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March 12, 2012

**BY HAND**

Honorable Robert W. Sweet  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: Schoolcraft v. The City of New York, et al.  
10-CV-6005 (RWS)

Your Honor:

I am the Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, assigned to represent the City of New York, the New York City Police Department ("NYPD"), and individual defendants Deputy Chief Michael Marino, Assistant Chief Patrol Borough Brooklyn North Gerald Nelson, Captain Theodore Lauterborn, Lieutenant Joseph Goff, Sergeant Frederick Sawyer, Sergeant Kurt Duncan, Lieutenant Christopher Broschart, and Sergeant Shantel James (collectively the "City Defendants") in the above-referenced matter. City Defendants write to respectfully request that the Court order the parties herein to swear/affirm that they did not provide a confidential NYPD Quality Assurance Division ("QAD") report to the Village Voice newspaper in violation of the Stipulation and Protective Order in this matter, and further, that they have no knowledge of the source of the leak. See Village Voice article dated March 7, 2012, entitled "The NYPD Tapes Confirmed", annexed hereto as Exhibit A.<sup>1</sup> City Defendants also respectfully request that the Court relieve them of their obligation to produce further confidential materials in this litigation until the remaining parties provide the requested affidavits.

By way of background, plaintiff, a former police officer with the NYPD, brings this action pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for violations of his Fourth and Fourteenth Amendment rights, and under New York State tort law against the City Defendants, ten (10) individually-named members of the NYPD, Jamaica Hospital, and two (2) individually named Jamaica Hospital defendants.

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<sup>1</sup> The NYPD Tapes Confirmed, The Village Voice, Graham Rayman, March 7, 2012, available at <http://www.villagevoice.com/2012-03-07/news/the-nypd-tapes-confirmed/>.

Honorable Robert W. Sweet  
Schoolcraft v. The City of New York, et al.  
March 12, 2012  
Page 2

Plaintiff served City Defendants with requests for Documents and Interrogatory Responses on or about May 20, 2011. Plaintiff's Document Request No. 14 requested the "QAD File Relating to Plaintiff's Allegations: The complete Quality Assurance Division ("QAD") file relating to the allegations made by Adrian Schoolcraft regarding the manipulation of crime statistics, falsification of crime reports, tampering with crime evidence, and/or downgrading of crime reports at the 81<sup>st</sup> Precinct." Further, plaintiff's Interrogatory Request No. 8 requested that City Defendants "Identify any QAD investigations that were launched in response to the allegations of Adrian Schoolcraft." City Defendants, in a response dated September 27, 2011, objected to plaintiff's requests on several grounds including, but not limited, to relevance and further indicated that defendants would construe and limit plaintiff's request as seeking documents related to the QAD investigation into the 81<sup>st</sup> Precinct Crime Reporting following plaintiff's 2009 general allegations pertaining to improper crime reporting in the 81<sup>st</sup> Precinct. City Defendants further stated that defendants would only produce documents responsive to plaintiff's request "**pursuant to the terms of a so-ordered Protective Order, a proposed copy of which has previously been produced to plaintiff's counsel for review.**"

A Stipulation and Protective Order in this matter was executed by all parties on September 28, 2011. See Stipulation and Protective Order, annexed hereto as Exhibit B. The Stipulation explicitly provided that "Confidential Materials" would refer to, *inter alia*, "files maintained by the NYPD's Quality Assurance Division ("QAD") with respect to any investigation, including but not limited to plaintiff." Further, the Stipulation restricted disclosure of the confidential material to "plaintiff's and/or Co-Defendants' attorneys or a person(s) specifically employed by plaintiff's and/or Co-Defendants' attorneys only if necessary for the preparation or presentation of plaintiff's and/or Co-Defendants case in this action." *Id.* at ¶ 4.<sup>2</sup> Pursuant to the Stipulation, on October 7, 2011, City Defendants produced the 95-page QAD Investigation into the 81<sup>st</sup> Precinct, bearing Bates Nos. D000508 through D000602, under a cover letter which clearly stated that the documents were being produced pursuant to the terms of the Stipulation and Protective Order in effect in this matter." See Cover Letter to October 7, 2011 Production, dated October 7, 2011, annexed hereto as Exhibit C. Importantly, neither plaintiff nor co-defendants objected to the confidentiality designation of the QAD materials prior to executing the Stipulation and Protective Order. Furthermore, neither party challenged the confidentiality of the documents after they were produced by City Defendants.

Nevertheless, in a Village Voice article dated March 7, 2012, reporter Graham Rayman indicated that he was in possession of the 95-page QAD Report. Furthermore, only two days later on March 9, 2012, a New York Times article reporting on the Village Voice article states that "[u]sing the state's Freedom of Information Law, Mr. Rayman of The Village Voice sought the report, which was completed in June 2010. The police denied his request. He appealed. They denied it again. He finally obtained a copy through *back channels* and published

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<sup>2</sup> On or about October 12, 2011, Brian Lee, Esq., counsel for defendant Isak Isakov, sent the executed Stipulation and Protective Order directly to Your Honor for endorsement and filing. However, counsel was directed to instead file the Stipulation with the Court via [judgments@nysd.uscourts.gov](mailto:judgments@nysd.uscourts.gov). The undersigned, however, was recently informed that the Stipulation was not submitted to the Orders and Judgments Division of the Court. Accordingly, the undersigned submitted it to [orders\\_and\\_judgments@nysd.uscourts.gov](mailto:orders_and_judgments@nysd.uscourts.gov) on March 9, 2012, after learning of the media leak and the fact that the Stipulation had not been previously endorsed by the Court.

Honorable Robert W. Sweet  
Schoolcraft v. The City of New York, et al.  
March 12, 2012  
Page 3

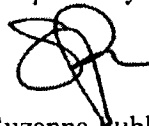
an article this week.”<sup>3, 4</sup> (emphasis added). City Defendants find it telling that this document remained confidential within NYPD custody for nearly two years, however, only months after disclosure to plaintiff and co-defendants, it has now been published.<sup>5</sup>

The disclosure of confidential documents is extremely important in this matter, since plaintiff continues to seek confidential materials herein. Most recently, on or about February 16, 2012, plaintiff served City Defendants with a Second Request for Documents from Defendant City of New York.<sup>6</sup> These requests include, *inter alia*, demands for the IAB Reports and Files of non-parties to this action, Investigative Reports from other Borough Investigations Units, “Confidential Performance Profiles” of the defendants named herein, and communications between Raymond Kelly and Paul Browne. The sought-after documents implicate the confidentiality of both non-parties to this action and the individually named defendants, as well as the law enforcement and/or deliberative process privileges. As it stands, defendants cannot in good conscience continue to produce confidential documents in this matter, knowing that the last documents produced under the Stipulation and Protective Order were published on the front page of the Village Voice. Absent assurances that both the parties and attorneys in this litigation were not the source of the leak, City Defendants have no confidence that the confidentiality of our documents will be maintained, including the confidential and sensitive documents expected to be produced in April.

Therefore, City Defendants respectfully request that the Court order the parties herein to swear/affirm that they did not provide the QAD report to the Village Voice newspaper, and further, that they have no knowledge of the individual who disclosed the report. City defendants also respectfully request that their obligation to respond to plaintiff’s Second Request for Documents be held in abeyance pending receipt of the requested affidavits.

I thank the Court for its consideration of this request.

Respectfully submitted,



Suzanna Publicker  
Assistant Corporation Counsel

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<sup>3</sup> Telling the Truth Like Crazy, N.Y. Times, Jim Dwyer, March 9, 2012, available at [http://www.nytimes.com/2012/03/09/nyregion/officer-sues-claiming-police-retaliation-for-truth-telling.html?\\_r=2&ref=nyregion](http://www.nytimes.com/2012/03/09/nyregion/officer-sues-claiming-police-retaliation-for-truth-telling.html?_r=2&ref=nyregion).

<sup>4</sup> The NYPD has confirmed that Graham Rayman made two FOIL requests related to the Schoolcraft matter and that no records were provided to Mr. Rayman pursuant to these requests.

<sup>5</sup> City defendants note that two years ago, Adrian Schoolcraft provided Rayman the digital audio recordings referenced in the instant lawsuit, and spoke with him at length regarding the allegations.

<sup>6</sup> A response thereto was to be due on March 18, 2012; however, as the undersigned was only just assigned to the case, plaintiff’s counsel Jon Norinsberg consented to an enlargement of time until April 2, 2012 for City Defendants to respond.

Honorable Robert W. Sweet  
Schoolcraft v. The City of New York, et al.  
March 12, 2012  
Page 4

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# EXHIBIT A



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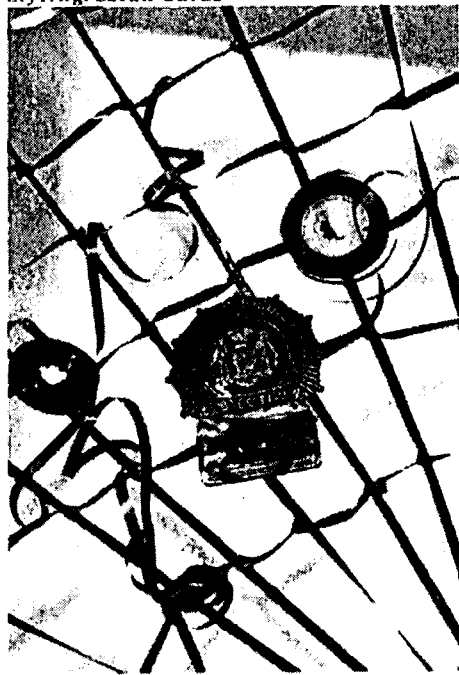
## The NYPD Tapes Confirmed

The report police hid for nearly two years that corroborates a Voice investigation — and vindicates a whistle-blower the NYPD tried to destroy

By Graham Rayman

published: March 07, 2012

Photography: Henry Hargreaves, Prop  
 Styling: Sarah Guido



THE COVER OF THE INVESTIGATIVE FINDINGS INTO THE INCIDENTS INVOLVED OFFICER OF POLICE SCHOOLCRAFT

In 2010, *The Village Voice* produced a five-part series, the "NYPD Tapes," about a cop who secretly taped his fellow New York Police Department officers.

For more than two years, Adrian Schoolcraft secretly recorded every roll call at the 81st Precinct in Brooklyn and captured his superiors urging police officers to do two things in order to manipulate the "stats" that the department is under pressure to produce: Officers were told to arrest people who were doing little more than standing on the street, but they were also encouraged to disregard actual victims of serious crimes who wanted to file reports.

Arresting bystanders made it look like the department was efficient, while artificially reducing the amount of serious crime made the commander look good.

In October 2009, Schoolcraft met with NYPD investigators for three hours and detailed more than a dozen cases of crime reports being manipulated in the district. Three weeks after that meeting—which was supposed to have been kept secret from Schoolcraft's superiors—his precinct commander and a deputy chief ordered Schoolcraft to be dragged from his apartment and forced into the Jamaica Hospital psychiatric ward for six days.

In the wake of our series, NYPD commissioner Raymond Kelly ordered an investigation into Schoolcraft's claims. By June 2010, that investigation produced a report that the department has tried to keep secret for nearly two years.

The *Voice* has obtained that 95-page report, and it shows that the NYPD confirmed Schoolcraft's allegations. In other words, at the same time that police officials were attacking Schoolcraft's credibility, refusing to pay him, and serving him with administrative charges, the NYPD was sitting on a document that thoroughly vindicated his claims.

Investigators went beyond Schoolcraft's specific claims and found many other instances in the 81st Precinct where crime

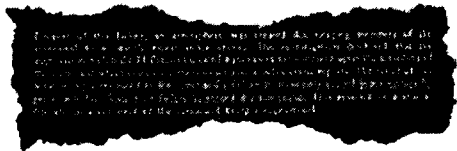
**NEW YORK CITY POLICE**  
**DEPARTMENT**

**QUALITY ASSURANCE DIVISION**

**INVESTIGATION**  
**INTO 81 PRECINCT**  
**CRIME**  
**REPORTING**

**TABLE OF CONTENTS**

TABLE OF CONTENTS	
EXECUTIVE SUMMARY	1
INTRODUCTION	1
BACKGROUND	1
SCOPE	1
METHODS	1
RESULTS	1
DISCUSSION	1
CONCLUSIONS	1
APPENDICES	1
REFERENCES	1



- Details:
- NYPD Tapes: The Series**
  - [The NYPD Tapes Part 1](#)
  - [Inside Bed-Stuy's 81st Precinct](#)
  - [The NYPD Tapes, Part 2](#)
  - [Bed-Stuy street cops ordered: Turn this place into a ghost town](#)
  - [The NYPD Tapes, Part 3](#)
  - [A Detective Comes Forward About Downgraded Sexual Assaults](#)
  - [The NYPD Tapes, Part 4](#)
  - [The WhistleBlower, Adrian](#)

reports were missing, had been misclassified, altered, rejected, or not even entered into the computer system that tracks crime reports.

These weren't minor incidents. The victims included a Chinese-food delivery man robbed and beaten bloody, a man robbed at gunpoint, a cab driver robbed at gunpoint, a woman assaulted and beaten black and blue, a woman beaten by her spouse, and a woman burgled by men who forced their way into her apartment.

"When viewed in their totality, a disturbing pattern is prevalent and gives credence to the allegation that crimes are being improperly reported in order to avoid index-crime classifications," investigators concluded. "This trend is indicative of a concerted effort to deliberately underreport crime in the 81st Precinct."

NYPD spokesman Paul Browne did not respond to repeated requests for comment.

The investigation found that crime complaints were changed to reflect misdemeanor rather than felony crimes, which prevented those incidents from being counted in the all-important crime statistics. In addition, the investigation concluded that "an unwillingness to prepare reports for index crimes exists or existed in the command."

Moreover, a significant number of serious index crimes were not entered into the computer tracking system known as OmniForm. "This was more than administrative error," the probe concluded.

There was an "atmosphere in the command where index crimes were scrutinized to the point where it became easier to either not take the report at all or to take a report for a lesser, non-index crime," investigators concluded.

Precinct Commander Steven Mauriello "failed to meet [his] responsibility." As a result, "an atmosphere was created discouraging members of the command to accurately report index crimes."

Mauriello's lawyer and union representative say he did nothing wrong.

Some 45 members of the command were interviewed, and hundreds of documents were examined.

The implications of the report are obvious: If the 81st Precinct was a typical station house, then crime manipulation is more widespread than city officials have admitted.

John Eterno, a criminologist at Molloy College and a former NYPD captain, says that what was happening in the 81st

Schoolcraft

Follow [continuing coverage of the NYPD Tapes here](#) at our Runnin' Scared blog.

Precinct is no isolated case. "The pressures on commanders are enormous, to make sure the crime numbers look good," Eterno says. "This is a culture. This is happening in every precinct, every transit district, and every police housing service area. This culture has got to change."

As for Mauriello, he's no rogue commander, says Eterno, who has published a book about crime reporting with John Jay College professor Eli Silverman. "Mauriello is no different from any other commander," he says. "This is just a microcosm of what is happening in the entire police department."

Indeed, it is clear from Schoolcraft's recordings that Mauriello was responding to pressure emanating from the Brooklyn North borough command and police headquarters for lower crime numbers and higher summons and stop-and-frisk numbers.

The seven index crimes—murder, rape, robbery, assault, burglary, grand larceny, and auto theft—are the central public indicators of the city's crime rate and, by extension, its reputation. The crime numbers are also the bedrock in evaluating the Bloomberg administration and critical to attracting tourism and economic development to the city.

As a result, Mayor Bloomberg and Kelly have gone to great lengths to insist the crime statistics are accurate. They have publicly downplayed the Schoolcraft allegations and insisted that any "underreporting" is a tiny anomaly.

Kelly's aides have also sought to marginalize Schoolcraft—to, in effect, kill the messenger. And the department has succeeded in making his life extremely uncomfortable. Schoolcraft has been suspended without pay for 27 months, he faces department charges, he was placed under surveillance for a time, and the city even blocked his application for unemployment benefits.

But the report amounts to a vindication of Schoolcraft's claims, undermines the city's official claims about the accuracy of the crime statistics, and confirms most of the findings in the "NYPD Tapes" series.

"He [Schoolcraft] brought to light a number of different issues related to crime reporting," a police source familiar with the investigation tells the *Voice*.

In the period since Schoolcraft came forward, investigators found similar informal but taboo practices in other precincts, police sources say.

Those findings, police sources say, were the reason behind Kelly's unprecedented departmental order in January, which reminded officers of their crime-reporting responsibilities.

Kelly never publicly acknowledged the actual reason behind issuing the order and claimed it was "routine." His spokesman, Paul Browne, claimed it had nothing to do with concerns about underreporting of crime. But no one could remember a similar order ever being issued in the past.

Based on the findings of this broader examination, the order told cops they had to take crime complaints. They could not send victims to other precincts, discount them because they weren't totally cooperative, reclassify a crime, delay recording a crime, or reject a crime because they didn't think prosecutors would pursue a conviction.

These are all dodges that have evolved in the era of CompStat, the NYPD's widely copied crime-fighting strategy, which ties career promotions to crime numbers, creating a strong incentive for commanders to downgrade reports.



But Kelly has not issued any overall examination of the accuracy of the city's crime statistics, nor has any outside investigative agency conducted a broader probe.

Instead, the police department has pursued a strategy of stonewalling reporters and refusing to release any documents surrounding the Schoolcraft affair. Indeed, the *Voice* was blocked in its efforts to obtain this report through the New York State Freedom of Information Law.

The request was blocked even though at the time, the report had been completed and therefore, should have been released.

Moreover, other investigations ordered by Kelly in 2010 appear to be on an indefinite, murky schedule. A three-member panel of former federal prosecutors is more than seven months late in issuing its findings. One of its members passed away in December.

All of this suggests that Bloomberg and Kelly are simply trying to delay a full accounting until after the next mayoral election. And other agencies—such as the state attorney general—won't address it either.

**Schoolcraft alleged that** commanders knew he had come forward and used the psychiatric stay to retaliate against him. For more than two years, the NYPD has publicly insisted that was not the case.

But the actual internal charges against Precinct Commander Mauriello raise new questions about that piece of the story. Mauriello, in his department charges, is accused of lying when he claimed he didn't know about the investigation into crime reporting in the 81st Precinct.

In fact, Mauriello knew before Schoolcraft was committed, investigators found. In addition, he denied he had seen Schoolcraft's memo book, which contained some of his allegations, when, in fact, he had seen it.

Mauriello is also charged with failing to file a report for auto theft, lying about his role in the incident, and falsely denying that he examined the precinct's crime report every day.

Schoolcraft, who turned out to be right, now is protected only by his lawsuit against the city—for which he was criticized.

In all, 11 of the 13 cases brought to investigators by Schoolcraft were substantiated. Complaints were downgraded in an attempt to avoid index-crime classification, investigators concluded. Reports were never filed. Reports were delayed and rewritten. Victims were ignored and pressured.

- A 2008 attempted robbery was classified as misdemeanor assault. Schoolcraft had alleged in this instance that a sergeant in the precinct ordered him to downgrade the report, saying, "We can't take another robbery."

- A 2008 robbery was wrongly classified as a report of lost property. Schoolcraft had given investigators an e-mail from the victim who claimed he had been beaten and robbed of his wallet and cell phone by three men. But the crime complaint was changed to "lost property [because] the victim doesn't feel he was a victim of a crime."

Disturbingly, two officers told the victim that because he couldn't identify his attackers, the case would be classified as lost property. That's a direct violation of NYPD policy.

None of the precinct officers interviewed in that incident could explain how the report was changed to lost property. The complaint was upgraded to robbery. Two officers were disciplined.

- The precinct somehow "lost" the complaint for a 2009 attempted robbery. Schoolcraft has said in the

past that he subsequently wrote a new report after the initial one couldn't be found.

A precinct sergeant told the victim that he would have to return to the precinct to look at mug shots, a process that would take "several hours." The victim said he had a job event to attend. Later, the complaint disappeared. In addition, the complaint languished for three days—a violation of a requirement that reports be "finalized" within 24 hours. A sergeant is facing department charges over the incident.

- The precinct commander ordered cops not to take a car theft. Here, the victim ran into several barriers in filing her complaint. First, an officer told her to wait a few days to see if the car reappeared. That advice delayed the investigation for two days. In addition, Schoolcraft had alleged that Mauriello ordered the female officer not to take the complaint. The officer lost five vacation days as a result of the investigation.

- In a 2009 incident, an elderly man said he was a burglary victim. When he showed up at the precinct to file a report, a sergeant told him to go to another precinct to file. Again, this is a violation of the NYPD's own policy. It was only after a newspaper article appeared months later that a report was taken.

- A 60-year-old retired traffic agent made repeated visits to the precinct to get a complaint number for her stolen vehicle from May through June 2009. The investigation showed the report was never entered into the NYPD computer system, preventing it from being counted in the crime statistics. Investigators concluded nothing would have been done if the woman hadn't been a former traffic agent and pressed the issue.

- In another auto theft, the victim got frustrated because she had to wait hours to file her complaint. The report was never entered in the computer system.

When she went to the 81st Precinct, the victim was told she had to go to the 79th Precinct. When she contacted the 79th Precinct, she was told she had to go to the location where the vehicle disappeared and report it to the 81st Precinct.

"She waited an inordinate amount of time, her complaint was never investigated, nor was a complaint report ever generated," investigators concluded.

- A man walked into the precinct to ask for his car-theft complaint report in June 2009. The report had disappeared, and a new one was made. Schoolcraft claimed that Precinct Commander Mauriello refused to accept the report.

A month later, two men were arrested for stealing the car. Only after that did 81st Precinct cops enter the report.

The victim subsequently confirmed that he felt that Mauriello was "interrogating" him and doubted he was telling the truth.

Investigators concluded that the report should have been an auto theft, not an "unauthorized use of a vehicle." They also found that Mauriello's account contradicted that of the victim and his cousin and wasn't credible.

- Investigators also recommended charges against a sergeant who told officers on Mauriello's orders not to take robbery reports if victims refused to return to the station house. Although the remark was on the Schoolcraft recordings, the sergeant initially denied ever saying that. Mauriello denied issuing any such order.

Investigators learned that no report was ever taken for the incident, which led to the sergeant's order.

•After a woman reported a knifepoint robbery, another precinct sergeant told cops, "If no surveillance cameras show her getting robbed, she's going to be locked up." In essence, cops were pressuring her not to file the complaint. The victim got frustrated, and no report was filed.

Investigators concluded that two officers failed to take the report, and the sergeant failed to follow up. All three cops are facing possible charges.

As to Schoolcraft's claims that Mauriello and one of his lieutenants repeatedly ordered cops to downgrade index crimes, investigators examined hundreds of complaints and found several dozen misclassified reports.

Even so, Mauriello and precinct supervisors still denied there was any extensive manipulation of crime reports.

A sergeant and officers told investigators that Mauriello reviewed the previous days' crime reports, but Mauriello denied that. He also denied calling victims back himself, even though the Schoolcraft tapes and a statement by one of Mauriello's lieutenants clearly show that he did.

Schoolcraft claimed that index crimes weren't being entered into the NYPD computer system that tracks crime reports citywide. Investigators found, based on a seven-week sample, that was true in 7 percent of cases.

Precinct officers did upgrade some complaints, but only at the low rate of one report per week, investigators concluded. Those upgrades were often done more than a month after the incident, rendering it impossible to actually solve the crime.

"This represents a severe delay in accurate crime reporting and calls into question the motive for changing the classification" after so much time had passed, investigators wrote.

Probers found seven instances where a crime was initially called a felony, changed to a misdemeanor, and then upgraded to a felony again long afterward. Investigators wrote that they found "severe deficiencies in the overall crime-reporting process as a whole."

Investigators found 46 crimes in all where something was not done properly, and thus did not make it into the precinct-crime stats. Twenty-five were misclassified, 16 were missing, and five weren't entered into the system.

"The investigation revealed the lengths that some members of the command went to in order to avoid index-crime reports," investigators concluded, going on to describe a "reluctance" to submit the reports. Since it was Mauriello's ultimate responsibility, investigators cited a "serious failure" in his command.

"Because of this failure, an atmosphere was created discouraging members of the command to accurately report index crimes," investigators concluded.

In all, five precinct officers, two sergeants, and Mauriello were either disciplined or charged with department infractions. Most of the command structure in the 81st was transferred. Kelly appointed one of the city's few female African American commanders to replace Mauriello.

Deputy Chief Michael Marino, the man who ordered Schoolcraft to be committed, was also transferred.

Probers referred two of Schoolcraft's allegations to Internal Affairs: one involving the arrests of people on minor infractions held unnecessarily in the command and released, and the other, three arrests of people who tried to turn guns in to the station house.

**Schoolcraft remains under a kind** of indefinite suspension without pay and lives upstate with his father. His federal lawsuit is moving along in a preliminary phase.

His lawyer, Jon Norinsberg, says the secret NYPD investigation totally backs Schoolcraft and proves that "crime reports were deliberately manipulated to create an utterly false portrait of crime levels in the precinct."

"The fact that the NYPD knew about a report that wholly vindicated Adrian's claims but never released it to the public—much less acknowledged its existence—is disgraceful and a complete betrayal of the trust of the people of New York," Norinsberg says. "Rather than attacking Adrian's credibility, the NYPD should have commended this officer's courage in coming forward—at great risk to himself and his own career—to expose the dishonesty and fraud that was taking place at the 81st Precinct."

Norinsberg says Commissioner Kelly's actions "have been nothing more than window dressing." "He has addressed the problem cosmetically but has done nothing at all to deal with the actual root of the problem: CompStat," he says. "This is the driving force behind the NYPD's obsession with numbers."

Norinsberg says his office has been "flooded with e-mails from other officers who have reported downgrading and non-reporting of crime merely to pad their commander's stats."

"It is a gross distortion of the truth to suggest that manipulation of crime statistics occurred only in the 81st Precinct," he says. "This is a citywide problem."

As for the other man at the center of the story—Mauriello—he is in a sort of limbo himself. He was transferred to Bronx Transit and charged departmentally 18 months ago, but little has happened since then—much to the irritation of his lawyer and union representative.

Roy Richter, the president of the Captains Endowment Association, says that despite the broad allegations contained in the report, Mauriello is only charged with obstructing the taking of a single auto-theft report.

"It's important to note that Mauriello was not charged in any administrative action related to the broad conclusions that are contained in the report," Richter says. "Prior to the investigation, his command was rated very highly in previous crime-statistics audits. We will challenge the charges against him. We feel he's been wrongly charged."

Mauriello is on full duty in the Bronx Transit command as an executive officer. During his time at the 81st Precinct, his command won a coveted unit citation for outstanding performance, and he was promoted.

As for the charge that Mauriello misled investigators, Richter says: "He was directed to recall incidents that happened a year or more before. It's difficult for any person or police officer or reporter to describe a timeline of events that happened 12 months previous. There was no misleading. He testified to the best of his memory at the time."

Lou La Pietra, Mauriello's lawyer, says his client denies the charges filed against him. "He's a fall guy," La Pietra says. "I don't know why, whether it's being done for political or litigation reasons. But he wants to move forward."

Richter and La Pietra are critical of the department delay to bringing the case to trial. "He was served in October 2010, and they haven't done anything more since," La Pietra says. "The guy's been put out to pasture 18 months. I don't know what their bigger agenda is."

**[grayman@villagevoice.com](mailto:grayman@villagevoice.com)**

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# EXHIBIT B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ADRIAN SCHOOLCRAFT,

Plaintiff,

-against-

THE CITY OF NEW YORK, DEPUTY CHIEF  
MICHAEL MARINO, Tax Id. 873220, Individually  
and in his Official Capacity, ASSISTANT CHIEF  
PATROL BOROUGH BROOKLYN NORTH  
GERALD NELSON, Tax Id. 912370, Individually  
and in his Official Capacity, DEPUTY INSPECTOR  
STEVEN MAURIELLO, Tax Id. 895117,  
Individually and in his Official Capacity, CAPTAIN  
THEODORE LAUTERBORN, Tax Id. 897840,  
Individually and in his Official Capacity,  
LIEUTENANT JOSEPH GOFF, Tax Id. 894025,  
Individually and in his Official Capacity, SGT.  
FREDERICK SAWYER, Shield No. 2576,  
Individually and in his Official Capacity,  
SERGEANT KURT DUNCAN, Shield No. 2483,  
Individually and in his Official Capacity,  
LIEUTENANT CHRISTOPHER BROSCART,  
Tax Id. 915354, Individually and in his Official  
Capacity, LIEUTENANT TIMOTHY CAUGHY, 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 his Official Capacity and  
JAMAICA HOSPITAL MEDICAL CENTER  
EMPLOYEE'S "JOHN DOE" # 1-50, Individually  
and in their Official Capacity (the name John Doe  
being fictitious, as the true names are presently  
unknown),

Defendants.  
-----X

**STIPULATION AND  
PROTECTIVE ORDER  
AS TO DOCUMENTS  
PRODUCED BY CITY  
DEFENDANTS**

10 CV 06005 (RWS)

**WHEREAS**, plaintiff seeks certain documents from defendants the City of New York, and NYPD defendants Deputy Chief Michael Marino, Assistant Chief Gerald Nelson, Deputy Inspector Steven Mauriello, Captain Theodore Lauterborn, Lieutenant Joseph Goff, Sgt. Frederick Sawyer, Sergeant Kurt Duncan, Lieutenant Christopher Broschart, and Sergeant Shantel James, (collectively referred to herein as "City Defendants") in discovery in this action, documents which City Defendants deem confidential, and

**WHEREAS**, City Defendants object to the production of those documents unless appropriate protection for their confidentiality is assured,

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the attorneys for plaintiff, City Defendants, and Jamaica Hospital Medical Center, Dr. Isak Isakov, and Dr. Lilian Aldana-Bernier (collectively referred to herein as "Co-Defendants") as follows:

1. As used herein, "Confidential Materials" shall mean all documents and the information contained therein relating to personnel of the New York City Police Department ("NYPD"), other than plaintiff in this action, except where otherwise specified in subsection (a), including, but not limited to, (a) files maintained by the NYPD's Internal Affairs Bureau ("IAB") and Brooklyn North Investigations Unit ("BNIU") with respect to any investigation into alleged misconduct by any member of the New York City Police Department, including but not limited to plaintiff; (b) files maintained by the NYPD's Quality Assurance Division ("QAD") with respect to any investigation, including but not limited to plaintiff; (c) internal and external Equal Employment Opportunity complaints and any related investigation; (d) personnel files and the information contained therein including, but not limited to, information regarding, promotions,



discipline, evaluations; (e) copies of any documents containing information about any actual or potential personnel action taken with respect to personnel of NYPD other than plaintiff in this action, including, but not limited to, copies of investigation files, disciplinary files, Employee Management Division ("EMD") files; (f) any documents identified by City defendants as subject to this order; (g) any documents that the Court directs to be produced subject to this order; and (h) any testimony concerning subsection (a), (b), (c), (d), (e), (f), and (g) and documents and the information contained therein.

2. Documents and information are not Confidential Materials to the extent that they (a) are properly obtained by plaintiff from the City defendants herein, or (b) are otherwise publicly available.

3. Neither plaintiff, plaintiff's attorney, nor the Co-Defendants or their attorneys in this matter shall use the Confidential Materials for any purpose other than for the preparation or presentation of plaintiff's case or defendants' defense in this action. In addition, any party may use the Confidential Materials for cross-examination or impeachment purposes, and Confidential Materials may be used in support of, or opposition to, any summary judgment motions, provided that the Confidential Materials are appropriately redacted for ECF filing, pursuant to the provisions of paragraph 6, *infra*.

4. Neither plaintiff, plaintiff's attorney, nor the Co-Defendants or their attorneys in this matter shall disclose the Confidential Materials to any person except under the following conditions:

- a. Disclosure of Confidential Materials, including, but not limited to those files maintained by the NYPD's IAB, BNIU, QAD, or Office of Equal Employment Opportunity with respect to any investigation into alleged

misconduct, including but not limited to plaintiff, and any EMD, personnel, investigative, and/or disciplinary files and/or materials may be made only to plaintiff's and/or Co-Defendants' attorneys or a person(s) specifically employed by plaintiff's and/or Co-Defendants' attorneys only if necessary to the preparation or presentation of plaintiff's and/or Co-Defendants' case in this action.

- b. Disclosure before trial of Confidential Materials may be made only to an expert who has been retained or specially employed by plaintiff's and/or Co-Defendants attorneys in anticipation of litigation or preparation for this action, to a witness at deposition, or to the Court.
- c. Before any disclosure is made to a person listed in subparagraph (a) or (b) above (other than to the Court), plaintiff and Co-Defendants shall provide each such person with a copy of this Stipulation and Protective Order, and such person shall consent in writing, in the form annexed hereto as Exhibit A, not to use the Confidential Materials for any purpose other than in connection with the prosecution or defense of this case and not to further disclose the Confidential Materials except in testimony taken in this case, or attached to motions, affidavits or declarations submitted to the Court, which have been redacted for ECF filing pursuant to the provisions of paragraph 6, *infra*. The signed consent shall be retained by plaintiff's attorney and/or Co-Defendants' attorneys and a copy shall be furnished to City Defendants' attorney within ten (10) days.

5. Deposition testimony concerning any Confidential Materials which reveals the contents of such materials shall be deemed confidential, and the transcript of such testimony, together with any exhibits referred to therein, shall be separately bound, with a cover page prominently marked "CONFIDENTIAL." Such portion of the transcript shall be deemed to be Confidential Materials within the meaning of this Stipulation and Protective Order.

6. If any paper which incorporates any Confidential Materials or reveals the contents thereof is filed in this Court, those portions of the papers shall be delivered to the Court enclosed in a sealed envelope bearing the caption of this action, an indication of the nature of the contents, and the following legend:

**CONFIDENTIAL**

This envelope contains documents or information designated confidential pursuant to an order entered by the United States District Court for the Southern District of New York in the above-captioned action. This envelope shall not be opened or unsealed without the express direction of a judge of this Court, and its contents shall not be displayed or revealed except as the Court may order. This envelope and its contents shall at all times be maintained separate and apart from the publicly available files of this case.

7. Within thirty (30) days after the termination of this case, including any appeals, the Confidential Materials, including all copies, notes, and other materials containing or referring to information derived therefrom, shall be returned to City defendants' attorney or, upon their written consent, destroyed, and all persons who possessed such materials shall verify their return or destruction by affidavit or certification furnished to City defendants' attorney; plaintiff's and Co-Defendants' attorneys shall represent that all Confidential Materials have been returned; provided that notes and other materials that are or contain the work product of


attorneys may be retained. However, any such retained work product shall remain subject to the provisions in this Order and shall not be used by plaintiff's counsel and/or Co-Defendants' counsel in any other case against the City of New York, its agencies or its employees and the same shall be verified to City defendants' attorney.

8. Nothing in this Stipulation and Protective Order shall prevent plaintiff's counsel from making an application to the Court in the matter of Stinson, et al. v. City of New York, et al. 10-Civ.-4228 (RWS), for disclosure of materials that would otherwise be subject to this Protective Order.

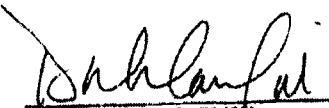
9. Nothing in this Stipulation and Protective Order shall be construed to limit City defendants' use of the Confidential Materials in any manner.

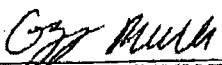
10. Facsimile signatures herein shall be considered as original signatures.


Dated: September 28, 2011  
New York, New York

  
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(212) 791-5396  
Norinsberg@aol.com

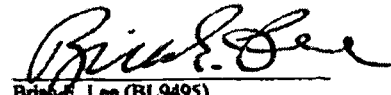
  
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SO ORDERED:

---

# EXHIBIT C



THE CITY OF NEW YORK  
**LAW DEPARTMENT**

100 CHURCH STREET  
NEW YORK, NY 10007

MICHAEL A. CARDOZO  
*Corporation Counsel*

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October 7, 2011

**VIA HAND DELIVERY**

Jon L. Norinsberg  
225 Broadway, Suite 2700  
New York, New York 10007

Gerald Cohen  
Joshua Fitch  
COHEN & FITCH, LLP  
225 Broadway, Suite 2700  
New York, New York 10007

Re: Schoolcraft v. The City of New York, et al.  
Civil Action Number: 10 CV 6005

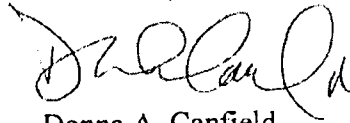
Dear Counsel:

Please find enclosed for service upon you, documents Bates stamped D000001-D001457 produced pursuant to the terms of the Stipulation and Protective Order in effect in this matter. Included in this production are the following:

Plaintiff's Command Personnel Folder  
Plaintiff's Employee Management Division ("EMD") File  
Various Memo book entries – Plaintiff  
Plaintiff's Psychological Evaluation Section file  
IAB Interim Report, dated October 7, 2010  
Charges and Specs. – Mauriello  
Charges and Specs - Schoolcraft  
Marino Command Discipline  
Internal Affairs Bureau ("IAB") Resumes - Defendants  
Central Personnel Index ("CPI") - Defendants  
Property Invoices  
Memobook – Broschart  
QAD Report 81 Precinct  
Defendants' Personnel Files

Also included are documents PG000001-PG000703, previously produced.

Yours truly,



Donna A. Canfield  
Assistant Corporation Counsel  
dcanfiel@law.nyc.gov

c: Gregory John Radomisi  
MARTIN CLEARWATER & BELL LLP  
*Attorneys for Jamaica Hospital Medical Center*  
220 East 42nd Street 13th Floor  
New York, NY 10017  
(by hand delivery)

Brian Lee  
IVONE, DEVINE & JENSEN, LLP  
*Attorneys for Dr. Isak Isakov*  
2001 Marcus Avenue, Suite N100  
Lake Success, New York 11042  
(by First Class Mail)



**COHEN & FITCH LLP**

233 BROADWAY, SUITE 1800  
NEW YORK, NY 10279  
TEL: 212.374.9115  
FAX: 212.406.2313

---

**FAX FORM**

**DATE:** April 25, 2012

**TO:** Honorable Robert W. Sweet, United States District Judge

**FIRM OR COMPANY:** Southern District of New York

**Cc:** Suzanna Publicker, Esq. (212-788-9776)  
Assistant Corporation Counsel

Gregory John Radomisli (212-949-7054)  
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Bruce M. Brady (212-248-6815)  
Callan, Koster, Brady & Brennen LLP  
1 Whitehall Street  
New York, NY 10004

**FROM:** Cohen & Fitch LLP

**PAGES** (including this page):   6    
If you did not receive all of the pages, please contact the sender as soon as possible.

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**MESSAGE:** Schoolcraft v. City of New York, et al  
10 CV 6005 (RWS)

**NOTE TO FAX OPERATOR:** The information contained in this Facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this facsimile is strictly prohibited. If you receive this Facsimile in error, please immediately notify us by telephone and return the original message to us at the address above via the United States Postal service. Thank you.

**COHEN & FITCH LLP**

233 BROADWAY, SUITE 1800

NEW YORK, NY 10279

TEL: 212.374.9115

FAX: 212.406.2313

April 25, 2012

**BY FACSIMILE****212-805-7925**

Honorable Robert W. Sweet  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: **Schoolcraft v. City of New York, et al.**  
**10 CV 6005 (RWS)**

Your Honor:

I am co-counsel for plaintiff in the above-referenced matter. I write now to respectfully request that Your Honor grant plaintiff leave to amend the complaint to add a First Amendment retaliation claim under 42 U.S.C. § 1983 based on the discovery that has been produced thus far. Additionally, it is also respectfully requested that plaintiff be permitted to substitute Lieutenant William Gough for Lieutenant Joseph Goff who was incorrectly named in the original complaint. The request to substitute Lt. Gough as a defendant is made with the consent of all parties and the request regarding the First Amendment claim is made with the consent of all parties except the City defendants. No prior requests to amend have been made.

Since the time of filing the first amended complaint in this action, the parties have conducted substantial document discovery. Specifically, the parties have exchanged over three thousand (3,000) documents as well as thousands of hours of audio recordings. Amongst the documents exchanged by the City defendants was the UF 49 (Unusual Occurrence Report) from October 31, 2009, which indicated that a Lt. William Gough was present during plaintiff's home invasion whose name bore a phonetic resemblance to the currently named defendant Lt. Joseph Goff. After verifying this information with the plaintiff, it was confirmed that because of the similarity in names Lt. Joseph Goff had erroneously been named instead of the correct Lt. William Gough. Accordingly, the plaintiff respectfully requests leave to amend the complaint to correct this error and add the appropriate defendant.

Additionally, the City defendants have also produced the documents from the investigation conducted by the Quality Assurance Division (QAD) of the New York City Police Department, which had performed an investigation into the allegations made by plaintiff Adrian Schoolcraft while still an active duty police officer at the 81<sup>st</sup> Precinct. Specifically, prior to the

events of October 31, 2009, Adrian Schoolcraft had made numerous complaints to supervisory personnel within the department and to outside investigative agencies regarding the enforcement and establishment of an arrest and summons quota. Additionally, he also made specific allegations that commanding officers had manipulated crime statistics and civilian complaints so as to avoid classification as index crimes.<sup>1</sup> These allegations included, but were not limited to, the failure to take reports of civilian complaints, destruction of civilian complaints, downgrading complaints that would have been categorized as index crimes to lesser offenses and discouraging civilians from making or pursuing criminal complaints.

Plaintiff believed, and still does, that this under-reporting was occurring in order to avoid the statistical categorization of these complaints as "major crimes" for purposes of reporting crime statistics to the public – i.e. to make it appear to the public at large that a certain manner of policing was affectively reducing crime when in fact the numbers being provided to the public were being falsified. Further, these allegations that plaintiff had made were eventually substantiated by the QAD investigative findings, which found that civilian complaints were in fact being falsified by the NYPD. As such, following the disclosure of the QAD findings, the merit and validity of plaintiff's First Amendment retaliation claim became clear – namely, that the events of October 31, 2009 and the subsequent campaign of harassment was done directly in retaliation against plaintiff because he had exercised his First Amendment right to speak out regarding this breach of the public trust and fraud on the public at large. Accordingly, plaintiff now makes the instant request to add a First Amendment Claim to the complaint.

***The Plaintiff Has Clear Grounds to Assert a First Amendment Retaliation Claim Based on the QAD Findings***

Under the law of this Circuit, a First Amendment retaliation claim is widely recognized when an individual suffers a constitutional injury in retaliation for exercising his rights under the First Amendment. See Skehan v. Village of Mamaroneck, 465 F.3d 96, 107 (2d Cir. 2006) (“[T]he First Amendment nonetheless prohibits it [generally, subject to certain defenses,] from punishing its employees in retaliation for the content of their speech on matters of public importance.”). In order to establish a First Amendment retaliation claim the plaintiff must show he engaged in protected speech and that the adverse employment action that resulted was motivated by its utterance. See id. (“In order to establish a First Amendment retaliation claim, plaintiffs must prove that: (1) they engaged in constitutionally protected speech because they spoke as citizens on a matter of public concern; (2) they suffered an adverse employment action; and (3) the speech was a ‘motivating factor’ in the adverse employment decision.”). Further, “adverse employment action” is not strictly construed under the First Amendment and only requires that the action taken be sufficient to discourage potential speakers from exercising similar rights in the future. See Nixon v. Blumenthal, 409 Fed.Appx. 391, \*1 (2d Cir. 2010) (“In the First Amendment context, plaintiffs need not demonstrate a material change in employment terms or conditions...rather, plaintiffs need only show that the retaliatory conduct in question ‘would deter a similarly situated individual of ordinary firmness from exercising his or her constitutional rights.’”). Additionally, in order for a public employee – namely, a police officer – to establish entitlement to First Amendment protection, he or she must show that they engaged

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<sup>1</sup> Index crimes consist of the seven major crime classifications: Murder, Rape, Robbery, Burglary, Felony Assault, Grand Larceny and Grand Larceny Auto.

in speech as a "citizen" regarding matters of public concern. See Ruotolo v. City of New York, 514 F.3d 184, 188 (2d Cir. 2008) ("Whether public employee speech is protected from retaliation under the First Amendment entails two inquiries: (1) "whether the employee spoke as a citizen on a matter of public concern" and, if so, (2) "whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public.").

In the present case, plaintiff can clearly satisfy every element of this claim. Plaintiff Adrian Schoolcraft spent years documenting corruption within the New York City Police Department. Specifically, he recorded superior officers instructing subordinates to make arrests and issue summonses pursuant to an internally established quota and in many instances either explicitly or implicitly instructing officers to disregard probable or reasonable cause in order to meet these requirements. Additionally, and perhaps even more importantly, plaintiff documented repeated instances of widespread fraud regarding civilian complaints within 81<sup>st</sup> Precinct – namely, officers' failure to take civilian complaint reports, their discouragement of civilians who desired to make reports and their misclassification of crimes contained in the reports. Further, in an attempt to expose this corruption clearly involving matters of public concern, plaintiff spoke to supervisors, made formal reports that he attempted to transmit to Police Department hierarchy and made written complaints to investigative units such as the Internal Affairs Department and Quality Assurance Division of the NYPD. As a result of this speech, NYPD officials modified the conditions of his employment and eventually entered his home and had him involuntarily committed to a psychiatric ward at Jamaica Hospital for six (6) days. Thereafter, defendants continued to retaliate against him for his speech regarding the departmental corruption by traveling hundreds of miles to his home in upstate New York in a continuing campaign of retaliation and intimidation. Accordingly, plaintiff can unquestionably establish the requisite elements for pleading and proving a First Amendment retaliation claim in this case.

**Garcetti is Entirely Inapplicable to the Speech Alleged in This Matter**

In response to plaintiff's request for consent to amend the complaint in order to add this claim, the City defendants have predictably relied on Garcetti v. Ceballos, 547 U.S. 410 (2006) in opposing plaintiff's proposed amendment on the grounds of futility. This position, however, ignores the underlying basis of that holding – namely, that First Amendment protection is *only* lost when the speech is *required* as a function of the employee's job. See id. at 421 ("We hold that when public employees make statements *pursuant to their official duties*, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.") (emphasis added). Conversely, if the speech is not *required* by the employee's job duties, it is protected, and this limitation of Garcetti has been widely recognized in this Circuit. See Sassi v. Lou-Gould, 2007 WL 635579, \*3 (S.D.N.Y. 2007) (Unlike the plaintiff in Garcetti, whose *job* it was to write the communications which he claimed constituted protected speech, Chief Sassi had no such duty to write public letters to the City Council "as a resident taxpayer." Chief Sassi's letters, which harshly criticized the City Council for its funding of the police department, were very similar to the letter in Pickering.) (emphasis added). In fact Your Honor has even recognized this distinction in cases involving facts similar to the instant case. See McAvey v. Orange-Ulster Boces, 2009 WL

2744745, \*5 (S.D.N.Y. 2009)(RSW)("McAvey's official job duties cannot be said to include 'scrutinize[ing] her *supervisors* for fraud-essentially acting as a supervisor of her supervisors-let alone report[ing] them to external investigators.'). Further, the mere fact that the speech is *related* to an individual's job does not lift the umbrella of First Amendment protection. See Jackson v. Jimino, 506 F.Supp.2d 105, 109 (N.D.N.Y. 2007)("If we were to adopt Defendants' argument, we would inextricably have find that Garcetti dictates a bright-line rule-an all or nothing determination-on an employee's speech even if it *tangentially* concerns the official's employment. We find that Garcetti does not stand for that proposition.'")(emphasis added).

In the present matter, plaintiff's speech undoubtedly involved matters of public concern – namely, the falsification of civilian complaints and the widespread institution of an arrest and summons quota, which implicitly and explicitly instructed officers to disregard probable cause. See Skehan 465 F.3d at 106 ("[D]efendants do not seriously contest that plaintiffs have satisfied the first two elements of their First Amendment case, *nor could they*. Plaintiffs' speech plainly concerned issues of public concern: misfeasance within the police department and allegations of an ongoing cover-up and an attempt to silence those who spoke out against it.")(emphasis added). As previously stated, plaintiff's speech concerned a system that required and/or influenced officers to disregard the law and violate individuals rights in order to meet departmental quota requirements. Moreover, plaintiff was speaking out regarding the widespread manipulation, tampering and falsification of civilian complaints being made by the public at large. Additionally, it cannot be argued with any level of credibility that addressing these matters was part of his job duties, and as such, he is entitled him to First Amendment protection. See Jackler v. Byrne, 658 F.3d 225, 241- 42 (2d Cir. 2011):

[I]t is clear that the First Amendment protects the rights of a citizen to refuse to retract a report to the police that he believes is true, to refuse to make a statement that he believes is false, and to refuse to engage in unlawful conduct by *filing a false report* with the police. We conclude that Jackler's refusal to comply with orders to retract his truthful Report and file one that was false has a *clear civilian analogue* and that Jackler was not simply doing his job in refusing to obey those orders from the department's top administrative officers and the chief of police.

Id. (emphasis added). Finally, the nature of plaintiff's speech not only was addressing matters of public concern, but acts that literally constituted a *fraud on the public* – namely, that citizens were being led to believe their complaints were actually being taken and being reported accurately. Under these circumstances, it is clear that plaintiff's allegations are abundantly sufficient to sustain a First Amendment retaliation claim. See Anderson v. State of New York, Office of Court Admin. of Unified, 614 F.Supp.2d 404, 428 (S.D.N.Y. 2009):

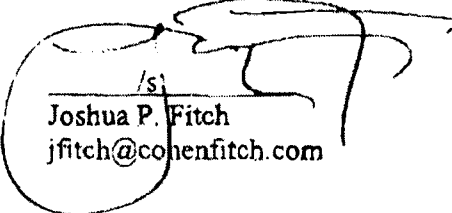
This case is patently distinguishable from Garcetti. Whereas the prosecutor in Garcetti spoke out about a *single* case pending in his office, Anderson spoke out about *systemic* problems at the DDC, thereby making her speech protected. Where a public employee's speech concerns a government agency's *breach of the public trust*, as it does here, the speech relates to more than a mere personal grievance and therefore falls outside Garcetti's restrictions.

(Id.)(emphasis).

Accordingly, since leave to amend pleadings is freely granted, and defendants cannot possibly sustain their burden of proving the futility of adding this claim, plaintiff respectfully requests that Your Honor issue an Order permitting plaintiff to amend the Complaint accordingly.

Thank you for your consideration of this request.

Very truly yours,

  
/s/  
Joshua P. Fitch  
jfitch@cohenfitch.com

Cc: VIA FAX

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*Boxet + File*

NEW YORK  
COUNTY  
SUPERIOR COURT  
FILED  
DATE FILED: 3-13-13



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THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
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RECEIVED  
MARCH 11 2013  
JUDGE SWEET CHAMBERS

March 1, 2013

*Treat as motion returnable 3/20*

**BY HAND DELIVERY**  
Honorable Robert W. Sweet  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: Schoolcraft v. The City of New York, et al.  
10-CV-6005 (RWS)

Your Honor:

I am the Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, assigned to represent the City Defendants above-referenced matter. City Defendants write regarding certain of plaintiff's discovery deficiencies.

By way of background, City Defendants served plaintiff with their First Set of Interrogatories and Document Requests on or about December 5, 2011, to which plaintiff belatedly responded on April 9, 2012. City Defendants served a second set of Document Requests on or about August 20, 2012, to which plaintiff again belatedly responded on October 24, 2012.<sup>1</sup> City Defendants outlined the deficiencies to plaintiff's responses to these requests in a letter dated December 19, 2012 (annexed hereto as Exhibit A), and have further followed up with plaintiff's counsel by letter dated February 15, 2013 (annexed hereto as Exhibit B). Plaintiff has not responded in any manner. City Defendants therefore respectfully request that the Court compel plaintiff to respond to the enumerated requests below by a date certain as City Defendants are not able to move forward with the second day of plaintiff's deposition until these documents are received.

<sup>1</sup> According to a review of the Civil Docket Sheet, Lieutenant William Gough, Sergeant Robert W. O'Hare, Sergeant Sondra Wilson, Lieutenant Thomas Hanley, and Captain Timothy Trainor have not yet been served with process, and are therefore not parties to this action.

<sup>2</sup> Pursuant to F.R.C.P. 33 and 34, because plaintiff failed to either respond, or seek an enlargement of time in which to respond within 30 days of service of City Defendants' discovery requests, any objections to those requests have been waived.

**A. Financial Expenses Incurred By Plaintiff**

City Defendants demanded proof of all financial expenses incurred by plaintiff as a result of the allegedly unlawful conduct of defendants in this matter.<sup>3</sup> Plaintiff responded by stating that the demand "is vague, ambiguous, overbroad and unduly burdensome, to the extent that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it calls for the production of material not within plaintiff's possession, custody or control, and that is more readily obtained from another source." Plaintiff is alleging economic damages in this matter, and as such, plaintiff's contention that the document request is "neither relevant nor reasonably calculated to lead to the discovery of admissible evidence" is utterly incomprehensible. Even to the extent that plaintiff alleges that evidence of plaintiff's financial damages is more readily available from another source, plaintiff has failed to identify the source(s) from whom City Defendants may request such evidence, despite requests from City Defendants to so identify the source(s). Plaintiff has similarly refused to provide evidence of his efforts to mitigate damages by attempting to secure other employment,<sup>4</sup> proof of the \$7,185.00 medical bill plaintiff claims he was issued as a result of his confinement,<sup>5</sup> and proof of purchase of the recording devices used by plaintiff.<sup>6</sup> Given the relevance of plaintiff's economic losses and any attempts to mitigate those losses to this litigation, City Defendants respectfully request that the Court order plaintiff to produce responsive information by a date certain.

**B. Documents Regarding Allegations of Illegality Regarding Police Officers Frank Pallestro and Adhyl Polanco**

Plaintiff alleged in his Second Amended Complaint that non-party Police Officers Adhyl Polanco and Frank Pallestro have evidence that the IAB failed to keep their complaints of corruption and illegality confidential, which plaintiff believe supports his claims in this action. City Defendants therefore demanded any documents in plaintiff's possession that support these allegations.<sup>7</sup> Plaintiff responded in part that "[the request] demands disclosure of information and/or communications that are protected by the attorney-client or work-product privileges, or which constitute material prepared for litigation purposes." In response, City Defendants requested a privilege log for those documents plaintiff believes are protected by the attorney-client and/or work-product privileges, which plaintiff has thus far failed to provide.

Plaintiff further objected to produce responsive documents concerning Frank Pallestro that are in plaintiff's possession, without first obtaining an Attorneys Eyes Only Stipulation executed by the parties and ordered by the Court. City Defendants do not believe any Attorneys' Eyes Only Stipulation is required when none was required for plaintiff to produce similar information pertaining to Adhyl Polanco. Further, plaintiff's claim that evidence regarding Frank Pallestro cannot be produced absent such a stipulation because Pallestro fears retaliation, is meritless in light of the fact that plaintiff has already identified Frank Pallestro as having

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<sup>3</sup> See 1<sup>st</sup> Set of Document Requests - Document Request Number 9.

<sup>4</sup> See 1<sup>st</sup> Set of Document Requests - Document Request Number 13.

<sup>5</sup> See 2<sup>nd</sup> Set of Document Requests - Document Request Number 6.

<sup>6</sup> See 2<sup>nd</sup> Set of Document Requests - Document Request Number 4.

<sup>7</sup> See 2<sup>nd</sup> Set of Document Requests - Document Request Number 1.



provided information to IAB regarding "allegations of illegality," and more importantly, Frank Palestro himself has given numerous interviews to media sources including the New York Daily News on these matters.<sup>8</sup> Accordingly, City Defendants respectfully request that the Court order plaintiff to provide all evidence in his possession regarding Police Officers Adhyl Polanco and Frank Palestro.

**C. Messages and Communications Received Through [www.schoolcraftjustice.com](http://www.schoolcraftjustice.com)**

Through the course of discovery, City Defendants learned that plaintiff and his counsel operated a website with the URI of [www.schoolcraftjustice.com](http://www.schoolcraftjustice.com), which asked members of the NYPD to provide information for plaintiff to use in his litigation. City Defendants demanded that plaintiff produce messages and communications received through [www.schoolcraftjustice.com](http://www.schoolcraftjustice.com), including the names, contact information, and IP addresses of all respondents.<sup>9</sup>

Plaintiff claimed that the request implicated that "disclosure of information and/or communications that are protected by the attorney-client or work-product privileges, or which constitute material prepared for litigation purposes." So, though plaintiff provided *some* response to this request, in doing so, plaintiff redacted the names, contact information, and IP addresses of all respondents. After City Defendants challenged the assertion of privilege, by pointing out that the website itself included a disclaimer stating that "information on this website is not intended to create, and receipt or viewing of this information does not constitute, an attorney-client relationship," the website was taken down.<sup>10</sup> It is clear from counsel's website disclaimer that there is no attorney-client relationship with regard to any responses to the [www.schoolcraftjustice.com](http://www.schoolcraftjustice.com) website and that any claim of privilege would not be asserted in good faith. Even if there *were* a relationship, plaintiff has refused to provide a privilege log reflecting the information plaintiff contends is protected by the attorney-client and/or work-product privileges, which is required under the Local Rules to be furnished at the time the objection is asserted. See Local Rule 26.2(b). Further, as the names, contact information, and IP addresses of all respondents is information that was not prepared for litigation purposes, it cannot be considered attorney work-product. Additionally, to the extent that plaintiff intends to rely on statements posted to the website in the furtherance of their litigation, defendants are entitled to learn the identities of the individuals providing information, and gather their contact information to investigate their claims and/or facilitate the service of subpoenas. Accordingly, City Defendants request that the Court demand plaintiff to produce the subject messages and communications received through [www.schoolcraftjustice.com](http://www.schoolcraftjustice.com), including the un-redacted names, contact information, and IP addresses of all respondents.

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<sup>8</sup> See, e.g., <http://www.nydailynews.com/news/nypd-whistleblower-palestro-reports-allege-corruption-1.194881>  
<http://www.nydailynews.com/news/nypd-whistleblower-palestro-reports-allege-corruption-1.194881>

<sup>9</sup> See 2<sup>nd</sup> Set of Document Requests - Document Request Number 2

<sup>10</sup> "The information contained on this website is for general information purposes only. Nothing on this or associated pages, documents, comments, answers, emails, or other communications should be taken as legal advice for any individual case or situation. This information on this website is not intended to create, and receipt or viewing of this information does not constitute, an attorney-client relationship. This is attorney advertising. Past performance does not guarantee future results." (Screenshot of [www.schoolcraftjustice.com](http://www.schoolcraftjustice.com), Exhibit C)(emphasis added)

**D. Communications by Plaintiff with Media Outlets**

City Defendants demanded that plaintiff "[p]roduce any documents, messages, and communications including but not limited to emails, text messages, and letters reflecting any communications, interviews, conversations, or meetings plaintiff has had with any media outlet regarding the allegations of the instant lawsuit, including but not limited to blogs, newspapers, radio stations, independent reporters, and magazines." See 2<sup>nd</sup> Set of Document Requests - Document Request Number 7. Plaintiff objected to that request by stating that it was "vague, ambiguous, overbroad and unduly burdensome, to the extent that it seeks documents that are more readily obtained from another source." City Defendants find this response wholly inappropriate given the number of statements plaintiff has made to the media pertaining to the allegations set forth in the complaint. City Defendants are entitled to discover statements that plaintiff has made concerning his allegations herein irrespective of whether they are also available from another source. Thus, plaintiff's objections to the document request are baseless and accordingly, City Defendants respectfully request that the Court compel plaintiff to provide documents responsive to these wholly reasonable demands.

**II. Plaintiff's Failure to Respond to City Defendants' Requests for Admissions**

On December 19, 2012, City Defendants served plaintiff with Requests for Admission regarding the identification of plaintiff's voice on certain recordings. Responses to these requests are needed because plaintiff could not recall whether he had made certain statements on the recordings when asked about them at his deposition on October 11, 2012. On that same date, City Defendants also followed up on requests for production of documents first made during plaintiff's deposition. Plaintiff has not responded to any of these requests, despite having had this glaring deficiency pointed out in a letter by City Defendants on February 15, 2013. In view of the foregoing, City Defendants respectfully request that the Court compel plaintiff to respond to City Defendants' Requests for Admissions and document discovery demands made by City Defendants first at plaintiff's deposition, and later by letter dated December 19, 2012 by a date certain.

For the reasons stated above, City Defendants respectfully request that the Court order plaintiff to provide the documents and information listed above by a date certain.

City Defendants thanks the Court for its time and consideration of this request.

Respectfully submitted,



Suzanna Publiker  
Assistant Corporation Counsel  
Special Federal Litigation Division

cc: Richard Gilbert (By Fax 212-633-1977)  
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# EXHIBIT A



MICHAEL A. CARDOZO  
*Corporation Counsel*

THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
100 CHURCH STREET  
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December 19, 2012

**BY FIRST-CLASS MAIL.**

Richard A. Gilbert, Esq.  
115 Christopher Street, 2<sup>nd</sup> Floor  
New York, New York 10014

Re: Schooler, et al. v. The City of New York, et al.  
10 CV 6005 (RWS)

Dear Counsel:

City Defendants are aware that you have recently been retained as counsel for plaintiff and write: 1) to address plaintiff's deficient discovery responses; and 2) regarding plaintiff's deposition, including follow-up requests for documents requested during the deposition.

**Plaintiff's Deficient Discovery Responses**

In compliance with the good faith obligations of the Federal Rules of Civil Procedure, City Defendants hereby identify the following deficiencies with respect to Plaintiff's Responses to Defendant's First and Second Sets of Interrogatories and Requests for Production of Documents.<sup>1</sup>

**1<sup>st</sup> Set of Document Requests - Document Request Number 9:** And any all documents or things, including but not limited to audiotapes, videotapes, or other electronic recordings, emails, letters, journals or diary entries or notes or like documents or things, in any form or format, concerning the financial expenses (other than expenses for mental health services) that plaintiff

<sup>1</sup> Additionally, pursuant to F.R.C.P. 33 and 34, because plaintiff failed to either respond, or seek an enlargement of time in which to respond within 30 days of service of City Defendants' discovery requests, any such objections to those requests were waived.

claims to have incurred to date as a result of the alleged wrongful acts or omissions of the defendants, including but not limited to attorneys' fees.

**Plaintiff's Response:** Plaintiff objects to this request on the grounds that it is vague, ambiguous, overbroad and unduly burdensome, to the extent that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it calls for the production of material not within plaintiff's possession, custody or control, and that is more readily obtained from another source.

**Defendants' Notice of Deficiency:** Plaintiff appears to be alleging economic damages in this matter. As such, City Defendants' Document Request No. 9 clearly requests documentary evidence of such damages. In light of plaintiff's intention to seek compensatory damages, plaintiff's contention that the document request is "neither relevant nor reasonably calculated to lead to the discovery of admissible evidence" is utterly incomprehensible. Thus, kindly provide the requested documents or, in the event that plaintiff is not seeking recompense for financial expenses incurred as a result of the alleged incident, state so. Finally, to the extent that plaintiff alleges that evidence of *plaintiff's* financial damages is more readily available from another source, identify the source(s) from whom City Defendants may request such evidence.

**1<sup>st</sup> Set of Document Requests - Document Request Number 13:** All documents concerning plaintiff's attempts to secure other employment and/or to otherwise mitigate his alleged damages since October 31, 2009, including but not limited to: all correspondence or other documents plaintiff has sent to or received from any employment agencies, search firms or other outplacement firms, any documents which reflect the dates upon which plaintiff has had contact with such agencies or firms, and any documents concerning any job prospects such agencies or firms have made known to plaintiff; all employment advertisements plaintiff has placed or to which plaintiff has responded; and all correspondence, resumes, reference letters or other documents plaintiff has sent to or received from any prospective employers, all documents concerning any offers of employment plaintiff has received from any prospective employers' and all documents concerning plaintiff's response(s) to any offers of employment he has received.

**Plaintiff's Response:** Plaintiff objects to this request on the grounds that it is vague, ambiguous, overbroad and unduly burdensome, to the extent that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it calls for the production of material not within plaintiff's possession, custody or control, and that is more readily obtained from another source. Notwithstanding, and without waiving or in any way limiting these objections or the General Objections, plaintiff states that responsive documents, to the extent that such documents exist and are in the possession of plaintiff, will be provided under separate cover.

**Defendants' Notice of Deficiency:** To the extent that plaintiff is claiming damages for *years of* lost income as a result of the alleged wrongful acts or omissions of the defendants, documents concerning plaintiff's attempts to secure other employment and/or to otherwise mitigate his alleged damages since October 31, 2009, are clearly relevant and likely to lead to the discovery of admissible evidence. As such, please produce the documents responsive to this request, including those you indicated would be provided under separate cover. Further, to the extent that plaintiff alleges that the requested documents are more readily available from another source,

City Defendants demand that plaintiff identify the source(s) from whom City Defendants may request the documents.

**2<sup>nd</sup> Set of Document Requests - Document Request Number 1:** Produce any and all documents and/or recordings which support, or tend to support, in any way whatsoever, any of the allegations set forth in paragraph 352 through 353 of plaintiff's Amended Complaint alleging that the IAB failed to keep complaints of corruptions and illegality confidential in the 42<sup>nd</sup> Precinct regarding allegations of illegality involving Police Officers Frank Pallestro and Adhyl Polanco.

***Plaintiff's Response:*** Plaintiff objects to this request on the grounds that it is vague, ambiguous, overbroad and unduly burdensome, to the extent that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it calls for the production of material not within plaintiff's possession, custody or control, and that is more readily obtained from another source and to the extent that it demands disclosure of information and/or communications that are protected by the attorney-client or work-product privileges, or which constitute material prepared for litigation purposes. Notwithstanding, and without waiving or in any way limiting these objections or the General Objections, plaintiff states that responsive documents concerning Adhyl Polanco have previously been provided in plaintiff's responses to defendants first demand for discovery, dated April 9, 2012. Additionally, responsive documents concerning Frank Pallestro are in plaintiff's possession, but will only be disclosed pursuant to an Attorneys Eyes Only Stipulation executed by the parties and ordered by the Court.

***Defendants' Notice of Deficiency:*** Please provide a privilege log for those documents plaintiff believes are protected by the attorney-client and/or work-product privileges. Additionally, in response to plaintiff's contention that "documents concerning Adhyl Polanco have previously been provided in plaintiff's responses to defendants first demand for discovery, dated April 9, 2012," please specifically identify the previously produced documents by reference to particular Bates Numbers. With regard to Frank Pallestro, it is unclear why plaintiff posits that an Attorneys' Eyes Only Stipulation is required when, ostensibly, none was required to produce similar information pertaining to Adhyl Polanco. Further, plaintiff's claim that evidence regarding Frank Pallestro cannot be produced absent such a stipulation, because he fears retaliation, is meritless in light of the fact that plaintiff has already identified Frank Pallestro as having provided information to IAB regarding "allegations of illegality," and more importantly, Frank Pallestro himself has given numerous interviews to media sources including the New York Daily News (<http://www.nydailynews.com/news/crime/wind-blower-palestro-reports-illegal-corruption-42nd-precinct-main-delegate-article-1.174881>). Therefore, kindly provide any and all documents in your possession responsive to this demand and, further, to the extent there are documents responsive to this document request outside of plaintiff's custody and/or control, identify the custodian of such documents.

**2<sup>nd</sup> Set of Document Requests - Document Request Number 2:** Produce any and all messages and communications received through [www.schoolcraftjustice.com](http://www.schoolcraftjustice.com), including the names, contact information, and IP addresses of all respondents.

**Plaintiff's Response:** Plaintiff objects to this request on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome, and to the extent that it demands disclosure of information and/or communications that are protected by the attorney-client or work-product privileges, or which constitute material prepared for litigation purposes. Notwithstanding, and without waiving or in any way limiting these objections or the General Objections plaintiff is providing responsive documents redacted accordingly.

**Defendants' Notice of Deficiency:** According to the [www.schoolcraftjustice.com](http://www.schoolcraftjustice.com) website, "The information contained on this website is for general information purposes only. Nothing on this or associated pages, documents, comments, answers, emails, or other communications should be taken as legal advice for any individual case or situation. This information on this website is not intended to create, and receipt or viewing of this information does not constitute, an attorney-client relationship. This is attorney advertising. Past performance does not guarantee future results." It is clear from counsels' own statements that there is no attorney-client relationship with regard to any responses to the [www.schoolcraftjustice.com](http://www.schoolcraftjustice.com) website. Further, as the names, contact information, and IP addresses of all respondents is information that was not prepared for litigation purposes, it cannot be considered attorney work-product. In any event, please provide a privilege log reflecting the information plaintiff contends is protected by the attorney-client and/or work-product privileges. Additionally, to the extent that plaintiff intends to rely on statements posted to the website, defendants are entitled to learn the identities of the individuals providing information, and gather their contact information to investigate their claims and/or facilitate the service of subpoenas. Accordingly, please produce the subject messages and communications received through [www.schoolcraftjustice.com](http://www.schoolcraftjustice.com), including the un-redacted names, contact information, and IP addresses of all respondents.

**2<sup>nd</sup> Set of Document Requests - Document Request Number 3:** Produce any and all evidence of "NYPD misconduct and corruption" that plaintiff collected and documented on or before October 31, 2009. If that evidence was destroyed, or is no longer in plaintiff's possession, please identify each item that was destroyed, the approximate dates of destruction, and the manner of its destruction. If that evidence is no longer in plaintiff's possession, please identify each item that is no longer in plaintiff's possession, and the current possessor, holder or recipient of that item.

**Plaintiff's Response:** Plaintiff objects to this request on the grounds that it is vague, ambiguous, overbroad and unduly burdensome, to the extent that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it calls for the production of material not within plaintiff's possession, custody or control, and that is more readily obtained from another source or has already been turned over in discovery. Notwithstanding, and without waiving or in any way limiting these objections or the General Objections, plaintiff identifies notes and documents plaintiff had prepared identifying corruption in the NYPD, which were seized by NYPD defendants during his seizure on October 31, 2009.

**Defendants' Notice of Deficiency:** To the extent that plaintiff claims that evidence of "NYPD misconduct and corruption" was seized by NYPD defendants during the incident at plaintiff's apartment on October 31, 2009, please identify with particularity what evidence plaintiff claims was taken from his apartment by the NYPD. Additionally, to the extent that plaintiff alleges that evidence of "NYPD misconduct and corruption" is more readily available from another source,



please identify what evidence is available from another source, and the source from which that evidence may be obtained.

**2<sup>nd</sup> Set of Document Requests - Document Request Number 4:** Produce any bills, receipts, cancelled checks or other proof of payment, insurance claims, and insurance benefits received, or like documents or things, in any form or format, concerning (a) Olympus D.V.R. (WS-331M), valued at \$100.00; (b) Key Ring Light, valued at \$15.00; and (c) Olympus D.V.R. (DS-50), valued at \$250.00 as referred in Plaintiff's Notice of Claim. If plaintiff is still in possession of any or all of these items, defendants demand the opportunity to inspect these items.

***Plaintiff's Response:*** Plaintiff objects to this request on the grounds that it is vague, ambiguous, overbroad and unduly burdensome, to the extent that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it calls for the production of material not within plaintiff's possession, custody or control, and that is more readily obtained from another source. Notwithstanding, and without waiving or in any way limiting these objections or the General Objections, plaintiff has annexed the receipts in his possession.

***Defendants' Notice of Deficiency:*** In response to this request, plaintiff produced receipts for an Olympus DS-50 1 GB Digital Voice Recorder, valued at \$159.99 (\$162.94 after shipping and tax) and a receipt for an Olympus WS-331M Digital Voice Recorder, valued at \$113.59 (\$123.10 after shipping and tax). Please confirm that the DS-50 described in the Notice of Claim valued at \$250 is the same DS-50 referenced in the receipt annexed to plaintiff's discovery responses, and that the Olympus WS-331M described in the Notice of Claim as valued at \$100.00 is the same WS-331M referenced in the receipt annexed to plaintiff's discovery responses. Further, in response plaintiff's averment that this request "calls for the production of material not within plaintiff's possession, custody or control, and that is more readily obtained from another source," plaintiff's identify the responsive evidence available from another source, as well as the source. Further, if plaintiff is still in possession of any or all of these items, defendants demand the opportunity to inspect these items at a date and time to be agreed upon by counsel.

**2<sup>nd</sup> Set of Document Requests - Document Request Number 5:** Produce any and all documents or things, including but not limited to bills, receipts, cancelled checks or other proof of payment, insurance claims, and insurance benefits received, or like documents or things, in any form or format, that support plaintiff's claim that he received a bill in the amount of \$7185.00 for his confinement at Jamaica Hospital Medical Center beginning on or about October 31, 2009.

***Plaintiff's Response:*** Plaintiff objects to this request on the grounds that it is vague, ambiguous, overbroad and unduly burdensome, to the extent that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it calls for the production of material not within plaintiff's possession, custody or control, and that is more readily obtained from another source. Notwithstanding, and without waiving or in any way limiting these objections or the General Objections, plaintiff states that he is not in possession of materials responsive to this request.

**Defendants' Notice of Deficiency:** Please identify whether plaintiff was ever in possession of materials responsive to this request, and further, identify any documents responsive to the request (even if said documents are not in plaintiff's possession) and the custodian of the documents.

**2<sup>nd</sup> Set of Document Requests - Document Request Number 6:** Produce any and all documents or things, including but not limited to bills, receipts, cancelled checks or other proof of payment, insurance claims, and insurance benefits received, or like documents or things, in any form or format, that support plaintiff's claim that Jamaica Hospital Medical Center collected money as a result of the alleged bill that plaintiff received in the amount of \$7,185.00 for his confinement at Jamaica Hospital Center beginning on or about October 31, 2009.

**Plaintiff's Response:** Plaintiff objects to this request on the grounds that it is vague, ambiguous, overbroad and unduly burdensome, to the extent that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it calls for the production of material not within plaintiff's possession, custody or control, and that is more readily obtained from another source. Notwithstanding, and without waiving or in any way limiting these objections or the General Objections, plaintiff states that he is not in possession of materials responsive to this request.

**Defendants' Notice of Deficiency:** Please identify whether plaintiff was ever in possession of materials responsive to this request, and further, identify any documents responsive to the request (even if said documents are not in plaintiff's possession) and the custodian of the documents.

**2<sup>nd</sup> Set of Document Requests - Document Request Number 7:** Produce any documents, messages, and communications including but not limited to emails, text messages, and letters reflecting any communications, interviews, conversations, or meetings plaintiff has had with any media outlet regarding the allegations of the instant lawsuit, including but not limited to blogs, newspapers, radio stations, independent reporters, and magazines.

**Plaintiff's Response:** Plaintiff objects to this request on the grounds that it is vague, ambiguous, overbroad and unduly burdensome, to the extent that it seeks documents that are more readily obtained from another source.

**Defendants' Notice of Deficiency:** Upon information and belief, plaintiff has made numerous statements to the media pertaining to the allegations set forth in the complaint. Defendants are entitled to discover the statements that plaintiff has made concerning his allegations herein. Thus, plaintiff's objections to the document request are baseless. Accordingly, please provide documents responsive to the demand. Additionally, to the extent that plaintiff claims that documents responsive to this request are "more readily obtained from another source", identify the source(s).

Please provide the information requested herein no later than January 11, 2013. Should plaintiff fail to timely respond, City Defendants will have no choice but to seek judicial intervention.

**Plaintiff's Deposition**

During the course of plaintiff's deposition, plaintiff indicated on several occasions that he had no independent recollection of many of the events upon which he was questioned, and instead directed the undersigned to his "recordings." For example, when asked about the number of times he was told to conduct a stop, question, and frisk without reasonable suspicion, plaintiff stated "I believe there are multiple recordings of supervisors telling officers to articulate a charge later." However, when asked to identify the specific recordings supporting his claims, plaintiff was unable to identify or narrow down the recording on which such conversations could be found. See, e.g., Schoolcraft Deposition Transcript at 80:13-83:6. Given the fact that plaintiff has provided defendants with approximately 150 recordings spanning over twenty hours, a continued deposition to review said recordings would not be an efficient use of the parties' time. Accordingly, City Defendants request that plaintiff agree to review the enclosed transcript and, in each instance where plaintiff did not specifically identify those recordings supporting his claim, identify with particularity the recordings referenced by plaintiff as responsive to City Defendants' questions.

Additionally, City Defendants request production of the following documents first requested during plaintiff's deposition on October 11, 2012:

1. Affidavits provided by plaintiff in other lawsuits - 14:8-15:12;
2. All recordings relating to plaintiff's claims not previously produced - 31:4-9;
3. A copy of the hard drive of the computer used by plaintiff on or about October 31, 2009 onto which plaintiff transferred relevant recordings - 35:24-36:7;
4. Inspection of the clothing that plaintiff was wearing on October 31, 2009 - 163:7-13;
5. Letter sent by plaintiff to Senator Farney - 279:19-280:1

**City Defendants' New Discovery Demands**

Enclosed please find City Defendants' First Set of Requests for Admissions

Encl

Sincerely yours



Suzanna Publicker  
*Assistant Corporation Counsel*  
Special Federal Litigation Division

cc Gregory John Radomisli (By First-Class Mail)  
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# EXHIBIT B



THE CITY OF NEW YORK  
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MICHAEL A. CARDOZO  
*Corporation Counsel*

SUZANNA PUBLICKER  
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February 19, 2013

**BY HAND DELIVERY**

Richard A. Gilbert, Esq.  
115 Christopher Street, 2<sup>nd</sup> Floor  
New York, New York 10014

Re: Schoolcraft v. The City of New York, et al  
10 CV 6005 (RWS)

Dear Counsel,

In accordance with defendants' continuing discovery obligations, enclosed please find color copies of the documents previously produced by City Defendants under Bates Nos. NYC00003728 through NYC00003286 and NYC00003257 through NYC00003276. The new color copies bear Bates Nos. NYC00007532 through NYC00007560. City Defendants also produce additional documents and recordings from the IAB Case File as described below. Documents bearing Bates Nos. NYC00007561, NYC00007567, and NYC00007676, NYC00007678-NYC00007681, NYC00007685, NYC00007689, NYC00007691, NYC00007695, NYC00007697, NYC00007699-NYC00007734, NYC00007736, NYC00007740, NYC00007742-NYC00007744, NYC00007746-NYC00007749, NYC00007752-NYC00007754, NYC00007760, NYC00007763, NYC00007766, NYC00007768-NYC00007771, NYC00007773-NYC00007774, NYC00007888-NYC00007889, NYC00007892-NYC00007942, NYC00007990-NYC00008006, NYC00008015-NYC00008048, NYC00008078-NYC00008100 are being produced subject to the Attorneys' Eyes Only Confidentiality Stipulation and Protective Order, endorsed by the Court on October 5, 2012. Documents bearing Bates Nos. NYC00007671, NYC00007673, NYC00007675, NYC00007682-NYC00007683, NYC00007686, NYC00007690, NYC00007692, NYC00007741, NYC00007745, NYC00007750-NYC00007751, NYC00007755-NYC00007759, NYC00007761, are being produced subject to the Confidentiality Stipulation and Protective Order, endorsed by the Court on October 5, 2012.

<u>Document Description</u>	<u>Bates Stamp No.</u>	<u>Confidentiality</u>
1. IAB CD titled Sgt. Krohley PO Rudy	NYC00007561	AFO
2. IAB CD titled Call-Out #09-097 (re: 09-61921)	NYC00007562	Not Confidential
3. IAB CD titled Lt. Hudnell - Wed 01/13/10 Att to Contacts, etc.	NYC00007563	Not Confidential
4. IAB CD titled Sgt. O'Hare IA No. 10-03173	NYC00007564	Not Confidential
5. IAB CD titled P.O. Schoolcraft 11.04.09	NYC00007565	Not Confidential
6. IAB CD titled Lt. Dronzek 01.06.10	NYC00007566	Not Confidential
7. IAB CD titled 159A	NYC00007567	AFO
8. IAB CD titled Lt. Hanlon	NYC00007568	Not Confidential
9. IAB CD titled Capt. Perez 01.06.10	NYC00007569	Not Confidential
10. IAB CD of Capt. Perez	NYC00007570	Not Confidential
11. IAB CD titled 310a - PO Joseph; 311a PO Bonnomette; 312a - PO Khela; 314a PO Martinez; 315a PO Brown; 317a Sgt. Alston; 318a PO Taveras; 319a PO Clark	NYC00007571	AFO
12. IAB CD titled 322a	NYC00007572	AFO
13. IAB CD titled 325a	NYC00007573	AFO
14. IAB CD titled 326a	NYC00007574	AFO
15. CD Containing Documents from IAB Investigation M09-1973	NYC0007671- NYC00008230 <sup>1</sup>	AFO Confidential Not Confidential

In accordance with defendants' continuing obligation under 1 R.C.P. 26(e), enclosed please also find additional documents responsive to plaintiffs' First Set of Requests for Production of Documents, bearing Bates Nos. NYC00007575 through NYC00007670, which are being produced subject to the Attorneys' Eyes Only Confidentiality Stipulation and Protective Order, endorsed by the Court on October 5, 2012. As to the requests for disciplinary information, please note that incidents reflecting charges of misconduct that do not involve allegations of a similar nature to the allegations against the individual officers in the complaint or false statements have been redacted. As there were no closed, relevant matters on the Central Personnel Indices for defendants Lt. Gough, Sgt. Wilson, Sgt. Wall, Lt. Hanley, and Lt. O'Hare, no CPI documents have been produced for those defendants. Similarly, there were no closed, relevant matters on the IAB Resumes of defendants Captain Trainor, Sgt. Wall, and Sgt. Wilson, therefore, no IAB Resume documents have been produced for those defendants. Additionally, there were no closed, relevant matters on the CCRB Histories of defendants Lt. O'Hare, Captain Trainor, Sgt. Wilson, and Sgt. Wall, therefore, no CCRB documents have been produced for those defendants. This office is continuing to inquire into incidents where an investigation may be ongoing. Once those matters are closed, to the extent that any exists, relevant disciplinary information will be provided. With respect to officer personnel folders, please note that City

<sup>1</sup> Please see enclosed for a log indicating documents that have been withheld on the basis of privilege, redundancy, and/or relevance.

Defendants have not produced performance evaluations that precede the incident by more than five years or post-date the incident.

<u>Document Description</u>	<u>Bates Stamp No.</u>	<u>Confidentiality</u>
16. Central Personnel Index for Captain Timothy Trainor	NYC00007575- NYC00007576	AEO
17. CCRB History for Lt. William Gough	NYC00007577	AEO
18. CCRB History for Lt. Thomas Hanley	NYC00007578	AEO
19. IAB Resume for Lt. William Gough	NYC00007579- NYC00007580	AEO
20. IAB Resume for Lt. Thomas Hanley	NYC00007581- NYC00007582	AEO
21. IAB Resume for Lt. O'Hare	NYC00007583- NYC00007585	AEO
22. Personnel Folder for Lt. William Gough	NYC00007586- NYC00007599	AEO
23. Personnel Folder for Sgt. Sondra Wilson	NYC00007600- NYC00007610	AEO
24. Personnel Folder for Captain Timothy Trainor	NYC00007611- NYC00007643	AEO
25. Personnel Folder for Lt. Robert O'Hare	NYC00007644- NYC00007658	AEO
26. Personnel Folder for Lt. Thomas Hanley	NYC00007659- NYC00007670	AEO

As you are aware, plaintiff was served with City Defendants' First Set of Requests for Admissions on December 19, 2012. Pursuant to F.R.C.P. 33 and 34, plaintiff was obligated to respond to said discovery demands within thirty (30) days of service. However, to date, City Defendants have not received plaintiff's responses. Additionally, on December 19, 2012, plaintiff was served with a letter from City Defendants indicating certain enumerated deficiencies with plaintiff's Responses to City Defendants' First and Second Sets of Interrogatories and Requests for Production of Documents. Plaintiff has also failed to respond to those discovery requests. Please serve plaintiff's responses to both City Defendants' Requests for Admissions and City Defendants' December 19, 2012 deficiency letter by March 8, 2013, otherwise, City Defendants will seek court intervention. Additionally, pursuant to F.R.C.P. 33 and 34, because plaintiff failed to either timely respond, or seek an enlargement of time in which to respond, to City Defendants' discovery demands, any objections thereto have now been waived.

City Defendants note that there is no indication from the Court's Civil Docket Sheet whether Lieutenant William Gough, Sergeant Robert W. O'Hare, Sergeant Sondra Wilson, Lieutenant Thomas Hanley, and Captain Timothy Trainor have been served. On numerous occasions, City Defendants have requested both from plaintiff's former counsel and from present

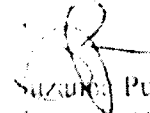


counsel affidavits of service indicating that these individuals were served.<sup>7</sup> Accordingly, if you have served these individuals, please produce the affidavits of service by February 28, 2013, otherwise City Defendants will seek Court intervention.

Finally, City Defendants request to know whether you will be accepting service of subpoenas on Larry Schoolcraft and Frank Serpico. Plaintiff's prior counsel, Jon Norinsberg, had consented to accept service of any subpoena issued to Larry Schoolcraft and to produce him for a deposition. City Defendants have previously asked present counsel about this request (see Letter dated January 9, 2013), but have not heard back. Additionally, a Daily News article dated February 4, 2013 (annexed hereto) indicated that Frank Serpico is now part of plaintiff's "legal team." Accordingly, please indicate whether you will accept service of a subpoena issued to Frank Serpico and whether you will produce him for deposition at a later date.

Traci

Sincerely yours,



Suzanne Publicker  
Assistant Corporation Counsel  
Special Federal Litigation Division

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<sup>7</sup> See Emails to Jon Norinsberg dated October 17, 2012, November 7, 2012, and November 13, 2012; Email to Richard Gilbert dated December 21, 2012, and conversation in person with Richard Gilbert at the Court conference on January 30, 2013.

# EXHIBIT C



Welcome

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Complaint

Media

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