

Brabazon, Joyce

From: Harnois, Steven
Sent: Monday, March 21, 2011 11:06 AM
To: Kimball, Kirk
Subject: Accepted: Meeting

Brabazon, Joyce

From: Harnois, Steven
Sent: Friday, April 01, 2011 5:12 PM
To: Celotti, Stella; Kimball, Kirk
Subject: FW: Datamaster

From: Andy Bromage [mailto:andy@sevendaysvt.com]
Sent: Fri 4/1/2011 10:25 AM
To: Harnois, Steven
Subject: Datamaster

Hi Steven,
I'm a writer for Seven Days newspaper. I've come across a DUI case in which Darcy Richardson and Amanda Bolduc make some pretty serious allegations about your work performance in the Dept. of Health alcohol testing program and I wanted to give you a chance to respond. I assume you're familiar with the case and the allegations made, but if not, I can send you the documents. I'm writing the story for next week's paper, which means I'm on deadline. You can reach me by phone at 865-1020 x39. I also left you a voicemail this morning.
Best,
Andy

// SEVEN DAYS //
:: Andy Bromage
:: Staff Writer
:: andy@sevendaysvt.com
:: <http://www.sevendaysvt.com>
:: 802.864.5684

Brabazon, Joyce

From: Celotti, Stella
Sent: Wednesday, April 06, 2011 10:52 AM
To: AHS - VDH - Lab Users
Subject: FW: Health Department answers

Importance: High

Hello, everyone, in reference to the Seven Days article, this is what was sent from the VDH Communications office to the reporter, Stella.

From: Andy Bromage [mailto:andy@sevendaysvt.com]
Sent: Monday, April 04, 2011 2:21 PM
To: Stirewalt, Robert
Subject: Re: Health Department answers
Importance: High

Got it.
Thanks,

On Apr 4, 2011, at 2:09 PM, Stirewalt, Robert wrote:

April 4, 2011

To: Andy Bromage
Seven Days

The Vermont Department of Health takes very seriously its responsibility to process and provide results for Driving Under the Influence (DUI) cases. After two state employees raised concerns to laboratory management in February 2010, we promptly initiated an investigation of the alleged issues and concerns. The report of that investigation has been provided to you.

Our investigation concluded that the employees' allegations of unethical behavior were not substantiated. Also, as further assurance of the accuracy and reliability of the test results, the datamaster instrument has internal controls so that it will not issue a subject test result if there was a problem with the instrument or test process.

The Health Department continues to encourage state employees to report any complaints to their supervisor and we will investigate allegations thoroughly, as part of our responsibility to serve the State of Vermont in serious matters such as DUI cases statewide.

Sincerely,

Mary Celotti
Public Health Laboratory Director
Vermont Department of Health

Answers to the questions you sent on Friday afternoon.

- How many Datamasters are currently deployed in Vermont?

There are currently 67 DataMaster DMT evidential instruments in use throughout the state

- What was the schedule for deploying them?

Deployment schedule

- a. Franklin and Grand Isle counties were deployed in July 2008*
- b. Chittenden county was deployed in November 2008*
- c. Washington County December 2009*
- d. Windham County February 2010*
- e. Addison County April 2010*
- f. Windsor County May/June 2010*
- g. Orleans County May/June 2010*
- h. Lamoille and Bennington County August 2010*
- i. Rutland County September 2010*
- j. Essex and Caledonia, Orange Counties November 2010*

- Why was it necessary to replace the old breath testing devices?

The BAC DataMaster's were vintage 1988. Many of the components were obsolete and replacement parts were no longer available.

- How much did the state spent on the new Datamaster DMT machines?

The Vermont Department of Health spent more than \$400,000 for the purchase of the DataMaster DMT machines.

- What was the source of those funds?

State of Vermont Department of Public Safety Governor's Highway Safety Program federal grant, through the National Highway Traffic Safety Administration

- Did the state return any Datamasters to the manufacturer because they weren't working properly?

Various DataMasters over a period of years were returned to the manufacturer for service or replacement.

- If so, how many were returned, and on approximately what dates?

Exact numbers of repaired and or replaced units would take additional time to research.

- Why were Datamaster machines selected over other breath test instruments, such as Drager?

In 2005, when the VDHL Evidential Breath Testing Program reviewed the available instruments for replacing the BAC DataMaster, the DataMaster DMT was the instrument that met our specifications and was selected for purchase.

- Were the Datamasters deployed before all the bugs were worked out? There are allegations that they were.

While the manufacturer of the DataMaster DMT continues to make hardware modifications and improvements to their product, all instruments in service for evidential use have met and continue to meet the performance standards promulgated by the Department of Health Rules and Regulations regarding breath testing instruments. The user-interface software designed by the VDHL Breath Testing Program has been upgraded and continues to be refined; however the user interface software does not affect the accuracy of a subject's breath sample test.

- Is DOH's alcohol testing program accredited?

The DOH breath testing program is not accredited.

- If not, why not?

Accreditation is not required in the state of Vermont for breath alcohol testing programs.

- Can anyone from DOH say anything about the integrity of the alcohol testing program in light of the allegations made by Darcy and Amanda?

See statement above.

// SEVEN DAYS //
:: Andy Bromage
:: Staff Writer
:: andy@sevendaysvt.com
:: <http://www.sevendaysvt.com>
:: 802.864.5684

Brabazon, Joyce

From: Kimball, Kirk
Sent: Tuesday, March 22, 2011 12:12 PM
To: Harnois, Steven
Subject: FW: Requested transcript
Attachments: SecureZIP Attachments.ZIP

Steve,
Attached is the Orleans county transcript of Darcys' testimony.
Kirk

-----Original Message-----

From: Bolduc, Amanda
Sent: Tuesday, March 22, 2011 8:06 AM
To: Kimball, Kirk
Subject: FW: Requested transcript

It's kind of a pain to read b/c of the way it was scanned. We should talk after you read it

ABolduc

Amanda Bolduc, MFS
PH Chemist III
Vermont Department of Health Laboratory
Alcohol and Toxicology Program
195 Colchester Ave
Burlington, VT 05402
(802) 585-6707 (mobile)
(802) 863-7412 (ph)
(802) 863-7632 (fax)
amanda.bolduc@ahs.state.vt.us
PLEASE NOTE new phone and email as of 10/13/10

From: Lillicrap, James [mailto:James.Lillicrap@state.vt.us]
Sent: Monday, March 21, 2011 1:53 PM
To: Bolduc, Amanda
Subject: Requested transcript

Dear Amanda:

As promised: after Alan finished reviewing the transcript we scanned it in PDF for you.
James Lillicrap

1 of the officers for the recertification for the Data
2 Master DMT, as well as the original Data Master, when she
3 was there. And that I've -- I've got other (inaudible)
4 you'll see about training for police officers to observe
5 the person. And we all know the reasons why.

6 Factually, I'll just lay it out for you.

7 There's -- the room is in a rectangle, the defendant is on
8 the processing stool, they're doing what they do. He says
9 I've got to start the 15 minute observation period. Then
10 they say well, to save some time, why don't we go over
11 here and do the prints and photographs. And so while two
12 officers are doing prints and photographs, then they have
13 the gentleman stand here in the corner, which I guess is
14 the camera shoot that's going. So that while they're
15 doing what they do with the machine, the defendant was
16 over here in the corner.

17 And then when they're done they say go sit
18 back down, he does, and they go off to the Data Master DMT
19 where Your Honor would be sitting and he's over here and
20 they have their back to him. So there's a period of at
21 least -- at least three minutes at the Data Master by my
22 sort of count that they're not observing the defendant and
23 as such they're not acting in accordance with the training
24 to operate the Data Master DMT and the State will not have
25 any evidence to refute that.

12 MR. GARY: Thanks very much for taking that
13 up. May I move to admit Exhibit C, Judge, which is the
14 DVD of the processing both at roadside and in the station.
15 You know, the authentication comes from the fourth page of
16 the affidavit noting as both. It was produced by the
17 State. So I move to admit C, which I've marked on the
18 envelope itself, rather the DVD.

19 THE COURT: Mr. Franklin?

20 MR. FRANKLIN: No objection.

21 THE COURT: And let me just -- before we
22 pin down, how long is this going to be?

23 MR. GARY: You know, it's not -- it's long,
24 but it's not -- it's not the worst. And if you look at
25 the affidavit, that's because the gentleman is -- is

1 speaking normally, standing normally. Everything's normal
2 and everything's normal. It's just a PBT.

3 THE COURT: So this is being offered in
4 rebuttal of the officer's --

5 MR. GARY: Nope, not rebuttal. I'll tell
6 you what.

7 THE COURT: What I'm trying to figure out
8 is why do I have it, what am I going to learn from it,
9 and, if possible, what portions of it would be --

10 MR. GARY: Right.

11 THE COURT: -- educational.

12 MR. GARY: I understand. The roadside I
13 don't think is important and there's no audio. At the
14 stationhouse there are two pretty -- pretty germane
15 issues, I think. One is, during the 15 minute observation
16 period that's supposed to be observed, it's not. And if I
17 give you the quick summary, also it's tough to find,
18 because there's no timer, Judge. There's a timer in the
19 corner and on -- on -- on the Corel program that I have to
20 play this one on, there's no -- no DVD like length timer
21 down at the bottom, so I can't point it to click ahead,
22 you know, minute number 28. So I can't help you there.

23 But the 15 minute observation period is not
24 observed. I'm going to call Darcy Richardson as a
25 chemist. She's going to testify that she did the training

1 The general chemist affidavit is the
2 general one that was signed back in April 2010 and the
3 last paragraph notes that simply that when a Data Master
4 is operated in accordance with the administrator or
5 officers in training, then it can give a valid and
6 accurate result and so on. But he didn't comply with his
7 training and there's no one here to testify, either by
8 chemist or by -- by police officer, that his lack of
9 following that training in the administration of that test
10 should be overlooked because it doesn't bear upon the test
11 itself. So that's one issue.

12 The second issue is there's a second
13 officer. I never got anything in the way of discovery
14 about a witness list or so on. I know who the first
15 fellow is because Officer Shelp, Vermont State Police,
16 signed the affidavit and so on and that's easy enough to
17 figure out.

18 The second fellow, I don't know who he is.
19 But if you were to watch it, it looks like he's trying to
20 instruct Trooper Dan Shelp.

21 THE COURT: Instruct?

22 MR. GARY: So it seems to me. The Data
23 Master DMT was installed in the Derby barracks in June.
24 Darcy Richardson supplied the training prior to that in
25 April in anticipation of the machine being installed.

1 Recertification includes an operation of the machine five
2 times by the particular officer. I don't know if Ben
3 Shelp is ever recertified in that particular machine. I
4 tried to get records from Cindy Taylor Hatch down at the
5 Academy. I just couldn't get her yesterday.

6 Be that as it may, you've got to have five
7 operations of this machine and on this tape you'll see
8 where they're trying to set it up and they have their
9 backs to the defendant. At one point Trooper Shelp turns
10 to the other gentleman and says geez, this is only the
11 second time I've operated this machine.

12 THE COURT: So you can hear him say this is
13 the second time I've run this?

14 MR. GARY: Yep.

15 THE COURT: Mr. Franklin, have you seen
16 that?

17 MR. FRANKLIN: I (inaudible), Your Honor,
18 but the fact that he's first time, second time, third
19 time, in and of itself does not indicate that it was
20 improperly done.

21 THE COURT: So assume it's the second --
22 only the second time and assume that his training requires
23 five, you say --

24 MR. GARY: Yes.

25 THE COURT: -- for certification?

1 the affidavit and the attestation of the trooper that he's
2 certified to run the Data Master machine.

3 THE COURT: Well if the tape contradicts
4 him, how do I figure that out. It's the second time I've
5 run it.

6 MR. FRANKLIN: We have a -- a -- it's my
7 understanding that Mr. Gary is -- is attempting -- is he
8 going to offer evidence that this wasn't done prop- --
9 what's the nature of that --

10 THE COURT: I think that's what he said.
11 All right. Well, let's get Darcy Richardson on the phone.
12 I'm just trying to delve out what I'm going to learn from
13 -- from this exhibit so that I've got some context in
14 which to hear the next piece of testimony. So you've
15 given me context. Let's hear from Ms. Richardson.

16 MR. GARY: When I call, Judge, I don't know
17 how good your system works, I generally come up. Do you
18 mind if I come up so she can hear me or do you think it
19 will work?

20 THE COURT: Our system? Really?

21 MR. GARY: Well, loud enough so she can
22 hear me.

23 THE COURT: Let's set up the little hockey
24 pucks.

25 MR. GARY: Thanks.

1 MR. GARY: Yes.

2 THE COURT: He's not certified; right? Is
3 that -- is that the argument?

4 MR. GARY: Yes.

5 THE COURT: Mr. Franklin?

6 MR. GARY: Well, let me throw this out, if
7 I may, just -- just quick. I believe the rule is, I
8 believe, and I believe the case law is -- man, I wonder if
9 it's an 80.5 or if it's in the 1205 statute, but I think
10 maybe it's 80.5 that an officer who writes on his
11 affidavit I am certified as law enforcement shall be prima
12 facie evidence that he is so certified. And, of course,
13 it's preprinted on your DUI affidavit right at the very
14 top before you sign your name, I am a law officer,
15 certified, and so on.

16 But, again, the Data Master DMT, you need
17 to go through a recertification process. It could be. I
18 just can't -- I can't tell the Court and I can't tell Mr.
19 Franklin. It could be that Ben Shelp was recertified, but
20 I don't have any information that he is. And all I can
21 tell you is Darcy's going to say you need to operate it
22 five times and he says this is my second time. And that's
23 over the course of from June until January 1 of seven and
24 a half months.

25 MR. FRANKLIN: Again, we'll just rely on

1 (Pause in the proceedings.)

2 THE COURT: Give Mr. Franklin a hockey
3 puck, too.

4 MR. GARY: I'm sorry? What do you call it?

5 THE COURT: Give Mr. Franklin a hockey
6 puck.

7 MR. GARY: Oh, a hockey puck. That's the
8 first time I ever heard that.

9 (Pause in the proceedings.)

10 THE COURT: I could call them ancillary or
11 auxiliary microphones.

12 (Pause in the proceedings.)

13 MR. GARY: Judge, I'm going to give you
14 Exhibit -- Defendant's Exhibit A that I'm going to have
15 Darcy authenticate. I gave a copy to the State and I've
16 got a copy myself so we can all look at the same thing as
17 we're speaking. Boy, I don't know how this works. Are
18 you good at this?

19 UNIDENTIFIED MALE SPEAKER: You need a
20 number to do an outlet.

21 COURT OFFICER: Your Honor, I will just
22 state this is a long distance call, I believe,
23 (inaudible). Are you okay with that?

24 THE COURT: Yes. The State can record the
25 seven cents that it cost.

1 UNIDENTIFIED MALE SPEAKER: It might be a
 2 longer call. Both her kids are home sick.
 3 (Phone Ringing.)
 4 UNIDENTIFIED MALE SPEAKER: Hi, this is Tom
 5 Lou. I'm sorry I can't take your call, but please leave a
 6 message and I'll get back to you as soon as I can. Thank
 7 you.
 8 TELEPHONE OPERATOR: At the tone, please
 9 record your message. When you're finished recording, you
 10 may hang up or press one for more options.
 11 THE COURT: (Inaudible) try again.
 12 TELEPHONE OPERATOR: To leave a call back
 13 number, press --
 14 COURT OFFICER: Is it 578? Look at the
 15 exhibit. 578?
 16 UNIDENTIFIED MALE SPEAKER: 578-2095.
 17 (Phone Ringing.)
 18 MR. GARY: When I have this on, does it
 19 interfere with the recording equipment?
 20 MS. RICHARDSON: Hello, this is Darcy.
 21 THE COURT: Darcy Richardson, how are you?
 22 Judge Bent speaking.
 23 MS. RICHARDSON: Good. How are you?
 24 THE COURT: Good. Mr. Gary's here, State's
 25 Attorney Alan Franklin's here. We're here in the matter

1 hear me?
 2 A. Yes, I can.
 3 Q. All right. Would you briefly set forth your
 4 education, training, and experience with respect to the
 5 Department of Health and the operation of the Data Master
 6 and/or Data Master DMT.
 7 A. Sure. I have a bachelor's degree in biology
 8 from the University of Vermont, a master's in forensic
 9 toxicology from the University of Florida. I was with the
 10 Health Department for eight years in the toxicology
 11 section, primarily working with the infrared breath
 12 testing equipment, so testing, calibrating, maintaining,
 13 repairing the instruments, as well as training all of the
 14 officers at the Police Academy. I've been involved with
 15 the DMT project since 2005 until I left the Department in
 16 2010.
 17 MR. GARY: I'd ask the Court to take
 18 judicial notice that she speaks faster than I do, which is
 19 almost impossible.
 20 Q. Darcy, did you provide training to officers
 21 around the State with respect to the operation of the Data
 22 Master and the Data Master DMT?
 23 A. I did on both counts.
 24 THE COURT: Can I just break in. This is
 25 the Judge speaking. What's the difference between the

1 of State v. Jason Mayhew.
 2 MS. RICHARDSON: Okay.
 3 THE COURT: Mr. Gary wants to ask you some
 4 questions. Before we get going, I have to ask, because
 5 you're doing this by phone, if you cannot hear, then you
 6 need to let us know.
 7 MS. RICHARDSON: Okay.
 8 THE COURT: Otherwise, we'll assume you've
 9 successfully heard the question and are answering that
 10 question. All right. Let's swear this witness in.
 11 COURT OFFICER: Would you raise your right
 12 hand, please. Do you solemnly swear the testimony you
 13 shall give relevant to the cause under consideration shall
 14 be the whole truth and nothing but the truth so help you
 15 God?
 16 MS. RICHARDSON: I do.
 17 THE COURT: Okay.
 18 DARCY RICHARDSON
 19 Called as a witness by and on behalf of the Defendant,
 20 having been first duly sworn, was examined and testified
 21 as follows:
 22 DIRECT EXAMINATION
 23 BY MR. GARY:
 24 Q. Darcy, this is Corby. I'm back here at the --
 25 the table and using sort of a remote audio thing. Can you

1 Data Master and the Data Master DMT?
 2 WITNESS: They're both infrared breath
 3 testing equipment from the same manufacturer, but that's
 4 about where the similarities end. They're just 20 years
 5 apart on the specter (inaudible) technology for that
 6 company.
 7 THE COURT: Did they get simpler to run or
 8 more complicated?
 9 WITNESS: The officers find them simpler to
 10 run in most cases.
 11 THE COURT: Okay. I'll let Mr. Gary pick
 12 up the questions, but. So it's a new technology. Do they
 13 run in -- are they operated in the same funct- -- the same
 14 basic manner?
 15 WITNESS: In the same manner, yeah. They
 16 follow this -- we try to keep the protocol, the testing
 17 protocol, anyway, very similar to the old one just so it
 18 would be familiar.
 19 THE COURT: All right. Go ahead and ask
 20 your questions.
 21 BY MR. GARY:
 22 Q. I'll just, Darcy, see if I can paraphrase three
 23 things or so, maybe, to give the Judge just some
 24 background on the DMT, maybe only out of curiosity
 25 interests.

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1 A. Okay.
 2 Q. The DMT was supposed to be sort of a better
 3 version and a better machine for the Data Master; isn't
 4 that true?
 5 A. We had hoped it would be, yes. It was certainly
 6 newer.
 7 Q. All right. And during the course of the -- the
 8 State's spent a whole bunch of money having this thing
 9 marketed to them and spent a whole bunch of money looking
 10 into it and having it tested and then ultimately buying it
 11 and installing it one by one, more or less around the
 12 State; is that just a fair generalization?
 13 A. Yeah. They -- they were purchased over two kind
 14 of set points with different funding sources a couple
 15 years apart. But then they've been slowly deployed county
 16 by county.
 17 Q. And is it fair to say that while you were there,
 18 along with Amanda Bolduc, that because of various
 19 different problems with the Data Master DMT, that you and
 20 Amanda recommended to the Department of Health and to the
 21 State of Vermont, more or less halfway through the
 22 process, to pull the plug on buying and purchasing these
 23 new machines, canceling the order, and going in a
 24 different direction with a different machine?
 25 A. Yes. That happened twice. Once after the

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1 initial purchase and when we received the first couple of
 2 batches in we made the recommendation to cancel the order
 3 and wait until either that instrument has been perfected
 4 by the manufacturer or we knew a competitor was coming out
 5 with another instrument, so it would be time for one of
 6 those two things to happen.
 7 In 2009 when the second order came through,
 8 excuse me, we had already tested the new instrument that
 9 had come out from Drager (ph) that had the same graphing
 10 feature we were looking at for the DMT and we found that
 11 instrument to be pretty far superior to what we had with
 12 the DMT's. And we recommended the Drager be purchased to
 13 finish out the State.
 14 THE COURT: Isn't the question, though,
 15 whether this was approved, breath tested quickly by the
 16 Department of Health, that this was the DMT approved?
 17 WITNESS: That was what was decided upon.
 18 THE COURT: All right. So -- all right.
 19 Go ahead.
 20 MR. GARY: Now, with respect, Judge, to
 21 this case in particular.
 22 Q. I'll ask you, Darcy, about the 15 minute
 23 observation period. As part of the training that you
 24 conducted to instruct officers, is there to be a 15 minute
 25 observation period prior to the administration of the Data

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1 Master DMT test?
 2 A. Yes.
 3 Q. And with the 15 minute observation period is
 4 where the -- the processing and administering officers to
 5 observe the particular subject for 15 uninterrupted
 6 minutes to make sure that various different things don't
 7 happen that might interfere with an accurate test result;
 8 is that true?
 9 A. Correct.
 10 Q. All right. If I were to represent to you and
 11 assume it to be true that the officer in this case during
 12 the 15 minute observation period conducted two other
 13 activities, one of which was setting up a fingerprinting
 14 machine and taking the mug shots or photographs, and, two,
 15 setting up the Data Master DMT machine with another
 16 officer, and that the observation period included in those
 17 two activities didn't -- excuse me -- did not include
 18 observing the subject Mayhew --
 19 MR. FRANKLIN: I'm going to object, your
 20 Honor. The question is kind of running on, compound,
 21 lengthy.
 22 THE COURT: I'm going to sustain the
 23 objection. It's a little confusing.
 24 MR. GARY: Yeah. Yep. All right, let me
 25 try it this way.

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1 Q. I'm going -- I'm going to show the Court what
 2 I've marked as Defendant's B. It's entitled the Data
 3 Master Operator Course, and it's a power point
 4 presentation. Did you help authorize -- or author or
 5 organize that Data Master Operator course?
 6 A. Yes, I did.
 7 Q. Is that the training that you folks at the
 8 Department of Health use to train officers in the
 9 operation and so on of the Data Master and the Data Master
 10 DMT?
 11 A. Yes.
 12 Q. There used to be a manual, but the manual, you
 13 folks, when you were at the Department of Health, you
 14 don't use it any more, you only use this power point
 15 presentation?
 16 A. There's still a DMT manual separate. The former
 17 VAT Data Master manual is no longer used. But there is a
 18 DMT addendum that is used.
 19 Q. All right. The Data Master operator course that
 20 I've marked Exhibit B has contact information for Robert
 21 Drabyn (ph), Darcy Richardson, Amanda Bolduc, and Steve
 22 Hanoi; is that true?
 23 A. Yes.
 24 Q. And part of that includes a 15 minute
 25 observation period training, a couple power point boxes

1 about that; doesn't it?
 2 A. Yes, it does.
 3 Q. All right.
 4 MR. GARY: Judge, I'm going to move to
 5 admit Exhibit B into evidence. And it's those pages
 6 referring to the observation period.
 7 THE COURT: Any objection, Mr. Franklin?
 8 MR. FRANKLIN: No objection.
 9 THE COURT: It's admitted, B.
 10 Q. Darcy, assume this fact to be true: The
 11 processing officer for Mr. Mayhew during the 15 minute
 12 observation period did not directly observe defendant
 13 Mayhew, while instead working a fingerprint and photo
 14 machine. Would that officer's activities be in accordance
 15 with the training that you provided to officers on the 15
 16 minute observation period?
 17 A. No. The officers are allowed to, you know, do
 18 some work while they're doing the -- the observation
 19 period, as long as that person is right with them. So
 20 they're allowed to do some their paperwork assuming
 21 they're sitting at the table with the subject.
 22 They're told that they don't have to necessarily
 23 make eye contact, but they do have to keep the person
 24 within visual and hearing proximity at all times during
 25 that initial 15 minutes immediately preceding the test.

1 a routine performance check report is.
 2 A. Routine performance checks are done three times
 3 a year, in February, June, and October, performed by the
 4 Data Master supervisor. And on the DMT it's actually
 5 programmed in as a software protocol and so it prompts the
 6 supervisor on what to do next, that kind of thing. And so
 7 the printout is the result of that testing.
 8 Q. And what is the purpose of a routine performance
 9 check on these -- what are they, quarterly -- quarterly
 10 basis?
 11 A. Yeah, sort of. They're done three times a year
 12 instead of four.
 13 Q. Excuse me. What's the -- what's the purpose of
 14 it?
 15 A. It's to make sure that the instrument is working
 16 properly so it's checking the accuracy and precision.
 17 It's also checking that the instrument won't accept any
 18 sort of non-valid tests. To make sure that the radio
 19 frequency is still being detected if it's around -- since
 20 it may be short of that, it's still kind of meeting the
 21 minimum standards.
 22 Q. Understood. This Routine Performance Check that
 23 I've marked as Exhibit A relates to Data Master DMT,
 24 serial number 104709, located at the Derby barracks. Do
 25 you know when that Data Master, more or less, was

1 Q. Thanks very much. Assume this second fact to be
 2 true: After completion of the prints, defendant Mayhew
 3 sat at a processing stool or bench --
 4 MR. FRANKLIN: Objection, your Honor. Lack
 5 of foundation. I don't know that Ms. Richardson has seen
 6 this tape.
 7 THE COURT: She doesn't need to.
 8 Overruled.
 9 Q. Once again, Darcy, assume that the processing
 10 officer at the completion of the prints and photographs
 11 told the defendant to return to the processing bench or
 12 stool next to the processing desk and then the processing
 13 officer and a second unidentified officer both went to the
 14 Data Master DMT machine across the room and had their
 15 backs to the defendant for a period of two to three
 16 minutes while they set up that machine, would those
 17 activities by the processing officer be in accordance with
 18 the training that you provided to officers on the
 19 operation of the Data Master or Data Master DMT with
 20 respect to the 15 minute observation period?
 21 A. No. They should have kept the subject with them
 22 when they were doing that.
 23 Q. Thanks very much. I've given the Judge what
 24 I've marked as Defendant's Exhibit A, I believe, which is
 25 a Routine Performance Check. Can you tell the Judge what

1 installed in the Derby barracks?
 2 A. It was June of 2010. I'm not sure of the actual
 3 day. They can make their own appointment, something like
 4 that.
 5 Q. Did you provide the recertification training to
 6 different officers in Orleans County with respect to the
 7 installations of these newer Data Master DMT's and, if so,
 8 when did you do that?
 9 A. I did do the -- the recertification for Orleans
 10 County. I believe it was probably in April of 2010. I
 11 know that it was, you know, a month or two before -- at
 12 least two months before the installation of the instrument
 13 itself, so March or April of that year.
 14 Q. Thanks very much. Just from your memory or any
 15 other documentation that you might have, do you remember a
 16 Vermont State Trooper Ben Shelp attending that
 17 recertification?
 18 A. I couldn't say who attended each day. I don't
 19 remember.
 20 Q. With respect to the Routine Performance Check
 21 report that's marked as Defendant's Exhibit A, did you
 22 provide that to me?
 23 A. Yes, I did.
 24 Q. Did you as -- how did you receive that Routine
 25 Performance Check report?

1 A. I received it from the Department of Health.
 2 Q. Can you explain what the graph shows on Exhibit
 3 A.
 4 A. Sure. That graph is supposed to meet the sample
 5 acceptance test. And so what it should show is the
 6 supervisor provide the shallow breath sample to the
 7 instrument, they provide a intermittent breath sample.
 8 They do a suck back test and then they do a full breath
 9 sample to get the zero result.
 10 What I noted about this graph in particular is
 11 that it's not the airflow line that's rising initially,
 12 it's the alcohol line; which shouldn't be happening. So
 13 that -- in my opinion, that instrument should have been
 14 pulled. Looking at the graph itself, it indicates to me
 15 there's liquid somewhere in the instrument, probably from
 16 the simulator.
 17 Q. Is this particular test supposed to be an
 18 alcohol free test as part of the routine performance
 19 check?
 20 A. Yes. That black line should stay completely at
 21 the bottom the entire time. The only line that should
 22 rise is the airflow line. Now looking at the black and
 23 white copy you can tell the difference between the two
 24 because the alcohol line is a thicker black line than the
 25 airflow line. The airflow line is very thin.

1 drop right as the center line rises.
 2 THE COURT: Well, I see the little -- the
 3 peak that goes up to the center of the graph at about 65
 4 seconds.
 5 WITNESS: That's -- that's the final breath
 6 sample that was provided.
 7 THE COURT: In this flow rate?
 8 WITNESS: That's the flow line. You can
 9 see how that line is thinner than the other one. And
 10 that's -- that's just how the manufacturer put it in so
 11 that you can tell on a black and white copy what it looks
 12 like. The alcohol line is thicker than the volume -- or
 13 the airflow line.
 14 THE COURT: So that squiggly line that we
 15 start with is the alc -- is an alcohol line?
 16 WITNESS: Yes. And it's -- I see a number
 17 of instruments that will have liquid in them. It's been
 18 kind of a common problem with how the (inaudible) are
 19 formed and that's very typical of what you see. It's
 20 because when the supervisor provided a shallow breath
 21 sample and those kind of improper breath samples
 22 initially, it's enough to move the water around inside of
 23 it, but it's not enough to get the flow sensor to register
 24 airflow.
 25 THE COURT: Unless the supervisor's been

1 You can also, in particular, on that graph see
 2 that its alcohol line and not the airflow line at --
 3 especially 55 seconds you see the airflow line finally
 4 rise as the alcohol line drops.
 5 Q. For those of us that are not as familiar with
 6 this as you, I'll try to break it down in a couple more
 7 questions. The first is this particular graph should be
 8 showing an alcohol free sample?
 9 THE COURT: You know, I've got to tell you,
 10 I can't -- this -- this doesn't -- this photocopy doesn't
 11 help me in the slightest. This was a photo -- faxed
 12 photocopy, I surmise. So I can't tell what it tells me.
 13 I can't see the distinction between the lines based on the
 14 legend. Does anybody have an original of this?
 15 MR. GARY: I don't. I can tell you Darcy
 16 made a public record request and I believe that is what
 17 was produced was a faxed copy of that. She just didn't
 18 ask for this, she had the whole shebang, but that's the --
 19 THE COURT: So just so I'm clear, Ms.
 20 Richardson, is there on this graph two different lines;
 21 there's a flow rate line and an alcohol line somewhere?
 22 WITNESS: Correct. What you can see --
 23 where you can see the two lines more clearly is at 55
 24 seconds. You'll see that the black line that has been
 25 hovering above is a little shaky. You can see that one

1 drinking?
 2 WITNESS: They should not have been
 3 drinking.
 4 THE COURT: All right. And how long does
 5 that condition persist?
 6 WITNESS: Any time it's completely emptied
 7 out. What you have to do is you have to break apart the
 8 sample chamber and manually clean it.
 9 THE COURT: Okay.
 10 BY MR. GARY:
 11 Q. When the judge asked the last question, Darcy, I
 12 guess you had mentioned early you phrased it as it should
 13 have been pulled. As a result of this routine performance
 14 check, what -- what do you mean by it should have been
 15 pulled?
 16 A. That instrument should have been retrieved by
 17 the Department of Health and done what I just stated, it
 18 should have -- they should have taken the sample chamber
 19 apart and cleaned it out and dried it.
 20 Q. With respect to -- did you receive a -- you
 21 know, a fair number of documents with respect to this Data
 22 Master DMT in your public information request that would
 23 -- did any of those documents show that the machine was
 24 pulled and serviced after this routine performance check
 25 in October of 2010?

1 A. I have a complete trial on this instrument up
2 until the end of January and nowhere in there does it show
3 that it was pulled.

4 Q. One more set, if you don't mind. It is the
5 supervisor and on this particular document it's a Carrie
6 Scotchen (ph) -- Scotchen, maybe --

7 A. Um-hum.

8 Q. -- listed as a supervisor. Is it the supervisor
9 who performs the routine performance check there at the
10 Derby barracks on this particular machine in October of
11 2010 and generates this report?

12 A. Yes.

13 Q. Has that report been reviewed by Stephen Hanoi?

14 A. Yes, it was.

15 Q. Can you tell the Court who Stephen Hanoi is?

16 A. He's the electronic technician for the Health
17 Department.

18 Q. When you were at the Department of Health, did
19 you make any complaints to the -- to the boss about
20 Stephen Hanoi --

21 MR. FRANKLIN: Objection, your Honor. I
22 really can't let this go on any further. May we approach?

23 THE COURT: You can do it from there.

24 MR. FRANKLIN: Okay. I have no idea where
25 this is going. And this brings to mind the requirements

1 MR. FRANKLIN: I don't know -- I don't know
2 -- I don't know what any of this means, your Honor.

3 MR. GARY: Judge --

4 MR. FRANKLIN: Before we get into talking
5 about people who have been -- there have been complaints
6 filed about people that aren't here or people I've never
7 even heard of, I just don't think should be allowed in
8 this proceeding at this time.

9 MR. GARY: If I may, Judge.

10 THE COURT: You may be heard.

11 MR. GARY: One, an objection must be timely
12 and specific. And it sounds to me like the -- the
13 objection is that this hasn't been put forth in a notice
14 of issues and it has. This machine is incapable of
15 providing an accurate result.

16 Secondly, the State offered a general
17 chemist affidavit. In its last paragraph it talks about
18 -- not specifically the observation period, but when it is
19 done in accordance with its training. And the rest of the
20 affidavit has to do with the Data Master and -- and how it
21 works and has been accepted and so on, but not specific to
22 this Data Master DMT here.

23 Everybody knows that these routine
24 performance check lists and the other calibration
25 instruments must be produced in both a civil and a

1 of the statement of issues to be litigated here and the
2 issue that -- I've noticed what the -- what the issue is.

3 Although the defense has issued the
4 standard boilerplate list of contested issues, I believe
5 by the tone of the questioning whether or not the test
6 results were accurate and accurately evaluated and whether
7 or not the test was taken (inaudible) rules adopted by the
8 Department of Health.

9 There is no way from the -- the paperwork
10 that's been available to the State at this time could we
11 (inaudible) of any notice of any of this stuff that the
12 defense is asking about, particularly complaints about
13 Stephen Harness (ph) and, you know, whether or not, you
14 know, the State has not seen this document Performance
15 Check report from October of 2010.

16 THE COURT: The report is admitted in
17 evidence?

18 MR. FRANKLIN: And had no idea what -- you
19 know, what it means or what the defense purported --
20 purports it to mean. And I don't at this point have any
21 idea where he's going with this. And I would -- I would
22 remind the Court, not that it needs to be reminded, that
23 this is an intent to be a summary proceeding and
24 (inaudible).

25 THE COURT: Did you want it to come in?

1 criminal discovery. This office doesn't do it and refuses
2 to do it and keeps a notebook upstairs with this
3 gentleman, the State's Attorney's Office, and that's where
4 these documents are. They won't send it down to St.
5 Johnsbury, but make me come up here to look at it, even
6 though it started with Robert Butterfield in.

7 St. Johnsbury, Will Porter in Orange, and the rest
8 routinely provided. I have a specific order in Chittenden
9 County because I don't practice there, that they have to
10 produce it to us. But we come up here for that.

11 I guess I'm not going to go overboard and be
12 facetious, say that I should come up here and show the
13 State what it has in its own file that it refuses to
14 produce here to the defendant. But this much is clear:
15 This machine should have been pulled and serviced because
16 it doesn't work right because it's measuring alcohol in a
17 chamber during the routine performance check and the
18 protocols and the rules are that it must be serviced; I
19 imagine maybe even in-house or pulled and brought back to
20 the Department of Health and it wasn't. This machine has
21 given an invalid result at the Derby barracks during the
22 course of this time.

23 With Mr. Hanoi, I'm simply setting out,
24 Judge, and if the State would stipulate to it, I will not
25 (inaudible) that it is a supervisor that conducts these

1 routine performance checks; these various reports from
2 around the State and in various different counties are
3 sent and Mr. Hanoi is to look them over and figure out
4 what needs to be serviced and what doesn't. The
5 supervisors don't know these kind of things, you know, I
6 mean unless the darned machine doesn't turn on. That's
7 easy enough.

8 Stephen Hanoi has signed off on this and
9 the proper testimony will be that Mr. Hanoi has falsified
10 records for quite some time and was asked to be removed by
11 Ms. Richardson and Ms. Bolduc for those particular types
12 of things. In fact, part of her leaving had to do with
13 that, that they were keeping him on and they wouldn't let
14 her work from home. But if the State is not going to --

15 THE COURT: Well, is there an allegation
16 that this particular record was falsified?

17 MR. GARY: Not falsified. It was signed
18 off by Mr. Hanoi without doing what he should have done,
19 which is recognize the problem, pull it, and service it
20 and put it back into operation here in Derby.

21 THE COURT: All right. The pending
22 question -- the objection to the pending question is
23 sustained as to what difficulties persisted with regard to
24 Mr. Hanoi, unless -- the proffer is that something about
25 his conduct affected this particular document itself,

1 in terms of showing me that this machine wasn't accurate
2 and I've taken all this testimony. And it seems to me
3 that -- that the horse is out of the barn at this point.

4 And, by the way, you know I share the same
5 concern because I've articulated it, but I want to make
6 sure that I understand the facts properly, especially in
7 technical errors, I want to get it right, as opposed to
8 get it half right because I'm only hearing one side.

9 So that's a concern. But the objection's
10 late.

11 BY MR. GARY;

12 Q. Darcy, as part of the State's exhibit, there's a
13 Data Master printout for this particular Derby barracks,
14 same serial number, Data Master for Jason Mayhew. And
15 ultimately I believe the test results were point one five
16 two and a second test at point one five two.

17 A. Okay.

18 Q. All right. I want you to assume these facts to
19 be true as set forth in the officer's affidavit admitted
20 into evidence: The gentleman's speech was normal, he was
21 steady while standing, he was steady while walking, he
22 passed the walk and turn test. The one leg stand was not
23 given. He was cooperative.

24 MR. FRANKLIN: Objection.

25 MR. GARY: I haven't asked the question.

1 which is not what I understand the proffer to be. The
2 proffer is -- is that he was not always -- that he was
3 lax. But --

4 MR. GARY: May- -- maybe I phrased the
5 question incorrectly or maybe I'm not reading the Court's
6 ruling. I mean I can certainly ask questions if it need
7 be here that Mr. Hanoi -- Mr. Hanoi overlooked certain
8 documents and simply signed off. I'm not saying he
9 falsified this, I'm saying he signed off on it without
10 recognizing the problem.

11 THE COURT: Very well. I'm going to leave
12 that to testimony of this witness to say that this was
13 incorrectly done.

14 MR. GARY: Okay. I just don't want to
15 belabor it, make you think --

16 THE COURT: No. And so I'm sustaining the
17 --

18 MR. GARY: -- I was jumping past you.

19 THE COURT: -- I'm sustaining it.

20 MR. GARY: Okay.

21 THE COURT: At this point that's all that's
22 in front of me. Mr. Franklin's made a more general
23 objection of -- it seems like it wasn't timely to the
24 testimony today. Now, I don't know where that gets us,
25 but Mr. Gary's been wandering down this road quite a ways

1 MR. FRANKLIN: What's the purpose -- what's
2 the purpose of talking about whether he's cooperative or
3 not?

4 THE COURT: Overruled. I'll let the
5 question get asked.

6 Q. Based on your years of training and experience
7 and testimony in the Courts and your review of the various
8 officers' affidavits and video tapes, would you expect a
9 person who's exhibited all those signs of sobriety to have
10 a test result --

11 MR. FRANKLIN: Objection. Objection, your
12 Honor. That's way speculative. This -- this witness did
13 not observe this defendant doing anything.

14 MR. GARY: I'm not asking what she saw,
15 Judge, I'm asking her to assume a fact that the State has
16 offered into evidence and the Court has granted in
17 evidence or -- or taken in. Those are the facts and only
18 the facts, so I don't have to ask Darcy Richardson if
19 those facts are true and I'm not asking her if they're
20 true. The State has established those facts and I've gone
21 with the State's facts that those were the observations by
22 the officer.

23 And I can tell you on the tape the fact
24 finder, being the Judge, if you saw it, you might very
25 well come to the same conclusion. And the question will

1 be whether a person two times the legal limit would
 2 exhibit that degree of sobriety.
 3 MR. FRANKLIN: Assuming that there's some
 4 kind of evidence of sobriety, I -- I -- this line of
 5 questioning is just way too speculative.
 6 THE COURT: (Inaudible.)
 7 MR. GARY: Additionally, Your Honor, the --
 8 THE COURT: HGN test totally (inaudible)
 9 out. I didn't hear you talk about the HGN test.
 10 MR. GARY: HGN tests, Judge, are not
 11 allowed in evidence without any scientific thing. They
 12 are allowed in Courts --
 13 THE COURT: Oh, but she -- she might be a
 14 scientist.
 15 MR. GARY: No, no, no, that's not -- but
 16 they are allowed to establish probable cause. I'm not
 17 talking about probable cause here.
 18 MR. FRANKLIN: Oh, but we are.
 19 THE COURT: I'm going to -- I'm going to
 20 sustain the objection --
 21 MR. FRANKLIN: Thank you, your Honor.
 22 THE COURT: -- without a better foundation.
 23 BY MR. GARY:
 24 Q. Darcy, do you have any experience or any
 25 training in determining certain signs of physical

1 capabilities?
 2 A. Yes.
 3 Q. What -- when does that level start, a BAC level,
 4 when would you expect to see some signs of physical or
 5 mental impairment or intoxication?
 6 A. Mental impairment you can find very well in a
 7 laboratory setting, although it takes longer when you
 8 don't have that kind of testing procedure. Physical
 9 symptoms can vary a bit based on (inaudible). So you can
 10 have some sort of behavioral tolerance if people consume
 11 alcohol frequently.
 12 MR. GARY: I'm going to ask the same
 13 question, Judge, but rather than start it, would you
 14 prefer to see if there's still an objection? I'm going to
 15 restate the question and -- but if we need to get to .
 16 argument, why don't we get to it.
 17 MR. FRANKLIN: Well, I'm also going to
 18 object on the matter of relevance. Where are we going
 19 with this? I have no idea.
 20 MR. GARY: Relevance, Judge, is not a where
 21 are we going with this, it's any fact that tends to make a
 22 fact of consequence either more likely or make it less
 23 likely. The fact of consequence here is a level of a test
 24 that's reported to be a 152, two times the legal limit, on
 25 a machine that should have been out of service because it

1 intoxication --
 2 MR. FRANKLIN: Objection, your Honor.
 3 That's asking the same question.
 4 THE COURT: Let him lay a foundation.
 5 Q. Do you -- you know, I should have that read back
 6 because I lost my place, but I'll try it again, Darcy. Do
 7 you have any training or experience in determining
 8 physical or even, I suppose, mental, signs of alcohol
 9 intoxication?
 10 A. I do have training on yes, the signs and
 11 symptoms of impairment from alcohol.
 12 Q. Offhand, do you know what the training is or
 13 what it consists of or, to speed things up, what your
 14 experience in that area might be as opposed to training?
 15 A. Well, I've been trained both in my undergraduate
 16 degree and my post graduate degree. I'm a member of the
 17 Northeastern Associates for Forensic Scientists and the
 18 International Association of Chemical Testing and I've
 19 attended their trainings numerous times. Not only that,
 20 I've reviewed thousands of processing forms for DUI cases
 21 over my employment with the Health Department and
 22 currently.
 23 Q. Do you have any training or experience in a
 24 particular quantity of alcohol or a BAC level which might
 25 then start to impair a subject's physical or mental

1 detects alcohol in it. And, two, when compared to the PBT
 2 of a 122 and a 152, there's too great a gap 50 minutes
 3 later. And, three, the gentleman's not showing any signs
 4 of intoxication --
 5 MR. FRANKLIN: Objection, your Honor.
 6 That's not --
 7 MR. GARY -- two times the limit.
 8 MR. FRANKLIN: -- what's in the affidavit.
 9 THE COURT: In your -- you'd point me to
 10 what, Mr. Franklin?
 11 MR. FRANKLIN: In -- in the affidavit it
 12 indicates number four, which was not mentioned to Ms.
 13 Richardson in the hypothetical, that he had a moderate
 14 odor of intoxicants, watery and bloodshot eyes, and he did
 15 say he had nor -- he had normal speech. The defendant
 16 also indicated that he had been drinking. And though the
 17 State understands the issue with the HGN, all -- all the
 18 others in the HGN were -- were checked off.
 19 THE COURT: The Court's going to sustain
 20 the objection on the bases that the proffer didn't cover
 21 all of the details in the affidavit. Do you have a copy
 22 of the affidavit? Does Ms. Richardson have a copy of this
 23 affidavit?
 24 MR. GARY: She does not.
 25 BY MR. GARY:

1 Q. Ms. Richardson, if you assume these facts to be
 2 true as set forth in Exhibit A, the affidavit of the
 3 police officer, that the police officer states that he
 4 observed a moderate odor of alcohol; that the eyes were
 5 watery and bloodshot; that the speech was neither
 6 unintelligible, mumbled, slurred, nor confused; the
 7 observation that the speech was normal; that the person,
 8 Jason Mayhew, according to the officer, admitted he had
 9 two light beers in the 30 minutes before being stopped;
 10 that the officer did not observe any signs of falling
 11 while standing, an extreme sway while standing, nor a
 12 slight sway while standing, nor unsteady while standing,
 13 and the officer claims in fact to have observed that the
 14 defendant was steady while standing.

15 Can you further assume it's true the officer
 16 claims that while walking, defendant Mayhew did not
 17 exhibit signs of falling, stumbling, or being unsteady,
 18 and, in fact, the officer observed defendant Mayhew as
 19 being steady while walking.

20 Can you further assume that the officer's
 21 representation during the walk and turn test that he did
 22 not observe that the defendant could not balance during
 23 instructions, that he did not stop --

24 MR. FRANKLIN: Objection. Compound
 25 question. This is -- I'm going to object again.

1 THE COURT: I understand. So far the
 2 proffer is accurate enough. Is there any inaccuracy in
 3 the proffer based on the affi- -- affidavit?

4 MR. FRANKLIN: Well, not -- not so far, but
 5 the -- this is a long, drawn out, several semicolon long
 6 question, which if Ms. Richardson doesn't have the
 7 affidavit in front of her, you know, would make it very
 8 difficult. I think that --

9 THE COURT: Overruled.

10 MR. FRANKLIN: -- questions about --

11 MR. GARY: Thank you.

12 BY MR. GARY:

13 Q. Can you further assume, Darcy, the officer's
 14 observations that the defendant did not stop walking on
 15 the walk and turn in order to steady himself and the
 16 officer claims that during the walk and turn he did not
 17 observe the defendant to lose his balance and that the
 18 defendant did not step off the line during the walk and
 19 turn --

20 MR. FRANKLIN: Objection, your Honor.
 21 That's not what the affidavit says. The affidavit says
 22 that the officer indicated he loses his balance.

23 THE COURT: Only to lose his balance while
 24 turning or turns incorrectly, not lose his balance when he
 25 steps off the line. It's on the form. Overruled.

1 BY MR. GARY:

2 Q. Darcy?

3 A. Yes.

4 Q. Can you further assume that the officer claims
 5 to have observed either or perhaps both that the defendant
 6 lost his balance while turning on the walk and turn and/or
 7 that he turned incorrectly, one or the other, or both.

8 Can you further assume that the officer's
 9 representations are true that he did not observe the
 10 defendant to start before he was instructed; the defendant
 11 did not fail to touch heel to toe over the course of 18
 12 steps; that he did not use his arms for balance; that he
 13 did not take the incorrect number of steps; and that he
 14 could, in fact, do the exercise.

15 Could you further assume that the officer did
 16 not have the defendant perform a one leg stand.

17 THE COURT: Are you going to add the HGN
 18 six clues in the PBT?

19 MR. GARY: I don't think the PBT can be
 20 used for any purpose, according to statute, either by
 21 defendant or the State, but I'm more than happy to add it.

22 THE COURT: Well, add the HGN. I agree
 23 with you on the PBT.

24 MR. GARY: And I think an HGN cannot be
 25 used without scientific evidence in either. I'll put it

1 in, but I'm certain --

2 MR. FRANKLIN: Your Honor, the -- the
 3 question isn't, you know, whether or not the HGN is used
 4 to -- to prove intoxication, it's whether or not it
 5 provides enough information for further investigation.

6 THE COURT: I'm going to require that all
 7 the information in the affidavit be provided to Ms.
 8 Richardson, who is, at least to my thinking, capable of
 9 interpreting scientific information and background of the
 10 HGN. It may or may not be relevant to her. She can take
 11 that information.

12 MR. FRANKLIN: Thank you, your Honor.

13 THE COURT: Mr. Gary?

14 MR. GARY: I'm going to note for the record
 15 that the objection by the State was that the HGN is
 16 available to investigate. So I imagine the claim is that
 17 there's reasonable suspicion of wrongdoing for further
 18 process for DUI, and, number two, that's not what I'm
 19 talking about. Having said that, I'll continue on with
 20 the question.

21 BY MR. GARY:

22 Q. Darcy, can you assume that the officer claims he
 23 observed a lack of -- on an HGN test a lack of smooth
 24 pursuit, distinct jerkiness at maximum deviation, and
 25 onset of distinct jerkiness prior to 45 degrees in each of

1 the left eye and right eye.

2 A. Yes.

3 Q. Can you assume that the defendant understood his
4 Miranda warnings down at the station and invoked those.

5 Can you also assume that the police officer
6 claims that he read the implied consent rights to the
7 defendant and he understood those and signed for those.

8 Can you also assume that the defendant -- that
9 the officer's claims that he observed that the defendant
10 was not excited, he was not talkative, he was not
11 indifferent, he was not profane, he was not combative, he
12 was not insulting, he was not cocky, he was cooperative,
13 he was not -- I guess he was not polite is not checked,
14 and he did not suffer from mood swings.

15 Can you also assume that the officer did not
16 observe any other unusual actions. He did not observe the
17 defendant to be hiccupping, belching, vomiting, fighting,
18 or laughing.

19 A. Okay.

20 Q. Assuming all of those facts to be true, what
21 signs would you expect to be exhibited from a defendant
22 such as Jason Mayhew if he was at a point one five two BAC
23 if the test was accurate?

24 A. Okay. Typically on that test result you're
25 going to see more signs on the walk and turn. There's --

1 typically, the most problems are with following
2 instructions, so usually, you know, they'll start before
3 they were asked, they step off the line, something like
4 that. But it's -- it's associated with many more clues,
5 as well as speech. The speech is usually at least foreign
6 at that point. The HGN I'm not concerned with. I've seen
7 HGN on an individual point 06. So HGN's very early.

8 I would expect -- I would expect more -- more
9 signs than what was observed by the officer.

10 Q. Given, then, that the test result for this Data
11 Master DMT machine of the same serial number to which I've
12 referred out of the Derby barracks for Jason Mayhew is a
13 point one five two and given the factual recitations as
14 put forth in the officer's affidavit and the routine
15 performance check problem and its lack of correction or --
16 or servicing, do you have an opinion about whether the
17 Data Master DMT BAC result of point one five two is an
18 accurate --

19 MR. FRANKLIN: Objection, your Honor.

20 Q. -- is an --

21 MR. FRANKLIN: I don't think -- I don't
22 think that the witness has enough information, including
23 observation, of having seen the affidavit, observing the
24 defendant, I don't believe that there's enough information
25 here. He talks about, you know, one Jason Mayhew --

1 THE COURT: I'm going to overrule the
2 objection. This goes to weight, not admissibility.

3 Q. Darcy --

4 A. Yeah.

5 Q. -- given the fact that in your opinion the
6 routine performance check showed that this Data Master
7 should have been taken out of --

8 MR. FRANKLIN: Objection. That's a fact
9 not in evidence. She's testified to it, but it's not an
10 ultimate finding of fact.

11 THE COURT: She's just -- overruled. She
12 testified that it should have taken out of service.

13 MR. GARY: May I please have the question
14 read back two questions ago.

15 THE COURT: You've going to have to go
16 back.

17 MR. GARY: Every time I do it, Judge, I'm
18 trying to get it and there are no specific objections.
19 The first objection was that the witness doesn't have
20 enough information and, really, that's a witness answer,
21 don't have enough information, the last one.

22 THE COURT: Do you want to take another
23 stab and ask the question?

24 MR. GARY: I think I might. I think I
25 might, Judge.

1 BY MR. GARY:

2 Q. Let's set some up back to this machine, Darcy.

3 A. Uh-huh.

4 Q. Given your knowledge of the routine performance
5 check and your review of it and based on your education,
6 training, and experience with the Data Master DMT in the
7 Derby barracks, serial number 104709, capable of giving an
8 accurate and reliable result in October of 2010 at the
9 time of the routine performance check?

10 A. No, it wasn't.

11 Q. Given your testimony that the machine had not
12 been pulled or serviced or corrected, if you will, on
13 January 8 of 2011, on the date of Mr. Mayhew's processing,
14 do you have an opinion about whether that Data Master DMT
15 was able to give an accurate and reliable BAC result for
16 Mr. Mayhew?

17 A. I do.

18 Q. What -- what's your opinion?

19 A. That it was not. Until that sample chamber has
20 dried and the -- the liquid is removed from the
21 instrument, that liquid is going to be affecting the
22 alcohol line every time a sample is delivered. So in my
23 opinion the instrument was not working properly at that
24 time.

25 Q. Given the factual recitations of the officer as

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1 set forth and the evidence taken by this Court and read to
 2 you by me moments ago and given your opinion that the Data
 3 Master DMT, serial number 104709, was incapable of giving
 4 a valid and accurate BAC result for Jason Mayhew on
 5 January 8 of 2011, do you have an opinion about the
 6 correlation between the point one five two test results
 7 and Mr. Mayhew's observed activities by the officer?
 8 A. Yes.
 9 Q. What is it?
 10 A. I don't believe the test result was accurate.
 11 And I think that it shows inconsistency with what was
 12 observed.
 13 Q. All right. Thanks very much.
 14 THE COURT: Mr. Franklin, did you have a
 15 question?
 16 CROSS-EXAMINATION
 17 BY MR. FRANKLIN:
 18 Q. Darcy, State's Attorney Alan Franklin. How are
 19 you doing.
 20 A. Good. How are you.
 21 Q. Not too bad. Did you observe the evidence
 22 ticket that was provided in this case?
 23 A. I did not.
 24 Q. You did not.
 25 A. No.

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1 performance checks.
 2 Q. Do you have an issue, then, with the affidavit
 3 that indicates that the Data Master provides a reliable
 4 and accurate means for an analysis of breath alcohol
 5 samples and is reported an alcohol concentration or a
 6 person's breath on a Data Master, at least that the
 7 instrument has successfully met all internal, external
 8 quality control reviews, has been operated properly at the
 9 time that the breath sample was test- -- was analyzed?
 10 A. I agree that the instrument did not observe any
 11 problems, but the instrument can't diagnose that problem.
 12 That's why it's done on the RPC and it's supposed to be
 13 reviewed by someone at the Health Department.
 14 THE COURT: Let me just -- this is the
 15 Judge speaking. What I'm trying to sort out here is what
 16 you're suggesting is, is that the -- this test that you
 17 were talking of that was done in October shows the
 18 presence of alcohol when there should have been none
 19 present; correct? Did you hear me?
 20 WITNESS: I'm sorry. That -- that broke up
 21 a little bit.
 22 THE COURT: Yeah. If I understand this
 23 right, the RPC test showed the presence of alcohol when
 24 there should have been none reported?
 25 WITNESS: Correct.

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1 MR. GARY: How about this. I'll object as
 2 asked and answered.
 3 THE COURT: Overruled.
 4 Q. And so you don't -- you have not -- let me
 5 rephrase that because I don't want to get my question
 6 objected to again.
 7 So would -- would not the observation of
 8 the actual evidence ticket in this case provide you with
 9 more information whether or not the machine was reliable?
 10 A. Not with what I observed on the RPC because that
 11 won't be observed again until you have an alcohol free
 12 test. So since it wasn't pulled, the next time you'll see
 13 it will be when they do the next RPC.
 14 Q. Okay. Is it -- is it a fact that -- the fact
 15 that a test is reported, evidence that the -- that the
 16 machine is working properly?
 17 A. Could you repeat the question?
 18 Q. Yes. Isn't the basic -- actually, I'll rephrase
 19 it a little bit.
 20 Isn't the basic idea of the Data Master
 21 test and are all these things that we've been talking
 22 about, the ultimate conclusion that the fact that there is
 23 a breath result reported in and of itself indicative that
 24 it's an accurate test?
 25 A. Not always, which is why we do the routine

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1 THE COURT: Correct?
 2 WITNESS: Correct. It showed alcohol when
 3 there shouldn't have been any. When the -- when the
 4 separate test is done, that's one of the areas that the
 5 instrument doesn't check. So after the supervisor
 6 performs that test, it asks the supervisor did the sample
 7 accept this test pass, yes or no. Then the officer has to
 8 select whether it passed.
 9 Now, this is the first RPC that the
 10 supervisor ever did, so I don't fault him for not -- not
 11 seeing this, but it's up to a person to review. The
 12 instrument can't determine this.
 13 THE COURT: But explain to me, then, if
 14 there was alcohol present that shouldn't have been there,
 15 would that not have shown -- shown up in the simulator
 16 evaluation on the actual test; that is, you would get an
 17 overly high alcohol read on the simulator test?
 18 WITNESS: And that has and you don't know
 19 because the -- we don't know what's actually in the
 20 simulator at the time of the test. We know what it is
 21 when it's certified, but then that solution is run a
 22 number of times and each time you run it, it goes down in
 23 concentration. The number that it's printing and saying
 24 that it's within range, that could be on a solution that
 25 has a low alcohol concentration and is being contributed

1 to the alcohol already in the sample chamber.
 2 THE COURT: How -- how often did that
 3 happen in your experience?
 4 WITNESS: Liquid in the sample chamber?
 5 THE COURT: No. Low simulator solution
 6 that was out of the printed range.
 7 WITNESS: How did it contribute from
 8 contamination when it was out of range?
 9 THE COURT: No. I was just curious about
 10 how often we should be worried about the simulator
 11 solution being wrong.
 12 WITNESS: (Inaudible) frequently.
 13 THE COURT: Okay.
 14 WITNESS: That is, the fluid that's entered
 15 out of range. If you look through the (inaudible) books
 16 you'll see they can usually get -- it depends on the
 17 instrument how quickly it's used -- they can get a couple
 18 months out of a bottle of solution and then they replace
 19 it.
 20 THE COURT: Would it have been replaced at
 21 the same time as this test was run in October; would that
 22 be typical?
 23 WITNESS: I'm sorry, what was the question?
 24 THE COURT: Would the solution have been
 25 replaced at the same time the test was run in October?

1 WITNESS: The solution was replaced in
 2 October; correct.
 3 THE COURT: All right. Sorry, I didn't
 4 mean to take this over. I was just trying to understand
 5 the -- this (inaudible). Mr. Franklin, go ahead, you may
 6 continue.
 7 BY MR. FRANKLIN:
 8 Q. Without observing the actual evidence ticket in
 9 this case, can you state that on January 8, 2011, that the
 10 machine wasn't working properly; can you categorically
 11 state that?
 12 A. Yes.
 13 Q. You can, without looking at the other statement?
 14 A. Yes, because there was a problem observed in
 15 October that was never corrected.
 16 Q. Despite all of the internal checks that indicate
 17 that it was passed on January 8?
 18 A. Yes, because the only one that would be affected
 19 by this is the breath sample and simulator vapor. And we
 20 don't know what the true concentration on the solution was
 21 in January, assuming it was replaced in October.
 22 Q. And did you -- in addition to not seeing the
 23 evidence ticket, you also didn't see the graph that
 24 accompanied the evidence ticket in this case; is that
 25 correct?

1 A. Correct.
 2 Q. And this Routine Performance Check report that
 3 was offered by the defense that talks about this -- that
 4 had this anomaly that -- that you're talking about --
 5 A. Um-hum.
 6 Q. -- does it also say that routine performance
 7 check passed?
 8 A. It does say passed.
 9 Q. How does that -- how does that come about?
 10 A. Well, on a sample (inaudible) test, it's up to
 11 the officer to say whether it passed or not. If the
 12 officer selects yes, then the instrument will say that the
 13 -- that it passed. If the officer selects no, it will say
 14 that it failed.
 15 Q. And when -- how does that -- how does the
 16 officer make that observation?
 17 A. Through experience. They should be looking at
 18 the screen. They should be making sure that only the blue
 19 line rises when they give the -- the shallow breath, the
 20 intermittent. When they do the suck back test, they
 21 should be observing that no alcohol rises and that they
 22 don't get a suck back error. And then they should be
 23 doing the final test, which is a full breath sample, and
 24 making sure that no alcohol shows on an alcohol free test.
 25 Q. Okay. And generally what was the -- what was

1 the procedure about these tests? In other words, they're
 2 performed -- a test was performed in October of 2010; is
 3 that correct?
 4 A. Correct.
 5 Q. By this sheet of paper; right?
 6 A. (No audible response heard.)
 7 Q. And what happens to it then; what happens to
 8 this test?
 9 A. Once they complete the routine performance test,
 10 it's faxed or mailed to the Health Department where it's
 11 signed off on or where the Health Department staff should
 12 say you know something was odd, we need to correct this or
 13 -- you know, it depends on what the result was of the
 14 test.
 15 Q. Okay. And what happens then?
 16 A. If it passes, nothing. The instrument is back
 17 in service until February where it does another routine
 18 performance check. If it fails, then the Health
 19 department should be following up and conducting whatever
 20 repair is necessary.
 21 Q. Okay. And this -- this (inaudible) says passed?
 22 A. It does say passed.
 23 Q. Thank you.
 24 MR. FRANKLIN: I have nothing further.
 25 REDIRECT EXAMINATION

1 BY MR. GARY:
 2 Q. Darcy, the -- the supervisor there at the Derby
 3 barracks -- I forget the name -- Terry Scotchen, is the
 4 one who performs the routine performance check; correct?
 5 A. Correct.
 6 Q. And he or she has to manually choose whether
 7 these checkmarks of passed or failed are made; is that
 8 true?
 9 A. For the sample (inaudible) test, yes. The other
 10 areas are -- if one of the other areas fails, then it
 11 would say failed on its own, but for the sample
 12 (inaudible) test, which is what is displayed on the graph,
 13 they have to select yes or no.
 14 THE COURT: And that's a supervisor
 15 function --
 16 WITNESS: I'm sorry?
 17 THE COURT: That's a supervisor function,
 18 not an officer function?
 19 WITNESS: Well, it's a -- a Data Master
 20 supervisor. It's typically an officer in the police
 21 agency that's been trained by the Health department to do
 22 a little maintenance on the instrument.
 23 THE COURT: Got it.
 24 BY MR. GARY:
 25 Q. And then this performance checklist gets sent to

1 A. Yes. I've run thousands and thousands and
 2 thousands of tests on these instruments and I've seen
 3 numerous graphs that are just in black and white and seen
 4 what's in the sample chambers. So I'm pretty familiar
 5 with determining lines when it's just a black and white
 6 copy.
 7 MR. GARY: I am about to ask, Judge, if she
 8 has experience in Mr. Hanoi signing off on documents, such
 9 as this, where he did not pick up on mistakes. I'd
 10 proffer that in case the State wants to make an objection.
 11 MR. FRANKLIN: I will -- I will object
 12 because --
 13 THE COURT: I'm going to sustain the
 14 objection.
 15 MR. GARY: May I have just a -- not to
 16 fight it, but just the basis for that for the record; the
 17 basis of the objection and the basis of the ruling.
 18 MR. FRANKLIN: He's talking about the --
 19 the veracity of someone who isn't here, hasn't been
 20 questioned. We don't -- I don't know -- I don't know
 21 anything about this guy. I don't know the first thing
 22 about him or what he did or didn't observe or anything
 23 like that.
 24 It's -- it's -- it's widely speculative
 25 what he or -- he did or did not do, observe, did not

1 the Department of Health and that is to be reviewed by Mr.
 2 Hanoi?
 3 A. Correct. In this case it was faxed.
 4 Q. And Mr. Hanoi signs off on these things or takes
 5 some corrective measure if corrective measure needs to
 6 occur?
 7 A. Correct.
 8 Q. And Mr. Hanoi signed off on this one; correct?
 9 A. Correct.
 10 Q. All right. And I take it, when it's not a faxed
 11 version, there's two different colors of ink and so on on
 12 this graph; one's a blue line and one's a black line?
 13 A. If it's the original, there's a blue line and a
 14 black line. When it's just a photocopy or a fax copy,
 15 then you have to look at the signatures at the lines.
 16 Q. And Mr. Hanoi, if it was a faxed copy that he
 17 received, obviously can't tell blue line versus --
 18 MR. FRANKLIN: Objection, your Honor. We
 19 --
 20 THE COURT: Sustained. Sustained. It's
 21 beyond the scope.
 22 Q. You can tell the difficulty or error, if you
 23 will, in this particular routine performance check based
 24 upon that first line and the rapid what I'll call
 25 squiggles or up and down spikes; is that correct?

1 observe. We had testimony that an original of these has
 2 certain colors on it, which, you know, begs the question
 3 of -- of, you know, what actually -- what has to happen.
 4 I have not heard this witness testify that she performed
 5 this check and Mr. Scotchen did, that it was reviewed at
 6 the time, you know, what Mr. Hanoi, or whatever his name
 7 is, observed or did, what he's --
 8 THE COURT: Thank you. But the Court
 9 already ruled on this earlier. Basically, it's not
 10 relevant. The Court has got before it Ms. Richardson's
 11 testimony. Mr. what's his name's veracity is not an
 12 issue.
 13 MR. GARY: Okay. I was under the
 14 impression it was at this point after the State's
 15 question, but it's not. Okay. All right. Hold on. Have
 16 you got any more for Darcy?
 17 MR. FRANKLIN: No.
 18 MR. GARY: Any more for Darcy, Judge?
 19 THE COURT: I don't have any more
 20 questions.
 21 Q. Darcy --
 22 THE COURT: I do have a question -- I do
 23 have a question, Ms. Richardson. Maybe you can help me,
 24 maybe you can't. But the question is one of
 25 certification.

1 WITNESS: Okay.
 2 THE COURT: And to the best of your
 3 knowledge, did the officer -- are officers required to
 4 take -- get more training on this new machine?
 5 WITNESS: Yes. Every officer in the State
 6 has to be recertified. That was a decision made by the
 7 Police Academy. So they would attend a class. It was a
 8 four hour class. They had to do -- they had to listen to
 9 a lecture, they had to do practice tests, they had to do a
 10 practical test in front of us, and take a test. And
 11 assuming they did all of that, then we would submit the
 12 paperwork to the Police Academy and they would be
 13 recertified,
 14 THE COURT: And how many times did they
 15 have to use this machine in order to become recertified?
 16 WITNESS: They had to do five tests on
 17 their own and then they had to do one in front of us where
 18 we ask them a few questions.
 19 THE COURT: And so if they -- if an officer
 20 happened to say this is only the second time I've operated
 21 this machine, that would suggest that officer's not
 22 certified; is that correct?
 23 WITNESS: That would suggest that to me,
 24 yes, because by the end of certification they've run it
 25 six times.

1 the certification of the officers took place in April of
 2 2010; is that correct?
 3 A. Correct.
 4 Q. So by necessity the training and certification
 5 could not have been on this particular machine; is that
 6 correct?
 7 A. (Inaudible) I have no memory of what serial
 8 numbers I brought with me to training.
 9 Q. Okay. Thank you.
 10 MR. FRANKLIN: I have nothing.
 11 THE COURT: Thank you very much.
 12 WITNESS: Okay.
 13 MR. GARY: Judge?
 14 THE COURT: Mr. Gary, anything further?
 15 MR. GARY: Did she just -- I missed it
 16 because of that blower. Did she testify that, you know --
 17 that they do the training on an actual Data Master DMT,
 18 just not on this particular serial --
 19 THE COURT: I think -- I think this is all
 20 fairly apparent.
 21 MR. GARY: Okay. Got it. Thanks very
 22 much. Thanks Darcy for all your patience. Good luck with
 23 the kids.
 24 WITNESS: No problem. Thank you.
 25 MR. GARY: See you later.

1 THE COURT: All right. Thank you. Mr.
 2 Franklin, did that --
 3 MR. FRANKLIN: Based on -- based on your
 4 questioning of the witness, Your Honor, I do have a couple
 5 questions.
 6 THE COURT: Yeah, go ahead.
 7 RECROSS EXAMINATION
 8 BY MR. FRANKLIN:
 9 Q. You indicated, I think, in your testimony,
 10 correct me if I'm wrong, that the machine; this machine
 11 went into service in June of 2010; is that correct?
 12 A. Correct.
 13 Q. And that the training occurred sometime in April
 14 of 2010?
 15 A. Correct.
 16 Q. So that by necessity, this particular machine
 17 could not have been operated at the time of certification
 18 and training; is that correct?
 19 A. I'm not sure I understand the question.
 20 Q. The -- the proffered information was that the
 21 officer stated it was the second time he used this
 22 machine. However, you testified that this machine was put
 23 into service in June of -- of 2010; correct?
 24 A. Oh, yes, correct.
 25 Q. And so the certification -- you indicated that

1 THE COURT: Thank you.
 2 WITNESS: Thanks. Bye.
 3 THE COURT: Any other evidence, Mr. Gary?
 4 MR. GARY: No, sir.
 5 THE COURT: Mr. Franklin, do you have any
 6 further evidence?
 7 MR. FRANKLIN: No, your Honor.
 8 THE COURT: All right.
 9 MR. GARY: I'll tell you, Sleigh loves this
 10 stuff. I -- I'm not that smart, but he just loves this
 11 stuff. What do you think of that? I didn't talk to him
 12 about this case, but.
 13 THE COURT: Anybody want to submit memos?
 14 MR. GARY: No. No. My God, no.
 15 THE COURT: All right. Thank you.
 16 MR. FRANKLIN: Not at this juncture, your
 17 Honor.
 18 UNIDENTIFIED FEMALE SPEAKER: I have a
 19 couple questions to clarify for the record. The defense
 20 witness, number one, Darcy Richardson, I wasn't clear what
 21 her position was or -- is she a DMT trainer? That was
 22 never clearly stated.
 23 THE COURT: Well, I guess you don't have to
 24 -- my notes will determine that she was a -- she did do
 25 DMT training, but if you want to just put a note down,

Brabazon, Joyce

From: Bolduc, Amanda
Sent: Monday, April 04, 2011 11:39 AM
To: Harnois, Steven
Subject: My response

Stella has given me the opportunity to provide a response to Darcy's allegations. I don't know how much will be sent to Seven Days, but I want you to know what I wrote.

The question from the reporter says "Can anyone from DOH say anything about the integrity of the alcohol testing program in light of the allegations made by Darcy and Amanda?" This is my response.

1. When VDHL switched from the BAC DataMaster to the DMT, there was a massive amount of new information and documentation available, yet the framework for handling this was not in place. This led to a breakdown in communication within the program where Chemists responsible for testimony had a lack of information regarding the instrument fleet. In February 2010, I raised a number of issues to my supervisor at the time regarding the work that was being performed on the DataMaster DMT instruments. Specifically I was concerned that what was being documented was not consistent with the work being performed. Also I was concerned that effective troubleshooting techniques were not being employed to appropriately diagnose performance issues. The level of oversight regarding the work being performed and the corresponding documentation was not sufficient for me to have confidence in my ability to testify to the maintenance of the DataMasters. Subsequent to the retirement of the previous Program Chief and the hiring of the new Program Chief, a number of new policies and practices have been implemented. The documentation requirements have increased significantly. The oversight regarding all maintenance aspects of the breath testing instruments has increased significantly. All of the concerns I had raised have been addressed. I now have clear and consistent documentation regarding the status of all of the breath testing instruments maintained by VDHL. I have full confidence that when a subject is tested on a DataMaster DMT instrument, that their breath is being fairly and accurately analyzed. I have full confidence that these instruments are maintained appropriately. A DataMaster result obtained by an officer certified to operate the instrument and when taken in accordance with their Department of Health training, is accurate and reliable and is in compliance with the provisions of the Department of Health rules.

A Bolduc

Amanda Bolduc, MFS
PH Chemist III
Vermont Department of Health Laboratory
Alcohol and Toxicology Program
195 Colchester Ave
Burlington, VT 05402
(802) 585-6707 (mobile)
(802) 863-7412 (ph)
(802) 863-7632 (fax)
amanda.bolduc@ahs.state.vt.us
PLEASE NOTE new phone and email as of 10/13/10

Brabazon, Joyce

From: Bolduc, Amanda
Sent: Thursday, April 07, 2011 11:09 AM
To: 'Michael Lavoie'
Cc: Harnois, Steven
Subject: RE: datamaster

I have full confidence in our entire fleet of DataMaster DMT Instruments.

ABolduc

Amanda Bolduc, MFS
PH Chemist III
Vermont Department of Health Laboratory
Alcohol and Toxicology Program
195 Colchester Ave
Burlington, VT 05402
(802) 585-6707 (mobile)
(802) 863-7412 (ph)
(802) 863-7632 (fax)
amanda.bolduc@ahs.state.vt.us
PLEASE NOTE new phone and email as of 10/13/10

From: Michael Lavoie [mailto:mlavoie@dps.state.vt.us]
Sent: Thursday, April 07, 2011 11:07 AM
To: Harnois, Steven; Bolduc, Amanda
Subject: datamaster

Good Morning,

Just wanted to check & insure we are okay with our datamaster that was taken by you guys & on 2/23 & returned on 3/4/11.

I'm sure we are okay but just checking!?

*Detective Michael Lavoie
7928 Williston Road
Williston, Vermont 05495*

*Williston Police Department
802 878 6611
373-9003 cell*

FAX 802 872 1124

Brabazon, Joyce

From: Harnois, Steven
Sent: Wednesday, April 06, 2011 1:30 PM
To: Celotti, Stella
Subject: RE: Health Department answers
Oh Boy.....

From: Celotti, Stella
Sent: Wed 4/6/2011 10:52 AM
To: AHS - VDH - Lab Users
Subject: FW: Health Department answers

Hello, everyone, in reference to the Seven Days article, this is what was sent from the VDH Communications office to the reporter, Stella.

From: Andy Bromage [mailto:andy@sevendaysvt.com]
Sent: Monday, April 04, 2011 2:21 PM
To: Stirewalt, Robert
Subject: Re: Health Department answers
Importance: High

Got it.
Thanks,

On Apr 4, 2011, at 2:09 PM, Stirewalt, Robert wrote:

April 4, 2011

To: Andy Bromage
Seven Days

The Vermont Department of Health takes very seriously its responsibility to process and provide results for Driving Under the Influence (DUI) cases. After two state employees raised concerns to laboratory management in February 2010, we promptly initiated an investigation of the alleged issues and concerns. The report of that investigation has been provided to you.

Our investigation concluded that the employees' allegations of unethical behavior were not substantiated. Also, as further assurance of the accuracy and reliability of the test results, the datamaster instrument has internal controls so that it will not issue a subject test result if there was a problem with the instrument or test process.

The Health Department continues to encourage state employees to report any complaints to their supervisor and we will investigate allegations thoroughly, as part of our responsibility to serve the State of Vermont in serious matters such as DUI cases statewide.

Sincerely,

Mary Celotti
Public Health Laboratory Director
Vermont Department of Health

Answers to the questions you sent on Friday afternoon.

- How many Datamasters are currently deployed in Vermont?

There are currently 67 DataMaster DMT evidential instruments in use throughout the state

- What was the schedule for deploying them?

Deployment schedule

- a. *Franklin and Grand Isle counties were deployed in July 2008*
- b. *Chittenden county was deployed in November 2008*
- c. *Washington County December 2009*
- d. *Windham County February 2010*
- e. *Addison County April 2010*
- f. *Windsor County May/June 2010*
- g. *Orleans County May/June 2010*
- h. *Lamoille and Bennington County August 2010*
- i. *Rutland County September 2010*
- j. *Essex and Caledonia, Orange Counties November 2010*

- Why was it necessary to replace the old breath testing devices?

The BAC DataMaster's were vintage 1988. Many of the components were obsolete and replacement parts were no longer available.

- How much did the state spent on the new Datamaster DMT machines?

The Vermont Department of Health spent more than \$400,000 for the purchase of the DataMaster DMT machines.

- What was the source of those funds?

State of Vermont Department of Public Safety Governor's Highway Safety Program federal grant, through the National Highway Traffic Safety Administration

- Did the state return any Datamasters to the manufacturer because they weren't working properly?

Various DataMasters over a period of years were returned to the manufacturer for

service or replacement.

- If so, how many were returned, and on approximately what dates?

Exact numbers of repaired and or replaced units would take additional time to research.

- Why were Datamaster machines selected over other breath test instruments, such as Drager?

In 2005, when the VDHL Evidential Breath Testing Program reviewed the available instruments for replacing the BAC DataMaster, the DataMaster DMT was the instrument that met our specifications and was selected for purchase.

- Were the Datamasters deployed before all the bugs were worked out? There are allegations that they were.

While the manufacturer of the DataMaster DMT continues to make hardware modifications and improvements to their product, all instruments in service for evidential use have met and continue to meet the performance standards promulgated by the Department of Health Rules and Regulations regarding breath testing instruments. The user-interface software designed by the VDHL Breath Testing Program has been upgraded and continues to be refined; however the user interface software does not affect the accuracy of a subject's breath sample test.

- Is DOH's alcohol testing program accredited?

The DOH breath testing program is not accredited.

- If not, why not?

Accreditation is not required in the state of Vermont for breath alcohol testing programs.

- Can anyone from DOH say anything about the integrity of the alcohol testing program in light of the allegations made by Darcy and Amanda?

See statement above.

// SEVEN DAYS //
:: Andy Bromage
:: Staff Writer
:: andy@sevendaysvt.com
:: <http://www.sevendaysvt.com>
:: 802.864.5684

Brabazon, Joyce

From: Bolduc, Amanda
Sent: Thursday, March 31, 2011 12:44 PM
To: Celotti, Stella; Kimball, Kirk; Harnois, Steven
Subject: Search 7D: | Seven Days

<http://www.7dvt.com/searchindex?filter1=38617>

This is the journalist whose writing the article

Brabazon, Joyce

From: Celotti, Stella
Sent: Wednesday, April 06, 2011 10:39 AM
To: AHS - VDH - Lab Users
Subject: Seven Days Article

Hello, everyone, there is an article about the laboratory's alcohol test area in today's edition of Seven Days newspaper. We were aware that the article was being published and provided information to the reporter. I am available if anyone has any questions. Thanks, Stella-Mary.

Mary (Stella) Celotti
Laboratory Director
Vermont Department of Health Laboratory
195 Colchester Avenue
Burlington, Vermont 05401
802-863-7570
(Fax) 802-863-7632
Stella.Celotti@ahs.state.vt.us