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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

EQUAL EMPLOYMENT :  
OPPORTUNITY COMMISSION, :  
Plaintiff, : RWT-07-CV-2612  
vs. :  
BLOCKBUSTER, INC., :  
Defendant. :

- - - - -

DEPOSITION of BARRY FRANCIS

Baltimore, Maryland

Friday, May 30, 2008

9:33 A.M.

Job No: 1-130251

Pages 1 - 243

Reported by: Barbara A. Conner, R.P.R.

<p style="text-align: right;">Page 33</p> <p>1 A To the best of my knowledge.</p> <p>2 Q Do you recall your first internal</p> <p>3 investigation of an EEO matter? Do you recall when that</p> <p>4 was?</p> <p>5 MS. SPEIGHTS: Objection.</p> <p>6 MR. PHILLIPS: That's okay. I'll ask for</p> <p>7 elaboration on the objection. What's the nature of the</p> <p>8 objection?</p> <p>9 MS. SPEIGHTS: You asked him two questions.</p> <p>10 You said first "Do you recall it," then you said "Do you</p> <p>11 recall when it was." You're asking him compound</p> <p>12 questions. I want to make sure he's answering the</p> <p>13 question that you're putting --</p> <p>14 Q Did you understand the question?</p> <p>15 MS. SPEIGHTS: Objection.</p> <p>16 MR. PHILLIPS: That's fine.</p> <p>17 Q Did you understand my question?</p> <p>18 A I'll ask you to rephrase.</p> <p>19 Q Okay, very good. That's fine. If you don't</p> <p>20 understand my questions or if they're confusing to you,</p> <p>21 please ask me to rephrase and I will do that. Okay?</p> <p>22 A Yes.</p>	<p style="text-align: right;">Page 35</p> <p>1 You recall conducting an investigation</p> <p>2 related to harassment and discrimination at the</p> <p>3 Gaithersburg warehouse, correct?</p> <p>4 A Yes.</p> <p>5 Q Do you recall conducting more than one</p> <p>6 investigation at that warehouse?</p> <p>7 A Yes.</p> <p>8 Q How many investigations did you conduct</p> <p>9 related to activities at that warehouse?</p> <p>10 A I don't recall.</p> <p>11 Q Do you recall when the first time you</p> <p>12 conducted an investigation related to the Gaithersburg</p> <p>13 warehouse was?</p> <p>14 A May of '05.</p> <p>15 Q Was that the first internal investigation of</p> <p>16 harassment or discrimination that you had conducted at</p> <p>17 Blockbuster?</p> <p>18 A No.</p> <p>19 Q Do you recall how many you'd conducted prior</p> <p>20 to that time?</p> <p>21 A I don't recall.</p> <p>22 Q You attended Lincoln University, is that</p>
<p style="text-align: right;">Page 34</p> <p>1 Q Do you recall when your first internal EEO</p> <p>2 investigation at Blockbuster was?</p> <p>3 A No.</p> <p>4 Q Do you recall how long it was after you</p> <p>5 started at Blockbuster when you did your first</p> <p>6 investigation?</p> <p>7 A No.</p> <p>8 Q Do you recall conducting an investigation of</p> <p>9 harassment and discrimination at the Gaithersburg,</p> <p>10 Maryland, distribution center?</p> <p>11 A Yes.</p> <p>12 Q Did you conduct more than one investigation</p> <p>13 related to that distribution center or just one?</p> <p>14 A Rephrase the question, please.</p> <p>15 Q How many investigations, internal</p> <p>16 investigations, of harassment or discrimination did you</p> <p>17 conduct related to the distribution center in</p> <p>18 Gaithersburg?</p> <p>19 MS. SPEIGHTS: Objection.</p> <p>20 A I'm not understanding your question. I'm</p> <p>21 sorry.</p> <p>22 Q Let me rephrase again.</p>	<p style="text-align: right;">Page 36</p> <p>1 correct?</p> <p>2 A That's correct.</p> <p>3 Q Did you receive a degree from Lincoln</p> <p>4 University?</p> <p>5 A Yes.</p> <p>6 Q What was your degree in?</p> <p>7 A Sociology, minor concentration in human</p> <p>8 services.</p> <p>9 Q By human services, is that analogous to human</p> <p>10 resources?</p> <p>11 A I don't know.</p> <p>12 Q What is human services?</p> <p>13 A Additional course requirements under the</p> <p>14 heading of sociology.</p> <p>15 Q Since that time, have you taken any courses</p> <p>16 in human resource management?</p> <p>17 A Yes.</p> <p>18 Q How many such courses have you taken?</p> <p>19 A I don't recall.</p> <p>20 Q Did any of those courses cover the topic of</p> <p>21 equal employment opportunity?</p> <p>22 A Yes.</p>

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1 with your training in Dallas?  
2 A Don't know.  
3 MR. PHILLIPS: Just for the record, I would  
4 request that to the extent that the witness has those  
5 materials in connection with the training in Dallas or  
6 any other trainings concerning investigations, that they  
7 be produced to the EEOC, unless they've been already  
8 produced. And, obviously, if there are any marginalia,  
9 we would still want production, but if it's exactly  
10 what's already been produced, then that's fine. If you  
11 could go ahead and let us know about that, I would  
12 appreciate it.  
13 Q With respect to the training regarding  
14 investigations, can you tell me, if you recall, what  
15 topics were covered regarding investigations.  
16 A Can you rephrase the question, please.  
17 Q Sure.  
18 Can you tell me, can you describe for me what  
19 things you were trained to do in those investigation  
20 trainings, for what kinds of things you were receiving  
21 training.  
22 MS. SPEIGHTS: In all three of the ones,

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1 Dallas, Webinars and conferences?  
2 MR. PHILLIPS: Yes, and it's not clear if  
3 it's three. It might be more than that.  
4 MS. SPEIGHTS: Three categories, is what I'm  
5 saying.  
6 MR. PHILLIPS: Right, right, right.  
7 Q Yes, let's take them one at a time. Let's  
8 start with the Dallas training. Can you tell me what  
9 was covered during that training.  
10 A Investigation of witnesses, interviewing of  
11 the witnesses, interviewing of the complainant.  
12 Q Anything else that you recall?  
13 A Not to my recollection.  
14 Q Then the Webinar training, can you recall  
15 what aspects of investigation were covered?  
16 A The same.  
17 Q The same as you've already testified to just  
18 now?  
19 A Yes.  
20 Q And in the conference calls, can you tell me  
21 what topic related to investigations was covered.  
22 A The same as my prior testimony.

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1 Q Other than your education at Lincoln  
2 University, have you received any other degrees?  
3 A No.  
4 Q Have you ever been discharged from a human  
5 resources job at any time in the past?  
6 A Not to my knowledge.  
7 Q Could you remind me when you started at  
8 Blockbuster, what month and year.  
9 A May 17, '04.  
10 MR. PHILLIPS: It's a good time to take a  
11 break.  
12 (Recess.)  
13 Q Mr. Francis, we talked earlier about the time  
14 period when you had responsibility for locations in the  
15 state of Maryland and I didn't ask you during that  
16 period, I don't think I asked you, specifically what  
17 time frame did you have responsibility for the  
18 Gaithersburg facility, the Gaithersburg distribution  
19 center, so I want to ask you that now. During what time  
20 frame did you have responsibility for the Gaithersburg  
21 warehouse?  
22 MS. SPEIGHTS: Objection.

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1 You can answer.  
2 A I never had responsibility for the  
3 Gaithersburg location.  
4 Q So, was your role at the Gaithersburg  
5 distribution center limited to conducting the  
6 investigations you referenced in your testimony earlier?  
7 A That's correct.  
8 Q Was there someone else at Blockbuster, to  
9 your knowledge, that had general human resource  
10 responsibility for the Gaithersburg distribution center  
11 during that time frame?  
12 A Can you rephrase that question, please.  
13 Q Sure.  
14 Was there someone else in HR who performed  
15 duties regarding the Gaithersburg distribution center  
16 during the time frame you were conducting investigations  
17 there?  
18 A Yes.  
19 Q Who was that person?  
20 A First name, Jennifer; I don't remember the  
21 last name.  
22 Q Jennifer Fitzgerald?

<p style="text-align: right;">Page 45</p> <p>1 A That's correct.</p> <p>2 Q Where was her office located?</p> <p>3 A I don't know.</p> <p>4 Q Do you know who her supervisor was?</p> <p>5 A No.</p> <p>6 Q Do you know what her title was?</p> <p>7 A No.</p> <p>8 Q Do you know why you were called on to conduct</p> <p>9 investigations at the Gaithersburg distribution center</p> <p>10 rather than Ms. Fitzgerald?</p> <p>11 A Because I was local HR to the facility.</p> <p>12 Q So, Ms. Fitzgerald, then, was not local?</p> <p>13 A That's correct.</p> <p>14 Q Do you know what state she was located in at</p> <p>15 the time?</p> <p>16 A No.</p> <p>17 Q I just want to make sure I'm clear. You</p> <p>18 performed no duties related to the Gaithersburg</p> <p>19 distribution center, other than the investigations you</p> <p>20 referenced earlier in your testimony, is that correct?</p> <p>21 A That is correct.</p> <p>22 Q Did someone supervise you in those</p>	<p style="text-align: right;">Page 47</p> <p>1 Q Mr. Barrett was employed at Blockbuster, is</p> <p>2 that correct?</p> <p>3 A To my knowledge.</p> <p>4 Q What was his title?</p> <p>5 A I don't know.</p> <p>6 Q Do you know what his job was?</p> <p>7 A Can you rephrase the question, please.</p> <p>8 Q Sure.</p> <p>9 Do you know what duties Mr. Barrett performed</p> <p>10 for Blockbuster?</p> <p>11 A He oversaw the distribution center.</p> <p>12 Q So, Mr. Barrett was the on-site manager of</p> <p>13 the distribution center?</p> <p>14 A That's correct.</p> <p>15 Q Was there any manager above Mr. Barrett in</p> <p>16 the chain of command who was physically located at the</p> <p>17 Gaithersburg center at the time you were conducting</p> <p>18 investigations there?</p> <p>19 A Can you restate it, please.</p> <p>20 Q Sure.</p> <p>21 At the time you were conducting</p> <p>22 investigations of the Gaithersburg center, were there</p>
<p style="text-align: right;">Page 46</p> <p>1 investigations?</p> <p>2 A Would you rephrase the question, please.</p> <p>3 Q Sure.</p> <p>4 Was there someone who supervised your</p> <p>5 investigations at the Gaithersburg center?</p> <p>6 A No, not to my knowledge.</p> <p>7 Q And during those investigations, did you have</p> <p>8 occasion to communicate with a gentleman named Scott</p> <p>9 Collen?</p> <p>10 A Yes.</p> <p>11 Q And what was Scott Collen's title at the</p> <p>12 time?</p> <p>13 A I'm not sure.</p> <p>14 Q What was his role in these investigations, if</p> <p>15 any?</p> <p>16 A I believe he was the overseeing manager of</p> <p>17 the distribution center.</p> <p>18 Q Did Mr. Collen assist you in any of these</p> <p>19 investigations at the Gaithersburg center?</p> <p>20 A Not to my knowledge.</p> <p>21 Q Do you recognize the name Lincoln Barrett?</p> <p>22 A Yes.</p>	<p style="text-align: right;">Page 48</p> <p>1 any managers other than Mr. Barrett who were physically</p> <p>2 located there?</p> <p>3 A Not to my knowledge.</p> <p>4 Q And you talked about Mr. Barrett having</p> <p>5 oversight responsibility for the distribution center.</p> <p>6 Can you elaborate on that? Did you come to know what</p> <p>7 his specific duties were at the distribution center?</p> <p>8 MS. SPEIGHTS: Objection.</p> <p>9 You can answer.</p> <p>10 A Not to my knowledge.</p> <p>11 Q As part of your job as the regional human</p> <p>12 resources manager at Blockbuster, are you required to</p> <p>13 understand what the duties of a distribution center</p> <p>14 manager are?</p> <p>15 A Can you rephrase that question, please.</p> <p>16 Q Sure.</p> <p>17 Is it part of your job at Blockbuster to</p> <p>18 understand what a distribution center manager does?</p> <p>19 A Not to my knowledge.</p> <p>20 Q And do you know whether Mr. Barrett ever</p> <p>21 received training in equal employment opportunity, i.e.,</p> <p>22 harassment and discrimination, while at Blockbuster?</p>

<p style="text-align: right;">Page 57</p> <p>1 Q Do you recall what you told him?</p> <p>2 A That I was aware of his separation and that's</p> <p>3 all I recall.</p> <p>4 Q Do you recognize the name Thomas Johnson?</p> <p>5 A Yes.</p> <p>6 Q Was Mr. Johnson an employee of Blockbuster?</p> <p>7 A To my knowledge.</p> <p>8 Q What did Mr. Johnson do at Blockbuster?</p> <p>9 A I believe he was a group lead.</p> <p>10 Q What is a group lead?</p> <p>11 A I'm not sure.</p> <p>12 Q Do you know any of the duties or</p> <p>13 responsibilities of a group lead?</p> <p>14 A No.</p> <p>15 Q Well, first of all, have you ever heard</p> <p>16 Mr. Johnson referred to as Taj?</p> <p>17 A Yes.</p> <p>18 MR. PHILLIPS: For the record, that's T-A-J.</p> <p>19 Q Do you know whether Mr. Johnson received</p> <p>20 training in harassment or discrimination while employed</p> <p>21 at Blockbuster?</p> <p>22 A I have no idea.</p>	<p style="text-align: right;">Page 59</p> <p>1 Mr. Johnson's discharge during that conversation?</p> <p>2 A Can you rephrase the question, please.</p> <p>3 Q Yes.</p> <p>4 During that conversation, what did Mr. Collen</p> <p>5 say to you about Mr. Johnson?</p> <p>6 A I don't recall.</p> <p>7 Q Although you do recall he told you he was</p> <p>8 discharged for performance management issues, correct?</p> <p>9 A That I recall.</p> <p>10 Q Do you recall anything beyond that?</p> <p>11 A No.</p> <p>12 Q Did you take any notes of this conversation?</p> <p>13 A I'm sorry; can you rephrase that question.</p> <p>14 Q Yes.</p> <p>15 Did you write any notes regarding this</p> <p>16 conversation with Mr. Collen?</p> <p>17 A No.</p> <p>18 Q Did anyone ever show you an action plan</p> <p>19 related to Thomas Johnson?</p> <p>20 A Not to my knowledge.</p> <p>21 Q Did anyone ever show you a Blockbuster</p> <p>22 corrective action related to Mr. Johnson?</p>
<p style="text-align: right;">Page 58</p> <p>1 Q Do you know whether Mr. Johnson has ever</p> <p>2 received training in harassment or discrimination at any</p> <p>3 time in his life?</p> <p>4 A I have no idea.</p> <p>5 Q Did you ever know Mr. Johnson outside of</p> <p>6 work?</p> <p>7 A No.</p> <p>8 Q Do you know how Mr. Johnson's employment</p> <p>9 ended at Blockbuster?</p> <p>10 A He was discharged.</p> <p>11 Q Do you know why he was discharged?</p> <p>12 A Performance management issues.</p> <p>13 Q What specific performance management issues?</p> <p>14 A I'm not sure.</p> <p>15 Q How did you come to know that he was</p> <p>16 discharged for performance management issues?</p> <p>17 A A conversation with Scott Collen.</p> <p>18 Q Is this the same conversation that you</p> <p>19 testified to earlier regarding Lincoln Barrett also or a</p> <p>20 different conversation?</p> <p>21 A Same conversation.</p> <p>22 Q And what did Mr. Collen say to you about</p>	<p style="text-align: right;">Page 60</p> <p>1 A Yes.</p> <p>2 Q How many corrective actions related to</p> <p>3 Mr. Johnson were you shown?</p> <p>4 A I don't recall.</p> <p>5 Q Who showed you that corrective action or</p> <p>6 actions?</p> <p>7 A My counsel and I reviewed them yesterday.</p> <p>8 Q Apart from the reviewing corrective actions</p> <p>9 with counsel, at any time prior to that did you ever see</p> <p>10 any corrective actions related to Thomas Johnson?</p> <p>11 A I don't recall.</p> <p>12 Q Do you recall if Mr. Collen ever showed you a</p> <p>13 corrective action related to Mr. Johnson?</p> <p>14 A I don't recall.</p> <p>15 Q Do you know if Mr. Collen ever showed you a</p> <p>16 corrective action related to Mr. Barrett?</p> <p>17 A I don't recall.</p> <p>18 Q Do you recall if anyone has shown you, other</p> <p>19 than any discussion you had with counsel yesterday, do</p> <p>20 you recall if anyone has shown you a corrective action</p> <p>21 related to Mr. Barrett in the past?</p> <p>22 A I don't recall.</p>

<p style="text-align: right;">Page 65</p> <p>1 Did you ever believe Mr. Johnson had engaged 2 in discrimination? 3 A No. 4 Q Did you ever believe that Mr. Johnson had 5 engaged in harassment of employees? 6 A No. 7 Q Are you aware of any communications with 8 anyone where they expressed the view that they believed 9 Mr. Johnson had engaged in harassment or discrimination? 10 MS. SPEIGHTS: Objection. 11 You can answer. 12 MR. PHILLIPS: Compound? Is that compound? 13 MS. SPEIGHTS: Yes. 14 MR. PHILLIPS: Okay. 15 Q Let's take them one at a time. Are you aware 16 of any communications with anyone where they expressed 17 the belief that Mr. Johnson had engaged in harassment? 18 MS. SPEIGHTS: You mean anyone at 19 Blockbuster? 20 MR. PHILLIPS: Anyone. 21 A Yes. 22 Q Were these managers or were these lower level</p>	<p style="text-align: right;">Page 67</p> <p>1 A Yes. 2 Q Was Mr. Tutu an employee of Blockbuster? 3 A To my knowledge. 4 Q Did Mr. Tutu work at the Gaithersburg 5 warehouse? 6 A To my knowledge. 7 Q Do you know what his job was? 8 A To my knowledge, a group leader. 9 Q Do you know if he was considered coequal with 10 Mr. Johnson or was one of them considered to be over, 11 have authority over the other? 12 A I have no idea. 13 MS. SPEIGHTS: Objection. 14 Q And do you know whether Mr. Tutu ever 15 received training of any kind in harassment or 16 discrimination while employed at Blockbuster? 17 A I have no idea. 18 Q And do you know whether he's ever received 19 that training outside of Blockbuster? 20 A I have no idea. 21 Q Did you know Mr. Tutu outside of work? 22 A No.</p>
<p style="text-align: right;">Page 66</p> <p>1 personnel? 2 A Lower level personnel. 3 Q So, for example, Mr. Collen never expressed 4 the view to you that he thought Mr. Johnson had engaged 5 in harassment? 6 A No. 7 Q Did any manager at Blockbuster ever express 8 the view to you that they thought Mr. Johnson had 9 engaged in discrimination of any kind? 10 A I'm sorry; could you repeat the question, 11 please. 12 Q Yes. 13 Did anyone at Blockbuster -- let's take it 14 more general -- did anyone at Blockbuster express their 15 view that Mr. Johnson had been engaging in 16 discrimination of any kind? 17 A Not to my knowledge. 18 Q So, to your knowledge, then, Mr. Johnson's 19 discharge was not the result of harassment or 20 discrimination allegations against him? 21 A Not to my knowledge. 22 Q Are you familiar with the name Kofi Tutu?</p>	<p style="text-align: right;">Page 68</p> <p>1 Q Do you know how Mr. Tutu's employment ended 2 at Blockbuster? 3 A No. 4 Q Do you know whether Mr. Tutu was ever 5 counseled or disciplined for harassment at Blockbuster? 6 A I don't know. 7 Q Do you know whether he was ever counseled or 8 disciplined for discrimination at Blockbuster? 9 A I don't know. 10 Q Was Mr. Johnson ever counseled or disciplined 11 for harassment while employed at Blockbuster? 12 A Not to my knowledge. 13 Q Was Mr. Johnson ever counseled or disciplined 14 for discrimination while at Blockbuster? 15 A Not to my knowledge. 16 Q Was Mr. Barrett ever counseled or disciplined 17 for harassment while at Blockbuster? 18 A Not to my knowledge. 19 Q And was Mr. Barrett ever counseled or 20 disciplined for discrimination while he was at 21 Blockbuster? 22 A Not to my knowledge.</p>

<p style="text-align: right;">Page 93</p> <p>1 Q As a part of your duties as a regional human 2 resource manager, are you required to, by Blockbuster, 3 to check and make sure that permanent Blockbuster 4 employees working within your territory have received 5 the harassment and discrimination training? 6 A Can you rephrase the question. 7 Q Yes. 8 Is it part of your job at Blockbuster to 9 check to make sure that people receive the harassment 10 and discrimination policy training? 11 A No. 12 Q Do you know whose job that is? 13 A Their immediate supervisor, employee's 14 immediate supervisor. 15 Q So, for example, with respect to Mr. Barrett, 16 it would have been Mr. Collen, correct? 17 A I can't speculate. I don't know. 18 Q At the time, though, Mr. Collen was 19 Mr. Barrett's immediate supervisor, correct? 20 A That's correct. 21 Q During the time frame that you were visiting 22 the Gaithersburg center, was there a procedure in place</p>	<p style="text-align: right;">Page 95</p> <p>1 ability to communicate in English? 2 A Yes. 3 Q Do you recall which workers? 4 A Can you rephrase the question, please. 5 Q Yes. 6 Do you recall which workers you came to know 7 were limited in their ability to communicate in English? 8 A No. 9 Q Did you ever have a listing of those 10 individuals anywhere, like a list of names? 11 A No. 12 Q Did you determine what their first languages 13 were? 14 A No. 15 Q Other than English, did you know what 16 languages they communicated in? 17 MS. SPEIGHTS: Objection. Communicated to 18 whom? 19 MR. PHILLIPS: To anyone. 20 MS. SPEIGHTS: Objection. 21 Q Did you know what languages they spoke, apart 22 from English?</p>
<p style="text-align: right;">Page 94</p> <p>1 for temporary workers to register complaints about 2 harassment or discrimination? 3 A I'm sorry; can you repeat the question. 4 Q Yes. 5 At the time that you were visiting the 6 Gaithersburg center, are you aware of any procedure that 7 was put in place for the temporary workers to make 8 complaints about harassment or discrimination? 9 A Not to my knowledge. 10 Q You mentioned earlier that there was, I 11 believe the phrase you used was, there was some language 12 barrier with some of the workers at the Gaithersburg 13 center. Are you referring to workers who were limited 14 in English proficiency, but spoke Spanish? 15 A No. 16 Q First of all, do you recall what languages 17 were spoken at the Gaithersburg center among the 18 workers? 19 MS. SPEIGHTS: Objection. 20 A No. 21 Q Did you ever come to know that any of the 22 workers at the Gaithersburg center were limited in their</p>	<p style="text-align: right;">Page 96</p> <p>1 A No. 2 Q Did you ever ask anyone? 3 A I don't recall. 4 Q Do you recall how you came to know that any 5 of these workers were limited in their ability to 6 communicate in English? 7 A From the representative from the agency. 8 Q Who was the representative? 9 A I knew her as Cinnie. 10 Q Cinnie Brown? 11 A Okay. 12 Q Don't guess. 13 A I don't recall. 14 Q Okay, but you knew her as Cinnie? 15 A Yes. 16 MR. PHILLIPS: C-I-N-N-I-E. 17 Q And she was a representative from Express 18 Personnel? 19 A That's correct. 20 Q Are you aware of anyone, other than yourself, 21 conducting investigations of harassment or 22 discrimination related to the Gaithersburg warehouse?</p>

<p style="text-align: right;">Page 105</p> <p>1 A Yes.</p> <p>2 Q Other than in communications with your</p> <p>3 counsel, had you heard that name before?</p> <p>4 A No.</p> <p>5 Q So, you are not aware of whether or not</p> <p>6 Ms. Fields made a complaint of harassment or</p> <p>7 discrimination?</p> <p>8 A Not to my recollection.</p> <p>9 Q Another individual who worked at that center</p> <p>10 named Michelle Despertt, last name spelled</p> <p>11 D-E-S-P-E-R-T-T, have you ever heard that name before,</p> <p>12 other than in connection with discussions with counsel?</p> <p>13 A Yes.</p> <p>14 Q When was the first time that you heard of</p> <p>15 Ms. Despertt?</p> <p>16 A Ms. Brown shared the name with me when we</p> <p>17 met.</p> <p>18 Q She shared the name with you when you met</p> <p>19 Ms. Brown?</p> <p>20 A Yes.</p> <p>21 Q What did she tell you about Ms. Despertt?</p> <p>22 A I don't recall.</p>	<p style="text-align: right;">Page 107</p> <p>1 Do you know of Ms. Wing ever complaining</p> <p>2 about her work at Gaithersburg?</p> <p>3 A No.</p> <p>4 Q Are you familiar with the name Lolita</p> <p>5 Gonzales?</p> <p>6 A Yes.</p> <p>7 Q When was the first time that you heard of</p> <p>8 Lolita Gonzales?</p> <p>9 A I don't recall.</p> <p>10 Q Do you recall how you became aware of Lolita</p> <p>11 Gonzales? What was it in connection with?</p> <p>12 A The EEOC charge.</p> <p>13 Q Do you recall a worker named Elizabeth</p> <p>14 Ledesma, L-E-D-E-S-M-A?</p> <p>15 A Not to my knowledge.</p> <p>16 Q Are you familiar with the name Emeten</p> <p>17 Nkwetta, N-K-W-E-T-T-A?</p> <p>18 A Yes.</p> <p>19 Q Was she also known as Blyth, do you know?</p> <p>20 A I have no idea.</p> <p>21 Q How did you come to know of Ms. Nkwetta?</p> <p>22 A I spoke with her when I did my investigation.</p>
<p style="text-align: right;">Page 106</p> <p>1 Q Did Ms. Despertt make a complaint of sexual</p> <p>2 harassment?</p> <p>3 A I don't recall.</p> <p>4 Q Did anyone ever provide you with any</p> <p>5 information regarding allegations made by Michelle</p> <p>6 Despertt of sexual harassment?</p> <p>7 A I don't recall.</p> <p>8 Q Did anyone ever provide you with information</p> <p>9 regarding allegations of sexual harassment made by Niema</p> <p>10 Fields?</p> <p>11 A Not to my knowledge.</p> <p>12 Q Do you recall knowing of a worker named Say</p> <p>13 Wing, S-A-Y Wing?</p> <p>14 A Yes.</p> <p>15 Q Do you know whether Ms. Wing ever made a</p> <p>16 complaint of sexual harassment?</p> <p>17 A I don't recall.</p> <p>18 Q Do you recollect Ms. Wing ever making a</p> <p>19 complaint of any kind in connection with her work in</p> <p>20 Gaithersburg?</p> <p>21 A Can you rephrase the question, please.</p> <p>22 Q Yes.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q Are you familiar with a worker named Victor</p> <p>2 Ruiz?</p> <p>3 A I'm not sure.</p> <p>4 Q Did you ever know of a worker named Grisel</p> <p>5 Nunez?</p> <p>6 A Yes.</p> <p>7 Q How did you come to know of Ms. Nunez?</p> <p>8 A Oh, I believe I spoke with her.</p> <p>9 Q Spoke with her about what?</p> <p>10 A During the investigation.</p> <p>11 Q And at any time did you become aware of an</p> <p>12 anonymous hotline complaint regarding harassment or</p> <p>13 discrimination issues at the Gaithersburg facility?</p> <p>14 A I don't recall.</p> <p>15 MR. PHILLIPS: I'll mark this as Francis</p> <p>16 exhibit 1.</p> <p>17 (Corrective Action Record was marked Exhibit</p> <p>18 1 for identification.)</p> <p>19 Q Go ahead and take a look at Francis exhibit</p> <p>20 1, just to determine if you recognize it, and then let</p> <p>21 me know when you're done, please.</p> <p>22 A Yes.</p>



<p style="text-align: right;">Page 125</p> <p>1 A Can you restate the question.</p> <p>2 Q Yes.</p> <p>3 Prior to yesterday, did you receive any</p> <p>4 documentation of any kind concerning a complaint of</p> <p>5 sexual harassment by Michelle Despertt?</p> <p>6 A Not to my knowledge.</p> <p>7 Q Prior to yesterday, did you receive any</p> <p>8 documentation of any kind concerning an investigation of</p> <p>9 a complaint of sexual harassment by Michelle Despertt?</p> <p>10 A Not to my knowledge.</p> <p>11 Q Have you ever communicated directly with</p> <p>12 Michelle Despertt?</p> <p>13 A No.</p> <p>14 Q Have you ever asked anyone to communicate on</p> <p>15 your behalf with Michelle Despertt?</p> <p>16 A Not to my knowledge, no.</p> <p>17 MR. PHILLIPS: This will be Francis exhibit</p> <p>18 5.</p> <p>19 (E-mail was marked Exhibit 5 for</p> <p>20 identification.)</p> <p>21 Q The same drill, Mr. Francis, please read it</p> <p>22 and let me know when you're done.</p>	<p style="text-align: right;">Page 127</p> <p>1 I wanted to ask you some questions now about</p> <p>2 this investigation that you conducted at the</p> <p>3 Gaithersburg center in May of 2005 and I guess I wanted</p> <p>4 to start by first asking you what facts precipitated</p> <p>5 that investigation; in other words, what caused you to</p> <p>6 conduct that investigation.</p> <p>7 A A discussion with Cinnie Brown.</p> <p>8 Q Was anyone else present during that</p> <p>9 discussion?</p> <p>10 A Another gentleman from the agency, as well as</p> <p>11 Scott Collen.</p> <p>12 Q And the other gentleman from the agency, are</p> <p>13 you referring to Drew Lenear?</p> <p>14 A I have no idea.</p> <p>15 Q What was your understanding of his position</p> <p>16 at Express Personnel?</p> <p>17 A Supervisor.</p> <p>18 Q Meaning Ms. Brown's supervisor?</p> <p>19 A Yes.</p> <p>20 Q Where did this discussion take place?</p> <p>21 A In their office.</p> <p>22 Q In the Express offices?</p>
<p style="text-align: right;">Page 126</p> <p>1 A I'm finished.</p> <p>2 Q Sir, other than what you may or may not have</p> <p>3 seen yesterday, do you recall ever seeing this document</p> <p>4 marked exhibit 5?</p> <p>5 A I don't recall.</p> <p>6 Q And having read this document, does this</p> <p>7 refresh your recollection as to whether anyone provided</p> <p>8 you with information concerning a complaint of sexual</p> <p>9 harassment by Michelle Despertt, beyond what you've</p> <p>10 already testified to?</p> <p>11 A No, it doesn't refresh.</p> <p>12 Q And does this refresh your recollection as to</p> <p>13 whether you were provided any documentation concerning a</p> <p>14 complaint by Michelle Despertt of sexual harassment?</p> <p>15 A No, it doesn't.</p> <p>16 MR. PHILLIPS: We're done with that.</p> <p>17 It's five minutes to 1. Let's go ahead and</p> <p>18 take a lunch break, with everybody's consent.</p> <p>19 MS. SPEIGHTS: Okay.</p> <p>20 (Luncheon recess.)</p> <p>21 Q All right, Mr. Francis. We're back from</p> <p>22 lunch.</p>	<p style="text-align: right;">Page 128</p> <p>1 A Yes.</p> <p>2 Q And where were their offices located?</p> <p>3 A I believe in Towson, Maryland.</p> <p>4 Q Did you go to their offices in Towson,</p> <p>5 Maryland, for the expressed purpose of discussing the</p> <p>6 issues that you then, in fact, discussed during that</p> <p>7 conversation?</p> <p>8 A I'm sorry; can you rephrase the question.</p> <p>9 Q Yes.</p> <p>10 Was it your purpose, in going to that office,</p> <p>11 to discuss these matters or did you go there for some</p> <p>12 other reason and then these matters were brought to your</p> <p>13 attention?</p> <p>14 A No, to discuss these matters.</p> <p>15 Q What were you told?</p> <p>16 MS. SPEIGHTS: Before going?</p> <p>17 MR. PHILLIPS: No.</p> <p>18 Q What were you told during this conversation</p> <p>19 with Ms. Brown, her supervisor and Scott Collen?</p> <p>20 A I don't recall specifically.</p> <p>21 Q Do you have any general recollection of what</p> <p>22 was said?</p>

<p style="text-align: right;">Page 129</p> <p>1 A Some employee issues at the location and some 2 management issues at the location. 3 Q Do you recall what specific employee issues 4 at the location? 5 A Not specifically, no. 6 Q Do you recall what specific management issues 7 at the location? 8 A No, I don't. 9 Q Do you have a recollection of anything else 10 that was said during that conversation? 11 A No more than seeing I would plan a visit out 12 to the location. 13 Q And by the location, we're referring to the 14 Gaithersburg warehouse? 15 A That's correct. 16 Q Did you take any notes of that conversation, 17 either during the conversation or afterwards? 18 A Can you rephrase the question. 19 Q Yes. 20 At any time did you commit to writing any 21 information that you gathered from that conversation 22 that you're referencing in your testimony?</p>	<p style="text-align: right;">Page 131</p> <p>1 Q And where do you generally keep these notes? 2 A In an investigative file. 3 Q In an investigative file, okay. 4 Did you create an investigative file relating 5 to the investigation that you conducted at the 6 Gaithersburg warehouse in May of 2005? 7 A Yes. 8 Q And do you recall what the contents of that 9 investigative file were? 10 A No, I don't recall. 11 Q And can you tell me, as I understand your 12 testimony, you've conducted a number of other harassment 13 or discrimination investigations, as well as other kinds 14 of investigations. As a general practice, what kinds of 15 documents do you create for the investigative file? 16 A Interview notes, any follow-up visits, 17 wellness visits, if necessary. 18 Q Anything else? 19 A That's all I recall at this time. 20 Q And on occasions where you have created an 21 investigative file, where is it kept? 22 A In my office or residence.</p>
<p style="text-align: right;">Page 130</p> <p>1 MS. SPEIGHTS: Objection. 2 You can answer. 3 A Not to my knowledge. 4 Q So, you did not create a record of what you 5 were told during that conversation? 6 A I don't recollect. 7 Q Is it your general practice to take notes of 8 conversations with individuals involving employee and 9 management issues at a given location? 10 A I'm sorry; can you rephrase the question. 11 Q Yes. 12 Do you generally take notes of conversations 13 that you have regarding employee issues or management 14 issues at a Blockbuster location? 15 A Yes. 16 Q And when you take such notes, do you provide 17 those notes to anyone, as a general practice? 18 A I don't understand your question. 19 Q Yes. 20 When you take notes of this kind of 21 conversation, do you provide those notes to anyone? 22 A No.</p>	<p style="text-align: right;">Page 132</p> <p>1 Q Oh, you have a home office? 2 A Referring to my store location. 3 Q Got it. Okay. 4 And do you recall maintaining any 5 investigative files regarding the Gaithersburg center, 6 any investigative files at all? 7 A Yes. 8 Q And do you recall specifically maintaining an 9 investigative file regarding your May 2005 10 investigation? 11 A Yes. 12 Q And do you know where that file is now? 13 A I believe it's been turned over to counsel. 14 Q When was the last time you saw the file? 15 A I don't recall. 16 Q Do you know when it was turned over to 17 counsel? 18 A I don't recall. 19 Q Do you know why it was turned over to 20 counsel? 21 A It was at the request of counsel. 22 Q Which counsel?</p>

<p style="text-align: right;">Page 133</p> <p>1 A Blockbuster counsel.</p> <p>2 Q Blockbuster in-house counsel?</p> <p>3 A Yes.</p> <p>4 Q Was this Heather Kramer?</p> <p>5 A I don't recall.</p> <p>6 Q Was it Mr. Stevenson?</p> <p>7 A I don't recall.</p> <p>8 Q And I think you said you don't recall what</p> <p>9 was in that file, is that correct?</p> <p>10 A That's correct.</p> <p>11 Q Did you turn that file over to counsel within</p> <p>12 the last year?</p> <p>13 A I don't recall.</p> <p>14 Q Were you asked to turn over that file in</p> <p>15 connection with a charge of discrimination filed by</p> <p>16 Lolita Gonzales?</p> <p>17 A Yes.</p> <p>18 Q Do you know where such files are kept at</p> <p>19 Blockbuster corporate?</p> <p>20 A I have no idea.</p> <p>21 Q Did you keep copies of the file?</p> <p>22 A No, I did not.</p>	<p style="text-align: right;">Page 135</p> <p>1 files?</p> <p>2 A Not to my knowledge.</p> <p>3 MR. PHILLIPS: To my knowledge, we have not</p> <p>4 received, the EEOC has not received production of an</p> <p>5 investigative file.</p> <p>6 MS. SPEIGHTS: You have received the contents</p> <p>7 of Mr. Francis's entire file.</p> <p>8 MR. PHILLIPS: Okay.</p> <p>9 MS. SPEIGHTS: Okay?</p> <p>10 MR. PHILLIPS: All right.</p> <p>11 MS. SPEIGHTS: And we have no obligation to</p> <p>12 produce it as a file under Rule 3334.</p> <p>13 MR. PHILLIPS: I will accept your</p> <p>14 representation. I will accept your representation that</p> <p>15 I have received all contents --</p> <p>16 MS. SPEIGHTS: You have.</p> <p>17 MR. PHILLIPS: -- of the investigative file.</p> <p>18 Q At any time prior to production of the</p> <p>19 investigative file regarding the May 2005 investigation,</p> <p>20 did you take any documents out of that file?</p> <p>21 A I'm sorry; can you rephrase the question.</p> <p>22 Q Yes.</p>
<p style="text-align: right;">Page 134</p> <p>1 Q Did you ever make any copies of anything from</p> <p>2 the file?</p> <p>3 A Not to my recollection.</p> <p>4 Q Is it Blockbuster policy that you maintain</p> <p>5 the files until they're requested by counsel?</p> <p>6 MS. SPEIGHTS: Objection.</p> <p>7 Q You can answer.</p> <p>8 A I'm not understanding the question; I'm</p> <p>9 sorry.</p> <p>10 Q Sure.</p> <p>11 Can you tell me, does Blockbuster have a</p> <p>12 policy regarding who maintains custody of investigative</p> <p>13 files?</p> <p>14 A Can I ask you to rephrase the question,</p> <p>15 please.</p> <p>16 Q Sure.</p> <p>17 Are you aware of any policies at Blockbuster</p> <p>18 concerning the person who is to maintain possession of</p> <p>19 the investigative file?</p> <p>20 A Not to my knowledge.</p> <p>21 Q Are you aware of any Blockbuster policies at</p> <p>22 all regarding recordkeeping concerning investigative</p>	<p style="text-align: right;">Page 136</p> <p>1 Do you recall at any time, prior to giving</p> <p>2 the file to counsel, taking any documents out of that</p> <p>3 file?</p> <p>4 A I don't recall, so, no.</p> <p>5 Q So, is it fair to say that you believe that</p> <p>6 you gave the entire investigative file that you created</p> <p>7 to counsel?</p> <p>8 A That's an accurate statement, yes.</p> <p>9 Q Do you recall which employees were involved</p> <p>10 in these employee issues that were referenced in this</p> <p>11 conversation with Cinnie Brown, her supervisor and Scott</p> <p>12 Collen?</p> <p>13 A No, I don't recall.</p> <p>14 Q Do you recall which managers were involved in</p> <p>15 these issues involving management at the location?</p> <p>16 A Yes, Barrett and Johnson.</p> <p>17 Q Do you recall what it was about Barrett that</p> <p>18 caused him to be involved in this issue? Was there a</p> <p>19 complaint about Mr. Barrett?</p> <p>20 A Can you rephrase the question.</p> <p>21 Q Yes.</p> <p>22 I mean, to your knowledge, was there a</p>

<p style="text-align: right;">Page 141</p> <p>1 complaint?</p> <p>2 A The allegation, yes.</p> <p>3 Q Anything else?</p> <p>4 A No.</p> <p>5 Q But you don't recall reviewing any statements</p> <p>6 in preparation for this particular set of interviews?</p> <p>7 A Not to my recollection.</p> <p>8 Q Before you conduct interviews of this kind,</p> <p>9 do you generally do anything else in preparation for the</p> <p>10 interviews, other than to potentially review a complaint</p> <p>11 document?</p> <p>12 A I'm not understanding your question; I'm</p> <p>13 sorry.</p> <p>14 Q Other than reviewing a complaint document,</p> <p>15 have you ever done anything else in preparation for</p> <p>16 interviews of this kind?</p> <p>17 A Not to my knowledge.</p> <p>18 Q So, now we're at the Gaithersburg warehouse.</p> <p>19 Well, first of all, who arrived first, you or Ms. Brown?</p> <p>20 A I don't recall.</p> <p>21 Q But eventually the two of you met up,</p> <p>22 correct?</p>	<p style="text-align: right;">Page 143</p> <p>1 A I don't recall.</p> <p>2 Q Do you know whether Mr. Barrett observed you</p> <p>3 present in the facility? Did you see him looking at</p> <p>4 you?</p> <p>5 A I don't recall.</p> <p>6 Q Did you see Mr. Johnson when you arrived at</p> <p>7 the facility?</p> <p>8 MS. SPEIGHTS: Again, go to speak with him?</p> <p>9 MR. PHILLIPS: No, this I'll be more general.</p> <p>10 Q Did you put eyeballs on him?</p> <p>11 A I don't recall.</p> <p>12 Q Now, you mentioned that Ms. Brown went and</p> <p>13 picked the employees to interview, correct?</p> <p>14 A Yes.</p> <p>15 Q Did you have any discussion with her at any</p> <p>16 time about which employees would be picked to be</p> <p>17 interviewed?</p> <p>18 A I believe so, yes.</p> <p>19 Q What was discussed during that conversation?</p> <p>20 A The conversation that I had with her was to</p> <p>21 not just pick anyone who had complained, but to pick</p> <p>22 other individuals as well so we could mix the grouping</p>
<p style="text-align: right;">Page 142</p> <p>1 A That's correct.</p> <p>2 Q What was the first thing that you did?</p> <p>3 A We reviewed the document, the, I guess, the</p> <p>4 questionnaire.</p> <p>5 Q What was the next thing you did after that?</p> <p>6 A Ms. Brown went and selected individuals to</p> <p>7 come in.</p> <p>8 Q I used the term "input" earlier. I want to</p> <p>9 be just more specific. Did you discuss any of the</p> <p>10 questions with Ms. Brown before they were asked?</p> <p>11 A I don't recall.</p> <p>12 Q So, before you showed up at the warehouse,</p> <p>13 did anyone notify anyone at the warehouse that you were</p> <p>14 coming?</p> <p>15 A Not to my knowledge.</p> <p>16 Q Before you began conducting interviews, did</p> <p>17 you see Mr. Barrett?</p> <p>18 MS. SPEIGHTS: You mean visibly see him or</p> <p>19 speak with him?</p> <p>20 MR. PHILLIPS: Right.</p> <p>21 Q Did you go to Mr. Barrett? Did you go to</p> <p>22 talk to him?</p>	<p style="text-align: right;">Page 144</p> <p>1 up as to not give an impression it was just this person,</p> <p>2 that person or group of individuals.</p> <p>3 Q Didn't want to put a big scarlet letter on</p> <p>4 the complainant and parade them out in front of</p> <p>5 everyone, basically?</p> <p>6 A That's correct.</p> <p>7 Q Do you recall who you interviewed first?</p> <p>8 A No.</p> <p>9 Q Who asked the questions during the</p> <p>10 interviews?</p> <p>11 A We both did.</p> <p>12 Q And did you limit your questions to the</p> <p>13 script, to the questions that were written?</p> <p>14 A Yes.</p> <p>15 Q And do you recall how many people were</p> <p>16 interviewed?</p> <p>17 A I don't recall how many, no.</p> <p>18 Q Did you take any notes of these interviews,</p> <p>19 you personally?</p> <p>20 A As outlined on the questionnaire, but no</p> <p>21 additional notes, no.</p> <p>22 Q But you wrote in the employee's responses to</p>

<p style="text-align: right;">Page 145</p> <p>1 the questions on the questionnaire?</p> <p>2 A We both did, yes.</p> <p>3 Q And did you do that with respect to every</p> <p>4 employee that the two of you interviewed?</p> <p>5 A I believe so.</p> <p>6 Q And what did you do with those notes after</p> <p>7 the interviews were completed?</p> <p>8 A Can you rephrase the question; I'm sorry.</p> <p>9 Q Yes.</p> <p>10 What happened to the notes?</p> <p>11 A My notes went to my investigative file.</p> <p>12 Q They did, okay.</p> <p>13 Would you say the questioning was divided</p> <p>14 evenly between you and Ms. Brown or did one of you do</p> <p>15 more of the questioning than the other?</p> <p>16 A Based on the language barrier, she would do</p> <p>17 more, or comfort level with the employee.</p> <p>18 Q Did any of the questioning take place in</p> <p>19 Spanish?</p> <p>20 A I don't recall.</p> <p>21 Q Were any of the questions asked using French?</p> <p>22 A Ms. Brown with the employees, there were</p>	<p style="text-align: right;">Page 147</p> <p>1 office?</p> <p>2 A From Mr. Barrett's office, yes.</p> <p>3 Q Did you observe Ms. Brown summoning the</p> <p>4 employees to the office? Do you know how she did that?</p> <p>5 A No. I stayed out of the room.</p> <p>6 Q Closed door interviews?</p> <p>7 A Yes.</p> <p>8 Q While these interviews were going on, did you</p> <p>9 have any contact with Mr. Barrett?</p> <p>10 A No.</p> <p>11 Q Did you see Mr. Barrett during, and I mean</p> <p>12 literally, did you see him at any time while these</p> <p>13 interviews were being conducted?</p> <p>14 A I don't recollect.</p> <p>15 Q Did you see Mr. Johnson at any time while</p> <p>16 these interviews were being conducted?</p> <p>17 A I don't recollect.</p> <p>18 Q Do you know what Mr. Tutu looks like?</p> <p>19 Bad question. I'll withdraw it.</p> <p>20 Have you ever seen Mr. Tutu?</p> <p>21 A I don't remember.</p> <p>22 Q About how long in total did all of these</p>
<p style="text-align: right;">Page 146</p> <p>1 times when she didn't speak English or use words that</p> <p>2 seemed familiar to me, so they weren't English, but I</p> <p>3 can't tell you exactly what they were. The person</p> <p>4 understood them.</p> <p>5 Q Do you know if Ms. Brown speaks Spanish?</p> <p>6 A I have no idea.</p> <p>7 Q Do you know if Ms. Brown speaks French?</p> <p>8 A I have no idea.</p> <p>9 Q Did you ever make any attempt to determine</p> <p>10 what languages Ms. Brown speaks?</p> <p>11 A No.</p> <p>12 Q Do you speak any languages other than</p> <p>13 English?</p> <p>14 A No.</p> <p>15 Q Was anyone present during these interviews</p> <p>16 other than you, Ms. Brown and the employee being</p> <p>17 interviewed?</p> <p>18 A Not to my recollection.</p> <p>19 Q Where were the interviews conducted, where in</p> <p>20 the facility?</p> <p>21 A In another office space a couple doors down.</p> <p>22 Q A couple doors down from Mr. Barrett's</p>	<p style="text-align: right;">Page 148</p> <p>1 interviews last?</p> <p>2 A A better part of the day.</p> <p>3 Q So, more than half the day?</p> <p>4 A Yes.</p> <p>5 Q Oh, by the way, did you provide any copies of</p> <p>6 your notes to anyone?</p> <p>7 A Not to my knowledge.</p> <p>8 Q Did you provide any summaries or</p> <p>9 transcriptions of your notes to anyone?</p> <p>10 A Not to my knowledge.</p> <p>11 Q We'll go back to the employee interviews in a</p> <p>12 second, but I want to ask you; at that time, at this</p> <p>13 session at the Gaithersburg warehouse, did you interview</p> <p>14 Mr. Barrett?</p> <p>15 A I'm sorry; could you rephrase the question.</p> <p>16 Q Yes.</p> <p>17 That day, did you interview Mr. Barrett?</p> <p>18 A I don't believe so.</p> <p>19 Q That day, did you interview Mr. Johnson?</p> <p>20 A I don't believe so.</p> <p>21 Q That day, did you interview Mr. Tutu?</p> <p>22 A I don't believe so.</p>

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1 Q You can answer.  
2 A Not to my knowledge.  
3 MR. PHILLIPS: This will be marked Francis  
4 exhibit, I think we're on, 6.  
5 (E-mail was marked Exhibit 6 for  
6 identification.)  
7 Q If you can, go ahead, Mr. Francis, take a  
8 look at Francis exhibit 6, just read it and let me know  
9 when you're done, please.  
10 A I'm finished.  
11 Q First of all, do you recall that it was May  
12 15, 2005 when you and Ms. Brown visited the Gaithersburg  
13 warehouse? Does that date sound correct?  
14 A I don't recollect exact date.  
15 Q Do you recall that it was somewhere around  
16 the middle of May?  
17 A I have no recollection at all as to when it  
18 was.  
19 Q Do you recognize this document, exhibit 6?  
20 Have you ever seen it before, other than yesterday,  
21 possibly?  
22 A No, I do not.

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1 Q Nevertheless, having read exhibit 6 now, does  
2 this document, any content of it, refresh your  
3 recollection as to the specific issues that were being  
4 investigated at the Gaithersburg warehouse in May 2005?  
5 MS. SPEIGHTS: Objection.  
6 You can answer.  
7 A It does not refresh me, no.  
8 Q If you could look at the e-mail toward the  
9 bottom of the first page, from June Davis to Scott  
10 Collen, do you see that? It starts with "Scott." It's  
11 on the first page.  
12 A Okay.  
13 Q The first line there reads, "The information  
14 Cinnie Brown obtained from the two temps that they feel  
15 they were being discriminated against follow along with  
16 Cinnie's general observations." Do you know who the two  
17 temps are who are referenced there?  
18 A I have no idea.  
19 Q Do you know what Cinnie's general  
20 observations were?  
21 A No, I have no idea.  
22 Q Do you know what type of discrimination is

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1 being identified in this or references, that is to say,  
2 in this first paragraph?  
3 A I have no idea.  
4 Q Looking at the second paragraph, "The person  
5 that made the allegation that one of the leads touched  
6 her inappropriately," and then in parens, "Say Wing,"  
7 closed parens, "is still not willing to put anything in  
8 writing." Do you recall being told that Say Wing was  
9 complaining that one of the leads touched her?  
10 A Not to my recollection.  
11 Q No one ever told you that, that Say Wing had  
12 alleged a lead had touched her?  
13 A No.  
14 Q Is it the general practice at Blockbuster to  
15 ask that complainants put their complaint in writing?  
16 MS. SPEIGHTS: Objection.  
17 You can answer.  
18 A Yes, it is.  
19 Q So, in your experience, it's a general  
20 practice to ask them to do that?  
21 A Yes.  
22 Q In your experience, have there been times

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1 where complainants have declined to put anything in  
2 writing?  
3 A Not to my knowledge.  
4 Q Is there a policy or procedure for what  
5 happens if a complainant declines to put their complaint  
6 in writing?  
7 A Not to my knowledge.  
8 Q Would you investigate such a complaint  
9 anyway?  
10 A Yes.  
11 Q Let's go to the second page, please, Bates  
12 1605. Second paragraph, the sentence starts "The  
13 following." Do you see that?  
14 A Yes.  
15 Q "The following was allegedly spoken by  
16 either," T-A-G, "Taj or Kofi Tutu:" Do you recall that  
17 there was a complaint made concerning Taj or Kofi or  
18 both?  
19 A Can you rephrase your question.  
20 Q Yes.  
21 Was someone complaining about Taj's behavior?  
22 MS. SPEIGHTS: In connection with his

<p style="text-align: right;">Page 165</p> <p>1 investigation?</p> <p>2 MR. PHILLIPS: Yes.</p> <p>3 A Yes.</p> <p>4 Q And do you see in the paragraph above that</p> <p>5 there's a reference in the middle of that paragraph to,</p> <p>6 "I also spoke with Lolita Gonzales regarding</p> <p>7 discrimination issues she and Elizabeth Ledesma allege"?</p> <p>8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q Do you recall now that Lolita Gonzales and</p> <p>11 Elizabeth Ledesma were alleging discrimination of some</p> <p>12 kind?</p> <p>13 A No.</p> <p>14 Q Was it your understanding at the time that</p> <p>15 someone was alleging some kind of discrimination?</p> <p>16 MS. SPEIGHTS: Again, at the time of his</p> <p>17 investigation?</p> <p>18 MR. PHILLIPS: At the time of the</p> <p>19 investigation, correct.</p> <p>20 A Not to my recollection.</p> <p>21 Q Toward the middle of the page, the sentence</p> <p>22 starts, "When LaQuanta," L-A-Q-U-A-N-T-A, "quit." Do</p>	<p style="text-align: right;">Page 167</p> <p>1 Q Did your investigation include determining</p> <p>2 whether or not someone asked Elizabeth or Lolita out?</p> <p>3 Was that a subject of the investigation?</p> <p>4 A I don't recall.</p> <p>5 Q Do you see where it says, "After that, he</p> <p>6 start treating us bad"?</p> <p>7 A Yes.</p> <p>8 Q Did your investigation encompass determining</p> <p>9 if someone was treating Elizabeth or Lolita bad?</p> <p>10 A I'm sorry; can you rephrase the question.</p> <p>11 Q Yes.</p> <p>12 Did your investigation involve determining</p> <p>13 whether someone had treated Lolita or Elizabeth bad in</p> <p>14 some way?</p> <p>15 A I don't recall.</p> <p>16 Q The sentence underneath that, you see where</p> <p>17 it says, "They smell like they smoke weed and drink</p> <p>18 alcohol"? Do you see that?</p> <p>19 A Yes.</p> <p>20 Q To your knowledge, did anyone conduct an</p> <p>21 investigation of marijuana or alcohol use?</p> <p>22 A I don't recall.</p>
<p style="text-align: right;">Page 166</p> <p>1 you see that sentence?</p> <p>2 A Yes.</p> <p>3 Q "When LaQuanta quit, she say a lot of things</p> <p>4 to him and since that day he changed and start treating</p> <p>5 us good." Do you see that sentence?</p> <p>6 A Yes.</p> <p>7 Q Do you know who LaQuanta is?</p> <p>8 A I have no idea.</p> <p>9 Q Have you ever had occasion to interview</p> <p>10 someone named LaQuanta Brinson?</p> <p>11 A Not to my knowledge.</p> <p>12 Q Do you know if anyone ever interviewed</p> <p>13 someone named LaQuanta Brinson?</p> <p>14 MS. SPEIGHTS: Anyone at Blockbuster?</p> <p>15 Q Anyone, period, including Cinnie Brown, or</p> <p>16 anyone else.</p> <p>17 A I have no idea.</p> <p>18 Q Do you see two paragraphs down, there's a</p> <p>19 reference here, "One time he asked Elizabeth and Lolita</p> <p>20 out and we say 'No.' After that he start treating us</p> <p>21 bad." Do you see that?</p> <p>22 A Yes.</p>	<p style="text-align: right;">Page 168</p> <p>1 Q Three sentences down, it says, "I also spoke</p> <p>2 with Say Wing. She does not want to write anything down</p> <p>3 regarding the sexual harassment issue because she fears</p> <p>4 doing so will get her fired. I asked her to do so even</p> <p>5 if in French only, but although she said she would fax</p> <p>6 something to me today, I have not seen it." Do you</p> <p>7 recall anyone telling you that Say Wing feared being</p> <p>8 fired regarding the sexual harassment issue?</p> <p>9 A I don't recall that.</p> <p>10 Q Did you ever see a statement from a worker</p> <p>11 named Say Wing?</p> <p>12 A I don't recall.</p> <p>13 Q Did the investigation in May 2005 encompass</p> <p>14 determining whether Say Wing had been subjected to</p> <p>15 sexual harassment?</p> <p>16 A I'm sorry; can you restate the question.</p> <p>17 Q Yes.</p> <p>18 Did you investigate whether Say Wing had been</p> <p>19 sexually harassed?</p> <p>20 A I'm sorry; can you restate that again. I'm</p> <p>21 not understanding your question.</p> <p>22 Q Yes.</p>

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1 You conducted an investigation in May 2005,  
2 correct?  
3 A That's correct.  
4 Q And was one of the issues investigated  
5 whether someone had sexually harassed Ms. Wing?  
6 A I don't recall.  
7 Q Are you aware of any documents that might  
8 refresh your recollection on that?  
9 A I'm not aware of any.  
10 Q Down at the bottom of the page, "Generally  
11 speaking, June, Linc," L-I-N-C, "pretty much is in his  
12 office and," T-A-J, "Taj and Kofi Tutu are running  
13 things out in the warehouse. I believe there may be an  
14 atmosphere of intimidation and fear of losing their jobs  
15 by people who speak very little English and are working  
16 up to 70 hours a week...therefore making an excellent  
17 paycheck, by their standards, even though they are  
18 overworked."  
19 Did your investigation in May 2005 include  
20 determining whether there was an atmosphere of  
21 intimidation or fear of losing people's jobs at the  
22 warehouse?

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1 A Yes.  
2 Q And do you recall what you were told about  
3 that issue by anyone?  
4 A I don't specifically recall, no.  
5 Q Did you regard that possible atmosphere of  
6 intimidation and fear of losing their jobs to be  
7 potential discrimination, at the time did you regard it  
8 as that, possibly?  
9 A No.  
10 Q Did you form any opinion at the time about,  
11 first of all, whether that was, in fact, happening at  
12 the warehouse?  
13 A I'm sorry; can you restate the question.  
14 Q Yes.  
15 At the time did you form any opinion about  
16 whether there was an atmosphere of intimidation and fear  
17 about losing jobs at the warehouse?  
18 A Yes.  
19 Q What was your opinion?  
20 A That if persons weren't working up to  
21 production levels, they'd be let go.  
22 Q Did you form any other opinions?

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1 A Not that I can recollect.  
2 Q Did you form any opinion as to why that  
3 atmosphere existed?  
4 A Yes.  
5 Q What was your opinion at the time?  
6 A That Mr. Barrett was delegating his authority  
7 out to his group leads.  
8 Q Delegating his authority and then not  
9 overseeing their exercise of that authority, is that a  
10 fair statement?  
11 A I'm sorry; can you repeat that again.  
12 Q Yes.  
13 Was the problem just that Mr. Barrett was  
14 delegating authority, in your opinion, or was it that he  
15 was delegating authority and then not doing proper  
16 oversight?  
17 A It's my understanding the GL's had no  
18 authority.  
19 Q And then he delegated authority to them?  
20 A That's correct.  
21 Q And did your opinion also include that  
22 Mr. Barrett had delegated authority and then had not

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1 undertaken steps to insure that it was being properly  
2 exercised?  
3 A That's fair, yes.  
4 Q What authority had Mr. Barrett delegated to  
5 the group leads at that time, in your opinion?  
6 A I'm not understanding your question; I'm  
7 sorry.  
8 Q Sure.  
9 You testified that Mr. Barrett had delegated  
10 authority to the group leads. I'll rephrase my question  
11 and ask you, what kind of authority?  
12 A Performance management.  
13 Q And when you reference "performance  
14 management," what are you talking about specifically?  
15 A When the employees weren't performing to the  
16 standard, whatever that might be, is that they could be  
17 sent home or issued discipline and that wasn't their  
18 place.  
19 Q Or terminated?  
20 A I'm not aware that the terminations were done  
21 through the GL.  
22 Q And your basis for forming this conclusion



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1 A I don't recall at this time.

2 Q Do you know how Cinnie Brown selected who was

3 to be interviewed when you did the, I guess we can call

4 it, the on-site at the Gaithersburg warehouse with her?

5 Do you know what criteria she used to decide who was

6 going to be interviewed, other than what you've already

7 said?

8 A Nothing other than my prior testimony.

9 Q Was everyone who was working at the

10 Gaithersburg warehouse at the time present, I mean

11 working shifts at the time that you visited the

12 Gaithersburg warehouse to conduct your investigation in

13 May?

14 MS. SPEIGHTS: Objection.

15 MR. PHILLIPS: Right, that's confusing.

16 Q Do you know if there was anyone who wasn't at

17 work the day that you went to the Gaithersburg warehouse

18 to do your interviews?

19 A I have no idea.

20 Q Did you ask anybody?

21 A I don't understand your question.

22 Q Did you inquire of anyone whether there were

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1 people who had been doing work at the warehouse who just

2 were not physically present that day?

3 A I don't recollect.

4 Q Can you tell me, just as a general practice,

5 how do you select people to interview in a harassment

6 investigation? How do you decide which people to

7 interview?

8 A In a store environment, it's rather easy,

9 it's all the employees.

10 Q Everybody who works at that store?

11 A That's correct.

12 Q And why do you do that? Why do you interview

13 everybody?

14 A Because the numbers are smaller and the

15 interaction is a lot greater.

16 Q And so, potentially, everyone at the store

17 might have relevant knowledge, is that correct?

18 A That is correct.

19 Q Have you ever done an investigation of a

20 distribution center, other than the one in Gaithersburg?

21 A No, I have not.

22 Q Well, did you have any thoughts at the time

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1 about how the employees should be selected for interview

2 at the Gaithersburg facility?

3 MS. SPEIGHTS: Other than what he's already

4 testified about?

5 Q Yes, other than what you already testified

6 to.

7 A No. It was necessary to definitely get the

8 ones who had formalized a complaint and then Cinnie was

9 to select other individuals as well and I'm not sure

10 of -- I knew she knew them, but I wasn't sure of the

11 relationship or why they were selected.

12 Q Is it your usual practice to take notes of

13 interviews that you conduct during investigations of

14 harassment or discrimination?

15 A Yes.

16 Q Why do you do that?

17 A To refresh my memory.

18 Q So that later you can determine what was said

19 to you earlier on when you were conducting the

20 interview?

21 A Yes.

22 Q Do you regularly prepare reports of

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1 investigations that you conduct?

2 A Can you rephrase the question, please.

3 Q Yes.

4 Is it your usual practice to prepare a report

5 of an investigation that you've conducted?

6 A A synopsis is usually done, yes.

7 Q Why do you do that?

8 A Because it assists in closing it out. It's a

9 refresher to whether it can be closed, crossing T's and

10 dotting I's.

11 Q Any other reasons?

12 A In the event that something occurs down the

13 road, there's a record there.

14 Q Oh, okay. All right.

15 So, for example, if there's an allegation,

16 similar allegation, in the future, someone can go back

17 and look at the record of the prior investigation?

18 A That is correct.

19 Q So, for example, prior allegations against

20 the same individual of the same type of conduct are

21 relevant to your investigations?

22 A Can be, yes.

<p style="text-align: right;">Page 181</p> <p>1 Q Can you think of any situations where prior 2 allegations against the same individual of the same kind 3 of conduct are not relevant to your investigations? 4 A Depends on the context of the allegation. 5 Q What aspects of the context do you look at to 6 determine if it's relevant? 7 A The players involved at the time, the 8 conversation that was held, the climate in the store at 9 the time are the things you look at. 10 MR. PHILLIPS: I think I've got another 11 document here that relates to this one. 12 Yes, I do. This will be 8. 13 (Questions was marked Exhibit 8 for 14 identification.) 15 Q If you can go ahead and take a look at 16 Francis exhibit 8 and read it and let me know when 17 you're done, sir. 18 MR. PHILLIPS: Just for the record, this 19 exhibit 8 starts at Bates number BBI 001635. 20 A I'm finished. 21 Q Can you tell me if you've seen before 22 yesterday any of the pages of exhibit 8.</p>	<p style="text-align: right;">Page 183</p> <p>1 Q Is it fair to say that all of the handwritten 2 notations on all pages in exhibit 8 are your 3 handwriting? 4 A That's correct. 5 Q And turning now to, again, the third page, 6 1637, and then looking at that page, looking at the 7 following page, 1638, those two pages, are those the 8 questions that you and Cinnie Brown asked employees when 9 you did your investigation at the Gaithersburg warehouse 10 in May 2005? 11 A I believe so. 12 Q And turning back to the first page, you can 13 verify it by looking at the questions, but I'll 14 represent to you that the questions starting at the top 15 with, "What is the work environment like," and then 16 going down to the fifth question, "Have you encountered 17 any situation that has made you uncomfortable," those 18 questions do not appear in document number 1637 and 1638 19 that you identified as the questions that were asked of 20 the employees in May 2005. Do you know why these 21 questions, these first five questions on the first page, 22 don't appear in the final set of questions?</p>
<p style="text-align: right;">Page 182</p> <p>1 A Yes. 2 Q Can you tell me which pages, please. 3 A First to last. 4 Q If you could just name off the numbers in the 5 bottom right-hand corner, just the last four digits. 6 A 1635, 36, 37, 38, 39, 40 and 41. 7 Q So, you recall seeing all of them before 8 yesterday? 9 A That's correct. 10 Q Can you, first of all, identify the first 11 page of this exhibit 8. What is that? Just the first 12 page, can you tell me what this is? 13 A It looks like it's a portion of the interview 14 questions. 15 Q And then turning to the second page, do you 16 recognize the handwriting on the second page? 17 A I do. 18 Q Whose handwriting is it? 19 A That's mine. 20 Q And could you turn to the third page, which 21 is 1637. Whose handwriting is on this document? 22 A That's mine.</p>	<p style="text-align: right;">Page 184</p> <p>1 A No, I don't. 2 Q Also, going down to the second question from 3 the bottom on the first page reads, "Have you yourself 4 or have you observed anyone being treated differently 5 from the others?" I'll represent to you that that is 6 not asked in that way in the questions that you 7 referenced in pages 1637 and 1938. Do you know why that 8 question was not asked in that way? 9 MS. SPEIGHTS: Objection. 10 MR. PHILLIPS: That's fine. I mean, you 11 know, the document speaks for itself. 12 MS. SPEIGHTS: You said "asked in that way." 13 Q Well, do you know why that question doesn't 14 appear in the list of questions? 15 MR. PHILLIPS: Thank you, counsel. 16 A No, I do not. 17 Q The second page, 1636, handwritten notations. 18 You referenced this was your handwriting. Were you 19 making suggestions here for additional questions? 20 A If my recollection serves me correct, this 21 first page was a draft of questions. I then responded 22 with some additional ones that I thought of or some ones</p>

<p style="text-align: right;">Page 185</p> <p>1 to be taken out and then a finalized document.</p> <p>2 Q And were those questions finalized at the</p> <p>3 warehouse or was it prior to that time?</p> <p>4 A Prior to that.</p> <p>5 Q Did you have a conversation with Ms. Brown</p> <p>6 about the questions prior to going to the warehouse?</p> <p>7 A That's correct.</p> <p>8 Q Did you send this to her? Did you</p> <p>9 communicate the information on this second page to</p> <p>10 Ms. Brown?</p> <p>11 A I don't believe I sent it. I would not send</p> <p>12 that to her. I believe I probably made notes to myself</p> <p>13 and spoke to her directly over the phone.</p> <p>14 Q Let's go back. 1637, do you see here the</p> <p>15 name of any employee, either on this page or on the next</p> <p>16 page? Do you see any employee's name referenced here at</p> <p>17 all?</p> <p>18 A I do not.</p> <p>19 Q Do you know if these two pages, 1637, 1638,</p> <p>20 are notes of an interview with someone?</p> <p>21 A I believe so.</p> <p>22 Q Do you know who the employee is?</p>	<p style="text-align: right;">Page 187</p> <p>1 sexual nature?" Did anyone tell you that they had heard</p> <p>2 it during these interviews?</p> <p>3 A I don't recall.</p> <p>4 Q When you took notes of these interviews, was</p> <p>5 it your intention to record information accurately as</p> <p>6 you were being told that information?</p> <p>7 A That was the intent.</p> <p>8 Q And does that refresh your recollection as to</p> <p>9 whether you knew that Taj had engaged in inappropriate</p> <p>10 or behavior of a sexual nature prior to your</p> <p>11 investigation?</p> <p>12 A I'm sorry --</p> <p>13 MS. SPEIGHTS: Objection.</p> <p>14 A -- can you repeat it, please.</p> <p>15 Q Yes.</p> <p>16 Do you recall anything else, now having read</p> <p>17 that, about allegations against Taj of inappropriate</p> <p>18 conduct or conduct of a sexual nature?</p> <p>19 A Not off the top of my head, no.</p> <p>20 Q Turn to the next page. Do you see the name</p> <p>21 written at the top, Sergio Santizo? Does that look</p> <p>22 correct? Am I reading that right?</p>
<p style="text-align: right;">Page 186</p> <p>1 A Not off the top of my head, no.</p> <p>2 Q Going to 1638, question 12, the question</p> <p>3 reads, "Have you seen or heard any behavior that has</p> <p>4 been inappropriate or of a sexual nature?" and then it</p> <p>5 says in parens, "Tell me what occurred." First of all,</p> <p>6 it's your handwriting, I'm asking you to read it because</p> <p>7 I'm not sure. Go ahead and read the handwritten</p> <p>8 notation under question 12.</p> <p>9 A "Heard it and have addressed it. Heard it,</p> <p>10 team lead," and that's "temporary" or "temp," "Taj" and</p> <p>11 I'm not sure what the other one is, that word is.</p> <p>12 Q Does it look like that last word there is</p> <p>13 Feb, F-E-B?</p> <p>14 A It could be.</p> <p>15 Q Did somebody tell you that they had heard</p> <p>16 that Taj had engaged in behavior that was inappropriate</p> <p>17 or of a sexual nature? Did anyone tell you that during</p> <p>18 these interviews?</p> <p>19 A I'm sorry; repeat that, please.</p> <p>20 Q Yes.</p> <p>21 The question here was, "Have you seen or</p> <p>22 heard any behavior that has been inappropriate or of a</p>	<p style="text-align: right;">Page 188</p> <p>1 A I believe so.</p> <p>2 Q Do you recall interviewing Mr. Santizo?</p> <p>3 A I don't remember, sir.</p> <p>4 Q Do you see down around the fifth question</p> <p>5 there, there's a word circled, it says "hostile?"</p> <p>6 A That's correct.</p> <p>7 Q Do you know what that means in this context?</p> <p>8 A I believe that's a word that I wrote to</p> <p>9 explain how the gentleman was feeling at the time.</p> <p>10 Q Oh, Mr. Santizo was feeling hostile?</p> <p>11 A No, how he was feeling about the environment.</p> <p>12 Q Did Mr. Santizo tell you that he felt like</p> <p>13 the environment was hostile because of his national</p> <p>14 origin or his race?</p> <p>15 A Can you rephrase the question, please.</p> <p>16 Q Yes.</p> <p>17 Did Mr. Santizo tell you he felt the</p> <p>18 environment was hostile and that it was because of his</p> <p>19 national origin or race?</p> <p>20 A No, that's not my prior testimony. Hostile</p> <p>21 is a word I used for Mr. Santizo. No employee used that</p> <p>22 word and, no, there was no discussion of race.</p>

<p style="text-align: right;">Page 189</p> <p>1 Q So, you and Ms. Brown did not ask the 2 witnesses any questions about whether they felt they had 3 experienced racial or national origin discrimination? 4 A We did not, to my knowledge. 5 Q I'm sorry? 6 A We did not, to my knowledge. 7 Q Turn to the next page, 1640. 8 Hang on a second. 9 Question 12 says, the same question that we 10 read before, but I'll read it again, "Have you seen or 11 heard any behavior that has been inappropriate or of a 12 sexual nature?" And then go down to that, question 13, 13 "Have you seen or heard any sexual jokes or 14 inappropriate language?" Do you recall being given any 15 information by any witnesses in response to either of 16 those questions? 17 A I don't recall. 18 Q And let me be more specific. Did any of the 19 employees who were interviewed report that they had seen 20 or heard sexual jokes or inappropriate language or 21 inappropriate or sexual behavior? 22 A I'm sorry; can you rephrase that question.</p>	<p style="text-align: right;">Page 191</p> <p>1 females? 2 A Yes. 3 Q Did any Hispanic females tell you that they 4 had seen or heard sexual behavior or sexual jokes? 5 A Not to my knowledge. 6 Q What did Ms. Nkwetta, Emeten, tell you about 7 sexual behavior or sexual jokes at the warehouse? 8 A I don't recall specifically. 9 Q Do you recall generally what she was 10 describing to you? 11 A That Taj would make comments to female 12 employees. 13 Q What kind of comments? 14 A I don't recall. 15 Q Sexual comments? 16 A I believe perceived sexual comments, yes. 17 Q When you say "perceived sexual comments," was 18 there any question in your mind whether these comments 19 were sexual at the time Ms. Nkwetta was telling you 20 about them? 21 A I don't recall; I couldn't validate it. 22 Q When you say you couldn't validate it, what</p>
<p style="text-align: right;">Page 190</p> <p>1 Q Yes. 2 Did anyone tell you that, yes, they had seen 3 or heard the conduct that is described in questions 12 4 and 13? 5 A Yes. 6 Q Who told you that? 7 A I believe two employees. 8 Q Which employees? 9 A I don't recall their names. 10 Q Were they male or female? 11 A Female. 12 Q Do you recall what their ethnicity was? 13 A I don't want to speculate, no. 14 Q Do you recall if one of them was Emeten 15 Nkwetta? 16 A Yes. 17 Q And do you recall if one of them was Say 18 Wing? 19 A Yes. 20 Q Do you recall interviewing Lolita Gonzales? 21 A I'm not sure of the name. 22 Q Do you recall interviewing any Hispanic</p>	<p style="text-align: right;">Page 192</p> <p>1 do you mean by that? 2 A No one else said the same thing. 3 Q What did Ms. Wing say about sexual behavior 4 or jokes? 5 A I don't recall specifically. 6 Q Did Ms. Wing tell you, as reflected in these 7 documents you've seen, that she had been touched? 8 A I don't recall that. 9 MS. SPEIGHTS: Objection. 10 Go ahead. 11 Q Did Ms. Wing tell you that she had heard 12 sexual comments? 13 A I believe so. 14 Q So, Ms. Nkwetta's account was validated in 15 the sense that Ms. Wing was telling you about sexual 16 comments also, correct? 17 MS. SPEIGHTS: Objection. 18 A No. Your question was are you asking -- let 19 me try it this way. Are you asking in terms of rumors 20 or directed towards her personally? 21 Q Let's be more specific. 22 A Thank you.</p>

<p style="text-align: right;">Page 193</p> <p>1 Q What exactly did she tell you?</p> <p>2 A I don't recollect, but it was rumor, it was</p> <p>3 third-party, it wasn't -- it wasn't at her personally.</p> <p>4 Q Did she identify who she had heard the rumor</p> <p>5 from?</p> <p>6 A She did not.</p> <p>7 Q Was she asked by anyone to identify who she</p> <p>8 had heard the rumor from?</p> <p>9 A I believe she was asked by Ms. Brown.</p> <p>10 Q Did she answer the question?</p> <p>11 A I don't recollect.</p> <p>12 Q As a result of your interview of Ms. Wing,</p> <p>13 did you or Ms. Brown interview anyone else at the</p> <p>14 facility?</p> <p>15 MS. SPEIGHTS: Objection.</p> <p>16 You can answer.</p> <p>17 A We had quite a few interviews, yes.</p> <p>18 Q Did you interview the person that Ms. Wing</p> <p>19 identified?</p> <p>20 A She did not identify an individual.</p> <p>21 Q What did she say about the individual?</p> <p>22 A She didn't speak to an individual, she spoke</p>	<p style="text-align: right;">Page 195</p> <p>1 Q Additional interviews that day, correct?</p> <p>2 A That's correct.</p> <p>3 Q Did you or Ms. Brown make any effort to</p> <p>4 interview people who were not present that day, but who</p> <p>5 worked at the warehouse?</p> <p>6 A I had no knowledge of who was not present,</p> <p>7 sir.</p> <p>8 Q Did you or Ms. Brown make any attempt to</p> <p>9 contact former workers of the warehouse to interview</p> <p>10 them about the work environment?</p> <p>11 A I was not in the selection process, sir, of</p> <p>12 the employees.</p> <p>13 Q That was Ms. Brown?</p> <p>14 A That's correct.</p> <p>15 Q Does your training through Blockbuster inform</p> <p>16 you that interviewing former employees can be a useful</p> <p>17 investigative technique in a sexual harassment</p> <p>18 investigation?</p> <p>19 MS. SPEIGHTS: Objection.</p> <p>20 You can answer.</p> <p>21 A Not to my recollection.</p> <p>22 Q Do you personally consider that to be a</p>
<p style="text-align: right;">Page 194</p> <p>1 to --</p> <p>2 Q General rumors?</p> <p>3 A -- general rumors, that's correct.</p> <p>4 Q In your experience as a human resource</p> <p>5 professional, are general rumors considered less</p> <p>6 probative of sexual harassment than direct statements</p> <p>7 made to the witness?</p> <p>8 MS. SPEIGHTS: Objection.</p> <p>9 A I'm sorry; do you want to rephrase the</p> <p>10 question?</p> <p>11 Q Yes.</p> <p>12 Are rumors considered less significant?</p> <p>13 A They are not.</p> <p>14 Q They are not significant at all?</p> <p>15 A They're not considered less significant.</p> <p>16 MS. SPEIGHTS: Objection.</p> <p>17 Q Are you trained to follow up on rumors of</p> <p>18 sexual harassment?</p> <p>19 A Yes.</p> <p>20 Q Do you know whether you did so in this case?</p> <p>21 A There were additional interviews held, prior</p> <p>22 testimony.</p>	<p style="text-align: right;">Page 196</p> <p>1 useful investigative technique in a sexual harassment</p> <p>2 investigation?</p> <p>3 A I'm sorry; rephrase the question.</p> <p>4 Q Yes.</p> <p>5 Do you personally believe that interviewing</p> <p>6 former employees is a useful investigative technique in</p> <p>7 a sexual harassment investigation?</p> <p>8 A Depending on the nature of the allegation.</p> <p>9 Q What is it about the nature of the allegation</p> <p>10 that would make such investigation useful or not useful?</p> <p>11 A In my current role, any employee who lodges a</p> <p>12 charge of harassment is an active employee of the</p> <p>13 company, so there would be no need to contact an</p> <p>14 ex-employee. Those persons are still on the books and</p> <p>15 free to be interviewed. The difference in the warehouse</p> <p>16 situation, they're not there, they're not -- they work</p> <p>17 for the agency and so it's in the agency's best</p> <p>18 interests, not mine, sir.</p> <p>19 Q Do you agree that former employees may have</p> <p>20 relevant corroborative evidence related to a sexual</p> <p>21 harassment investigation?</p> <p>22 MS. SPEIGHTS: Objection.</p>

<p style="text-align: right;">Page 197</p> <p>1 You can answer.</p> <p>2 Q That there's at least the potential for that?</p> <p>3 MS. SPEIGHTS: Objection.</p> <p>4 You can answer.</p> <p>5 A I would agree.</p> <p>6 Q Do you find that fear of retaliation is a</p> <p>7 concern of some of the people that you have interviewed</p> <p>8 in investigations?</p> <p>9 A I'm sorry; can you rephrase the question.</p> <p>10 Q Yes.</p> <p>11 Has anyone in an investigation that you have</p> <p>12 interviewed expressed to you fear of retaliation?</p> <p>13 A As it relates to -- I'm sorry; it's a general</p> <p>14 question.</p> <p>15 Q I'm sorry. As it relates specifically to</p> <p>16 what they may or may not say to you during the</p> <p>17 interview?</p> <p>18 MS. SPEIGHTS: Objection.</p> <p>19 You can answer.</p> <p>20 Q You can answer.</p> <p>21 A The potential exists, yes.</p> <p>22 Q And you understand that witnesses may</p>	<p style="text-align: right;">Page 199</p> <p>1 MS. SPEIGHTS: Objection.</p> <p>2 You can answer.</p> <p>3 A I'll disagree with that, sir.</p> <p>4 Q Well, if you're not working there, are there</p> <p>5 other ways that you can be retaliated against?</p> <p>6 A Well, in your statement, Blockbuster</p> <p>7 retaliates, so if you'll rephrase the question, please.</p> <p>8 Q I understand. I will rephrase the question.</p> <p>9 If you're no longer working for a company,</p> <p>10 that company cannot retaliate against you, at least with</p> <p>11 respect to your employment, because it no longer exists,</p> <p>12 would you agree with that statement?</p> <p>13 MS. SPEIGHTS: Objection.</p> <p>14 You can answer.</p> <p>15 A Fair statement.</p> <p>16 Q In your training, has anyone ever expressed</p> <p>17 to you the notion that there's at least the potential</p> <p>18 that a former employee may be more candid during an</p> <p>19 investigation of sexual harassment, as opposed to a</p> <p>20 current employee because of the fear of retaliation?</p> <p>21 A I don't recall.</p> <p>22 Q I think you testified, I know you testified</p>
<p style="text-align: right;">Page 198</p> <p>1 possibly fear retaliation based on what they say to you</p> <p>2 during the interview?</p> <p>3 MS. SPEIGHTS: Objection.</p> <p>4 You can answer.</p> <p>5 A That's a fair statement, yes.</p> <p>6 Q And do you recognize that a former employee</p> <p>7 would be less likely to fear retaliation?</p> <p>8 MS. SPEIGHTS: Objection.</p> <p>9 You can answer.</p> <p>10 Q You can answer the question.</p> <p>11 A I would disagree, sir.</p> <p>12 Q You would disagree with that?</p> <p>13 A That's correct.</p> <p>14 Q Why would you disagree with that?</p> <p>15 A Retaliation is retaliation, sir. Whether</p> <p>16 you're an employee or not an employee, it has no bearing</p> <p>17 on someone being able to retaliate for a statement that</p> <p>18 you made.</p> <p>19 Q You would agree with me, though, if you're no</p> <p>20 longer employed by Blockbuster, it's less likely that</p> <p>21 Blockbuster would be able to retaliate against you in</p> <p>22 terms of your employment?</p>	<p style="text-align: right;">Page 200</p> <p>1 earlier that you did not interview Michelle Despertt,</p> <p>2 correct?</p> <p>3 A Not to my knowledge.</p> <p>4 Q And you understood at the time you conducted</p> <p>5 this May investigation, through Cinnie Brown you</p> <p>6 understood, that Ms. Despertt had registered some kind</p> <p>7 of sexual harassment complaint, correct?</p> <p>8 A That is correct.</p> <p>9 Q And you understood that was a complaint</p> <p>10 against Thomas Johnson, correct?</p> <p>11 A That is correct.</p> <p>12 Q Why didn't you interview Michelle Despertt?</p> <p>13 MS. SPEIGHTS: Objection, asked and answered,</p> <p>14 but go ahead.</p> <p>15 A She was no longer at the facility, sir, in</p> <p>16 May of '05.</p> <p>17 Q Turn to the last page, please. I just would</p> <p>18 like you to read the handwritten notations into the</p> <p>19 record just so we're clear on what they say.</p> <p>20 A "Wouldn't have tried to speak with</p> <p>21 management. Linc went to -- "</p> <p>22 Q "TX?" Does that look like "TX" to you?</p>

<p style="text-align: right;">Page 213</p> <p>1 A I don't recall.</p> <p>2 Q Do you recall whether she said anything else</p> <p>3 along those lines of inappropriate sexual remarks,</p> <p>4 beyond what you've already testified to?</p> <p>5 A I don't recall.</p> <p>6 Q Did you or Ms. Brown ask any of the other</p> <p>7 employees, other than Ms. Nkwetta, directly whether they</p> <p>8 had heard Taj talking about people's butts?</p> <p>9 A I don't recall.</p> <p>10 Q There's reference here about "all the girls."</p> <p>11 Do you regard a group lead talking about women's</p> <p>12 buttocks to be a form of sexual harassment?</p> <p>13 MS. SPEIGHTS: Objection.</p> <p>14 You can answer.</p> <p>15 A It's an allegation.</p> <p>16 Q I'm not asking you to agree that the</p> <p>17 allegation is true. I'm asking you, if the allegation</p> <p>18 were true, would that be considered a form of sexual</p> <p>19 harassment under the Blockbuster policies concerning</p> <p>20 harassment and discrimination?</p> <p>21 A If the allegation was true, it would be</p> <p>22 deemed a form of sexual harassment, yes.</p>	<p style="text-align: right;">Page 215</p> <p>1 that Taj had made sexual comments?</p> <p>2 MS. SPEIGHTS: Objection.</p> <p>3 You can answer.</p> <p>4 Q You can answer.</p> <p>5 A I did not.</p> <p>6 Q Why did you not draw a conclusion?</p> <p>7 A If I reached my conclusion, sir, I would have</p> <p>8 closed out the investigation. The investigation</p> <p>9 continued.</p> <p>10 Q Once the investigation was completed, did you</p> <p>11 reach any conclusion about whether Ms. Nkwetta's</p> <p>12 allegations regarding Taj making sexual comments were</p> <p>13 truthful?</p> <p>14 A I could not validate that, no.</p> <p>15 Q And what in your mind was required for you to</p> <p>16 be able to validate those allegations?</p> <p>17 A Additional person or persons saying that it</p> <p>18 happened to them.</p> <p>19 Q And is it your testimony that at the time you</p> <p>20 were not made aware that Ms. Wing had alleged that she</p> <p>21 was touched inappropriately?</p> <p>22 A Not to my knowledge.</p>
<p style="text-align: right;">Page 214</p> <p>1 Q Did you believe Ms. Nkwetta, ultimately, did</p> <p>2 you believe her that Taj had done these things that are</p> <p>3 reflected in page 139?</p> <p>4 MS. SPEIGHTS: Objection.</p> <p>5 A Can you rephrase the question, please.</p> <p>6 Q Yes, I will rephrase the question.</p> <p>7 You referenced earlier that Ms. Nkwetta told</p> <p>8 you that Taj made sexual comments, correct?</p> <p>9 MS. SPEIGHTS: Objection.</p> <p>10 Q Was that your testimony earlier, that</p> <p>11 Ms. Nkwetta told you that Taj had made sexual comments</p> <p>12 of some kind?</p> <p>13 A That's correct.</p> <p>14 Q Did you draw any conclusion as to whether</p> <p>15 Ms. Nkwetta was telling you the truth?</p> <p>16 A No, I did not.</p> <p>17 Q Why didn't you draw a conclusion?</p> <p>18 A Because of the allegation and there was more</p> <p>19 investigation pending.</p> <p>20 Q At any point subsequent to completing your</p> <p>21 continued interviews, did you draw any conclusion about</p> <p>22 whether Ms. Nkwetta had told you the truth when she said</p>	<p style="text-align: right;">Page 216</p> <p>1 Q If you had interviewed Ms. Despertt and she</p> <p>2 had told you that she was subjected to sexual comments</p> <p>3 by Taj, would that have been enough for you to conclude</p> <p>4 that Ms. Nkwetta's allegations were substantiated?</p> <p>5 MS. SPEIGHTS: Objection.</p> <p>6 Q You can answer the question.</p> <p>7 A I won't speculate.</p> <p>8 Q Have you received any training through</p> <p>9 Blockbuster about the standard for determining whether</p> <p>10 an allegation of sexual harassment is to be considered</p> <p>11 substantiated?</p> <p>12 A I don't understand your question, sir.</p> <p>13 Q Yes.</p> <p>14 Have you received any training from</p> <p>15 Blockbuster regarding what kind of proof is required to</p> <p>16 demonstrate that an allegation of sexual harassment is</p> <p>17 true?</p> <p>18 MS. SPEIGHTS: Objection.</p> <p>19 You can answer.</p> <p>20 Q You can answer.</p> <p>21 A Oh, yes.</p> <p>22 Q And what have you been told about that?</p>

<p style="text-align: right;">Page 233</p> <p>1 A No, we had tentatively, because we both  2 travel, we tentatively looked our calendars, because his  3 travel is more expansive than mine, to see if we could  4 possibly, based on the discussion that was yet to be  5 had, if things panned themselves out the right way,  6 Scott requested prior notice so he could plan his flight  7 schedules accordingly. So, assuming things were going  8 to work out in terms of admission or whatever you want  9 to call it when I sat down with Taj, we were going to go  10 ahead and plan a visit for that Tuesday to the site.  11 Q But look earlier in the preceding section, it  12 starts with "Taj's interview." Do you see that?  13 A Yes.  14 Q It starts with the line, "Taj did not own up  15 to yelling at any staff, sexual harassing any staff with  16 comments or inappropriate conversations," period. Do  17 you see that?  18 A That's correct.  19 Q So, as of the date of this e-mail,  20 Mr. Johnson had already been interviewed, correct?  21 A No, we -- we met on the 15th, yes. We met on  22 at 15th, at 1 o'clock in the morning, per -- at which I</p>	<p style="text-align: right;">Page 235</p> <p>1 Q Why not?  2 A My discussion with Taj did not reveal to me  3 that in and of itself he was the problem.  4 Q What did you think the problem was?  5 A As I mention in the document, ineffective  6 leadership.  7 Q Did Mr. Collen agree with this conclusion?  8 A To my knowledge, yes.  9 Q Did Mr. Collen, in response to this e-mail,  10 did Mr. Collen ever communicate to you that he had  11 concerns about your recommendation and that he thought  12 you may wish to still go ahead and separate Taj from his  13 employment?  14 A I believe he shared that with me, yes.  15 Q Did he say why?  16 A I don't recall.  17 Q Who made the ultimate decision about whether  18 to separate Taj from his employment at Blockbuster?  19 MS. SPEIGHTS: At this time?  20 Q At this time, yes, sir.  21 A You know, when he was done or you mean right  22 now?</p>
<p style="text-align: right;">Page 234</p> <p>1 e-mailed him that evening.  2 Q So, is it your testimony that you never  3 intended to separate Taj from his employment at  4 Blockbuster?  5 A That's not my testimony. Again, assuming  6 that all the facts line themselves up, all the ducks  7 were in a row, okay, we had planned on going to the  8 site, having the conversation and administering a  9 separation.  10 Q So, when you say "we," who are you referring  11 to? You and who else?  12 A Mr. Collen and myself, yes.  13 Q So, you had discussed this with Mr. Collen?  14 A Yes.  15 Q And he was onboard with that?  16 A He was checking into flights, yes.  17 Q But he was onboard with the intention to  18 separate Taj from his employment?  19 A That's correct.  20 Q But you did not separate Taj from his  21 employment as a result of this investigation?  22 A That's correct.</p>	<p style="text-align: right;">Page 236</p> <p>1 Q No, I'm talking about --  2 A As of the 15th.  3 Q -- as a result of this May investigation, who  4 made the ultimate decision about whether or not Taj  5 would be separated from his employment at Blockbuster?  6 A Mr. Collen and Ms. Fitzgerald.  7 Q Did you have any communications with  8 Ms. Fitzgerald, other than this e-mail, about your  9 recommendation that Taj not be separated?  10 A I'm sorry; I'm lost now in your question.  11 Q Yes.  12 Other than in this e-mail, did you have any  13 communications with Ms. Fitzgerald about the topic of  14 whether Taj should be separated?  15 A There was a document later, when he was  16 separated, that preexisted the separation, which I  17 believe was in August. There was an August e-mail, yes.  18 Q In connection with the May investigation, did  19 you have any communications with Ms. Fitzgerald, other  20 than this e-mail, about the topic of whether or not Taj  21 should be separated from his employment?  22 A Ms. Fitzgerald and I didn't speak; Mr. Collen</p>



<p style="text-align: right;">Page 237</p> <p>1 and I spoke.</p> <p>2 Q Did you communicate with her by e-mail on</p> <p>3 that subject, other than this e-mail?</p> <p>4 A Not to my recollection, no.</p> <p>5 Q Did Mr. Collen ultimately agree with your</p> <p>6 recommendation or not about not separating Taj at this</p> <p>7 time?</p> <p>8 A I believe so.</p> <p>9 Q Did you have any discussions in which he</p> <p>10 discussed with you his decision about whether to</p> <p>11 separate Taj?</p> <p>12 A I don't recall.</p> <p>13 Q Did he ever tell you that ultimately he</p> <p>14 agreed with your recommendation?</p> <p>15 A I don't recall.</p> <p>16 Q Did he tell you why Taj was not separated at</p> <p>17 this time?</p> <p>18 A I don't recall.</p> <p>19 MR. PHILLIPS: This is 11, I believe.</p> <p>20 (E-mail was marked Exhibit 11 for</p> <p>21 identification.)</p> <p>22 Q Take a look at exhibit 11. I'll represent to</p>	<p style="text-align: right;">Page 239</p> <p>1 Q The next sentence, it says, "I felt that</p> <p>2 enough information was uncovered last week that would</p> <p>3 warrant his termination." Did Mr. Collen tell you what</p> <p>4 information he was referencing that warranted</p> <p>5 termination?</p> <p>6 A I don't recollect.</p> <p>7 Q Did you ever have any understanding of what</p> <p>8 information was uncovered last week that he's</p> <p>9 referencing here?</p> <p>10 A I don't recollect.</p> <p>11 MR. PHILLIPS: Just a minute, I might be</p> <p>12 done.</p> <p>13 Q Did you ever discuss this issue whether Taj</p> <p>14 should be separated with anyone other than Scott Collen?</p> <p>15 MS. SPEIGHTS: In May?</p> <p>16 MR. PHILLIPS: Yes.</p> <p>17 Q Again, we're all talking about as a result of</p> <p>18 the May investigation.</p> <p>19 A I don't recall.</p> <p>20 Q Do you recall receiving information that</p> <p>21 Cinnie Brown believed that Taj should be separated at</p> <p>22 this time?</p>
<p style="text-align: right;">Page 238</p> <p>1 you it's an e-mail string based off of 10. The</p> <p>2 information under "Barry" in this top e-mail is the new</p> <p>3 information in this thing. Let me know when you're</p> <p>4 done.</p> <p>5 A I'm done.</p> <p>6 Q Do you recall receiving this e-mail?</p> <p>7 A Yes.</p> <p>8 Q So, do you now recall that Mr. Collen said</p> <p>9 that he's not sure that he agreed with your decision to</p> <p>10 keep Thomas in place?</p> <p>11 A Yes.</p> <p>12 Q Did he ever say to you why he wasn't sure</p> <p>13 that he agreed with the decision to keep Thomas in</p> <p>14 place?</p> <p>15 A Not to my recollection. What happened was</p> <p>16 that Mr. Collen would then discuss it with his primary</p> <p>17 HR contact and that would be Ms. Fitzgerald.</p> <p>18 Q Were you ever privy to those communications?</p> <p>19 A I was not.</p> <p>20 Q Did anyone ever discuss with you the content</p> <p>21 of those communications?</p> <p>22 A Not to my knowledge.</p>	<p style="text-align: right;">Page 240</p> <p>1 A What information is that?</p> <p>2 Q I'm asking, did anyone ever give you</p> <p>3 information to the effect that Cinnie Brown believed</p> <p>4 that Taj should be separated at this time?</p> <p>5 A I don't recall.</p> <p>6 Q Do you know whether she ever held that</p> <p>7 opinion or not?</p> <p>8 A I don't recall.</p> <p>9 Q Did Cinnie Brown ever express to you her</p> <p>10 opinion about whether or not the allegations that were</p> <p>11 being investigated in May 2005 had been substantiated by</p> <p>12 the investigation?</p> <p>13 A Cinnie Brown and I never discussed the</p> <p>14 outcome of the investigation, to my knowledge.</p> <p>15 MR. PHILLIPS: You have a plane to catch.</p> <p>16 I assume you're going to read and sign?</p> <p>17 MS. SPEIGHTS: We will read and sign.</p> <p>18 MR. PHILLIPS: I would say pack it up and</p> <p>19 head out.</p> <p>20 (Signature not waived.)</p> <p>21 (Deposition concluded at 4:44 P.M.)</p> <p>22</p>