

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 ADRIAN SCHOOLCRAFT,

5
6 PLAINTIFF,

7
8 -against- Case No:
9 10 Civ. 6005
10 (RWS)

11 THE CITY OF NEW YORK, DEPUTY CHIEF MICHAEL MARINO,
12 Tax Id. 873220, Individually and in his Official
13 Capacity, ASSISTANT CHIEF PATROL BOROUGH BROOKLYN
14 NORTH GERALD NELSON, Tax Id. 912370, Individually
15 and in his Official Capacity, DEPUTY INSPECTOR
16 STEVEN MAURIELLO, Tax Id. 895117, Individually and
17 in his Official Capacity, CAPTAIN THEODORE
18 LAUTERBORN, Tax Id. 897840, Individually and in his
19 Official Capacity, LIEUTENANT WILLIAM GOUGH, Tax Id.
20 919124, Individually and in his Official Capacity,
21 SGT. FREDERICK SAWYER, Shield No. 2576, Individually
22 and in his Official Capacity, SERGEANT KURT DUNCAN,
23 Shield No. 2483, Individually and in his Official
24 Capacity, LIEUTENANT CHRISTOPHER BROSCART, Tax Id.
25 915354, Individually and in his Official Capacity,
LIEUTENANT TIMOTHY CAUGHEY, Tax Id. 885374,
Individually and in his Official Capacity, SERGEANT
SHANTEL JAMES, Shield No. 3004 and P.O.'s "JOHN DOE"
#1-50, Individually and in their Official Capacity
(the name John Doe being fictitious, as the true
names are presently unknown) (collectively referred
to as "NYPD defendants"), JAMAICA HOSPITAL MEDICAL
CENTER, DR. ISAK ISAKOV, Individually and in his
Official Capacity, DR. LILIAN ALDANA-BERNIER,
Individually and in her Official Capacity and
JAMAICA HOSPITAL MEDICAL CENTER EMPLOYEES "JOHN
DOE" #1-50, Individually and in their Official
Capacity (the name John Doe being fictitious, as
the true names are presently unknown),

26
27 DEFENDANTS.
28 -----X

29 DATE: October 17, 2014
30 TIME: 10:20 A.M.

31
32 (Deposition of JOHN ETERNO, PhD)

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DATE: October 17, 2014

TIME: 10:20 A.M.

DEPOSITION of an Expert Witness,
JOHN ETERNO, PhD, taken by the Respective Parties,
Pursuant to a Notice and to the Federal Rules of
Civil Procedure, held at the offices of the New
York City Law Department, 100 Church Street,
New York, New York 10007, before Nathan MacCormack,
a Notary Public of the State of New York.

J. ETERNO

1 Would we would bring them up in lecture and in
2 class discussion. Students often might do papers on this,
3 as well.

4 Q. Have you ever taught a course dealing with the
5 topic of emotionally disturbed persons?

6 A. Not specifically.

7 Q. Has it ever come up in any of your courses?

8 A. Again, possibly.

9 Q. But you don't have a specific recollection?

10 A. No.

11 Q. Do you hold any expert or professional
12 certifications?

13 A. Yes.

14 Q. What certification or titles are those?

15 A. I am CITI-certificated, in terms of social
16 behavioral research, that's C-I-T-I, which means
17 Collaborative Institutional Training Initiative; I am
18 certificated as a physical fitness instructor for law
19 enforcement; I was certified by the New York City Police
20 Academy to be a Police Academy instructor, where I taught
21 police science, where I taught Emotionally Disturbed
22 People; I am also a verbal judo instructor, and
23 certificated by the New York City Police Department there.

24 Q. Can you repeat which courses you have taught on
25 emotionally disturbed persons?

J. ETERNO

1 A. That would be in police science.

2 Q. So, when I asked earlier if you had ever taught
3 any course dealing with emotionally disturbed persons you
4 would add that to the list?

5 A. I would.

6 Q. When did you teach that course?

7 A. This was 1987 through '88.

8 Q. In what context did you teach that course?

9 A. I taught recruits at the academy.

10 Q. Was the course solely on emotionally disturbed
11 persons?

12 A. No.

13 Q. What was the context of the course?

14 A. Police science.

15 Q. How long was the section on emotionally disturbed
16 persons?

17 A. I don't recall.

18 Q. How long was the training that you gave to these
19 new recruits?

20 A. Approximately six months.

21 Q. What kind of training did you give with regard to
22 emotionally disturbed persons?

23 A. There were very strict lectures that we do and
24 cover on emotionally disturbed people. We sometimes do
25 role play, other types of activities for the recruits.

J. ETERNO

1 Q. Do you personally have any experience with
2 emotionally disturbed persons?

3 A. Yes.

4 Q. What is that experience?

5 A. As a police officer, police sergeant, police
6 lieutenant and a police captain.

7 Q. And what were your experiences in those different
8 capacities?

9 A. We handle emotionally disturbed people on a
10 regular basis.

11 Q. In your capacity as an employee of the N.Y.P.D.,
12 did you ever have occasion to declare someone as an E.D.P.?

13 A. Yes.

14 Q. And when I say "E.D.P.," you understand that I
15 mean an emotionally disturbed person?

16 A. I do.

17 Q. How many times did you declare someone an E.D.P.?

18 A. I don't recall.

19 Q. How did you decide whether or not somebody was an
20 E.D.P.?

21 MR. SMITH: Objection to the form.

22 A. Using the patrol guide standard: Mentally ill
23 and dangerous to himself or others.

24 Q. And how would you determine if someone was
25 mentally ill?

J. ETERNO

1 individuals were disciplined as a result of having that
2 Q.A.D. report?

3 A. No, they haven't.

4 Q. You drafted the patrol guide section on
5 complaints when you were employed by the N.Y.P.D.; is that
6 correct?

7 A. I helped draft it, yes.

8 Q. Do you know if that section, as written by you,
9 is still in place?

10 A. No, I don't.

11 Q. The next section, starting on page 8 of your
12 report, is the Blue Wall of Silence.

13 MR. SMITH: Why don't we take a lunch break?

14 MS. PUBLICKER METTHAM: If you let me finish
15 the question, Mr. Smith. As you know, you cannot
16 take a break while a question is pending. We can
17 take a break after that.

18 MR. SMITH: I was suggesting that we take a
19 break before you asked the question.

20 MS. PUBLICKER METTHAM: Well, I am going to
21 ask the question, then we can take the break.

22 Q. Your section indicates that the blue --

23 A. Where are we now?

24 MS. PUBLICKER METTHAM: On page --

25 MR. SMITH: She is asking one more question,

J. ETERNO

1 then we are taking a break.

2 MS. PUBLICKER METTHAM: Mr. Smith, if you
3 are going to continue to interrupt
4 inappropriately I am going to make an application
5 to the court based on your continued malfeasance.

6 Q. Professor Eterno, your section entitled Blue Wall
7 of Silence indicates that the code of silence has been
8 observed and studied in reports of many police departments
9 throughout the world, right?

10 A. Yes.

11 Q. So, do you believe that every police department
12 in the world has a blue wall of silence?

13 A. I believe that the informal code is something
14 that exists and is well researched. There are numerous
15 studies that have shown the police culture is pervasive in
16 policing.

17 So, when you say "every police department," I
18 would have to say that it is pervasive, it might not be
19 somewhere. But there is an informal code, that is well
20 documented.

21 MS. PUBLICKER METTHAM: We can take a break
22 at this time for lunch. The time is 1:18 p.m.

23 (Whereupon, a luncheon recess was taken at
24 this time.)

25 MS. PUBLICKER METTHAM: So, we are going

J. ETERNO

1 back on the record. It is 2:12 p.m.

2 Q. Dr. Eterno, when we left off we were talking
3 about the blue wall of silence.

4 A. Yes.

5 Q. How do you determine whether a police department
6 has a blue wall of silence?

7 A. There is a huge amount of research that indicates
8 that a blue wall of silence is nearly ubiquitous in police
9 departments. This research is well documented.

10 Q. How does the research determine whether a
11 department has a blue wall of silence?

12 A. They use typical social science methods, might
13 include surveys or qualitative research, where they would
14 actually visit the department and watch what's going on.

15 Q. And what kind of information that would be
16 derived from a survey or research, qualitative research,
17 would indicate that a blue wall of silence was in place?

18 A. Well, the blue wall of silence is really part of
19 the informal code, which is part of police culture. And
20 the police culture is something that's in -- it's in every
21 department. But instead of a formal code, it's an informal
22 code.

23 It's just what's going on. So, the nature of the
24 blue wall of silence may be very different depending on the
25 department.

J. ETERNO

1 Q. So, when you use the term "blue wall of silence,"
2 what do you mean?

3 A. Well, again, it's a euphemism for police culture,
4 and it is a way that officers informally deal with what's
5 going on in the dangerousness of the work environment and
6 the loyalty to one another.

7 Because of that danger, they kind of stick
8 together. And because of that, they will develop a blue
9 wall of silence where they won't talk about things.
10 Because they need to stick together, they need to be loyal
11 to one another. And again, we have seen this in the Mollen
12 Commission, the Knapp Commission, we have seen this
13 numerous places.

14 Q. Is the blue wall of silence necessarily
15 pejorative?

16 A. I think most people do take it that way, as a
17 pejorative term. But I would say in some cases it's not
18 necessarily a bad thing.

19 It could be at times something healthy, where
20 officers want to keep things to themselves. But generally,
21 it is used as a negative term.

22 Q. Do you believe it's a pejorative term?

23 A. I think in general it is, yes.

24 Q. You said that it can manifest in different ways
25 and different agencies; is that correct?

J. ETERNO

1 A. Yes.

2 Q. And how could it manifest differently in
3 different agencies?

4 A. In some agencies it may not be as necessary.
5 There may not be as much danger, there may not be as much
6 need for that protection. In other agencies there may be a
7 very strong need for that protection. It might be in an
8 agency that perhaps is doing things that might be illegal.
9 And officers are aware of that, that you need to make sure
10 that you don't rat out the other guy.

11 Or it may just be that they are doing things that
12 may be questionable in the eyes of people who are not
13 initiated into the world of policing. And to that extent,
14 at times the officers need to stick together to defend
15 themselves from what they perceive at times to be unneeded
16 circumspection of what they are doing.

17 Q. In your answer you mentioned danger and
18 protection. Can you be more specific about what kind of
19 danger and protection you believe are related to this blue
20 wall of silence?

21 A. Yes. The danger of the work environment. We are
22 talking about perpetrators and others who may be fighting
23 police officers, or just could be animosity against police
24 officers. It could be a community that may be negative to
25 the police officers.

J. ETERNO

1 But the danger is generally thought to be, at
2 least in most of the literature, it's generally seen to be
3 the work environment itself and from the perpetrators.

4 Q. And when you refer to protection, what are you
5 referring to?

6 A. Well, protection from various different things
7 from the outside, community pressures, media pressures. It
8 could be legal pressures, it could be C.C.R.B, or it could
9 be from the bosses.

10 There is a literature on the New York City Police
11 Department written by Elizabeth Reuss-Ianni, had a very
12 interesting study that compares two cultures of policing.
13 They call them management culture and the street cop
14 culture. She points out that there is some animosity
15 between those two, so it could even be protection from
16 management.

17 Q. Can you spell Reuss-Ianni?

18 A. R-E-U-S-S dash I-A-N-N-I. The name of the book
19 is Two Cultures of Policing, one of many of her writings.

20 Q. And earlier you mentioned that there were
21 surveys, qualitative research and studies into police
22 culture and the blue wall of silence that you believe are
23 authoritative; is that correct?

24 A. Very authoritative, yes.

25 Q. What are those?

J. ETERNO

1 A. Stoddard, Wesley, Fielding, Manning, Crank, just
2 to name a few off the top of my head that show that. There
3 is also research on an attitude effect, Oneman, Wardman and
4 Shepherd, just a few of the names that come to mind.

5 Q. What do you mean by attitude effect?

6 A. The attitude effect is where officers respond
7 to -- again, this is part of the police culture, just like
8 the blue wall of silence, that officers respond to the
9 attitude of suspect as to opposed to the legality of what
10 the suspect is doing.

11 Q. And do you believe that attitude effect is
12 reflected in your expert report in any way?

13 A. It's possible. It could be there somewhere. I
14 didn't specifically mention it, but it might be there.

15 Q. Have you formed opinions in this case about the
16 attitude effect?

17 A. Not specifically. But there might be
18 circumstances that come up when we are talking that it may
19 come up.

20 Q. But in your expert report, have you come to a
21 conclusion or opinion about the attitude effect as it
22 relates to Adrian Schoolcraft?

23 MR. SMITH: Objection to the form.

24 A. No.

25 Q. In your expert report you mention that the issue

J. ETERNO

1 of the blue wall of silence has repeatedly come up in the
2 history of New York City; is that correct?

3 A. Yes.

4 Q. And in doing so, you cite to the 1972 Knapp
5 Commission and the 1994 Mollen Commission; is that correct?

6 A. Yes.

7 Q. Are you aware of any other commissions or studies
8 on New York's blue wall of silence in the last 20 years?

9 A. No. Those are the two main commissions. There
10 haven't been any commissions since Mollen regarding -- at
11 least at that level. There was the Committee to Combat
12 Corruption, Mark Pomerantz, which I do talk about in my
13 expert report.

14 But that was basically cut off and not allowed to
15 do -- Mark Pomerantz eventually quit when he wasn't allowed
16 to rebuke.

17 Q. Was the subject of the Committee to Combat
18 Corruption the blue wall of silence?

19 A. No. That was complaint reports at the time and
20 the gaming of complaint reports.

21 Q. Are you aware of any studies outside of the
22 commissions' on the blue wall of silence's prevalence in
23 New York City in the last 20 years?

24 A. No. I did mention it in my book, Policing Within
25 the Law: A Case Study of the New York Police Department.

J. ETERNO

1 Q. When was that book published?

2 A. 2003.

3 Q. Have you done any research, qualitative research,
4 on the blue wall of silence yourself?

5 A. Not qualitative, no.

6 Q. Have you done any quantitative research on the
7 blue wall of silence?

8 A. Yes. As I said, it's in my book, Police Culture,
9 Policing Within the Law, where there is quantitative work
10 on the police culture.

11 Q. And what is that quantitative work?

12 A. It was a survey that I sent out as part of my
13 dissertation.

14 Q. What was that survey?

15 A. It was a survey on whether officers would follow
16 the law in various situations. I put them in various
17 hypothetical situations and asked them what they would do
18 in that situation.

19 Q. How does that relate to the blue wall of silence?

20 A. One of the variables was police culture, where I
21 mention the loyalty to one another, which is part of the
22 blue wall of silence. We also talk about the language, and
23 I also did measure the attitude effect.

24 Also, one of the variables that was in the
25 instrument that I used included a measure of police

J. ETERNO

1 culture.

2 Q. What was that measure of police culture?

3 A. Again, it was a survey question, and they were
4 put into hypothetical situations which included the police
5 culture.

6 Q. When you say "which included police culture,"
7 what do you mean, what was the survey question?

8 A. Well, it -- it's hard to explain. It was a
9 factorial survey method, which means that when it came to
10 police culture, and putting them in various hypothetical
11 situations, when I put them in those situations I used
12 specific language that measures the extent to which the
13 police culture has an effect on them.

14 Q. What questions did you ask that got to the issue
15 of the blue wall of silence?

16 A. The police culture was measured in every
17 question, so the police culture including loyalty. Things
18 like that were in various questions, depending on the type
19 of questioning. Since it's something called the factorial
20 survey method, which means they don't get -- every officer
21 doesn't get the same exact method. It's randomly -- the
22 question they get is randomly selected.

23 And then, looking at the differences in the
24 officers' responses, we can determine how much influence
25 the police culture has.

J. ETERNO

1 Q. What was the result of that survey as it related
2 to the blue wall of silence?

3 A. The police culture did have an effect on some
4 officers at certain times.

5 Q. On how many officers?

6 A. Well, I don't have that in front of me. I would
7 have to take a look at the -- look it over again.

8 Q. Do you recall approximately what the percentage
9 of officers was?

10 A. I don't recall right now, but it depended on the
11 situation. The police culture had more of an effect, and I
12 compared it, certain situations and stop situations. And
13 in the stop situations, the police culture had more of an
14 effect in the stop as opposed to the search.

15 Q. Can you explain that further?

16 A. Okay. There are a number of different types of
17 scenarios that I put them in legally; some were search
18 situations, some were stop situations.

19 When I compared the differences between the stop
20 and the search situations, I found that in the stop
21 situations the officers did react more to loyalty and other
22 police culture factors that would be involved in the blue
23 wall of silence.

24 Q. And that's what you meant when you said that this
25 has a greater effect on some officers at some times?

J. ETERNO

1 A. Yes.

2 Q. Did you find that any officers were more or less
3 immune to this blue wall of silence?

4 A. From -- again, from my recollection, just off the
5 top of my head, but from my recollection of my research,
6 there were officers that were more prone than others.

7 Q. Would you say that this research that you
8 conducted is some of the facts and data on which you relied
9 in creating your expert report?

10 A. Not really. It's just basic knowledge. I didn't
11 rely on that for this report, no.

12 Q. So, at trial, you would not rely on that research
13 in defending your report?

14 MR. SMITH: Objection to the form.

15 A. No. However, I would rely on general knowledge
16 that I have on the police culture and the blue wall of
17 silence. That, I would rely on.

18 Q. The next section on the next page, page 9, is
19 titled "The Blue Wall and Forceable Hospitalization of
20 Officer Schoolcraft."

21 You claim that the blue wall of silence likely
22 contributed to Officer Schoolcraft?

23 A. Yes.

24 Q. What do you mean by "likely contributed"?

25 A. "Likely" means that it appears to have.

J. ETERNO

1 Q. Is that to a reasonable degree of scientific
2 certainty?

3 A. Yes.

4 Q. And on what do you base that opinion?

5 A. On what's in appendix B, and all the other
6 materials, my knowledge and expertise.

7 Q. Did you read the depositions of any officers
8 involved in this case?

9 A. Not in their entirety.

10 Q. Did you read any in part?

11 A. There was, I think, an Officer Duncan that I
12 looked at.

13 Q. And earlier today, when I asked you about
14 documents, you did not mention Officer Duncan?

15 A. Isn't that in appendix B?

16 Q. I am sorry, that one is in appendix B.

17 MR. SMITH: As is Finnegan.

18 Q. So, the only depositions you reviewed would be
19 Finnegan and Duncan?

20 A. Yes.

21 MR. SMITH: But he did mention that there
22 were subsequent reports.

23 THE WITNESS: Yes, the lieutenant's special
24 assignment from the medical division.

25 Q. So, you did not review the complete deposition of

J. ETERNO

1 still doesn't make her statement meaningless.

2 A department psychologist's opinion is very
3 important. Regardless of the circumstances, I would take
4 what she has to say about him very seriously.

5 Q. So, you would take very seriously, the fact that
6 she removed his guns based on anger issues very seriously?

7 MR. SMITH: Objection to the form.

8 A. Yes.

9 Q. Is it your understanding --

10 A. Let me clarify that. I would also take seriously
11 the fact that she said he is not a danger to himself or
12 others. Both statements are important.

13 Q. Do you believe that she saw Adrian Schoolcraft on
14 October 31, 2009?

15 MR. SMITH: Objection to the form.

16 A. I don't know when she saw him.

17 Q. So, on page 10, the next real sentence starting
18 with "we note." I would like you to read that page for me.
19 You can read it into the record if you like, or if you
20 like, you can read it to yourself.

21 A. We are talking about two issues?

22 Q. Yes.

23 A. I guess we should read this in. "Two issues with
24 this are, one, the EMT only states he is potentially
25 emotionally disturbed, which is not emotionally disturbed.

J. ETERNO

1 And two, according to police procedure, a police officer,
2 not an EMT, must reasonably believe that the person being
3 taken into forcible custody is mentally ill or temporarily
4 deranged and his behavior is likely to cause serious injury
5 to himself other others."

6 Q. Great. I will move on.

7 To what police procedure are you referring to?

8 A. This is the patrol guide procedure on emotionally
9 disturbed persons.

10 Q. Is that cited in your appendix? It's the last
11 page of your report.

12 A. It's not in the appendix, but it's in the
13 references section, page 28 at the bottom.

14 Q. This just states the "N.Y.P.D. patrol guide,
15 unpublished," correct?

16 A. Yeah, unpublished.

17 Q. So, I am asking which patrol guide procedure,
18 specifically, you are referring to?

19 A. Emotionally disturbed persons.

20 Q. You don't know the number?

21 A. Not off the top of my head.

22 Q. How did you receive that document?

23 A. Again, I have the patrol guide on my computer at
24 work.

25 MS. PUBLICKER METTHAM: I am going to ask

J. ETERNO

1 for production of the E.D.P. procedure in which
2 the expert relied in creating his report.

3 Q. In that police procedure, does it state what
4 information has to be captured on an unusual incident
5 report?

6 A. Do you have a copy of the procedure?

7 Q. I don't.

8 A. Okay, I am not sure.

9 Q. When you wrote this report, did you believe that
10 to be the case?

11 MR. SMITH: Objection to the form.

12 A. Believe what to be the case?

13 Q. Did you believe that the police procedure
14 required information to be included in the unusual incident
15 report?

16 A. An unusual incident report is a separate
17 procedure in the patrol guide. And anything that the chief
18 of patrol needs to know should be included in the unusual
19 report.

20 I think it would be critical for the chief patrol
21 to know why a member of the service -- a uniformed member
22 of the service is being forcibly placed into a mental
23 hospital. So yes, I believe that should be in the unusual
24 report.

25 Q. And you believe it's not contained in the unusual

J. ETERNO

1 incident report drafted by Captain Lauterborn?

2 A. From my recollection, because I don't have the
3 memo. But from my recollection of the memo, there was no
4 indication specifically delineating how Officer Schoolcraft
5 was found to be mentally ill and dangerous.

6 Q. Is it possible that by writing "potentially
7 emotionally disturbed" Captain Lauterborn was indicating
8 that he reasonably believed plaintiff was emotionally
9 disturbed?

10 MR. SMITH: Objection to form.

11 A. The issue with that, if that's what the EMT said,
12 "He is a potential emotionally disturbed person," this to
13 me does not indicate that he is emotionally disturbed. And
14 as I say in my expert opinion, the situation that led to
15 this was actually created, in my view, by the police
16 department.

17 Q. Did you read the deposition of Lieutenant Hamlon
18 of the F.D.N.Y.?

19 A. I did not.

20 Q. So, do you know whether by stating "potentially
21 emotionally disturbed" she believed that he was emotionally
22 disturbed?

23 A. "Potentially" means potentially. I take that for
24 what it says. So, if she has some other meaning or somehow
25 communicated something else, it's not in the written

J. ETERNO

1 record.

2 Q. Is it appropriate to make a determination about
3 someone's mental illness, to make a diagnosis on the scene
4 of an incident?

5 MR. SMITH: Objection to the form.

6 A. You are not making a diagnosis. That's going to
7 be made at the hospital.

8 Q. So, you can't make a diagnosis about whether
9 someone is mentally ill while at the scene of the accident;
10 is that correct?

11 MR. SMITH: Objection to the form.

12 A. Correct, you don't make a diagnosis.

13 Q. Because police officers don't make diagnoses,
14 correct?

15 A. Correct.

16 Q. So, they have to reasonably believe that an
17 individual is emotionally disturbed?

18 MR. SMITH: Objection to the form.

19 A. That is correct.

20 Q. And you don't believe that by writing
21 "potentially" someone could mean "reasonably believing"?

22 MR. SMITH: Objection to the form.

23 A. I think that it's showing what an EMT thought.
24 It is not showing what any of the officers thought at the
25 scene.

J. ETERNO

1 Q. Your report mentioned that the duty captain
2 referred complaint reports to Internal Affairs for
3 followup; is that right?

4 A. Again, you are referring to the Lauterborn memo?

5 Q. No. I am just referring to your report. On page
6 10, "Additionally, the duty captain refers the complaint
7 reports to Internal Affairs for followup, which is referred
8 to Quality Assurance, which, in turn, confirms Officer
9 Schoolcraft's allegations about the corrupt activity in the
10 precinct."

11 So, this does seem to be you paraphrasing from
12 the unusual incident report?

13 A. Yes.

14 Q. So, based on this, the duty captain did not try
15 to cover up the complaint report he found in Schoolcraft's
16 apartment?

17 MR. SMITH: Objection to the form.

18 A. No.

19 Q. Does that fit within your concept of the blue
20 wall of silence?

21 A. Well, the tape recorder not being put in
22 certainly is something that bothers me. When he put this
23 in -- excuse me, when he put this in, and not the tape
24 recorder, that seems a little conflicting to me.

25 Q. But does the fact that he -- on its own, the fact

J. ETERNO

1 that the duty captain reported the complaint reports he
2 found to Internal Affairs fit within your concept of the
3 blue wall of silence?

4 A. How do you mean? What do you mean, fitting
5 within my concept of the blue wall -- who is being silent?
6 What are you driving at?

7 Q. Well, the duty captain didn't try to cover up
8 these complaint reports, did he?

9 A. Yeah, the duty captain is a supervisory officer
10 involved with this. The blue wall of silence really has to
11 do with officers, you know, police officers' rank.

12 The supervisor has a completely different set of
13 responsibilities and duties that he or she would have to
14 do. So, I am not quite sure what you mean by "fitting
15 within the blue wall of silence" in this context.

16 Q. Well, thank you for that clarification, I don't
17 think we had that before.

18 So, for you, the blue wall of silence relates
19 only to other officers, of the rank of officer?

20 MR. SMITH: Objection to the form.

21 A. Sorry, not totally. But in this case, they
22 clearly have been brought in as a supervisory type of
23 thing, they are now working under formal guidelines.

24 The blue wall is an informal thing, it's not
25 something that is written down. They weren't operating

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1 under patrol guide procedures now. There are very specific
2 things that they need to do. So, this would not fall in
3 with that thesis.

4 Q. So, if a supervisor, for example, were within the
5 blue wall of silence, trying to protect someone else, you
6 don't believe they could have covered up those complaint
7 reports found in his room?

8 A. I see what you are saying. Yes, that's very
9 possible, if they were trying to cover up for him. But I
10 don't think in this case the supervisors were trying to
11 cover up for him. I don't think that was an issue. I
12 don't think that was ever an issue.

13 Q. You don't believe they were trying to cover up
14 for themselves?

15 A. That's a separate issue. I don't know.

16 Q. You claim that plaintiff was found in good
17 condition in his apartment; is that right?

18 A. Based on the Lauterborn memo, yes, and the tape
19 recordings.

20 Q. Are you aware of his elevated heart rate?

21 A. I am aware of that, yes.

22 Q. And you are aware of his elevated blood pressure?

23 A. Yes.

24 Q. And you believe that, given the elevated heart
25 rate and elevated blood pressure, he was in good condition?

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1 A. I think anyone would have an elevated heart rate
2 having a team of armed officers in your living room
3 refusing to leave.

4 Q. But you didn't answer the question, which is, do
5 you consider having elevated heart rate and elevated blood
6 pressure to be a good condition?

7 A. Depends on the situation.

8 Q. You believe in this situation his elevated heart
9 rate and elevated blood pressure was a good condition?

10 A. I think it was completely normal given the
11 situation.

12 Q. Were you there that night?

13 A. No.

14 Q. Have you seen any video of that evening?

15 A. No.

16 Q. You haven't read the officers' depositions who
17 were there that day, other than Officer Duncan?

18 A. Right, yes.

19 Q. So, you don't know whether they perceived him to
20 be in good condition or not; is that correct?

21 MR. SMITH: Objection to the form.

22 A. Correct.

23 Q. As you just mentioned, you believe that if he
24 appeared emotionally disturbed, it was only the direct
25 result of the actions of the N.Y.P.D., correct?

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1 A. I didn't say "only," but I do feel that that was
2 certainly a contributing factor.

3 Q. I believe you do say it's a direct result. On
4 page 11, "If any actions appeared emotionally disturbed
5 they occurred after they entered the apartment. In fact,
6 if they occurred, they apparently were the direct result of
7 the actions of the N.Y.P.D."

8 A. Apparently.

9 Q. So, what do you mean by apparently, then?

10 A. It appears that that was the direct reaction of
11 them staying in his living room, or bedroom, not sure
12 which. But they stayed there against his wishes. That
13 would drive anyone's blood pressure, I think, higher.

14 Q. Do you have any medical background or training?

15 A. Just what I had with the Police Academy.

16 Q. So, are you qualified to make a determination
17 about the impact of others on an individual's mental or
18 physical health?

19 A. I am a physical fitness instructor for law
20 enforcement, but I am not a qualified doctor of medicine.

21 Q. And have you ever done any studies on the impact
22 of others on someone's physical and mental health?

23 A. I actually did a study for the police department
24 on physical fitness standards and their effect on arrests
25 that went on to win an award. It won a police foundation

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1 Hemmerdinger award, which did indicate that those who are
2 able to have higher cardiovascular endurance made more
3 arrests, things like that.

4 Q. I'm sorry, but that didn't answer the question,
5 which was, have you done any research on the impact of
6 others on someone's mental or physical health?

7 A. Again, it's a physical fitness study on policing
8 and it's effect on police. And I think that would qualify
9 as a study on somebody's health, on fitness and how they
10 react.

11 Q. On causation of outside forces, on someone's
12 physical or mental health, you believe your research does
13 that?

14 MR. SMITH: Objection to the form.

15 A. Can you rephrase?

16 Q. You believe that your research on officer's
17 physical fitness actually relates to the causation of an
18 outside force on an individual's physical and mental
19 health?

20 A. What do you mean by causation -- I am not clear
21 on the question.

22 Q. My question to you is, is the impact of other
23 individuals on someone's physical or mental health, that's
24 a causation?

25 A. I understand what you are saying. No, that would

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1 not be it.

2 Q. Your report indicates that it would have been
3 exceedingly prudent to contact the legal bureau for advice,
4 as well as notify them directly; is that correct?

5 A. Yes.

6 Q. Is it required that officers contact the legal
7 bureau before declaring someone an E.D.P.?

8 A. It's not required to declare someone an E.D.P.
9 But this is an extremely unusual situation, where a
10 uniformed member of the service is being declared
11 emotionally disturbed. It would have been extremely
12 prudent to contact the legal bureau on this.

13 Q. But is it required?

14 A. No.

15 Q. Moving on to the next section, which is also on
16 page 11. That's your section on hospital data; is that
17 right?

18 A. Yes.

19 Q. Mr. Smith has represented that the Health and
20 Hospital Corporation data is no longer available on the
21 website and no copy has been maintained by the expert; is
22 that accurate?

23 A. Yes.

24 Q. So, there is nothing --

25 MR. SMITH: Just correct one thing. I

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1 didn't do the independent determination of
2 whether or not this data was available on the
3 website. That was done by, I believe, the
4 witness. So, I would be passing on information
5 about the existence of the data, I wasn't --

6 MS. PUBLICKER METTHAM: It was your
7 representation to the rest of the codefendants.

8 MR. SMITH: To the extent that was the
9 representation, I would like to clarify. I did
10 not go to the hospital's website. I spoke to the
11 witness about his ability to do so. And I think
12 we will get to the information of what he did to
13 try to get information.

14 But to the extent that someone was
15 suggesting that I did it, I want to make a
16 correction.

17 Q. So, was that statement I read accurate, that the
18 Health and Hospital data is no longer on its website and no
19 hardcopy has been maintained by the expert?

20 A. Yes.

21 Q. So, for us to review or check your data here,
22 there is no way you can think of for us to do that?

23 A. Contact Health and Hospital.

24 Q. What data would we ask for?

25 A. You would ask for the datas from the hospital

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1 which is collected by them from 1999 through 2006.

2 Q. Was there a title to this particular section,
3 just "hospital data," generally?

4 A. It's -- actually, emergency room visits.

5 Q. Have you made any efforts to locate this data?

6 A. Yes.

7 Q. What efforts have you made?

8 A. Searching through the materials on my study,
9 getting on the website.

10 Q. So, how did you write the section without access
11 to those materials?

12 A. I did have access at one time. And it's in our
13 book, so I know it's true.

14 Q. So, you haven't actually looked at any of this
15 data since before writing your report in this case?

16 A. The data itself?

17 Q. Yes.

18 A. No.

19 Q. So, you are relying on data you have used in
20 other books?

21 A. In the book that I cited in the references
22 section, yes.

23 Q. When was the last time you looked at that
24 research?

25 A. Just before we wrote the book.