

Deposition of Riccardo Munoz taken 11/20/14

1 UNITED STATES DISTRICT COURT
 2 DISTRICT OF MINNESOTA
 3
 4 File No. 13-CV-266
 5
 6 -----
 7 Forest Olivier et al.,
 8 Plaintiffs,
 9
 10 vs.
 11 Karl Willers et al.,
 12 Defendants.
 13 -----
 14
 15
 16 DEPOSITION OF RICCARDO MUNOZ, taken pursuant
 17 to Notice of Taking Deposition and taken before Debra J.
 18 Mokszycke, a Notary Public in and for the County of Anoka,
 19 State of Minnesota at 222 South Ninth Street, Suite 2200,
 20 Minneapolis, Minnesota, on the 20th day of November, 2014,
 21 commencing at approximately 12:30 p.m.
 22
 23
 24
 25

3

1 APPEARANCES:
 2 NATHAN M. HANSEN, Attorney at Law, HANSEN LAW
 3 OFFICE, 2440 North Charles Street, Suite 242, North St. Paul,
 4 Minnesota, 55109, appeared representing the Plaintiffs.
 5
 6 ALAN C. MILSTEIN, Attorney at Law, SHERMAN,
 7 SILVERSTEIN, KOHL, ROSE & PODOLSKY, P.A., 308 Harper Drive,
 8 Suite 200, Moorestown, New Jersey, 08057, appeared representing
 9 the Plaintiffs.
 10
 11 JOHN M. BAKER and JANINE WETZEL KIMBLE,
 12 Attorneys at Law, GREENE ESPEL, PLLP, 222 South Ninth Street,
 13 Suite 2200, Minneapolis, Minnesota, 55402-3362, appeared
 14 representing Defendants Nicholas Jacobson and the Olmsted
 15 County Sheriff's Office.
 16
 17 STEPHANIE A. ANGOLKAR and NATHAN C. MIDOLO,
 18 Attorneys at Law, IVERSON, REUVERS, CONDON, 9321 Ensign Avenue
 19 South, Bloomington, Minnesota, 55438, appeared representing
 20 Defendants Karl Willers, the Hutchinson Police Department,
 21 Kenneth Willers, the Nobles County Sheriff's Office, Daniel
 22 Lewis, Steve Schulz, the Kanabec County Sheriff's Office,
 23 Michael Hadland and the Fillmore County Sheriff's Office.
 24
 25

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1 HELEN R. BROSNAHAN, Assistant County Attorney,
 2 DAKOTA COUNTY JUDICIAL CENTER, 1560 Highway 55, Hastings,
 3 Minnesota, 55033-2392, appeared representing Defendant Bryce
 4 Schuenke and Dakota County.
 5
 6 ANDREW T. JACKOLA, Assistant County Attorney,
 7 GOVERNMENT CENTER, 2100 Third Avenue, Suite 720, Anoka,
 8 Minnesota, 55303-5025, appeared representing Defendant Chris
 9 McCall and the County of Anoka.
 10
 11 JEFFREY S. BILCIK, Assistant Attorney General,
 12 Bremer Tower, Suite 1800, 445 Minnesota Street, St. Paul,
 13 Minnesota, 55101-2134, appeared representing Defendant Riccardo
 14 Munoz.
 15
 16
 17 - - -
 18 WHEREUPON, the following proceedings were duly had:
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5

1 RICCARDO MUNOZ,
2 After having been first duly sworn,
3 testified under oath as follows:
4
5 EXAMINATION
6 BY MR. MILSTEIN:
7 Q Are you still a sergeant?
8 A No.
9 Q What are you now?
10 A I do not any longer work for the state patrol.
11 Q Okay. So you are -- I should just call you Mr. Munoz?
12 A Sure.
13 Q So my name is Alan Milstein. I represent the plaintiffs in
14 this case that's been brought against several officers of
15 different counties.
16 I'm going to ask you some questions. If at any time
17 you don't understand the question, just stop me and I'll
18 try to rephrase it. Just make sure that your answers are
19 verbal so the court reporter can take those down. Okay?
20 A Okay.
21 Q You were the lead instructor at the DRE program; is that
22 right?
23 A Correct.
24 Q And when did that start in Minnesota?
25 A Approximately 20 years ago, I believe.

6

1 Q And how long have you been in charge of it?
2 A It was less than a year.
3 Q When did you assume control?
4 A I believe it was November of 2011, I believe.
5 Q November of 2011?
6 A I think so.
7 Q And how was it that they asked you to do that?
8 A It was a position that was posted for vacancy and I applied
9 for it and one other trooper applied for it. I think it
10 was just the two of us.
11 Q And at the time what was your position?
12 A I worked as a trooper in the east metro.
13 Q You worked as a state trooper?
14 A Correct.
15 Q And east metro meaning --
16 A The east metro district of the state patrol.
17 Q And where is the east metro district?
18 A Basically everything east of Highway 280. If you split the
19 Twin Cities in half, the Minneapolis-St. Paul border, and
20 kind of north and south from there.
21 Q Okay. And why did you want to volunteer for that
22 position? Was it a full-time position?
23 A Yes.
24 Q So if you were the head of the DRE program, you didn't have
25 to do anything else?

7

1 A No, we still worked enforcement and regular patrol duties.
2 Q I see. Was there any extra pay in being the DRE
3 coordinator?
4 A There was a -- just because it was a sergeant promotion,
5 there was a pay increase for that, but not for -- that was
6 a standard promotional rate, I believe.
7 Q I see. So you went from trooper to sergeant because of
8 this new position?
9 A Correct.
10 Q And had you gone through the DRE program before?
11 A Yes.
12 Q When did you go through it?
13 A I believe it was 2005, 2006.
14 Q And who was the coordinator when you went through it?
15 A Don Marose.
16 Q And what was the purpose when you went through it? What
17 was the purpose of the program?
18 A I don't understand the question. The program itself as a
19 whole?
20 Q Yeah. In 2005, what was the purpose of it?
21 A Of the DRE program?
22 Q Yes.
23 A To learn about how to determine what kind of drugs people
24 could be impaired on.
25 Q Did that include alcohol?

8

1 A Yes.
2 Q And did it include marijuana?
3 A As far as observing folks that had been using marijuana?
4 Q Yes.
5 A Yes.
6 Q And when you did -- when you went through the program in
7 2005, was it basically set up the same way as you set it up
8 in 2011?
9 A I believe so, yeah.
10 Q Two or three weeks of classroom and then the officers went
11 out to evaluate people who were on drugs?
12 A Yes.
13 Q And so you spent the two or three weeks in the classroom?
14 A I believe it was two weeks.
15 Q Two weeks, five days a week?
16 A That sounds correct.
17 Q 8:00 to 5:00 or so?
18 A Yeah.
19 Q And then what did you do after that to go find the people?
20 A We drove around the city streets of Minneapolis generally,
21 looking for folks that appeared to be impaired. Stop and
22 talk to them, explain our program of what we were looking
23 for, looking for volunteers, and asked if they wanted to
24 come with and participate in the program, if we suspected
25 that they were impaired on some kind of drug, not including

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1 alcohol.
2 Q And did you have to do 15 people?
3 A I believe it was 12 or 15.
4 Q As a unit, as a two-officer unit?
5 A Correct. I believe the numbers of required evaluations had
6 changed and I was unclear what the actual requirements were
7 because it showed two different -- at some point when I was
8 researching the home website for the drug recognition
9 program, I came across two different requirements. I
10 believe that one said 12 evaluations and one said 15. I
11 don't remember specifically.
12 Q I see. Do you remember the -- I'm not talking about the
13 names, but do you have a present recollection of the
14 substances that the 12 or 15 people that you and your
15 partner evaluated were on?
16 A In 2005?
17 Q Yeah.
18 A Multiple categories of drugs.
19 Q Which categories?
20 A I believe -- I believe of the seven drug categories, at
21 least five or six different categories of drugs.
22 Q And they were marijuana --
23 A Stimulants, depressants, marijuana, hallucinogens. I'm
24 sorry, I can't recall the other --
25 Q Well, that's good.

10

1 A -- three drug categories.
2 Q And this is almost -- this is, what, 2005, so almost nine
3 years ago. Do you recall the drugs that the people you
4 evaluated had taken?
5 A Yeah. I believe we saw the majority of the categories in
6 most folks. I mean, for purposes of what we were -- I
7 guess I'm trying to -- I believe we saw the majority of the
8 drug categories overall through the entire class of
9 different folks, that maybe I didn't deal with personally,
10 but observed.
11 Q All right. So after that training, from 2005 to 2011, did
12 you have the opportunity to utilize that training?
13 A Yes.
14 Q And do you believe that you were able to determine, because
15 of that training, whether drivers were impaired on any of
16 the drugs that were part of that program?
17 A Yes.
18 Q So did you believe you were able to determine if somebody
19 was high on marijuana?
20 A Yes.
21 Q High on crack?
22 A Yes.
23 Q High on cocaine?
24 A Yes. Not specifically crack or cocaine, but stimulants.
25 Q And high on amphetamines?

11

1 A Yes.
2 Q Now in Minnesota you can't be arrested for being high on
3 those drugs, simply for being high on those drugs, correct?
4 A I believe that's correct, yes.
5 Q But you can be arrested for possessing those drugs,
6 correct, if they're illegal?
7 A Correct.
8 Q And you can be arrested for driving while impaired on those
9 drugs?
10 A Yes.
11 Q Did you have any other -- did you have any further training
12 after 2005, before you took over the program on drug
13 recognition evaluation?
14 A Just training to be an instructor for the program.
15 Q So tell me about that. Well, before I ask you that -- so
16 you find out there's an opening. You applied. One other
17 person applies. You get the job. What kind of training
18 did they give you before you started the program?
19 A As far as instructor training?
20 Q Yes.
21 A I think the instructor training was in 2006. That was more
22 of how to teach an adults class. It wasn't specifically
23 towards -- it wasn't -- it was more of a class on how to
24 teach, versus how -- not so much about the program itself.
25 Q I was under the impression that there was some training

12

1 before you took over the program specific to you --
2 A For the coordinator position?
3 Q Yes.
4 A No, nothing in particular for -- like a field training
5 program or anything like that, no.
6 Q Okay. So how many years did you actually do the
7 coordinator position?
8 A I believe it was less than a year. I think it was November
9 of 2012 to -- I know I -- to be honest, I don't remember.
10 A year and a month.
11 Q And why did it end after a year and a month?
12 A I separated from the state patrol for a medical disability.
13 Q For a medical disability?
14 A (Nodding head.)
15 Q Related to the job?
16 A No. Well, yes. I'm sorry, yes. Not that job, but other
17 aspects of the job. Injuries sustained from work-related
18 accidents, crashes, concussions. I suffered from
19 postconcussive syndrome and PTSD.
20 Q So was there only -- the previous officer said that the
21 program was once a year for the officers who participated;
22 is that correct?
23 A Generally, yeah. On average the classes were once a year.
24 Q And so during your tenure, did you only have one class, so
25 to speak?

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1 A Yes.

2 Q And when did that -- when was that held?

3 A I started the position in November. The class, I think,
4 started in April the following -- so four months later
5 or --

6 Q Four months later?

7 A -- three months later.

8 Q And was something circulated among the various police
9 forces in the county about the class so that the officers
10 would know when to apply?

11 A As far as like a flier or a memo or --

12 Q Yeah.

13 A Yeah. I believe it got sent out to, I believe, the
14 majority of the law enforcement agencies statewide.

15 Q And saying essentially we have this DRE program, anybody
16 who wants to participate should sign up?

17 A Not for anybody. It generally was for folks that had a
18 passion, if you will, for impaired drivers and that were
19 generally -- I'm not -- I'm trying to think of the --

20 Q Well, let me --

21 A -- correct term for them.

22 Q -- ask you this. Did any of the officers who asked to be
23 in the class, did they have to apply and did any of them
24 get rejected?

25 A Yeah, I believe there were folks that weren't allowed in.

15

1 it this is the syllabus for the April 2012 classroom
2 portion?

3 A Correct. It looks to be.

4 Q And was this something that you put together or was
5 essentially the class the same in the 2012 year as it had
6 been in previous years?

7 A Yeah. This would have been like a template of previous
8 years, just change the names and times.

9 Q I see. Okay. So you were pretty much working on forms
10 that had been used in prior years?

11 A Correct.

12 MR. JACKOLA: For those of us in the cheap
13 seats, do you have a Bates number or anything like that?

14 MR. MILSTEIN: You know, I don't. I don't.
15 But this is the Minnesota Drug Recognition Expert School
16 syllabus, April 2 to 12, 2012.

17 Counsel, just so it's convenient for them, if you can
18 share with your witness and then let them have your set --

19 MR. BILCIK: I can do that.

20 BY MR. MILSTEIN:

21 Q So let me just see if I can understand who these people
22 are. So the Drugs & Society, who were Nielson and
23 Maciejewski?

24 A Lieutenant Tiffani Nielson is a west metro lieutenant for
25 the state patrol. And Jeff Maciejewski, he is a University

14

1 I don't remember how many applicants there were, but it
2 wasn't -- it wasn't standard that everybody that applied
3 got a seat in the class. There were -- they had to
4 write --

5 They had to fill out an application and I believe they
6 were asked why they wanted to be in the program and what
7 they had done in their community to -- I don't remember
8 exactly how it was worded. What efforts they had done to
9 stop impaired drivers.

10 Q And who made that decision as to whether or not these
11 officers would get in or not?

12 A I believe I did most of the screening for the applications.

13 Q All right. So you said April is when it started? Is that
14 what you said?

15 A Yeah.

16 Q And how many were in that class?

17 A I believe there was 25 or 26. I don't remember. The
18 number 19 rings a bell in my head, but I don't know that
19 that was correct.

20 Q And it was a two-week class?

21 A The classroom portion, yes.

22 Q Let me show you -- I don't have exhibits for everybody, but
23 here's a set for your counsel. You can sort of share
24 those. Everything is already marked.

25 Let me show you what is marked as Exhibit 1. I take

16

1 of Minnesota police officer. I believe he's a sergeant.

2 MR. MILSTEIN: Are you okay? Do you have
3 trouble hearing him?

4 THE REPORTER: I'm fine.

5 MR. MILSTEIN: You speak in a low voice. I
6 can hear you and if she's fine, that's all that matters.

7 THE WITNESS: Okay. I'm sorry if I'm not
8 talking loud enough.

9 MR. MILSTEIN: Are you guys able to hear
10 him?

11 MS. BROSNAHAN: It's fine.

12 MR. MIDOLO: It's fine, yeah.

13 BY MR. MILSTEIN:

14 Q Then Development & Effectiveness, who are those people?

15 A Russ Czapar, I forget what agency he was with. As well as
16 Slawson, I don't remember -- oh, I believe she was a Maple
17 Grove officer. Michalek was a trooper in the east metro.

18 Q And Brent Nelson?

19 A He was forensics at the BCA. I don't know a specific job
20 title, but he worked at the BCA.

21 Q And I had asked you about the form. Did you recruit these
22 instructors or were they more or less --

23 A They were instructors from previous classes that I had
24 taught at and had taught with me or had taught to me.

25 Q So you didn't have to go find these people, they were part

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17

1 of the DRE program before?
 2 A Correct. They were already instructors that had, I
 3 believe, taught at other classes, all of them.
 4 Q And how about Cline, C-l-i-n-e?
 5 A He is a Woodbury officer.
 6 Q And Horazuk?
 7 A The name rings a bell, but I can't place what agency.
 8 Q Gomez and Frances?
 9 A Gomez is a Crystal officer. I believe she's a sergeant.
 10 And Frances -- boy, I can't think of -- I believe it was a
 11 male. I can't think of where he was from.
 12 Q And then Isaacson and Vossen?
 13 A Isaacson?
 14 Q The next page.
 15 A Oh, sorry. Craig Isaacson is a west metro lieutenant for
 16 the state patrol and Darin Vossen, I believe, works for the
 17 St. Cloud Police Department, or did at the time.
 18 Q Okay. And Karen Mara?
 19 A Karen Mara was, at the time, a Minneapolis city prosecutor.
 20 Q So she's an attorney --
 21 A Correct.
 22 Q -- in the prosecutor's office?
 23 A Yeah. I believe the City of Minneapolis. She, yeah, works
 24 for the Minneapolis City Attorney's Office, or worked at
 25 the time.

19

1 Q So marijuana.
 2 A Inhalants.
 3 Q Inhalants meaning what?
 4 A Anything you can inhale, paint, gas, glue, aerosols.
 5 Q Done for the purpose of getting high?
 6 A Yes, I believe so. And then dissociative anesthetics.
 7 Q Such as what?
 8 A Those would be like tranquilizers, horse tranquilizers,
 9 generally pet pharmaceuticals.
 10 Q Okay. Any specific kinds or names you recall?
 11 A Ketamine. And then stimulants.
 12 Q Stimulants such as what?
 13 A Any stimulant that is classified in the stimulant category.
 14 Q And coffee would be a stimulant?
 15 A Correct.
 16 Q Would that be included there?
 17 A It would have been discussed, that caffeine is a stimulant.
 18 Q But the focus was more on things like amphetamines,
 19 Dexedrine, that kind of drug?
 20 A I'm not familiar with Dexedrine.
 21 Q Speed?
 22 A Yeah, cocaine, meth.
 23 Q Right. Okay. So --
 24 A Anything that's going to, you know, fall into the stimulant
 25 category.

18

1 Q Okay. I think that's everybody. How about Godding?
 2 A Isaiah Godding is a trooper. I believe he's in the
 3 Alexandria area in northern Minnesota.
 4 Q So it's mostly police officers with one prosecutor, and
 5 then the members of the lab, so to speak?
 6 A Correct.
 7 Q And which ones did you teach personally?
 8 A Pardon?
 9 Q Which classes did you teach personally?
 10 A I don't -- I don't know that I did a lot of the instructor
 11 role. Mine was more of a coordinator position, just
 12 overseeing -- scheduling these instructors to teach the
 13 different sections of the class that they were generally
 14 more versed in.
 15 Q And the focus of the classes were on drugs that would
 16 impair driving; is that correct?
 17 A Just the drugs and how they affect the body.
 18 Q But was the ultimate reason why you were looking at that is
 19 because you're looking at drugs that might impair the body
 20 and impair the ability of people to drive?
 21 A Well, this isn't a program that is just used for driving
 22 scenarios.
 23 Q Okay. So what drugs were discussed in the program?
 24 A Well, I can read them here, as far as the categories.
 25 Cannabis.

20

1 Q Was it primarily -- was the focus primarily on illegal
 2 drugs?
 3 A No, any drugs, prescription or non.
 4 Q But coffee wouldn't impair somebody, would it?
 5 A It can affect your body, absolutely.
 6 Q All right. And what other drugs?
 7 A Depressants, antidepressants.
 8 Q So an antidepressant would be included?
 9 A Yes.
 10 Q SSRIs?
 11 A A what?
 12 Q Do you know what an SSRI is?
 13 A I'm not familiar with that.
 14 Q What kind of antidepressants?
 15 A There was a list of approximately maybe 80 different --
 16 Q Things like Paxil and --
 17 A Yeah, Paxil or --
 18 Q -- Prozac or Wellbutrin?
 19 A -- Effexor or -- I don't know if that's a -- I don't
 20 remember if it's a --
 21 Q Okay.
 22 A Yeah. I mean, not just like a name brand or anything like
 23 barbiturates or nonbarbiturate categories. There's six
 24 subcategories of depressants.
 25 Q Okay. To what extent did the program describe

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1 antidepressants as causing impairment of driving?
2 A I don't understand your question.
3 Q I mean, was it the position of the program that someone who
4 was on Paxil was impaired?
5 A I think potentially -- I'm not a doctor, but they
6 potentially could be, yes. It's a depressant, the same as
7 alcohol.
8 Q Okay. Then at the end of the two weeks there was a quiz or
9 a test, correct?
10 A I believe so, yeah.
11 Q And who prepared -- was it, again, did you use the form of
12 the test that was used in prior years or --
13 A Yeah, there was a -- I believe the PDF version of it was on
14 the home DRE website and that's where that would have been
15 downloaded from or photocopied from previous tests.
16 Q And the officers had to get what kind of grade in order to
17 get the certification?
18 A I believe it was 80 percent.
19 Q And in that class of 2012, did they all get the 80 percent?
20 A I believe so. I don't remember anyone having to retake
21 it.
22 Q Then after the classroom training, the officers were
23 supposed to go out and evaluate 15 people as a pair of
24 officers, correct?
25 A I believe, yeah, it was 15 or 12. I don't remember what

22

1 the final number was determined to be.
2 Q I think in the 2012 year it was 15.
3 A Okay.
4 Q Was it you who instructed them on how to do that?
5 A At the last day of our classroom class, for the instructors
6 that were there we explained generally, you know, where --
7 like different areas of -- you know, how to, you know, stop
8 and talk to people and say this is what we're doing. This
9 is the program and we're looking for volunteers. This is
10 what our program is about. Do you want to come with and
11 participate.
12 Q But I had asked you whether you were the person who --
13 A Oh, I'm sorry.
14 Q -- gave the officers the training on how to go about
15 finding those people?
16 A Yes, I was in the group that was -- one of the instructors
17 that was there that discussed that with them.
18 Q So it was a group of people who told them what they had to
19 do to find the 15 people?
20 A Yeah, they just -- yeah.
21 Q And was that all done on the last day of class?
22 A I believe so.
23 Q After the exam or before?
24 A I don't recall.
25 Q I'm going to ask you some more about that, but before I do,

23

1 were you present also when they were evaluating people or
2 was your job essentially done at the end of the classroom
3 period?
4 A I was present at times for evaluations.
5 Q Did you tell them that there was a building where the
6 evaluations could take place?
7 A Yes.
8 Q And where was that building?
9 A Initially we used the Fifth Precinct in Minneapolis and
10 then we moved to the DOT building on the west side of the
11 airport.
12 Q DOT stands for --
13 A Department of Transportation.
14 Q And did you tell the officers that all the evaluations
15 should take place in those two places?
16 A No.
17 Q Could they evaluate people in their squad cars?
18 A No.
19 Q Could they evaluate people on the street?
20 A Evaluations have been done on the street, yes.
21 Q So why couldn't they do it in their squad cars?
22 A Well, they wouldn't be able to physically move.
23 Q Oh, I see.
24 A But you wouldn't be able to perform an entire evaluation on
25 the street.

24

1 Q Did you say it was preferable to bring them to the DOT
2 building or to the precinct, whichever was to be utilized
3 at the time?
4 A Yeah, generally that's where folks would come for the
5 evaluation, unless there was a situation where it was a DWI
6 stop from another agency that wasn't in the program, and
7 then we would send an instructor to evaluate.
8 Q I see. So if someone was arrested for DWI, you would send
9 somebody to evaluate that person who was arrested?
10 A Correct.
11 Q But if it was just volunteers, as opposed to somebody that
12 was arrested, they were supposed to do it either at the
13 precinct or at the building, the DOT building?
14 A Yes.
15 Q Was there any kind of instruction as to what kind of drugs
16 you should find people impaired by in these evaluations?
17 A Anything suspected of the seven drug categories.
18 Q So could somebody do evaluations of 15 people on
19 antidepressants and that would satisfy the --
20 A No. The requirement, I think, was three or four different
21 drug categories.
22 Q Three or four different categories?
23 A Correct.
24 Q And did you give them any instruction on where to find
25 these people?

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1 A Yeah. Myself and the other instructors advised them of
 2 different locations where drug use was prevalent.
 3 Q And what locations were those?
 4 A Near the -- near the bus station downtown, near Franklin
 5 Avenue, Lake Street, near Dunwoody Boulevard, or Avenue,
 6 and that was it. There might have been a couple others. I
 7 can't recall.
 8 Q Did you or any of the other instructors tell any of the
 9 officers that they should go to Peavey Plaza?
 10 A No.
 11 Q Or that they should go to where Occupy Minnesota was at
 12 that time holding any kind of protest?
 13 A No.
 14 Q Were the officers supposed to identify people who were
 15 already impaired, already high?
 16 A That would be the ultimate desire, I mean, to find people
 17 that were high that wanted to participate, yes.
 18 Q Well, was there instructions to the officers that they
 19 should only evaluate the people who they found who were
 20 high as opposed to getting them high?
 21 A I don't understand your question.
 22 Q I mean, you know what the controversy is in this case,
 23 correct?
 24 A Yes.
 25 Q And the allegations are that certain officers who were in

27

1 be in the program?
 2 A No. I don't know that I'm understanding the question.
 3 Q If an officer confronted somebody who had marijuana on him
 4 or was in the process of smoking marijuana, what did you
 5 expect would happen?
 6 A They would ask them to participate in the evaluation.
 7 Q But not arrest them?
 8 A I don't know if you can arrest for internal possession.
 9 MR. BILCIK: You don't know?
 10 THE WITNESS: I don't know.
 11 BY MR. MILSTEIN:
 12 Q I'm not talking about arresting them for being high. I'm
 13 talking about somebody with illegal drugs on their person.
 14 A We weren't searching people for drugs.
 15 Q But if they saw somebody who had a joint in his hand, what
 16 would you expect to happen?
 17 A Most folks would probably eat it to hide it, or finish
 18 smoking it.
 19 Q I take it you didn't think it was even necessary to tell
 20 the officers to don't give drugs to people to evaluate
 21 them?
 22 A Of course not. That's no different than telling an adult
 23 to wash their hands after using the bathroom.
 24 Q That was just something that you expected the officers to
 25 know they shouldn't do?

26

1 the DRE program either watched subjects get high or
 2 actually gave them the drugs so they could get high. You
 3 understand that, right?
 4 A Correct.
 5 Q Did you or the other instructors tell the officers that the
 6 only evaluations you should conduct are for people who are
 7 high when you find them, as opposed to watching them get
 8 high or giving them drugs to get high?
 9 A That's a lot of questions in one question. Oh, yeah. We
 10 never instructed anyone to give anyone drugs.
 11 Q Did you instruct anyone to watch them take drugs and then
 12 evaluate them?
 13 A No.
 14 Q Was there any comment about that, that is, what do you do
 15 if you're -- if you put somebody in the car and they start
 16 smoking marijuana or --
 17 A That was never a conversation.
 18 Q What did you expect would happen if that happened?
 19 A That what would happen? I don't --
 20 Q Well, what would you expect to happen if an officer
 21 observed somebody getting high in front of them?
 22 A That we would stop and walk up and talk to them, ask them
 23 if they wanted to participate in the program.
 24 Q So if they saw somebody smoking marijuana, rather than
 25 arrest them, they should go and ask them if they wanted to

28

1 A Of course.
 2 Q Did you tell the officers -- was there any instruction as
 3 to whether the homeless would be good subjects for the
 4 evaluations?
 5 A I don't believe so.
 6 Q Now the officers were -- I mean, you knew the officers were
 7 all going to be driving around in squad cars, in full
 8 uniform, badges, weapons, as opposed to being in plain
 9 clothes, correct?
 10 A Correct.
 11 Q Was there any thought that that might make it difficult to
 12 actually get people to admit that they were high?
 13 A No.
 14 Q Why not?
 15 A For years, it's -- people welcomed us to -- and expected us
 16 because they knew they would get a cheeseburger or
 17 something for participating in the evaluation or --
 18 Q And were the officers just supposed to randomly ask anybody
 19 that they --
 20 A No.
 21 Q -- came across?
 22 A No.
 23 Q So who were they supposed to ask?
 24 A Anyone that appeared to be impaired.
 25 Q So it wasn't -- you didn't just walk up to a stranger and

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1 say, are you on any drugs?
2 A Of course not.
3 Q You would observe and watch and see if they showed signs of
4 impairment and then you would confront them?
5 A Yeah. We would observe them, see what they're doing, watch
6 their mannerisms, behaviors, stupor, if you will, and if
7 they appeared to be impaired, we would talk to them.
8 Q Did that include people who were drunk?
9 A Yes.
10 Q So alcohol was one of the seven categories?
11 A No.
12 Q It was not?
13 A No.
14 Q So if somebody was drunk --
15 A We didn't use anyone that was drunk for the field
16 certifications because it wasn't one of the factors -- or
17 one of the -- the word escapes me.
18 Q Well, it wasn't one of the --
19 A One of the categories of what we were looking for.
20 Q And how were they supposed to identify if someone was on an
21 antidepressant?
22 A Well, it generally would have the same effects of alcohol,
23 to some degree, minus the odor on the breath.
24 Q If somebody had been prescribed Paxil and had been taking
25 it for years, there was an expectation that that person

30

1 could be identified on the street?
2 A They could be, if they were taking it incorrectly. If it
3 was something their body was used to, you know, and it was
4 normal for them, they might not be impaired, or observably
5 impaired.
6 Q And how about somebody who had smoked a joint, let's say, a
7 half hour before, what would you look for?
8 A Take a look at their eyes and see what their eyes looked
9 like. You can smell it, if it was there, more times than
10 not.
11 As far as medical effects, the pulse would be higher,
12 the blood pressure would be higher, the pupils are
13 generally dilated.
14 Q But they wouldn't be able to see, just by looking at them,
15 whether their blood pressure was high or their --
16 A Oh, by looking at them, no. I thought you were asking
17 about -- sorry.
18 Q I'm talking about how are you going to find somebody who is
19 supposedly high on marijuana, other than glassy-eyed or
20 eating a lot of potato chips?
21 A Well, you smell like weed. Your eyes are bloodshot,
22 watery. Your speech is maybe stammered. Your responses
23 are slower. I mean, it's not a challenging task to find
24 someone that is impaired by weed.
25 Q It is what?

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1 A I don't believe it's a challenging task to find someone
2 that's impaired by weed. But in regards to a half hour,
3 it's hard to say.
4 Q Right. Did you ask the officers whether they had
5 themselves ever smoked marijuana?
6 A Yeah.
7 Q Would that have eliminated them from the program or not?
8 A I don't believe so.
9 Q And did you expect that, since most of the officers were
10 just from the community, that most of them had tried it at
11 one point or the other?
12 A I'm in no position to make that assumption.
13 Q Of those that you asked in the class, how many -- do you
14 remember how many smoked or had gotten high at some point
15 in time?
16 A I don't remember if it was that class or the previous class
17 I might have been at, or a different previous class, but I
18 think it was one person. I don't recall if it was this
19 class or --
20 Q So only one person, do you think?
21 A That I remember.
22 Q And did you believe that?
23 A Yeah, I did. I don't remember who it was or where they
24 were from.
25 Q Let me show you Exhibit 2 here. This is a blank evaluation

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1 form. So again, this isn't a form that you developed, this
2 is one that was available to you as the coordinator in a
3 program that had been in existence for some time?
4 A I believe so, yes.
5 Q Did you change it in any way?
6 A I don't believe so. If I would have changed anything it
7 would have been maybe the lettering in the State of
8 Minnesota, changed the font size or something.
9 Q Okay. I'm curious as to why at the top it says arrestee's
10 name as opposed to subject's name or volunteer's name?
11 A I believe, and I can't say for certain, but this would have
12 been a generic form from whoever the creator was of it, and
13 there are multiple versions of this throughout the country,
14 so in some states the folks are arrested.
15 Q So this isn't a form in particular to Minnesota, this is --
16 A No.
17 Q -- a form that was in existence around the country?
18 A Yeah. I don't know how many versions there are. I've seen
19 multiple versions of this form. This is just one of them.
20 Q And it's true, isn't it, that in a place like California,
21 the DRE program is conducted on individuals who are
22 arrested as opposed to volunteers who are not arrested?
23 A I believe that's how their program operates there, yes.
24 Q And do you know whether in any other state, other than
25 Minnesota, the program is conducted on individuals who were

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1 not arrested, the way it was done in Minnesota?
2 A I don't know for certain.
3 Q So for those who are volunteers -- well, did you go through
4 the form in the classroom period?
5 A Yeah. The form was gone over probably several times. Not
6 to say with me specifically, but the form was -- everybody
7 got a notepad of them, so there are probably 100 filled out
8 as each person practices or --
9 Q And where it says Miranda Warning Given, did you tell the
10 officers, you know, if you're recruiting volunteers, don't
11 give them Miranda rights, they don't need Miranda rights?
12 A Yeah. We weren't arresting the volunteers. They were
13 volunteers.
14 Q Right. I'm asking what your instructions were. So did you
15 tell the officers to don't give them Miranda rights or was
16 it not commented on?
17 A I don't recall that it was discussed. It wouldn't have
18 been an arrest scenario, unless there was an arrest -- a
19 physical arrest for another agency, and then the arrestee's
20 name would be appropriate. This is the same form that I
21 would use for an arrest.
22 Q Let's talk about the facility that non-arrested
23 participants were taken to, the DOT facility. Were you
24 there during that whole period?
25 A Most of it.

1 Q And who else was present, other than the officers who would
2 be bringing people in?
3 A An occasional shop worker that worked at the facility.
4 Q But any of the other instructors?
5 A Oh, yeah, multiple other instructors.
6 Q And anybody who was not an instructor?
7 A Just the volunteers.
8 Q The volunteers, the police officers bringing them in, and
9 the instructors. For instance, was there a physician
10 present?
11 A Not that I'm aware of.
12 Q Any emergency personnel?
13 A Just the first responder law enforcement officers.
14 Q Again, I'm not from this area. How long does it take to
15 get from where we are now to that facility?
16 A Driving?
17 Q Yes.
18 A Ten minutes, without traffic.
19 Q And from Peavey Plaza?
20 A I don't exactly know where that's at, but I think it's
21 downtown here somewhere, I think, so 10 minutes, maybe 15.
22 Q Was there any training that you conducted where you told
23 officers they had to get the consent of the volunteers?
24 A I don't believe so. Oh, just the --
25 Q Did they have to sign anything --

1 A No.
2 Q -- in order to agree to participate?
3 A No.
4 Q Did you tell them what they should tell the proposed
5 subjects?
6 A That we were doing this program, explain the program to
7 them, and if they wanted to participate in the program and
8 help us out with learning observations of the physical
9 sides of -- the effects of drugs and how it affects the
10 body.
11 Q Do you know what an institutional review board is?
12 A No.
13 Q Do you know whether anybody, outside of the state police,
14 looked at the program to see whether it was an appropriate
15 program? Did anybody pass on it, did the governor, did any
16 medical group, any ethics group, any outside group? Other
17 than the state police officers, did anybody pass on the
18 program?
19 A As far as -- I don't understand your question. Did
20 anybody --
21 Q As far as saying that the program was appropriate, that you
22 could recruit volunteers, that you could evaluate people,
23 ask them what kinds of drugs they were on, that kind of
24 thing.
25 A Yeah, I don't -- I don't know.

1 Q What time did you expect the officers to go out and look
2 for people?
3 A Anywhere between 3:00 a.m. and -- 3:00 p.m. and 3:00 a.m.
4 I don't remember what the --
5 Q Did you tell them that? I mean, you wouldn't find somebody
6 high at 8:00 a.m.
7 A Of course you could.
8 Q Did you tell them to target 3:00 a.m. to -- or 3:00 p.m. to
9 3:00 a.m.? Is that what you told them?
10 A I don't remember exactly what time our evening classes or
11 the certifications began, but it would have been late
12 afternoon into the late hours of the night.
13 Q And how long were you there at that DOT building?
14 A I was in and out. I believe I was there for the majority
15 of the time other folks were there.
16 Q So if there were 19 people, or 19 officers -- but they were
17 pairs, so let's say there were 10 pairs of officers, and
18 there were 15 subjects with each pair, that would be 150
19 subjects for the class.
20 A I believe mathematically that makes sense.
21 Q Other than the ones who were arrested, of course -- the
22 ones who were arrested would not be taken to the building,
23 the DOT building, correct?
24 A They could have been. If it was an arrest from a
25 neighboring city that wasn't in the program and they said

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1 they need someone to evaluate this person that doesn't have
2 any alcohol on them and they appear to be impaired by
3 drugs, then they could have -- I don't know if they did or
4 didn't, but they could have been brought to that facility
5 for an evaluation.
6 Q So just roughly, of the 150 -- I take it all of the members
7 of the class completed the program and had 15 evaluations?
8 A I believe so.
9 Q And how long a period was it after the class ended, the
10 classroom instruction ended?
11 A I don't remember. It could have been the next day or the
12 next week that the certifications would have started.
13 Q But how long did it take the ten pairs of officers to
14 complete the 15 evaluations?
15 A Somewhere around three weeks, I think. And it wasn't every
16 night. It was four or five nights a week.
17 Q Okay. It wasn't weekends?
18 A Well, it probably included weekends.
19 Q Oh, it did? Okay. So in that three-week period, would you
20 estimate that virtually all of the 150 did come to the
21 building?
22 A Probably the majority, yeah.
23 Q The overwhelming majority?
24 A I don't have the specific numbers. I would say the
25 majority. I mean, if they had to -- yeah, the majority.

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1 Q At any given time, if I had showed up at the building, how
2 many subjects would be there?
3 A Anywhere between zero and 10.
4 Q At any time that you were there, did you see any of the
5 officers give any of the subjects drugs?
6 A No.
7 Q At any time that you were there, did you see any of the
8 subjects smoking marijuana?
9 A No.
10 Q Or taking any of the drugs in the seven categories?
11 A No.
12 Q And if you had seen it, what would you have done?
13 A Well, if they were illegal, I mean, the -- if someone had a
14 prescription, that's one thing, but --
15 Q No, if they were illegal, yeah.
16 A Well, it wouldn't happen. I mean, it wouldn't have been
17 allowed.
18 Q So just educate me a little bit. So you're there with the
19 other instructors on a given day, and how did it work when
20 somebody -- when a team of officers, a pair of officers,
21 would bring somebody to the site? Did they have to check
22 in or what?
23 A We had kind of a classroom desk-table area for doing
24 reports. We used the garage for evaluations. They would
25 bring someone in and whatever instructor was there would

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1 ask them, you know, what they thought they had and then
2 they would just start the evaluation.
3 Q Let's just do it bit by bit. First, when they first pulled
4 up, did anybody have to sign in?
5 A No.
6 Q So they would walk through the door with their volunteer,
7 right?
8 A Yep.
9 Q I take it the volunteer was not in handcuffs?
10 A No.
11 Q And one of the instructors would come up to the officers
12 with the volunteer and greet them?
13 A Yeah.
14 Q And say, what do you have?
15 A Yeah. Generally not in front of that person, but yeah.
16 Q Not in front of the person? They would pull the officers
17 aside?
18 A Well, I mean, if there was -- if an officer said what they
19 thought they had in front of that person, then the person
20 might act a different way, so one person would maybe walk
21 the volunteer into the garage, the other person would maybe
22 have a conversation with the instructor on what categories
23 they thought the person was under the influence of.
24 Q And did you do most of these or did the various instructors
25 do that?

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1 A I have no idea how many evaluations I witnessed. It was, I
2 think -- I don't know. Everybody was busy with them. I
3 don't know that I did any more or less than anyone else.
4 Q So about how many did you actually witness?
5 A Maybe a dozen that I witnessed and made notes on. I don't
6 recall.
7 Q So the officers would come in and an instructor like you or
8 one of the other instructors would meet them and they would
9 then take that subject into the garage. Is that what you
10 said?
11 A Correct.
12 Q And they would have their form and they would simply just
13 go through their form, correct?
14 A Correct. They would follow the steps of the evaluation.
15 Q And did the instructor -- was there always an instructor
16 observing that?
17 A There should have been at all times, yeah. The instructors
18 would have to sign off on a form that said they witnessed
19 it, and that they didn't, you know, miss steps or critique
20 them for how the process was done or maybe how a flashlight
21 was used to look at someone's eyes or the positioning of it
22 or --
23 Q You know, I was mistaken. I think this form says that
24 there were 12 evaluations minimum. So let me show you
25 Exhibit 3. So again, was this a form in your file or did

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1 you guys prepare this?

2 A This would have been something printed off of the DRE
3 website, I imagine. It's not anything I created.

4 Q So 12 evaluations minimum, correct?

5 A That's what it says, yes.

6 Q What does 75 percent toxicology samples collected mean?

7 A The volunteers would volunteer for a urine sample, so we
8 could -- so those would be screened at the BCA for presence
9 of categories and then that could be confirmed with what
10 the officers suspected, or the categories that folks
11 would've been impaired on.

12 Q So let me see if I've got this right. So 75 percent of the
13 12 minimum evaluations, there would be some toxicology like
14 a urine sample?

15 A Correct.

16 Q Was it urine or blood or just urine?

17 A Generally urine. We didn't -- I don't know that we had
18 anyone there that was a phlebotomist.

19 Q Okay. So 75 percent of the 12 give a urine sample. And
20 was the requirement for the officers to pass that they must
21 confirm by toxicology reports that their evaluation was
22 correct?

23 A Could you ask that again? I don't --

24 Q Yeah. So it says 75 percent positive toxicology samples
25 from the lab. So once the urine samples were in the lab,

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1 what the tox screening showed in an overall --

2 Q They had to be correct?

3 A Correct.

4 Q So if I bring somebody in for marijuana and he does a urine
5 sample and it turns out he's on meth, and that happens
6 frequently, then I'm not passing the DRE, right?

7 A Yeah. If you weren't accurate on what you had believed you
8 saw and it came back contrary and you didn't get to that
9 point, then yeah, I don't know that you would be
10 successfully passing that.

11 Q And if it came back negative -- if 75 percent of my
12 subjects came back with negative toxicology, then I don't
13 pass, right?

14 A I suppose. I don't know that I'm entirely understanding.
15 So you're saying if they did everything -- basically you
16 diagnosed them wrong, if you will? Is that --

17 Q Yeah. It turned out they -- that at least the toxicology
18 turned out to be negative. That's just the way I read
19 this, that there's got to be a positive toxicology sample,
20 75 percent, in order to meet the requirements.

21 A I believe that's how it's worded. I can't -- I didn't
22 write it. I can't dissect it any further than what it
23 says, so --

24 Q It says you must be the evaluator for six, so typically the
25 team is six and six, is how they operated, correct?

42

1 was it a requirement that 75 percent must have tested
2 positive for the drug that they were brought in for?

3 A No, I -- I think I understand what you're asking, but I
4 don't --

5 Q So an officer picks somebody up. He thinks they're on
6 marijuana. The person tells them they're on marijuana.
7 They do a urine -- they give a urine sample. It turns out
8 the urine sample is negative.

9 A Okay.

10 Q Then what happens?

11 A Well, if --

12 Q I take the evaluation doesn't occur right away. I mean,
13 the toxicology evaluation, right?

14 A Yeah, no. Those are boxed up and sent -- they're dropped
15 off at the BCA and they got to them when they could.

16 Q Right. So what happens if the 15 -- or of the 12 -- I'm an
17 officer. I'm in your program. I bring in somebody who I
18 say is on marijuana. You take his urine sample and it
19 turns out he wasn't on anything. Does that person count in
20 my 12?

21 A I believe so, yes.

22 Q But do I have to have 75 percent with positive toxicology
23 results? That's the way I read that. Am I wrong there?

24 A They had to be 75 percent accurate, if I recall correctly,
25 on what drug categories they called impairment on, versus

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1 A Yeah. You did six yourself and watched six.

2 Q Right. And three of the seven drug categories must be
3 confirmed, so you could have -- do you recall how many of
4 the people were on antidepressants?

5 A I don't remember what the -- I don't remember what the
6 toxicology reports showed us. I know at some point there
7 was a report of what was what, but I don't remember the
8 numbers of what the --

9 Q And then it says that all evaluations must be witnessed and
10 supervised by a DRE instructor. Was that the case, that
11 there was always an instructor witnessing the evaluations?

12 A Uh-huh, correct.

13 Q Did you ever go out into the field with any of the officers
14 to select the people?

15 A No. I went out one night to look for folks because people
16 came back after several hours and didn't have any
17 volunteers, and I went out and looked and there was -- the
18 streets were empty. There was nothing around, so --

19 Q I don't know if I asked you this. Were any of the
20 evaluations videotaped?

21 A Not that I know of.

22 Q Or recorded in any way, other than on the form?

23 A I don't know. I think there was -- I think there was --
24 Channel 9 News or Channel 5 News was there for something at
25 some point. I don't know what part of -- oh, there was,

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1 yeah. There was a news channel there recording an
 2 evaluation.
 3 Q Did the instructors have notepads and take notes?
 4 A Yeah. We had a clipboard with a check-off sheet of, you
 5 know, what -- if like someone missed a step in the
 6 evaluation, we would note that down. So yeah, there was a
 7 sign-off sheet that had to be signed off by the instructor.
 8 Q Did any officer tell you that any other officer had
 9 actually given drugs to any of the subjects?
 10 A I don't remember the dialogue. One officer told me he saw
 11 something. Physically giving? I don't remember that being
 12 said. Maybe, I'm not sure.
 13 Q Well, what is it that you recall?
 14 A About what?
 15 Q About that. I mean, you obviously recall something.
 16 A Could you be more specific?
 17 Q There was a deputy -- I forget how you pronounce his name.
 18 Mahowald?
 19 A Oh, yeah, Mahowald.
 20 Q Yeah. Did he tell you that he saw something that was
 21 inappropriate?
 22 A Yeah. He -- I don't remember exactly how the conversation
 23 went down, but --
 24 Q Was he in the class, by the way?
 25 A Yeah.

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1 some trooper had pretty, quite sure he had said some
 2 trooper gave him a red evidence taped bag that had weed in
 3 it, made him smoke it in his car."
 4 Question: "This is one of the test subjects?"
 5 "One of the fellow, one of the people they dealt with
 6 on the street. They didn't say who."
 7 And then a little farther down, "...who came into the
 8 class and said it. I don't know where this person was they
 9 talked to. He didn't come in with them. But someone came
 10 back in the classroom and basically said that a guy told
 11 them that someone, some trooper gave them a bag of red
 12 evidenced taped weed and made them smoke it in the car."
 13 "And what did you do from that?"
 14 "Immediately asked every trooper specifically in the
 15 class you know did you do anything stupid and they're like
 16 no I didn't and I asked basically everyone that was in the
 17 classroom at the time you know and everyone just kinda,
 18 no."
 19 Then you say, "I reiterated you know the conversations
 20 that we had about what and what not to do like basically
 21 you know don't be stupid, don't cross any lines."
 22 Do you see that?
 23 A Yes.
 24 Q And I think on page 7, the first half of that page --
 25 MS. KIMBLE: Is that still Exhibit 9?

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1 Q And what did he tell you?
 2 A If I could have a moment.
 3 MR. MILSTEIN: Are you looking at his prior
 4 statement?
 5 MR. BILCIK: Yes. Do you have it?
 6 MR. MILSTEIN: Yeah. Do you want to take a
 7 look at it?
 8 MR. BILCIK: That's what he would like to
 9 do, is refresh his memory.
 10 MR. MILSTEIN: Sure.
 11 MR. BILCIK: Thank you.
 12 THE WITNESS: From what I do remember, I
 13 remember having the conversation that he did see something
 14 or someone did something wrong and he didn't want to say
 15 who it was.
 16 MR. MILSTEIN: And that's Exhibit 9.
 17 MR. BILCIK: Do you recall what page,
 18 Counsel, that he could look at?
 19 MR. MILSTEIN: And here's Exhibit 8. I
 20 think there were two of them.
 21 BY MR. MILSTEIN:
 22 Q I think it's page 7 of Exhibit 9 and page 3 of Exhibit 9.
 23 So if you look on Exhibit 9 on page 3, there in the middle,
 24 "Um someone came back in from the field and said you know
 25 basically you know some guy we saw or talked to said that

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1 MR. MILSTEIN: Yes.
 2 BY MR. MILSTEIN:
 3 Q Did you read that also?
 4 A Pardon?
 5 Q Did you read on page 7 also?
 6 A I'm on page 7 now.
 7 Q Okay. Why don't you read that first half.
 8 A The first half?
 9 Q Read that page.
 10 A "And at that point --"
 11 Q You don't have to read it out loud.
 12 A Okay. I don't understand what you're asking me. Do you
 13 want me to read it or not?
 14 Q Just read it to yourself.
 15 A Okay. I finished that. Could you ask your question
 16 again?
 17 Q So does that refresh your recollection as to the
 18 conversation you had?
 19 A Yes.
 20 Q So what is it that you recall?
 21 A What I just read. That I had a conversation with Andy
 22 Mahowald about -- that he didn't know where it was, but yet
 23 he saw something. It wasn't his, and he didn't know where
 24 it came from. He never touched it, but he saw it happen,
 25 and he didn't want to get in trouble. I told him that

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1 coming to me was the right thing to do and going to my boss
2 was the right thing to do.
3 Q And ultimately did you figure out who that person was, who
4 this officer was telling you had done this?
5 A Yes.
6 Q And who did you figure out it was?
7 A I don't recall his first name, but the Willers officer from
8 the Hutchinson Police Department.
9 Q I believe it's on page 7 there, two thirds down.
10 A It says Karl Willers.
11 Q And what did you do after finding -- after hearing that
12 from the deputy? I think on the next page --
13 A I think I told him to get ahold of his boss and his union
14 people and I think I told him --
15 Q It says you called your supervisor, Major Mike Asleson; is
16 that right? Was he your supervisor?
17 A Yes.
18 Q So you called your supervisor?
19 A Yes.
20 Q And what did you say to your supervisor?
21 A I think I got his voice mail.
22 Q Did you ever end up talking to him about it?
23 A I don't recall. I know we talked about it at some point,
24 yes.
25 Q Did you confront Officer Willers?

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1 A No.
2 Q Did you ask all the officers in your class whether any of
3 them had done this?
4 A I believe that was on page -- we already looked at that,
5 but yeah, I asked the classroom if anyone had done anything
6 stupid or whatever, but --
7 Q I don't understand that, because the classroom period was
8 already over.
9 A I could draw a picture, if that would help you understand
10 what the room looked like, or the building.
11 Q Well, I mean, after the two-week classes ended, was there
12 still classroom instruction?
13 A No.
14 Q So how could you ask -- I mean, after the two-week class
15 period was over, was the group ever assembled together?
16 A Yes.
17 Q In what circumstance?
18 A In a classroom table scenario for report writing.
19 Q For what?
20 A Report writing or doing their report evaluations.
21 Q Oh, I see. So you continued to have some classes after the
22 two-week period was over?
23 A No. It was a classroom setting to do paperwork in. It
24 wasn't any classroom instruction, but people would write
25 reports in that room.

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1 Q But they were all present at the same time?
2 A I don't know if everybody was there at every time. Some
3 folks could make it some days and some folks couldn't.
4 Q I'm just trying to figure out how it is that you told the
5 class -- or asked the class did any of you do anything
6 stupid, or are you saying you did that at various times
7 with various groups of people?
8 A No, I'm not saying that. I believe it's written in here
9 somewhere, that someone came in and said that -- back on
10 page 3 again? Yeah. I said --
11 Q Before you read that, I have asked you whether it refreshed
12 your recollection. I just need to know whether you have a
13 present -- after reading that, whether you have a present
14 recollection of these events or whether you need to read
15 that in order to remember what happened? Do you understand
16 the difference?
17 A If I'm going to be quoted on actual verbiage, I would
18 rather know what I said specifically.
19 Q Yeah, I understand that. It's just something that lawyers
20 are concerned with, and maybe it means nothing to you, but
21 there's a difference between --
22 A I remember asking the folks that were in that classroom
23 area where the report writing was done, no classroom
24 instruction, if anyone did anything stupid, or don't be
25 stupid, or don't do anything stupid. I mean --

52

1 Q And when you asked that question, what do you remember the
2 class saying?
3 A No, was the answer.
4 Q Was Officer Willers in that group?
5 A I don't remember.
6 Q And is it your testimony you never really confronted him?
7 A I don't know that I did. I don't believe I did. I don't
8 know that we had more than three minutes of dialogue
9 throughout the entire training class.
10 Q Was that the only time that anybody told you that he saw --
11 that any of them saw something inappropriate, that is, they
12 saw an officer give marijuana or a drug to one of the
13 subjects?
14 A Yes, I think so.
15 Q Did you ever hear that Officer Willers said that 30 to 40
16 percent of the class --
17 A Yeah, I saw something about that. I don't remember what it
18 was, a news article or something, yeah.
19 Q Did you ever check that out or did you have any reaction to
20 that?
21 A I don't believe that's probably true at all, but that's my
22 opinion. It was nothing for me to research at that point.
23 It wasn't within my wingspan, if you will, to -- I mean,
24 this was -- just the allegation itself was enough for my
25 superiors to know.

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1 And that wasn't my responsibility, I don't think, at
 2 that point. I just thought that, you know, the supervisors
 3 needed to be aware. That's why I reported it right away.
 4 Q What was your supervisor's position? I don't mean his
 5 position on the event, I mean his position in the state
 6 police?
 7 A Major.
 8 Q And was he your supervisor in your role as a trooper or
 9 your supervisor in your role as the coordinator of the DRE
 10 program, or both?
 11 A The coordinator of the program, I believe. I don't know if
 12 he -- he wasn't my immediate supervisor while I was in the
 13 field, while working in the station.
 14 Q Okay. So he was only your supervisor as the coordinator of
 15 the program?
 16 A Correct.
 17 Q And where was he headquartered?
 18 A Downtown, the state patrol office.
 19 Q And this may sound like a dumb question, but how did you
 20 know that he was your supervisor as the coordinator of the
 21 program? Did he give you instructions? Did he --
 22 A No.
 23 Q -- make you report to him --
 24 A That was --
 25 Q -- or was it just the --

54

1 A When I got the position there was --
 2 Q -- command structure?
 3 A Yeah, it was the command structure, yes. I believe I gave
 4 him reports at times or -- he was my direct supervisor. I
 5 don't --
 6 Q So did you, for instance, give him a report that 20 people
 7 had enrolled, 20 people passed the test?
 8 A Maybe the number of the people that were going to be in the
 9 class, but not as far as who passed or who didn't. It
 10 wasn't -- I don't know if that was discussed.
 11 Q Did you ever end up speaking to him about what the deputy
 12 had told you?
 13 A I believe so.
 14 Q And what did you say to him and what did he say to you?
 15 A I basically just recalled the conversation the best I could
 16 and explained to him what Deputy Mahowald told me.
 17 Q Was Willers Deputy Mahowald's partner?
 18 A I believe so, yeah.
 19 Q Now were there two Willers in the group?
 20 A Yes, there were.
 21 Q Were they brothers or relatives?
 22 A I believe they were brothers.
 23 Q And how was it that people were paired with one another?
 24 Why weren't the two Willers paired together?
 25 A Generally the pairing always worked out in the past really

55

1 well with folks that were familiar with the metro area to
 2 some degree versus those that weren't.
 3 I wouldn't put -- or there wouldn't generally be a
 4 case where a person from the southern part of the state and
 5 a person from the northern part of the state would be
 6 paired together because neither would have any -- generally
 7 any geographical sense of the downtown area.
 8 Q Right. So you always put somebody who knew the local scene
 9 with somebody who was outside the local scene?
 10 A We tried as far as -- you know, more of a guessing, really,
 11 of -- I don't know how to describe that. If it was a
 12 trooper that had worked in the metro area and someone that
 13 didn't work in the metro area ever from a different agency,
 14 I would put those two together.
 15 Q What happened to the urine samples or the toxicology
 16 reports?
 17 A The urine samples were dropped off at BCA.
 18 Q And the BCA would then conduct the toxicology evaluation?
 19 A Yeah. They would do like a screening on them to determine
 20 the presence of drug categories.
 21 Q And what happened to the screening results?
 22 A I imagine they were e-mailed back at some point. About
 23 that time I was leaving the agency.
 24 Q Do you know who has possession of those?
 25 A I don't know.

56

1 Q Were the officers told to tell the subjects to use phony
 2 names or real names?
 3 A They could use their own name, if they wanted to, or they
 4 could make up a name.
 5 Q Were the toxicology reports listed by number or name?
 6 A I believe they were by number.
 7 Q And that corresponded with the number that was listed on
 8 the evaluation?
 9 A The urine kit bottle would have a number on it. I think
 10 that's referenced in the -- yeah, it's on the bottom of
 11 that sheet.
 12 Q So it was a number that was on the evaluation sheet, and
 13 then a number on the vial that the urine sample was in, and
 14 then that same number was then on the toxicology report?
 15 A I believe so.
 16 Q Did you look at the toxicology reports?
 17 A I saw one of them.
 18 Q Just one of them?
 19 A Yes.
 20 Q And did it confirm the DRE evaluation?
 21 A I didn't have the opportunity to go through all the
 22 evaluations before I left.
 23 Q I know I asked you this, but I'm just confused by this one
 24 point. So the toxicology reports came out weeks, at least,
 25 after all the officers had completed their evaluations,

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1 correct?

2 A I don't remember the timeline. It generally doesn't happen

3 overnight. I mean, sometimes they can get them back within

4 a couple days and sometimes it could take weeks.

5 Q Right. And by then the officers are back at their

6 stations?

7 A Generally, yes.

8 Q And was it the case that if a particular officer's

9 toxicology reports turned out to be incorrect with respect

10 to what -- how he had evaluated the subject, that he would

11 then not pass, not have passed the DRE?

12 A Yeah, I think -- are you referring --

13 Q Do you understand my question?

14 A -- back to that percentage --

15 Q Yeah.

16 A -- thing? Yeah, they had to be accurate on, you know, what

17 they were believing they were impaired by and what their

18 report said.

19 Q So they didn't get their certificate of passing as soon as

20 they finished their 15 evaluations?

21 A No.

22 Q They wouldn't get their certificate of passing until all

23 the toxicology reports came back?

24 A Yeah. The only part they would have possibly got a

25 certificate for would have been the classroom portion, for

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1 wrong?

2 A Again, like not washing your hands after going to the

3 bathroom.

4 Q How about as far as targeting Occupy Minnesota protestors,

5 would you expect the officers to know that that would be

6 wrong?

7 A I don't know if that would have any difference of -- I

8 don't understand what your question is. To seek out

9 volunteers from --

10 Q To target specifically Occupy Minnesota protestors, would

11 that -- I mean, you were a supervisor of the program.

12 A Oh, yeah, you don't -- I mean, you're not targeting

13 anything. You're looking for volunteers, so -- if, you

14 know, someone went to whatever part of town, it's still a

15 volunteer, so there wasn't any -- to say, you know, you

16 have to go to this intersection and this intersection

17 and --

18 Q But would you have believed that it was wrong to target

19 Occupy Minnesota protestors?

20 A Oh, no, I never -- I never specifically told people to

21 go -- to go to that place and --

22 Q No, I know. You've said that.

23 A -- look for people there.

24 Q Would you have -- if an officer said, can we target Occupy

25 Minnesota protestors, would you have said, no, that is not

58

1 the tests and whatnot.

2 Q And are you saying that by the time the toxicology reports

3 came back, you were already out?

4 A I saw one report. I believe there would have been more.

5 Q So by the time you --

6 A It was all about the same time. I don't have an entire

7 detailed timeline of that.

8 Q So you don't know one way or the other whether any of the

9 officers in the class actually didn't meet that 75 percent

10 criteria of --

11 A Yeah, I --

12 Q -- successful evaluations?

13 A I don't know who passed the class or who didn't, that I

14 recall. I don't remember.

15 I never instructed anyone to give -- you know, any

16 students to give anyone drugs or that it was permissible to

17 do it, nor were there any other instructors doing that. I

18 mean, that wouldn't have been -- it wouldn't have been

19 tolerated, so --

20 Q And again, it may just seem obvious, but did you actually

21 tell them don't do that?

22 A I don't know that I specifically said don't give people

23 drugs. I don't know that -- I personally would be insulted

24 if someone told me that, as an officer.

25 Q Because you expected the officers to know that would be

60

1 appropriate, it would be an infringement, so to speak, of

2 their First Amendment rights to protest?

3 A If anyone wanted to target anyone for anything I wouldn't

4 have -- the group would have had an entirely different

5 conversation.

6 Q Was there any concern on your part that an officer in full

7 uniform, in a squad car, carrying firearms and handcuffs,

8 that his approach to any individual might be coercive as

9 opposed to voluntary?

10 A Well, I --

11 Q Do you know what I'm saying?

12 MR. BILCIK: Objection, speculative.

13 THE WITNESS: Yeah, I don't think so. It

14 depends on what the officer's conduct was.

15 BY MR. MILSTEIN:

16 Q Well, let's say you have a 19-year-old kid who's high on

17 marijuana and an officer approaches him in full uniform,

18 badge and gun and handcuffs, and says to him, I'm not going

19 to arrest you, but I want to know whether you'll volunteer

20 to be in this program. Is there any concern that that

21 might be coercive?

22 A That's not a dialogue that I would have ever recommended

23 anyone to use, or would never have been directed like

24 that. That's -- you know, a good conversation is gentle

25 and friendly. It's, hey guys, how's it going? I mean,

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1 that's how the conversation should start, or something
2 similar to that.
3 I remember for that it was -- I guess I don't know if
4 that's what you're asking. I mean, we try to, you know,
5 just let people know, and a lot of folks were already
6 waiting for us, so --
7 Q What do you mean they were already waiting for you?
8 A There were folks that would come back and bring their
9 friends and, you know, do three or four evaluations in a
10 week, and we would buy them a cheeseburger or --
11 Q What kinds of remunerations or reward was given to the
12 subjects?
13 A Whatever, you know, a can of pop, or fries at McDonald's,
14 tacos, cigarettes.
15 Q Anything else?
16 A Not that I'm aware of.
17 Q Was there any instruction as to what would cross the line?
18 A I don't believe so. I think that would be entirely
19 obvious. I mean --
20 Q Well, how about money?
21 A I'm sure it's been done.
22 Q So that wouldn't be something that you would find
23 inappropriate, to give five bucks, ten bucks, fifteen
24 bucks, twenty bucks, to a subject?
25 A That would be on them. I wouldn't do that personally,

1 by drugs would look like or act like?
2 A Yeah, just for training.
3 Q For their training they were trying to find out what a
4 person on drugs would look like or act like?
5 A That's what the training is designed to do, is to determine
6 what someone looks like, acts likes, talks like, and what
7 their body does under the effects of different drug
8 categories, whether alone or combined.
9 Q Did you learn at some point that the program had -- in
10 Minnesota had been suspended?
11 A Yes.
12 Q And how did you learn -- you were out by then, right?
13 A I think it was right about the same time it was stopped.
14 Q So how did you learn that?
15 A From, I don't know, the commissioner's office or the state
16 patrol. I don't know who specifically told me. It might
17 have been the news before I even --
18 Q And why was it suspended, if you know?
19 A I don't know specifically the reasons.
20 Q Do you know generally what the reasons were?
21 A I imagine because of the allegations.
22 Q Did anybody tell that to you?
23 A I can't recall specifically that someone had a direct -- I
24 mean, I'm sure at some point someone did.
25 Q And when you say "the allegations," the allegations that

1 but --
2 Q But that would be okay with you, as the instructor?
3 A I wouldn't have approved of -- I mean, I wouldn't have said
4 yes or no, don't give them five bucks, but if that's what
5 you want to do for their 45 minutes, that's fine. Or find
6 someone else to do it for nothing, or for something to do.
7 Q Or give them cigarettes, that's okay?
8 A Well, if they're of age and they want a cigarette and
9 you --
10 Q Or buy --
11 A Maybe the cop smokes and --
12 Q Or buy a meal at McDonald's or a fast food place?
13 A I've done it myself, yeah.
14 Q But certainly you would never have approved giving
15 marijuana or any other drug to any of these subjects?
16 A Absolutely not.
17 Q Did you consider the volunteers human subjects?
18 A How so? I --
19 Q Did you consider that there was -- that what you were doing
20 was essentially research?
21 A You're training. You're learning from experiences. I
22 think the research was done when the program was founded,
23 so I don't know that -- we don't need to be reinvented for
24 that, if that's what you're asking.
25 Q Well, were the officers researching what a person impaired

1 officers had given drugs to the subjects?
2 A Yeah.
3 Q Did the commissioner tell that to you?
4 A I don't know who specifically. I believe I saw it on the
5 news or in the newspaper before anyone told me directly.
6 Q When you were interviewed, as reflected in those exhibits I
7 gave you, I think it was 8 and 9, was that after you were
8 out or while you were still in the --
9 A I don't know what date it was. I don't recall if I was
10 there in May or not. I don't -- I don't remember. It was
11 all -- it was a couple times -- a couple months there that
12 I -- I don't remember when I left.
13 Q How did you find out that they needed to interview you?
14 A Someone contacted me.
15 Q Did they subpoena you or --
16 A No, I don't think so. I think it was -- I think the BCA
17 called me.
18 Q Who called you?
19 A Someone through the BCA.
20 Q And did --
21 A Or it could have been my union representation. I don't
22 remember.
23 Q Did you have a lawyer present with you at the time?
24 A I don't think so. I don't believe so, no.
25 Q You don't believe so?

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1 A (Shaking head.)
 2 Q And they didn't give you any instructions, Miranda warnings
 3 or instructions about --
 4 A I don't think so.
 5 Q -- self-incrimination or anything like that?
 6 A I don't believe so. I need to use the restroom.
 7 Q I think I'm basically finished with you, but --
 8 A If you are, great. If not, I do need to use the restroom.
 9 Q All right. Go ahead.
 10 (Recess.)
 11 MR. MILSTEIN: All right. I don't have any
 12 further questions.
 13 MR. BILCIK: I just have a couple I would
 14 like to clarify.
 15
 16 EXAMINATION
 17 BY MR. BILCIK:
 18 Q So you never told anybody to use drugs or to provide drugs
 19 to any of these participants, correct?
 20 A Correct, never.
 21 Q In fact, you use this "washing your hands" analogy and
 22 that's because you didn't specifically tell them not to do
 23 that because you assumed that they wouldn't as police
 24 officers; is that correct?
 25 A Oh, of course.

66

1 Q And when you found out about Officer Willers' involvement
 2 in providing some alleged drugs to an individual, you
 3 reported that information to your supervisor?
 4 A Correct.
 5 Q And at what point in the program did this information
 6 become available to you?
 7 A I think it was the last night of the program.
 8 Q So is that a point in time that any corrective measures
 9 could have been taken regarding the program?
 10 A No.
 11 Q It was at the very end when you find out about this?
 12 A Yeah. There was, I think, four people in the parking lot.
 13 Q Did you have any discussions with Officer Willers about
 14 this? Did you have time to discuss it?
 15 A No, I don't think we spoke at all. He did -- I think he
 16 said thank you when he left and that was it, or something
 17 along the lines of that, but we didn't have a conversation.
 18 MR. BILCIK: All right. That's all I have.
 19 I just wanted to clear that up. Thank you.
 20 MS. KIMBLE: I have a few questions.
 21
 22 EXAMINATION
 23 BY MS. KIMBLE:
 24 Q My name is Janine Kimble. I'm with the law firm of Greene
 25 Espel, where we are right now, and I represent two of the

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1 defendants in this case, Nicholas Jacobson and Olmsted
 2 County. I'm just going to ask you a few follow-up
 3 questions.
 4 I would like to start with Exhibit 3, so if you could
 5 find that and turn to that. You found it? Okay.
 6 You were asked questions earlier about, quote,
 7 positive confirmations, and some of the questions referred
 8 to what they were brought in for. I want to make sure I
 9 understand what was being compared to what, what was being
 10 confirmed.
 11 So when your program, the DRE program, was deciding
 12 when an evaluation should be counted as a positive
 13 confirmation, did it compare the full toxicology report to
 14 what the officer said the person was under the influence
 15 of? Is that what it meant to confirm, or did it mean
 16 something else?
 17 A If I can, where did that sheet go, refer to the other sheet
 18 that had the diagrams and -- I don't know where it was.
 19 Was that in the --
 20 Q Maybe 1 or 2?
 21 A I might be able to explain it really easy with --
 22 MR. MILSTEIN: I think it was 2.
 23 BY MS. KIMBLE:
 24 Q So if you could --
 25 A All right. This is not the form I was thinking of, but

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1 on the bottom of this form that's called a face sheet --
 2 there's another version that has checkboxes for drug
 3 categories. So where it says on here DRE's Opinion,
 4 there's a form that has checkboxes on it for what
 5 categories and you can either write it or check a box,
 6 but that --
 7 If someone said they're under the influence of
 8 stimulants and narcotics, then ideally the person doing the
 9 evaluation would want to see on the toxicology report
 10 stimulants and narcotics. Does that help --
 11 Q Yes.
 12 A -- answer that?
 13 Q Yes. So just to clarify, so you're comparing what was at
 14 the bottom of that form, the DRE Opinion, which was the
 15 product of all of the observations and the questions that
 16 the DRE evaluator asked --
 17 A Yeah.
 18 Q -- you're comparing that to the full toxicology report?
 19 A Yeah. You would have to have a reason why you suspected a
 20 narcotic as a category or a stimulant as a category and you
 21 would want that to match.
 22 You would want to be able to basically reverse
 23 engineer, if you will, this sheet and explain why you
 24 thought it was a stimulant or why you thought it was a
 25 narcotic, doing different things to the body and whatnot.

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1 Did that help?

2 Q Yes, it does.

3 You were also asked some questions today about the

4 program generally, the DRE program generally, and I'm

5 wondering who would you say designed the DRE program?

6 A I believe it was designed in 1979 by some cops in

7 California.

8 Q And then in your role, leading the DRE program for the

9 State of Minnesota in 2011, would you say that the DRE

10 program that was run in Minnesota in 2011 was designed by

11 the State or someone else?

12 A It's been the same format, I think, since its inception

13 in -- I believe it was '79. It's the same -- I mean,

14 there's been updated things on forms or maybe medically,

15 but I don't think it's changed since its birth.

16 Q Okay. And who would you say ran the DRE program in the

17 summer of 2011, what department or organization?

18 A Well, the overall oversight would have been the folks that

19 are in charge of the DRE program nationwide. I mean, I

20 don't know if -- is that what you're asking, like whose

21 program is it?

22 Q Well, I'm wondering -- you oversaw the program that

23 operated in Minnesota in 2011 and I'm wondering if you

24 would -- if you would -- excuse me, 2012. You started in

25 the fall of 2011. Sorry about that.

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1 you know, everyone had their areas they knew more about or

2 knew less about, and, you know, if that guy was great at

3 teaching that subject, if it's physiology, then I wanted

4 him for physiology, so -- is that -- am I getting --

5 Q Yes.

6 A I'm sorry. I don't -- I think I understand what you're

7 asking. I think I already answered it. I'm kind of lost.

8 My head is a little fried.

9 MS. KIMBLE: That's it. Thank you.

10 MR. MIDOLO: I do have one question, before

11 we go down the line.

12

13 EXAMINATION

14 BY MR. MIDOLO:

15 Q Just on that same point, when you took over the program you

16 were a Minnesota state trooper?

17 A Yes.

18 Q And I'm sorry. My name is Nate Midolo. I represent some

19 of the defendants in this case, including Deputy Willers,

20 as well as Deputy Lewis.

21 So you were a Minnesota state trooper at the time.

22 Did you have to be a Minnesota state trooper to be a

23 coordinator of this program?

24 A No.

25 Q You could have been a Minneapolis police officer?

70

1 A That's okay.

2 Q Would you say that the State of Minnesota ran the program?

3 A I guess I don't -- they didn't run it. I mean, it was

4 just -- I was the person filling the position for the

5 program, the nationwide program for the State, but it could

6 have been any agency that wanted to host a seat and take

7 someone out of their staff to do it. I don't know if

8 that's --

9 MR. MILSTEIN: Agency meaning what?

10 THE WITNESS: Any law enforcement agency

11 that --

12 MR. MILSTEIN: In the state?

13 THE WITNESS: It doesn't even have to be a

14 law enforcement officer that runs the program. It can be

15 someone that's been trained in it that -- it just -- it

16 could be anyone in this room in a different state or the --

17 I mean, it doesn't have to be an officer.

18 BY MS. KIMBLE:

19 Q I'm just wondering, in particular, when you were

20 coordinating the program, not who could have been running

21 the program, but what -- who was running the program? Were

22 you running the program?

23 A Yeah. I set up the schedules. I, you know, got the

24 instructors. They were just, you know, repeat instructors

25 from previous classes or folks that I taught with that --

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1 A Correct.

2 Q It just happened to be that you were a trooper at the time,

3 but that wasn't a requirement?

4 A Correct.

5 MR. MIDOLO: Okay. That's all I have.

6 MS. BROSNAHAN: I have a question.

7

8 EXAMINATION

9 BY MS. BROSNAHAN:

10 Q You indicated that you were certified by DRE or you went

11 through the certification class somewhere around 2005 or

12 2006, correct?

13 A Correct.

14 Q Since that time period has the state patrol in Minnesota

15 always been the facilitator or been the agency that's run

16 the program?

17 A As far as I know, yes.

18 Q And so as far as you know, Minneapolis or St. Paul or

19 Duluth, none of the other police agencies in the state have

20 ever run this DRE program in Minnesota since its inception

21 here?

22 A Not that I'm aware of, no.

23 MS. BROSNAHAN: I don't have any other

24 questions.

25

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1 EXAMINATION

2 BY MR. JACKOLA:

3 Q Mr. Munoz, my name is Andrew Jackola. I'm an assistant
4 county attorney in Anoka County. I represent Chris McCall,
5 who has been involved in this lawsuit, as well as the
6 County of Anoka.

7 Mr. Milstein asked you about research and that is kind
8 of a loaded term in this lawsuit, so I'll expand on that --
9 or ask you to expand on that, and maybe get a little bit of
10 clarification here.

11 Now the practical portion of the program is where
12 students would go out into the field and find volunteers to
13 participate; is that --

14 A Correct.

15 Q -- fair? Now in the practical portion, would you
16 characterize that as being designed to learn something
17 about the subjects or to test the knowledge of the
18 students?

19 A Yes, to both. I mean, they need to learn what -- they need
20 to learn what they're looking for. I mean, it's training
21 for, you know, visualizing and seeing those -- making those
22 observations. If you're not -- maybe that's not what you
23 asked, but -- could you ask the question again? I'm sorry.

24 Q Let me put it a different way. Did the state patrol or any
25 other law enforcement agency compile this information to

75

1 through the same application process.

2 Q I understand that. And over the course of 20 years, would
3 you expect that virtually every county has sent somebody
4 in?

5 A No.

6 Q Would some counties participate more than other counties?

7 A Sure.

8 Q And you would send -- to alert the counties of the
9 opportunity, you would send memos to all of the various
10 county agencies, correct?

11 A I believe I tried to send a memo out to all the chiefs and
12 sheriffs.

13 Q In the various counties?

14 A Yeah. I don't know how many of them got it or who didn't,
15 but --

16 Q How many of the 20 class members were actually state
17 troopers?

18 A I think four or five.

19 Q And the rest were county officers?

20 A Correct, county or city.

21 Q Just to follow-up on the questions you were asked there at
22 the end there. The officers -- the goal of the program in
23 the field part of the program was for the officers to learn
24 from the volunteers what characteristics a drug-impaired
25 individual might exhibit, correct?

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1 draw any broad inferences or conclusions about the persons
2 who participated in the program?

3 A No, no. That's -- no. That's why we -- you know, someone
4 could be John Doe and someone could be Jane Doe. We didn't
5 need to know who they are, and we didn't want to. Our
6 focus there was learning about the effects of what we just
7 studied for two weeks in a classroom.

8 Q So it was used to assess the students' knowledge?

9 A Correct, and so they could recognize, you know, what they
10 had just learned out of books in two weeks.

11 MR. JACKOLA: Thank you. That's all I
12 have.

13 MR. MILSTEIN: I have just a couple other
14 questions.

15

16 FURTHER EXAMINATION

17 BY MR. MILSTEIN:

18 Q All the counties in Minnesota for the 20 years that the
19 program was in existence would send their officers to the
20 DRE program, correct?

21 A No.

22 Q I mean, they would have the opportunity to send their
23 officers?

24 A If they wanted to participate in it and their officers
25 wanted to participate in it, they would have to probably go

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1 A Yeah. The program, I think what you're asking, is designed
2 to recognize and detect signs of impairment that drugs
3 cause, and for folks that are working primarily DWI shifts,
4 if you will, that they would be able to pick up on these
5 things and see --

6 Q No, I understand that.

7 A -- them in person.

8 Q But my question is, they would learn this from the subjects
9 in the -- who were volunteers in the program, correct?

10 A Yes, some of the information. I mean, some of the
11 observations would come from them or videos or written
12 documents.

13 MR. MILSTEIN: Okay. That's all I have.

14 MR. BILCIK: Are we all done? All right.
15 Officer, you have the right to review this transcript
16 before it's submitted to the parties. You can't change the
17 transcript itself, but there will be some paper at the end
18 of it that will allow you to make any comments,
19 corrections, etcetera.

20 So you have a right, at this point in time, to review
21 the transcript before it's submitted or waive that right.
22 What would you like to do?

23 THE WITNESS: Get a copy.

24 MR. BILCIK: You would like to see it
25 first?

Deposition of Riccardo Munoz taken 11/20/14

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1 THE WITNESS: Sure.
 2 MR. BILCIK: Okay. You can make those
 3 arrangements with the court reporter.
 4 (WHEREUPON, the deposition of RICCARDO MUNOZ
 5 concluded at approximately 2:30 p.m.)
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1 Michael Bounds et al. vs. Karl Willers et al.
 2
 3 ADDITIONS, OMISSIONS AND CORRECTIONS
 4 Page Line Addition, Omission or Correction Reason
 5 _____
 6 _____
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15
 16 _____
 17 RICCARDO MUNOZ
 18
 19 The above-named individual, before me, read said
 20 deposition and made the additions, omissions and corrections as
 21 indicated.
 22
 23 _____
 24 Notary Public
 25 My Commission Expires _____ (DJM)

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1 STATE OF MINNESOTA)
) ss.
 2 COUNTY OF ANOKA)
 3
 4 Be it known that I took the deposition of RICCARDO
 5 MUNOZ on the 20th day of November, 2014, at Minneapolis,
 6 Minnesota;
 7 That I was then and there a Notary Public in and for
 8 the County of Anoka, State of Minnesota, and that by virtue
 9 thereof, I was duly authorized to administer an oath;
 10 That the witness before testifying was by me first
 11 duly sworn to testify the truth and nothing but the truth
 12 relative to said cause;
 13 That the testimony of said witness was recorded in
 14 stenotype by myself and transcribed into typewriting by myself
 15 and that the deposition is a true record of the testimony given
 16 by the witness to the best of my ability;
 17 That I am not related to any of the parties hereto nor
 18 interested in the outcome of the action;
 19 That the reading and signing of the deposition by the
 20 witness was not waived.
 21
 22 WITNESS MY HAND AND SEAL THIS 4TH DAY OF DECEMBER, 2014.
 23 (SEAL)
 24
 25 Debra J. Mokszycke, Notary Public