

13-3088-cv(L), 13-3461-cv(CON), 13-3524-cv(CON)

United States Court of Appeals

for the

Second Circuit

DAVID FLOYD, LALIT CLARKSON, DEON DENNIS, DAVID OURLICHT,
Individually and on behalf of all others similarly situated,

Plaintiffs-Appellees,

v.

CITY OF NEW YORK,

Defendant-Appellant,

SERGEANTS BENEVOLENT ASSOCIATION,

Proposed Intervenor-Appellant,

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Volume 31 of 88 (Pages A-7801 to A-8098)

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D4t9flo1

Vizcarrondo - cross

1 THE COURT: I thought it would be just very few
2 questions. But, okay, let's take about ten minutes and
3 reconvene.
4 (Recess)
5 (Continued on next page)
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D4T8FLO2 Mohan - cross

1 CROSS-EXAMINATION
2 BY MR. MOORE:
3 Q. Good morning, Lieutenant Mohan.
4 A. Good morning.
5 Q. You said that you were never the patrol supervisor of
6 Officer Serrano, correct?
7 A. Yes, that's correct.
8 Q. On occasion you would supervise him in an impact overtime
9 assignment?
10 A. That's correct.
11 Q. That was pretty rare though, wasn't it?
12 A. Yes.
13 Q. You also said that one of the things you do when you
14 supervise your officers is to make sure they make proper memo
15 book entries, right?
16 A. Correct.
17 Q. You're one of a number of supervisors at the 40th Precinct,
18 correct?
19 A. Correct.
20 Q. Sometime in 2005 until 2012 you were a sergeant and you
21 supervised patrols?
22 A. Yes.
23 Q. Did you do that for the entire time you were a sergeant at
24 the 40th Precinct?
25 A. Yes.

D4T8FLO2 Mohan - cross

1 Q. During that time you would have meetings with other
2 supervisors, correct?

3 A. Yes.

4 Q. And with the commanding officer of the precinct?

5 A. That's correct.

6 Q. And the executive officer?

7 A. That's correct.

8 Q. And integrity control officer?

9 A. That's correct.

10 Q. They never told you that there was a problem with respect
11 to memo book entries being filled out by officers, did they?

12 A. That was never discussed.

13 Q. Did they tell you that each year from 2005 to 2012 the
14 precinct failed the audit with respect to whether officers were
15 preparing memo book entries related to stop and frisk?

16 MR. MARUTOLLO: Objection. This is beyond the scope
17 of the direct examination.

18 THE COURT: I will allow it.

19 A. I'm not aware of that, no.

20 Q. You also testified that there was -- you would never tell
21 somebody to -- it's OK to assign an arrest to another officer
22 who wasn't present, right?

23 A. That's correct.

24 Q. But it's not OK to tell an officer to say that they
25 personally witnessed an arrest if they were not present,

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D4T8FLO2 Mohan - cross

1 correct?

2 A. Could you rephrase that again, sir?

3 Q. It's not OK to tell an officer to say that they personally
4 witnessed an arrest if they didn't, right, even though they are
5 being assigned the arrest, that's not OK, right?

6 A. That's not OK, no.

7 Q. That would be a violation of department of regulations,
8 right? Correct?

9 A. I don't think I am understanding you correctly. We always
10 do that, I mean, regularly do that. It's not a violation
11 against department policy. So you could assign an arrest to
12 another officer.

13 Q. Right. You can assign an arrest, but you can't -- if there
14 is paperwork that would require the officer to say I personally
15 observed somebody do something, you can't direct them to sign
16 that paperwork if they weren't personally present, right?

17 A. The paperwork, when they do the arrest processing, it will
18 be in the arrest processing whether -- you have to indicate
19 whether you're the arresting officer or you're the assigned
20 officer on the arrest paperwork.

21 THE COURT: I was going to say you didn't answer his
22 question. Let him try one more time.

23 Q. It would be a violation of department policy for an officer
24 to say they personally observed an arrest when they didn't do
25 that, correct?

D4T8FLO2 Mohan - cross

1 A. Correct.

2 Q. Have you been present at roll calls when Lieutenant Barrett
3 or Lieutenant Doute have led the roll calls?

4 A. No.

5 Q. You have never been present when either of them did the
6 roll calls?

7 A. No.

8 Q. You don't usually go to the patrol roll calls then,
9 correct?

10 MR. MARUTOLLO: Objection. It was asked and answered
11 in his direct examination. He testified about that already.

12 MR. MOORE: We cannot have a speaking objection.

13 THE COURT: Do you attend patrol roll calls or not?

14 THE WITNESS: I always attend patrol roll calls.

15 THE COURT: If you always attend them, how come you
16 have never heard these two lieutenants do roll calls?

17 THE WITNESS: Because Lieutenant Doute was assigned
18 after I left the 40th Precinct.

19 THE COURT: And the other one?

20 THE WITNESS: Lieutenant Barrett, I know her briefly
21 in the 40th Precinct, maybe a couple of months.

22 THE COURT: But if you always attend the roll calls,
23 then one would think you would have heard them.

24 THE WITNESS: Judge, it depends. I was working the
25 midnight to 2 in the 40th Precinct and mostly the ICO, which

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D4T8FLO2 Mohan - cross

1 Lieutenant Barrett was the ICO in the 40th Precinct, she
2 probably would be working the second platoon. And Lieutenant
3 Doute, I believe he was the ICO for a brief period of time in
4 the 40th Precinct. I don't know him.

5 Q. Well, you were in the 40th Precinct in July of 2010,
6 correct?

7 A. July of 2010, no, I wasn't.

8 Q. I'm sorry. I thought you said you were in the 40th
9 Precinct until 2012.

10 A. No.

11 Q. Before you got promoted to lieutenant?

12 A. I was in the 40th Precinct up until 2009. I was
13 transferred to the 30th Precinct in January of 2010.

14 Q. OK. I don't think you testified to that on direct. That's
15 why I was confused.

16 After 2009, you weren't at the 40th Precinct?

17 A. That's correct.

18 Q. In any of the roll calls, did any of the people conducting
19 the roll calls ever mention numbers, like we would like to see
20 a certain amount of summonses, a certain amount of arrests, a
21 certain amount of 250s, anybody ever mention numbers?

22 A. No.

23 Q. You have never heard that at any roll call you ever
24 attended as a member of the New York City Police Department, is
25 that correct?

D4T8FLO2 Mohan - cross

- 1 A. That's correct.
2 Q. From time to time in the precinct, when you were at the
3 40th Precinct, you would get reports from your supervisors
4 saying there is a spike in crime in a certain area, correct?
5 A. That's correct.
6 Q. And your supervisors -- would it be your understanding that
7 your supervisors would expect you as a patrol supervisor to
8 address that condition?
9 A. That's correct.
10 Q. One of the ways of addressing that condition would be to
11 engage in enforcement activity, correct?
12 A. That's correct.
13 Q. And enforcement activity often includes arrest?
14 A. Yes.
15 Q. Summons?
16 A. Summons.
17 Q. Is that correct?
18 A. Yes.
19 Q. And also stop activity, filling out 250s, correct?
20 A. That's correct.
21 Q. In terms of measuring whether that condition was being
22 addressed by enforcement activity, your supervisors would look
23 at the number of summonses, the number of arrests and the
24 number of 250s being generated, correct?
25 A. Yes, that's correct.

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D4T8FLO2 Mohan - cross

1 Q. If the numbers were too low in relation to the condition,
2 there would be questions addressed to you and other supervisors
3 about the low nature of those numbers, correct?

4 A. No, that's not correct.

5 Q. That never happened?

6 A. That never happened.

7 Q. So they would just mention the numbers but they wouldn't
8 discuss it any further?

9 A. They expect the officers to go out there to address
10 conditions. That could be arrests, summonses or stop, question
11 and frisk. But there was never any numbers mentioned, whether
12 they were low or high, it was never mentioned.

13 Q. The question was, they would look at the numbers to
14 determine whether enforcement activity is addressing that
15 condition, right? Isn't that what you just testified to a
16 minute ago?

17 A. I testified that, yes, they expect you to go out there and
18 address the condition, whether it's in the form of arrests,
19 250s, or summonses.

20 Q. Right. And part of the determination by the supervisors at
21 the precinct, in terms of whether a condition is being
22 addressed, is to look at the numbers in each of those
23 categories of enforcement activity, right?

24 MR. MARUTOLLO: It calls for speculation that
25 question.

D4T8FLO2 Mohan - cross

1 MR. MOORE: I don't think so.

2 THE COURT: Do you make those determinations as a
3 supervisor yourself?

4 THE WITNESS: No, I don't.

5 THE COURT: Objection sustained.

6 Q. But in the meetings you have attended, there have been
7 discussions, have there not, about the numbers in each of those
8 enforcement activities, correct?

9 A. I have never discussed those numbers with my superiors.

10 THE COURT: Superiors, equal or below, have you
11 discussed it at any meeting?

12 THE WITNESS: No.

13 MR. MOORE: I have nothing further.

14 THE COURT: Anything further for this witness?

15 MR. MARUTOLLO: Can I have one moment, your Honor?

16 THE COURT: Yes.

17 REDIRECT EXAMINATION

18 BY MR. MARUTOLLO:

19 Q. A few questions, Lieutenant Mohan. When you were working
20 at the 40th Precinct, did you conduct roll calls with other
21 supervisors, present?

22 A. Yes.

23 Q. Were there any other superior officers with you at these
24 roll calls?

25 A. No superiors, just other officers. The officers and maybe

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D4T8FLO2 Mohan - redirect

1 another sergeant.

2 Q. Would Lieutenant Barrett then not be at the roll calls you
3 were present at?

4 A. If I am working, it all depends what tour she was working.
5 I believe she probably was at certain roll calls addressing ICO
6 related issues.

7 MR. MARUTOLLO: One moment, your Honor.

8 No further questions.

9 THE COURT: Thank you.

10 Anything further?

11 MR. MOORE: No.

12 THE COURT: All set. Thank you.

13 MR. MARUTOLLO: The defendants call Sergeant Eduardo

14 Silva.

15 MR. MOORE: I am just going to observe that Sergeant
16 Silva has been in the courtroom.

17 THE COURT: He has. I observed it, but nobody said
18 anything.

19 MR. MOORE: There is an order.

20 THE COURT: I understand but nobody said anything.

21 MR. MOORE: I just noticed it.

22 THE COURT: There is another officer stepping out.

23 EDUARDO SILVA,

24 called as a witness by the defendants,
25 having been duly sworn, testified as follows:

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D4T8FLO2 Mohan - redirect

1 THE COURT: State your full name, your first and last,
2 spelling both names for the record.

3 THE WITNESS: Eduardo Silva, E-D-U-A-R-D-O, S-I-L-V-A.

4 DIRECT EXAMINATION

5 BY MR. MARUTOLLO:

6 Q. Good morning, Sergeant Silva.

7 Are you currently employed by the NYPD?

8 A. Yes, I am.

9 Q. How long have you been employed by the NYPD?

10 A. Approximately ten years.

11 Q. What is your educational background?

12 A. I am presently in school right now finishing my college
13 degree.

14 Q. Did you enter and graduate from the police academy?

15 A. Yes, I did.

16 Q. When did you graduate from the police academy?

17 A. December 2003.

18 Q. After graduating from the police academy, where were you
19 assigned?

20 A. I was assigned to the 115th Precinct in Queens North, which
21 covers Jackson Heights, Corona, Elmhurst and East Elmhurst.

22 Q. What were your duties and responsibilities in the 115th
23 Precinct?

24 A. I was assigned to operation impact. My general duties and
25 responsibilities were to keep the peace, prevent crime, general

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D4T8FLO2 Silva - direct

1 enforcement in order to improve the quality of life in the
2 neighborhood.

3 Q. How long were you assigned to that precinct?
4 A. Up until July 2004.

5 Q. Where were you assigned next?
6 A. July 2008, I was promoted and I was assigned to the 40th
7 Precinct.

8 Q. You say you were promoted?
9 A. I'm sorry. I am going to correct myself. From the 115th
10 Precinct, I was transferred to the 112th Precinct in July of
11 2004, and that's in Queens North also, which covers Forest
12 Hills and Rego Park.

13 Q. What were your duties and responsibilities in the 112th
14 Precinct?
15 A. In the 112th Precinct, I was assigned to patrol duties,
16 keeping the peace, preventing crime, and general enforcement to
17 improve the quality of life in the neighborhood.

18 Q. Did there come a time when you were promoted to sergeant?
19 A. Yes.

20 Q. When was that?
21 A. That was in July of 2008.

22 Q. Now, upon being promoted to sergeant, did you receive any
23 training?
24 A. Yes.

25 Q. After your promotion to sergeant, where were you assigned?

D4T8FLO2 Silva - direct

- 1 A. I was assigned to the 40th Precinct in the Bronx.
2 Q. Is that your current assignment?
3 A. Yes, it is.
4 Q. What area does the 40th Precinct cover?
5 A. It covers Mott Haven and Melrose in the South Bronx.
6 Q. What is your current assignment within the 40th Precinct?
7 A. I am the business conditions sergeant.
8 Q. What are your duties and responsibilities as the business
9 conditions sergeant?
10 A. I lead a team of nine officers whose duties and
11 responsibilities are to address general enforcement and quality
12 of life conditions in the area.
13 Q. How long have you been the business conditions sergeant at
14 the 40th Precinct?
15 A. Approximately, I would have to say going on a year.
16 Q. As the business conditions sergeant for the 40th Precinct,
17 do you review UF-250s completed by officers under your
18 supervision?
19 A. Yes, I do.
20 Q. Do you discuss the underlying facts of the UF-250s with
21 officers under your supervision?
22 A. Yes.
23 Q. Now, prior to your current duties as the business
24 conditions sergeant, what was your assignment?
25 A. I was the anticrime supervisor.

D4T8FLO2 Silva - direct

1 Q. How long were you the anticrime supervisor?

2 A. Approximately one year and a half.

3 Q. What were your duties and responsibilities as the anticrime
4 supervisor?

5 A. I led a team of four officers to patrol the confines of the
6 40th Precinct in plain clothes and unmarked vehicles in order
7 to address high crime activity.

8 Q. Prior to working as the anticrime supervisor, what was your
9 assignment?

10 A. I was assigned as a C2 supervisor and patrol.

11 Q. This is still when you're a sergeant at the 40th Precinct?

12 A. Yes.

13 Q. Now, over the course of your almost five years at the 40th
14 Precinct, how would you describe the crime levels in that
15 precinct?

16 A. It's a very high crime precinct.

17 Q. What are you basing that on?

18 A. I am basing it on my experience of the five years I have
19 been there. I have responded to numerous shootings, robberies,
20 stabbings, chain snatchers, phone snatchers. I review
21 complaint forms every day prior to turning out my cops.

22 Q. Now, as a sergeant, do you ever speak with your officers
23 about the crime conditions that they are trying to address?

24 A. Yes, on a daily basis.

25 Q. How do you inform your officers of these crime conditions?

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D4T8FLO2 Silva - direct

- 1 A. Prior to turning them out on roll call, I address all of
2 the conditions that are going on in the command at the time.
3 Q. How do officers under your supervision address crime
4 conditions?
5 A. They address it through general enforcement, summonses,
6 effecting arrests, doing directives, community interaction, and
7 just by mere presence.
8 Q. When you say directives, what are you referring to?
9 A. Directives is when I have them go to particular locations.
10 Let's say, for example, say we have a bank robbery, I have them
11 go to different banks in the location and conduct directives
12 there.
13 Q. On July 31, 2010, what was your assignment?
14 A. I was assigned as the violence reduction overtime
15 supervisor.
16 Q. What tour were you working that day?
17 A. I was 2130 by 0605 in the morning.
18 Q. What is the violence reduction tour?
19 A. It's a tour that is requested by the command in order to
20 address specific crime conditions in our command.
21 Q. Do you know how precincts receive violence reduction tour
22 assignments?
23 A. To the best of my knowledge, it's either requested by the
24 commanding officer or it's actually given to us by the patrol
25 borough, in this case, patrol borough Bronx, to address

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D4T8FLO2 Silva - direct

- 1 high-crime conditions.
2 Q. In 2010, how often would the 40th Precinct receive violence
3 reduction tour overtime?
4 A. Approximately, three times a week.
5 Q. Why is that?
6 A. It's a high crime precinct, and from the time I have been
7 in the 40, we get a vast amount of shootings during the summer
8 period.
9 MR. MOORE: Object to the characterization of a vast
10 amount of shootings. I ask that that be stricken.
11 THE COURT: That's his characterization of it. I am
12 not going to strike it. I don't know exactly what it means
13 obviously in numbers, but it certainly means high.
14 THE WITNESS: I have worked in other commands where we
15 have never had a shooting at all, and since I have been here,
16 numerous amount of shootings.
17 Q. How are officers selected to work the violence reduction
18 tour?
19 A. For the most part, it was on a volunteer basis. If you
20 were scheduling a day off, you were able to do the overtime.
21 Obviously, if you were sick or on vacation you were not able to
22 do the overtime.
23 Q. Were officers assigned to overtime as the month progressed?
24 A. Yes, they were.
25 Q. Why was that?

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D4T8FLO2 Silva - direct

1 A. We had to fill the spots.

2 Q. Now, what were your duties and responsibilities as a
3 sergeant working in the violence reduction tour on July 31,
4 2010?

5 A. I was in charge of the roll call. I had to address my
6 officers about specific conditions going on in the command. I
7 would have to respond to any arrest incidents, respond to any
8 unusual incidents would be any robberies, shootings, any major
9 crimes that occurred within the area that I was covering, and
10 just reviewing all of my officers' paperwork.

11 Q. Did you review the audio that was secretly recorded by
12 Officer Serrano on July 31, 2010?

13 A. Yes, I did.

14 THE COURT: When did you do that?

15 THE WITNESS: I reviewed it in my lawyer's office.

16 THE COURT: When?

17 THE WITNESS: I would say approximately six to eight
18 weeks ago.

19 Q. Was the audio a complete recording of the July 31, 2010
20 roll call?

21 A. No, it was not.

22 Q. What was missing from the audio of the roll call?

23 A. Pretty much the entire roll call. My officers were not
24 given their specific assignments, their vehicle assignments,
25 their meal times, the color of the day, the return date. They

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D4T8FLO2 Silva - direct

1 weren't trained. Every roll call has a small portion that is
2 directed towards training.

3 Q. Was there any discussion of crime conditions or crime
4 patterns that was not included on that audio?

5 A. They weren't included at all in that audio.

6 THE COURT: Was there any discussion that day?

7 THE WITNESS: I discussed it, but it wasn't on the
8 tape.

9 THE COURT: You know you discussed it on that very
10 day?

11 THE WITNESS: Yes. Every roll call, you have to
12 address your officers on the conditions out there, any
13 shootings that happen, any robberies, any particular areas in
14 the zones that we are covering so they will be aware of it so
15 they won't be in any danger and able to address it.

16 Q. What was your role at the roll call on July 31, 2010?

17 A. Specifically everything I already mentioned, plus I would
18 give my officers my phone number so they can reach out to me,
19 check in, and let me know what's going on.

20 Q. You indicated that your officers would check in with you at
21 certain points during the tour, is that right?

22 A. Yes, sir.

23 Q. Is that check-in, is that something you would do on a
24 regular tour, in other words, not a crime reduction tour?

25 A. On a regular tour.

D4T8FLO2 Silva - direct

1 Q. Why would you do that? Why would you have them check in?

2 A. I am the direct supervisor. I am in charge of them. I am
3 responsible for them. I had a few officers I know who were
4 ordered to do overtime that I was afraid they were going to be
5 malingering. So I need for them to know that they are going to
6 be in touch with me and vice versa.

7 Q. What, if anything, did you hear Officer Serrano ask you
8 during this roll call?

9 A. He had suggested that I said that I wanted five Cs, five
10 250s, and that's why I said, Serrano, I just cut him off, and
11 he just started giggling, and I guess the rest of the officers
12 present started laughing.

13 Q. What was your understanding of Lieutenant Doute's comments
14 at this roll call regarding any fives?

15 MR. MOORE: Object to the foundation.

16 THE COURT: Did you hear Doute say that on the tape?

17 THE WITNESS: Yes.

18 THE COURT: You heard what he said?

19 THE WITNESS: Yes.

20 THE COURT: What is your question?

21 Q. Did you hear Lieutenant Doute say "any fives"?

22 A. Yes, I did.

23 THE COURT: What did that mean to you?

24 THE WITNESS: In my opinion, it's that Lieutenant
25 Doute was --

D4T8FLO2 Silva - direct

1 THE COURT: I am not interested in what you think he
2 meant. What did it mean to you?

3 THE WITNESS: To go out and address the crime
4 conditions and performance goals set that day would have been
5 five criminal court summonses or an arrest.

6 Q. Did you believe that, again, did you believe that
7 Lieutenant Doute mandated five C summonses, five verticals and
8 five 250s during this tour?

9 A. No, I did not. Neither I or Lieutenant Doute ever mandated
10 any officer at a command of anything.

11 Q. Did you hear anyone on the audio -- withdrawn.

12 At any point during this roll call on July 31, 2010,
13 did any superior officer threaten punishment if officers did
14 not reach a certain level of activity?

15 A. No.

16 Q. Did Lieutenant Doute instruct you to do a status check at
17 any point during the tour?

18 A. Yes. In the beginning of the tour.

19 Q. What did that status check mean to you?

20 A. It goes back to having my officers check in with me because
21 there are a few officers it is known that they're going to come
22 to work and basically not address any conditions.

23 Q. When you say not address conditions, what do you mean?

24 A. Basically, come in to get paid and do nothing.

25 Q. Have you ever punished or retaliated against in any way any

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D4T8FLO2 Silva - direct

1 officers who worked under you for failing to reach a certain
2 amount of activity?

3 A. Never.

4 Q. Sergeant Silva, I am handing you what has been premarked
5 for identification as Defendants' Exhibit D10.

6 What is this document?

7 A. This is a report I submitted at the end of my violence
8 reduction tour.

9 Q. Did you complete this document?

10 A. Yes, I did.

11 Q. Are you familiar with this document?

12 A. Yes.

13 MR. MARUTOLLO: I would like to enter this document
14 into evidence, Defendants' Exhibit D10.

15 MR. MOORE: No objection.

16 THE COURT: D10 is received.

17 (Defendants' Exhibit D10 received in evidence)

18 Q. Sergeant Silva, according to this document, what activity
19 overall was conducted during the July 31, 2010 violence
20 reduction overtime tour?

21 A. There was one arrest effected for driving a vehicle for
22 suspended license. There were a total of 15 criminal court
23 summonses issued, six for consumption of alcohol, one for
24 public urination, seven for disorderly conduct, one for
25 excessive noise, and those 15 criminal court summonses resulted

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D4T8FLO2 Silva - direct

1 in two return on warrants and also two verticals.

2 Q. How many UF-250s were conducted during this tour?

3 A. None.

4 Q. Did you punish any of the officers who worked during this

5 violence reduction tour for failing to complete any UF-250s?

6 A. No, I did not.

7 Q. Did the 40th Precinct receive violence reduction overtime

8 tours in August 2010, in other words, after this July 31, 2010

9 tour?

10 A. Yes, they did.

11 Q. Did they receive that overtime tour even though there were

12 no UF-250s?

13 MR. MOORE: Object to the form, Judge. How does he

14 know why they were directed.

15 MR. MARUTOLLO: I can rephrase.

16 Q. Were you still a sergeant in the 40th Precinct in August of

17 2010?

18 A. Yes, I was.

19 Q. Did you supervise any violence reduction overtime tours in

20 August of 2010?

21 A. I am aware that there were. I am not too sure if I did or

22 not.

23 Q. Did you ever serve as Officer Serrano's direct supervisor

24 on any other occasion besides July 31, 2010?

25 A. Yes. I was his direct supervisor for approximately two and

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D4T8FLO2 Silva - direct

1 a half years.

2 Q. How would you describe Officer Serrano as a police officer?

3 MR. MOORE: Can we first establish the period of time
4 he supervised him?

5 THE COURT: Yes.

6 Do you recall?

7 MR. MOORE: Also, Judge --

8 THE COURT: I can only do one thing at a time.

9 Do you recall when you supervised him?

10 THE WITNESS: Yes. From the time I got to the
11 command, which was August 2008, up until December of 2010.

12 THE COURT: What was your other problem, Mr. Moore?

13 MR. MOORE: If he is going to talk about evaluations,
14 the city never produced the evaluations of Officer Serrano. So
15 we are a little bit at a disadvantage.

16 THE COURT: Were they called for?

17 MR. MARUTOLLO: They were never requested.

18 MR. MOORE: If he is going to ask him to testify about
19 it?

20 THE COURT: Then they will have to produce them to you
21 during a break, but they are not at fault for not doing it
22 since they weren't called with.

23 If you want to get into the area of evaluations, then
24 you will have to go and find them.

25 MR. MARUTOLLO: Can I have a moment, your Honor?

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D4T8FLO2 Silva - direct

1 THE COURT: Sure.

2 MR. MARUTOLLO: Your Honor, defendants will not ask
3 any questions about the evaluations that were conducted. We
4 just want a general question about a description of Officer
5 Serrano as a police officer, not necessarily about evaluations.

6 THE COURT: OK.

7 MR. MOORE: Note my objection, Judge, unless we can
8 see the evaluations.

9 THE COURT: I will allow that.

10 You are not allowed to talk about evaluations, but
11 what is your own opinion or evaluation of this officer?

12 THE WITNESS: My opinion of Officer Serrano is a basic
13 average officer. The only thing that really pops out from the
14 time that I supervised him was that on frequent occasion he
15 would have me respond to almost three quarters of his jobs
16 because he was very reluctant in making decisions. So he would
17 want me to come over there and make a decision for him. That's
18 the only thing that stands out.

19 MR. MARUTOLLO: No further questions, your Honor.

20 THE COURT: Mr. Moore.

21 CROSS-EXAMINATION

22 BY MR. MOORE:

23 Q. During the time you were the sergeant -- are you still in
24 the 40th?

25 A. Yes, sir.

D4T8FLO2 Silva - cross

1 Q. During that period of time, have there been any discussions
2 in the 40th Precinct about the fact that officers are not
3 putting into their memo books details of their stop and frisk
4 activity, ever recall any discussion about that?

5 A. Can you repeat that, sir?

6 Q. Do you recall any discussion during the time you have been
7 in the 40th Precinct, any discussion of the fact that officers
8 who are engaging in stop and frisk activity are not putting
9 into their memo books details of those stop and frisks?

10 A. No, sir.

11 Q. Officers are required to do that, correct?

12 A. Yes, they are.

13 Q. Are you aware that during the time you have been a
14 supervisor at the 40th Precinct that the 40th Precinct has
15 consistently failed the audit with respect to whether officers
16 are filling in the details of their stop and frisk activity in
17 their memo books, are you aware of that?

18 A. No, sir.

19 Q. Nobody in the precinct ever discussed that with you?

20 A. No, sir.

21 Q. Your commanding officer or the executive officer never
22 talked to you about that?

23 A. No, sir.

24 Q. Now, you listened to the tape that Mr. Serrano made of a
25 roll call on July 31, 2010, correct?

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D4T8FLO2 Silva - cross

- 1 A. Yes, sir.
2 Q. Have you seen the transcript, a portion of the transcript
3 of that?
4 THE COURT: Have you seen the transcript?
5 THE WITNESS: Yes, your Honor.
6 MR. MOORE: Judge, I am going to show him what has
7 already been marked as 297T2.
8 THE COURT: It's in evidence?
9 MR. MOORE: In evidence.
10 MR. MARUTOLLO: Just for the record, I don't believe
11 the transcript itself is in evidence. I know the audio is.
12 MR. MOORE: I thought we had an agreement with respect
13 to the transcript. If it's not in, we would move it.
14 THE COURT: There was one day they read a lot of T
15 numbers in.
16 MS. BORCHETTA: We specifically moved this into
17 evidence.
18 MR. MARUTOLLO: Sorry.
19 Q. You recognize here the name of Lieutenant Doute, correct?
20 A. Yes.
21 Q. If you go down the page, it indicates that you were also
22 present at this roll call, correct?
23 A. Yes, I was.
24 Q. You see in the first paragraph there Lieutenant Doute is
25 talking about conditions, correct?

D4T8FLO2 Silva - cross

- 1 A. Line 6?
2 Q. Line 6.
3 A. Yes.
4 Q. He says, "In the meantime, I will try to keep the rest of
5 my dogs off the conditions guys to give you and to let your
6 feeding frenzy first and then I will let them do the rest. You
7 know what I mean. So any questions regarding that? Five,
8 five, five. Five, five, five, any questions?" Do you see
9 that?
10 A. Yes, sir.
11 Q. You said you remember actually being at this roll call, you
12 said that on your direct, correct?
13 A. I was present at the roll call.
14 Q. You remember Lieutenant Doute saying "five, five, five,"
15 right?
16 A. Yes, sir.
17 Q. And that's five, five, five areas of enforcement activity
18 he is looking for, correct?
19 MR. MARUTOLLO: Objection. I would note for the
20 record there are unintelligible phrases that were on this audio
21 that aren't listed on this transcript, in the five, five, five
22 section.
23 THE COURT: That's not a basis for the objection. But
24 the question was improper because you're asking what the
25 speaker said.

D4T8FLO2 Silva - cross

1 Q. Did you understand that five, five, five to -- withdraw.

2 You understood that five, five, five to be referring
3 to enforcement activity that Lieutenant Doute wanted the
4 officers to engage in, correct?

5 A. That was the performance goal for violence reduction.

6 Q. So with respect to the performance goal, it would be five
7 summonses, five arrests, and five what else, five stops?

8 A. It's basically -- somewhere down there it says five of
9 anything.

10 Q. What do the fives refer to?

11 A. It can be any type of general enforcement, summonses --

12 Q. It could be 250s?

13 A. UF-250s.

14 Q. You wouldn't call that a quota, would you?

15 A. No.

16 Q. You would call it a performance goal though?

17 A. Yes, sir.

18 Q. You are aware that officers are evaluated based upon how
19 they meet their performance goals, correct?

20 A. Officers are evaluated for --

21 Q. Can you just answer that question, Sergeant?

22 MR. MARUTOLLO: He was trying to answer that question.

23 THE COURT: Were you interrupted?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: Go ahead.

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D4T8FLO2 Silva - cross

- 1 A. Officers are evaluated on performance goals plus other
2 things.
3 Q. I understand. But part of what their evaluation is based
4 upon whether they meet the performance goals that are set for
5 them, correct?
6 A. Yes. But their overall evaluation is not concerned about
7 performance goals.
8 THE COURT: But it's one component?
9 THE WITNESS: Yes, ma'am.
10 Q. You know who Captain Materasso is, correct?
11 A. Yes, I do.
12 Q. Is she still in the 40th Precinct?
13 A. Yes, she is.
14 Q. Did she ever tell you that 50 percent of the officers'
15 evaluation would be based on meeting performance goals?
16 A. No.
17 Q. Were you aware that she had that standard in mind in
18 evaluating officers?
19 A. No.
20 Q. So although it's only a part of the evaluation, still
21 performance goals would be a part of an officer's evaluation,
22 correct?
23 A. Yes.
24 Q. If they failed to meet the standards set for them in the
25 performance goals, it could lead to them having some adverse

D4T8FLO2 Silva - cross

1 employment consequences, correct?

2 A. What do you mean by that?

3 Q. They could get a new assignment, they could be put on a

4 different shift. There's all kinds of things that could happen

5 to them if they don't meet the performance goals set for them,

6 correct?

7 A. Not that I am aware of.

8 THE COURT: You think there is no consequence at all

9 for not meeting performance goals?

10 THE WITNESS: It depends where -- I don't know where

11 his question is coming from.

12 THE COURT: I am just asking you, aren't are

13 consequences if you don't meet your performance goals?

14 THE WITNESS: Yes.

15 THE COURT: What might those consequences be?

16 THE WITNESS: Exactly what counsel said.

17 THE COURT: Like, in your words?

18 THE WITNESS: Change of assignment possibly, change of

19 partnership.

20 Q. They could even be transferred out of the precinct,

21 correct?

22 A. Not that I am aware of, no.

23 Q. So this transcript indicates that you were present while

24 the phrase "five, five, five" was mentioned, right?

25 A. Yes.

D4T8FLO2 Silva - cross

1 Q. At some point Officer Serrano says, "You said five Cs, five
2 250s and what else?" Do you see that?

3 A. Yes.

4 Q. Then you say, "Serrano." You're trying to stop Serrano
5 from talking, right?

6 A. Pretty much.

7 Q. You wanted to stop him because he was getting too specific
8 about the actual numbers of types of enforcement activity that
9 were being expected, right?

10 A. Not at all, sir.

11 Q. After you say "Serrano," then Lieutenant Doute says, he
12 repeats "five, five, five." Do you see that?

13 A. Yes, sir.

14 Q. He repeats it again, "five, five, five. OK." Then he says,
15 "Any five, you know what I mean." Correct?

16 A. Yes, sir.

17 Q. Did you understand when he said, "you know what I mean" to
18 be, you know you have certain performance goals and you have
19 got to go out and meet it, right?

20 A. Yes.

21 MR. MOORE: One second, Judge.

22 Nothing further, Judge.

23 THE COURT: Thank you, Mr. Moore.

24 MR. MARUTOLLO: A few questions.

25 THE COURT: All right.

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D4T8FLO2 Silva - cross

1 REDIRECT EXAMINATION
2 BY MR. MARUTOLLO:
3 Q. Sergeant Silva, Mr. Moore asked you questions about officer
4 memo books during the cross-examination. While a sergeant at
5 the 40th Precinct, do you review officer memo books?
6 A. Yes, I do.
7 Q. Do you scratch or sign officer memo book entries?
8 A. On a daily basis.
9 Q. Do you review entries related to stop, question and
10 possibly frisk in these memo book entries?
11 A. Yes, I do.
12 THE COURT: Did you ever find these entries not
13 complete enough?
14 THE WITNESS: I review more the form itself.
15 THE COURT: The UF-250 form more than the memo book?
16 THE WITNESS: Yes. But I also instruct my officers
17 exactly what to put down in the memo books.
18 THE COURT: Do you check the memo books?
19 THE WITNESS: Yes.
20 THE COURT: Did you ever find an insufficient
21 description in the memo books?
22 THE WITNESS: No.
23 THE COURT: Never? They were all perfect?
24 THE WITNESS: Pretty much, your Honor.
25 Q. Just going back for a second to the transcript of
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D4T8FLO2 Silva - redirect

1 Lieutenant Doute indicating "five, five and five," did you
2 understand that to mean a total amount of activity of 15 of
3 something?

4 A. No.

5 MR. MARUTOLLO: Can I have one moment, your Honor?
6 No further questions, your Honor.

7 THE COURT: Thank you.
8 Anything further?

9 MR. MOORE: No.

10 THE COURT: All set. Thank you.

11 MR. MARUTOLLO: Defendants call Sergeant Stephen
12 Monroe.

13 MS. BORCHETTA: Can we raise one issue? According to
14 the city's list of witnesses, this is the final witness
15 identified for today, except for Detective Hawkins who might
16 come.

17 THE COURT: Do you have your revised list in front of
18 you? I left my in chambers.

19 One second. OK.

20 MS. BORCHETTA: If they need to move up any witnesses,
21 we might need to get attorneys who are not here here. So we
22 would just ask that if somebody from the city could identify
23 anybody else being called today by 1:00.

24 MR. MARUTOLLO: We can do that right now. Detective
25 Hawkins, who was here last Wednesday and Thursday, we were

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D4T8FLO2 Silva - redirect

1 hoping that she will be here. However, we are not 100 percent
2 sure on that. If Detective Hawkins is not here in the
3 afternoon, we will continue with the order, which is, I
4 believe, Detective Santos Albino and then Sergeant Justin
5 Dengler.

6 THE COURT: OK.
7 In the meantime, we have Sergeant Monroe.

8 STEPHEN MONROE,
9 called as a witness by the defendants,
10 having been duly sworn, testified as follows:

11 THE COURT: State your full name, first and last,
12 spelling both for the record.

13 THE WITNESS: Sergeant Stephen Monroe, S-T-E-P-H-E-N,
14 M-O-N-R-O-E.

15 DIRECT EXAMINATION

16 BY MR. MARUTOLLO:

17 Q. Good afternoon, Sergeant Monroe.

18 A. Good afternoon.

19 Q. Are you currently employed by the NYPD?

20 A. Yes, I am.

21 Q. What is your educational background?

22 A. I have a BF degree in behavioral science.

23 Q. How long have you been employed by the New York Police
24 Department?

25 A. Approximately 20 years.

D4T8FLO2 Monroe - direct

1 Q. When did you join the NYPD?

2 A. August 1993.

3 Q. Did you enter and graduate from the police academy?

4 A. Yes, I did.

5 Q. When did you graduate from the police academy?

6 A. March 1, '94.

7 Q. After graduating from the police academy, where were you
8 assigned?

9 A. 70 Precinct, Brooklyn South.

10 Q. How long were you assigned to the 70 Precinct?

11 A. Approximately six years.

12 Q. What were your duties and responsibilities as an officer in
13 the 70 Precinct?

14 THE COURT: What borough is that?

15 THE WITNESS: Brooklyn. Brooklyn South, ma'am.

16 THE COURT: Thank you.

17 Then he asked for your duties and responsibilities you
18 had in that precinct.

19 A. I did patrol and general enforcement.

20 Q. Where were you assigned next?

21 A. The 60 Precinct in Brooklyn South.

22 THE COURT: Also Brooklyn South?

23 THE WITNESS: Yes, ma'am.

24 Q. What were your duties and responsibilities as an officer in
25 the 60 Precinct in Brooklyn South?

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D4T8FLO2 Monroe - direct

- 1 A. I did patrol, general enforcement, I was the truancy
2 officer, and conditions.
3 Q. How long were you assigned to the 60 Precinct?
4 A. About ten years.
5 Q. Did there come a time when you were promoted to sergeant?
6 A. Yes, sir.
7 Q. How did you attain the position of sergeant?
8 A. I took a test.
9 Q. Why did you want to become a sergeant?
10 A. To use my knowledge and my experience to help other police
11 officers.
12 Q. When were you promoted to sergeant?
13 A. October 2010.
14 Q. So just to be clear, prior to being promoted to sergeant,
15 did you have at least 15 years of patrol officer experience?
16 A. Yes, I did.
17 Q. Upon being promoted to sergeant, did you receive any
18 training?
19 A. Yes. I took a leadership management course.
20 Q. After your promotion to sergeant, where were you assigned?
21 A. The 40th Precinct in South Bronx.
22 Q. Is that your current assignment?
23 A. Yes, it is.
24 Q. Again, you said that covers the South Bronx?
25 A. South Bronx, Mott Haven.

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D4T8FLO2 Monroe - direct

- 1 Q. What are your duties and responsibilities as a sergeant in
2 the 40th Precinct?
3 A. I am a patrol supervisor. I supervise approximately ten
4 police officers. I supervise their patrol duties. I supervise
5 their paperwork and their arrestees.
6 Q. How would you describe the crime levels in the 40th
7 Precinct?
8 A. It's very high.
9 Q. How do you know that?
10 A. From my experience there and the crime statistics of the
11 precinct.
12 Q. What kind of crime conditions are prevalent in the 40th
13 Precinct, if any?
14 A. It's a lot of robberies, a lot of assaults and shootings.
15 Q. Now, what is your understanding of the racial makeup of the
16 officers working at the 40th Precinct?
17 A. It's mostly Hispanic and black.
18 Q. As a sergeant, do you ever speak with your officers about
19 the crime conditions that they are trying to address?
20 A. Yes, I do.
21 Q. How do you inform your officers of these crime conditions?
22 A. I speak with them about crime conditions at roll call. I
23 will address like what type of robbery patterns, type of
24 larceny patterns. Also, there is a quest for excellence form
25 that is given to each sector, and I will explain that. Each

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D4T8FLO2 Monroe - direct

- 1 sector -- a precinct is broke down in four sectors: Adam Boy,
2 David, Frank, George, Henry and John. Those are the four
3 sectors. The quest is a precinct condition for each sector.
4 Like, for example, Sector Adam would have maybe a robbery
5 pattern in a certain area or a quality of life condition or
6 maybe an auto condition, traffic.
7 Q. Would you communicate the information on these quest for
8 excellence condition reports to your officers?
9 A. Yes, I would. I would hand them out. Also, I would tell
10 them each sector, what the most important condition in the
11 sector they should address.
12 Q. Are you familiar with the NYPD's Operations Order 52?
13 A. Yes, I am.
14 Q. Pursuant to Operations Order 52, do you review officer
15 monthly conditions impact measurement reports?
16 A. Yes, I do.
17 Q. How do you review these reports?
18 A. Well, I sign them three times a month and I also review
19 their memo books.
20 Q. You discuss these reports with your officers?
21 A. Yes.
22 Q. As a sergeant, how do you ensure that officers under your
23 supervision are conducting lawful stops based on reasonable
24 suspicion?
25 A. Well, in the field we get radio runs. Most of the radio

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D4T8FLO2 Monroe - direct

1 runs usually have some type of description. I usually go to
2 the location of where the call is given with my officers, and I
3 observe the stops looking for safety and their approach of the
4 suspect.

5 Q. Will you ever physically witness a stop while out on patrol
6 with these officers?

7 A. Yes, I will. I am out there monitoring the radio runs.

8 Q. Do you ever review UF-250s of officers in your squad?

9 A. Yes, daily.

10 Q. Do you review officers' memo books of officers in your
11 squad?

12 A. Yes, I do. When I am on patrol, I will usually sign them
13 and review them.

14 Q. Do you ever speak with officers about stops that they have
15 made?

16 A. Yes, I do.

17 Q. What do you speak to them about regarding these stops?

18 A. I talk to them about their approach, their safety, the type
19 of condition that is addressed.

20 Q. Now, just going back for a second to UF-250s. During your
21 review of these UF-250s, do you pay any attention or any
22 special attention to the location listed on the UF-250?

23 A. Yes, I do.

24 Q. Why do you do that?

25 A. Depending on the condition of that sector, like maybe a
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D4T8FLO2 Monroe - direct

1 robbery pattern, assault pattern, or maybe there was a shooting
2 in that area.

3 Q. So do you see if the locations match up with the conditions
4 that are to be addressed?

5 A. Yes, I do.

6 Q. Have you ever punished an officer under your supervision by
7 assigning them to work as your driver?

8 A. No.

9 Q. Why would you assign an officer to work as your driver?

10 A. Mostly because I needed a driver.

11 Q. I'm sorry?

12 A. Because I needed a driver.

13 Q. As a supervisor, have you ever subjected officers under
14 your command to a quota?

15 A. Never.

16 THE COURT: Have you ever reviewed a memo book entry
17 that you considered inadequate?

18 THE WITNESS: Ma'am, when you say inadequate?

19 THE COURT: When you reviewed the memo book entry for
20 a UF-250 stop, did you ever think the memo book entry was not
21 completed or not complete at all?

22 THE WITNESS: If the officer needs instruction in the
23 accuracy or completeness of the memo book entry, yes, I will.

24 THE COURT: So you have seen entries that were not
25 complete enough or were not accurate enough over the years?

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D4T8FLO2 Monroe - direct

1 THE WITNESS: Yes, I have.

2 THE COURT: Each time you saw that, you told the
3 officer?

4 THE WITNESS: I instructed them on the proper way to
5 fill them out.

6 Q. As a sergeant, have you ever punished an officer under your
7 command for failing to conduct a certain number of stops,
8 summonses or arrests?

9 A. No.

10 THE COURT: Are you aware of performance goals?

11 THE WITNESS: Yes, I am.

12 THE COURT: What is a performance goal?

13 THE WITNESS: A performance goal would be addressing
14 your conditions.

15 THE COURT: I'm sorry?

16 THE WITNESS: Addressing your conditions in your
17 sector or specified in the quest.

18 THE COURT: Or specified?

19 THE WITNESS: When I say conditions, like in the
20 quest, different quality of life conditions, shooting patterns,
21 when they go in and they talk to the public, when they go to
22 areas where there are shootings, they do verticals and
23 directive patrols.

24 THE COURT: So the performance goals are never
25 numerical?

D4T8FLO2 Monroe - direct

1 THE WITNESS: Numerical in what way?
2 THE COURT: Numbers. Performance goals are never
3 stated in terms of numbers?
4 THE WITNESS: For the officer?
5 THE COURT: Officers or the precinct or the tour, did
6 anybody ever say a performance goal is numbers?
7 THE WITNESS: No.
8 THE COURT: You never heard that?
9 THE WITNESS: Not for the officers, no.
10 THE COURT: For who? If it's not for the officers,
11 then for who?
12 THE WITNESS: When you say performance goals, you are
13 talking about?
14 THE COURT: Did anybody in a supervisory level state
15 to the officers during roll call or during -- I guess roll
16 call, the performance goals that are expected?
17 THE WITNESS: They are expected to address the
18 conditions in sectors.
19 THE COURT: They are never numerical?
20 THE WITNESS: Never.

21 BY MR. MARUTOLLO:

22 Q. Sergeant Monroe, how do you evaluate officers who are
23 working under your supervision?
24 A. Well, through my 15 years on patrol and my three years of
25 supervising, I evaluate officers by their conditions, address

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D4T8FLO2 Monroe - direct

1 their conditions, how they interact with the public, their
2 accuracy and completeness of the reports.
3 Q. You are familiar with an officer named Pedro Serrano?
4 A. Yes, I am.
5 Q. How long have you been Pedro Serrano's immediate
6 supervisor?
7 A. Approximately two years.
8 Q. Over the course of your supervision of Officer Serrano, how
9 would you evaluate Officer Serrano's job performance?
10 A. Over my two years?
11 Q. Yes.
12 A. Mediocre.
13 Q. Going back for a second, did you have any input on Officer
14 Serrano's 2010 performance evaluation?
15 A. No, I did not.
16 Q. So what year did you first begin to evaluate Officer
17 Serrano?
18 A. I believe 2011.
19 Q. With respect to this first evaluation, do you remember what
20 score you gave Officer Serrano during this 2011 performance
21 evaluation period?
22 A. A 3.
23 Q. That is on a scale of 1 to 5, with 1 being the lowest and 5
24 being the highest, correct?
25 A. Yes.

D4T8FLO2 Monroe - direct

1 Q. Why did you give Officer Serrano a score of 3 in 2011?

2 A. He showed lack and drive.

3 THE COURT: He what?

4 THE WITNESS: He showed lack of initiative and drive.

5 Q. Did you also evaluate Officer Serrano in 2012?

6 A. Yes, I did.

7 Q. What score did you give Officer Serrano during the 2012
8 evaluation period?

9 A. I believe a 3.

10 Q. Why did you give Officer Serrano a 3 in 2012?

11 A. From my two evaluations, 2012 he regressed somewhat. Most
12 of the calls or jobs that I go to -- we call assignments over
13 the radio jobs, whereas you would call them assignments or
14 assignments. For an officer to have his amount of time, which
15 was eight years, he called me regularly to most of his jobs to
16 supervise him or answer questions that I felt that he should
17 already know if he had patrol experience.

18 Q. How would you evaluate Officer Serrano's decision-making
19 ability in 2012?

20 A. Poor.

21 Q. Why is that?

22 A. Well, if he is calling me to a large amount of his jobs to
23 answer questions that he should know, that I feel he should
24 know, in my 15 years of experience on patrol and three years as
25 a supervisor, he is calling me to ask questions and make

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D4T8FLO2 Monroe - direct

1 decisions for him.

2 Q. Did you consider Officer Serrano's decision-making ability
3 to be problematic for you?

4 A. Well, if I am going --

5 MR. MOORE: Object to the form. I don't know what
6 that means.

7 THE COURT: Was he an officer that you felt needed
8 more supervision than other officers?

9 THE WITNESS: Yes.

10 THE COURT: That creates a problem for you, is that
11 right?

12 THE WITNESS: Officer Serrano had eight years of
13 patrol experience. In my 15 years on patrol, I wouldn't call a
14 supervisor as much as he called the supervisor to his location.
15 And the questions that he asked me were not questions that were
16 to help him solve a problem. He wanted me to go there and
17 solve the problem.

18 THE COURT: OK.

19 Q. Is it fair to say when you had to respond to Officer
20 Serrano, that you could not therefore be physically with other
21 officers?

22 A. If I am going to a majority of his jobs, I can't fairly
23 supervise other younger police officers on patrol.

24 Q. Sergeant Monroe, do you remember a June 2012 meeting with
25 Captain Martine Materasso and Officer Serrano?

D4T8FLO2 Monroe - direct

1 A. Yes.

2 Q. Why were you present at that meeting?

3 A. We were -- his evaluation, he was appealing it.

4 Q. Was that his 2011 evaluation?

5 A. Yes, it was.

6 Q. What, if anything, occurred at the meeting?

7 A. We discussed his evaluation and him addressing his
8 conditions. I think we discussed, if he addressed his
9 conditions a little better, we would do an interim eval.

10 MR. MOORE: Would do a what?

11 A. Interim eval.

12 THE COURT: Interim evaluation.

13 A. So if he addressed his conditions more better, we would do
14 a better interim eval for him, meaning we would give him a
15 better score.

16 Q. Was that raised with Officer Serrano in the room?

17 A. Yes, it was.

18 Q. Did Captain Materasso receive a phone call during this
19 meeting?

20 A. Yes, she did.

21 Q. What was your understanding of that phone call?

22 THE COURT: He didn't have any understanding of the
23 phone call.

24 You weren't on the phone call, were you?

25 THE WITNESS: No, I wasn't.

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D4T8FLO2 Monroe - direct

1 THE COURT: I can't allow that.

2 Q. Did you indicate to Officer Serrano that he needed to do a
3 certain amount of activity at that meeting?

4 A. I indicated he needed to address his conditions in the
5 sector.

6 MR. MARUTOLLO: Can I have one moment?

7 THE COURT: Did you tell him that he had to increase
8 his numbers?

9 THE WITNESS: No, ma'am.

10 THE COURT: He didn't have to increase his stops,
11 summonses or arrests?

12 THE WITNESS: No. He had to address his conditions.

13 THE COURT: I know. But you didn't tell him to pick
14 up his activity level?

15 THE WITNESS: I told him to address his conditions in
16 the sector.

17 THE COURT: All right.

18 Q. Sergeant Monroe, what happened after Captain Materasso
19 received that phone call?

20 A. Herself and Officer Serrano -- she asked Officer Serrano to
21 go with her to some type of narcotics location.

22 Q. Sergeant Monroe, I would like to show you what has already
23 been entered into evidence as Defendants' Exhibit B10.

24 I will hand you a hard copy.

25 THE COURT: You said that's already in evidence?

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D4T8FLO2 Monroe - direct

1 MR. MARUTOLLO: Yes.

2 THE COURT: It's on the screen, right?

3 MR. MARUTOLLO: Yes.

4 Q. Before we talk about Exhibit B10, Sergeant Monroe, can
5 conditions in a sector be addressed without enforcement
6 activity?

7 A. Without enforcement activity?

8 THE COURT: You kept answering before that you told
9 him to address conditions, and I kept saying, did you tell him
10 to pick up activity? So I guess what the counsel is saying,
11 can you address conditions without increasing enforcement
12 activity, was that the way you addressed conditions?

13 THE WITNESS: It depends on the condition.

14 Q. If there was a robbery at a location, would there be ways
15 to address that condition without stops, arrests or summonses?

16 A. A robbery location?

17 THE COURT: If you had a robbery condition, is there a
18 way to address it other than stops, summonses, arrests?

19 THE WITNESS: It depends on.

20 THE COURT: The answer is?

21 THE WITNESS: It depends.

22 THE COURT: Even on the robbery condition?

23 THE WITNESS: It depends.

24 Now, here he has directive patrols. If that's a
25 robbery pattern in that location, the officer should be going

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D4T8FLO2 Monroe - direct

1 to the location and serving the area for suspicious activity,
2 any type of suspicious activity or whatever the officer feels
3 would bring his level of suspicion up or just serving the area.

4 If on the quest sheets -- let me go back. On the
5 quest sheets, for that particular sector, there is usually like
6 a description of -- say it's a robbery pattern. There is
7 usually a description of a perpetrator doing the robbery, some
8 type of general description.

9 Q. Can physical presence by uniformed officers address
10 conditions?

11 MR. MOORE: Object to the leading nature of that
12 question.

13 THE COURT: Sustained.

14 Q. Turning to Defendants' Exhibit B10, which is already on the
15 screen, Sergeant Monroe, do you recognize this document?

16 A. Yes.

17 Q. This document is Officer Serrano's October 2012 monthly
18 performance report, right?

19 A. Yes.

20 Q. I'm sorry. Monthly conditions impact measurement report,
21 right?

22 A. Yes.

23 THE COURT: You said October '12?

24 MR. MARUTOLLO: Yes.

25 THE COURT: Wasn't it signed in April '12?

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D4T8FLO2 Monroe - direct

1 MR. MARUTOLLO: On the top right-hand corner it says
2 October 2012.

3 THE COURT: Later on I thought it was signed April
4 '12.

5 Is that 11? Somebody in your group said 11. I saw it
6 as a 4, but I'm told it's 11.

7 Well, on that most interesting note, we will reconvene
8 at 5 after 2. We are taking our lunch recess now.

9 (Luncheon recess)

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D4t9flo3

AFTERNOON SESSION

2:11 p.m.

(In open court; trial resumed)

MS. BORCHETTA: Your Honor, I'm sorry. We need to interject an objection hopefully with time for the city potentially to respond to it.

We object to the witnesses the city has indicated they would call if we finish early, which it looks like we would today, which is Detective Albino and Sergeant Dengler. And our objection begins with the fact that we were supposed to question Detective Hawkins this morning. The first we learned that we weren't going to be questioning Detective Hawkins was when the city said during court that the next witness it was calling was Detective Vizcarrondo, skipping her. We still don't know why she isn't here.

And we, therefore, had no notice that Sergeant Dengler and Detective Albino might go today.

We understand that it's the way of proceedings that sometimes we do go faster. However, we're particularly burdened by calling these two witnesses early.

These two witnesses conducted searches into NYPD records to identify John Does. It involves a number of stops. It involves a lot of documents. It is also the subject of an extensive fact specific stipulation between the parties that was not finalized until late last night.

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D4t9flo3

1 And our entire cross-examination of them is tailored
2 necessarily to that stipulation, which we could not begin
3 preparing until today. There are also a number of documents
4 that we agreed to produce for -- as part of the city's
5 stipulations when those witnesses appeared that we literally
6 physically have not had time to get together. My understanding
7 is it's about 60 exhibits.

8 THE COURT: All right. Look. That's very convincing.

9 MR. MARUTOLLO: Your Honor, may I --

10 THE COURT: Can we skip over those two and bring in
11 more ordinary people? Who else are you going to object to if
12 they said well we'll skip --

13 MS. BORCHETTA: Your Honor, we said at the beginning
14 of the lunch break that we would be willing to move on to
15 Inspector Lehr or Sergeant Marino.

16 MR. MARUTOLLO: May I be heard regarding --

17 THE COURT: It's a waste of my time to hear these
18 arguments. It truly is. It's a convincing enough case. She's
19 got to get 60 exhibits together. The stip wasn't reached until
20 late last night. They're not ready for the cross. I don't
21 need a counterargument. I'm not going to go forward with it.
22 Either I'm going to stop at 2:30, which is a true waste of my
23 time. It will throw us off the schedule for summations, which
24 is not critical to everybody, or you're going to bring in two
25 more -- I don't know what word to use -- ordinary witnesses

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D4t9flo3

1 that don't require special preparation. They are perfectly
2 prepared to go with Lehr or she said Marino. I don't know
3 what's wrong with Cirabisi. Any of these people. Even the
4 stop people. I can't imagine why you can't go with Barrett or
5 White. They're all the same. Five choices to find two people
6 so we use the afternoon.

7 I'm just asking you to be flexible and do it. I don't
8 want an argument.

9 MR. MARUTOLLO: No, your Honor.

10 One note I was offering perhaps to might help the
11 situation is the parties have indeed reached a stipulation
12 regarding, in lieu of direct live testimony, which is about I
13 believe it's ten pages long, single-spaced, which frankly I was
14 planning on reading into the record, which may take some time.

15 Additionally, Ms. Patel has e-mailed and indicated
16 that Sergeant Dengler, who was one of the individuals who will
17 be testifying, that there is an exhibit ready and that they are
18 I believe prepared for Sergeant Dengler to go first instead of
19 Detective Albino who has the more extensive investigation.

20 I not sure if that will be of any assistance because
21 it seems that, at the very least, Sergeant Dengler will be able
22 to testify today particularly as the stipulation has been -- it
23 was finalized last night, your Honor, but it was sent from last
24 Sunday, a week before, have been discussing it all week and at
25 plaintiffs' request it was discussed --

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D4t9flo3

1 THE COURT: It didn't get done until last night. They
2 didn't expect the witness today. They got 60 exhibits to put
3 together. They're not ready for their cross. There's a lot of
4 other people you could call who are more ordinary or plain
5 vanilla -- that was the word I was looking for.

6 Call some of these people. Call their precincts. See
7 if Lehr can come down. See if Marino can come down. I don't
8 see what's wrong with Barrett or White. Then you'd take these
9 people and be done with it. We spend more time talking about
10 it.

11 MS. RICHARDSON: Your Honor, in an effort to try to
12 assist, I've already reached out to Sergeant Marino. The
13 problem is that he was not scheduled to testify until later
14 this week and he is in New Jersey. He does not believe that he
15 can get back before 4:30 today. So he's unavailable.

16 THE COURT: There's one. There were other choices
17 here. There's Lehr in the 67th precinct. I don't know why
18 there can't be Cirabisi in the 107. I don't know there can't
19 be White. I don't know why there can't be Barrett. There's a
20 lot of other choices.

21 MR. MOORE: And then there's Hawkins. We haven't
22 heard any explanation why she didn't show up.

23 THE COURT: I don't know if the defendants know. My
24 impression was they were thinking she might walk through the
25 door any minute earlier this morning.

D4t9flo3

1 MR. MARUTOLLO: It was intended to be about the same
2 amount of time for Detective Hawkins as was for Detective
3 Vizcarrondo.

4 THE COURT: But you haven't found her, or she's not
5 here, either one or the other.

6 MS. PUBLICKER: Just briefly we have been calling
7 other witnesses and we've had the issue that some of them have
8 criminal trials going on that our notifications can't
9 supersede.

10 THE COURT: I don't believe all the five names I just
11 brought up are in criminal trials. There aren't enough going
12 on to keep five of them busy.

13 So somebody should go out in the hall and call all
14 five that I mentioned to see what you can do to fill the day;
15 otherwise, I'm going to stop. But then you're going to suffer
16 at the end of this. That's what's going to happen. I'm not
17 staying a day after the 20th at 5:00, as we've discussed.

18 MR. MARUTOLLO: May I proceed your Honor?

19 THE COURT: With this witness.

20 I don't see anybody from the defense team leaving to
21 make phonecalls. I asked them to. Maybe I should just direct
22 it. Would somebody leave the room and make phonecalls of the
23 five names I suggested.

24 MS. PUBLICKER: Yes, your Honor.

25 THE COURT: Thank you.

D4t9flo3

1 STEPHEN MONROE, resumed.
2 DIRECT EXAMINATION
3 BY MR. MARUTOLLO:
4 Q. Sergeant Monroe, before the break we were discussing your
5 June 2012 meeting with captain Martine Materasso. Do you
6 recall that?
7 A. Yes.
8 Q. And you indicated that you told Officer Serrano, during
9 that meeting with Captain Materasso, that he needed to address
10 his conditions?
11 A. Yes.
12 Q. What did you mean when you told Officer Serrano that he
13 needed to address his conditions?
14 A. What I meant by addressing conditions was depending on what
15 the condition is, might be shooting condition or robbery
16 location or shooting location -- we've had shootings in the
17 past -- I meant by him addressing the condition, going to the
18 location. His very presence as an officer, when you go to the
19 locations, interactions with the public, surveying the
20 location, looking for suspicious activity.
21 When you address the public and you're out there.
22 Visibility to the public. They'll come to you and they'll tell
23 you what's going on, or you'll see what's going on.
24 With his eight years of experience as a patrol officer
25 in the South Bronx I would assume that he -- when I go address

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1 conditions, he can go out and survey the locations; survey the
2 shooting locations or robbery locations specified in the
3 request sheets.

4 Some of these locations that they have may be
5 descriptions of like gang members or -- descriptions of robbery
6 patterns, some type of description. Address the conditions by
7 going on the location and surveying, looking for suspicious
8 activity and asking the question why, what's going on here,
9 what's out of place. And then you go from there.

10 Q. So if a shooting occurred in a given location, how would
11 you expect officers under your supervision to address that kind
12 of condition?

13 A. Well I would expect them to go to locations, survey the
14 area, do verticals, directed patrols, looking for something
15 that's out of place. You go from there and --

16 Q. Would you ever consider their presence alone to be
17 sufficient?

18 A. Yes.

19 Q. And when you mentioned verticals, what did you mean by
20 that?

21 A. Verticals. Verticals are when -- say we get -- give you an
22 example of the location where they had maybe shootings. When
23 you go into a building, do verticals. You go into the
24 building. You're entering the building. You're going into the
25 lobby. You're going into the vestibule. You're going to the

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- 1 roof. You're going down the stairwells. You're looking for
2 suspicious activity. Probably maybe -- depends on what the
3 officer notices, encounters.
4 Q. I'd like to turn your attention back to Defendants' Exhibit
5 B10 which has already been entered into evidence.
6 Again, Sergeant Monroe, what is this document? I know
7 you have a hard copy in your hand.
8 A. This is a performance conditions impact measurement report.
9 Q. Is this from October 2012?
10 A. Yes, it is.
11 Q. Did you complete any part of this document?
12 A. Yes. I signed it three times.
13 Q. And on the back page of this document did you complete any
14 other sections?
15 A. Yes. I made comment in the supervisor's comment section.
16 Q. First, Sergeant Monroe, with respect to this document, what
17 are the conditions that are to be addressed by Officer Serrano
18 during October 2012?
19 A. Shootings and robberies.
20 Q. And how many days --
21 THE COURT: Does it say that on the form somewhere?
22 Is it on the top?
23 MR. MARUTOLLO: It's not on the very top, your Honor.
24 It's on -- you can see right here. Robberies and shootings.
25 THE COURT: But those are individual days, aren't
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1 they?

2 MR. MARUTOLLO: Right.

3 THE COURT: So for some days, the conditions to be
4 addressed are shooting and robberies, right?

5 THE WITNESS: The days he was on patrol.

6 THE COURT: All the days he was on patrol?

7 THE WITNESS: Yeah. Now you see --

8 Q. What do you mean when you say that the days he's on patrol
9 he was assigned to address robberies and shootings?

10 A. Some of these days he has what CRV, that's something
11 outside -- like detail outside of command. He's RDO.

12 Q. Are you referring to his assignments?

13 A. Yes.

14 THE COURT: I guess he's saying whenever it doesn't
15 say shootings and robberies it's because he's assigned to
16 something else or on an RDO.

17 THE WITNESS: Except five and six he doesn't have any
18 conditions.

19 Q. During this period, October 2012 --

20 A. Yes.

21 Q. -- does it indicate how many days Officer Serrano was on
22 patrol?

23 A. Thirteen.

24 Q. And approximately how long is each day on patrol?

25 A. Eight hours and 30 minutes.

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1 Q. Now, the patrol time in your platoon during this period was
2 usually between the hours of 4:00 p.m. and midnight, right?

3 A. Yes.

4 Q. Now during your career you've worked two other platoons,
5 right?

6 A. Yes.

7 Q. And those were platoons, the day tour from eight to four
8 and midnights from twelve to eight; is that right?

9 A. Yes.

10 Q. In your own experience do you find there are more or less
11 crimes during the four to twelve tour?

12 A. On the four to twelve there are more crimes.

13 Q. And in your experience what are you basing that on?

14 A. My experience there and the statistics. The stats of the
15 precinct.

16 Q. Looking at Defendants' Exhibit B10 there's a box there
17 that's checked and also circled that says ineffective. Did you
18 check and circle that box?

19 A. Yes.

20 Q. Underneath that box are also handwritten comments in the
21 box stating officer's impact on declared conditions; is that
22 right?

23 A. Yes.

24 Q. And the comments in that section indicate that "P.O.
25 Serrano indicates he had 20 car related stops. However, his

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1 activity does not reflect effective policing. P.O. Serrano
2 only has one B summons and no UF 250s."

3 Did you write those comments?

4 A. Yes, I did.

5 Q. And you rated him as ineffective in response to how he
6 addressed his declared conditions?

7 A. Yes.

8 Q. How would you compare Officer Serrano to other officers
9 under your supervision working in the same tour and same sector
10 as Officer Serrano?

11 MR. MOORE: I'm going to object to that, Judge, unless
12 we have some evidence similar to what's being presented here.
13 There is no way to verify what he's going to say in terms of --

14 MR. MARUTOLLO: It's his personal knowledge, your
15 Honor.

16 MR. MOORE: How he rates with the other officers.

17 THE COURT: When you say you rated him as ineffective
18 is that on the form?

19 THE WITNESS: Yes. Right there. It's an X and a
20 circle.

21 THE COURT: Right.

22 How many other officers were under your supervision on
23 the same tour and the same sector as Officer Serrano?

24 THE WITNESS: During that month of October?

25 THE COURT: Yes. Let's say that.

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Monroe - direct

1 How many were under your supervision in the same
2 sector and the same tour?
3 THE WITNESS: About five or six.
4 THE COURT: Five or six others?
5 THE WITNESS: Yes. Six.
6 THE COURT: And do you recall whether they were
7 rated -- any of them were rated ineffective or were they all
8 rated effective?
9 THE WITNESS: Some of these officers I wasn't their
10 squad supervisor so I wouldn't know what their --
11 THE COURT: So how many of those six did you
12 personally rate? Any?
13 THE WITNESS: Four.
14 THE COURT: You rated four others?
15 THE WITNESS: Mm-hmm.
16 THE COURT: Did you rate any of those four
17 ineffective?
18 THE WITNESS: No.
19 Q. Why didn't you rate those four officers ineffective?
20 MR. MOORE: Once again, I think he's trying to elicit
21 testimony that we have no way of verifying its accuracy.
22 THE COURT: It's under oath. He says he personally
23 rated them and he rated none of them ineffective. I take his
24 word for that.
25 MR. MOORE: Beyond that why should it be -- I
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1 understand that's what he said. Now he's going to go into
2 details.

3 THE COURT: Not much detail. He's going to say why
4 did you rate them effective or, in the negative, why didn't you
5 rate them ineffective?

6 I'll allow that. Why didn't you rate them
7 ineffective?

8 THE WITNESS: Why didn't I? In comparison?

9 THE COURT: I didn't ask that.

10 Why were they rated effective, those four; or put in
11 the negative, why weren't they rated ineffective?

12 THE WITNESS: Okay. Well the other officers in my
13 squad answered, you know, just as many -- I wouldn't say they
14 answered -- I don't recall how many jobs they answered but it
15 was, you know, it was a high amount of jobs. And on their
16 impact mission form, they addressed the conditions more
17 vigorously.

18 Q. Now --

19 A. In comparison to Officer Serrano.

20 Q. Now Officer Serrano lists 161 radio runs during October of
21 2012; is that right?

22 A. Yes.

23 Q. According to this document?

24 A. Yes.

25 Q. First, can you explain to the court how officers respond to
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1 radio runs?

2 A. Well we receive the radio runs over central, 911. You call
3 911 and 911 calls central. You call 911 with say it was a
4 robbery, for an example. You'll call 911. Say I've been
5 robbed at this location. You'll give a brief description. Say
6 send the police.

7 911 will dispatch that to our central, which will come
8 over the air, dispatch a sector with the location where you're
9 at and maybe a description if you gave one.

10 In my fifteen years on patrol and my three years as a
11 supervisor, Officer Serrano if he had like maybe --

12 MR. MOORE: He's going beyond what the question was at
13 this point.

14 THE WITNESS: I'm answering the question.

15 THE COURT: One second.

16 I'll strike starting with "in my fifteen years"
17 because that was no longer responsive to, "Can you explain how
18 officers respond to radio runs?" He finished explaining that
19 and suddenly came up Officer Serrano's name, which had nothing
20 to do with the question.

21 Q. Just going back, Sergeant Monroe, is there a primary sector
22 officer assigned when there's a radio run?

23 A. (No response).

24 Q. First -- so, is there?

25 A. Yes.

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1 Q. And what does that mean?

2 A. Well the primary sector would be the sector that central
3 designates to go to that particular location or job.

4 Q. Is there a secondary officer assigned to the sector?

5 A. Depending on the job. If there's a robbery in progress or
6 maybe an assault in progress or maybe a shooting with -- or a
7 man with a gun with a description, there will be a backing
8 sector.

9 Q. So, turn your attention to Officer Serrano. What did it
10 mean to you that Officer Serrano had 161 radio runs in October
11 of 2012 and no UF 250s?

12 A. Well that --

13 MR. MOORE: I'm going to object to that question,
14 Judge.

15 THE COURT: Why?

16 MR. MOORE: Because I think he's asking a compound
17 question. He's comparing apples and oranges on some level.

18 THE COURT: Overruled.

19 What does it mean to you that he had 161 radio runs
20 and no UF 250s?

21 THE WITNESS: Judge, it means to me if he's a primary
22 sector going to say for example a robbery job or a person that
23 states that they've been robbed. He gets to there. He's
24 supposed to be doing a canvass making some type of
25 investigation.

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1 If he's the backing sector, all right -- if he's the
2 primary sector he should get their further information, should
3 be putting over a description of the perpetrator.

4 If he's the backing sector, he's going to be going to
5 the location; if he's getting the description, he's going to be
6 doing a canvass also for that perpetrator.

7 Now if you're doing a canvass, if you're doing police
8 work in the South Bronx, it's -- it was a very high crime
9 sector, you're going to make an investigation. You're going to
10 canvass the area. You're looking for possible individuals
11 fitting those descriptions.

12 THE COURT: Yeah.

13 THE WITNESS: And you're going to possibly make a
14 stop.

15 THE COURT: Possibly.

16 THE WITNESS: If they fit the descriptions that the
17 sector or the central put over. In the general area.

18 Q. Now, were you familiar with these radio runs in
19 October 2012?

20 A. Yes. Most of them, yes.

21 Q. Did you monitor the radio as part of your duties as
22 sergeant?

23 A. I monitored the radio constantly.

24 Q. And do you recall if any of these radio runs had detailed
25 descriptions related to them?

D4t9flo3 Monroe - direct

1 A. In my experience --
2 MR. MOORE: This is based on his personal knowledge.
3 THE COURT: Yes. He said he monitored the radio.
4 THE WITNESS: In my experience, depending on the jobs,
5 30 was to be a robbery, an assault in progress --
6 THE COURT: That's not the question. The question was
7 very specific to October 2012. When you heard the radio, did
8 some of the radio calls have descriptions?
9 THE WITNESS: Yes, they did.
10 THE COURT: All right.
11 Q. And if they had descriptions what did that mean to you then
12 that Officer Serrano had zero 250s in response to these 161
13 radio runs?
14 A. Well that means he's going to the location or going to the
15 job and he's not doing a canvass. He's just taking a report.
16 THE COURT: Wait a minute. He's not doing a canvass.
17 Would you write a UF 250 if you just asked questions of
18 somebody?
19 THE WITNESS: Okay. If you're going to the location.
20 Someone, say we're using a robbery for an example, and the
21 person says okay this -- a person had a particular clothing or
22 whatever the case may be and he went southbound on 138 Street
23 or northbound, whatever. And you get there in a reasonable
24 amount of time. You're supposed to do a canvass with the
25 complainant. Look for the perpetrator. Or if the complainant

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1 can't come with you, you still should be doing a canvass
2 looking for --

3 THE COURT: I'm sure that's true. But why would that
4 necessarily result in 250s?

5 THE WITNESS: Well it wouldn't necessarily result in a
6 250 unless you see a person fitting the description that the
7 complainant gave. Because you're only going to look for the
8 people that the description that the complainant gave.

9 Q. But in your experience in this South Bronx precinct what --
10 I mean did you have any -- what did you think, that there was
11 161 radio runs and he never found anyone that fit the
12 description?

13 MR. MOORE: Object to that, Judge.

14 THE COURT: That's sustained. I mean I don't know if
15 all 161 of those had a description. It's an unfair question
16 the way it was posed.

17 Q. Well did officers in your squad, Sergeant Monroe, during
18 the same time period fill out more UF 250s to address the same
19 condition?

20 A. Yes.

21 Q. And did other officers in your squad during the same time
22 period make more arrests and issue more summonses to address
23 the same conditions?

24 A. Yes.

25 Q. Now is there a certain number of UF 250s that Officer

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1 Serrano needed to complete each month?
2 A. No.
3 Q. So then why did you note on Exhibit B10 that he did not
4 complete any UF 250s? What was your purpose in doing that?
5 A. Well if he's going to 161 jobs with 13 days on patrol like
6 I said before he's either going to be the primary sector or the
7 backing sector. Now we have to at least make an attempt to
8 find the perpetrators or the perpetrators that did whatever
9 crime happened. We have to make an attempt. We are police
10 officers. Make an investigation. Make an attempt. We have to
11 go out there and try to find the person. If this is a
12 reasonable amount of time. And in my opinion he didn't make
13 any attempts.
14 MR. MOORE: I'm sorry. I didn't hear.
15 THE WITNESS: In my opinion he didn't make any
16 attempts.
17 Q. I'd like to show you what's already been entered into
18 evidence as Plaintiffs' Exhibit 296.
19 Sergeant Monroe, did you ever send a text message to
20 Officer Serrano indicating that you need to do more 250?
21 A. Yes.
22 Q. And first were there more texts between you and Officer
23 Serrano than what's shown on the screen right now in
24 Plaintiffs' Exhibit 296?
25 A. Yes, there was.

D4t9flo3 Monroe - direct

1 Q. And do you remember what these other texts were referring
2 to?

3 A. I needed to do the -- I needed to calculate all my squad
4 members' activity. I didn't have his. So I texted him, I
5 don't have your activity report. He sent me a picture of his
6 activity report. And I couldn't make out the numbers on the
7 bottom of it because the picture was kind of faded. So I asked
8 him, you know, the number of days and the number of radio runs
9 he had.

10 Q. Just the activity report that you're referring to, is that
11 Defendants' Exhibit B10, is that the report you're talking
12 about?

13 A. Yes.

14 Q. Now it says on here, on Plaintiffs' Exhibit 296 that
15 there's 14 days on patrol and 109 radio runs?

16 A. He's got 13 and he lists nine radio runs. But he has 161
17 radio runs.

18 Q. So why did you state to Officer Serrano that he needed to
19 do more UF 250s in a text message?

20 A. Well if you're going to -- let me see. Okay.

21 He listed here -- I think 12 directed patrols.

22 Q. Twelve directed patrols you say?

23 A. And one vertical.

24 MR. MOORE: He's now referring to a document. The
25 question is why did he list on the -- why did he indicate on

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D4t9flo3 Monroe - direct

1 the text message that there was --

2 THE COURT: Yes. Why did you say to Officer Serrano

3 that he needed to do more 250s in a text message?

4 THE WITNESS: He's going to -- he has 13 days on

5 patrol. 161 jobs that he answered. Now, in that many jobs,

6 and that area is a high crime area. Some of the jobs -- I

7 can't tell you how many are jobs like robberies in progress,

8 assaults in progress, assaults in the past where he would have

9 been, again, the primary sector or the backing sector. He --

10 he doesn't seem to me that he did any type of canvass for

11 anybody or looked for anybody.

12 THE COURT: And you base that on the absence of 250s?

13 THE WITNESS: If there's a detailed description and

14 you're looking for the perpetrator in a reasonable amount of

15 time there should be some type of UF 250.

16 THE COURT: Okay.

17 Q. Now, during the course of your supervision of Officer

18 Serrano, did you ever review his paperwork such as his activity

19 log?

20 A. Yes.

21 Q. And how often would you review his activity log?

22 A. When I did patrol daily.

23 Q. What conclusions, if any, did you reach regarding Officer

24 Serrano's activity log and paperwork?

25 A. Well he's listing that he has like on -- on this report

D4t9flo3 Monroe - direct

1 he's listing 20 -- 20 car stops. Directed conditions. By
2 verticals. And directed patrols. All right.

3 Here he has one B summons -- I mean one mover. That's
4 a vehicle summons. If he's doing car stops you have to stop a
5 person for an infraction. Some type of infraction. That's why
6 you make a car stop. You don't just systematically stop people
7 in cars. We have APL locations where there's accidents, a
8 large amount of accidents like pedestrian crosswalks, people
9 yielding -- not yielding to the right of way. Not yielding
10 to -- not obeying pavement markings. If he's stopping these
11 people he's not documenting it in his activity report.

12 MR. MARUTOLLO: May I have one moment, your Honor?

13 THE COURT: Yes.

14 (Pause)

15 MR. MARUTOLLO: No further questions, your Honor.

16 THE COURT: All right. Mr. Moore.

17 MR. MOORE: Yes, Judge.

18 CROSS-EXAMINATION

19 BY MR. MOORE:

20 Q. Sergeant Monroe you're still at the 40th precinct,
21 correct?

22 A. Yes. Yes, sir.

23 Q. And you're aware, are you not, that after Officer Serrano
24 testified in court he was transferred out of the 40th
25 precinct?

D4t9flo3 Monroe - cross

1 MR. MARUTOLLO: Objection, your Honor.
2 THE COURT: I'll allow. Do you know if he was
3 transferred?
4 THE WITNESS: Yes. He was transferred.
5 THE COURT: When was he transferred?
6 THE WITNESS: Where?
7 THE COURT: When? How long ago was he transferred
8 out?
9 THE WITNESS: I don't recall.
10 THE COURT: Roughly. Was it a year, a month, a week?
11 Roughly.
12 THE WITNESS: Roughly, maybe a week ago. Maybe.
13 THE COURT: Okay.
14 Q. And he was -- when he was in the 40th precinct he was
15 working a four to twelve shift, correct?
16 A. Yes.
17 Q. And you're aware that one of the reasons he was working a
18 four to twelve shift is because he has two young children,
19 right?
20 MR. MARUTOLLO: Objection, your Honor. What's the
21 relevance?
22 THE COURT: We'll see.
23 Did you know that?
24 THE WITNESS: I knew he had a -- he just recently had
25 a daughter. But I wasn't aware of the reason that's why he was
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D4t9flo3 Monroe - cross

1 working the four to twelve.

2 Q. You're aware now that he's -- the shift he's on is a

3 midnight shift, twelve to eight?

4 A. I was unaware of that.

5 Q. Let's take a look at Exhibit B10. In 13 days of work

6 Officer Serrano responded to 161 radio runs, correct?

7 A. Yes.

8 Q. There's a number right here.

9 Now, the other officers you supervised, the other four

10 or five you supervised, none of them did 161 radio runs in 13

11 days, did they?

12 A. (No response).

13 Q. Yes or no, Officer, if you remember.

14 A. Did I remember?

15 Q. Do you remember whether any of the other ones did 161 radio

16 runs in 13 days of patrol?

17 A. They did close to it.

18 Q. Do you know any who did less than 161 radio runs?

19 A. Not off the top of my head.

20 Q. In 13 days?

21 A. Not off the top of my head.

22 Q. Do you know of any who did more than 161 in 13 days of

23 patrol duty?

24 A. There probably are but I don't know off the top of my head.

25 Q. So you don't know whether Serrano's radio runs are better

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D4t9flo3 Monroe - cross

1 or worse than anybody else on the -- that you were supervising
2 in October of 2012, correct?

3 A. In the amount of jobs on the four to twelve it's about
4 average.

5 Q. You're not aware whether it's more or less than the
6 average, right? As you sit here today you can't tell me
7 whether it's more or less than the average; is that correct?

8 A. It's about the average.

9 Q. So it's about -- so you think it's about the average of all
10 the other officers you were supervising, right?

11 A. On the four to twelve?

12 Q. Right.

13 A. On the four to twelve. Yes. Exactly.

14 Q. Whatever shift you were working when you were supervising
15 Serrano, that was the four to twelve, right?

16 A. Yes, that is.

17 Q. And you see there there's an indication for directed
18 patrol. There's a category for that, right?

19 A. Yes.

20 Q. And what is a directed patrol, that category up here?

21 A. (No response).

22 Q. What is directed patrol?

23 A. Directed patrol is when an officer goes into a specified
24 location or to a specified location listed by conditions or
25 listed by the request sheet.

D4t9flo3 Monroe - cross

1 Q. Do you know whether any officers under your supervision on
2 the four to twelve shift in October of 2012 did more or less
3 than the number of directed patrols that Officer Serrano did?

4 A. In my squad, yes.

5 Q. Do you know --

6 A. They did about as many, yes.

7 Q. As you sit here today, you're saying that all of them did
8 more?

9 A. All of them did more?

10 Q. Yeah.

11 A. I can't say that, because by looking -- all of their
12 activity reports for that month.

13 Q. Well, you're saying -- you said here in court or before
14 lunch that you considered Officer Serrano a mediocre officer.

15 Do you remember that?

16 A. Yes.

17 Q. So how many officers in your squad in October of 2012 did
18 more directed patrols than Officer Serrano?

19 A. (No response).

20 Q. Or can you tell us? You don't know one way or the other?

21 A. Not off the top of my head, no.

22 Q. The primary responsibility of an officer on patrol in a
23 patrol car is to respond to radio runs, correct?

24 A. Yes.

25 Q. So that would be the majority of the statistics that are
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D4t9flo3 Monroe - cross

1 captured in this form for a patrol officer would be the number
2 of radio runs they're assigned to, correct? That would be the
3 overwhelmingly large statistics that's being captured in this
4 document, correct?

5 A. When you say statistics, what do you mean?

6 THE COURT: That's the largest category for numbers,
7 is the number of radio runs, right?

8 THE WITNESS: Yes.

9 Q. And how many officers -- do you know the exact number of UF
10 250s that the other officers on your squad did in October of
11 2012?

12 A. I would have to review the supervisor's -- the calculation
13 for that month.

14 Q. You don't have that information as you sit here today,
15 right?

16 A. No. Not off the top of my head, no.

17 Q. Do you know the number of C summonses or A summonses or B
18 summonses that the other members of that squad wrote in
19 October 2012 as you sit here today?

20 A. Not off the top of my head, no.

21 Q. Do you know the number of arrests the other officers on
22 that squad made during this period of time, October 2012?

23 A. (No response).

24 Q. As you sit here today?

25 A. Not off the top of my head.

D4t9flo3 Monroe - cross

1 Q. And you say that you believe that the number -- that his
2 activity does not reflect effective policing. Do you see that?

3 A. (No response).

4 Q. That's what you said, right?

5 MR. MARUTOLLO: Objection to the form of the question.

6 MR. MOORE: I'm sorry.

7 Q. That's what's written in the report, correct?

8 A. Where? I said ineffective. You're saying effective?

9 THE COURT: There's a phrase, "However his activity
10 does not reflect effective policing." It says it right there.

11 THE WITNESS: It says ineffective.

12 THE COURT: No. No. No. A sentence in your
13 handwriting, "Police officer Serrano indicates he had '20 car
14 related stops' however his activity does not reflect effective
15 policing."

16 Do you see that now?

17 THE WITNESS: Yes. That's true.

18 THE COURT: So the question is.

19 Q. And you're basing that on the fact that he did so many
20 radio runs, correct?

21 A. Yes.

22 Q. And it's your belief that had he been doing effective
23 policing he would have been making summonses and arrests and
24 stops given that large amount of radio runs, correct?

25 A. No.

D4t9flo3 Monroe - cross

1 Q. What is -- why does the number of stops indicate to you
2 that he's not doing effective policing?

3 A. Well if he's going out and he's being an assertive and
4 effective police officer and he's asking questions making
5 investigations.

6 Now the 40 precinct is a high crime area. Now in that
7 number of days, in that number of time -- amount of jobs, he
8 should be, in my opinion, writing more UF 250s if he's going
9 out and being an effective assertive police officer.

10 Q. Do you know what he was actually doing in response to those
11 160 radio runs? Do you know as you sit here today?

12 A. Well --

13 Q. Yes or no. Do you know as you sit here today what he was
14 doing on these 160 radio runs?

15 MR. MARUTOLLO: Objection.

16 THE WITNESS: When you say what he was doing, what do
17 you mean by that?

18 THE COURT: What was he actually doing in the field on
19 those days, do you know, personally?

20 THE WITNESS: Yes. I was his patrol supervisor. I
21 was there.

22 THE COURT: Okay. So what was he doing?

23 THE WITNESS: I was on the desk or on patrol.

24 THE COURT: So what was he doing?

25 THE WITNESS: He's going to the jobs and he's not, you
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D4t9flo3 Monroe - cross

1 know, he's obviously not doing canvasses. He's obviously
2 not --

3 Q. You were there, Officer. What was he doing? Not
4 obviously.

5 What was he doing or not doing? You said --

6 THE COURT: Don't ask both at once. That makes it
7 tougher.

8 What was he doing? You said -- you tried to tell us
9 what he was not doing.

10 THE WITNESS: Going to jobs and writing reports.

11 THE COURT: He was going to jobs and writing reports?

12 THE WITNESS: And writing reports, yes.

13 Q. And there were -- and this is what you personally observed,
14 right?

15 THE COURT: You personally observed him going to jobs
16 and writing reports?

17 THE WITNESS: Not all the jobs, no.

18 Q. How many -- what percentage of these 161 jobs were you
19 personally present at?

20 A. Off the top of my head I couldn't tell you.

21 Q. Well, you said he used to call you all the time because
22 he'd always have questions. Would you say you were present for
23 50 percent of these radio runs?

24 A. In his case?

25 Q. Yeah.

D4t9flo3 Monroe - cross

1 A. He would call me a good amount of times, yes.

2 Q. What percentage of these radio runs that he responded to
3 were you present and observing what he was doing?

4 A. I'd say about half.

5 Q. So for 80 -- for 80 of these runs were there and you
6 observed what he was doing, correct?

7 A. When he called me to the scene or when I scratched him.
8 That means when I, you know, when I want to go to a job, he was
9 there, and scratch his memo book and reviewed his memo book.

10 Q. Sergeant Monroe, you testified on direct that one of the
11 reasons you considered Serrano to be a mediocre police officer
12 is that he would call you to the scene and he would ask you
13 questions about what to do all the time. And you felt, based
14 on his experience, that was -- you shouldn't be doing that
15 after eight years as a police officer, right?

16 A. That was my assessment over a year of evaluations, over the
17 twelve months.

18 Q. Right. So tell me what you --

19 A. None of specifically the month of October. That assessment
20 was over the year, over the twelve months.

21 Q. So do you think October is different than any other month
22 given your assessment of Officer Serrano?

23 A. When you say different --

24 Q. Well you're trying to say --

25 THE COURT: Was it an unusual month or was it a
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D4t9flo3 Monroe - cross

1 typical month?

2 THE WITNESS: It was probably a typical month.

3 Q. So typically when you would respond to 50 percent of these
4 radio runs and you would have concerns that he was being
5 mediocre, what wasn't he doing that you were concerned about?
6 What wasn't he doing?

7 A. Well the jobs he would call me to would be like regular --
8 simple jobs that he wouldn't need supervision for. But he
9 would ask for supervision or ask for the answer. When in my
10 experience, with his eight years on patrol, he should already
11 know the answer.

12 Q. So can you tell us as you sit here today anything that you
13 believe he should have been doing that he wasn't doing on the
14 80 or so runs that you actually responded to him on?

15 A. What I believe he wasn't doing, making a proper
16 investigation.

17 Q. Making identification of what?

18 A. No. A proper investigation.

19 Q. By doing what or not doing -- withdraw that.

20 What was he doing that led you to conclude he wasn't
21 doing proper investigation?

22 A. He didn't ask the questions.

23 THE COURT: He wasn't asking questions, you said, of
24 people.

25 THE WITNESS: When you go to a job, and they need
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D4t9flo3 Monroe - cross

1 help, or a robbery happened, or something happened, all right.
2 It's our job to get the information from them to help them. If
3 we don't get the proper information from -- then we can't help
4 them properly, can we?
5 Q. You're saying he wasn't even getting the information from
6 the person who was the victim?
7 A. Not when I come there and I'm getting it from them.
8 Q. So that's sort of the most basic fundamental activity for a
9 police officer to do, right? When they respond to a call and
10 they get the information from the victim about what happened,
11 right?
12 A. Mm-hmm.
13 Q. And you're saying he didn't do that? You had to instruct
14 him constantly about that, right?
15 A. Most times, yes.
16 Q. And yet you still gave him a three on the evaluation,
17 right?
18 A. Yes.
19 Q. And before -- are you aware that before in the years before
20 that Officer Serrano consistently got fours on his evaluation.
21 Are you aware of that?
22 A. I'm unaware of that.
23 THE COURT: I'm sorry. Before that, before what?
24 MR. MOORE: Before the evaluation he gave him in --
25 for 2011.

D4t9flo3 Monroe - cross

1 THE COURT: So he's saying before your 2011 evaluation
2 did you know he had received fours?

3 THE WITNESS: I was unaware of that.

4 THE COURT: Okay.

5 Q. When you gave him the evaluation for 2011 and it was a
6 three he obviously appealed it, right? You're aware of that,
7 right?

8 A. 2011?

9 Q. Yes.

10 And he appealed it because the three was less than
11 what he had been getting in the past from evaluations from his
12 supervisors, right?

13 A. Yes.

14 Q. Now, I just want to check because it says here officer's
15 impact on declared conditions.

16 Do you see that?

17 And it looks like both effective and ineffective are
18 checked, right?

19 THE COURT: First there was a mark on --

20 THE WITNESS: That was an initial error on my part.
21 But I put an X and I put a circle so you knew exactly what it
22 meant.

23 Q. Does that mean that -- did you change that because your
24 supervisor said he wanted you to change it from effective to
25 ineffective?

D4t9flo3 Monroe - cross

1 A. No. That was an error on my part.

2 Q. Now, in a situation where there's a radio run reporting
3 a -- let's say a robbery and the suspect is a black male 14 to
4 21, what would you expect Officer Serrano to do in that
5 context?

6 A. (No response).

7 Q. When he responds?

8 A. Repeat that question.

9 THE COURT: If the description that's put out is black
10 male 14 to 21, what would you expect him to do when he got to
11 the area?

12 THE WITNESS: When he's the primary sector?

13 THE COURT: Yes. Let's say that.

14 THE WITNESS: I expect him to get a further
15 description.

16 (Continued on next page)

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D4T8FLO4 Monroe - cross

- 1 Q. What if the only description he has is a black male 14 to
2 21, would you expect him to go out and stop all black males 14
3 to 21 to determine if they are perpetrator?
4 A. No.
5 Q. Maybe not all, but simply go focus on black males 14 to 21
6 to look for the perpetrator?
7 A. I expect him to go to the scene and get a further
8 description.
9 Q. What if he can't get any further description than that,
10 what if there is no further description?
11 A. Well, we do a general canvass and go from there.
12 Q. You would stop all males 14 to 21 to determine if they --
13 A. No.
14 Q. When you say a general canvass, a general canvass is you're
15 going up and stopping people, right?
16 A. It doesn't mean that.
17 Q. What does a general canvass mean?
18 A. You're surveying the initial area, the immediate area.
19 Q. One of the ways you survey is you look for people who are
20 around the area, right?
21 A. No. You're looking for suspicious activity, something
22 that's out of place.
23 Q. Now, these radio runs that you're talking about, they don't
24 distinguish between whether he is the primary responder or a
25 back-up responder, correct?

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D4T8FLO4 Monroe - cross

1 A. Yes, they do.

2 Q. You can tell from looking at this form whether --

3 A. You're talking about the form?

4 Q. Yes, I am.

5 A. No, it doesn't.

6 Q. In these 161 radio runs, which are reflected in Defendants'
7 Exhibit B10, you can't tell me, as you sit here, can you,
8 whether those radio runs are runs where he was the primary
9 responder or a back-up responder?

10 A. Not by this one, no.

11 Q. So you would just be speculating as to the amount of runs
12 that were either primary or backup, correct?

13 A. I couldn't give you a specific number, no.

14 Q. Now, radio runs are not police initiated enforcement
15 efforts, correct?

16 A. What do you mean by that?

17 THE COURT: We have heard the testimony here about
18 self-initiated stops versus responses to radio runs. They are
19 different, right?

20 THE WITNESS: Self-initiating stops, it depends -- it
21 would depending on -- we are talking about --

22 THE COURT: Self-initiated is you're just doing patrol
23 and just observe something and you stop somebody. It's not
24 responding to a radio run, it's an observation, right?

25 THE WITNESS: It would be an observation, but

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D4T8FLO4 Monroe - cross

1 depending on the condition, depending on the location,
2 depending on time of day, depending on what you're stopping
3 them for.

4 THE COURT: But it's not a response to a radio run.
5 There is no radio call saying, suspect fleeing, red jacket,
6 it's not like that?

7 THE WITNESS: If the officer is driving along on
8 patrol and he is surveying a sector and sees suspicious
9 activity.

10 THE COURT: Correct. That's self-initiated as opposed
11 to responding to a radio run?

12 THE WITNESS: Yes.

13 BY MR. MOORE:

14 Q. Self-initiated are where most of the stops and frisks take
15 place, correct?

16 A. No.

17 Q. In your experience, you said 15 years -- how long have you
18 been a police officer?

19 A. 20.

20 THE COURT: Do you know whether the majority are
21 self-initiated or a response to radio runs?

22 THE WITNESS: The majority?

23 THE COURT: Of stops, UF-250 stops.

24 THE WITNESS: That depends on the precinct. That
25 depends on the time of day. That depends on the conditions.

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D4T8FLO4 Monroe - cross

1 THE COURT: Overall, do you know the statistics for
2 the City of New York overall?

3 THE WITNESS: Not off the top of my head, no.

4 Q. You also indicated in answer to your counsel's question
5 that you had a problem with how Serrano filled out his memo
6 books, correct?

7 A. Yes.

8 Q. Did you have a problem with the way any of your other
9 officers filled out their memo books?

10 A. It depends on the officer.

11 THE COURT: All he is asking you, were there any other
12 officers where their entries in memo books were not perfect,
13 were not up to par?

14 THE WITNESS: Of course, yes.

15 Q. In fact, that was a problem in the 40th Precinct while you
16 were there as a sergeant, correct?

17 A. What do you mean by that?

18 Q. That officers were failing to fill out the details of stops
19 and frisks in their memo book, that was a problem that existed
20 in the 40th Precinct when you were there?

21 A. Precinct wide, I don't know.

22 Q. I'm sorry?

23 A. The 40th Precinct itself, I don't know that to be true.

24 Q. What about your officers?

25 A. It depends on the officer.

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D4T8FLO4 Monroe - cross

1 Q. So there were some officers who had problems with filling
2 out their memo books --

3 MR. MARUTOLLO: Objection. Asked and answered.

4 Q. -- with the information about a stop and frisk?

5 THE COURT: I will allow it. We are limiting it now
6 to his officers.

7 A. If they did, I would correct them and instruct them.

8 THE COURT: The question is only, was that a problem
9 that was common among your officers, not just one officer, but
10 a lot of the guys had problems with filling out the memo book
11 correctly and it was generally a common problem?

12 THE WITNESS: Amongst my guys, it wasn't that
13 prevalent, it wasn't that often.

14 THE COURT: You don't know about the whole precinct?

15 THE WITNESS: I don't know about the whole precinct.

16 Q. When did you become a sergeant, October of 2010?

17 A. Yes.

18 Q. That's when you went to the 40th Precinct?

19 A. Yes.

20 Q. From time to time you had meetings with your fellow
21 supervisors in the 40th Precinct, correct?

22 A. When you say meetings, what do you mean by that?

23 Q. You discussed police matters within the 40th Precinct with
24 your fellow supervisors?

25 A. We discussed conditions to be met, crime conditions.

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D4T8FLO4 Monroe - cross

1 Q. It's a simple question. Did you used to meet regularly
2 with your fellow supervisors in the 40th Precinct?
3 MR. MARUTOLLO: Objection. Asked and answered. He
4 said they would meet for conditions.
5 THE COURT: I will allow the question. All he is
6 asking you is did you meet with your fellow supervisors on a
7 regular basis in the 40th Precinct?
8 THE WITNESS: When you say meeting --
9 THE COURT: Did the supervisors get together and talk
10 about things?
11 THE WITNESS: Was this a scheduled meeting?
12 THE COURT: I don't care if it's scheduled or
13 unscheduled.
14 THE WITNESS: We had scheduled meetings with the CO.
15 Q. The executive officer would be present as well sometimes?
16 A. Yes.
17 Q. The integrity control officer, correct?
18 A. Sometimes.
19 Q. The platoon lieutenants would be present sometimes?
20 A. Yes.
21 Q. Do you recall anybody ever mentioning in those meetings,
22 those regularly scheduled meetings, that officers in the 40th
23 Precinct --
24 A. They weren't regularly scheduled. The CO would schedule
25 them.

D4T8FLO4 Monroe - cross

1 Q. Whether they were regularly scheduled or just happened, you
2 had meetings with your command structure in the 40th Precinct,
3 correct?

4 A. Yes.

5 Q. During those meetings, nobody ever told you there was a
6 problem with respect to officers filling out their memo books
7 with the details of stop and frisks, right?

8 A. When I went to the meeting, I never heard that.

9 Q. Nobody ever told you that for the years that you were
10 there, as a supervisor in the 40th Precinct, that the precinct
11 failed the audit with respect to memo books and putting details
12 of stop and frisk in memo books, nobody ever told you that,
13 right?

14 A. No, I never heard that.

15 Q. Nobody ever gave you any specific direction or directives
16 to try to fix that problem since you have been a sergeant in
17 the 40th Precinct, correct?

18 A. When you say nobody?

19 Q. Nobody in the command structure of the 40th Precinct.

20 A. I don't recall.

21 Q. Now, you have done two evaluations of Officer Serrano,
22 correct?

23 A. Yes.

24 Q. I am showing you what has already been entered into
25 evidence as Defendants' Exhibit C10. Do you recognize this as

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D4T8FLO4 Monroe - cross

1 a performance evaluation of Officer Serrano for the rating
2 period December 2010 to December 2011?

3 A. Yes.

4 Q. You're identified here as the rater on the first page,
5 Stephen Monroe, that's you?

6 A. Yes, that's me.

7 Q. He wasn't listed as chronic sick, right?

8 You see it says not chronic, right?

9 A. Not chronic, yes.

10 Q. So he was a dependable officer in terms of showing up for
11 work, correct?

12 A. Yes.

13 Q. In the evaluation you are asked to check off or put a
14 rating number for each of these different areas, performance
15 areas and behavioral dimensions, correct?

16 A. Yes.

17 Q. You have a 3 in all those categories, right?

18 A. Yes.

19 Q. You see here that you added also some additional
20 information with respect to this evaluation, right?

21 A. Yes.

22 Q. With respect to category number 13, which goes to the
23 question of police ethics and integrity, read for us what you
24 wrote there.

25 MR. MARUTOLLO: Objection. This document is already
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D4T8FLO4 Monroe - cross

1 in evidence.

2 THE COURT: There is no reason that the witness has to
3 read it.

4 "Police Officer Serrano adheres to the ethics of the
5 department and guidelines."

6 Q. You wrote that, correct?

7 A. Yes.

8 Q. When you wrote it, you believed it at the time, right?

9 A. Yes.

10 Q. And you believed he was a person of integrity, right?

11 A. When you say integrity?

12 THE COURT: One that adheres to the ethics usually
13 means --

14 A. I believe he adheres to the ethics of the guidelines of the
15 department.

16 Q. If he is somebody with integrity, he is somebody who tells
17 the truth, right?

18 A. Well --

19 Q. Is that how you would understand the term integrity to
20 mean?

21 A. Well, when he adheres to the ethics of the department, I am
22 relating to his ethics towards the police guidelines.

23 Q. It actually says "police ethics/integrity."

24 THE COURT: You mean category 13 on the front page?

25 MR. MOORE: Yes.

D4T8FLO4 Monroe - cross

1 THE COURT: Can I see that again?

2 "13. Police ethics/integrity." OK.

3 Q. It's really putting the two of those things together. But
4 don't you understand, Sergeant Monroe, that when somebody has
5 good integrity that they are somebody who tells the truth?

6 A. Yeah.

7 Q. You also write, with respect to his judgment, that's
8 another category, right?

9 You write, "PO Serrano always demonstrates an ability
10 to sound decisions." What you meant there was to make sound
11 decisions, right?

12 A. I said what I meant. Ability to make sound decisions.

13 Q. Make wasn't in there. That's why I said to make sound
14 decisions.

15 So you considered Police Officer Serrano as somebody
16 who had the ability to make sound decisions, right?

17 A. In 2011, yes.

18 Q. We don't have his 2012 evaluation. Do you think that in
19 2012, he all of a sudden became somebody who didn't have the
20 ability to make sound decisions?

21 A. In my opinion, he regressed.

22 Q. In your opinion what?

23 A. He regressed.

24 Q. His activity actually increased though, right, in 2012?

25 A. I have to look at the --

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D4T8FLO4 Monroe - cross

1 Q. Do you know whether his arrest numbers increased in 2012?

2 A. Again, I have to go back.

3 THE COURT: He doesn't know. He would have to look at
4 the forms he says.

5 MR. MOORE: That's why I asking his memory, Judge.

6 THE COURT: He said he would have to look at the
7 forms.

8 Q. Do you recall whether his summons activity, sitting here
9 today without looking at the form, whether that increased or
10 decreased in 2012?

11 A. To give an accurate answer, I will have to go back and
12 look.

13 THE COURT: Let's go on.

14 On interpersonal he said, "Officer Serrano handles
15 sensitive situation with a care and empathy."

16 "Overall, Serrano is a competent police officer and
17 has the ability to be a leader."

18 Q. So you don't mention in here anything about him being a
19 mediocre police officer, right?

20 THE COURT: Look at the recommendation on the front
21 page.

22 There. "Continue in present assignment." That's what
23 you recommended, that he stay right where he was, right?

24 THE WITNESS: Yes.

25 Q. But you don't say anywhere in here that he is a mediocre

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D4T8FLO4 Monroe - cross

1 police officer, right? You don't use that term.

2 A. In this form, no. But there is a -- they left off one of
3 the items because it's -- can you put that up again, please?

4 Q. Sure. Which one are you referring to?

5 A. This is from 26 to 13. They left off the latter comments
6 that I made. The one comment I made that he --

7 Q. Wait. I'm sorry. Are you saying this form is not
8 complete?

9 A. No, it's not complete. It's abbreviated.

10 Q. Before you say what is there, this is a document that was
11 produced by the city and it has a Bates stamp number on it. So
12 if you're going to talk --

13 MR. MOORE: Judge, if he is going to talk about a
14 document that has different information on it, we should at
15 least have it.

16 THE COURT: That would be a different document. This
17 document is complete. It says page 2 of 2. So this is a
18 complete document.

19 THE WITNESS: Then it's complete.

20 THE COURT: There may be another document you're
21 referring to.

22 THE WITNESS: No. It's complete then.

23 THE COURT: This one is complete.

24 Q. Now, following this evaluation, you're aware that Officer
25 Serrano appealed the evaluation, right?

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D4T8FLO4 Monroe - cross

- 1 A. Yes.
2 Q. And he has a right to do that, right?
3 A. Yes, he does.
4 Q. Did you say you were present at a meeting where his appeal
5 was discussed with Captain Materasso?
6 A. Yes, I was.
7 Q. Did you take any notes of that meeting or do you have any
8 notes from that meeting?
9 A. No, I didn't.
10 Q. Do you recall that meeting taking place sometime in June of
11 2012?
12 A. To my recollection, yes.
13 Q. Besides yourself, Captain Materasso and Officer Serrano
14 were present, right?
15 A. Yes.
16 Q. Was there anybody else present?
17 A. I don't recall.
18 MR. MOORE: One second, Judge.
19 Q. Do you recall Captain Materasso saying to Officer Serrano
20 in that meeting that the reason he got a 3 on his evaluation
21 was because his activity wasn't high enough?
22 A. No.
23 Q. Do you recall her mentioning anything about the need to
24 increase his activity in terms of C summonses, arrests and
25 250s? Do you recall anything about that?

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D4T8FLO4 Monroe - cross

- 1 A. I don't recall that.
2 Q. Do you recall Captain Materasso saying that 50 percent of
3 an officer's evaluation in her precinct was based on their
4 activity? Do you recall her saying that?
5 A. No, I don't recall that.
6 Q. Did she ever say that to you?
7 A. No.
8 Q. In any event, Captain Materasso denied the appeal, right?
9 A. Excuse me?
10 Q. She denied the appeal, right?
11 A. What do you mean denied the appeal?
12 Q. He was appealing his evaluation.
13 THE COURT: The evaluation didn't change, she didn't
14 reverse it?
15 THE WITNESS: She did not reverse it.
16 Q. Then the next year, for the year 2012, you gave him another
17 3 on his evaluation, correct?
18 A. Yes.
19 Q. He appealed that as well, correct?
20 A. Yes.
21 Q. He had a meeting with Deputy Inspector McCormack, are you
22 aware of that?
23 A. Yes.
24 Q. Were you present for that?
25 A. No, I was not.

D4T8FLO4 Monroe - cross

- 1 Q. Why weren't you present for that?
2 A. I believe I took my son to the doctor that day.
3 Q. That's a good reason.
4 MR. MOORE: One second, your Honor.
5 Q. Now, you mentioned in your testimony --
6 MR. MOORE: Just a couple more questions judge.
7 Q. You mentioned in your testimony that you became aware of
8 Operations Order 52, right?
9 A. Yes.
10 Q. How did you become aware of that?
11 A. How did I become aware of it?
12 Q. Yes. Was it distributed to you and you read it? Was it
13 discussed in the precinct?
14 A. I believe it was distributed.
15 Q. I'm sorry?
16 A. I believe it was distributed.
17 Q. Showing you what was previously marked as Plaintiffs'
18 Exhibit 285 in evidence. Can you identify this as Operations
19 Order 52? Can you recognize this document as Operations Order
20 52?
21 A. Yes, it is.
22 Q. You have read it before?
23 A. Yes.
24 Q. It talks about department managers, you see that in
25 paragraph 3, where it says "department managers can and must

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D4T8FLO4 Monroe - cross
1 set performance goals." Do you see that?
2 A. Yes.
3 Q. You're a department manager, right?
4 A. Yes.
5 Q. As a sergeant, you're a department manager, correct?
6 A. Yes.
7 Q. It indicates that performance goals have to be -- well,
8 this is in the context of talking about proactive enforcement
9 activity, right? You see the phrase in the first paragraph,
10 "proactive enforcement activity"?
11 A. Yes.
12 Q. Proactive enforcement activity includes arrests, summonses,
13 and 250s, right?
14 A. No.
15 Q. You say that doesn't include that?
16 THE COURT: What does proactive enforcement activity
17 mean?
18 THE WITNESS: It means going out into the public and
19 being visible and being assertive.
20 THE COURT: It might result in UF-250s or summonses?
21 THE WITNESS: If necessary.
22 Q. Officers are evaluated based, in part, on their performance
23 activity, correct?
24 A. Only?
25 Q. I said in part. That's part of the evaluation on their

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1 enforcement activity?

2 A. When you say performance?

3 Q. I misspoke. Their enforcement activities, that's part of
4 how you evaluate an officer, correct, partly?

5 A. When you say enforcement?

6 Q. Arrests, summonses, 250s. That's part of how you evaluate
7 an officer.

8 A. It depends on the officer.

9 Q. That's what you referred to in your quarterly evaluation
10 that we looked at earlier, right?

11 A. It depends on the officer.

12 Q. Pardon?

13 A. It depends on the officer.

14 THE COURT: It depends on the officer.

15 Q. I don't think that answers my question. The question is,
16 are you saying some officers are evaluated on enforcement
17 activity and some aren't?

18 A. It depends on their duties.

19 Q. For a patrol officer on duty in a precinct, part of how you
20 evaluate him is based upon their enforcement activity, right?

21 A. I evaluate them on how they address the conditions. That
22 means, when they go out and they aggressively go out and be
23 visible and address their conditions by going to the public,
24 asking questions, if they need to make arrests and 250s, yes.

25 Q. So that's a yes, right?

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D4T8FLO4 Monroe - cross

- 1 In evaluating an officer, if you believe they don't
2 have sufficient enforcement activity, you can take adverse
3 employment consequences against them, correct?
4 A. Adverse? No.
5 Q. You can affect their employment in a negative way?
6 A. No.
7 Q. No, you can't? You can't give them a bad evaluation?
8 A. A bad evaluation?
9 Q. An evaluation that is below standard or substandard?
10 A. I wouldn't do that.
11 Q. Well, look at paragraph 14 and 15 in this document.
12 Look at paragraph 15. It says, "Uniformed members of
13 the service who remain ineffective, who do not demonstrate
14 activities impacting on identified crime and conditions, or who
15 fail to engage in proactive activities despite the existence of
16 crime conditions and public safety concerns, will be evaluated
17 accordingly and their assignments reassessed."
18 You agree with that, right?
19 A. It depends on the officer.
20 Q. I don't know what that means. Is it dependent on whether
21 you like the officer?
22 A. I depends on how he addresses his conditions. Each officer
23 has his own way of doing things.
24 Q. Well, I am talking about the way the police department
25 wants officers to do business, OK, not how each officer wants
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1 to do their own business. I am talking about how the police
2 department wants their officers to perform.

3 In that context, would you agree with me that the
4 amount of enforcement activity an officer takes, in terms of
5 their proactive activities, can be used to reassess them in
6 terms of their employment with the police department?

7 A. No.

8 Q. Even though that's what it says in this operations order,
9 right?

10 A. I think what they mean is for the officer to be visible,
11 the officer should go out and make an investigation, and be
12 assertive in the public.

13 Q. That's what you think it means?

14 A. If in their investigation, in surveying the locations, in
15 interaction with the public, and from surveying suspicion
16 activity, if a summons or arrest should be made from that, yes.

17 Q. If they are not doing that, then they can be subject to
18 having their employment reassessed, right?

19 A. It depends on the officer.

20 Q. Presumably it depends on the supervisor as well, right?

21 A. It depends on the officer.

22 Q. When you say it depends on the officer, what do you mean?

23 A. Well, visibility to the public, he is going out and making
24 himself available to the public, that's how we get information,
25 that's how we get information as to the criminal activity, when

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D4T8FLO4 Monroe - cross

1 the officer goes out and addresses that. He is being
2 assertive.

3 MR. MOORE: I have nothing further.

4 THE COURT: Any redirect?

5 MR. MARUTOLLO: May I have one moment, your Honor?

6 THE COURT: Sure.

7 REDIRECT EXAMINATION

8 BY MR. MARUTOLLO:

9 Q. Sergeant Monroe, do you have the ability to transfer
10 officers out of a precinct?

11 A. No, I do not.

12 Q. Did you have any involvement in the decision to transfer
13 Officer Serrano?

14 A. No, I did not.

15 MR. MARUTOLLO: No further questions, your Honor.

16 MR. MOORE: Nothing.

17 THE COURT: You're done. Thank you.

18 THE WITNESS: Thank you.

19 THE COURT: What are we doing next?

20 MS. GROSSMAN: We were able to locate Inspector Lehr.

21 THE COURT: Do you expect Hawkins tomorrow?

22 MS. GROSSMAN: No.

23 THE COURT: Do you expect her ever?

24 MS. GROSSMAN: Yes.

25 THE COURT: Who do we have for tomorrow? Who is on
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D4T8FLO4

Monroe - redirect

1 tap?

2 MR. MARUTOLLO: Detective Albino and Sergeant Dengler
3 who will be first tomorrow.

4 THE COURT: I notice Ms. Borchetta is not here.

5 MR. CHARNEY: That's fine.

6 THE COURT: You know you're getting Albino and Dengler
7 tomorrow.

8 Who else?

9 MS. RICHARDSON: We also have Sergeant Marino,
10 Lieutenant Telford, and we also have Police Officer Kha Dang.11 KENNETH LEHR,
12 called as a witness by the defendants,
13 having been duly sworn, testified as follows:14 THE COURT: State your full name, first and last,
15 spelling both for the record.16 THE WITNESS: Sergeant Kenneth Lehr, K-E-N-N-E-T-H,
17 L-E-H-R.18 MS. GROSSMAN: Your Honor, I just wanted to alert the
19 Court to the fact that Inspector Lehr testified in the Ligon
20 proceedings. So we are going to try to avoid duplicating the
21 testimony, but there may be a few questions that we just have
22 to ask just to move on to other topics.

23 THE COURT: OK.

24 (Continued on next page)

25 DIRECT EXAMINATION

D4T8FLO4 Lehr - direct

1 BY MS. GROSSMAN:

2 Q. Inspector Lehr, good afternoon.

3 A. Good afternoon.

4 Q. Can you tell us when you became employed with the police
5 department?

6 A. January 20, 1987.

7 Q. When did you become promoted to sergeant?

8 A. November 25, 1997.

9 Q. What is your current assignment now?

10 A. I am the commanding officer of the 67 Precinct.

11 THE COURT: Where is that?

12 THE WITNESS: East Flatbush.

13 Q. When did you become the commanding officer of the 67
14 Precinct?

15 A. January 30, 2012.

16 Q. That's a position that you hold now?

17 A. That's correct.

18 Q. Were you commanding officer of any other precinct?

19 A. Yes.

20 Q. Which one?

21 A. Prior to my current assignment, I was the commanding
22 officer of the 9th Precinct from January 30, 2010 to
23 January -- excuse me -- January 3, 2010 -- January 30, 2010, to
24 January 3, 2012.

25 THE COURT: Where is that one?

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1 THE WITNESS: That would be Alphabet City in the East
2 Village.

3 Q. Prior to your time as CO in the 9th Precinct, were you the
4 commanding officer of any other command?

5 A. Yes. From May 20, 2006, through January of 2010, I was
6 commanding officer of Transit District 33.

7 Q. Now, you gave testimony on or about October 19, 2012 in the
8 Ligon matter. Do you remember that?

9 A. Yes, I do.

10 Q. Did you have an opportunity to review your trial testimony
11 in the Ligon proceeding?

12 A. Yes, I did.

13 Q. Do you adopt that testimony here today in the Floyd matter?

14 A. Yes.

15 MS. GROSSMAN: I understand we are going to be
16 designating appropriate portions of the transcript for the
17 court.

18 THE COURT: Thank you.

19 Q. Now, can you just tell the Court the boundaries of the 67
20 Precinct?

21 A. The 67 Precinct, if you go north to south, the north
22 portion is East New York Avenue, down to Avenue H, as in Henry.
23 East to west, it would be East 98th Street to Bedford Avenue.

24 Q. What are the demographics of the 67 Precinct?

25 A. The 67 Precinct is 90 percent black, 7 percent Hispanic,
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D4T8FLO4 Lehr - direct

- 1 and white and Asian Pacific, pretty much evenly split, one and
2 a half each.
- 3 Q. Generally, what are the crime conditions that you are
4 confronting in the 67 Precinct?
- 5 A. The 67 Precinct is one of the busier precincts in the city.
6 We address all seven major index crimes, which is murder, rape,
7 robbery, felony assault, burglary, grand larceny, grand larceny
8 auto, and also shootings are a big part of what we do.
- 9 Q. How many officers are assigned to the 67 Precinct?
- 10 A. I have 188 police officers on my command roster that have a
11 67 Precinct command card. In addition to that, I have an
12 impact zone, which is policed by 64 police officers, and I have
13 an impact response team which consists of 24 officers, making
14 the total officers that turn out at the 67 Precinct 276.
- 15 Q. How many anticrime officers do you have?
- 16 A. Ten.
- 17 Q. How many teams does that make up?
- 18 A. It's two teams, each supervised by one sergeant, two teams
19 of one and five.
- 20 Q. Who supervises the anticrime unit in the 67 Precinct?
- 21 A. The specials operations lieutenant.
- 22 Q. How many officers are assigned to your conditions teams?
- 23 A. One sergeant, five police officers.
- 24 Q. Is there only one conditions team?
- 25 A. That's correct.

D4T8FLO4 Lehr - direct

- 1 Q. With respect to your impact zones in the 67, where are they
2 located?
3 A. The impact zone is from East New York Avenue down to Avenue
4 B, as in boy, and it runs from east to west, it would be 98th
5 Street to 93rd Street, so it's five blocks wide if you go east
6 and west and eight avenues long north and south.
7 Q. What is the supervisor to officer ratio for those officers
8 assigned to impact?
9 A. The impact officers are supervised by one lieutenant and
10 six sergeants.
11 Q. On any given tour, how many officers would you find
12 assigned to this particular impact zone?
13 A. If everybody was scheduled to work and not on vacation,
14 you're looking at about 42 per tour.
15 Q. How many lieutenants and sergeants assigned to those 42
16 officers?
17 A. On a given night, when two squads are in, one lieutenant
18 and four sergeants.
19 Q. With respect to the impact response team, how many squads
20 make up the impact response team?
21 A. Three squads, each consisting of one sergeant and eight
22 police officers, and they are also supervised by a lieutenant.
23 Q. Can you explain to the Court how you determine how to
24 deploy officers in the 67 Precinct?
25 A. We review -- in real-time, we read crime reports as they

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1 come in, and we make adjustments as we see trends and patterns
2 develop. Basically, geographically and by time of day, we will
3 plot them out on a map, we will identify where we are recording
4 the crimes, and at what time of day, and then we make
5 adjustments to personnel accordingly.

6 Q. Now, when you make these decisions every day, are you
7 looking at crime that occurred the previous year when making
8 your deployment decisions?

9 A. No.

10 Q. What are you basing your decisions on?

11 A. Well, we review the crimes in real-time, and then based on
12 what we see developing we will deploy, really day to day and
13 tour to tour.

14 Q. What is the definition of real-time?

15 A. As we get the reports that are recorded, we will make
16 adjustments with our personnel accordingly.

17 Q. Now, are you also looking at crime that occurred seven to
18 eight weeks early to determine how you're going to deploy your
19 officers, for example, tomorrow?

20 A. If we were to do that, it would be from trends that we see
21 developing right now in real-time, and then we would look at
22 that as part of a larger issue that has been persistent. And
23 then in that regard, we may, but it would be based on a current
24 crime that got recorded, we are responding to that, and by
25 looking at that we would look back further and see, is this a

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1 crime that we continue to take over a six- or seven-week
2 period, and we look at that because if we are still taking it,
3 then we probably have been ineffective in eradicating it so we
4 may have to address what our approach has been.

5 Q. Would it be fair to say that the majority of your command
6 resources are in response to real-time crime conditions?

7 A. Yes.

8 Q. Who in your command is actually making the decisions about
9 where to send officers?

10 A. I do.

11 Q. Now, are the officers broken up into particular sectors?

12 A. Yes. I mean, baseline coverage when we turn out a platoon,
13 there's 14 sectors in the confines of the 67 Precinct. It's
14 about three and a half miles square, pretty expansive. The 14
15 sectors, there will be a radio car, we turn out a platoon, a
16 radio car, and we will have responsibility for every one of
17 those sectors. And then the way that works, if a call gets
18 dispatched to 911, that call will ultimately get called out
19 over the air and assigned to one of the sectors, and if that
20 sector is tied up, then the next closest available.

21 Q. Do you have a sector map in your precinct?

22 A. I do.

23 Q. I am going to show you what has been marked as Defendants'
24 Exhibit J14.

25 MS. HOFF VARNER: If I could just ask you to move it
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1 into evidence before putting it on the screen.

2 MS. GROSSMAN: Sure. We ask for admission of J14.

3 MS. HOFF VARNER: No objection on authenticity, but I
4 do question the relevance of this document.

5 THE COURT: I don't know that yet. I can't rule on
6 relevance. Whatever it is, it's harmless. It is an accurate
7 map. I will let in J14 and see what the relevance is.

8 (Defendants' Exhibit J14 received in evidence)

9 Q. Inspector, are the demographics that you described in terms
10 of the 67 Precinct equally distributed throughout the 67
11 Precinct?

12 A. Yes.

13 Q. How do you use a sector map in order to determine how you
14 assign officers?

15 A. Well, as we record crimes, my crime analysis staff will use
16 a map and have an indication on that map of where the crimes
17 are occurring, and they will basically indicate these symbols
18 of where the crimes are happening, different for the three
19 tours, whether it's the midnight tour, the day tour, or the
20 third platoon which is 4 to 12.

21 Based on that, we will deploy our resources
22 geographically to -- we will draw a correlation between -- we
23 are trying to deploy exactly at the right time of day, in the
24 right geographic area, where we are recording crimes.

25 Q. What are the top three sectors in terms of recorded seven

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D4T8FLO4 Lehr - direct

1 major index crimes?
2 A. Through April 14, which I believe was week 15 for the
3 calendar year, the top sectors were Sector Adam, Sector David,
4 and Sector Ida, in that order.
5 Q. So right here on the sector map, you see an A?
6 A. That's correct.
7 Q. Does that represent Sector Adam?
8 A. It does.
9 Q. And right over here, does this say Sector D?
10 A. Yes.
11 Q. Does that represent Sector David?
12 A. Yes, it does.
13 Q. What was the third sector that you mentioned?
14 A. I, as in Ida. It's a little bit harder to see on this map,
15 but if you go from A right across, the next one over is H, as
16 in Henry, and then it looks like a triangle is Sector Ida as it
17 goes up. Correct. That's Sector Ida. It looks like a
18 triangle.
19 Q. I just took the liberty of circling Sector A for Adam,
20 Sector D for David, and Sector I for Ida.
21 Now, is there any correlation between the crime in
22 these sectors and stop, question and frisk encounters that have
23 occurred in these sectors?
24 A. Yes.
25 Q. What correlation do you see in Sector Adam?

D4T8FLO4 Lehr - direct

1 A. Well, through April 14, Sector Adam was -- we recorded 15
2 percent of the total index crimes year to date in Sector Adam.
3 In looking at the stop, question and frisk encounters by 67
4 Precinct personnel in the same time period, it was a percentage
5 of 17 percent of the overall total. So it was 15 percent of
6 the crime, 17 percent of the stop, question and frisk
7 encounters.

8 Q. What about Sector David?

9 A. Sector David, for the same time period, accounted for 10
10 percent of the total major index crimes recorded, and 12
11 percent of the stop, question and frisk encounters performed by
12 67 Precinct personnel.

13 Q. What about Sector Ida?

14 A. Sector Ida came in at about 8-1/2 percent of the crime, and
15 we recorded, I believe, 10 percent of the stop, question and
16 frisk encounters by 67 Precinct personnel.

17 Q. What are the sectors with the least amount of the seven
18 major index crimes recorded in the 67 Precinct?

19 A. Sector Eddie and P as in Peter.

20 Q. Is there any correlation between the crime in these sectors
21 and the stop, question and frisk encounters?

22 A. Yes.

23 Q. Can you explain?

24 A. Well, Sector Eddie and Peter -- I mean, Frank and Peter,
25 excuse me. The two sectors that were the lowest were F as in

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1 Frank and P as in Peter. They each represented about 4 percent
2 of the total index crimes through April 14. And they also
3 accounted for about 8 percent of the total stop, question and
4 frisk encounters when you combine the two sectors by 67
5 Precinct personnel.

6 Q. Looking on the map, you see I am circling Sector F over
7 here. Is that Sector Frank?

8 A. Yes.

9 Q. And Sector P is here to the right?

10 A. Correct.

11 Q. What do these statistics tell you, in terms of the way
12 you're managing your personnel in the 67 Precinct?

13 A. Well, what I am looking for is a correlation between our
14 enforcement efforts and the crime, and what it tells me is
15 that, if you look at the way -- the percentage of encounters
16 are consistent with the percentage of crime. That's at the top
17 end of the spectrum and the bottom end.

18 Q. Now, how do you identify command conditions for the
19 personnel in at your precinct?

20 A. Excuse me?

21 Q. How do you identify the command conditions, crime
22 conditions?

23 A. Well, we review a number of things, which include 311 calls
24 for quality of life complaints, 911 calls, particularly if they
25 pertain to narcotics locations and shots fired jobs. Of

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1 course, we review the crime reports that we are recording
2 and -- as I said, we break them down into time of day, what
3 particular tour, and geographically as well. Then we break
4 them down into, what is it emanating from? In other words, if
5 there is a condition that happens on the midnight shift, and
6 it's in a particular sector, is it specific to a night-life
7 condition where it's emanating from a club situation? Or is it
8 a daytime condition, where it is close to a school corridor
9 where it's specific to a school condition? Because these are
10 factors that come into the thought process and who we are going
11 to assign to address that particular condition.

12 Q. How do you communicate these conditions to the officers in
13 your command?

14 A. When we're reviewing the stuff, I turn out a lot of roll
15 calls. I speak to my supervisors, particularly the supervisors
16 who have a specific task in special operations and are very
17 specifically focused on individual type of crimes, specific
18 type of crimes. In addition to that, we detail the crimes and
19 the conditions in the quest for excellence, which we make
20 available to everybody in the precinct, supervisors and police
21 officers.

22 Q. Do you post any of the information in the precinct?

23 A. Yes.

24 Q. Where is the information posted?

25 A. It's posted in the muster room as well as it's kept at the
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1 desk for the supervisors. So it's in the muster room for
2 anybody's perusal and it's at the desk for supervisors so they
3 can quickly -- you just have it available.

4 Q. What is your understanding of the purpose of quest?

5 A. Quest, it provides structure and guidance in terms of
6 enforcement efforts.

7 Q. How do you evaluate now whether your officers in the 67
8 Precinct are actually addressing these crime conditions?

9 A. Well, what we are looking for is a reduction in the rate of
10 occurrence on these conditions, reduction in crime and
11 reduction in quality of life conditions. If we are not seeing
12 the reduction in crime, what I am looking for is to see, are we
13 still recording crimes but for a different reason? In other
14 words, is it the same thing reoccurring or is it a different
15 condition that we have to adjust our approach?

16 Q. How do you ensure that officers in your command are not
17 going out and just trying to bring in numbers for numbers'
18 sake?

19 A. Well, what I do is I give very specific instruction on what
20 we are looking to combat, and we measure the results of that in
21 real-time, just like we are looking at the crimes as well. I
22 am looking -- we are always measuring to see if there is a
23 direct correlation between the enforcement contacts and what
24 the police officer is doing in the field with the crime
25 conditions, and we will see if we are having a positive effect

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D4T8FLO4 Lehr - direct

1 and slowing down the rate of occurrence or eradicating the
2 crime completely.

3 Q. How do you know that supervisors are actually out there
4 supervising officers who are making stops?

5 A. Well, I listen to the radio a lot. The 67 Precinct is a
6 very busy precinct and you can hear it on the radio, you will
7 hear it. So you could hear the response to radio runs when
8 they come over. I also see it. Myself, I do respond -- I do
9 spend a fair amount of time in the field. I do respond to a
10 pretty good number of live active radio runs, and I am able to
11 see the performance of my supervisors in the field and, you
12 know, I watch very closely the guidance they are giving to the
13 officers; whether it's at a crime scene or a commercial armed
14 robbery or a shooting scene, I pay very close attention to the
15 direction that the supervisor is giving to the officers.

16 So I hear it, I see it, and then I review the results
17 in terms of, you know, the reports that come out, how many
18 times they are on the scene, if that's indicated on the
19 reports. So I am pretty comfortable saying that they are out
20 there giving proper direction in that regard.

21 Q. Now, have there been occasions when you have had to attend
22 CompStat meetings?

23 A. Yes.

24 Q. Do you feel pressure from those CompStat meetings to
25 increase your enforcement activity?

D4T8FLO4

Lehr - direct

- 1 A. No.
2 Q. What message do you receive from these CompStat meetings?
3 A. I think the CompStat meetings are an opportunity to
4 demonstrate that we are addressing the conditions properly.
5 Q. Now, are you aware of investigations that are conducted by
6 the office of chief of department?
7 A. Yes.
8 Q. Are you as a commanding officer responsible for making sure
9 that the investigations, we will call them OCD investigations,
10 are distributed to the appropriate personnel in your precinct?
11 A. Yes.
12 Q. Who is responsible for conducting the OCD investigations in
13 your command?
14 A. They get distributed to different supervisors. The admin
15 lieutenant will distribute them, and they will go out to
16 lieutenants and sergeants.
17 Q. Who is responsible for managing the intake of these OCD
18 investigations?
19 A. The administrative lieutenant, he distributes them and is
20 responsible for the retrieval.
21 Q. What exactly is he trying to retrieve?
22 A. When the investigation is completed, they will go back to
23 him, and then they come to me or my executive officer for
24 review.
25 Q. What paperwork is generated in response to an office of
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1 chief of department investigation?

2 A. That would depend on the type of investigation. If it's
3 for something -- we will just take a situation, if the
4 investigation is in regard to an incident in the street, and
5 let's say, for instance, the officer initially is unidentified,
6 there is a whole host of paperwork that would have to be
7 generated. Even if the officer is identified, we are going to
8 pull the Sprint job, the 911 if it's a radio run, because
9 sometimes that contains information that can add to the
10 information. The officer's activity log would be included in
11 what would be retrieved in addition to. If there was any type
12 of reports taken, in terms of a complaint report; if there was
13 an arrest made, an online booking sheet; if it was a stop,
14 question and frisk encounter, the stop, question and frisk
15 report. All these things would be compiled and part of the
16 investigation.

17 Q. Now, prior to becoming commanding officer, did you serve as
18 the integrity control officer in any of your prior assignments?

19 A. Yes, I did.

20 Q. When did you hold that position of integrity control
21 officer?

22 A. From December of 2000 to December of 2005.

23 Q. What precinct did you serve as ICO?

24 A. 66.

25 Q. As ICO, did you have responsibility for conducting OCD

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- 1 investigations?
2 A. Yes.
3 Q. How many of those OCD investigations would you say you
4 conducted, approximately?
5 A. Well over 100.
6 Q. When you were sergeant, did you also conduct OCD
7 investigations as a sergeant?
8 A. I did.
9 Q. How is it that you went about conducting an OCD
10 investigation in those roles?
11 A. Well, the first thing, obviously, when you get assigned the
12 investigation, the first thing I like to do is contact the
13 complainant. Before I do anything else, I want to speak to the
14 complainant and find out if the information that I have on that
15 written report details the whole encounter. If there is any
16 more information that I can get, I will add that to my own
17 file, build out on it so I can identify exactly what the
18 complaint is about.
19 Q. The written report that you just made reference to, is that
20 a summary from the Civilian Complaint Review Board, a summary
21 of the allegations?
22 A. Yes.
23 Q. OK. Go on.
24 A. Then once I have a preliminary interview with the
25 complainant, then I will talk to the subject officer or

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1 officers and get any pertinent paperwork in regard to it and
2 conduct an investigation.

3 Q. So let's say a complaint comes in regarding an unidentified
4 officer. What steps would you take to try and identify that
5 officer?

6 A. Well, like I said, the first thing I do is interview the
7 complainant because I may be able to find out some additional
8 info.

9 Q. What kind of information would you hope to find out?

10 A. The location is good because then I can run the location
11 and Sprint to see if there was a radio run at the same time and
12 I can see basically if anybody went over the radio to say they
13 were responding. Then I can take a look at the precinct roll
14 calls and I can track down any officers that were working that
15 particular tour, collect their activity log entries to see if
16 they were there, and any other pertinent reports that were
17 taken from there.

18 Q. What information that you would get from the complainants
19 might help you identify the officer, the unknown officer?

20 A. I mean, what happens typically, the first thing you would
21 ask is, was the officer in uniform or was he in plain clothes,
22 what is the physical description of the officer, did you get a
23 radio car number or a shield number or a name, you know, hair
24 color, these type of things.

25 Q. Now, in terms of a complaint where you actually had an

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1 identified officer, do you also interview the officers?

2 A. Yes.

3 Q. Do you document that in the work that you're doing when
4 you're keeping track of the steps you're taking with respect to
5 your OCD investigation?

6 A. Yes.

7 Q. Now, did you interview the complainants over the phone or
8 in person?

9 A. Well, going back to December 2000 and 2005, if my memory
10 serves correct, I just got a cell phone around that time. So
11 back then it was pretty common to have to go out to somebody's
12 residence and try and make personal contact. But with cell
13 phones it's made it much easier to contact people either
14 through an e-mail or via phone. Basically, what I would do at
15 that point is by phone or in person.

16 Q. If the complainant wants to being speak over the phone, do
17 you just accommodate -- let me rephrase the question.

18 What determines whether you're going to speak to the
19 complainant by phone or in person?

20 A. I always like to take into consideration, if somebody took
21 the time out to file a complaint, then they have already had a
22 negative interaction with the police. So I always would extend
23 myself and ask what is most convenient for the complainant, and
24 I would make arrangements to be available for them just so the
25 process didn't further inconvenience them.

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1 Q. If a complainant wanted to speak to you in person, would
2 you make arrangements to speak to the complainant in person?

3 A. Yes.

4 Q. Now, what happens if you made attempts to reach out to the
5 complainant but you didn't receive any return calls, what would
6 you do next?

7 A. Well, if we were unable to make contact through phone, we
8 would go to the house if there was an address provided. I used
9 to go a minimum of three different times. I would go in the
10 daytime and go in the evening, just in case the person had a
11 day job or a night job, I wouldn't know that usually in
12 advance. If that was also unsuccessful, I would leave a letter
13 at the address provided, if I had the address. I would leave a
14 letter with my contact information. I had an answering machine
15 in the office and sometimes that worked.

16 Q. When you were unable to make contact with the complainant,
17 did you then continue with the investigation anyway?

18 A. Well, yes. I would still have to -- I would still have an
19 interview with the officers responsible for generating the
20 complaint in the first place and try and find out exactly, you
21 know, what could they have done better, or could we have done
22 something better to not have the complaint in the first place.

23 Q. After you do your interviews and gather all the paperwork,
24 what happens next, in terms of -- let me rephrase the question.

25 After gathering the paperwork in connection with the
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- 1 OCD investigation, what would you do with that paperwork?
2 A. I would type up the findings of my investigation and turn
3 it into my commanding officer for review.
4 Q. Where was that paperwork maintained?
5 A. Which paperwork?
6 Q. The OCD paperwork.
7 A. I would give it to my commanding officer for review.
8 Q. Now, when you were done with the OCD investigation, did you
9 actually transmit the paperwork and arrange to send that off
10 through channels to the office of chief of department?
11 A. The investigations they have, there is an official
12 department form which you type the results of the investigation
13 on. The corresponding paperwork that I would compile for the
14 investigation, what I used to do is I would make my own file on
15 it. I had a filing cabinet where I would keep a folder with
16 all the accompanying documents for every chief of department
17 communication that I did.
18 I did that because when I first started doing the job,
19 there would be occasions where, let's say I was doing an
20 investigation and then sometime later, maybe a third party
21 would call in a similar complaint, it would come in under a
22 different number, but it would become evident it was the same
23 thing. So rather than go back and retrieve all the documents
24 again, I found it was easier to just keep everything on file,
25 which is what I did.

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1 Q. Does the police department require that the underlying
2 paperwork in support of an OCD investigation be transmitted up
3 to the office of chief of department?

4 A. That was not a requirement. It's just something that I did
5 to cut down on having to redo it again in the event that
6 another complaint came in for the same incident.

7 Q. Now, as the commanding officer of the 67 Precinct, are OCD
8 investigations handled in the same way that you just described?

9 A. Yes.

10 Q. When officers in your command now, in the 67 Precinct, are
11 finished with their OCD investigations, how are the results
12 communicated up through channels to the office of chief of
13 department?

14 A. The administrative lieutenant will -- they will be turned
15 in to him. He will review them. When he feels that they are
16 ready for my review, they will come to me. I will either,
17 based on what I see, sign it or send it back for further
18 investigation if I am not satisfied with it. And then I will
19 endorse it and it will go back up through channels.

20 Q. The document that actually gets transmitted up through
21 channels, is that an OCD disposition and penalty report?

22 A. Yes, it is.

23 Q. As the CO of the 67 Precinct, are there occasions when you
24 substantiated charges against an officer in connection with
25 these OCD investigations?

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A. Yes. (Continued on next page)

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1 Q. And in your role as ICO and sergeant were there occasions
2 when you held those positions that you substantiated charges
3 against officers for OCD -- are there occasions when you were
4 the ICO and the sergeant that you substantiated some of the OCD
5 charges?

6 A. Yes.

7 Q. And so what encounters represent the largest portion of the
8 complaints concerning encounters with the police that you have
9 reviewed at the OCD level?

10 A. Most often it's either -- it's the manner in which the
11 encounter takes place. There's -- the narratives will describe
12 some sort of rude behavior by the police officer. So it's
13 either a rude encounter or somebody doesn't understand -- or it
14 was failed to be explained to them why they were engaged in the
15 first place.

16 So more than anything else what I'm seeing when I
17 review these is either a situation where the officer could have
18 maybe navigated it better or did not communicate exactly what
19 was going on at the time.

20 Q. Are officers expected to, when possible, explain the reason
21 for a stop?

22 A. Yes.

23 Q. And are some of the OCD complaints that you received, do
24 they indicate to you that officers could have done a better job
25 in explaining the reason why a person was stopped?

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1 A. Yes.

2 Q. Now, the OCD disposition and penalty report, does that then
3 get sent to the borough command?

4 A. Yes.

5 Q. Now when you're looking at an OCD report and disposition,
6 what are you looking for as the CO of the 67 precinct?

7 A. The first thing I'd be looking for is the interview with
8 the complainant. I want to make sure that we interviewed the
9 complainant, got all the facts; and plus, it's important for
10 the complainant to know that the police department followed up
11 and is actually following up and taking some action on whatever
12 was the source of the complaint.

13 The other thing I'm looking for is the -- what did
14 they find out from the officers? What did the officers say was
15 the reason for the encounter and what exactly happened?

16 Then I'm looking for the accompanying documents that
17 would support that.

18 Q. Are there occasions when you disagreed with the disposition
19 of the OCD investigation noted by a supervisor?

20 A. Yes.

21 Q. And what have you done about that?

22 A. I have had it returned with some instructions on whatever I
23 felt needed to be included in the investigation or another step
24 that needed to be taken or two.

25 Q. What are examples of occasions when you've returned the OCD

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- 1 investigation to one of your supervisors for further work?
2 A. A lot of times it has to do with a disposition. I mean
3 I've had cases where the -- maybe the disposition was
4 exonerated and what happens is there was either a failure to or
5 would have been unable to contact the complainant and that's,
6 you know -- by definition to have an exonerated disposition,
7 the parties would have to be, both parties would have to be
8 interviewed.
9 Q. So if someone was not interviewed and there was an
10 exoneration, would that be a change that you would make if that
11 came across your desk?
12 A. Yes.
13 Q. And what would you change that disposition to?
14 A. Depending on -- at minimum -- it could be an
15 unsubstantiated or based on the other factors involved with the
16 case it could be something that was maybe substantiated against
17 the officer.
18 Q. Approximately how many OCD investigations are investigated
19 in your command per month?
20 A. In 2012 we averaged 70 per month roughly.
21 Q. Now can the direct supervisor of the officer who is the
22 subject of the complaint conduct the investigation?
23 A. Yes.
24 Q. Under what circumstances?
25 A. (No response).

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1 Q. When can that happen?

2 A. If the administrative lieutenant assigns it to him they
3 will conduct that investigation.

4 Q. Now if that supervisor was involved in the actual stop,
5 would that supervisor then be responsible for conducting an
6 investigation of the officer who is the subject of the OCD
7 investigation?

8 A. Typically if that supervisor is named in the complaint or
9 is somehow involved is going to be a subject or a witness, so
10 no. Somebody else would be responsible for conducting that
11 investigation.

12 Q. Now are there occasions when the supervisor who might have
13 signed off on a 250, for example, but was not present during a
14 stop, could that sergeant or supervisor conduct the OCD
15 investigation?

16 A. Yes.

17 Q. Do you have any concerns that a direct supervisor under
18 that circumstance might not be able to be impartial?

19 A. No.

20 Q. Or let me ask it differently that's a double -- do you have
21 concerns about whether that supervisor would be impartial?

22 A. No.

23 Q. How come?

24 A. Because ultimately the investigation upon completion is
25 going to be brought back to me for review. And based on the --

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1 what's noted in the final disposition I'll be able to make a
2 determination whether or not it was properly conducted.

3 Q. Now, in the 67 precinct has your command received OCD
4 complaints alleging that a person was stopped for no reason?

5 A. Yes.

6 Q. In the last month what percentage of the OCD complaints
7 involved stop, question and frisk encounters?

8 A. I had taken a look at the first hundred for the year and of
9 those first hundred there were five that I would put in that
10 category.

11 Q. What was the nature of those complaints?

12 A. There were stops, encounters, and basically what's been
13 described as either rude behavior by the police officer or
14 they -- it was not explained to them why they were stopped in
15 the first place.

16 MS. HOFF VARNER: Your Honor, if I may, I think I need
17 to raise an objection to the prior line of questioning. But I
18 just want to consult with my colleague very briefly.

19 (Pause)

20 Your Honor, I'd like to object to the prior line of
21 questioning about the OCD complaints that were received at the
22 67 precinct, to the numbers of complaints and the substance
23 thereof. And I object on at least two grounds. I'll start
24 with the first one which is that years ago we asked for
25 information about OCD investigations and complaints. The city

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1 designated Julie Schwartz and Helen McAleer as their 30(b)(6)
2 witnesses to testify about all of these areas. Neither witness
3 was able to give us any of the information that Commanding
4 Officer Lehr just provided.

5 THE COURT: Which in particular.

6 MS. HOFF VARNER: For example, the appropriate ways in
7 which ICOs or other officers should conduct investigations, the
8 percentage of complaints that were relevant to stop, question
9 and frisk.

10 THE COURT: That was very recent.

11 Wasn't that very recent based on only this year?

12 THE WITNESS: Yes.

13 THE COURT: Yes. The question was: I have taken a
14 look at first hundred for this year and only five would be in
15 the category complaining about the stop and frisk for no
16 reason.

17 That's 2013. I thought that was going to be your
18 objection, you hadn't gotten any 2013 data.

19 MS. HOFF VARNER: That's part two of the objection
20 which is that we have no documents -- the city has produced
21 nothing that would allow us to cross-examine this witness or to
22 verify that what he's saying is consistent with the
23 documentation.

24 THE COURT: Right.

25 When did you do the work that told you that of the
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1 first hundred complaints in 2013 only five had to do with
2 complaining about a stop and frisk for no reason. When did you
3 put that together?

4 THE WITNESS: I just looked at that in the last two
5 weeks.

6 THE COURT: Who asked you to do that?

7 THE WITNESS: Well after consultation with counsel, I
8 took a look at that.

9 THE COURT: Well then, yeah, I think you should have
10 turned over the results of that. If you asked this witness to
11 prepare these statistics, they should have made that known to
12 the plaintiffs' counsel.

13 MS. GROSSMAN: Your Honor, I'm just trying to give a
14 context for --

15 THE COURT: I know what you're trying to do. But he
16 went and got new statistics for 2013 in the last two weeks
17 because you asked him to. If you were going to ask him to
18 update his statistics in 2013 surely that should have been made
19 known to the plaintiffs.

20 We've had objections before in this case to material
21 developed in the last four months. Unless it was produced in
22 discovery and everybody had a fair chance to deal with it, I'm
23 not going to allow it.

24 MS. GROSSMAN: Well, your Honor, first of all the
25 discovery demands were very specific to particular commands.

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1 So Inspector Lehr is of the 67 precinct. No discovery has been
2 sought by other precincts. Because the plaintiffs wanted to
3 focus on particular precincts and we provided documents in
4 response to that.

5 This is a case challenging the entire city.

6 THE COURT: I know what the case is about, actually,
7 Ms. Grossman. I've been living with it for a lot of years, as
8 you often point out. The point is that there were two
9 witnesses designated on this subject. It's not this witness.
10 And he's done some statistical work in the last couple weeks
11 that was not made known to the plaintiffs.

12 It doesn't seem to me, to use a word that you use
13 frequently, fair.

14 So what would you like to do? Do you want to just put
15 off the cross until tomorrow, which is what's going to happen
16 anyway. It's ten after four.

17 MS. HOFF VARNER: More specifically, plaintiffs move
18 to strike the testimony both about the recent statistical
19 analysis, the -- what happens with respect to OCD
20 investigations in the 67 precinct and the testimony about the
21 appropriateness and the sort of standards for OCD investigation
22 to the extent that he testified beyond his personal experience.

23 THE COURT: He didn't, really.

24 Isn't all that you've talked about based on your
25 personal experience as the precinct commander?

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1 THE WITNESS: Well in terms of if you're talking about
2 what I did when I conducted chief of department that was -- I
3 actually did that work as a lieutenant when I was -- the
4 question was, was I previously an integrity control officer?
5 And I said yes.
6 THE COURT: You were an integrity officer where?
7 THE WITNESS: I was for five years.
8 THE COURT: Where?
9 THE WITNESS: In the 66.
10 THE COURT: So that was based on personal experience.
11 MS. HOFF VARNER: To the extent that he's testified
12 about his personal experience conducting OCD investigations as
13 an ICO or lieutenant, that's fine. To the extent it's gone
14 beyond that.
15 THE COURT: To what extent has it gone beyond that?
16 MS. HOFF VARNER: I don't think it has.
17 MR. MOORE: He's talked about what he did in the last
18 two weeks.
19 THE COURT: That I know. That's a different subject.
20 We're getting to that.
21 MS. HOFF VARNER: To the extent that he's talked about
22 the --
23 THE COURT: Number of complaints that he looked at in
24 2013, there were about a hundred, only five of them had to do
25 with stop and frisk for no reason, and he put that together in

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1 the last two weeks.

2 How did you do that? What did you look at to compile
3 that number?

4 THE WITNESS: I had my admin lieutenant, who actually
5 distributes those, take a look through. I said take a look.
6 See if there's something that would fall under this criteria.

7 THE COURT: Take a look at what? Pieces of paper?

8 THE WITNESS: The actual complaints. And of those --
9 try and identify any that would be in relationship to a stop
10 and, you know, let me know.

11 THE COURT: And you told this administrative assistant
12 to look at all the complaints in 2013 to date?

13 THE WITNESS: No. I took a sample -- I took the first
14 hundred. It was a sample. We had 70 a month from last year.
15 So it would have been --

16 THE COURT: This is this year. I thought this was
17 2013, I thought you said.

18 THE WITNESS: Yes. The first hundred from this year.

19 THE COURT: The first hundred in 2013?

20 THE WITNESS: Right.

21 THE COURT: So.

22 MS. HOFF VARNER: We would ask to strike all of that
23 testimony.

24 THE COURT: We could ask the city to produce the first
25 hundred in 2013, and you could look through them.

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1 MS. HOFF VARNER: I think in the alternative we would
2 request all of the OCD investigations from -- at least for 2013
3 and preferably from 2012 when he became the commanding officer
4 of the 67 so we have an opportunity to test this evidence that
5 he's providing about the statistics.

6 THE COURT: I think that's fair.

7 How hard was that for this administrative assistant to
8 gather the complaints? Are they all in one place? Are they
9 paper or computer? How does one gather --

10 THE WITNESS: They are hard copy paper.

11 THE COURT: They are hard copy paper. Are they filed
12 together?

13 THE WITNESS: Yes.

14 THE COURT: You could easily bring in the first
15 hundred or you could bring in all of them from 2013, right?

16 No. It's not for Ms. Grossman. It's for you.

17 That would be easy to do, to bring in all the physical
18 complaints from 2013?

19 THE WITNESS: Yes.

20 THE COURT: Is it about 70 a month because you said
21 that.

22 THE WITNESS: That was the average. When we averaged
23 out 2012, that was our average.

24 THE COURT: So you don't know the total number for
25 2013 to date?

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1 THE WITNESS: No.
2 THE COURT: How long are they, each complaint? Is it
3 just one page each?
4 THE WITNESS: It depends on the narrative. It's typed
5 out.
6 THE COURT: So is it a page or two each?
7 THE WITNESS: Roughly.
8 THE COURT: Yeah. Page or two each.
9 What's your position, Ms. Grossman?
10 MS. GROSSMAN: Well, your Honor, you asked me to
11 immediately find a witness today. He was --
12 THE COURT: I appreciate that. What's your position
13 on producing these pieces of paper?
14 MS. GROSSMAN: I think, if you wouldn't mind, I think
15 a hundred for the first -- if we can narrow it to the
16 testimony, we can see where that goes. Because the burden in
17 the middle of all that we're doing right now, I am just asking
18 that we limit retrieval of the documents to what he testified
19 to.
20 THE COURT: I don't think so. The point is to test
21 the assertion that it's about a five percent rate on these
22 complaints. You raised it. You didn't have to raise it. So
23 I'm not worried about burden. You raised it. You wanted to
24 put this statistic into evidence. So it seems to me that to
25 get sort of a fair look it should be all of them from 2013 to

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1 date. I don't know that it's a big burden.

2 MS. GROSSMAN: We'll look and find out what is
3 involved.

4 THE COURT: I think he just told us what's involved.
5 They're a page or two each on average. There may be by now as
6 many as 280 or 300. And they're physical pieces of paper.
7 That's it.

8 MS. HOFF VARNER: Your Honor, we would also --

9 MS. GROSSMAN: We need to also consider redactions of
10 confidential information. I just don't know what we're going
11 to be seeing. So we'll look for that document in response to
12 the Court's order.

13 THE COURT: You can get the administrative assistant
14 to start pulling them right now, get them together. As soon as
15 you leave court, make a call and get them put together. I mean
16 they already put the first hundred together. So put the rest
17 together. And then give them to counsel, Ms. Grossman, so she
18 can look at them for redaction purposes.

19 MS. GROSSMAN: Your Honor, I just want to just make
20 clear that neither Commissioner Schwartz nor McAleer were
21 responsible for actually conducting the OCD investigations.

22 So to the extent that the plaintiffs are saying that
23 these witnesses provided testimony and they weren't on notice,
24 they didn't seek this information out in discovery.

25 MS. HOFF VARNER: Your Honor, with all --

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1 THE COURT: Folks one at a time. One at a time. Not
2 two or three.

3 MS. GROSSMAN: Of all the precincts.

4 THE COURT: Oh, no. I understand. They never sought
5 all the precincts in the City of New York. Absolutely not.
6 But you asked this question. You got this answer.

7 What is it?

8 MR. CHARNEY: I was just going to say that that's just
9 not true. We served a 30(b)(6) deposition notice in the summer
10 of 2009 on the policies and practices and procedures for
11 conducting OCD investigations.

12 THE COURT: I understand. All that Ms. Grossman has
13 said is that you didn't seek it precinct-by-precinct. You
14 didn't ask every precinct to produce all its complaint reports.

15 MR. CHARNEY: We didn't realize that was going to
16 become an issue in this case until today.

17 THE COURT: I understand that.

18 MS. HOFF VARNER: Your Honor, I'd also request that if
19 the city produces the disposition reports for these one hundred
20 OCD investigations that they also produce any supporting
21 documentation which, according to the witness, would include
22 the activity logs or the UF 250s.

23 THE COURT: I'm not going to be able to do that.

24 It is in the middle of the trial. That would be
25 burdensome, to start going back and looking for all the

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1 documentation for 280 complaints. I can't do that. If you
2 want that, I will give you ten. That's not going to happen.
3 That would be burdensome.

4 That's not what his administrator did. Your
5 administrator just pulled the complaints and just counted up
6 and tried to identify which ones were based on a stop and frisk
7 allegedly for no reason. And they came to five percent. And
8 that's what you want him to check.

9 MS. HOFF VARNER: Although, I think that the witness
10 testified, and perhaps I'm incorrect, but I believe he
11 testified that that paperwork was generated as part of the
12 investigation and that it was all compiled as part of the
13 disposition report in the final -- the final disposition.

14 THE COURT: It may have been that's not what the
15 administrative assistant pulled together and checked. I don't
16 think that's what you said. I think they checked the complaint
17 report.

18 THE WITNESS: Right.

19 THE COURT: To determine whether it was based --
20 whether the basis of the complaint was an alleged stop and
21 frisk for no reason. And you asked that person to identify any
22 that looked like that and the person said five out of a
23 hundred.

24 THE WITNESS: That's correct.

25 THE COURT: Yeah. So that's it.

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1 MS. HOFF VARNER: And we would also ask for a
2 reasonable amount of time to consider whatever documents are
3 turned over.

4 THE COURT: I understand.

5 MS. HOFF VARNER: Thank you, your Honor.

6 BY MS. GROSSMAN:

7 Q. Inspector are you notified when civilian complaints are
8 brought in to police officers?

9 A. Yes.

10 Q. How are you notified?

11 A. My integrity control officer monitors the civilian
12 complaints and he reports to me. Every week we talk about
13 what's -- how we're doing in that regard, recaps at the end of
14 the month with an updated sheet on how we're doing; how we did
15 for the month and how we're doing for the year.

16 Q. Do you get monthly reports of the officers who receive
17 CCRBs in your command?

18 A. I do.

19 Q. And does anyone speak with officers about the civilian
20 complaints?

21 A. Yes.

22 Q. Who does?

23 A. Well, the integrity control officer, as the civilian
24 complaint reports get filed, will speak to the supervisor or
25 the officer, if it's a police officer, and the police officer

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1 and the supervisor. They will be appraised of the contents of
2 the CCRB report. And typically what happens is he'll start
3 collecting paperwork that's going to be sent to the Civilian
4 Complaint Review Board for review.

5 MS. HOFF VARNER: I would just object to the answer to
6 the extent that it's unclear as to whether he's speaking of his
7 personal experience or of general practices in the police
8 department.

9 MS. GROSSMAN: He's the commanding officer of the 67
10 precinct and is responsible for knowing what's going on in his
11 command.

12 THE COURT: That sounds right.

13 Is this what goes on in your precinct where you're the
14 commander?

15 THE WITNESS: Yes.

16 THE COURT: Is this the procedure that's followed?

17 THE WITNESS: Yes.

18 THE COURT: I'll allow it.

19 Q. Did you follow the same procedure when you were the ICO,
20 did you also have conversations with officers who had civilian
21 complaints?

22 A. Yes.

23 Q. And do you let the sergeants who supervise these subject
24 officers know about the fact that civilian complaints have been
25 filed against a particular officer?

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1 A. Yes.

2 Q. And how come you do that?

3 A. Excuse me?

4 Q. How come you do that?

5 A. Because I want the supervisors to monitor the performance
6 of the officers and be aware of exactly how to perform out
7 there, keep an eye on them, and give them some guidance.

8 Q. Now what do you expect a supervisor to do if an officer he
9 supervises receives more than one CCRB within a six-month
10 period?

11 A. Well, with that there's an added responsibility on the
12 supervisor to try and provide some guidance to the officer, to
13 try and navigate the situation a little bit better,
14 particularly if it's for the same reason that he's compiling
15 these civilian complaints.

16 What we do if he had two civilian complaints and it
17 was for the same type of behavior or action, that would be
18 something we would be able to talk to the officer about. And I
19 would want the sergeant to specifically address that issue.

20 Q. Now, are you aware of the department's procedures regarding
21 monitoring and assistance programs?

22 A. Yes.

23 Q. I'm going to show you what's been admitted as Defendants'
24 Exhibit Z3.

25 Now have officers on your command been placed on
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1 performance monitoring?
2 A. Yes.
3 Q. Now looking at Defendants' Exhibit Z3, are you familiar
4 with this document?
5 A. Yes, I am.
6 Q. Now referring to Bates number NYC_2_00006350.
7 THE COURT: Mine are all illegible. I can't read any
8 Bates numbers on the copy you gave me. They just come off as a
9 group of dashes.
10 MS. GROSSMAN: On the screen.
11 THE COURT: Do you know how far into the document that
12 is, roughly?
13 MS. PUBLICKER: About 16.
14 THE COURT: I think I found it. Thank you. Okay.
15 Q. So Inspector, are you familiar with the criteria for an
16 officer, the criteria that places an officer in performance
17 monitoring?
18 A. Yes.
19 Q. And what are your responsibilities as a CO when an officer
20 is placed in performance monitoring at the level I?
21 A. I'll meet with the officer. I have to sit down with him.
22 I'll -- or her. I'll discuss the -- whatever the issue is that
23 got them into performance monitoring in the first place, what
24 exactly the program entails, and what their responsibility is
25 to successfully improve to the point where they can ultimately

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1 get out of the program.
2 Q. And so how do you learn when an officer is placed in
3 performance monitoring.
4 A. You get a notification from the employee management
5 section.
6 Q. And what kind of report is sent to you from employee
7 management?
8 A. I'll get a report detailing what exactly -- what happened
9 that got the officer into the program in the first place.
10 Q. So now looking at level I, second bullet point, 3 or more
11 CCRBs in one year.
12 Do you actually know the summary? Do you receive a
13 summary of what those three CCRBs are about?
14 A. Yes.
15 Q. And what other information is provided by employee
16 management?
17 A. Basically we have access to -- well, what I'll get from
18 employee management is the notification that the person's
19 enrolled in a program, and the CCRBs. And the other stuff we
20 could just compile at the command.
21 Q. Do you get the CCRB history of an officer?
22 A. Yes.
23 Q. And do you get the disposition of those CCRB complaints?
24 A. If there is a disposition it would be part of the file,
25 yes.

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1 Q. And is it your understanding that when an officer is placed
2 in performance monitoring it -- that the numbers that trigger
3 placement in the performance monitoring, it does not matter if
4 the CCRB is substantiated or unsubstantiated?

5 MS. HOFF VARNER: Objection to the leading nature of
6 the question.

7 MS. GROSSMAN: I'm sorry. I could ask that better.
8 Sorry.

9 Q. Do you have an understanding as to whether the criteria
10 that places an officer in performance monitoring requires an
11 unsubstantiated CCRB or a substantiated CCRB?

12 A. No. The fact that the CCRBs are generated in the first
13 place is enough that would enter them in the program.

14 Q. Now when an officer is on level II, what other
15 documentation is provided to you --

16 A. Level.

17 Q. -- by employee management?

18 A. Well level II differs from level I in that it requires
19 quarterly reports on the performance of the subject officers.
20 So in addition to everything that would in a level I folder
21 there are evaluation reports that have to go back up to
22 employee management quarterly on the officer's progress.

23 Q. And what information are you required to include in the
24 quarterly report?

25 A. They record different things such as sick, was the officer

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1 subject to any disciplinary action during the rating period
2 such as command disciplines or minor violations, also demeanor
3 of the person, and then arrest and summons activity will all be
4 captured in that report. There's also a narrative where -- for
5 some comments on an officer's performance.

6 Q. And when an officer in your command is placed in a
7 monitoring program, what are you as the CO required to do?

8 A. I meet with the officer. We'll sit down. We'll discuss
9 the factors that got them into the program.

10 I will give them all the parameters of the program and
11 how he or she can successfully get through that program. And
12 explain to them exactly the fact that they will be monitored.
13 There will be interim reports that go up every quarter.

14 Q. And do you discuss steps that the officer needs to take to
15 get off the monitoring program?

16 A. Yes.

17 Q. And do you also speak with the immediate supervisor?

18 A. Yes.

19 As well as the platoon commander or the lieutenant
20 that's responsible for the officer.

21 Q. Do you actually go through the civilian complaints with
22 that officer?

23 A. Yes.

24 Q. And what -- in terms of stops, have you had occasion to
25 monitor officers who have had CCRBs concerning improper stops?

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1 A. In my experience what's happening on these stops, it's
2 the -- it's the manner in which the stop is made. It's more
3 about rudeness. And I find it's either going to be the way
4 that the officer spoke to the person or not explaining why the
5 stop happened in the first place.

6 MS. HOFF VARNER: Your Honor, I would object to that
7 question and answer to the extent that it relies on information
8 that he pulled together based on the 2013 analysis that we just
9 discussed.

10 THE COURT: Is that based on the review of the 2013
11 information?

12 THE WITNESS: We're talking about civilian complaints
13 now?

14 MS. GROSSMAN: Just generally.

15 THE WITNESS: No. It's separate.

16 THE COURT: Objection overruled.

17 Okay. It's 4:30. We need to stop for the day anyway.
18 So I am going to direct that he speak to his administrative
19 person and gather all of the 2013 complaints, just the one or
20 two page summary of each complaint, so that it can be produced
21 to your counsel for potential redaction and then to plaintiffs'
22 counsel.

23 See you tomorrow.

24 MR. MOORE: Judge, can I have a word with you
25 unrelated to the case?

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THE COURT: Yes. Sure.
MS. HOFF VARNER: Your Honor, can I just ask for a
deadline or some sort of date certain by which --
THE COURT: I'm hoping. But he has to call his person
first to see.
(Adjourned to April 30, 2013 at 10:00 a.m.)

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DEFENDANT EXHIBITS	
Exhibit No.	Received
O3, C4, N5, and T115167
D105249
J145341

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----x

DAVID FLOYD, et al.,
Plaintiffs,

v.

08 CV 1034(SAS)

CITY OF NEW YORK, et al.,
Defendants.

-----x

New York, N.Y.
April 30, 2013
10:05 a.m.

Before:

HON. SHIRA A. SCHEINDLIN,
District Judge

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1 (Trial resumed)

2 KENNETH LEHR, resumed.

3 MS. BORCHETTA: The parties have a brief stipulation
4 that we would like to put on the record.

5 The parties have stipulated to the following facts.
6 Inspector Helen McAleer's testimony at trial transcript pages
7 3998, line 25, from the sentence beginning "and unfortunately,"
8 to 3999, line 1, and 4010, lines 1 to 2, that the NYPD
9 conducted an investigation into the November 2008 racial
10 profiling allegation against Police Officer Jonathan
11 Rothenberg, OCD case number 0854288, is stricken from the
12 record. And the NYPD is unable to determine whether or not an
13 investigation into the November 2008 racial profiling
14 allegation against Police Officer Jonathan Rothenberg was
15 conducted.

16 THE COURT: I am looking confused because it's unusual
17 to strike ten pages of testimony.

18 MS. COOKE: It was one page, 3998 to 3999, a couple of
19 sentences. And on 4010, those two lines. It's a total of four
20 lines of testimony.

21 THE COURT: Anyway, what is it all about?

22 MS. COOKE: If you recall, Inspector McAleer testified
23 with respect to paperwork that her staff had called PS2
24 regarding an investigation filed, the case filed that Ms.
25 Borchetta mentioned. We then, in response to plaintiffs'

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1 counsel request, provided a declaration from the individual
2 whom Inspector McAleer's staff had spoken to and who had
3 conducted the search for that relevant paperwork, which could
4 not be identified because there had been flooding of raw sewage
5 related to Hurricane Sandy in the basement storage records room
6 of PS2. So because paperwork was destroyed and could not be
7 identified, it can't be identified whether or not, in fact, the
8 investigation steps were taken and what those were and what the
9 disposition was. So we have stricken four lines of testimony
10 to clarify that.

11 THE COURT: OK. I think I understand.

12 I also received a letter through my law clerk from Ms.
13 Borchetta. It's dated last night at 10 after 8. Essentially
14 asking for proffers of certain remaining witnesses.

15 Does the city want to respond to that in writing or
16 orally?

17 MS. GROSSMAN: I didn't have a chance to review that
18 letter, but we would like to respond in writing if that's
19 possible.

20 THE COURT: Maybe not. Maybe when you review it, you
21 will decide you don't have to.

22 MS. GROSSMAN: If I may just have an opportunity to
23 review it and at lunchtime I can look at it.

24 THE COURT: And let me know how you want to proceed.
25 You may not want to respond in writing because maybe you will

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1 be able to respond or do what she asks. OK. So we will
2 address that later today.
3 Inspector Lehr, we are continuing.
4 DIRECT EXAMINATION (Cont'd)
5 BY MS. GROSSMAN:
6 Q. Good morning, Inspector.
7 A. Good morning.
8 Q. Yesterday you testified that the 67 Precinct --
9 THE COURT: Can I interrupt?
10 Were you able to sort of give that homework assignment
11 to the administrative person in the precinct?
12 THE WITNESS: Yes, your Honor.
13 THE COURT: Are they working on it as we speak or is
14 it done already?
15 THE WITNESS: It's completed.
16 MS. GROSSMAN: Your Honor, it's in the works, and we
17 are getting documents as we speak. So we are going to have
18 someone redact them and try to make arrangements for
19 production. So I have to go back to my office later at the end
20 of the day and see where they stand and then assess the
21 redaction process. But I don't anticipate that it will take
22 more than a day or two. We will try to turn that around as
23 quickly as possible.
24 MS. HOFF VARNER: In the interim, I just wanted to
25 renew our motion to strike the relevant testimony from
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1 yesterday. If the city produces the documents, they will have
2 an opportunity to elicit it again, and until that point, we
3 think it should be deleted.

4 THE COURT: I will just hold off on that request until
5 you get the documents, assess it, figure out what to do about
6 it.

7 It may mean you may have to come back for some
8 questions. That's the only thing. Once the city turns it over
9 to the plaintiff, the plaintiff may have some questions and you
10 may have to come back.

11 THE WITNESS: I understand.

12 THE COURT: Now we are ready to proceed.

13 BY MS. GROSSMAN:

14 Q. Yesterday you testified that the 67 Precinct conducted
15 about 70 OCD investigations per month. Do you recall that
16 testimony?

17 A. Yes.

18 Q. Now, since complying with the Court's order from yesterday,
19 did you have occasion to find out the total number of OCD
20 investigations that were actually --

21 THE COURT: In what period?

22 Q. From the beginning of January 2013 to present?

23 THE COURT: That's fair.

24 What is the problem? I would like to know the answer.

25 MS. HOFF VARNER: I'm sorry. The question?

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1 THE COURT: How many investigations between January 1,
2 2013 to date?

3 A. I would just like to clarify. Yesterday I said that the 67
4 Precinct averaged 70 of those investigations per month going
5 back to 2012. When we actually looked at that, that was the
6 total number of communications of which the chief of department
7 communications are a subtotal.

8 So we boiled it down for the new year, for 2013, how
9 many of the total communications, which year to date we had
10 278, how many of those -- which were still about 70 per month
11 through April -- how many of those were chief of department
12 communications, which was what we were talking about here. It
13 turned out we had 107 year to date what we are talking about
14 here. So our real average for those specific type of
15 communications was about 26, 27 per month for the year.

16 THE COURT: That's from the chief of department. What
17 was the 70 referred to?

18 THE WITNESS: What happens is that number is inflated
19 by other things that get numbers. It could be memos, it could
20 be some directives that come down from overhead commands,
21 meaning the borough, patrol service bureau or chief of
22 department. When I had asked my administrative lieutenant for
23 an average of how many we were getting per month, there was a
24 breakdown of communication on my part. I should have clarified
25 that we were just talking specifically about chief of

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1 department investigations, and he included the total number.
2 So I am sorry for any confusion with that.

3 THE COURT: That's fine. I am glad we straightened it
4 out.

5 Q. So there are about 25 average office of chief of department
6 investigations relating to police encounters with the public?

7 A. Yes. For 2013, the first four months, it's roughly 25, 26.

8 Q. Of those, approximately how many relate to stop, question
9 and frisk?

10 MS. GROSSMAN: Subject to proving up --

11 THE COURT: I understand.

12 In 2013, of the 107, how many relate to stop and
13 frisk?

14 THE WITNESS: I had my staff at a glance go through
15 them manually last night, and what they identified were six
16 that possibly stem from a stop, question and frisk situation
17 that we have identified, but they will all be available.

18 THE COURT: To your knowledge, this hasn't been done
19 for 2012, this analysis?

20 THE WITNESS: No, it hasn't.

21 THE COURT: I just want to make sure.

22 So it was done at my request for 2013?

23 THE WITNESS: Yes. They worked through the night to
24 get me that information.

25 Q. Now, when you were the integrity control officer, did you
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- 1 actually receive any training on how to conduct an
2 investigation?
3 A. Yes. The department has training for all ICOs. I attended
4 that training. Part of that training was how to conduct
5 investigations.
6 Q. Did you receive that training from the Internal Affairs?
7 A. Yes.
8 Q. Have the ICOs in the various commands that you served as
9 commanding officer also received that kind of training?
10 A. Yes.
11 Q. Now, what are you looking for when you review an OCD
12 investigation as the commanding officer?
13 A. I start off reading the context -- the complaint itself and
14 find out what exactly is the source of the complaint.
15 Sometimes -- I will make sure when I review the investigative
16 results that the investigation actually addresses what was
17 complained about.
18 Q. How do you evaluate whether the OCD investigation is
19 adequate in your view?
20 A. I want to make sure that all the elements of the complaint
21 are addressed by the investigating supervisor.
22 Q. Is part of that making sure that an attempt was made to
23 speak with the complainant?
24 A. Yes.
25 Q. Is part of that also to see if pursuant to that attempt

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1 there was actually an interview with the complainant?

2 MS. HOFF VARNER: Objection. All of this was asked
3 and answered from yesterday's testimony.

4 THE COURT: We are focusing on OCD complaints. I will
5 allow it.

6 A. Yes.

7 THE COURT: It would be best if she would just ask you
8 what was done rather than a leading question.

9 Q. What have you looked at to determine the adequacy of the
10 OCD investigations that you have reviewed?

11 A. Just to reiterate, the important thing is that all parties
12 are interviewed so we can get all sides of the story. The
13 complainant, number one, that's the person who is generating
14 the complaint in the first place; any members of the service
15 that may have been involved in this so we can get different
16 perspectives on whatever happened; any corresponding department
17 records that would add to the investigation to make sure that
18 we have got everybody included that was there and maybe has a
19 vantage point that can shed some light, further light on the
20 situation. And then any corrective action that needs to be
21 taken.

22 Q. So now returning back to, we started talking about
23 performance monitoring yesterday so I just want to return to
24 that topic referring to Defendants' Exhibit Z3.

25 MS. GROSSMAN: Your Honor, do you need another copy?

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1 THE COURT: Which one is it again?

2 MS. GROSSMAN: Defendants' Z3.

3 THE COURT: I have it.

4 Q. I think we put on the screen NYC_2_00006350. That was the
5 performance monitoring criteria.

6 Now, we discussed yesterday some of the steps that you
7 as commanding officer would take once you are noticed that an
8 officer is on performance monitoring. At some point you
9 mentioned you would actually bring the officer in and have a
10 face-to-face meeting, right?

11 A. Yes.

12 Q. Can you tell the Court what it is that you discuss with
13 that officer and what your goal is when you have such a
14 meeting?

15 A. Well, we will review the actions that got them in trouble
16 in the first place and got them into the performance monitoring
17 program. We will take a look -- in one of these cases, it's
18 usually a compilation of things that happened. We will review
19 that and look for a common thread. Are they making the same
20 mistake over and over again, or is it more of a widespread
21 approach to the way they are going about their work?

22 Once I identify the weaknesses in the officer's
23 approach, we will discuss that. Also, come up with, depending
24 on what those findings are, basically some recommendations on
25 how they can correct their action and maybe better navigate

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1 these types of situations without getting into a problem.

2 Q. Do you actually discuss the civilian complaints that are
3 attached to the file that you receive?

4 A. Yes. If they are entered because of an accumulation of
5 CCRBs, we will go through their whole history with civilian
6 complaints. Also, I will discuss with them exactly what their
7 obligations are to successfully complete the program, what the
8 time limits on the program are, and what the ramifications are
9 at the end of the road, in terms of basically the whole
10 perspective on what the performance monitoring program is, I
11 apprise them of all of that.

12 Q. Are there discussions about the impact that being on
13 performance monitoring has on an officer's career in the police
14 department?

15 A. Yes.

16 Q. Can you explain what you discuss with the officers?

17 A. Well, I take the opportunity, while I have them in front of
18 me, to discuss with them -- I will ask them, what are your
19 career goals? What are your aspirations within the NYPD?
20 There are a lot of different avenues you can go down in the
21 NYPD, whether you want to go to emergency service, if you want
22 to try and become a detective, but there is a lot of different
23 career paths. No matter what path they are looking to go to,
24 their inclusion in the performance monitoring program, it's
25 going to impede their career, and if they are serious about

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1 being a police officer and making this their career, then they
2 are going to have to successfully get through this program and
3 hopefully not return back into it. So I will lay all that out,
4 and I will talk about how it can hurt them when they are in
5 competition for a career path opportunity with somebody who
6 maybe doesn't have negative or performance monitoring in their
7 history.

8 Q. Now, are you aware of occasions where officers have been
9 held up in terms of promotion because they have been on
10 performance monitoring?

11 A. Yes.

12 Q. Now, specifically, with respect to some of the discussions
13 you had regarding civilian complaints when an officer is on
14 monitoring, what are some of the specifics that you are looking
15 for when you're looking at the CCRB cases?

16 A. Well, the CCRB criteria, you're talking about FADO
17 allegations -- force, abuse of authority, discourtesy, obscene
18 language, discourtesy. What I will do is I will take a look.
19 If they are accumulating multiple CCRBs, are they falling into
20 the same category?

21 Q. What kind of categories?

22 A. If it's for force, then I would talk -- let's say somebody
23 got three, the minimum criteria to get into the program. If
24 all three are force, then I want to focus in on exactly -- I
25 will get into the CCRBs, what is in the text of the complaint

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1 and try and identify what is happening here, why is this
2 officer getting these type of complaints? If it's discourtesy,
3 I will look for a common thread. Is there a remark that the
4 officer is making repeatedly? If there is something that they
5 purge from their interaction with the complainant, can they
6 maybe not fall into a situation -- can they not get into a
7 situation where they are disrespecting somebody else to the
8 point where it's going to generate a CCRB on them and they are
9 going to have to be disciplined for it.

10 So I will look for these type of things because,
11 basically, I will be able to more accurately give
12 recommendations to the specific officer on how to correct their
13 actions.

14 Q. What are some of the available options for you to remediate
15 a problem with an officer who is on monitoring?

16 A. Well, the officers in the 67 who have gone into performance
17 monitoring, we send them to training. There is a two day
18 training course which is designed and aimed at, you know,
19 basically focusing in on the department's commitment to
20 courtesy, professionalism, and respect, and raise their
21 awareness of these things.

22 Q. Do you have options available in terms of reassigning
23 officers from one tour to another or in other -- let me
24 rephrase it.

25 Do you have other options available to you in terms of
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- 1 changing an officer's assignment?
2 A. Yes.
3 Q. What would be examples of circumstances where you might
4 change an officer's assignment?
5 A. If somebody in say a specialized unit was accumulating
6 CCRBs and I felt like they were not -- I sat down with them and
7 discussed what the issue was, and I felt like they weren't
8 making adjustments in their approach by my own observations, I
9 have moved people out of assignments and put them back into a
10 uniformed assignment for that.
11 Q. Now, are you required to document the fact that you had a
12 meeting with an officer on performance monitoring?
13 A. Yes.
14 Q. Is that required by the employee management division?
15 A. Yes.
16 Q. How do you go about documenting that meeting?
17 A. There is a form that requires a signature of myself as well
18 as the subject officer.
19 Q. Is that form generally attached to the packet of material
20 that the employee management division sends to you?
21 A. It comes down with the folder down through channels. It
22 gets endorsed by myself and the subject officer and goes back
23 up to employee management division.
24 Q. So the subject officer also has to sign this piece of
25 paper?

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- 1 A. Yes.
2 Q. Do you also speak to an officer's immediate supervisor and
3 the lieutenant about an officer who is on monitoring?
4 A. Yes.
5 Q. What is the purpose of that meeting with the lieutenant and
6 direct supervisor?
7 A. I want them to be aware of what the problem is, and I
8 expect them to increase the level of supervision and provide
9 some guidance to the officer.
10 Q. With respect to officers who are on performance monitoring,
11 what role do you have your ICO play in monitoring an officer?
12 A. The ICO has to have -- what I direct them to do, and what
13 they are doing, is having consistent interaction with the
14 subject officers and monitoring their performance, both by
15 engaging them in a dialogue as well as making patrol
16 observations on how they are doing in the street and their
17 interaction with the public, even in a station house setting as
18 well.
19 Q. Are these observations in the presence of the officer or
20 from a distance from the officer?
21 A. Both.
22 Q. How long is an officer on performance monitoring?
23 A. One year.
24 Q. At level one, looking at the different levels, there is
25 level one, level two, and I think if you go down a little there

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1 is level three?

2 A. Correct.

3 Q. How long is an officer on performance monitoring when it's
4 level one?

5 A. One year.

6 Q. Do you have to evaluate the officer after a certain period
7 of time?

8 A. Yes. At the ten month mark, I have to make a
9 recommendation on -- I have to report on and make
10 recommendation on, number one, the officer's performance, how
11 have they done since they were put in performance monitoring?
12 I have to make recommendation on whether I believe they should
13 continue to be in level one monitoring or if I make a
14 recommendation that their behavior is to the point where they
15 need to be elevated to a level two or three.

16 Q. What are some of the considerations you take into account
17 when you are making that recommendation?

18 A. What I am looking for is, did the officer who had the
19 problem in the first place make an adjustment to the way that
20 they are policing? That's what I am looking for. I am looking
21 for them to correct the deficient behavior.

22 Q. Now, are you also considering whether there are additional
23 civilian complaints that have been lodged against that officer?

24 A. The way the program works is if they get another civilian
25 complaint after being entered into the program, the clock

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1 starts over. So that one year period that we discussed for
2 level one monitoring, if a police officer goes through a nine
3 month period without a civilian complaint but then gets one,
4 the clock starts all over. So they are still going to be in
5 the performance monitoring program. They have to go a year
6 without a another one to rotate out of the program.

7 Q. During your years as commanding officer of the various
8 commands, in Transit District, 9th Precinct and 67 Precinct,
9 have you had occasion to remove an officer from enforcement
10 duties as a result of being on performance monitoring?

11 A. Yes.

12 Q. When the clock starts running again when an officer
13 receives a civilian complaint, does it matter if that civilian
14 complaint is substantiated or unsubstantiated?

15 A. The disposition is separate and apart. The fact that the
16 civilian complaint is lodged is enough to get the officer
17 entered in the program and to extend it.

18 Q. Now, does the receipt of an OCD complaint factor into your
19 decision whether to remove the officer from level one
20 monitoring?

21 A. Yes.

22 Q. How so?

23 A. Depending on the nature of the complaint, if it's
24 consistent or somehow an indication that the officer is still
25 performing in a way that got them in trouble in the first

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1 place, that would tell me they are not adjusting their
2 approach, and I would definitely take that into consideration.

3 Q. If an officer on monitoring received another complaint,
4 would you bring that officer in to speak with him again?

5 A. Yes.

6 Q. Do you have discussions with the supervisor of that
7 particular officer as well?

8 A. Yes.

9 Q. Why do you believe it's important for you as commanding
10 officer to have that face-to-face meeting with the officer?

11 A. I think it's very important for the message to come
12 directly from me because I don't want it to go through somebody
13 else. It's got to come directly from me. I am the commanding
14 officer of the command. I feel a responsibility to give some
15 proper guidance and try and provide the officer with a path to
16 successfully adjust their behavior and successfully complete
17 the program. So I want the message to come directly from me
18 personally.

19 Q. Now, have you also as commanding officer adjudicated
20 command disciplines?

21 A. Yes.

22 Q. Have you also adjudicated command disciplines for failure
23 to make activity logs?

24 A. Yes.

25 Q. What are the range of penalties in your command when an
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1 officer receives a command discipline for failure to make an
2 activity log?

3 A. The memo book entry deficiencies are a scheduled B, C, D,
4 which means they can be anything from a warn and admonishment
5 to a maximum of ten days penalty.

6 Q. Inspector, I am going to move on to 802 QAD audits. Are
7 you familiar with the 802 QAD audits?

8 A. Yes.

9 Q. Referring to Defendants' Exhibit G6.

10 MS. GROSSMAN: Your Honor, I have a courtesy copy. We
11 are not really going to spend much time with the document. We
12 are going to try to use the screen, but I just want to give
13 this to the witness.

14 THE COURT: OK.

15 Q. Can you just take a moment to look at that document,
16 Inspector?

17 Now, when were you the commanding officer of the
18 Transit District 33, you were responsible and had oversight for
19 the 802 QAD audits, right?

20 A. Yes.

21 Q. Can you just remind the Court when you were the commanding
22 officer of Transit District 33?

23 A. May 20, 2006, through January of 2010.

24 Q. So referring to the 2007 audit at Bates number
25 NYC-00004296, do you see to the left the results of the transit
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1 bureau audits are on the screen?
2 A. Yes.
3 Q. You see to the left it has the list of the transit
4 districts?
5 A. Yes.
6 Q. Looking at Transit District 33, do you see the results of
7 the activity log portion of the audit while you were the
8 commanding officer of Transit District 33?
9 What are the results? Do you see to the far right
10 check members activity log?
11 A. It's a 4.
12 Q. The overall rating for the stop, question and frisk for
13 Transit District 33?
14 A. 3.9.
15 Q. Moving on to the 2008 audit at NYC-00004314.
16 Now, I don't know that the screen is able to see, but
17 maybe you can zoom out a little. To the left do you see
18 Transit District 33?
19 A. Yes.
20 Q. Moving over to the right, do you see the results of the
21 activity log portion of the audit?
22 A. Yes.
23 Q. What is it?
24 A. 4.
25 Q. What is the overall rating?

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- 1 A. 4.
2 Q. Then moving on to the 2009 audit at NYC_2_00018533, you see
3 to left Transit District 33?
4 A. Yes.
5 Q. You see the results for the activity log portion of the
6 audit?
7 A. 4.
8 Q. What is the overall for stop, question and frisk?
9 A. 4.
10 Q. So then there came a time that you were transferred to the
11 9th Precinct, right?
12 A. Correct.
13 Q. You were transferred in January 2010?
14 A. Correct.
15 Q. So now let's move on to the 2010 802 audit. And we are
16 going to NYC_2_00021742.
17 Looking at the activity log rating to the right, you
18 see the 9th Precinct received a 1 on the activity log?
19 A. Yes.
20 Q. And an overall of 3.2?
21 A. Correct.
22 Q. So what steps did you take to try to correct that
23 deficiency when you were at the 9th precinct?
24 A. I had circulated a memo and instructed my desk officers to
25 spot-check the officers' activity logs. As they came into the

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1 station house to turn in stop, question and frisk reports, I
2 had mandated that the sergeants or lieutenants on the desk take
3 the stop, question and frisk reports and spot-check the
4 officers' activity logs to ensure that they were making
5 activity log entries.

6 Q. Now, moving on to 2011, 802 for the 9th Precinct, again,
7 the activity log rating for the 9th precinct was again a 1?

8 A. Yes.

9 Q. And the overall was a 3.1?

10 A. Correct.

11 Q. So what additional efforts did you take to try to remediate
12 that problem?

13 A. At that point, obviously, the first attempt at correcting
14 this failed to have the desired result. At that point, I had
15 my integrity control officer take a more active role in
16 ensuring that this was actually getting done and spot-check
17 himself on these.

18 Q. So then moving on to 2012, the 802 9th Precinct, looking
19 over to the 9th Precinct, what was the rating for the activity
20 log entry?

21 A. 3.

22 Q. The overall rating was a 3.6?

23 A. Correct.

24 Q. Now, you were no longer the commanding officer at the time
25 that this rating came in, right?

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- 1 A. Correct.
2 Q. By that time you were transferred to another precinct?
3 A. The 67.
4 Q. Do you believe that your steps played a role in bringing
5 about the change in the activity log rating?
6 MS. HOFF VARNER: Objection. Calls for speculation.
7 THE COURT: I will allow it.
8 A. I like to think that it did. I think we got the ball
9 rolling. But the person who succeeded me there deserves some
10 of the credit as well.
11 Q. So now referring to the 2012 802 audit for the 67 Precinct,
12 at NYC_2_00027860, looking at the results of the audit for the
13 67 Precinct, what was the rating under the activity log portion
14 for the 67 Precinct in 2012?
15 A. 4.
16 Q. What was the overall rating for the stop, question and
17 frisk?
18 A. 3.8.
19 Q. Now, moving on to UF-250s, are you aware that the patrol
20 guide procedure regarding stop, question and frisk requires the
21 desk officer to sign the UF-250s?
22 A. Yes.
23 Q. In practice, are the squad supervisors actually signing the
24 250s in the 67 Precinct?
25 A. Yes.

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1 Q. How do you know that?

2 A. Just in the review process of the stop, question and frisk,
3 any glance at the index, you will see that a number of
4 supervisors that are in the field are endorsing a large portion
5 of the stop, question and frisk reports.

6 Q. Have you provided instruction to the supervisors in your
7 command that you expect, when possible, that squad supervisors
8 sign the 250s?

9 A. Yes.

10 Q. Now, while you were the CO in the 67 Precinct, how many
11 officers received 2.5 or lower on their evaluation?

12 A. None.

13 Q. Last year?

14 A. None.

15 Q. Now, going back to the questions that I asked you about the
16 civilian complaints, do you have an understanding of
17 approximately how many civilian complaints were filed against
18 officers in your command last year, just ballpark?

19 A. I think it was 46 or 49, around that range. I want to say
20 49, roughly.

21 THE COURT: By last year you mean all of 2012?

22 THE WITNESS: All of 2012.

23 Q. Now, what are the demographics of the officers in your
24 command?

25 MS. HOFF VARNER: Objection.

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- 1 MS. GROSSMAN: Did I ask that yesterday?
2 MS. HOFF VARNER: I do object on relevance.
3 THE COURT: I don't know what the relevance is myself.
4 MS. GROSSMAN: The demographic composition of the
5 officers.
6 THE COURT: What is the relevance?
7 MS. GROSSMAN: I think that in terms of the
8 sensitivity to --
9 THE COURT: I don't think that's fair to make any
10 inference that one race is more sensitive to another race or
11 their own race or anybody else. So I am not going to allow
12 that. That would require him to draw an inference about race,
13 which I don't think is appropriate.
14 Q. Now, are the uniformed staff in your command deployed
15 evenly throughout the precinct?
16 A. No.
17 Q. What determines the deployment of the uniformed staff?
18 MS. HOFF VARNER: Objection. I think all of these
19 questions about deployment were asked and answered yesterday.
20 MS. GROSSMAN: Not these specific questions.
21 THE COURT: Do you think you talked about this
22 yesterday, this particular question?
23 THE WITNESS: Not this particular one.
24 THE COURT: Go ahead.
25 A. The deployment is based on current crime trends and

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1 conditions.

2 Q. Now, how do you go about reinforcing the racial profiling
3 policy in your command?

4 A. As soon as officers get assigned to the precinct, we have
5 an orientation at the command. As part of that orientation, we
6 invite and have members of the community in the 67 Precinct,
7 including local politicians, local clergy, community council
8 representatives, prominent members of the community, all come
9 in and introduce themselves to the police officers. So we do
10 that.

11 We also have some of the officers who have been in the
12 precinct for a long time and have some standing speak to the
13 officers about what they can expect, different conditions that
14 are unique to the 67.

15 One of the other things we do is, when I have a new
16 group of officers like that, I will take a number of them and
17 have them attend the community council meetings so they can
18 introduce themselves to the community and then make
19 observations on what the community concerns are. Because in
20 that setting the people who attend those meetings have an
21 opportunity to talk about things that concern them, things that
22 are important to them, and I want the young officers to be able
23 to see that, and so they may hopefully have a better
24 understanding of how their actions on the street really affect
25 the relationship between the police officers and the community

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1 we serve.

2 THE COURT: Does the topic of stop and frisk ever come
3 up at any of these community meetings?

4 THE WITNESS: A whole broad range of topics come up,
5 disputed arrests, disputed summonses, stop, question and frisk,
6 requests for more officers in my side of the precinct rather
7 than somewhere else, a whole host of things come up.

8 THE COURT: I asked specifically about stop, question
9 and frisk. Does that come up?

10 THE WITNESS: It does.

11 Q. What specifically about stop, question and frisk does come
12 up?

13 A. Depending on the specific scenario, a lot of times it's got
14 to do with the treatment, people feel like they were not
15 treated properly and were not apprised of the reason for the
16 stop. So they will ask questions about that.

17 One of the things we do at community council meetings
18 is I have some staff members there, including my community
19 affairs staff. When we get a complaint like that, we will
20 exchange information. If the officer is readily available, we
21 will basically try and repair the relationship there. If there
22 is a negative interaction, anything along those lines, where
23 somebody feels they had a negative interaction with the police,
24 if we have an opportunity to somehow repair that, we try and do
25 that. We will exchange information and follow up with them.

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1 Q. Now, is Jumaane Williams, does he serve in the 67 Precinct,
2 or does the 67 Precinct cover the area that he serves?

3 THE COURT: Who?

4 MS. GROSSMAN: Jumaane Williams.

5 A. He is a local City Council representative for a large
6 portion of the East Flatbush area.

7 Q. Does he attend some of your community meetings?

8 A. He regularly attends just about all of the public meetings.
9 He is a regular at the community council meetings, a regular at
10 the community board meetings. If he is not available for
11 cabinet meetings, he will have a representative from his staff
12 there. But Councilman Williams and myself, several times a
13 month we are in the same setting, and we are together a lot
14 every month at different meetings.

15 Q. What is the sum and substance of some of the comments he
16 has made to you?

17 MS. HOFF VARNER: Objection. Calls for hearsay.

18 THE COURT: Sustained.

19 MS. GROSSMAN: It's about the notification of concerns
20 about the community regarding stop, question and frisk.

21 MS. HOFF VARNER: I would still object. It still
22 calls for hearsay.

23 THE COURT: No. Not if it's not offered for the truth
24 but merely to show the notice the police officers had. But
25 then it can't be offered for the truth, but just to show the

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1 statements or complaints that he made.

2 Go ahead.

3 A. Councilman Williams is an outspoken critic of stop,
4 question and frisk. He is an opponent of stop, question and
5 frisk. He will voice that regularly at the meetings that we
6 both attend. However, he is very complimentary to me
7 personally and my staff. He will usually preface his comments
8 about stop, question and frisk as a whole with a compliment to
9 the members of the 67 Precinct.

10 THE COURT: I don't think that last part went to
11 notice, I must say. It's nice to know.

12 Q. Generally, in terms of the community council meetings,
13 approximately how many members of the community generally
14 attend that meeting?

15 A. At least 40.

16 Q. What about community board meetings?

17 A. The community board meetings, I would say anywhere from 70
18 to 100.

19 Q. Now, has the community voiced concerns in ways other than
20 at these community meetings about stop, question and frisk?

21 MS. HOFF VARNER: Objection again on hearsay, except
22 to the extent it goes to notice.

23 THE COURT: I will allow it for that purpose.

24 You can answer.

25 Q. Outside the context of these community meetings, have you

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1 become aware that there has been some concern in your community
2 about stop, question and frisk?

3 A. Well, yes. Back on March 9 --

4 THE COURT: Of this year?

5 THE WITNESS: Of this year.

6 A. There was a police involved shooting in which a 16-year-old
7 was killed. In the wake of that incident, there were a number
8 of demonstrations that took place in the 67 Precinct for
9 several weeks. During the course of those demonstrations,
10 there was a vigil set up on 55th Street and Church Avenue.
11 There were a number of marches that took place from that
12 location to the shooting location, which was on 52nd Street
13 between Snyder and Tilden. Also, some of these marches
14 proceeded down to Nostrand and Snyder, the site of the 67
15 Precinct. Within the demonstration area participants, there
16 were a number of banners which voiced or basically were
17 concerns about police and stop, question and frisk was also
18 represented in some of the banners. There was some anti police
19 stuff as well as stop, question and frisk.

20 Q. Other than what we have discussed, are you aware of
21 complaints that citizens have made about racial profiling?

22 A. No.

23 Q. In terms of specific complaints that are brought to your
24 attention in your command?

25 MS. HOFF VARNER: Objection. Asked and answered.

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1 A. Not specifically.

2 THE COURT: I didn't hear.

3 MS. HOFF VARNER: I objected on the grounds that it
4 was asked and answered.

5 THE COURT: He answered again. That's OK.

6 Q. You mentioned you have a community affairs officer?

7 A. I have two.

8 Q. What are their responsibilities?

9 A. They are the bridge between the 67 Precinct and the
10 community, the liaison. They establish relationships with
11 people in the community. They are there to basically -- they
12 attend all the public meetings with me. They establish
13 relationships with the staff and local politicians, prominent
14 members of the community, and that's it.

15 MS. GROSSMAN: I am just going to go back to a few
16 questions from the beginning of yesterday that I failed to ask,
17 and I think I will be just a few more minutes.

18 Q. When you identified crime trends, how does that influence
19 the adjustment of your deployment?

20 A. Well, it could be an adjustment in the time of day that my
21 officers are working. We will look at the time that it's
22 occurring and the location where it's occurring. If the
23 officers -- if I have a group of officers that I feel are best
24 suited to eradicate that particular condition, I will just
25 assign them geographically and give them the information I have

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1 available on the crime trend. If it's something that the hours
2 are different than who I feel is best suited to deal with that
3 type of condition, I will adjust their hours at times and have
4 them do it, as well as communicate it to my patrol forces.

5 Q. Yesterday I showed you a sector map. Can you just tell the
6 Court approximately how many officers are assigned to each
7 sector out of the couple of hundred officers in your command on
8 any given tour?

9 A. Well, the baseline -- the way the platoons turn out on the
10 three platoons, meaning the midnight shift, the day shift, and
11 the 4 to 12 shift, we will turn out on average six sector cars.
12 However, there are 14 sectors within the 67 Precinct. So
13 typically you will have an Adam Boy Charlie, David Eddie Frank.
14 So as the radio cars turn out, they will be responsible for --
15 they are called a sector car, but it's really a few sectors
16 each, and they will be deployed into those areas.

17 Q. How do you know that the officers are actually addressing
18 the reported crime conditions in your command?

19 A. Well, we keep measuring as we go forward and see if the
20 condition is being corrected. Are we still seeing a repeat of
21 it? Are we recording the same type of crimes? Are we getting
22 the same type of 311 complaints? Are we getting the same type
23 of 911 calls for chronic narcotics or have we been able to
24 reduce or eliminate the problem?

25 Q. Now, moving on to supervision, I asked a few questions

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1 yesterday. I just wanted to ask one follow-up.

2 You mentioned that the, I think the integrity control
3 officer goes out and does some field observations in the field?

4 A. Yes.

5 Q. How do you know that the ICO is doing this?

6 A. Well, I have been out with the ICO personally. We have
7 gone out on a number of occasions and worked together. I was
8 an ICO in the past. I like to see the way he works. In
9 addition to that, he reports back to me on his observations,
10 how many hours he spends out making observations, and he tells
11 me what he sees and the corrective action that he takes.

12 Q. Now, plaintiffs' expert claims that there is over-policing
13 in majority of minority neighborhoods, like the 67 Precinct
14 where you serve as CO. Do you agree that there is
15 over-policing?

16 MS. HOFF VARNER: I am going to object to the extent
17 that that requires him to interpret what our expert means by
18 over-policing.

19 THE COURT: I think that's right. There is no
20 definition of the term that's in common.

21 You haven't read this expert report, have you?

22 THE WITNESS: No.

23 THE COURT: Objection sustained.

24 Q. Separate and apart from what the expert said, do you
25 believe there is too much policing in the 67 Precinct?

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1 A. No. In fact, at the community council meetings that we
2 just brought up and talked about, more than any other
3 complaint, it's people complaining that they don't have police
4 near their house. So, basically, we get a lot of people
5 lobbying for added police presence where they live.

6 MS. HOFF VARNER: I just object and move to strike
7 that last answer on hearsay grounds.

8 THE COURT: Overruled.

9 Q. Now, did there come a time where you, in terms of UF-250s,
10 did there come a time when you received a communication from
11 chief of patrol in March of 2013 regarding --

12 THE COURT: Can you start that question again?

13 Q. Did there come a time that you learned of a chief of patrol
14 memo dated March 5, 2013 requiring 250s be submitted along with
15 activity logs?

16 MS. HOFF VARNER: I object to that question. You have
17 already ruled that that particular memo cannot be discussed or
18 entered into evidence until Chief Hall testifies, which is
19 scheduled for several weeks from today.

20 THE COURT: If I already ruled that, then I already
21 ruled that.

22 MS. GROSSMAN: You actually allowed the witnesses to
23 answer that it's happening, because you let other witnesses
24 discuss that they received the memo and they are complying with
25 it.

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1 MS. HOFF VARNER: Actually, I think your Honor has
2 allowed them to say that they have received the memo.

3 THE COURT: Did you receive the memo?

4 THE WITNESS: Yes.

5 THE COURT: And?

6 MS. HOFF VARNER: And nothing further.

7 THE COURT: OK. I can't recall. You two seem to
8 recall. We have now gotten the answer the memo is received,
9 yes.

10 MS. GROSSMAN: I think I would like to be able to ask
11 the witness whether he is following --

12 THE COURT: I assume he follows orders all the time.
13 You're following whatever the memo tells you to do?

14 THE WITNESS: Yes, your Honor.

15 THE COURT: All right.

16 MS. GROSSMAN: May I make an offer of proof?

17 THE COURT: I don't know what that means. I ruled on
18 this already apparently. The memo itself and the contents of
19 it won't come in until Chief Hall testifies. But he has said
20 he received it and is following it.

21 MS. GROSSMAN: Just a couple of more minutes.

22 Q. Since March 5, have you instituted new procedures regarding
23 the activity logs?

24 THE COURT: One second.

25 The problem with that?

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1 MS. HOFF VARNER: This is effectively the same
2 question. He has already said that he has complied with
3 whatever the requirements of the memo are.

4 THE COURT: So you're asking the same question another
5 way? You're saying since March 5 what are you doing? But
6 that's whatever the memo says he should do. I said I am going
7 to put the memo off until Chief Hall comes.

8 MS. GROSSMAN: OK, your Honor.

9 (Continued on next page)

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D4u9flo2 Lehr - cross

1 MS. GROSSMAN: I have no further questions.

2 CROSS-EXAMINATION

3 BY MS. HOFF VARNER:

4 Q. Good morning, Inspector Lehr.

5 A. Good morning.

6 Q. As the commanding officer of the 67 precinct, are you aware
7 that there were over ten thousand UF 250s completed in your
8 precinct for 2012?

9 A. I don't know the number off the top of my head but okay.

10 THE COURT: Does that sound -- that could be in the
11 ballpark?

12 THE WITNESS: Yes.

13 THE COURT: Yes.

14 Q. And you testified that there's a correlation between the
15 sectors in your precinct that have the highest numbers of index
16 crimes and the sectors that have the highest numbers of stop,
17 question and frisk activity, correct?

18 A. For 2013 through April 14, which was week 15 of this year.

19 Q. The way that you just said that, is that correlation that
20 you identified based on a regular report that the precinct
21 produces?

22 A. No. That was based on me retrieving information from the
23 department databases and just cross-referencing where the
24 crimes were occurring and where the UF 250 encounters were
25 occurring.

D4u9flo2 Lehr - cross

1 Q. Was this generated in order to -- for you to allow you to
2 testify at this trial?

3 A. No. I regularly -- I have -- part of my oversight in terms
4 of -- in measurements on how we perform is -- I do that.

5 Q. So how often do you look at the correlation between the
6 index of major crimes and the sectors where those crimes are
7 occurring and the sectors where the stops are occurring?

8 A. Regularly.

9 Q. How often, once a month? Once every six months?

10 A. Regularly.

11 THE COURT: I know. So she's trying to get the
12 interval. When you say regularly, do you try to do it once a
13 month?

14 THE WITNESS: What happens is we prepare for -- it's
15 part of like something that I look at. If I'm preparing for a
16 CompStat meeting or a borough meeting where I have to discuss
17 the transit conditions in my command, that would be part of my
18 normal oversight. So it's something that I do look at. I've
19 regularly looked at. It goes back to the days when I was in
20 district 33 in transit. Just where it comes from, in transit,
21 you know -- I had 51 train stations in district 33. So it was
22 just part of my thought process. We would always take a look
23 at where were the crimes occurring and if we had any type of
24 activity, did it correlate to the right tour and the right
25 location.

D4u9flo2

Lehr - cross

1 And this is basically the same thing. Broken down by
2 sector. If I have a number of crimes, I'll always try and
3 identify my top sector for crime and I'll always have to have a
4 response in terms of what I've done to try and address that.

5 So deploying personnel would be one aspect of that.
6 Then part of the CompStat process is: Okay, you identify a
7 problem. You have to respond to it. Then take a look at
8 what's being done in response to that. So I'll take a look
9 afterwards to see: Did that crime that we deployed the people
10 for, whether it was a robbery condition or a burglary
11 condition, when we identified it, we're taking out a rate of
12 maybe one per day. Now we make the deployment. Are we now
13 taking at a lower rate? Is it happening twice per week rather
14 than seven times per week? Are we having a positive impact?
15 It's just another measurement of that.

16 Q. To look at that measurement you're looking at the map of
17 where the crime happens and where the activity happens,
18 correct?

19 A. Yes.

20 Q. So as long as your officers are making stops in the places
21 or the sectors that have the highest crime, you're satisfied
22 that those are quality stops, correct?

23 A. No. Not at all.

24 Q. Well you're satisfied that those stops are addressing the
25 conditions that you've identified, correct?

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D4u9flo2

Lehr - cross

- 1 A. What I'm saying is geographically my officers are in their
2 location more so that -- for instance, if I was taking a look
3 at that same -- the same formula that I'm using here and I
4 found that my number one sector where we're recording the most
5 stop, question and frisk encounters was in sector King however
6 sector King is a section where I was not recording crimes I
7 would look at that as a problem perhaps.
8 Q. I understand. But that's --
9 A. I would have to look into those and say why are we engaging
10 it over here in sector King when we have a problem in sector
11 Adam.
12 Q. I understand that. But that wasn't my question.
13 My question was whether or not if your officers are
14 making stops in the right places in the sectors that have the
15 highest crimes at that point you would be satisfied that those
16 are quality stops?
17 A. No. We look further also. If you look the year-to-date
18 through that same time period, April 14. One of the other
19 things I look at as another measurement in terms of is it
20 quality? Yes, geographically is one aspect of that.
21 What I also look at is the time of day. If you look
22 at the crimes for that same time period in the 67 precinct
23 year-to-date through April 14 the number one platoon which
24 recorded the most crimes was the third platoon. The second --
25 the number two platoon for recorded crime, for rate of

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D4u9flo2 Lehr - cross

1 occurrence was the day tour. And the third was the midnight
2 shift.

3 When I look at the stop, question and frisk encounters
4 that were incurred for the same time period, the third platoon
5 had the highest rate. The second platoon had the second
6 highest rate and the midnight had the third.

7 So geographically is one aspect. What I'm also
8 looking for is the time of day.

9 Another measurement is what are we stopping them for.
10 If we're trying to address a burglary condition, is that what
11 we're doing there? Is that what we're trying to have an effect
12 on?

13 But first what I'm looking at, before anything else,
14 is are we slowing down the rate of occurrence on the condition
15 that we're looking to eradicate.

16 Q. So you just identified I think one, two, three, four
17 factors that you look at in determining whether your stops are
18 quality stops. And those were high crime, where -- the
19 geographic location, the time, what the person was being
20 stopped for, and the rate of occurrence.

21 Do I understand that correctly?

22 A. Those are the things I look at, yes.

23 Q. Those are the things you look at.

24 You would agree with me though that just because a
25 stop takes place in a high crime area doesn't necessarily mean

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D4u9flo2 Lehr - cross

1 that there is reasonable individualized suspicion for the stop,
2 correct?

3 A. Repeat that, please.

4 Q. You would agree with me that just because a stop takes
5 place in a high crime area doesn't mean that there's
6 necessarily reasonable individualized suspicion for that stop,
7 correct?

8 A. No.

9 THE COURT: You don't agree with her or you do agree
10 with her?

11 THE WITNESS: I agree -- yes, I agree.

12 Q. So you agree that high crime area doesn't necessarily
13 mean --

14 THE COURT: He just said that. High crime area alone
15 wouldn't be enough for reasonable articulable suspicion, right?
16 Okay.

17 Q. Similarly the time of day wouldn't necessarily mean --

18 THE COURT: Alone? Time of day alone?

19 MS. HOFF VARNER: Yes.

20 THE WITNESS: Yes.

21 Q. And similarly what the form says that the individual is
22 being stopped for wouldn't necessarily mean that there was
23 reasonable individualized suspicion, correct?

24 A. Yes.

25 Q. And the same thing would be true even if the stops happened

D4u9flo2 Lehr - cross

1 to correlate with a decrease in a crime condition, that
2 wouldn't necessarily mean that any individual stop had
3 reasonable individualized suspicion, correct?

4 A. Yes.

5 Q. Are you aware that in 2011 only approximately six percent
6 of the stops in the 67th precinct resulted in a summons or
7 arrest?

8 A. I was not in the 67 in 2011.

9 Q. That wasn't my question.

10 Are you aware that in 2011 approximately six percent
11 of the stops resulted in a summons or arrest?

12 A. I was not aware of that.

13 Q. You were not aware of that.

14 Are you aware that in the last quarter of 2012 only
15 3.5 percent of the stops made in the 67th precinct resulted in
16 an arrest?

17 A. Yes.

18 Q. And are you aware that in the last quarter of 2012 less
19 than one percent of the stops made in the 67th precinct
20 resulted in a summons?

21 A. Yes.

22 Q. Has anyone above you in the NYPD chain of command ever
23 spoken with you about the number of arrests that the stop,
24 question and frisk activity in your precinct is generating?

25 A. No.

D4u9flo2 Lehr - cross

1 Q. Are you at all concerned that the low numbers of arrests
2 and summonses resulting from stop, question and frisk might
3 mean that officers are making stops without reasonable
4 suspicion?

5 A. What I do to try and ensure that that's not happening is
6 reinforce what we teach the officers and reinstruct the
7 officers on.

8 THE COURT: That's not answering.

9 Are you concerned that if the arrests and summonses
10 together is only four percent of the stops, does that concern
11 you?

12 THE WITNESS: Yes.

13 THE COURT: That maybe the stops are not based on
14 reasonable suspicion?

15 THE WITNESS: Yes.

16 THE COURT: Is the answer yes?

17 THE WITNESS: The answer is yes.

18 THE COURT: That's all it calls for right now.

19 Q. And you testified earlier today that people in the 67th
20 precinct have made complaints about racial profiling in the
21 precinct by the NYPD, correct?

22 A. I did not say that they were complaining about racial
23 profiling, no.

24 Q. Okay. Isn't it true that people in the 67th precinct have
25 demonstrated against the NYPD, for example, in reaction to the

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D4u9flo2 Lehr - cross

1 Kimani Gray killing?

2 A. Yes.

3 Q. And in response to the Kimani Gray killing, those protests
4 explicitly included banners that talked about racism in the
5 NYPD, correct?

6 A. Yes.

7 Q. But you don't think that that's a complaint about racial
8 profiling?

9 A. In that -- okay. That -- well these complaints have not
10 come to me. And we also talked about the community settings.

11 I'm not saying that that did not happen at the
12 demonstrations. At the demonstrations there were a number of
13 banners that were up for a range of anti police or problems
14 with police. That is true.

15 What I also said was at the community meetings when I
16 interact with the community and they have an opportunity to
17 talk to me, racial profiling has not come up in a one-on-one --
18 someone hasn't come up to me and said, hey, you know what, the
19 cops in the 67, they stopped me because of -- they're
20 profiling. That particular complaint has not come to me
21 personally, directed at me personally.

22 But in the demonstration setting, yes, there were a
23 number of anti police banners that were up across a range of
24 subjects. But yes.

25 THE COURT: Never in the community meetings when they
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D4u9flo2 Lehr - cross

1 complained about stop, question and frisk as an activity, no
2 one ever said what we don't like about it is the racial
3 profiling?

4 THE WITNESS: Correct.

5 THE COURT: Never said that?

6 THE WITNESS: Correct.

7 THE COURT: They just said they didn't like it but
8 didn't say why?

9 THE WITNESS: That's correct.

10 Q. And I think you said that 90 or more than 90 percent of the
11 67th precinct is African-American or Black; is that right?

12 A. Yes.

13 Q. And so is it your testimony that in order to count as a
14 community complaint it has to be a complaint that's directed to
15 you at a community council meeting?

16 A. No.

17 Q. So complaints in demonstrations would certainly count as a
18 complaint about racism or racial profiling, correct?

19 A. Yes. I'm acknowledging that. Yes.

20 Q. Those complaints about racism in the wake of the death of
21 Kimani Gray, is it your testimony that those complaints about
22 racism were not related to stop, question and frisk?

23 A. No. I didn't say that. I said that there were a number of
24 banners with different messages, anti police. And stop,
25 question and frisk was one of those -- would fall into one of

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D4u9flo2 Lehr - cross

1 those categories, yes.

2 Q. So stop, question and frisk and police racial profiling or
3 racism were all complaints raised as part of this protest,
4 correct?

5 A. Yes.

6 Q. And you testified that other than the Kimani Gray incident
7 you were not aware of other problems or complaints about racial
8 profiling in the 67th precinct, correct?

9 A. I -- yes.

10 Q. But isn't it true that after the 2011 West Indian parade
11 there were -- there were officers quoted on Facebook pages
12 making racist comments about policing that parade?

13 A. The West Indian parade is in the 71 precinct and 2011 I was
14 in the 9th precinct in Manhattan.

15 I am aware that that happened. It was in the news at
16 the time. I don't know any of the officers who were involved
17 in that. They never worked for me. I was not connected in any
18 way to that incident. And it didn't -- it didn't overlap into
19 my tenure when I got to the 67. There were no issues that I
20 was involved with, with that incident.

21 Q. So you're not aware of at least one of the officers making
22 racist comments on Facebook about the West Indian parade was
23 actually a member of the 67 precinct?

24 A. Do you have his name? Because I don't think he was there
25 while I was there.

D4u9flo2

Lehr - cross

1 Q. I don't have his name but I'm going to show you a document
2 to see if it refreshes your recollection.

3 THE COURT: It's marked as?

4 MS. HOFF VARNER: We can mark it for identification
5 only, because I don't intend to admit it, as 585. Plaintiffs'
6 585.

7 THE COURT: This is shown to you just to see if it
8 refreshes your recollection. Either it does or it doesn't.

9 MS. HOFF VARNER: Because it's small print I put a
10 mark next to the paragraph that I'm referring to.

11 THE WITNESS: Is his name here?

12 MS. HOFF VARNER: His name is not there.

13 Q. If you look at the paragraph that I've indicated?

14 MS. GROSSMAN: I don't even know what publication that
15 this is.

16 MS. HOFF VARNER: You can see at the bottom, this is
17 NY Carib News dot com.

18 THE COURT: It's just shown to refresh his
19 recollection. Either it does or it doesn't.

20 Q. So if you look at the paragraph that I've indicated.

21 MS. GROSSMAN: Which paragraph?

22 THE COURT: You're not going to read from this
23 document?

24 MS. HOFF VARNER: I'm not.

25 THE COURT: So he's looking at the paragraph you
SOUTHERN DISTRICT REPORTERS, P.C.

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Lehr - cross

1 indicated. Either it refreshes his recollection or it doesn't.

2 Does it?

3 THE WITNESS: No. I wasn't there at the time and --

4 THE COURT: No worry. Hello. The answer is no.

5 Q. And you testified that elected representatives in the 67th

6 precinct have expressed concern about the stop, question and

7 frisk practices in the 67, correct?

8 A. No. In fact --

9 THE COURT: I thought you did say that.

10 THE WITNESS: Not in the 67. What I said --

11 THE COURT: Not in the 67. At the community meetings

12 didn't you say some people did express concern about the stop,

13 question and frisk?

14 THE WITNESS: She specified an elected official,

15 didn't you?

16 THE COURT: You mean the name you mentioned before?

17 Q. Jumaane Williams?

18 A. What I'm saying is --

19 THE COURT: He told you he was a critic of stop,

20 question and frisk?

21 THE WITNESS: He's a well known outspoken critic of

22 stop, question and frisk. However his comments are prefaced

23 with compliments to me and my staff.

24 THE COURT: Then went on to say after the preface that

25 he didn't like the activity; is that right?

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Lehr - cross

1 THE WITNESS: Yes. He's against stop, question and
2 frisk.

3 Q. Have you or your staff in the 67th precinct heard
4 complaints from councilmember Williams or other community
5 members that police officers are stopping people illegally
6 without reasonable individualized suspicion on the basis of
7 race? I'm not --

8 THE COURT: Is that a complaint you've heard from the
9 councilman or anybody else?

10 THE WITNESS: No.

11 THE COURT: No.

12 THE WITNESS: He has -- we have had a number of
13 discussions in my tenure in the 67 precinct where he contacted
14 me and had concerns about an arrest situation on at least two
15 occasions off the top of my head that I can think of where he
16 had gotten some calls into his office.

17 THE COURT: But he never has talked about stop,
18 question and frisk in terms of racial bias?

19 THE WITNESS: Not with me about a specific incident
20 for the 67 in that regard.

21 THE COURT: Or even overall, he never said.

22 THE WITNESS: No, he hasn't.

23 THE COURT: Never tied his criticism to race issues.

24 THE WITNESS: No. But we have had a couple of
25 discussions where his office received some calls or he knew

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D4u9flo2 Lehr - cross

1 somebody that had been arrested and inquired about the
2 particulars and we had discussions about that. That's taken
3 place.

4 Q. What about other community members? Have you heard
5 complaints from them that officers are stopping people
6 illegally without reasonable suspicion?

7 A. No.

8 Q. I think you testified that stop, question and frisk does
9 come up at community meetings and you specifically indicated
10 that people express concern about their treatment at the hands
11 of officers; is that correct?

12 A. Yes.

13 Q. But it's your testimony that those people don't make any
14 complaints that that treatment was related to race or that the
15 stop was related to race?

16 A. In the discussions that I've had with community members in
17 my -- in my interactions and the stuff that's been communicated
18 to me personally, there have been issues where stop, question
19 and frisk has come up. But it's the -- in listening to the
20 details of the complaint where people are conveying their
21 complaint to me, they haven't said this officer stopped me
22 because of a race issue.

23 It's been more about I was stopped for no reason or,
24 you know, the officer didn't explain, you know, why I was being
25 stopped and those type of scenarios. I've had a number of

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D4u9flo2 Lehr - cross

1 those type of conversations. Yes.

2 Q. And in those scenarios, has the person complaining about
3 the stop been African-American or black?

4 A. Yes.

5 Q. You testified that in those instances you would try put the
6 stopped person together with the officer who made the stop to
7 help them -- to explain what had happened, correct?

8 A. That was in a larger context when we were talking about how
9 the community council meetings go. Whether the complaint --
10 you're narrowing it to just stop, question and frisk. What I'm
11 saying is if I get a complaint from somebody and they've had a
12 negative interaction with one of my officers and I have an
13 opportunity to repair that, whether it's for a disputed
14 summons, an arrest, a stop-question-and-frisk encounter, or a
15 quality of life condition that they've called the police a
16 number of times and it just persists and they're frustrated
17 that the police have been unable to repair it or fix the
18 problem, in any of these type of instances if I have an
19 opportunity to get the two together, if it is a specific
20 officer being complained about or if it's a larger issue that I
21 can try and have an impact on, yeah, I'm going to try and help
22 that person out.

23 Q. But you would agree with me that if, hypothetically, a stop
24 is based on race or is made without reasonable suspicion, an
25 explanation given to the person who is stopped is not going to

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D4u9flo2 Lehr - cross

1 fix that problem, correct?

2 MS. GROSSMAN: Objection.

3 THE COURT: One moment, please.

4 Sustained.

5 Q. The community meeting -- you testified about the community
6 orientation meetings that you host for new officers at the 67th
7 precinct. That meeting is something you decided to do on your
8 own, correct?

9 A. No. In fact, it's been going on for a number of years at
10 the 67. It was integrated to the program a number of years ago
11 before my tenure. It was something that I definitely liked and
12 tried to expand on.

13 Q. But you don't have any personal knowledge of whether that
14 same program happens in other precincts, do you?

15 A. I'm talking -- I don't.

16 Q. And you weren't directed to engage in this community
17 orientation program by the borough commander or NYPD
18 headquarters, correct?

19 A. I don't know if it's a boroughwide thing. It's possible.
20 But I can only speak to the 67. It was in place before I got
21 there. I thought it was a great thing. And I tried it and am
22 trying to grow it.

23 Q. There's nothing in the NYPD patrol guide or any other NYPD
24 policies or procedures that requires precinct commanders to
25 hold meetings with community members to discuss stop, question

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D4u9flo2 Lehr - cross

1 and frisk, correct?

2 A. Just for stop, question and frisk?

3 Q. Yes.

4 A. Not that I'm aware of.

5 Q. You're aware that officers are required to enter

6 information about stops in their memo books, correct?

7 A. Yes.

8 Q. And this is an important rule because it helps officers

9 remember what happened during the stop and it gives the police

10 department a record, correct?

11 A. Yes.

12 Q. You're aware, as we discussed -- sorry, as you discussed

13 with Ms. Grossman, that the quality assurance division audits

14 precincts for compliance with the rule that SQFs -- stop,

15 question and frisks must be included in their memo books,

16 correct?

17 A. Yes.

18 Q. So as long as there's an entry corresponding to a UF 250,

19 then that's enough to pass the audit, correct?

20 A. Well the --

21 Q. Withdrawn. That was a bad question. Let me start again.

22 Do you know how many -- the QAD audits look at five

23 memo books, correct?

24 A. Yes.

25 Q. And if there's an entry in those five memo books that

D4u9flo2 Lehr - cross

1 corresponds to a UF 250, then that's enough to pass the audit,
2 correct?
3 A. I never worked in QAD. It's -- I don't know the answer to
4 that.
5 Q. Have you ever personally reviewed the memo books that QAD
6 audits as part of these annual audits?
7 A. No.
8 Q. We saw some of your QAD audit results from when you were
9 the commanding officer of transit district 33. Do you remember
10 that?
11 A. Yes.
12 Q. Where is transit district 33?
13 A. Transit district 33 station house is at the Broadway
14 junction, East New York station. It's on the border of
15 Brownsville, East New York. Covers four different train lines:
16 The AC line, the J line, the L line, and the M. Has a total of
17 51 stations in nine different precincts, in three different
18 patrol boroughs.
19 Q. There's surveillance cameras in the subway stations in
20 New York, aren't there?
21 A. In some, yes.
22 Q. When you were the commanding officer of the 9th precinct,
23 did anyone within the NYPD chain of command ever speak to you
24 about the low -- the low scores that you were receiving on the
25 QAD audits?

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D4u9flo2 Lehr - cross

1 A. Yes.

2 Q. Who was that?

3 A. Specifically I don't remember but I'm required when you get
4 a failing grade like that to make some adjustments and try and
5 correct the problem. And then you have to send a response back
6 up to quality assurance division on the steps you're taking to
7 fix the problem. So that goes back up through channels. So
8 the borough does get involved in that. They are directly
9 involved in that. That particular one could have been a number
10 of people.

11 Q. And in 2009 you did take steps to try to solve the problem
12 of the failing audit scores, correct?

13 A. Yes.

14 Q. But in 2010 the 9th precinct failed the audit again,
15 correct?

16 A. Yes. The record will show that I failed to correct the
17 problem.

18 Q. You attended a stop, question and frisk refresher training
19 course at Rodman's Neck, correct?

20 A. No.

21 Q. Well, you did receive a stop, question and frisk refresher
22 training, correct?

23 A. Yes. I believe that was at the police academy.

24 Q. Okay. And there was a member of the legal bureau who
25 attended that presentation?

D4u9flo2 Lehr - cross

1 A. Correct.

2 Q. And you saw a PowerPoint presentation as part of the
3 refresher training, correct?

4 A. Yes.

5 Q. In your view was that training session accurate and
6 consistent with the law?

7 A. Yes.

8 Q. In the Ligon hearing back in October you testified that
9 you, on a regular basis, take a sampling of stop, question and
10 frisk reports and read them to see how they're completed,
11 correct?

12 A. Yes.

13 Q. Do you continue to do that today?

14 A. I do.

15 THE COURT: When you say those reports you're
16 referring to the UF 250s?

17 THE WITNESS: Yes. The hard copies.

18 THE COURT: The what?

19 THE WITNESS: The actual.

20 THE COURT: Hard copy.

21 Q. So you're looking at the actual physical UF 250 forms,
22 correct?

23 A. Yes.

24 Q. But you can't determine whether there's reasonable
25 individualized suspicion for a stop based solely on the UF 250

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D4u9flo2 Lehr - cross

1 form; isn't that true?

2 A. Yes.

3 Q. So let's talk a little bit about the OCD investigations.
4 You testified that as the ICO of the 66th precinct -- you were
5 in that position from 2000 to 2005, correct?

6 A. Yes.

7 Q. And between 2000 and 2005 when you were investigating OCD
8 complaints you found that it was appropriate to speak to the
9 officer and speak to the complainant, correct?

10 A. Yes.

11 Q. If you received an OCD report where the investigator never
12 spoke to the stopping officer, you would find that to be
13 inadequate, correct?

14 A. If the officer was available? Yes.

15 Q. And your testimony -- strike that.

16 You also testified about your understanding as the
17 commanding officer of the 67th precinct of how complaints are
18 handled at the 67th precinct.

19 Do you remember that testimony?

20 A. Yes.

21 Q. And that testimony was based on your personal knowledge of
22 what happens at the 67th, correct?

23 A. Yes.

24 Q. It was not based on any knowledge about what might happen
25 at other commands or other precincts, correct?

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D4u9flo2 Lehr - cross

1 A. I'm not sure what you mean.

2 I mean I take a level of experience with me that --
3 I've worked in a number of commands. So my thought process
4 is -- I mean, yeah, my experiences in other commands are
5 present.

6 Q. You don't have any personal knowledge about what goes on or
7 how other commanding officers in precincts where you haven't
8 worked might handle OCD investigations?

9 A. I do not.

10 Q. In fact, the patrol guide does not provide any instruction
11 on how to properly conduct an OCD investigation into a civilian
12 complaint, correct?

13 A. You're talking about the actual, like an outline best
14 practice? I'm not sure what you mean.

15 THE COURT: I think it's self-explanatory she does say
16 in the patrol guide are there instructions on how to conduct an
17 OCD investigation.

18 THE WITNESS: No.

19 THE COURT: Thank you.

20 Q. There is no written requirement in the patrol guide that a
21 person investigating an OCD complaint must interview all of the
22 witnesses, correct?

23 A. Correct.

24 Q. There is no written requirement that the person
25 investigating the OCD complaint must review documents in

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D4u9flo2 Lehr - cross

1 conducting the investigation, correct?

2 A. Correct.

3 Q. And there is no written guideline for people investigating
4 the OCD complaints that enumerates the documents that should be
5 reviewed, correct?

6 A. Correct.

7 THE COURT: How much more do you think, Ms. Hoff
8 Varner? I'm just trying to decide whether to take the morning
9 break. You're not in the range of a minute?

10 MS. HOFF VARNER: Ten minutes maybe.

11 THE COURT: Let's take our morning recess now then.
12 We'll reconvene at quarter to twelve.

13 MS. HOFF VARNER: Thank you.

14 (Recess)

15 Q. Before we get started I want to ask you, Inspector Lehr, if
16 you consulted with your attorney at all during the break of
17 your cross-examination?

18 A. No.

19 Q. Yesterday you testified that you get monthly reports of the
20 officers who receive CCRBs in your command.

21 Do you remember that testimony?

22 A. Yes.

23 Q. And you testified that the integrity control officer will
24 speak to a supervisor or the officer, correct?

25 A. Yes.

D4u9flo2

Lehr - cross

- 1 Q. The purpose of that initial conversation is to allow the
2 integrity control officer to collect the paperwork to send to
3 the CCRB, correct?
4 A. In part. The -- we have to -- the officer needs to be
5 appraised that he got the CCRB as well. So it's part of --
6 there are several reasons why we get the -- we share this
7 information. We want the officer to know that his actions
8 resulted in a CCRB. We want the supervisor to understand what
9 the officer did to get the CCRB. We want them to be aware of
10 what happened.
11 Q. But at that point this initial point, the command level --
12 no one in the command level personally conducts an
13 investigation of that CCRB complaint, correct?
14 A. Correct.
15 Q. You also testified that the sergeants who supervise the
16 subject officers are informed that civilian complaints have
17 been filed against their officers, correct?
18 A. Correct.
19 Q. And you testified that you do that because you want the
20 supervisors to monitor the performance of the officers,
21 correct?
22 A. Yes.
23 Q. But there is no police requirement that the supervisors
24 monitor those officers who have a single CCRB complaint,
25 correct?

D4u9flo2 Lehr - cross

1 A. Well the supervisor responsible for supervising the
2 officers' overall performance in which their interaction with
3 the community is a part.

4 Q. But that wasn't my question. My question, I think, was
5 that there is no police requirement that the supervisors
6 particularly monitor those officers who have a single CCRB
7 complaint?

8 A. Correct.

9 Q. And, in fact, if you look at Defendants' Exhibit Z3. This
10 is the performance monitoring criteria that Ms. Grossman showed
11 you earlier. And that makes it clear that performance
12 monitoring is only required at the point where there are three
13 or more CCRBs in one year, correct?

14 A. Or six in five years; or if you go down to level II, two or
15 more substantiated complaints in four years. So there are
16 several instances where this would kick in.

17 Q. But there is no requirement that performance monitoring
18 kick in when there's just one civilian -- one CCRB complaint?

19 A. That's correct.

20 Q. How many officers under your supervision have been in
21 monitoring for conduct related to stop, question and frisk?

22 A. I don't have it broken down like that.

23 I currently have, out of 276 officers assigned -- that
24 turn out of the 67, that includes the 67 precinct personnel and
25 the impact personnel, I have 13 officers that are in

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D4u9flo2 Lehr - cross

1 performance monitoring. Of the 13 that are in performance
2 monitoring, six are in performance monitoring due to civilian
3 complaints. Of the subcat -- and those civilian complaints are
4 generated for a range of issues, of which stop, question and
5 frisk is a part in some instances. But I don't have that
6 specific breakdown for you.

7 Q. And so you also probably don't have a specific breakdown
8 for how many officers under your supervision have been in
9 monitoring for alleged racial profiling, correct?

10 A. Correct.

11 Q. You personally, as the commanding officer of the 67th
12 precinct, you don't select the officers who are placed on
13 monitoring, correct?

14 A. I don't select but I can recommend.

15 THE COURT: Who do you recommend to?

16 THE WITNESS: To employee management division. They
17 would have the say.

18 Q. And you don't know whether every person in your command who
19 qualifies for performance monitoring is, in fact, placed on
20 performance monitoring, correct?

21 A. If they meet the criteria, they're going to be -- they're
22 going to be placed on performance monitoring.

23 Q. If a police officer in your command against whom a CCRB
24 complaint is brought is then assigned to a different command,
25 then that command would have no information about any

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D4u9flo2 Lehr - cross

1 monitoring that you did at the 67th precinct for that officer,
2 correct?

3 A. That's really not the way it works.

4 What happens is if somebody is in performance
5 monitoring even if I wanted to change their -- if they were
6 going to be transferred, that transfer would go through the
7 employee management division who really oversees this program.

8 So any change in assignment I would probably be
9 required to -- I would be required to do an interim evaluation,
10 which would basically be a reflection of the officer's
11 performance while in performance monitoring.

12 In addition to that, in level II and level III
13 monitoring -- in level II monitoring there are quarterly
14 reports that are required. In level III monitoring there are
15 monthly reports that are required. So those files are built up
16 as the person is in that program.

17 Q. I understand your answer with respect to formal monitoring
18 with the employment management?

19 A. Employment management, yes.

20 Q. I understand your answer with respect to the formal
21 performance monitoring.

22 My question is about the informal monitoring that you
23 testified about, about telling sergeants that they should
24 closely supervise their officers who have a single CCRB
25 complaint. Those officers aren't placed in a formal monitoring

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D4u9flo2 Lehr - cross

1 program, correct?

2 A. Correct. Yes.

3 Q. And those -- and that informal monitoring would not be
4 transferred to another precinct along with the officer?

5 A. That's correct.

6 MS. HOFF VARNER: Just one second, your Honor.

7 (Pause)

8 No further questions. Thank you.

9 THE COURT: That turned out to be four minutes.

10 Probably could have done it before the break. Oh, well.

11 All right, Ms. Grossman.

12 MS. HOFF VARNER: The break made it shorter.

13 REDIRECT EXAMINATION

14 BY MS. GROSSMAN:

15 Q. Plaintiffs' counsel asked you a few questions about the
16 patrol guide and does it set out the investigative steps that
17 need to be taken for an OCD investigation.

18 A. Yes.

19 Q. ICOs do receive training by the internal affairs bureau; is
20 that right?

21 A. Correct.

22 Q. And can you describe when you attended the ICO -- sorry.

23 When you attended the training by the IAB, in sum and substance
24 what was the training that you received regarding conducting an
25 investigation? In summary?

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D4u9flo2

Lehr - redirect

1 MS. HOFF VARNER: I'm raising an objection.

2 MS. BORCHETTA: I'm sorry, your Honor. Just is it --
3 she asked investigations and the question needs a clarification
4 of whether she's asking about OCD investigations or IAB
5 investigations.

6 THE COURT: Which did you mean? It seemed like you
7 meant IAB but maybe I'm wrong.

8 BY MS. GROSSMAN:

9 Q. There is training on investigations provided to ICO by the
10 IAB. So I wanted the witness to explain the nature of the
11 training.

12 A. Okay. I received that training roughly twelve years ago
13 but what happens is -- the training is in regard to
14 investigations as a whole because ICOs will do investigations
15 on OCD investigations. They'll also do misconduct cases at
16 times that come down to the command level. So there are a
17 number of different kind of investigations that an ICO has to
18 conduct. However, the approach to the investigations is the
19 same, whether -- no matter what category it's in, it's about
20 fact finding and documenting and getting to the bottom -- into
21 the heart of the matter. So, yes, we receive the training for
22 that.

23 Q. Plaintiffs' counsel asked you some questions about the
24 officers on monitoring, if you're aware if anyone has been on
25 monitoring for racial profiling. Are you aware of any officers

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D4u9flo2 Lehr - redirect
1 in monitoring for racial profiling complaints?
2 A. No.

3 MS. GROSSMAN: I have no further questions.

4 RE CROSS EXAMINATION
5 BY MS. HOFF VARNER:

6 Q. You received training as an integrity control officer
7 twelve years ago, correct?

8 A. Roughly, yes.

9 Q. But integrity control officers are not the only police
10 personnel who can conduct investigations of civilian
11 complaints, correct?

12 A. Civilian complaint review board investigates the civilian
13 complaints.

14 Q. Sorry. Let me clarify.

15 With respect to OCD complaints, integrity control
16 officers are not the only police personnel who can do those
17 investigations, correct?

18 A. Correct.

19 Q. Lieutenants and sergeants can also do those investigations?

20 A. Yes.

21 Q. And you testified that you received training on how to
22 conduct investigations as a whole, correct?

23 A. Yes.

24 Q. Did that training include anything specific that was
25 related to stop, question and frisk?

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D4u9flo2 Lehr - recross

1 A. It's twelve years. I'm twelve years removed from that. I
2 don't -- I couldn't say specifically yes or no. I'm sorry.
3 MS. HOFF VARNER: No further questions.
4 THE COURT: All right. Are we done with this witness?
5 MS. GROSSMAN: Yes.
6 THE COURT: Sorry about that. We could have finished
7 it all before the break.
8 We're done with you for now. She may need you back.
9 THE WITNESS: I understand. Thank you very much.
10 THE COURT: Mr. Marutollo.
11 MR. MARUTOLLO: Defendants call Detective Michele
12 Hawkins.
13 MICHELE HAWKINS,
14 called as a witness by the Defendants,
15 having been duly sworn, testified as follows:
16 DIRECT EXAMINATION
17 BY MR. MARUTOLLO:
18 Q. Good afternoon, Detective Hawkins.
19 A. Good afternoon.
20 Q. Are you currently employed?
21 A. Yes, I am.
22 Q. Where are you employed?
23 A. New York City Police Department.
24 Q. How long have you been employed by the NYPD?
25 A. Nineteen years.

D4u9flo2 Hawkins - direct

- 1 Q. Did you attend and graduate from the police academy?
2 A. Yes, I did.
3 Q. When did you graduate?
4 A. In 1994.
5 Q. What is your present rank with the NYPD?
6 A. Police detective.
7 Q. And when were you promoted to detective?
8 A. The year 2000.
9 Q. What is your current command?
10 A. Narcotics Borough Queens.
11 Q. How long have you been working in Narcotics Borough Queens?
12 A. Queens, I've been working there for eleven years.
13 Q. Turning your attention to May 29, 2007. What unit were you
14 working in on May 29, 2007?
15 A. Narcotics.
16 Q. And do you remember what hours you were working that day?
17 A. Yes. I was working the two to ten p.m.
18 Q. And on May 29, 2007 did you attend a tactical meeting or a
19 tac meeting?
20 A. Yes, I did.
21 Q. Was that at the start of your tour?
22 A. Yes.
23 Q. On May 29, 2007 what was discussed at the tac meeting?
24 A. Well actually the tac meeting is where we discuss the
25 tactics before we leave the base and we discuss robbery trends,

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D4u9flo2 Hawkins - direct

- 1 A. No.
2 Q. Were you wearing your shield?
3 A. Yes.
4 Q. And do you remember where you were wearing it?
5 MS. BORCHETTA: Objection, your Honor. Just for
6 clarification to that question about the period of time he's
7 asking for that question.
8 THE COURT: The time during the day of shift?
9 MS. BORCHETTA: There's some question about whether
10 this detective provided identification. So the question is
11 whether -- where he's asking her -- he's asking her when she
12 was wearing this shield.
13 THE COURT: Did you have your shield out on your
14 clothes the whole time during the shift?
15 THE WITNESS: Yes, ma'am.
16 THE COURT: The whole time?
17 THE WITNESS: Yes.
18 THE COURT: That takes care of time.
19 Q. Can you describe your shield.
20 A. It's circular and it's -- it has my shield numbers at the
21 bottom of the circle and it's gold in color.
22 Q. Where was your van when you first observed Ms. Acevedo?
23 A. Actually on 43rd Street.
24 Q. Can you describe the area where you first observed
25 Ms. Acevedo?

D4u9flo2 Hawkins - direct

- 1 A. Actually it was a very desolate area. Not a lot of people
2 around. Was warehouses in that area. Basically commercial.
3 Q. How long did you observe Ms. Acevedo for?
4 A. Basically a few seconds.
5 Q. What obstructions, if any, were in your view of Ms. Acevedo
6 when you first saw her?
7 A. I was actually seated in the back seat so it was Detective
8 DeMarco and Detective Vizcarrondo that obstructed my view a
9 little.
10 Q. Did there come a time when you actually saw Ms. Acevedo?
11 A. Yes.
12 Q. While you were still in the vehicle?
13 A. Yes.
14 Q. After you first observed Ms. Acevedo, what happened next?
15 A. Detective DeMarco spoke to her through his window. He
16 said: Hi, New York City Police Department. In substance.
17 Q. And how would you describe Detective DeMarco's tone of
18 voice?
19 A. Actually he was trying to be friendly.
20 Q. Where was Ms. Acevedo when Detective DeMarco was speaking
21 to her?
22 A. She was walking on the sidewalk.
23 Q. And what, if anything, did Ms. Acevedo say in response to
24 Detective DeMarco?
25 A. She said you're no F'ing cops.

D4u9flo2 Hawkins - direct

1 Q. Did she actually use the full curse word?

2 A. Yes, she did.

3 Q. What was your reaction to Ms. Acevedo's comment?

4 A. Well actually she said you're no F'ing cops and then she
5 bolted. She just ran. And after she ran we just looked at
6 each other in disbelief because we couldn't believe that she
7 ran.

8 Q. Did you think she was afraid?

9 A. Yes. So I actually said I think we need to identify
10 ourselves a little better than that.

11 Q. Why did you think she was afraid?

12 A. Basically at that time there was a segment on the news
13 stating that there were people going around robbing people with
14 police shields. So if, in fact, that you are a little leery
15 about whether the person is, in fact, a police officer you
16 should show -- ask them for their police ID.

17 Q. So after this initial exchange what happened next?

18 A. The van was backed up. I got out the van. And I actually
19 had my shield in one hand and my ID card in the other hand.
20 Like this: I had my shield in this hand and I had my ID card
21 in the other hand. I said: We are, in fact, police officers.
22 This is my shield. And I had my ID card -- I took it out and I
23 had it in this hand already. I said this is my shield and this
24 is my ID card. We are, in fact, police officers so you don't
25 have to be afraid.

D4u9flo2

Hawkins - direct

1 THE COURT: So indicating for the record that she's
2 showing her shield in the left hand and putting both HANDS up
3 in front of her to demonstrate the way she showed Ms. Acevedo.
4 Q. Just to be clear in your other hand was your police
5 identification card?

6 A. Yes. That's correct.

7 Q. Why did you show her both your shield and your police
8 identification card?

9 A. Because the news segment said if you're, in fact, leery
10 that they're, in fact, police officers to ask for the police
11 identification card; since everyone was showing shields,
12 robbing people.

13 Q. So what, if anything, did Ms. Acevedo say in response to
14 your display?

15 A. Well actually she didn't want anything to do with us. She
16 said: You're not F'ing police. You're not F'ing police.

17 But I -- my concern is I wanted to allay her concerns
18 that she wasn't being a victim or she wasn't being robbed.

19 Q. And what was her tone of voice at this point?

20 A. A bit hostile.

21 Q. What happened next?

22 A. Basically left. She continued walking. And we left, said:
23 Have a nice day.

24 Q. Did Ms. Acevedo actually ever stop walking during this
25 encounter with you?

D4u9flo2 Hawkins - direct

- 1 A. No. She continued walking.
2 Q. At any point did you say to Ms. Acevedo when you hear
3 police you stop?
4 A. No, I did not.
5 Q. Did you hear anyone else say that?
6 A. No.
7 Q. Did you ever pull Ms. Acevedo out of a van?
8 A. No, I did not.
9 Q. Did you ever push her against the side of a van?
10 A. No, I did not.
11 Q. Did you ever shake her by her shoulders?
12 A. No.
13 Q. Did you ever hit Ms. Acevedo's head against the side of a
14 truck or van?
15 A. No. Absolutely not.
16 Q. Did you ever hold Ms. Acevedo by her wrists?
17 A. No.
18 Q. Did you ever search Ms. Acevedo in any way?
19 A. No. Didn't touch her.
20 Q. Did you ever even touch Ms. Acevedo?
21 A. No.
22 Q. Did you ever say that she forgot -- I'm sorry. Did you
23 ever say that she forgot to take her medication?
24 A. No, I did not.
25 Q. And how long would you describe your interaction with

D4u9flo2 Hawkins - direct

1 Ms. Acevedo after you exited the police van?

2 A. Basically it was about a minute, minute-and-a-half, at
3 most.

4 Q. Now, did you receive any discipline from the NYPD for this
5 incident?

6 A. Yes, I did.

7 Q. And what discipline did you receive?

8 A. Actually they took a day.

9 THE COURT: For what? What were you disciplined for?

10 THE WITNESS: Basically CCRB indicated that it was a
11 bad stop and also failure to provide memo book entries.

12 Q. And did you meet with the integrity control officer
13 regarding this disciplinary action?

14 A. Yes, I did.

15 Q. And I think you may have said this but what punishment, if
16 any, did you receive?

17 A. They took a day.

18 Q. One vacation day?

19 A. Yes.

20 MR. MARUTOLLO: No further questions, your Honor.

21 THE COURT: All right. Thank you.

22 Ms. Borchetta.

23 (Continued on next page)

24

25

D4U8FLO3 Hawkins - cross

1 CROSS-EXAMINATION

2 BY MS. BORCHETTA:

3 Q. Good afternoon Detective Hawkins.

4 A. Hi. How are you?

5 Q. You just testified regarding a tac plan. Do you recall
6 that?

7 A. Yes, I did.

8 Q. I am going to show you a document that's previously been
9 admitted into evidence, which is Plaintiffs' Exhibit 6.

10 A. Thank you.

11 Q. This is the tac plan that you received on the date of the
12 incident with -- this is the tac plan that would have been
13 discussed at the tac meeting that you had the date of the
14 incident with Ms. Acevedo, correct?

15 A. Yes.

16 Q. And there are locations listed at the bottom of the tac
17 plan, correct?

18 A. Yes.

19 Q. And those indicate locations where there might be drug
20 sales, correct?

21 A. Yes.

22 Q. On the day of the incident with Ms. Acevedo, you were
23 driving in the van intending to go to the locations listed on
24 this tac plan, right?

25 A. That's correct.

D4U8FLO3 Hawkins - cross

1 Q. Your intent in going to those locations on that day was to
2 conduct buy and bust operations and to gain intelligence on
3 narcotic sales, right?

4 A. Yes, primarily.

5 Q. Now, you agree that the area in which you encountered Ms.
6 Acevedo was desolate, right?

7 A. Yes.

8 Q. And when you first saw Ms. Acevedo, she appeared to you to
9 be someone from whom you can gain intelligence about narcotic
10 sales, right?

11 A. Yes.

12 Q. She appeared to you at that time to be familiar with the
13 area, right?

14 A. Yes. That's correct.

15 Q. You didn't observe her looking over her shoulder, right?

16 A. Not where I was seated.

17 Q. It appeared to you when you first saw her, that she
18 wouldn't be afraid to speak with you?

19 A. That's correct.

20 Q. The windows on the van that you were in were tinted,
21 correct?

22 A. Yes.

23 Q. And you believed that Ms. Acevedo would not have been able
24 to see you from where she was on the sidewalk when you first
25 saw her from the van, right?

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D4U8FLO3 Hawkins - cross

1 A. Yes.

2 Q. Now, turning to the point when you were outside of the van
3 engaging Ms. Acevedo, your focus in getting out of the van was
4 to allay her concerns and make sure she was OK, right?

5 A. That's correct.

6 Q. And you just testified that you had known at the time of
7 reports that people had been driving in a van impersonating
8 officers and robbing people, right?

9 MR. MARUTOLLO: Objection, your Honor.

10 A. I did not say that.

11 THE COURT: She's answered. She says she didn't say
12 that.

13 Q. You had heard at the time that there been people
14 impersonating police officers and robbing people?

15 A. That's correct.

16 Q. When Ms. Acevedo ran, in part, you wanted to allay her
17 concerns that she might be the victim of a robbery, right?

18 A. Yes. That she was not a victim of a robbery.

19 Q. Yet you were only outside of the van, you say, for a minute
20 to a minute and a half, right?

21 A. Yes.

22 Q. Now, you say that Ms. Acevedo ran down the street yelling,
23 right?

24 A. Yeah. She ran down the street; she ran away from the van.

25 Q. You testified that she was cursing?

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D4U8FLO3 Hawkins - cross

1 A. Yes, she was.

2 Q. That was after Detective DeMarco had spoken to her from the
3 van window?

4 A. Yes.

5 Q. And though she was in a desolate area and you were aware of
6 people who were impersonating police and robbing people, and
7 she ran and she was cursing, and you wanted to --

8 MR. MARUTOLLO: Objection.

9 THE COURT: We have had this already. This is all a
10 big lead up.

11 Q. Given all of the things that you were aware of at that
12 moment when you exited the van with Ms. Acevedo, you wanted to
13 allay her concerns?

14 A. Yes.

15 Q. And yet you say you were only outside of the van attempting
16 to allay her concerns for a maximum of 90 seconds, right?

17 MR. MARUTOLLO: Objection.

18 THE COURT: I will allow it. Is that accurate or not?

19 A. Can you repeat the question?

20 THE COURT: She was saying you wanted to allay her
21 concerns, but you were only out of the van for 90 seconds, is
22 that correct?

23 THE WITNESS: Yes.

24 Q. And you got back into the van even though you say she
25 continued to be concerned that you were not police officers,

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D4U8FLO3 Hawkins - cross

1 right?

2 A. I got back into the van even though what?

3 Q. When you got back into the van, at that point Ms. Acevedo
4 still appeared to you to have concerns that you were not police
5 officers, right?

6 A. She said -- she just said, "You're no F'ing police." But I
7 showed my shield and I showed my ID card. I said, we are in
8 fact police officers.

9 Q. So according to what you're saying, Ms. Acevedo indicated
10 that she didn't believe that you were officers, right?

11 A. Yes.

12 Q. And you still got back into the van, right?

13 A. Yes.

14 Q. Now, you understand that there are levels of suspicion that
15 an NYPD detective must have to engage in certain encounters
16 with the public, right?

17 MR. MARUTOLLO: Objection, your Honor. This goes
18 outside the scope of the direct examination. It was limited to
19 the incident at issue.

20 THE COURT: This is part of the incident at issue.

21 They thought she might have information.

22 Do you understand there are different levels?

23 THE WITNESS: Yes, I do.

24 THE COURT: You do.

25 THE WITNESS: Yes.

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D4U8FLO3 Hawkins - cross

- 1 Q. You understand that the second level of suspicion is a
2 common law right of inquiry, right?
3 A. Yes.
4 Q. And the third level you understand to be reasonable
5 suspicion?
6 A. Yes.
7 Q. And your understanding is that a level two encounter, so a
8 common law right of inquiry, you as an NYPD detective may ask a
9 person accusatory questions that suggest the person is engaged
10 in crime, right?
11 A. Yes.
12 Q. And that understanding is consistent with your training,
13 right?
14 A. Yes.
15 Q. Now, you testified just now about a CCRB substantiation of
16 a complaint related to the encounter with Ms. Acevedo, right?
17 A. Yes.
18 Q. Now, you learned that you received a substantiated CCRB
19 complaint related to the incident with Ms. Acevedo from an ICO,
20 right?
21 A. Yes.
22 Q. And you met with the ICO to discuss the discipline you were
23 receiving related to that substantiated CCRB complaint, right?
24 A. Yes.
25 Q. And the ICO told you that you received the substantiated

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D4U8FLO3 Hawkins - cross

1 CCRB complaint because the CCRB deemed that you had done an
2 improper stop and an improper memo book entry, right?

3 A. Yes. CCRB.

4 Q. The ICO never said you had done an improper stop?

5 A. No.

6 Q. And the ICO never said that your memo book entry was
7 improper, right?

8 A. No.

9 Q. And you don't remember the ICO asking you anything about
10 the incident with Ms. Acevedo, right?

11 A. No, I don't.

12 Q. I want to show you what has been marked as Plaintiffs'
13 Trial Exhibit 13. It's a poor copy, but do you recognize this
14 to be an excerpt of your memo book?

15 A. Yes, I do.

16 MS. BORCHETTA: I move the admission of Plaintiffs'
17 13.

18 MR. MARUTOLLO: No objection.

19 THE COURT: Plaintiffs' 13 is received.

20 (Plaintiffs' Exhibit 13 received in evidence)

21 Q. Now, this handwriting is terrible, but --

22 MR. MARUTOLLO: Objection.

23 THE COURT: I think she meant it's hard to read.

24 MS. BORCHETTA: I meant the copy, I did not mean to
25 insult Detective Hawkins.

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D4U8FLO3 Hawkins - cross

1 THE COURT: She meant hard to read.

2 Q. You can read it, correct, the copy I have handed you?

3 THE COURT: Why don't you look at the hard copy.
4 Would that be easier?

5 THE WITNESS: I will try.

6 A. Thursday, May 29, 2007 --

7 Q. You don't need to read it into the record. I am going to
8 ask you a question and you can look at it for reference.

9 You did not include any information about the
10 encounter of Ms. Acevedo in this memo book entry?

11 A. No.

12 Q. And no superior in the NYPD ever told you that you should
13 have included information about the encounter with Ms. Acevedo
14 in your memo book, right?

15 A. No, because it wasn't an encounter, it wasn't a stop.

16 Q. And you still don't believe that you should have included
17 information about your encounter with Ms. Acevedo in your memo
18 book, right?

19 A. I sure don't.

20 Q. Despite the CCRB substantiation of an allegation against
21 you for abuse of authority in conducting a stop, you still
22 don't believe that it was a stop, right?

23 A. I believe it didn't escalate to a stop. May I?

24 Q. So the answer is yes?

25 THE COURT: You can explain. You started to say you
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1 didn't think it escalated to stop.

2 A. I didn't believe it escalated to a stop because, basically,
3 it was a request for information and it did not lead to a stop
4 because she wasn't a subject of an investigation at all. It
5 was just a friendly encounter, as I thought. She wasn't a
6 subject of any investigation.

7 Q. No one in the NYPD ever told you that your understanding of
8 the encounter with Ms. Acevedo was incorrect, right?

9 A. No.

10 Q. Now, you had an OCD allegation against you for an improper
11 stop and arrest, right?

12 MR. MARUTOLLO: Objection, your Honor. This line of
13 questioning has no foundation.

14 THE COURT: I assume Ms. Borchetta has a good faith
15 basis to ask the question. But if it has no basis, she will
16 say she wasn't and then that will be the end of it because I
17 won't allow impeachment with extrinsic evidence.

18 Do you remember the question?

19 THE WITNESS: Actually, it was in regards to an OCD
20 stop, question and frisk.

21 A. Actually, before I conferred with my attorney, I had no
22 knowledge of it. And, basically, it seemed like a dispute from
23 an arrest that I made. But I have no knowledge of that.

24 Q. You have no knowledge of that.

25 So no one ever discussed with you that this allegation
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D4U8FLO3 Hawkins - cross

1 had been brought other than your attorneys?
2 A. No, absolutely not.
3 Q. To your knowledge, no one interviewed you about it within
4 the NYPD?
5 A. No.

6 MS. BORCHETTA: No further questions.
7 THE COURT: Anything further?
8 MR. MARUTOLLO: Nothing further.
9 THE COURT: You're all set. Thank you.
10 MR. MARUTOLLO: We would like to call Sergeant Justin
11 Dengler. If we could just have one moment, your Honor.
12 JUSTIN DENGLER,
13 called as a witness by the defendants,
14 having been duly sworn, testified as follows:
15 THE COURT: State your full name, first and last,
16 spelling both for the record.
17 THE WITNESS: Sergeant Justin Dengler, J-U-S-T-I-N,
18 D-E-N-G-L-E-R.
19 MR. MARUTOLLO: The parties have agreed in lieu of
20 direct examination to have written stipulations read into the
21 record.
22 THE COURT: Is this the ten page, single-spaced that
23 you referred to yesterday?
24 MR. MARUTOLLO: Yes, it is.
25 The parties have helpfully prepared the stipulation.
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1 We have provided a copy to the court reporter and the exhibits
2 mentioned are also in that binder. I think for purposes of
3 saving time, I won't actually cite to every Bates stamp number,
4 but they are all in the exhibits, and I think they will be on
5 the record with the court reporter.

6 First, Detective Santos Albino of the Special
7 Litigation Support Unit of the New York City Police Department
8 conducted -- the stipulations are for both Inspector Albino and
9 Sergeant Dengler. Detective Albino is in the courtroom as
10 well.

11 THE COURT: OK.

12 MR. MARUTOLLO: Detective Santos Albino of the Special
13 Litigation Support Unit of the New York City Police Department
14 conducted an investigation into the identities of John Doe
15 officers involved in the alleged stops of David Ourlicht, Lalit
16 Clarkson, and Nicholas Peart.

17 Detective Albino conducted a search to identify four
18 plainclothes officers in an unmarked, black Lincoln Town Car
19 who allegedly stopped plaintiff David Ourlicht on or about
20 February 21, 2008.

21 Two Lincoln Town Cars were assigned to NYPD commands
22 in Queens, both black in color, on February 21, 2008.

23 On August 24, 2009, Detective Albino was present at
24 the photo array procedure in which David Ourlicht viewed photo
25 arrays that included officers from the 107th Precinct and

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1 Patrol Borough Queens South Anticrime Unit on duty in February
2 2008.

3 The photo arrays included photographs of officers from
4 the 107th Precinct and Patrol Borough Queens South Anticrime
5 Unit on duty in February 2008, as well as fillers (photographs
6 of officers who were not on duty in those commands).

7 Of the officers from the 107th Precinct and Patrol
8 Borough Queens South Anticrime Unit on duty in February 2008,
9 the arrays only included officers fitting the following
10 description: White males, from mid 20s to mid 30s.

11 On August 24, 2009, Mr. Ourlicht identified seven
12 officers who may have possibly been the police officers present
13 at the alleged February 21, 2008 incident and who were actually
14 employed by the NYPD at that time.

15 Five of the officers identified during the photo array
16 were fillers. Two officers identified during the August 24,
17 2009 photo array (Officers James Conaghan and Christopher
18 Tzimiritas) were on duty in the 107th Precinct at the time of
19 the incident.

20 Police Officer Conaghan was assigned to anticrime on
21 February 21, 2008. Officer Conaghan's partners on February 21,
22 2008 were Officers Matilda Leonardi and Andrew Alloro. Officer
23 Conaghan was driving van number 5.

24 Officer Tzimiritas was working on February 21, 2008 in
25 the anticrime unit in plainclothes. Detective Albino learned

D4U8FLO3 Hawkins - cross

1 that Officer Tzimiras was on tour with Sergeant William
2 Sommer and Officer Jonathan Jordan on February 21, 2008.

3 Officers Conaghan and Tzimiras were deposed in the
4 present litigation.

5 On January 12, 2010, Mr. Ourlicht met with his
6 attorneys, without defense counsel present, and a photo array
7 was conducted without fillers. During this array, Mr. Ourlicht
8 identified the following officers -- whose photographs were
9 present in the original array -- as officers who could have
10 been involved with his stop on February 21, 2008: Officer
11 Kenneth Winters, Officer Conaghan, Officer Sean Ring, Sergeant
12 William Sommer, Officer Jonathan Jordan, Officer Christopher
13 Tzimiras and Sergeant Edward Goutnik.

14 On or about June 2009 through December 2009, Detective
15 Albino reviewed the activity log entries of Officer Kenneth
16 Winters, Officer Sean Ring, Sergeant William Sommer, Officer
17 Jonathan Jordan, Sergeant Edward Goutnik, Officer Conaghan, and
18 Officer Tzimiras for the alleged February 21, 2008 incident.
19 There are portions of their activity logs that are illegible or
20 redacted.

21 During the course of discovery, Detective Albino
22 searched the electronic UF-250 database, and compared
23 information obtained from searches to Mr. Ourlicht's name, date
24 of birth, and the location of the alleged stop, namely, the
25 corner of Chapping Court and Chapping Parkway across from

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1 Jamaica High School in Queens, New York.

2 Based on Detective Albino's electronic UF-250 database
3 search, no UF-250 was found that could have corresponded to
4 Mr. Ourlicht's alleged stop.

5 Turning to the next incident, David Ourlicht's alleged
6 June 6 or June 9, 2008 incident.

7 On August 24, 2009, Detective Albino was present at
8 the photo array procedure at which David Ourlicht viewed the
9 photo arrays of the PSA 5 officers assigned to patrol at
10 approximately 10 a.m. on June 6, 2008 or June 9, 2008.

11 The photo arrays included photographs of officers from
12 PSA 5 on June 6 or June 9, 2008, as well as fillers
13 (photographs of officers who were not on duty in this command).

14 Mr. Ourlicht signed his name under 12 photographs of
15 police officers whom he thought may have been involved in his
16 alleged stop: Five photos from the June 6, 2008 array and
17 seven photos from the June 9, 2008 array. The 12 photos
18 depicted 11 officers. Sergeant Gordon Pekusic appeared in both
19 arrays and Mr. Ourlicht identified his photo twice.

20 Of the 11 photographs, Mr. Ourlicht identified ten
21 fillers.

22 Sergeant Gordon Pekusic was the only officer of these
23 11 who was assigned to PSA 5 on June 6, 2008 or June 9, 2008 at
24 the time of the alleged incident.

25 Sergeant Pekusic was the patrol supervisor on June 6,
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1 2008.

2 On or about February 2013, Detective Albino spoke to
3 Sergeant Pekusic.

4 On June 6, 2008, Sergeant Pekusic's activity log
5 shows, among other things, that: At 9:20 a.m., he indicated
6 "98Q" to #4141. At 9:35 a.m., he indicated "90Y." He also
7 indicated that he inspected Officers Ruggiero and Williams
8 while at the above location. At 10:00 a.m., he indicated "75C"
9 Harlem Hospital, which is located on Lenox Avenue between 135th
10 Street and 137th Street. At 10:10 a.m., he indicated -- I
11 think that part may be cut from this copy. We can return
12 there.

13 On June 9, 2008, Sergeant Pekusic's activity log shows
14 that he was the desk officer.

15 The van numbered 9466, which was identified by
16 Mr. Ourlicht, was assigned to PSA 5 on both June 6, 2008 and
17 June 9, 2008.

18 The PSA 5 roll call indicates that on June 6, 2008,
19 van 9466 was assigned to Officers Negron, Goris and Delgado.

20 The June 6, 2008 activity log entries for Officers
21 Negron and Goris indicate that they were assigned to van 9466
22 on truancy patrol and that they picked up numerous truants
23 beginning at 9:05 a.m. through 10:36 a.m. The activity logs
24 also indicate other activity, such as "10-98" around 11:00 a.m.
25 There are portions of their activity logs that are illegible or

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1 redacted.

2 The June 6 and June 9, 2008 activity logs for Officer
3 Delgado, assigned to van 9466, are unavailable because they
4 have been lost.

5 On or about February 2013, Detective Albino spoke to
6 Officers Negron, Delgado and Goris.

7 On June 9, 2008, van 9466 was assigned to Police
8 Officers Socorro and Crawford from PSA 5.

9 Activity logs for Officers Socorro and Crawford were
10 produced in the course of litigation and indicate various
11 activity from 7:30 a.m. to 12 p.m. There are portions of their
12 activity logs that are ineligible or redacted.

13 On or about February 2003, Detective Albino spoke to
14 Officers Socorro and Crawford.

15 On January 12, 2010, Mr. Ourlicht met with his
16 attorneys, without defense counsel present, and a photo array
17 was conducted without fillers. He identified the following
18 officers -- whose photographs were present in the original
19 array -- as officers who could have been involved with his stop
20 on June 6 or 9, 2008 stop: Sergeant Gordon Pekusic, Lieutenant
21 George Mifud, Officer Kennedy, and Officer Campos.

22 On or about February 2013, Detective Albino spoke to
23 Sergeant Pekusic, Lieutenant Mifud, Officer Kennedy, and
24 Officer Campos.

25 During the course of discovery, Detective Albino
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1 searched the electronic UF-250 database and compared
2 information obtained from searches to Mr. Ourlicht's name, date
3 of birth and the location of the alleged stop, namely, the
4 Johnson public housing complex (East 112th to East 115th
5 between Park and Lexington), Harlem, Manhattan.

6 Based on the search of the electronic UF-250 database,
7 no UF-250 was found that could have corresponded to
8 Mr. Ourlicht's alleged stop.

9 Turning to the Lalit Clarkson alleged January 2006
10 incident.

11 On August 24, 2009, Detective Albino was present at
12 the photo array in which Lalit Clarkson viewed photographs that
13 included plainclothes from the 44th Precinct in January 2006.
14 The photo arrays only included officers fitting the following
15 descriptions: First, male, Latino, with dark hair, and second,
16 male, Caucasian.

17 The arrays only contained fillers and photographs of
18 plainclothes officers from 44th Precinct in January 2006.

19 Mr. Clarkson identified two officers as possibly
20 having been involved in his alleged stop. Both officers
21 Mr. Clarkson identified were fillers.

22 On January 20, 2010, Mr. Clarkson met with his
23 attorneys, without defense counsel present, and a photo array
24 was conducted without fillers. He identified the following
25 officers -- whose photographs were present in the original

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D4U8FLO3 Hawkins - cross

1 array -- as officers who could have been involved with his stop
2 in January 2006: Officer Conrad McDowell, Officer Peter Shine
3 and Officer Josh Kaveney.

4 On or about December 2009, Detective Albino learned
5 that Officer Conrad McDowell retired and his activity log
6 entries could not be obtained.

7 On or about December 2009, Detective Albino learned
8 that Officer Peter Shine retired and his activity log entries
9 could not be obtained.

10 On or about December 2009, Detective Albino reviewed
11 the activity log of Officer Kaveney.

12 On or about February 2013, Detective Albino spoke to
13 Officer Kaveney.

14 During the course of discovery, Detective Albino
15 searched the electronic UF-250 database, compared information
16 obtained from searches to Mr. Clarkson's name, date of birth
17 and location of the alleged stop, namely, on the corner of
18 169th Street and Walton avenue.

19 Based on Detective Albino search of the electronic
20 UF-250 database, no UF-250 was found that could have
21 corresponded to Mr. Clarkson's alleged incident.

22 Turning to Nicholas Peart's spring 2008 alleged
23 incident.

24 On or about February 2013, Detective Albino searched
25 the 63rd Precinct personnel rosters and discovered that eight

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1 Asian officers were working in the 63rd Precinct from March 1
2 to June 30, 2008.

3 On or about February 2013, Detective Albino ran a
4 UF-250 search for these eight Asian officers from March 1 to
5 June 30, 2008, and learned that these officers completed 59
6 UF-250s.

7 Detective Albino then cross-referenced each of the 59
8 UF-250s with Mr. Peart's date of birth, age, location of
9 alleged stop (East 49th Street, Flatbush) and time of alleged
10 stop (from March 1 to June 30, 2008) and there were no matches
11 for a stop which could have corresponded to Mr. Peart's alleged
12 stop.

13 On or about February 2013, Detective Albino searched
14 NYPD personnel rosters and Detective Albino learned that there
15 were 19 Asian officers working in the neighboring 67th Precinct
16 from March 1 to June 30, 2008.

17 On or about February 2013, Detective Albino ran a
18 UF-250 search for each of the 19 Asian officers from March 1 to
19 June 30, 2008. These officers completed 45 UF-250s.

20 On or about February 2013, Detective Albino then
21 cross-referenced each of the 45 UF-250s with Mr. Peart's date
22 of birth, age, location of alleged stop (East 49th Street,
23 Flatbush, and time of alleged stop from March 1 to June 30,
24 2008) ("afternoon") and there were no matches that could have
25 corresponded to Mr. Peart's alleged stop.

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1 On or about February 2013, Detective Albino searched
2 the electronic UF-250 database, compared information obtained
3 from the searches to Mr. Peart's date of birth and the location
4 of alleged stop (East 49th Street, Flatbush, and time of
5 alleged stop from March 1 to June 30, 2008) ("afternoon").

6 Based on Detective Albino's electronic UF-250 database
7 search, no UF-250 was found that could have corresponded to Mr.
8 Peart's alleged incident.

9 Turning to Nicholas Peart's September 2010 alleged
10 incident.

11 On or about February 2013, Detective Albino searched
12 NYPD personnel rosters and learned that there were 193 male
13 non-African American officers who were working in September
14 2010 in the 32nd Precinct and PSA 6.

15 On or about February 2013, Detective Albino searched
16 the electronic UF-250 database, compared information obtained
17 from searches to Mr. Peart's date of birth and of the location
18 of the alleged incident. (West 144th Street between 7th and
19 8th Avenues).

20 Based on Detective Albino's electronic UF-250 database
21 search, no UF-250 was found that could have corresponded to Mr.
22 Peart's alleged incident.

23 Turning to Nicholas Peart's April 13, 2011 alleged
24 incident.

25 Detective Albino learned that there were 94 male white
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1 officers who were working May 2011 in the 32nd Precinct and PSA
2 6.

3 On or about February 2013, Detective Albino searched
4 the electronic UF-250 database, compared information obtained
5 from searches to Mr. Peart's date of birth and the location of
6 the alleged incident, namely, 129 and 125 West 144th Street.

7 Based on Detective Albino's electronic UF-250 database
8 search, no UF-250 was found that could have corresponded to Mr.
9 Peart's alleged incident.

10 Finally, turning to David Floyd's alleged April 20,
11 2007 incident.

12 Sergeant Justin Dengler of the Special Litigation
13 Support Unit of the New York City Police Department conducted
14 an investigation into the identities of John Doe officers
15 involved in the alleged April 20, 2007 stop of David Floyd.

16 On or about December 2012, Sergeant Dengler determined
17 that shield number 12141 was assigned to a female police
18 officer, Mary Deacy, who was assigned to the 14th Precinct in
19 midtown Manhattan on April 20, 2007.

20 On or about December 2012, Sergeant Dengler further
21 determined that shield number 9292 was assigned to a male
22 police officer, Amador Ortiz, who was assigned to the Transit
23 Borough Queens Task Force in Queens on April 20, 2007.

24 On or about December 2012, Sergeant Dengler ran a
25 UF-250 search for Officers Ortiz and Deacy for April 20, 2007

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D4U8FLO3 Hawkins - cross

1 and found no UF-250s at 1359 Beach Avenue and/or 1.5 blocks
2 from 1359 Beach Avenue in the Bronx for April 20, 2007.

3 On or about December 2012, Sergeant Dengler searched
4 for the surname "Goodman" in the NYPD personnel history
5 database and learned that there were four male non-civilian
6 members of the service with the surname "Goodman" who were
7 employed by the NYPD in April 2007.

8 None of the four officers with the surname "Goodman"
9 were assigned to a Bronx command on April 20, 2007.

10 On or about December 2012, Sergeant Dengler ran a
11 UF-250 search for the four officers with the surname "Goodman"
12 and found no UF-250 entries on April 20, 2007 corresponding to
13 Mr. Floyd's date of birth, age, and the following locations:
14 Beach Avenue in the Bronx, New York and/or 1.5 blocks from the
15 address 1359 Beach Avenue.

16 On or about December 2012, Sergeant Dengler searched
17 the surname "Rodriguez" in the NYPD personnel history database
18 and learned that there were 225 male, non-civilian members of
19 the service with the surname "Rodriguez" who were employed by
20 the NYPD during April 2007, and that 84 were assigned to
21 commands in the Bronx.

22 Four officers named Rodriguez were working in the 43rd
23 Precinct and Police Service Area 8 on April 20, 2007.

24 Mr. Floyd did not recognize a photograph of one of
25 these officers (Julio Rodriguez) in the photo array conducted

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1 February 1, 2010.

2 On or about December 2012, Sergeant Dengler ran a
3 UF-250 search for these four officers with the surname
4 "Rodriguez" from the 43rd Precinct and PSA 8 for April 20, 2007
5 and Mr. Floyd's date of birth, age, and the following locations
6 of alleged stop: Beach Avenue in the Bronx and/or 1.5 blocks
7 from the address 1359 Beach Avenue for the entire day.

8 Based on Sergeant Dengler's search for Rodriguez there
9 were no matches for UF-250s that correspond to Mr. Floyd's
10 stop.

11 Mr. Floyd participated in a photo array with his
12 attorney and defendants. He identified 44 photographs of
13 officers depicted in the photo array as officers possibly
14 involved in the encounter.

15 The photo arrays created for the April 20, 2007 stop
16 consisted of photos of officers assigned to uniformed units
17 within the 40th Precinct on April 20, 2007 on the 4 to 12 and
18 12 to 8 tours. Additionally, the photographs included from
19 Bronx Task Force on April 20, 2007, and the photographs
20 contained photographs of officers from the Bronx evidence
21 collection team who were assigned to that team on April 20,
22 2007 at the time of the alleged incident.

23 The activity logs of 35 of the identified officers
24 were produced during the course of discovery. I am just going
25 to read their names: Pedro Almonte, Nestor Beaume, Vincent

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D4U8FLO3 Hawkins - cross

1 Carty, David Egan, Steven Fernandez, Edward Garmendiz, Matthew
2 Hayes, Sean Higgins, Kris Kalmanowicz, Anthony Leitao, J.
3 Lopez, Caren McCormick, Jose Medina, Ferdi Memodoski, James
4 Nelms, Angel Padilla, Martin Pastor, Martin Palazzo, Jorge
5 Perdomo, Victor Perez, Vito Plaia, Bennett Ramos, Druilio
6 Rivera, Manuel Rohena, William Sanchez, Roberto Santiago, Erik
7 Sherar, Bruce Taylor, Ruben Tengco, Alexander Valasques, Ronny
8 Valdez, Rafael Velazquez, Keith Walker, Michael Weiss, Kurt
9 Wiebke, Amable Lopez.

10 Officer Cliff Acosta, identified by David Floyd during
11 the photo array, was assigned to the 43rd Precinct on April 20,
12 2007. He lost his memo book for that date and therefore it was
13 not produced for the purposes of this litigation.

14 Officer Luis Algarin, identified by David Floyd during
15 the photo array, was assigned to Patrol Borough Task Force on
16 April 20, 2007. He retired and his activity log entries could
17 not be obtained.

18 Officer Mario Badia, identified by David Floyd during
19 the photo array, was assigned to Patrol Borough Bronx Task
20 Force on April 20, 2007. He retired and his activity log
21 entries could not be obtained.

22 No documentation or information relevant to the April
23 20, 2007 memo book for Officer Clayton, identified by David
24 Floyd during the photo array, was produced to plaintiffs during
25 the course of discovery.

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D4U8FLO3 Hawkins - cross

1 Officer Gabriel Cotto, identified by David Floyd
2 during the photo array, was assigned to Patrol Borough Bronx
3 Task Force on April 20, 2007. He was unable to locate his memo
4 book entries for April 20, 2007 and therefore it was not
5 produced for purposes of this litigation.

6 Officer Richard Fernandez, identified by David Floyd
7 during the photo array, was assigned to Patrol Borough bronx
8 Task Force on April 20, 2007. He resigned and therefore his
9 memo book entries were not produced for purposes of this
10 litigation.

11 Officer Luis Mendez, identified by David Floyd during
12 the photo array, was assigned to the 43rd Precinct on April 20,
13 2007. He lost his memo book covering that date and therefore
14 did not produce it for the purposes of this litigation.

15 Roll calls for the 43rd Precinct and the Bronx
16 evidence task force were produced during discovery.

17 THE COURT: This seems to have taken all the time
18 prior to the luncheon recess. So we didn't get any testimony
19 in, but we will reconvene at 5 after 2.

20 (Luncheon recess)
21
22
23
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25

D4U8FLO3

Hawkins - cross
AFTERNOON SESSION
2:05 p.m.

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JUSTIN DENGLER, resumed.

MR. MARUTOLLO: One final note with respect to the stipulations. We just wanted to make a record into evidence that we have agreed to admit Defendants' Exhibit F3, G3, and Plaintiffs' Exhibits 491 through 548, which are all in the binder.

THE COURT: But not C3? You didn't mention C3.

MR. MARUTOLLO: And C3.

THE COURT: C3, F3, G3 and 491 through?

MR. MARUTOLLO: 548.

THE COURT: All right. 491 through 548 are received, as is C3, F3 and G3.

(Plaintiffs' Exhibits 491 through 548 received in evidence)

(Defendants' Exhibits C3, F3 and G3 received in evidence)

THE COURT: That constitutes the direct.

Now, Ms. Patel.

CROSS-EXAMINATION

BY MS. PATEL:

Q. Good afternoon, Sergeant.

A. Good afternoon.

Q. I am going to start with the stop of David Floyd on April

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D4U8FLO3 Dengler - cross

1 A. That's correct.

2 Q. A dark colored van?

3 A. Correct.

4 Q. But you never searched for vans in use in the Bronx on
5 April 20, 2007, did you?

6 A. Yes, I did. For unmarked vans in use in the Bronx on April
7 20, 2007, yes, I did.

8 THE COURT: Is that in the stipulation that was just
9 read?

10 MS. PATEL: No.

11 THE COURT: There is no mention of that.

12 MR. MARUTOLLO: Just as a note, those are only the
13 issues that the parties agreed upon. However, the
14 investigators did do more work.

15 THE COURT: Thank you.

16 Q. I am showing the witness Plaintiffs' Exhibit 551, which is
17 a daily vehicle assignment sheet for April 20, 2007. Do you
18 see that?

19 A. Yes.

20 MS. PATEL: I move this into evidence, your Honor.

21 It's a vehicle assignment sheet, dated April 20, 2007.
22 Plaintiffs' Exhibit 551, Bates stamp NYC-2-8195.

23 THE COURT: Any objection to that?

24 MR. MARUTOLLO: No objection.

25 THE COURT: 551 is received.

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D4U8FLO3 Dengler - cross

1 (Plaintiffs' Exhibit 551 received in evidence)

2 Q. Plaintiffs' Exhibit 551, you see here it says "unmarked
3 autos" in the third column?

4 A. Yes.

5 Q. And there's numbers here, right?

6 A. Correct.

7 Q. Mr. Floyd alleges that a female officer was involved in the
8 April 20, 2007 stop, correct?

9 A. Correct.

10 Q. You're aware that a female officer was on patrol in the
11 43rd Precinct at the time of David Floyd's stop on April 20,
12 2007, correct?

13 A. Correct.

14 Q. Did you review her memo book?

15 A. Yes, I did.

16 Q. Did you produce it to the plaintiffs?

17 A. Yes, I did.

18 Q. She wasn't included in the photo array, was she?

19 A. I believe that she was, yes.

20 Q. Do you remember her name?

21 A. Yes, I do.

22 MR. MARUTOLLO: Objection. I am not sure which female
23 officer you're referring to and is there more than one?

24 MS. PATEL: I don't know either. That's why I am
25 asking.

D4U8FLO3

Dengler - cross

1 THE COURT: I don't understand the objection.
2 MR. MARUTOLLO: I guess the question --
3 THE COURT: The question was, Are you aware that a
4 female officer was on patrol in the 43rd Precinct at the time
5 of David's Floyd stop? He answered yes. Did you review her
6 memo book? He said yes so he knows.
7 MR. MARUTOLLO: I guess my objections is, if there
8 were more than one female officer --
9 THE COURT: I don't know. Did you review her memo
10 book? Yes, I did.
11 Whose memo book did you review?
12 THE WITNESS: There were several females that were on
13 patrol that day.
14 THE COURT: You reviewed all of their memo books?
15 THE WITNESS: I did, yes.
16 THE COURT: It should have been plural. Did you
17 produce them to the plaintiffs? Yes, you did.
18 THE WITNESS: Correct.
19 THE COURT: Was she in the photo array, all of these
20 photo arrays? There are several now.
21 THE WITNESS: I believe that I wasn't involved in the
22 creation of that photo array. It was done back in 2010. I
23 believe that all of the individuals that worked in the 43rd
24 Precinct on the second platoon and third platoon roll call were
25 included in that photo array.

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D4U8FLO3 Dengler - cross

1 THE COURT: When she asked, do you recall the name,
2 you said, yes, you do.

3 THE WITNESS: I do recall the names of some of the
4 females that were on the photo array and the ones that were on
5 the second and third platoon roll calls.

6 BY MS. PATEL:

7 Q. Let me narrow my question a little bit.

8 You're aware, aren't you, that the defendants
9 represented to the court in May 2009 that there was only one
10 female officer on patrol in the 43rd Precinct at the time of
11 David Floyd's stop on April 20, 2007?

12 A. I am not sure what exactly was represented back in 2009. I
13 was assigned this specific investigation in December of 2012.

14 THE COURT: You want the names or no?

15 MS. PATEL: No, your Honor. I think we probably have
16 them.

17 I am showing the witness Plaintiffs' Exhibit 552,
18 which is a collection of memo books in which we were able to
19 ascertain certain legible portions of the memo books, with
20 locations of activity by the police officers in the memo books.

21 The memo books were produced by the city in the course
22 of discovery for this particular John Doe stop, and they are
23 from Bronx task force tour 2 and 3, Bronx evidence collection
24 team, and the uniformed units within the 43rd Precinct from 4
25 to 12 and 12 to 8. It's not all of the memo books produced,

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D4U8FLO3 Dengler - cross

1 but it's the memo books where we were able to find legible
2 addresses.

3 Q. Do you recognize this exhibit as being memo books?

4 A. Yes.

5 MS. PATEL: We would move for the admission.

6 MR. MARUTOLLO: We would object to this admission.

7 The memo books are already in evidence themselves.

8 This list, I believe it's the same list --

9 MS. PATEL: No.

10 MR. MARUTOLLO: Can I have a copy then? You gave me
11 Plaintiffs' 552.

12 MS. PATEL: That's it.

13 THE COURT: You want to see 552? Are you sure you're
14 looking at the same exhibit?

15 MR. MARUTOLLO: It was originally 549 and it was
16 blacked out.

17 In any event, we object to this coming into evidence.
18 This was provided to the defendants late last night. There is
19 no indication that these are the only legible entries in these
20 memo book entries.

21 Additionally, there are other memo book entries that
22 have been provided, and I think this might give a misleading
23 set of data when we have all the memo books already in evidence
24 that was part of the stipulations. I think this chart,
25 although I understand it's intended to simplify matters, I

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D4U8FLO3

Dengler - cross

1 MS. PATEL: This witness is here to prove that they
2 have done an adequate search, and whether or not the photo
3 spread is a good photo spread or it was done in an appropriate
4 manner is potentially questioned. So whether or not this
5 witness or the police department should have investigated other
6 potential officers I think is an open question.

7 It's very few questions about this.

8 THE COURT: I don't care if there are very few
9 questions. It's cluttering the record. Is there anything in
10 these memo books that you have looked through that you have
11 found that the light went on and you said, that's it, that's
12 the stop? Do you have something like that?

13 MS. PATEL: I think the issue is, if I could just
14 show, this is where the stop happened, this red dot, and this
15 is where some of the activity is. So I think whether this was
16 investigated or not is part of the question with this witness.

17 THE COURT: The purpose of putting in the memo book,
18 what is the purpose of cluttering the record with a bunch more
19 memo books of the officers he didn't identify? I understand
20 that the identification may mean nothing, that the pictures may
21 be so different, uniform versus nonuniform, whatever. It may
22 not be meaningful that he picked some and not others. So you
23 went and collected the other memo books of everybody on duty at
24 that time. But is there anything in those memo books that
25 makes you say, oh, somebody recorded that stop, it's actually

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D4U8FLO3 Dengler - cross

1 there? Did you find something like that?

2 MS. PATEL: Unfortunately, part of the problem is what
3 we know is officers don't always document things.

4 THE COURT: If these memo books don't prove anything,
5 then they aren't relevant.

6 MS. PATEL: They show that officers were in the area.

7 THE COURT: I am sure nobody will disagree that there
8 are officers in the area. They are in this precinct. That's
9 what they do all day every day. I am sure they were in the
10 area. I think we are not taking the memo books or the summary,
11 unless you said you found something.

12 MS. PATEL: Well, we did, but they are included in the
13 memo books that you have so I will move on to that.

14 THE COURT: OK.

15 BY MS. PATEL:

16 Q. You testified on direct that Mr. Floyd was shown a photo
17 array in Exhibit C3, correct?

18 A. Correct.

19 MS. PATEL: The Court's attention can be turned to C3.

20 THE COURT: I am looking at C3 now. It's a large
21 group of individual photos.

22 Q. The portion of the photo array that was shown to David
23 Floyd was NYC-2-12711 to 12914.

24 Are you aware that there's 203 photographs in that
25 photo spread?

D4U8FLO3 Dengler - cross

1 A. I wasn't aware of that exact number, no.

2 THE COURT: Would the defense stipulate to that
3 number?

4 MR. MARUTOLLO: Yes, your Honor. Although we would
5 note that Sergeant Dengler, he is testifying here in lieu of
6 Detective O'Gorman who has retired.

7 THE COURT: All the more reason to agree with her
8 number. What did you say, Ms. Patel?

9 MS. PATEL: 203 photographs.

10 THE COURT: All right. Unless you have reason later
11 to tell me it's not 203, I assume it is.

12 Q. Those photographs, you testified on direct, were several
13 tours within the Bronx, right, commands in the Bronx?

14 A. Correct.

15 Q. But that photo array was not limited by the physical
16 descriptions of the officers, correct?

17 A. I'm not sure how that photo array was created.

18 Q. So you're not aware of whether or not there was any
19 limitation to the photos that were included?

20 A. I'm not aware how that photo array was created. It was
21 done back in 2009 before I was assigned.

22 Q. Your stipulated testimony on direct, in that testimony you
23 stated that Mr. Floyd sat for a photo array on January 12,
24 2010, right?

25 A. Can you repeat that?

D4U8FLO3 Dengler - cross

1 Q. That Mr. Floyd sat for a photo array on January 12, 2010?

2 A. I believe it was in February 2010. But like I said, I was
3 not involved in that photo array.

4 Q. If I could turn your attention to Plaintiffs' Exhibit 518,
5 which is in the binder in front of you.

6 A. OK. I have it.

7 THE COURT: Which one is that again?

8 MS. PATEL: 518, which is a memo book for J. Lopez
9 with the Bates number NYC-2-9556 to 557.

10 MR. MARUTOLLO: What exhibit number is this?

11 MS. PATEL: 518.

12 Q. You can see on the second page NYC-2-9557, a note that
13 says, "Santiago, van number 59" something. Do you see that?

14 A. Yes, I do.

15 Q. Did you investigate this officer and that van?

16 A. Yes, I did.

17 Q. You did?

18 A. Yes, I did.

19 Q. What were the results of your investigation?

20 A. This officer is assigned to Bronx Task Force and Bronx Task
21 Force does not utilize unmarked vehicles. I searched for Bronx
22 Task Force in the fleet services division allocation database
23 and determined that they did not possess any unmarked vans back
24 in April of 2007.

25 This officer's tour also starts at 1730 hours.

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D4U8FLO3 Dengler - cross

1 Plaintiff Floyd alleged that time of occurrence was about 3
2 p.m. in the afternoon. This officer's tour started at 1730,
3 which is 5:30 p.m.

4 Q. Would you say that this officer probably couldn't have been
5 the officer -- are you saying this couldn't have been the
6 officer who stopped him?

7 A. Correct.

8 Q. But he was included in the photo array?

9 A. Apparently he was.

10 Q. You made that conclusion based on the time of his tour?

11 A. The time. It also says that his assignment is 40, which to
12 mean means the 40 Precinct. The Bronx Task Force gets
13 dispatched to the various commands throughout the Bronx. So
14 apparently here he was sent to the 40 Precinct and his tour
15 only started at 5:30 p.m.

16 Q. Showing the witness Plaintiffs' Exhibit 550. Is that a
17 map?

18 A. Yes.

19 Q. And you see that there is a key, a house key with the
20 address 1359 Beach Avenue, and that's David Floyd's address,
21 right?

22 A. Yes.

23 Q. And there are two points plotted there, right?

24 A. I see.

25 MS. PATEL: I move for the admission of the map.

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D4U8FLO3 Dengler - cross

1 MR. MARUTOLLO: I just want to make sure. Is this
2 Floyd map 2?
3 MS. PATEL: That's right.
4 MR. MARUTOLLO: I would object again on relevance
5 grounds. With respect to Kris Kalmanowicz, I am not sure if he
6 is one of the officers who was identified. We received this
7 last night, your Honor. If both McCormick and Kalmanowicz were
8 identified, then we have no objection.
9 MS. PATEL: They were. In Plaintiffs' Exhibit 519 and
10 516, which are included in the binder.
11 MR. MARUTOLLO: I also object on the grounds that it's
12 misleading. I am not exactly sure what these markers mean, if
13 it's something that it's only one particular time during the
14 tour. Particularly, the time of the entry I think makes it
15 even less relevant.
16 THE COURT: The time of the memo book entry?
17 MR. MARUTOLLO: Right.
18 THE COURT: I don't know the time of the memo book
19 entry. I can't read it nor did I want to unless it's in
20 evidence. That was the problem. Maybe you can confer.
21 BY MS. PATEL:
22 Q. Let's look at Plaintiffs' Exhibit 519, NYC-2-7447 to 448.
23 This is a memo book for Caren McCormick, correct?
24 A. Correct.
25 Q. And you see on the second page there is an indication for
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D4U8FLO3 Dengler - cross
1 activity at 1522 at Metro and Wood?
2 A. Correct.
3 (Continued on next page)
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D4u9flo4

Dengler - cross

1 MR. MARUTOLLO: Just object to the term "little ways
2 over." I realize the map speaks for itself, but.
3 THE COURT: Right.
4 MS. PATEL: Okay. That's -- this plot point is here
5 at 1359 Beach Avenue, correct?
6 THE WITNESS: Yes.
7 THE COURT: Do you have a hard copy of that that I
8 could look at or no?
9 MS. PATEL: Yes.
10 THE COURT: If you have a duplicate hard copy it might
11 be easier for me to -- if you don't --
12 MS. PATEL: You can actually have this. I'm done.
13 THE COURT: Thank you.
14 Q. Sergeant Dengler, do you recall in November 2009 providing
15 information to the plaintiffs regarding memo book entries for
16 Lalit Clarkson's John Doe stop?
17 A. I don't specifically remember anything like that. I
18 know --
19 Q. I can refresh your recollection.
20 A. Okay. Sure.
21 MS. PATEL: Showing the witness what's previously
22 marked as -- or Bates stamped NYC 2-9391, which is a
23 declaration by Sergeant Justin Dengler, and also a declaration
24 signed by Lieutenant Richard Lovina Bates stamped NYC 2-9481.
25 Does that refresh your recollection about doing the

D4u9flo4 Dengler - cross
1 search related to Lalit Clarkson.
2 THE WITNESS: Yes.
3 THE COURT: She has one, just the January 2006?
4 Right?
5 MR. MARUTOLLO: That's correct, your Honor.
6 MS. PATEL: Yes, your Honor.
7 Q. And you provided information that police officer Shawn
8 Gazorian's memo book was lost, correct?
9 A. Correct.
10 Q. And therefore was not produced?
11 A. Correct.
12 Q. You're aware, aren't you, that officers conduct stops
13 without making memo book entries, right?
14 A. I've heard of such things, yes.
15 Q. And you know that officers sometime conduct stops and don't
16 fill out a UF 250 form, correct?
17 A. I've heard of such allegations, yes.
18 Q. But you don't know for a fact? You think that officers
19 always fill out UF 250 forms when they conduct stops?
20 A. I don't have any --
21 MR. MARUTOLLO: Objection, your Honor.
22 THE COURT: Sustained.
23 Q. Is it your understanding that police officers always fill
24 out UF 250s?
25 THE COURT: Did I just not sustain an objection to

D4u9flo4 Dengler - cross

1 that exact question.
2 MS. PATEL: I'm sorry, your Honor.
3 THE COURT: I know what they're supposed to do. It
4 doesn't matter what he thinks or his opinion or whatever.
5 Obviously, they're supposed to fill them out for all stops. Do
6 they fill them out for all stops? No.
7 MS. PATEL: I guess the reason for the question is
8 that to the extent his search was based on UF 250s.
9 THE COURT: I realize that. That's an argument for
10 summation. I understand that.
11 MS. PATEL: Okay.
12 Nothing further, your Honor.
13 MR. MARUTOLLO: A few brief questions, your Honor.
14 REDIRECT EXAMINATION
15 BY MR. MARUTOLLO:
16 Q. Sergeant Dengler, you testified during cross-examination
17 that you searched other dates besides April 20, 2007?
18 A. Yes, I did.
19 Q. Why did you do that?
20 MS. PATEL: Objection. He was not asked any questions
21 about anything related -- other than April 20, 2007.
22 MR. MARUTOLLO: But he did testify about that.
23 THE COURT: All she's saying is it's improper redirect
24 but.
25 MS. PATEL: Exactly.

D4u9flo4 Dengler - redirect

1 THE COURT: Since your direct was limited to the
2 stipulation, I'll allow you some leeway.
3 MS. PATEL: It's not limited to the stipulation. This
4 question is not --
5 THE COURT: No. I realize that. That's my point.
6 It's outside the stipulation.
7 MS. PATEL: That's right.
8 THE COURT: I know. I said since he limited the
9 direct to the stipulation, I'm going to allow him some latitude
10 on redirect.
11 Anyway, you did look at dates other than April 20,
12 right?
13 THE WITNESS: Yes, I did.
14 Q. Why did you do that?
15 A. The plaintiff changed his allegations in 2011 to include --
16 he stated that it may have been a Saturday in April. So I
17 checked every Saturday in April 2007, which was April 7, 14, 21
18 and 28.
19 Q. Now, besides the electronic database UF 250 search, did you
20 search -- did you conduct an investigation into any other
21 UF 250s related to this David Floyd allegation?
22 A. Yes, I did.
23 MS. PATEL: Objection, your Honor.
24 First of all, I did not ask any questions about his
25 UF 250 database search so it's outside the scope.

D4u9flo4 Dengler - redirect

1 THE COURT: That was -- your very last question
2 essentially was: You limited your search to the UF 250s? You
3 tried to say did you look at things other than -- no, you
4 started to say: Don't you realize that not everybody fills out
5 a 250. But it was clear that his search was limited to the
6 UF 250s.

7 Now the question is only: Did you limit yourself to
8 the electronic database, or did you actually look through I
9 guess hard copy 250s?

10 THE WITNESS: I did. At police headquarters all the
11 hard copies are stored and I manually searched through all the
12 hard copies physically.

13 THE COURT: I know it's still 250s, but it's beyond
14 the electronic database.

15 MS. PATEL: I would just say that should be stricken
16 because it's cumulative. The same search that was done during
17 the course of discovery would have covered anything that was
18 done manually because the only thing redacted is the names,
19 which would have been in the electronic search that was
20 conducted during the course of discovery.

21 THE COURT: I'm sorry. I apologize. I'm not
22 following this. But maybe -- let me make sure I understand.

23 Are the paper copies more complete than the database?

24 THE WITNESS: Well the paper copies are unredacted.
25 Basically in the UF 250 in the electronic database, if the

D4u9flo4 Dengler - redirect

1 person was not arrested or summonsed, their name and address is
2 correct.

3 THE COURT: Other than that, the electronic database
4 and the paper data, so to speak, should be identical?

5 THE WITNESS: Yes.

6 THE COURT: There's not more 250s in the paper world?

7 THE WITNESS: That's correct.

8 THE COURT: So.

9 MS. PATEL: But when this electronic search that we
10 stipulated to in the stipulation was conducted during the
11 course of discovery, during that time the electronic database
12 included the names.

13 So, therefore, whether or not the defendants
14 determined that they should do a manual search is irrelevant.

15 THE COURT: Maybe that's when you expand it to the
16 other Saturday -- the other days though when you went through
17 all the Saturdays in April?

18 THE WITNESS: Yes, I did. I did every Saturday in
19 April.

20 MS. PATEL: Again, your Honor, that's outside the
21 scope of discovery. Nothing was ever provided to the
22 plaintiffs.

23 THE COURT: What could they -- I'm sorry, Ms. Patel,
24 you're just managing to lose me today. What could they provide
25 you? A negative is a negative. What could they do? Say

D4u9flo4 Dengler - redirect

1 here's a negative.

2 All he's testifying to is he looked through all the
3 Saturdays in April and didn't find anything in the UF 250s.

4 Of course, your argument is there may have been no
5 250. I understand that argument.

6 MS. PATEL: And I just think the relevance of a search
7 that was done outside the scope of discovery, you know, I would
8 object -- any evidence that's --

9 THE COURT: The issue is prejudice. The issue is
10 always prejudice. But there's nothing that could -- there's
11 nothing prejudicial because there's nothing to give you in
12 discovery, other than to invite you to go down to headquarters
13 and look through all the 250s yourself which wouldn't turn up
14 anything else if you look.

15 MS. PATEL: If we had known that there was a further
16 search being conducted in December 2012 we could have deposed
17 the witness.

18 THE COURT: It would have been a pretty short
19 deposition. I looked through every Saturday in April in the
20 electronic database and hard copies and didn't find anything.

21 He didn't go beyond the 250s. So I don't know what
22 the deposition would have given you. What would you have asked
23 at deposition?

24 MS. PATEL: Well, your Honor, I mean the names that he
25 used, the locations that he narrowed.

D4u9flo4 Dengler - redirect

1 THE COURT: I'll allow you to do that on recross. You
2 can do that. That's fine. All right. Go ahead.

3 MR. MARUTOLLO: We would note, your Honor, we did
4 stipulate to those addresses and the locations in the direct
5 examination.

6 THE COURT: If she wants to ask that on recross she
7 can for the December 2012 search, which she never heard about
8 until, what, just now?

9 MS. PATEL: Well I mean a week ago when we discovered
10 that.

11 MR. MARUTOLLO: That's not accurate, your Honor. He's
12 been listed as a witness in place of Detective O'Gorman since
13 the beginning.

14 THE COURT: I'm asking when she first heard of the
15 December 2012 search.

16 And the answer is?

17 MS. PATEL: When we first received the draft
18 stipulation which was I don't know -- I don't have the exact
19 date but a week or two ago.

20 And we have objected to that.

21 MR. MARUTOLLO: May I have one moment, your Honor.

22 (Pause)

23 No further questions, your Honor.

24 THE COURT: Ms. Patel, go ahead and ask those
25 questions if you'd like.

D4u9flo4 Dengler - redirect

1 RE CROSS EXAMINATION
2 BY MS. PATEL:
3 Q. When you did your UF 250 search, did you search for McGraw
4 Avenue?
5 A. Yes, I did. I searched for every 250 that was conducted in
6 the confines of the 43rd precinct on April 7, 14, 20, 21, and
7 28.
8 Q. And this was in your manual search?
9 A. Yes.
10 Q. How many UF 250s were there?
11 A. Hundreds. There were hundreds.
12 And it was also done in my electronic search as well.
13 MS. PATEL: Nothing further.
14 MR. MARUTOLLO: No further questions, your Honor.
15 THE COURT: Okay. Thank you.
16 (Witness excused)
17 MR. MARUTOLLO: We can call Detective Santos Albino.
18 Again, in lieu of the stipulation we'll waive our direct
19 examination.
20 SANTOS ALBINO,
21 called as a witness by the Defendant,
22 having been duly sworn, testified as follows:
23 CROSS-EXAMINATION
24 BY MS. PATEL:
25 Q. Detective Albino let's start with discussing the

D4u9flo4 Albrino - cross

1 February 21, 2008 stop of David Ourlicht.

2 THE COURT: I'm sorry. Give me a second. Is there

3 one just stop of Ourlicht here?

4 MS. PATEL: There's two.

5 THE COURT: Which one did you say?

6 MS. PATEL: February 21, 2008.

7 Q. You're familiar with the factual allegations regarding

8 David Ourlicht's February 21, 2008 stop, right?

9 A. Yes.

10 Q. You've reviewed his deposition testimony related to this

11 case, right?

12 A. Yes, I did.

13 Q. And have you reviewed his trial testimony as well?

14 A. That's correct.

15 Q. Let's turn to the photo arrays conducted for David

16 Ourlicht. You were present for his photo array, correct?

17 A. Is this the --

18 Q. I'm just asking. You were present for the photo array,

19 right?

20 A. Yes, I was.

21 Q. And the photo arrays consisted of plain clothes members of

22 service assigned to the roll calls of the 107th precinct in the

23 borough Queens south anticrime roll calls, correct?

24 A. That's correct.

25 Q. And the photo array for David Ourlicht's stop of

D4u9flo4 Albino - cross

1 February 21, 2008 was limited to white men between the ages of
2 20 and 30; is that right?

3 A. That's correct.

4 Q. That's because you determined that there was no other
5 Queens boroughwide command units that should have been included
6 within the array, right?

7 A. The arrays were for -- from the precinct of occurrence.
8 And from officers that were assigned to the borough anticrime
9 team.

10 Q. But there could have been other boroughwide command
11 officers on duty in that area, right?

12 A. That's correct.

13 Q. And the photo arrays also included fillers, right?

14 A. Yes.

15 Q. And by fillers, I mean photographs of officers who were not
16 assigned to borough Queens south anticrime or the 107th
17 precinct on that day, right?

18 A. Yes.

19 Q. The photographs in the photo arrays of the officers from
20 the 107th precinct roll call for the borough Queens south
21 anticrime weren't taken around February 21, 2008, were they?

22 A. The photo arrays?

23 Q. The photographs.

24 A. The photographs.

25 The department photo base maintains a list of our

D4u9flo4 Albino - cross

1 employees and their photos and it's renewed every five years.

2 THE COURT: So at any one time a particular person's
3 photo could be four-and-a-half years old?

4 THE WITNESS: That's correct.

5 THE COURT: For example?

6 THE WITNESS: Yes.

7 THE COURT: But it shouldn't be more than five years?

8 THE WITNESS: It's on their birthday every five years.

9 Q. And the photographs may or may not depict a different hair
10 color of the officer from February 21, 2008, correct?

11 A. That may be possible, yes.

12 Q. And whether or not they had different facial hair, correct?

13 A. Yes.

14 Q. And a different build, lost weight or gained weight? They
15 could be different from the photograph, right?

16 A. Yes, ma'am.

17 Q. And you would also agree, wouldn't you, that by using the
18 photo arrays, Mr. Ourlicht can't hear the sound of the person's
19 voice, right?

20 A. It's only a photo, ma'am. There is no sound.

21 Q. And there could be something that listening to the voice of
22 an officer that would assist in making an accurate
23 identification, right?

24 A. Only if the officers are present. If the officer was
25 present during the photo array.

D4u9flo4 Albino - cross

1 Q. My question is if a police officer -- if a person speaks,
2 the person making the identification, hearing the voice, that
3 can assist in making an accurate identification?

4 A. Yes, it may.

5 Q. But in any case at the time of the photo array that was
6 conducted for David Ourlicht in which you were present, he did
7 not know the identities of any of the officers who corresponded
8 to the photographs he was shown, right?

9 A. I'm sorry. Can you repeat the question.

10 Q. At the time of the photo array, David Ourlicht did not know
11 the identities of any of the police officers whom he was shown?

12 MR. MARUTOLLO: Objection. Calls for speculation,
13 your Honor.

14 THE COURT: Well if that's his testimony, then it's a
15 fair question.

16 To your knowledge he did not have a name and shield
17 number, did he?

18 THE WITNESS: No, he did not. He did not provide any
19 information.

20 THE COURT: So he didn't have the identities, to your
21 knowledge.

22 THE WITNESS: Yes, ma'am.

23 Q. And I was there at the photo array, correct?

24 A. I believe so, yes.

25 Q. Yes. We met there. And I didn't have that information

D4u9flo4 Albino - cross

1 that photo array, right?

2 A. I don't recall.

3 THE COURT: But you heard it at the time? You were
4 there.

5 THE WITNESS: I was present. Yes, ma'am. I was
6 present, your Honor. And I don't recall --

7 THE COURT: I know you don't recall. But at the time
8 you heard what he said, whatever?

9 THE WITNESS: Sure, sure.

10 Q. And there was a transcript of that proceeding, right?

11 A. Yes, there was.

12 Q. And you stated that you've reviewed the transcripts of the
13 depositions, correct?

14 A. Yes. After the photo array hearing I was provided with
15 copies of that -- of the results of those photo arrays.

16 Mr. Floyd selected -- excuse me, Mr. Ourlicht selected some
17 photos. And those copies were produced to our office.

18 Q. Okay. I'm just asking whether or not you have reviewed the
19 transcript. I think you testified earlier that you did, you
20 reviewed the transcript of what was said at that photo array.

21 A. I reviewed the results of, on the transcripts, yes.

22 Q. And you took notes during that photo array, right?

23 A. No, I did not.

24 MS. PATEL: For the record, your Honor, I'm going to
25 read in the Bates numbers of -- for defendants -- it's from

D4u9flo4 Albino - cross

1 Defendants' Exhibit F3, David Ourlicht was shown from
2 February 21, 2008 NYC 2-8733 to 41. And 8742 to 52.
3 Q. And then so, Detective Albino, you recall that he was shown
4 86 pages of photographs, correct?
5 A. I believe so, yes.
6 Q. And there were six photographs per page, correct?
7 A. That's correct. The photo array consists of six
8 photographs, yes.
9 Q. And only one of those photographs was an actual officer
10 from the 107th precinct roll call for Queens borough south?
11 A. That's correct.
12 Q. That's 516 pictures, correct?
13 A. Sounds about right.
14 Q. Why did -- I'm sorry. The six-shot photo arrays are
15 particularly used in criminal cases, correct?
16 A. They can be used for criminal case, yes, ma'am.
17 Q. Why were photo arrays used in this case?
18 A. It's my understanding --
19 MR. MARUTOLLO: Objection, your Honor.
20 THE COURT: I'll allow it.
21 THE WITNESS: It's my understanding that the courts
22 had ordered photo arrays to be produced for this specific
23 plaintiff, Mr. Ourlicht's case.
24 Q. My question was why did -- why was it decided to use
25 fillers?

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1 MR. MARUTOLLO: I don't have the transcript.
2 THE COURT: Show it to Mr. Marutollo. If that's what
3 he said, I expect a stipulation.
4 MS. PATEL: One moment, your Honor. I have it.
5 MR. MARUTOLLO: Your Honor, I think maybe to expedite
6 matters we can stipulate to the fact that he may have possibly
7 been selected twice but --
8 THE COURT: Why don't you look at the transcript.
9 MS. PATEL: On page 42, line 15.
10 (Pause)
11 MR. MARUTOLLO: Your Honor, I would also note that
12 Mr. Ourlicht did testify and this was not raised during his
13 examination.
14 MS. PATEL: Your Honor, this is -- it's rebuttal
15 testimony, your Honor. And the parties stipulated to certain
16 facts in order -- in lieu of rebuttal testimony to make it
17 easier for the court and for the parties.
18 THE COURT: I understand. I'm still asking
19 Mr. Marutollo to look at the page of the transcript to see if
20 she accurately said what Mr. Ourlicht said.
21 MS. PATEL: Your Honor, for some reason this doesn't
22 have page numbers so it's just taking a moment.
23 I'll just come back to this, your Honor, while we look
24 for the citation.
25 THE COURT: Okay.

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- 1 Q. You're aware that the New York police department was
2 ordered by this court to provide memo books for the officers
3 who appeared in the photo arrays, correct?
4 A. Yes.
5 Q. And some of the memo books corresponding to the officers
6 were not produced, were they?
7 A. Can you repeat that question, please.
8 Q. Some of the memo books were not produced, were they?
9 A. For what date? I'm sorry.
10 Q. For both days, for January 6 or 9, 2008.
11 A. Yes. That's correct.
12 Q. And for February 21, 2008.
13 A. I believe the February 21 incident all the memo books were
14 provided.
15 Q. Are you reading from something?
16 A. I have the stipulation.
17 MS. PATEL: Providing the witness with NYC-2-9390
18 which is a declaration signed by Sergeant Justin Dengler. Just
19 read this to yourself.
20 Does that refresh your recollection that not all the
21 memo books for the February 21, 2008 incident were produced?
22 THE WITNESS: Yes.
23 Q. So they were not produced -- all produced, were they?
24 A. Yes. They were not produced.
25 Q. Turning your attention to the binder in front of you to

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1 Plaintiffs' Exhibit 500 Bates stamped NYC 2-7443 through 46.
2 This is a memo book for Lisa Negron; is that correct?
3 A. Yes, it is.
4 Q. And then also turning your attention to Plaintiffs' Exhibit
5 501, NYC --
6 THE COURT: Did you want to point something out on the
7 first one? Why did you have him look at 500? Anything you
8 want to point out?
9 MS. PATEL: Yes, your Honor.
10 THE COURT: Why don't we do that before we turn to
11 501.
12 MS. PATEL: Sure.
13 Q. You see there's an indication on -- in the memo book next
14 to 9:10.
15 THE COURT: Which page?
16 MS. PATEL: 7444.
17 THE COURT: Okay.
18 MS. PATEL: That says.
19 THE COURT: One. Does that say one?
20 I can't read it. It ends.
21 MS. PATEL: The address 1760 Lexington is indicated.
22 Do you see that?
23 THE COURT: I see 1760 Lex. It's in evidence. I see
24 it.
25 MS. PATEL: And then at 9:11 a.m. it also states 1565

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1 addresses that we just covered?
2 A. Can I just review it?
3 MS. PATEL: Of course.
4 I seek for the admission and I can redact the entries
5 that we weren't able to find in the memo books.
6 MR. MARUTOLLO: Just object on the grounds of
7 relevance, your Honor, as these officers --
8 THE COURT: Can't hear you.
9 MR. MARUTOLLO: These officers are not selected in the
10 photo array by Mr. Ourlicht.
11 THE COURT: Right.
12 MR. MARUTOLLO: And --
13 THE COURT: That doesn't matter to me if they were
14 in -- I guess what precinct are we in now?
15 MS. PATEL: They were assigned to the 107th precinct.
16 THE COURT: They're assigned to the 107th. And the
17 memo books were pulled. And whether or not he was able to pick
18 them out. If she thinks this shows the vicinity and the time
19 and similarities to what he testified was the stop, I would
20 allow it. That's the relevance.
21 MS. PATEL: Your Honor, I would also note that on
22 direct in the stipulation there is testimony that these
23 officers were assigned to the van, the exact van that David
24 Ourlicht testified that were the -- was the van that stopped
25 him.

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1 THE COURT: Okay.

2 THE WITNESS: Your Honor if I may. These officers
3 were not assigned to the 107th precinct. These officers are
4 assigned to Police Service Area number five. Which is a total
5 different location and a different borough. The 107 is in the
6 borough of Queens. PSA 5 is in the Borough of Manhattan.

7 THE COURT: But you're telling me, Ms. Patel, that
8 there's evidence that they were assigned to the van identified?

9 MS. PATEL: Yes, your Honor.

10 THE COURT: Well, that's -- you can't testify. Where
11 is the testimony about that?

12 MS. PATEL: It's in the stipulation.

13 THE COURT: Can you point me?

14 MS. PATEL: I can show you the paragraph.

15 MR. MARUTOLLO: Your Honor, it's in paragraph 11, page
16 5.

17 THE COURT: The PSA 5 roll call indicates that on
18 June 6, 2008 van 9466 was assigned to officers Negron, Goris
19 and Delgado.

20 So it certainly is relevant what their memo book says.
21 Since they were assigned to that van on that date.

22 MR. MARUTOLLO: The one note we would additionally
23 indicate in terms of an objection is that David Ourlicht
24 testified at trial that the individuals who stopped him on the
25 date of this incident were males. And these three individuals

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1 are females. And I think that's obviously a significant factor
2 in terms of our objection for this relevance.

3 MS. PATEL: Your Honor, he also testified that he was
4 on the ground and maybe couldn't see the officers.

5 THE COURT: All I know is he identified the van number
6 as 9466, right?

7 MS. PATEL: That's right.

8 THE COURT: And these folks were assigned to that van
9 on that date and their memo books reflect activity in the area
10 that this fellow described, right, Ourlicht described?

11 MS. PATEL: Yes, Judge.

12 THE COURT: So it's relevant.

13 MS. PATEL: I would move for admission of the map.

14 THE COURT: Which is exhibit what?

15 MS. PATEL: 551.

16 THE COURT: 551. All right. 551 is received.

17 (Plaintiff's Exhibit 551 received in evidence)

18 Q. And you're aware that David Ourlicht was stopped at the
19 Johnson houses, correct?

20 A. Yes. That's the allegation.

21 Q. And the Johnson houses complex in your stipulation you said
22 that it was between Lexington and Park at 112th and extending
23 to I believe it's 115 Street; is that right?

24 A. 115 Street is cut off on the map here.

25 Q. You'd agree with me that there's a notation here. This is

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1 where Johnson houses is?
2 A. Yes.
3 Q. That's between Park Avenue and Lexington Avenue?
4 A. Yes. That's the indication, yes.
5 Q. And you can see here that the 9:11 notation from Officer
6 Negrón's memo book is on the same block as the Johnson houses?
7 A. It's in the vicinity. But Officer Negrón's memo book,
8 she's claiming that she had a couple of truants in her van. So
9 it's very unlikely that she'd be involved in a stop, question
10 and frisk with juveniles in the van. It's not a safety --
11 MS. PATEL: I would move to strike. That's totally
12 speculative.
13 MR. MARUTOLLO: I think, based on his experience, he's
14 indicating he's answering the question.
15 THE COURT: Which question is he answering?
16 MS. PATEL: I asked whether the location is on the
17 same block.
18 THE COURT: Right. That's all you asked. I agree.
19 So the answer is stricken.
20 MS. PATEL: So, your Honor, we found the locations.
21 THE COURT: From the tape recording of Mr. Floyd?
22 MS. PATEL: From the court transcript of David
23 Ourlicht's photo array.
24 THE COURT: Where he said -- what do you allege he
25 said, Ms. Patel?