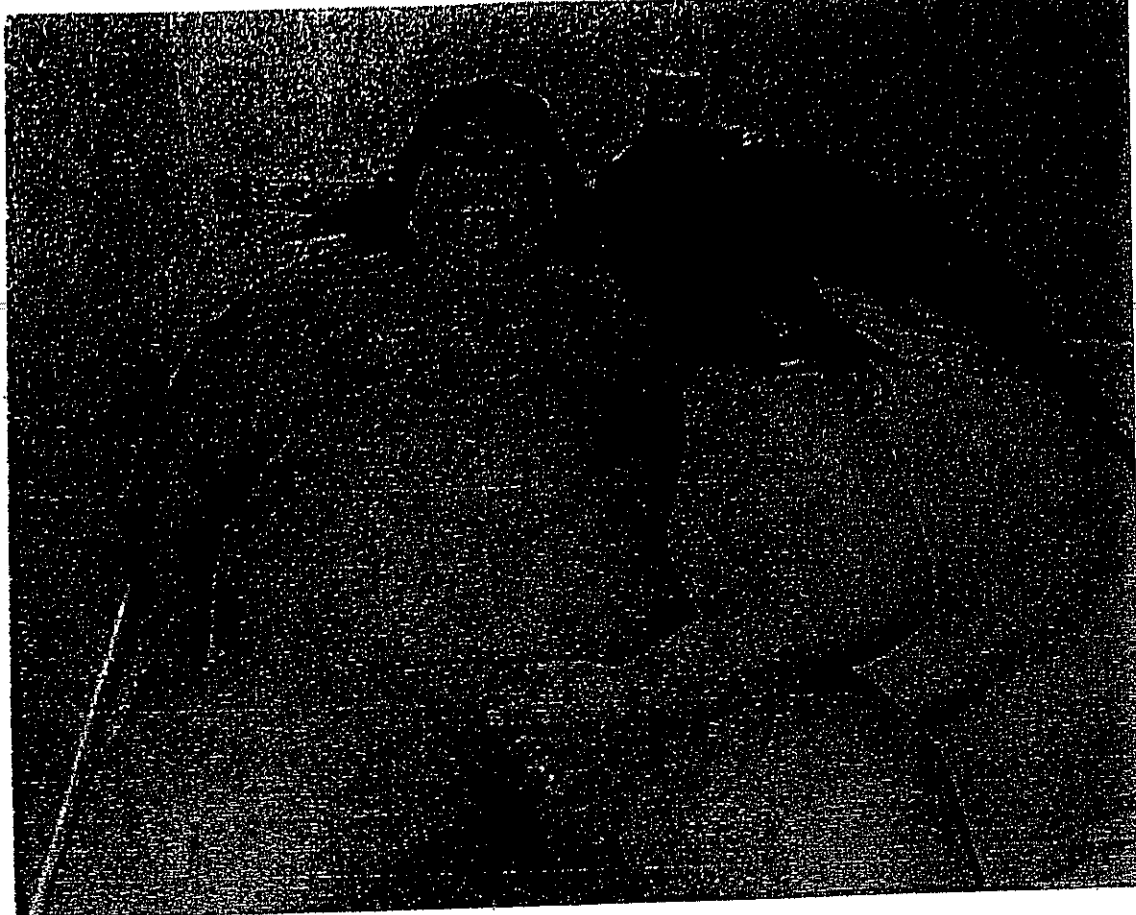






**EXHIBIT F**







**From:** <Vic.Uvalle@cl.orlando.fl.us>  
**To:** <efloeter@arq.net>  
**Sent:** Monday, March 22, 2004 9:57 AM  
**Attach:** DIVAMILKSHAKE[1].wmv  
**Subject:** Re: FW: This is crazy!!! FW: Diva MilkShake...WOW

---

(See attached file: DIVAMILKSHAKE[1].wmv)(See attached file:  
DIVAMILKSHAKE[1].wmv)

11/29/2006



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

CASE NO: 6:05-CV-885-ORL-22KRS

KEVIN EASTERLING,

Plaintiff,

vs.

THE CITY OF ORLANDO

Defendant.

Deposition of: DWAIN L. RIVERS

Taken By: The Defendant

Date: Monday, November 13, 2006

Time: 3:31 p.m. - 4:17 p.m.

Location: 1477 West Fairbanks Avenue  
Suite 100  
Winter Park, Florida 32789

Reported By: Lassie Steakley,  
Professional Court Reporter

*COPY*

Zacco & Associates Reporting Services  
605 East Robinson Street, Suite 430  
Orlando, Florida 32801  
(407) 425-6789



1 materials on the City's computers?

2 A. Yes.

3 Q. What actions or what investigation if any took  
4 place with regard to that INOI?

5 A. Her INOI, when she put it out, was already being  
6 looked at or encompassed, so hers was not -- it would have  
7 been duplicating of efforts, so there was no need for us to  
8 initiate that.

9 Q. Are you familiar with a record that has been  
10 written by Technology Management and authored by, I want to  
11 say, Mr. Green with regard to pornographic materials on the  
12 City's computers?

13 A. Anything involving the investigation into the  
14 electronic equipment would be confidential.

15 Q. Are you aware that the City's attorneys have  
16 represented in federal court that there is no pornography,  
17 period, on the City's computers?

18 A. Do I know?

19 Q. Yes.

20 A. No. That there is none?

21 Q. Repeat, none.

22 A. No.

23 Q. And so, without asking what it says, is there a  
24 report authored by Mr. Green dated December 20, 2005 from  
25 Technology Management?



1           A.    Like I said, in my opinion, that would be part of  
2   the investigation.

3           Q.    Was that done -- if such a report exists, would it  
4   have been requested as part of any investigation?

5           A.    Requested by?

6           Q.    Internal affairs.

7           A.    When we do an investigation, we do a comprehensive  
8   investigation.  If there's something out there that we need  
9   to get, we would request it.

10          Q.    Are you aware of whether or not any of the City's  
11   computers have been -- have had their hard drives cleaned of  
12   adult content and pornographic --

13          A.    Are you asking me about the investigation again?

14          Q.    No.  I'm asking you, if such matters have existed  
15   and the City has cleaned the hard drives or, that is to say,  
16   deleted from the hard drives pornographic and adult content  
17   materials?

18          A.    Outside of any of our ongoing investigations in  
19   internal affairs, I--

20          Q.    You're not going to comment on it that?

21          A.    I'm not going to comment about anything to do with  
22   the ongoing investigation.

23          Q.    What I should do is certify all those questions  
24   probably for record purposes.  I just need to ask them a  
25   couple of more times, so bear with me.



1 A. That's fine.

2 Q. (CQ) Are you aware of adult content and  
3 pornographic materials being found on the hard drives of  
4 computers at the undercover drug unit or DED Unit computers?

5 A. That would be part of an ongoing investigation and  
6 I can't speak about it at this time.

7 MR. LAFAY: Since you're refusing to answer, I'll  
8 ask that that question be certified.

9 Q. (CQ) Have you seen a report authored by Vernon  
10 Green of Technology Management dated December 20, 2005 which  
11 details the pornographic materials and adult content found on  
12 the City's computers?

13 A. Again, I fall back to confidentiality of the  
14 investigation.

15 MR. LAFAY: Again, since you're refusing to answer,  
16 Mr. Rivers, I would certify that question.

17 Q. As internal affairs manager -- and if you'll bear  
18 with me just summing up your title that way -- did you  
19 receive INOI's for Matt Floeter after he had filed a  
20 complaint with internal affairs?

21 A. Did I see INOI's from Matt Floeter?

22 Q. For him, targeting him, if you will.

23 A. Initiated on, yes.

24 Q. Would those have been initiated by Lieutenant  
25 Uvalle?