

Florida Department of Highway Safety and Motor Vehicles



INVESTIGATIVE REPORT

September 14, 2007

Case Number:	Florida Department of Law Enforcement (FDLE): IG75-0052
Investigative Team:	Inspector General Al Dennis, FDLE Inspector Wayne Thompson, FDLE Inspector Tonja Bryant-Smith, FDLE Captain Andrew McClenahan, Florida Department of Environmental Protection (DEP)
Subject:	Colonel Christopher Knight, Director, Florida Highway Patrol (FHP)
Complainants:	FHP employees: Lieutenant James Darby, Lieutenant Colonel Larry Austin, Chief Kevin Guidry, Major Leroy Smith, Major Cyrus Brown, Captain Timothy Ashley, and Lieutenant Kevin Conner, and Anonymous email.

TABLE OF CONTENTS

<u>CONTENTS</u>	<u>PAGE</u>
TABLE OF CONTENTS.....	1
SUMMARY OF COMPLAINTS	2-3
ALLEGATIONS / FINDINGS SUMMARY	4-35
1) Memorandum.....	4-10
Additional Findings	5-10
2) Testimony in PERC Hearing	11-12
3) Testimony to Commission on Ethics.....	13-14
4) Statement to Media.....	15-16
5) Retaliation Against Lieutenant James Darby	17-18
6) Lieutenant James Darby's Leave	19-21
7) Use of Derogatory Language.....	22-23
8) Discrimination in Promotions.....	24-28
9) Disparate Treatment in Discipline.....	29-31
10) Retaliation Against former Sergeant John Berke	32
11) Communication	33-34
12) April 2006 Inspector General Investigation	35
ADDITIONAL ISSUES/RECOMMENDATIONS.....	36
SIGNATURE PAGE	37
APPENDIX A – PERSONS INTERVIEWED.....	A-1
APPENDIX B – PROMOTIONAL STATISTICS.....	B-1 – B-5
All FHP Promotions, July 1, 2001 to June 30, 2007.....	B-1
Captains Competing for Rank of Major, 1998 to 2002	B-2
Lieutenants Competing for Rank of Captain, 2001 to 2006	B-3
Major Promotion Statistics before FHP-2003 – Numbers Only	B-4
Major Promotion Statistics before FHP-2003 – By Race	B-4
Assessment & Promotion Statistics - African Americans Only	B-4
Executive Staff (6/30/07).....	B-4
Captain Promotion Statistics (FY 2001/02 through 2006/07)	B-4
Captain Promotion Statistics – By Race	B-4
Captain Promotion Statistics – African Americans Only	B-5
FHP Promotions to Lieutenant FYs 2001-2007	B-5
Agency-wide Racial Makeup by EEO Job Category FY 2005/06	B-5
Agency-wide Promotions by Race FY 2005/06	B-5
2005 U.S. Census Bureau Statistics for Florida.....	B-5

SUMMARY OF COMPLAINTS

This investigation was initiated as a result of four complaints received by the Florida Department of Highway Safety and Motor Vehicles (The Department) as follows:

- In November 2006, Florida Highway Patrol (FHP) Lieutenant James Darby, Jr. filed a complaint with the Chief Inspector General's Office (CIG), Executive Office of the Governor, regarding the Director of the FHP, Colonel Christopher Knight.
- On March 20, 2007, six FHP employees, all African American, reported concerns to the Executive Office of the Governor about the treatment of African Americans by Colonel Knight.¹
- On April 4, 2007, the CIG received an anonymous email that alleged that a previous Department Inspector General investigation against Colonel Knight was incomplete.
- On May 22, 2007, the Department's Executive Director Electra Theodorides-Bustle received an email from Mr. John Berke, a former FHP Sergeant, alleging that Colonel Knight retaliated against him.

Executive Director Bustle requested independent investigative assistance into the allegations against Colonel Knight. Florida Department of Law Enforcement (FDLE) Inspector General Al Dennis was temporarily assigned to the Department, reporting to Executive Director Bustle, and instructed to take the lead on the investigation. FDLE Inspectors Wayne Thompson and Tonja Bryant-Smith, and Florida Department of Environmental Protection (DEP) Captain Andrew McClenahan were assigned to the investigative team.

The following allegations were included in this investigation:

1. Colonel Knight falsified a December 2, 2003, memorandum and made intentional misstatements of fact within the document.
2. Colonel Knight gave false testimony under oath in a Public Employees Relations Commission (PERC) Hearing.
3. Colonel Knight knowingly provided false information to the Florida Commission on Ethics in an anti-nepotism ruling.
4. Colonel Knight lied to a television news reporter saying that Tallahassee wasn't aware of an FHP trooper's traffic crashes.

¹ Lieutenant Colonel Larry Austin, Chief Kevin Guidry, Major Leroy Smith, Major Cyrus Brown, Captain Timothy Ashley, and Lieutenant Kevin Conner.

5. Colonel Knight retaliated against James B. Darby, Jr., by intentionally reassigning him, forcing him to relinquish his assigned patrol vehicle thereby creating a financial hardship while other FHP employees have been allowed to use their assigned vehicles.
6. Colonel Knight required Lieutenant James B. Darby, Jr., to take mandatory family medical leave in violation of Section 110.221, Florida Statutes (F.S.).
7. Colonel Knight used derogatory language when referring to African Americans.
8. As a result of the changes under Colonel Knight to the FHP Promotional Process minorities have not been promoted to higher-ranking positions resulting in a pattern of disparate treatment.
9. Colonel Knight controls internal investigations, disciplinary actions, and personnel decisions in a manner that shows disparate treatment of minorities.
10. Former FHP Sergeant John Berke was denied an opportunity to participate in the FHP Reserve program in retaliation for filing a complaint against a friend of Colonel Knight's.
11. Colonel Knight discriminates against minorities by not including them in meetings and other communications.
12. The Inspector General for the Department did not interview key witnesses about allegations of Colonel Knight's improper relationship with employees that would have resulted in testimonial and physical evidence to sustain the allegations against Colonel Knight and prove that he lied under oath during the investigation.

ALLEGATION #1: Colonel Knight made intentional misstatements of fact within a December 2, 2003 memorandum. NOT SUSTAINED

Colonel Knight falsified the December 2, 2003, memorandum. SUSTAINED

Colonel Knight allegedly falsified an internal FHP memorandum dated December 2, 2003, documenting a November 26, 2003, meeting with Lieutenant James Darby (former Captain in F-Troop) during an aircraft enforcement detail. The memorandum is reproduced as follows:

**DIVISION OF FLORIDA HIGHWAY PATROL
OFFICE OF THE DIRECTOR
December 2, 2003**

TO: Files
FROM: Colonel Christopher A. Knight (*initialed*)
SUBJECT: Documentation of Discussion with Captain James B. Darby, Jr.

This will document the discussion I had with Captain James B. Darby, Jr., regarding his relationship with his immediate supervisor, Major Rebecca P. Tharpe. The date was Wednesday, November 26, 2003 (the day prior to Thanksgiving).

The discussion took place in the median of Interstate 75 between Clark Road and SR-681. We had just completed an aircraft enforcement detail and Captain Darby had asked me earlier the day if he could talk to me after we finished the detail.

Captain Darby asked me if he could transfer to another location in the state due to his inability to work for Major Tharpe. He talked about how difficult it was for him to work with her, as she created a negative working environment in the manner in which she treated people. He stated that he didn't think she wanted him as a captain in the troop, as he had worked with her in Miami and they did not get along there.

He specifically stated, "She is difficult to work for." Captain Darby stated that Major Tharpe does not like anyone, and that she has a history of mistreating people in her chain of command. He said that she supervises in Troop F the way she supervised in Troop E, and that he did not like working in that kind of environment. Specifically, he stated that the way she supervises those that work for her is not a manner in which he feels comfortable working.

He asked that if the opportunity arose for him to transfer that he be considered. It was better for him to leave the troop than for him to try to work for Major Tharpe.

CAK/ck

Darby testified that he did not meet with Colonel Knight on November 26, 2003. He stated that he was on leave in November 2003. Darby stated he met with Colonel Knight after an aircraft detail on I-75 on December 24, 2003. However, Darby denied ever making the comments attributed to him in Colonel Knight's memorandum at that time or on any other date. Darby confirmed that he requested a transfer to Lake City as stated in the memorandum, but said that this conversation took place in July 2004 not in November 2003 as stated in Colonel Knight's memorandum. Darby advised his request was based on a personal desire to return to Lake City and not based on his working relationship with his Troop Commander, Major Rebecca Tharpe (Tharpe) as stated in Colonel Knight's memorandum. Based on Darby's testimony, he asked for a transfer to Lake City in July 2004, but did not make a formal written request. The review of Darby's personnel file failed to reveal a written transfer request completed by Darby, or a written acknowledgement or transfer denial from Colonel Knight.

Documents provided by Darby verified that he was on approved leave during the week of Thanksgiving 2003. Darby provided a hotel bill from the Evergreen Marriott Conference Resort showing that he was in Stone Mountain, Georgia on the day that Colonel Knight's memorandum stated they met.

An analysis of F-Troop aircraft enforcement records verifies that an aircraft detail was conducted on I-75 on both November 26, 2003, and December 24, 2003. Colonel Knight's vehicle was the pace vehicle used to calibrate speed detection equipment on the later date.

Colonel Knight admitted in his sworn and recorded interview that he was mistaken on the date on the memorandum and that the meeting and conversation between he and Darby actually occurred on December 24, 2003, not November 26, 2003. Colonel Knight stated, *"But anyways, it was just him and I standing there."* Colonel Knight added, *"I knew it was a day before a holiday because that's the day we worked the road. Obviously [it wasn't Thanksgiving, it was Christmas]. But the bottom line is I take full responsibility for that. And I just want to make sure that there is – I didn't falsify anything. I got the incorrect dates."* Colonel Knight testified that while he was mistaken on the date, the content of the memorandum was accurate.

Colonel Knight stated he denied Darby's transfer request after consulting with the troopers in the Lake City area who did not want Darby to return. The Lake City area Troop Commander, Major Rick Carpenter, confirmed Colonel Knight's stated justification for denying Darby's transfer.

FINDING:

- During this investigation it was established that a meeting occurred between Colonel Knight and Darby on December 24, 2003.
- During this investigation the comments attributed to James Darby by Colonel Knight in his December 2, 2003, memorandum cannot be proved or disproved due to the conflicting testimony of the only two witnesses present.
- During this investigation it could not be proved or disproved whether Colonel Knight documented his discussion with Darby immediately following their meeting.

As to the *content* of the memorandum, the allegation that Colonel Knight made intentional misstatements is **NOT SUSTAINED**².

ADDITIONAL FINDINGS:

During the interview, with Colonel Knight, additional information concerning the creation of the December 2, 2003, memorandum was disclosed.

Upon reviewing statements and documentation obtained during this investigation and afforded him under the Bill of Rights, Colonel Knight said he realized that the correct date of his meeting and conversation with Darby occurred the day before Christmas 2003. When asked, if he originally thought the conversation took place on November 26, 2003, the day before Thanksgiving, and why he dated his memorandum December 2, 2003, Colonel Knight stated that he should have documented it on his first day back at work.

² Not Sustained is defined as: There is insufficient proof to confirm or to refute the allegation.

Colonel Knight explained to investigators that after Major Tharpe was terminated in June 2006³, and in response to her subsequent Equal Employment Opportunity Commission (EEOC) complaint against the Department, he was asked to locate the documentation of his meeting with Darby. According to Colonel Knight, he was unable to locate his original documentation. He testified that he attempted to recreate⁴ the document sometime in September 2006 from his memory and dated the memorandum December 2, 2003. Colonel Knight testified that he did not have any original notes about the conversation or meeting, but added that he has a good memory. When asked if he was trying to recreate the date he wrote the memorandum from memory, Colonel Knight said yes. He stated that December 2, 2003, is when he should have documented the conversation. Colonel Knight further stated in his testimony that when he was told it would be helpful if the Department had his document, he wrote the document in September 2006 and dated it, December 2, 2003. Portions of his testimony on June 28, 2007, directly relating to the above are as follows:

Q: What was the reason for the meeting mentioned in the memo?

A: Well, I don't know the reason for the meeting. I was actually in Sarasota County working. ...I'm from Venice, Sarasota County, and so I always go to Venice the day before Thanksgiving. ...And the troopers there expect it, it's as simple as that. They know I'm coming down there to Venice and there's an expectation I'll work in Venice. And I pilot too, so we work aircraft detail. So that's where the date of the day before Thanksgiving came from, because that's when I'm always there.

As far as the documentation discussion, totally my fault on the date. Here is what happened. We had this discussion subsequent to us working an aircraft detail. When I got back to Tallahassee, I documented it. The response here of this memo that I'm accused of falsifying was written in response to an EEO complaint that former Major Rebecca Tharpe filed against the agency. That's what it's for, it's a files memo.

What happened is when our EEO people were doing a -- I mean, our OER, Office of Employee Relations, people were responding to this EEO complaint, naturally I was part of the discussion. And I told them, hey, I had this conversation with Darby that -- I had this conversation with Darby where he told me that he couldn't work for her because of her management styles and asked me if he could transfer. He asked me if I had it documented, and I told him I did.

...I tell you, I looked and I looked and I looked and I couldn't find the dang memo, so I told them that I wrote it but I can't find it. And I was told -- listen, I want to make this perfectly clear, this is my responsibility. I'm not blaming it on anybody from the department.

So I simply -- they said it would be very helpful if we had a document documenting your discussion. So what I did, I did it from memory. And my memory was that we had the conversation after an aircraft detail. And the reason I thought it was the day before Thanksgiving in '03 is that I knew I would have been there.

...Now, I didn't realize until yesterday the date that it was because James Darby said in his -- that he had the conversation with me

³ In a June 9, 2006 memorandum from Colonel Knight to Deputy Executive Director David Westberry, Colonel Knight outlined concerns with Major Rebecca Tharpe and his recommendation for her separation from the Florida Highway Patrol. In this memorandum, Colonel Knight stated in pertinent part, Former Captain James B. Darby, Jr., "...complained to me in November of 2004 of how difficult it was for him to work for Major Tharpe, and asked that he be transferred to North Florida as soon as a position became available."

⁴ As used herein, the words "create" and "recreate" are meant to convey that the memorandum dated December 2, 2003 was represented by Colonel Knight to be a reconstruction of an earlier (lost) memorandum.

regarding transfer on December 24th, which would make sense because I would be down there for Christmas.

...And I didn't falsify a document. I created the document, wrote the document because I couldn't find my original, and I documented for the department. This file's memo has nothing to do with the action on the dismissal of Major Becky Tharpe. This was in response to an EEO complaint, that's what it's for.

...We had this conversation obviously on December 24th, 2003. The contents of this memo are entirely accurate. That's exactly what he told me.

...So the document was a document for an agency response to an EEO complaint, not to benefit Chris Knight, not to document something that didn't occur. I simply got the wrong date, and I take responsibility for that, that's my fault.

...And I tell you, when I documented that is when I talked to [Jim Darby's wife]. I got a little bit concerned because I called her after she called my office.

...Because I should have documented the discussion when I got back, which would have been my first day back. That's my responsibility. I should have done that. I documented it after I talked to [Jim Darby's wife].⁵

Q: So why did you date the memorandum December 2nd, 2003?

A: Because I should have documented the discussion when I got back, which would have been my first day back.

Q: So when you wrote December 2nd, 2003, you were trying to recreate that date in your memory of --

A: When I should have documented, yes.

Q: When you wrote that some time after June 13, 2006 in response to the EEO complaint --

A: Yes, sir.

Q: -- you were attempting to recreate something that already existed -- that you couldn't locate?

A: I still don't know where it is.

Q: Okay.

A: I probably typed over it, to be honest with you.

Q: Okay. Why didn't you just write a whole new one? Why did you date it December 2nd?

A: And I should have. And I take full responsibility for that.

Q: Okay.

A: Listen, and - can I expand on that a little bit?

Q: Please, absolutely.

A: And I want to make this clear. The memo is 100 percent my responsibility. I took full responsibility for that. It's not falsified. The dates are incorrect. I take responsibility for that. It's not -- if I could do it over, I would do it a different way. I don't say that because I did it for the agency. I did it in response to the agency's response in the EEO complaint.

Q: Who told you to write the memo?

A: That's not me. I take full responsibility for it.

⁵ According to Darby's testimony, his wife called Colonel Knight to discuss her husband's transfer request in July 2004.

Q: I know. Well, I mean, if somebody suggested it, you need to -- if you can't find it, make sure you write it.
A: No, nobody told me that. I want to make that clear.
Q: Okay.
A: If I gave you that impression, don't ever feel that way. Nobody told me to recreate a memo.
Q: Right.
A: All I was told is that it would be helpful if we had it documented. I looked for that thing, I looked because I was asked many times for it.

In a follow up to his sworn and recorded interview, Colonel Knight provided additional information. When asked to narrow down the date he recreated the December 2, 2003, memorandum, Colonel Knight advised that the Department was waiting for him to locate the original memorandum to include as part of the response to the EEOC. Colonel Knight explained that he gave the recreated memorandum to Maggie Lamar in the Office of Employee Relations. The EEOC response was sent via fax on September 15, 2006. Therefore, Colonel Knight was comfortable advising that he recreated the memorandum during the second week of September 2006.

Three agency members, Rene Knight (not related to Colonel Knight), Margaret Lamar and Cynthia Mazzara, confirmed that they relied upon the December 2, 2003, memorandum as though it were the original, or a copy thereof, and that it was used along with other documents in an official agency response to Tharpe's EEOC complaint.⁶ All three stated that they were never told the document was a recreation. In this investigation, the response to the EEOC was reviewed and Colonel Knight's memorandum was attached and referred to in the response as Attachment BB on Page 13.

Deputy Executive Director David Westberry, General Counsel Judson Chapman and Assistant General Counsel Bryan Pugh each stated they did not specifically recall Colonel Knight's December 2, 2003 memorandum, nor did they recall anyone requesting Colonel Knight to specifically provide documentation. Each was somewhat familiar with the memorandum's content describing Colonel Knight's meeting with Darby and the comment attributed to Darby about his supervisor, Major Rebecca Tharpe. When Assistant General Counsel Pugh was asked what day he would assume Colonel Knight's December 2, 2003 memorandum was written he responded, "*Based on the face, I'd assume December 2, 2003.*"

SUMMARY:

- Colonel Knight testified that he "recreated" the "December 2, 2003" memorandum during the second week of September 2006. Colonel Knight testified that he was never able to locate the original.
- Colonel Knight testified that although the dates related in the memorandum were in error, the content of the memorandum regarding what transpired in the meeting was "entirely accurate".
- Colonel Knight testified that he did not have any original notes of his 2003 meeting with Darby to use when he recreated the 2003 memorandum in September 2006, but that he had a "pretty good memory". The investigation determined that Colonel Knight's

⁶ Rene Knight - Chief of Personnel Services. Cynthia Mazzara - Manager, Office of Employee Relations. Margaret Lamar - Senior Consultant, Office of Employee Relations.

December 2, 2003 memorandum not only had the incorrect meeting date ("November 26, 2003") but, it would have had to have been created after December 2, 2003 if the meeting did in fact occur just before Christmas 2003 as Colonel Knight testified. Further, in his June 9, 2006 memorandum to Deputy Executive Director David Westberry recommending termination of a Major, Colonel Knight referred to this meeting with Darby as having occurred in November 2004, which is not only the incorrect date, but incorrect year.

- During this investigation it was verified that the December 2, 2003 memorandum was published and attached as part of the September 15, 2006 FHP EEOC response and is referred to as Attachment BB on page 13 of the document.
- Colonel Knight failed to properly notify and advise members of FHP or the EEOC that the memorandum was a recreation from memory and not an original memorandum produced on December 2, 2003. Furthermore, Colonel Knight failed to document, notate or otherwise disclose that this memorandum was created in September 2006 or backdated.
- Review of the memorandum shows that on its face, there is no notation to suggest that it is, in fact, a recreation.
- This investigation disclosed that at least three individuals relied on the memorandum on face value as being an original or copy thereof.

ANALYSIS OF FINDINGS:

Negligence is defined in 15-3.001 Florida Administrative Code, as:

Failure to use ordinary or reasonable care in, or the omission of or inattention to, the performance of assigned duties and responsibilities. Negligence is synonymous with carelessness and signifies the lack of care, caution, attention, diligence or discretion and includes the loss of state property and equipment.

Based on the findings, Colonel Knight was negligent in that he:

- failed to personally maintain an official agency record (a public record) or ensure that the record was archived in a retrievable manner;
- failed to label the memorandum on its face as a recreation or otherwise place a reader of the memorandum on notice that the memorandum was not the original (or copy of the original);
- failed to adequately verify the various dates in the recreated memorandum prior to publishing it to others and presenting it as evidence in an official agency action; and
- failed to disclose to others that the memorandum was in fact a recreated memorandum and was based on personal recollection rather than independent documentation or evidence.

A finding of Negligence is **SUSTAINED**.⁷

⁷ Sustained is defined as: The allegation is true; the action of the Department or the employee was inconsistent with Department policy.

Falsification of Records is defined in 15-3.001 F.A.C., as (bold emphasis added):

An intentional act of misrepresentation, falsification or omission of any material fact, whether oral or written, on such records as, but not limited to, time and attendance (leave); employment status; employment application; travel vouchers; driver licenses; identification (I.D.) card applications; work and production records; licensures or certificates. Such records shall include, but not be limited to, records, affidavits, sworn statements, citations, written warnings, and correction cards.

Based on the following:

- by allowing the memorandum to be used without clarification of the date it was recreated and that it was based upon his recollection, Colonel Knight allowed at least the Department's Office of Employee Relations staff and perhaps others to assume the memorandum was original (or a copy thereof) and denied those reading it full disclosure that details in the memorandum were recollections; and
- only when questioned during this investigation did Colonel Knight make the disclosure that the memorandum was created three years after the fact. That the memorandum was in fact a recreation is a material fact.

A finding of Falsification of Records, as defined above, is **SUSTAINED**.

ALLEGATION #2: Colonel Knight gave false testimony under oath in a PERC Hearing.
UNFOUNDED

Darby alleged that Colonel Knight lied under oath during the August 2006 PERC Hearing regarding Darby's discipline in an effort to unduly influence and manipulate PERC Hearing Officer William Salmon to find in favor of the FHP. Specifically, Darby alleged that Colonel Knight lied under oath when he testified that an Executive Staff meeting with 13 members present occurred to discuss Darby's discipline and that the decision for dismissal was unanimous.

Transcripts obtained from the PERC hearing state:⁸

COUNSEL:	And what types of discipline were considered?
KNIGHT:	Initially, we were going to dismiss him. Dismissal. That was the discussion, actually dismissal. There's an FHP staff, there's 13 members. There's 14 now, but at the time there was 13, and when we discussed the situation involving the breakdown, the deficiencies in Captain Darby in his operation of the district, it was unanimous for dismissal, separation from service, because he clearly didn't want the job or refused to do the job.
OPPOSING COUNSEL:	Objection to hearsay on the other 12 people that we don't know who they are and what they said.
HEARING OFFICER:	Overruled.

According to testimony from Major Leroy Smith and Chief Kevin Guidry, both members of the FHP Executive Staff, they did not meet to discuss Darby's discipline. Chief Guidry testified that this group has never met to decide discipline against an employee. He added that Darby was one of the best Captains FHP employed and that he would never vote to terminate him.

Colonel Knight testified that his Executive Staff is actually comprised of 21 FHP members.⁹ Colonel Knight recalled that a total of 12 staff members were present for the discussions on the Darby case, including himself, as follows: 1) Judson Chapman, General Counsel, 2) Kathy Jimenez-Morales, Assistant General Counsel, 3) Bryan Pugh, Assistant General Counsel, 4) Lieutenant Colonel Larry Austin, 5) Lieutenant Colonel Ken Howes, 6) Lieutenant Colonel John Czernis, 7) Lieutenant Colonel Rick Gregory, 8) Major David Brierton, Investigation Briefing Officer, 9) Major Ernesto Duarte, Public Affairs, 10) Captain Eileen Powell, Bureau of Investigations, and 11) Rene Knight, Chief of Personnel Services.¹⁰ Colonel Knight advised that Chief Kevin Guidry and Major Leroy Smith are friends with Darby and are not part of his supervisory chain of command. Colonel Knight testified he did not feel the need to put them in the position where they would have to make decisions about a friend's future.

Colonel Knight stated that when he was testifying in the PERC hearing, he was referring to some members of his Executive Staff. Colonel Knight further stated he was trying to express that there was a meeting to discuss Darby's discipline, that 12 people attended it, and that there had been discussions regarding Darby's discipline with members of his Executive Staff. He stated he was not being dishonest in the hearing. Colonel Knight stated that during the meeting, a range of

⁸ James B. Darby vs. Florida, Department Case # CS-2006-123, Transcript page # 862, 863

⁹ The 21 members of his Executive Staff include 4 Lieutenant Colonels, 3 Chiefs and 4 Majors at Headquarters, as well as the 10 individual Troop Commanders (Majors) in the field.

¹⁰ Ms. Rene Knight is not related to Colonel Christopher Knight.

disciplinary actions was discussed, including dismissal, and that he was the one that mitigated that decision.

According to Assistant General Counsel Bryan Pugh, he attended a meeting to discuss Darby's discipline on March 2, 2006. During his interview, he stated that the general consensus around the table was dismissal for Darby.

Lieutenant Colonel Austin also testified that he attended a meeting to discuss Darby's discipline. He could not recall all who attended, but remembers at least Department Attorneys Bryan Pugh and Kathy Jimenez-Morales, Lieutenant Colonel Gregory, and Colonel Knight were present. Austin stated that Colonel Knight asked everyone for their recommendation after discussing the allegations. Austin recalled discussion ranging from demotion to dismissal. While Austin recommended termination, he could not recall if it was unanimous.

In upholding Darby's demotion, the PERC Final Order states, "*It is undisputed that Darby could have been dismissed, and demotion is an available lesser punishment within the range of punishment up to, and including, dismissal.*"¹¹

FINDING:

- During this investigation it was determined that Colonel Knight held a meeting with members of FHP's Executive Staff, and Darby's discipline was discussed. This was verified through interviews with some members of the Executive Staff who were present.
- Colonel Knight confirmed that Chief Guidry and Major Smith were not included in the meeting because they were not in Darby's chain of command and it was perceived that they were personal friends.
- A review of the testimony from the PERC Hearing revealed that Colonel Knight was not asked to explain exactly who was present at the meeting and who he was referring to.

This allegation is **UNFOUNDED**.¹²

¹¹ James B. Darby vs. Florida, PERC Case # CS-2006-123, Final Order, page 7.

¹² Unfounded is defined as: The complaint was clearly false or there is no credible evidence to support the complaint.

**ALLEGATION #3: Colonel Knight knowingly provided false information to the Florida Commission on Ethics in an anti-nepotism ruling.
UNFOUNDED**

Allegations were made that Colonel Knight knowingly gave false information under oath when he testified to the Florida Commission on Ethics (Commission) in 2002 regarding the promotion of his brother, Tom Knight, to the position of Troop Commander (Major).¹³ Allegedly, Colonel Knight testified to the Commission that there would be two levels of supervision between he and his brother if the Commission affirmed the recommendation to promote his brother to Major.

According to Chief Guidry, Colonel Knight was reorganizing the FHP command structure and eliminating a Bureau Chief rank and this was allegedly something he knew when he testified to the Commission. Documentation provided by Chief Guidry shows that he provided recommendations on August 28, 2002, to Colonel Knight for the FHP 2003 restructuring of the FHP chain of command in which the Bureau Chief position was eliminated.

Colonel Knight said that Tom Knight, his brother, was ranked number one on the eligibility list for promotion to Major and had been passed over once due to Colonel Knight's position. When another vacancy for Major became available, the Department requested a ruling from the Commission to determine whether there would be a nepotism violation in the event Tom Knight was promoted. Colonel Knight stated that he never testified to the Commission concerning the promotion of his brother, Tom Knight.

On April 30, 2002, the Commission published, in response to the Department's inquiry for a nepotism ruling, an opinion that it would not be a nepotism violation as it related to the possible promotion of Tom Knight.¹⁴ The Commission's opinion was based on Colonel Knight not overtly advocating for the promotion of his brother, and that the Department's Executive Director was responsible for making the decision for the personnel action not Colonel Knight. According to documentation obtained from the Commission, former Department Deputy Executive Director Joe McCaskill provided the information to the Commission about the existing chain of command should Tom Knight be promoted to a Major's position under his brother on March 4, 2003.¹⁵ In the letter, McCaskill states:

"In addition, there are two supervisory ranks between the Director and a Troop Commander (Major), namely, a Lieutenant Colonel and regional Bureau Chief over field operations."

McCaskill's statement to the Commission on March 4, 2002, was approximately five months before Guidry's recommendations about the future command structure of FHP. Tom Knight was promoted to Major on July 5, 2002. The Advisory Opinion states, in pertinent part, that *"Contrary to a popular belief, the anti-nepotism law addresses only hires, promotions, and advancements; it does not prohibit two relatives from working together or one relative from supervising another."*

¹³ Complainants: James Darby, Lieutenant Colonel Larry Austin, Chief Kevin Guidry, Major Leroy Smith, Major Cyrus Brown, Captain Timothy Ashley, and Lieutenant Kevin Conner.

¹⁴ Florida Commission on Ethics "Anti-Nepotism" Advisory Opinion #CEO 02-11, published April 30, 2002. The full Advisory Opinion is available online at <http://www.ethics.state.fl.us/opinions/02/CEO%2002-011.htm>.

¹⁵ Letter dated March 4, 2002 to Commission Attorney Chris Anderson.

FINDING:

- It was determined that the Department requested the Advisory Opinion from the Florida Commission on Ethics before promoting Colonel Knight's brother.
- It was determined that Colonel Knight did not testify before the Florida Commission on Ethics concerning the promotion of his brother.
- It was also determined that Deputy Executive Director Joe McCaskill represented the Department in this matter.
- Guidry's recommendation for the proposed changes in the FHP Command structure did not occur until four months after the Commission's opinion was issued.

The allegation that Colonel Knight provided false information to the Florida Commission on Ethics is **UNFOUNDED**.

**ALLEGATION #4: Colonel Knight lied to a television news reporter saying that Tallahassee wasn't aware of an FHP trooper's traffic crashes.
NOT SUSTAINED**

Darby alleged that Colonel Knight told a news reporter that Tallahassee was not aware of a trooper's driving history that Darby contends was not true. In support, Darby provided a television clip¹⁶ of the January 4, 2006, television story that aired in Tampa regarding a trooper's six traffic crashes in six months and her 18 month long history of driving complaints and concerns. Included in a telephone interview was a statement from Colonel Knight in which he states, *"No, we weren't aware in Tallahassee regarding uh, regarding her driver history as far as far as being on the patrol."* Darby also provided a copy of a letter from a concerned citizen dated December 12, 2005, regarding an accident with the trooper, and a copy of Colonel Knight's response to the citizen dated December 16, 2005. Darby contends that this supports Colonel Knight's knowledge of the traffic accidents.

FHP Public Information Officer Major Duarte testified that the Department received a public records request from the media that preceded the January 4, 2006 television story.

According to Lieutenant Colonel Larry Austin, FHP had pending internal investigations involving the trooper at the time of the public records request. Lieutenant Colonel Austin said that the traffic incidents are typically handled at the Troop level.

Chief Silvester Dawson stated internal investigations of the trooper began in August 2005 and were not completed until October 2006.

Colonel Knight testified as follows:

Q: In January of 2006, there was a television news report where you gave a phone interview to a TV news reporter in which you stated, quote, Tallahassee was not aware of [the trooper's] driving problems, unquote. Can you explain what you were referring to in that television interview?

A: Yeah, How I found out about the issues is a public records request came into Major Ernesto Duarte, our Chief Public Affairs Officer, regarding - it was a public records request for [the trooper's] driving record is what it amounted to. He came down and showed it to me. And because when he was getting the information, he realized, well, we're going to have a problem here because of the multiple accidents she had. She was really a probationary employee when all of this happened, so he told me about it ... so that's where I got it. I got it from Ernie Duarte.

And when I said - I can't remember the lady's name that called. She actually called me and wanted to do an interview with me, called me in my office and said she wanted to do a - Jackie Barren I think was her name. I don't know who she is, but you always act like you do.

But I told her, I said, let me - and I wouldn't give her the interview there. She was ready with a tape recorder to do an interview with me. But I didn't have all the facts. I told her, I said, let me

¹⁶ NBC Channel 8 "On Your Side", January 4, 2006 "Trooper Troubles". The media inquiries and citizen complaints on the trooper's driving history resulted in the internal investigation that led to the disciplinary actions disputed and upheld in Darby's PERC Hearing.

see what's going on with this thing, because frankly I didn't have any knowledge that this [this trooper] had all of these accidents.

And the reason being is because those patrol car wrecks don't come to me, they go to the Lieutenant Colonel. And Lieutenant Colonel Austin had never said anything about it. So I really had to get up to date on what was going on. So I did. I kind of educated myself, got with Duarte, got with Larry and educated myself. And I told her I would call her back after I knew what I was talking about. So that's what I did.

Q: And so when you said that Tallahassee was not aware of [the trooper's] driving problems, is that -

A: It was talking about me.

Q: It was talking about you?

A: It was talking about me.

Q: Okay.

A: And I don't know - I'm not going to throw anybody under the bus with headquarters. I really didn't have all of the facts then. I was just trying to educate myself so I knew what I was talking about.

FINDING:

- A review of the tape of the news report, the five-second sound byte does not include a reporter's question, the date of the recorded interview, or the context in which Colonel Knight's statement was made.
- Colonel Knight confirms in the interview with the reporter that FHP was looking into the matter.
- Colonel Knight stated that when he said "Tallahassee", he was referring to himself.
- Colonel Knight testified that he did not have any knowledge that the trooper had all of these accidents and had to educate himself on the extent of her driving history.

The allegation that Colonel Knight lied to a reporter is **NOT SUSTAINED**.

ALLEGATION #5: Colonel Knight retaliated against James B. Darby, Jr., by intentionally reassigning him, forcing him to relinquish his assigned patrol vehicle thereby creating a financial hardship while other FHP employees have been allowed the continued use of their assigned vehicles.

UNFOUNDED

Darby alleged that Colonel Knight intentionally reassigned him to a post in Ft. Myers more than 30 miles from his current residence in North Port that forced him to relinquish his assigned patrol vehicle creating an additional financial hardship on him. Darby explained that he only had one personal vehicle for his family, and that he could not afford another vehicle or the gasoline to travel back and forth to his new work location.

Darby stated he thought that the FHP residence policy only applied to voluntary reassignments.¹⁷ On May 22, 2006, Darby wrote a memorandum to Major Tharpe requesting that he be allowed the continued use of the take home patrol vehicle since his reassignment was involuntary. On June 14, 2006, Colonel Knight wrote a memorandum to Darby authorizing him to utilize his assigned FHP vehicle for 90 days.¹⁸

Regarding the use of an FHP take home patrol vehicle, FHP Policy 5.03.06(D) (3) states:

The troop commander will approve/disapprove requests to reside outside of designated residence area. Proposed residences outside of the 30 mile radius of the member's city of assignment will not be approved.

Darby also contends that policy requires the appeal of any residence denial be made to the Bureau Chief. When Colonel Knight restructured the FHP in 2003, regional Bureau Chief positions were eliminated. Darby said he did not make an appeal because he felt he had nobody to appeal to regarding Colonel Knight's decision.

Lieutenant Colonel Austin and Colonel Knight both testified that Darby would have been allowed to park the patrol vehicle at a secure location (such as a police or fire station) within 30 miles of his assignment. Darby was allowed to drive his personal vehicle to this location and drive the take home vehicle the rest of the way to his work, thereby reducing his personal transportation costs. Both explained this is a practice that is approved; however Darby never took advantage of that opportunity. In addition, Colonel Knight stated that if Darby had requested an extension of the 90 days he would have granted it.

Colonel Knight testified that he personally decided against his staff's recommendation for Darby's dismissal or demotion all the way to Trooper, deciding instead to demote him to Lieutenant. Colonel Knight testified that he made that decision in an effort to limit the financial impact on Darby, and because he knows Darby had to provide for his two school age children and wife.

¹⁷ FHP Policy 5.03 requires FHP members to reside within 30 miles of their city of assignment.

¹⁸ 90 days (May 19, 2006 through August 17, 2006) FHP Policy 5.03.06(C) (2), permits a member to reside in a temporary dwelling for up to 90 days.

A review of agency records showed one example in 1997 where an employee who was demoted was reassigned and allowed to retain the take home vehicle.¹⁹ In this instance the use of the take home patrol vehicle was a result of a legal settlement agreement that predated Colonel Knight's appointment.

In response to the PERC Hearing Recommended Order sustaining Darby's demotion, Darby appealed being reassigned. However, the Hearing Officer dismissed his argument.²⁰ In response to a complaint filed by Darby against Colonel Knight, the Florida Commission on Ethics met on March 2, 2007 and dismissed the complaint stating, "*The Complainant invites this Commission to attempt to second guess, retry, or reinvestigate various FHP or PERC matters. We decline to do so.*"²¹

FINDING:

- It was confirmed that Darby was demoted and this action was upheld by PERC.
- Darby's salary was reduced by \$623.58 a month due to the demotion.
- Colonel Knight reassigned Darby to Lee County which allowed Darby to receive a monthly cost of living salary supplement benefit, an increase of \$416.65.
- Colonel Knight authorized Darby to continue to use his take-home agency vehicle for 90-days following the reassignment.
- Darby's residency was not in compliance with FHP Policy and he did not appeal as required in policy and procedure.
- Evidence obtained does not support Colonel Knight's actions were retaliatory in nature.

This allegation is **UNFOUNDED**.

¹⁹ Joseph Chancy vs. DHSMV, PERC settlement agreement, case # CS-97-134, dated September 8, 1997.

²⁰ Exception #28 was denied. PERC declined to address these personnel actions.

²¹ Florida Commission on Ethics Complaint #06-268.

ALLEGATION #6: Colonel Knight has required Lieutenant James B. Darby, Jr., to take mandatory family medical leave in violation of Section 110.221, Florida Statutes (F.S.).
UNFOUNDED

Darby alleges that Colonel Knight required him to use family medical leave that he did not request. He further alleges that this is in direct violation of Section 110.221, F.S., which states the state shall not require a career service employee to take mandatory family medical leave.

Darby's personnel file was obtained and reviewed. Documentation shows that subsequent to Darby's demotion and reassignment to Lee County in May 2006, Darby began taking sick leave on August 18, 2006. He has not returned to work since. Each month, beginning on September 7, 2006, Darby has provided FHP with medical documentation from his physician recommending that he not attend work for 30 days.²²

Darby provided a copy of an October 27, 2006, letter from Colonel Knight that stated (*emphasis added*):

"Based on the medical information provided by Dr. Bernardo Arias, dated September 7, 2006, you are eligible to utilize your sick, annual, compensatory, other earned leave, or leave without pay, under the provisions of the **Federal Family Medical Leave Act (FMLA)** .

Therefore, effective September 7, 2006, any paid or unpaid leave used related to your qualifying condition will be applied to your annual FMLA leave entitlement. Your entitlement period for FMLA leave related to this condition is September 7, 2006, through September 6, 2007. In accordance with this federal law, this entitlement period provides 480 hours of protection from adverse employment action, which coincides with any paid or unpaid leave you take for your FMLA condition during your one-year entitlement period. The enclosed Attachment 1 provides information regarding key provisions of the Federal Family and Medical Leave Act. If your need for leave continues to exist after your entitlement period has ended, we will reevaluate your eligibility at that time.

In accordance with FMLA policy, you may be required to submit current medical certification to your supervisor every 30 days while using FMLA leave. Please use the attached FMLA medical certification form to provide this information."

According to Colonel Knight's testimony, the Department's Bureau of Personnel Services handles all FMLA issues. He said that the bureau prepared the letter and he signed it.

On November 20, 2006, Darby's attorney contacted the Department to advise them that Darby "*declines the request of Patrol to take FMLA*" and cited Subsection 110.221(2)(e), F.S., advising that the state may not require Darby to take mandatory family medical leave.

On December 5, 2006, the Department's General Counsel Judson Chapman responded to Darby's attorney explaining that the FMLA was applied due to "a serious health condition that

²² Federal Family Medical Leave Act (FMLA) requires medical updates from the employee.

makes the employee unable to perform the employee's job." Chapman explained it was the Department's interpretation that Dr. Arias' medical diagnoses recommending Darby not return to work constituted a "serious health condition" for the purposes of FMLA entitlement. The letter also states (*emphasis added*):

"As you are obviously aware, **Section 110.221 of the Florida Statutes is a state statute that describes the manner in which state sponsored "parental or family medical leave" may be administered.** The state statute defines the term "family" to mean "a child, parent, or spouse" while "family medical leave" means leave requested by an employee for a "serious family illness". The state statute further defines "parental leave" as "leave for the father or mother of a child who is born or adopted by that parent". The sub-section you referenced in your November 20, 2006 correspondence prevents a state agency from forcing an employee to take the state employee family or parental leave should they find themselves in one of the situations described in Section 110.221(1), Florida Statutes. **To our knowledge, your client has not requested, nor has he been required to use, state sponsored "parental or family medical leave", as contemplated in Section 110.221, Florida Statutes, to care of an ill child, ill family member or newly born or adopted child.**

By contrast, Public Law 103-3 (107 Stat. 6), less formally known as "the Family and Medical Leave Act of 1993" or "FMLA", is a federal statute that grants a specific set of rights for up to 480 hours of unpaid leave to eligible employees. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles. The federally guaranteed rights to unpaid leave are to be granted for any of the following reasons: to care of the employee's child after birth, or placement for adoption or foster care; to care for the employee's spouse, son or daughter, or parent who has a serious health condition; **or for a serious health condition that makes the employee unable to perform the employee's job.** In addition, the federal statute, and its accompanying regulations, provides that certain kinds of paid leave may be substituted for unpaid leave at the employer's option. **As such, the law clearly provides that it is the employer's responsibility to designate leave as FMLA leave."**

According to Susan Maciejewski, U.S. Department of Labor, the Department is obligated to notify the employee of their entitlement to FMLA. This was done on October 27, 2006 and re-stated in a December 5, 2006 letter from the Department's General Counsel to Darby's attorney. The U.S. Department of Labor supports that if the employee refuses to accept the job protection afforded through FMLA, the employer would be legally justified in dismissing the employee once the employee's leave is exhausted. Review of leave records show that Darby's sick and annual leave was exhausted on May 25, 2007. However, the Department has continued to authorize leave without pay and has continued to pay for Darby's health plan coverage.

FINDING:

- A representative of the U. S. Department of Labor confirmed the Department is obligated to notify employees of their FMLA entitlement.
- In a letter dated, October 27, 2006, Colonel Knight informed Darby of his eligibility under the FMLA.
- Colonel Knight testified that the Bureau of Personnel Services prepared this letter and he signed it.
- The Department's General Counsel provided information to Darby's attorney in a letter dated December 5, 2006 explaining differences between State and Federal Family Medical Leave, advising that the Department was not mandating that Darby take State Family Medical Leave but rather was informing him of his rights under the Federal FMLA.

The allegation that Colonel Knight required Lieutenant James B. Darby, Jr., to take mandatory family medical leave in violation of Section 110.221, Florida Statutes (F.S.), is **UNFOUNDED**.

**ALLEGATION #7: Colonel Knight used derogatory language when referring to African Americans.
NOT SUSTAINED**

It was alleged that during a conversation with Auxiliary Lieutenant Colonel Peter Warrick while attending a November 2005 Advisory Council meeting in Orlando, Colonel Knight referred to African American troopers as “N—boys.”

According to Auxiliary Lieutenant Colonel Peter Warrick, he met Colonel Knight at the referenced meeting held at the Ameri-Suites hotel. In his sworn testimony, Warrick stated:

“He (Colonel Knight) and I were standing in the lobby alone and he looked at me and said, ‘I was going to fire Becky Tharpe today. I had permission from Fred Dickinson to do that.’ All of a sudden, total different tone of voice, total different look on his face, ‘But if I did that, the God damn Niggers would try to hang me.’ My reaction was, ‘what?!’ All of a sudden he recomposed himself and said, ‘Well, I have this situation where I fired this captain in Orlando named Sterling King and the blacks are very upset with me.’ The hostility that was in that first initial comment never came back. It was just that quick, bang, and I was shocked by it. I mean, I have never heard him talk like that before.”

Warrick testified that he recalled a conversation he had with former Lieutenant Colonel Rick Gregory months after the Council meeting when he asked Gregory if he ever heard Colonel Knight use the “N” word. In response, Gregory allegedly told Warrick that it didn’t shock him and that it was a frequent thing. Warrick testified that he had never heard Colonel Knight specifically use the phrase “N-boys.”

When investigators contacted former Lieutenant Colonel Gregory to schedule an interview, Gregory stated he was not interested in participating in this investigation. However, Gregory confirmed that Warrick contacted him and told him about the Colonel’s use of the “N” word. Gregory stated, *“Warrick was unhappy and disappointed by the direction of FHP and Knight’s unwillingness to accept advice or constructive criticism.”* Gregory stated that he never heard Colonel Knight use the “N” word, and denied saying this to Warrick.

When asked if he had ever used the “N” word, Colonel Knight stated, *“No sir, I have not.”* When questioned if he had ever referred to African American troopers as “N-boys,” Colonel Knight replied, *“I have not ever done that. That’s never come up, never.”* When questioned about the conversation with Warrick, Colonel Knight admitted that he may have run into him while checking in to the hotel but denied making the statement alleged. Colonel Knight stated, *“That never happened. I’m going to show you something and hopefully this will show you that that’s fabricated. I read that yesterday because of all the allegations and this is one that really has me most upset because I’ve never done that. It’s not in my vocabulary, I don’t do that. I was simply going to reassign Becky [Tharpe]. I had never intended on doing this. It was all approved. Never was there a discussion about dismissal.”*

Colonel Knight provided a memorandum dated December 7, 2005, signed by him and the Department’s then Executive Director Fred O. Dickinson, which stated he was going to transfer

Major Tharpe to the Office of Inspections in Tallahassee.²³ Further, Colonel Knight provided a letter, dated December 6, 2005, from Colonel Knight to Major Tharpe, justifying Tharpe's reassignment based on her being the best candidate for the job.²⁴ Colonel Knight added, *"I never had a discussion with him [Warrick] regarding firing Becky Tharpe, and I never made the statement of any derogatory comments regarding African Americans. Did not happen."*

FINDING:

- Auxiliary Lieutenant Colonel Peter Warrick stated that Colonel Knight used the "N" word when referring to African Americans in a one on one conversation.
- Colonel Knight recalled a conversation with Warrick but denied having ever used the "N" word when referring to African Americans.
- No other witnesses provided testimony to support the allegation.

The allegation that Colonel Knight used derogatory language when referring to African Americans is **NOT SUSTAINED**.

²³ According to Colonel Knight, the memorandum, signed and approved by the Department's Executive Director Fred Dickinson, was never issued or executed.

²⁴ According to Colonel Knight, the December 6, 2005 letter, signed and approved by the Department's Executive Director Fred Dickinson, was never issued.

**ALLEGATION #8: As a result of the changes under Colonel Knight to the FHP Promotional Process minorities have not been promoted to higher-ranking positions resulting in a pattern of disparate treatment.
NOT SUSTAINED**

The complainants²⁵ alleged that Colonel Knight is inconsistent in selection processes for promotions. The complainants reported a perception that the promotion process has gone back to the "Good Old Boy" system and promotions are decided by Colonel Knight for his benefit rather than being based on an objective process, or qualifications.

The complainants stated that since Colonel Knight implemented a departmental re-structuring in July 2003, no African Americans have been promoted to command staff positions (Major and Lieutenant Colonel).

They stated that the objective promotional assessment process for Captain will be eliminated July 1, 2007. They said the new proposed promotion process will have an adverse impact on minorities. They said the new process will not be based on an objective assessment process, the written exam has been eliminated, and the process will now be limited to an in-house interview which is subjective and could be manipulated. They also reported confusion on how the decision to make this change was reached.

The complainants alleged that Colonel Knight also eliminated an objective assessment process for promotion to Major in 2003. They said that prior to the 2003 FHP re-structuring, Captain and Major positions went through an objective assessment process that resulted in a list of the most qualified candidates from which to make promotional selections. They stated that the process was based on a written exam with a passing score, an exercise, and an oral interview.

The complainants cited an example where Leroy Smith, an African American male, was passed over for promotion to Major on December 15, 2002, despite being number one on the promotion eligibility list. They alleged that Mark Trammell, a white male and number two on the promotion list, was promoted instead. They said that the practice was always to go straight down the list and this was not done for Smith. They claimed that Smith was only promoted after he complained to the Executive Director. Smith stated that he took his complaint of disparate treatment to their Human Intake Customer Service Officer Rosalind Guyton (now deceased) prior to the promotional list expiring, and she communicated his complaint to Executive Director Fred Dickinson. He said that it was only after his complaint to the Executive Director that he was promoted.

The complainants cited the promotion of David Brierton on October 6, 2006, to Lieutenant Colonel as another example where no process was used and the vacancy was not advertised. They also said that Brierton had less experience and time in his rank than other qualified personnel.

The complainants said when Colonel Knight removed the education requirement for Lieutenant Colonel in 2001 they were told that this was so that more minorities would be eligible for

²⁵ Complainants: Lieutenant Colonel Larry Austin, Chief Kevin Guidry, Major Leroy Smith, Major Cyrus Brown, Captain Timothy Ashley, and Lieutenant Kevin Conner.

promotion. They said that Brierton is the only one that benefited from this change because he was promoted and he only holds a high school education. They said that there were numerous experienced minority candidates with college degrees who qualified for the position.

They said that in the promotional ceremony of Brierton to Lieutenant Colonel, Colonel Knight announced that he was the Godfather to one of Brierton's children. They said that this statement added to their perception that this decision was based on the personal desires of Colonel Knight and not on objective procedures.

Colonel Knight confirmed that he removed the educational requirements for Lieutenant Colonel in 2001 shortly after he became Director. Colonel Knight testified that this change was made to allow more females and minorities to be eligible to compete in the promotion process.

Review of written policies regarding education requirements show that FHP Policy 5.02, Promotion, (1996), education requirements were required for Captain and Major positions. The policy dated July 1, 2002, required candidates for Captain and Major to have a minimum of 60 semester hours of college credits and the policy dated July 1, 2006, requires candidates for Lieutenant, Captain and Major to possess a bachelor's degree from an accredited college or university.

Colonel Knight said that his 21 member Executive Staff includes: 14 Troop Commanders/Majors, 3 Chiefs, and 4 Lieutenant Colonels of which 11 are white males, 7 are African American Males, 2 are Hispanic Males, and 1 white female.

Colonel Knight defended the promotions he has made to Lieutenant Colonel since his appointment in 2001. He said that he has promoted one African American male and three white males to the position of Lieutenant Colonel. He added that his promotion of Brierton was consistent with FHP Policy. He provided a copy of FHP Policy 5.02(H) (3) that supports there is no requirement for Lieutenant Colonel vacancies to be advertised, no requirement of an assessment process, and no requirement that the promotion be approved by the Executive Staff.

When asked why Mark Trammell, a white male, was selected for Major over Leroy Smith, an African American, Colonel Knight testified that this was his decision that was supported by the Executive Director. Colonel Knight advised that the Troop Commander for Troop-H had been moved and that there was turmoil in that troop. He said that Trammell used to work in that Troop and promoting him to that Troop was what was best for the agency at that time. Colonel Knight stated that his decision to promote Trammell was strictly based on what was best for the agency at that time. Trammell was promoted on December 15, 2002.

Colonel Knight said that he had no issues with promoting Leroy Smith. He said that he personally telephoned Smith when this decision was made and promised Smith he would be promoted before the end of that year. Colonel Knight testified that he promoted Smith as promised. Investigators confirmed that Smith was promoted on July 1, 2003. Colonel Knight explained that Smith was number one, Trammell was number two, and Tony Allen, an African American, was number five. He said that Allen was promoted to the rank of Major on December 15, 2002, ahead of Smith but nobody complained about this promotion.

Colonel Knight said that he had lengthy discussions with eleven of his staff members about promoting Trammell. He said Chief Guidry led the discussion and it was unanimous that Trammell be promoted.

FHP Policy 5.02(F) (2) dated January 1, 2005, states, *"After the closing date of vacancy announcements, the Director will make appointments from the pool of candidates who are eligible for lateral placement and the top five eligible promotional candidates from the promotional list with the highest numerical scores that have applied for the position."*

Regarding the changes made to the promotions process, Colonel Knight stated that the Assessment Center Process is expensive. He also said that he did not feel that the assessment process was working the way some people believed it was. He said that it did not provide for racial diversity. Colonel Knight said that until July 2003, Lieutenants, Captains, and Majors went through the same Assessment Center Process and as of July 1, 2003 candidates for Major were no longer required to complete a written exam and the In-Basket Exercise. He said that the candidates are only obligated to announce their interest in a vacancy and to go through an Executive Interview.²⁶

Colonel Knight explained that the last Captain's promotion list ending June 30, 2007, contained nineteen eligible candidates. There were only three white females and one African American male and fifteen white males on the list. The only African American male was Clairmon Davies. He said Davies, even though he was number eleven on the list, was promoted to Captain and assigned to Troop-E in Miami, on November 17, 2006. He said that this effectively left no other racial diversity from which to select additional Captains. According to Colonel Knight, the top nine on the list were all white males or females. He said that FHP was not getting the racial diversity pool needed for position of Captain.

Colonel Knight also cited the 2006-2007 Sergeant promotional eligibility list as proof that the process was hindering promotional efforts. He said that only seven candidates made it to the final eligibility list (four white males, one African American male, one Hispanic male, and one white female). Colonel Knight testified that this was a major concern when considering that FHP may promote 25 to 30 Sergeants each year.

Colonel Knight testified that a couple of years ago, Lieutenant Kathy McKinney informed him that FHP was one of the only Highway Patrol and State Police agencies that still required an exam for Captains. Colonel Knight said he asked her to research what other state trooper and state police agencies were doing. After receiving her research results, which showed that some did and "a whole bunch" did not require a written test, Colonel Knight said he decided to make changes to the Captain promotional process and to remove the exam from the process. He also offered statistics that showed the exam eliminated 60% of the applicants from being eligible for promotion.

Colonel Knight said, before changing the promotion process for the Captain position, he assembled a diverse advisory group of FHP Lieutenants from around the state.²⁷

²⁶ Executive Interview oral board normally consists of Lieutenant Colonels only.

²⁷ The Advisory Group consisted of Lieutenants: Kathy McKinney (white female), Lavada Curry (African American female), Jose Lopez (Hispanic male), Aristides Maldonado (Hispanic male), Michael Long (African American male), Jimmy Collins (African American male), Paul Sharp (white male), John Bagnardi (white male), and Bobby Collins (African American male).

During her testimony, Lieutenant McKinney confirmed doing the research for Colonel Knight regarding agencies using an exam and being a part of the advisory group in 2006 for the changes to the Captain promotional process.

According to Colonel Knight, he held a telephone conference call on December 14, 2006 with the advisory group including: Lieutenant Colonel Austin, Lieutenant Colonel Czernis, Lieutenant Colonel Brierton, Chief Guidry, Management Analyst-I Angela Hutchinson, and Operations and Management Consultant Manager Peggy McNally, Office of Leadership Education and Development. According to Colonel Knight's testimony and the handwritten notes he provided from several members in attendance, the overall feedback was positive and in favor of the changes in 2007 to the promotion process for Captains.

Colonel Knight said that the new 2007 policy, Draft Revision for FHP Policy 5.02, states that promotions for Captain and Major are required to go through an Executive Assessment Process. Policy states that candidates for Captain and Major will no longer be maintained on an annual promotional list. Instead, each advertised vacancy will initiate a separate competitive assessment process. Colonel Knight said the Draft policy says that promotions to Captain and Major will be based on ranked scores of the Executive Oral Board consisting of the four Lieutenant Colonels and the Troop Commander for the area.

Peggy McNally stated that the January 1, 2007 promotion policy is a draft that had not been approved as of August 14, 2007. She explained that absent an approved policy there was no current written and approved promotion policy for promotion to Captain. She stated that once it is approved, unless the process is changed again, the promotion policy for Captain will be the same as the process for Major. She said that the policy should be more specific and should define the actual process so that it is clear to the applicants. McNally stated that, when the change in the promotion process for Captain was proposed by Colonel Knight, she had asked him to delay its implementation for a year because there had been so many changes to the promotion process. However, she stated that Colonel Knight made the decision to proceed with the policy as drafted. She also expressed concern that Colonel Knight had asked Lieutenants and the Lieutenant Colonels for input on this issue, but did not request input from the Captains. She said that the Lieutenants on the Advisory Council were the very ones that would benefit from the change.

Since Colonel Knight's appointment and prior to the 2003 changes to the promotion process for Major, there were a total of 5 promotions to Major consisting of 2 White males, 2 African American males, 1 Hispanic male. Since the promotion process was changed on July 1, 2003, there have been six promotions to the rank of Major; 5 were white males, and 1 was a Hispanic male. No African Americans have been promoted to Major since 2003. Since 2003, the Major's promotional eligibility list is no longer maintained by FHP.

From 2001 to 2007, the number of African Americans in the eligibility pool for the rank of Captain increased. However, the number of African Americans participating in the promotion process decreased (*See Appendix B-4, FHP Captain Promotion Statistics – African American Only*). Of the 23 promotions to Captain during Colonel Knight's tenure, 8 were minority males, or 34.8%; 5 were females for a total of 56.5% of the eligibility pool that were minorities and females promoted to Captain for the period of 2001 to 2007, and 10 white males accounted for 43.5% of the actual promotions (*See Appendix B-4, FHP Captain Promotion Statistics – By Race*).

FINDING:

- Colonel Knight eliminated the college degree requirement for the rank of Lieutenant Colonel in 2001.
- Colonel Knight eliminated the assessment process for Major in 2003.
- It was established in the investigation that since July 1, 2003, no African American has been promoted to the rank of Major.
- The investigation revealed that there is no approved written policy establishing the promotional process for Captains and Majors.
- The positions of Captains, Majors and Lieutenant Colonels are Select Exempt positions and are not subject to collective bargaining procedures.
- The draft changes to the promotional process policy for Majors and Captains include the elimination of the written exam and removal of the exercise. However, the oral interview is still required and applicants are required to apply rather than be maintained on an annual eligibility list.
- None of the examples cited by the complainants revealed that the promotional decisions for Major and Lieutenant Colonel were made based upon race.
- The review of the racial make-up of the entire FHP is consistent with the U.S. Census Bureau statistics for the State of Florida.

The allegation that Colonel Knight's changes to the FHP Promotional Process has resulted in a pattern of disparate treatment is **NOT SUSTAINED**. However, until a transparent and fully documented process is in place the perception of disparate treatment or lack of an objective process is likely to continue.

ALLEGATION #9: Colonel Knight controls internal investigations, disciplinary actions and personnel decisions in a manner that shows disparate treatment of minorities.
UNFOUNDED

The complainants alleged that internal affairs investigations come out the way Colonel Knight wants them to and that he does not follow policy or practices when dispensing discipline.²⁸ It was alleged that there was disparate treatment of minorities in the handling of internal investigations, discipline issues, and personnel decisions.

The complainants stated that the 2005 arrest and termination of a Captain, an African American, was an example of disparate treatment of minorities. The complainants said that fixing tickets is a common practice that does not usually get investigated or result in arrest.

The Captain was initially investigated for fixing a ticket and subsequently found guilty of Attempted Official Misconduct, a 1st degree misdemeanor.

The complainants indicated that the Captain's case was not handled according to policy and past practice.

They stated that it is unheard of for an investigation to be handled outside of the troop. The Captain's immediate supervisor, Troop Commander Major Cyrus Brown, stated that he was never told of the investigation until he was notified that an arrest warrant had been issued for the Captain. Brown stated that he believed this was due to the impression that he and King were friends. Brown denied that he and the Captain were friends. However, the Captain stated they were.

The Captain testified that he was treated differently and unfairly. He added that he felt he was singled out because he questioned Colonel Knight in front of other troopers regarding the racial composition of internal investigation staff members.

David Brierton, the Major in charge of the Bureau of Investigation that investigated the Captain, testified that the case was investigated and handled appropriately. Brierton stated that the Bureau had received administrative allegations against the Captain involving sexual harassment. It was during those investigations, which both the Captain and his Troop Commander were made aware of the criminal allegations relating to the ticket fixing.

According to Brierton, Troop Commanders are not routinely given case briefings once an investigation becomes a criminal matter. Colonel Knight stated that Brierton kept him informed of the investigation of the Captain. However, he did not have information on the extent that Brown was informed.

Regarding the claim that the Captain was treated unfairly because he questioned the racial composition of internal investigations staff members, Colonel Knight stated that he was not mad and later promoted the Captain into a position in internal investigations.

²⁸ Complainants: Lieutenant Colonel Larry Austin, Chief Kevin Guidry, Major Leroy Smith, Major Cyrus Brown, Captain Timothy Ashley, and Lieutenant Kevin Conner.

According to Colonel Knight, the decision to prosecute and file arrest warrants against the Captain was made by the State Attorney's Office not FHP. He said that this is the case in all internal investigations regarding criminal violations.

Brierton testified he was never told how to handle a case. Brierton stated that investigations are always supported by the findings of fact. Brierton also testified that while he was not involved with disciplinary decisions at the time the Captain was investigated, the disciplinary decisions resulting from the internal investigations were in line with the guidelines provided by the Department's Supervisor Assistance System (SAS).²⁹ Brierton testified that current disciplinary decisions made at the Troop level are also based on the SAS and past comparable cases.

Chief Dawson confirmed that Colonel Knight does not instruct him as to how to handle an Internal Affairs investigation.

Investigators analyzed the cases cited by the complainants in support of their claim that minorities are subjected to disparate treatment.

The cases involving Trooper Garry Bones and Lieutenant Antonio Bartolome were compared to the Captain's case to determine if Colonel Knight handled them consistently and without racial bias. Each of these cases predated Colonel Knight and he had no involvement in their handling. This refutes the allegation that Colonel Knight had any racial bias in these cases.

Regarding Troopers Richard Moore and Gabriel Lorenzo, these cases were investigated and handled at the troop level under Major Rebecca Tharpe with no indication of involvement by Colonel Knight refuting the allegation.

A case involving Trooper Thomas Page, a white male, who falsified internal productivity reports, was compared to the handling of the Captain's case. Investigators found that Colonel Knight recommended the employee's termination even though Page resigned before discipline could be imposed. Investigators verified that this matter was forwarded to the Criminal Justice Standards and Training Commission as required. As such, there was no evidence of inappropriate involvement by Colonel Knight.

Investigators compared the case involving Trooper Kreshawn Walker-Vergenz, an African-American female, to the case involving the hiring of John Gilcher, a white male. Investigators found that the hiring of Gilcher predated Colonel Knight and the case involving Trooper Kreshawn Walker-Vergenz was based on separate and supportable information. Investigators found no evidence of a racial bias by Colonel Knight in the handling of the Trooper Kreshawn Walker-Vergenz case.

It was alleged that three anonymous "Scared Cop" letters were not being investigated by the FHP due to a practice of not investigating anonymous complaints. However, according to complainant testimony, FHP launched an investigation into an anonymous complaint against an African American trooper. The anonymous complaint accused African American Trooper Ondra Jenkins of openly cheating on a promotional exam that was proctored by Lieutenant Colonel Austin, also an African American.

²⁹ The disciplinary action/checklist used by the Department.

Austin testified that he requested the investigation of the incident involving Jenkins. FHP investigators determined that the allegations against Jenkins were unfounded and this investigation found that Colonel Knight was not involved.

The complainants alleged disparate treatment in the sudden reassignment in September 2006 of Major Smith, Chief Guidry, and Chief Dawson, all African Americans. It was alleged that these were the only employees reassigned to different duties at that time. Dawson stated that he did not know why he was reassigned and Guidry and Smith felt their reassignments could have been retaliation for their meeting with the Executive Director in September 2006 to protest the possible promotion of David Brierton to Lieutenant Colonel by Colonel Knight.

Colonel Knight testified he made the staffing adjustments after he promoted David Brierton from the Bureau of Investigations to Lieutenant Colonel. He stated that he wanted Dawson in Headquarters and close to Lieutenant Colonel Ken Howes so Dawson could be exposed to Headquarters operations and mentored toward becoming a Lieutenant Colonel in the future. Colonel Knight stated that he approached all three before any changes were made and they all agreed to reassignments. Colonel Knight said that staff moves involving his command staff would affect minorities because he has so many on his staff. Investigators found that there was no evidence that these decisions were based on race and there were no changes in rank or pay.

Lieutenant Colonel Larry Austin, an African American, testified that when his counterpart, former Lieutenant Colonel Rick Gregory, a white male, was out of the office, Gregory's subordinates including the Troop Commander and Majors would report to a Captain under Gregory instead of to Austin. Austin stated that when he was out of the office, he assigned his subordinates to report to Lieutenant Colonel Gregory. Austin stated that he was not sure if Gregory's practice was made along racial lines or if it was due to a lack of confidence in his performance. He said that this has not happened since Brierton has been promoted to Lieutenant Colonel and Gregory has left the Department.

Colonel Knight testified that Lieutenant Colonels Austin and Gregory did not get along. He also said that it is a Lieutenant Colonel's decision who is the acting supervisor in their absence.

FINDING:

- The review of the examples provided by the complainants did not provide any evidence that they were based upon race.
- Both Lieutenant Colonel Brierton and Chief Dawson stated that Colonel Knight does not instruct them on how Internal Affairs cases are handled.

This allegation is **UNFOUNDED**.

**ALLEGATION #10 Former FHP Sergeant John Berke was denied an opportunity to participate in the FHP Reserve program in retaliation for filing a complaint against a friend of Colonel Knight's.
NOT SUSTAINED.**

Former FHP Sergeant John Berke complained that he was denied an opportunity in 2003 to participate in the FHP Reserve program because when he was employed by FHP he filed a complaint against his supervisor, who he alleges is a friend of Colonel Knight's. Berke provided no specific details as to why he felt he was retaliated against by Colonel Knight.

Colonel Knight stated that he could not recall if he made the decision not to allow Berke to participate in the Reserve program or if it was made by Auxiliary Coordinator Leslie C. "Carl" Herold. Colonel Knight stated that whoever made the decision to deny Berke an opportunity to serve on the Reserve program made the right decision, saying, *"There's no right to being in our Auxiliary, or no right to be in our Reserve Program. The issue he [Berke] has, he's taking shots at everybody down there and filing all of these complaints when he's going out the door, why would he even want to be associated with us? We've denied several people from staying in it, so that's not an isolated case."* Colonel Knight testified that he did not retaliate against Berke, and was not friends with Berke's former supervisor.

Lieutenant Herold stated he was FHP's Auxiliary Coordinator when Berke requested to join the reserves, and recalled there being some issue surrounding Berke being turned down, but did not recall the specifics. He said that Colonel Knight made all the final decisions regarding the reserves and he only handled the administrative paperwork.

FHP Policy 18.01.05(B)(10) states:

The Director of the Florida Highway Patrol will make the final decision for acceptance or rejection of a reserve officer applicant.

FHP Policy 18.01.05(E)(1-4) states:

1. *Reserve officers do not have, nor can they attain career service status.*
2. *Reserve officers serve without pay under the direction of the Director of the Florida Highway Patrol*
3. *Reserve officers have no appeal rights to the Career Service Commission in the event they are suspended or dismissed.*
4. *Reserve officers serve at the pleasure of the Director and may be separated from the reserve without cause.*

FINDING:

- There are no independent witnesses and no documentation to support Berke's allegation of retaliation for membership in the FHP Reserves.
- Berke's information was received nearly four years after the alleged retaliation.

This allegation is **NOT SUSTAINED**.

ALLEGATION #11 Colonel Knight discriminates against minorities by not including them in meetings and other communications.
UNFOUNDED

The complainants stated that Colonel Knight shares information with only a few individuals. They gave an example when the Colonel and one or two of his Lieutenant Colonels left to attend the funeral in April 2007 of a law enforcement officer from another agency, but the information was not shared with all Executive Staff nor was anyone told that Colonel Knight was leaving for the ceremony. They stated that Colonel Knight does not invite all the African American members of the Executive Staff to meetings and that Major Leroy Smith is not allowed to be a part of certain decision-making processes.

The complainants verified that nearly every weekday morning at 9 a.m. Colonel Knight meets with six of his Executive Staff members that directly report to him: 4 Lieutenant Colonels, and 2 Chiefs.³⁰

Lieutenant Colonel Austin and Chief Guidry stated no real issues are discussed during those meetings. Major Leroy Smith stated that he was excluded from these morning meetings and therefore does not have input on agency decisions. Major Duarte, Public Information Officer, stated that he did not have appropriate access to meetings where major decisions were made and that his job duties required knowledge of FHP issues for the media.

Colonel Knight testified that he holds a 9 a.m. meeting nearly every weekday morning and said that half of the staff in his morning meetings are African American. According to Colonel Knight, he would often speak with Sergeant Gifford Ramsey (now deceased), the former president of the Black Troopers Coalition, every Sunday and Ramsey would share any concerns with him at that time, including a complaint that Chief Kevin Guidry and Major Leroy Smith were not being included in meetings. Colonel Knight advised that he then made some reconfigurations of the staff so that Guidry could be included in the daily meetings.

Colonel Knight advised that his weekday morning meetings are held to help facilitate communication. Colonel Knight says that he goes around the room and provides every person an opportunity to ask questions, make comments, or give suggestions. Colonel Knight advised that he is constantly visiting troops in the field and at training sessions. He stated that he has a very good relationship with the people that report to him directly, and acknowledged that he may joke around and laugh with staff members.

When asked to respond to the complaints regarding the infrequency of meeting with the headquarters Executive Staff, Colonel Knight advised that it would be nearly impossible to meet every day with 13 or 14 people. He said nothing would get accomplished. Colonel Knight explained that if somebody wanted to attend the morning meetings, they are more than welcome. Colonel Knight stated that FHP has a Management Fellows Program, and those members also attend the meetings at times.

³⁰ Lieutenant Colonel Larry Austin, African American male; Lieutenant Colonel Ken Howes, white male; Lieutenant Colonel John Czernis, white male; Lieutenant Colonel David Brierton, white male; Chief Kevin Guidry, African American male; and Chief Silvester Dawson, African American male.

Regarding the funeral of a Fish and Wildlife Commission Officer, Colonel Knight advised that he had a full airplane going to that funeral. He said Lieutenant Colonel Austin attended the funeral. He also said that he believes that he invited Chief Guidry, but that Guidry had a meeting conflict. Colonel Knight advised that there was a large FHP representation at the funeral.

Chief Dawson stated, *"We meet every morning 9:00 A.M. unless something is scheduled"*. He confirmed it was the four Lieutenant Colonels and the two Bureau Chiefs that met with Colonel Knight. Chief Dawson stated, *"We talk about whatever the current situation may be and sort of round table. Each person brings up information that should be shared that is within their area of responsibility, talk about it."* Chief Dawson stated, *"It is productive sometimes and then sometimes we don't really have a lot to talk about."*

Lieutenant Colonel Larry Austin verified that he accompanied Colonel Knight to the funeral and stated that Colonel Knight generally asks the Lieutenant Colonels if they want to attend events first and then asks others. He also stated that Colonel Knight does not travel with a lot of people, usually only two or three per event.

Lieutenant Colonel Ken Howes stated in his interview that Colonel Knight is too accessible and that the Colonel has an open door policy, returns telephone calls and e-mails. Howes said Colonel Knight set up an e-mail address so sworn and non-sworn members of FHP could e-mail him directly.

Similarly, Lieutenant Colonel David Brierton stated that Colonel Knight is overly accessible at all times of the day and night. Brierton stated that Colonel Knight is the most accessible of the four Colonels he has worked for. Lieutenant Colonel Brierton described Colonel Knight's leadership style as "Management By Walking Around".

Investigators interviewed a diverse group of other FHP members that included minorities and varying levels of staff. No testimony was obtained to support the allegation that Colonel Knight discriminates against minorities in his communications. These interviews revealed that Colonel Knight's communications with them were typically characterized as very positive.

FINDING:

- None of the examples cited by the complainants revealed that communication by Colonel Knight were made based upon race.
- Testimony obtained establishes that there are many avenues to communicate with Colonel Knight, i.e., e-mail, cellular telephone, office phone, field visits, etc.
- It was established that Colonel Knight has daily meetings with those who report directly to him, 4-Lieutenant Colonels and 2-Bureau Chiefs, of which 50% are African Americans.
- Interviews established that Colonel Knight requests input from anyone present at the daily meetings prior to the end of each meeting.

The allegation that Colonel Knight discriminates against minorities by not including them in meetings and other communications is **UNFOUNDED**.

ALLEGATION #12: The Inspector General for the Department did not interview key witnesses about allegations of Colonel Knight's improper relationship with employees that would have resulted in testimonial and physical evidence to sustain the allegations against Colonel Knight and prove that he lied under oath during the investigation.

UNFOUNDED

An anonymous email sent to the Chief Inspector General stated:³¹

"Look at their sworn interviews that are floating around FHP and notice a basic investigative task was not completed in the investigation. Named witnesses were never interviewed; Troopers Carl Miller, Christopher Chappel (sic) and Gonzalez's boyfriend Lt. Greg Bueno. Bueno may have voice recordings of Mr. Knight calling Ms. Gonzalez from his private and work phone as many as 13 times a day. A secretary heard the voice recordings Mr. Knight left. Oman told Miller and Chappel that Knight was going to marry her after he moved her to the academy. She may have been selected for that position over more senior troopers to get her close to him."

Investigators confirmed that the Department's Inspector General investigated allegations that Colonel Knight was having personal relationships with female FHP employees and gave them preferential treatment resulting in a report dated April 15, 2006. The investigation was reviewed for completeness.³² Investigators obtained sworn recorded statements from the troopers that allegedly had pertinent testimony in the original investigation. A summary of their testimonies is as follows:

Trooper Carl Miller – Miller stated that FHP female Trooper Melissa Oman never told him that Colonel Knight was going to marry her. Miller stated that he had no first hand information or any pertinent information to contribute to the original investigation.

Lieutenant Greg Bueno – Bueno confirmed that he had a phone call conversation in September 2005 with Colonel Knight regarding interactions with his girlfriend. Bueno stated it was a personal discussion that was not confrontational. Bueno stated that he knew Colonel Knight had communicated with Gonzalez, but did not have any knowledge about the content of the communication. Bueno stated that he had no tape-recorded answering messages or any evidence that would refute Colonel Knight's sworn statements in the original investigation.

Sergeant Christopher Chappell – Chappell stated that Oman never told him that Colonel Knight was going to marry her. Chappell stated that he had no first hand information or any pertinent information to contribute to the original investigation.

FINDING:

- The witnesses named in the anonymous complaint were interviewed and they provided no additional information or evidence to warrant the re-opening of the original investigation.

The allegation is **UNFOUNDED**.

³¹ E-mail received April 4, 2007 from "anticorruption@tampabay.rr.com"

³² Department Inspector General, Case # 2005/06-13. The findings in this case show three counts of "Conduct Unbecoming a Public Employee". One count was found to be "Unfounded", and two counts "Not Sustained".

ADDITIONAL ISSUES

Several matters surfaced during the course of this investigation that warrant attention by management.

Fear of Retaliation - Many of those interviewed stated they expected retaliation from Colonel Knight as a result of cooperating with this investigation.

Issue with a Trooper - A trooper was allegedly allowed by the Troop Commander to resign in lieu of an internal investigation for accepting free concert tickets in connection with a traffic stop of a rock band's vehicle for speeding and possible drug violations.

Recommendation from Inspector General - The Department's Inspector General Larry Noda made the following recommendation in case #2005/06-13 that has not been implemented: *"Management should consider revisions to existing policies in order to address potential personal relationship biases that may exist in either the Department's organizational structure or when supervisors conduct performance reviews and planning activities."*

FHP submissions to Criminal Justice Standards and Training Commission (CJSTC) Disciplinary Board - During this investigation, it was determined that some sustained internal affairs investigations were not being submitted to the FDLE Criminal Justice Standards & Training Commission.

Scared Cop Letters - Copies of three anonymous letters were given to the investigators that had been circulating within the Department for a couple of years, commonly referred to as "Scared Cop" letters in which derogatory language was allegedly used by Colonel Knight.

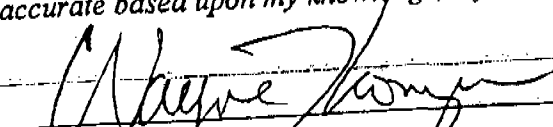
RECOMMENDATIONS

1. Management should review the findings in this report and take appropriate action.
2. Management should remind all employees that retaliation of any kind is prohibited.
3. Management should prepare a corrective memorandum stating that the December 2, 2003 memorandum was backdated. This corrective memorandum should be attached to the original and provided to requestors of any past discovery or public records requests as well as any future requests.
4. Management should develop and implement an objective, transparent, and documented promotion process for all FHP ranks.
5. Management should investigate the allegations contained in the anonymous letters authored by "Scared Cop".
6. Management should ensure that a proper investigation into allegations that a former trooper allegedly received gifts in exchange for leniency and determine whether the case was handled per policy and in accordance with Florida Statutes.
7. Evaluate the Supervisory Assistance System for improvements in disciplinary guidelines.
8. Management should ensure that FHP is in compliance with CJSTC regarding the submission of the results of their Internal Affairs investigations.
9. Management should consider implementing the recommendation made in the Department's Inspector General Case # 2005/06-13.


Author Signatures

I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in Section 112.532 and Section 112.533, Florida Statutes; and

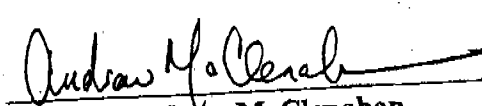
I, the undersigned, also verify pursuant to Section 92.525, Florida Statutes, that the contents of the attached report, dated September 14, 2007, consisting of 43 (37+6) pages, are true and accurate based upon my knowledge, information and belief.


Inspector Wayne Thompson
Florida Department of Law Enforcement

Date: Sept 13, 2007


Inspector Tonja Bryant-Smith
Florida Department of Law Enforcement

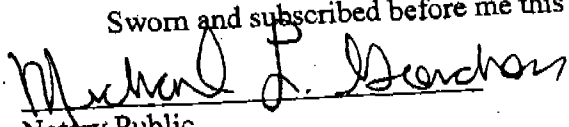
Date: Sept 13, 2007


Captain Andrew McClenahan
Florida Department of Environmental Protection
(Representing the Chief Inspector General's Office, Executive Office of the Governor)

Date: Sept 13, 2007

State of Florida)
County of Leon) ss:

Sworn and subscribed before me this 13 day of September, 2007.



Notary Public



Michael L. Gordon
Commission # DD337171
Expires July 25, 2008
Bonded Tally Paid - Insurance, Inc. 888-365-7019

Personally known (X) OR Produced Identification ()

Reviewer's Signature:


Inspector General Al Dennis
Florida Department of Law Enforcement

Date: Sept 13, 2007

APPENDIX A – PERSONS INTERVIEWED

1. Lieutenant Colonel Larry Austin
2. Chief Kevin Guidry
3. Major Leroy Smith
4. Chief Silvester Dawson
5. Captain Timothy Ashley
6. Major Cyrus Brown
7. Lieutenant Kevin Conner
8. Sterling King (former FHP)
9. Lieutenant Jacquelyn Freeman
10. Lieutenant James Blue Darby, Jr.
11. Auxiliary Lieutenant Colonel Peter Warrick
12. Trooper Carl Miller
13. Lieutenant Gregory Bueno
14. Sergeant Christopher Chappell
15. John Berke (former FHP)
16. Colonel Christopher Knight
17. Lieutenant Colonel Ken Howes
18. Lieutenant Colonel David Brierton
19. Major Ernesto Duarte
20. Major Rick Carpenter
21. Major Steven Williams
22. Major James Brierton
23. Major Grady Carrick
24. Gilbert Brown (former FHP)
25. Captain Linda Perkins
26. Captain Urana Harris
27. Captain Michelle Carter
28. Captain Cindy Williams
29. Captain Eileen Powell
30. Lieutenant Jimmie Collins
31. Lieutenant Jose Lopez
32. Lieutenant John Bagnardi
33. Lieutenant Kathy McKinney
34. Lieutenant Lavada Curry
35. Lieutenant Bobby Collins
36. Sergeant Dennis Hobbs
37. Trooper William Smith
38. Rene Knight, Chief of Personnel Service
39. Cynthia J. Mazzara, Manager, Office of Employee Relations
40. Margaret A. Lamar, Senior Consultant, Office of Employee Relations
41. Peggy H. McNally, Operations & Management Consultant Manager, FHP
42. Lieutenant Leslie C. "Carl" Herald
43. General Counsel Judson M. Chapman
44. Assistant General Counsel Bryan T. Pugh
45. Deputy Executive Director David F. Westberry

APPENDIX B – PROMOTIONAL STATISTICS

Data received from FHP
July 11, 2007

FHP Sworn promotions
Effective 07/01/01 thru 06/03/07

Reformatted 7/11/07 by:
Inspector Wayne Thompson

	W/M	AA/M	H/M	O/M	W/F	AA/F	H/F	O/F	TOTAL
7/1/01 - 6/30/02									
Lt Col		1							1
Chief	1	2							3
Major			1						1
Capt	1	2	1						4
Lieut	3		1		1				5
Sgt	13	3			2	1			19
Corp	17	2	5		3	1	1		29
7/1/02 - 6/30/03									
Lt Col	3								3
Chief									0
Major	2	2							4
Capt	2		2		1				5
Lieut	4	1	2		3	1			11
Sgt	14	6	1		3				24
Corp	17		4		1	1			23
Pilot	1								1
7/1/03 - 6/30/04									
Lt Col									0
Chief									0
Major	1		1						2
Capt	1	1			1				3
Lieut	9	3	1			1			14
Sgt	23	3	2	1					29
Corp	28	2	1		7	1	1		40
Pilot									0
7/1/04 - 06/30/05									
Lt Col									0
Chief									0
Major									0
Capt	3								3
Lieut	7	1	1		1				10
Sgt	21	4	2	1	2	1	1		32
Corp	35	4	7	1	4			1	52
Pilot									0
7/1/05 - 6/30/06									
Lt Col									0
Chief									0
Major	1								1
Capt	1		1		1				3
Lieut	5	5	1		2	1			14
Sgt	16	3	3		2	2	1		27
Corp	17	3	8		5		1		34
Pilot			1						1
7/1/06 - 06/30/07									
Lt Col	1								1
Chief									0
Major	3								3
Capt	2	1			2				5
Lieut	7	4			1				12
Sgt	19	2	3		1	1	1		27
Corp	17	4	3		4	1			29
Pilot									0
TOTALS	295	59	52	3	47	12	6	1	475

African American promotions = 15% (71 of 475)

Hispanic promotions = 12% (58 of 475)

Female promotions = 14% (66 of 475)

Other promotions = 1% (4 of 475)

TOTAL Minority and Female promotions = 38% (180 of 475)

Complete breakdown of sworn promotions during this period by race/sex are as follows:

WM	62%	(295 of 475)	W/F	10%	(47 of 475)	O/M	1%	(3 of 475)
AA/M	12%	(59 of 475)	AA/F	3%	(12 of 475)	O/F	1%	(1 of 475)
HM	11%	(52 of 475)	H/F	1%	(6 of 475)			

Of 42 command-level promotions (Capt, Major, Chief, Lt. Col.) 48% awarded to minorities & females.

FLORIDA HIGHWAY PATROL - ASSESSMENT PROCESS STATISTICS

CAPTAINS COMPETING FOR THE RANK OF MAJOR FY 1998/99 - 2002/03

Fiscal Year	2002/03	2001/02	2000/01	1999/00	1998/99	Totals
Eligible:	52	42	49	45	45	233
Requested:	36	27	33	25	22	143
Participated:	22	18	25	19	15	99
Assess. Process:	19	5	19	5	4	52
Promoted:	4	1	3	0	1	9

FY 2002/03	African Amer.	Hispanic	Other	White/Female	White/Male	Totals
Eligible:	5	2	1	3	41	52
Requested:	3	2	0	3	28	36
Participated:	3	2	0	2	15	22
Assess. Process:	3	2	0	2	12	19
Promoted:	2	0	0	0	2	4

FY 2001/02	African Amer.	Hispanic	Other	White/Female	White/Male	Totals
Eligible:	3	2	1	1	35	42
Requested:	3	2	0	1	21	27
Participated:	2	2	0	1	13	18
Assess. Process:	0	1	0	0	4	5
Promoted:	0	1	0	0	0	1

FY 2000/01	African Amer.	Hispanic	Other	White/Female	White/Male	Totals
Eligible:	5	2	1	1	40	49
Requested:	5	2	0	1	25	33
Participated:	3	1	0	1	20	25
Assess. Process:	3	1	0	0	15	19
Promoted:	2	0	0	0	1	3

FY 1999/00	African Amer.	Hispanic	Other	White/Female	White/Male	Totals
Eligible:	3	1	1	1	39	45
Requested:	3	1	0	1	20	25
Participated:	2	1	0	1	15	19
Assess. Process:	2	0	0	0	3	5
Promoted:	0	0	0	0	0	0

FY 1998/99	African Amer.	Hispanic	Other	White/Female	White/Male	Totals
Eligible:	4	0	1	0	40	45
Requested:	4	0	0	0	18	22
Participated:	4	0	0	0	11	15
Assess. Process:	2	0	0	0	2	4
Promoted:	1	0	0	0	0	1

Eligible = Sworn members eligible to participate in the promotion process.
 Requested = Those who requested to participate in this promotion process.
 Participated = Those who actually participated in the written examination.
 Assess. Process. = Those who qualified to proceed to the Assessment Process.
 Promoted = Those promoted to the rank of Major.

Prepared by: Inspector Wayne Thomsson July 23, 2007

Florida Highway Patrol – Assessment Process Statistics
Lieutenants Competing for the Rank of Captain
FY 2001/02 – 2006/07

Fiscal Year	2006/07	2005/06	2004/05	2003/04	2002/03	2001/02	Totals
Eligible:	162	115	127	118	133	129	784
Requested:	67	67	67	60	82	81	424
Participated:	48	40	48	39	62	51	288
Assess. Process:	22	15	10	19	30	15	111
Promoted:	5	3	3	3	5	4	23

2006/07	Afr. Amer.	Hispanic	Asian	Nat. Am.	White/Female	White/Male	Totals
Eligible:	21	5	0	0	15	121	162
Requested:	11	3	0	0	8	45	67
Participated:	7	1	0	0	5	35	48
Assess. Process:	2	0	0	0	3	17	22
Promoted:	1	0	0	0	2	2	5

2005/06	Afr. Amer.	Hispanic	Asian	Nat. Am.	White/Female	White/Male	Totals
Eligible:	17	5	0	0	10	83	115
Requested:	10	5	0	0	8	44	67
Participated:	6	3	0	0	7	24	40
Assess. Process:	3	1	0	0	2	9	15
Promoted:	0	1	0	0	1	1	3

2004/05	Afr. Amer.	Hispanic	Asian	Nat. Am.	White/Female	White/Male	Totals
Eligible:	18	6	0	0	12	91	127
Requested:	9	4	0	0	8	46	67
Participated:	8	3	0	0	4	33	48
Assess. Process:	1	2	0	0	0	7	10
Promoted:	0	0	0	0	0	3	3

2003/04	Afr. Amer.	Hispanic	Asian	Nat. Am.	White/Female	White/Male	Totals
Eligible:	15	5	0	0	12	86	118
Requested:	9	1	0	0	7	43	60
Participated:	6	1	0	0	3	29	39
Assess. Process:	4	1	0	0	1	13	19
Promoted:	1	0	0	0	1	1	3

2002/03	Afr. Amer.	Hispanic	Asian	Nat. Am.	White/Female	White/Male	Totals
Eligible:	15	5	0	0	9	104	133
Requested:	14	4	0	0	6	58	82
Participated:	12	3	0	0	5	42	62
Assess. Process:	7	2	0	0	3	18	30
Promoted:	0	2	0	0	1	2	5

2001/02	Afr. Amer.	Hispanic	Asian	Nat. Am.	White/Female	White/Male	Totals
Eligible:	15	4	0	0	8	102	129
Requested:	13	4	0	0	8	56	81
Participated:	11	3	0	0	3	34	51
Assess. Process:	3	1	0	0	2	9	15
Promoted:	2	1	0	0	0	1	4

Eligible = Sworn members eligible to participate in the promotion process.

Requested = Those who requested to participate in this promotion process.

Participated = Those who actually participated in the written examination.

Assess. Process. = Those who qualified to proceed to the Assessment Process.

Promoted = Those promoted to the rank of Captain.

Prepared by: Inspector Wayne Thompson July 19, 2007

FHP Major Promotion Statistics Before FHP-2003 Changes – Numbers Only:

Fiscal Year	2001/02	2002/03	Totals
Eligible:	42	52	94
Requested:	27	36	63
Participated in Written Exam	18	22	40
Assessment Process:	5	19	24
Promoted from List:	1	4	5

FHP Major Promotion Statistics Before FHP-2003 Changes – By Race:

FY 2001/02 & 2002/03	African American	Hispanic	Other	White Female	White Male	Totals
Eligible:	8	4	2	4	76	94
Requested:	6	4	0	4	49	63
Participated in Written Exam	5	4	0	3	28	40
Assessment Process:	3	3	0	2	16	24
Promoted from List:	2	1	0	0	2	5

FHP Major Promotions Assessment & Promotion Statistics - African Americans Only

African American Only	2001/02	2002/03	Total
Eligible:	3	5	8
Requested:	3	3	6
Participated in Written Exam	2	3	5
Assessment Process:	0	3	3
Promoted from List:	0	2	2

FHP Executive Staff as of June 30, 2007

Position/ Title	White Male	African American Male	Hispanic Male	White Female	Totals
Lieutenant Colonel:	3	1	0	0	4
Chief:	0	2	0	1	3
Major/ Troop Commander:	8	4	2	0	14
TOTAL	11	7	2	1	21

FHP Captain Promotion Statistics – Totals³³

Fiscal Year	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	Totals
Eligible:	129	133	118	127	115	162	784
Requested:	81	82	60	67	67	67	424
Participated in Written Exam	51	62	39	48	40	48	288
Assessment Process:	15	30	19	10	15	22	111
Promoted from List:	4	5	3	3	3	5	23

FHP Captain Promotion Statistics – By Race

2001/02 thru 2006/07	African American	Hispanic	White Female	White Male	Totals
Eligible:	101	30	59	587	784
Requested:	66	21	45	292	424
Participated in Written Exam	50	14	27	197	288
Assessment Process:	20	7	11	73	111
Promoted from List:	4	4	5	10	23

³³ See Appendix B-3 for a complete list of promotion statistics.

FHP Captain Promotion Statistics – African Americans Only

African Americans Only	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	Totals
Eligible:	15	15	15	18	17	21	101
Requested:	13	14	9	9	10	11	66
Participated in Written Exam	11	12	6	8	6	7	50
Assessment Process:	3	7	4	1	3	2	20
Promoted from List:	2	0	1	0	0	1	4

FHP Promotions to Lieutenant FY 2001-2007

Lieutenants	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	Totals
White Males	3	4	9	7	5	7	35
AA Males	0	1	3	1	5	4	14
Hispanic Males	1	2	1	1	1	0	6
White Females	1	3	0	1	2	1	8
AA Females	0	1	1	0	1	0	3
Totals	5	11	14	10	14	12	66

Agency-wide Racial Makeup by EEO Job Category

FY 05/06 EEO Job Category	White	Black	Hispanic	Other	Totals:
#1 - Administrators	77%	15%	7%	1%	100%
#4 - Protective Service	69%	17%	13%	2%	101%

Agency-wide Promotions by Race

Promotions 2005/2006	White	Black	Hispanic	Other	Total
Number Promoted:	197	71	35	10	313
Percentage Promoted:	62.9%	22.7%	11.2%	3.2%	100.0%

2005 U.S. CENSUS BUREAU STATISTICS FOR FLORIDA

White	80.4 %
Black	15.7 %
American Indian & Alaskan Native	0.4 %
Asian	2.1 %
Native Hawaiian & Other Pacific	0.1 %
All Other races	1.3 %