

4 CASE NO.: 8:04-CV-1904-T-23MA

5

7 Plaintiff

9 CITY OF TAMPA, FLORIDA,

10 Defendant

[illegible]

12

14 DATE: OCTOBER 26, 2005 - 1:30 P.M.

16 411 N. FRANKLIN STREET

17 TAMPA, FLORIDA 33602

18 REPORTER: CARLA DEE ALLEN - NOTARY PUBLIC

19

20

21

22 D & D REPORTING SERVICE, INC.

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 9 TAMPA, FL 33602
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15 * * * *

17 I N D E X

18 Direct Examination by Mr. Magri. 3

19 * * * *

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1 S T E V E N H O G U E

2 WAS CALLED AND AFTER BEING DULY SWORN WAS EXAMINED AND
 3 TESTIFIED AS FOLLOWS:

5 D I R E C T E X A M I N A T I O N

6 BY MR. MAGRI:

7 Q. Good afternoon, Chief. My name is Joe
 8 Magri. I represent Dr. Orban in this lawsuit. I'll
 9 be asking you questions here this afternoon. If
 10 there's any questions that I ask that you don't
 11 understand or you need clarification, ask me to do so,
 12 and I'll be happy to, okay?

13 A. Will do.

14 Q. You're the Chief?

15 A. That's correct.

16 Q. And for how long have you had that position?

17 A. Just over two years.

18 Q. All right. And you came up from which
 19 police department?

20 A. Ft. Walton Beach where I was a police chief
 21 there.

22 Q. You used to work here in Tampa, though,
 23 prior to that?

24 A. Prior to that I worked here.

25 Q. And you're a member of the pension plan

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1 here?

2 A. Currently, yes.

3 Q. And is there an A and B division of that, or
 4 how does that work?

5 A. No, you're just in it or you're not.

6 Q. You're in it or you're not, okay. You filed
 7 an Affidavit in this case, and I'd like to start
 8 there. You've read the plaintiff's Complaint, and you
 9 state that you're familiar with the -- generally
 10 familiar with the events involving March 27 of 2000.

11 What have you done to check to look into those events?

12 A. The 2000?

13 Q. Yes.

14 A. I read the Complaint and basically responded
 15 with what you have there, and I don't think I've done
 16 any research into it, though.

17 Q. Okay.

18 A. I've heard some, you know, general
 19 conversation with Kirby Reinsberger reference this,
 20 just kind of a general overview, none of the real
 21 details. Of course, I've talked to my attorneys.

22 Q. All right. So is it fair for me to say that
 23 the only document that you've reviewed in relation to
 24 this would be the Complaint?

25 A. That's correct.

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1 Q. Okay. And you attach a memorandum from
 2 Thomas Stringer to your Affidavit?

3 A. That's correct.

4 Q. And is your understanding of that what's set
 5 forth in this Affidavit?

6 A. My understanding of that is that Judge
 7 Stringer I think it was back in 1985, or right about
 8 then -- in fact, I was here then as an officer or some
 9 rank, I don't remember, in '95 I was probably a
 10 sergeant -- that that came about where we were going
 11 to court and testifying.

12 And my understanding of it was from back
 13 then, and it could be completely inaccurate because I
 14 was a sergeant, really wasn't involved in the policy
 15 decisions at that time, was that the defense attorneys
 16 were all saying that the officers could not testify
 17 since they had not seen anything so they really
 18 couldn't testify to anything but showing up,
 19 interviewing people and just writing a ticket.

20 So they said we will excuse you from coming
 21 to court because the officers are just sitting there
 22 doing nothing. All of the defense attorneys were
 23 starting to not let the officers testify in court.

24 So the Judge, my understanding was, had that
 25 order issued so that the officers did not have to

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1 attend because there was objections to them testifying
2 in court.

3 Q. Okay. As I understand this policy, what the
4 officers do is they fill out some sort of a form?

5 A. That's correct.

6 Q. And they then -- and then what happens?

7 A. This form basically says they did not
8 witness it, they put a copy of the accident report
9 with it and they ship it back over to the clerk's
10 office, and I guess in court that is produced in lieu
11 of the officer.

12 Q. Okay. And do you know to what point it
13 serves to have the report sent to court?

14 A. That's what the Judge wanted at the time.

15 Q. Okay. Is there any protocol that officers
16 follow when they fill out one of these -- a crash
17 report, accident report?

18 A. There are guidelines for filling out
19 accident reports. We actually have two. We have what
20 we call a long form and a short form depending on
21 different circumstances determines which form you fill
22 out.

23 Q. Okay. And do you know what those
24 circumstances are?

25 A. You know, I don't know in great detail, but

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1 you fill a long form out if it's a felony, traffic
2 offense, if it's a DUI. Actually any criminal offense
3 you fill out the long form. If it's a government
4 vehicle you fill out the long form. And there's
5 probably a couple of more, but I don't recall. They
6 are all listed in the SOP.

7 Q. Okay. And the SOP would be TPD's SOP?

8 A. That's correct.

9 Q. Okay. Now, do you know whether officers are
10 trained in terms of taking down the things that people
11 tell them at the scene?

12 A. Of course, they are.

13 Q. And do you know what that training --

14 A. They go through a field training program.

15 Q. Okay.

16 A. When you come on the Tampa Police Department
17 you go into what we call the Field Training Evaluation
18 Program where they ride with a seasoned officer. This
19 is after they have finished the police academy and
20 then have gone to what we call hold-over where we give
21 about six weeks of individualized training just by the
22 Tampa Police Department for Tampa police officers.

23 The police academy is done at the local
24 universities, junior colleges generally, and that's
25 kind of a generic law enforcement curriculum. The

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1 hold-over is particularly just for police officers
2 that are going to work here in the City of Tampa.

3 And we give them, I think it's six to eight
4 weeks additional training. And they go for four
5 months, roughly four months with a field training
6 officer where they're also trained, and they go over
7 the SOPs at that time.

8 Q. Okay. Has there been an increase in the
9 number of traffic citations that have been issued over
10 the last few years?

11 A. How many are we talking about?

12 Q. Well, is it accurate that last year there
13 was like a 40 percent increase?

14 A. Right. The two years that I've been here,
15 we've seen an increase both years. Prior to that, I
16 couldn't say how many citations were written.

17 Q. All right. So is it approximately correct
18 that it was a 40 percent increase last year?

19 A. I think that is approximately correct.

20 Q. Do you recall what that percentage would be
21 this year?

22 A. No, I don't right off, but I could get that
23 information.

24 Q. Okay. I'd appreciate it if you would.

25 A. Um-hmm.

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1 Q. Is there a reason why there's been that sort
2 of an increase?

3 A. Yes, there is.

4 Q. What is it?

5 A. It's several fold. One, our traffic
6 fatalities and accidents are going up. So we are --
7 that's one reason that we write traffic citations.

8 Another reason we write traffic citations is
9 because I go to a lot of community meetings, and the
10 number one complaint from all of the citizens in Tampa
11 at all community meetings that I go to is traffic
12 enforcement.

13 They want more traffic enforcement. They
14 don't like speeders. They don't like people running
15 through stop signs. They don't like people running
16 through red lights. It's pretty much across the
17 board. Loud car radios are also particularly
18 frustrating to the public.

19 And we're in the business of responding to
20 what the public wants, and that's one reason that
21 we've increased our traffic citations because we are,
22 in fact, responding.

23 We are a community policing philosophy
24 organization here, and we believe in responding to the
25 demands of the public.

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1 And, there's one other reason, and also it's
2 good police work. You know, the more times you stop
3 some people and you'll find stolen property and
4 contraband and people with guns that shouldn't have
5 guns and everything of that nature.

6 So those are three right off the top of my
7 head as to why we do these -- why we've increased our
8 traffic citations.

9 Q. Okay. When you talk about fatalities in
10 accidents going up, what are you referring to?

11 A. The number of people that die each year in
12 traffic-related traffic crashes.

13 Q. Okay. Would that also be the number of
14 accidents or just --

15 A. I think the number of accidents are also
16 going up, in fact, I'm pretty sure of that, but I
17 don't know the exact statistics on that; but our
18 traffic fatalities are definitely going up.

19 Q. Why is that?

20 A. Well, I wish I had an absolute crystal ball
21 answer for you, but I don't, and if I did I'd probably
22 be the police chief in New York City instead of Tampa,
23 Florida, I don't know, if I had those kind of answers.

24 But the truth is that, you know, traffic
25 accidents are going up, and I truly believe that

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1 traffic citations help reduce the number of traffic
2 accidents.

3 Now, I don't have any definitive data to
4 that effect because I'm not sure you can quantify it
5 really. We write a number of tickets and we have a
6 number of accidents.

7 There's no way to tell whether if you wrote
8 less accidents (sic), you might have had more
9 accidents than you currently did. There's no way to
10 quantify that.

11 Q. Are you familiar with the research that says
12 that, you know, when you get out of the DUI area, that
13 sort of thing, that accidents are most the function of
14 engineering of roadways, left turn signals for
15 instance or left turn lanes and --

16 A. I'm sure that --

17 MR. MAKHOLM: Excuse me. Object to form.
18 What survey are you talking about?

19 MR. MAGRI: Didn't I say literature?

20 MR. MAKHOLM: I thought you said survey.

21 BY MR. MAGRI:

22 Q. Well, whatever. Are you familiar with
23 literature of that sort?

24 A. I've heard that expressed, but I've never
25 heard it expressed as the only reason for traffic

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1 accidents. In fact, I think it's probably better
2 documented that driver error causes more traffic
3 accidents than equipment failures or engineering of
4 the streets.

5 Q. Okay. Does engineering of the streets
6 affect driver error?

7 A. I don't know about that, but I'm not saying
8 the engineering of the street could not also have some
9 impact on traffic accidents, obviously.

10 Q. Okay. Let's take the situation where you've
11 got no left turn arrow or left turn lane, and you got
12 a multi-lane street on each side, you know, two or
13 more lanes that's, say, going north and two or more
14 lanes going south and no left turn lane either way.

15 When a -- periodically in such circumstances
16 there will be accidents where some person attempts to
17 turn left in front of other traffic, is that correct?

18 A. You're right.

19 Q. Okay. In that circumstance, how does one
20 determine who is at fault for the resulting accident?

21 A. All depends what the circumstances are. I
22 mean, in that scenario you just gave me, if somebody
23 is turning left in front of traffic and gets hit, then
24 that person generally violated somebody's
25 right-of-way.

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1 There could be mitigating circumstances if
2 the other car was coming at 200 miles an hour and a
3 person could reasonably look up and see them pretty
4 far down the road and wouldn't expect anybody to be
5 driving that fast and they turned left in front and
6 that 200 miles an hour car closed that distance that
7 would have been normally plenty to get across the road
8 in, then that would be a mitigating circumstance.

9 Or if somebody was stopped in the road
10 making a left turn and somebody else ran into the back
11 end of them while they were waiting for traffic to
12 clear, that would cause a whole different set of
13 scenarios or who was at fault.

14 So you can't just be -- you have to have a
15 little more information than what you're giving me is
16 what I'm basically saying.

17 Q. Okay, all right. The TPD has a policy to
18 write a citation at every crash, right?

19 A. That's not true.

20 Q. No. What is TPD's policy?

21 A. Our policy is that the officer will use
22 their discretion. Our policy also is that if you
23 cannot determine who's at fault in the accident we
24 don't charge anybody.

25 Q. Okay.

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1 A. And, in fact, our policies clearly state
2 both of those facts.
3 Q. All right.
4 A. Or that the officer has the discretion
5 whether to issue a traffic citation or not.
6 Q. All right. What policies are you referring?
7 A. Our SOP, I think it's 635. Is that the
8 traffic SOP?
9 MS. RICHARDSON: SOP 634, I don't know if
10 that's the right one.
11 BY MR. MAGRI:
12 A. This is the 1994 policy. There's a '97
13 update.
14 MS. RICHARDSON: Okay.
15 BY MR. MAGRI:
16 A. I could step out and get it if you'd like.
17 Q. Yeah, why don't you.
18 MR. MAKHOLM: We're off the record.
19 (At this time a discussion was
20 held off the record.)
21 BY MR. MAGRI:
22 A. It's SOP 635.
23 Q. Okay.
24 A. Section 5, Enforcement Actions. General
25 statement. "The issue of when to issue a citation and

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1 when to issue a warning are and have been questions
2 asked by law enforcement officers throughout the
3 history of law enforcement."
4 These questions cannot be answered in a
5 simple matter because of many circumstances that might
6 surround a particular violation. The decision becomes
7 easier if one understands the purpose for taking
8 enforcement action in modification of driver
9 behavior."
10 And it goes on from there to explain that
11 minor infractions should receive verbal warnings, the
12 more serious ones should receive traffic citations.
13 So it clearly addresses that in our SOP that, you
14 know, to give a citation or not to give a citation is
15 the officer's discretion.
16 Q. Is there a provision in there that talks
17 about -- and by the way, can I get a copy of the SOP?
18 MS. RICHARDSON: When I go back to the
19 office.
20 MR. MAGRI: Okay, great. In fact, it's on
21 the computer, right?
22 MS. RICHARDSON: It is on INET.
23 MR. MAGRI: I can just run it off so I'll
24 just write these numbers down.
25 BY MR. MAGRI:

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1 Q. Okay. Is there a provision in there that
2 requires supervisory approval if an officer determines
3 that a citation is inappropriate?
4 A. It's not in this SOP, but it is in another
5 part of the SOP.
6 Q. Can you pull that one out?
7 A. Whew.
8 Q. We're relying on your memory because you
9 just proved that yours is better than counsels'.
10 A. I'm not going to be able to put my hands on
11 that in just a real short order.
12 Q. Okay.
13 A. But I can get that for you. It does address
14 that at another point in the SOPs.
15 MS. RICHARDSON: That might be 634 maybe.
16 BY MR. MAGRI:
17 A. I think 634 is traffic citations. Yeah,
18 it's traffic citations. I think it's an 800 statute
19 SOP.
20 Q. Well, why don't we -- I know I have it
21 someplace myself.
22 A. But there is an SOP that we have or training
23 manual that does speak to that issue.
24 Q. What's the purpose of that requirement?
25 A. I think it's twofold really. I mean, I

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1 didn't -- I wasn't there when they originated that
2 policy so I don't know exactly what the conversation
3 was, but it has validity in two instances.
4 One, sometimes police officers can't figure
5 out who to cite, can't figure out who was at fault in
6 an accident. And a sergeant who is their supervisor,
7 or the corporal in lieu of the sergeant, are both
8 senior experienced people who can come over and help a
9 younger officer or somebody who cannot figure out what
10 occurred in their traffic accident and give them some
11 advice on how it might -- who might be at fault.
12 And the other issue is that the police have
13 an obligation to the other person who is not at fault
14 in that accident scene to, in fact, assess that
15 accident as correctly as possible and to cite the
16 individual who, in fact, caused the accident.
17 So not only do we have a training issue or
18 an experience issue by doing that, that can be solved
19 by bringing a more experienced person over to look at
20 a traffic accident, but we also have an absolute
21 obligation to the other person who wasn't at fault to
22 determine who was at fault and who wasn't in the
23 accident. And that's assuming, of course, that it's
24 more than a one-car accident.
25 Q. Okay. Is there material that's directed to

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1 the supervisors that helps to instruct them how to
2 utilize that section or that provision?

3 A. I don't quite follow what you're asking for
4 or what you're asking.

5 Q. I'm wondering if there's any training that
6 supervisors go through on how to exercise their
7 supervisory responsibility under that section?

8 A. Under that section in particular?

9 Q. Right.

10 A. I don't think there's anything that
11 addresses that section. I mean, the SOPs, which you
12 can see as I have here in front of you, is about five
13 inches thick. It's full of things that officers and
14 supervisors should and shouldn't do.

15 I don't think there's a training bulletin
16 designed for every one of those things. In fact,
17 there are very few training bulletins. So it
18 basically says in the SOP that if the officer can't
19 figure out who is at fault in the accident and who
20 should receive a citation that they should just call
21 their supervisor.

22 It doesn't say that they're going to get a
23 traffic ticket or somebody's going to get a traffic
24 ticket, if the officer thinks it's inappropriate, call
25 the supervisor and get that same approval and, of

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1 course, nobody will get a ticket.

2 I've investigated hundreds and hundreds and
3 hundreds of traffic accidents in my police career, and
4 not every one of them did somebody receive a traffic
5 citation.

6 Q. When you were here on TPD, did they have
7 such a supervisor --

8 A. I'm still here.

9 Q. Well, I understand, the first time around.

10 A. Okay.

11 Q. Did they have that kind of supervisor
12 approval requirement?

13 A. Yes, yes.

14 Q. If you thought it was inappropriate?

15 A. Yes, if you thought -- if it was
16 inappropriate to write a citation, then you called
17 your supervisor and got him over there, or her over
18 there, to review your decision-making process to make
19 sure that it was valid.

20 Q. You mention got him or her over there, what
21 do you mean by that?

22 A. Usually we call them to the traffic scene.

23 Q. So they would come to the scene?

24 A. Sometimes, not all the time. Sometimes you
25 could say over the radio, you could get over the radio

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1 -- and I'm just giving you a for instance, not the way
2 it is all the time -- but you can say on the radio,
3 look, I've got no witnesses to this accident, both of
4 them said they had a green light when they came
5 through the thing, they met right in the middle of the
6 intersection, and I really can't tell who had the
7 green light and who didn't.

8 You know, then they'll say I don't want to
9 write either one of them a traffic ticket. They might
10 say over the radio, if those are the circumstances,
11 then that's fine.

12 Or if they might have skid marks and cars,
13 you know, displaced and they just couldn't figure out
14 who was where, and everybody has gone to the hospital
15 in an accident, they might call a supervisor over to,
16 you know, help them figure out where the skid marks
17 were. That would be more of a training issue.

18 Q. Is there such a thing as an unavoidable
19 accident?

20 A. Well, I'm sure there are particularly for
21 those people who are not at fault in an accident.
22 They're stopped in traffic and they're making a left
23 turn and somebody runs into the rear end of you, that
24 probably wasn't too avoidable for you. It might have
25 been well easily avoidable for the other people.

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1 Q. Is there ever an accident or a crash where
2 from the standpoint of both cars where the accident
3 might be unavoidable?

4 A. I mean, I can't think of any situations like
5 that that I think that would be true, but I won't rule
6 out the possibility that there is some way that that
7 could occur.

8 Q. Okay.

9 A. I can't ever think -- recall any independent
10 knowledge right now of that ever occurring in my
11 career, that it wasn't avoidable at all.

12 Q. What about the car that cuts somebody off or
13 causes that vehicle to hit another or something?

14 A. Well, it's avoidable by the person who cut
15 that person off so that was an avoidable accident.

16 Q. Okay. But as between the cars involved in
17 the accident?

18 A. Well, it kind of goes to my first example.
19 Somebody is stopped in traffic waiting to make a
20 left-hand turn and somebody runs into the back end of
21 them, it wasn't really unavoidable -- it was
22 unavoidable by the person sitting there in traffic
23 waiting to make their left-hand turn, but it was
24 avoidable by the person who actually caused the
25 accident.

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1 Q. Okay, fair enough. But there can be
2 situations where two cars are in an accident, and the
3 accident is unavoidable as to those two cars?

4 A. I'm not ruling out the possibility. I just
5 can't think of any circumstances, you know, from my
6 practical experience that that's been true; but I
7 would say that I haven't really given it much thought.

8 Q. Okay.

9 A. I guess there could be some set of
10 circumstances that could have an accident be
11 unavoidable, I don't know.

12 Q. I'm thinking of the situation where, let's
13 say, somebody cuts another off and then that car that
14 gets cut off hits another and, you know, the third
15 party goes off on his merry way, no one sees him.

16 A. Right, but that's clearly an avoidable
17 accident --

18 MR. MAKHOLM: Objection. Excuse me, excuse
19 me.

20 BY MR. MAGRI:

21 A. -- by the phantom vehicle.

22 MR. MAKHOLM: I just object to form. I
23 don't think it was a question.

24 BY MR. MAGRI:

25 Q. Okay. It's avoidable by the phantom

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1 vehicle, but not avoidable by the vehicles that had
2 been in the accident -- that were in the accident
3 together, correct?

4 A. Absolutely true that once an accident series
5 starts, some things that happen are unavoidable.

6 Q. Okay.

7 A. If somebody hits you as you're going through
8 the intersection in the side and it displaces your
9 vehicle into another vehicle, and that other vehicle
10 is at fault, it surely was unavoidable by you.

11 You hate to say unavoidable I guess if you
12 saw the car coming and could have slowed down and
13 those kind of things all go into the avoidable
14 category.

15 But there are instances where once the chain
16 of events starts happening that you have no control
17 over them anymore because your vehicle is out of
18 control and sliding across the road and where it goes
19 you won't be able to steer it nor stop it.

20 Q. Now, if you have a witness to something like
21 that it becomes -- let's say you got a phantom vehicle
22 situation, does the police have a protocol as to how
23 they treat phantom vehicle claims by people?

24 A. Um-hmm.

25 Q. What is that?

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1 A. Well, it's part of an investigation. If
2 somebody claims a phantom vehicle then, you know, you
3 look for witnesses. It all depends on what the
4 circumstance is. You're asking very broad general
5 questions.

6 Q. Yes.

7 A. And, you know, you're not telling me whether
8 there's skid marks on the ground that the phantom
9 vehicle left that would indicate it was there, were
10 there witnesses to it, were there other people in the
11 vehicle that could be witnesses to it, were any other
12 vehicles hit.

13 Those kind of things all go to telling you a
14 story, all the evidence and how the cars are situated
15 and what happened goes to tell you a story as to
16 whether it happened. Have people in my career lied to
17 me about phantom vehicles and I've clearly been able
18 to prove that they were lying, yes, that's happened.

19 Q. How do you do that?

20 A. Well, that's once again, it's all about the
21 circumstances. You find a witness that said, oh, no,
22 that's not the way it happened, I was right behind him
23 a hundred yards, I saw exactly what that individual
24 did, and they tell you what they did. And the person
25 who's telling you that, obviously it's very

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1 self-serving to their situation and that also goes
2 into account.

3 Q. What do you do if -- when you're writing
4 those up do you document these stories that are being
5 told? Do you write down that so and so is saying
6 this?

7 A. On a normal traffic accident, are you
8 talking about a traffic accident?

9 Q. Yeah.

10 A. You might depending on the seriousness of
11 the accident. If it was a minor accident, you would
12 generally just list that person as a witness so that
13 when they got to court they could testify to what they
14 told you.

15 Q. Okay. And if you have -- if you've got a
16 phantom vehicle claim and you don't have skid marks or
17 other witnesses or things like that, how do you deal
18 with it?

19 A. Sometimes you just have to accept the fact
20 that there was a phantom vehicle there if that's what
21 the person was telling you and you have nothing to
22 counter that because lots of times there are phantom
23 vehicles. So, I mean, you have to give that credence,
24 too, but you have to conduct an investigation to see
25 if all of the facts support that.

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1 Q. When you do that, do you document that in
2 some fashion?
3 A. Um-hmm, yes.
4 Q. How so?
5 A. It's on the accident report.
6 Q. All right. In other words, you document
7 that you conducted such an investigation?
8 A. Right. Usually we draw a little diagram.
9 If you're doing a long form like I was telling you
10 before, then you actually show the phantom vehicle on
11 there, talk about the phantom vehicle in the place
12 where you write the verbiage.
13 Q. Okay. Does the -- I take it TPD has
14 training materials with regard to training young
15 officers or -- and at the academy I'm sure has
16 materials as well?
17 A. The academy has training material, right.
18 Q. Okay. I think we're attempting to get that.
19 A. That's really not under the control of the
20 police department.
21 Q. Oh, I see. In other words, they'd have to
22 be a separate --
23 A. HCC runs the training campus here locally.
24 Q. Okay.
25 A. Now, St. Pete JC also runs one.

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1 Q. I see.
2 A. So they have the training material out
3 there.
4 Q. All right.
5 A. It's independent of the police department.
6 We hire people at the police department, they come --
7 they're already certified law enforcement officers.
8 If they've been through a police academy, they've
9 passed the state exam.
10 There's one exception to that, and that's
11 called a scholarship academy, and that's where we pay
12 a stipend to people to go to the academy, and I guess
13 -- I'm not sure they're considered our employees or
14 what their status is, but we actually pay them to go
15 to the academy.
16 And during the time they're actually in the
17 police academy, we're paying them. And then when they
18 graduate they have a contract to get a job with us.
19 Once they graduate and pass the State exam, then we
20 give them a job. That's a very small minority of the
21 people we hire.
22 Q. Does the TPD once it gets people from the
23 academy have training materials for traffic law
24 enforcement?
25 A. You know, I haven't been involved in that

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1 since the mid 80s so I'm not exactly sure what
2 training material they have, but I know they have
3 training material.
4 Q. Okay. In Florida there's a premium tax
5 payment that comes from the State that goes to the
6 police and firemen pension funds. Are you familiar
7 with that?
8 A. I'm a lot more familiar with it today than I
9 probably was two years ago, yes. 185 money you're
10 talking about?
11 Q. Right. Are you familiar with how that
12 works?
13 A. Not really. You know, it's something that I
14 had heard about, you know, many years ago in kind of a
15 nebulous sort of way that it was out there, but to be
16 honest with you until this lawsuit was filed I didn't
17 know whether that was car insurance money or life
18 insurance -- I heard it was insurance money.
19 And I had always heard prior to becoming,
20 you know, a little more educated on it since Ms.
21 Orban's lawsuit that it was for the police department
22 investigating traffic accidents, something that the
23 insurance companies needed the traffic accidents for
24 whatever.
25 And that was some sort of through the

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1 legislature had mandated that the insurance companies
2 pay the cities for doing the traffic accidents.
3 That's what I always thought it was. I'm not sure
4 it's exactly that anymore. But what the funding
5 source actually is and how it works, even to this day
6 I don't have a clue.
7 Q. Okay. Are you familiar with the fact that
8 as premiums rise there's a tax on that increase?
9 A. It's a tax on the increase of the premiums,
10 no. My understanding of it is that it's based on the
11 premiums that are written in a jurisdiction I would
12 assume, I'm not even sure that's true. Is it just the
13 City of Tampa that the 185 money comes back to the
14 City on or is it the county, too.
15 Q. I think that they break it down by cities
16 across the state.
17 A. Or zip codes.
18 Q. Huh?
19 A. Or zip codes.
20 Q. Well, I have to ask them how exactly they do
21 that.
22 A. Okay, I don't really know either.
23 Q. Or I'll ask Dr. Orban, probably knows it
24 better than I do. If she was here, I'm sure she'd
25 tell you.

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1 But, in any event, when this -- my
2 understanding is that in the late 90s there's an
3 amendment to statutes that were passed that meant that
4 -- states that the premium tax increase and any
5 increase in premiums over a base year goes to extra
6 benefits. Are you familiar with that?

7 A. No.

8 Q. Okay. Are you familiar with the amount of
9 money that's put into the police pension fund each
10 year?

11 A. Couldn't tell you.

12 Q. Are you familiar with what the percentage is
13 that the State pays vis-a-vis the City and the
14 officers?

15 A. The State pays on our pension?

16 Q. Yeah.

17 A. I don't think the State pays anything under
18 our pension.

19 Q. Well, through this premium tax increase,
20 it's collected by the State, right?

21 A. No.

22 Q. Okay. Are you aware that in this past year
23 for which we have records, or last year for which we
24 have records, the amount the State pays actually is
25 greater than the amount that both the City and the

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1 officers have paid combined?

2 A. No, I wasn't aware of that.

3 Q. How is it that you were placed into the
4 pension fund when you came back here?

5 A. I'm not sure what went on with the pension
6 fund because I wasn't involved in that process. When
7 I was employed here they gave me an employment
8 benefits package verbally, and one of those things is
9 they said I was going into the general employees
10 pension plan.

11 When I got here, apparently, there is some
12 rule in the general employees pension plan that says
13 that retired police officers and firefighters from the
14 City of Tampa cannot be in their plan.

15 So they told me that I was not going to be
16 able to go into that plan and did I have any
17 objections if they tried to put me back into the
18 police plan.

19 Well, I was at the time currently drawing
20 about a \$50,000.00 a year retirement from the Tampa
21 Police Department pension plan so I had one of the
22 caveats to it was I had to stop receiving that if I
23 went back into the pension plan, but then I would tend
24 to accrue additional benefits based on my longevity.

25 And so I said, yes, that's fine, if you can

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1 arrange that, that would be fine with me. So they
2 went ahead and said that they had arranged it, and it
3 was a matter of my understanding of the Mayor having
4 an executive order said that I could be back in.

5 And they had voted on it at the pension
6 board meeting, and I received a majority of the votes
7 to become back in, and I was put back in. What
8 mechanisms and what, you know, how that was all done,
9 I really don't have a clue other than just basically
10 that story I told you is about all I know about it.

11 Q. Were you there when they voted on that?

12 A. Yeah.

13 Q. I mean, do you know who voted what ways?

14 A. I want to say that there were one policeman
15 and two firemen I think voted against me. I think
16 there was one person absent, and I think five voted
17 for me, two policemen and three City people, something
18 like that. It was a, I think, a three to five vote,
19 and one person was absent.

20 Q. Do you know the names of the people that
21 voted against you?

22 A. That voted against me, the only one I know
23 is the police officer. I knew him because I knew him,
24 but I couldn't tell you his name. He's retired since
25 then. In fact, probably a year after that I promoted

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1 him to sergeant.

2 Q. And do you know why he voted against it?

3 A. Why he voted against it, no, I haven't a
4 clue.

5 Q. Okay. I mean, do I get the sense from what
6 you were saying before that this actually may not
7 have, financially speaking, it may not have been a
8 benefit for you to do it this way, or?

9 A. The long run it will be a benefit for me. I
10 think I did some rough calculations. Of course, I'm a
11 police officer, I'm not a financial planner. But if I
12 live six years beyond retirement, if I remember
13 rightly, I kind of come to a break-even point, and
14 then from then on I actually get more money out of it.

15 Q. Okay. Is there a quota system with regard
16 to traffic citations?

17 A. Absolutely not.

18 Q. What to you is a quota system?

19 A. What is a quota system? Where we tell
20 officers you got to write 30 traffic tickets a year or
21 30 traffic tickets a month or 30 traffic tickets a
22 day, and that's what you got to turn in.

23 Q. And why don't you -- why do you say
24 absolutely not?

25 A. It's illegal.

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Q. And the basis for that statement is what?

A. It's been ruled in the courts that it's illegal to have quotas, and I would be willing to bet you there's not a police officer in Florida that doesn't know that.

Q. Okay. My understanding is that officers have been rated down in traffic law enforcement over the last few years if they don't meet district averages?

A. I don't know that -- I'm sure officers have been rated down in their traffic law enforcement. Based on what, it is usually the sergeant writes an evaluation on an officer, and that criteria is not set in stone.

Obviously, traffic enforcement is one of the things that police officers are supposed to do, and, in fact, in the SOP here it clearly states that that's one of their duties is to do traffic enforcement.

We also most of our uniform officers ride zones, and in that zone we have plenty of traffic complaints from people in the neighborhoods that are complaining or we have high traffic accident intersections in there or high accident stretches of the road and they are expected to, in fact, enforce traffic violations in those areas.

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If they don't do their job, then, yes, they probably are rated below expectations or unsatisfactory.

Q. It's my understanding that with some officers that have been rated below expectation on traffic law enforcement that they're pointed to district averages when they inquire as to how many citations should I be writing in order to improve this?

A. Well, I'm not -- I don't know that, okay. I don't -- I'm the police Chief, but I don't do everything here at the police department. It's all delegated down to other people, and each division is run by a major who sets certain policies as to what, you know, what they expect from their officers.

No major says you got to write this many tickets, I guarantee you that because that's a quota system, but there is some expectation that officers do their job, which a part of that job is writing traffic citations and enforcing the traffic laws.

Now, but that's never a black or white issue because, you know, somebody may be low in traffic citations, but does something else, some officers belong to our tactical response team, and they spend a lot of time off on tactical response calls.

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So their productivity would be less, let's say, than somebody who was there all the time. So that officer would be -- you would look at it when you rated them based on how much time they were doing the job of patrol officer and say, okay, overall this is reasonable for this amount of time that he actually spent here because his other duties took him away from his street duties for a certain segment of time.

So everything is a little bit of a -- or maybe one officer makes hundreds and hundreds of arrests each year, and his traffic enforcement, or her traffic enforcement wasn't as much as somebody else who made less arrests.

So it's always a balancing act. That's why the sergeants do it. They're there every day with their officers, they know when their officers are working.

They also give instructions to their officers, you should do some traffic enforcement here or there, and they're expected to do what their sergeant tells them. And when they don't, then there are consequences for not doing what you're supposed to be doing.

Q. There have been -- there is a sergeant at least that complained that he received directions from

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above to rate down certain patrol officers that he thought were doing a good job overall, but he was told to rate them down in traffic law enforcement because they weren't writing enough citations.

He didn't think that that was appropriate for the officer because he thought that the officer was contributing in other ways. Is that a complaint that you've heard?

A. Not really. I'm sure you could find some individual instance of everything around here at one time over, you know, many, many years. But this organization is a paramilitary organization, and a sergeant has a lieutenant who is their boss.

And just like in any organization sometimes the boss doesn't agree with what the sergeant is doing or not doing and gives that person particular instructions. Like that officer's traffic law enforcement is not acceptable.

You know, we have officers that go a year at work and write five or six traffic tickets. Now, what I would say to you, sir, is in a year's driving around, do you see five or six traffic accidents in your daily driving around. Of course, you do, and so does everybody else and so do those police officer.

And their job is to take action on it,

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1 different from you, which is not to take action. But
2 their job is to take action on those kind of things,
3 when they don't, they're not doing their job.

4 Q. Okay. So there is a -- is there a number
5 below which --

6 A. There is no number.

7 Q. Okay.

8 A. You can take that right out of your
9 vocabulary. There is no number here that says you got
10 to write a certain amount. It's always like I said,
11 it's a little bit in the gray area.

12 You look at the officer's overall
13 productivity, how much time they had to do traffic law
14 enforcement. You know, you're running from call to
15 call to call all day long, assigned calls over the
16 radio, you might not have time to do any traffic
17 enforcement in one day. A sergeant realizes that.

18 You have five or six hours of patrol time
19 and nothing to show for five or six hours of patrol
20 time, the sergeant might well say to an officer, what
21 were you doing.

22 You know you had these three intersections
23 or this stretch of road or this complaint in your area
24 about traffic or can be vagrants or it can be, you
25 know, people using drugs.

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1 It could be a whole variety of things
2 depending on which zone and what the problems are in
3 that zone. Traffic enforcement just being just one of
4 those things that we would work on.

5 Q. Have sergeants complained about not having
6 people to do backup because they're involved in
7 traffic enforcement, patrol officers now I'm talking
8 about?

9 MR. MAKHOLM: Objection to form.

10 BY MR. MAGRI:

11 Q. Have you heard that complaint come up the
12 chain?

13 MR. MAKHOLM: Go ahead.

14 BY MR. MAGRI:

15 A. No.

16 Q. How about where patrol officers write things
17 like "per supervisor" on various forms?

18 A. I have never heard of that. I'm not sure
19 that -- you know, like I said, I'm not sure what
20 you're referring to. What do you mean "per
21 supervisor?" Wrote a traffic ticket per supervisor?

22 Q. Right.

23 A. In other words went out and caught a speeder
24 riding down the road and said per supervisor I wrote a
25 traffic citation today?

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1 Q. No, I'm saying where they've called the
2 supervisor up and the -- at the crash scene saying
3 they didn't really know who to write it to and the
4 supervisor told him who he thought it ought to be
5 written to and they've written per supervisor on the
6 form?

7 A. I don't see anything inappropriate with
8 that. Maybe that officer wants that supervisor to go
9 to court with him because he's told everybody at the
10 scene I couldn't figure it out, gets to court and his
11 attorney says, well, you couldn't figure it out, could
12 you. Said, well, why did you do it, why did you give
13 him a traffic citation.

14 Well, see, in my notes here I wrote per my
15 supervisor. I gave him the circumstances or they came
16 by the scene or she came by the scene, and I issued
17 the citation.

18 Q. Is that something you're familiar with or
19 are you --

20 A. No, I've never heard of it or seen it
21 before.

22 Q. Okay.

23 A. I was in this business, the real police
24 business, which was writing tickets and putting people
25 in jail and things like that for many, many years, and

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1 I can't ever recall anybody writing it.

2 Me ever writing it in a report nor when I
3 was a sergeant ever having an officer write it in, and
4 I gave plenty of officers direction as a sergeant and
5 when to make an arrest, when not to make an arrest,
6 unarrest people they had arrested and those kind of
7 things. That's just part of being a supervisor.

8 Q. Okay. Hold on one second. I'm moving
9 through these things, though it may not appear to be
10 that way. With regard to the pension payments, do you
11 pay the same amount every year in your pension?

12 A. No.

13 Q. How does that -- how is that determined how
14 much you pay?

15 A. Well, you know, I don't really know because
16 I've never really been on the pension board, but it's
17 my understanding that it's based on how well the
18 pension fund does generally associated with the
19 economy and the market and our investment counselor as
20 long as the investment counselor is able to invest the
21 money and make good financial decisions.

22 And the fund makes a lot of money, our
23 contributions go down. If, in fact, the fund has bad
24 years, then our contributions go up.

25 Q. What are the sources for contributions to

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1 your knowledge?

2 A. The police officers contribute, the City
3 contributes, the 185 money is a contributor, and the
4 interest that the fund makes goes back into the fund.

5 Q. Is the City's amount set?

6 A. Yes. It's -- I think -- I think by contract
7 it's 1.33 of the officers. So whatever the officer
8 pays, the City pays 1.33 of that.

9 Q. Is that the same every year, or does it vary
10 like the officers?

11 A. Well, it will vary like ours because as ours
12 goes up, the City's goes up because it's 1.33. So
13 they're always paying essentially a third more than we
14 are. They're equal us plus another third.

15 Q. All right.

16 A. That's my understanding of it, but once
17 again I need to qualify this that I'm not by any
18 stretch of the imagination --

19 Q. I understand.

20 A. -- a pension -- real knowledgeable about how
21 the pension is financed.

22 Q. How about the state contribution, is that
23 affected by how well the investments of the pension
24 plan do, if you know?

25 MR. MAKHOLM: Objection to form.

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1 BY MR. MAGRI:

2 A. I don't know to be honest with you. I don't
3 know if -- the only thing I can assume is from what
4 you said earlier about them is that it's not, that
5 it's some sort of fixed amount based on premiums or
6 something of that nature. That's what you kind of
7 indicated to me when you were speaking here, or I
8 gleaned that from you. I might be incorrect.

9 Q. Does the Tampa Police Department have a
10 policy, practice or custom of issuing citations in
11 crash cases where a reasonable investigation has not
12 occurred or such investigation has disclosed that
13 either no citation would be appropriate or that a less
14 severe citation would be appropriate?

15 A. No.

16 Q. There was a time when TPD did not send
17 officers to every crash, isn't that correct?

18 A. That's still true today.

19 Q. Okay. What is Tampa's policy with regard to
20 sending officers to crashes?

21 A. Okay. Well, I'm going to be going from
22 memory here, and I haven't reviewed this policy in a
23 while. But if we have private property crashes where
24 there are no injuries and no criminal violations, we
25 do not send any officer to those crash sites.

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1 Q. Private property meaning?

2 A. Like in a parking lot of a mall. There are
3 plenty of agencies that do investigate those kind of
4 accidents. We don't.

5 Q. I see. Where a fender-bender in a mall
6 parking lot?

7 A. Right.

8 Q. I see, okay.

9 A. Or any kind of private property. And if
10 it's a delayed accident report, we don't generally
11 send an officer to investigate that unless there are,
12 you know, criminal charges or some, you know, serious
13 injury or something of that nature.

14 Those are two, and there might be another
15 one or two, I don't know, but I'd have to actually
16 refresh myself from the SOP to be sure; but I know
17 that we don't send them to every investigation that we
18 could.

19 Q. Do you know what SOP that would be?

20 A. You must think I'm a lot smarter than I
21 really am.

22 Q. You've done pretty well so far.

23 A. Let me look here. It might be the 400
24 statutes. It's SOP 401.3, Private Property Crashes.
25 "Private property crashes shall not be investigated by

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1 this department unless they meet one of the following:
2 Death or personal injury, DUI, reckless driving, hit
3 and run or a government vehicle."

4 "Delayed Traffic Crashes. When reporting
5 delayed traffic crashes where all parties exchange
6 mandatory information or those satisfied prior to any
7 party leaving, drivers report of traffic crash form
8 shall be furnished."

9 We will just hand it to them, we won't
10 actually do the investigation. And in those cases
11 there would be no traffic citation either.

12 "Delayed traffic crash reports with
13 investigative leads regardless of time shall be
14 initiated whether on private property or street
15 crashes, unless both parties settled at the scene and
16 then later notified police." So that's the other one.

17 Q. Okay. Do you have the long form, short form
18 policy in there?

19 A. Yeah, actually I think this is it. Yes, for
20 a long form, "A motor vehicle crash which results in
21 death or personal injury, personal injury includes any
22 possible injury such as complaint of pain, a motor
23 vehicle crash involving a violation of Florida
24 Statutes" 316.27 -- I'm sorry, ".027, Subsection 2,
25 hit and run felony."

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1 Florida State Statutes 316.061, Subsection
2 1, Hit and Run, attended property misdemeanor; Florida
3 State Statutes 316.063, leaving the scene, unattended
4 property misdemeanor because violation of this statute
5 is a misdemeanor.

6 "Investigation reporting is required
7 regardless of whether the accident occurred on public
8 or private property and regardless of whether the
9 investigative leads are known. Hit and run reports
10 without investigative leads shall be retained in the
11 districts."

12 "Florida State Statutes 316.193, DUI;
13 Florida State Statutes 316.192, reckless driving,
14 government vehicles and government property. Traffic
15 crashes not meeting the above-mentioned criteria shall
16 be documented on Florida crash report short form."

17 Q. Okay. What about careless driving, is that
18 listed?

19 A. No, that's not included. That's a short
20 form, unless there is a hit and run involved with it
21 or a DUI or a leaving the scene or personal injury or
22 death.

23 Q. Okay. It's been reported that there was a
24 time when TPD did not investigate minor crashes apart
25 from the ones that you've identified, but crashes

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1 where there wasn't a significant amount of property
2 damage. Do you recall such a --

3 A. Yes, I think what you're referring to is,
4 yeah, a very minor accident, and what we do is we go
5 to the scene of those accidents and then provide those
6 people with the forms to fill out.

7 I think we provide them with a short form
8 accident actually, and they complete their own; but I
9 don't know what that traffic damage is, I'm not
10 particularly familiar with that.

11 Again, I'd have to research the SOPs. And
12 we've gotten lucky with two so far. This next one
13 will take a while for me to find.

14 Q. Okay. Is there an SOP that has an amount or
15 something of that sort?

16 A. There's got to be something because I am
17 familiar with what you're talking about, but I just
18 don't know the -- you know, some of these things tend
19 to change, and they've all come into play since I was
20 actually doing this kind of work. So to some degree
21 you fall out of the knowledge base a little bit on
22 these things.

23 Q. I understand.

24 A. I'm going to have to have more time to
25 review it.

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1 Q. Well, let me say this, and see if this
2 strikes anything with you. We've heard that there was
3 a time when dispatchers would try to get a sense from
4 the callers as to what kind of an accident was
5 involved and if it was a minor accident, see if the
6 parties could handle it on their own, but that that
7 policy has been changed in recent years to now require
8 dispatch whenever a call comes in?

9 A. That probably occurred while I was gone.
10 There are, as I read to you, there are some reasons
11 why we don't do traffic accidents. And, let's say,
12 and one of those was where the parties have agreed and
13 exchanged information at the scene, gone home and then
14 have called the police.

15 Now, if a dispatcher -- if somebody calls
16 into dispatch and tells them that, yes, I was involved
17 in a very minor traffic accident, there were no
18 injuries, there were no criminal charges involved, we
19 did exchange information.

20 At that time I didn't want a traffic
21 accident report made so we both agreed and went home
22 our separate ways, but now that I've been home and
23 talked to my husband and it's six hours later I'd like
24 a traffic accident done.

25 By policy we do not do those traffic

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1 accidents, and when they told the dispatcher that, if
2 she was aware or he was aware of the policy, they
3 would tell them that we're not going to dispatch a
4 call.

5 That is their job to somewhat triage the
6 calls. And when they know that we don't investigate
7 those accidents, then there's no reason to send a
8 police officer to those locations.

9 Q. Okay. What this officer was discussing was
10 a perceived change in the -- going after -- not a
11 situation like that, for instance, where a dispatcher
12 wouldn't send you to a type of accident that wouldn't
13 be investigated by the department, but -- in one of
14 those categories, but in terms of seriousness of
15 accidents there was a time when there was an effort to
16 have the police be more involved in the somewhat more
17 serious accidents than they feel they are now. Any --

18 A. I'm not -- I really have to know more what
19 they were talking about and under what circumstances.
20 Our SOP today is pretty clear on what kind of
21 accidents you go to and which ones you don't go to.

22 Q. Right.

23 A. And even a minor accident, if they called
24 you to the scene and we're there, then we would
25 investigate that.

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1 Q. So if it's not in one of these locations or
2 if it's not a type of accident that you don't --

3 A. You know, I kind of recall and I'd have to
4 go back, but there was a time here when there was a
5 dollar figure estimated that we wouldn't investigate
6 underneath a certain dollar number.

7 But what happened was, if I recall
8 correctly, and once again this is very sketchy just
9 from memory many, many years ago, that we had so many
10 complaints from the citizens about not coming out and
11 investigating their traffic accidents that we changed
12 that policy. And I don't even think it was in effect
13 very long.

14 Q. Now, why does citizens want officers to come
15 out to their --

16 MR. MAKHOLM: Objection, any way the chief
17 would know that?

18 MR. MAGRI: Well --

19 MR. MAKHOLM: How would the Chief know why
20 people call or why people wouldn't call or
21 wouldn't want them to come out. I object to the
22 question. I object to the form.

23 MR. MAGRI: Maybe I didn't phrase it right
24 if that's the interpretation of my question that
25 you have. So let me do it the right way.

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1 BY MR. MAGRI:

2 Q. Based on your contact with communities and
3 the communities speaking, based on your understanding
4 behind the complaints that certain citizens had that
5 officers weren't coming out, based on an understanding
6 you previously expressed in this depo about how both
7 parties including the not at fault party deserve
8 proper police action on a citation, what is your
9 understanding of how -- of what it is that the
10 community wants with regard to citations and why it
11 wants the police to come to the scene of accidents
12 to--

13 A. I'm not sure that people want police to come
14 to the scene of a traffic accident and write somebody
15 a traffic ticket. I mean, I have investigated
16 accidents where the other party was adamant that the
17 other person get a traffic citation.

18 But the truth is that much, much more it's
19 the other way. People say I just want an accident
20 report, I really don't want -- you know, you don't
21 have to charge him, please don't charge him, or I
22 don't care if he gets a ticket, I'm not here to give
23 him a ticket, I just want a police report.

24 People really want the police report in my
25 opinion because it's an official document that they

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1 can then take forward to their insurance company and
2 get their car fixed.

3 Q. Okay. Does the crash report identify who's
4 at fault?

5 A. Yes.

6 Q. Does that impact in terms of getting their
7 car fixed, or what is it that they want about it?

8 A. I don't know -- other than I'm assuming that
9 they want an official document that says I was
10 involved in the accident, here's the other driver's
11 information, you know, this isn't -- you know,
12 somebody exchanges names with you, you don't know if
13 that's fictitious or not. I think it's a sense of
14 security.

15 Q. Okay. Is there a thing where officers -- is
16 there a circumstance where officers will write a crash
17 report, but not a citation?

18 A. Of course.

19 Q. Short form, long form or both?

20 A. Probably both. There are plenty of times
21 that if you can't determine who was at fault in the
22 accident you wouldn't write a citation. Officer
23 discretion -- I'm sure there are some very, very minor
24 accidents where maybe somebody backed into a car as
25 they were backing out of their driveway and put a

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1 little dent in something and maybe they just wrote the
2 report for them.

3 I'm sure officers have used their discretion
4 in that way, too, when, in fact, the SOP addresses
5 very, very minor violations.

6 Q. Do citations have an effect on people's
7 insurance?

8 MR. MAKHOLM: Object to form.

9 BY MR. MAGRI:

10 A. I don't know how the insurance companies
11 decide how much your insurance rates goes up. I'll
12 probably be able to tell you next year since I got two
13 traffic tickets this year whether mine went up because
14 of that, but I don't know what criteria they use.

15 I've always generally heard, just probably
16 like all the public has that the more traffic tickets
17 you get, it can affect your insurance rates.

18 Q. Someone once said to me that from the
19 insurance companies' standpoint, they don't treat
20 people who get citations as safer drivers. Do you
21 have any contrary evidence to that?

22 A. I really don't know how the insurance
23 companies, you know, rate people.

24 Q. Do you periodically review the policies of
25 the police department to see how they're filtering

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1 down to the people below you?
 2 MR. MAKHOLM: Object to form.
 3 BY MR. MAGRI:
 4 A. I don't quite follow what you mean filtering
 5 down. We create an SOP book.
 6 Q. Right.
 7 A. We give that to every employee here.
 8 They're expected to know it.
 9 Q. Is how they're carrying out their duties
 10 under those SOPs, is that reviewed or checked?
 11 A. Oh, constantly. That's the whole -- that's
 12 the whole organizational structure of the police
 13 department, it's a paramilitary organization.
 14 Officers are checked by their sergeant or their
 15 corporal.
 16 The sergeants and corporals are checked by
 17 the lieutenants. The captains review their work. The
 18 majors review their work. The assistant chiefs review
 19 their work, and I review the assistant chiefs' work.
 20 So it's kind of an upward process with review at every
 21 step.
 22 Q. Are you familiar with the fact that several
 23 police officers are concerned about the emphasis on
 24 writing citations from a number of different
 25 perspectives?

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1 A. When you have an organization of a thousand
 2 people, I'm sure we have an opinion on one thing or
 3 another about everything here at the police
 4 department. I can tell you that, you know, police
 5 officers don't particularly relish writing traffic
 6 tickets.
 7 I think the public has a misperception that
 8 police officers like to write traffic tickets. They
 9 don't. It's the one time that you come in contact
 10 with the average citizen. It's usually a negative
 11 contact if you're writing them a traffic citation, and
 12 usually they're not happy.
 13 And just like anybody else, you know, police
 14 officers are human and they don't like to be causing
 15 people to be unhappy and to have to go through those
 16 situations. That's one thing.
 17 A lot of police officers sympathize with
 18 people about how expensive traffic tickets are. You
 19 know, I've been through that myself. You know, you
 20 write somebody that, you know, makes 4 or \$500.00 a
 21 week.
 22 A traffic citation for 150 or \$200.00,
 23 you're taking food out of their kids' mouths, and
 24 their rent's got to be paid and their house payment
 25 has got to be paid.

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1 And those are things that go through police
 2 officers' minds, too. So it's not just a cut and dry
 3 kind of situation. But on the same token, it is their
 4 job to write traffic citations, enforce the traffic
 5 laws. So there's kind of a tug of war. But police
 6 officers as a general rule do not enjoy writing
 7 traffic tickets.
 8 Q. Have there been -- with the amount of
 9 citations increasing at the rate they are, have the
 10 complaints become greater in recent years?
 11 A. From officers?
 12 Q. Yeah.
 13 A. No, no. I don't -- you know, those kind of
 14 complaints really don't filter up. Officers don't
 15 stop me and complain about how much traffic citations
 16 are costing citizens. It's just not something that,
 17 you know, they're, you know, going to talk to me
 18 about.
 19 They complain about other things, but that's
 20 not one of them. But I know when I was writing
 21 tickets and I was a patrol officer, that was a concern
 22 with me and most other officers too, and we would talk
 23 about such things.
 24 It didn't mean we didn't do our job, but
 25 those were, you know, somebody could give you a

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1 hard-luck story every once in a while about, you know,
 2 how they were financially destitute and you might cut
 3 them a break that you may be not well have done to
 4 somebody who could have afforded a ticket. I mean,
 5 it's not always just a black or white situation
 6 whether you write a traffic ticket.
 7 Q. When one car hits another car in the rear,
 8 is the car that did the hitting always at fault?
 9 A. Oh, absolutely not. I had a car one time in
 10 a traffic accident coming down the road, lost control,
 11 did a 180 degrees, slid across the road and smacked a
 12 car right in the front end that was parked. Sure
 13 wasn't the parked car's fault.
 14 Q. Any other instances where you could think
 15 of?
 16 A. Not right off the bat.
 17 Q. What about a situation where almost -- well,
 18 I'll give you one. Where there was a fellow who
 19 eventually it caught up to him, but he had probably
 20 16, 18 instances where he was in accidents where
 21 almost always older people hit him in either the rear
 22 or the side and ultimately it turns out that this guy
 23 was a accident causer. But is there ever an instance
 24 where people who get hit in the rear can cause the
 25 accident themselves?

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1 A. Sure, or can be at least a contributing
2 factor. You know, if somebody slams on their brakes
3 in the middle of the road for no apparent reason at
4 all and come to a, you know, a screeching halt and
5 somebody slides into the rear end of them, they are a
6 contributing factor to that accident.

7 That doesn't mean the person who hit them in
8 the rear doesn't also share some of the liability of
9 being wrong by not being able to keep their car at a
10 distance that they could control it no matter what the
11 person did in front of them, but the other person did
12 something that was so outrageous that they also
13 contributed to the fact that they got hit in the rear
14 end. So in that case, that's a perfect example of
15 both people having culpability.

16 Q. What if you had a situation where somebody
17 is doing all of the textbook things, follows the right
18 -- you know, following somebody at exactly what the
19 drivers education book says you're supposed to follow
20 people at?

21 A. Two seconds behind them.

22 Q. Yeah, for every -- yeah, that's right.

23 A. The new thing is two seconds.

24 Q. The new thing is two seconds, yeah. And
25 you're supposed to be able to count it, pick an object

1 and then count it, right?

2 A. Right.

3 Q. Yeah. What if a person is doing that and
4 something -- and the person in front of them does
5 something absolutely weird for no reason at all, slams
6 their brakes on, just stops dead in the street?

7 A. Then they contributed to the accident.

8 Q. But even though you're following them at
9 two seconds behind, if you're not able to stop in
10 time?

11 A. You still have some culpability, sure.

12 Q. And the theory of that is?

13 A. That you have to maintain control of your
14 vehicle and keep it at a safe distance at all times to
15 be able to stop in case something happens up in that
16 car ahead of you.

17 Actually, if you're following the two-second
18 rule you should be able to stop your car even if they
19 slam on their brakes and come to a sudden stop because
20 the reason that is in effect is because you cannot
21 predict why somebody might slam on their brakes.

22 A child run out in front of them, an animal
23 run out in front of them, and you will have that panic
24 emergency stop. And you're obligated if you're
25 following that vehicle to keep your vehicle at such a

1 distance that you can, in fact, stop before you run
2 into the back of them.

3 Q. Okay.

4 A. I mean, you've been driving down the
5 interstate, I'm sure, and all of a sudden everybody
6 ahead of you at a 70 miles an hour interstate is dead
7 stopped in the road. You have to stop. You have to
8 be far enough behind that you can come to a stop, too.

9 MR. MAGRI: Off the record.

10 (At this time a discussion was
11 held off the record.)

12 BY MR. MAGRI:

13 Q. What does at fault mean to you?

14 MR. MAKHOLM: Object to form.

15 BY MR. MAGRI:

16 Q. I think in your Affidavit you may have used
17 that term, let me pull it up. It says Dr. Orban -- at
18 the time found plaintiff Dr. Orban at fault. What's
19 that mean to you?

20 A. That she was culpable in the accident.

21 Q. And by culpable you mean what?

22 A. That she was -- did something that violated
23 the traffic statutes to cause that accident or to
24 contribute to the causation of that accident.

25 Q. Is there -- if Internal Affairs complaints

1 come in over traffic accidents or traffic citations,
2 is that -- are they investigated or recorded?

3 A. Every complaint that we get is investigated
4 to some degree.

5 Q. Do you know whether you can determine how
6 many complaints are coming in over traffic accidents
7 or citations to Internal Affairs?

8 A. Well, we know what our complaints are, yes,
9 we could go back and research it, we can figure out
10 how many complaints. I mean, what kind of time frame
11 are you talking about?

12 Q. Oh, in the last --

13 A. Last year, two years?

14 Q. Yeah, two or three years, let's say.

15 A. Yeah, we could go back and we would probably
16 have to hand search them, but we could tell how many
17 complaints were Internal Affairs. A lot of complaints
18 don't go to Internal Affairs.

19 Q. When you say you probably have to hand
20 search them, what do you mean?

21 A. I'm sorry?

22 Q. Where you say you have to hand search them,
23 what do you mean?

24 A. You have to actually go back through the
25 records, or where they're on the computer you have to

1 physically run through them. We don't have just a
2 program we can put, you know, complaints involving
3 traffic accidents, punch a button and kick out a
4 number for you.

5 Probably have -- somebody would have to
6 physically go back through each case to see what they
7 involved so that they could determine if it involved a
8 traffic accident.

9 Q. How many complaints a year does a police
10 department like this get?

11 A. In Internal Affairs, I'd be guessing. I'd
12 be guessing, but probably -- well, there are all kinds
13 of complaints, but, you know, what we call Internal
14 Affairs complaints probably 125.

15 Q. Okay. If crash reports contain inaccurate
16 information, does TPD have a policy about correcting
17 them?

18 A. Yeah, we can if -- there's a form that you
19 fill out for an accident that you put something that
20 was incorrect to fix it and send it back into
21 Tallahassee. There's a mechanism for doing that.

22 Q. Is there a standard operating procedure with
23 regard to when you do those things?

24 A. No, but whenever you make a mistake, you do
25 it, I mean it's pretty clear. You know, it has to be

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1 determined that you made a mistake. Lots of times
2 people don't agree with what you did, that's not
3 necessarily a mistake.

4 But if you put down the wrong street, that's
5 clearly a mistake. And, in fact, it's -- lots of
6 times you'll get your case dismissed in court because
7 you put down the wrong street, put down the incorrect
8 address of where something occurred.

9 Q. Okay.

10 A. So that would be something that would be
11 corrected. But who's at fault or who the officer put
12 at fault in the report, lots of times if somebody was
13 found at fault in the report doesn't think they are at
14 fault. And, of course, that's just a matter of
15 opinion, though, that's not a mistake in the report.

16 Q. What about things like whether it was wet or
17 dry out?

18 A. The pavement was wet and, in fact, it said
19 it was dry, then that's a mistake, yeah, should
20 reflect that the pavement was wet.

21 Q. Same would be true report of injury versus
22 no report of injury or air bag deployment?

23 A. Those are pretty clear-cut things. If the
24 person complained of injury, lots of times people will
25 say I'm not hurt at all at an accident scene and they

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1 call you up two days later and say, oh, I'm hurting
2 now.

3 Q. Let me show you something. Take a look at
4 this.

5 MR. MAGRI: This is Exhibit C, the long form
6 crash report.

7 MR. MAKHOLM: Okay.

8 BY MR. MAGRI:

9 Q. Where it has safety equipment. See where it
10 has 2, 4?

11 A. Um-hmm.

12 Q. What does that mean?

13 A. Two means seat belt, shoulder harness, and
14 four means air bag.

15 Q. And what does that reflect to you?

16 A. That they were wearing a seat belt, shoulder
17 harness and that the air bag deployed.

18 Q. Okay. And if that wasn't accurate, that's
19 something that should be corrected, right, or changed?

20 A. Yes, if those things did, in fact, occur
21 then they should be changed.

22 Q. Okay.

23 A. Now, once again, I don't think the air bag
24 is -- you can debate whether that deployed or not, but
25 you can debate whether somebody was wearing a seat

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1 belt or not.

2 Q. Based on whether they've got it on part of
3 them or not, or?

4 A. Well, you know, based on somebody there says
5 they were not wearing a seat belt.

6 Q. Oh, I see.

7 A. And when the officer gets there says, oh,
8 yeah, I had my seat belt on then, you know.

9 Q. Do you know why Captain Marks resigned, was
10 that during your tenure?

11 A. She didn't resign, she retired.

12 Q. She retired, okay. With regard to -- and
13 I'm almost done, Chief, because I don't want to take
14 up any more of your time, but I appreciate your
15 willingness to sit here. Has there been a reduction
16 in squad numbers in south Tampa?

17 A. A reduction in squad numbers, yes.

18 Q. How about in officers?

19 A. No, been an increase.

20 Q. There's been an increase?

21 A. Correct.

22 Q. How so?

23 A. We redeployed the police department, and
24 when we did that we made the squads larger so that one
25 sergeant in the past had 8 officers and a corporal

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1 working for him. Now many of them have 12 officers
2 and a corporal working for them.

3 So we made them larger, but the same number
4 of people are deployed in the patrol division. And
5 then we put into each patrol division two squads which
6 were not there before and one SAC squad, which was not
7 there before. So we increased each patrol division
8 by, you know, roughly 30 officers.

9 Q. And that would be true in south Tampa?

10 A. That would be true in all three of our
11 districts.

12 Q. All of them?

13 A. Well, and, of course, you have to kind of
14 understand what we did. We took the City, let's just
15 say this -- these two pieces of paper were the City.
16 They were two districts.

17 We created three districts out of that,
18 divided up the existing officers that were in those
19 two districts into the three districts. So
20 geographically there's essentially the same number of
21 officers.

22 And then to each one of those three
23 districts, we put about an additional 30 people into.
24 So it was really like 90 people over the course of
25 three districts. So it was really more than just if

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1 you were thinking of two districts when we changed the
2 deployment from two to three.

3 Q. Has there been an increase in the number of
4 traffic squad officers?

5 A. The traffic squads do not work in the
6 districts. They work out of special operations under
7 Major Bennett. And not since I have been here have we
8 increased the number of officers that are on the two
9 traffic units.

10 Well, we have -- each cycle has its own
11 traffic unit, and each cycle has its own DUI unit. So
12 we consider also traffic because they write traffic
13 tickets as well as do DUI investigations.

14 Q. So the second traffic squad was before your
15 time, it was created before your time?

16 A. The two traffic units, yes. We split them
17 from one traffic unit into two. We just took them and
18 put one on one cycle and one on the other cycle. If
19 we had 14 officers, it was split 7 to 7 on the cycles,
20 same number of people out there.

21 Q. Okay.

22 A. Just a different way of deployment.

23 MR. MAGRI: Thank you. I don't have any
24 other questions at this point, thanks. Thanks
25 for spending the time.

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1 THE WITNESS: It's not a problem.

2 MR. MAKHOLM: Chief, you know you have the
3 option to waive or read. I would suggest that
4 you read if this is ordered.

5 THE WITNESS: Okay, I'll read it.

6
7 (At this time the deposition
8 in the above-captioned matter
9 was concluded.)
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1
2 CERTIFICATE OF OATH
3 STATE OF FLORIDA)
4 COUNTY OF PINELLAS)

5 I, CARLA DEE ALLEN, Court Reporter,
6 certify that I was authorized to and did
7 stenographically report the foregoing deposition and
8 that the transcript is a true record of the testimony
9 given by the witness.

10 I further certify that I am not a
11 relative, employee, attorney, or counsel of any of the
12 parties, nor am I a relative or employee of any of the
13 parties' attorney or counsel connected with the
14 action, nor am I financially interested in the action.

15 I, the undersigned authority, certify
16 that STEVEN HOGUE personally appeared before me and
17 was duly sworn.

18 WITNESS my hand and official seal this
19 30TH day of JANUARY, 2006.
20
21

22 CARLA DEE ALLEN
23 NOTARY PUBLIC - STATE OF FLORIDA
24 COURT REPORTER
25

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