

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

PLAINTIFF,)

VS.)

Case No. 8:07-CV-02612

BLOCKBUSTER, INC.,)

DEFENDANT.)

DEPOSITION OF

SCOTT COLLEN

June 24, 2008

DEPOSITION OF SCOTT COLLEN, produced as a
witness at the instance of the PLAINTIFF, and duly sworn,
was taken in the above-styled and numbered cause on the
24th day of June, 2008, from 9:29 a.m. to 5:00 p.m.,
before Shayne Wimmer, CSR in and for the State of Texas,
reported by machine shorthand, at the law offices of EEOC,
207 S. Houston, 3rd Floor, Dallas, Texas 75202, pursuant
to the Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

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1 Q. Have you ever received any training at
2 Blockbuster concerning antidiscrimination or
3 antiharassment policies?
4 A. Yes, I have.
5 Q. Okay. How many such trainings have you
6 received?
7 A. Approximately two or three.
8 Q. Okay. Do you know who the other people were who
9 attended those trainings, if anyone?
10 A. At the time that I attended them?
11 Q. Yes.
12 A. Yes. Peers and other distribution center
13 managers.
14 Q. Okay. So distribution center managers. When
15 you say peers, you're talking about regional directors?
16 A. That would be correct.
17 Q. Was it explained to you why you were receiving
18 this training?
19 A. I can't recall it specifically being explained.
20 Q. Did you have any understanding at the time of
21 why you were receiving such training?
22 A. It was part of an annual training block that we
23 did.
24 Q. Okay. Have you ever received any training in
25 investigative skills while employed at Blockbuster?

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1 MS. SPEIGHTS: Objection. You can answer.
2 Q. (By Mr. Phillips) You can answer.
3 A. Can you clarify training?
4 Q. Sure. Any kind of instruction. Doesn't
5 necessarily have to be in a classroom. It could be a web
6 based training. It could be an on-the-job coaching on
7 something. It could be a formal classroom type setting.
8 But any situation where someone is attempting to impart to
9 you knowledge regarding conducting investigations.
10 MS. SPEIGHTS: Objection. You can answer.
11 Q. (By Mr. Phillips) You can answer.
12 A. It's a long description, but I can tell you I
13 have had some one-on-one training on investigative
14 questioning.
15 Q. Okay. How many times?
16 A. I can't recall exactly how many.
17 Q. Who gave you the training?
18 A. Human resources, members of the human resources
19 department.
20 Q. Did they tell you why they were giving you the
21 training as opposed to somebody else?
22 MS. SPEIGHTS: Objection.
23 A. I can't recall why.
24 Q. (By Mr. Phillips) What did they cover during
25 the training, to the best of your recollection?

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1 A. To the best of my recollection it was probably a
2 process of maybe developing a list of questions that I
3 might use to talk with employees about allegations that
4 occurred.
5 Q. Okay. Any other subject matter you can think of
6 that was covered in that one-on-one training you're
7 describing?
8 A. Not that I can recall.
9 Q. Have you actually had occasion to conduct
10 investigations related to potential harassment or
11 discrimination at Blockbuster at any time?
12 A. Yes.
13 Q. How many times have you conducted such
14 investigations?
15 A. Personally and with other members of management
16 at Blockbuster?
17 Q. Let's divide it up. Let's go you personally.
18 Then you maybe in conjunction with other managers. First
19 let's start with you personally?
20 MS. SPEIGHTS: Objection. You can answer.
21 A. Can you restate what type of investigation for
22 me so I can refresh my memory?
23 Q. (By Mr. Phillips) Sure. On how many occasions
24 have you personally participated in an investigation of
25 harassment or discrimination at Blockbuster?

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1 A. Approximately two to three times.
2 Q. Have you had any kind of involvement apart from
3 those two to three times in any other internal
4 investigations of harassment or discrimination at
5 Blockbuster?
6 A. Possibly once or twice other times.
7 Q. What was the nature of that involvement the once
8 or twice other times that you're talking about?
9 A. I might go with a member of a human resources
10 team. They might conduct the investigation while I
11 remained present in the workplace.
12 Q. So you're present there, but you're not actually
13 conducting interviews?
14 A. Possibly.
15 Q. Do you have any specific recollection of that
16 ever happening?
17 A. Yes.
18 Q. At what facilities?
19 A. Gaithersburg, Maryland.
20 Q. Any others?
21 A. Miami, Florida.
22 Q. Distribution center in Miami?
23 A. Correct.
24 Q. Any others?
25 A. I believe in Indianapolis, Indiana.

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1 Q. What is your understanding of your function when
2 you go to these investigations but you don't actually
3 conduct the interviews? What are you doing when you're
4 there?
5 A. Generally I'm out in the workplace visible
6 working with employees and managers.
7 Q. When you say working with them, what
8 specifically are you doing?
9 A. I might pick orders. I might do quality checks.
10 Q. So we're talking about actual distribution
11 center functions?
12 A. That's correct.
13 Q. What's the purpose for doing that?
14 A. I do it anytime I go in a facility.
15 Q. Okay.
16 A. There's no real purpose other than...
17 Q. Well, why do you go with someone who is
18 conducting the investigation interviews when you're not
19 conducting them?
20 A. The major reason that we do that is oftentimes
21 the person coming in doing the investigation has never
22 been in the building, and it could intimidate the entire
23 workforce. So I'm a familiar face.
24 Q. Now, the occasion you mentioned where you did
25 this in Gaithersburg Maryland, was this an investigation

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1 where Barry Francis was conducting the interviews?
2 A. That's the one I recall.
3 Q. Okay. So at that investigation while
4 Mr. Francis conducted interviews, you were out performing
5 distribution center functions?
6 A. Yes. I'd clarify that in that I don't believe
7 Mr. Francis was the only one, and he may not have been
8 even conducting the interviews, but he was participating.
9 Q. But while he was participating in the
10 interviews, you were out on the floor of the distribution
11 center performing distribution center functions?
12 A. Performing distribution center functions,
13 working on my laptop or whatever.
14 Q. You mentioned earlier two to three times where
15 you personally participated in conducting investigations
16 of harassment or discrimination, correct?
17 A. That's correct.
18 Q. Were any of those investigations at the
19 Gaithersburg warehouse?
20 A. Yes.
21 Q. You said two to three times. How many
22 investigations do you recall personally conducting at the
23 Gaithersburg warehouse?
24 A. There's only one that I can think of.
25 Q. On that one occasion, what were you

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1 investigating?
2 A. Complaints that had been surfaced to the
3 temporary staffing company.
4 Q. Who was the temporary staffing company?
5 A. Express Personnel.
6 Q. What were the complaints?
7 A. It was a complaint that was what I would call a
8 laundry list of issues about the management staff there at
9 the facility.
10 Q. Do you recall anything on the list?
11 A. Not right offhand.
12 Q. Who was the complaint against specifically?
13 A. I believe one person was Taj Johnson.
14 Q. Okay. He was a group lead at the Gaithersburg
15 warehouse, correct?
16 A. That is correct.
17 Q. Were there complaints against anyone other than
18 Taj Johnson?
19 A. I can't recall.
20 Q. Okay. What were the specifics of the complaints
21 against Mr. Johnson?
22 A. They were what I would categorize as
23 discrimination, creating a hostile work environment.
24 Q. Creating a hostile work environment in what way?
25 A. Attempting to intimidate employees.

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1 Q. Okay. You said discrimination. What type of
2 discrimination was he being accused of?
3 A. I believe it was probably sexual discrimination.
4 Q. Was it just one person making complaints or more
5 than one?
6 A. I believe it was one.
7 Q. Do you recall the name of that individual?
8 A. I can't remember exactly. I believe it was
9 Michelle someone.
10 Q. Michelle Despertt?
11 A. I believe that was correct.
12 MR. PHILLIPS: For the record, Despertt is
13 D-E-S-P-E-R-T-T.
14 Q. (By Mr. Phillips) Did anyone else, to your
15 knowledge, make an allegation of sexual harassment at the
16 same time as Ms. Despertt or was it just Ms. Despertt that
17 you were --
18 A. To my knowledge it was only her.
19 Q. Do you recall what she was accusing Taj of with
20 regard to sexual discrimination?
21 A. I don't recall that right offhand.
22 Q. Was she alleging that Mr. Johnson was sexually
23 harassing her in some way?
24 MS. SPEIGHTS: Objection. You can answer.
25 A. I can't remember specifically.

1 Q. (By Mr. Phillips) Did anyone else assist you in
2 that investigation?
3 A. I can't recall.
4 Q. When you personally conduct investigations, do
5 you usually have someone at Blockbuster assisting you?
6 MS. SPEIGHTS: Objection. You can answer.
7 A. In 2004/2005?
8 Q. (By Mr. Phillips) Well, let's -- have you
9 ever -- let me withdraw the question and rephrase it.
10 In any of the investigations that you have
11 personally conducted, have you had anyone from Blockbuster
12 participate in those investigations other than yourself?
13 A. Yes.
14 Q. Okay. Who were those individuals?
15 A. Generally a member of the human resources
16 department.
17 Q. Okay. Would it be a human resources person who
18 has specific responsibility for that location or just
19 someone with more general responsibility?
20 A. I really don't know what their specific
21 responsibility might have been. It could have been either
22 one of those.
23 Q. Do you recall the name Jennifer Fitzgerald?
24 A. Yes, I do.
25 Q. Is it correct to say that during the 2004/2005

1 time frame she had responsibility for human resources at
2 the Gaithersburg center?
3 A. I believe that would be correct.
4 Q. Okay. Did Ms. Fitzgerald participate with you
5 in this investigation of accusations made by Michelle
6 Despertt?
7 A. I believe Jennifer had phone discussions related
8 to it.
9 Q. Phone discussions with whom?
10 A. I know I personally had phone discussions. I
11 believe she had phone discussions with the distribution
12 center manager at that time. I can't be sure, but she may
13 have had phone discussions with other Blockbuster
14 employees that were employed at that location.
15 Q. At the time she was located here in Texas; is
16 that correct?
17 A. Yes. Her office was in Dallas.
18 Q. The distribution center manager during this time
19 frame was Lincoln Barrett; is that correct?
20 A. Yes. Of Gaithersburg?
21 Q. Yes.
22 A. Yes.
23 Q. What did -- did Ms. Fitzgerald, to your
24 knowledge, ever travel to the Gaithersburg center to
25 assist in an investigation of Ms. Despertt's allegation?

1 A. Not to my knowledge.
2 Q. Did anyone else -- strike that.
3 Did you travel to the Gaithersburg warehouse to
4 conduct an investigation of Ms. Despertt's allegation?
5 A. Yes.
6 Q. What did you do to conduct an investigation of
7 her accusation?
8 A. What did I do?
9 Q. What did you do to conduct an investigation?
10 A. While I was at the facility?
11 Q. Let's just take this temporarily. How did you
12 first become aware of her complaint?
13 A. I believe I either heard from Jennifer or June
14 Davis at Venturi Staffing.
15 Q. You don't know which one sitting here today?
16 A. Sitting here today, I don't remember which one.
17 Q. Do you recall what you were told about her
18 complaint?
19 A. I believe it was at first a verbal conversation.
20 Then it was followed up with an e-mail relating to the
21 acquisitions, but I don't remember specifically.
22 Q. An e-mail from her to someone, from Ms. Despertt
23 to someone?
24 A. I believe so, yes.
25 Q. Do you recall when you were first told about

1 this accusation?
2 A. I do not.
3 Q. After you received this information, what was
4 your next step? What did you do in response to that?
5 A. I don't recall the exact next step.
6 Q. Did you do anything regarding her complaint
7 between the time that you first became aware of it and
8 time that you traveled to the Gaithersburg warehouse to
9 conduct the investigation?
10 A. I'm pretty sure I had conversations with Cinnie
11 Brown. I'm pretty sure Jennifer and I talked about
12 appropriate questions to ask Blockbuster employees.
13 Pretty sure I got a list of full-time Blockbuster
14 employees at the site. Made travel plans to go.
15 Q. Do you specifically recall having a written list
16 of questions?
17 A. I believe so.
18 Q. Do you know where that list is now?
19 A. No, I don't.
20 Q. Do you know what you did with it when you were
21 done with it?
22 A. What I did with...
23 Q. Did you discard -- for example, did you discard
24 it? Did you put it in a file? Did you provide it to
25 human resources? What did you do with it?

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1 MS. SPEIGHTS: Objection. You can answer.
2 Q. (By Mr. Phillips) You can answer.
3 A. The list of questions, to the best of my
4 recollection, were probably discarded after I summarized
5 and put things into a corrective action.
6 Q. Okay. So now you've traveled to the
7 Gaithersburg warehouse. What was your next step when you
8 got to the Gaithersburg warehouse? What did you do?
9 A. I don't remember specifically what the next step
10 was or the first thing I did. Probably met with Lincoln
11 to inform him of why I was there.
12 Q. What did you do after that?
13 A. As best I recall, my objective there was to talk
14 to our Blockbuster full-time employees.
15 Q. So did you conduct interviews of any of the
16 employees?
17 A. I believe so.
18 Q. How many?
19 A. I can't recall.
20 Q. Which employees?
21 A. I can't recall.
22 Q. What did you ask them?
23 A. I don't remember the specific questions. They
24 were geared at understanding the environment of the
25 workplace, understanding who they felt like counseled them

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1 when they didn't perform or when people didn't perform
2 correctly. I also inquired as to whether they had seen or
3 observed any threatening actions.
4 Q. Did you ask them whether they had experienced or
5 observed any conduct of a sexual nature?
6 A. I don't believe so.
7 Q. Why didn't you ask them that?
8 A. Because if I put it in a term like that, I might
9 lead them to assume something.
10 Q. So they might invent something having to do with
11 sexual harassment when it didn't actually happen?
12 A. They could.
13 Q. So you just asked them generally about the work
14 environment, how it was?
15 A. Generally.
16 Q. Okay. In not asking them specifically about
17 whether they had seen or observed any conduct of a sexual
18 nature -- experienced or observed any conduct of a sexual
19 nature, were you following what you understood to be your
20 Blockbuster training on conducting investigations?
21 MS. SPEIGHTS: Objection.
22 A. I was following the list of questions between
23 Jennifer and I we had developed.
24 Q. (By Mr. Phillips) Did you take any notes of
25 your interviews?

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1 A. I believe so.
2 Q. Did you take notes of all of your interviews?
3 A. I couldn't say they were necessarily all.
4 Q. What did you do with the notes?
5 A. Honestly, I don't recall. They could have at
6 some time been discarded.
7 Q. Did you -- during this time frame, did you
8 maintain a file regarding any investigations that you
9 conducted?
10 MS. SPEIGHTS: Objection.
11 Q. (By Mr. Phillips) You can answer.
12 MS. SPEIGHTS: I don't think we've
13 established that, Ron. I want to be fair here that we
14 have an accurate record. You have not established that he
15 had conducted any other investigations during this time
16 period.
17 MR. PHILLIPS: Okay. Now that we're done
18 with your speaking objection, we can go on with my
19 question.
20 MS. SPEIGHTS: Then I'll just make the
21 objection and just have the record the way you want it.
22 Objection.
23 MR. PHILLIPS: That's fine.
24 A. Can you repeat the question.
25 Q. (By Mr. Phillips) Sure. Let me ask you this.

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1 Have you ever put together an investigative file of an
2 investigation that you've conducted related to harassment
3 or discrimination?
4 A. No.
5 Q. Do you have any -- what do you generally do with
6 your notes and interviews that you conduct during these
7 investigations?
8 MS. SPEIGHTS: Objection.
9 Q. (By Mr. Phillips) You can answer.
10 A. I wouldn't say I generally do anything with
11 them.
12 Q. What have you done in the past with notes of
13 interviews you've conducted regarding internal
14 investigations of sexual -- well, of any harassment or
15 discrimination?
16 A. Sometimes the notes are either kept in a file or
17 turned over to HR or discarded. It just depends.
18 Q. What did you do with your notes of these
19 interviews regarding the Desperett accusation?
20 MS. SPEIGHTS: Objection, asked and
21 answered. You can answer again.
22 A. I don't recall.
23 Q. (By Mr. Phillips) In the course of conducting
24 that investigation, did you interview Mr. Johnson?
25 A. I can't recall.

<p style="text-align: right;">Page 37</p> <p>1 Q. Did you interview Michelle Despertt? 2 A. I don't believe so. 3 Q. Why didn't you interview Michelle Despertt? 4 A. I only interview Blockbuster employees. 5 Q. What was your understanding of Ms. Despertt's 6 status at that time? 7 A. My understanding was she had been employed by 8 Express Personnel. 9 Q. She was the one that was making the accusation, 10 correct? 11 A. Ms. Despertt? 12 Q. Yes. 13 A. Yes. 14 Q. Didn't you think it was relevant to get 15 information from her about the nature of her accusation? 16 MS. SPEIGHTS: Objection. You can answer. 17 A. Did I feel like it was relevant -- 18 Q. (By Mr. Phillips) Did you feel like it was 19 relevant to question her about what she was complaining 20 about? 21 A. I had a recap of her complaint, and her employer 22 interviewed her. 23 Q. Who gave you the recap? 24 A. Again, it either came from Jennifer or June. 25 Q. Describe it for me. What was the recap? First</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. Did you ask Ms. Brown what questions she asked 2 Ms. Despertt? 3 A. Not to my knowledge. 4 Q. Did you get -- receive any information from any 5 source regarding Ms. Brown's opinion, if any, concerning 6 Ms. Despertt's credibility? 7 A. Her credibility? 8 Q. Yes. Do you know if -- strike that. 9 Do you know if anybody attempted to assess 10 Ms. Despertt's credibility by questioning her? 11 A. Not to my knowledge. I don't know. 12 Q. Did you review any documents other than the ones 13 you've already testified to as part of your investigation 14 of Ms. Despertt's accusation? 15 MS. SPEIGHTS: Objection. You can answer. 16 A. I can't say for sure. 17 Q. (By Mr. Phillips) Let's go back. You received 18 a recap by e-mail, correct? 19 A. Which recap? 20 Q. A recap of Ms. Despertt's allegations. 21 A. Yes. 22 Q. And you had a list of questions that you asked, 23 correct? 24 A. That I asked while I was at the facility? 25 Q. Correct.</p>
<p style="text-align: right;">Page 38</p> <p>1 of all, in what form was it? 2 A. I believe it was in e-mail form. 3 Q. Do you recall how long this e-mail was? 4 A. Roughly a page or three-fourths of a page maybe. 5 Q. I think we've already talked about you don't 6 remember the specifics of what's in it beyond what you've 7 already testified, correct? 8 A. Correct. 9 Q. Do you know who specifically questioned 10 Ms. Despertt about her accusations if it was not you? 11 A. I believe Cinnie Brown and her had a 12 conversation. 13 Q. Do you know how long that conversation was? 14 A. No, I do not. 15 Q. Did you ask at the time? 16 A. No, I did not. 17 Q. Did -- do you know what questions that Ms. Brown 18 asked Ms. Despertt? 19 A. No, I did not. 20 Q. At the time, did you have any information in 21 that regard? 22 A. In what regard? 23 Q. To what questions Ms. Brown was asking 24 Ms. Despertt. 25 A. Not to my knowledge.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes. 2 Q. Apart from those documents, did you look at any 3 other documents as part of your investigation? 4 A. I can't be for sure. 5 Q. Have you had a practice in any of your other 6 investigations of reviewing documents as part of the 7 investigation, any documents? 8 MS. SPEIGHTS: Objection. You can answer. 9 A. Depending upon the investigation, there may be a 10 lot of different document. 11 Q. (By Mr. Phillips) What categories of documents 12 have you reviewed in the past in any of your 13 investigations? 14 A. In any investigation? 15 Q. Yes. What -- can you just list them for me? 16 What are the categories of documents you have reviewed as 17 part of your investigations? 18 MS. SPEIGHTS: Harassment and 19 discrimination investigations? 20 MR. PHILLIPS: That's what we're talking 21 about, yes. 22 MS. SPEIGHTS: Then it should be in the 23 question. 24 A. That's what I was confused about. So harassment 25 and discrimination?</p>

<p style="text-align: right;">Page 41</p> <p>1 Q. (By Mr. Phillips) Yes. I don't think we've 2 this morning been talking about investigations of any 3 universe of things. The context is we're talking about 4 investigations of harassment or discrimination. 5 A. Okay. 6 Q. So what other type of documents? 7 A. I probably was answering the question relating 8 to any investigation. So I can't recall any other 9 documents being reviewed. 10 Q. Okay. Have you in the past reviewed 11 investigative files regarding other people who've made 12 accusations against the same person? Have you done that? 13 MS. SPEIGHTS: Objection. 14 Q. (By Mr. Phillips) That's a bad question. Let 15 me withdraw it and rephrase it. 16 In the past, in any investigation of harassment 17 or discrimination, have you inquired of anyone whether 18 there were any files pertaining to the individual being 19 accused of other complaints? 20 MS. SPEIGHTS: Objection. 21 Q. (By Mr. Phillips) You can answer. 22 A. Can I clarify are we talking about this 23 investigation? 24 Q. We're speaking about -- I'm asking you whether 25 you have sought information or specifically reviewed files</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. I'm not asking you to guess today. 2 A. Okay. 3 Q. You don't recall whether you interviewed 4 Mr. Johnson as part of an investigation? 5 A. I can't recall specifically. I can't imagine 6 that I wouldn't have talked to him. 7 Q. But today you have no specific recollection of 8 that? 9 A. That's correct. 10 Q. All right. Did you do anything else as part of 11 this investigation after you conducted these interviews of 12 full-time Blockbuster employees? 13 A. Did I do anything else? Yes. I know I recapped 14 my assessment in the form of -- I believe it was an e-mail 15 document. 16 Q. Okay. Anything else? 17 A. As a result of that, administered some 18 corrective actions where I felt required and where HR 19 agreed with me. 20 Q. Did you draw any conclusions concerning whether 21 Ms. Despertt's allegations of sexual discrimination were 22 substantiated or not? 23 A. My conclusion was that it wasn't. 24 Q. And what facts did you base that conclusion on? 25 A. The discussions I had with other employees at</p>
<p style="text-align: right;">Page 42</p> <p>1 concerning other investigations of the same person. 2 MS. SPEIGHTS: Objection. You can answer. 3 A. I can't recall. 4 Q. (By Mr. Phillips) Okay. Have you ever -- has 5 Blockbuster ever provided you with any training in which 6 they have told you that past allegations against the 7 person that's being presently accused are considered 8 relevant evidence potentially? 9 MS. SPEIGHTS: Objection. You can answer. 10 A. I know that past allegations can be -- I don't 11 know whether I received training on that or how, but I 12 know that. 13 Q. (By Mr. Phillips) Okay. Let's go back to 14 Ms. Despertt then. As part of your investigation related 15 to Ms. Despertt, did you inquire of anyone at Blockbuster 16 concerning whether Thomas Johnson had been accused of 17 sexual discrimination, as you say it, in the past? 18 A. I can't recall. Probably maybe we had a 19 discussion. I might have had a discussion with Linc. 20 Q. You say maybe. Can you testify with reasonable 21 certainty that you did that today or are you -- 22 A. No. 23 Q. Okay. I just want to make clear you're not 24 guessing here. 25 A. Okay.</p>	<p style="text-align: right;">Page 44</p> <p>1 that time. 2 Q. And you don't recall how many employees you 3 interviewed? 4 A. I don't. 5 Q. Do you recall -- did you interview any females? 6 A. I can't recall. The majority of the workforce 7 there was female at that time. 8 Q. All right. At any point, have you been asked by 9 anyone to make a search of files that you maintain to 10 determine whether or not you have any documents pertaining 11 to this investigation of Michelle Despertt's allegation? 12 A. Yes. 13 Q. What were the results of your search? 14 A. Predominantly I found e-mail communications, 15 Word documents, I believe some copies of corrective 16 actions, those types of things. 17 Q. What type of Word documents? 18 A. I think possibly like an action plan that had 19 been developed or that actually Lincoln Barrett had 20 developed. That's the one that I can think of firsthand. 21 Q. Okay. 22 MR. PHILLIPS: This will be Collen 23 Exhibit 1. 24 (Exhibit 1 marked) 25 Q. (By Mr. Phillips) Let just go ahead and take a</p>

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1 look at that, Mr. Collen. Read it, and let me know when
2 you're done, please.
3 MR. PHILLIPS: For the record, this has
4 been marked Collen Exhibit 1. It's Bates
5 No. Blockbuster 001608. It was previously marked as
6 Francis 3.
7 A. Okay.
8 Q. (By Mr. Phillips) Having reviewed Collen
9 Exhibit 1, do you recognize it?
10 A. Yes.
11 Q. What is it?
12 A. It's an e-mail to Jennifer Fitzgerald that I put
13 together following the visit to the Maryland facility.
14 Q. Okay. So is this the recap that you testified
15 earlier to that you prepared after conducting interviews?
16 A. I believe that would be correct.
17 Q. Okay. Did you prepare an investigative
18 report -- setting aside this document, did you prepare any
19 other investigative report concerning your investigation
20 into Michelle Despertt's allegation?
21 A. Not to my recollection.
22 Q. Let's take a look at the second -- first of all,
23 strike that.
24 Why were you submitting this recap to Jennifer
25 Fitzgerald?

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1 A. To provide her an update of my assessment of the
2 situation.
3 Q. But why were you providing this to Jennifer
4 Fitzgerald as opposed to someone else at Blockbuster?
5 A. She was the human resources contact that I
6 worked through at that time.
7 Q. Did you provide a copy of this recap to anyone
8 other than Jennifer Fitzgerald?
9 A. I can't recall.
10 Q. Have you reported -- strike that.
11 Second paragraph, first line, go ahead and read
12 the first sentence for me, please.
13 A. Is that where it starts I have.
14 Q. Yes.
15 A. I have spent the morning talking, investigating
16 and counseling both Taj and Linc on the issues forwarded
17 to us by Cinnie.
18 Q. Does that sentence then refresh your
19 recollection as to whether you interviewed Mr. Johnson?
20 A. It would look like I did.
21 Q. Would you agree with me that it looks like you
22 also interviewed Mr. Barrett?
23 A. That would be connect.
24 Q. Does this refresh your recollection as to
25 anything that Mr. Johnson told you during that interview?

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1 A. No.
2 Q. Okay. Now, at the end of the sentence it says
3 on the issues forwarded to us by Cinnie. Does this -- is
4 this referencing the recap that you said you received from
5 somebody? Is that what that is talking about there?
6 A. I believe at that time I'm referencing the
7 recap.
8 MR. PHILLIPS: This will be Collen 2.
9 (Exhibit 2 marked)
10 Q. (By Mr. Phillips) Go ahead and read Collen
11 Exhibit 2. Let me know when you're done.
12 A. Okay.
13 Q. I wanted to ask you, Mr. Collen, have you ever
14 seen an e-mail containing -- starting with the From
15 mdespertt line? Do you see that, like the third line
16 down?
17 A. Yes.
18 Q. I'll mark the exhibit where I'm talking about.
19 A. Okay.
20 Q. Sort of reading down, including the text of the
21 e-mail, have you ever received a written description that
22 contained these words?
23 A. Have I ever seen this e-mail before.
24 Q. Yes, sir.
25 A. Yes, I believe so.

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1 Q. Was this the e-mail that was forwarded to you by
2 Cinnie Brown?
3 A. I don't believe it was forwarded to me by Cinnie
4 Brown.
5 Q. Okay. Was it forwarded to you by anybody?
6 A. I believe it was forwarded to me by either June
7 Davis or Jennifer Fitzgerald.
8 Q. When was it forwarded to you by June Davis or
9 Jennifer Fitzgerald?
10 A. I couldn't tell you.
11 Q. Is it fair to say that it was during the same
12 time frame as March 7th, 2005?
13 A. Obviously it would have to be after that, but I
14 would think it would be sometime after that.
15 Q. But it was forwarded to you before you conducted
16 your investigation at the Gaithersburg warehouse?
17 A. I believe so.
18 Q. Having read Collen Exhibit 2, does this refresh
19 your recollection now as to the specifics of the
20 allegations that were being made by Michelle Despertt
21 against Thomas Johnson?
22 A. Yes.
23 Q. Okay. Having read Collen Exhibit 2 -- first of
24 all, let's go down to -- you see almost toward the end
25 there's a reference to Say Wing? Do you see that?

<p style="text-align: right;">Page 49</p> <p>1 A. Yes.</p> <p>2 Q. To your knowledge, was Say Wing an employee --</p> <p>3 strike that.</p> <p>4 Did Say Wing work at the Gaithersburg warehouse?</p> <p>5 A. During this time, I believe she did.</p> <p>6 Q. Okay. Did you interview Say Wing?</p> <p>7 A. I'm not sure.</p> <p>8 Q. Did you ever ask anyone, and not just at</p> <p>9 Blockbuster, but anybody whether Ms. Despertt had any</p> <p>10 witnesses to these actions she's making?</p> <p>11 A. I believe I did of Cinnie Brown, yes.</p> <p>12 Q. What was Cinnie Brown's response?</p> <p>13 A. I believe she interviewed several of her</p> <p>14 employees and found no one that could say that they</p> <p>15 witnessed any of these things.</p> <p>16 Q. Do you know which employees she interviewed?</p> <p>17 A. I do not.</p> <p>18 Q. Did you know at the time?</p> <p>19 A. I don't believe so. I don't believe I asked</p> <p>20 names.</p> <p>21 Q. Did you ask Ms. Brown whether she interviewed</p> <p>22 anyone who was identified by Ms. Despertt as a witness?</p> <p>23 A. I did not ask Cinnie Brown.</p> <p>24 Q. Did you ask anyone whether any persons</p> <p>25 identified as witnesses by Michelle Despertt were</p>	<p style="text-align: right;">Page 51</p> <p>1 sexual nature.</p> <p>2 MS. SPEIGHTS: Objection. The question</p> <p>3 will speak for itself.</p> <p>4 A. Okay. The only thing I would say is I'd clarify</p> <p>5 it as I did not ask anyone if they had experienced sexual</p> <p>6 harassment.</p> <p>7 Q. (By Mr. Phillips) Okay. There's -- I want to</p> <p>8 go down here to starting in the second third of the</p> <p>9 document. It's the sentence starting with --</p> <p>10 A. He wanted me.</p> <p>11 Q. -- he. I'll read it to you. He one day made a</p> <p>12 remark that this was the best seat in the house because he</p> <p>13 was sitting right in front of the tables and us, the</p> <p>14 employees, mostly women, were sitting at the table. He</p> <p>15 was looking right between our legs.</p> <p>16 Do you know if you or anybody else specifically</p> <p>17 asked female employees if he had done that, Taj had done</p> <p>18 that?</p> <p>19 A. I don't believe so.</p> <p>20 Q. Do you know if you or anyone else specifically,</p> <p>21 next line, asked whether he -- it says here he also</p> <p>22 questioned me about wearing push-up bras.</p> <p>23 Do you know if you or anyone else specifically</p> <p>24 asked any employees whether he'd made comments about</p> <p>25 push-up bras?</p>
<p style="text-align: right;">Page 50</p> <p>1 interviewed?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. Looking here at, again, Ms. Despertt's</p> <p>4 accusations, did you ask any of the employees that you</p> <p>5 interviewed at the Gaithersburg warehouse specifically</p> <p>6 about Ms. Despertt's accusations, any of them that are</p> <p>7 listed in here?</p> <p>8 A. Can you repeat the question?</p> <p>9 Q. Sure. Did you ask any employees any specific</p> <p>10 questions as to the allegations that Ms. Despertt was</p> <p>11 making here?</p> <p>12 A. I definitely remember asking about smelling of</p> <p>13 alcohol on one's breath. I believe one of the questions</p> <p>14 or things that I asked people was if they'd ever been</p> <p>15 subject of like a comment or one of like sexual in nature</p> <p>16 or of maybe it was intimidating of nature.</p> <p>17 Q. Do you know that -- do you have specific</p> <p>18 recollection of asking people that today?</p> <p>19 A. I can't remember exactly how the question was</p> <p>20 framed.</p> <p>21 Q. Earlier in your testimony you said that you</p> <p>22 didn't ask any questions specific to sexual.</p> <p>23 A. To sexual harassment.</p> <p>24 Q. I believe the way the question was framed was</p> <p>25 whether they had experienced or observed anything of a</p>	<p style="text-align: right;">Page 52</p> <p>1 A. I don't recall.</p> <p>2 Q. Again, this portion that references Say Wing</p> <p>3 down here, he asked Say Wing have she ever had any big</p> <p>4 black dick.</p> <p>5 Did you or anyone else to your knowledge ask any</p> <p>6 of the workers any questions about whether Mr. Johnson</p> <p>7 made statements about his penis or any penis?</p> <p>8 A. I don't believe -- no.</p> <p>9 Q. Back up. I'm skipping around here. After the</p> <p>10 bras, question mark, do you see where it starts, not</p> <p>11 capitalized, but and one day?</p> <p>12 A. Yes.</p> <p>13 Q. And one day I was in a room -- well, there's a</p> <p>14 misspelling -- cleaning DVDs, and he came in, closed the</p> <p>15 door and said I got you now. He walked up behind me,</p> <p>16 grabbed my hips from each side with both hands and started</p> <p>17 pumping me from behind. I'd asked him to stop three times</p> <p>18 before he let me go and then I moved around him and opened</p> <p>19 back up the door.</p> <p>20 Do you know whether Cinnie Brown concluded that</p> <p>21 Ms. Despertt was credible in making that accusation?</p> <p>22 A. I don't know what Ms. Brown thought.</p> <p>23 Q. Did you ask her?</p> <p>24 A. I don't recall.</p> <p>25 Q. And you did not interview Ms. Despertt, correct?</p>

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1 A. That is correct.

2 Q. Would you agree with me that this worker here is

3 making an allegation of not just sexual harassment but a

4 physical assault?

5 MS. SPEIGHTS: Objection.

6 A. I can't tell testify to what would be physical

7 assault or not.

8 Q. (By Mr. Phillips) But you understand from the

9 sentences that I read to you that she was grabbed in a

10 sexual way.

11 MS. SPEIGHTS: Objection/SH.

12 Q. (By Mr. Phillips) She's making the allegation.

13 A. I understand there's an allegation.

14 Q. Okay. Didn't you think that was something you

15 needed to talk to her about?

16 A. Did I think I needed to talk to her?

17 Q. Don't you think that's a serious allegation?

18 MS. SPEIGHTS: Objection.

19 A. I, in my position with Blockbuster, had a vendor

20 that was responsible for talking to their employee and

21 gaining the understanding of what they experienced.

22 Q. (By Mr. Phillips) Did you ever inquire of

23 Express what Cinnie Brown's qualifications were to conduct

24 investigations of sexual harassment?

25 A. No.

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1 Q. Do you know if anybody at Blockbuster made such

2 an inquiry?

3 A. I have no idea if anyone did.

4 Q. Did you ever receive any verbally or in writing,

5 including e-mail, any recap from -- strike that.

6 Did you ever receive any information from

7 Ms. Brown that detailed exactly what she was told by the

8 individuals that she interviewed?

9 A. I can't remember if I received anything.

10 Q. Did you ever receive anything in summary form

11 from anyone concerning what Ms. Brown was told when she

12 interviewed people?

13 A. I can't recall.

14 Q. Do you recall ever asking for either the

15 specifics of what she was told or at least a summary?

16 A. I believe I recall asking Cinnie or through June

17 and having June ask Cinnie to document or have the

18 employee document their concerns, either Cinnie or the

19 employee -- her employee document the concerns.

20 Q. You're referring to Ms. Despertt -- to have

21 Ms. Despertt document her allegations?

22 A. Or any. Not just Ms. Despertt.

23 Q. Do you know if that was ever done, if the people

24 she interviewed documented what they said?

25 A. Not to my knowledge.

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1 MR. PHILLIPS: We've been going an hour an

2 20 minutes. Let's go ahead and take a break.

3 (A break was taken).

4 Q. (By Mr. Phillips) Back from our break,

5 Mr. Collen. I want today ask you a few questions about

6 these Exhibits 1 and 2. Let's look at Exhibit 1 again,

7 this e-mail you sent to Ms. Fitzgerald.

8 A. Okay.

9 Q. Going to the second line in the second

10 paragraph, could you read that sentence, please? It

11 starts with it is my.

12 A. It is my opinion that given the dynamics

13 involved, the true story lies somewhere between both

14 accounts, open parentheses, Taj and Michelle Despertt,

15 close parentheses.

16 Q. The true story lies somewhere between both

17 accounts. What true story are you referencing there?

18 What was your conclusion as to the true story?

19 A. The conclusion I came to was that not all of the

20 allegations that Michelle Despertt made were probably

21 accurate.

22 Q. Which allegations did you believe were probably

23 accurate? You can make reference to Exhibit 2, if you

24 need to.

25 A. In general I would say creating a hostile

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1 situation in the workplace.

2 Q. Hostile in what way?

3 A. Taj yelling at employees.

4 Q. Anything else as far as hostility in the

5 workplace?

6 A. That's probably it.

7 Q. Were there any other aspects of Ms. Despertt's

8 accusations that you believe were probably correct?

9 A. Not to my recollection.

10 Q. So is it fair to say that you concluded as of

11 this date, this e-mail, that Ms. Despertt's allegations

12 regarding specifically sexual harassment were untrue?

13 A. Can you repeat the question?

14 Q. Yes. So did you conclude then that

15 Ms. Despertt's allegations that were specifically sexual

16 harassment in nature were untrue?

17 MS. SPEIGHTS: Objection. You can answer.

18 Q. (By Mr. Phillips) You can answer.

19 A. I can't be for sure that I would say that.

20 Q. Did you conclude that they were not sufficiently

21 substantiated?

22 A. I concluded by talking to several employees that

23 there was not enough employees that felt like that type of

24 concern existed.

25 Q. How many would have been enough?

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1 interview any employees?
2 MS. SPEIGHTS: Objection. Asked and
3 answered.
4 A. Yes, I did.
5 Q. (By Mr. Phillips) Do you know why the results
6 of those interviews are not discussed in this e-mail?
7 A. I would say that they are discussed in the first
8 sentence. Talking, investigating.
9 Q. Let me be more specific. Can you tell me why
10 the results of any -- I'm sorry. Strike that.
11 Can you tell me why any feedback from employees
12 other than Mr. Johnson and Mr. Barrett are not referenced
13 in this e-mail?
14 A. No.
15 Q. And you don't have the notes of those
16 interviews?
17 A. No.
18 Q. Have you ever received any instruction from
19 anyone at Blockbuster concerning how long you should
20 retain documents that you compile during the course of a
21 harassment or discrimination investigation?
22 A. No.
23 Q. See the first number, No. 1 there in Exhibit 1?
24 A. Yes.
25 Q. Can you read both sentences there, please?

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1 A. A written warning is being drafted by Linc for
2 Taj related to both sexual harassment and his demeanor
3 toward employees and temps during the workday. I should
4 have that to you for review by early Friday AM.
5 Q. Did Mr. Barrett draft the written warning that's
6 referenced in this Exhibit No. 1?
7 A. Yes, to my knowledge.
8 Q. Did you review it?
9 A. Yes, to my knowledge.
10 Q. Was it forwarded to Ms. Fitzgerald for her
11 review?
12 A. Yes, I believe it was.
13 Q. Okay. Did you have any discussions with -- did
14 anyone, to your knowledge, have any discussions with
15 Ms. Fitzgerald directly concerning that document?
16 A. Yes, I believe so.
17 Q. Who did?
18 A. I'm fairly certain I did. I can't say for sure,
19 but I would guess that Linc did.
20 Q. Were those communications verbal or were they in
21 some written form?
22 A. Mine would have been verbal. This would have
23 probably been the only written to Ms. Fitzgerald.
24 Q. What did the two of you talk about in
25 relationship to the written warning drafted by Mr. Barrett

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1 for Mr. Johnson?
2 A. Probably would have just been any questions or
3 concerns she had with particular wording.
4 Q. Sitting here today, do you have any specific
5 recollection of that communication?
6 A. No.
7 Q. Okay. Did you discuss the written warning with
8 Mr. Barrett?
9 A. I believe so.
10 Q. Do you have any recollection of what the two of
11 you talked about during that discussion?
12 A. No.
13 Q. Why were you reviewing that document?
14 A. Because I was there and involved in looking into
15 the allegations.
16 Q. And you were Mr. Barrett's direct supervisor?
17 A. That's correct.
18 Q. Next line -- next enumerated item down, can you
19 read that, please, both sentences?
20 A. A written warning is being drafted by myself for
21 Linc related to performance ensuring that a positive work
22 environment exist in the workplace. Additionally, he must
23 ensure that GL's -- that's G-L's -- are not involved in
24 disciplinary, termination nor corrective actions with any
25 employees, full time or temporary.

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1 Q. Okay. So did you ultimately draft a written
2 warning for Mr. Barrett?
3 A. Yes, I did.
4 Q. I take it from this then that you were warning
5 him that he needed to -- that as a distribution center
6 manager, he needed to ensure that a positive work
7 environment existed in the workplace.
8 A. Yes. That would be correct.
9 Q. Because as a distribution center manager, that
10 was part of his job, correct?
11 A. That would be correct.
12 Q. By the way, during this time frame of 2005 --
13 2004/2005, was there a complaint procedure for employees
14 of Blockbuster to register complaints of harassment or
15 discrimination internally?
16 A. Yes.
17 Q. Can you tell me what that procedure was?
18 A. They have several options.
19 Q. What were their options?
20 A. To raise the issue to a manager, to call a
21 member of the HR team if they knew that person and knew
22 the phone number. We have an employee hot line that can
23 be called. Those are the three main ways that I can think
24 of.
25 Q. When you referenced make a complaint to a

<p style="text-align: right;">Page 65</p> <p>1 manager, you're referencing someone in Mr. Barrett's 2 position, a distribution center manager? 3 A. Or myself. 4 Q. Any other managers? 5 A. Not that I can think of. 6 Q. Okay. Is it your understanding that -- strike 7 that. 8 Once a distribution center manager during this 9 time frame received a complaint of harassment or 10 discrimination, according to Blockbuster policy, what were 11 they supposed to do with that complaint? 12 A. I wouldn't say there was a Blockbuster policy 13 that requires what that manager does. 14 Q. Okay. What was -- in your experience, what have 15 Blockbuster managers done when they've received an 16 internal complaint of harassment or discrimination? 17 A. Our managers -- 18 Q. Specifically distribution center managers. 19 A. Our managers are asked to work with their HR 20 support person related to that to inform them. 21 Q. Okay. So they have to tell -- somebody like 22 Mr. Barrett has to tell HR? 23 A. DC manager should tell HR. 24 Q. Do they have to communicate that information to 25 you also?</p>	<p style="text-align: right;">Page 67</p> <p>1 what I call hour by hour needs throughout the different 2 processes. So making sure the right quantity of employees 3 are in the right area within the distribution center at a 4 time to accomplish the day's work. 5 Q. That would include, for example, directing 6 employees to do various kinds of tasks or how to do those 7 tasks, correct? 8 A. How to do the task would be training, yes. What 9 to do would be telling them or moving them from one 10 assignment to another one, yes. 11 Q. Let's go down to the next sentence. When I 12 called Cinnie to give her an update, she requested the 13 following in writing: No. 1, written statement related to 14 the SH charge from Taj; No. 2, written statement related 15 to the SH charge from Linc; No. 3, a list of actions that 16 BB was taking related to this issue. She mentioned SH 17 training for Taj and/or Linc as an example. 18 Then the next line down, I told Cinnie that her 19 request was beyond my ability to make the decision as to 20 what information we would or would not share with a 21 staffing firm. I suggested that she make the request for 22 information to June and that at the same time I would 23 alert you to the fact that the request had been made. 24 Do you know if Ms. Brown ever received the 25 information she requested there?</p>
<p style="text-align: right;">Page 66</p> <p>1 A. Not necessarily. 2 Q. The main thing is to get HR involved? 3 A. That is correct. 4 Q. Okay. This reference to GLs in the second 5 sentence, that's group leads, correct? 6 A. That would be correct. 7 Q. So the group leads at the time of this e-mail in 8 Gaithersburg would have been Mr. Johnson and Kofi Tutu; is 9 that correct? 10 A. I believe that's correct. 11 Q. What's the problem with group leads being 12 involved in disciplinary, termination or corrective 13 actions with employees? 14 A. Why do we not allow that? 15 Q. Yes, sir.. 16 A. Group leads are an hourly employee and not 17 considered a member of management. 18 Q. What are the duties of a group lead? Again, 19 we're talking about the 2004/2005 time frame. 20 A. Generally speaking, they were responsible for 21 training employees or temporary employees. I believe they 22 helped transport mail to and from the postal service. 23 They provided quality inspections of the work flow. They 24 were able to perform any task within the distribution 25 center. They provided a general direction of managing</p>	<p style="text-align: right;">Page 68</p> <p>1 A. I have no idea. 2 Q. Did you have any discussion with anyone at 3 Blockbuster or at Express Personnel or at Venturi 4 concerning whether Ms. Brown would receive that 5 information? 6 A. Other than this e-mail, I don't recall. 7 Q. Whose authority is it to determine whether she 8 would receive information she requested? 9 A. I don't know. 10 Q. Do you know why she was requesting that 11 information? 12 A. I do not. 13 Q. Did you ever have any discussions with her 14 regarding this request she made? 15 A. Well -- 16 Q. Other than what's reflected -- 17 A. Other than what's reflected here, I don't 18 believe so. 19 Q. Okay. Did you provide anyone with any copies of 20 the notes that you made of the interviews you conducted at 21 the Gaithersburg warehouse related to the Michelle 22 Despertt complaint? 23 A. I'm not sure. 24 Q. Have you ever provided copies of your notes to 25 anyone concerning investigations of harassment or</p>

<p style="text-align: right;">Page 69</p> <p>1 discrimination that you've conducted? 2 A. I can't recall. 3 Q. Do you know if there's any procedure at 4 Blockbuster regarding providing copies of those kinds of 5 documents to other people at Blockbuster? 6 A. I don't know what procedures exist related to 7 that. 8 MR. PHILLIPS: We'll call this Collen 9 Exhibit 3. 10 (Exhibit 3 marked) 11 MR. PHILLIPS: For the record, Collen 12 Exhibit 3 was previously marked as Francis 4. 13 Q. (By Mr. Phillips) Go ahead and take a look at 14 that, Mr. Collen. Read it, and let me know when you're 15 done. 16 A. Okay. 17 Q. Do you recognize this document, Mr. Collen? 18 A. Yes, I believe so. 19 Q. What is it, please? 20 A. It's an e-mail communication between myself and 21 Cinnie Brown. 22 Q. Concerning? 23 A. I believe it was concerning a request -- 24 concerning the e-mail that Michelle Desperrt sent to 25 Cinnie on June 28th of '05.</p>	<p style="text-align: right;">Page 71</p> <p>1 A. Yes, I believe so. 2 Q. Did you provide copies of this Michelle Desperrt 3 e-mail to anyone? Strike that. Anyone other than the CCs 4 noted at the top of Collen Exhibit 3. 5 A. Other than Jennifer Fitzgerald, Barry Francis 6 and Brian Hand? 7 Q. Yes, sir. 8 A. I could have provided this at the request of the 9 HR department when they asked for all information 10 pertaining to this set of events. 11 Q. Did they ask for that? Did HR ask for all 12 documents pertaining to this set of events? 13 A. Yes. 14 Q. When did they ask for that? 15 A. I don't recall the exact date. 16 Q. Was it shortly after this set of e-mails in late 17 June 2005? 18 A. I don't believe so. 19 Q. Was it within the last year? 20 A. It could be within the last year. It might have 21 even been prior to that. 22 Q. How long did you keep your notes of the 23 interviews that you did at the Blockbuster warehouse? 24 A. The ones. 25 Q. The ones --</p>
<p style="text-align: right;">Page 70</p> <p>1 Q. Okay. So you're -- concerning the e-mail she 2 sent to Ms. Brown that is reflected at the bottom of this 3 string with the heading sent Tuesday, June 28, 2005? 4 A. Correct. 5 Q. Okay. Did you have any -- as a result of this 6 e-mail, did you have any verbal conversations with anyone 7 either inside or outside Blockbuster concerning 8 Ms. Desperrt's allegations? 9 A. I can't be for sure. I don't recall. 10 Q. In looking down at the bottom, the June 28th 11 portion of this e-mail string we were referencing, second 12 paragraph, it looks like about the second sentence in, it 13 says: I have hired an attorney, and he is asking for this 14 information. I am pursuing my own case of sexual 15 harassment against Mr. Jefferson, Blockbuster and the 16 company you are employed with, if I have to. 17 Do you recall reading this portion of her e-mail 18 at the time? 19 A. I believe so. 20 Q. Did you understand from this portion of her 21 e-mail that Ms. Desperrt was threatening Blockbuster with 22 litigation? 23 A. I believe that would be the intent. 24 Q. Was that your understanding at the time that she 25 was threatening a sexual harassment case?</p>	<p style="text-align: right;">Page 72</p> <p>1 A. -- in March? 2 Q. Yes, sir. 3 A. I don't recall. 4 Q. Do you have any practice as to how long you keep 5 those kinds of notes? 6 A. I don't have a practice. 7 Q. How long have you kept those notes in the past 8 regarding other investigations? 9 A. Various amounts of time. 10 Q. Okay. Is there any set of factors that you 11 consider in deciding how long to keep those or 12 considerations you might have in deciding how long to keep 13 those notes? 14 A. If an employee is no longer with the company and 15 it related to their employment, I might not keep them. 16 Just a variety of reasons. 17 Q. Have you ever received any training from 18 Blockbuster concerning what to do with documents that 19 relate to someone who is threatening Blockbuster with 20 potential litigation for sexual harassment or some other 21 form of discrimination? 22 A. Can you repeat the question? 23 Q. Yes, sir. Have you ever received any training 24 from Blockbuster concerning what to do with records, 25 specifically investigative records, pertaining to an</p>

<p style="text-align: right;">Page 73</p> <p>1 individual who has stated that they intend to bring a case 2 against Blockbuster for harassment or discrimination? 3 MS. SPEIGHTS: Objection. You can answer. 4 Q. (By Mr. Phillips) You can answer. 5 A. I don't believe I've received instruction. 6 Q. Okay. Have you ever been made aware by 7 anyone -- strike that. 8 Was there any further investigation conducted 9 related to Michelle Despertt's allegations after you 10 drafted Collen Exhibit 1, the recap? 11 A. Not to my knowledge. 12 Q. So there was no further investigation conducted 13 in response to Collen Exhibit 3, specifically the Michelle 14 Despertt e-mail portion? 15 A. No. 16 Q. Okay. Do you know -- do you see in the middle 17 of this document it says sent from Cinnie Brown to 18 Michelle Despertt, 6/29/05? 19 A. I do. 20 Q. Do you know if anyone informed Ms Despertt of 21 the results of the investigation prior to 6/29/05? 22 A. I have no idea. 23 Q. Do you know if anyone contacted Ms. Despertt 24 after the interview of Thomas Johnson to gather further 25 information from her in light of what he said in his</p>	<p style="text-align: right;">Page 75</p> <p>1 Q. To your knowledge, did anybody at Blockbuster 2 communicate with Drew Lenear about this Michelle Despertt 3 allegation? 4 A. I don't believe so. I'm not sure. 5 Q. But you did not? 6 A. The only time I might have was in a meeting in 7 preparation for the interviews, but not after that fact. 8 Q. In preparation for these interviews or a 9 different set of interviews? 10 A. A different set of interviews. 11 Q. Okay. Now, in this e-mail from Brown to 12 Despertt in the middle of the page, it says -- second 13 sentence. I'll just read it. It says: In corroboration 14 with Blockbuster management, an investigation has been 15 conducted. Your concerns have been addressed, and 16 appropriate action has been taken. Then a semicolon. I 17 am not at liberty to discuss this with you further. 18 Other than the written warnings that we've 19 already talked about in your testimony, was there any 20 other corrective action taken regarding Ms. Despertt's 21 allegations of sexual harassment? 22 A. There were only two corrective actions that I'm 23 aware of that were written in the middle of March of '05. 24 Q. Were there any other actions taken by 25 Blockbuster of any kind in response to Ms. Despertt's</p>
<p style="text-align: right;">Page 74</p> <p>1 interview? 2 A. Can you repeat the question? 3 Q. Yes, sir. Did anyone, not just you, but anybody 4 contact Ms. Despertt after you interviewed Thomas Johnson 5 to get feedback from her regarding what he said in his 6 interview? 7 A. I don't know who might have contacted her. 8 Q. You did not do that, though? 9 A. I did not. 10 Q. Okay. Did you ever provide to Cinnie Brown any 11 information concerning what Mr. Johnson said during your 12 interview with him? 13 A. I can't recall. 14 Q. Do you know if anyone at Blockbuster provided 15 Ms. Brown with that information? 16 A. I don't know who might have. 17 Q. Do you know if anyone at Blockbuster, including 18 yourself, provided Ms. Davis with that information? 19 A. I'm not sure. 20 Q. Do you know who Drew Lenear is? 21 A. I believe I know who Drew is. 22 Q. He was somebody in charge over at Express 23 Personnel; is that right? 24 A. I believe that would be correct. I didn't know 25 the last name.</p>	<p style="text-align: right;">Page 76</p> <p>1 allegations in March? 2 A. Not to my knowledge. 3 MR. PHILLIPS: This will be Collen 4. 4 (Exhibit 4 marked) 5 Q. (By Mr. Phillips) I gave you the wrong 6 document. I apologize for that. I gave you the wrong 7 document. 8 A. It's the same thing as 3. 9 (Exhibit 4 marked) 10 Q. (By Mr. Phillips) This is Collen 4. Go ahead 11 and take a look at Collen 4. Read it, and let me know 12 when you're done, please. 13 A. Okay. 14 Q. For authentication purposes, Collen Exhibit 4, 15 at least the top portion, is an e-mail as part of a string 16 that you sent to Cinnie Brown on 6/29/05; is that correct? 17 A. That would be correct. 18 Q. Okay. Go to the second page, please, Bates 19 No. 1612. This is that Michelle Despertt e-mail we saw in 20 the previous Exhibit. I just want to a draw your 21 attention to something here. Toward the end of this 22 Despertt 6/28/05 e-mail there's a line there. I'll read 23 it to you. It says: I still have contacts at 24 Blockbuster, and I am told that T-A-G-E -- I think it's a 25 reference to Taj -- but I am told T-A-G-E is still</p>

<p style="text-align: right;">Page 77</p> <p>1 employed there, and is still doing the same things. 2 Did anybody at Blockbuster follow up on this 3 allegation by Ms. Despertt that Mr. Johnson is quote, 4 unquote, still doing the same things? 5 A. I can't recall. 6 Q. Do you know if -- did you follow up on it? 7 A. Not to my recollection specifically, no. 8 Q. Do you have any general recollection of doing 9 anything in response to this allegation by Ms. Despertt? 10 A. In response to that, no. 11 Q. Okay. Do you have any recollection of doing 12 anything regarding Michelle Despertt's allegations after 13 March of 2005 other than sending you these e-mails? 14 A. The only recollection I would say is I believe I 15 recall this allegation, the Michelle Despertt allegation, 16 being discussed during a meeting in preparation for some 17 investigation at the facility in May of '05. 18 Q. Was this a meeting when you, Barry Francis, Drew 19 Lenear and Cinnie Brown? 20 A. I believe that would be correct. 21 Q. This would have been up in Towson at the Express 22 office up there? 23 A. I believe that's correct. 24 Q. What did you talk about regarding the Despertt 25 complaint?</p>	<p style="text-align: right;">Page 79</p> <p>1 Q. Do you recognize it? 2 A. Yes, I do. 3 Q. What is it? 4 A. It's a Corrective Action Record. 5 Q. Is this the Corrective Action Record regarding 6 Thomas Johnson that you previously referenced in your 7 testimony that was done in the context of the Despertt 8 complaint? 9 A. Yes. 10 Q. Okay. Why don't you take a look -- -- prior 11 to -- was this document reviewed by you prior to being 12 presented to Mr. Johnson? 13 A. Yes, I believe it was. 14 Q. Okay. Does it accurately reflect what you 15 believe to be the correct corrective action at the time 16 given the circumstances? 17 A. Yes, I believe it does. 18 Q. Okay. Look at the category called Facts or 19 Events which is about a third of the way down the form. 20 Do you see that? 21 A. Yes, I do. 22 Q. First sentence there, I'll read it to you. Over 23 the past two months, Thomas has had negative interactions 24 with temps which has created a hostile work environment 25 within the Gaithersburg facility. These include yelling</p>
<p style="text-align: right;">Page 78</p> <p>1 A. As best I recall, it was simply a review of it 2 so that all parties understood the history of the site. 3 Q. What specifics were talked about regarding 4 Ms. Despertt's allegations, if any? 5 A. I don't remember specifics being discussed. 6 Q. Was there any discussion of why that was 7 considered -- strike that. 8 Do you know why you-all were talking about 9 Ms. Despertt's complaint in that context? 10 A. We had new concerns expressed to the site, and 11 we were looking back at what had happened previously. 12 Q. Okay. So in assessing what was going on at the 13 site then, it was important to consider past allegations 14 of the same category? 15 A. That would be correct. 16 Q. Okay. 17 MR. PHILLIPS: This will be Collen 5. 18 (Exhibit 5 marked) 19 Q. (By Mr. Phillips) Mr. Collen, go ahead and read 20 this document. It's been marked Collen Exhibit 5. For 21 the record, it was previously marked Francis 1. 22 A. Okay. 23 Q. Have you had a chance to read Collen Exhibit 5, 24 sir? 25 A. Yes, I have.</p>	<p style="text-align: right;">Page 80</p> <p>1 at temporary employees and behavior that may have been 2 construed as sexual harassment. Thomas has also 3 participated in providing direct performance feedback and 4 counseling -- which and is omitted -- sessions with 5 temporary employees. 6 There's a reference there to behavior that may 7 have been construed as sexual harassment. 8 A. Yes. 9 Q. What behavior is being referenced there? 10 A. I can't identify exactly what was referenced 11 there. I can't recall that. 12 Q. Do you have any recollection at all of the facts 13 that you considered or Mr. Barrett considered in approving 14 this language, behavior that may have been construed as 15 sexual harassment? 16 A. No, I don't. 17 Q. Were there any drafts of this document? 18 A. I believe so. 19 Q. Do you know what happened to those drafts? 20 A. No, I do not. 21 Q. How was this document transmitted to you for 22 review? 23 A. I believe it would have come electronically. 24 Q. As an attachment to an e-mail? 25 A. I believe that would be correct.</p>

<p style="text-align: right;">Page 85</p> <p>1 Q. What is Collen Exhibit 6? 2 A. It's a corrective action. 3 Q. Is this the corrective action you referenced 4 earlier in your testimony that you prepared for Lincoln 5 Barrett concerning -- related to the investigation you 6 conducted regarding Michelle Despertt? 7 A. Yes. 8 Q. Go down to Facts or Events, second sentence. 9 Additionally the group -- additionally the GLs have not 10 received and adequate level of supervision, such that one 11 individual has had more than one accusation of job 12 misconduct. Temporary employees have commented that GLs 13 yell at them. 14 Looking at that now, does that refresh your 15 recollection at all as to the identities of individuals 16 that you may have interviewed related to the Despertt 17 allegation? 18 A. No. 19 Q. Were there other employees who complained that 20 the group leads yelled at them other than Ms. Despertt? 21 Better question. I'll withdraw that one. 22 Do you recall the names of any temporary 23 employees who commented that the group leads yell at them? 24 A. I do not recall their names. 25 Q. Do you recall what their race or national origin</p>	<p style="text-align: right;">Page 87</p> <p>1 was sexual harassment at this time? 2 A. No. 3 Q. But you're referencing here sexual harassment in 4 the workplace must cease immediately? 5 A. I do reference that, yes. 6 Q. It's your testimony that you had not concluded 7 there was any sexual harassment? 8 A. It's my -- I believe my testimony and the 9 information that I provided in the recap of my visit said 10 that it could have been construed as sexual harassment or 11 maybe it was the write-up for Taj, the corrective action 12 for Taj. 13 Q. So Taj had engaged in some actions that could 14 have been construed as sexual harassment? 15 A. I believe that's what I referenced. 16 Q. And you don't recall what those actions were? 17 A. Other than the intimidation and the yelling at 18 employees. 19 Q. Were they the actions referenced in 20 Ms. Despertt's e-mail which is Collen Exhibit 2? 21 A. I don't understand. I guess I don't understand 22 the question. 23 Q. At the time, did you conclude that any of 24 Ms. Despertt's allegations of sexual harassment reflected 25 in Collen Exhibit 2 were substantiated?</p>
<p style="text-align: right;">Page 86</p> <p>1 was? 2 A. I do not. 3 Q. Then there's language here. Such that one 4 individual has had more than one accusation of job 5 misconduct. Who is the individual being referenced there? 6 A. That would be a reference to Taj. 7 Q. When you said job misconduct, what kind of 8 misconduct are you referencing there? The yelling? 9 A. Yelling, intimidation of employees or staff. 10 Q. Go down to the section that reads Improvement 11 Required and Time Allowed. Do you see that? 12 A. I do. 13 Q. Sexual harassment in the workplace, intimidation 14 of employees and/or verbal abuse shown to employees will 15 not be tolerated and must cease immediately. Should any 16 instance be brought to Linc's attention, he will notify 17 his manager immediately. Immediate and sustained 18 improvement is required in all areas addressed in this 19 corrective action. 20 Seems from that first sentence like you 21 concluded that there was sexual harassment. 22 A. Are you asking me -- 23 MS. SPEIGHTS: Objection. Is that a 24 question? 25 Q. (By Mr. Phillips) Did you conclude that there</p>	<p style="text-align: right;">Page 88</p> <p>1 MS. SPEIGHTS: Objection, asked and 2 answered. 3 Q. (By Mr. Phillips) You can answer. 4 A. I would just have to review it. I believe -- I 5 don't believe any of them directly in here were confirmed, 6 in Exhibit 2. 7 Q. Yes, sir. Let's get away from some of these 8 documents for a minute. I want to ask you a few other 9 questions here. As a regional -- as a Director of 10 Regional Operations during the 2004/2005 time frame, did 11 you have as a responsibility or duty conducting training 12 for personnel concerning Blockbuster's policies against 13 harassment or discrimination? 14 A. No, I did not. 15 Q. Okay. Who had that responsibility? 16 A. I believe it was either the legal department or 17 our human resources department. 18 Q. Was it part of your duties and responsibilities 19 back then to ensure that individuals, specifically 20 managers, working in your distribution centers had 21 received such training from Blockbuster? 22 A. Distribution center managers? 23 Q. Yes, sir. 24 A. Yes. 25 Q. Did Mr. Barrett ever receive any training from</p>

<p style="text-align: right;">Page 89</p> <p>1 Blockbuster concerning harassment or discrimination? 2 A. I believe so. 3 Q. When did he receive that training? 4 A. I can't recall the exact date, but I believe it 5 was in January or February of 2005. 6 Q. What was the form of the training? 7 A. Annually at our meeting of all managers there's 8 a presentation and a one-on-one -- a group with a 9 presenter that presents information. 10 Q. Okay. Do you have a recollection of Mr. Barrett 11 attending such a training? 12 A. I do. Again, I can't put a date to it. 13 Q. Okay. What was covered in that training in the 14 time frame you're talking about, January/February, 15 potentially? 16 A. I can't recall exactly all the details of the 17 training. 18 Q. How long is the training usually? 19 A. An hour to two. Sometime between an hour to two 20 hours. 21 Q. Is attendance at the training documented in some 22 way? 23 A. I can't recall. 24 Q. Is there a sign-in sheet or form to fill out 25 verifying that someone attended it?</p>	<p style="text-align: right;">Page 91</p> <p>1 A. Just in general training? 2 Q. Training specific to harassment or 3 discrimination. 4 A. Other than as they become employed there's a set 5 of required paperworks and employee handbooks and 6 documents that have to be reviewed and signed. I know 7 those things would be completed. Our HR ensures that 8 those things get signed during the on boarding procedure. 9 Q. Do you know if there's any discussion of those 10 things that are being signed during the on boarding? 11 A. I don't know. 12 Q. Now, at the Gaithersburg warehouse during the 13 2004 time frame up to say summer of 2005, it's my 14 understanding that a number of the workers there at the 15 warehouse were placed there through Express Personnel. Is 16 that a correct understanding? 17 A. There was temporary staff there that we used 18 through Express. That's correct. 19 Q. During that time frame up through say August of 20 2005, were there any permanent employees working at the 21 Gaithersburg warehouse other than Mr. Barrett, Mr. Johnson 22 and Mr. Tutu? 23 A. Permanent Blockbuster employees? 24 Q. Yes. 25 A. I believe so.</p>
<p style="text-align: right;">Page 90</p> <p>1 A. I can't recall. 2 Q. Do you recall Mr. Barrett being at that meeting? 3 A. I recall Mr. Barrett being at the meeting. 4 Q. How long was the meeting overall? 5 A. We had all the managers in for approximately two 6 to four days. 7 Q. All right. Where was the meeting? 8 A. It was held here in Dallas, Texas. 9 Q. To your knowledge, did Mr. Barrett ever travel 10 to Dallas, Texas for any reason other than that meeting? 11 A. I can't be for sure. Related to his Blockbuster 12 employment? 13 Q. Yes. 14 A. Related to his Blockbuster employment, I can't 15 be for sure. 16 Q. Do you know if Mr. Johnson, Thomas Johnson, 17 received any training from Blockbuster concerning 18 harassment or discrimination? 19 A. I can't confirm. I don't know. 20 Q. Okay. Whose job is it to see that -- well, do 21 you know if group leads received that kind of training at 22 Blockbuster during this time frame, 2004/2005? 23 A. I don't believe a formal training. 24 Q. What kind of training did they receive back 25 then, group leads?</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. Do you know who those employees were? 2 A. I do not. 3 Q. Do you know what their positions were? 4 A. They would have been considered warehouse 5 operators or distribution clerks. I believe those are the 6 two titles. Don't quote me on that. 7 Q. I have to plead ignorance here. What's the 8 difference between a warehouse operator and a distribution 9 clerk? 10 A. The difference is that we have some employees 11 that work predominantly on our systems interfacing with 12 the computer, the computerized system. Then we have other 13 people that predominantly pack mailers, pick inventory. 14 So they don't work with the computer systems. 15 Q. Do you know if any of those temporary workers 16 working at the Gaithersburg warehouse through Express 17 received any training from Blockbuster on harassment or 18 discrimination? 19 A. I don't know. 20 Q. Did they receive Blockbuster policies concerning 21 reporting harassment or discrimination? 22 A. I don't believe they did from Blockbuster. 23 Q. All right. Do you know if they received report 24 or complaint procedures concerning harassment or 25 discrimination from anybody?</p>

<p style="text-align: right;">Page 93</p> <p>1 A. I don't know.</p> <p>2 Q. Did you ever inquire?</p> <p>3 A. I don't believe so.</p> <p>4 Q. Do you know why temporary workers in</p> <p>5 Gaithersburg didn't receive policies concerning reporting</p> <p>6 harassment or discrimination?</p> <p>7 MS. SPEIGHTS: Objection.</p> <p>8 A. Do I know why?</p> <p>9 Q. (By Mr. Phillips) Yeah. Do you know why?</p> <p>10 A. No.</p> <p>11 Q. I think I know the answer here, but just to be</p> <p>12 clear. Did you know Mr. Barrett before he came to work</p> <p>13 for Blockbuster?</p> <p>14 A. I did not.</p> <p>15 Q. Did you ever socialize with him once he came to</p> <p>16 work for Blockbuster, socialize outside of work?</p> <p>17 A. No.</p> <p>18 Q. Did you know Mr. Johnson before he came to</p> <p>19 Blockbuster?</p> <p>20 A. No.</p> <p>21 Q. Did you know Kofi Tutu before he came to</p> <p>22 Blockbuster?</p> <p>23 A. No, I did not.</p> <p>24 Q. Did you ever socialize with Johnson or Tutu</p> <p>25 outside of work?</p>	<p style="text-align: right;">Page 95</p> <p>1 A. Yes.</p> <p>2 Q. What position is that?</p> <p>3 A. Any employee in the distribution center could do</p> <p>4 that function.</p> <p>5 Q. Who usually does it?</p> <p>6 A. A warehouse operator or a distribution clerk.</p> <p>7 Q. You referenced putting away DVDs. Is there a</p> <p>8 permanent position at Blockbuster which has as one of its</p> <p>9 duties putting away DVDs?</p> <p>10 A. Yes.</p> <p>11 Q. What position is that?</p> <p>12 A. Again, that would be any of the positions could</p> <p>13 do that.</p> <p>14 Q. Who usually does it?</p> <p>15 A. The same two that I referenced before, a</p> <p>16 distribution clerk or a warehouse operator.</p> <p>17 Q. And you referenced inspecting DVDs for quality.</p> <p>18 Who usually does that at Blockbuster?</p> <p>19 A. Same as I answered previously.</p> <p>20 Q. So the distribution clerk or the warehouse</p> <p>21 operator?</p> <p>22 A. That's correct.</p> <p>23 Q. You mentioned opening mailers. Is this a</p> <p>24 permanent job at Blockbuster that has that as one of its</p> <p>25 functions?</p>
<p style="text-align: right;">Page 94</p> <p>1 A. No, I did not.</p> <p>2 Q. What kind of work did the Express -- the workers</p> <p>3 placed through Express Personnel during the 2004/2005 time</p> <p>4 frame do at the Gaithersburg warehouse?</p> <p>5 A. You mean list off the different functions?</p> <p>6 Q. Yes.</p> <p>7 A. They would pack envelopes with DVDs. They would</p> <p>8 pick DVDs for outbound shipments. They would open up</p> <p>9 mailers, inspect the DVDs for quality. They would what we</p> <p>10 call put away DVDs into inventory. That's it. That's the</p> <p>11 majority of what they did.</p> <p>12 Q. Would they also do some working on computers,</p> <p>13 some of them?</p> <p>14 A. Some of them might.</p> <p>15 Q. Regarding -- first of all, any other functions</p> <p>16 you can think of other than those?</p> <p>17 A. Those are the majority of them.</p> <p>18 Q. Okay. Is there a permanent -- strike that.</p> <p>19 Is there a position at Blockbuster, a permanent</p> <p>20 Blockbuster employee position, that performs the function</p> <p>21 of packing envelopes?</p> <p>22 A. Are you saying -- can you rephrase the question?</p> <p>23 Q. Yes, sir. Do -- is there a position at</p> <p>24 Blockbuster, a permanent job position at Blockbuster,</p> <p>25 which has as its job packing envelopes?</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Yes, there is.</p> <p>2 Q. What position is that?</p> <p>3 A. Again, anyone at the DC would be able to do</p> <p>4 that. Primarily it's done by the same two referenced</p> <p>5 before, a warehouse operator or a distribution clerk.</p> <p>6 Q. Is it fair to say that all of the duties -- is</p> <p>7 it fair to say that all of the functions that you</p> <p>8 referenced the temporary workers doing at the Gaithersburg</p> <p>9 warehouse are functions that are also performed by</p> <p>10 permanent employees at Blockbuster?</p> <p>11 A. Can you repeat the question?</p> <p>12 Q. Yeah. Is it fair to say that the functions that</p> <p>13 you referenced that are performed by -- that were</p> <p>14 performed by temporaries at the Gaithersburg warehouse are</p> <p>15 also duties that are performed by permanent employees of</p> <p>16 Blockbuster?</p> <p>17 A. I'm confused by the question because I don't</p> <p>18 think we've talked about temporary employees and what they</p> <p>19 do.</p> <p>20 Q. Well, I'm talking specifically about the workers</p> <p>21 who were placed through Express.</p> <p>22 A. Okay.</p> <p>23 Q. Can you tell me, for example, what's the -- I'll</p> <p>24 withdraw the question.</p> <p>25 What's the difference between the work that was</p>

<p style="text-align: right;">Page 97</p> <p>1 performed by the Express Personnel workers at the 2 Gaithersburg warehouse and the work of a permanent 3 distribution clerk at Blockbuster, if there is a 4 difference? 5 A. For some, there is a difference. 6 Q. What's the difference? 7 A. Difference might be the skills to use the 8 inventory management system. 9 Q. The computer we were referencing? The inputting 10 into the computer we were referencing earlier? 11 A. That would be correct. 12 Q. Any other differences? 13 A. Not to my immediate knowledge. 14 Q. In this Gaithersburg warehouse, this facility, 15 just so I'm clear on what it does, how it fits within 16 Blockbuster, it processes sending out and returning DVDs 17 that were rented out by mail; is that correct? 18 A. We have subscribers that we send movies to via 19 the mail, and they return them to us via the mail. 20 Q. I've never done it before. I just want to be 21 clear that's what it does. Are you aware that at some 22 point in 2005, approximately the summer of 2005, some of 23 the Express Personnel workers were converted to permanent 24 Blockbuster employees? 25 A. I don't have specific recollection of who or</p>	<p style="text-align: right;">Page 99</p> <p>1 A. Predominantly it's an attendance -- 2 understanding of the person's attendance and an 3 understanding of the person's productivity level, ability 4 to perform the job. 5 Q. So the temporary workers attendance, that's 6 something that is -- that's something that's tracked by 7 Blockbuster management? 8 A. The time sheets reflect when someone works and 9 doesn't work. 10 Q. So they -- the temporary workers fill out a time 11 sheet when they come in and when they leave? 12 A. Either it's filled out or stamped or... 13 Q. The workers -- do you know if there are any 14 policies concerning when temporary workers can take time 15 off? 16 A. That would be between the temporary agency and 17 the temporary employee. 18 Q. So Blockbuster is not involved in that decision 19 about whether the temporary employee comes to work? 20 A. Blockbuster simply has a requirement of the 21 number of staff that we need. 22 Q. Do they -- do temporary employees need to ask 23 Blockbuster managers for permission to be off? 24 A. No. 25 Q. Who sets the temporary workers' schedules?</p>
<p style="text-align: right;">Page 98</p> <p>1 where. 2 Q. Do you know generally that some of them were? 3 A. Yeah, I believe so. 4 Q. Were you involved in the making the decision 5 about who would be converted to permanent Blockbuster 6 status? 7 A. I don't recall whether I did or didn't. 8 Q. Do you know who at Blockbuster was involved in 9 making that decision? 10 A. I believe Lincoln Barrett was. 11 Q. Do you know if anyone else was involved in that 12 decision? 13 A. I believe Cinnie Brown was. 14 Q. Anyone else? 15 A. Probably someone in our recruiting department. 16 Q. Do you have a specific person that you can think 17 of? 18 A. No, I don't. 19 Q. Do you know if that's happened at other 20 distribution centers where temporary workers have been 21 later converted to permanent Blockbuster employees? 22 A. Yes. 23 Q. Do you know what the process has been in those 24 centers as far as how the decision is made as to who they 25 select?</p>	<p style="text-align: right;">Page 100</p> <p>1 A. The temporary agency. 2 Q. Specifically at the Gaithersburg warehouse, do 3 you know who set that schedule? 4 A. No. 5 Q. Okay. Do you know whether -- do you know who 6 temporary employees spoke to at the Gaithersburg warehouse 7 to get permission to be absent? 8 A. I don't. 9 Q. What was the job classification at Blockbuster 10 that the Express Personnel workers who were converted to 11 permanent status were assigned to? 12 A. I don't know. 13 Q. Were you privy to any communications with 14 Venturi or Express regarding the formation of the contract 15 or agreement between Blockbuster and those agencies 16 concerning these workers in Gaithersburg? 17 A. I don't believe so. 18 Q. Have you ever had any communications with anyone 19 regarding that subject? 20 A. The subject of what? 21 Q. Let's be more specific. Did you ever have any 22 discussions with anyone concerning whether it was 23 Blockbuster's intention to convert some of those employees 24 to permanent status when it retained Venturi or Express? 25 A. Can you repeat the question?</p>

<p style="text-align: right;">Page 101</p> <p>1 Q. Did you ever have any communications with anyone 2 regarding whether Blockbuster intended to convert some of 3 those temps to permanent status when it entered into the 4 contract with Venturi or Express? 5 A. I don't know what was contractually agreed to. 6 Q. Were you a part of any communications concerning 7 the decision to convert some of these folks to permanent 8 status? 9 A. At Gaithersburg? 10 Q. Yes, sir. 11 A. I don't believe so. 12 Q. Were the temporary workers that worked at 13 Gaithersburg required to have any particular 14 qualifications to do the job they were doing there? 15 A. Yes. I can't remember exactly what those are in 16 general. In general terms they were decent hand eye 17 coordination, able to read numerals. 18 Q. Any others? 19 A. Not that I can recall. 20 Q. Those were Blockbuster requirements to be able 21 to do this job? 22 A. I believe so. 23 Q. Were the temporary workers assigned through 24 Express to the Gaithersburg warehouse required to provide 25 any equipment or tools to do their jobs at the warehouse?</p>	<p style="text-align: right;">Page 103</p> <p>1 those? 2 A. Blockbuster provided those. 3 Q. Who was responsible for directing the activities 4 of these Express Personnel workers on a day-to-day basis 5 when they were at the warehouse? 6 A. Can you repeat the question? 7 Q. Who supervised the temporaries' work when they 8 were in the Gaithersburg warehouse? 9 A. Lincoln Barrett. 10 Q. He was responsible for assigning their tasks 11 within the warehouse? 12 A. He or one of his group leads would assign tasks. 13 Q. Do you know if these Express Personnel temporary 14 workers were provided with training on how to perform 15 their duties in the warehouse? 16 A. To the best of my knowledge, yes. 17 Q. Who provided that training? 18 A. I can't say for sure who would have. 19 Q. Is it fair to say it would have been Mr. Barrett 20 or someone he designated? 21 A. That would probably be correct. 22 Q. You mentioned earlier productivity level being a 23 criterion for deciding who to convert from temporary to a 24 permanent employee? 25 A. That's correct.</p>
<p style="text-align: right;">Page 102</p> <p>1 A. Not to my knowledge. 2 Q. What kinds of equipment would they use during 3 the day? 4 A. Possibly a picking cart, a work table, pick 5 sheets, which would be a piece of paper with instructions 6 on where to go to find merchandise, totes that mails would 7 be carried in or mailers would be carried in. That's -- 8 the computer equipment, if they had to interface. 9 Q. Who owned the computer equipment? 10 A. I don't know if Blockbuster owns it or if we 11 lease it. 12 Q. But it was either leased or owned by 13 Blockbuster? 14 A. I believe so. 15 Q. Blockbuster provide the totes? 16 A. The totes that I refer to are owned by the USPS. 17 Q. Okay. Do you know who got them from the USPS? 18 A. We picked them up every morning full of mail. 19 Q. Who owned the picking carts? 20 A. We do. 21 Q. Blockbuster? 22 A. Yes. 23 Q. Who owned the tables? 24 A. Blockbuster. 25 Q. There were pick sheets you said. Who provided</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. How was productivity level assessed? 2 A. One of the major levels was what we call a 3 packing productivity. 4 Q. What's that? 5 A. It's a measure of how many bundles of movies and 6 mailing labels an employee can complete within a given 7 amount of time. 8 Q. Who tracks that information? 9 A. Generally either a manager or a group lead. 10 Q. How is that information tracked? 11 A. It's tracked by a notation that's required by 12 the employee or temporary staffing member on the back of a 13 pick ticket. 14 Q. If a temporary -- are you aware of situations 15 where a temporary worker placed through Express was not 16 performing their duties correctly at the Gaithersburg 17 warehouse? 18 A. Am I aware of specific instances? 19 Q. Yes. 20 A. Not specific instances. 21 Q. Are you aware generally that action was taken to 22 correct performance deficiencies by those temporary 23 workers, any of them? 24 A. Can you rephrase the question? 25 Q. Yes, sir. Are you aware of any instance where</p>

1 not a specific person, but just generally are you aware of
 2 any instances where temporary workers were -- their work
 3 was deemed deficient and they were given further
 4 instruction on how to perform their duties?
 5 A. I believe that occurred, yes.
 6 Q. Who was responsible for making that correction?
 7 A. Linc Barrett.
 8 Q. Do you know if the temporary workers placed
 9 through Express had assigned seats at the tables in the
 10 Gaithersburg warehouse?
 11 A. I'm not for sure.
 12 Q. Had you ever heard that from anyone other than
 13 your lawyers?
 14 A. No. I had heard that.
 15 Q. Do you know who assigned the seats?
 16 A. I do not. I don't know that seats were
 17 assigned.
 18 Q. Okay. Do you know how the temporary workers
 19 placed through Express were paid? Specifically, do you
 20 know if they were paid hourly?
 21 A. My knowledge is they were paid hourly.
 22 Q. If they worked overtime, do you know if they
 23 were paid overtime?
 24 A. To my knowledge they were paid overtime.
 25 Q. Do you know if Express Personnel ever had anyone

1 present at the warehouse during this 2004/2005 time frame
 2 on a regular basis?
 3 A. Yes.
 4 Q. Who was that person or persons?
 5 A. Cinnie Brown.
 6 Q. Do you know how often she went to the warehouse?
 7 A. During late May and at least June I believe she
 8 was there almost weekly.
 9 Q. So once a week during that period, late May to
 10 early June?
 11 A. Actually I believe late May to late June.
 12 Q. I'm sorry. Do you know what she was doing when
 13 she was there?
 14 A. Yes, I do.
 15 Q. What was she doing?
 16 A. Meeting with Linc Barrett and also meeting with
 17 her employees.
 18 Q. What was she meeting with Mr. Barrett about?
 19 A. She was meeting specifically about any
 20 productivity or attendance issues that he had with her
 21 staff that was on board there.
 22 Q. How do you now know that's true?
 23 A. Cinnie told me, and I would say Linc told me.
 24 Q. Were they talking about anything else to your
 25 knowledge?

1 A. I don't know what else they might have
 2 discussed.
 3 Q. Was -- do you know what Cinnie -- when Cinnie
 4 met with her staff, do you know what she talked to them
 5 about?
 6 A. Other than generally to understand how the work
 7 environment was.
 8 Q. Did Ms. Brown have any authority to direct the
 9 work of the temps working at the Gaithersburg warehouse?
 10 MS. SPEIGHTS: Objection. You can answer.
 11 A. Can you repeat it?
 12 Q. (By Mr. Phillips) I'll rephrase it. Did
 13 Ms. Brown have any authority to assign tasks to the
 14 workers who were placed through Express Personnel and
 15 working at the Gaithersburg warehouse?
 16 MS. SPEIGHTS: Objection. You can answer.
 17 Q. (By Mr. Phillips) You can answer that.
 18 A. You mean telling them what to do?
 19 Q. Yes, sir.
 20 A. No, she did not.
 21 Q. Do you know if Blockbuster ever caused the
 22 assignment of one of those Express Personnel workers to
 23 end at the Gaithersburg warehouse?
 24 A. If we ever caused any assignment to end?
 25 Q. An assignment of one of those temporary workers

1 placed through Express.
 2 A. I'm sure, yes.
 3 Q. Do you know if any of those individuals had
 4 their assignment ended because of performance issues?
 5 A. Yes, I believe so.
 6 Q. Do you recall who that was?
 7 A. No, I do not.
 8 Q. Can you tell me just sort of the process of how
 9 that was done with respect to the employees who had
 10 performance issues and where their assignment was ended,
 11 what were the steps taken to end that assignment?
 12 A. By the local management? What the local
 13 management did to end an assignment?
 14 Q. Yes, sir.
 15 A. After having determined that there was a
 16 deficiency, they would contact the temporary agency and
 17 notify them that that individual's service would no longer
 18 be needed.
 19 Q. Was the temporary agency's job then to go find a
 20 replacement?
 21 A. Maybe, maybe not.
 22 Q. This would have been Mr. Barrett who would have
 23 contacted the temporary agency?
 24 A. Yes, I believe so, in Gaithersburg.
 25 Q. Thank you. To your knowledge, did Express

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1 Personnel ever refuse to end a worker's assignment?
2 A. Not to my knowledge. I don't know.
3 Q. Do you know if Express Personnel had any legal
4 right to prevent the end of a worker's assignment?
5 MS. SPEIGHTS: Objection.
6 A. I don't know necessarily what their legal rights
7 were.
8 Q. (By Mr. Phillips) Do you know if in the
9 situations where workers had their assignment ended
10 because of performance, whether they were counseled on
11 their performance before their assignment was ended ?
12 A. Depends on what time frame you're talking about.
13 Q. Specifically during the time frame of the start
14 of distribution center until summer of 2005.
15 A. The process was put in place between -- after
16 May of 2005 by which some counseling, I know, did occur.
17 Q. Okay. Who conducted the counseling on
18 performance problems?
19 A. It would have been Cinnie Brown.
20 Q. How did she know what to counsel people on?
21 A. In the weekly meetings with Linc.
22 Q. So Linc would communicate to her what the
23 problem was with a particular workers. Then it was
24 Cinnie's job to go ahead and communicate that information
25 to the worker?

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1 A. I believe that would be correct.
2 Q. Why was Ms. Brown involved in that? Why didn't
3 Mr. Barrett just communicate that directly?
4 A. She was the employer of the employee.
5 Q. Do you know how that was done prior to this
6 May '05 time frame?
7 A. I do not.
8 MR. PHILLIPS: Let's go off the record a
9 minute.
10 (A break was taken)
11 Q. (By Mr. Phillips) Do you know if the permanent
12 Blockbuster employees who were working at the Gaithersburg
13 warehouse during the 2004/2005 time frame received copies
14 of the Blockbuster antiharassment or discrimination
15 policy?
16 A. I believe they did as part of their new hiring
17 process.
18 Q. Do you know why Blockbuster gives copies of that
19 policy to their employees?
20 A. I don't know why.
21 Q. Do you know if those permanent employees at the
22 Gaithersburg warehouse were given information about the
23 complaint procedure, if they had a complaint of harassment
24 or discrimination?
25 A. I can't be for certain.

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1 Q. Do you know from experience that Blockbuster
2 employees generally get that information?
3 A. From experience they do.
4 Q. Does anyone at Blockbuster provide -- strike
5 that.
6 Does anyone at Blockbuster check to make sure
7 that the permanent employees get that information?
8 A. It's the responsibility of the hiring manager.
9 Q. Who in this case would be the distribution
10 center manager?
11 A. That would be correct.
12 Q. During this period of 2004 to 2005 when there
13 were Express Personnel temp workers working at the
14 Gaithersburg warehouse, what was the process for them to
15 complain about harassment or discrimination?
16 A. I can't confirm exactly what their process was.
17 Q. Is it your understanding that they should be
18 reporting those things to Express?
19 A. That would be a primary way, yes.
20 Q. Are there any other ways?
21 A. Not to my knowledge.
22 MR. PHILLIPS: I'm going to mark this as
23 Collen Exhibit 7.
24 (Exhibit 7 marked)
25 Q. (By Mr. Phillips) I only have one copy. I just

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1 want to make sure you recognize the pages of this exhibit.
2 A. Okay.
3 Q. Do you recognize the pages of Exhibit 7?
4 A. Yes.
5 Q. Are those the forms that you were referencing
6 earlier in your testimony that are completed upon bringing
7 in a new Blockbuster permanent employee?
8 A. I believe that would be correct.
9 Q. Okay. Do you know if there is any -- I don't
10 need to -- turning to Bates No. Blockbuster 001778 and
11 1779, do you recognize that as a Blockbuster policy
12 regarding harassment that was in effect in 2005?
13 A. Yes, I do.
14 Q. Okay. Do you know if employees who receive this
15 policy are provided with any additional verbal training
16 beyond what's written here on this policy?
17 A. I can't confirm what other training may occur.
18 Q. Do you know whether the permanent employees are
19 tested on their understanding of this document?
20 A. I don't know.
21 Q. Okay. Did you receive this document when you
22 came to work for Blockbuster?
23 A. I believe I did, yes.
24 Q. Were you provided with any training related to
25 this document in particular?

<p style="text-align: right;">Page 113</p> <p>1 A. Not to my recollection.</p> <p>2 Q. Okay. Were you tested on your comprehension of</p> <p>3 the document?</p> <p>4 A. I don't believe so.</p> <p>5 Q. How much -- do you recall how much time you were</p> <p>6 given to read and sign all of these documents when they</p> <p>7 were presented to you?</p> <p>8 A. No, I don't.</p> <p>9 Q. Was it more than 10 minutes?</p> <p>10 A. I would think probably so.</p> <p>11 Q. More than 15?</p> <p>12 A. To review all the documents?</p> <p>13 Q. Yes, sir.</p> <p>14 A. I would think so.</p> <p>15 Q. Is that how much time you were given to review</p> <p>16 all the documents?</p> <p>17 MS. SPEIGHTS: Objection.</p> <p>18 Q. (By Mr. Phillips) You can answer.</p> <p>19 A. I believe the question was how long I'd been</p> <p>20 given, and I would say at least 15 minutes because there</p> <p>21 was a large set of documents.</p> <p>22 Q. Were you given copies to take home with you?</p> <p>23 A. I can't recall.</p> <p>24 Q. Do you know if permanent employees at</p> <p>25 Blockbuster are given copies of these documents to take</p>	<p style="text-align: right;">Page 115</p> <p>1 Blockbuster called the Compass?</p> <p>2 A. I don't believe it's an organization.</p> <p>3 Q. What is it?</p> <p>4 A. I believe it's an Internet or network, like</p> <p>5 training type tool.</p> <p>6 Q. Have you accessed it before?</p> <p>7 A. I have not.</p> <p>8 Q. How do you know what's on it?</p> <p>9 A. I don't know what it's on it. I've just heard</p> <p>10 the name.</p> <p>11 Q. Do you know who uses it?</p> <p>12 A. No, I do not.</p> <p>13 MR. PHILLIPS: I'm going to go ahead and</p> <p>14 stop here for lunch.</p> <p>15 (A break was taken)</p> <p>16 Q. (By Mr. Phillips) We're back on the record</p> <p>17 after the lunch. Mr. Collen, I wanted to ask you some</p> <p>18 questions related to other investigations that may have</p> <p>19 taken place at the Gaithersburg warehouse during the</p> <p>20 2004/2005 time frame. I wanted to start by first asking</p> <p>21 you apart from the investigation regarding Michelle</p> <p>22 Despertt's accusation and apart from the investigation</p> <p>23 that Mr. Francis participated in that you referenced</p> <p>24 earlier in your testimony where you met with Cinnie Brown</p> <p>25 and Mr. Francis and another individual, apart from those</p>
<p style="text-align: right;">Page 114</p> <p>1 with them?</p> <p>2 A. Actually, I do not know whether that is the</p> <p>3 case.</p> <p>4 Q. Okay. Have you heard of an individual named</p> <p>5 Lolita Gonzales?</p> <p>6 A. I have heard that name, yes.</p> <p>7 Q. Do you recall when the first time was that you</p> <p>8 heard that name?</p> <p>9 A. I do not.</p> <p>10 Q. Were you ever informed that she had filed a</p> <p>11 Charge of Discrimination against Blockbuster with the</p> <p>12 EEOC?</p> <p>13 A. I don't know that I could say she filed --</p> <p>14 something was filed. I don't know what -- what I was</p> <p>15 informed that she filed.</p> <p>16 Q. Okay. But you were informed she filed</p> <p>17 something?</p> <p>18 A. Something or made a claim. I don't know whether</p> <p>19 you call it filed or made a claim.</p> <p>20 Q. At the time, did you know what it specifically</p> <p>21 was she was making a claim about or filed something about?</p> <p>22 A. I don't believe so.</p> <p>23 Q. Do you recall when you were informed?</p> <p>24 A. No, I do not.</p> <p>25 Q. Is there an organization or department within</p>	<p style="text-align: right;">Page 116</p> <p>1 two investigations, are you aware of any other</p> <p>2 investigations of harassment or discrimination that took</p> <p>3 place at the Gaithersburg warehouse at any time during the</p> <p>4 time frame of 2004 to 2005?</p> <p>5 A. I believe so.</p> <p>6 Q. Would that have been an investigation in</p> <p>7 approximately August of 2005?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Other than those three investigations,</p> <p>10 are you aware of any others regarding harassment or</p> <p>11 discrimination, potential harassment or discrimination at</p> <p>12 the Gaithersburg warehouse?</p> <p>13 A. I don't believe so.</p> <p>14 Q. Okay. Regarding the investigation, you</p> <p>15 testified to earlier that Mr. Francis participated in, do</p> <p>16 you have any recollection of what the subject matter of</p> <p>17 the investigation was?</p> <p>18 A. The subject was additional complaints.</p> <p>19 Q. Complaints of what?</p> <p>20 A. Inappropriate behavior by individuals at the</p> <p>21 facility.</p> <p>22 Q. Which individuals?</p> <p>23 A. I couldn't specify the exact individuals.</p> <p>24 Q. Was Mr. Johnson one of them?</p> <p>25 A. I believe so.</p>

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1 Q. Do you recall anyone else being accused of
2 inappropriate behavior?
3 A. Not specifically. I'm not sure.
4 Q. What kind of inappropriate behavior do you
5 recall?
6 A. I don't recall.
7 Q. Was there allegations of sexual harassment?
8 A. I can't confirm that.
9 Q. Was it allegations of discrimination of some
10 kind?
11 A. I can't confirm that either.
12 Q. Okay. I will go ahead and show you what we'll
13 mark Collen 8.
14 (Exhibit 8 marked)
15 Q. (By Mr. Phillips) Go ahead and read Collen 8
16 and let me know when you're done.
17 MR. PHILLIPS: For the record, this was
18 previously marked Francis 7.
19 Q. (By Mr. Phillips) First I'll ask you if you
20 recognize this document.
21 A. Yes.
22 Q. What is it?
23 A. It's an outline of a meeting.
24 Q. Do you know who prepared the outline?
25 A. I don't remember.

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1 Q. Is this related to the meeting that you
2 testified about earlier at the Express office in Towson?
3 A. I believe so.
4 Q. And you see the date at the top, 5/12/05,
5 5/13/05. Does that time frame sound accurate as far as
6 when the meeting was held?
7 A. I believe so.
8 Q. All right. Now, having read Collen Exhibit 8,
9 does this refresh your recollection as to the issues that
10 were being investigated at the Gaithersburg warehouse in
11 May of 2005?
12 A. Not really, no.
13 Q. So having read this document, does it give you
14 any better sense of what was being investigated in that
15 investigation that Mr. Francis participated in that you
16 testified about earlier?
17 A. Other than the fact that probably B states
18 discrimination.
19 Q. Does that help trigger your memory that
20 discrimination was being investigated during this time
21 frame?
22 A. It doesn't really help trigger my memory, no.
23 Q. So having read this document, you have no
24 independent recollection of what was being investigated
25 apart from what you've already testified to?

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1 A. No.
2 Q. Okay. Look down at the Item IA, Alleged Sexual
3 Harassment. Do you see that?
4 A. Yes.
5 Q. Below that do you see a reference to Niema
6 Fields?
7 A. Yes.
8 Q. Does that help refresh your recollection that
9 Niema Fields had complained about sexual harassment?
10 A. No.
11 Q. You were provided a copy of this document at the
12 time, correct?
13 A. I believe so.
14 Q. Was there any discussion concerning Niema Fields
15 and what allegations she may or may not have made?
16 A. I can't remember.
17 Q. Did you take any notes at this meeting with
18 Mr. Francis, Mr. Lenear and Ms. Brown?
19 A. I don't remember.
20 Q. Have you ever attended meetings to discuss these
21 kinds of issues with other vendors, other temporary
22 agencies?
23 A. Yes.
24 Q. Did you take notes of those meetings?
25 A. I don't recall.

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1 Q. Down at IB it says Alleged Discrimination
2 Charges, and there are three names listed there.
3 A. Yes.
4 Q. Lolita Gonzales, Elizabeth Ledesma and Milagros
5 Ledesma. At any point did you become familiar with the
6 substance of their accusations?
7 A. I don't recall.
8 Q. Do you have -- after having read this document,
9 do you have any further recollection of any matters that
10 were discussed during this meeting between the four of
11 you, you, Francis, Lenear and Brown, other than what
12 you've already testified?
13 A. No.
14 Q. Were you provided at this meeting with any
15 documents other than Exhibit 8?
16 A. I can't remember what I was provided.
17 Q. You can set this one aside.
18 A. Okay.
19 MR. PHILLIPS: This will be Collen 9.
20 (Exhibit 9 marked)
21 Q. (By Mr. Phillips) Go ahead and read Collen 9.
22 MR. PHILLIPS: For the record, this was
23 previously marked as Francis 6.
24 A. Okay.
25 Q. (By Mr. Phillips) Do you recognize this

<p style="text-align: right;">Page 121</p> <p>1 document, sir?</p> <p>2 A. Yes, I do.</p> <p>3 Q. What is it?</p> <p>4 A. It's an e-mail communication from myself to</p> <p>5 Jennifer Fitzgerald.</p> <p>6 Q. Which encompasses several e-mails that you</p> <p>7 forwarded to Ms. Fitzgerald; is that correct?</p> <p>8 A. There are several -- there's a chain of e-mails</p> <p>9 attached.</p> <p>10 Q. Okay. Having read this document, Collen</p> <p>11 Exhibit 9, does that help your recollection now as to the</p> <p>12 issues that were being investigated at least in part by</p> <p>13 Mr. Francis at the Gaithersburg warehouse?</p> <p>14 A. Yeah. I would say it refreshes some of my</p> <p>15 memory.</p> <p>16 Q. Okay. Having read Exhibit 9, can you tell me</p> <p>17 now what were the issues that were being investigated at</p> <p>18 the Gaithersburg warehouse in May of 2005?</p> <p>19 A. Hostile work environment; decisions of how</p> <p>20 people or when people worked and when people didn't work,</p> <p>21 how those decisions were being made; whether there was</p> <p>22 abuse of alcohol or drug or use of drug or alcohol in the</p> <p>23 facility. That may not be all of them, but sort of a</p> <p>24 summary.</p> <p>25 Q. Was sexual harassment investigated?</p>	<p style="text-align: right;">Page 123</p> <p>1 Were you provided with any information regarding</p> <p>2 Cinnie's general observations on that issue?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you know if anyone ever determined who --</p> <p>5 which one of the leads Ms. Wing was, according to this</p> <p>6 e-mail, saying touched her inappropriately?</p> <p>7 A. I don't recall.</p> <p>8 Q. Do you know who received this allegation that</p> <p>9 Ms. Wing had been touched inappropriately?</p> <p>10 A. I do not.</p> <p>11 Q. Do you know first of all who participated in the</p> <p>12 investigation other than Mr. Francis?</p> <p>13 A. Which investigation?</p> <p>14 Q. The investigation in May 2005 that was proceeded</p> <p>15 by the memo that you looked at earlier, Collen Exhibit 8.</p> <p>16 A. In May 2005, I believe on site there were four</p> <p>17 individuals.</p> <p>18 Q. Who were the four?</p> <p>19 A. Myself, Cinnie Brown, Barry Francis and for at</p> <p>20 least some portion of the day, Drew.</p> <p>21 Q. Okay. Do you recall -- first of all, do you</p> <p>22 know if there was any action taken by anyone to prepare</p> <p>23 for that investigation in any way?</p> <p>24 A. Yes.</p> <p>25 Q. What actions were taken to prepare?</p>
<p style="text-align: right;">Page 122</p> <p>1 A. I couldn't tell you.</p> <p>2 Q. Do you see on the first page bates numbered 1604</p> <p>3 in the e-mail from Davis -- June Davis to you dated</p> <p>4 4/18/05. In the seconds sentence, do you see where it</p> <p>5 says the person that made the allegation that one of the</p> <p>6 leads touched her inappropriately (Say Wing) is still not</p> <p>7 willing to put anything in writing?</p> <p>8 A. I do see that.</p> <p>9 Q. Do you know if that allegation was investigated</p> <p>10 in May 2005?</p> <p>11 A. I am not sure.</p> <p>12 Q. Do you know who decided what kind of</p> <p>13 investigation to conduct at the Gaithersburg warehouse?</p> <p>14 Do you know who decided what issues were to be</p> <p>15 investigated at the Gaithersburg warehouse during this</p> <p>16 time frame?</p> <p>17 A. That was really decided jointly during the</p> <p>18 meeting that the four individuals referenced earlier had.</p> <p>19 Q. Including yourself?</p> <p>20 A. Yes.</p> <p>21 Q. Looking at the first sentence of this same</p> <p>22 e-mail that I referenced you to, the information Cinnie</p> <p>23 Brown obtained from the two temps that feel they were</p> <p>24 being discriminated against follow along with Cinnie's</p> <p>25 general observations.</p>	<p style="text-align: right;">Page 124</p> <p>1 A. There was a meeting that was conducted amongst</p> <p>2 the four of us. There was, to the best of my</p> <p>3 recollection, a list of questions that was reviewed and</p> <p>4 compiled.</p> <p>5 Q. Any other actions?</p> <p>6 A. I don't believe so.</p> <p>7 Q. Do you know who wrote the questions?</p> <p>8 A. I don't.</p> <p>9 Q. Did you review those?</p> <p>10 A. I did.</p> <p>11 Q. Did you review them prior to any interviews</p> <p>12 being conducted?</p> <p>13 A. Yes, I did.</p> <p>14 Q. Okay. Did you provide any feedback to anybody</p> <p>15 pertaining to those questions?</p> <p>16 A. I believe I did.</p> <p>17 Q. Do you recall what your feedback was?</p> <p>18 A. No, I don't.</p> <p>19 Q. Was the feedback written or verbal?</p> <p>20 A. I believe it was most likely written.</p> <p>21 Q. Okay. Do you recall who you provided the</p> <p>22 feedback to?</p> <p>23 A. I do not.</p> <p>24 Q. Did you ever have any sense of whether your</p> <p>25 feedback was incorporated into the final set of questions?</p>

<p style="text-align: right;">Page 133</p> <p>1 Q. Between that discussion where you agreed with 2 Mr. Francis that Taj would be interviewed and the time 3 when Taj was, in fact, interviewed by Mr. Francis, were 4 there any other actions that you know of taken regarding 5 this investigation? 6 A. I don't believe -- I don't recall. 7 Q. At some point Mr. Francis did interview 8 Mr. Johnson, correct? 9 A. Yes, I believe so. 10 Q. Do you recall having any conversations with 11 Mr. Francis about that interview? 12 A. Yes, I do. 13 Q. How many conversations did you have with 14 Mr. Francis about that interview? 15 A. I don't remember how many. 16 Q. Did Mr. Francis -- other than maybe sending you 17 an e-mail, did Mr. Francis provide you with any other 18 documents pertaining to that interview? 19 A. I don't believe so. 20 Q. Did you take any notes regarding that interview 21 at all? 22 A. Regarding which interview? 23 Q. The interview with Mr. Johnson. 24 A. No. I wouldn't have had any notes. 25 Q. Did you take any notes of conversation with</p>	<p style="text-align: right;">Page 135</p> <p>1 Q. What was his job title, if you know? 2 A. Vice President of Operations for Online. 3 Q. Do you have any sense of why he was being sent 4 to -- a copy of this e-mail? 5 A. Other than -- no, I don't recall why. 6 Q. Does Mr. Hand still work for Blockbuster? 7 A. He does not. 8 Q. Do you recall when he left? 9 A. Approximately May of '06, I believe. 10 Q. Did you ever have any communications with 11 Mr. Hand concerning this May 2005 investigation? 12 A. I don't believe so. 13 Q. Do you know if anyone had any such 14 communications with Mr. Hand other than this e-mail? 15 A. I have no idea. 16 Q. Did you have any communications with Mr. Hand 17 concerning the allegations of Michelle Despert's 18 allegations? 19 A. I don't believe so. 20 Q. Having read this e-mail, does this help refresh 21 your recollection that sexual harassment was an issue that 22 was being investigated in May of 2005 at the Gaithersburg 23 warehouse? 24 A. I would say it points to that, yes. 25 Q. Does it help you remember anything more</p>
<p style="text-align: right;">Page 134</p> <p>1 Barry Francis? 2 A. Not to my knowledge. 3 Q. So at some point Mr. Francis sent you an e-mail 4 concerning what Taj had said, correct? 5 A. That's correct. 6 MR. PHILLIPS: This was previously marked 7 at Francis 10. We'll mark it here as Collen 10. 8 (Exhibit 10 marked) 9 Q. (By Mr. Phillips) Go ahead and read that 10 e-mail, and let me know when you're done. 11 A. Okay. 12 Q. Do you recognize this e-mail, Mr. Collen? 13 A. Yes, I do. 14 Q. What is this e-mail? 15 A. It's an e-mail from Barry Francis to myself 16 regarding his meeting with Taj. 17 Q. So this is the interview -- this is the e-mail 18 concerning the interview with Taj that you previously 19 referenced? 20 A. I believe that would be correct. 21 Q. Okay. In the To heading at the top of this 22 e-mail, it's to you and then to someone named Brian Hand. 23 A. Yes. 24 Q. Who is Brian Hand? 25 A. Brian Hand was my boss at the time.</p>	<p style="text-align: right;">Page 136</p> <p>1 concerning whether sexual harassment was being 2 investigated? 3 A. Not really. 4 Q. Go down to the summary section. Look at the 5 second paragraph there. That being said, I would like to 6 recommend we alter our plan to visit the site on Tuesday 7 for the separation of Taj. 8 Prior to this e-mail, had you and Mr. Francis 9 come to a plan that you were going to separate Mr. Johnson 10 from his employment at Blockbuster? 11 A. I don't know that I would call it a plan to 12 separate him. 13 Q. Was it your intention to separate him from his 14 employment at Blockbuster? 15 A. Pending the interview that Barry was going to 16 conduct of Taj, information that had been gained up until 17 that time said that it might lead to that. 18 Q. So based on the information that had been 19 obtained up to the point just prior to Taj being 20 interviewed, it was your intention to separate from his 21 employment? 22 A. I believe that would be correct. 23 Q. Was Mr. Johnson separated from his employment at 24 this time in May 2005? 25 A. No, he was not.</p>

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1 Q. He was separated at some point, correct?
2 A. That is correct.
3 Q. August 2005? Does that sound right?
4 A. I believe late August.
5 Q. Why didn't you fire him then in May?
6 A. Because Barry, through an interview, uncovered
7 facts and information that pointed to the fact that we
8 shouldn't terminate him at that time.
9 Q. What facts and information?
10 A. I guess I would point to the recap of Taj's
11 interview.
12 Q. What aspects of that real estate recap?
13 A. There's items here that suggest that Taj hasn't
14 been trained, maybe, appropriately. States he may have
15 used profanity, but it wasn't directed to a staff member.
16 There's just a variety of items here that Barry used to
17 form that judgment.
18 Q. Did you agree with that judgment, that Taj
19 should not be separated?
20 A. Initially I challenged it.
21 Q. Why did you challenge it initially?
22 A. Because I didn't have the firsthand knowledge of
23 sitting down and talking with Taj. I had heard the recap
24 that Cinnie and Barry had provided from various employees,
25 so...

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1 Q. Did you eventually talk to Taj yourself?
2 A. I did not, not to my knowledge.
3 Q. So you relied on Mr. Francis' interview of
4 Mr. Johnson?
5 A. Well, I would categorize it as I relied upon
6 Barry's complete picture of the whole interview process,
7 which included Taj and all the other employees.
8 Q. So because Mr. Francis had done the interviews
9 and had firsthand knowledge, you deferred to his judgment
10 on that?
11 A. Not only that, he's also the HR professional.
12 Q. Do you know -- have you at anytime known what
13 questions Mr. Francis asked of Mr. Johnson?
14 A. I'm not sure what the questions were.
15 Q. Didn't Mr. Francis ever provide you with the
16 specific answers that Mr. Johnson gave to each of those
17 questions?
18 A. I don't recall.
19 Q. Did Mr. Francis provide you, for example, with
20 any notes of any discussion he had with Mr. Johnson?
21 A. I don't believe so.
22 Q. Did Mr. Francis ever state to you his opinion of
23 Mr. Johnson's credibility in his denials of sexually
24 harassing the staff as is reflected in this Taj interview
25 section that you were referencing earlier?

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1 A. Can you repeat that?
2 Q. Did Mr. Francis ever provide for you his opinion
3 of Mr. Johnson's credibility when he denied sexually
4 harassing staff with comments or inappropriate
5 conversations as is reflected in the first sentence under
6 Taj's interview?
7 MS. SPEIGHTS: Objection.
8 A. I got lost.
9 Q. (By Mr. Phillips) I'll ask a more simple
10 question. Did Mr. Francis ever tell you his opinion of
11 Mr. Johnson's credibility?
12 A. I don't recall.
13 Q. Do you know whether Mr. Francis made any effort
14 to assess Mr. Johnson's credibility?
15 A. I don't know whether he did or didn't.
16 Q. Do you know if anyone at Blockbuster assessed
17 Mr. Johnson's credibility, specifically as it relates to
18 any denials he made against him?
19 A. I'm not aware of -- I don't know.
20 Q. At the time of receiving this e-mail, we've
21 already established you knew there were prior allegations
22 of sexual harassment by Michelle Despertt against
23 Mr. Johnson, correct?
24 A. I believe so, yes.
25 Q. Also I think we've discussed an e-mail that was

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1 forwarded to you that was written by Ms. Despertt which
2 referenced an individual named Say Wing. Do you recall
3 that name?
4 A. I recall Say Wing, yes.
5 Q. Do you know if anybody interviewed Say Wing to
6 get the specifics of what her allegations may or may not
7 have been concerning the group leads?
8 A. I'm not sure if she was interviewed or not.
9 Q. Have you ever spoken to Say Wing at any time?
10 A. Yes, I have.
11 Q. When did you speak to her?
12 A. I don't remember.
13 Q. Have you spoken to her in the last year?
14 A. Yes.
15 Q. Did you speak to her back in 2005?
16 A. I really don't recall.
17 Q. How would you characterize her verbal English
18 language ability in your opinion?
19 A. How would I characterize her verbal English
20 language ability? She can speak basic English.
21 Q. Okay. What kinds of things have you discussed
22 with Say Wing?
23 A. Like within the past year, it's probably been
24 things related to how are you doing. It's general
25 conversation I have with an employee when I walk up to

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1 them on the floor.
2 Q. In reaching your decision to not separate Taj at
3 this time, did you consider the fact that there had been
4 prior allegations made against him regarding sexual
5 harassment?
6 A. Yes.
7 Q. Did you give those allegations any weight in
8 your decision making regarding whether or not to separate
9 Taj at this time?
10 A. All past corrective actions are taken into
11 account when considering current or future actions on an
12 employee.
13 Q. Did you reach the conclusion then that those
14 past allegations coupled with what you knew at this time
15 regarding new allegation weren't enough to justify a
16 separation?
17 A. It wasn't really my place to decide that in
18 particular. I took the facts working with Barry, and we
19 would come to a recommendation.
20 Q. Did you and Mr. Francis make a recommendation to
21 somebody?
22 A. We agreed upon the path of a corrective action.
23 Q. The two of you together?
24 A. Yes.
25 Q. To your knowledge, was anyone else involved in

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1 those deliberations?
2 A. Yes. I believe Jennifer Fitzgerald was.
3 Q. Do you know if she had any opinion regarding
4 whether or not Mr. Johnson should be separated at this
5 time?
6 A. I don't recall.
7 Q. Did you have any written communications with
8 Ms. Fitzgerald other than -- did you have any written
9 communications with her?
10 A. I don't recall. I believe she may have been
11 copied on some communication, maybe some e-mail
12 communication.
13 Q. Do you know whether Ms. Fitzgerald agreed with
14 the decision to not separate Taj from his employment?
15 A. I don't recall whether she agreed or disagreed.
16 Q. Under Summary, second paragraph -- it says here
17 at the end of the first paragraph actually, also, I do not
18 believe the staff are in harm's way of retaliation from
19 the leaders.
20 Do you see that sentence?
21 A. I do.
22 Q. Did you discuss the issue of potential
23 retaliation with Mr. Francis?
24 A. I don't recall.
25 Q. Did you have any opinion on this issue of

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1 whether or not staff might be in harm's way of
2 retaliation?
3 A. I don't actually recall whether I did or didn't.
4 Q. Next sentence, there is no leadership bench.
5 The next sentence, at this juncture, I suggest
6 micromanagement and aggressive remedial training for the
7 GLs and Linc regarding the people initiative.
8 There's a term there I don't understand, the
9 people initiative. What is that?
10 A. I certainly won't describe it for Barry. I can
11 tell you what it means to me.
12 Q. Sure.
13 A. To me it means making sure the people have a
14 positive work environment. That was mine and Barry's
15 biggest concern.
16 Q. Where I'm getting at there is this term people
17 initiative. Does that refer to any program or policy at
18 Blockbuster?
19 A. Not to my knowledge.
20 Q. Okay. All right. It's not capitalized.
21 A. No.
22 Q. So were there any actions taken in response to
23 this investigation in May 2005?
24 A. Yes. There were corrective actions issued.
25 Q. What corrective actions?

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1 A. I believe it was a corrective action for both
2 Linc and Taj.
3 Q. Related to what concerns?
4 A. Related to similar concerns as were investigated
5 and communicated in the middle of March.
6 Q. Item 3 toward the bottom of this page, Kofi
7 should be administered a final. Do you know if that was
8 done?
9 A. I do not.
10 Q. The term final used here, does that represent a
11 final written warning?
12 A. Yeah. That represents the third step in our
13 four-step corrective action process.
14 Q. What's the fourth step?
15 A. Termination.
16 Q. Do you know for a fact that Mr. Johnson was
17 administered the third step, final written warning?
18 A. I believe he was.
19 Q. What is the basis for your belief?
20 A. The basis for my belief is that I remember
21 reviewing the warning itself, the corrective action.
22 Q. Were there any other actions taken apart from
23 what you've already testified to in response to this
24 investigation?
25 A. There was -- Linc was placed on an action plan

<p style="text-align: right;">Page 145</p> <p>1 to improve overall leadership and performance. 2 Q. Was there any element of that action plan that 3 dealt with harassment and discrimination? 4 A. I know there were elements that were put in 5 place that would ensure that would not happen. 6 Q. What were those elements? 7 A. One element was a requirement by both Cinnie and 8 Linc that they meet weekly at the facility to review the 9 performance of employees of Express Personnel that were on 10 site. 11 Q. Any other elements to ensure that harassment or 12 discrimination wouldn't take place? 13 A. I can't remember all of them. I remember that 14 one in particular because we were concerned about -- we 15 didn't want a temporary let go just based on a person 16 there at the DC making that decision. 17 Q. How long did that system continue? 18 A. To the best of my knowledge, at least through 19 the summer of '05. 20 Q. Were you to be provided with information before 21 any -- strike that. 22 With apart from Cinnie Brown, was anyone at 23 Blockbuster to be provided with information before any 24 temporary could be let go? 25 A. Not to my knowledge.</p>	<p style="text-align: right;">Page 147</p> <p>1 here aside for a minute. Are you aware of anyone else at 2 Blockbuster who at some point held the view that 3 Mr. Johnson should be terminated as a result of this 4 investigation? 5 A. Not to my knowledge. 6 Q. I felt that enough information was uncovered 7 last week. 8 Sitting here now, do you have any further 9 recollection of what information you were referencing in 10 this e-mail? 11 A. No. 12 Q. According to Blockbuster policies and 13 procedures, who was the -- was there someone in this 14 situation who had final decision making authority 15 regarding whether or not to separate Taj from his 16 employment? 17 A. Can you rephrase the question? 18 Q. Yeah. According to Blockbuster policies, as 19 between you and Mr. Francis, did one of you have final 20 decision making authority on whether or not to fire Taj? 21 MS. SPEIGHTS: Objection. 22 A. Did either one of us have final? 23 Q. (By Mr. Phillips) Yes. 24 A. No. 25 Q. To coin an old phrase, where does the buck stop?</p>
<p style="text-align: right;">Page 146</p> <p>1 Q. Was anyone -- strike that. 2 MR. PHILLIPS: This will be 11. 3 (Exhibit 11 marked) 4 Q. (By Mr. Phillips) Go ahead and read Exhibit 11. 5 Take as much time as you need. It was previously marked 6 Francis 11. I will represent to you that everything 7 below -- everything starting with the e-mail from Francis 8 to Collen dated 5/15/05 is what you just read in 9 Exhibit 10. 10 A. Correct. I reviewed it. 11 Q. Okay. Can you tell me at least as to the top 12 portion, the e-mail from you to Barry Francis, what is 13 this? 14 A. This is an e-mail from me to Barry Francis 15 regarding his e-mail that he sent to me after his 16 investigation of Taj or his interview with Taj. 17 Q. Can you look at the second sentence. I felt 18 that enough information was uncovered last week that would 19 warrant his termination. Then the next sentence: Let's 20 plan to discuss on Monday. 21 Did you discuss it with Mr. Francis the 22 following Monday? 23 A. I can't confirm with you that it was Monday, but 24 I do believe we talked about it. 25 Q. We talked about Jennifer Fitzgerald. Let's set</p>	<p style="text-align: right;">Page 148</p> <p>1 Who -- how is the decision made? 2 MS. SPEIGHTS: Objection. You can answer. 3 A. A decision is made -- a recommendation is given, 4 and human resources will take that to our legal 5 department. To my knowledge, they're one of the final 6 steps to see yes, we can separate the employee. 7 Q. (By Mr. Phillips) But if a recommendation is 8 made to not separate, does that information get 9 transmitted to legal? 10 A. Not to my knowledge. 11 Q. Okay. Are you aware of any information 12 regarding a recommendation being transmitted to the legal 13 department concerning Thomas Johnson prior to August of 14 2005? 15 A. I'm not. 16 Q. Who transmits that information to the legal 17 department? 18 A. I don't know. 19 Q. Is it someone in human resources? 20 A. I would assume so. 21 Q. When a decision is made to not separate an 22 employee who's been accused of misconduct, specifically in 23 this situation with a group lead with Mr. Johnson, is 24 there somebody under Blockbuster policy who has the final 25 decision?</p>

<p style="text-align: right;">Page 149</p> <p>1 A. Can you repeat the question?</p> <p>2 Q. Yeah. Let me put it another way. I understand</p> <p>3 your prior testimony that you and Mr. Francis both agreed</p> <p>4 that Mr. Johnson would not be separated at this time. I</p> <p>5 understand that's what you testified to, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. Is there a Blockbuster policy that covers a</p> <p>8 situation, hypothetical situation, where you and</p> <p>9 Mr. Francis may have disagreed? I'm not asking you to</p> <p>10 admit that you did disagree. I'm just saying when that</p> <p>11 situation arises, is there a policy to cover that? Who</p> <p>12 makes the decision?</p> <p>13 MS. SPEIGHTS: Objection.</p> <p>14 A. I'm not aware of a policy.</p> <p>15 Q. (By Mr. Phillips) Have you ever had a</p> <p>16 disagreement with the regional HR person concerning</p> <p>17 whether or not to separate someone who is under</p> <p>18 investigation internally?</p> <p>19 A. Not to my knowledge.</p> <p>20 Q. When an investigation of potential harassment or</p> <p>21 discrimination is conducted, do you know if there is any</p> <p>22 review of that investigation by anybody above your level</p> <p>23 or Ms. Fitzgerald's level?</p> <p>24 MS. SPEIGHTS: Objection.</p> <p>25 A. I have no idea.</p>	<p style="text-align: right;">Page 151</p> <p>1 Q. Why were you forwarding these e-mails to</p> <p>2 Mr. Henderson on 5/24/2006?</p> <p>3 A. I believe this would have been a request by him</p> <p>4 to gain any information they have.</p> <p>5 Q. Did he tell you why he wanted that information?</p> <p>6 A. I don't recall whether he did or didn't.</p> <p>7 Q. Did anyone else at Blockbuster ask you for this</p> <p>8 information?</p> <p>9 A. I can't recall.</p> <p>10 MR. PHILLIPS: This will be 13.</p> <p>11 (Exhibit 13 marked)</p> <p>12 Q. (By Mr. Phillips) Mr. Collen, go ahead and look</p> <p>13 at Collen Exhibit 13, and let me know when you're done.</p> <p>14 A. Okay.</p> <p>15 Q. Have you had an opportunity to review Collen 13?</p> <p>16 A. Yes.</p> <p>17 Q. Can you identify it please?</p> <p>18 A. Yes. It's a Corrective Action Record.</p> <p>19 Q. This is a corrective action regarding Thomas</p> <p>20 Johnson?</p> <p>21 A. That's correct.</p> <p>22 Q. Where have you seen this document before?</p> <p>23 A. I saw it, I believe, following the interviews at</p> <p>24 Gaithersburg in the middle of May.</p> <p>25 Q. Okay. Do you recall who provided you with this</p>
<p style="text-align: right;">Page 150</p> <p>1 Q. (By Mr. Phillips) Do you know if there was any</p> <p>2 review by anyone at Blockbuster of the decision by you and</p> <p>3 Mr. Francis to not separate Mr. Johnson at this time?</p> <p>4 A. Other than Mrs. Fitzgerald?</p> <p>5 Q. Other than a discussion with Ms. Fitzgerald.</p> <p>6 A. I don't believe so.</p> <p>7 Q. Are you aware of any actions taken by</p> <p>8 Ms. Fitzgerald to review your decision?</p> <p>9 A. I'm not aware.</p> <p>10 Q. Do you know if Ms. Fitzgerald was provided with</p> <p>11 information concerning the specifics of what employees</p> <p>12 told Ms. Brown and Mr. Francis when they were interviewed</p> <p>13 on site?</p> <p>14 A. I'm not sure what Ms. Fitzgerald received.</p> <p>15 MR. PHILLIPS: This will be 12.</p> <p>16 (Exhibit 12 marked)</p> <p>17 Q. (By Mr. Phillips) I'll represent to you that</p> <p>18 the e-mail text that's referenced in this document is</p> <p>19 exactly the same as Exhibit 11.</p> <p>20 A. Correct.</p> <p>21 Q. You see here where you forwarded the e-mail</p> <p>22 reflected in Exhibit 11 to Michael Henderson?</p> <p>23 A. Yes, I did.</p> <p>24 Q. Okay. Do you see there the date 5/24/2006?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">Page 152</p> <p>1 document?</p> <p>2 A. I can't remember whether I drafted or Linc</p> <p>3 drafted it.</p> <p>4 Q. It's -- you believe it's one of the two of you,</p> <p>5 but you don't know which?</p> <p>6 A. That's correct.</p> <p>7 Q. If you take a look here -- first of all, was</p> <p>8 this intended to be the final written warning that was</p> <p>9 referenced in the e-mail that we were talking about</p> <p>10 earlier, which would have been Collen 10?</p> <p>11 A. Yes. I believe it would be.</p> <p>12 Q. Okay. You would agree with me that this</p> <p>13 document is not signed?</p> <p>14 A. I would agree with you.</p> <p>15 Q. Do you know why it was not signed?</p> <p>16 A. I do not know.</p> <p>17 Q. Are Corrective Action Records at Blockbuster</p> <p>18 required to be signed?</p> <p>19 A. They should be signed by the supervisor, yes.</p> <p>20 Q. The employee is then presented with the</p> <p>21 Corrective Action Record to acknowledge receiving it by</p> <p>22 signature; is that correct?</p> <p>23 A. Not necessarily.</p> <p>24 Q. There's an employee signature line there, second</p> <p>25 line from the top. Do you see that?</p>

<p style="text-align: right;">Page 153</p> <p>1 A. Yes.</p> <p>2 Q. So you would agree with me that this form is</p> <p>3 designed to be signed by the employee?</p> <p>4 A. No, I would not.</p> <p>5 Q. Why is the employee signature line on this form,</p> <p>6 if you know?</p> <p>7 A. Yes. It's there to give the opportunity to the</p> <p>8 employee to sign, particularly if they choose to make</p> <p>9 comments in the Employee Comments section.</p> <p>10 Q. Do you know what the purpose is for having a</p> <p>11 supervisor sign this document?</p> <p>12 A. Yes. To show that the supervisor prepared the</p> <p>13 document and administered the corrective action.</p> <p>14 Q. Do you know whether this Corrective Action</p> <p>15 Record was administered to Mr. Johnson?</p> <p>16 A. I do not.</p> <p>17 Q. Do you have any reason to believe that</p> <p>18 Mr. Johnson was provided with a final written warning</p> <p>19 concerning the matters that he was to be warned about in</p> <p>20 accordance with your understanding with Mr. Francis?</p> <p>21 A. You'll have to repeat the question.</p> <p>22 Q. Do you know if Mr. Johnson was warned as a</p> <p>23 result of the May 2005 investigation?</p> <p>24 A. It's my belief he was, yes.</p> <p>25 Q. What is the basis for your belief?</p>	<p style="text-align: right;">Page 155</p> <p>1 want you to look back at Collen Exhibit 5. Put it next to</p> <p>2 Collen Exhibit 13.</p> <p>3 A. Okay.</p> <p>4 Q. First of all, you'll notice in the top left-hand</p> <p>5 corner under Warehouse Group Lead there's a date on both.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And it says 3/17/05?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Then I'd like you to look at -- it's cut</p> <p>11 off here. Do you see the section that says Why a Problem?</p> <p>12 A. Yes, I do.</p> <p>13 Q. I want you to read that section to the extent</p> <p>14 you can in both documents and let me know when you're</p> <p>15 done.</p> <p>16 A. Okay.</p> <p>17 Q. To the extent the text isn't cut off in</p> <p>18 Exhibit 13, would you agree with me that the words that</p> <p>19 appear in Exhibit 13 in that section are the same as the</p> <p>20 words that appear in Collen 5?</p> <p>21 A. With that exception, I would agree.</p> <p>22 Q. Okay. Then looking down under Previous</p> <p>23 Corrective Action, for example, look at both documents.</p> <p>24 Read the text under Previous Corrective Action, and let me</p> <p>25 know when you're done.</p>
<p style="text-align: right;">Page 154</p> <p>1 A. Conversations with Linc Barrett.</p> <p>2 Q. What did Mr. Barrett say to you that caused you</p> <p>3 to believe that Mr. Johnson was warned?</p> <p>4 A. We had covered, particularly whenever I gave him</p> <p>5 his corrective action, what his step would be to talk with</p> <p>6 Taj.</p> <p>7 Q. Anything else that causes you to believe that</p> <p>8 Mr. Johnson received a final written warning?</p> <p>9 A. No.</p> <p>10 Q. I'm trying to get a sense of who authored this.</p> <p>11 First of all, I will represent to you that the -- there's</p> <p>12 a portion here in the middle right section that there's</p> <p>13 some text that appears to be missing. I'm not trying to</p> <p>14 hide the ball on you here. That's in the original the</p> <p>15 EEOC was provided by Blockbuster.</p> <p>16 MS. SPEIGHTS: For the record, this is not</p> <p>17 a document produced by Blockbuster. This has an EEOC</p> <p>18 bates number.</p> <p>19 MR. PHILLIPS: That's correct. But it was</p> <p>20 an attachment to a position statement provided during the</p> <p>21 investigation.</p> <p>22 MS. SPEIGHTS: I just wanted to clarify.</p> <p>23 MR. PHILLIPS: Understood.</p> <p>24 Q. (By Mr. Phillips) I want you to -- I'm trying</p> <p>25 to figure out who wrote this. Maybe this will help. I</p>	<p style="text-align: right;">Page 156</p> <p>1 A. Okay.</p> <p>2 Q. Would you agree with me that the first sentence</p> <p>3 of both sections is the same language?</p> <p>4 A. Yes.</p> <p>5 Q. You see there are Niema Fields is referenced</p> <p>6 again in Collen 13?</p> <p>7 A. That's correct.</p> <p>8 Q. Do you know why Niema Fields was referenced in</p> <p>9 Collen 13?</p> <p>10 A. No.</p> <p>11 Q. Then look at the Facts or Events section on both</p> <p>12 documents, and let me know when you're done.</p> <p>13 A. Okay.</p> <p>14 Q. Comparing those two sections, you would agree</p> <p>15 with me they're not identical?</p> <p>16 A. That's correct.</p> <p>17 Q. You would also agree with me that the language</p> <p>18 is very similar in both sections.</p> <p>19 A. I would agree there's some consistency between</p> <p>20 the sections, yes.</p> <p>21 Q. For example, the last sentence of the two</p> <p>22 sections.</p> <p>23 A. Yes.</p> <p>24 Q. Okay. You testified earlier that Mr. Barrett</p> <p>25 prepared Collen 5 and provided it to you, correct?</p>

<p style="text-align: right;">Page 157</p> <p>1 A. I believe that's correct.</p> <p>2 Q. Given the similarity between the two documents,</p> <p>3 does that assist you in any way in remembering who</p> <p>4 prepared Collen Exhibit 13?</p> <p>5 A. Not really, no.</p> <p>6 Q. Okay.</p> <p>7 MR. PHILLIPS: This will be Collen 14.</p> <p>8 (Exhibit 14 marked)</p> <p>9 Q. (By Mr. Phillips) Go ahead and read it, and let</p> <p>10 me know when you're done.</p> <p>11 A. Okay.</p> <p>12 Q. Do you recognize the document?</p> <p>13 A. Yes, I do.</p> <p>14 Q. What is it?</p> <p>15 A. It's a corrective action issued to Lincoln</p> <p>16 Barrett on 5/17/05.</p> <p>17 Q. Is this the corrective action that you prepared</p> <p>18 that you referenced earlier in your testimony?</p> <p>19 A. Yes, I believe so.</p> <p>20 Q. Looking down at the Improvement Required and</p> <p>21 Time Allowed section, do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Second paragraph, I'll read it to you. Linc</p> <p>24 will have until 9:00 a.m. eastern time on Monday, May</p> <p>25 23rd -- it's actually May 23 with a T-H after it -- to</p>	<p style="text-align: right;">Page 159</p> <p>1 Q. Do you know if Mr. Barrett ever received any</p> <p>2 training from any source, including Blockbuster or anyone</p> <p>3 else, about how to eliminate harassment in the workplace?</p> <p>4 A. I'm not aware of whether he did or didn't.</p> <p>5 Q. Okay. Did Mr. Barrett -- to your knowledge, did</p> <p>6 he consult with anyone inside or outside of Blockbuster in</p> <p>7 order to formulate a plan to eliminate harassment in the</p> <p>8 workplace?</p> <p>9 A. Yes.</p> <p>10 Q. Who did he consult with?</p> <p>11 A. Barry Francis.</p> <p>12 Q. Okay. Do you know what Mr. Francis'</p> <p>13 qualifications are for devising a plan to eliminate</p> <p>14 harassment in the workplace?</p> <p>15 A. I do not.</p> <p>16 Q. Do you know what role Mr. Francis had, if any,</p> <p>17 in formulating a plan to eliminate harassment in the</p> <p>18 workplace?</p> <p>19 A. Will you repeat it?</p> <p>20 Q. Do you know if Mr. Francis -- do you know what</p> <p>21 Mr. Francis' role was in aiding Mr. Barrett to formulate a</p> <p>22 plan to eliminate harassment in the workplace?</p> <p>23 A. No, I don't.</p> <p>24 MR. PHILLIPS: This will be 15.</p> <p>25 (Exhibit 15 marked)</p>
<p style="text-align: right;">Page 158</p> <p>1 present a comprehensive action plan, with deliverables and</p> <p>2 success indicators, to his manager which will at a minimum</p> <p>3 address the following.</p> <p>4 Then there are bullet points. Elimination of</p> <p>5 harassment in the workplace; elimination of favoritism in</p> <p>6 the workplace; collection and documentation of key</p> <p>7 performance indicators for all staff; improvement of</p> <p>8 training for new associates at the facility. Then the</p> <p>9 next sentence: The action plan should provide for closure</p> <p>10 of all identified actions within a maximum of 30 calendar</p> <p>11 days at which time a formal assessment of progress</p> <p>12 against the plan will be conducted.</p> <p>13 Did Mr. Barrett deliver to you a plan for</p> <p>14 elimination of harassment in the workplace?</p> <p>15 A. He delivered to me a plan that dealt with four</p> <p>16 different items.</p> <p>17 Q. Can you describe the plan that he delivered to</p> <p>18 you?</p> <p>19 A. Describe it in --</p> <p>20 Q. What did it look like?</p> <p>21 A. It was -- I believe it was a Word document,</p> <p>22 approximately five or so pages long.</p> <p>23 Q. Do you know what the plan provided for in terms</p> <p>24 of elimination of harassment in the workplace?</p> <p>25 A. I can't recall.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. (By Mr. Phillips) Go ahead and look at</p> <p>2 Exhibit 15, and let me know when you're done.</p> <p>3 A. Okay.</p> <p>4 Q. Do you recognize Collen Exhibit 15?</p> <p>5 A. I do.</p> <p>6 Q. What is it?</p> <p>7 A. It's part of the action plan that was prepared</p> <p>8 in response to the corrective action issued to Linc.</p> <p>9 Q. In the lower right-hand corner of the document,</p> <p>10 is that your signature?</p> <p>11 A. Is yes, it is.</p> <p>12 Q. Was there any other portion of this plan that</p> <p>13 dealt with issues of harassment?</p> <p>14 A. I can't recall.</p> <p>15 Q. Do you see the date here of -- looking on the</p> <p>16 right-hand side under Item 2, Review with staff</p> <p>17 Blockbuster policy on harassment, sexual harassment or</p> <p>18 otherwise. Completion date, 6/14/3035, do you see that?</p> <p>19 A. I do.</p> <p>20 Q. By signing this were you certifying that</p> <p>21 Mr. Barrett had completed that task, Review with staff</p> <p>22 Blockbuster policy on harassment?</p> <p>23 A. Can you repeat the question?</p> <p>24 Q. Yeah. Was your signature meant to certify that</p> <p>25 he had completed that task?</p>

<p style="text-align: right;">Page 165</p> <p>1 Q. Okay. What did you discuss with Mr. Barrett 2 during these meetings to assess progress? What did you 3 talk to him about? 4 A. I would go over the detailed action plan. Any 5 type of supporting documentation that he had at that time. 6 I would also take an opportunity to casually talk to the 7 full-time employees. That's predominantly what I did. 8 Q. What did you talk to the full-time employees 9 about? 10 A. General conversation, how's the environment at 11 the facility, how are things going. Anytime I walk into a 12 facility, I'm talking to employees. 13 Q. Were there any documents prepared associated 14 with either the midterm assessment or the final assessment 15 that you did with Mr. Barrett? 16 A. I don't believe any documents other than the one 17 we finally signed off on. 18 Q. Other than Exhibit 15? 19 A. Which I believe is probably the final plan. 20 Q. I'll represent to you that there were other 21 pages to the plan. 22 A. Yeah. There were several pages. 23 Q. You don't have those in front of you. Do you 24 know if Mr. Johnson was rehired by Blockbuster at some 25 point?</p>	<p style="text-align: right;">Page 167</p> <p>1 Blockbuster? 2 A. It was a violation, again, of the items that he 3 had been on a final warning for. 4 Q. Including work environment issues? 5 A. That would be correct. Leadership, et cetera. 6 Q. Was Mr. Johnson terminated either in whole or in 7 part because of sexual harassment? 8 A. I can't recall exactly what our foundation was. 9 Q. Okay. So you don't recall whether he was 10 terminated because of national origin or race 11 discrimination? 12 A. I can't recall. 13 Q. Was Mr. Barrett terminated from his employment 14 because of sexual harassment issues at the Gaithersburg 15 warehouse? 16 A. I don't believe so. 17 Q. Was he terminated for permitting sexual 18 harassment to take place at the Gaithersburg warehouse? 19 A. I don't believe so. 20 Q. Was he terminated for race or national origin 21 harassment taking place at the Gaithersburg warehouse? 22 A. I don't believe so. 23 MR. PHILLIPS: Let's go ahead and take a 24 break. 25 (A break was taken)</p>
<p style="text-align: right;">Page 166</p> <p>1 A. Not to my knowledge. 2 Q. At some point Mr. Johnson was fired by 3 Blockbuster, correct? 4 A. Yes. His employment was terminated. 5 Q. At some point Mr. Barrett's employment was also 6 separated, correct? 7 A. That is correct. 8 Q. Do you know why Mr. Johnson's employment was 9 separated from Blockbuster? 10 A. It was the result of additional complaints that 11 had come to Blockbuster's attention, I believe, from the 12 temporary agency as well as a set of interviews of current 13 existing Blockbuster employees. 14 Q. Who made the decision to separate Mr. Johnson 15 from his employment? 16 A. It was a joint recommendation made, I believe, 17 by myself, Barry Francis and I believe Jennifer Fitzgerald 18 at that time. 19 Q. To who was the recommendation made? 20 A. Well, again, back previously I said our legal 21 department usually does a final review. 22 Q. Was there any document prepared and submitted to 23 the legal department? 24 A. I'm not sure. 25 Q. Why was Mr. Barrett's employment ended with</p>	<p style="text-align: right;">Page 168</p> <p>1 Q. (By Mr. Phillips) We're in the home stretch, 2 Mr. Collen. I have a few more questions for you regarding 3 this May 2005 investigation. At any point during or after 4 that investigation, did you provide to Mr. Francis any 5 information that you obtained during the Michelle Despert 6 investigation? 7 A. I don't recall. 8 Q. Do you recall having any communications with 9 Cinnie Brown in May 2005 -- well, or at any time, 10 concerning course of action that Blockbuster intended to 11 take regarding Thomas Johnson as a result of the May 12 investigation? 13 A. I can't remember. 14 Q. Did you have a conversation with Cinnie Brown in 15 which she told you that she thought Mr. Johnson should be 16 terminated? 17 A. I don't recall that. 18 Q. Did she ever communicate to you her thoughts or 19 Express Personnel's thoughts regarding what should happen 20 to Mr. Johnson related to the May 2005 investigation? 21 A. I don't recall. 22 Q. I'll represent to you that Ms. Brown told the 23 EEOC that she told you -- well, she asked you a question 24 during a conversation with you to the effect of didn't you 25 think that you had enough to terminate the managers at</p>

<p style="text-align: right;">Page 177</p> <p>1 Q. Do you know if the issue of treating African 2 Blacks and Hispanics worse than American Blacks was 3 something that Mr. Francis was looking at during this 4 August investigation? 5 A. I do not know. 6 Q. Did you have any conversation with Mr. Francis 7 regarding the scope of the investigation in terms of the 8 issues that were to be looked at? 9 A. Not that I can recall in terms of discussions. 10 Q. Who determined what issues were to be 11 investigated during this August investigation? Do you 12 know? 13 A. I don't recall. 14 Q. Do you recall having any participation in the 15 decision about what issues would be looked at during this 16 investigation? 17 A. I don't recall. 18 MR. PHILLIPS: This will be 17. 19 (Exhibit 17 marked) 20 Q. (By Mr. Phillips) Go ahead and read Exhibit 17, 21 and let me know when you're done. 22 A. Okay. 23 Q. Do you recognize Exhibit 17, Mr. Collen? 24 A. Yes, I do. 25 Q. What is Exhibit 17?</p>	<p style="text-align: right;">Page 179</p> <p>1 that name familiar to you? 2 A. Yes, it is. 3 Q. Did it come to your attention at any point that 4 Emetem Nkwetta was making an allegation that Taj had 5 engaged in inappropriate sexual conduct? 6 A. Can you repeat the question? 7 Q. Yeah. Did it come to your attention that Emetem 8 had provided information to the effect that Taj had done 9 something inappropriate of a sexual nature? 10 A. I don't believe so. 11 Q. You would agree with me that this language at 12 least suggests that Emetem had informed somebody of a 13 sexual problem, quote, unquote, regarding Taj? 14 A. It seems to point to that fact. 15 Q. I'll represent to you that Mr. Francis has 16 already testified in this case that earlier during the May 17 investigation he became aware of at least one allegation 18 from Emetem Nkwetta regarding sexual comments by Taj. Was 19 that information ever communicated to you? 20 A. I can't recall whether it was or wasn't. 21 Q. Would that kind of information have been 22 relevant to your considerations in May of 2005 regarding 23 what action to take regarding Taj? 24 A. In this particular instance, if it occurred back 25 in January, it probably wouldn't have been taken into</p>
<p style="text-align: right;">Page 178</p> <p>1 A. It's an e-mail between Barry Francis and myself. 2 Q. Does this e-mail relate to the new allegations 3 that were investigated in August of 2005? 4 A. My belief it does. 5 Q. If you could look down at the second paragraph, 6 I'll read a portion to you. At some point before the 7 EOW -- what's EOW? 8 A. I would take that to mean end of week. 9 Q. Okay. Is that some kind of Blockbuster jargon 10 or just your inference based on experience? 11 A. Based on experience. 12 Q. I would like to speak off-line with EEs, 13 Fernando and Emetem. There is only one new complaining EE 14 since my visit and that is Grisel. She is also the wife 15 of Victor Ruiz. So unless she can give specifics as to 16 the sexual activity in the office...she might be deemed as 17 having a vested interested in protecting her husband's 18 allegations. You and I spoke -- then there's an E back 19 slash -- Emetem when we were there earlier. She spoke to 20 the sexual problems of TJ then, but also indicated they 21 were date stamped as earlier in the year. IE Jan '05. 22 Clearly the environment is not conducive to what BBI 23 stands for. 24 Did it come to your attention at some point that 25 Emetem -- first of all, does the name Emetem Nkwetta, is</p>	<p style="text-align: right;">Page 180</p> <p>1 account in the May investigation. 2 Q. Why not? 3 A. Because we had -- it was an occurrence or an 4 instance prior back in January. We had investigated a lot 5 of those concerns back in March. 6 Q. Back in March, do you know if anyone had 7 interviewed Ms. Nkwetta? 8 A. I'm not sure. 9 Q. So if this were new information that were not 10 known in March, isn't that something that would be 11 relevant to your decision about whether the sexual 12 harassment allegations against Taj were substantiated in 13 May? 14 A. I don't think I understand the question. 15 Q. Sure. If you -- you referenced earlier the 16 investigation and the issues that were looked at in March, 17 correct? 18 A. In March, correct. 19 Q. Do you know whether Ms. Nkwetta brought those 20 issues to Blockbuster's attention in March? 21 A. I do not know. 22 Q. If she did not and they were first brought to 23 Blockbuster's attention in May, would your answer still be 24 the same, that those concerns would not be considered 25 germane to your consideration about what to do in May --</p>

<p style="text-align: right;">Page 181</p> <p>1 MS. SPEIGHTS: Objection.</p> <p>2 Q. -- if it was new information basically?</p> <p>3 A. Basically in May we were looking at items that</p> <p>4 had occurred from the middle of March forward.</p> <p>5 Q. (By Mr. Phillips) Would you consider a report</p> <p>6 of sexual harassment from a person other than the ones</p> <p>7 complaining in the May time frame relevant to your</p> <p>8 considerations even though it happened in January? Would</p> <p>9 you consider that relevant as corroborative evidence?</p> <p>10 MS. SPEIGHTS: Objection. You can answer.</p> <p>11 A. I got lost.</p> <p>12 Q. (By Mr. Phillips) I'm trying to understand how</p> <p>13 you use information regarding allegations of past sexual</p> <p>14 harassment. What you have said to me so far is that you</p> <p>15 had an investigation in March; that you addressed those</p> <p>16 issues in March. Then we moved on to May.</p> <p>17 A. Can I interrupt you?</p> <p>18 Q. Yes, sir.</p> <p>19 A. And we provided coaching and counseling to the</p> <p>20 employee in March.</p> <p>21 Q. To whom?</p> <p>22 A. To Taj and Lincoln Barrett.</p> <p>23 Q. Okay. Did you consider in March any allegations</p> <p>24 by Emetem Nkwetta?</p> <p>25 A. Not to my knowledge.</p>	<p style="text-align: right;">Page 183</p> <p>1 MS. SPEIGHTS: Objection. You can answer.</p> <p>2 A. I don't know how -- I guess I'm not following</p> <p>3 the question.</p> <p>4 Q. (By Mr. Phillips) Let me withdraw it and</p> <p>5 rephrase it.</p> <p>6 In your mind, in May, when you were considering</p> <p>7 the allegations made at that time, what was being</p> <p>8 investigated at that time in May, were any allegations --</p> <p>9 were any events that transpired prior to March relevant to</p> <p>10 your decision about what was appropriate action in May?</p> <p>11 MS. SPEIGHTS: Objection. You can answer.</p> <p>12 Q. (By Mr. Phillips) You can answer.</p> <p>13 A. The corrective action was relevant. In other</p> <p>14 words, the employee had been told what performance needed</p> <p>15 to change.</p> <p>16 Q. Let me go back then. Did -- so you have no --</p> <p>17 okay. Sitting here today, do you recall whether</p> <p>18 Mr. Francis told you back in May that Emetem Nkwetta,</p> <p>19 spoke, to sexual problems of Taj then? Do you have</p> <p>20 recollection of Mr. Francis telling you that?</p> <p>21 A. I don't have recollection of him telling me or</p> <p>22 not telling me.</p> <p>23 Q. Okay. And you don't recall what you discussed</p> <p>24 with Mr. Francis concerning Michelle Despertt's</p> <p>25 allegations. Is that your testimony?</p>
<p style="text-align: right;">Page 182</p> <p>1 Q. Because as you testified earlier, you didn't</p> <p>2 believe that those allegations were corroborated back in</p> <p>3 March.</p> <p>4 A. I don't know.</p> <p>5 MS. SPEIGHTS: Objection.</p> <p>6 A. I don't know if they were surfaced.</p> <p>7 Q. (By Mr. Phillips) So if an employee is</p> <p>8 reporting new allegations to you that you were not aware</p> <p>9 of in March when that person was talked to in May,</p> <p>10 wouldn't that information be relevant to your</p> <p>11 consideration about whether or not the May allegations</p> <p>12 were substantiated; that there was an allegation by</p> <p>13 somebody else that there was inappropriate sexual conduct?</p> <p>14 MS. SPEIGHTS: Objection.</p> <p>15 Q. (By Mr. Phillips) You can answer.</p> <p>16 A. I've lost the question. I'm sorry.</p> <p>17 Q. So in the May investigation, you only considered</p> <p>18 relevant information about allegations or reports from</p> <p>19 employees that took place between March and May. Is that</p> <p>20 your testimony?</p> <p>21 A. That's the primary focus, yes.</p> <p>22 Q. Allegations made by employees that took place of</p> <p>23 events that took place prior to March would not be</p> <p>24 relevant -- were not relevant to your consideration at</p> <p>25 that time in May.</p>	<p style="text-align: right;">Page 184</p> <p>1 A. I don't recall.</p> <p>2 Q. There's a question here at the end of this</p> <p>3 sentence or paragraph: Do you have the comments in</p> <p>4 writing from the interim group lead? Do you know what</p> <p>5 that refers to?</p> <p>6 A. That refers to a group lead that had been</p> <p>7 assigned to the Gaithersburg facility to cover, I believe,</p> <p>8 an illness by a new group lead that had been fired at this</p> <p>9 facility.</p> <p>10 Q. Where had this interim group lead come from?</p> <p>11 A. From Philadelphia.</p> <p>12 Q. What was his or her name?</p> <p>13 A. I don't remember his name.</p> <p>14 Q. So it was a male?</p> <p>15 A. I believe it was a male, yes.</p> <p>16 Q. Did you receive comments in writing from that</p> <p>17 person? Did anyone receive comments in writing from that</p> <p>18 person?</p> <p>19 A. I don't know if anyone ever did or not.</p> <p>20 Q. What kind of comments were to be provided?</p> <p>21 A. I don't recall exactly what the comments would</p> <p>22 have been.</p> <p>23 Q. Okay. What was the general subject matter?</p> <p>24 What was this person being asked to submit in writing?</p> <p>25 A. I believe the general subject matter was the</p>

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1 concerning the specifics of the anonymous hot line
2 complaint referenced in this e-mail?
3 A. I can't be for sure whether I did or didn't.
4 Q. Did you have any discussions with anyone
5 concerning what was said by the anonymous caller?
6 A. I cannot recall whether I did or didn't.
7 Q. Do you know whether anonymous hot line
8 complaints are documented in any way by Blockbuster?
9 A. I don't know.
10 MR. PHILLIPS: This will be 19.
11 (Exhibit 19 marked)
12 Q. (By Mr. Phillips) Go ahead and look at 19 and
13 just look at it to see if you recognize it.
14 A. I do recognize it.
15 Q. What is -- this appears to actually be two
16 copies of the same form. Would you agree with me?
17 Different handwritten notations, but within the boxes on
18 the form the text is the same. Would you agree with me?
19 A. I believe that's correct.
20 Q. With a few exceptions.
21 A. Right.
22 Q. What is this form?
23 A. This form is an Employee Separation Form.
24 Q. Was this the Employee Separation Form prepared
25 regarding Thomas Johnson's separation?

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1 A. Yes, it was.
2 Q. Who prepared it?
3 A. I did.
4 Q. Look down at the box. Briefly describe the
5 reason that supports the decision to terminate. Do you
6 see that?
7 A. Yes, I do.
8 Q. I'll read it to you. Numerous employees and
9 temp staff reported favoritism, harassment and
10 intimidation tactics used by the employee.
11 Do you see that?
12 A. Yes, I do.
13 Q. Then look down below that where it discusses has
14 this employee received any previous corrective actions.
15 Do you see there the entry 3/28/05 where it says
16 harassment, misconduct?
17 A. Yes.
18 Q. Then the entry 5/17/05, final written
19 harassment, misconduct?
20 A. Yes, I do.
21 Q. Didn't you conclude at least as of 3/28/05 that
22 Mr. Johnson had been engaging in sexual harassment of
23 workers at the Gaithersburg warehouse?
24 MS. SPEIGHTS: Objection, asked and
25 answered.

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1 A. No, I don't believe so.
2 Q. (By Mr. Phillips) What kind of harassment were
3 you referencing in this specific form?
4 A. I believe it was, as I said earlier, the yelling
5 and the treatment of employees in such a manner as
6 intimidating.
7 MR. PHILLIPS: This will be 20.
8 (Exhibit 20 marked)
9 Q. (By Mr. Phillips) If you can look at it for
10 purposes of identification, and let me know when you're
11 done.
12 A. Okay.
13 Q. What is this document?
14 A. It's an Employee Separation Form.
15 Q. Is this concerning -- is this the separation
16 form concerning Lincoln Barrett?
17 A. Yes, it is.
18 Q. That's it on that one. I just wanted you to
19 identify it. I just have a few other documents I want you
20 to look at and tell me if you recognize them.
21 MR. PHILLIPS: This will be 21.
22 (Exhibit 21 marked)
23 Q. (By Mr. Phillips) Again, just look at it for
24 purposes of identification. I'll represent to you that
25 this is an excerpt. This is not the complete human

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1 resources book.
2 A. Okay.
3 Q. Looking past to the third page, which is labeled
4 1181, what is that document, 1181?
5 A. 1181 is the first page of the job description
6 for DC manager.
7 Q. Looking at 1183 and 1184, what is that document?
8 A. That's the full description of a group lead, job
9 description.
10 Q. And 1187 to 1188, what is that document?
11 A. That's the full job description for a
12 distribution clerk.
13 MR. PHILLIPS: This will be 22.
14 (Exhibit 22 marked)
15 Q. (By Mr. Phillips) Just flip through this
16 document just for purposes of determining whether you've
17 ever seen it before, whether you've seen it in this form
18 or in the form of a, for example, PowerPoint presentation?
19 A. I can't be for sure that I've seen it.
20 Q. Take a minute or two and look through it a
21 little more and let me know.
22 A. Okay.
23 Q. Having looked at the document a little further,
24 do you recall ever seeing anything presented to you like
25 this, either presented as a written document or, for