

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT, IN AND FOR
DADE COUNTY, FLORIDA

CASE NO. 97-09230 CA 11

MARLA E. GONZALEZ,

Plaintiff,

vs.

FRED O. DICKINSON, III, et al.,

Defendants.

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DEPOSITION OF RICK A. SWOPE

Taken before Angela Saxon, Certified
Professional Reporter and Notary Public in and for
the State of Florida at Large, pursuant to notice of
taking deposition filed by the Defendants in the
above cause.

Tuesday, September 28, 1999
100 S.E. 3rd Avenue
Fort Lauderdale, Florida 33394
10:50 a.m. - 12:35 p.m.

ORIGINAL

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1 APPEARANCES:

2 On behalf of the Plaintiff:

3 LEVIN & FINGER
4 3191 Coral Way, Suite 1010
5 Miami, Florida 33145
6 BY: DAVID J. FINGER, ESQUIRE

7 On behalf of the Defendants:

8 SIMMONS & CLYNE, P.A.
9 2600 Douglas Road
10 Coral Gables, Florida 33134
11 BY: CHARLENE BELLINGER-HONIG, ESQUIRE

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I N D E X

WITNESS

RICK A. SWOPE
By Ms. Bellinger-Honig

DIRECT

4

By Mr. Finger

CROSS

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By Ms. Bellinger-Honig

REDIRECT

77

By Mr. Finger

RECROSS

83

Ms. Bellinger-Honig

REDIRECT

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By Mr. Finger

RECROSS

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Ms. Bellinger-Honig

REDIRECT

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By Mr. Finger

RECROSS

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Ms. Bellinger-Honig

REDIRECT

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By Mr. Finger

RECROSS

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E X H I B I T S

NUMBER

Plaintiff's Exhibit No. 1

PAGE

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1 THEREUPON,

2 RICK A. SWOPE,

3
4 being by me first duly sworn to tell the whole
5 truth, as hereinafter certified, testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MS. BELLINGER-HONIG:

9 Q. Would you please state your name for the
10 record?

11 A. It's Rick Swope, S-W-O-P-E.

12 Q. And Mr. Swope you've done a number of
13 depositions, isn't that correct?

14 A. Yes, ma'am.

15 Q. So I don't have to tell you the ground
16 rules, right?

17 A. No, you don't. I understand, ma'am.

18 Q. Okay. Could you give us a little bit of
19 your background, please?

20 A. I graduated from high school in 1974. I
21 went into the military. I went through military
22 police training in the United States Army. I was
23 stationed my entire career in the military at Fort
24 Riley, Kansas. I worked the road for approximately
25 two to three months meaning I worked patrol

1 activities, accidents, those types of things. After
2 that I was promoted to sergeant, and I was placed in
3 the what's called S1 section which is staff one
4 section. I was the administrative coordinator for
5 the entire military police company which at that
6 time consisted about 970 military police officers.
7 I was responsible for the processing, the
8 disciplinary actions, the Article 15s.

9 If you're not familiar with Article 15 it is
10 like a charge, a probable cause affidavit would be
11 in the civilian world. I was responsible for making
12 sure the police officers that came into the service
13 or military police officers were given appropriate
14 punishment. I had approximately 23 people working
15 for me in that division. I did that for the entire
16 three years.

17 Q. After that you, after you left the
18 service?

19 A. Then I worked just in a factory for
20 approximately one year driving a forklift while I
21 was waiting to be appointed as a police officer for
22 the City of Monroe, Michigan.

23 I was then appointed as a police officer, went
24 through the standard training, did that for six
25 years as a police officer mainly in accident

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1 investigation and D.U.I. enforcement.

2 When I was with the City of Monroe, Michigan I
3 didn't have any administrative duties at that time
4 beyond my normal tour of duty. I then came to the
5 Broward Sheriff's Office. I was hired to work in
6 the Traffic Homicide Unit in 1984 with the Broward
7 Sheriff's Office. They were setting up a unit.
8 Because of my experience at that time they were
9 looking for people, I was selected.

10 I worked the road with the Broward Sheriff's
11 Office for approximately two and one half months
12 until a unit was set up. At that time I went into
13 -- at that time it was called the Special Operations
14 Group. I was appointed as the administrative
15 coordinator and was the administrative coordinator
16 four out of the six years. My responsibility was
17 countless, numerous. I did budgeting, hiring,
18 disciplinary letters and review.

19 Probably to get right to the gist of the thing,
20 what I did mainly was as far as this case would be
21 is that I assisted in writing the CAOLE Manual
22 (phonetic) which is Combined Accreditation Of Law
23 Enforcement. My policy and procedures dealt with
24 writing disciplinary actions involving motor vehicle
25 accidents and disciplinary actions involving members

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1 of the unit. Primarily I assisted -- there was
2 actually two of us that actually wrote the policies
3 and procedures. That's the way we did it at that
4 time. And we did recommendations either for hiring,
5 disciplinary actions and of course that was sent up
6 the line based on progressive discipline depending
7 on what kind of problems we had, complaints.

8 Q. This is for the Broward Sheriff's Office?

9 A. Okay, during that time I also worked as an
10 instructor part time at the Broward County Police
11 Academy. I work there from 1985 to 1994, possibly
12 the beginning of 1995; I'm not sure. I assisted
13 there as well on recruits. And what I mean by that
14 is not only the training part of my responsibility
15 was to ensure that the recruits met standards in my
16 classes, the classes I gave and also anything that I
17 supervised.

18 There was obviously individuals that had to be
19 -- I don't want to say brought up on charges because
20 that's really a different terminology today, but
21 people who didn't meet criteria we had to write
22 letters either for progressive suspensions or to
23 have them removed as a police recruit, taken out of
24 the police program. That was another form of
25 disciplinary action and progressive discipline.

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1 After I left the -- I left the Broward
2 Sheriff's Office to go in my own business in July of
3 1990. And I've been working primarily as an
4 accident reconstructionist and D.U.I. consultant
5 since that time. However, I've testified in about
6 three cases on policies and procedures police
7 departments have. I'm also currently working with
8 the US Attorney's Office involving policies and
9 procedures of pursuit driving, fleeing and alluding,
10 those type of situations. So I'm involved -- a lot
11 of the cases I have involved policies and
12 procedures. I've worked defense work for various
13 agencies, municipalities involving policies and
14 procedures.

15 Q. What three cases are you working on
16 regarding policy and procedures?

17 A. I was working on one for Wicker Smith in
18 --

19 Q. What is the name of the case?

20 A. I'm not sure. I think it's Melvin or
21 something like that. I think Rick Ramsey is the
22 attorney for Wicker Smith. It's a lawsuit against
23 the City of Titusville. I've worked that case. I'm
24 also --

25 Q. And Titusville, what is the allegations in

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1 that case?

2 A. That deals with the policy and procedure
3 of an officer making traffic stops. And I don't
4 recall. Again, I haven't received all the
5 materials. I haven't reviewed all materials at this
6 point.

7 Q. You're just getting started with that
8 case?

9 A. Right. The other case I don't know the
10 name, but I know that the US Attorney is Mike
11 Welussa. I don't know how to spell that, so don't
12 ask me. He works with the Miami US Attorney's
13 Office. This case involves a Seminole police
14 department. It involves policies and procedures for
15 pursuit and pursuit actions. That case is currently
16 going. It's a federal case involving one or two
17 facilities in Seminole County or somewhere.

18 The third case I'm not sure of right now.
19 Maybe it will come to me during the deposition.

20 Q. And what publications have you done?

21 A. All the publications I've done are listed
22 on my curriculum which I have for you if you want a
23 copy of that. The publications are listed on there.
24 The publications, I'm sorry, the additional
25 information I do such as training outlines policies

1 and procedures, those would be incorporated in the
2 manuals of the Broward County Sheriff's Office for
3 the Broward County Community College Criminal
4 Justice Institute.

5 Q. It says here as far as education you have
6 a masters degree in technology and engineering?

7 A. Yes, ma'am.

8 Q. And what does that encompass?

9 A. That encompasses technological aspects of
10 engineering statistics, statistical analysis,
11 industrial engineering, policies on science
12 experimentations, those types of things.

13 Q. Is it in any particular specified field of
14 engineering that you're talking about or is it just
15 general?

16 A. It's general, although it probably leans
17 more to statistical analysis involving industrial
18 engineering.

19 Q. By industrial engineering, please, I don't
20 know, what is that?

21 A. That encompasses a lot of mathematical
22 formulas, how to gear things, how to do
23 experimentations, in other words, knowing how many
24 types of experimental runs you have to have before
25 you come up with a fact basis. If I start my car

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1 once, I can't say the car is going to start every
2 time. I have to start it maybe 50 times to make
3 sure that the car is going to start. There's a lot
4 of analysis involved, setting up experimentation,
5 experimentation runs, reviewing policies, reviewing
6 things, doing statistical analysis, a lot of numbers
7 crunching, those kind of things.

8 Q. And you have a bachelors in criminal
9 justice from St. Thomas University?

10 A. Yes, ma'am.

11 Q. You received that in 1989?

12 A. Correct.

13 Q. And what is this Northwest And Traffic
14 Institute?

15 A. That would be encompass primarily accident
16 investigation and accident reconstruction courses.

17 Q. When did you do that?

18 A. Probably starting sometime around 1974.

19 Q. And have you gone back there on a regular
20 basis, or was that the -- you took a class in '74?

21 A. Right. And I think I took some also in
22 '79 and '80. That was a police training class. And
23 then eventually when I moved to Florida the classes
24 then went to the Institute of Police Technology and
25 Management.

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1 Q. So the Institute of Police Technology and
2 Management gave you some credit for those classes;
3 is that what you're saying?

4 A. No, it's not credit courses. Those are
5 courses involving law enforcement, in other words,
6 there's certification that I held in law
7 enforcement.

8 Q. And is there any expiration or any
9 requirement of renewal for these certifications?

10 A. No, not that I'm aware of unless it's
11 changed since I left police work, but other than
12 that I couldn't tell you.

13 Q. You left police work approximately nine
14 years ago?

15 A. Yes, ma'am, July of 1990.

16 Q. You went to the Institute of Police
17 Technology and Management, when was that?

18 A. I went -- I attended classes there
19 beginning in 1985. I probably attended my last
20 course there in 1990 or '91. I actually taught for
21 that university as well.

22 Q. When was the last time you taught there?

23 A. Probably '91 or '92. I'm not sure. Could
24 have been '93; I'm not sure.

25 Q. And what did you teach there?

1 A. I`caught primarily drunk driving, in other
2 words, D.U.I. investigation, D.U.I. apprehension and
3 also instructor, D.U.I. instructor.

4 Q. University of North Florida in
5 Jacksonville, when did you go there?

6 A. Again, the same thing as IPTM, they're
7 situated on the University of North Florida campus.

8 Q. So IPTM and University of North Florida
9 are basically one in the same?

10 A. That's correct.

11 Q. I see. And you have been working since
12 1990 in accident reconstruction primarily?

13 A. Privately.

14 Q. Privately?

15 A. Yes, ma'am.

16 Q. Your own your business?

17 A. Yes, ma'am.

18 Q. That is your primary --

19 A. It is my primary business, correct.

20 Q. And you say you do some consulting to
21 various municipalities, and is this also as a part
22 of your business as far as accident reconstruction?

23 A. Yes, ma'am, but it also deals with, as I
24 indicated, policies and procedures when departments
25 ask me. I have been consulted numerous times over

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1 policies and procedures, over new manuals,
2 accreditations of law enforcement agencies.

3 Usually the police academy would refer me or
4 something like that or other people, but I would be
5 one of the referrals.

6 Q. And it says here to the Broward State
7 Attorney's Office, when was the last time you were a
8 consultant to them?

9 A. Well, actually I have a case right now
10 with them, State versus Rutherford. But very rarely
11 now, maybe once every other year, once per year. It
12 depends.

13 Q. And insurance companies, what do you do
14 for those?

15 A. Insurance companies are primarily accident
16 reconstruction work.

17 Q. You said you were with the Army and you
18 were a police officer in Monroe and you were a
19 police officer with the Broward Sheriff's Office.
20 You said you were there for six years but four years
21 you were in administration, what did you do for the
22 other two?

23 A. The other two I was primarily did road
24 work, in other words, investigated traffic accidents
25 and fatalities.

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1 Q. When you left the Broward County Sheriff's
2 Office what position were you holding?

3 A. I was deputy sheriff. I had not -- the
4 position that I had was actually referred to as a
5 administrative coordinator but there was no rank in
6 that division that I was in.

7 Q. As administrative coordinator did that
8 also include you going out on what you said the
9 street?

10 A. Well, I went out in the street when there
11 was a fatality. I didn't patrol around and drive
12 around the county. I was office bound pretty much
13 except when I could sneak out for donuts and stuff
14 like that.

15 Q. For the last four years that you worked
16 for the Broward Sheriff's Office you were primarily
17 in a desk position?

18 A. Pretty much, correct.

19 Q. Okay, I understand.

20 How did you become involved in this case?

21 A. I was contacted by Mr. Finger.

22 Q. When?

23 A. I was contacted sometime around July of
24 1997. I first received some of the case file on
25 July 10th of '97 I assume I would have spoken with

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1 Mr. Finger before that.

2 Q. And what were you asked to do?

3 A. I was asked to review some materials.

4 Q. What materials were those?

5 A. Initially I had some materials of an
6 arrest of Miss Gonzalez. I think there was probable
7 cause affidavit. There was a DRE evaluation at that
8 particular point in time. I think that was probably
9 it.

10 Initially at that time I didn't receive a lot
11 of material, so additionally that's all I received.

12 Q. Did you ever write a report after
13 receiving that material?

14 A. No, ma'am. I knew I was going to receive
15 additional materials later.

16 Q. And have you since received additional
17 materials?

18 A. Yes, ma'am.

19 Q. What else have you received?

20 A. I have a entire list of materials that I
21 reviewed if you want that.

22 Q. Yes, please.

23 So you received --

24 A. Do you need me to read it?

25 Q. You write like a doctor but a little bit

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1 better. I can read this.

2 It says here Benny Merino, I take it that's a
3 deposition?

4 A. Yes, ma'am.

5 Q. I cannot make out this. Oh, Mr. Walls,
6 that's a deposition?

7 A. Yes.

8 Q. A deposition of Dr. Goodnick, Dr. Giron,
9 Dr. Abreu, Dr. Mena, records depo of Juan Antunez?

10 A. Yes.

11 Q. It looks like Rojas, Addison, Rojas,
12 Razik, Rojas, the DRE manual. What part of the
13 manual did you receive?

14 A. I think I received the whole manual, and I
15 reviewed parts of it and I sent it back to Mr.
16 Finger.

17 Q. You could you describe what you received?

18 A. What do you mean?

19 Q. Can you tell me what do you recall it
20 looking like?

21 A. I just recall it being a manual. I'm
22 familiar with it. I believe it's a manual that was
23 printed by NHTSA. The manual goes into the types of
24 things that a DRE evaluator should look at. It goes
25 into the signs and different types of drugs and

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1 narcotics and those types of things.

2 Q. Could you quickly go from the manual and
3 just read off the list?

4 A. Sure. I looked at D.U.I. instructor
5 manuals., D.U.I. student manuals, DRE policies
6 manual, Miami Herald.

7 (Beeper beeping.)

8 Q. Do you need to take that?

9 A. No.

10 Miami Herald article which encompassed several
11 different days. It was called "Collars For
12 Dollars." I looked at the Physicians' Desk
13 Reference, internal affairs search on Ariel Rojas,
14 deposition or video of Frank Tellian, Miami Police
15 procedures manual, Broward Sheriff's Office manual,
16 Miami Beach Police Department manual, Metro Dade
17 Police Department manual, Miramar Police Department
18 manual, Boca Raton Police Department manual, City of
19 Atlanta Police Department manual, Michigan State
20 Police manual, Monroe City Police manual.

21 I also reviewed a box of materials involving
22 Miss Rojas who I believe was Miss Gipson at the
23 time, whatever. I don't want to mix the Rojas' up.
24 Maybe I should call her Gipson. That box is over
25 there.

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1 I forgot to add that I also looked at statute
2 -- Florida Statute 943 which covers the department
3 of law enforcement. And I also have a letter from
4 the Highway Safety and Motor Vehicle which I just
5 received yesterday involving information on Trooper
6 Jacqueline Gipson, the records that were destroyed.
7 So I think that's about it.

8 Q. Have you since you received all of that
9 information have you issued any kind of a report?

10 A. No, ma'am, I haven't. I have not given
11 anything in a report form to Mr. Finger, but I did
12 write down a list of opinions and notes that I took
13 while I was reviewing all this information. I have
14 that down in writing.

15 Q. What did Mr. Finger ask you to do with all
16 of this information?

17 A. Initially I looked at the DRE information,
18 and subsequently I received the internal affairs
19 records. I have received from internal affairs what
20 I call a card from Ariel Rojas which indicates all
21 of the information and complaints he's had. And
22 then I received a similar thing with the entire
23 investigative file on Miss Gipson. So I reviewed
24 that.

25 And then actually Mr. Finger didn't ask me to

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1 do anything at that point. I then went to him and
2 told him what I thought based on reviewing the
3 records. And basically that's what I did.

4 Q. What did you tell him?

5 A. Mind if I look here? I can't remember all
6 this.

7 Q. No, go ahead.

8 A. Do you want me to basically tell you what
9 I told him?

10 Q. Yes, what your opinions are.

11 A. I'll just list this to you.

12 Q. One thing I must ask you, do you expect to
13 receive any other documentation or any other
14 materials regarding this case?

15 A. Well, do I expect to, I don't know if
16 there is going to be additional depositions taken. I
17 assume that if yourself or Mr. Finger takes
18 additional information, I'll probably review it.
19 Mr. Finger did not advise me that there is going to
20 be any other materials forthcoming. If there is,
21 I'll look at it.

22 Q. Other materials may or may not alter your
23 opinion that you're about to give me?

24 A. That's correct. If you come up with
25 something I'll certainly look at it and the same

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1 with Mr. Finger.

2 Q. Okay.

3 A. My opinions basically are fairly easy as
4 far as readability.

5 The first opinion I have is based on all
6 available evidence and materials reviewed to date no
7 arrest of Miss Gonzalez should have been made. Then
8 I have subsections which explain the opinion.

9 Q. Okay.

10 A. A, the officer was not aware of the
11 effects of medication that Miss Gonzalez was on at
12 the time of the arrest. The officer indicated in a
13 report that Miss Gonzalez indicated what type of
14 medication she was on, but the officer indicated
15 that she was not aware of any effects or what this
16 medication would or would not do.

17 Q. Now, was that before or after the actual
18 arrest; do you recall?

19 A. I don't recall at what point it was.

20 Q. Would it have made a difference if she
21 became aware of medication after the arrest as
22 opposed to before?

23 A. It would but it's a standard question. If
24 the officer asks the first question, an officer asks
25 are you on medication or have you been drinking.

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1 Normally that would be improper procedure for the
2 officer to ask after the arrest. So I would assume
3 that it was done before the arrest.

4 Q. Okay.

5 A. The subsection B, the officer was not
6 aware of a bipolar disorder and effects of same.

7 And, again, it's my understanding that Miss
8 Gonzalez indicated that she did have a bipolar or
9 some type of mental disorder.

10 Q. And do you know whether or not she
11 indicated that before or after the arrest?

12 A. Again, I don't know. Again, that should
13 be a question that is asked prior to that.

14 Q. Did you read Marla Gonzalez's deposition?

15 A. Yes, I did.

16 Q. Are you aware when she was asked if she
17 was injured or had any problems that she responded
18 "no"?

19 A. In the deposition, correct.

20 Q. That's what she said that she responded to
21 at the scene of the accident; are you aware of that?

22 A. That's correct.

23 Q. So under those circumstances as a former
24 police officer if you come upon a person who's been
25 in an accident and you question whether or not they

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1 are injured in any way or is there any problems with
2 them, and they tell you no, what would you then do;
3 would you second guess that or what?

4 A. Well, you're making the assumption that
5 she -- that the officer wrote it in her report that
6 this information was given to her. It was my
7 understanding it was given to her at the scene.

8 Q. Are you referring to the DRE report or are
9 you referring to the arrest affidavit?

10 A. Yes.

11 Q. Which one?

12 A. I'm referring to the DRE report but that
13 was done later.

14 Q. Are you aware that the DRE is done after
15 the arrest?

16 A. That's correct.

17 Q. That's my question. Isn't it true that
18 when you start to do field sobriety tests you do ask
19 a person if there is anything that would impair
20 their ability to do the tests?

21 A. That's correct.

22 Q. Do you know is there anything in there
23 that would indicate to you that was not asked?

24 MR. FINGER: Object to the form. You
25 mean at the scene when she had them do it

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1 or later on at the station?

2 BY MS. BELLINGER-HONIG:

3 Q. At the scene of the accident is there
4 anything that you reviewed that would indicate to
5 you that that question was not asked?

6 A. No, I don't know one way or the other.

7 Q. Go ahead. I do have another question.
8 You as a police officer, did you receive any medical
9 training?

10 A. Yes.

11 Q. Did you receive medical training regarding
12 bipolar disorder?

13 A. I don't recall if I did or not. It's been
14 a long time ago. I don't recall if that was
15 something that was mentioned or not. I don't
16 recall.

17 Q. Answer me this, are police officers
18 routinely trained to recognize when a person is
19 schizophrenic?

20 A. Yes.

21 Q. Are they also taught how to recognize if
22 someone is suffering from posttraumatic stress
23 disorder?

24 A. No.

25 Q. Are they taught if they have a borderline

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1 personality disorder, are they taught how to
2 recognize that?

3 A. No.

4 Those are general questions for general police
5 officers. These are police officers that are above
6 the norm. These are not routine police officers.
7 You have an instructor on the scene who is supposed
8 to know all this by the DRE manual.

9 Q. They're supposed to be able to recognize
10 any and all persons that are possibly suffering from
11 psychiatric problems in your opinion?

12 A. Well, I can't say they can recognize all,
13 but they should be able to know the general signs
14 because, again, they're elevated above the normal
15 patrol officer, so to speak.

16 Q. Did you do any investigation as to what a
17 bipolar disorder is?

18 A. No. You mean on my own?

19 Q. Yes.

20 A. No.

21 Q. Proceed.

22 A. Number C or letter C is no desk reference
23 manual available as indicated by the DRE manual.

24 Q. Okay.

25 A. D: Report indicated in parenthesis a low

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1 blow when, in fact, no alcohol reading was present
2 whatsoever.

3 So the officer indicated in the report that it
4 was a low blow or a low reading when in effect there
5 was no reading.

6 Q. Okay.

7 A. E: Miss Gonzalez indicates she made no
8 statements regarding cocaine yet the officer
9 indicates in the report that a white powder
10 substance was present on the nose. There was no
11 swab taken of the so-called evidence, nor was a
12 simple photograph taken of same.

13 Q. Do you know whether or not that is
14 required?

15 A. Absolutely. It's evidence. If the police
16 officer does not collect evidence and collect
17 evidence that involves a felony, then that is a
18 chargeable offense.

19 Q. Now, in reviewing the DRE manual, do you
20 know if there is anything in that manual that tells
21 them that they're supposed to take swabs or photos?

22 A. No, but the police procedure of their
23 department that lists the collection of evidence,
24 the manual doesn't supersede the department manual.

25 Q. Is that in regards to taking swabs as for

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1 when --

2 A. It doesn't say take swabs. It says
3 collection of evidence.

4 Q. I'm asking you is that part of collection
5 of evidence in all cases?

6 A. Absolutely.

7 Q. Proceed.

8 A. F: Based on previous conduct of officer
9 her testimony is rejected. And I have "see below."

10 Q. Pardon me?

11 A. I have "see below", and I have all the
12 reasons why I made that statement.

13 Q. What are those reasons?

14 A. Number two: Numerous past complaints show
15 by volume and similarity a definite pattern of
16 lying, perjury and unethical conduct; A, further and
17 greater investigation was required based on the
18 volume of complaints; B, the department did not
19 follow police custom by progressive discipline.
20 Whether the allegations are true or false department
21 has a duty to proceed with the investigation; C,
22 department turned a blind eye, did not proceed with
23 further investigations to ascertain or head off a
24 potential and recurring problem.

25 Now I kind of go into another letter but it's

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