

1 UNITED STATES DISTRICT COURT  
 2 MIDDLE DISTRICT OF FLORIDA  
 3 TAMPA DIVISION  
 4  
 5  
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 7 ----- >  
 8 BARBARA ORBAN, :  
 9 :  
 10 Plaintiff, :  
 11 :  
 12 vs. : CASE NO.: 8:04-CV-1904-T-23MA  
 13 :  
 14 CITY OF TAMPA, FLORIDA, :  
 15 :  
 16 Defendant. :  
 17 ----- >  
 18  
 19 DEPOSITION OF: EDWARD BOWDEN  
 20 TAKEN BY: Counsel for Plaintiff  
 21 DATE: August 23, 2005  
 22 PLACE: Tampa Police Department  
 23 Room 519  
 24 411 North Franklin Street  
 25 Tampa, Florida  
 TIME: 10:37 a.m. to 1:36 p.m.  
 REPORTED BY: Michele Galeski  
 Notary Public  
 State of Florida at Large

1 I N D E X  
 2  
 3 PAGE  
 4  
 5 Examination by Mr. Magri 4, 123  
 6 Examination by Ms. Richardson 116  
 7 Certificate of Oath 128  
 8 Certificate of Reporter 129  
 9  
 10  
 11  
 12  
 13 E X H I B I T S  
 14  
 15 NO. DESCRIPTION PAGE  
 16 1 "Florida Uniform Traffic Citation" 14  
 17 2 "Driver Exchange of Information" 21  
 18 3 "Florida Traffic Crash Report" 22  
 19  
 20  
 21  
 22  
 23  
 24  
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1 APPEARANCES:  
 2  
 3 JOSEPH D. MAGRI, Esquire  
 4 Merkle & Magri, P.A.  
 5 Suite 301  
 6 550 North Reo Street  
 7 Tampa, Florida 33609  
 8 Appeared on behalf of Plaintiff  
 9  
 10 URSULA RICHARDSON, Esquire  
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 12 5th Floor  
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 14 Tampa, Florida 33602  
 15 and  
 16 JOHN A. MAKHOLM, Esquire  
 17 The Makhholm Law Group  
 18 One Capitol Center  
 19 Suite 205  
 20 696 First Avenue North  
 21 St. Petersburg, Florida 33701-3610  
 22  
 23 Appeared on behalf of Defendant  
 24  
 25

1 The deposition of EDWARD BOWDEN, taken  
 2 pursuant to notice by counsel for the Plaintiff, on  
 3 August 23, 2005, commencing at 10:37 a.m., at Tampa  
 4 Police Department, Room 519, 411 North Franklin Street,  
 5 Tampa, Florida, before Michele Galeski, Notary Public,  
 6 State of Florida at Large.  
 7 EDWARD BOWDEN,  
 8 having been duly sworn to tell the truth, the whole truth  
 9 and nothing but the truth, was examined and testified as  
 10 follows:  
 11 EXAMINATION  
 12 BY MR. MAGRI:  
 13 Q Good morning.  
 14 A Good morning.  
 15 Q My name, for the record, is Joe Magri. I  
 16 represent Dr. Orban.  
 17 I'll be asking you questions here this morning.  
 18 If there's any questions I ask that you don't understand  
 19 or you need clarification of them, ask me to do it and  
 20 I'll be happy to. Okay?  
 21 A Yes, sir.  
 22 Q What do you do, sir?  
 23 A I'm a police officer with the City of Tampa.  
 24 Q For how long?  
 25 A Nineteen years, four months and about thirteen

1 days.

2 Q All right. What did you do before that?

3 A I was an assistant manager for Eckerd Drugs.

4 Q All right. Approximately how long?

5 A About 13 months.

6 Q Can you sort of take me back in your background

7 till you get to schooling?

8 A Prior to working at Eckerd's I worked

9 construction here in the Tampa area for about four

10 months. Prior to that I worked at a health club in

11 membership sales and fitness counseling for -- I don't

12 know what period of time.

13 My education -- I went to the United States

14 Coast Guard Academy for a year and USF for one semester

15 and since that time took one course with St. Leo's -- a

16 remote course here at TPD, having accumulated about

17 28 1/2 credit hours.

18 Q Okay. And where are you assigned now?

19 A District I patrol.

20 Q Patrol?

21 A Yes, sir.

22 Q And for how long have you been doing that?

23 A The patrol or my current squad assignment?

24 Q Current squad.

25 A I've been on the squad, I think, for about

1 three years.

2 Q Prior to that?

3 A Prior to that I did a ten-month stint in the

4 law-enforcement after-care program, which is an

5 after-care program for juveniles who have been released

6 from boot camps. And prior to that I was in patrol.

7 Q Where?

8 A I believe all my patrol career has been in

9 District I. In my 19-plus years the other assignments I

10 had -- I think in '88 I did about six months in quad,

11 which is the undercover drug street-level stuff. Did

12 about six months or so with a community policing squad in

13 west Tampa housing area. And then the leap assignment, I

14 think, are my only tenure out of patrol. Other than that

15 I've done field training about three different times.

16 Q Okay. As I indicated, I represent Dr. Orban.

17 We're here on a matter that involves her.

18 Do you remember Dr. Orban?

19 A Yes, sir, I do.

20 Q How do you recall her? What do you recall?

21 A I recall at the time training -- I had Officer

22 Dave Duncan as a training officer. He was my

23 probationary officer that I was training. And I can

24 recall investigating a traffic crash involving Dr. Orban.

25 Q Okay. Approximately how many traffic crashes

1 have you investigated?

2 A I'd say on an average of probably 4 per week

3 times, say, 50 weeks a year of work, times 19 years.

4 Whatever number that might add up to.

5 Q That's a lot.

6 A Yes, sir.

7 Q It might be close to a little under 4,000

8 perhaps?

9 A I would say if the 4 times 50 is 200 per year,

10 times 20 years. When I get there, it would be about

11 4,000. So that would be a rough average.

12 Q How is it that you remember Dr. Orban's event?

13 A Because of this pending litigation primarily

14 which has refreshed my recollection. I do recall the

15 traffic crash that we investigated. But I've given

16 previously a sworn statement in this matter and I've

17 heard different comments about her efforts over the past

18 five years.

19 Q Okay. And the sworn statement you're referring

20 to is what?

21 A It was a step in these proceedings. I don't

22 recall the exact date that the sworn statement was given,

23 but it was --

24 Q Was that an affidavit?

25 A Yes, sir.

1 Q Okay. Was that an affidavit you prepared?

2 A No. They were a sworn verbal statement that I

3 gave, and prior to your arrival I saw a written summary

4 of that here today. And I signed it. It was notarized

5 at the time that I gave the statement.

6 Q Is the -- tell me what you recall about

7 Dr. Orban's accident or crash.

8 A Best I recall, it was on Howard Avenue. I

9 pulled up on the computer -- just for a specific location

10 it showed Howard and Bristol, which I haven't been able

11 to get a copy of the written report because they only

12 hold on to them for a couple years. So I wasn't able to

13 pull that from records today.

14 But I can recall that -- or the best I recall,

15 I think it was either raining or it had just rained. I

16 can remember being near the Meeting Place restaurant,

17 which is now closed, on Howard Avenue, pulling into a

18 parking lot or investigating it while in the parking lot.

19 I can recall speaking with Dr. Orban. I recall

20 that Officer Duncan was with me, that I was training him.

21 And the extent of the damage, I think, was fairly

22 minimal.

23 Q Okay. All right. Now, Howard and Bristol are

24 the street addresses?

25 A On the computer, which at the time we weren't

1 doing computerized reports. They've updated some of the  
2 information.

3 The traffic crash is still a handwritten  
4 report, but the entities from that crash are entered into  
5 the computer going back -- I don't know how many years.  
6 I think we got computers around 2003. This was from  
7 2000.

8 But her name, when I put it into the computer,  
9 was listed in reference to this address and it showed an  
10 address of Howard and Bristol.

11 Q Okay. All right. And it had been raining or  
12 had just rained?

13 A Just to the best of my recollection, yes, sir.

14 Q Okay. Was it still reflective of the rain --  
15 wet?

16 A As I recall, the road surfaces of the parking  
17 lot we were in were wet from either a recent rain or it  
18 was still sprinkling. I don't recall.

19 Q Okay. And you pulled into a parking lot?

20 A I don't recall if they had already pulled off  
21 the street into the parking lot, but I can remember  
22 that's where the investigation was done, that the  
23 vehicles were out of the roadway and we were in a parking  
24 lot. Like I said, if it wasn't the Meeting Place, it was  
25 another one of the small restaurants on the west side of

1 A As I recall, I think both vehicles were able to  
2 drive from the scene. I don't recall any injuries, as I  
3 recall, and I don't think there was extensive damage to  
4 the vehicles.

5 Q All right. Precisely what that was, you  
6 can't --

7 A Not without referring to the police report and  
8 seeing the estimation that was given at the time.

9 Q Okay. Now, do you recall anything she told you  
10 about the circumstances of the accident?

11 A No. Nothing specific. Just based on our  
12 investigation, our observations and information provided  
13 by the involved parties that her vehicle, for whatever  
14 reason, had struck the back end of the other involved  
15 vehicle.

16 I don't recall at the time she gave any excuses  
17 as far as him abruptly stopping or the wet roads or  
18 whatever conversation might have pertained.

19 Q Okay. So I take it you made some effort to  
20 pull up the documents that relate to this particular --

21 A Yes, sir. Through the record-management system  
22 that's computerized, entering her name, the only entry  
23 for her name was this accident from 2000.

24 I called records prior to coming down here this  
25 morning, and that's where I was informed that they only

1 Howard Avenue.

2 Q Okay. And you recall speaking with Dr. Orban?

3 A Yes, I do.

4 Q What do you recall about that?

5 A She's a pleasant lady. Again, just brought to  
6 recollection because of being aware of these civil  
7 proceedings that she was courteous. It wasn't any  
8 antagonistic-type conversation.

9 I recall that she was issued a citation. At  
10 the time I think there was some disagreement with the  
11 citation but nothing that she got nasty about or  
12 anything.

13 Q Okay. Anything else?

14 A Not specifically. No, sir.

15 Q Do you recall what the citation was for?

16 A At this time, no. And I can't pull up the  
17 report or, again, I didn't get a copy of the report  
18 before I got here.

19 I don't recall if it was following too closely  
20 or careless driving. As I recall, her vehicle struck the  
21 back of the other involved vehicle in the rear, and that  
22 would have been the choice of the two options at the time  
23 for the citation.

24 Q All right. And you indicated the extent of  
25 damage was minimal?

1 have hard copies of the reports going back two years.

2 Q Okay. Now, you indicated that you were  
3 training Officer Duncan?

4 A Yes, sir.

5 Q What does that mean?

6 A I'm trying to think of the extent of the formal  
7 training course. I can't remember if it was a 40-hour or  
8 80-hour training course to become a field training  
9 officer. I took that, I think, first back in 1989 or  
10 somewhere around there.

11 I've trained -- been assigned to different  
12 training squads, which is where a probationary officer  
13 just out of the academy goes to the street and they're  
14 assigned to train officers for a period of about 16  
15 weeks. And I've done that, I think, three formal periods  
16 during my career here where I have done it for a year and  
17 a half or so and then taken a break and then gone back to  
18 different squads to train at different times.

19 Q What's entailed in training an officer?

20 A It starts out -- there's a four-phase training  
21 program. The first phase -- the probationary officer is  
22 straight out of the academy. They're given a couple  
23 weeks of observation where they ride. The training  
24 officer does the majority of the work and can involve the  
25 probationary officer as much as discretionary at that

1 time. But they're basically there for observation.  
 2 There's no grading.  
 3 Following that -- at least at the time I did  
 4 it, I think it was six weeks in Phase 1. There was four  
 5 more weeks of Phase 1 where a written report card, as it  
 6 were, is done each day on their performance and more and  
 7 more responsibility is given to the probationary officer  
 8 as you progress in the program, to the point at Phase IV,  
 9 which is about the last two weeks of the program of,  
 10 again, about a 16-week program, they're supposed to do  
 11 everything as a one-man unit.

12 And the training officer becomes more of an  
 13 observer, allowing them to act pretty much on their own  
 14 prior to being exited from the program and put out on  
 15 their own on the street.

16 Q Okay. Would they be writing things up in which  
 17 phase?

18 A They can start from the beginning of Phase 1  
 19 even during the observation period, and that's generally  
 20 the way I train. We both may write whatever incident  
 21 we're on. And then if their report is acceptable, that  
 22 may even be submitted. That's kind of up to the training  
 23 officer. But I know when I train, they pretty much start  
 24 from Day 1 writing, whether their report is the one  
 25 that's turned in or mine.

1 officer, E. Bowden, Badge 446, Payroll 32898.

2 Q All right. So you would have filled all of  
 3 that out?

4 A Yes, sir. That's all my handwriting.

5 Q All right. Now, what's this -- what's this, if  
 6 anything, tell us?

7 A As far as the entire citation?

8 Q Right. I mean -- yeah.

9 A Starting from the top there's a report number,  
 10 which is the way we do our citations to reference if it  
 11 wasn't a report and it was just a traffic stop, that may  
 12 be an event number. In this case it's a report number  
 13 indicating that this was a traffic crash.

14 Grid number is the location. The city is  
 15 gridded out. And that's required on the top of the  
 16 ticket. Down from that is the county, city, the  
 17 violator's or cited individual's information: Their  
 18 license number, the vehicle, location of the offense, and  
 19 then the violation that was cited for.

20 Following that is whether it was a crash, the  
 21 estimated amount of damage -- which, looking at this, I  
 22 can't tell if it's 1,000 or 7,000 -- which would be  
 23 indicative of the severity. I don't have any expertise  
 24 in estimating exact amounts of damage, but that kind of  
 25 gives a ballpark of how much damage. And the statute

1 Q Okay. Let me show you a document.

2 MR. MAGRI: We can mark that as Exhibit 1.

3 A Yes, sir.

4 MR. MAKHOLM: Do you mind if I take a look at  
 5 that?

6 MR. MAGRI: Sure.

7 MR. MAKHOLM: Thank you.

8 BY MR. MAGRI:

9 Q Do you recognize that?

10 A I recognize my handwriting.

11 Q Okay. Where is your handwriting?

12 A The entire ticket, from report number on down  
 13 through the blocks that are filled out. The only thing  
 14 not in my handwriting on this front page is where  
 15 Dr. Orban signed the citation.

16 MR. MAGRI: Okay. All right. Let's mark that  
 17 as Exhibit 1.

18 (Exhibit 1 marked for identification.)

19 BY MR. MAGRI:

20 Q Now, down here at the bottom where it indicates  
 21 the officer, what does it say?

22 A On the first line is Officer D. Duncan,  
 23 Badge 977, Payroll 44916. The "1" and "10" in  
 24 parentheses would stand for District I, Squad 10. And my  
 25 name is underneath that: MPO, which is master patrol

1 number that applies to the written violation. Underneath  
 2 that is court instructions, which this says "See  
 3 envelope." There's a traffic envelope that's provided  
 4 with detailed information.

5 Q Okay. Is there a portion on here where you  
 6 explain what the careless driving was?

7 A No, sir.

8 Q And is it typical that you explain it  
 9 somewhere?

10 A It would generally be explained what the  
 11 violation is based on in the narrative section of the  
 12 crash report, which generally I do a long-form crash  
 13 report. It's a four-page report. Unless there's  
 14 additional information, such as additional passengers or  
 15 witnesses where it extends the report past four pages,  
 16 the narrative is generally Page 3 of the four-page  
 17 report.

18 Q All right. You say a "long form."

19 Are there multiple forms?

20 A They have a -- which I usually use primarily  
 21 for an exchange of information. There's a carboned form  
 22 that can be used as a short form, which is a two-page  
 23 report. It has three carbon copies attached to it, or at  
 24 one point I think it had two carbon copies, where the  
 25 information is filled in about the drivers. And you can

1 take the back carbons off and then each driver has the  
2 information of the other driver provided.

3 I use it as an exchange-of-information sheet.  
4 I don't generally do short-form accidents. I just -- it  
5 doesn't really shorten it up much to do a short-form  
6 accident, so I do long-form crashes.

7 Q Is there any guidelines for --

8 A I don't think so. As far as I'm aware, you  
9 basically can't go wrong by doing a long-form accident.  
10 You know, some people would view it as additional work,  
11 but it gives you a little bit more room to write. And  
12 because of the carbon backing on the short form or  
13 exchange form, a lot of the times the pen doesn't write  
14 very well on that and it's just -- for me it's been  
15 easier to do the long-form crash report.

16 Q All right. Do you know if other officers do it  
17 that way?

18 A Some do the short form, I think. I haven't --  
19 I don't edit reports or whatever, so I don't know what  
20 people are turning in now. I think a lot of people have  
21 gone to the same method of using the short form as an  
22 exchange paper for the drivers and then transposing the  
23 information over onto a long form.

24 Q Okay. Do you know if the Florida statutes  
25 envision the use of long forms in certain circumstances?

1 I think you had to do everything long form. Then I think  
2 it went back to, you could do the short forms in certain  
3 circumstances.

4 What I found, like I said, easier is just to  
5 use the short form as an exchange and to write long forms  
6 on everything.

7 Q All right. So at one point it was the practice  
8 to use just long forms?

9 A I believe, if I recall. Like I said, going  
10 back through my career, I think at one point we didn't  
11 use the short forms, but I can't recall that  
12 specifically.

13 Q Okay. And is that still the case?

14 A Like I said, I haven't -- I don't pay enough  
15 attention to what other officers write to see if people  
16 are still using short forms. And I don't edit reports,  
17 so I don't know if people are still doing that or not.

18 I just know as far as my practice, I always use  
19 the short form for an exchange and complete a long-form  
20 crash report.

21 Q Now, do people know what you're doing? In  
22 other words --

23 A Yes. And I've imparted it in different times  
24 that I've trained where basically I'm leaving it up to  
25 the probationary officer when they're on their own that

1 A I don't really know where -- I know they have  
2 DHSMV numbers, which are state-issued numbers, on the top  
3 of both the exchange, or short-form, and the long-form  
4 reports. So each individual report has its own state  
5 number.

6 And I don't know what the guidelines are as far  
7 as state requirements. Like I said, I've never been  
8 corrected as far as using the long form on any of my  
9 traffic crashes.

10 Q All right. Do you recall receiving any  
11 particular training on that issue?

12 A Yeah. We've had training on the completion of  
13 traffic-crash reports at different times starting in the  
14 academy and then in the FTO program and then updates  
15 throughout my career. And I can't recall any specific  
16 time, dates or content of that training at this point.

17 Q Okay. Would the practices that you employ be  
18 consistent with the training that you received?

19 A That would be going back a ways as far as the  
20 FTO program. When I went through it I can't remember at  
21 that time if we had short forms or you could use short  
22 forms.

23 I think through my career the procedures have  
24 changed at different times. At one point I don't even  
25 know if we were using short forms or you were allowed to.

1 if it fits within the policy -- which, again, I'm not  
2 overly familiar with because I've made a choice of how I  
3 do crashes.

4 But I generally train them, "This is how I do  
5 it. You can do it this way while you're riding with me,"  
6 which is to use the short form for an exchange and  
7 complete a long form. It gives them additional practice  
8 if a long form is required.

9 Q Well, now, when you train them, do you indicate  
10 to them whether or not you believe that to be consistent  
11 or inconsistent with Tampa Police protocol?

12 A My training would not be knowledgeably  
13 inconsistent with any policy. I'm not up on every policy  
14 and every specific detail. I know what's worked for me  
15 and what's been accepted, so --

16 Q But you would treat it as -- to the extent that  
17 they've continued to have you train these various  
18 officers, that that's a reflection of the fact that they  
19 don't find your training to be improper in some fashion?

20 A If I understand your question, yeah. I believe  
21 that what I do is acceptable by the department standards.

22 Q Okay. Does the -- do you recall -- hold on one  
23 second.

24 Do you recall any conversations you had with  
25 the other driver in this case?

1 A No, I don't.

2 Q Do you recall any follow-up contact with any of  
3 the individuals involved in this case?

4 A I ran into, I believe, Dr. Orban's husband at  
5 Tampa General Hospital where I think I was down there on  
6 another call. And I don't believe he made any indication  
7 of any knowledge of me while I was at the hospital. But  
8 I think I received a call after I left the hospital and  
9 he began discussing this traffic crash. And this is  
10 quite a bit of time, I think, after the crash itself.

11 And I indicated to him that I didn't feel  
12 comfortable answering any questions on the phone because  
13 I understood that there was pending civil litigation.

14 Q Okay. Do you recall anything else about that  
15 conversation?

16 A With the husband? No, sir.

17 Q Do you recall having any additional  
18 conversations with Barbara Orban after this night?

19 A No, I don't.

20 Q Okay. Let me show you the --

21 MR. MAGRI: We'll mark this as Exhibit 2. I  
22 guess you can mark it down here where there's no  
23 writing.

24 (Exhibit 2 marked for identification.)

25 MR. MAGRI: In fact, why don't we mark this as

1 Exhibit 3 while we're off the record and he's  
2 looking at that?

3 (Exhibit 3 marked for identification.)

4 BY MR. MAGRI:

5 Q All right. I've handed you Exhibit 2. Take a  
6 moment and take a look at it. Tell me if you recognize  
7 that.

8 A This is an exchange or a short-form face sheet.  
9 This is not in my handwriting. It has Dr. Orban's name  
10 in Section 1 and a Matthew Collins listed as the driver  
11 in Section 2. References the date of March 27, 2000,  
12 with a report number.

13 Q Okay. Would that be the date of the accident?

14 A Yes. That's documented on the exchange. That  
15 would have been the date of the crash.

16 Q Okay. Does it tell us anything about the  
17 accident and its location and the circumstances?

18 A Yeah. I can see it's incorrect as "on street  
19 or highway: MacDill Avenue," which it wasn't. It was on  
20 Howard Avenue, I believe 20 feet south of the  
21 intersection with Bristol Avenue.

22 And it indicates for damage amount on each  
23 vehicle about \$500, which, again, is not an exact  
24 estimation but kind of a ballpark figure to reference how  
25 much damage was observed.

1 The signature and the name on the bottom is  
2 Officer Duncan with his payroll and badge number. And  
3 again, because this is not my handwriting, I would assume  
4 it's Officer Duncan's handwriting.

5 Q Okay. May I see that again?

6 A Uh-uh.

7 Q Does the \$500 that it lists as the estimated  
8 amount of damage on each car -- is that consistent with  
9 the 1,000 you have on the ticket?

10 A Yes, sir.

11 Q All right. Now, let me show you Exhibit 3.  
12 Take a moment. Take a look at that. Tell me if you  
13 recognize it.

14 A This is, as I referenced, a long form.

15 MR. MAKHOLM: Excuse me one second.

16 Counsel, can we look at that, please?

17 MR. MAGRI: Sure.

18 BY MR. MAGRI:

19 Q While they're looking at it, do you review the  
20 documents that are prepared by Officer Duncan? Like, for  
21 instance, Exhibit 2 -- would you review that?

22 A Yes, sir. It would have been reviewed before  
23 submission.

24 I see a discrepancy at this point. As I  
25 recall, the accident happened on Howard Avenue. And both

1 the exchange, or short form, and the long form indicate  
2 MacDill Avenue. So if it did occur, as I recall, on  
3 Howard Avenue, that would have been something that I  
4 missed in my review of the reports.

5 Q Okay. Does MacDill intersect with Bristol?

6 A I can't recall. I think west of Howard,  
7 Bristol turns into a residential area. It's an older  
8 street with older houses. And I'm thinking of the west  
9 side of MacDill. In that area is more business. Just  
10 being familiar with the area, I'm pretty sure it was on  
11 Howard Avenue.

12 And like I said, I can recall -- I thought we  
13 were near the Meeting Place restaurant and the parking  
14 lots there and so on. Like I said, that would have been  
15 something in my review that I missed that he put it as  
16 MacDill throughout the report and it was actually on  
17 Howard Avenue.

18 Q Okay. Do you recognize Exhibit 3?

19 A Again, it looks like -- and still the same.  
20 Can't tell if it's the same format we've had because  
21 they've changed these over the years. There's different  
22 shaded areas on the reports now. I don't recall any  
23 shaded areas on the long form. It's similar, at least,  
24 to the long-form crashes that we use still.

25 Q Do you recognize the handwriting?

1 A Yeah. The handwriting is not mine.  
 2 Q Okay. Does it have a date of accident?  
 3 A March 27th of 2000.  
 4 Q And again, it has MacDill and Bristol?  
 5 A Yes, sir. That the crash occurred on MacDill  
 6 approximately 20 feet south of Bristol Avenue.  
 7 Q Okay. Does it indicate any of the  
 8 circumstances of it?  
 9 A It provides on Page 1 the information on the  
 10 drivers and involved vehicles.  
 11 Page 2 there's some different codes that  
 12 indicate what determinations were made or road conditions  
 13 at the time. At the bottom of Page 2 there's a section  
 14 for who was cited for a violation: The citation number,  
 15 name, charge, statute number.  
 16 Page 3 is a narrative giving a brief written  
 17 explanation of what was determined to have happened in  
 18 the crash. It also has a spot for any witnesses, which  
 19 is shaded where I can't tell if there were any listed or  
 20 not. The bottom of Page 3 is where the names go of the  
 21 investigating officers.  
 22 And then Page 4 is a hand-drawn diagram of the  
 23 information gathered as far as how the crash occurred.  
 24 Q Okay. Just see it.  
 25 Is the -- this indicates that the time of the

1 crash was 6:30?  
 2 A Yes, sir.  
 3 Q Time officer notified 6:35, and time officer  
 4 arrived at 6:45?  
 5 A Yes, sir.  
 6 Some of those are estimations. The time of the  
 7 crash -- the only truly accurate time is generally the  
 8 time officer notified because that would be on the call  
 9 as far as dispatch. If this had been serious injury or  
 10 fatality, you can go back and have radio check the exact  
 11 times as far as when the call came in to radio and when  
 12 it was dispatched and when you arrived on scene if you  
 13 notified radio of that.  
 14 With the current computer system, the time it  
 15 was received on radio and the dispatch time are  
 16 automatically displayed on the computer. And then your  
 17 arrival time is sometimes an estimation about how long  
 18 you think it took you to get there after getting the  
 19 call.  
 20 Q But given the fact that this didn't involve a  
 21 serious injury --  
 22 A There wasn't any specifics necessarily gathered  
 23 as far as that. The only time that I would say is  
 24 probably the exact or accurate may be the time officer  
 25 notified.

1 Q Okay. Would there still be a record of that,  
 2 do you know?  
 3 A I don't know how long radio communications  
 4 keeps any sort of -- I would doubt they'd have tapes. I  
 5 don't know what kind of records they have there.  
 6 Q Okay. This indicates that the number of lanes  
 7 there were two?  
 8 A Yes, sir.  
 9 Q Does that mean one going in one direction and  
 10 the other in the other?  
 11 A In this case, yes, sir.  
 12 Q All right. And it says "undivided"?  
 13 A That would mean that it's a bidirectional  
 14 roadway, that it's not a one-way road.  
 15 Q Okay. Then it says "20 feet" --  
 16 A South of Bristol. That would be an estimation  
 17 on the distance from the south road edge of that  
 18 intersection, or actually the south road edge of  
 19 Bristol -- an estimation of how many feet south.  
 20 Q Okay. And then it says "estimated miles per  
 21 hour." For one of the vehicles it lists it as "5-10"?  
 22 A He put it down at five to ten miles an hour.  
 23 And again, a lot of that is based on statements of the  
 24 involved parties as well as the observed damage to the  
 25 vehicles.

1 We're not experts as far as -- some people are  
 2 trained in it. We're not experts as far as looking at  
 3 damage and determining speed. But that's based on the  
 4 minimal damage that that was an approximation of the  
 5 speed she might have been going.  
 6 Q Okay. You would expect minimal damage from  
 7 that sort of speed?  
 8 A Yes, sir.  
 9 Q Okay. The other vehicle is listed as going  
 10 zero miles per hour?  
 11 A Yes, sir.  
 12 Q Does that mean it was stopped?  
 13 A Yes, sir.  
 14 Q Don't, typically, for following too closely you  
 15 need two vehicles -- both vehicles to be moving?  
 16 A I'm not a traffic expert, even though I've had  
 17 an extensive experience investigating traffic crashes.  
 18 I've heard different philosophies on either following too  
 19 closely or careless. And I can't truthfully recall at  
 20 this point which explanation was determined to be  
 21 correct.  
 22 Following too closely may be that both vehicles  
 23 are still moving and somebody runs into the back end of a  
 24 still-moving vehicle. And the counter to that was if the  
 25 vehicle stopped in front and a vehicle runs into the back

1 of it, one of them is supposed to be following and one  
2 was supposed to be careless. But again, that's  
3 interpretation.

4 And I don't know specifically how the statutes  
5 were intended. I know that both generally cover the  
6 incident of running into the back end of somebody.

7 Q Is there a point in time when you were doing  
8 this that you had a better idea of that?

9 A I think specifically after I'd been instructed,  
10 I think I turned in a ticket for either careless or  
11 following too closely and was corrected by somebody who  
12 was more knowledgeable about traffic violations that  
13 whichever I had done was not the correct violation to  
14 cite somebody with. And that's long ago enough now that  
15 I don't recall which is the right explanation and which  
16 one is incorrect.

17 Q Okay. Dr. Orban recalls you telling her that  
18 following too closely, you usually needed to have both  
19 vehicles going together. Is that --

20 A That could have been correct at the time. Like  
21 I said, I can't recall specifically at that time where or  
22 what my thought process was as far as those two different  
23 statutes.

24 Q Okay. Is there a place on here where it  
25 described where the impact was? I see an "8" down here.

1 A As far as the points on vehicles where it made  
2 contact?

3 Q Yes.

4 A Vehicle 1, which was indicated as Dr. Orban's  
5 vehicle, has the front of the car figure -- Number 1 is  
6 circled and point of impact, which is a separate block.  
7 Point of impact, circle area of damage, which would have  
8 been the initial striking point, was also indicated as 1,  
9 which would indicate the front of her vehicle and on  
10 Vehicle 2, which was the other involved vehicle.

11 The Number 8, which is the rear of the vehicle  
12 diagram, is circled, as well as Number 8 listed as the  
13 point of initial impact, which would indicate the rear of  
14 the other involved vehicle.

15 Q Okay. Is there always a ticket issued when the  
16 front of somebody's car bumps the rear of someone else's  
17 car?

18 A Generally. Yes.

19 Q Is that always the case?

20 A I would say almost always.

21 I can remember one crash investigation I had  
22 where I think a vehicle struck another vehicle in the  
23 rear with its front. And the circumstances in that  
24 case -- there was a small child in the front seat that  
25 had kicked the gear shift or shift lever into reverse

1 from drive where it dropped the transmission on the  
2 vehicle and it stopped abruptly and the vehicle behind  
3 struck that vehicle.

4 And I think in that case, because of the  
5 circumstances, I didn't issue a citation. And as I  
6 recall, I was instructed later that I probably should  
7 have.

8 Q Okay. If there's a crash and you decide not to  
9 issue a citation, do you have to contact a supervisor?

10 A I think I've read through that policy either  
11 once or maybe more over my career. And I think it  
12 indicates that, yes, if you're not going to cite  
13 somebody, I believe you're supposed to get supervisory  
14 approval.

15 Q Have you ever done that?

16 A Gotten supervisory approval?

17 Q Or called them for it.

18 A I don't necessarily want to get myself in  
19 trouble for admitting to not obliging by policy, but I  
20 can't recall from specific case to case if I've notified  
21 them every time where I haven't or have made a  
22 determination not to issue a citation. I can say  
23 honestly that there's been cases where I haven't issued a  
24 citation and haven't notified the supervisor.

25 Q Okay. Have there been cases where you

1 contacted a supervisor?

2 A I believe so. And again, I can't remember  
3 during my career at what point that might have been where  
4 there was maybe some question in my mind about how to  
5 handle the situation. Either there were -- generally  
6 that's when there's divergent stories and there's no  
7 independent witness to relay what happened.

8 I can't recall specific instances, but I know  
9 at different times that I've raised a supervisor to run  
10 the scenario by him and get approval.

11 Q Okay. And when you're calling him in those  
12 instances, do you recall any specific ones?

13 A No, I can't. Again, I just generally think at  
14 some point I probably did call a supervisor to advise him  
15 that I had made the determination that I wasn't going to  
16 issue a citation and seeking the authorization to do  
17 that. I don't recall any specific instances.

18 Q Did you ever have an instance where the  
19 supervisor said, "Well, no. I think you ought to write  
20 one"?

21 A The only time I can remember any review of a  
22 supervisor was after the circumstance I gave you, just  
23 for a specific instance, where I didn't issue a citation  
24 because of the vehicle going from drive to reverse where  
25 I didn't issue a citation and was instructed afterwards

1 that the vehicle that was trailing, no matter what  
2 happened in front of him, should have allowed enough room  
3 to react to the situation.

4 Q Okay. Aren't there some times when you can  
5 just have an accident without one car or the other being  
6 at fault?

7 A I think there's mutual -- or there's -- if two  
8 vehicles were to merge toward the same lane, if there's,  
9 say, a three-lane roadway -- because I've almost done it  
10 myself -- and there's a center lane, say, on the  
11 interstate and both vehicles start moving toward that  
12 center line at the same time and they've been running  
13 about evenly as they're going in the same direction, I  
14 could see where two vehicles could glide and you could  
15 determine that maybe that nobody's -- you know, somebody  
16 is at fault because two vehicles ran into each other.  
17 But that specific situation probably would be a case  
18 where I didn't cite anybody unless I had an independent  
19 witness.

20 Q Have you ever had a case like that?

21 A That specific example I've given you was from  
22 personal experience where I've almost done that. As far  
23 as investigating a crash where -- I can't recall  
24 specifics -- where there's been mitigating circumstances  
25 where maybe neither driver was at fault, I'm sure there's

1 the rear end of somebody, it's a fairly straightforward  
2 issuance of a citation to the trailing vehicle.

3 So in this case why I would have notified my  
4 supervisor, I really don't know. If that's her  
5 recollection, it's possible that that happened.

6 Q Okay. She maintains that in this accident she  
7 was following a large SUV which made an abrupt -- no  
8 signaling or no indication -- turn, left turn at the  
9 intersection. And then she discovered there was traffic  
10 backed up from the intersection -- not that one right  
11 there, but the one before, all the way almost back to it.

12 Could that description have been a reason why  
13 you called a supervisor to --

14 A We're getting into more specifics than what I  
15 recall. I don't recall her statement as far as an SUV  
16 making an immediate left turn in front of her, and I do  
17 not recall contacting a supervisor or why I would have  
18 contacted a supervisor in those circumstances. It's  
19 fairly straightforward for investigations I've done that  
20 a citation would have been issued.

21 Q Okay. If she had told you about the SUV  
22 turning, is that something that should have been  
23 documented?

24 A Not generally if it was a non-contact vehicle  
25 and it wasn't a -- about the only time that you'd have a

1 been cases, but I can't recall anything specifically now.

2 Q The policy that TPD has says that if you  
3 determine that the issue -- in a crash, except where  
4 someone is deceased -- if you determine that issuance of  
5 a citation is inappropriate, you need to get supervisory  
6 approval.

7 A Like I said, from my review of policy, which I  
8 guess is as needed, yeah, I can recall reading that at  
9 some time or another in my career.

10 Q Okay. Now, do you know why that policy is  
11 there?

12 A As far as seeking supervisory approval? No, I  
13 don't.

14 Q When you were told you should have issued a  
15 citation in that instance, who told you that?

16 A My supervisor. I don't recall who it was at  
17 the time.

18 Q All right. Was that documented in any way?

19 A No, sir.

20 Q Dr. Orban recalls you telling her that night  
21 that you had contacted the supervisor about this  
22 accident.

23 A I can't contradict her recollection. I don't  
24 recall if I did or not in that case. I don't know why in  
25 this case I would have because generally, if you run into

1 non-contact vehicle documented in the report is, again,  
2 if there was an independent witness saying, "Oh, yeah.  
3 The vehicle cut that vehicle off, causing them to take  
4 evasive action which ran them into another car."

5 It almost has to come down to an independent  
6 witness saying, "Yes. There was another vehicle that  
7 caused the crash that is not here at this time."

8 In this case, no. That falls back on -- you're  
9 supposed to allow enough following distance behind a  
10 vehicle to react to whatever happens in front of you as  
11 far as stopping, changing lane, whatever, to avoid  
12 collision with the vehicle in front.

13 So whether she had said that or if she did say  
14 that, I don't recall that at this time. And, no. It  
15 probably wouldn't be reflected in the report if she did  
16 say it.

17 Q Is the -- if someone does cut off a vehicle and  
18 that leads to the vehicle swerving and getting into an  
19 accident and you have an independent witness of that  
20 fact, does the person that swerved and then hit some  
21 other vehicle -- are they cited?

22 A If there's -- and I've had very few crashes  
23 where I've done a non-contact vehicle. I've had cases  
24 where people have used an excuse of another vehicle, and  
25 it could have been that there was another vehicle that

1 may have contributed to a crash.  
2 But without having an independent witness,  
3 generally what's found to be the at-fault contacting  
4 vehicle would be cited. And I forgot what your specific  
5 question was as far as that.

6 Q Okay. If you had another witness in that  
7 instance where the independent witness said that the  
8 vehicle cut off this vehicle, causing them to swerve, in  
9 that circumstance would you find them at fault?

10 A With this specific case where, if, based on  
11 Dr. Orban's recounting of it, there was a vehicle in  
12 front of her going the same direction, which is  
13 southbound in the same lane, that failed to signal a turn  
14 and just made a left turn and then all of a sudden the  
15 roadway in front of him is exposed, no. I wouldn't  
16 consider that necessarily a contributing factor to the  
17 crash.

18 If she was southbound and a vehicle that was  
19 going northbound violated her right of way, if the other  
20 vehicle had committed an offense, say violating her right  
21 of way, and to avoid a collision with that vehicle, had  
22 taken evasive action and struck another vehicle, then,  
23 yeah. That would be something that I would probably put  
24 into the report.

25 Q Okay. What if the vehicle that she was

1 that there should be enough room to the vehicle in front  
2 of you that you can react to it, especially at a lower  
3 speed that, "Okay. Something happened in front of her,"  
4 you know, that you're going at a slow enough speed that  
5 you can react to it. It's kind of related to the speed  
6 that you're traveling, how much distance there should be.

7 Q What if you have enough space between you and  
8 the vehicle in front of you, but the vehicle in front of  
9 you does something negligently? In other words, the  
10 vehicle in front of you now engages in some negligent  
11 action?

12 MR. MAKHOLM: Objection. I think you should  
13 explain what kind of negligent action. I don't know  
14 how he can answer that.

15 MR. MAGRI: Okay. I'll explain it -- at least  
16 one.

17 BY MR. MAGRI:

18 Q The vehicle has failed to observe stopped  
19 traffic in front of him. Okay? And he's now gotten to  
20 the point where he realizes he can't stop.

21 A Yes, sir.

22 Q The only thing he can do is make an abrupt turn  
23 to get out of the way of that traffic -- okay -- so that  
24 he doesn't hit it.

25 A Right.

1 following going southbound made that turn because that  
2 vehicle had -- the driver of that vehicle had been  
3 distracted, hadn't paid attention to the traffic in front  
4 of him and then when he finally realized that there was  
5 traffic in him, felt the only way he could avoid a crash  
6 is by making an abrupt turn to the left and, therefore,  
7 when Dr. Orban -- when he gets out of Dr. Orban's view,  
8 she's now confronted in the situation that he was in?

9 A You're getting into specific or hypotheticals,  
10 I guess.

11 My understanding and the way I personally drive  
12 and would account for my own personal driving is, you're  
13 supposed to allow enough distance in front of your  
14 vehicle in that direction of travel to respond to pretty  
15 much anything that happens in front of you. And that's  
16 where it's the ten miles or ten feet per ten miles per  
17 hour, whatever the formula is.

18 And again, to go to a personal -- you know, I  
19 allow enough following distance, which people then cut  
20 into. But I've got a judgment of what my reaction time  
21 is to something happening in front of me.

22 And you see in your own personal driving  
23 probably where people are too close to the vehicle in  
24 front of them. So I can't say.

25 Basically, that's my personal philosophy, is

1 Q At that point, you following him, find yourself  
2 confronted with the scenario that his negligence had  
3 caused him to be confronted with.

4 A But he's vacated a space of whatever his  
5 vehicle's distance or length is. And my personal feeling  
6 on that should be that there should be enough reaction  
7 time or distance allowed to react to whatever is in front  
8 then of that vehicle.

9 If that vehicle immediately swerves out of the  
10 lane, you have at least the length of that vehicle plus  
11 what distance you had allowed for following that vehicle  
12 in front of you. So basically, you have an open space  
13 where that vehicle has vacated that you should have  
14 plenty of distance to react to whatever they were  
15 reacting to in front of them.

16 Going back to the gear shift going from drive  
17 to reverse, that's a vehicle directly in front that  
18 stopped dead in the traffic and there is no vacated  
19 space. And you should still allow enough distance to  
20 react to whatever that vehicle in front of you does.

21 So in the specific scenario you're giving, if  
22 that vehicle takes an evasive action and vacates a space,  
23 you now have that much additional space in between the  
24 vehicle in front of you the distance that they vacated,  
25 which would be the length of their vehicle plus your

1 properly-allowed following distance to the vehicle that  
2 moved out of your lane.

3 Q And so you would assume that in giving someone  
4 a ticket in that circumstance that the way the vehicle  
5 turned left you had enough room to stop?

6 A There should have been enough following  
7 distance behind, again, this vehicle that vacates the  
8 lane that you could have reacted to anything that that  
9 vehicle did.

10 So, again, yes. If there's a space vacated now  
11 to the vehicle that was in front of that vehicle, there  
12 should be plenty of room to react to whatever is going on  
13 in front of them.

14 Q Okay. What was this ten feet for ten miles?

15 A I don't know what the specific formula is. I  
16 know there is a formula that's recommended for following  
17 distance, and I can't remember if it was ten feet or what  
18 the -- that may be about right. I can't remember.  
19 There's some formula, and it's not a specific scientific  
20 whatever. It's just a recommended driver's education  
21 type, if you're going this speed, allow this much  
22 distance in between.

23 I know that I have a personal space that I'm  
24 comfortable with that I can react to pretty much anything  
25 that happens in front of me, which most other drivers

1 with careless because I think that was the instruction I  
2 was given at the time when I was doing -- I thought  
3 following too closely was a more specific statute to the  
4 circumstance.

5 And I think that's where I was corrected, that  
6 both vehicles had to be moving to use following too  
7 closely. I could have that wrong after this period of  
8 time, but I think that's where -- a case like this today,  
9 if I was investigating, I would cite the driver with  
10 careless driving.

11 Q What's careless driving? What's the criteria  
12 for that?

13 A Again, that's going -- two people that are --  
14 you know, as far as reading the statute, interpretation  
15 of the statute, I think with careless and that being an  
16 issue -- at one point where I stopped issuing for  
17 careless driving and gone to the following too closely  
18 because careless, I believe, is supposed to have other  
19 elements than just one element, that there's -- it's just  
20 short of reckless driving. It's not just that you were  
21 too close; maybe that you were going too fast and you  
22 were too close or that there's supposed to be other  
23 elements.

24 But I know in my investigations now of careless  
25 driving, I haven't had them kicked back in a circumstance

1 don't oblige. Like I said, if I'm on the interstate, I  
2 know, just through my experience of driving pretty much a  
3 safe distance, and I follow generally further back than  
4 most cars that I see on the roadway, and I have people  
5 cut in front of me and then I have to fall back from  
6 them.

7 But there is some recommended -- like I said, a  
8 driver-education-type formula or something for following  
9 distance.

10 Q Okay. You're talking about something that  
11 driver's education recommends?

12 A Yeah. It's not, like I said, as far as I know,  
13 anything scientific. It kind of allows for natural or  
14 normal reaction time. If you allow this much space in  
15 between the vehicle in front of you, you should be able  
16 to react to whatever happens in front of you.

17 Q What is the definition of following too  
18 closely?

19 A To be specific, I'd have to pull out a statute  
20 book. I'm not a traffic guru.

21 Like I said, I have a lot of experience  
22 investigating accidents. That's part of my patrol  
23 responsibilities. And the discrepancy between what  
24 following too closely is and what careless is -- I think  
25 now generally in a case like this I would cite somebody

1 like this where at one time a supervisor who was more  
2 knowledgeable of traffic or interpretation of traffic  
3 statutes had corrected me in what I was doing. And I  
4 think that's where I switched from a following too  
5 closely back to using the careless statute.

6 Q Okay. So there was a time when you thought  
7 careless driving required two actions?

8 A Multiple elements for the issuance of a  
9 citation.

10 And like I said, I think looking at statutes or  
11 whatever, I felt at that time that a following too  
12 closely was a more specific interpretation of the law for  
13 striking somebody in the rear end or not allowing enough  
14 space.

15 Q But at some point you believe you learned that  
16 the two vehicles ought to be moving for following too  
17 closely?

18 A I believe so.

19 Q And then is there another point where you  
20 determined that you don't need two actions for careless  
21 driving?

22 A I still think that may be the case.

23 As with all statutes that we deal with, a lot  
24 of it -- I'm sure there's court rulings. There's  
25 everything else. But statutes are written -- to me, some

1 statutes look black and white. And I think when I  
2 started doing following too closely, that may have been a  
3 clear black-and-white, to me, interpretation of, "Okay.  
4 You hit somebody in the rear and didn't allow enough  
5 distance," and it looked like a good statute.

6 But different court rulings, or whatever it may  
7 be, may have affected the way those either statutes or  
8 violations are interpreted. It may not be specifically  
9 how it is in the statute book.

10 So I guess my understanding of careless today  
11 would still be the same, that -- yeah -- I think there's  
12 probably more elements required, but it's a citation that  
13 covers a crash and basically doesn't get kicked back when  
14 you issue a citation for it.

15 Q Say that one again now.

16 A That by issuing careless-driving citations now  
17 in a circumstance similar to this, I haven't had any  
18 reports or citations handed back from a supervisor  
19 saying, "No. You need to cite them with this instead of  
20 this."

21 When I had gone from either the following too  
22 closely to the careless or the careless to the following  
23 too closely, that was working with a supervisor who was  
24 more of a traffic person. Said, "No. This doesn't  
25 apply. You need to use this statute."

1 Vehicle 2 in the rear at low speed. He's got  
2 specifically that the driver of Vehicle 1 failed to  
3 observe Vehicle 2 in time and struck Vehicle 2 at the  
4 point listed on the diagram. And Vehicle 2 was stopped,  
5 heading southbound on -- and again, he's got MacDill  
6 Avenue where I think it was Howard Avenue.

7 Q Now, he only indicates one bad or one improper  
8 action. Right?

9 A Yes, sir.

10 Q And he should have listed more than one.  
11 Right?

12 A If, like I said, the interpretation of careless  
13 driving or the way it's written is that there's more than  
14 one element, then, yes. Careless driving may not be the  
15 appropriate charge.

16 But again, just recalling specifically with  
17 discrepancies between careless and following too closely,  
18 I think it was that I had been corrected in the past on,  
19 "Don't issue for following too closely." In this  
20 circumstance, it was careless, or that applies -- or is  
21 the applicable statute of the tens of thousands of  
22 statutes, I don't know.

23 Q Okay. Now, is the citation supposed to contain  
24 a description of what the careless driving was?

25 A I don't know whether it's supposed to. I know

1 Q Okay. With regard to the circumstances of the  
2 accident, is that -- is the description of that contained  
3 on Pages 3 and 4 of the long form?

4 A Page 3 would be a brief written narrative  
5 explaining the information that was gathered from the  
6 involved drivers and observations.

7 And again, I can see a discrepancy on that  
8 where I recall that it was on Howard Avenue and he's  
9 documented throughout that it was on MacDill.

10 I think if Officer Duncan had listed on the  
11 front page MacDill and in the narrative had put Howard, I  
12 probably would have noticed that discrepancy because it  
13 ran throughout the report. When I reviewed it, I didn't  
14 pick that up.

15 But Page 3 is a written narrative and then  
16 Page 4 is a hand-drawn diagram kind of relaying the  
17 information that had been gathered.

18 Q Okay. What's his description of the accident?

19 A The Vehicle 1, which was Dr. Orban's vehicle,  
20 was southbound on -- and he's got it listed as MacDill.  
21 Again, as I recall, it was Howard Avenue.

22 And that's something where I wrote the citation  
23 and I put Howard Avenue. So again, I think it was  
24 something I missed.

25 But Vehicle 1 was southbound and struck

1 I've never done that.

2 It's got a block to check that careless is one  
3 of the specific written violations on top and then you  
4 put in the statute number that associates with the  
5 violation. If the violation is not in the preprinted  
6 options, then you handwrite in in the block below what  
7 the violation is that you're citing for.

8 Q Okay. Now, I take it that in terms of the  
9 description that's given here or the diagram, this is  
10 something that you're going based on what you were being  
11 told at the time.

12 Because the vehicles were in the parking lot at  
13 that point. Right?

14 A Correct.

15 Q Now, the --

16 MR. MAKHOLM: Counsel, can I interject? What  
17 exhibit are you referring to right now, just for the  
18 record?

19 MR. MAGRI: The long form.

20 MR. MAKHOLM: Is that 3?

21 MR. MAGRI: 3.

22 MR. MAKHOLM: Thank you.

23 BY MR. MAGRI:

24 Q This indicates that there -- if I look at  
25 Page 2 of 4 on there, that says there -- it says "no

1 defects," "vehicle defect: No defects," I think. It  
 2 says "01."  
 3 That means no defects?  
 4 A Correct.  
 5 Q So in other words, no defects in the vehicle  
 6 caused the accident?  
 7 A Not that information we've gathered -- and I  
 8 can go to different crashes I've investigated. If  
 9 somebody said, "Oh, my brakes failed," or whatever, that  
 10 may be indicated somewhere in either the narrative or in  
 11 that code, or if we could show that there was a vehicle  
 12 defect. But that would indicate to me that nothing was  
 13 relayed that there was a brake problem or anything else.  
 14 Q Okay. This says "road system identifier: 05."  
 15 That would mean local?  
 16 A Yes, sir.  
 17 Q All right. And then this says "road surface  
 18 condition." It says "01, dry."  
 19 A Yeah. That doesn't match my recollection of  
 20 the circumstances. I thought it was wet out. I thought  
 21 it had either just rained or was raining or started  
 22 raining, and that might have been my impression as we  
 23 were doing the investigation.  
 24 Q Okay. It gives the road surface as being  
 25 blacktop.

1 Do you know if that's accurate?  
 2 A There's brick down there somewhere, and I can't  
 3 recall at that specific location if it's brick or  
 4 blacktop.  
 5 Q All right. It says "contributing causes,  
 6 road."  
 7 "01" means no defects. Right?  
 8 A Yes, sir.  
 9 Q It says "contributing causes, environment:  
 10 01."  
 11 That means vision not obscured?  
 12 A Yes, sir.  
 13 Q Now, if someone explained to an officer that  
 14 their vision was obscured by a vehicle that was in front  
 15 of them that abruptly turned, shouldn't they have filled  
 16 out "vision obscured"?  
 17 A No. I wouldn't have taken that as an  
 18 indication.  
 19 What I think of more is an improper setback on  
 20 a building where the roadway -- and I can think of a  
 21 specific street where you have to pull up into an  
 22 intersection too close because a building is too close to  
 23 the roadway or overhanging brush or tree limbs that may  
 24 block a traffic-control device.  
 25 But, no. Just because a vehicle in front of

1 you did something and then you ran into a vehicle where a  
 2 space was vacated, I wouldn't even at this point indicate  
 3 that as vision obscured.  
 4 Your vision of the traffic in front of you is  
 5 not obscured at that point. Now, what's happening in  
 6 front of that vehicle may be obscured from your view.  
 7 But, no. I wouldn't take that even now as a vision being  
 8 obscured. That was my interpretation of it.  
 9 Q Okay. But if what's happening in front of the  
 10 vehicle where you could -- of which your vision could be  
 11 obscured --  
 12 A Yes, sir.  
 13 Q If that had played some part in the accident,  
 14 wouldn't that be significant?  
 15 A I would look more at environmental  
 16 circumstances, I think, rather than a -- like in this  
 17 specific scenario that you're presenting.  
 18 No. If you can see a vehicle in front of you  
 19 and something is in front of that -- and again, where  
 20 this vacates and you run into a car that's in front of  
 21 the vehicle that vacated a space, I still wouldn't  
 22 interpret that as a vision obscured.  
 23 A lot of these, I think, are personal  
 24 interpretations on some of those codes. And again, this  
 25 could go back to -- I don't know when in my career

1 that -- you know, whether it was academy or after the  
 2 academy when somebody might have gone through step by  
 3 step what each one of these codes means. But that's my  
 4 personal interpretation of that.  
 5 Q At the academy you're taught about how to fill  
 6 these things out?  
 7 A Yes, sir.  
 8 Q Are there other points where --  
 9 A I think when they've changed forms at different  
 10 times -- which, with the long form there hasn't been  
 11 major changes; there have been some. And I think there's  
 12 a state-issued booklet that goes specifically with the  
 13 form that tells each section how to fill it out or  
 14 whatever.  
 15 You know, when I would have been trained in  
 16 that or remembered that or reviewed that, I don't recall  
 17 post the academy when we were going through and probably  
 18 were specifically instructed on each of those blocks.  
 19 Q Would Officer Duncan have been out of the  
 20 academy for a few weeks at the time this was done?  
 21 A As I recall, when I was training, I was getting  
 22 primarily Phase 3 or prior-experienced officers. I don't  
 23 know if somebody was looking out for me or whatever, but  
 24 I had -- I didn't have, as I recall, the Day 1 rookies.  
 25 I think I had rookies that were further advanced in the

1 program.  
2 IF I recall with Officer Duncan, I think he  
3 might have been in Phase 3, which is about three-quarters  
4 of the way through the training program.

5 Q Which is how many weeks total?

6 A The entire program is the 16 weeks. The first  
7 phase is six weeks. The second phase, unless they're  
8 extended, is four weeks. So that's ten weeks. So he  
9 would have been on the street -- should have been at  
10 least ten weeks.

11 Q All right. The next block says "traffic  
12 control" and it's got "01."

13 What does that mean?

14 A Just that at the specific location there wasn't  
15 either a stop sign, red light or traffic signal.

16 I guess where I indicate on that -- if it  
17 happens at an intersection, you generally have a  
18 traffic-control device that's involved. If it's in the  
19 middle of a street or it's not in an intersection, that  
20 would be where there would be an indicator of no specific  
21 traffic-control device.

22 Q Okay. If you got an "01, not at intersection,"  
23 et cetera, on-site location -- "01" means not at  
24 intersection, railroad crossing or bridge?

25 A Yes, sir.

1 black and white you've got to be within so many feet of  
2 an intersection or this has got to be happening to put  
3 this code in here.

4 Q Does the fact that the individual turned out of  
5 the -- that a car she was following turned abruptly at an  
6 intersection -- is that influenced by the intersection?

7 A Again, that would be the determination of the  
8 officer, interpretation or information he gathered.  
9 Yeah. That could be considered influenced by the  
10 intersection.

11 Q What's the significance of whether something is  
12 influenced by an intersection or not influenced by an  
13 intersection?

14 A Again, I think that goes to personal  
15 interpretation and the way a specific officer may  
16 document something.

17 I can only speak for myself how I would  
18 consider that. I guess, again, if they were approaching  
19 the intersection -- which, in your case that you're  
20 giving, yeah, they were still -- they were just quite a  
21 ways north of it. I'd have to think it would be within a  
22 car or two for me to put that down, that somebody stops  
23 at a yellow light instead of the pending red light or  
24 whatever, comes to an abrupt stop and somebody catches  
25 the tail end of that vehicle, I may consider that

1 Q And that would be true even though it was, say,  
2 20 feet from the intersection?

3 A Yes.

4 On this -- if I can see the diagram for just a  
5 second. If they'd been heading northbound and they were  
6 within 20 feet of entering that intersection and  
7 something happened in the intersection that contributed  
8 to the accident, at that point I would probably put that  
9 it was influenced by the intersection if it was related  
10 to the intersection.

11 In this case, because they're going southbound  
12 and they're south of the intersection, there's no  
13 indication of an immediate intersection coming out.  
14 That's why it would have been indicated as not influenced  
15 by an intersection.

16 Q All right. If the traffic had been backed up  
17 all the way to the intersection, which is south of where  
18 the accident occurred, back to where the accident  
19 occurred, would that warrant influence by the  
20 intersection?

21 A Yeah. Technically, that could be influenced by  
22 the intersection at that point.

23 And again, that's kind of personal to the  
24 officer how they investigate it, how they interpret it or  
25 how they document it. I don't think there's a clear-cut

1 influenced by the intersection.

2 I'm sure there's other circumstances. In this  
3 one, I think just because of the distance to the next  
4 intersection, I didn't take that into account or we  
5 didn't take it into account.

6 Q Do you know why there's a box for "influenced  
7 by intersection" -- what the purpose of that is?

8 A No. I don't know.

9 Q All right. This indicates first aid given. It  
10 says "none required at scene"?

11 A Yes, sir.

12 Q There was no ambulance called, I take it?

13 A Not that I recall. No.

14 Q Would there have been a box for any of that?

15 A If treatment was provided.

16 I've been on crashes where you might have fire  
17 rescue or an ambulance respond, but there's no injuries  
18 found or complained about. I probably wouldn't put the  
19 fire-rescue or ambulance information in there if they  
20 didn't provide any treatment.

21 Q Okay.

22 A I don't recall in this case if an ambulance  
23 responded or not.

24 Q There's a box that says "physician, paramedic,  
25 EMT," et cetera.

1 Does that -- I guess that would relate to the  
2 first aid that was given?

3 A Yes, sir. If any was required.

4 Q And so this has just got a slash through it  
5 because none was required at the scene?

6 A Correct.

7 Q Okay. Then it said "injured taken to," and  
8 you've got "nonapplicable"?

9 A Correct.

10 Q No one was taken anywhere?

11 A Right.

12 Q Okay. Now, there's a section over here that  
13 talks about injury. I guess it says "inj."  
14 Is that injury?

15 A Yes, sir.

16 Q And it has a "1." Right?

17 A Yes, sir.

18 Q What does that mean?

19 A I think if I go to the code box below, it  
20 indicates no injury.

21 Q Okay. None?

22 A Correct.

23 Q And that would be for Barbara Orban. Right?

24 A Yes, sir.

25 Q And then safety equipment -- what's that mean?

1 A Again, there's a reference box at the bottom of  
2 that page. If it says "2," I think that was safety belt,  
3 shoulder harness, whatever it is, that's indicated in  
4 that code box.

5 Q All right. And "4" -- what's "4"?

6 A Maybe air-bag deployment. I don't know. I  
7 don't know. He might have -- again, this is his writing.  
8 I wouldn't have indicated if the air bag -- and  
9 I think that's a change in the new reports. I think  
10 there's "air bag deployed/air bag not deployed" on the  
11 new code boxes. So he may have coded that that each  
12 vehicle was equipped with an air bag.

13 I don't recall air bags deploying in that case.  
14 So again, that was -- he might have done that because the  
15 vehicles were air-bag equipped, but I don't recall them  
16 being deployed. And again, that's something I notice  
17 that's a change between that form and the modern forms,  
18 that there's a --

19 Q But there is a number, a "1" which says "not in  
20 use." Right?

21 A For safety belt or no equipment. I believe so.  
22 Yeah. That would be indicative if somebody didn't have a  
23 seat belt on or you could prove that they didn't have a  
24 seat belt on.

25 Q All right. That could also be in terms of any

1 other safety equipment like air bags. Right?

2 A Yes, sir.

3 Q And as far as ejection, that's a "1," which  
4 would mean no. Right?

5 A Correct.

6 Q All right. Now, did they have the same kind of  
7 thing for Vehicle Number 2?

8 A I'd have to refer to the report. They have the  
9 same blocks that you can fill in. I'm not sure what  
10 codes we have on there.

11 Q All right. And did they have the same numbers  
12 written there: 1, 2, 4 and 1?

13 A Yeah. When you get to that part of that line.  
14 The only difference between that coded line is on "6"  
15 where Ms. Orban's code is "2" for female and the other  
16 driver is "1" for male, but everything else looks the  
17 same.

18 Q And you don't recall an air bag being deployed  
19 in his car either, do you?

20 A No, sir.

21 Generally in a rear-end collision the vehicle  
22 that gets struck in the rear wouldn't have deployment of  
23 the air bag.

24 Q Okay. Now -- and this indicates that there was  
25 no injury to that driver. Right?

1 A Correct.

2 Q But if we look at the citation, the box for  
3 injury is checked "yes," that there is injury.

4 A Either -- and again, that would have to be  
5 specific from an incident five years ago. Either by the  
6 time I got to writing this somebody was complaining about  
7 a sore neck or I checked the wrong box for the  
8 information gathered.

9 Q Okay.

10 A That's a possibility. You've got two different  
11 people working on this, one that filled out the report --  
12 and, yes. I'm supposed to review his work. But some of  
13 the code boxes or whatever I obviously missed. I missed  
14 the address on it, for one. So the code boxes may not be  
15 exactly the way I would have filled them in.

16 Q But you don't recall any injury here?

17 A No, I don't.

18 Q Okay. Now, are these forms -- if there's  
19 inaccurate information like that contained on them and  
20 people bring that to your attention, are those ever  
21 addressed with an addendum or anything?

22 A There's an update form that's also a  
23 continuation form. It has -- in fact, I'm not sure on  
24 that one if Page 3 and 4 is an update continuation. I'd  
25 have to look at the modern reports because I'm not sure

1 if it's Page 3 and 4 on the long form or -- actually,  
2 they're unnumbered.

3 But I think on the modern or the most recent  
4 used ones there's a block that you check either  
5 "continuation" or "update." And it's either on this page  
6 or it's on a separate -- we have another form that's also  
7 a state form for traffic crashes that's all blank space  
8 where you can fill in additional information for more  
9 passengers than will fit on the form, additional  
10 witnesses, additional citations, anything else that may  
11 go on there where there's a block that you can check  
12 "continuation" or "update."

13 So, yes. I believe corrections can be made via  
14 one of those forms.

15 Q Okay. I thought -- let me just see.

16 I'm going to show you a document which is  
17 marked as Exhibit D. It's a document that's been filed  
18 in this case.

19 It appears to be part of this Florida traffic  
20 crash report long form, but it seems to come after the  
21 portion that I've shown you -- after the diagram.

22 A Yeah. The copy that you're showing here as  
23 Exhibit C looks to be the same -- a copy of the same  
24 paperwork that you presented as far as the long-form  
25 crash report, as does Page 2 and Page 3. They all look

1 A Captain -- I would assume that's Joe Marks.

2 Q Okay. And Exhibit D is the page we just looked  
3 at. Then there's a "left blank" line running across.  
4 Then there's a page that's says "blank" and then there's  
5 another page or two.

6 What do those relate to, if you know?

7 A The officer's name at the bottom of this report  
8 is Officer K. Howell, who is now a sergeant. And this is  
9 dated -- where he's done what should have been done on  
10 the other form. He's indicating this report or addendum  
11 was completed May 13th of 2002, still in reference to the  
12 crash on March 27th of 2000.

13 Q And who is K. Howell?

14 A He's a sergeant at this point. He was an FTO.  
15 I don't know why or when he would have referenced this  
16 information, you know, two years post when we did the  
17 crash.

18 Q Do you know what he's writing about or what the  
19 purpose of filling that out is?

20 A I think what he's done is either put it on an  
21 updated form or corrected the form that was used for this  
22 amendment.

23 This is the form that I was talking about where  
24 there's an update or continuation. He's updated this  
25 traffic crash. He's corrected the -- on this form,

1 like the same -- a copy of the same report, as does the  
2 diagram.

3 And this is the form -- like I said, I think  
4 it's been updated to where one of these forms has blocks  
5 at the top you can check that say "continuation" or  
6 "update" on the modern forms. And this is a further  
7 narrative with amended information. And this is where it  
8 looks like, again, the same handwriting that completed  
9 the original report that corrects it to traveling  
10 southbound on South Howard Avenue.

11 Q Okay. Any other changes you see there?

12 A The only thing I see -- and again, it's a  
13 shaded area, but it looks like it was completed by  
14 Officer Duncan.

15 If this was done at a different date, that  
16 block should have been put in at the bottom -- the date  
17 of, basically, this report. There's a date of crash  
18 which is referending March 27th of 2000. If there's a  
19 change or an amendment to the original report, that's  
20 where I would indicate on the date of this specific  
21 report so that there's a reference for when this  
22 amendment was completed, because I don't see -- the only  
23 reference I can see is when the narrative was edited,  
24 which was in May of 2001.

25 Q By whom, when you say "edited"?

1 instead of having it as a written narrative correction,  
2 he's gone to the correct form which amends the  
3 information in the original report.

4 And he's indicating that the vehicles were  
5 southbound on Howard. As I recall, that's been corrected  
6 from the original report where it indicated MacDill. And  
7 then he's gone on, as was done in the first amendment, to  
8 put it in a narrative form that the vehicles were  
9 traveling south on Howard.

10 And again, it's basically the same information.  
11 It's just put, I believe, either on a corrected or a more  
12 recent revision of that form.

13 Q Okay. Any other changes you see there?

14 A I was just looking why he'd gone on to three  
15 pages?

16 Q Can you tell?

17 A The first one changes the street that the  
18 vehicles are on. The second one gives a brief narrative  
19 stating that, that they were on Howard Avenue. The third  
20 page reflects no new information that I can see. And I  
21 guess the reason he did that is because that probably  
22 fronts on the diagram page, which is the back side of  
23 Page 4 for the diagram.

24 So he's also updated and corrected the diagram  
25 to change it from the original of MacDill Avenue,

1 correcting the diagram to Howard Avenue. Other than  
2 that, he stayed with the same measurements that were  
3 enumerated in the first report. He's just basically  
4 changed the street.

5 Q Okay. Thank you.

6 When you prepare one of these -- a citation --  
7 a short form, long form -- what happens to them?

8 A At the end of my shift everything gets turned  
9 in to your supervisor.

10 Q Do you know who your supervisor was back then?

11 A It looks like acting Sergeant Wagner, who was  
12 the corporal of the squad. But apparently the sergeant  
13 was out that day, so he was acting sergeant. He would  
14 have edited the report.

15 Q And this is a patrol squad?

16 A It's an FTO squad, was what I was on -- a field  
17 training officer squad.

18 Q Okay. All right. So back at that point  
19 Corporal Wagner would have been your immediate supervisor  
20 on that day?

21 A On that day. I believe he was working for  
22 Sergeant Minnix, who is now retired. Wagner was the  
23 corporal.

24 Q Now, what happens to these forms once you fill  
25 them out?

1 phone numbers. There's a space for the citation number,  
2 the report number and a block that's checked that said  
3 "did not witness crash."

4 And that's submitted, I guess, finally to  
5 violations. If it does go to court and subpoenas are  
6 issued, they're supposed to look at and not issue a  
7 subpoena to the officer because we didn't witness the  
8 crash. We don't have anything we can testify to other  
9 than, basically, the hearsay that we've gathered.

10 Q So what happens to this report?

11 A It ultimately ends up in the records section.  
12 In this case, it's indicated on the side where it was  
13 edited that it was retained at D-1, which just means that  
14 it doesn't go anywhere. It doesn't get referred to a  
15 detective for any latent follow-up. And I think it's  
16 filed with records.

17 So I write it. It goes to my supervisor. Once  
18 he sends it via whatever chain it goes through, it ends  
19 up in records. And basically, I think after my  
20 supervisor has edited a case like this where it's  
21 retained, nobody ever looks at it.

22 Q Okay. Does the report itself go to court?

23 A I believe that -- and I don't know some of the  
24 procedures. I don't know if we have a liaison with the  
25 court where, when a citation comes in, it's got the

1 A Truthfully, I don't know. It's indicated in  
2 the line along with the sergeant's, corporal's,  
3 supervisor's signature that this is retained to D-1,  
4 which means basically it's not -- I know that much. It's  
5 not referred for any detective follow-up, where a traffic  
6 crash involving a hit-and-run or something may be.

7 MR. MAGRI: Speaking of all this, I'm looking  
8 at my watch because I have to go feed my meter.

9 (Brief recess from 12:02 p.m. to 12:17 p.m.)

10 MR. MAGRI: Back on the record.

11 BY MR. MAGRI:

12 Q When you get these reports done, what happens  
13 to them?

14 A As a street officer, I submit it to my  
15 supervisor for editing and then he refers it or retains  
16 it to wherever it's supposed go. So my participation in  
17 the report is pretty much done once it's completed and  
18 submitted to my supervisor.

19 Q All right. Now, did you go to the traffic  
20 hearing that --

21 A Not on traffic crashes if citations are issued.  
22 There's a form that's generally -- and I think it was  
23 back on this date as well. There's a form that's  
24 attached to the back of the citation that lists the other  
25 involved parties, any independent witnesses, addresses,

1 attached sheet that shows witnesses' names and the report  
2 number. Somebody from either the violations bureau or  
3 the department forwards a copy of the report to the  
4 traffic court. I believe it does because I think I've  
5 been in court before where I've seen that they have  
6 reference to the crash report.

7 Q You mean the court has access?

8 A The court has, actually, a crash report. I  
9 don't know what the procedures are that gets that report  
10 or a copy of that report to the court, but I believe that  
11 they do get a copy of the report.

12 Q The reason you don't have to attend is because  
13 you didn't actually observe the accident?

14 A That's correct.

15 Q And so you would only have hearsay testimony to  
16 offer. Correct?

17 A That's correct.

18 Q What's the difference between your report and  
19 your testimony in terms of the fact that it has hearsay  
20 in it?

21 MR. MAKHOLM: Object. I don't think he has the  
22 legal background to explain that.

23 BY MR. MAGRI:

24 Q If you know.

25 A I don't.

1 Q I mean, your report didn't observe the  
2 accident, did it?

3 A No, sir.

4 Q And your report is actually one more step of  
5 hearsay because it's what you wrote down. Right?

6 A The report is a summary of the information  
7 gathered at the investigation which would be based upon  
8 the involved's statements, any witness statements, the  
9 observed damage to vehicles, the observed roadway and  
10 conditions at the scene. So it's a culmination of those  
11 observations and accumulated statements.

12 Q Okay. So to the extent that, say, Ms. Orban  
13 went in there and said that it was wet and the report  
14 says it's dry, that might be something that would be  
15 looked at to question what she's saying. Right?

16 MR. MAKHOLM: Object. I don't even understand  
17 what the question means.

18 BY MR. MAGRI:

19 Q Do you understand?

20 A Not really. No, sir.

21 Q Okay. If the report is reviewed to look at  
22 observations, for instance -- are you with me so far?

23 A Yes.

24 Q Someone is reviewing this report at traffic  
25 court to look at observations. They look there and they

1 traffic court, I don't think there's much weight put on  
2 the report itself. There's nobody --

3 Q Did you ever see a situation where the traffic  
4 judge says, "Well, what you say here is different than  
5 the report"?

6 A Not that I recall. No.

7 I think what I recall from traffic court is  
8 that there's no other parties that show up where a person  
9 is there on a violation from a traffic crash and it's  
10 dismissed because there's nobody there to present an  
11 opposing view of what occurred.

12 Q Okay. But in the instance when you've seen the  
13 traffic reports at the court, do you recall any  
14 conversations that occurred concerning them?

15 A No, sir. Like I said, I don't think that  
16 there's -- even though it ends up in court, I've never  
17 experienced or seen where it's even utilized.

18 Q Okay. So you, from your own observations,  
19 wouldn't have any idea why it's sent? It's not you.

20 A I think it's sent so there is documentation of  
21 what information was gathered by an officer at the scene.  
22 But because we cannot testify necessarily to something we  
23 didn't witness, I haven't seen where the traffic crash  
24 report has been used in traffic court.

25 Q Well, you could testify to what you observed,

1 see that it's dry when actually it was wet. Right?

2 A That could be the case.

3 This report would be reviewed by me first.  
4 Officer Duncan wrote the report. I reviewed it. My  
5 supervisor reviewed it. That's the end of departmental  
6 review unless it's referred for some reason, which this  
7 report wasn't.

8 And then when it's submitted to court -- what  
9 I've seen on personal experience in court -- if the other  
10 involved parties are not in court, generally the ticket  
11 is dismissed at that point. They are supposed to be  
12 issued subpoenas. But I've seen, when I've been there on  
13 other citations, that there's no other person to give an  
14 account of what occurred, just the person who was cited,  
15 that generally in the traffic court here in the county  
16 those cases are dismissed.

17 Q Okay. But to the extent that the traffic  
18 report contains what might be viewed as observations  
19 which differ from what the parties say, that would --

20 A I don't think they put much weight on it,  
21 truthfully. I think there's a procedure that a copy of  
22 the report gets to court. But again, the officer who  
23 submitted or wrote the report is not generally there to  
24 present the report.

25 I don't even know why -- from what I've seen in

1 though, couldn't you?

2 A If you were to show up in court -- in fact, I  
3 just took care of one yesterday where you'll get a  
4 subpoena for a citation that was issued from a traffic  
5 crash. If you were issued a citation on a traffic crash,  
6 there's a form that we can fill out, again, that we did  
7 not witness it. You have to attach that to a copy of the  
8 subpoena and a copy of the report. You submit that to  
9 your sergeant within -- it's got to be outside of about  
10 seven days of the court date. And that, again, releases  
11 you from appearing on that subpoena once it's submitted.

12 Q Okay. But the report still goes for whatever  
13 use they want to make of it?

14 A I guess so.

15 Q Okay. Can you tell me why, if someone brought  
16 to the attention of the police department that there were  
17 various inaccurate entries on that crash report apart  
18 from the street, why they wouldn't have been changed  
19 along with changing what was on the street?

20 MR. MAKHOLM: Object. I don't think there's  
21 any way he can testify what the police department  
22 does.

23 You can answer.

24 A I think if they have something that they can  
25 actually show -- and I don't recall if I might have been

1 contacted, "Hey, did this happen on MacDill, or did it  
2 happen on Howard?"  
3 Like I said, my recollection is it happened on  
4 Howard. I can't recall if that information was gathered.  
5 If they can prove through, I'd say, two sources -- the  
6 person calling in or wanting a change in the report and  
7 then the officer -- such as in this case, my recollection  
8 is it happened on Howard Avenue -- and they get that  
9 confirmation, at that point somebody would feel  
10 comfortable, as they did in this case, to amend the  
11 original report, you know, two years post fact.

12 Other than that, I don't know when reports are  
13 edited or amended. You know, I think I've had people  
14 infrequently possibly request that I do an amendment to a  
15 report I've written within close time frame to when the  
16 report was actually written. And if there's -- I can't  
17 recall ever doing that, but I think I've had a request  
18 once or twice in my career. But I think they would need  
19 more than one source to actually amend a report.

20 BY MR. MAGRI:

21 Q Okay. What about, where else is this report  
22 filed? Do you know if it goes to the State of Florida,  
23 Department of Motor Vehicles?

24 A I'm not sure. I think for statistical purposes  
25 that the state may get information from the reports.

1 This does have a state-issued number on top of  
2 each individual report. So that's possible. Again,  
3 that's beyond my scope that the state gets statistics or  
4 whatever. And I think it may get forwarded to the state,  
5 but I don't know that.

6 Q Okay. With regard to traffic citations, is  
7 there an amount that you're expected to write each year?

8 MR. MAKHOLM: Object. I don't think the  
9 question is clear.

10 MR. MAGRI: Citations.

11 A I think you'd have to be more specific as far  
12 as, is there a set -- you have to have this number. At  
13 this point there's a recommended number. How it affects  
14 each individual -- you know, it would be an individual  
15 determination of how that's affecting them.

16 BY MR. MAGRI:

17 Q What's the recommended number?

18 A I don't know that you could even title it as a  
19 recommended number. The district average in District I  
20 for the past year, I think, was 72 tickets.

21 Q Okay. And how would that affect each  
22 individual?

23 A I can only speak for myself personally. I  
24 received a "below expectations" in traffic law  
25 enforcement because of my number, which is way below the

1 district average.

2 Q What was your number?

3 A Four.

4 Q And when was that?

5 A My anniversary date was April. I think I got  
6 the evaluation -- they usually do it about a month prior  
7 to your anniversary date.

8 Q So that would have been --

9 A March of this year.

10 Q March of '05? And how about in years  
11 preceding?

12 A I've had, I think, a total of four "below  
13 expectations." There was a break. The year I went to  
14 the law enforcement after-care program I got a "meets  
15 expectations," but I issued no citations that year  
16 because we weren't doing traffic law enforcement. And I  
17 think that's covered somewhere in their evaluation  
18 guideline if it's a non-observed category, you get the  
19 basic "meets expectations." But I have, other than that  
20 one year, four "below expectations" in traffic law  
21 enforcement.

22 Q Okay. And how many citations did you write in  
23 the other three years?

24 A I can't recall. Well below, I would say, what  
25 the average was.

1 Q Okay. And is there a reason that occurs?

2 A My time or my perspective on police work in  
3 patrol is, I'm there to respond to the public as far as  
4 calls that come in, and I don't put much weight on  
5 traffic law enforcement. If there's a good observed  
6 violation that occurs in front of me, you know, I would  
7 stop that individual and deal with that situation.

8 I'm radar-certified. I haven't run radar, I  
9 don't think, in numerous years. I just don't put the  
10 weight on that and I'm able to occupy my time at work by  
11 just responding to calls for service.

12 Q Okay. And have you received counseling or  
13 suggestions or goals created or anything like that?

14 A And this, I can tell you, came from reviewing  
15 my -- I keep my evaluations. I had reviewed them prior  
16 to coming down here this morning.

17 There was -- I can tell you specifically from  
18 this year because it's only a couple months ago what I  
19 read on the comments. The previous year, I think, it was  
20 listed as a goal or objective, and that wasn't originated  
21 by me, to improve my traffic law enforcement.

22 This past year I was given a, I guess, remedial  
23 program that's supposed to be reviewed quarterly on what  
24 steps I've taken to meet my goal and objective, which,  
25 again, was not my originated goal and objective, but to

1 improve traffic law enforcement.

2 And just last week -- I think that quarter had  
3 come up where I had to write a memo for my supervisor  
4 documenting what I've done to increase my  
5 traffic-law-enforcement activity.

6 Q And what have you done?

7 A I've written two tickets for this quarter, both  
8 off of one traffic stop. I've notified the motor  
9 squad -- we have two motor squads, the motorcycle units  
10 that that's all they do, are the traffic law enforcement.

11 An individual that I've worked with before  
12 that's on a motor squad -- given him a couple locations  
13 in my zone, you know, requesting his attention when he  
14 has time to address it.

15 I think the other things I documented -- there  
16 were some traffic-engineering issues that I thought could  
17 assist in my specific zone with improving traffic safety.  
18 One of them was on Armenia Avenue where they'd repaved  
19 the road and they hadn't properly lined the road.

20 I'd made calls to traffic engineering and the  
21 county. They were aware of the situation. They finally  
22 got out and lined the road correctly and that's reduced  
23 the number of traffic crashes.

24 I've made -- probably not that many. But I  
25 think I've made some traffic stops where I've issued

1 streets in speed, it was higher than what it was supposed  
2 to be.

3 They put stop signs on Rome Avenue, both on  
4 Cass and on Cypress, which, again, because of the  
5 traffic-control device, has assisted in those areas. By  
6 putting a break in the traffic, it's slowed traffic on  
7 those two streets.

8 And other than that, I don't have really any  
9 identifiable areas that are a traffic issue or problem.

10 Q Okay. Is that going to satisfy it, do you  
11 know?

12 A I don't know. I'm coming up on 20 years at  
13 this point, so I'll see what they do on my next  
14 evaluation.

15 Q What's that mean?

16 A It means I don't know where they can go beyond  
17 what they've already done, which is give me a "below  
18 expectations" on my evaluation.

19 I'm not promotable. So as far as any leverage  
20 on that, I'm not threatened with promotion because I  
21 haven't passed their exam for promotion.

22 There's verbal counselings along the way, I  
23 guess, as far as, "Why don't you just increase your  
24 tickets," where this isn't an issue. At this point that  
25 hasn't happened.

1 verbal warnings. So these were all elements that went  
2 into this memo that I responded to my sergeant for this  
3 quarterly remediation.

4 Q Have you gotten any feedback on that?

5 A No.

6 Q Were the references to engineering -- is that  
7 something that you're encouraged as part of this  
8 remedial?

9 A You're supposed to look at -- the request in  
10 the evaluation, I believe, was to increase  
11 traffic-law-enforcement activity.

12 Where they've, I guess, hit home with me to  
13 actually motivate me to do anything more increased toward  
14 traffic is when somebody pointed out, "Well, look at your  
15 specific zone. Are there areas where you have a higher  
16 number of crashes that something could be done to  
17 decrease the number of crashes?"

18 And in the majority of the -- I can think of  
19 two things where traffic-control devices have assisted in  
20 decreasing the crashes in my zone. One was relining  
21 Howard and Armenia Avenue where they're corrected some of  
22 the lining that's assisted in the traffic flow. The  
23 other is on Cass Street between Willow Avenue and Howard  
24 Avenue and Cypress Street between Willow and Howard where  
25 there have been no traffic breaks between those two

1 Q Has that happened to any of the other officers?

2 A I can't speak for anybody else and what their  
3 experiences have been.

4 Q Have you had any conversations with any other  
5 officers that have --

6 A I think the same thing, where people feel that  
7 there is some pressure to increase the number of  
8 citations issued. But again, you'd have to speak to  
9 specific officers.

10 Q What's the general sense of why there's that  
11 pressure?

12 MR. MAKHOLM: Objection. I don't think he can  
13 speak for the general sense of the officers of the  
14 Tampa Police Department.

15 BY MR. MAGRI:

16 Q Well, what's your general sense?

17 A Getting on -- I don't know. As far as me  
18 relaying my personal feelings or whatever, I don't know  
19 as I want to shoot myself in the foot. I don't know what  
20 I'm required by law to answer as far as my personal  
21 feelings.

22 Q Well, I think if you have some, you should say  
23 what they are.

24 MR. MAKHOLM: Well, we would disagree with  
25 counsel.

1 Legally you're here to answer questions from  
2 counsel. And unless we have an objection, you can  
3 answer his questions. With regards to his narrative  
4 that he thinks you can give your opinions and you  
5 should give your opinions, that's just his thoughts.  
6 It's up to you to answer his questions.

7 A My thoughts are that I have until April to  
8 finish my 20th year, and I plan on continuing my career  
9 as long as I can after that as long as I can tolerate it.  
10 And I think I could get into a position of being  
11 uncomfortable if I give my personal views at this point.

12 BY MR. MAGRI:

13 Q Is there a recognition or a concern -- let me  
14 rephrase it. Those are both bad starts.

15 Has the emphasis on writing traffic citations  
16 become stronger in the last four or five years?

17 A No. It's gone through different stages, I  
18 think, where you feel different pressures or suggestions  
19 as far as increasing traffic depending on, I think,  
20 sometimes who the major of the district is, your  
21 immediate supervision, what weight they put on traffic  
22 law enforcement, and that's varied over the years.

23 Q Okay. Well, try to give me some feeling about  
24 that. What's it currently?

25 A Currently I've got a "below expectations" on my

1 expectations" in traffic law enforcement?

2 A No. And I've gone through different stages  
3 where, like I said, I was radar-certified. Back in the  
4 day when I first came on, I did numerous DUIs. I worked  
5 the night shift. Now we've got a DUI squad. So nobody  
6 does DUIs other than the DUI squad pretty much.

7 When I got radar-certified I wrote numerous  
8 tickets earlier in my career. I'd say this has been for  
9 an extensive part of my career. But earlier in my career  
10 I probably wrote a lot more tickets than I do now.

11 Q Now, with regard to -- so would it be true that  
12 it's been in the last -- prior to these last five years  
13 you weren't getting "below expectations" in traffic.  
14 Right?

15 A Again, I think that depends on the evaluator,  
16 your supervisor, what they feel they can justify in  
17 getting an evaluation through.

18 I know I didn't get a remediation program last  
19 year because the supervisor I had was able to counter my  
20 traffic activity with my other activity, which is  
21 responding to calls.

22 And I can almost guarantee I'm probably in the  
23 top 1 percent of the department as far as the number of  
24 calls I respond to, the number of reports I write. And I  
25 think most of my supervisors have recognized that I'm a

1 evaluation and I'm in a remedial -- quarterly remedial  
2 program to increase my traffic activity. So I would say  
3 that there's some weight put on traffic law enforcement  
4 from supervision.

5 Q Prior to the last few years you hadn't been  
6 getting "below expectations" on anything, had you?

7 A I can't recall any category other than traffic  
8 that I've gotten "below expectations." I know it used to  
9 be they had a numerical score, and I was generally  
10 superior in the numerical score and in the categories.

11 The way they rate them now with either "meets  
12 expectations," "above expectations" or "exceeds  
13 expectations" -- I know a few years ago there were enough  
14 "exceeds expectations," or whatever the highest category  
15 was, that there had to be additional substantiation to  
16 justify that evaluation.

17 The only category that I've gotten "below  
18 expectations" in, that I recall, is the traffic law  
19 enforcement.

20 Q And that's been in the last few years, too?

21 A Out of the last five evaluations, other than  
22 the one when I was in the after-care program, four of the  
23 last five evaluations have been "below expectations" in  
24 traffic law enforcement.

25 Q But prior to that you weren't getting "below

1 good officer other than I'm not very active on traffic.

2 Q Okay. But in terms of "below expectations,"  
3 this has been a problem for you in the last four or five  
4 years. Right?

5 A Specifically. Before that I don't know if  
6 there was less attention given to traffic so people  
7 didn't necessarily -- you know, because I don't know what  
8 direction a supervisor would get as far as evaluating  
9 traffic law enforcement.

10 Those standards could have changed over the  
11 years where I might have written a lot less tickets than  
12 somebody else but I'd still met expectations because of  
13 my other work. I'd say within the last four or five  
14 years there's specific attention given to traffic law  
15 enforcement.

16 Q And is there an understanding of a relationship  
17 between citations and insurance?

18 MR. MAKHOLM: Objection.

19 Is this a question to him, or is this a broad  
20 stroke of everybody here?

21 MR. MAGRI: I don't see anybody else that's  
22 answering questions.

23 MR. MAKHOLM: Yeah. But the question, the way  
24 you couched it, Counselor, seems to me to be asking  
25 him about what everybody thinks.

1 So to that extent I object. If you're just  
2 asking him what he thinks --

3 MR. MAGRI: Okay. I'll ask him what he thinks,  
4 even though I --

5 A Specifically what I think as far as citations  
6 and insurance is, I know if you get either so many points  
7 or a citation, insurance companies generally look for any  
8 reason they can to raise your premiums, and citations  
9 generally aren't good for your insurance premiums.

10 BY MR. MAGRI:

11 Q Okay. I want to look at something here.  
12 I'm going to show you a portion of what's been  
13 produced to me from your files where it talks about  
14 activity by disposition and those sorts of things. Take  
15 a moment to take a look at that page and tell me if  
16 you've ever seen that before.

17 A I've seen these forms. I haven't seen them in  
18 the last few years.

19 Q All right.

20 A This is statistics for your activity, a  
21 specific officer's activity.

22 Q Okay. Do you know what those categories mean?  
23 MR. MAKHOLM: One second. Can we have a look  
24 at this before -- are you going to ask him about all  
25 these things?

1 MR. MAGRI: I'll ask him about them.

2 A The dispositions that are on there go back a  
3 few years, I think, or at least as far as my -- like I  
4 said, I haven't seen a stat sheet like that in a couple  
5 years.

6 When we used to come off a call, you came off  
7 the call with a Disposition 10A, which means you're back  
8 in service and you would give your specific statistics.  
9 10A with an A1 would be a felony arrest.

10 As I recall, we haven't used those dispositions  
11 in quite a while. But you verbally over the radio gave  
12 your dispositions: If there was an arrest, if there was  
13 tickets, if there was a report.

14 Some of them that I do recall -- I think an A1  
15 was a felony and A2 a misdemeanor. Without looking on  
16 that specifically, the C2, I think, is a moving  
17 violation. C1 I don't recall. I think that might have  
18 been a non-moving violation. And C6 -- if I recall  
19 correctly, I think that was off of traffic crashes. It  
20 was a disposition that a citation was issued in reference  
21 to a traffic crash.

22 Going down into the reporting section where  
23 there are the "R" numbers, an R1 was a Part-1-type  
24 offense, which I can't give you the specific definitions  
25 of a Part 1 and Part 2 report.

1 If I recall, an R4 was a traffic crash. And  
2 most of the others I don't recall because, like I said,  
3 this has been -- this is from 2001. That may have been  
4 the last time I've ever seen a stat sheet like that. I  
5 don't know if they generate statistics like that anymore  
6 or not.

7 BY MR. MAGRI:

8 Q So the ones that would relate to citations  
9 were --

10 A The Cs.

11 Q -- the Cs and then also R4?

12 A R4 is a report. All the "Rs" were reports. So  
13 an R4 was a traffic crash report.

14 Q All right. So the Cs would have been citations  
15 activity?

16 A Correct.

17 Q And the Rs would have been report activity?

18 A That's correct.

19 Q And in terms of traffic, the one report that  
20 you would write would be R4?

21 A Right.

22 Q For crashes?

23 A That would have been the disposition when you  
24 came off the call. It would be 10A with an R4, which  
25 would indicate, "I'm back in service and I have a crash

1 report."

2 Q Okay. Now, does TPD write more citations now  
3 than it used to as a department?

4 A The only information I have on that -- because  
5 I don't pay that much attention to statistics -- is a  
6 report on statistics that I saw, I think, from last year  
7 that citations were up -- I don't know what -- 70-some  
8 percent from the previous year.

9 Q Do you know why that is?

10 A No.

11 Q Are you -- well, let me ask you some questions  
12 about something that a retired patrol officer has told  
13 us.

14 Is it understood or have you heard over at the  
15 police department that insurance companies pay the police  
16 department to conduct traffic-crash investigations?

17 A The information I can give you on that is just  
18 what another officer had told me, which is that the  
19 insurance companies contribute to our -- to state 185  
20 monies, or whatever number it was, that ultimately  
21 somehow benefit our pension.

22 Q Okay. And he also says, "As part of the  
23 investigation for insurance companies, Tampa Police  
24 officers are expected to identify the at-fault driver and  
25 write a citation to that driver."

1 A My understanding of an investigation -- and  
2 none of this is based necessarily on fact. It's my  
3 understanding and what I've heard from other people.

4 And there is, I think -- like you said, if I  
5 weren't to issue a citation on a traffic crash, by policy  
6 I'm supposed to get supervisory approval. So I guess  
7 that correlates to, if I'm dispatched to a traffic crash  
8 and I investigate it, that I'm supposed to write a  
9 citation for it.

10 Q Okay. And so you would identify the at-fault  
11 driver in order to --

12 A As best as we can from the information gathered  
13 at the scene. Yes.

14 Q All right. Does that ever create a difficulty  
15 for you where you've got conflicting stories and you  
16 don't have witnesses?

17 A Yes.

18 The easiest example would be that you have a  
19 traffic-signal light with a 90-degree angle intersecting  
20 roads and you have a T-bone-type accident or one going  
21 east/west, the other one north/south and they collide in  
22 the intersection and both drivers were to stand there and  
23 tell you, "I had the green light."

24 You're not there to -- you weren't there to  
25 witness what color the light was. If you can't find an

1 wouldn't be issued.

2 BY MR. MAGRI:

3 Q Would be what?

4 A I wouldn't issue a citation.

5 Q All right. But in your supervisor's  
6 explanation, he told you you could either not issue one  
7 or issue one to each of them?

8 A Correct.

9 Q Okay. How would you issue one to each of them?

10 A I guess siding with each person's account of  
11 what happened, that the other party was at fault, and  
12 making the decision, "Okay. We'll find both parties at  
13 fault," because we can't disprove either story at that  
14 point.

15 Q Do any officers do that, to your knowledge?

16 A I'm not aware of how other people handle the  
17 situations.

18 Q All right. Did the supervisor encourage you to  
19 approach it one way or the other?

20 A As I recall, the one time I sought direction on  
21 that -- and that was years ago -- I don't think there was  
22 a recommendation one way or the other. It was just, "You  
23 could do it this way," whatever. He was going to accept  
24 the report however I determined to do it.

25 And like I said, since that time generally, if

1 independent witness as to that --

2 My personal practice on that is generally not  
3 to issue a citation, document it, show how they collided  
4 based on their statements. I've even put question marks  
5 on the little traffic-signal symbol that I put on the  
6 crash report and document it in the narrative that  
7 there's divergent stories on what color the lights were.

8 Q All right. Do all officers follow that same  
9 practice, do you know?

10 MR. MAKHOLM: Objection. I don't think he can  
11 testify to what all officers do.

12 A The only thing I can say is, as far as -- I  
13 don't know when this was presented. But I had a question  
14 where there's two totally different stories as to how a  
15 crash occurred. And I at one time sought supervisory  
16 direction and was given different options.

17 One is you cite both parties. The other is you  
18 cite neither party. The third is that you could write  
19 the crash into two -- basically, split the -- and I've  
20 done that -- I don't remember when, and not very often --  
21 but split the diagram page and draw two separate diagrams  
22 of how the vehicles had come together and switched the  
23 lights around or give both accounts in a diagram.

24 My practice now is, if I've got no independent  
25 witnesses and differing stories, generally a citation

1 I've got two different stories and no independent witness  
2 and I can't determine just based on the roadway or  
3 whatever who might have been at fault, then I don't issue  
4 a citation. There's other times where there's differing  
5 stories in looking at the roadway and how the collision  
6 occurred between the two vehicles, where the impact point  
7 is, I may issue a citation because you can determine  
8 based on the collision point in the roadway, "No. It had  
9 to happen this way instead of that way."

10 Q Does the -- are these subjects the course of  
11 continuing training, or do these --

12 A I can't recall formalized -- any sort of  
13 formalized training in traffic-crash investigation for  
14 years.

15 Like I said, I think the last thing I can even  
16 generally recall was when the form changed, because it's  
17 changed -- it's been updated slightly from this form from  
18 2000 till now -- the form we're using, that I think when  
19 there's a change in the form, you know, it's addressed in  
20 roll call or whatever that, "Here's a new form. You've  
21 got to get rid of your old ones and here's the changes."

22 I can't give you a specific time frame when  
23 that's occurred or what my last training might have been  
24 in traffic crashes.

25 Q We've heard from different people at the police

1 department or who are retired from the police department  
2 that in the course of training, officers will now be  
3 taught to identify the at-fault driver and then write the  
4 ticket or the citation accordingly.

5 Have you heard that?

6 A I don't know about what they're doing in  
7 training right now. No.

8 Q Okay. Have you ever been informed that the  
9 crash report is written to provide information to the  
10 insurance companies?

11 A Any factual information? No. As far as  
12 speculation, personal feelings and what other people say,  
13 yeah.

14 If there's not a serious injury or fatality or  
15 a criminal offense, such as DUI or something else, it's  
16 the general perspective that it's documentation for  
17 insurance.

18 Q Okay. Has there been concerns raised by any of  
19 the officers about having to write citations? Citations  
20 have gone up considerably in terms of the fines and  
21 things. Is that correct?

22 A Yes, sir.

23 Q Has any concern -- have you heard any concern  
24 talked about at the police department about having to  
25 write citations to certain people that take up perhaps a

1 either to the roadway and traffic signals and clearing  
2 brush back from the roadway, moving parked cars that  
3 obstruct view.

4 Q Turn lanes?

5 A Yeah.

6 I'm a strong believer that it's engineering  
7 factors. You're still going to have the random somebody  
8 screwed up and blew the red light because they didn't see  
9 it or whatever. And I feel that accidents -- and the  
10 definition of an accident -- that there's unintentional  
11 acts that you're not going to be able to eliminate  
12 totally. But I think there's things you can do in  
13 engineering that are effective in helping decrease  
14 traffic crashes.

15 Q In fact, insurance companies don't believe that  
16 people who get citations are less likely to have  
17 problems --

18 MR. MAKHOLM: Objection.

19 BY MR. MAGRI:

20 Q -- do they?

21 MR. MAKHOLM: Objection.

22 BY MR. MAGRI:

23 Q Because they raise their rates. Right?

24 MR. MAKHOLM: Objection.

25 BY MR. MAGRI:

1 sizeable chunk of what they've earned?

2 A I can only speak to my personal feelings on  
3 that, which I will speak to, is that I don't -- somebody  
4 that's working on a budget, whatever, the expense of a  
5 current moving violation I do not like. That's probably  
6 part of the reason I don't write many tickets is, I'm not  
7 comfortable issuing a citation in that dollar amount.

8 Q Do other officers feel that way?

9 A I'd say some do; some don't.

10 Q Okay. But do you know why there's been a  
11 70 percent increase in citations?

12 A No, I don't.

13 MR. MAKHOLM: Objection.

14 BY MR. MAGRI:

15 Q You indicated that in terms of traffic law  
16 enforcement, one of the things that you've attempted to  
17 do in terms of this program where you're being monitored  
18 is to identify areas where traffic has occurred and where  
19 maybe changes in -- engineering-type changes to that area  
20 might help?

21 A Yes, sir.

22 Q Is there a reason why you've done that?

23 A I think it's effective. I think that's what  
24 affects positively decreasing traffic crashes, is the  
25 majority of a positive effect is from engineering changes

1 Q You don't have to answer that one.

2 MR. MAKHOLM: Off the record.

3 (Off-record discussion.)

4 BY MR. MAGRI:

5 Q In terms of the -- do you know whether there  
6 is -- let me step back.

7 We've heard from various individuals at the  
8 police department that at one point there were -- people  
9 were sort of thought of as -- the average citation should  
10 be 50 and then that number was increased to 80 in the  
11 patrol area.

12 Have you heard anything like that?

13 A All I know is that it was relayed to me in my  
14 evaluation and through verbal communication that the  
15 district average for last year was 72.

16 Q Okay. And was that felt to be a good average,  
17 or did they actually hope that that might go up?

18 A I don't know what their hopes were as far as  
19 the citations.

20 Q All right. Have they created a second citation  
21 or traffic squad?

22 A As far as I know, I think there's two motor  
23 squads, one on each were deployed on an A shift and a  
24 B shift, which is over an eight-day cycle, four on and  
25 four off, As working four days, Bs working four days.

1 And I think there's a motor squad for each of the A shift  
2 and B shift.

3 Q Are more officers dedicated to that than they  
4 used to be?

5 A I would say since they've gone to two squads,  
6 that, yes. Probably. I don't know their specific  
7 deployment. But if you go from one squad to two squads,  
8 generally that would indicate an increase in manpower.

9 Q Have they reduced the manpower that's available  
10 for patrol in District I?

11 A The deployment has changed. Where we had two  
12 squads that covered Sector B, which is from 275 south to  
13 MacDiil Air Force Base, and there was a dividing line  
14 between those two squads somewhere around Swann Avenue,  
15 now there's one squad. There was supposed to have been  
16 an increase in personnel on that one squad. The overall  
17 number of officers covering Sector B now is less than  
18 what it had been when there were two squads.

19 Q Okay. And is Sector B -- which area is that?  
20 Is that Palma Ceia?

21 A That's District I, which is -- yes -- the west  
22 side of the city, west of the river and downtown.  
23 Sector B, I think, is split by the interstate from  
24 downtown heading west out to the Howard Frankland.

25 And actually, with the change in deployment

1 That's my personal knowledge of what the law is.

2 Q Okay. In that circumstance can drivers  
3 themselves fill out a crash report?

4 A My understanding by law is -- yes -- that they  
5 can do -- if that information is exchanged, they've met  
6 their legal obligation under statute.

7 Q Okay. Is there any reason why -- if a police  
8 officer arrives on scene, is that something that they  
9 ever do, is have the people exchange information?

10 A It's a risky proposition. I guess I can say  
11 that it's been done -- I've personally done it -- where I  
12 think our policy or procedures at this point are, if  
13 you're dispatched to the crash, you're supposed to write  
14 the crash, issue the citation associated with the crash.

15 There's been some where the damage is so  
16 minimal. I, generally, in the few times I've done it,  
17 would ask what I would consider or determine to be the  
18 not-at-fault driver if they're satisfied simply with the  
19 exchange of information.

20 I've gone to the point of -- and this is my way  
21 of, I guess, covering myself if it were to come back  
22 later, filling out the exchange sheet for them, putting  
23 my name at the bottom, putting that there is no report,  
24 number, and then putting my district office phone number.

25 And I've told them, "If any issue arises later

1 there was about two grids that were taken that used to be  
2 in Sector B and have now been moved up to Sector A out  
3 around the Westshore mall. But overall, it's generally  
4 the same geographical area.

5 Q Okay. Has there been -- is more extra duty  
6 encouraged by the community, to hire extra-duty officers  
7 in that area?

8 A I'm not sure what the demand for -- you're  
9 talking about off-duty work?

10 Q Yeah.

11 A I don't know what their demands are for off  
12 duty at this point. There's always been off duty  
13 available, and I don't know if that's increased or  
14 decreased with time.

15 Q Okay. Do you know what the minimum information  
16 required by law is in a crash report for minor crashes  
17 that do not entail injury or fatality?

18 A What's the question?

19 Q Do you know what the minimum information is  
20 required by law that could be filled out?

21 A As far as specific information, no. I've  
22 indicated, I guess maybe when I'm off duty -- what my  
23 understanding of the law is, your vehicle information,  
24 insurance information, driver information -- if that's  
25 exchanged, I think that meets the requirements by law.

1 where you contact the insurance company and stories  
2 change or whatever, you can contact me. I can always go  
3 back and author a crash report later," as long as they  
4 hold onto that exchange sheet for me to gather the  
5 information from.

6 The times that I've done that -- I think I've  
7 had one time where somebody tried to submit it for  
8 insurance and the other driver's story had changed about  
9 what had occurred. And I'd recalled the information and  
10 gone back and originated a crash report at a later date.

11 Q All right. And you indicated for your own  
12 protection you fill out that.

13 What do you mean by that?

14 A As far as -- like I said, my understanding of  
15 our procedures are, if you're dispatched, you're supposed  
16 to write the crash report.

17 And there's been times with discretion that --  
18 like I said, if the not-at-fault driver is satisfied with  
19 it, my understanding is that they've met state statutes.  
20 They've exchanged information. I verify that the proper  
21 information has been exchanged, that I've made that  
22 decision and just done an exchange form that allowed them  
23 the follow-up of, "Here's my name. Here's my office  
24 number if there's any problems that arise later."

25 Q There's been a study done of motorcycle

1 crashes. And in that study it was found that the police  
2 department wrote citations in a  
3 statistically-significant, substantially higher number of  
4 those crashes percentage-wise than did either the Florida  
5 Highway Patrol or the Hillsborough County Sheriff's  
6 Office.

7 Do you have any feeling as to why that might  
8 have occurred?

9 A Say that again. The Tampa Police has issued  
10 more citations in motorcycle crashes?

11 Q A statistically-significant higher number of  
12 citations than did those other law-enforcement agencies  
13 when they have investigated motorcycle crashes.

14 A I said motorcycle or motor vehicle of other  
15 types. I don't differentiate or have an understanding of  
16 a differentiation between a crash.

17 My understanding of our procedures are, if  
18 you're actually dispatched to a crash, no matter what the  
19 involved vehicles are, you know, you're supposed to write  
20 the report and issue the citation.

21 Q Do you know whether the Hillsborough County  
22 Sheriff's Office or Florida Highway Patrol has a  
23 similar --

24 A I don't know anything about their procedures.

25 Q Okay. I ask that only because sometimes when

1 retirees did.

2 Q And were those people in the DROP program --  
3 who were they? Were they --

4 A There's a -- I'm not sure how large the group  
5 was because there was a time frame that was bracketed by  
6 our contract that will cover people back to -- I don't  
7 know if it was -- I think police that were still active,  
8 working actively as police officers, but were in the  
9 DROP, were covered by the contract.

10 And I think it went to two separate issues that  
11 the union represents in collective bargaining all active  
12 police officers in their negotiations. And there was a  
13 middle ground there where pension and contract  
14 negotiations intermixed and there was a dispute about  
15 that.

16 Q Was there any dispute over whether or not any  
17 of the reserves that were applicable to the pension funds  
18 were going to be used now?

19 A As far as I know, the reserves aren't covered  
20 by our pension. I don't know anything about reserves in  
21 our pension. I don't know of any reserves that are  
22 covered by the pension other than the retirees who are, I  
23 guess, working as reserve officers at this point.

24 Q Okay. I think I probably phrased that badly.

25 Is there a current action involving some of the

1 you're involved in law enforcement you sometimes hear  
2 what other --

3 A There's very little intercommunication between  
4 the other agencies.

5 Q Okay. What does "at fault" mean to you?

6 A "At fault" would be the party more responsible  
7 for the two parties coming together in a crash.

8 Q Okay. And once you determine that, then you  
9 have to determine what the citation would be?

10 A Yeah. Which statute would be most applicable  
11 to the violation that you've determined.

12 Q Are you familiar at all with any of the dispute  
13 between the retired officers about the way the pension is  
14 being handled right now?

15 A I'm familiar with or aware of, following our  
16 last contract that there was a group of officers who were  
17 in the DROP program who are no longer contributing to the  
18 pension who were included in some of the increased  
19 benefits we got in the active employee contract.

20 And the retirees, I think, were disgruntled  
21 over the fact that the DROP members who were not  
22 contributing received these increased benefits where  
23 retirees did not. And basically, members in the DROP  
24 program, as far as the pension was considered, were  
25 retirees and they got an increased benefit over what the

1 retired officers against the --

2 A As I understand, that's still pending, that  
3 they're contesting the fact that the -- and I think that  
4 was the contention, was that the DROP members who don't  
5 contribute to the pension were included in in the  
6 benefit -- I think that's referred to as our increased  
7 percentage that we collect. They weren't contributing to  
8 the pension, but they were included in that benefit,  
9 where true retirees who no longer worked actively were  
10 not included.

11 Q Okay. And what is the benefit, as you  
12 understand it?

13 A We went from an accumulation of 2 1/2 percent  
14 toward your per year to 3.15 percent. So for a 20-year  
15 officer, you went from collecting 50 percent of your  
16 ending pay or ending highest through your average pay  
17 to -- I think if I left at 20 years, it would be about  
18 63 percent.

19 Q Okay. All right. And did the DROP officers  
20 include the high-ranking officers or --

21 A Yeah. I think there were members that were --  
22 I don't know who was covered by -- I know the contract  
23 that I'm involved in, the collective bargaining deals  
24 with sergeants and below. Above that rank I'm not sure  
25 what their agreements financially are with the city. But

1 the collective agreement that I'm involved in would be  
 2 sergeants down through patrolmen.  
 3 Q Okay. Now --  
 4 A Although I guess that's where you get a  
 5 separate issue is, I think the pension would be the same,  
 6 that there was an increase from 2 1/2 percent to  
 7 3.15 percent for everybody that was still an active  
 8 police officer.  
 9 Q And what you understand is, that's the amount  
 10 of -- when you say "increase from 2 1/2 to 3.15 percent,"  
 11 that increase portion is what? It's how much is  
 12 contributed?  
 13 A Our contributions -- it's somehow -- I don't  
 14 understand all the formulas. The city puts in a certain  
 15 amount for each dollar that we put in, and that's  
 16 affected by the market. After 9/11 our contributions  
 17 tripled, and the city has to pay in whatever dollar ratio  
 18 was previously contracted for.  
 19 Q 1.34 or something?  
 20 A Yeah. I'm not sure what the ratio is. And I  
 21 just lost track of your question.  
 22 Q I probably was listening to your answer so  
 23 intently that I can't remember right now.  
 24 But the -- I believe it was, the 3.15 as  
 25 opposed to the 2.5 -- how does that manifest itself in

1 the increase from 50 to 63 percent?  
 2 A I'm not sure I understand that question.  
 3 Q When you retire, now you'd get 63 percent,  
 4 roughly, as opposed to 50?  
 5 A If I were to leave at 20 years, yes.  
 6 Q All right.  
 7 A Where if I'd left at 20 years with the old  
 8 payout it would have been 50 percent because it was a  
 9 straight 2 1/2 percent, now it's 63 and -- I don't know  
 10 if it's a fraction, but it's 63 percent of 20 years.  
 11 Q Okay. And so the -- all right. So by  
 12 increasing it to 3.15, they've increased the percent of  
 13 your pay that you can get when you retire?  
 14 A For each year. If I can last longer than 20  
 15 years, then that keeps increasing to whatever point you  
 16 either enter the DROP or you -- I'm not sure what the  
 17 max-out number is. I don't know if you can make it all  
 18 the way up to 100 percent or if there was a cutoff before  
 19 that.  
 20 But, yes. Each year I stay, I collect more  
 21 than I would have under the prior agreement.  
 22 Q So you indicated that after 9/11, the  
 23 contributions you made went up significantly?  
 24 A They tripled at least.  
 25 Q All right. And does that mean you took home

1 less take-home pay?  
 2 A Absolutely.  
 3 Q Because more of it was going into the pension?  
 4 A Yes.  
 5 Q And is that still the case?  
 6 A I think this year we're finally going to see a  
 7 reduction in our contributions because of the improved  
 8 market. And I think the percentage that we paid prior  
 9 to -- and we've probably gone lower than we should have.  
 10 Based on the way I understand the pension,  
 11 they've got to keep your contributions at a certain  
 12 amount to keep it fiduciarily sound or whatever.  
 13 And I think we'd gotten down in the less than  
 14 2 percent contribution range. After 9/11 it jumped up to  
 15 about 13 percent. And since 9/11 we've run it, I think,  
 16 12 to 13 percent. The contributions have stayed fairly  
 17 consistent, I think, because of the improving market.  
 18 Supposedly in October we're going to see a decrease down  
 19 to possibly 4 percent, although I don't think that number  
 20 has been set.  
 21 Q Okay. How do you know all these numbers?  
 22 A It's a very important topic, stuff that  
 23 especially officers that are nearing retirement, I think,  
 24 pay quite a bit of attention to.  
 25 Q Are these things documented?

1 A There's information, I think, that the pension  
 2 board puts out. I know the last posting I saw where  
 3 somebody officially was questioning what our  
 4 contributions were going to be next year, and that  
 5 indicated that it was going to be determined in the next  
 6 pension meeting or whatever based upon their returns from  
 7 the prior year.  
 8 Q Okay. Is there -- are you familiar with  
 9 unfunded liabilities and funded liabilities and that sort  
 10 of thing?  
 11 A No.  
 12 Q Okay. Do you know whether or not the pension  
 13 has accessed certain funds that had previously been off  
 14 limits and, as a result of that, the unfunded liability  
 15 of the pension plan has increased?  
 16 A I'm not that knowledgeable. I've heard of 185  
 17 monies and different phrases for things that were  
 18 supposed to pay different benefits or do something with  
 19 the pension, but I don't have much understanding of that.  
 20 Q What's 185 monies?  
 21 A I have no idea. It's just a number that I'd  
 22 heard reference some -- the one specific thing that I'd  
 23 heard is -- and this comes up when people run for the  
 24 pension board -- is they come in and they start throwing  
 25 these -- "We've got these 185 monies. We've got this;

1 we've got that."

2           There was supposed to be a thirteenth check

3 that was supposed to assist in health insurance or

4 whatever, and that was something that took a hit after

5 9/11 where that was depleted, I guess. And the

6 thirteenth check didn't turn into what they thought it

7 was going to be because of the hit the market took.

8           Q     Right.

9           A     But that's just my lower-level understanding of

10 the detailed pension issues, I guess. Most of that is

11 gathered when, like I said, somebody is running for the

12 pension board and they come in and start throwing what

13 they're going to do around, and the terminology.

14           Q     Now, people who run for the pension fund --

15 those are other officers?

16           A     Yes.

17           Q     Okay. And what's 185 monies?

18           A     I don't know.

19           Q     All right. Do you know what the 185 refers to?

20           A     No, I don't.

21           Q     All right. Now, do they give you written

22 documentation of these issues as they come up on their

23 own?

24           A     I think generally what I recall is just a

25 roll-call-type presentation where somebody will come in

1 and -- like I said, generally the people running for the

2 board have gone to numerous pension meetings and they've

3 educated themselves on the workings of the pension and

4 they try to dummy it down when they come into roll call

5 as far as, "This is personally what we're going to do if

6 you elect us."

7           Q     Speaking of roll call, was there any directive

8 after this lawsuit was filed asking officers not to talk

9 with Dr. Orban or to restrict who they might talk to?

10           A     I don't go to roll call. Generally I come in

11 about a half hour earlier than my shift to relieve the

12 midnight units, and I leave a half hour earlier than my

13 scheduled shift would be, which I've done for about the

14 last three years.

15           So I miss a lot of roll call, information

16 that's passed. But I've not heard of anything specific

17 or unspecific as far as anything about Dr. Orban.

18           Q     Okay. Has there been generally anything about

19 being concerned about what you say to people in relation

20 to these topics like traffic law enforcement or --

21           A     As far as specific supervisory directives or

22 directions from supervisors?

23           Q     Yeah.

24           A     Not that -- no. I can't think of -- you have

25 whatever policies and procedures as far as discussing

1 anything with the public or the media or what you're

2 personally comfortable with discussing with outside

3 people. But I can't think of any case where a supervisor

4 has told me specifically, "Don't talk to so-and-so."

5           You know, there's basically common sense and

6 career protection or whatever that you make your own

7 determination of who you're going to talk to.

8           Q     Okay. But apart from a supervisory direction,

9 have you heard anything like that?

10           A     No. Just my personal feeling or what I'm

11 comfortable with. Like this. You put me under subpoena

12 and put me under oath, I'll answer what questions I think

13 I can answer or should answer and I'll answer them

14 truthfully.

15           But as far as venting any frustrations I might

16 have, I personally don't go outside -- and I'm sure

17 there's some that do. Just like the newspaper article

18 with the sheriff suing this LEO affairs. You know,

19 there's -- if a problem arose, I think there's policies

20 that deal with who you discuss certain things with.

21           I've never run into a problem with that because

22 I don't generally talk to people outside other than

23 friends.

24           Q     Okay. I think I understand.

25           All right. Apart from the thirteenth check, do

1 you know whether the thirteenth check is the subject of

2 that dispute between retired and current?

3           A     My understanding of the dispute was, I thought,

4 over the increased percentage. I'm trying to think if

5 there was any other issues I was aware of that -- I think

6 that was my understanding of it, was that we're getting

7 an increased benefit as far as payout over what they had.

8           And I think if it had been split between DROP

9 and retirees against active that there might not have

10 been substantiation as much for possibly their argument

11 as there is because people included in the DROP weren't

12 contributing to the pension increase.

13           And there was a pension increase in

14 contributions not just from the market but to fund this

15 increased percentage that we'd voted on that, yes, we'll

16 pay an extra whatever percent of our pay it was to fund

17 this increased percentage.

18           Q     All right. Now, as far as the -- what is your

19 understanding of what 9/11 did to the pension fund?

20           A     I don't quite understand. I know that the

21 statements -- you'd get their annual statements. We were

22 at about 1.5 billion dollars or whatever in the fund

23 prior to 9/11, and that's strictly for Tampa fire and

24 police -- had this much money.

25           My understanding is there's kind of a core

1 value to that that, "Yeah. Your stocks are all out  
2 here," but there's a solid core value that's a lot less  
3 than the 1.5 billion or whatever it might have been, and  
4 that's where the fiduciarily-sound amount comes from.

5 It's a guaranteed amount that if everything  
6 washed away, we can still pay the benefits that have been  
7 guaranteed to all the active and retirees. The actual  
8 value of the pension was less than the 1.5 billion.

9 And then after 9/11, when everything crashed  
10 down, some of the inflated values of the fund disappeared  
11 and you fell back to that core value.

12 And that's why our contributions went up  
13 because we had to fund to guarantee that these benefits  
14 would be paid out that were guaranteed. That's just my  
15 layman's understanding of the pension.

16 Q All right. And so in the -- you indicated that  
17 the pension fund gets funded by your contributions, the  
18 city contributions and what else?

19 A The investment returns, I guess, on what  
20 they're invested in. I don't -- that affects our  
21 contribution rate. If the market is good, we pay less.  
22 If the market is down, we pay more. And that's as far as  
23 our personal input into the pension. But the return on  
24 their investments affects what our contribution is and  
25 the city pays their set amount that's tied in with our

1 nothing factual or anything that I've read -- is that the  
2 insurance companies contribute somehow to our pension.  
3 Based on what, I don't know.

4 Q Okay. Who in the police department follows  
5 what happens to the pension? I mean, if you were going  
6 to ask a question about pensions to someone you thought  
7 was knowledgeable, who would you go to?

8 A A pension board member. There's -- I don't  
9 know -- two or three members from the police department,  
10 I think two from the fire department, two from the city  
11 or whatever the breakdown is. I think there's equal  
12 representation from the city, fire and police department.

13 There's a lieutenant -- I think he's a  
14 lieutenant or captain -- I don't know. I can't keep  
15 track of them -- Mark Hamlin, who's on the board.  
16 There's certain individuals, you know, that have gotten  
17 involved in it, have educated themselves on the pension.

18 There's some people who aren't on the pension  
19 board who have run for the pension board who have stayed  
20 up with pension topics that I might question, because a  
21 lot of times you get a different opinion from a board  
22 member versus somebody who wants to be on the board.

23 And I know a few individuals I'd go to if I had  
24 a specific question about the pension. But the only  
25 thing I've found is that you're going to get a

1 contribution.

2 If our percentage goes down, the city's amount  
3 they have to pay in goes down, but it's still in the same  
4 ratio.

5 Q Where is this insurance tax or this premium tax  
6 that comes from the state?

7 A I don't know anything about that.

8 Q Are you familiar that the -- that there's a  
9 premium tax on insurance premiums that people in Tampa  
10 pay?

11 A No, I'm not.

12 Q Whereas those -- a certain percentage of those  
13 premiums are used to pay the pension fund?

14 A Just through hearsay I've heard something about  
15 there's an interrelationship between the insurance agency  
16 and some money contributed to the pension. But  
17 there's -- I know absolutely nothing factual about any of  
18 that.

19 Q You mean in terms of how it happens?

20 A No.

21 Q So you haven't heard that it's actually tied to  
22 the insurance premiums that people who live in Tampa --  
23 what they pay?

24 A No.

25 The only thing I have heard -- and again, it's

1 180-degree different opinion. And if you talk to a  
2 fireman, they have different opinions on the pension.

3 So a lot of it, I think, is based on their  
4 research and opinions they've generated off of what  
5 they've found out.

6 Q Okay. Well, I think the premiums from car  
7 insurance go to the police side of the pension, whereas  
8 the premiums from other types of insurance might go to  
9 the fire.

10 MR. MAKHOLM: Objection if that's a question.  
11 It sounds like a statement to me. But I think that  
12 if it is a question, it's been asked and answered.  
13 He doesn't know the answer to that.

14 A That's well beyond my scope of understanding.

15 MR. MAGRI: Okay. I think that's all the  
16 questions I have right now.

17 MR. MAKHOLM: Ursula.

18 MS. RICHARDSON: Oh, me?

19 MR. MAKHOLM: Yeah.

20 EXAMINATION

21 BY MS. RICHARDSON:

22 Q Officer Bowden, with respect to this particular  
23 lawsuit, at any point during the traffic stop back on  
24 March 27th of 2000 do you recall ever telling Dr. Barbara  
25 Orban that she should file a lawsuit against the City of

1 Tampa?

2 A No.

3 I have a pat speech I guess I give. And again,

4 I don't remember an antagonistic interaction with

5 Dr. Orban. She might have questioned the ticket or

6 thought that she shouldn't have gotten the ticket.

7 And my general statement is, "If you don't

8 agree with the citation, take it to court. I didn't

9 witness the crash. You have the right to go present any

10 mitigating circumstance of why you don't think you should

11 have been cited."

12 I was referring to traffic court, not any sort

13 of civil action.

14 Q When you said earlier during Mr. Magri's

15 questioning that although she was very pleasant, she did

16 disagree or might have had some disagreement with the

17 ticket.

18 Do you remember specifically what her

19 disagreement was?

20 A I can't remember specifically. I do remember

21 just kind of generally that it wasn't -- she wasn't

22 thrilled she was getting a ticket. And I think there was

23 some -- I don't want to say argument, but discussion as

24 to maybe why she shouldn't have gotten the ticket. But I

25 can't recall specifics as to that conversation.

1 we're here."

2 Q So you can't say for sure whether or not you

3 may have given her an impression that if you were alone

4 that you might have done something --

5 A There's that possibility. And like I said,

6 there's a rough recollection that -- you know, I tried to

7 appease her, I guess, that she was getting the ticket.

8 Wasn't exactly happy with that, but had been pleasant

9 otherwise and gave her -- you know, "Here's your options

10 as far as court or school or whatever."

11 Q Okay. Do you recall that there was any thought

12 process on your part or any directive from anyone who

13 said that because Dr. Orban may have been dressed the way

14 she was or driving the type of car she was that she

15 should have been the person who would have been issued

16 the ticket?

17 A No.

18 Q Do you remember any information that because of

19 distinguishing characteristics that that is the reason

20 why she received the ticket she did that day?

21 A No.

22 Q With reference to the questions that Mr. Magri

23 was asking you about the difference between careless

24 driving and following too closely, are you familiar at

25 all with a legal presumption or a legal principle that

1 Q To the best of the recollection that you have

2 at this point, which I understand is five years later --

3 but do you have any recollection that somebody told you

4 or forced you to give Dr. Orban a ticket on that date?

5 A No.

6 Q Do you have any specific recollection that you

7 had it in your mind that you were not going to give

8 Dr. Orban a ticket based on the accident information that

9 you received from her and Mr. Collins?

10 A The only thing I can -- and there's just a

11 rough recollection of that. I don't know if I hadn't

12 been training -- I can't recall at that time in my career

13 if I was doing the exchanges, even though that was maybe

14 not what was expected in a minimal crash like this. But

15 because I was training, sometimes that affects a little

16 bit your procedures as far as I can't go out and just,

17 "Do as I say and not as I do." So you have to lead by

18 example.

19 So we were dispatched to a crash. The

20 procedures generally followed are that if you get

21 dispatched to the crash, you investigate and issue a

22 citation. That's the only thing I can -- like I said,

23 just a general recollection that -- I don't know if I

24 might have relayed that to her that, "Look, I'm training

25 and we're going to go ahead and do the crash because

1 typically the person who rear-ends someone is typically

2 the person who is at fault?

3 A I just know that's based on my experience and

4 investigation of the accidents and, again, going back to

5 that one crash that had an impact, I guess, what I did

6 following it, that I thought if anybody should have been

7 excused from a ticket, it was somebody whose kid kicked

8 the gear shift and dropped the transmission and stopped

9 the car abruptly and was instructed that a citation

10 probably should have been issued even in that

11 circumstance.

12 So my personal practice, I guess, or

13 presumptions on a crash scene are, if you hit somebody in

14 the tail, you're generally at fault.

15 Q When you were saying earlier that -- saying or

16 not saying. I'm not really sure how to phrase that.

17 But Mr. Magri was asking you questions about

18 what the policy says about when you decide not to write a

19 citation, you're supposed to speak with a supervisor.

20 A I believe -- I'm not -- I've never studied for

21 the sergeant's exam, and it's specifics like that that

22 would be detailed in there. There's a review in training

23 and as needed going through the policies and, as they

24 come out, reading them. But as far as memorizing each

25 specific thing -- but I think there is something in the

1 policy about you're supposed to seek supervisory rule.  
 2 Q But say, for instance, if you get called out to  
 3 this particular crash -- and we'll just refer to March  
 4 27th of 2000 -- is there a specific code that goes out  
 5 over the radio that says that you are being dispatched to  
 6 a traffic crash versus home burglary?

7 A It would be your call sign. And it's -- I  
 8 think it's the same code. It's a Signal 4, Baker 2, a  
 9 copy of Signal 4 at whatever location. That would  
 10 indicate to me they're calling me at my unit. And a copy  
 11 of Signal 4 would be a traffic crash.

12 Generally there's related information that goes  
 13 with it: With injuries, without injuries; blocking the  
 14 road, not blocking the road, that sort of thing.

15 Q Okay. In an instance, say, for instance, like  
 16 March 27th of 2000, if you had made a unilateral decision  
 17 or exercised your own discretion not to issue a citation,  
 18 how is that then reflected, or is there a way for your  
 19 supervisors to then notice that you were dispatched and  
 20 it didn't happen?

21 A Generally in the citation section of the crash  
 22 report I may notate, "No citation issued. See  
 23 narrative," and then in the narrative, you know, "This is  
 24 why I didn't issue a citation. There's divergent stories  
 25 and there's no independent witness."

1 A No.

2 If I had made -- based on my own discretion, if  
 3 I make a decision, damage is minimal, at-fault driver is  
 4 satisfied with it and I don't write a report, then, no.  
 5 There's nothing submitted.

6 They get a copy. I do use the short form as an  
 7 exchange and hand those out.

8 Q So would it be fair to say that it may escape a  
 9 supervisor's view if you are in some way disregarding  
 10 policy by not having contact with them --

11 A Yes.

12 Q -- by doing it that way?

13 A Correct.

14 MS. RICHARDSON: That was all I had.

15 MR. MAKHOLM: Okay. I don't have anything.

16 MR. MAGRI: I just have a brief follow-up with  
 17 regard to this.

## EXAMINATION

19 BY MR. MAGRI:

20 Q You recall having a conversation with Dr. David  
 21 Orban? I think he runs Tampa General's emergency.

22 A Correct.

23 Q But you don't really recall having a  
 24 conversation with Dr. Barbara Orban?

25 A I can't recall, now that you've brought it up a

1 So, yeah. It's not like there's a block on the  
 2 report where you've got to put in who was cited or the  
 3 violator. And if I had made a decision not to issue a  
 4 citation, then I would have to have some indication in  
 5 the report why I didn't issue a citation, or when it's  
 6 being reviewed I would be questioned on that.

7 Q Okay. So when you respond to traffic crashes,  
 8 although you have a personal philosophy about not issuing  
 9 citations, you do at least fill out the crash reports for  
 10 each of those?

11 A Yes. Other than what I said -- and I  
 12 can't give you specifics on that -- where there's -- you  
 13 know, the damage is so minimal, the not-at-fault driver  
 14 is agreeable to it and I don't try to persuade them one  
 15 way or the other. I don't have any problem writing the  
 16 report if they want it, but -- I was heading somewhere  
 17 with that

18 Q When I was asking the question about, although  
 19 you may not write the citation, you do actually write the  
 20 report itself?

21 A Other than in those cases where, like I said, I  
 22 have done exchanges and not done the reports.

23 Q When you do an exchange of information, is that  
 24 exchange of information documented? Is it subjected to,  
 25 like, editing?

1 second time, if there may have been a communication  
 2 shortly after the crash. And this is going back five  
 3 years.

4 The communication with the doctor at TGH was  
 5 since I became aware of the civil litigation, because  
 6 that was my response to him, that, "I understand there's  
 7 civil litigation. I can't answer your questions."

8 I believe there may have been -- again, because  
 9 you've asked twice -- a recollection that shortly after  
 10 the crash five years ago she may have called and had  
 11 questions about the report or about something. And  
 12 that's just a very general recollection that's coming to  
 13 my mind now.

14 Q You've indicated to us about how they expect  
 15 you to write the citations if you go out to a crash.  
 16 Right?

17 A Yes, sir.

18 Q And, I mean, there's no reason why you wouldn't  
 19 have told her that. In fact, you believe you may have  
 20 said something like that to her. Right?

21 A That it's an expected policy or procedure?

22 Q Yeah.

23 A Yeah. That's also part of my -- whatever --  
 24 the speech that I give when I'm issuing a citation,  
 25 that's our policy -- which it may not be policy. It may

1  
2  
3  
4 Q Okay. Now, is it also -- you've also indicated  
5 here that you're aware of some insurance connection in  
6 terms of this process?  
7 A Just very vague.  
8 Q Okay.  
9 A And most of that is hearing it from other  
10 officers or whatever, but nothing factual.  
11 Q All right. But in the course of the  
12 conversation with Dr. Orban, it could be possible that  
13 you may have mentioned that as well?  
14 A The only other thing I think that I've used in  
15 any conversation is that my personal perspective on some  
16 of these traffic crashes is that we're investigating them  
17 primarily for the benefit of the insurance company, that  
18 they have documentation at the time at the scene.  
19 Because as far as how it relates to police  
20 work, you know, I guess just personally sometimes I don't  
21 see that relationship if there's minimal damage, there's  
22 no criminal offense.  
23 And there's been times in my career where we  
24 got to a point we weren't being dispatched to crashes of,  
25 say, this magnitude -- no injury, vehicle is movable --

1 THE WITNESS: All right.  
2 MR. MAGRI: You have a right to read.  
3 THE WITNESS: I'll wait till it goes somewhere.  
4 MR. MAKHOLM: So you want to read?  
5 THE WITNESS: No. I'll waive.  
6 MR. MAKHOLM: Okay.  
7 (Proceedings concluded at 1:36 p.m.)  
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1 and I thought it came from complaints from drivers that  
2 they're not getting the documentation they need, that we  
3 changed again to, we respond to pretty much everything  
4 that comes in.  
5 Q Okay. All right. So there was a time when you  
6 wouldn't go to these types of crashes, but now --  
7 A No. As I recall, I think there was a time when  
8 communications would screen it: "Is there any injury?  
9 Is the vehicle driveable?" We didn't get sent at all.  
10 There was another time, either before that or  
11 after that, where we didn't need any approval. You go  
12 out. The vehicle is driveable. There's no injuries.  
13 You do the exchange. You don't have to write a report.  
14 And we've come back around to, you get  
15 dispatched now, you're supposed to write a report.  
16 Q And they don't -- and dispatch doesn't screen  
17 them to say --  
18 A No.  
19 If somebody calls in and says, "There's been a  
20 traffic crash. I'm at whatever location," we're going to  
21 get dispatched to it.  
22 MR. MAGRI: Okay. I don't have any more  
23 questions. Thanks.  
24 MR. MAKHOLM: I don't have any.  
25 MR. MAGRI: Thank you, Officer.

1 CERTIFICATE OF OATH  
2  
3 STATE OF FLORIDA  
4 COUNTY OF HILLSBOROUGH  
5  
6 I, the undersigned authority, certify that  
7 EDWARD BOWDEN personally appeared before me and was duly  
8 sworn.  
9  
10  
11 WITNESS my hand and official seal this date:  
12 September 13, 2005.  
13  
14  
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19  
20 MICHELE J. GALESKI  
21 Notary Public  
22 State of Florida  
23 Commission Expires 11/21/06  
24 Commission No. DD-157198  
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CERTIFICATE OF REPORTER

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

I, MICHELE J. GALESKI, certify that I was authorized to and did stenographically report the foregoing deposition; that a review of the transcript was not requested; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated: September 13, 2005.

\_\_\_\_\_  
MICHELE J. GALESKI

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