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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

New York, N.Y.  
April 1, 2013  
10:00 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

14 BELDOCK LEVINE & HOFFMAN, LLP  
15 Attorneys for Plaintiffs

15 BY: JENN ROLNICK BORCHETTA  
16 JONATHAN MOORE

17 COVINGTON & BURLING, LLP  
17 Attorneys for Plaintiffs

18 BY: KASEY MARTINI  
18 GRETCHEN HOFF VARNER  
19 ERIC HELLERMAN  
19 BRUCE COREY

20 CENTER FOR CONSTITUTIONAL RIGHTS  
21 Attorneys for Plaintiffs

21 BY: DARIUS CHARNEY  
22 SUNITA PATEL  
22 BAHAR AZMY

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APPEARANCES (Cont'd)

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25

MICHAEL A. CARDOZO  
Corporation Counsel for the City of New York  
Attorney for Defendants  
BY: HEIDI GROSSMAN  
BRENDA E. COOKE  
JOSEPH MARUTOLLO  
MORGAN D. KUNZ  
SUZANNA PUBLICKER  
LINDA DONAHUE  
LISA M. RICHARDSON  
JUDSON VICKERS

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1 (Trial resumed)

2 THE COURT: Good morning, everyone.

3 ERIC ADAMS,

4 called as a witness by the plaintiffs,

5 having so affirmed to tell the truth, testified

6 as follows:

7 THE COURT: Please state your full name, first and  
8 last, spelling both names for the record.

9 THE WITNESS: Eric Adams, E-R-I-C, A-D-A-M-S.

10 DIRECT EXAMINATION

11 BY MR. MOORE:

12 Q. Good morning, Senator Adams.

13 A. Good morning.

14 Q. Can you tell us your current employment?

15 A. I am a New York state senator in the 20th senatorial  
16 district, central Brooklyn.

17 Q. If you could try to keep your voice up so that everybody  
18 can hear you. Maybe move a little closer to the mike.

19 A. This is a very uncomfortable chair.

20 Q. There is nothing we can do about that.

21 THE COURT: Nor can we given our budget.

22 Q. So tell us what your position is again.

23 A. New York state senator in the 20th senatorial district.

24 Q. What generally is the area that's covered by the 20th  
25 senatorial district?

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1 A. It covers Flatbush, Prospect Heights, Crown Heights,  
2 Brownsville, a small part of Bedford-Stuyvesant, parts of  
3 Sunset Park, and just the tip of Bay Ridge.

4 Q. Do you know what police precincts would be encompassed  
5 within the 20th senatorial district?

6 A. The 70, 71, 77, the 73rd, and a small part of the 68  
7 precinct.

8 Q. How long have you been a state senator?

9 A. Seven years.

10 Q. Before that were you employed by the New York City Police  
11 Department?

12 A. Yes, I was.

13 Q. Tell us how many years you were employed by the New York  
14 City Police Department.

15 A. 22.

16 Q. At what rank did you retire?

17 A. Yes, I did.

18 Q. At what rank did you retire?

19 A. A captain.

20 Q. As a state senator, are you involved in issues that are  
21 brought to you by members of the community?

22 A. Yes, I am.

23 Q. Does one of those issues relate to the question of stop and  
24 frisk?

25 A. Yes.

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1 Q. Can you tell us what your concern is about that issue as it  
2 relates to the constituents of your community?

3 A. I don't quite understand the question.

4 Q. With respect to that issue of stop and frisk, how is that  
5 an issue for you in doing your duties as a state senator?

6 A. Well, people often come and visit me to find out if it was  
7 used correctly, or they will speak with me if they felt that it  
8 was used incorrectly. And we have received over the years a  
9 large number of young people who appear to have been used  
10 incorrectly.

11 Q. The issue of stop and frisk is an issue that is of concern  
12 to you as a state senator, correct?

13 A. Yes, it is.

14 Q. Let me draw your attention back to July of 2010.

15 MR. MOORE: I apologize, your Honor. I have a cold so  
16 I can hear my voice sounding kind of nasal.

17 THE COURT: As long as you stay there, that will be  
18 OK.

19 MR. MOORE: I won't approach the bench.

20 Q. Do you recall sometime in July 2010 you were at a meeting  
21 where Police Commissioner Raymond Kelly was present?

22 A. Yes.

23 Q. What were the circumstances of that meeting?

24 A. I was introducing a bill, co-sponsor of a bill in Albany  
25 that would make it unlawful to hold a database of individuals

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- 1 who were stopped and questioned and/or frisked, and they did  
2 nothing wrong at all, so the information would no longer be  
3 allowed to be held in that database.  
4 Q. So the bill that you were co-sponsoring and introducing was  
5 attempting to prevent those names from being entered into an  
6 NYPD database?  
7 A. Yes.  
8 Q. So you had a meeting about that bill?  
9 A. Yes.  
10 Q. Go ahead.  
11 A. The governor was attempting to determine if he was going to  
12 sign the bill into law.  
13 Q. So where did the meeting take place?  
14 A. On 40th and Third, at the governor's office, Manhattan  
15 location.  
16 Q. That was Governor Paterson at the time?  
17 A. Yes.  
18 Q. It was at his New York City office?  
19 A. Yes.  
20 Q. Do you recall who else was present at the meeting?  
21 A. Of course, I was there, Governor Paterson was there,  
22 Senator Golden was there, Commissioner Kelly, and Assemblyman  
23 Hakeem Jeffries, who is now Congressman Jeffries.  
24 Q. Now U.S. congressman?  
25 A. Yes.

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1 Q. Is that Martin Golden?

2 A. Yes.

3 Q. Do you remember anybody else from the New York City Police  
4 Department present other than Commissioner Kelly?

5 A. No.

6 Q. Why were you meeting with Governor Paterson?

7 A. He wanted to hear both sides of the issue and attempt to  
8 determine if he was going to sign the bill or not. He was  
9 receiving a large amount of pressure to not sign the bill from  
10 many, unfortunately, of the white elected officials.

11 Q. In addition to this meeting, did you have more than one  
12 meeting with Governor Paterson or just this meeting?

13 A. This was the only meeting.

14 Q. So tell us what you recall being said at the meeting.

15 A. The discussion surrounded the group attempting to share  
16 with Governor Paterson what our positions were around stop and  
17 frisk and the bill that we were going to introduce.

18 Assemblyman Jeffries, who was the co-sponsor, he gave his  
19 position, I gave my position, Senator Golden shared his  
20 position, and of course the commissioner gave his.

21 Q. Now, Senator Golden, did he speak against the bill?

22 A. Yes, he did.

23 Q. What about Police Commissioner Kelly, did he speak against  
24 the bill?

25 A. Yes, he did.

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1 Q. What do you recall Police Commissioner Kelly saying?

2 A. Several things. One that he felt the bill was not  
3 necessary because they were already doing internal procedures  
4 to ensure that the policy was correctly carried out.

5 Q. When you say the policy, you mean the policy with regard to  
6 stop, question and frisk?

7 A. Yes.

8 Q. Did he indicate what that training was or what internal  
9 proceedings they were doing to prevent the abuse of stop and  
10 frisk?

11 A. No.

12 Q. Do you remember anything else he said at that meeting?

13 A. He stated that he felt that it was a good deterrent, and he  
14 went into the area of -- when I raised the concern of the  
15 disproportionate number of blacks and Hispanics who were  
16 stopped, he raised what his beliefs were that was the group  
17 that was really being focused on or targeted.

18 Q. When you say you raised concerns about the tactic, what did  
19 you say before Commissioner Kelly made his comments?

20 A. That it was a disproportionate number of blacks and  
21 Hispanics that were being targeted, particularly young people,  
22 and that it was unfairly targeting that group and it wasn't  
23 used for what I believe the law entitled stop and frisk to be  
24 used for.

25 Q. In response to those comments, do you recall, as best you

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1 can, what Commissioner Kelly said at that time in that meeting  
2 with Governor Paterson?

3 A. Again, what stood out most for me is that he stated that he  
4 targeted or focused on that group because he wanted to instill  
5 fear in them, every time they leave their home, they could be  
6 stopped by the police.

7 Q. When you say that group, you mean black and Hispanic youth,  
8 correct?

9 A. Yes.

10 Q. What was your reaction to that, Senator Adams?

11 A. Well, first of all, I was amazed that he was comfortable  
12 enough to say that in the setting as I shared -- I have a young  
13 child, Senator Paterson has a young male child, Senator Hakeem  
14 has a young male child, and for him to say that in the room, I  
15 was shocked to hear that, and I told him that that was illegal,  
16 and that's not what the stop and frisk was supposed to be used  
17 for, and that's not what the law allows it to be used for.

18 Q. When you told him you believed it was illegal, what did he  
19 say?

20 A. How else will we get rid of guns?

21 Q. Did Commissioner Kelly communicate in any way to you during  
22 the meeting that the stops he was referring to were unlawful or  
23 illegal stops?

24 A. He didn't differentiate between the two.

25 Q. What did you understand him to be referring to in his

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1 comments?

2 A. His response was the response after I stated that it was an  
3 unfairly disproportionate number of stops to young black and  
4 Hispanics, and he responded after that. So if he was talking  
5 about all stops, he didn't make that indication to me.

6 Q. When he said that this tactic was used to instill fear, did  
7 you have a problem with that?

8 A. Yes, I did.

9 Q. What was your problem with that, Senator Adams?

10 A. The tool is a great tool if it's used correctly, and  
11 nowhere in any police procedure, my understanding of the law,  
12 nowhere are you allowed to use the tool to instill fear,  
13 nowhere, and I don't believe that is what the tool is supposed  
14 to be used for.

15 Q. When you say the tool, are you referring to the tactic of  
16 stop, question and frisk?

17 A. Yes, I am.

18 Q. Did you ask Commissioner Kelly anything else after he made  
19 those comments, did you ask him anything else?

20 A. No.

21 Q. Do you recall asking him about whether there was a study or  
22 any data that supported his position?

23 A. Yes, I did.

24 Q. What do you recall asking him?

25 A. He stated that he was giving his argument on why the tool,

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1 the tool being stop and frisk, is useful in preventing gun  
2 violence. And I stated, do we have any data or any empirical  
3 data or any study that shows that? And he stated no.

4 Q. In your experience, Senator Adams, both as a police officer  
5 and for 21 years?

6 A. 22.

7 Q. 22 years, and as a state senator dealing with your  
8 constituency, are there certain types of stops that you have  
9 become concerned about that have been brought to your  
10 attention?

11 A. Yes.

12 Q. What kind of stops are those?

13 A. Stops where a police officer was responding to a person who  
14 is a victim of a crime is a great stop. If they were  
15 responding to a crime pattern in a particular community, that's  
16 a great stop. If they were responding to an observation of  
17 someone acting suspicious, they have reasonable suspicion that  
18 a person is committing a crime, those are great stops. But  
19 stops where officers are just responding to a quota, or they  
20 are self-initiated stops for no reason other than trying to  
21 fulfill a quota, those are terrible stops, and those are the  
22 stops that I have a problem with.

23 Q. When you say self-initiated stops, can you tell us what you  
24 mean by that?

25 A. If you're on patrol and you see a person walking down the

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1 block or coming from school, and because of the way they are  
2 dressed or their ethnicity you stop them, question them and  
3 frisk them, those are self-initiated stops. No victim came to  
4 you and stated that I was a victim of a crime. No one told you  
5 at the beginning of the night that we have a particular robbery  
6 or pattern. So you're not responding to a particular incident.  
7 You're responding to your need to fulfill a predetermined  
8 number of stops.

9 Q. So it's in that area of police work where you believe the  
10 abuse of stop and frisk is most prevalent?

11 A. I believe that if we ever were to do a study, I believe you  
12 would find an overwhelming number of those stops are in that  
13 area.

14 MS. GROSSMAN: Objection. This is speculative about  
15 what he believes he would find, in a study that hasn't  
16 happened. I am giving latitude, but this is beyond the scope  
17 of what this witness is here for.

18 THE COURT: I think that's right with respect to where  
19 he believes a problem would be. But if he has firsthand  
20 knowledge based on his experience in his own district, for  
21 example, of areas where this is more of a problem than other  
22 areas within his district, he can say that.

23 Are there some neighborhoods in your own district that  
24 has experienced this more than other areas?

25 THE WITNESS: Yes. When you look at the large number

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1 of people who come to my office and complain about being  
2 stopped, they are stating, their complaints are based on the  
3 officers stopping them not because they stated they fit a  
4 description, or not because they stated they believe they  
5 committed a crime, it was just a self-initiated stop.

6 THE COURT: Are those people more in some parts of  
7 your district than other parts? Is there a geographic  
8 difference?

9 THE WITNESS: Yes. I cover Park Slope, which is an  
10 extremely high economic area; I don't receive complaints from  
11 that area. I cover Borough Park; I don't receive complaints  
12 from that area. Crown Heights, which is a large mixture of an  
13 Hasidic community and African-American community and Caribbean  
14 community, I receive complaints not from my Hasidic residents,  
15 but from my African-American residents. So when you look at  
16 the geographical area of my district, based on the ethnicity of  
17 the people who are there, that's who I receive the complaints  
18 from.

19 THE COURT: Does your district also cover Bed-Stuy?

20 THE WITNESS: Yes, it does.

21 THE COURT: Is that an area where you get complaints  
22 from?

23 THE WITNESS: Yes, I do.

24 THE COURT: Any other neighborhoods?

25 THE WITNESS: Flatbush area as well, we receive a

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1 large number of complaints in the Flatbush area as well.

2 MR. MOORE: I have nothing further at this point.

3 Thank you, Senator Adams.

4 THE COURT: Ms. Grossman.

5 CROSS-EXAMINATION

6 BY MS. GROSSMAN:

7 Q. Good morning, Senator Adams.

8 A. Good morning.

9 Q. Now, you testified on direct that you sponsored this bill  
10 regarding stop, question and frisk, which prohibited the entry  
11 of means into a database, right?

12 A. Yes. I co-sponsored it.

13 Q. It was a very important bill for you, right?

14 A. Yes, it was.

15 Q. It was very important that it be passed? It was very  
16 important that the governor sign this bill, right?

17 A. Yes.

18 Q. You put a lot of work into that bill so, of course, it was  
19 very important for you to have this signed by the governor?

20 A. Was that a question?

21 THE COURT: It meant a lot to you, is that right?

22 THE WITNESS: Yes.

23 Q. So after the Senate and the Assembly approved the bill,  
24 there came a time when you had this meeting with the governor,  
25 correct?

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1 A. Yes.

2 Q. Police Commissioner Kelly was present, correct?

3 A. Yes.

4 Q. And Senator Golden?

5 A. Yes.

6 Q. And Hakeem Jeffries?

7 A. Yes.

8 Q. And you recall that the meeting took place in the summer of  
9 2010?

10 A. I know it took place in the summer of 2010.

11 Q. You know it took place before the passing, before the  
12 governor signed the bill, isn't that right?

13 A. Yes.

14 Q. You know now that the bill was signed on July 16, 2010,  
15 right?

16 A. No.

17 Q. You don't know that?

18 A. No.

19 THE COURT: Was the bill ever signed?

20 THE WITNESS: Yes.

21 THE COURT: Do you know when it was?

22 THE WITNESS: I don't know the date.

23 THE COURT: What year?

24 THE WITNESS: It was 2010.

25 THE COURT: You know what month?

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1 THE WITNESS: It was after the meeting with the  
2 governor.

3 THE COURT: OK.

4 MS. GROSSMAN: I just want the Court to note that in  
5 the joint pretrial order the undisputed fact that the parties  
6 agreed to is that the bill was indeed signed on July 16, 2010.

7 THE COURT: OK.

8 Q. Senator, just for purposes of getting the timeline here, I  
9 am going to work backwards. So assuming that the bill was  
10 signed on July 16, 2010, this meeting that took place with the  
11 governor took place the same week that the bill was signed,  
12 isn't that right?

13 A. I believe so.

14 Q. So it's fair to say that it happened a few days before the  
15 July 16 bill was signed, isn't that right?

16 A. If that's date that it was signed, then I would say  
17 correct.

18 Q. You testified on direct that the purpose of the meeting was  
19 so that the governor can decide whether he was going to sign  
20 that bill, right?

21 A. Yes.

22 Q. It was your understanding that this was so because there  
23 was an overwhelming number of white politicians in the city who  
24 were lobbying him not to sign the bill, right?

25 A. Yes.

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1 Q. According to you, the governor actually didn't know if the  
2 bill impacted the communities of the white politicians; he  
3 wasn't sure about that, right?

4 A. I didn't ask the governor that.

5 Q. But that was your understanding at the time that you  
6 attended that meeting?

7 A. No. I don't recall ever saying that was my understanding.

8 Q. Well, you remember giving testimony about a month ago in my  
9 offices on February 13, 2013?

10 A. Yes.

11 Q. I can show you your deposition, but right now you don't  
12 have a memory of saying that at your deposition?

13 A. What was the statement that you stated that I said?

14 Q. According to you, the governor was not sure if the bill  
15 impacted the communities of the white politicians.

16 A. I don't know if I phrased it that way, but I don't believe  
17 it did impact their communities.

18 Q. But that was the governor's goal, was to find out if it did  
19 impact those communities?

20 A. Yes.

21 Q. And you remember --

22 A. I'm sorry. One of his goals. He wanted to find out the  
23 pros and cons.

24 Q. I understand. So one thing you remember from the meeting  
25 was that everyone was cordial, they were discussing their

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1 beliefs, right?

2 A. Yes.

3 Q. And everyone was discussing their beliefs about why the  
4 bill should be signed and why it shouldn't being signed?

5 A. Yes.

6 Q. Now, you believe you first spoke about your beliefs of the  
7 bill when you were at this meeting?

8 A. Yes.

9 Q. According to you, the commissioner also expressed his  
10 belief that the bill didn't need to be signed because the  
11 police department was doing internal training and developing  
12 procedures to address the issues of stop, question and frisk,  
13 isn't that right?

14 A. Yes.

15 Q. Now, you took no notes of your meeting, did you?

16 A. No.

17 Q. You took no notes memorializing what the police  
18 commissioner said after the meeting, right?

19 A. That's not true. I'm not sure if I took notes or not.

20 Q. Well, you were asked for any and all notes pursuant to a  
21 subpoena that I served on you, isn't that right, Senator?

22 A. Yes.

23 Q. At your deposition, I asked you a lot of questions about  
24 whether you had any documents and you didn't give me any notes,  
25 did you?

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1 A. That's incorrect what you're saying.

2 Q. Did you produce any notes for me in response to the  
3 subpoena, Senator?

4 A. No.

5 THE COURT: In what way was what she said incorrect?

6 THE WITNESS: She asked me several times during the  
7 deposition did I have any notes, and I stated that I looked  
8 through my notes. I have approximately 10,000 e-mails. And  
9 she asked me, did I have any that I can produce, and I said,  
10 not at this time. And she asked that several times in  
11 different creative ways, and I tried to express, as best I can,  
12 I couldn't produce it at this time. So I didn't say I didn't  
13 have any notes to memorialize the meeting. I couldn't produce  
14 it at that time.

15 THE COURT: Now I understand.

16 Q. As of today, you haven't provided the city with any notes,  
17 isn't that right?

18 A. I didn't look again. I was in Albany trying to pass the  
19 budget.

20 Q. I asked you about a month ago if you could do us the  
21 courtesy of looking for those notes, and you didn't look for  
22 those notes and produce them to us, isn't that right, Senator?

23 A. I did a valiant effort, but I still have more searching to  
24 do.

25 Q. Now, there came a time about 15 months after the signing of  
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1 the bill, which was July 16, that you submitted an affidavit in  
2 or about October 2011 for the plaintiffs in the class action  
3 lawsuit in Floyd, isn't that right, Senator?

4 A. If those are the dates, then I will say yes. I don't know  
5 the dates, but the dates are on the affidavit. So I would say  
6 yes if those are the dates on the affidavit.

7 MS. GROSSMAN: Just for purposes of creating the  
8 timeline, I would just ask the Court to take notice that there  
9 was an affidavit submitted by the senator in October 2011 in  
10 support of the class certification motion.

11 THE COURT: No objection, right?

12 MR. MOORE: No.

13 THE COURT: That's the date of the affidavit  
14 previously submitted.

15 Q. Now, prior to the signing of this affidavit, you met with  
16 the plaintiffs' counsel, isn't that right?

17 A. Yes.

18 Q. You had a conversation with plaintiffs' counsel about the  
19 prospect of signing an affidavit on their behalf, isn't that  
20 right?

21 A. Yes.

22 Q. As a result of that meeting, the plaintiffs actually  
23 drafted an affidavit and forwarded that to you for you to sign,  
24 isn't that right?

25 A. Yes.

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1 Q. You didn't draft the affidavit, it was the plaintiffs'  
2 attorneys who drafted that for you?

3 A. No. I don't know if my staff gave them a summary of my  
4 comments or if I gave them a summary of my comments at the  
5 meeting. I don't know how the original draft was created.

6 Q. What you do know is that at some point in time the  
7 plaintiffs' attorneys are the ones who drafted the affidavit  
8 and then forwarded it to you for review, isn't that right?

9 A. Yes.

10 Q. Now, referring to that affidavit, you stated, quote,  
11 unquote, and if you need to look at a copy of it, I can show it  
12 to you, but just to get the question out. You said, "During  
13 this meeting, I expressed to Commissioner Kelly my concerns  
14 about the disproportionately high number of young black and  
15 Latino men stopped and frisked by NYPD officers in recent  
16 years." Isn't that right, you said that in your affidavit?

17 A. Yes.

18 Q. You also said in the affidavit, In response, Commissioner  
19 Kelly stated that the NYPD targets the stop and frisk activity  
20 at young black and Latino men because it wants to instill the  
21 belief in members of these two populations that they could be  
22 stopped and frisked every time they leave their homes so that  
23 they are less likely to carry weapons.

24 Does that refresh your memory about what you included  
25 in the affidavit?

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1 A. I recall using the term "instill fear." Is that what you  
2 just said? I didn't hear you use the term "fear."

3 THE COURT: Could you show him a copy of his  
4 affidavit?

5 MS. GROSSMAN: Sure.

6 THE COURT: You had just read him one portion. Could  
7 you tell him what page and paragraph?

8 MS. GROSSMAN: It's Defendants' Exhibit X9.

9 MR. MOORE: Do you have a copy? Thank you very much.

10 THE COURT: What was the portion you had just read to  
11 him, page and paragraph?

12 MS. GROSSMAN: Sure.

13 Q. It is paragraph 4. It's on Bates number NYC\_2\_00025222.

14 It's paragraph 4, Senator.

15 THE COURT: Thank you.

16 Q. It says, "During this meeting, I expressed to Commissioner  
17 Kelly my concerns about the disproportionately high number of  
18 young black and Latino men stopped and frisked by NYPD officers  
19 in recent years."

20 Do you see that reference in paragraph 4, Senator?

21 A. Yes.

22 Q. In paragraph 5, do you also see what is contained in  
23 paragraph 5? It says, "In response, Commissioner Kelly stated  
24 that the NYPD targets its stop and frisk activity at young  
25 black and Latino men because it wants to instill the belief in

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1 members of these two populations that they could be stopped and  
2 frisked every time they leave their homes so that they are less  
3 likely to carry weapons."

4 Do you see that paragraph, Senator?

5 A. Yes.

6 Q. Now, you notice that in that paragraph the word fear isn't  
7 included in that paragraph, isn't that right, Senator?

8 A. Yes.

9 Q. You also notice the word target is included, correct?

10 A. Yes.

11 Q. And you remember during your deposition testimony that you  
12 didn't remember that the police commissioner used the word  
13 target or focus; as of the date of your deposition, you didn't  
14 remember which word he used, isn't that right?

15 A. Yes.

16 Q. So this paragraph is not exactly what you remember  
17 happening during the meeting with Police Commissioner Kelly and  
18 the governor, correct?

19 A. I don't understand that question.

20 THE COURT: Rephrase.

21 Q. Some of the testimony you just gave today about what  
22 occurred at that meeting with the governor are not precisely  
23 contained in this paragraph in your affidavit, isn't that  
24 right?

25 A. It's as precise as I recall.

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1 Q. The word fear was something that stood out in your mind and  
2 it didn't find its way in this affidavit, isn't that right,  
3 Senator?

4 A. Yes.

5 Q. And the word target is in this affidavit, but you just  
6 testified on direct and at your deposition that you weren't  
7 sure if the word was focus that the police commissioner used,  
8 isn't that right?

9 A. Right.

10 Q. Now, according to you, the police commissioner also  
11 expressed his view at the meeting with the governor that  
12 engaging in stops can deter people from carrying guns, isn't  
13 that right?

14 A. Yes.

15 Q. When the police commissioner did refer to the term stop, he  
16 did not use the word unlawful during that meeting, right?

17 A. No.

18 Q. And you know that the police commissioner was trying to  
19 express how important stop and frisk was, and the way they were  
20 using it was very important?

21 MR. MOORE: Object.

22 Q. You know that's what the police commissioner was trying to  
23 express?

24 MR. MOORE: Object.

25 THE COURT: Sustained. His state of mind.

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1 Q. The impression, as a person in the room listening to what  
2 the police commissioner was saying, was that you understood how  
3 important the stop and frisk was to the police commissioner,  
4 you heard that through his words how important stop and frisk  
5 was?

6 MR. MOORE: Same objection.

7 THE COURT: It's been rephrased.

8 Was it your impression that it was a very important  
9 policy to him? Forget about his state of mind. Was that your  
10 state of mind?

11 THE WITNESS: That's a challenging question, Judge.  
12 Because was it important, the policy, or was it important how  
13 he was using the policy?

14 THE COURT: I am only asking how it appeared to you.  
15 The best you can answer, how did it appear to you?

16 THE WITNESS: I felt the way he was using it as a  
17 deterrent was important to him.

18 THE COURT: OK.

19 Q. You remember stating at your deposition, when asked a  
20 series of questions and giving a series of answers, that it was  
21 indeed important to the police commissioner, right?

22 A. I'm not understanding.

23 THE COURT: Would you like her to read some questions  
24 and answers from your deposition?

25 THE WITNESS: Right.

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1 Q. This is page 38, line 16 through 21.

2 THE COURT: He doesn't have a copy.

3 Hold on. You're going to get a copy of your  
4 deposition.

5 A. What page?

6 Q. 38, line 16 to 21.

7 "Q. Do you remember anything else that the police commissioner  
8 said at the meeting?

9 "A. In essence, that was the entire discussion. He was  
10 attempting to express how the program was important and the way  
11 they were using it was important, and that was the basics of  
12 the discussion."

13 Do you remember that question and giving that answer?

14 A. Yes.

15 I'm sorry.

16 Q. That's all, Senator.

17 THE COURT: Go ahead. Did you have a question?

18 THE WITNESS: Her question was that, was it important  
19 to him? And his statement at the meeting was how important the  
20 policy was. That's why I was trying to figure out what she was  
21 asking. He didn't express how important it was to him.

22 Q. The police commissioner talked about the statistics at this  
23 meeting?

24 A. Yes.

25 Q. And the police commissioner also talked about how many guns

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1 the police department has removed off of streets, isn't that  
2 right?

3 A. Yes.

4 MR. MOORE: Object.

5 THE COURT: What is the objection?

6 MR. MOORE: It's beyond the scope of this case,  
7 whether the number of guns that are taken off the street  
8 because of this policy may be unconstitutional.

9 THE COURT: I have always said the effectiveness of  
10 the policy is not of interest to this Court. But it seems to  
11 me it's part of what happened in the meeting. I will allow it  
12 solely for that purpose. I have heard statistics anyway in  
13 this case about the rate. I think you opened on the random  
14 stop rate was higher by far than the number of guns seized in  
15 this program. It has all come up so I am going to allow this  
16 scope.

17 Q. The police commissioner did indicate that the guns were  
18 removed based on a stop, question and frisk, in his view, isn't  
19 that right?

20 A. Yes.

21 Q. The police commissioner also expressed at this meeting how  
22 crime has decreased, isn't that right?

23 A. Yes.

24 Q. And how crime with weapons has decreased and how he used  
25 stop, question and frisk to -- how the police department used

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1 stop, question and frisk to bring down crime with weapons?

2 A. Yes.

3 Q. You know that the police commissioner has expressed that he  
4 believes proper use of stop, question and frisk is a way of  
5 decreasing gun violence, isn't that right?

6 A. No.

7 Q. He has expressed that stops, questions and frisks are a way  
8 of decreasing gun violence?

9 A. You said proper. I haven't heard him use the term proper.  
10 I heard him state that using stop, question and frisk decreases  
11 gun violence. Proper is an important part in that.

12 Q. You just mentioned that you have no problem with officers  
13 using patterns as a basis in conducting stop, question and  
14 frisk activity, right?

15 A. I'm sorry?

16 Q. Didn't you just say on your direct testimony that the use  
17 of stop, question and frisk in response to a described detailed  
18 pattern is a proper use of stop, question and frisk?

19 THE COURT: A crime pattern.

20 A. Those are powerful terms. Pattern is not what I said.  
21 Crime pattern is what I said.

22 Q. Crime pattern.

23 A. That's a big difference. Pattern is being black. Crime  
24 pattern is a crime.

25 Q. Well Senator, when you used the term crime pattern on your

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1 direct testimony, when stops are conducted in response to a  
2 crime pattern, you have no problem with officers making a  
3 reasonable suspicious stop based on a crime pattern, isn't that  
4 right?

5 A. Correct.

6 Q. So that's a proper use of stop, question and frisk that the  
7 police commissioner endorses?

8 MR. MOORE: Object to whether the police commissioner  
9 endorses it.

10 THE COURT: Sustained.

11 Q. You would have no problem with that proper use of stop,  
12 question and frisk, isn't that right, Senator?

13 A. Which proper use?

14 Q. The proper use of police responding to a crime pattern and  
15 making a stop, a question, or a frisk?

16 A. Correct.

17 Q. Now, you claim that gun violence is of particular  
18 importance to you as a senator?

19 A. Yes, it is.

20 Q. You know that gun violence is of critical importance to the  
21 police commissioner, isn't that right?

22 MR. MOORE: Object.

23 THE COURT: Do you want to get into the statistics of  
24 getting guns off the street? If you want to go down that road,  
25 we will go back and repeat what we heard in the opening. As I

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1 recall, it was very low. I remember the opening. If you did a  
2 random checkpoint, you got 5 percent. If you do the street  
3 stops, you get less than 1 percent. If you want to go down  
4 that road, it's OK with me. Is there a general topic that the  
5 commissioner is concerned about gun violence, that's fine.

6 Q. You know that the police commissioner -- it's very  
7 important to the police commissioner to bring down gun  
8 violence?

9 A. I believe it is.

10 Q. And you know at this meeting it was very important for the  
11 police commissioner to try to convince the governor not to sign  
12 this bill because he viewed this bill as very important to  
13 continuing to bring down gun violence?

14 THE COURT: I have to sustain the objection to the  
15 form.

16 Did he state one of the reasons he opposed the bill is  
17 he thought it would affect his ability to reduce gun violence?

18 THE WITNESS: I don't recall that was part of the  
19 essence of his argument.

20 Q. You do know that the police commissioner wanted to convince  
21 the governor not to sign this bill?

22 THE COURT: That's clear.

23 He was opposing the bill, right?

24 THE WITNESS: Yes.

25 Q. Now, according to you, at this meeting, Police Commissioner  
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- 1 Kelly stated that the NYPD either targets or focuses stop,  
2 question and frisk on black and Hispanic young men. That's  
3 according to you, at this meeting, this is what the police  
4 commissioner said?  
5 A. Yes.  
6 Q. You interpreted his statements to mean that police should  
7 stop young black and Hispanic men regardless of reasonable  
8 suspicion, right?  
9 A. Yes.  
10 Q. The police commissioner justified making these stops  
11 without reasonable suspicion, according to you, because it  
12 instills fear and deters gun violence, right?  
13 A. No.  
14 Q. That was his justification, according to you?  
15 A. No.  
16 Q. Well, you did interpret the police commissioner's comments  
17 as discriminatory, correct?  
18 A. I'm sorry?  
19 Q. You did interpret the police commissioner's comments as  
20 being somewhat discriminatory, correct?  
21 A. Yes.  
22 Q. According to you, the police commissioner, who has been a  
23 police commissioner for 12 years, serving in the public eye for  
24 decades, said all these things before three black elected  
25 officials, according to you, that's what the police

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1 commissioner said?

2 MR. MOORE: That's a bit argumentative.

3 THE COURT: It's a bit argumentative, I agree. If she  
4 wants to hear the answer, go ahead.

5 You can answer that.

6 THE WITNESS: She said he said all these things. Now,  
7 I am not trying to be difficult, but I just need to know what  
8 things.

9 THE COURT: I think she was referring back to the  
10 statements that were allegedly discriminatory, namely, that he  
11 liked the policy because he thought it would deter young folks  
12 from carrying weapons and it would instill fear in them.

13 THE WITNESS: Yes. Thank you.

14 Q. The police commissioner made all these comments that we  
15 just discussed all while attempting to convince the governor,  
16 and in the presence of three black elected officials, to not  
17 sign the bill?

18 A. Yes.

19 Q. You're aware, are you not, that the police commissioner  
20 absolutely denies making such comments, right?

21 MR. MOORE: Object, Judge.

22 A. No, I'm not.

23 THE COURT: You're not aware of that?

24 THE WITNESS: No.

25 Q. Well, there came a time when you reviewed the police

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1 commissioner's affidavit in response to your affidavit where he  
2 in fact did deny making those comments, isn't that right?

3 THE COURT: Affidavit submitted in this case?

4 MS. GROSSMAN: Yes. An affidavit submitted in  
5 opposition to the class certification motion.

6 THE COURT: Let's see. Did you review the  
7 commissioner's affidavit?

8 THE WITNESS: And of my understanding --

9 THE COURT: Could you give me yes or no? Did you  
10 review the commissioner's affidavit in this case?

11 THE WITNESS: Yes.

12 Q. You're aware, based on reviewing the police commissioner's  
13 affidavit, that he denies making those comments, isn't that  
14 right?

15 A. My recollection of the affidavit, he indicated what he  
16 said. He didn't specifically state that he didn't say what I  
17 said.

18 Q. Let me show you the police commissioner's affidavit.

19 MS. GROSSMAN: That would be at Defendants' Exhibit  
20 X9, NYC\_2\_00025220 to 25222.

21 MR. MOORE: Judge, this is purportedly to refresh his  
22 recollection?

23 THE COURT: I think so.

24 MR. MOORE: It's not being offered in evidence because  
25 Commissioner Kelly is not testifying.

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1 THE COURT: He is not. And she can't offer a  
2 statement of her own client.

3 MR. MOORE: Can I get a copy?

4 A. Thank you.

5 Q. Referring to paragraph 3 of the declaration of Raymond  
6 Kelly -- and this is something that you read, this affidavit  
7 you read -- paragraph 3, "At that meeting --"

8 MR. MOORE: Objection.

9 THE COURT: Sustained. It's solely used to refresh  
10 recollection. All you can do is say, having read paragraph 3  
11 to yourself, does it now refresh your recollection? That's  
12 about it. Otherwise, you're getting his testimony in the  
13 backdoor. We talked about that. Either Commissioner Kelly is  
14 here or he is not here. If he chooses not to be here, we are  
15 not going to have his statements in the record.

16 All I want to know is whether it refreshes your  
17 recollection that he denies making the statements that you say  
18 he made? That's all I want to know. That's basically yes or  
19 no. If it doesn't refresh your recollection, then that's it.  
20 Does it or doesn't it?

21 THE WITNESS: Yes.

22 MR. MOORE: Yes, it does refresh your recollection?

23 THE WITNESS: Yes, it does refresh my recollection.

24 Q. That recollection is that he denied what it is that you  
25 said that he said?

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1 A. No.

2 THE COURT: Then no it is.

3 Q. Well, in the affidavit, there are statements consistent  
4 with what you just testified to on direct, right?

5 MR. MOORE: Object.

6 THE COURT: Objection is sustained. It's not coming  
7 in.

8 Q. Now, after this meeting with the governor, there was a  
9 meeting at Medgar Evers College where you claim that the police  
10 commissioner restated the same things he said to you and the  
11 governor at this July 14 meeting, isn't that right?

12 A. Yes.

13 Q. And the meeting at Medgar Evers was with a group of African  
14 American elected officials, correct?

15 A. Yes.

16 Q. And it was a meeting with the Central Brooklyn Black  
17 Legislative Coalition, correct?

18 A. Yes.

19 Q. And the meeting happened sometime in 2010, shortly after  
20 the bill was signed, correct?

21 A. I believe so.

22 Q. Do you remember if it was an in August of 2010?

23 A. No. It was sometime after.

24 Q. Now, in addition to the members that I just mentioned,  
25 there were some people -- Police Commissioner Kelly was

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- 1 present, correct?  
2 A. Yes.  
3 Q. And there were some other police department officials  
4 present at that meeting as well, correct?  
5 A. Yes.  
6 Q. One of the people who attended was Chief Banks?  
7 A. Yes.  
8 Q. And Inspector Juanita Holmes?  
9 A. Yes.  
10 Q. And these individuals are high-ranking black NYPD  
11 officials, correct?  
12 A. Yes.  
13 Q. And you recall that the police commissioner spoke at this  
14 meeting, correct?  
15 A. Yes.  
16 Q. You recall that other people spoke at this meeting?  
17 A. Yes.  
18 Q. Assemblyman Jeffries was there?  
19 A. Yes.  
20 Q. He spoke?  
21 A. Yes.  
22 Q. And Congresswoman Clarke was there?  
23 A. Yes.  
24 Q. And Assemblywoman Robinson spoke at this meeting?  
25 A. Yes.

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D418FLO1 Adams - cross

- 1 Q. And there were about 50 black elected officials and  
2 staffers present at this meeting?  
3 A. Yes.  
4 Q. It was a round table setup, is that right?  
5 A. Yes.  
6 Q. It was a conversation about various topics, including stop,  
7 question and frisk?  
8 A. Yes.  
9 Q. The police commissioner talked about some of his  
10 initiatives and programs at this meeting?  
11 A. Yes.  
12 Q. And he also talked about stop and frisk?  
13 A. Yes.  
14 Q. And he spoke about stop, question and frisk after  
15 Congresswoman Clarke raised some of the concerns that she had,  
16 correct?  
17 A. Yes.  
18 Q. And she also had concerns about the young people in her  
19 community, correct?  
20 A. Yes.  
21 Q. The police commissioner responded by discussing issues of  
22 violence, correct?  
23 A. Yes.  
24 Q. And he also responded by talking about gun-related crimes?  
25 A. Yes.

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D418FLO1 Adams - cross

1 Q. And again, his concept around stop and frisk, correct?

2 A. Yes.

3 Q. The police commissioner expressed at this meeting that he  
4 thought stop, question and frisk was a useful tool?

5 THE COURT: We are getting way too far into what he  
6 said at the meeting. I won't take his statements. I gave you  
7 a lot of scope to talk about the topics he mentioned. If he  
8 would like to come here, he is welcome in this courtroom.

9 Q. You would agree, Senator, that many of the statements that  
10 the police commissioner made were stated in the context of many  
11 other topics, isn't that right?

12 MR. MOORE: Objection.

13 THE COURT: I don't know what that means.

14 MS. GROSSMAN: There is a context to what --

15 THE COURT: It was stated in the context of many other  
16 comments. It doesn't mean anything to me, and I am the trier  
17 of fact. I have to sustain an objection to that because I  
18 don't understand what it means.

19 Q. Senator, you would agree that the comments that you found  
20 offensive during the meeting with the governor, and that you  
21 claim were restated at the Medgar Evers College meeting, they  
22 were stated within the context of many other topics that were  
23 discussed that day, isn't that right?

24 MR. MOORE: Same objection.

25 THE COURT: I still don't know what it means. I will

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1 sustain the objection.

2 Q. Then you would agree that the comments that the police  
3 commissioner made were stated along with many other comments  
4 that he made about stop, question and frisk?

5 MR. MOORE: Same objection.

6 THE COURT: If I understood what it meant, I would  
7 allow the question. I do not. If you're saying he spoke about  
8 a lot of things that afternoon, that's fine. Was it morning or  
9 afternoon or evening, whatever it was.

10 THE WITNESS: It was morning.

11 THE COURT: He spoke about a lot of things that  
12 morning?

13 THE WITNESS: Yes.

14 THE COURT: That's the best I can do.

15 Q. My point is that the comments were made and easily could be  
16 misinterpreted given many of the things that he said?

17 THE COURT: That's just plain argumentative. It could  
18 be misinterpreted. That's a question that says anything is  
19 possible. It doesn't help me. Anything is always possible.

20 Q. Well, you would agree, would you not, Senator, that it was  
21 your interpretation of what the police commissioner said that  
22 made you believe that his comments were discriminatory?

23 THE COURT: To you. All she is saying is to you they  
24 were discriminatory, that's how you took them, right or wrong?

25 THE WITNESS: Yes. Yes.

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D418FLO1 Adams - cross

1 Q. Now, we talked about whether or not you wrote any notes  
2 after your meeting with the governor, and you said you don't  
3 recall having written notes, correct?

4 A. No. That's not what I said.

5 Q. You couldn't find any notes as of today?

6 A. Yes.

7 Q. Now, the first document that actually has any commentary  
8 about what the police commissioner said from your own work is a  
9 PowerPoint presentation that you posted on your Web site, isn't  
10 that right?

11 A. No. Can you repeat that again?

12 Q. Well, you did prepare a PowerPoint presentation of your  
13 comments -- withdrawn.

14 You did create a PowerPoint presentation regarding  
15 stop, question and frisk issues, correct?

16 A. No.

17 Q. You don't have coming out of your office or on your behalf  
18 a PowerPoint presentation that's posted on your Web site?

19 A. Yes.

20 MR. MOORE: The question was did he prepare one.

21 THE COURT: Maybe a staff prepared it.

22 Do you know who did prepare it?

23 THE WITNESS: A staff member prepared it.

24 THE COURT: It's on your Web site?

25 THE WITNESS: Yes.

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D418FLO1 Adams - cross

1 THE COURT: When did it get on your Web site,  
2 approximately?

3 THE WITNESS: I don't know the date.

4 THE COURT: What year?

5 THE WITNESS: Around 2/11.

6 Q. Actually, wasn't it April 2012 that it was posted on your  
7 Web site, Senator?

8 A. That's why I say I don't know the date. It's quite  
9 possible.

10 Q. Would you like to see a copy of your Facebook page and your  
11 senator Web site page to verify that the PowerPoint  
12 presentation was indeed posted in April 2012?

13 THE COURT: I think you accept her date if she says  
14 that's the date?

15 THE WITNESS: I do.

16 Q. So April 2012 is when you posted the stop, question and  
17 frisk PowerPoint?

18 THE COURT: If that's the date you have, he accepts  
19 it. He doesn't have an independent recollection of the date.

20 Q. Now, referring to Defendants' Exhibit X9.

21 THE COURT: What is that?

22 MS. GROSSMAN: That would be an excerpt from the  
23 PowerPoint presentation.

24 THE COURT: All right.

25 MS. GROSSMAN: That would be NYC\_2\_00025229.

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Adams - cross

1 MR. MOORE: I don't understand the statement. It  
2 hasn't been offered. It hasn't been shown to the witness.

3 MS. GROSSMAN: I am setting it up for that.

4 THE COURT: She is about to do that.

5 MS. GROSSMAN: And 230.

6 Q. Senator, I am going to show you the second page of this  
7 PowerPoint presentation.

8 MR. MOORE: If you're going to hand him a document, I  
9 would like to have a copy of the document, please.

10 I don't want to go through the document on the big  
11 screen. If you're going to use a document, I would like to see  
12 a copy of the document.

13 THE COURT: Do you have it on your screen?

14 MR. MOORE: It's on the screen.

15 THE COURT: If it's on yours without being on the big  
16 one, you can look at it.

17 MR. MOORE: I will have to move over there.

18 THE COURT: It isn't a long walk, Mr. Moore.

19 MR. MOORE: I will look over her shoulder.

20 I have got it. She was kind enough to give it to me.

21 Q. Now, on the second page, if you can look at that with me,  
22 Senator.

23 A. Yes.

24 Q. There is a photograph of the police commissioner?

25 A. Yes.

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D418FLO1 Adams - cross

1 Q. Next to his photograph there is the statement, which is as  
2 follows: "We stop African American and Hispanic youth because  
3 we want to instill the fear in them that every time they leave  
4 their home they can be stopped and searched by the police."

5 And you attribute that statement to Police  
6 Commissioner Kelly on your PowerPoint presentation, isn't that  
7 right?

8 A. Yes.

9 Q. Nowhere in that statement do you see the word target,  
10 correct?

11 A. Yes.

12 Q. Nowhere in that statement do you see the word focus?

13 A. Yes.

14 Q. And that's not an actual quote, that's really a summary of  
15 what you believe the police commissioner said to you at that  
16 meeting with the governor, correct?

17 A. Yes.

18 Q. Now, as a former captain in the police department, you have  
19 experienced occasions, have you not, when certain police  
20 officers haven't wanted to do their job, right?

21 A. I'm not understanding that question.

22 Q. There were times as a captain, there were some officers who  
23 were good performers and some officers who were bad performers,  
24 correct?

25 MR. MOORE: It's beyond the scope.

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D418FLO1 Adams - cross

1 MS. GROSSMAN: The plaintiff opened the door with the  
2 idea of quotas. So I am trying to address that.

3 THE COURT: I do think that is beyond the scope of  
4 this witness's testimony on direct or the purpose of being here  
5 at all. It doesn't make any sense to go back to his time as a  
6 captain and talk about people performing or not performing. If  
7 you want to talk to him about quotas, go ahead.

8 It's been seven years since you left the police force?

9 THE WITNESS: Yes.

10 Q. Well, you did talk about some of the police enforcement  
11 that you felt was necessary for your district that you were  
12 comfortable with, that you thought was lawful, isn't that  
13 right?

14 THE COURT: The districts you represent now.

15 A. I don't recall talking about police enforcement. I talked  
16 about the use of stop, question and frisk in the district that  
17 I represent.

18 THE COURT: You have told us there were certain uses  
19 that you thought were proper and good?

20 THE WITNESS: Yes.

21 (Continued on next page)

22

23

24

25

D41nflo2 Adams - cross

1 Q. You would agree, would you not, that if a part of the  
2 precinct was experiencing robberies and grand larcenies, you  
3 would want police officers to go to that part of the precinct,  
4 right?

5 A. I'm sorry?

6 THE COURT: If there were a pattern of robberies and  
7 burglaries in a particular area, didn't you say you would like  
8 to have the police focus on that pattern?

9 THE WITNESS: Yes.

10 Q. Let's just take this a step back from a pattern. Let's say  
11 that were a lot of complaints coming in about grand larcenies  
12 and robberies in a particular part of your precinct.

13 Wouldn't you want officers to go to that part of the  
14 precinct as well?

15 A. Yes.

16 Q. If these robberies and grand larcenies were happening at a  
17 particular time in your precinct or your district, maybe around  
18 midnight, you would hope that police would go to those  
19 particular areas around that time, wouldn't you?

20 A. Yes.

21 Q. If grand larcenies and robberies were happening at a  
22 particular time of the day, between 4 and midnight, within a  
23 particular two-block radius, you would hope that police  
24 officers would go to that two-block radius as well, wouldn't  
25 you?

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D41nflo2

Adams - cross

1 MR. MOORE: Two block radius of what?

2 Q. Any two-block radius where crime is reported as happening,  
3 grand larcenies and robberies, correct?

4 A. Yes.

5 Q. You would probably be comfortable with police officers  
6 going beyond the two-block radius just in case the crime is  
7 spreading?

8 MR. MOORE: Object to the --

9 Q. Wouldn't you agree?

10 MR. MOORE: Judge, first of all, I think this is well  
11 beyond the scope of the direct. I understand why counsel is  
12 going into it, but I think it is beyond the scope of this  
13 witness's testimony.

14 THE COURT: I will allow it.

15 So if you were to even think of going beyond the  
16 two-block radius of the reported crime area, that would be OK,  
17 too, right? Or wrong? For the police to investigate beyond  
18 the two-block radius of where certain reported crimes had  
19 occurred would be OK?

20 THE WITNESS: Yes. But, Judge, I want to be clear on  
21 what I am saying yes to.

22 THE COURT: OK.

23 THE WITNESS: Am I saying yes to the police having  
24 omnipresence in areas where we have crime, or am I saying yes  
25 to the police doing stop, question and frisk merely because we

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D41nflo2 Adams - cross

1 have those complaints.

2 That's the difference.

3 THE COURT: Let's do the first one first and the  
4 second one second.

5 The first one?

6 THE WITNESS: OK. If there is a report, as the  
7 counsel was stating, there is a report of high crimes in a  
8 particular area, I would love the police have an omnipresence  
9 in those areas.

10 THE COURT: OK. Good.

11 The second question that you posed?

12 THE WITNESS: The mere fact that we have a report of  
13 robbery or grand larceny, that is not evidence enough to just  
14 carry out a large number of stops, questions and frisks in  
15 those areas. I don't agree with that.

16 THE COURT: OK. Good.

17 Q. Well, Senator, you would agree that if there were large  
18 numbers of complaints concerning grand larcenies and robberies,  
19 and then the police were present in the area where the  
20 complaints occurred, that if the officers observed reasonably  
21 suspicious behavior, you would expect that officer to make a  
22 stop, correct?

23 A. No.

24 Q. If officers are in an area and they observe reasonably  
25 suspicious behavior of a robbery or grand larceny happening,

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D41nflo2 Adams - cross

1 you would not want the officers to make a stop?

2 A. That's a different question. Yes.

3 Q. OK. If you thought that officers had reasonable suspicion  
4 to believe a crime was being committed, irregardless of whether  
5 it is a grand larceny or robbery, you would expect that officer  
6 to make a stop, correct?

7 A. Yes.

8 Q. And if the officers were actually present in an area  
9 because of the crime reported, if they observed black or  
10 Hispanic young men between 14 and 21 engaging in reasonably  
11 suspicious behavior consistent with the robbery or grand  
12 larceny, you would expect that officer to make a stop, correct?

13 MR. MOORE: Object to the form of that question,  
14 Judge.

15 THE COURT: Why? I will allow that.

16 MR. MOORE: It's putting two things together.

17 THE COURT: What?

18 MR. MOORE: Black and Hispanic young man 14 to 21 and  
19 with reasonably suspicious behavior.

20 THE COURT: Correct.

21 MR. MOORE: That was not Detective Marino's testimony.

22 THE COURT: So what. That is her question to him. In  
23 other words, race shouldn't matter. If the police officer  
24 observes reasonably suspicious behavior, whether it's 14 to  
25 21-year-old black males or 14 to 21-year-old white males or

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D41nfl02 Adams - cross

1 Asian males, whatever, if they see that reasonably suspicious  
2 behavior, that a crime has occurred or is about to occur, they  
3 can make a stop?

4 THE WITNESS: Those are great stops.

5 THE COURT: OK.

6 Q. You would agree that the physical description, including  
7 race, could contribute to reasonable suspicion, correct?

8 A. I'm sorry. Say that again.

9 Q. You would agree with that a physical description which  
10 includes the race of an individual could contribute to  
11 reasonable suspicion for a stop, correct?

12 A. I am not understanding that at all.

13 Q. You don't understand?

14 A. No, I don't. Say it again so I can understand.

15 Q. Sure. Wouldn't you agree that a physical description  
16 including the race of an individual could be a factor that  
17 gives rise to reasonable suspicion to stop someone?

18 THE COURT: You mean if there is a description of a  
19 suspect?

20 MS. GROSSMAN: Yes.

21 THE COURT: That includes race, there's just been a  
22 burglary and somebody has seen a white male fleeing, then it's  
23 OK to consider the person a white male because somebody  
24 observed a white male fleeing the scene. Then the race is all  
25 right. Correct?

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D41nflo2

Adams - cross

1 THE WITNESS: Without a doubt, yes.

2 THE COURT: OK.

3 MS. GROSSMAN: Can I just have one moment, your Honor.

4 THE COURT: Sure.

5 Q. Senator Adams, you mentioned during your direct testimony  
6 that you received some complaints from your constituents about  
7 stop and frisk, correct?

8 A. Yes.

9 Q. Would you have referred them to the Civilian Complaint  
10 Review Board to file a complaint?

11 A. I stated to you that people come for -- two ways: One, if  
12 they are unsure about the stop and frisk policy, if it was done  
13 correctly, I tell them, yes. If it was done incorrectly, I  
14 refer them to file a complaint with CCRB.

15 Q. So when you believe that an individual has described a set  
16 of circumstances which gave rise to a bad stop you would refer  
17 that individual to the Civilian Complaint Review Board,  
18 correct?

19 A. Yes.

20 Q. There are occasions when people have complained to you  
21 about a stop that you determined that they were good stops,  
22 correct?

23 A. Yes.

24 MS. GROSSMAN: OK. I have no further questions.

25 THE COURT: Thank you.

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D41nflo2

Adams - cross

1 Redirect.

2 MR. MOORE: Just a couple, Judge.

3 THE COURT: OK.

4 REDIRECT EXAMINATION

5 BY MR. MOORE:

6 Q. Just a couple of questions, Judge.

7 You were referred to a PowerPoint that your office  
8 prepared at some point, correct?

9 A. Yes.

10 MR. MOORE: Judge, we would move the admission into  
11 evidence of that PowerPoint, which I believe is Exhibit X9,  
12 pages NYC\_2\_0025229 to NYC\_2\_0025251. We would move that into  
13 evidence.

14 THE COURT: That is, the entire PowerPoint?

15 MR. MOORE: Yes.

16 MS. GROSSMAN: We would object to that because we just  
17 focused on the two pages. If you want to put in that second  
18 page, I would have no objection, but I didn't think it was  
19 necessary.20 THE COURT: He's offering the entire PowerPoint  
21 presentation. You object to that?

22 MS. GROSSMAN: Yes.

23 THE COURT: I think that's right. Sustained.

24 MR. MOORE: It is a document they listed on their  
25 exhibit list, so I don't understand why they would object now.

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D41nflo2 Adams - redirect

1 THE COURT: But they are. Therefore, there has to be  
2 a basis.

3 MR. MOORE: For completeness purposes, if they are  
4 just taking one document. I can go page by page if you want.

5 THE COURT: I didn't accept that one page in evidence  
6 either. She questioned about the page, but it wasn't received  
7 in evidence.

8 Q. You recall in your PowerPoint Senator Adams talking about  
9 various issues having to do with stop, question and frisk,  
10 correct?

11 A. Yes.

12 THE COURT: I am not sure what you are doing. Are you  
13 trying on offer a prior consistent statement to rebut a charge  
14 of recent fabrication, because that is all the rule permits?

15 MR. MOORE: No. I'm offering it to show Senator  
16 Adams' balanced approach to the issue, which is consistent with  
17 what he's testifying to.

18 THE COURT: I am not going to allow prior statements  
19 that are out-of-court statements. They are hearsay. He's  
20 here. Ask him whatever you want. I am not interested in his  
21 prior statement.

22 Go ahead.

23 Q. You believe, Senator Adams, that stop, question and frisk  
24 is an effective policing tool when used correctly, correct?

25 THE COURT: That I will allow.

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D41nflo2 Adams - redirect

1 Q. Correct?

2 THE COURT: Do you believe it's effective when used  
3 correctly?

4 THE WITNESS: Yes.

5 Q. It is your understanding that stop, question and frisk must  
6 be based on reasonable suspicion that a crime has been  
7 committed, has been committed, is being committed or is about  
8 to be committed, correct?

9 A. Yes.

10 Q. And you need reasonable suspicion, right?

11 A. Yes.

12 Q. So when you were objecting, your objections to the police  
13 department's use of stop and frisk are not in instances where  
14 they are using reasonable suspicion to stop people, correct?

15 A. Yes.

16 Q. You are not objecting to that, right?

17 A. No, I am not.

18 Q. You are objecting to what you believe to be the use of the  
19 tactic when there is no reasonable suspicion, correct?

20 A. Correct.

21 Q. Those are some of the complaints that have come into you in  
22 your office as a state senator, correct?

23 A. Yes.

24 MS. GROSSMAN: Your Honor, now we are going back to  
25 what was covered on direct.

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D41nflo2 Adams - redirect

1 THE COURT: It is true. It was offered on direct. Go  
2 ahead. Let's see if you can finish up. You said just a few  
3 questions. Since he's already done several, he may be close to  
4 finishing.

5 MR. MOORE: I keep thinking it is a jury here.

6 THE COURT: I know.

7 MR. MOORE: I apologize.

8 THE COURT: I agree.

9 MR. MOORE: Going back over something that they --  
10 anyway.

11 THE COURT: Anyway.

12 MR. MOORE: I understand. I'll try to limit my  
13 responses.

14 THE COURT: OK.

15 BY MR. MOORE:

16 Q. Do you recall Ms. Grossman asking you some questions about  
17 whether you used the term target or focus?

18 A. Yes.

19 Q. Do you see much difference between the two in the context  
20 of the issue you are talking about?

21 A. No.

22 Q. All right.

23 Ms. Grossman also asked you about when you made the  
24 affidavit and when you came forward with your reporting what  
25 Commissioner Kelly said at that meeting. Do you recall that?

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D41nflo2

Adams - redirect

1 A. Yes.

2 Q. Actually, is it not accurate, Senator Adams, that sometime  
3 shortly after that meeting you went public with Commissioner  
4 Kelly's comments?

5 A. Yes.

6 Q. So you didn't come forward only when lawyers for the Center  
7 for Constitutional Rights asked you, right?

8 A. Correct.

9 Q. You had already come forward and made these comments in the  
10 press on several occasions, right?

11 A. Correct.

12 Q. This is a concern held not by you, but other --

13 MS. GROSSMAN: Your Honor, this is the plaintiff's  
14 witness. The leading nature of the questions -- I mean, I  
15 think that he can ask a proper question.16 THE COURT: Yes. But the proper time for the  
17 objection is after the question. I don't know where this is  
18 going. If you are going to ask him what other people said,  
19 that is not right either. That is inappropriate.20 MR. MOORE: You are aware, are you not, that other  
21 legislators have expressed --22 THE COURT: I just said you can't say what other  
23 legislators said. They are not here. He's here. What they  
24 said is not an out-of-court statement. It is hearsay.

25 Q. Except that she asked him about it. She asked about him

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D41nflo2 Adams - redirect

1 Congressman Clark's comments?

2 THE COURT: In general terms at the meeting.

3 MR. MOORE: At the meeting.

4 THE COURT: He said that Congressman Clark also  
5 expressed concern from her constituents. I think that is what  
6 she said, more or less.

7 MR. MOORE: Can he comment about what Congressman  
8 Clark said?

9 THE COURT: No. She expressed concerns by her  
10 constituents.

11 You already told us that.

12 THE WITNESS: Yes.

13 Q. And the topic was criticism of stop, question and frisk,  
14 correct?

15 THE COURT: That you understood.

16 A. Yes.

17 Q. Ms. Grossman went through a series of scenarios I guess,  
18 for lack of a better word, with you about if officers are on  
19 the street and they see larcenies and robberies or they are  
20 aware of a pattern of larcenies and robberies, they should be  
21 able to stop people who they believe might be engaged in the  
22 crime, correct?

23 A. Yes.

24 Q. You agree with me, do you not, that they can only stop  
25 people if they have reasonable suspicion, correct?

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D41nflo2 Adams - redirect

1 A. Yes.

2 Q. That is your concern about stop, question and frisk as it's  
3 used by the police department, correct?

4 A. Yes, it is.

5 Q. You have never objected -- you were a police officer for 22  
6 years, right?

7 A. Yes.

8 Q. You don't object to the police department using stop,  
9 question and frisk as a tactic, right?

10 A. No, and I used it.

11 Q. You just want to see it used properly?

12 A. Exactly.

13 Q. In conformance with the Constitution, right?

14 A. Yes.

15 MR. MOORE: Nothing further, Judge.

16 THE COURT: Ms. Grossman.

17 Anything further?

18 RE CROSS EXAMINATION

19 BY MS. GROSSMAN:

20 Q. Senator Adams, you would agree that there are occasions  
21 when an officer can actually approach an individual on less  
22 than reasonable suspicion, isn't that right?

23 A. Yes.

24 Q. So it's not only --

25 MR. MOORE: Judge, that is beyond the scope of either  
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D41nflo2 Adams - cross

1 my direct or my redirect. Now we are going into a whole new  
2 level of suspicion, and I just think it's beyond the scope of  
3 whatever has been testified to.

4 THE COURT: Overruled. Go ahead.

5 MS. GROSSMAN: His answer was yes.

6 THE COURT: I know.

7 MS. GROSSMAN: I have no further questions. Thank  
8 you.

9 THE COURT: Thank you.

10 Anything further?

11 MR. MOORE: Nothing, Judge.

12 THE COURT: Thank you.

13 THE WITNESS: Thank you very much.

14 THE COURT: All right. Your next witness.

15 MR. CHARNEY: I believe it's Fernando Guimaraes.

16 FERNANDO GUIMARAES,

17 called as a witness by the Plaintiffs,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. CHARNEY:

21 Q. Good morning, Captain Guimaraes.

22 A. Good morning.

23 Q. You began working for the New York City Police Department  
24 in 1996, is that correct?

25 A. 1995.

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D41nflo2

Guimaraes - direct

- 1 Q. I'm sorry. 1995. And from August -- actually in August of  
2 2006, you became the special operations lieutenant in the 43rd  
3 Precinct, is that correct?
- 4 A. It was August of 2007.
- 5 Q. OK. August of 2007. Sorry. When did you stop being the  
6 special operations lieutenant in the 43rd Precinct?
- 7 A. It was July of 2010.
- 8 Q. Now, as the special operations lieutenant in the 43rd  
9 Precinct, you oversaw the specialized units in that precinct,  
10 correct?
- 11 A. That's correct.
- 12 Q. That would include the anticrime units in the 43rd  
13 Precinct?
- 14 A. Yes, sir.
- 15 Q. Each of those anticrime units in the 43rd Precinct was  
16 supervised by an anticrime sergeant, correct?
- 17 A. That's correct.
- 18 Q. One of those sergeants that worked under you at the time  
19 that you were the special operations lieutenant was James  
20 Kelly, correct?
- 21 A. Sergeant James Kelly, yes.
- 22 Q. You were Sergeant Kelly's direct supervisor when you were  
23 the special operations lieutenant in the 43rd Precinct?
- 24 A. That's correct.
- 25 Q. As special operations lieutenant in the 43rd Precinct, you

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D41nfl02 Guimaraes - direct

1 had two direct supervisors, right?

2 A. It would be my executive officers and my commanding  
3 officer.

4 Q. OK. At the time that you were the special operations  
5 lieutenant in the 43rd Precinct, your executive officer was  
6 Russell Green?

7 A. Yes, it was.

8 Q. And your commanding officer was Charles Ortiz, correct?

9 A. It was Inspector Ortiz, correct.

10 Q. Now, it is true, is it not, that when you were the special  
11 operations Lieutenant of the 43rd Precinct you did not discuss  
12 the NYPD's stop, question and frisk policies and procedures  
13 with either Inspector Ortiz or Captain Green, right?

14 A. No, it wasn't discussed. It was -- no, it wasn't discussed  
15 sir.

16 Q. So that means that between August of 2007 and July of 2010,  
17 you did not discuss the NYPD's stop, question and frisk  
18 policies and procedures with either Inspector Ortiz or Captain  
19 Green?

20 A. I wouldn't say it wasn't discussed in the sense of, you  
21 know, during supervisors' meetings which we held every day, any  
22 issues that were brought up, any new procedures that were in  
23 the NYPD that were relative to any scrutiny or any new  
24 procedures that were out, it would be brought up during our  
25 supervisors' meetings in addition to any issues within the

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D41nflo2 Guimaraes - direct

1 command.

2 Q. You recall being deposed in this case, right?

3 A. Yes, sir.

4 Q. That was in November of 2009?

5 A. Yes.

6 Q. And you swore to tell the truth at that deposition, right?

7 A. Yes, sir.

8 Q. I am going to give you a copy of this. This is your  
9 deposition transcript.

10 Sorry. Let me hand it to you.

11 Can you turn to page 31, line 22. I'm going to read  
12 the question and answer.

13 "Q. Since becoming a special operations lieutenant --

14 MS. RICHARDSON: Objection, your Honor. I believe  
15 this is improper impeachment. The question went through a  
16 period of 2010. The deposition was taken in 2009.

17 MR. CHARNEY: I can ask him then --

18 Q. Between the time you became a special operations lieutenant  
19 and the time of your deposition, November 2009, you didn't  
20 speak to Inspector Ortiz or Captain Green about any of the  
21 NYPD's stop, question and frisk policies and procedures,  
22 correct?

23 A. That's what I put down. That's what I said on the  
24 deposition, so then that would be correct.

25 Q. So your testimony is -- well, then I guess --

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D41nflo2

Guimaraes - direct

1 MR. CHARNEY: Do we have to read the deposition?

2 THE COURT: If you represent that's what it says.

3 Q. If I represent that is what you testified to, you would  
4 agree that you didn't speak to them about these policies and  
5 procedures?

6 A. Yes.

7 Q. OK. That helps.

8 THE COURT: I'm sorry. What is the name of the  
9 counsel who spoke. You are?

10 MS. RICHARDSON: Ms. Richardson, your Honor.

11 THE COURT: Richardson. Thank you.

12 Q. I would like to show you what's previously been admitted  
13 into evidence as Plaintiff's Exhibit 184. We are going to pull  
14 it up on the screen here.

15 Captain Guimaraes, do you recognize this document?

16 A. Yes, it is an operations order issued by the police  
17 department.

18 Q. Do you know what this operations order covers?

19 A. In regards to the department policy regarding racial  
20 profiling.

21 Q. It is correct, is it not, that in fact this document  
22 expresses what the department's racial profiling policy was at  
23 the time of your deposition in November of 2009?

24 A. Yes, sir.

25 Q. And the date of this document is March 2002, correct?

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D41nflo2

Guimaraes - direct

1 A. Yes, sir.

2 Q. It is correct, is it not, that this document represented  
3 the police department's policy regarding racial profiling from  
4 March of 2002 until May of 2012?

5 A. Until what?

6 Q. Until May of 2012?

7 A. Yes.

8 Q. Now, it is true, is it not, that from the time that you  
9 were appointed a special operations lieutenant in August of  
10 2007 until the time of your deposition in November of 2009 you  
11 did not discuss this policy with any of your subordinate  
12 officers in the 43rd Precinct, correct?

13 A. There wasn't a need to discuss it, sir.

14 Q. But you did not in fact discuss it, right?

15 A. No, everyone is aware of the policy.

16 Q. But if you didn't discuss it, you wouldn't know whether or  
17 not they were aware of it, am I right?

18 A. Well, through officers going to training, through in  
19 service training at the police -- at the station house,  
20 department training in regards to them going to in-tech  
21 training -- that's a service training that the officers have to  
22 go to -- they would know what the policy is.

23 Q. But you don't actually know if they covered those topics at  
24 those trainings, right, because you weren't there?

25 A. I wasn't there, no, sir.

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Guimaraes - direct

1 Q. And you didn't speak to them about this policy, right?

2 A. No, sir.

3 Q. Now I want to show you what I believe has previously been  
4 admitted into evidence as Plaintiff's Exhibit 96.

5 Do you recognize this document?

6 A. An operations order in regards to activity logs.

7 Q. You have seen it before today, right?

8 A. Yes.

9 Q. Is it true, is it not that this document discusses NYPD  
10 policies and procedures regarding when an officer is required  
11 to make an entry into his activity log?

12 A. Yes.

13 Q. It is true, is it not, that NYPD policy and procedure  
14 requires officers to make entries in their activity log about  
15 every stop, question and frisk that they conduct, right?

16 A. Yes.

17 Q. That has been the policy in fact the entire time you have  
18 been the special operations lieutenant in the 43rd Precinct,  
19 correct?

20 A. That's correct.

21 Q. However, between the time you became the operations  
22 lieutenant in August of 2007 and the time of your deposition in  
23 November 2009, you never discussed this policy regarding  
24 activity log entries with any of the officers that worked under  
25 you, correct?

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D41nfl02 Guimaraes - direct

1 A. That's correct, sir.

2 Q. You also never discussed this policy regarding activity log  
3 entries either with Captain Green or Inspector Ortiz, did you?

4 A. I don't believe so.

5 Q. Isn't it true that during the time you were the special  
6 operations lieutenant in the 43rd Precinct you never advised  
7 any officer working under you that they were not in compliance  
8 with the NYPD's policies regarding activity log entries for  
9 stop and frisk, isn't that correct?

10 A. That is correct. They --

11 Q. Now, Lieutenant -- I'm sorry, Captain -- you were aware  
12 that Sergeant Kelly participated in a stop, question and frisk  
13 of one of the plaintiffs in this case, on February 27, 2008,  
14 correct?

15 A. Yes, I was made aware.

16 Q. You were aware that he never made an entry about this stop  
17 in his own activity log, correct?

18 A. I'm sorry.

19 Q. You were aware that he never made an entry about this stop  
20 in his activity log, correct?

21 A. I was made aware.

22 Q. I'm sorry?

23 A. I was made aware, yes.

24 Q. But you never spoke to Sergeant Kelly about this failure,  
25 did you?

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D41nflo2

Guimaraes - direct

- 1 A. It would go in, the officer who conducted the stop, it  
2 would go into his memo book.
- 3 Q. But my question was you never spoke to Sergeant Kelly about  
4 the fact that Sergeant Kelly never made an entry about this  
5 stop in his own activity log, right?
- 6 A. No, I didn't.
- 7 Q. As his direct supervisor it was your responsibility to  
8 actually review his memo book on a regular basis, correct?
- 9 A. I wouldn't say on a regular basis. It's once a month that  
10 I'm required to look at his memo book.
- 11 Q. Now, isn't it true that the mission of the anticrime unit  
12 that you oversaw in the 43rd Precinct is to address violent  
13 crime?
- 14 A. Yes, street robberies, violent crimes, and burglaries.
- 15 Q. It is your view that the way they implement this mission is  
16 to make sure they are in the area of the precinct where crimes  
17 are occurring so that they can try to prevent these crimes from  
18 happening, right?
- 19 A. Correct, that and the outskirts of where the crime is  
20 actually occurring.
- 21 Q. It was your responsibility as the special operations  
22 lieutenant to determine what areas of the precinct the  
23 anticrime units should patrol, correct?
- 24 A. Yes, it was my responsibility in addition to the commanding  
25 officer.

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D41nflo2

Guimaraes - direct

- 1 Q. The way you would do that would be, the way you would  
2 figure out where in the precinct the areas where the crime is  
3 occurring is to review the NYPD crime complaints, right?
- 4 A. What I would do is I would receive the previous 24 hours of  
5 crime complaints for the seven major crimes. And then from  
6 there I would see if I could put together sort of a pattern or  
7 a trend of where crimes were occurring. It wasn't a pattern  
8 that was made by the squad. It was something where I would  
9 track and see if there's -- if there's little clusters of  
10 crimes occurring in different areas.
- 11 Q. So the answer is that, yes, you would look at the crime  
12 complaint data to make these determinations, correct?
- 13 A. That's correct, sir.
- 14 Q. You were looking for the specific locations within the  
15 precinct where the crimes were occurring, right?
- 16 A. Well, we'd look into the sectors. Sectors are areas that  
17 are broken down in a command.
- 18 Q. You were looking for clusters, right, like groups of crimes  
19 that were grouped close together?
- 20 A. Correct.
- 21 Q. For example, the examples you gave, that you gave at your  
22 deposition, right, were like specific streets, right?
- 23 A. I don't believe I gave a specific street.
- 24 Q. OK.
- 25 A. Unless, if you just want to refer to the page.

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D41nflo2 Guimaraes - direct

- 1 Q. Maybe you misunderstood. I am not asking you to give me  
2 the name of a specific street. When you were talking about  
3 specific locations you are talking about, right, like  
4 particular streets or blocks or subway stations, right?  
5 A. Yes, areas.  
6 Q. That is what you mean by areas, though, right?  
7 A. Yes, correct. It can be within a five- or six-block  
8 radius. It can be a ten-block radius.  
9 Q. I want to show you what's been marked or previously  
10 admitted into evidence as Defendants' Exhibit L4.  
11 MR. CHARNEY: I will blow it up.  
12 Q. Do you recognize this document, Captain?  
13 A. Yes. That is a pattern sheet that the boroughs put out.  
14 Q. Is this kind of document something you would regularly  
15 review to determine which locations in the 43rd Precinct were  
16 showing clusters of particular kinds of crimes?  
17 A. Well, this would be one of the documents I would like at.  
18 Q. Is it fair to say that the information in this document  
19 comes from the NYPD's crime complaint data?  
20 A. That in addition to the detective squad putting the case  
21 together -- putting the patterns together.  
22 Q. They are putting it together from crime bulletins, right?  
23 A. Correct.  
24 Q. If you look this is a two-page document, this is page 1 you  
25 see --

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D41nfl02 Guimaraes - direct

1 MR. CHARNEY: Wait, keep it on page 1.

2 Q. Do you see there are three burglaries, reported burglaries  
3 listed on this first page, right?

4 A. Yes, sir.

5 Q. And it looks like the first one -- well, all three are on  
6 Stratford Avenue, correct?

7 A. Let me just see. 1149, 1187 and 1161, yes, sir.

8 Q. They are all from -- the first two are from January of  
9 2008, right?

10 A. Yes.

11 Q. And the third one is from February 2, 2008, right?

12 A. That's correct.

13 Q. And then going to the second page -- sorry about the  
14 scrolling.

15 If you can go to the second page. That was page 2,  
16 I'm sorry. Can we go to page 1 then.

17 That was the second page. We saw three burglaries.

18 Then here we have four burglaries listed, right?

19 A. Yes.

20 Q. And it looks like the first two are on Ward Avenue,  
21 correct?

22 A. 1200 block of Ward and then the last two are on the 1300  
23 block of Elder Avenue.

24 Q. So of the seven burglaries listed on this pattern sheet,  
25 they occurred on three different streets, right?

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D41nflo2

Guimaraes - direct

1 A. I'm sorry?

2 Q. The seven burglaries we just looked at occurred on three  
3 different streets, right?

4 A. Would you just be able to scroll on the second page.

5 Q. Yes. Sure.

6 A. I want to see if it's the same pattern that we are looking  
7 at.

8 Q. Sure.

9 A. No, these are two different patterns.

10 Q. OK. So then the first pattern, which would be the first  
11 page --

12 A. Is pattern 3.

13 Q. So this is pattern 3. So pattern 3 you have three  
14 burglaries?

15 A. No, sir. This is pattern 10.

16 Q. OK.

17 THE COURT: Pattern 10 you said. Where do I --

18 THE WITNESS: It is right below the shield on the  
19 upper left.

20 THE COURT: I see.

21 Q. So for pattern 10 all the burglaries occurred on one  
22 street, right?

23 A. Yes, sir.

24 Q. It looks like they actually all occurred on the same block,  
25 right, based on the addresses?

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D41nfl02 Guimaraes - direct

1 A. 1149, 1187 and 1161, yes.

2 Q. So that's pattern 10. Now let's look at the first page,  
3 which you said was a different pattern, right?

4 A. That would be --

5 Q. This is pattern 3?

6 A. Yes, sir.

7 Q. Is it correct that all the burglaries listed an pattern 3  
8 occurred on two different streets?

9 A. Two different streets a couple of blocks apart.

10 Q. OK. Now I want to show Defendants' Exhibit K13.

11 THE COURT: I would like to pick up with K13 after the  
12 morning recess. So we are going to break now until a quarter  
13 of 12, and we'll be back in about 10 minutes.

14 (Recess)

15 THE COURT: Mr. Charney.

16 MR. CHARNEY: Thank you, your Honor.

17 Q. Captain Guimaraes, before the break we were talking about  
18 crime clusters, crime patterns.

19 Do you recall that?

20 A. Yes, sir.

21 THE COURT: Mr. Charney, I can't hear you.

22 Q. I'm sorry. You had testified I believe that you -- when  
23 you are talking about patterns you are looking at specific  
24 locations within the precinct, right?

25 A. Yes.

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D41nfl02 Guimaraes - direct

1 Q. You mentioned, I believe, for example, six- to ten-block  
2 areas?

3 A. It would all depend, sir.

4 Q. Isn't that the example you gave earlier?

5 A. Yes. Like I said, it would all depend. If there was a  
6 certain crime involving a vehicle or a car, then that would  
7 have -- or a bicycle, then that would have to expand even  
8 further.

9 Q. Now I want to show you what's been previously admitted as  
10 Defendants' Exhibit K13. Now, if you would move to the second  
11 page of this document.

12 MR. CHARNEY: Can we do that.

13 Q. Do you see there is a list of addresses on here?

14 A. Yes, sir.

15 Q. And it's correct, right, that these are the addresses from  
16 the burglary pattern sheets we just looked at before the break?

17 A. Yes, sir.

18 Q. Going back to the first page, do you see the plots on this  
19 map, all the red dots?

20 A. Yes, sir.

21 Q. Is it correct that these red dots represent each of these  
22 addresses?

23 A. I see the ones on Stratford, the one right over --

24 THE COURT: I can't hear you now. The one on  
25 Stratford?

D41nfl02

Guimaraes - direct

1 THE WITNESS: The one on Stratford. I see the ones  
2 on, I believe that's Elder and the two dots on Ward.

3 THE COURT: On which one?

4 THE WITNESS: Ward.

5 Q. The Ward ones are the ones kind of in the middle, right,  
6 between Manor Avenue and Boynton Avenue?

7 A. Yes, sir.

8 Q. It is fair to say that each of these reported burglaries  
9 are within two to three blocks of each other, right?

10 A. Yes, sir.

11 Q. You see on the top right-hand corner of the map there is  
12 another dot, right?

13 A. That's correct.

14 Q. It is fair to say that that dot is much further than two to  
15 three blocks away from any of those other dots, right?

16 A. That's correct, sir.

17 Q. Now, when you were the special operations lieutenant in the  
18 43rd Precinct, you did from time to time review officers'  
19 completed UF-250 forms, correct?

20 A. That is correct.

21 Q. Because that is one of your jobs as a supervisor, right?

22 A. To look at a 250, yes.

23 Q. When you did so, you would look to make sure that all the  
24 boxes were filled out correctly, right?

25 A. Right. All the captions were filled out, the information

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D41nflo2

Guimaraes - direct

- 1 was correct. If anything was missing, what I would do is I  
2 would circle and return it back to the officer and instruct him  
3 on, letting him know how to fill out a proper 250 and have him  
4 correct it.
- 5 Q. Other than that, other than making sure all the captions  
6 were filled out completely and correctly, you didn't do  
7 anything else when you reviewed those 250s, right?
- 8 A. I would look at the crime suspected and see if it would  
9 match with, you know, the -- I think the caption right  
10 underneath that would be -- if I see a 250 here, I would be  
11 able to pinpoint it a little bit more in detail.
- 12 Q. Do you recall being asked a question at your deposition  
13 about what you would do to review a 250 before signing it?
- 14 A. I would look to see if all the captions were filled out.
- 15 Q. You also remember being asked, besides doing that, did you  
16 do anything else? Do you remember being asked that?
- 17 A. I don't remember that, sir.
- 18 Q. Do you want to turn to page 102 of your deposition, line  
19 23. If you can read from line 23 on page 102 to line 11 on  
20 page 103.
- 21 A. Do you want me to read it, sir?
- 22 Q. Just read it to yourself.
- 23 A. OK.
- 24 Q. I want to see if it refreshes your recollection.
- 25 A. To what line, sir?

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D41nflo2

Guimaraes - direct

1 Q. 11 on page 103.

2 A. Yes, OK. I read it.

3 MR. MOORE: Judge, I'm having a hard time hearing him.

4 Do you think he can move closer to the --

5 THE COURT: Yes. We tried that.

6 MR. CHARNEY: I will try to speak up as well.

7 THE COURT: OK.

8 Q. After reviewing that, is your recollection refreshed that  
9 you testified that, other than reviewing the 250 to make sure  
10 all the boxes were filled out and other than instructing  
11 officers to properly complete it, you didn't do anything else  
12 when you reviewed a form, right?

13 A. That's correct, sir.

14 Q. So when you were the special operations lieutenant, when  
15 you reviewed these completed 250s, you never actually discussed  
16 the underlying circumstances of the stop with the officer who  
17 filled out the 250, right?

18 A. No, I didn't, sir.

19 Q. Also, when you were reviewing these 250s you never reviewed  
20 the officer's memo book entry to make sure that a proper entry  
21 had been made for the stop in question, right?

22 A. No, I did not, sir.

23 Q. You have attended CompStat meetings or you did attend  
24 CompStat meetings when you were the special operations  
25 lieutenant of the 43rd Precinct, right?

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D41nflo2

Guimaraes - direct

1 A. Yes.

2 Q. But at none of the meetings you attended was the racial  
3 profiling policy we looked at earlier ever discussed, was it?

4 A. That I do not recall.

5 Q. But you did discuss stop and frisk at some of those  
6 meetings?

7 A. That I discussed or that were discussed?

8 Q. Thank you. The issue of stop and frisk was discussed at  
9 some of those meetings, right?

10 A. Yes.

11 Q. But that was mainly to look at the numbers of stops that  
12 were being conducted in the precinct?13 A. No, in regards to an individual that might have been  
14 stopped.15 Q. Is it your view that a quality stop is a stop that occurs  
16 where crime is the highest?

17 A. That is one of the factors.

18 Q. So is it your view that as long as stops are happening that  
19 correspond to the areas where crime is happening, that is a  
20 good stop to you?

21 A. That's one of the factors, sir. That's more to that.

22 Q. I asked you a little earlier about what your  
23 responsibilities were as a special operations lieutenant. Do  
24 you recall that?

25 A. You asked me how many individuals or how many units I

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D41nflo2 Guimaraes - direct

1 monitored, I supervised.

2 Q. Yes. Now I want to ask you a little bit about your  
3 responsibilities as a supervisor of these units. Isn't it fair  
4 to say that one of your responsibilities is to make sure that  
5 the officers working under you are complying with NYPD policies  
6 and procedures?

7 A. Yes, sir.

8 Q. So it's really your job to make sure that they are familiar  
9 with and understand these policies and procedures, right?

10 A. Yes, sir.

11 Q. And it is your job to make sure they are complying with  
12 these policies and procedures, right?

13 A. Yes, sir.

14 Q. That would include the patrol guide section on stop,  
15 question and frisk, right?

16 A. Yes, sir.

17 Q. And the policies and procedures regarding activity log  
18 entries, right?

19 A. Patrol guide procedure or --

20 Q. Let's start with patrol guide procedures. You would make  
21 sure they were complying with all patrol guide procedures  
22 regarding activity log entries?

23 A. I would make sure my sergeants were taking care of that,  
24 were supervising.

25 Q. But ultimately it is your responsibility that the officers

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D41nflo2 Guimaraes - direct  
1 are in fact complying with these policies and procedures,  
2 correct?  
3 A. If it were to stop, it would stop on me.  
4 MR. MOORE: I can't hear him, Judge. He's talking  
5 very softly.  
6 THE COURT: I agree.  
7 MR. MOORE: If he could get closer to the microphone.  
8 THE COURT: And raise your voice. OK.  
9 MR. CHARNEY: Just one minute, your Honor.  
10 I want to show what's previously been admitted into  
11 evidence as I believe Plaintiff's Exhibit 285.  
12 Q. Actually before I ask you this, Captain, where are you  
13 currently assigned?  
14 A. I am assigned to the narcotics division of organized crime  
15 control.  
16 Q. Is that like a centralized unit that covers the entire  
17 police department or is it in a particular borough?  
18 A. It is in a particular borough.  
19 Q. Which borough?  
20 A. Brooklyn.  
21 Q. Is that Brooklyn North or Brooklyn South?  
22 A. Brooklyn North.  
23 Q. Do you recognize Plaintiffs' Exhibit 285?  
24 A. This is the first time I'm seeing it, sir.

25 (Continued on next page)

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D418FLO3

Guimaraes - direct

1 Q. Are you familiar with the quest for excellence system?

2 A. I wasn't working in a police precinct when this came out.

3 Q. Are you familiar in your current role as a captain in the  
4 narcotics division of the quest for excellence system?

5 A. We don't have that there.

6 Q. Are you in a detective bureau?

7 A. Yes. It's not the detective bureau. It's an organized  
8 crime control bureau.

9 Q. Your bureau, the officers that work under you have to fill  
10 out the monthly impact measurement reports?

11 A. That I would not be aware of, sir.

12 Q. Do your officers have to fill out any monthly reports  
13 documenting enforcement actions that they take in that action?

14 A. I would say so.

15 Q. Is it fair to say that you as a supervisor of that -- is it  
16 a bureau or a unit? I want to have the right term.

17 A. The bureau is organized crime control bureau. Within that  
18 bureau there is auto crime, there is the narcotics division,  
19 there is organized crime division.

20 Q. As a supervisor of the officers in the narcotics division,  
21 you, in fact, review their monthly activity?

22 A. No, I do not, sir.

23 Q. You do not?

24 A. I do not.

25 Q. Do you review sergeants' summaries of those activities?

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D418FLO3 Guimaraes - direct

1 A. No, I do not.

2 Q. Do you have any role in reviewing what in fact the officers  
3 under your supervision are doing?

4 A. No, I do not.

5 Q. How long have you been in that position?

6 A. Approximately two and a half years.

7 MR. CHARNEY: One moment, your Honor.

8 No further questions.

9 THE COURT: Who is cross-examining? Ms. Richardson?

10 MS. RICHARDSON: Yes.

11 CROSS-EXAMINATION

12 BY MS. RICHARDSON:

13 Q. Good morning, Captain Guimaraes.

14 A. Good morning, ma'am.

15 Q. Let me just make sure that you speak into the microphone  
16 for us.

17 How long have you been employed by the NYPD?

18 A. For approximately 17 and a half years.

19 Q. Did you attend and graduate from the NYPD police academy?

20 A. Yes, I did.

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

22 A. In March of 2006.

23 Q. Now, could you please briefly walk the Court through your  
24 various assignments with the NYPD after you graduated from the  
25 academy?

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D418FLO3 Guimaraes - cross

1 A. From March 2006 until August of 2000, I was assigned to the  
2 48th Precinct as a police officer.

3 MR. MOORE: You mean 1996, right?

4 THE WITNESS: 1996.

5 MR. MOORE: You said 2006.

6 A. From March of 1996 to August of 2000, I was assigned to the  
7 48th Precinct as a police officer. From August of 2000 to  
8 November of 2003, I was assigned to the 88th Precinct as a  
9 sergeant. From November 2003 to July of 2010, I was assigned  
10 as a lieutenant in the 43rd Precinct. July 2010 until present,  
11 I am a captain in the police department.

12 Q. I believe you previously testified that you are currently a  
13 captain assigned to Brooklyn North narcotics, correct?

14 A. Yes, narcotics division.

15 Q. What are your duties and responsibilities as a captain  
16 assigned to Brooklyn narcotics?

17 A. Well, I have three modules. Each module consists of a  
18 sergeant and approximately seven to eight detectives. Each  
19 module is assigned to a certain area in Brooklyn North. One  
20 module is assigned to the 83rd Precinct. My second module is  
21 assigned to the 84th and the 88th Precinct. And my last module  
22 is assigned to the 90th and 94th Precinct. Basically, what  
23 happens is there are complaint reports involving narcotics  
24 sales, usage that detectives are tasked to investigate.

25 Q. Forgive me, I am not sure if you said this, but how many

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D418FLO3 Guimaraes - cross

1 detectives do you currently supervise?

2 A. Approximately, 23. It fluctuates from month to month.

3 Q. Prior to your assignment to Brooklyn North narcotics, you  
4 testified that you were assigned to the Midtown South Precinct?

5 A. I was the executive officer for the Midtown South Precinct  
6 for a little over four months.

7 Q. Prior to your promotion to captain, you were the special  
8 operations lieutenant in the 43rd Precinct, correct?

9 A. Correct.

10 Q. Can you please tell the Court briefly about what a special  
11 operations lieutenant does?

12 A. A special operations lieutenant oversees specialized units.  
13 In the 43rd Precinct, it was a large specialized unit. I  
14 oversaw two anticrime teams as mentioned, two street narcotics  
15 teams, two conditions teams, a business district team, a school  
16 safety team, a domestic violence team, an auxiliary program,  
17 and the traffic safety team.

18 Q. You mentioned a business district team. What exactly is  
19 that?

20 A. In the 43rd Precinct, Castle Hill Avenue, Westchester  
21 Avenue, two areas where there is a high commercial volume, the  
22 business district team would make sure, if there was any  
23 vehicles double-parked, make sure that moved along because  
24 buses ran along that way, unlicensed peddlers. They would  
25 enforce laws.

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D418FLO3 Guimaraes - cross

1 Q. You also mentioned an auxiliary team?

2 A. Auxiliary team. That's comprised of a coordinator, and in  
3 the 43rd Precinct, we roughly had about 23 auxiliary police  
4 officers.

5 Q. Now, when you were assigned to the 43rd Precinct, would you  
6 say it was a high crime precinct?

7 A. Yes.

8 Q. How do you know that?

9 A. Through the complaint reports, through the CompStat sheets  
10 that we had that were presented to us on a weekly basis.

11 Q. Now, were you involved in the community when you were  
12 assigned to the 43rd Precinct?

13 A. As a special ops you have to work hand-in-hand with the  
14 community, yes.

15 Q. Do you believe it is important for police officers to  
16 interact with the community?

17 A. Without a doubt. The communities are our eyes and ears.

18 Q. Why do you believe it is important for officers to interact  
19 with the community?

20 A. Because the best source of information is from the  
21 community. I always tell the officers, if you're parked having  
22 a cup of coffee, never dispel what someone lets you know  
23 because the community is who sees what is going on out there.

24 Q. Have you been involved in the community throughout your  
25 entire career with the NYPD?

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D418FLO3

Guimaraes - cross

1 A. Roughly so.

2 Q. Have you ever received any acknowledgements or award for  
3 your involvement with the community?

4 A. A community breakfast where awards were given out.

5 Q. Did you in fact receive an award at that community  
6 breakfast?

7 A. Yes, we did.

8 Q. What kind of an award was that?

9 A. It was an acknowledgement to myself and my units for the  
10 great work that was being done in the 43rd Precinct. I believe  
11 that was in 2009.

12 Q. Now, as the special operations lieutenant, would you  
13 discuss with your officers what specific conditions they were  
14 to address during any given tour?

15 A. I would more discuss it with my sergeants, since it was  
16 easier to speak to a group of eight or nine instead of a group  
17 of a hundred, and the tours were all different in regards to  
18 specialized units. I had units starting as early as 6 in the  
19 morning and as late as 7:30 at night.

20 Q. So you would speak with your sergeants about crime  
21 conditions, correct?

22 A. I would do a tour conducive. I would usually do a  
23 modified, like a 10 or 11:00 start, where I would be able to  
24 cover most of my units.

25 Q. Then would you rely on those sergeants to pass along that

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D418FLO3 Guimaraes - cross

1 information to the officers assigned to the special teams?

2 A. Yes. That's the chain of command in the NYPD.

3 Q. Now, how would you determine what the conditions were?

4 A. As mentioned, I would receive a package each day on my desk  
5 from the crime analysis unit in regards to the previous 24  
6 hours' crime, any seven major crimes that occurred in the  
7 command in the past 24 hours.

8 Q. What would you do with that information?

9 A. I would look at it. I would see if there is any  
10 similarities. In addition to that, other precincts,  
11 neighboring precincts would also let us know.

12 Q. Would you do anything else to determine what the crime  
13 conditions were?

14 A. I would go out in the field.

15 Q. What would you do when you were out in the field?

16 A. I would monitor the conditions. If there is a complaint at  
17 123 Main Street, just as an example, I would go out there and  
18 see exactly what the -- you know, if there was a robbery, I  
19 would see if there were any cameras there where it would  
20 benefit us, speaking to maybe the super outside the building,  
21 which in locations where you have a lot of apartment buildings,  
22 supers are a great source of information. So I would go out, I  
23 would read my work in the morning time, and then if I was able  
24 to, I would go out in the field.

25 Q. Now, as a supervisor, how would you evaluate whether your

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D418FLO3 Guimaraes - cross

1 sergeants and their officers were addressing the given crime  
2 conditions?

3 A. By the type of arrests that would come. If they were out  
4 in the specific locations where I tasked them to be. If I  
5 observed them doing rooftop observations, vertical patrols of  
6 buildings.

7 Q. Anything else?

8 A. That's all I can think of right now.

9 Q. As the special operations lieutenant, how, if at all, would  
10 you supervise your officers in terms of their stop, question  
11 and frisk activity?

12 A. If I was out there on patrol and I saw an officer -- one of  
13 my officers stopping an individual, I would wait till the stop  
14 was over, I would have call them over to the car if I wasn't  
15 out of the vehicle already, and I would ask them, what do you  
16 have? That's the common practice of, what was this all about,  
17 what do you have?

18 Q. Did you in fact have occasion while you were a special  
19 operations lieutenant to do that?

20 A. Oh, yes.

21 Q. As a supervisor, have you ever had officers under your  
22 supervision drive you around on patrol?

23 A. Yes.

24 Q. Why would you do that?

25 A. I would have them as my vehicle operator.

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D418FLO3 Guimaraes - cross

1 Q. Would you ever discuss crime conditions with those officers  
2 who would act as your driver?

3 A. That's all we would discuss. If it wasn't sports or  
4 something, that's what we would discuss.

5 THE COURT: If it wasn't sports, they discussed crime  
6 conditions. That's the short of it.

7 THE WITNESS: Sorry, your Honor.

8 Q. How would you determine which officer was going to be  
9 assigned to act as your driver on a given night?

10 A. It all depended. If his partner was out, if his partner  
11 had court, vacation, if it was the last individual that wasn't  
12 partnered up, I would utilize him as my operator.

13 Q. So do you consider assigning an officer to be your driver  
14 to be a punishment?

15 A. Not at all.

16 Q. Can you please describe for us the type of training you  
17 received at the NYPD police academy?

18 A. Training was, and this is going back to 1995, it was police  
19 science, law, social science, and tactics.

20 Q. Did any of that training include training on the law of  
21 stop, question and frisk?

22 A. Yes.

23 Q. Can you describe the training on the law of stop, question  
24 and frisk that you received at the academy?

25 A. It was classroom training, it was role-playing training, in

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D418FLO3 Guimaraes - cross

1 regards to stop, question and frisk.

2 Q. Did you also receive training on completing UF-250s at the  
3 academy?

4 A. Yes. They would issue the different forms, complaint  
5 reports, 250s, the aids, accident reports, and we would fill  
6 them out.

7 Q. Have you been trained on the law of stop, question and  
8 frisk since you have left the police academy?

9 A. Yes.

10 Q. In what way?

11 A. There is always refresher courses. Let's say if you go up  
12 to the range to qualify, and that's twice a year, there would  
13 always be a lesson block on different aspects, and one of them  
14 in my past 16 years, 17 and a half years, would be on stop,  
15 question and frisk.

16 Q. As a police officer and now as a captain, have you received  
17 any other training as a member of the NYPD?

18 A. Yes. Auto crime training, street survival training,  
19 tactics training, auto crime training, narcotics training,  
20 search warrant entry training. As a member of the police  
21 department, we are constantly going to training. Twice a year  
22 we have to requalify on our firearms. As a supervisor, you  
23 have to go to -- it's lead training. As a police officer, it's  
24 intact training.

25 Q. You mentioned lead training. What exactly is that?

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1 A. Lead training, it's intact training for sergeants and  
2 lieutenants. That's classroom session and role-plays that  
3 supervisors are given, in regards to handling emotionally  
4 disturbed individuals, an arrest situation.

5 Q. I believe you also mentioned intact training, is that  
6 correct?

7 A. Police officer receives intact training.

8 Q. Would that be similar training to the lead training that  
9 supervisors receive?

10 A. Yes.

11 Q. Based on your training and experience, when can you  
12 forcibly stop and question a citizen?

13 A. When you believe a crime has been committed, is about to be  
14 committed, or will be committed, and the crime has to be a  
15 felony or penal law misdemeanor.

16 Q. What paperwork, if any, are you required to fill out when  
17 you forcibly stop someone?

18 A. UF-250.

19 Q. Is there any other paperwork that an officer is required to  
20 fill out when they stop someone?

21 A. And the memo book entry has to get done also.

22 Q. Do you fill out a UF-250 every time you forcibly stop  
23 someone?

24 A. Yes.

25 Q. If you arrest someone, would you fill out a 250?

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1 A. No, unless it's a summary arrest.

2 Q. What do you mean by that?

3 A. A summary arrest, an example of that is if two officers are  
4 called into a department store, and when they arrive at the  
5 department store, they see someone that is placed under arrest  
6 for shoplifting. So that's a summary arrest. You already know  
7 what they are arrested for because of the security guard  
8 letting you know, I observed this individual removing this  
9 property and he walked through the registers and is walking out  
10 the door. That's an example of a summary arrest.

11 Q. In that situation, you would not need to fill out a UF-250?

12 A. No, ma'am.

13 Q. Can you forcibly stop someone for suspicion of committing a  
14 violation?

15 A. No.

16 Q. Why is that?

17 A. Because it's suspicion and a violation.

18 THE COURT: I can't hear you.

19 A. Because it's suspicion and a violation. It's not a felony  
20 or penal law misdemeanor.

21 Q. What if an officer were to observe an individual committing  
22 a violation?

23 A. If you're observing that in your presence, you can forcibly  
24 stop him and place him under arrest or issue a summons.

25 Q. Is that because you have probable cause at that time to

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1 believe they committed a violation?

2 A. Yes, and it's done in your presence.

3 Q. What is your understanding, if any, of the term furtive  
4 movements?

5 A. Furtive movement, it's one of the check boxes that's on the  
6 universal 250. Furtive movement can be anything from adjusting  
7 a waistband -- whatever the officer sees at that time,  
8 adjusting a waistband, messing around with a lock on a car,  
9 taking a screwdriver and putting it inside his sleeve. It's  
10 whatever the officer sees at that time.

11 Q. Can you forcibly stop someone solely for exhibiting furtive  
12 movements?

13 A. No. There would have to be something else with that.

14 Q. What else would you have to observe in order to stop  
15 someone while committing furtive movements?

16 A. You would have to see that a crime was going to be  
17 committed, or has been committed.

18 Q. Have you ever forcibly stopped someone without having  
19 reasonable suspicion that the individual had committed, was  
20 committing, or was about to commit a penal law misdemeanor  
21 felony?

22 A. No.

23 Q. Have you ever forcibly stopped someone because of their  
24 race?

25 A. No.

D418FLO3 Guimaraes - cross

1 Q. What training, if any, have you received about when an  
2 individual may walk away from a police officer?

3 A. When you don't have enough to stop an individual. If you  
4 ask them, you know, have you seen -- an example is a shots  
5 fired call, and you're going down the block and you roll down  
6 the window and see someone walking by, hey, have you heard  
7 anything? They can just turn around and walk away.

8 Q. What is your understanding about when a police officer may  
9 speak with a citizen on the street?

10 A. When you have reasonable suspicion, that would be the stop,  
11 question and frisk. The other one would be the request for  
12 information. If you feel that criminality is afoot and you  
13 want to come out and speak to that individual.

14 Q. Do you say or do anything different when you are engaged in  
15 a consensual police encounter as opposed to a forcible stop  
16 that has been based on reasonable suspicion?

17 A. Obviously, your guard is up a little bit. You and your  
18 partner, through experience, your tactics are raised higher.  
19 It's an individual basis. It's not something that, you know,  
20 it's straight. It can vary from one incident to the next.

21 Q. Have you ever stopped someone to ask them a question and  
22 allowed that person to walk away?

23 A. Yes. If I didn't have anything else to go on, absolutely.

24 Q. What is your understanding of the term frisk?

25 A. Frisk is a pat-down on the outermost garment.

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1 Q. Based on your training and experience, when can you frisk a  
2 citizen?

3 A. When you notice a bulge or if an individual is tugging at a  
4 certain area trying to conceal something they might have.

5 Q. What level of suspicion is required to frisk?

6 A. Reasonable suspicion.

7 Q. Is there any paperwork you are required to fill out when  
8 you frisk someone?

9 A. A UF-250.

10 Q. Do you fill out a UF-250 form every time you frisk someone?

11 A. Yes.

12 Q. Would you frisk every person that you forcibly stopped?

13 A. No.

14 Q. How would you determine when to frisk a person that you  
15 have forcibly stopped?

16 A. If I stop someone and if they have a tight shirt and a  
17 tight pair of jeans, there is nothing that I can see that's  
18 going to harm me, I wouldn't need to frisk anyone.

19 Q. So if I understand you correctly, would you frisk someone  
20 when you believe they might have something that could harm you?

21 A. Yes.

22 Q. Captain Guimaraes, what is a memo book?

23 A. A memo book is another name for an activity log. It's a  
24 binded notepad that the officers keep and it lists their  
25 assignments and their day-to-day operations of what they do.

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1 Q. What is your understanding regarding what kind of  
2 information officers must include in their memo books?

3 A. My understanding is that they have to start their day off,  
4 they have to put down what tour they are doing, what their  
5 assignment is for the day, who their partner is, what time roll  
6 call was at, if you're working at a police precinct. And then  
7 if you're assigned to a sector car, it goes from one assignment  
8 to the next, the time you received the assignment to the time  
9 giving back the disposition. If you issue a summons, you have  
10 to put down the summons number, the name of the individual, the  
11 vehicle they were in, the offense committed. In regards also  
12 to any paperwork that's being issued, if there is a serial  
13 number or a lot number, that would have to go in the memo book  
14 also.

15 Q. You mentioned any paperwork. If an officer stopped a  
16 person and filled out a UF-250, would that stop need to be  
17 recorded in the memo book?

18 A. Yes.

19 Q. What information would need to be recorded in the memo  
20 book?

21 A. The person being stopped, what the offense suspected was,  
22 the location, the person's date of birth, and anything else  
23 that he would feel would pertain or be necessary to include in  
24 that memo book entry.

25 Q. Do you know if the NYPD has a policy prohibiting racial  
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1 profiling?

2 A. Yes, they do.

3 Q. What do you understand the NYPD's policy to be?

4 A. You're not able to initiate police action just based solely  
5 on someone's race, gender, skin color, sexual orientation.

6 Q. When did you first learn about the NYPD's policy  
7 prohibiting racial profiling?

8 A. When you're in the academy.

9 Q. Have you ever reviewed the NYPD's policy prohibiting racial  
10 profiling?

11 A. Different intervals in my career, yes.

12 Q. Have you received training on the NYPD's policy prohibiting  
13 racial profiling?

14 A. Like I mentioned earlier, the training is always  
15 incorporated into other training also. If we go to tactics  
16 training, they might have blocks of classroom sessions in  
17 regards to whatever training we are attending that day in  
18 addition to any other training that's prevailing in the police  
19 department at that time, any new orders or new procedures.

20 Q. Now, I believe on your direct examination Mr. Charney asked  
21 you a series of questions regarding Plaintiffs' Exhibit 285,  
22 which is Operations Order 52. Do you remember that?

23 A. Yes, I remember.

24 Q. Is it your understanding that Operations Order 52 applies  
25 to you in your current assignment?

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1 A. It does not apply to me in my current assignment.

2 Q. Why is that?

3 A. It's directed to patrol officers and I'm in an  
4 investigative unit.

5 Q. Now, thinking back to when you were a police officer, were  
6 you ever subject to a quota?

7 A. No.

8 Q. While you were a police officer, did you ever feel that if  
9 you did not conduct a certain number of stops, you would be  
10 punished?

11 A. No.

12 Q. While you were a police officer, did you ever feel that if  
13 you did not issue a certain number of summonses, you would be  
14 punished?

15 A. No.

16 Q. Did you ever feel that if you did not make a certain number  
17 of arrests, you would be punished?

18 A. No.

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

21 A. No.

22 Q. As a supervisor, have you ever told an officer that he or  
23 she should increase the number of stops that they perform?

24 A. No.

25 Q. Have you ever punished an officer for failing to conduct a

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1 certain number of stops?

2 A. No.

3 Q. Have you ever punished an officer under your command for  
4 failing to issue a certain number of summonses?

5 A. No.

6 Q. Have you ever punished an officer under your command for  
7 failing to make a certain number of arrests?

8 A. No.

9 Q. Have you ever denied officers under your supervision  
10 overtime because their activity was too low?

11 A. No.

12 Q. Have you ever denied an officer a day off due to low  
13 activity?

14 A. No.

15 Q. Have you ever felt pressure to make an unconstitutional  
16 stop of a person?

17 A. No.

18 MS. RICHARDSON: If I could have just one minute, your  
19 Honor?

20 THE COURT: Sure.

21 MS. RICHARDSON: Just a few more questions, your  
22 Honor.

23 Q. Captain Guimaraes, does crime cross precinct boundaries or  
24 does it stay within a precinct?

25 A. It crosses precinct boundaries, sectors, like I mentioned  
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1 earlier, in regards to not only do I look at the crime reports,  
2 but, also, we field calls from other commands letting us know  
3 what they have in their command to be on the lookout in ours.

4 MS. RICHARDSON: No further questions.

5 THE COURT: OK. Any redirect, Mr. Charney?

6 MR. CHARNEY: Yes.

7 REDIRECT EXAMINATION

8 BY MR. CHARNEY:

9 Q. Captain, you recall testifying, both when I was questioning  
10 you and when Ms. Richardson was questioning you, when you were  
11 the special operations lieutenant in the 43rd Precinct, that  
12 you would review the crime complaints from the preceding 24  
13 hours, correct?

14 A. Yes.

15 Q. You recall reviewing the crime complaints for the preceding  
16 24 hours to February 27, 2008?

17 A. If it was presented to me, I would have reviewed it, sir.

18 Q. Do you recall looking back at, I guess it was Defendants'  
19 Exhibit L4?

20 THE COURT: That was the summary?

21 MR. CHARNEY: These are burglary pattern sheets.

22 Q. I guess we are looking at -- this is, I believe, the first  
23 page. All of those burglaries listed there were from January,  
24 correct?

25 A. The 4th, the 7th, the 17th, yes.

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1 Q. On the second page, two of the three were from January and  
2 one was from the first week of February, correct?

3 A. Yes, sir.

4 Q. None of these are within three weeks of February 27, 2008,  
5 right?

6 A. No, they are not.

7 Q. Are you aware that the NYPD crime complaint data for  
8 January and February 2008 shows that there were no burglaries  
9 reported in the 36 square block radius of 1359 Beach Avenue in  
10 those two months?

11 A. Say that again.

12 Q. That the NYPD's crime complaints for the months of January  
13 and February of 2008 show that -- I missed one -- there was  
14 only one burglary reported in the 36 square block radius of  
15 1359 Beach Avenue during that time?

16 A. I don't understand your question, sir.

17 Q. Are you aware of that fact?

18 A. No. I'm not aware of that fact.

19 Q. You do review the crime complaints for the 43rd Precinct,  
20 or you did when you were the special operations lieutenant,  
21 correct?

22 A. Correct.

23 Q. So I was just asking you, based on your review, you're  
24 aware of the fact there was only one reported burglary in the  
25 36 square block radius of 1359 Beach Avenue in the two months,

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1 January and February 2008?

2 A. I don't want to commit to that because I do not believe  
3 that is correct.

4 THE COURT: What is your basis for not believing it is  
5 correct?

6 THE WITNESS: 36 square block area of 1359, that would  
7 go into the 49th Precinct, the 48th Precinct, the 45th  
8 Precinct.

9 THE COURT: You don't know?

10 THE WITNESS: Absolutely not.

11 THE COURT: You don't know the statistics from those  
12 precincts?

13 THE WITNESS: That's correct.

14 Q. Are you aware that the portion of that radius that is  
15 within the 43rd Precinct, there was only one burglary complaint  
16 for January and February 2008 in that portion?

17 A. Now just going to the 45th Precinct, that's kind of  
18 impossible because Ward Avenue, Stratford Avenue is  
19 approximately, I would say, seven or eight blocks away from  
20 Beach Avenue.

21 Q. We can look at the map.

22 A. Yes. It's not 36 blocks away, sir.

23 Q. Before I do that, didn't you testify when Ms. Richardson  
24 was asking you questions that you did talk to other commands to  
25 find out about crime because crime does cross precinct lines?

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1 A. Yes. If I would receive a phone call, you know, letting us  
2 know we have an issue here in, let's say, the 45th Precinct,  
3 that they are stealing copper pipes from abandoned homes, they  
4 would let me know that so I would let my personnel know that,  
5 hey, be on the lookout for individuals lurking inside of  
6 abandoned homes.

7 Q. So would it be fair to say that if there was a crime  
8 pattern in the neighboring precinct that was very close  
9 geographically to the boundary of your precinct, you would hear  
10 about that from that other precinct?

11 A. I would hope I would hear.

12 Q. Again, going back to this 36 block square radius around  
13 1359 Beach Avenue, do you recall hearing at any point between  
14 January and February of 2008 that there were burglaries  
15 occurring right on the boundary of the 43rd Precinct adjacent  
16 to 1359 Beach Avenue?

17 A. Sorry. I don't understand the 36 square block because  
18 Stratford --

19 Q. Let's look at Exhibit K13.

20 A. Stratford Avenue is not far from Beach Avenue.

21 Q. I am not asking you if it's far.

22 THE COURT: He is saying within 36 square blocks.

23 A. It's within 36 square blocks. 36 square blocks, sir, if  
24 you look at a map --

25 THE COURT: Look at the map he has.

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1 A. If you look at the map, 36 square blocks, that can lead  
2 into two precincts to the north of the 43rd Precinct.

3 Q. Looking at this map, isn't it fair to say that to get to  
4 Stratford Avenue from Beach Avenue, you would have to go from,  
5 let's see, one, two, three, four, five, six -- I am trying to  
6 count how many it is across. How many blocks would you have to  
7 cross?

8 A. It would be one, two, three, four, five, six, seven, eight,  
9 nine.

10 Q. Are you counting the Bronx River Parkway or no?

11 A. No. The Bronx River Parkway runs underneath. There is an  
12 overpass you can walk straight across.

13 Q. You have to go across it?

14 A. It would be one block.

15 Q. When I am saying square blocks, I am saying east west by  
16 north south. Is it fair to say if you started at Beach Avenue  
17 and you went four blocks south and nine blocks over, you're not  
18 seeing any burglaries, are you?

19 A. Yes. You would see the burglaries that are occurring in  
20 that cluster.

21 Q. It's a matter of counting, and we can do that. If you say  
22 you see it, that's fine.

23 My question is going the other direction.

24 A. Sir, the walking distance from, let's say, Stratford to  
25 Beach, it's a five-minute walk.

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1 Q. Again, I don't have any basis to ask you about that because  
2 I haven't been there.

3 My question is, you said that you wouldn't know  
4 whether it's the other direction to the east, you wouldn't know  
5 whether or not there were burglaries in that direction?

6 A. Yes, I would, because that would still comprise the 43rd  
7 Precinct.

8 Q. And I am asking you, do you recall, based on your review of  
9 the crime complaints for this period of time, January to  
10 February 2008, that there was one burglary reported in the 36  
11 square block radius of 1359 Beach Avenue?

12 A. That's not correct, sir, because you have here two crime  
13 patterns.

14 Q. So it's your testimony that these are within the 36 square  
15 block radius?

16 A. Yes, sir.

17 Q. All of these burglaries?

18 A. Yes, sir.

19 Q. Now, you also mentioned that you speak to people in the  
20 community because they are the eyes and ears?

21 A. That's one of the tools that a police officer can have,  
22 sure.

23 Q. Is it fair to say that you rely on the trust of the  
24 community in order to be able to figure out where a crime is  
25 right?

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1 A. That's one of our tools, yes, sir.

2 Q. Did you ever speak to civilians in the 43rd Precinct about  
3 their concerns about stop, question and frisk?

4 A. It was never mentioned to me. I would speak to the  
5 civilians. As a special ops, you have to attend the community  
6 council meetings.

7 Q. Was stop, question and frisk ever raised at those community  
8 council meetings?

9 A. The two issues that were raised at the community council  
10 meetings were, one, doing a great job, and two would be, you  
11 did a great job here, but now do something over here.

12 Q. Do you believe that if such complaints were made that your  
13 job would be to figure out ways to address those concerns; in  
14 other words, if complaints were made that people believed stops  
15 were being made unnecessarily, do you believe the NYPD has a  
16 responsibility to try to make sure that stops are not being  
17 made unnecessarily?

18 A. Yes. And the way that would be brought to light would be  
19 you would let the individual know that if they felt that they  
20 were stopped unnecessarily by a police officer, that their  
21 avenue would be to the Civilian Complaint Review Board, that  
22 they can bring that up, they can file a formal complaint and  
23 put the officer on notice.

24 Q. Other than telling them to file a formal complaint, do you  
25 believe it was your job to then speak to the other officers and

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1 commanders in your precinct to see if maybe your practices  
2 needed to change?

3 A. No.

4 Q. So the only thing you think you would be responsible for  
5 doing if a complaint was made would be to tell somebody to file  
6 a civilian complaint?

7 A. Well, in addition to that, it would let -- in unit  
8 training, it would be brought up. If a commanding officer saw  
9 at the community council meeting or heard that the community  
10 had some issues with officers, that would be part of a topic  
11 during unit training.

12 Q. Now, you talked a lot about the formal training that both  
13 you and officers received both in the academy and after they  
14 get on the job, correct?

15 A. Yes, sir.

16 Q. Isn't it the role of a supervisor to reinforce that formal  
17 training in the precinct and on the street?

18 A. To a certain aspect, yes.

19 Q. But you testified earlier, right, that when you were the  
20 special operations lieutenant, you did not speak to the  
21 officers under your supervision about the NYPD stop, question  
22 and frisk policies and procedures?

23 A. I would rely on my sergeants to bring that to light.

24 Q. But you didn't speak to them about it either, the  
25 sergeants, right?

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1 A. It wouldn't be fair to say that I did not speak to them. I  
2 would have spoken to them.

3 Q. About the stop and frisk policies and procedures?

4 A. I would think so, yes.

5 Q. If you could turn to -- I will come back to that.

6 You also mentioned, when Ms. Richardson was asking you  
7 questions, if you were driving around the precinct and saw  
8 officers under your command making a stop, that you would call  
9 them over to the car and discuss the stop with them, right?

10 A. If they were walking towards their vehicles, I would call  
11 them over. If they were still engaged, I would be out of the  
12 car and wait until they were finished, and then ask them what  
13 the individual stop was for, what is it that you have in  
14 regards.

15 Q. But it's fair to say that you didn't observe in person  
16 every stop that an officer under your supervision made when you  
17 were the special operations lieutenant, right?

18 A. No.

19 Q. In fact, a large number of those stops you didn't actually  
20 personally observe, right?

21 A. That would be correct.

22 Q. In those cases, you would have rely on the paperwork the  
23 officer filled out for that stop to determine if it was a good  
24 stop?

25 A. The paperwork, their training, my supervisors out there

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1 monitoring them, yes.

2 Q. You testified earlier, right, when you would review a  
3 completed 250, you didn't ask the officers who completed it  
4 about the underlying circumstances of the stop?

5 A. No. If I was presented with the 250 as the reviewer, I  
6 would make sure that all the captions were filled out  
7 correctly, and if there was a caption that wasn't filled out,  
8 then I would bring it to their attention and instruct them.

9 Q. You also testified that the 43rd Precinct is a high crime  
10 precinct, correct?

11 A. It was at the time I was there, yes.

12 Q. It's also a big precinct, correct?

13 A. It's roughly about four square miles.

14 Q. I think you also testified earlier that from the anticrime  
15 unit officers, their mission was to really identify those  
16 specific locations in the precinct where the crime was  
17 happening, right?

18 A. The epicenter and the outskirts, correct.

19 Q. Because you don't want them patrolling in an area where  
20 there weren't many burglaries, right?

21 A. No. No.

22 Q. You didn't do any field visits on February 27, 2008 in the  
23 area of 1359 Beach Avenue, did you?

24 A. That I do not recall.

25 Q. You didn't talk to any community members in that area about

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1 whether or not they observed any burglaries?

2 A. No. I do not recall that.

3 Q. Now, you also testified, when Ms. Richardson was asking you  
4 questions, about the fact that when somebody is stopped for a  
5 violation. You remember discussing that issue?

6 A. Yes.

7 Q. I believe you testified if the officer actually observes  
8 the violation occur, then they can stop the person?

9 A. They can or they can't?

10 Q. They can.

11 A. Yes. If it's done in their presence, yes.

12 Q. That would be stopping them on probable cause, correct?

13 A. Yes.

14 Q. So it's not permissible for an officer to stop somebody  
15 simply because they reasonably suspect the person has committed  
16 a violation, right?

17 A. No, that is not correct.

18 Q. Because that would actually be against the law, right?

19 A. Yes.

20 Q. Now, with respect to quotas, it's correct, isn't it, your  
21 understanding of NYPD policies and procedures are that quotas  
22 are prohibited in the police department, right?

23 A. Correct.

24 Q. The reason for that is quotas are also prohibited under New  
25 York law, correct?

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1 A. That's correct, sir.

2 Q. So if the NYPD was in fact engaging in quotas, they could  
3 be exposed to liability, right?

4 A. That would be correct.

5 Q. You're aware that in this case, the plaintiffs have alleged  
6 that the NYPD does engage in quotas, correct?

7 A. I was aware with the stop and frisk. I wasn't aware of  
8 that.

9 Q. I'm sorry. You were aware of the stop and frisk? What do  
10 you mean by that?

11 THE COURT: The issue of being done right or wrong,  
12 but he wasn't aware there was a question about quotas.

13 Q. If in fact, let's say, the police department was imposing  
14 quotas on stop and frisk activity, that would be against New  
15 York law, correct?

16 A. Absolutely.

17 Q. So the NYPD could be exposed to liability if they engaged  
18 in that kind of practice, right?

19 A. Yes.

20 MR. CHARNEY: No further questions, your Honor.

21 THE COURT: Anything further for this witness?

22 MS. RICHARDSON: Can I have just one minute?

23 THE COURT: Do you have just one or two?

24 MS. RICHARDSON: Just two questions.

25 THE COURT: All right.

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D418FLO3 Guimaraes - redirect

1 RECROSS-EXAMINATION

2 BY MS. RICHARDSON:

3 Q. Captain Guimaraes, if a crime pattern is open, is that  
4 crime that you would focus on for instructing the members of  
5 your special teams for their patrol?

6 A. Yes.

7 Q. Why is that?

8 A. Because an open pattern means that the individual or  
9 individuals are still not arrested and the crime is still  
10 ongoing, that particular crime.

11 Q. Now, looking at the exhibit that's up on the screen now, I  
12 believe this is K13, could you count the number of blocks that  
13 you see between Beach Avenue and the Elder Avenue dots?

14 A. It would be, if we run along 174th Street, it would be one,  
15 two, three, four, five, six, seven, eight, nine, ten, eleven,  
16 twelve.

17 Q. From those Elder Avenue burglary dots that you ended at,  
18 how many blocks down would it be to cover the remaining  
19 burglaries that you see on that screen?

20 A. It would be one going south and then two, three going  
21 west -- going east I mean, sorry. So it would be a total of  
22 four blocks.

23 MS. RICHARDSON: No further questions.

24 THE COURT: Anything further?

25 MR. CHARNEY: No.

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Guimaraes - recross

1 THE COURT: Thank you. We are going to have our  
2 luncheon recess now and we will reconvene at 2:00.  
3 (Luncheon recess)  
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D418FLO3 Guimaraes - recross

1 A F T E R N O O N S E S S I O N  
2 (2:00 p.m.)

3 KRISTIANNA ACEVEDO,  
4 called as a witness by the Plaintiffs,  
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. BORCHETTA:

8 Q. Good afternoon, Ms. Acevedo.

9 A. Good afternoon.

10 Q. How old are you?

11 A. 30 years old.

12 Q. Where did you currently live?

13 A. Staten Island, New York.

14 Q. How long have you lived there?

15 A. Two years.

16 Q. Where were you born?

17 A. San Juan, Puerto Rico.

18 Q. When did you come to the United States?

19 A. Five years old.

20 Q. Are you a United States citizen?

21 A. Yes, I am.

22 Q. Is it fair to say that you grew up in New York City?

23 A. Yes.

24 Q. Are you married?

25 A. Yes, I am.

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D41nflo4 Acevedo - direct

- 1 Q. Do you live with your wife in Staten Island?  
2 A. Yes, I do.  
3 Q. When did you get married?  
4 A. The first day it was legal in 2011.  
5 Q. What is the highest level of education you have attained?  
6 A. A BA.  
7 Q. From what college?  
8 A. Hunter College.  
9 Q. What year did you receive that BA?  
10 A. In 2005.  
11 Q. You have worked for the City of New York, correct?  
12 A. Yes, I have.  
13 Q. In what capacity?  
14 A. I worked for the Parks Department.  
15 Q. How long did you work for the Parks Department?  
16 A. For about three and a half years.  
17 Q. Are you currently employed?  
18 A. Yes, I am.  
19 Q. Where are you currently employed?  
20 A. With Special Touch Home Care.  
21 Q. What do you do for Special Touch Home Care?  
22 A. I am a recruiter of home health aides.  
23 Q. How long have you worked for that business?  
24 A. For two years.  
25 Q. You are here today to testify about an encounter with the

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D41nflo4 Acevedo - direct

- 1 NYPD, right?  
2 A. Yes.  
3 Q. On what date did that happen?  
4 A. May 29, 2007.  
5 Q. In what borough?  
6 A. Queens, New York.  
7 Q. Was it in a particular neighborhood?  
8 A. Yes. It's near where Sunnyside meets Astoria on the border  
9 of Woodside and Long Island City.  
10 Q. Where did you live at the time?  
11 A. In Sunnyside.  
12 Q. You were stopped by the NYPD on that date, right?  
13 A. Yes, I was.  
14 Q. Were you stopped near the location of where you were living  
15 at the time?  
16 A. Yes, on the same street, but further up.  
17 Q. What were you doing just prior to the time that you were  
18 stopped?  
19 A. I was walking to my bank on Northern Boulevard.  
20 Q. What bank were you going to?  
21 A. New York Community Bank.  
22 Q. Where were you headed to the bank from?  
23 A. I was taking 43rd Street straight up to Northern Boulevard.  
24 Q. Had you headed on that route from your home that day?  
25 A. Yes.

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D41nfl04 Acevedo - direct

- 1 Q. About what time did you leave your house?  
2 A. At about 5 p.m.  
3 Q. What were you wearing?  
4 A. Shorts and a tank top.  
5 Q. What was the weather like that day?  
6 A. It was sunny. It was pretty warm.  
7 Q. Was it still light out when you left your home?  
8 A. Yes, it was.  
9 Q. What, if anything, were you carrying?  
10 A. I had a shoulder bag.  
11 Q. What was in your bag, if anything?  
12 A. My wallet, bank documents, and my keys.  
13 Q. Did you have anything in your pockets?  
14 A. No, I did not.  
15 Q. Did you have pockets on the shorts you were wearing that  
16 day?  
17 A. Yes, I did.  
18 Q. As you were walking to the bank, what, if anything,  
19 happened?  
20 A. As I approached the Long Island Rail Road overpass near  
21 Northern Boulevard, I noticed a van a dark blue van parked on  
22 the side of the road.  
23 Q. Did you see whether any people were in that van.  
24 A. Yes. There were two men in the front seat of the vehicle.  
25 Q. Please describe the area where you first saw this van.

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D41nflo4 Acevedo - direct

- 1 A. It's like an industrial warehouse kind of area between the  
2 two residential and commercial areas, so it's about two blocks  
3 with warehouses.
- 4 Q. When you first noticed this van, did you see other people  
5 on the sidewalk at the time?
- 6 A. No, I did not.
- 7 Q. What, if anything, did the men in the van say to you?
- 8 A. They said, Hey, you got tattoos. Where are you going?  
9 Come over here, something like that.
- 10 Q. What, if anything, did you say when you first saw them?
- 11 A. I don't recall saying anything.
- 12 Q. When you first saw the men in this van, was it moving or  
13 was it parked?
- 14 A. It was parked.
- 15 Q. When you first saw these men in this van, did you see  
16 anyone else in the van besides the two men?
- 17 A. No, I did not.
- 18 Q. Where were the men, from what you could see, seated in the  
19 van?
- 20 A. One was in the driver's seat and one was on the passenger's  
21 side.
- 22 Q. When they began saying things to you, what, if anything,  
23 were you thinking?
- 24 A. I was just -- I figured if I just kept walking they would  
25 just leave me alone.

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D41nfl04 Acevedo - direct

1 Q. What were you feeling, if anything, when they first started  
2 talking to you?

3 A. A little concerned just because it was kind of a desolate  
4 area.

5 Q. What happened next?

6 A. I started to walk and then the van started going in reverse  
7 jerking backwards, and when it started to -- and then at one  
8 point they yelled something else like, Come over here; or,  
9 Where are you going? Something like that. So that's when I  
10 started to run.

11 Q. From what you could observe of this van when you first saw  
12 it, did it appear to you at the time to be an NYPD vehicle?

13 A. No, it did not.

14 Q. And after you began to run from this van, what happened  
15 next?

16 A. I ran to a UPS truck that was parked a little further up,  
17 and I told the driver that I was being followed by a van.

18 Q. Where was the UPS driver when you said that to him?

19 A. He was in the dryer's seat of the vehicle.

20 Q. Where were you when you were saying that to him?

21 A. I was leaning in from the passenger's side of the vehicle.

22 Q. What happened next?

23 A. A female, a woman came running, and the first thing I heard  
24 was, Police. When you hear police, you stop. And -- go ahead.

25 Q. Sitting here today, do you have an understanding of who

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D41nflo4 Acevedo - direct

1 that person was?

2 A. The CCRB identified her as Michelle Hawkins.

3 Q. When you say the CCRB, you are talking about the Civilian  
4 Complaint Review Board, right?

5 A. Yes.

6 Q. Your understanding from the CCRB is that person's name was  
7 Detective Michelle Hawkins?

8 A. That's correct.

9 Q. At the time did you know who she was?

10 A. No, I did not.

11 Q. After Detective Hawkins said to you, When you hear police  
12 you stop, what happened next?

13 A. She pulled me out of the van by my shoulders and pushed me  
14 up against the side of the van and started to shake me by my  
15 shoulders, causing my head to hit the side of the UPS truck two  
16 times.

17 Q. After Detective Hawkins pushed you against the UPS truck,  
18 what happened next?

19 A. She held me there by my right wrist, and by then the two  
20 other men from the van came running.

21 Q. Do you know sitting here today who those two men were?

22 A. The CCRB identified them as Detectives DeMarco and  
23 Detective Fiscaranto.

24 Q. Do you know which one was which?

25 A. No, I do not.

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D41nflo4 Acevedo - direct

1 Q. Can you describe these men?

2 A. Sure one man had darker brown hair; the other man had  
3 lighter brown hair.

4 Q. Can you describe anything about their physical appearance.

5 A. The darker haired man was taller than the lighter haired  
6 man. The lighter haired man was a little stockier.

7 Q. After these men this arrived -- well, actually let me take  
8 it back a minute.

9 What were these three detectives wearing?

10 A. They were all wearing tank tops and shorts.

11 Q. After Detective Hawkins was holding you against the van by  
12 your right wrist, where were the male detectives at that point?

13 A. The dark-haired officer was on my left and the lighter  
14 haired officer was on the right of him, and then Michelle  
15 Hawkins was holding me on my right side.

16 Q. I also want to clarify the record. I think I just said she  
17 was holding you by the van. She was holding you by the UPS  
18 truck. Right?

19 A. Yes.

20 Q. Not by their van, right?

21 A. That's correct.

22 Q. What, if anything, did you say to Detective Hawkins at that  
23 point?

24 A. I asked if I could see their badge -- oh, the first thing I  
25 said was, You did not identify yourselves as officers.

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D41nflo4 Acevedo - direct

1 She said, When you hear police you stop. That was my  
2 response.

3 Q. At that point, did you feel like you were free to leave?

4 A. No, I did not.

5 Q. Why not?

6 A. Because she told me I should stop because they identified  
7 themselves as police.

8 THE COURT: Because they?

9 THE WITNESS: They identified themselves as police.

10 She also said, When you hear police you stop.

11 Q. Was there any other reason you felt that you could not  
12 leave?

13 A. Also because the detective was holding me by my wrist.

14 Q. After the male detectives arrived on the sidewalk near the  
15 UPS truck, what happened next?

16 A. I believe they asked me if I lived around there and where I  
17 was going.

18 Q. Did any of them show you badges?

19 A. Right after they asked me those questions and I answered  
20 them that I was going to my bank, I asked them if I could see  
21 their badges.

22 Q. Did any of them comply with your request?

23 A. Yes. Detective Hawkins showed me like a small emblem that  
24 she had around her neck, and the lighter haired officer, he  
25 said, he hesitated, and then he said that his badge was stolen.

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D41nflo4 Acevedo - direct

1 And then the darker haired officer flashed the badge real  
2 quick.  
3 Q. What, if anything, happened after that?  
4 A. The darker haired officer asked if he could see my ID, and  
5 then when he -- when I gave that to him, they passed it around  
6 and he asked me why my address didn't say Queens on it.  
7 Q. Had you told them that you lived at an address in Queens?  
8 A. Yes.  
9 Q. That was in response to their questions about where you  
10 lived?  
11 A. Yes.  
12 Q. Do you have an understanding of why the detective was  
13 asking about your ID?  
14 A. Yes.  
15 Q. What was your understanding?  
16 A. They were just asking why it didn't match where I lived.  
17 Q. What did that identification say?  
18 A. It had a Staten Island address, which is where I grew up.  
19 Q. Did you explain that to them?  
20 A. Yes.  
21 Q. What, if anything, happened after that?  
22 A. The dark-haired officer put my ID back into my bag and then  
23 began to search around my bag looking in all the linings, and  
24 then the female officer searched my pockets and pulled my  
25 pockets out.

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D41nflo4 Acevedo - direct

1 Q. When you say your pockets, what pockets are you referring  
2 to?

3 A. On my shorts.

4 Q. What happened after the search and the frisk?

5 A. I believe the first thing they said was, We just want to  
6 take you down to the station for questioning. Something like  
7 that.

8 Q. Did they say anything about the UPS driver?

9 A. Yes. They asked me how I knew the UPS driver, if I knew  
10 him. And I said no, but I said that he was my witness.

11 Q. What, if anything, did they say when you said that?

12 A. The dark-haired officer said, What could he do? We have  
13 guns. And then he patted some kind -- he patted whatever he  
14 had under his armpit.

15 Q. Did you see a gun on him?

16 A. No, I did not.

17 Q. When they said to you that they wanted to take you down for  
18 questioning, what, if anything, did you say to them?

19 A. I said that I wouldn't go anywhere, and I told them first  
20 that I was not getting in that van and that I wouldn't go  
21 anywhere without a marked police vehicle present.

22 Q. What, if anything, did they say when you said that to them?

23 A. The dark-haired officer asked me if I forgot to take my  
24 medication today.

25 Q. After the dark-haired detective made a comment to you about

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D41nflo4 Acevedo - direct

1 taking medication, what happened next?

2 A. Then they started to make calls on their radio while I  
3 continued to be detained there against the UPS truck.

4 Q. When you say radio, can you describe what you saw that you  
5 thought was a radio?

6 A. It was like just a basic radio.

7 Q. Did you hear anything that made you think it was a radio?

8 A. Yes. There was like some kind of a feedback, and they were  
9 communicating and there was a couple of lines of communicating  
10 on it.

11 Q. While this was happening, where were you?

12 A. I was still in front of the UPS truck being held there by  
13 Detective Hawkins.

14 Q. When you say being held there, how were you being held  
15 there?

16 A. By my wrist.

17 Q. Detective Hawkins was holding your wrist?

18 A. I believe so.

19 Q. After the detectives made calls using their radio, what  
20 happened next?

21 A. Then the dark-haired officer told me I could go.

22 Q. And did you go?

23 A. Yes.

24 Q. Where did you go?

25 A. I went to the bank on Northern Boulevard.

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D41nflo4 Acevedo - direct

- 1 Q. How much time elapsed between when Detective Hawkins said,  
2 When you hear police you stop, and when the dark-haired officer  
3 said you could go?  
4 A. About ten minutes.  
5 Q. What were you feeling during that ten-minute period?  
6 A. I was concerned. I didn't know what was going to happen  
7 next. I didn't know why they were holding me there.  
8 Q. Were you wondering why you were being held?  
9 A. Yes.  
10 Q. Did they ever tell you why you were being held?  
11 A. No.  
12 Q. After this incident, how were you feeling about the stop?  
13 A. I felt ashamed of it, and I felt that if it happened to me  
14 it could happen to anyone.  
15 Q. You mentioned earlier that you contacted CCRB, is that  
16 right?  
17 A. Yes, that same evening.  
18 Q. You contacted CCRB about this stop?  
19 A. Yes, through the NYPD website.  
20 Q. When you say "through the NYPD website," what do you mean?  
21 A. I was looking for just any kind of NYPD contact link.  
22 First I had called 911, and then I went to the website and  
23 found that CCRB contact.  
24 Q. Why did you call 911?  
25 A. Because I wanted to report what had happened.

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D41nflo4 Acevedo - direct

- 1 Q. After the call with 911, you found information about  
2 submitting a complaint to CCRB online?  
3 A. On the Internet, yes.  
4 Q. Did you contact the CCRB about this stop through some  
5 online format?  
6 A. Yes.  
7 Q. Did CCRB ever get in touch with you about the stop?  
8 A. Yes. They gave me a call probably the next day or two days  
9 later and then they had me come in a week or two later.  
10 Q. Why did you go to the CCRB to report this stop?  
11 A. Because I felt that the stop was unconstitutional and  
12 unfair.  
13 Q. Why did you think that?  
14 A. Because I felt like I was stopped without any cause, and it  
15 took them a while to identify themselves as officers.  
16 Q. Did CRRB interview you?  
17 A. Yes, they did.  
18 Q. How long was that interview?  
19 A. Probably about an hour.  
20 Q. Were you ever informed of the result of the CCRB's  
21 investigation?  
22 A. Yes. About a year and a few months later I received a  
23 letter from the NYPD.  
24 Q. So it took about a year and a few months -- I will rephrase  
25 it. I took over a year for you to hear about the results of

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D41nflo4 Acevedo - direct

1 the CCRB investigation, is that right?

2 A. Yes, that's correct.

3 Q. I'm going to show you a document that's been marked as  
4 Plaintiffs' Exhibit 5. Is plaintiff's' Exhibit 5 the letter  
5 you received from the NYPD about the CRRB findings?

6 A. Yes, it is.

7 MS. BORCHETTA: Your Honor, I would move to admit  
8 Plaintiffs' Exhibit 5.

9 MR. MARUTOLLO: No objection, your Honor.

10 THE COURT: Exhibit 5 is received.

11 (Plaintiffs' Exhibit 5 received in evidence)

12 Q. This is a letter dated August 20, 2008, correct?

13 A. Yes.

14 Q. This is from the department advocate's office, is that  
15 right?

16 A. Yes, that's correct.

17 Q. And that's from the police department, right?

18 A. Yes.

19 Q. It refers in this letter to the CCRB's findings, right?

20 A. Yes.

21 Q. Then, if you turn to the next page, that is a letter with  
22 the CCRB's findings, right?

23 A. Yes, it is.

24 Q. That is what you received?

25 A. Yes.

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D41nflo4 Acevedo - direct

1 Q. What was your understanding of what the CCRB found?

2 A. It found that three of the officers, the charges about  
3 having stopped me, those were substantiated.

4 Q. And did you have any other understanding of anything else  
5 that was substantiated or found through the CCRB?

6 A. Yes. They also were found to have not marked the entries  
7 in their memo book.

8 Q. Did you receive any other information about what, if  
9 anything, happened with respect to your complaint to CCRB?

10 A. No. This was the only letter I ever received from them.

11 Q. So you never heard anything about whether or not anything  
12 happened to the police officers as a result of the CCRB's  
13 findings, right?

14 A. That's correct.

15 Q. What, if any, reaction did you have upon being informed of  
16 the CCRB findings?

17 A. It felt like it was kind of -- I was glad to see it  
18 substantiated. But at the same time, as far as the questioning  
19 and the threatening to take me into the station house, those  
20 remained unsubstantiated.

21 Q. How did you feel about that?

22 A. I felt it was unfair.

23 Q. Ms. Acevedo, why did you decide to be a witness in this  
24 case?

25 A. Because I feel that the stop-and-frisk policy is

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D41nflo4 Acevedo - direct

1 unconstitutional and it makes people afraid in their own  
2 neighborhoods.

3 MS. BORCHETTA: No further questions. Thank you.

4 THE COURT: Mr. Marutollo.

5 DIRECT EXAMINATION

6 BY MR. MARUTOLLO:

7 Q. Good afternoon, Ms. Acevedo.

8 A. Good afternoon.

9 Q. At the time of your deposition on January 3, 2013, you were  
10 sure that the incident you testified about here today occurred  
11 on July 7, 2007, is that correct?

12 A. That's correct, because I hadn't seen the CCRB note that I  
13 had written to them.

14 Q. So at the time of your deposition three months ago you  
15 thought it had happened on July 7, 2007?

16 A. At that time I recalled it incorrectly, until I saw that  
17 actual date.

18 Q. You were also certain that this incident occurred on a  
19 Saturday, isn't that correct?

20 A. That's only because I thought it happened on July 7.

21 Q. But it actually happened on a Tuesday?

22 A. Yes.

23 Q. You testified during your direct examination that you left  
24 your home at 5 p.m. that day?

25 A. Yes, I did.

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D41nflo4 Acevedo - cross

- 1 Q. But at your deposition, you testified that you left your  
2 house at about 4 p.m., is that right?  
3 A. Yes. I did say that at the deposition, but I do believe it  
4 was a little later, around 5 o'clock.  
5 Q. But at your deposition you believed the bank closed at 5  
6 o'clock, isn't that right?  
7 A. On Saturdays, yes, it did.  
8 Q. You claimed you were walking down 43rd Street to your bank,  
9 correct?  
10 A. Yes.  
11 Q. You had to walk about six avenues to get to your bank?  
12 A. Yes. That's correct.  
13 Q. As you were walking, you were carrying a bag?  
14 A. Yes.  
15 Q. That bag contained bank documents, your wallet, and your  
16 keys, right?  
17 A. Yes, sir.  
18 Q. You were planning on meeting with a bank representative  
19 when you got to the bank, right?  
20 A. Yes.  
21 Q. And you were walking alone?  
22 A. Yes, I was.  
23 Q. The area near the bank was desolate, right?  
24 A. Correct.  
25 Q. I believe you testified during direct examination that it

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D41nflo4 Acevedo - cross

1 was two blocks of warehouses?

2 A. Yes. It's kind of -- just under the Long Island Rail Road  
3 there's just a few blocks of warehouses, and then it returns to  
4 being a more commercial area.

5 Q. And there are no residential buildings, right?

6 A. In that exact spot, no.

7 Q. You believe that the area you were walking through was a  
8 bad area, right?

9 A. No. That's incorrect.

10 Q. You met with investigators from CCRB about this incident,  
11 right?

12 A. Yes, I did.

13 Q. And you told the CCRB investigator the truth?

14 A. Yes, I did.

15 Q. And you told the CCRB investigator about the entire  
16 incident, right?

17 A. To the best of my knowledge at the time, yes.

18 MR. MARUTOLLO: Your Honor, I would like to play a  
19 short audio snippet. I have transcripts just for the ease of  
20 the Court. This is going to be a document with the Acevedo  
21 transcript No. 1.

22 MS. BORCHETTA: Got it.

23 MR. MARUTOLLO: This is going to be from the track  
24 that says Acevedo interview.

25 Q. I will hand you one as well, Ms. Acevedo.

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D41nfl04 Acevedo - cross

1 A. OK. Thank you.

2 MR. MARUTOLLO: I will hand one to the Court.

3 THE COURT: Thank you.

4 Q. So I would like to play or ask one of my colleagues,  
5 Mr. Kunz, to play a snippet from your June 6, 2007, phone  
6 interview with CCRB and the file titled Acevedo interview.

7 MR. MARUTOLLO: Please play from 4:05 to 4:09. I  
8 refer the Court to the middle of page 4, again of the  
9 transcript entitled Acevedo No. 1. If you could play that.

10 (Audio played)

11 Q. Was that your voice on that tape?

12 A. Yes, it was.

13 THE COURT: I didn't find that in the transcript.  
14 Where was that?

15 MR. MARUTOLLO: It is right in the middle of page 4,  
16 your Honor. It says, "So I started to run because I was kind  
17 of nervous. It was a bad area."

18 THE COURT: OK. Thank you.

19 Q. Now, actually I would like to show you, Ms. Acevedo, two  
20 photographs which have been marked as Defendants' Exhibit M9.  
21 I think those are going on the screen. There's actually two  
22 pages, Ms. Acevedo, in this exhibit, Defendants' Exhibit M9.

23 This is from your deposition.

24 First, for the photograph bearing Bates stamps No.  
25 NYC\_2\_00023467, does this photograph fairly depict the location

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D41nflo4 Acevedo - cross

1 of this incident in 2007?

2 A. Yes, it does. It's changed a little bit because it looks  
3 like there was some construction there in the past few years.

4 Q. But apart from the construction on the right side of the  
5 photograph, does the photograph accurately depict the location?

6 A. Not necessarily, because there used to be two businesses  
7 over there.

8 Q. Well, at your deposition were you shown this photograph?

9 A. Yes, I was.

10 Q. And did you mark an X where the encounter occurred on this  
11 photograph?

12 A. Yes, I did.

13 Q. For the next photo, bearing Bates stamps No.

14 NYC\_2\_00023468, you also marked an X on this photograph where  
15 the encounter took place, is that correct?

16 A. Correct.

17 MR. MARUTOLLO: OK. I'm sorry. Can we move to admit  
18 this exhibit into evidence, your Honor.

19 THE COURT: You mean the two photographs?

20 MS. BORCHETTA: No objection.

21 THE COURT: All right. What Exhibit? D and E?

22 MR. MARUTOLLO: M9.

23 THE COURT: The two photographs are both M9?

24 MR. MARUTOLLO: Yes, your Honor.

25 THE COURT: M9, consisting of two photographs, is

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1 received.

2 (Defendants' Exhibit M9 received in evidence)

3 Q. You claim that as you approached the Long Island Rail Road  
4 overpass, two men sitting in a blue van began to talk to you,  
5 correct?

6 A. Yes, correct.

7 Q. You claim that the van was parked, correct?

8 A. Yes.

9 Q. You could see the faces of the two men, correct?

10 A. I don't recall if I could see their faces, but I could  
11 tell -- I could see that there were two men sitting there and I  
12 could hear what they were saying to me.

13 Q. I am just going to hand you your deposition.

14 A. Thank you.

15 Q. Again, you were deposed in this matter?

16 A. Yes, I was.

17 Q. And you were asked questions, and you gave answers to those  
18 questions?

19 A. Yes.

20 Q. You told the truth, right?

21 A. To the best of my recollection, yes.

22 Q. I just want to turn your attention to page 36, lines 23  
23 through 25.

24 "Q. And when you --"

25 MS. BORCHETTA: I'm sorry. You are refreshing her

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1 recollection, right?

2 MR. MARUTOLLO: No, I believe she said she did not see  
3 the faces in the van. I am impeaching her.

4 MS. BORCHETTA: I'm sorry. I thought were refreshing  
5 year recollection.

6 Q. Page 36 lines 23 through 25:

7 "Q. And when you said it was facing you, does that mean that  
8 you could see the faces of the two men in the van?

9 "A. Yes."

10 Did you give that answer to that question?

11 A. Yes, I did.

12 Q. During your direct I believe you said that the first thing  
13 the men said to you was, Hey, can I see your tattoos?

14 MS. BORCHETTA: Objection.

15 A. No, it was several different sentences.

16 Q. At your deposition, however, you said that the first thing  
17 the men said to you was, Hey, can I see your tattoos?

18 Is that right?

19 A. I'm sorry. What line is that?

20 Q. Actually, if you could close the deposition for a moment.

21 A. OK.

22 Q. At your deposition when asked what was the first thing the  
23 men inside the van said to you, you said that the first thing  
24 they said was, Hey, can I see your tattoos?

25 Is that right?

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D41nflo4 Acevedo - cross

1 A. If you --

2 THE COURT: Do you remember what you said at the  
3 deposition.

4 THE WITNESS: If you're referring to what exactly was  
5 said in the deposition I would have to see it on the page just  
6 to be sure.

7 Q. OK. Let me turn your attention to page 38, lines 19  
8 through 21. I could read it to help refresh your recollection.

9 MS. BORCHETTA: If it's for refreshing her  
10 recollection, I would ask for her to read it herself.

11 THE COURT: That's fine. Can you take a look at those  
12 lines.

13 THE WITNESS: Yes.

14 THE COURT: Let me know when you're finished.

15 THE WITNESS: OK.

16 THE COURT: OK. She's finished.

17 Does that refresh your recollection as to what they  
18 said?

19 THE WITNESS: Yes.

20 THE COURT: Now what do you remember? That they said  
21 first?

22 THE WITNESS: Hey, can I see your tattoos?

23 THE COURT: That's your memory now? That is what they  
24 said?

25 THE WITNESS: To the best of my knowledge it might

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D41nflo4 Acevedo - cross

1 have been look at first they said, Hey, for a while and then  
2 they said, You got tattoos, or can I see your tattoos,  
3 something like that.

4 Q. But at your June 14, 2007 interview with the CCRB you said  
5 that the first thing the men said inside the van to you was,  
6 Hey, come here, right?

7 A. That was said. I am just -- I'm not sure if that was said  
8 before the tattoo statement.

9 Q. You never actually told CRRB that the first thing the men  
10 said was can I see your tattoos, right?

11 A. I did mention tattoos when I met with the CCRB, but  
12 unfortunately I am not sure if I specifically said that part.

13 Q. Well, let me again turn your attention to a CCRB audio  
14 recording that you were part of. I can again give you a  
15 transcript of that.

16 MR. MARUTOLLO: Can I ask that the witness please stop  
17 reading the deposition.

18 Q. I'm going to be handing you a transcript that's entitled  
19 Acevedo transcript No. 3.

20 For the audio purposes this is the track entitled  
21 Kristianna Acevedo Int.

22 MS. BORCHETTA: I'm sorry, which page did you say?

23 MR. MARUTOLLO: I didn't mention the page yet.

24 Mr. Kunz, let me refer to the page first. Page 8.

25 Mr. Kunz, if you could play from Kristianna Acevedo

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D41nfl04 Acevedo - cross

1 Int. 6:55 to 7:12.

2 THE COURT: Where is that?

3 MR. MARUTOLLO: Before you start playing it, if you  
4 want to follow along on the transcript, this is on page 8.

5 THE COURT: On the top?

6 MR. MARUTOLLO: I'm sorry. In the middle.

7 (Audio played)

8 Q. Just to be clear, the first thing they said was, Hey, come  
9 here, right?

10 A. That's what I told the CCRB, yes.

11 Q. You were truthful with the CCRB?

12 A. Yes, I was.

13 Q. The next thing you said was, Could I help you? Do you need  
14 directions?

15 Is that right?

16 A. I don't recall saying that, but it's in the recording.

17 Q. And you also said at your June 14, 2007 interview with CCRB  
18 that one of the men responded to you by saying, Oh, we just  
19 want to talk. Right?

20 A. Yes, that's correct.

21 Q. After they said they just wanted to talk, you claimed you  
22 continued walking, right?

23 A. Correct.

24 Q. You claim that when you were about 15 to 20 feet away the  
25 van started moving in reverse, right?

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D41nflo4

Acevedo - cross

- 1 A. Yes.
- 2 Q. And you couldn't hear exactly what the individuals in the  
3 van were saying when it was going in reverse, right?
- 4 A. They said something like, Hey, or something to me. They  
5 definitely didn't identify themselves as officers at that  
6 point.
- 7 Q. You claim that then you began to run toward a UPS truck,  
8 right?
- 9 A. After the van started jerking and they continued yelling,  
10 yes.
- 11 Q. And you claim that after speaking to the UPS driver  
12 Detective Hawkins got out of the van, right?
- 13 A. Yes.
- 14 Q. And Detective Hawkins is an African-American female?
- 15 A. Yes, she is.
- 16 Q. You claim that Detective Hawkins was wearing a tank top  
17 that said NYPD on it, right?
- 18 A. Yes.
- 19 Q. You claim that after exiting the vehicle Detective Hawkins  
20 said, When you hear police you stop, is that right?
- 21 A. Yes.
- 22 Q. And you claim at that moment when Detective Hawkins made  
23 that statement, that is when you were stopped and not free to  
24 leave, right?
- 25 A. Correct.

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D41nflo4 Acevedo - cross

1 Q. You believe that any time an officer asks you a question  
2 you do not feel free to leave, isn't that correct?

3 A. When they tell you stop, yes.

4 Q. That wasn't my question. I said do you believe that  
5 anytime an officer asks you a question, you do not feel free to  
6 leave, is that right?

7 A. If they have identified themselves as officers, yes, that's  
8 correct.

9 Q. So anytime an officer asks you a question, you don't feel  
10 free to leave?

11 A. Correct.

12 THE COURT: But that didn't happen here. They didn't  
13 ask you a question initially.

14 THE WITNESS: Not before -- they didn't identify  
15 themselves before they had asked that question.

16 THE COURT: What question? I'm sorry.

17 THE WITNESS: When they were saying, Hey, come here.

18 THE COURT: That's not a question, is it?

19 THE WITNESS: I guess not.

20 Q. You also claimed during your direct examination that  
21 Detective Hawkins banged your head on the side of a UPS truck?

22 A. It was that she shook me, causing my head to hit the UPS  
23 truck.

24 Q. But you didn't mention this head hitting the truck at  
25 either your June 6, 2007, CCRB interview or your June 14, 2007

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D41nflo4 Acevedo - cross

1 interview with CCRB, right?

2 A. I did mention being pushed up against the side of the  
3 truck, and I believe I said that I had been shaken.

4 MR. MARUTOLLO: Your Honor, I don't want to waste the  
5 Court's time in terms of a reading and hearing through the  
6 entire audio. Perhaps we can stipulate that that was not  
7 actually mentioned at a later point.

8 MS. BORCHETTA: Your Honor, I would stipulate that she  
9 told the CCRB that she was pushed up against the van and  
10 shaken, but she did not mention her head being hit.

11 THE COURT: OK.

12 Q. You claimed that you asked to see the officers' badges,  
13 correct?

14 A. Yes.

15 Q. You claim that Detective Hawkins showed you a badge with an  
16 emblem on it?

17 A. She showed me something that she had on a necklace, and I  
18 didn't think it was a badge.

19 Q. You said it had an emblem on it?

20 A. Yes.

21 Q. And you claim that the dark-haired officer showed you his  
22 badge, correct?

23 A. He flashed it really quick, but I couldn't see any numbers  
24 or names or anything.

25 Q. You stated that the dark-haired officer asked you for

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D41nflo4 Acevedo - cross

1 identification, correct?

2 A. Yes.

3 Q. You claim that the dark-haired officer searched your bag,  
4 correct?

5 A. Yes.

6 Q. On direct you claimed that the dark-haired officer searched  
7 your bag by looking in the linings, is that correct?

8 A. Yes.

9 Q. But you actually removed your identification from your own  
10 purse, isn't that correct?

11 A. Yes. After I heard the CCRB recording, I recalled that I  
12 had given them my ID initially, and it was him that put it back  
13 in.

14 Q. But you actually took your ID out of your own purse,  
15 correct?

16 A. I believe so.

17 THE COURT: Did there come a time when the police  
18 officers searched the bag by going through the lining?

19 THE WITNESS: Yes. That's when he put my wallet back  
20 in my purse.

21 THE COURT: And then he looked around the lining?

22 THE WITNESS: Yes, went through it.

23 Q. You never testified at the CCRB either June 14, 2007 or the  
24 June 6, 2007 that the dark-haired officer actually looked in  
25 the lining, did you?

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D41nflo4 Acevedo - cross

1 A. I did testify that he was going through my bag, he put it  
2 back into my bag.

3 Q. But not actually through the lining, he just put it back  
4 into the wallet, is that correct?

5 A. He searched around it, yes.

6 Q. You also claimed that Detective Hawkins searched your  
7 pockets in your shorts, correct?

8 A. Yes.

9 Q. But you never mentioned that search at any of your CCRB  
10 interviews, did you.

11 A. I don't recall.

12 Q. Perhaps we can stipulate later, but when you say you don't  
13 recall, you mean you didn't do that, you didn't say that or --

14 A. I don't recall what I said in the CCRB interviews. There  
15 were a few different interviews, phone, what I submitted via  
16 the web form and also a few in-person interviews.

17 Q. Just to be clear, you met with the CCRB three times,  
18 correct, at least three times?

19 A. I don't recall. I think it was twice but I don't recall.

20 Q. You did a photo array with CCRB?

21 A. Yes.

22 Q. And you had a phone interview with CCRB?

23 A. I believe so, yes.

24 Q. And you had at least one in-person meeting with CCRB, apart  
25 from the photo array?

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D41nflo4

Acevedo - cross

1 A. Yes.

2 Q. When the officers were asking you questions near the UPS  
3 truck, you claim that you were very calm, correct?

4 A. Yes.

5 MR. MARUTOLLO: Your Honor, if we could, again, we  
6 could do this I guess at a later point we can make a  
7 stipulation regarding those searches of Detective Hawkins  
8 searching the pockets, that they were not mentioned during the  
9 CCRB interviews.10 MS. BORCHETTA: Your Honor, I am not able to remember  
11 offhand whether specifically she mentioned the pockets being  
12 searched. If I can stipulate to that, we will. But she did  
13 mention that dark-haired officer went into her purse.14 THE COURT: He didn't ask for a stipulation on that.  
15 He asked for the one about the pockets in the shorts. Will you  
16 look at that and remember to tell me?

17 MS. BORCHETTA: Yes, your Honor.

18 Q. At the time of your January 3, 2013, deposition you  
19 indicated that the incident you testified about today was the  
20 only time you have ever been stopped by the NYPD in your life,  
21 correct?

22 A. Yes.

23 Q. You can't say that you were stopped because of your race,  
24 correct?

25 A. I am not sure why I was stopped.

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D41nflo4 Acevedo - cross

1 Q. Well, in fact, you believe that you appear white, correct?

2 A. I believe I'm kind of undiscernibly Hispanic.

3 THE COURT: What?

4 THE WITNESS: I don't necessarily think I'm  
5 discernibly Hispanic, but it depends on who the person is  
6 looking at me.

7 Q. If you would just turn your attention to the deposition  
8 transcript, page 62, lines 11 through 16.

9 "Q. What do you mean potentially" --

10 MS. BORCHETTA: Your Honor?

11 MR. MARUTOLLO: I'm sorry.

12 MS. BORCHETTA: Objection.

13 She just said exactly what she said at her deposition,  
14 but if you would like to read it anyway --

15 MR. MARUTOLLO: Your Honor, that's not exactly what  
16 she said. She's testifying -- this is for impeachment purposes  
17 here. The last two comments she made were not in line. Page  
18 14 -- I'm sorry, page 62, lines 14 through 16.

19 MS. BORCHETTA: Your Honor, I'm sorry. If he's going  
20 to read it, I ask that he read starting at line 11.

21 MR. MARUTOLLO: OK. Sorry. That's where I'm  
22 starting.

23 "Q. What do you mean potentially?

24 "A. There is a possibility, but I'm not sure how obvious I am  
25 as a Hispanic person, so --

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D41nflo4 Acevedo - cross

1 "Q. What do you mean?

2 "A. I think I probably appear white. I can't necessarily say  
3 that it's because of my race."

4 Did you give those answers to those questions?

5 A. I did.

6 Q. The officers did not say anything to you about your race  
7 during this entire encounter, correct?

8 A. No, they did not.

9 Q. And the officers did not use any racial slurs or epithets  
10 during this encounter?

11 A. No.

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

13 THE COURT: Yes.

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

15 THE COURT: Thank you.

16 Ms. Borchetta.

17 REDIRECT EXAMINATION

18 BY MS. BORCHETTA:

19 Q. Ms. Acevedo, do you recall Mr. Marutollo asking you about  
20 telling the CCRB that the area where you were stopped was a bad  
21 area?

22 A. Yes, I do recall.

23 Q. What did you mean by "bad area"?

24 A. By bad I didn't mean crimewise. I meant that it was  
25 desolate.

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D41nflo4 Acevedo - redirect

1 Q. And it was desolate, right?

2 A. Yes.

3 Q. And do you recall that Mr. Marutollo just asked you a  
4 series of questions suggesting that you were being inconsistent  
5 between your CCRB testimony and your testimony today?

6 A. Yes.

7 Q. But you told the CRRB that when you got to the UPS truck  
8 you heard a woman say, When you hear police, you stop, right?

9 A. Yes.

10 Q. And you testified to that today?

11 A. Yes.

12 Q. And you told the CCRB that the detectives asked you about  
13 why your identification was from Staten Island?

14 A. Yes.

15 Q. And you testified to that today, right?

16 A. Yes.

17 Q. And you told the CCRB that one of the detectives said,  
18 patting his side, what's the UPS guy going to do, we have guns,  
19 right?

20 A. Yes.

21 Q. And you testified to that today, right?

22 A. Yes, I did.

23 Q. You told the CCRB --

24 MR. MARUTOLLO: Objection, your Honor, just to the  
25 leading nature of these questions.

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D41nflo4

Acevedo - redirect

1 THE COURT: I don't have any problem with it. It  
2 saves time on redirect.

3 Go ahead.

4 Q. You told the CCRB that Detective Hawkins pushed you up  
5 against the UPS truck, right?

6 A. Yes.

7 Q. You testified to that today, right?

8 A. Yes.

9 Q. And you told the CCRB that Detective Hawkins was holding  
10 your wrists, right?

11 A. Yes.

12 Q. And you testified to that today, right?

13 A. Correct.

14 Q. And you told the CCRB that one of the male detectives put  
15 his hands in your bag, right?

16 A. Yes.

17 Q. And he did, right?

18 A. Yes.

19 MS. BORCHETTA: Sorry. Just one moment.

20 I have no further questions, your Honor.

21 Thank you.

22 THE COURT: Anything further, Mr. Marutollo?

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

24 THE COURT: OK. All set. Thank you.

25 THE WITNESS: Should I just leave all this?

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D41nflo4 Acevedo - redirect

1 THE COURT: Yes. Just leave it there.

2 Thank you.

3 (Witness excused)

4 CLIVE LINO,

5 called as a witness by the Plaintiffs,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MARTINI:

9 Q. Good afternoon, Mr. Lino.

10 A. Good afternoon.

11 Q. Mr. Lino, where do you live?

12 A. 2238 Creston Avenue, Bronx, New York.

13 Q. How old are you?

14 A. 32.

15 Q. Please describe your educational background beginning with  
16 college.

17 A. I have a bachelor's in sociology from St. John's Mercy  
18 College and a master's in adolescent education from Mercy  
19 College.

20 Q. Are you currently employed?

21 A. Yes, I am a social worker at Catholic Guardian Society and  
22 Home Bureau.

23 Q. What is the Catholic Guardian Society and Home Bureau?

24 A. It's nonprofit faith-based organization.

25 Q. Mr. Lino, you are here to testify about three

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D41nflo4 Lino - direct

1 stop-and-frisk encounters you had with the NYPD, correct?

2 A. Yes.

3 Q. I would like to direct your attention to the night of  
4 February 5, 2008.

5 Please tell the Court what you did that evening.

6 A. I was going to the store, to the Chinese restaurant with a  
7 friend.

8 Q. Which friend?

9 A. James.

10 Q. Approximately what time was this?

11 A. Around 8 p.m.

12 Q. Where is the Chinese restaurant?

13 A. On 103rd Street and Lexington Avenue.

14 Q. Where were you living at this time?

15 A. On 102nd Street and Third Avenue.

16 Q. How far away from that is the Chinese restaurant?

17 A. Two blocks.

18 Q. What happened after you and James went to get the Chinese  
19 food?

20 A. We went into the Chinese restaurant, ordered the food, and  
21 we decided to wait in front of the restaurant for the food to  
22 be ready because it was kind of nice outside.

23 Q. Where were you standing while you were waiting outside?

24 A. Directly in front of the Chinese restaurant right next to  
25 the entrance.

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D41nflo4 Lino - direct

1 Q. Which direction were you facing?

2 A. We were facing with our backs to the restaurant and our  
3 face was to the street.

4 Q. Were either you or James moving around at all?

5 A. No.

6 Q. Were either of you shuffling your feet?

7 A. No.

8 Q. Mr. Lino, I would like to show you a page of Defendants'  
9 Trial Exhibit M10, which is Bates numbered NYC\_2\_00028764.

10 Would you please take a look at that?

11 A. Yes.

12 Q. Mr. Lino, do you recognize what this photo depicts?

13 A. It is the Chinese restaurant on 103rd Street and Lexington,  
14 and it shows the intersection of 103rd Street and Lexington.

15 Q. Is the Chinese restaurant that you and James went to  
16 depicted in that photograph?

17 A. Yes, Great Wok.

18 Q. Is this photo a fair and accurate representation of that  
19 intersection and the restaurant?

20 A. Yes.

21 MS. MARTINI: Your Honor, I would like to move that  
22 page of Defendants' Trial Exhibit M10 into evidence.

23 MR. KUNZ: No objection.

24 THE COURT: That page of M10 is received.

25 (Plaintiffs' Exhibit page NYC\_2\_00028764 of M10

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D41nfl04 Lino - direct

1 received in evidence)

2 Q. Mr. Lino, what were you wearing that night?

3 A. I had this light -- it's like a tannish beige brown State  
4 Property jacket.

5 Q. When you say State Property, what do you mean?

6 A. That's the name of the brand.

7 Q. Was the jacket a winter jacket?

8 A. No. It was a thin, like spring jacket.

9 Q. What was James wearing?

10 A. He had the same jacket, but it was kind of like a greenish  
11 olive color.

12 Q. Do you know the brand of his jacket?

13 A. It was a State Property jacket.

14 Q. How do you know the brand of his jacket?

15 A. We went to buy them like the same time.

16 Q. Was either jacket blue or black in color?

17 A. No.

18 Q. Did either of your jackets have a hood?

19 A. No.

20 Q. Did either of your shirts have a hood?

21 A. No.

22 Q. Were you holding anything while you were waiting outside  
23 for your food?

24 A. No.

25 Q. Did you have anything in your pockets?

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D41nflo4 Lino - direct

1 A. I had my keys and the money to pay for the Chinese food.

2 Q. Did there come a time when you were approached by NYPD  
3 officers.

4 A. Yes, while we were waiting outside the restaurant for the  
5 food to be finished, some officers had approached us.

6 Q. How long were you waiting outside before the officers  
7 approached you?

8 A. Well, less than five minutes.

9 Q. Please describe for the Court what you remember about the  
10 officers.

11 A. Two officers, male. They were dressed in their uniforms,  
12 one Hispanic -- I mean one black and one Caucasian.

13 Q. Do you now know either of the officers' names?

14 A. One officer I know was Kovall. The other officer I don't  
15 remember.

16 Q. You mentioned one officer was black and one officer was  
17 white. Which officer was Officer Kovall?

18 A. The white officer.

19 Q. What happened once the officers approached you?

20 A. They were asking what were we doing on the corner, where  
21 were we going, where were we coming from, where do we live, do  
22 we have ID.

23 Q. How, if at all, did you respond?

24 A. I told him them I didn't have my ID, because we had just  
25 came down to go to the Chinese restaurant, and we was going

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D41nflo4 Lino - direct

1 right back upstairs.

2 Q. Where were the officers standing when they were asking you  
3 and James these questions?

4 A. They were in front of James and I, and their backs were  
5 facing the street.

6 Q. Did you attempt to leave at all while the officers were  
7 asking you these questions?

8 A. No.

9 Q. Why not?

10 A. Because I didn't want the situation to escalate.

11 Q. Did the officers tell you why they stopped you?

12 A. Eventually, the -- I believe it was the black officer, he  
13 said that they stopped us because of the coat that James was  
14 wearing, it fit the description of a coat that a suspect was  
15 wearing.

16 Q. Did either officer say anything else about why they stopped  
17 you?

18 A. The black officer said that they had orders to stop anyone  
19 on the corner whenever they felt like it, on that corner  
20 whenever they felt like it.

21 Q. Did the officers talk to anyone else while they were  
22 questioning you?

23 A. No. But the black officer received a phone call on his  
24 phone and he just said hello and kind of walked away.

25 Q. You said his phone. What this a cell phone that he was

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D41nflo4 Lino - direct

1 carrying?

2 A. Yeah.

3 Q. Did you hear his cell phone ring?

4 A. Yes.

5 Q. Where was Officer Kovall at the time when the black officer  
6 took the call on the cell phone and walked away?

7 A. He was still in front of James and I.

8 Q. Did the black officer say anything to you about the phone  
9 call that he took?

10 A. No.

11 Q. Did either officer search or frisk you?

12 A. Yes. The black officer searched me. He tapped my pockets  
13 and my waist.

14 Q. Where were you standing when he frisked you?

15 A. We were standing in front of the Chinese restaurant where,  
16 my hand against the glass turned around, so now I was facing  
17 inside the Chinese restaurant.

18 Q. Why were you now facing in that direction?

19 A. Because they asked us to turn around.

20 Q. Did either officer ask if he could search or frisk you?

21 A. No.

22 Q. What happened after the officer patted you down?

23 A. Say that again.

24 Q. After you were patted down, what happened next?

25 A. They kind of like put more of their attention towards

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D41nfl04 Lino - direct

1 James, and the woman in the Chinese restaurant like gave me a  
2 signal kind of like the food was ready, and officer allowed me  
3 to go in and pay for the food.  
4 Q. So you went back inside the Chinese restaurant?  
5 A. Yes.  
6 Q. How long were you inside the restaurant?  
7 A. For about a minute, maybe less than a minute.  
8 Q. What happened after you exited the restaurant?  
9 A. When I came out I thought we were going to be getting ready  
10 to leave, like they was wrapping it up. While I exited the  
11 store a car pulled up and on three plainclothes officers came  
12 out.  
13 Q. You said three officers. Were the officers male or female?  
14 A. They were all male.  
15 Q. You said they were in plainclothes.  
16 How do you know that they were officers?  
17 A. Because they spoke -- when they walked towards us they  
18 spoke to the officers who were already there, and they were  
19 able to have access to us.  
20 Q. What happened once the additional three officers arrived?  
21 A. They started questioning us again. They was asking us like  
22 the same questions we were asked by the first set of officers.  
23 And then they told the officers that they can go run our ID,  
24 which they did -- I mean, they told them to go run our names,  
25 which they did, and they searched us again.

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D41nflo4 Lino - direct

- 1 Q. You said "they." The additional three officers searched  
2 you?  
3 A. Yes.  
4 Q. Can you describe what they did?  
5 A. They did the same thing. It was a pat of the waist, the  
6 front pockets, and the back pockets.  
7 Q. Did all three officer pat you down?  
8 A. No, just one.  
9 Q. Where were the original two officers when the new officer  
10 patted you down?  
11 A. They had went to the car to run our names.  
12 Q. What happened after the second officer patted you down?  
13 A. The first two officers came back from the car and they  
14 mentioned something about a summons that James and I had  
15 received in January, and then the other, the second set of  
16 officers ended up leaving.  
17 Q. Did you ask any of the officers for their badge number or  
18 names?  
19 A. After the three officers left, I asked Officer Kovall and  
20 the African-American officer for their badges. The  
21 African-American officer looked at me and walked way; and  
22 Officer Kovall, he gave me his, but he did it in a sarcastic  
23 kind of way.  
24 Q. When you say sarcastic, can you describe that for the  
25 Court.

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D41nflo4 Lino - direct

1 A. I think he was trying to intimidate me out of getting his,  
2 so he said, well, since we're playing the name game, why don't  
3 you give me your information again, so he pulled out his pad  
4 and took my information.

5 (Continued on next page)

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D418FLO5 Lino - direct

- 1 Q. Did Officer Kovall eventually give you his badge number or  
2 name?  
3 A. Yes.  
4 Q. Did he give you both?  
5 A. I'm not exactly sure right now, but I got his name and his  
6 badge number.  
7 Q. Did any of the officers give you a ticket or summons?  
8 A. No.  
9 Q. Did you write a complaint to the CCRB about this incident?  
10 A. Yes.  
11 Q. Do you understand that when I say CCRB, I am referring to  
12 the Civilian Complaint Review Board?  
13 A. Yes.  
14 Q. Now I would like to direct your attention to the night of  
15 February 24, 2011.  
16 A. Yes.  
17 Q. What were you doing that evening?  
18 A. I had went to my mom's apartment for a birthday.  
19 Q. Where was that?  
20 A. 102nd Street and Third Avenue.  
21 Q. What did you do after that?  
22 A. I left to go to the subway to head back home.  
23 Q. Approximately what time was this?  
24 A. I'm not sure. It was in the evening.  
25 Q. What were you wearing that night?

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D418FLO5 Lino - direct

- 1 A. My red Pelle Pelle leather jacket.  
2 Q. What is Pelle Pelle?  
3 A. That's just a name brand.  
4 Q. Were you carrying anything?  
5 A. I had a grocery bag with a Tupperware with leftover food in  
6 it.  
7 Q. Can you describe the Tupperware container?  
8 A. Small, rectangular, plastic.  
9 Q. Could you describe the bag that you were carrying?  
10 A. Standard grocery bag, white shopping bag.  
11 Q. What subway station were you going to?  
12 A. 103rd and Lexington.  
13 Q. What happened when you entered the subway station?  
14 A. I noticed there were two officers on the left side of the  
15 train station. They were speaking to someone. They went  
16 towards the downtown side and I went down to the uptown side of  
17 the train.  
18 Q. Please describe what the officers looked like.  
19 A. One white, one Hispanic, both males. They had their  
20 uniforms on.  
21 Q. Do you now know either of the officers' names?  
22 A. One officer is Figueroa, the other officer I don't remember  
23 his name.  
24 Q. Which officer was Officer Figueroa?  
25 A. The Hispanic officer.

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D418FLO5 Lino - direct

1 Q. What happened once you were on the platform for the uptown  
2 6 train?

3 A. I noticed that the train was about to enter the  
4 platform -- into the train station, and at the same time, those  
5 same two officers had just came from upstairs and entered the  
6 platform.

7 Q. What happened next?

8 A. The train was pulling in the station and they walked  
9 towards me. And then I kind of moved out of the way because I  
10 thought they were going to walk past me, but one of them  
11 stopped behind me and one of them stopped in front of me.

12 Q. Which officer stopped behind you and which officer stopped  
13 in front of you?

14 A. Figueroa was behind me on the right and the other officer  
15 was in front of me on the left.

16 Q. What happened once the officer stopped on either side of  
17 you?

18 A. Officer Figueroa put his hand in my pocket and then in my  
19 jacket pocket, right pocket, and I kind of brushed it away and  
20 stepped aside at the same time.

21 Q. How do you know he put his hand in your pocket?

22 A. I felt a tug on my jacket pocket.

23 Q. Did you have anything in that pocket?

24 A. I had my MetroCard.

25 Q. Did you have anything else?

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D418FLO5 Lino - direct

1 A. No, that's it.

2 Q. Did you have anything in your other jacket pocket?

3 A. No.

4 Q. Did you have anything in your pants pockets?

5 A. Probably my keys and my wallet.

6 Q. Did either officer say anything to you before Officer  
7 Figueroa put his hand in your pocket?

8 A. No.

9 Q. You mentioned the train was coming. Is it possible that  
10 either officer said something and you didn't hear it?

11 A. No. Because I heard everything else and -- I just heard  
12 everything, and they were standing like right next to me. It  
13 would be impossible for me not to hear if they had said  
14 something.

15 Q. What happened once Officer Figueroa put his hand in your  
16 pocket?

17 A. I had brushed his hand away and stepped back, and I was  
18 like, what's wrong, and they didn't say anything.

19 Q. You also mentioned there was a train coming. Did you  
20 attempt at any time to get on that train?

21 A. Well, after I brushed his hand and stepped aside and I  
22 said, what's the problem, they didn't say anything. So I was  
23 going to take a step on to the train, but then one of them  
24 stopped me and said, oh, well -- something to the effect, you  
25 need to wait with us, or can you wait with us, so I missed the

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D418FLO5 Lino - direct

1 train.

2 Q. How, if at all, did you respond to the officers when they  
3 told you you needed to wait?

4 A. I asked them what was the problem, why were they stopping  
5 me, just those type of stuff.

6 Q. How, if at all, did the officers respond?

7 A. The white officer said, excuse my language, "If you shut  
8 the fuck up, we'll tell you why we stopped you."

9 Q. What did the officers do or say next?

10 A. They asked me to put my bag of food on the floor, and I  
11 told them no because it's the New York City train station,  
12 which is filthy, and if it was them they wouldn't want to do  
13 it. And the Hispanic officer eventually said, Just put the  
14 F'ing bag down, and he reached for it. Then I noticed there  
15 was a bench so I just placed the bag on the bench.

16 Q. Did either officer tell you why he wanted you to put the  
17 bag of food down?

18 A. No.

19 Q. Did the officers ask you for ID?

20 A. Yes. And I produced it.

21 Q. Did either officer search or frisk you?

22 A. One of them asked me if I mind being searched, and I said  
23 yeah, but they proceeded to search me anyway.

24 Q. When you say they proceeded to search you, can you describe  
25 exactly what they did?

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D418FLO5 Lino - direct

- 1 A. The white officer patted my waist and my front pockets and  
2 Officer Figueroa went in my back pockets.  
3 Q. You said he went in your back pocket, is that right?  
4 A. Yes.  
5 Q. What happened when the officers were patting you down and  
6 searching you?  
7 A. I looked back to see what he was doing. Then he asked me  
8 if I had a fucking problem.  
9 Q. Where were your hands at this time?  
10 A. By my side.  
11 Q. How, if at all, did you respond to Officer Figueroa asking  
12 you if you had an F'ing problem?  
13 A. I told him I did have a problem because he went in my  
14 pockets. I didn't do anything. I didn't know why they were  
15 stopping me. They didn't tell me why they were stopping me.  
16 So I told them I had a problem.  
17 Q. Did either officer find anything in your pockets?  
18 A. No.  
19 Q. Did they ever tell you why you were being stopped?  
20 A. I think it was the white officer, he eventually said that I  
21 was being stopped because about three to five days ago a  
22 shooting suspect was wearing a jacket similar to mine.  
23 Q. You mentioned you were wearing a red leather jacket that  
24 night?  
25 A. Yes.

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D418FLO5 Lino - direct

1 Q. Mr. Lino, I would like to show you what has been marked as  
2 Defendants' Exhibit A9. Please take a look. Do you recognize  
3 what is depicted in these photographs?

4 A. Yes. It's my red Pelle Pelle jacket.

5 Q. Is this the jacket that you were wearing that night?

6 A. Yes.

7 MS. MARTINI: Your Honor, I would like to move  
8 Defendants' Exhibit A9 into evidence.

9 MR. KUNZ: No objection.

10 THE COURT: A9 is received.

11 (Defendants' Exhibit A9 received in evidence)

12 THE COURT: What does it say on it?

13 THE WITNESS: Pelle Pelle. P-E-L-L-E, and then on the  
14 other side it's the same thing, P-E-L-L-E.

15 Q. Mr. Lino, does your jacket have any stripes on it?

16 A. No.

17 Q. Does your jacket have any numbers on the front?

18 A. No.

19 Q. Have you ever seen anyone else wearing that jacket?

20 A. Yes. It's a popular jacket.

21 Q. Have you ever owned other Pelle Pelle jackets?

22 A. I own maybe six or seven of them.

23 Q. Have you ever owned any other red Pelle Pelle jackets?

24 A. One.

25 Q. Other than this one?

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D418FLO5 Lino - direct

1 A. Yeah. So two.

2 Q. Did both of your red Pelle Pelle jackets say Pelle Pelle on  
3 the front?

4 A. The other one doesn't.

5 Q. Did the officers ever show you a photo of the jacket they  
6 mentioned?

7 A. No.

8 Q. Did they ever show you a photo of the suspect that they  
9 mentioned?

10 A. No.

11 Q. Did there come a time when you exited the platform?

12 A. Yeah, when they took me upstairs.

13 Q. You say they took you upstairs. Could you just describe to  
14 the Court how it came to be that you were upstairs?

15 A. The white officer asked Officer Figueroa if he wants to do  
16 it, and then he said yeah. And then they asked me to come with  
17 them upstairs. And I asked them if I was under arrest, because  
18 if I wasn't, I didn't want to go. They said I was not under  
19 arrest, but they were forceful, just come on, come on, they got  
20 aggressive. One was in front of me and one was behind me.  
21 They were making sure that I was making paces towards moving.  
22 So I stopped about two or three times and told them I didn't  
23 want to go upstairs, but they just kind of like forced me up  
24 there anyway.

25 THE COURT: Did you feel free to just walk away?

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D418FLO5 Lino - direct

1 THE WITNESS: No. If I would have walked away, I  
2 think I would have got arrested.

3 Q. Why didn't you want to go upstairs?

4 A. Because I had just used my last fee on my MetroCard. I  
5 didn't do anything wrong. I didn't think I had to go upstairs.  
6 They didn't even tell me why they were taking me upstairs.

7 Q. Did you tell the officers why you didn't want to go  
8 upstairs?

9 A. Yeah.

10 Q. How far is it from where you and the officers were standing  
11 on the platform to exit the train station and go outside?

12 A. We were in the middle of the platform. So we had to walk  
13 half a length of the platform, and then up two flights of steps  
14 to the turnstile, and up another two flight of steps.

15 Q. What happened once you got outside of the subway station?

16 A. Officer Figueroa stood in front of me with his hand on his  
17 gun, and the other officer took my ID to the police van.

18 Q. Did you see any other officers when you got outside?

19 A. No.

20 Q. Do you know what the other officer did when he went to the  
21 police van?

22 A. I assume he ran my ID.

23 Q. Why do you assume that?

24 A. Because after he came back he told Officer Figueroa that I  
25 was clean.

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D418FLO5 Lino - direct

1 THE COURT: That I was what?

2 THE WITNESS: Clean.

3 Q. At that point did the encounter end?

4 A. No. I asked for my ID. They actually walked me all the  
5 way back down to the platform where they removed me from the  
6 first time.

7 Q. Did there come a time when they gave you your ID back?

8 A. They gave me my ID back right before they left, and then I  
9 tried to get their badge numbers.

10 THE COURT: Tried to get their what?

11 THE WITNESS: Badge numbers.

12 Q. What happened when you tried to get their badge numbers?

13 A. I pulled out my phone and then the white officer said, Oh,  
14 you're not taking no fucking pictures of me. And then I asked  
15 Officer Figueroa for his stuff, and then he kind of like  
16 mumbled it and walked away. I asked him two more times, and he  
17 said, I already gave it to you, if you didn't get it the first  
18 time too bad. I just remembered it and punched it in my cell  
19 phone so that's how I got it.

20 Q. Just to be clear, the white officer's response to you  
21 taking out your phone, he cursed?

22 A. Yes.

23 Q. Had Officer Figueroa already given you his badge number?

24 A. No.

25 Q. Were you ultimately able to get either officer's name or

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D418FLO5 Lino - direct

1 badge number?

2 A. Yes.

3 Q. Did either officer give you a ticket, summons or card  
4 explaining why you were stopped?

5 A. No.

6 Q. How long did the entire encounter last?

7 A. About 20 to 30 minutes.

8 Q. Did you file a complaint with the CCRB about this incident?

9 A. Yes.

10 Q. Did you give an interview about the stop to the CCRB  
11 investigator?

12 A. Yes.

13 Q. Did you hear from the CCRB after the interview?

14 A. Yes. They sent me a notice stating that the complaint was  
15 substantiated.

16 Q. Mr. Lino, I would like to show you a page of what is  
17 Plaintiffs' Trial Exhibit 194, Bates numbered PL-000470 through  
18 472.

19 Mr. Lino, do you recognize that document?

20 A. Yes.

21 Q. What is it?

22 A. It's a notice from the CCRB dated July 23, 2012.

23 MS. MARTINI: I would like to move these Bates  
24 numbered pages of Plaintiffs' Exhibit 194 into evidence.

25 MR. KUNZ: Just to be clear, what are the Bates

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D418FLO5 Lino - direct

1 numbers?

2 MS. MARTINI: 470 to 472.

3 MR. KUNZ: No objection.

4 THE COURT: It is exhibit what?

5 MS. MARTINI: 194.

6 THE COURT: Those pages of 194 are received.

7 (Plaintiffs' Exhibit 194, Bates Nos. PL 000470-000472  
8 received in evidence)

9 Q. Do you know what, if anything, happened to the officers as  
10 a result of the CCRB investigation?

11 A. No. After this notice I never heard anything from anyone.

12 Q. You never heard anything after you received this letter  
13 from the CCRB?

14 A. Correct.

15 Q. Were you ever contacted by anyone from the NYPD after  
16 receiving this letter?

17 A. No.

18 Q. I also want to just briefly ask you about an encounter you  
19 had with the NYPD on August 3, 2008?

20 A. Yes.

21 Q. In order to stay within the Court's prior rulings, I  
22 specifically want to ask you what you recall about what the  
23 NYPD officer said during this stop.

24 Just briefly, where were you when you were stopped?

25 A. In the lobby of building 210.

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D418FLO5 Lino - direct

- 1 Q. When you say building 210, was that your apartment  
2 building?  
3 A. At the time, yeah.  
4 Q. Who stopped you?  
5 A. Officer Hassan, and I forgot the other officer's name.  
6 Q. During the stop, did Officer Hassan say anything to you  
7 which you felt was racially insensitive?  
8 A. His cell phone went off and he had a 50 Cent ring tone, and  
9 he was like, Here is a little rap for you, this should calm you  
10 down.  
11 Q. Who is 50 Cent?  
12 A. A popular hip hop artist.  
13 Q. Did you know the song that was played on his ring tone?  
14 A. I didn't know the song, but I know who 50 Cent is.  
15 Q. I didn't hear you.  
16 A. I didn't know the song, but I knew who the artist was.  
17 Q. After Officer Hassan said, "Here is a little rap for you,  
18 this should calm you down," what, if anything, did you do?  
19 A. I said, See, that's your problem, you're stereotyping  
20 because rap is not my number one genre of music.  
21 Q. How did Officer Hassan respond, if at all?  
22 A. He was like, Well, you see your problem now, your attitude  
23 is the reason you get stopped.  
24 Q. How did Officer Hassan's comments make you feel?  
25 A. I felt uncomfortable. I thought it was wrong. I thought

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D418FLO5 Lino - direct

1 it was racially motivated. I didn't think that's the way he  
2 should be representing the NYPD. I just all around thought it  
3 was wrong and I felt uncomfortable with it.

4 Q. Did you write a complaint to the CCRB about this stop?

5 A. Yes.

6 Q. Mr. Lino, why did you agree to testify in this case?

7 A. Because I want to see something done about this stop and  
8 frisk -- the whole stop and frisk policy. I have a son now,  
9 and I don't want the same thing to eventually happen to him in  
10 the future. And I just want to see something done so that I  
11 don't get stopped again for no reason.

12 MS. MARTINI: No further questions.

13 THE COURT: Thank you.

14 Mr. Kunz.

15 CROSS-EXAMINATION

16 BY MR. KUNZ:

17 Q. Good afternoon, Mr. Lino.

18 A. Good afternoon.

19 Q. Good to see you again.

20 So we are here today to talk about two occasions, I  
21 guess three occasions, when you have had interactions with the  
22 police, is that correct?

23 A. Yes.

24 Q. So the one that happened in the housing development, that  
25 was the Washington Houses where you lived at the time?

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D418FLO5 Lino - cross

1 A. Yes.

2 Q. At 102nd and Third Avenue?

3 A. Yes.

4 Q. That one at 102nd and Third Avenue, that was in August of  
5 2008?

6 A. August 2008, yes.

7 Q. The other two stops that we are here to talk about both  
8 happened on the same corner, 103rd and Lexington?

9 A. No.

10 Q. One of them happened at street level and one of them  
11 happened down in the subway, but it's all on that same corner?

12 A. Yeah.

13 Q. The first one that was in that corner, that was in February  
14 2008?

15 A. Yeah.

16 Q. The next one was a little over three years later in  
17 February 2011?

18 A. Yes.

19 Q. Back in 2008, you lived in the Washington Houses, correct?

20 A. Yes.

21 Q. This is a housing development?

22 A. Yes.

23 Q. I am going to show you a two-page exhibit that's been  
24 marked as Defendants' Exhibit H10 for purposes of this  
25 deposition. Look at both sides, if you would.

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D418FLO5 Lino - cross

1 A. You want me to focus on a particular part of this?

2 Q. You're looking at the first side of it?

3 A. Yeah.

4 Q. What is the first side of it?

5 A. It looks like a map of the east side of Harlem.

6 Q. Could you flip the document over? What is on the backside  
7 of that?

8 A. It's a map of some streets, Third Avenue to Second Avenue.

9 Q. On the backside of it there, is that a closer view of the  
10 area around 103rd and Lexington Avenue?

11 A. Say that again.

12 Q. Does the intersection of 103rd and Lexington Avenue appear  
13 on the back page of that?

14 A. Yes.

15 MR. KUNZ: I would move both of these exhibits into  
16 evidence.

17 MS. MARTINI: No objection.

18 THE COURT: And the numbers?

19 MR. KUNZ: H10.

20 THE COURT: H10 is received.

21 (Defendants' Exhibit H10 received in evidence)

22 Q. Showing you the backside of H10, which is bearing Bates  
23 stamp number NYC\_2\_00025275, is it fair to say that right here  
24 in the middle of the map, 103rd and Lexington Avenue, this is  
25 the intersection where the vicinity of the two incidents that

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D418FLO5 Lino - cross

1 occurred?

2 A. Yeah.

3 Q. In February of 2008 and then the second one in February of  
4 2011?

5 A. Yes.

6 Q. Then over here, right about 102nd and Third Avenue, this is  
7 the vicinity of the housing development that you lived in at  
8 the time?

9 A. Yes.

10 Q. Now, you said that this side of the map here depicts -- I'm  
11 sorry, this is Bates stamp number ending in 25274, Defendants'  
12 Exhibit H10 for this trial. You said that this picture here,  
13 or map here is a portion of East Harlem, I believe you said?

14 A. Yeah.

15 Q. In East Harlem, this is where the Washington complex is,  
16 correct?

17 And that's a pretty large housing development, is that  
18 correct?

19 A. Yeah.

20 Q. I think you testified at your deposition that there are 14  
21 buildings in the development?

22 A. Well, if you include Lexington Houses, then yeah.

23 Q. Lexington Houses is another development that is adjoining  
24 it, it's just to the north?

25 A. No. Sometimes it's called Washington/Lexington Houses.

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D418FLO5 Lino - cross

1 Sometimes they include it all as one complex and sometimes they  
2 don't. I don't know when they do and when they don't.

3 Q. From what streets does the whole complex span?

4 MS. MARTINI: Objection, your Honor. I don't see the  
5 relevance of this line of questioning. Your ruling was very  
6 clear and limited the stop that occurred in the Washington  
7 Houses building only to what was said during the encounter.

8 MR. KUNZ: I am not getting into the facts of that  
9 incident. I am just laying background about the neighborhood.

10 THE COURT: To find out if it is a high crime area?

11 MR. KUNZ: Yes.

12 THE COURT: OK.

13 You want to hear the question? I think he said, from  
14 what streets does the whole complex span?

15 A. It goes from 96th Street to 104th Street, and it goes from  
16 First Avenue to Park Avenue.

17 THE COURT: OK. Thank you.

18 Q. Now, isn't it true that there is a problem with crime in  
19 and around the Washington/Lexington Houses?

20 A. I don't know.

21 Q. Well, you testified at your deposition that it's common to  
22 see people with open containers of alcohol in the area,  
23 correct?

24 A. That doesn't mean there is crime.

25 Q. You testified that in your deposition?

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D418FLO5 Lino - cross

1 A. Yes.

2 Q. And you know it's illegal to have an open container of  
3 alcohol in public in New York City?

4 A. Yes.

5 Q. You also testified at your deposition that you occasionally  
6 see people smoking marijuana in and around the Washington  
7 Houses, isn't that correct?

8 A. Yes.

9 Q. You said you see graffiti on the walls of your building and  
10 other buildings in the development?

11 A. I'm not sure if I said that.

12 Q. Would you like me to show you your deposition?

13 A. I might have said it. Right now I'm not sure if I said it.  
14 If it's on there I said it.

15 THE COURT: If it's there, he acknowledges it. And  
16 you represent that it is there?

17 MR. KUNZ: Yes, your Honor.

18 Q. You also see broken bottles, broken windows, things like  
19 that?

20 A. Yes.

21 Q. In fact, you have heard gunshots in and around the  
22 Washington and Lexington Houses, isn't that correct?

23 A. Yes.

24 Q. The lock to the front door of your building, I believe it  
25 was 210 East 102nd, the front door of that building was broken

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D418FLO5 Lino - cross

1 from time to time, correct?

2 MS. MARTINI: Objection.

3 THE COURT: What is the objection.

4 MS. MARTINI: He just explained that he was getting  
5 into the high crime nature of the neighborhood. These are very  
6 specific questions to his building that you said you didn't  
7 want to hear about.

8 THE COURT: It is part of the crime in the building if  
9 his building door lock was broken.

10 MS. MARTINI: The building is a NYCHA building, and  
11 that's the stop that you said you didn't want to hear the  
12 details about.

13 THE COURT: I don't want to go into the stop in the  
14 NYCHA building, but the fact that the front door lock was  
15 broken, I will take that.

16 Q. So the lock would be broken from time to time?

17 A. Yeah.

18 Q. There is also gang activity in the area, correct?

19 A. Yeah.

20 Q. In fact, you said at your deposition that there are a lot  
21 of Bloods in the area, correct?

22 A. Yeah. But I also said in my deposition that this is New  
23 York City so there is a little bit of crime everywhere. So if  
24 you want to say how much crime is lot of crime, a little bit of  
25 crime, I couldn't tell you that, because as a resident of New

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D418FLO5 Lino - cross

1 York City, I feel there is some crime anywhere you go in New  
2 York.

3 Q. OK. I appreciate that. But particularly in your  
4 neighborhood, there are a lot of Blood members, correct?

5 A. Yeah.

6 Q. And Bloods is a violent street gang?

7 A. Yes.

8 Q. You grew up in the area, correct?

9 A. Yes.

10 Q. You have lived there since 1991?

11 A. Yeah.

12 Q. Over the years that you have lived there, you have seen the  
13 significant negative effects that crime can have on the  
14 community, correct?

15 A. Yeah.

16 Q. In fact, when you were a teenager, you were the victim of a  
17 crime, right?

18 A. Yes.

19 Q. You were robbed at gunpoint?

20 A. No.

21 Q. You weren't robbed at gunpoint when you were 12 or 13 years  
22 old?

23 A. No.

24 Q. I am going to hand you a copy of your deposition. Turning  
25 your attention to page 73.

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D418FLO5 Lino - cross

1 A. Yes.

2 Q. Lines 3 through 24 -- your deposition occurred on December  
3 20, 2012, is that correct?

4 A. Excuse me?

5 Q. Your deposition occurred on December 20, 2012?

6 A. Yes.

7 Q. Before you testified at your deposition you took an oath to  
8 tell the truth?

9 A. Yeah.

10 Q. And you did tell the truth?

11 A. Yes.

12 Q. At your deposition, were you asked the following questions  
13 and did you give the following answers:

14 "Q. Were you ever the victim of a crime?

15 "A. When?

16 "Q. Ever.

17 "A. Yeah.

18 "Q. When?

19 "A. Got my hat stolen a while back, probably when I was a  
20 teenager.

21 "Q. Other than that?

22 "A. I got jumped one time, probably when I was a teenager,  
23 most of this stuff was when I was younger. That's really it.

24 "Q. Tell me about when your hat was stolen.

25 "A. I was going to one of the museums on Fifth Avenue to do

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1 some summer project for school and there were kids, just came  
2 right up on me and my cousin, and I think one of them had a  
3 gun, and they wanted to fight my cousin or something, and I  
4 said, no, and they snatched my hat and ran."

5 Do you remember giving those answers to those  
6 questions?

7 A. Yes. I said I think.

8 Q. You know people who live in and around the  
9 Washington/Lexington Houses who have died because of the  
10 violence in the neighborhood, correct?

11 A. Yeah.

12 Q. Over the years that you have lived there, the crime has  
13 persisted in the area, correct?

14 A. Yeah.

15 Q. In fact, you believe that it may have gotten worse over  
16 time?

17 A. It's possible.

18 Q. Well, you testified at your deposition that you believe  
19 that crime may have gotten worse over time, correct?

20 A. If I said that, then I said it.

21 Q. Now, during your direct testimony, you testified about  
22 three stops?

23 A. Yes.

24 Q. But you have had many other encounters with the police,  
25 correct?

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D418FLO5 Lino - cross

1 A. What do you mean by encounters?

2 Q. There are other instances where you have encountered the  
3 police, correct?

4 A. Yeah.

5 THE COURT: I think we are going to stop now for ten  
6 minutes. We will take our afternoon recess and reconvene at  
7 about 20 of 4.

8 (Recess)

9 BY MR. KUNZ:

10 Q. So before we took the break, I had asked you that you're  
11 here today to testify about three times you have been stopped  
12 by the police, correct?

13 A. Yes.

14 Q. But there were other times when you have had encounters  
15 with the police, correct?

16 A. Yeah.

17 Q. And you selected these three stops because you feel your  
18 rights were violated the most in these instances, correct?

19 A. Yeah.

20 Q. These are the worst of the times you have had police  
21 encounters?

22 A. For the most part, yeah.

23 Q. Now, is it fair to say that you don't remember everything  
24 about these stops, you don't remember all of the details?

25 A. No.

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1 Q. That's not fair to say?

2 A. No, I don't remember all the details.

3 Q. And the reason you don't remember all the details is  
4 because you had a number of encounters over the years and a lot  
5 of them happened a long time ago, correct?

6 A. Yeah.

7 Q. You are about five feet ten inches tall?

8 A. Yes.

9 Q. You weigh about 175?

10 A. Yeah.

11 Q. And you were about that same height and weight in 2008?

12 A. Yeah.

13 Q. And since 2008, you have maintained about that same height  
14 and weight?

15 A. Yeah, give or take.

16 Q. Now, chronologically speaking, turning your attention to  
17 the first time that you testified about, the first stop you  
18 testified about, what date did that occur on?

19 A. Don't you have the date?

20 Q. Do you remember the date?

21 A. Of the three we just mentioned, February 5, February 24,  
22 and August 3rd.

23 Q. Which one was the earliest one in time?

24 A. 2008, 2011, and I can't remember the other year right now.

25 Q. OK. If I told you it was February 5, 2008, would that make

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1 sense?

2 A. Yeah.

3 Q. So that's five years ago?

4 A. Yeah.

5 Q. Because this occurred five years ago, you don't recall what  
6 happened that day very well, do you?

7 A. Well, I recall some things better than I do others.

8 Q. In fact, you don't remember the chronological order that  
9 things happened during the stop, do you?

10 A. No. But I remember some of the things that happened.

11 Q. You remember some of the things that happened, just not the  
12 order in which they happened?

13 A. Some of the things I remember in the order in which they  
14 happened, some of them I don't.

15 Q. And you made a written statement about what happened that  
16 day during this incident, correct?

17 A. Yes.

18 Q. But you don't recall when you wrote that statement, right?

19 A. No, because that was a while ago.

20 Q. You may have written the statement sometime in 2008, but  
21 you're not sure, right?

22 A. Yeah.

23 Q. So if the incident happened in February 2008, sometime in  
24 the next ten months you think you wrote this statement, but you  
25 have no idea when?

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D418FLO5 Lino - cross

1 A. Yeah.

2 Q. Now, the incident began when you left your house to go to a  
3 Chinese restaurant to get some food, correct?

4 A. Yes.

5 Q. It was at night?

6 A. Yes.

7 Q. 8 p.m.?

8 A. Yes.

9 Q. But it was dark out?

10 A. Yes.

11 Q. And the Chinese food restaurant that you went to is on the  
12 northeast corner of 103rd and Lexington, is that correct?

13 A. Yes.

14 Q. When you were being questioned by your attorney, you were  
15 shown a photograph M10. There is another photograph in that  
16 same packet taken from a different angle that I want to show  
17 you.

18 MR. KUNZ: I am showing the witness what has been  
19 marked NYC\_2\_00028765.

20 A. Yes.

21 Q. What does this photograph depict?

22 A. This is showing -- it looks like someone took this from the  
23 top of the hill on 102nd and Lexington. This is showing 103rd  
24 and Lexington.

25 Q. And you can see the Chinese food restaurant you were

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D418FLO5 Lino - cross  
1 standing in front of in this photograph?

2 A. Yeah, kind of.

3 MR. KUNZ: I would like to move this photograph into  
4 evidence, your Honor.

5 MS. MARTINI: No objection.

6 THE COURT: What is the exhibit number?

7 MR. KUNZ: The same exhibit number. It's M10 and it's  
8 the second page of that exhibit ending in Bates stamps number  
9 28765.

10 THE COURT: That exhibit is received.

11 (Defendants' Exhibit M10, Bates No. 28765 received in  
12 evidence)

13 Q. This is the photograph that I just asked you questions  
14 about, correct?

15 A. Yes.

16 Q. Down here at the bottom of the hill with the blue awning,  
17 this is the Chinese restaurant that you were standing in front  
18 of?

19 A. Say that again.

20 Q. At the bottom of the hill with the blue awning, this is the  
21 Chinese restaurant that you were standing in front of when the  
22 incident happened?

23 A. Yes.

24 Q. Do you see this check cashing location right here with the  
25 yellow awning?

D418FLO5

Lino - cross

- 1 A. Yes.
- 2 Q. Have you ever heard of robberies happening outside of that  
3 check cashing location?
- 4 A. Never.
- 5 Q. Now, you were wearing a tan or beige jacket that night,  
6 correct?
- 7 A. Yes.
- 8 Q. During your direct testimony earlier today, you said that  
9 you did not have a hoody on, correct?
- 10 A. I didn't.
- 11 Q. But at your deposition, you told me that you didn't  
12 remember anything else about what you were wearing that day,  
13 isn't that right?
- 14 A. That's probably true, but I know for a fact that jacket  
15 doesn't have a hoody on it.
- 16 Q. Right. Could you have been wearing a hooded sweater  
17 underneath the jacket?
- 18 A. It's a possibility, but I don't think so.
- 19 Q. It's a possibility because other than the fact that you  
20 were wearing this jacket, you don't remember anything else  
21 about what you were wearing that day, right?
- 22 A. Yeah. It's a possibility because I own hoodies, but I  
23 don't remember me having one on that day.
- 24 Q. You were with another man, right?
- 25 A. Yes.

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D418FLO5

Lino - cross

- 1 Q. James?  
2 A. Yes.  
3 Q. He was wearing basically the exact same jacket, just a  
4 different color?  
5 A. Yes.  
6 Q. You don't recall anything else about what he was wearing  
7 that day, correct?  
8 A. No.  
9 Q. Other than this jacket, you remember that, but nothing else  
10 about what he was wearing?  
11 A. No.  
12 Q. OK. So you went to the Chinese restaurant, you went inside  
13 and ordered some food, and then you went and stood outside the  
14 restaurant waiting for the food, correct?  
15 A. Yes.  
16 Q. You waited outside for about five minutes?  
17 A. A little less than five minutes.  
18 Q. Then two police officers came up to you, correct?  
19 A. Yes.  
20 Q. And you recognized them as police officers right away,  
21 correct?  
22 A. Yes.  
23 Q. Now, I believe during your direct testimony you said that  
24 they were wearing uniforms?  
25 A. Yes.

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D418FLO5 Lino - cross

1 Q. But didn't you testify at your deposition that they were  
2 not wearing uniforms?

3 A. I may have, but some of the officers there had uniforms and  
4 some didn't. So if I made that mistake, it's possible.

5 Q. Earlier today you testified that the first two officers  
6 that came were in uniform, correct?

7 A. Yes.

8 Q. But at your deposition, you told me that those first two  
9 officers were not wearing uniforms?

10 A. At the deposition, I haven't looked at or read anything of  
11 my complaints since I made them. But since then, I have looked  
12 at it, so that's how.

13 Q. Just answer my question. At the deposition that you gave  
14 in December of 2012, a little over three months ago, you said  
15 that those first two officers were not wearing uniforms?

16 A. Yes.

17 Q. You also said at the deposition that you think both the men  
18 were male, correct?

19 A. Yes.

20 Q. Earlier today you said that one of them was a white male  
21 and one of them was a black male, correct?

22 A. Yes.

23 Q. But at your deposition, you told me that, other than the  
24 fact that they were both male, you couldn't recall anything  
25 about them at all, right?

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D418FLO5 Lino - cross

- 1 A. Yeah, I think so.  
2 Q. You didn't know how tall they were, right?  
3 A. Is that a question?  
4 Q. At the deposition, you told me that you did not know how  
5 tall the men were, right?  
6 A. I probably did.  
7 Q. You probably said that?  
8 A. I might have, yeah.  
9 Q. If I directed you to a page of your deposition, would it  
10 refresh your recollection about what you said?  
11 A. Possibly.  
12 Q. Why don't you take a look at page 108, lines 6 through 21.  
13 Read it to yourself.  
14 A. What lines?  
15 Q. Page 108, lines 6 through 21.  
16 A. Yes.  
17 Q. At your deposition, you didn't know how tall the men were?  
18 A. Yes.  
19 Q. You didn't know their ethnicity?  
20 A. Yes.  
21 Q. You did not know their skin tone?  
22 A. Yes.  
23 Q. You did not know their hair color?  
24 A. Yes.  
25 Q. In fact, at your deposition, just four months ago, you

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1 didn't even recall if the officers were white, black or  
2 Hispanic, did you?

3 A. Yes. But this was so many years ago, and I have seen my  
4 complaint since the deposition. So that's how I know.

5 Q. So since the deposition, you have read a document that you  
6 had previously written?

7 A. My complaints.

8 Q. That refreshed your recollection about what the officers  
9 looked like?

10 A. Yeah.

11 Q. But independent of reviewing that document, as you  
12 testified at your deposition, you had no memory of what they  
13 looked like?

14 A. After I wrote it, I never seen it again.

15 Q. As you said before, you have no idea when you wrote that  
16 document?

17 A. I'm pretty sure the document has a date on it so I know  
18 approximately around when it was written, but I know it was  
19 years ago.

20 Q. You said that you're pretty sure the document has a date on  
21 it?

22 A. Yeah.

23 Q. If I showed you the document, would it refresh your  
24 recollection that it does not have a date on it?

25 A. Possibly.

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D418FLO5 Lino - cross

1 Q. I should actually correct that. There is one date on it.

2 When you wrote this, did you write a date on this  
3 document?

4 A. There is no date on here, so no.

5 Q. Now, the first thing the officers did was start asking you  
6 questions, correct?

7 A. Yes.

8 Q. They wanted to know what you were doing on the corner?

9 A. Yeah.

10 Q. One of the officers said that the jacket your friend was  
11 wearing matched a description that they were looking for,  
12 correct?

13 A. Yeah.

14 Q. The officers said this to you early in the conversation,  
15 basically as soon as they got there?

16 A. No.

17 Q. Well, they said it to you before you went inside the  
18 Chinese food store to get your food?

19 A. Some minutes had already passed in between that.

20 Q. In response to the officers asking you why you were there,  
21 you told them that you had just come down to get food and that  
22 you were not just standing there and hanging out, correct?

23 A. I told them they could go inside and ask the lady in the  
24 Chinese store if we didn't just order some food.

25 Q. Then they let you, you went into the Chinese food store and

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1 you picked up the food you just ordered, correct?

2 A. That's incorrect. They didn't let me go in to confirm that  
3 I just ordered food. They let me go in when the Chinese store  
4 lady confirmed that my order was finished. That's different.

5 Q. You testified earlier that you don't really remember the  
6 order of things happening. Is this something you don't  
7 remember the order of happening?

8 A. That's not about order. That's about the content. The  
9 content was me going in to pick up my food which was done, not  
10 me going in to confirm that I had just ordered food.

11 Q. You said you were frisked, correct?

12 A. Yeah.

13 Q. The officers had you face the wall and they patted you  
14 down, correct?

15 A. Uh-huh.

16 Q. The frisk lasted for just a couple of seconds?

17 A. Give or take, yeah.

18 Q. After you went back inside to the Chinese food restaurant  
19 to get your food, you came back outside, correct?

20 A. Yes.

21 Q. The officers that you had been interacting with, neither of  
22 them tried to stop you from leaving the outside and going in,  
23 right?

24 A. Say that again.

25 Q. You just walked up from the street into the Chinese food

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D418FLO5 Lino - cross

- 1 store and no officers told you you couldn't go inside?  
2 A. No.  
3 Q. You didn't ask them permission first, you just turned  
4 around and walked inside, correct?  
5 A. I didn't ask them permission, but somehow I got some type  
6 of signal to go in. I know I didn't just walk off and leave  
7 because that would have made the situation worse.  
8 Q. Then when you came back outside from the Chinese  
9 restaurant, you said that the two officers that were there  
10 originally, they were focusing on your friend, correct?  
11 A. Yes.  
12 Q. Right about then, other officers arrived, correct?  
13 A. Yes.  
14 Q. You testified today that it was three other officers that  
15 came, correct?  
16 A. Yes.  
17 Q. But at your deposition, you said you weren't sure how many  
18 officers came, correct?  
19 A. Yes. But again, I have read my complaint since my  
20 deposition.  
21 Q. You state that this second group of officers, that they  
22 frisked you, is that correct?  
23 A. Yes.  
24 Q. The second frisk, that was the same as the first one?  
25 A. Yeah.

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D418FLO5 Lino - cross

1 Q. It was a pat-down of the outside of your clothing and it  
2 lasted just a couple of seconds?

3 A. Yes.

4 Q. Now, you stated during your direct testimony that one of  
5 the officers told you that he had orders to stop everyone that  
6 they see on the corner, is that correct?

7 A. Yes.

8 Q. I believe you said earlier today that it was the  
9 African-American officer that said that to you?

10 A. Yeah.

11 Q. But at your deposition, you told me that you have no idea  
12 which officer said that, correct?

13 A. Yes. But again, I have read my complaint since the  
14 deposition.

15 Q. During this encounter, none of the officers that you  
16 interacted with used any racial slur or anything like that, did  
17 they?

18 A. No.

19 Q. The officers didn't do anything to indicate to you that you  
20 were stopped because of your race, did they?

21 A. Well, they stopped two innocent black men in front of a  
22 store. I think that's enough to say they stopped me because of  
23 my race.

24 Q. So other than the fact that you and your friend were  
25 stopped, the officers did not do anything that would indicate

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D418FLO5 Lino - cross

- 1 that you were stopped because of your race, correct?  
2 A. No.  
3 Q. No, they didn't do anything?  
4 A. Correct. Correct.  
5 Q. Now, the next incident occurred about -- I am going to skip  
6 the August 2008 incident and we will cover that later. The  
7 next one that occurred on that same corner of 103rd and  
8 Lexington, it occurred about three years later, correct?  
9 A. Yeah.  
10 Q. And just like the first incident, your memory of the 2011  
11 incident is not very good, is it?  
12 A. Yeah.  
13 Q. Yes, it's not very good?  
14 A. Yes, it's not very good.  
15 Q. For example, you don't recall what time of day the incident  
16 happened?  
17 A. It was in the evening.  
18 Q. When you testified at your deposition, you told me you did  
19 not recall what time of day it was?  
20 A. At the time I didn't. I read my complaint since the  
21 deposition.  
22 Q. So after this incident, you also typed out a complaint  
23 about what had happened?  
24 A. Excuse me?  
25 Q. After this incident in February of 2011, you also typed out  
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1 a statement about what happened that day?

2 A. You're saying did I type it out in February '11 after it  
3 happened, is that your question?

4 THE COURT: When did you type it out, the incident?

5 THE WITNESS: I don't know when.

6 THE COURT: Was it a week later, a day later, a month  
7 later?

8 THE WITNESS: It was probably a couple of weeks later.

9 Q. You don't remember when you typed it out?

10 A. No.

11 Q. Also at your deposition, I asked you if the incident  
12 happened at nighttime, and you said you didn't know, correct?

13 A. Yeah. But I read my complaint since the deposition.

14 Q. You don't recall what you were wearing that day, do you?

15 A. I remember I had on the red Pelle Pelle jacket.

16 Q. So other than the red Pelle Pelle jacket, you don't recall  
17 what you were wearing that day?

18 A. I think I had on some jeans.

19 Q. But you're not sure. You think maybe jeans, but you're not  
20 sure?

21 A. I think, but I'm not sure.

22 Q. Now, the red leather jacket that you were wearing that  
23 night, it was a Pelle Pelle brand red leather jacket?

24 A. Yes.

25 Q. This is an expensive jacket, right?

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D418FLO5 Lino - cross

1 A. Yeah.

2 Q. How much did you pay for it?

3 A. Like \$600.

4 Q. The retail value is about \$1200, correct?

5 A. Give or take.

6 Q. You said you have how many others of these Pelle Pelle  
7 jackets?

8 A. Probably about six or seven of them.

9 THE COURT: Did they all cost \$600?

10 THE WITNESS: Between 5 and 700.

11 Q. I am going to show you what has been entered into evidence  
12 as Defendants' Exhibit A9. We only looked at one of these  
13 photographs, but I just want to call your attention to this  
14 one. This is Bates stamp number ending in 23887.

15 This is you wearing a red leather Pelle Pelle jacket,  
16 right?

17 A. Yes.

18 Q. This is the red leather jacket that you were wearing on  
19 February 24, 2011?

20 A. Yes.

21 Q. In this photograph, I guess you're facing to your right?

22 A. Yeah.

23 Q. So this incident happened after you left your mother's  
24 house in the Washington Houses, correct?

25 A. Yes.

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Lino - cross

1 Q. And you walked over to 103rd and Lexington Avenue to catch  
2 the subway?

3 A. Yes.

4 Q. And you wore the jacket on the walk over, right?

5 A. Yes.

6 Q. And you didn't see anyone else wearing a red leather jacket  
7 that night, did you?

8 A. I didn't see anybody.

9 Q. Then you went down into the train station and the first  
10 time you noticed the police was as you were going through the  
11 turnstiles into the subway station, correct?

12 A. Yeah. He looked at me and I looked at him.

13 Q. You made eye contact with him?

14 A. Yeah.

15 Q. So right then you knew that he was looking at you and  
16 paying attention to you?

17 A. No. You make eye contact with people all the time. It  
18 doesn't mean you're looking at them.

19 Q. Now, you testified earlier today that one of the men was  
20 white and one of the men was Hispanic, is that correct?

21 A. Yes.

22 (Continued on next page)

23

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D41nflo6 Lino - cross

1 Q. At your deposition you didn't recall any physical  
2 characteristics of them, did you?

3 A. That's correct.

4 Q. Then after you passed them and made eye contact with one of  
5 them, you went downstairs to the uptown side of the platform,  
6 right?

7 A. Yes.

8 Q. I am going to show you the third photograph from  
9 Defendants' Exhibit M10.

10 Do you recognize what that photograph depicts?

11 A. Yes. It is a picture of the 103rd Street and Lexington  
12 Avenue train station.

13 Q. Is this the subway platform that were you standing on when  
14 the officers first interacted with you?

15 A. Yes, but from this picture you can't see where we were.

16 Q. But you see the width of the platform and looking down the  
17 platform.

18 A. Yes.

19 MR. KUNZ: I move this into evidence, your Honor.

20 MS. MARTINI: No objection, your Honor.

21 THE COURT: That part of M10 is received.

22 (Plaintiff's Exhibit page NYC\_2\_00028766 of M10  
23 received in evidence)

24 Q. You had a plastic bag on you that day, correct?

25 A. Yes.

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D41nflo6

Lino - cross

- 1 Q. And in the plastic bag was a Tupperware container with  
2 food?  
3 A. Yes.  
4 Q. So you go down the stairs, you are waiting on the platform  
5 for the train, and you see two officers start walking towards  
6 you, correct?  
7 A. Yes.  
8 Q. It is the same two officers you had seen upstairs?  
9 A. Yes.  
10 Q. You said that one of them reached towards your pocket, is  
11 that correct?  
12 A. He went in my pocket.  
13 Q. You brushed his hand away, is that correct?  
14 A. Yes.  
15 Q. In fact, you didn't just brush his hand away, you pushed  
16 his hand away, right?  
17 A. Incorrect.  
18 Q. If you could turn to your -- actually before I do that, you  
19 not only pushed his hand away, you pushed it down hard, hard  
20 enough that if his hand had been in your pocket, it would have  
21 ripped the jacket pocket, correct?  
22 A. No, I didn't say it. I said I pushed it. If I pushed it  
23 hard and it was already in, it probably would have ripped the  
24 jacket pocket.  
25 Q. If you could turn to page 163 of your deposition.

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D41nflo6

Lino - cross

1 A. Yep. 163.

2 Q. 163.

3 A. Yep.

4 Q. Lines 10 through 14, were you asked the following questions  
5 and did you give the following answers:

6 "Q. When you say you brushed the officer's hand away, was it  
7 just like a quick brush or did you push it down?

8 "A. It was -- I actually kind of pushed it back (indicating).  
9 I pushed it down. I probably would have ripped the coat if his  
10 hand was in there."

11 Did you give that answer to that question.

12 A. Yes. But that is not exactly what you just said when you  
13 said it the first time. What you just read is not what you  
14 said to me the first time. You said pushed really, really  
15 hard. You put the word "hard" in there. The word "hard" is  
16 not in here.

17 Q. Well, you pushed it down hard enough where you feel like it  
18 would have ripped the coat if his hand had been in your pocket,  
19 right?

20 A. Well, I pushed his hand away from my pocket. I wouldn't  
21 say I pushed it hard enough.

22 Q. Well, you said at your deposition that --

23 A. You are saying I pushed it hard enough. I didn't say I  
24 pushed it hard enough.

25 Q. In fact, you testified at your deposition that you don't

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D41nflo6 Lino - cross

1 have any idea if his hand was even in your pocket, didn't you?

2 A. I am not sure if I said that.

3 Q. Take a look at page 162, line 24, of your deposition, and  
4 read to page 163, line 5.

5 You can just read it to yourself.

6 MS. MARTINI: Could you say the line number again.

7 MR. KUNZ: Sure. 162, line 24, to 163, line 5.

8 A. Yeah, I said -- yeah.

9 Q. Does that refresh your recollection about the fact that at  
10 the time of your deposition you said you had no idea if the  
11 officers went into your pocket or not?

12 A. I also said I felt a nudge or something in my pocket or  
13 whatever. So that's because I -- I wasn't quite sure what it  
14 says here. I'm pretty sure that's what I said. I'm saying his  
15 hand could have been in my pocket, not all the way in. You  
16 could have your hand all the way in a pocket or just a couple  
17 of fingers in the pocket. Like his hand was in the pocket, I  
18 felt a nudge, so I said his hand was in my pocket.

19 Q. You say his hand was in your pocket because you felt a  
20 nudge? Is that what you are saying?

21 A. Yes. That's when I pushed it back. When I pushed it back,  
22 I felt his hand, so his hand had to be in my pocket if when I  
23 pushed it back his hand was there.

24 Q. When you say in your deposition I don't know if his hand  
25 actually made it in there or not, that's true, right? You have

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D41nflo6

Lino - cross

1 no idea --

2 A. I said that at the time, so that is the truth at the time.  
3 Since then I have read my complaints and stuff, so that may be  
4 why the answer changed.

5 THE COURT: What is your belief now?

6 THE WITNESS: Now I know his hand -- I don't know how  
7 deep or how far his hand was in my pocket. When I brushed it  
8 back, I felt his hand.

9 THE COURT: OK.

10 Q. You remember that now because you read this statement you  
11 wrote sometime after the incident, right?

12 A. Yeah.

13 Q. You were frisked during the incident, correct?

14 A. Was I frisked?

15 Q. Yes?

16 A. Yes.

17 Q. You described the frisk as they patted you down, correct?

18 A. Yes.

19 Q. During the frisk -- sorry. During your deposition you  
20 testified that you don't remember them going into your pockets  
21 during the frisk, correct?

22 A. Yes.

23 Q. The frisk lasted just a couple of seconds?

24 A. Yes.

25 Q. Now, I think earlier today you testified that it was one or

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D41nflo6 Lino - cross

1 both of the officers that frisked you, is that correct?

2 A. Yes.

3 Q. But at your deposition you told me you didn't recall which  
4 of the officers frisked you, correct?

5 A. That's probably true.

6 Q. That was in December of 2012?

7 A. Yeah.

8 Q. After the frisk you had a conversation with the officers,  
9 correct?

10 A. Yeah.

11 Q. But you don't remember what the conversation was about, do  
12 you?

13 A. No.

14 Q. But you do recall that the officers told you why they had  
15 stopped you, right?

16 A. Yes. Eventually they told me why they stopped me.

17 Q. They said that you matched the description of someone  
18 wanted in relation to a shooting, correct?

19 A. Incorrect.

20 Q. Do you want to turn to your deposition, page 165.

21 A. Sure.

22 Q. I am going to read lines 19 through 23:

23 "Q. What did they say?

24 "A. 'Somebody was shooting' or something like, he either said  
25 three or five days, I am not sure what number, but he said

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D41nflo6 Lino - cross

1 three or five days someone with the same coat I have was a  
2 suspect in a shooting."

3 A. That's not what you said the first time. The first time  
4 you said I fit the description, not my coat. Here the coat fit  
5 the description, not me personally.

6 Q. Now, you also stated that the officers brought you  
7 upstairs, is that correct?

8 A. Yes.

9 Q. When the encounter was over, they escorted you back  
10 downstairs, right?

11 A. Yes.

12 Q. And they put you back into the station without having to  
13 pay another Metro fare?

14 A. Yes. I already missed three trains.

15 Q. You also stated that you believe that the officers ran your  
16 ID, is that correct?

17 A. Yes.

18 Q. But you did not actually see them run your name, right?

19 A. No. But --

20 Q. And they never told you that they did that, right?

21 A. No.

22 Q. No, they never told you?

23 A. No, they never told me that.

24 Q. Now, the third incident that you testified about you said  
25 occurred on August 3, 2008?

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D41nflo6 Lino - cross

1 A. Yeah.

2 Q. Now, isn't it true that, like the other incidents, your  
3 memory of this incident is not very good?

4 A. Yes.

5 Q. You state that during this police encounter one of the  
6 officers got a phone call and you took offense to a comment  
7 that he made about his own ring tone, correct?

8 THE COURT: His own ring tone?

9 MR. KUNZ: His ring tone.

10 A. Yes.

11 Q. It was the officer's own ring tone, correct?

12 A. Yes.

13 Q. Other than the fact that the ring tone went off, the  
14 officers didn't say anything or do anything that was culturally  
15 insensitive, did they?

16 A. Yes. He said, Here's a little rap for you. That should  
17 calm you down.

18 Q. Other than that comment that you claim that they made, the  
19 officers didn't say or do anything that was culturally  
20 insensitive, correct?

21 A. No.

22 Q. No, they didn't?

23 A. No, they didn't.

24 Q. They did not use any racial slurs, correct?

25 A. No.

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D41nflo6 Lino - cross

- 1 Q. In fact, neither of them made any comment about your race  
2 at all, correct?  
3 A. No.  
4 Q. No, they didn't?  
5 A. Correct.  
6 Q. Now, as we have gone over a little bit today, your memory  
7 of these incidents is not very good at times, correct?  
8 A. Correct.  
9 Q. In fact, you've had other instances, other interactions  
10 with the police that you also don't remember, correct?  
11 A. Correct.  
12 Q. You testified during your deposition that you did not  
13 recall receiving a summons in January of 2008, correct?  
14 A. I don't remember that.  
15 Q. Go ahead and turn to page -- I'm sorry. This is a  
16 different deposition than the one you have.  
17 I am going to direct you to pages 242 to 245.  
18 A. It doesn't go that far. Oh, thanks.  
19 Q. So 242, line 11, to 245, line 6. Just read it to yourself,  
20 not out loud.  
21 A. OK. Yeah.  
22 Q. So this was an incident where you were stopped and issued a  
23 ticket in the subway, but you do not recall anything about it  
24 happening at your deposition, correct?  
25 A. What's the question?

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D41nfl06 Lino - cross

1 Q. At your deposition you did not recall that the incident had  
2 happened, correct?

3 A. Yeah.

4 Q. Now, you also likewise did not recall an incident that  
5 occurred in August of 2008, August 30, 2008, correct?

6 A. I don't know what incident you are speaking of.

7 Q. So 245, line 24 through 247, line 24. Read it to yourself.

8 A. Yes.

9 Q. So this was an instance where you were stopped and issued a  
10 summons, but at your deposition you did not recall it, correct?

11 A. Yes.

12 Q. Likewise, there was a time when you received a summons in  
13 August of 2009 that you also did not recall at your deposition,  
14 correct?

15 A. I don't remember that either.

16 Q. 248, line 17, to 251, line 20.

17 A. Yes.

18 Q. So this was another instance where you were stopped and you  
19 received a summons, but you did not recall it at your  
20 deposition, right?

21 A. Yes.

22 Q. Finally, there's one more from April of 2009. It was  
23 another instance where you were stopped and you received a  
24 summons, but you did not recall it at your deposition, correct?

25 A. I think so.

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D41nflo6 Lino - cross

1 Q. You can take a look at your deposition transcript if you  
2 want.

3 A. What page?

4 Q. 252, line 7, through 254, line 2.

5 A. OK.

6 Q. So this was another instance where you received a summons  
7 and at your deposition you did not recall it, is that correct?

8 You have to answer verbally.

9 A. Yes.

10 Q. So there was at least four instances that you testified to  
11 at your deposition where you were stopped by the police,  
12 received a summons, but you had no memory of it at your  
13 deposition, correct?

14 A. Yes.

15 Q. The first one was January 2008, and you were issued a  
16 ticket for moving between subway cars?

17 A. Yes.

18 Q. And the next one was August 2008 --

19 MS. MARTINI: Objection, your Honor. I think this  
20 goes beyond the scope your prior rulings regarding getting into  
21 prior acts.

22 THE COURT: I don't recall that. It seems to me these  
23 are all encounters with the police, and it tests his memory. I  
24 would allow it. I don't remember the ruling.

25 Q. The second one was August of 2008, and you received a

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D41nflo6 Lino - cross

1 ticket for allegedly having an open container, correct?

2 A. Yes.

3 Q. The third one was August 2009, and you were stopped and  
4 issued a summons?

5 MR. KUNZ: Sorry. One second, your Honor.

6 Q. The third one was in August of 2009, and you were stopped  
7 and issued a summons for disorderly conduct, is that correct?

8 A. Yes.

9 Q. And the final one, the fourth one, was from April 2009, and  
10 you were issued a summons for an open container and spitting in  
11 public, correct?

12 A. Yes.

13 Q. Now, you became involved in this case sometime last fall,  
14 correct, the fall of 2012?

15 A. I think so.

16 Q. Before you were involved in this case, you were also a  
17 plaintiff in another case related to stop, question and frisk,  
18 correct?

19 A. Yes.

20 Q. In that other case you were also suing the NYPD, correct?

21 A. Yes.

22 Q. So is it fair to say that you have strong feelings about  
23 stop, question and frisk in the NYPD?

24 A. Yes.

25 Q. In your opinion stop, question and frisk is not good at

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D41nflo6 Lino - cross

- 1 all, is that correct?  
2 A. No. Sometimes it's good, sometimes it's not.  
3 Q. Do you want to turn to page 97 of your deposition?  
4 A. Which one? You gave me two of them.  
5 Q. The first one. They are sequentially numbered. So page  
6 97.  
7 A. Yes.  
8 Q. Lines 7 through 9:  
9 "Q. OK. What's your opinion of stop, question and frisk?  
10 "A. I don't think that's good at all."  
11 Did you give that answer to that question?  
12 A. Yes.  
13 Q. You have spoken publicly about your opinion of stop,  
14 question and frisk, correct?  
15 A. What do you mean "publicly"?  
16 Q. Well, you've done interviews with the media?  
17 A. Yeah.  
18 Q. On the radio?  
19 A. Yeah, in regard to the other case, yeah.  
20 Q. You have spoken about the NYPD on Twitter?  
21 A. No.  
22 Q. Do you want to turn to page 87 of your deposition.  
23 A. The first one?  
24 Q. Yes.  
25 A. Yes.

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D41nflo6 Lino - cross

1 Q. Page 87, lines 20 through 25:

2 "Q. And you think you have tweeted about the NYPD?

3 "A. I'm not -- about the stop, question and frisk?

4 "Q. About the NYPD at all.

5 "A. I think one time after I was stopped I might have tweeted,  
6 Fuck the NYPD."

7 Did you give those answers on those questions?

8 A. Yes. But you said -- I said, I might, I may have. You  
9 said I did.

10 THE COURT: Do you know whether you did?

11 THE WITNESS: I don't know if I did. I said I may  
12 have.

13 THE COURT: I'm asking you now.

14 THE WITNESS: I don't know. I'm not sure.

15 THE COURT: OK.

16 Q. You have made a lot of complaints about law enforcement,  
17 correct?

18 A. No.

19 Q. Well, you have complained about law enforcement between 15  
20 and 18 times?

21 A. Those are because I was stopped all those times.

22 Q. So, yes, you have made complaints about law enforcement?

23 A. Oh, yeah, yeah, yeah.

24 MR. KUNZ: No further questions at this time.

25 THE COURT: Thank you.

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D41nflo6 Lino - cross

1 Any redirect, Ms. Martini?

2 MS. MARTINI: Yes. Quickly hopefully, your Honor.

3 REDIRECT EXAMINATION

4 BY MS. MARTINI:

5 Q. Mr. Lino, since your deposition, have you had a chance to  
6 review the complaint that you wrote to the CCRB for each of the  
7 stops that you testified here today about?

8 A. Yes.

9 Q. Since your deposition, have you had a chance to listen to  
10 the interviews that you gave to the CCRB investigator for each  
11 of the February stops that you testified here about today?

12 A. Yes.

13 Q. Did rereading your deposition -- I'm sorry. Did rereading  
14 the complaints that you wrote to the CCRB and listening to the  
15 interviews that you gave to the CCRB investigator help refresh  
16 your recollection about the facts and circumstances of those  
17 encounters with the NYPD?

18 A. Yes.

19 Q. Mr. Kunz asked you a lot of questions about your memory  
20 with respect to these stops, and you said you recalled certain  
21 things better than others?

22 A. Uh-huh.

23 Q. Why is it that you recall certain things better than others  
24 about those stops?

25 A. I think certain things are irrelevant and certain things

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D41nflo6 Lino - redirect

1 affect me more than other things do, so certain things stick.  
2 Like I don't think that the officer's height and his eye color  
3 has anything to do with the way he speaks to me or if he  
4 touches me. So certain things like that I am not going to  
5 remember, but I don't think it is that relevant.

6 Q. Mr. Kunz also asked you about several summonses that you  
7 have received over the years.

8 A. Yes.

9 Q. Did you receive any of these summonses during or related to  
10 any of stops that you testified about here today?

11 A. No.

12 Q. Do you recall testifying at your deposition that you had  
13 received summonses numerous times, but that you just didn't  
14 know how many exactly?

15 A. Yes.

16 Q. You told Mr. Kunz that you have strong feelings about the  
17 stop, question and frisk.

18 Do you have any friends or family members who are  
19 police officers?

20 A. My dad -- well, my dad is a judge, but he was, he's a  
21 retired cop. I have three friends that currently are NYPD  
22 officers. I have a couple of friends that are correction  
23 officers at Rikers Island. I have a cousin who I think just  
24 entered the police academy, and my uncle is probably an FBI  
25 agent or secret service, nobody knows because it's supposed to

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D41nflo6 Lino - redirect

1 be secret. He does something. That's that.

2 Q. Mr. Kunz also asked you about another lawsuit that you were  
3 involved in against NYPD.

4 What relief were you seeking in that case?

5 A. The way they explained it to me was to get my name --  
6 because I have been stopped so many times, so basically my name  
7 is all over the place. So I was trying to get my name removed  
8 from the database. So that's what that was all about.

9 Q. Were you seeking money damages in that case?

10 A. No.

11 Q. Are you seeking money damages here?

12 A. No.

13 MS. MARTINI: Just one second, your Honor.

14 Q. Mr. Kunz also asked you a series of questions about when  
15 you wrote your complaint after you were stopped by the police  
16 officers outside the Chinese restaurant.

17 Do you recall that?

18 A. Can you ask that again.

19 Q. Sure.

20 Mr. Kunz asked you if you recalled when you wrote the  
21 complaint after the Chinese restaurant incident?

22 A. Yes.

23 Q. Do you recall when you wrote the complaint to the CCRB?

24 A. No.

25 Q. I would like to show you a document to see if it helps you

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D41nflo6 Lino - redirect

1 refresh your recollection. Then I'll ask you a question.

2 THE COURT: What are you showing him? It has to have  
3 an exhibit number. You can't show him something without a  
4 number.

5 MS. MARTINI: Sure. It's Defendants' Exhibit F9.

6 THE COURT: OK.

7 Q. If you would just look at the top of that document and then  
8 I'll ask you.

9 THE COURT: For the record again, what is it?

10 MS. MARTINI: F9.

11 THE COURT: No. What is it?

12 MS. MARTINI: It is a stamped copy of his CCRB  
13 complaint, and it is stamped with the CCRB date.

14 THE COURT: Oh, good. OK.

15 Does that refresh your recollection about the date?

16 THE WITNESS: Yes.

17 THE COURT: What is it?

18 THE WITNESS: Sometime in March.

19 THE COURT: Of what year?

20 THE WITNESS: It was like late February, early March  
21 of 2011.

22 THE COURT: Thank you.

23 MS. MARTINI: For the record, it is 2008.

24 THE WITNESS: I'm sorry. It's 2008. That was the  
25 other one. I'm sorry. Sorry.

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D41nflo6 Lino - redirect

1 THE COURT: OK.

2 MS. MARTINI: No further questions, your Honor.

3 THE COURT: OK. Anything else, Mr. Kunz?

4 MR. KUNZ: Just very briefly, your Honor.

5 RE CROSS EXAMINATION

6 BY MR. KUNZ:

7 Q. When you testified at your deposition, you knew that you  
8 were going to be testifying in court about this case, correct?

9 A. Oh, yeah, yeah.

10 Q. But you didn't feel it was important to review your  
11 statements that you had written before your deposition?

12 A. No, I've never really been to court like that. This is my  
13 first time up here like this.

14 MR. KUNZ: No further questions.

15 THE COURT: OK. So I guess we are done with this  
16 witness? Yes?

17 MS. MARTINI: Yes, your Honor.

18 THE COURT: OK. Thank you.

19 All set. You're done.

20 (Witness excused)

21 THE COURT: Not only is he done, but we're done for  
22 the day, too. We're done. I will see you tomorrow at 10  
23 o'clock.

24 MR. CHARNEY: Can I ask one question, your Honor?

25 THE COURT: Yes.

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D41nflo6 Lino - recross

1 MR. CHARNEY: The first thing we would like to do  
2 tomorrow is play those recordings from the 81th Precinct. We  
3 have transcript which we will provide you in the morning. So  
4 we have played some of them the first week.  
5 THE COURT: Without transcripts.  
6 MR. CHARNEY: Yes. Would you like us to replay those  
7 with the transcripts?  
8 THE COURT: I would like that. I don't want to waste  
9 any time at all, but I had a lot of difficulty understanding  
10 the words.  
11 How much time am I committing myself to by saying you  
12 could play them?  
13 MR. CHARNEY: The portion that we played was about 20  
14 minutes. We probably have another 20 minutes or possibly 40,  
15 but we do have transcripts now.  
16 THE COURT: I understand.  
17 It's much easier with transcripts.  
18 MR. CHARNEY: Yes.  
19 THE COURT: OK. I guess we'll start with that.  
20 OK. Thank you.  
21 (Adjourned to Tuesday, April 2, 2013 at 10:00 a.m.)  
22  
23  
24  
25

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4 Exhibit No.	Received
5 M9 . . . . .	.1713
6 A9 . . . . .	.1744
7 H10 . . . . .	.1753
8 M10, Bates No. 28765 . . . . .	.1765

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