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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.  
March 18, 2013  
10:00 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

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1 (In open court; case called)

2 THE COURT: All right. That gets us ready to get  
3 started. With that we're going to have an opening statement  
4 for the plaintiffs.

5 Mr. Charney.

6 MR. CHARNEY: Thank you.

7 Good morning, your Honor. May it please the court, my  
8 name is Darius Charney. I'm one of the attorneys for the  
9 plaintiffs in this case. With me is my trial team, who has  
10 already introduced themselves earlier. So thank you for having  
11 us this morning.

12 THE COURT: One quick request, Mr. Charney. You're  
13 very tall. So point that closer and speak up a little bit so  
14 everybody can hear you.

15 Thank you.

16 MR. CHARNEY: So I'd like to begin with the afternoon  
17 of February 27, 2008. On that afternoon David Floyd a  
18 28-year-old African-American student at City College had just  
19 left his home in the Parkchester section of the Bronx, on his  
20 way to ride the subway to class when he ran into his neighbor,  
21 also a black man, who lived in the basement apartment of  
22 David's godmother's house, where David also rented an apartment  
23 at the time.

24 The neighbor had locked himself out of his apartment.  
25 So David, who had a spare set of keys that included an extra

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1 Floyd on that February afternoon in 2008 has become an all too  
2 common occurrence in neighborhoods across New York City in  
3 recent years.

4 In the last eight years, which is the class period in  
5 this case, the New York police department has recorded more  
6 than 4.3 million stops and frisks of the residents of New York  
7 City, the vast majority of whom, almost 90 percent, were not  
8 doing anything illegal when they were stopped. That's an  
9 average of more than half a million stops a year, almost  
10 fifteen hundred stops a day.

11 This case is about much more than numbers. It's about  
12 people. While the statistics are disturbing enough, there are  
13 also the harrowing accounts of those who have been stopped and  
14 frisked by the NYPD often multiple times while trying to go  
15 about their daily lives walking to school, work, waiting for  
16 the subway, going to the store, or helping out a neighbor,  
17 experiences like David Floyd's and the other named plaintiffs  
18 and class member witnesses who will testify at this trial.  
19 These include plaintiff David Ourlicht who, as a 20-year-old  
20 biracial college student, went to help his friend move  
21 furniture at his friend's apartment in the East Harlem public  
22 housing project on a June morning in 2008. David and his  
23 friend went outside to the courtyard of the complex for a  
24 cigarette break. After they had been standing out there for a  
25 few minutes along with some other black male residents of the

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1 complex, a group of uniformed NYPD officers appeared running  
2 towards them with guns drawn. The officers shouted at David,  
3 his friend, and the other men to get face down on the ground,  
4 at which point, with guns pointed at the back of their heads,  
5 they were all frisked and searched, supposedly because of a  
6 report of a gun. But the officers gave no description of the  
7 alleged suspect carrying the gun nor any information about  
8 where in the large complex the gun had supposedly been seen.  
9 Needless to say, no weapons and contraband was found on David,  
10 his friend, or any of the other men.

11 You will also hear from Kristianna Acevedo, a young  
12 Latino woman, who was taking the shortest route to her local  
13 bank through an industrial area in Woodside Queens in May of  
14 2007 when two men in a van began calling at her, chased her in  
15 reverse down the block sending her running for help to the only  
16 other person on the street, a UPS driver making deliveries.  
17 Well, it turns out that these men in the car were undercover  
18 NYPD narcotics detectives and a female detective who had also  
19 been in the van rushed out, pushed Ms. Acevedo against the UPS  
20 truck and said: When you hear police, you stop.

21 Ms. Acevedo, shaken, told them that the UPS driver was  
22 her witness. To which one of the detectives responded patting  
23 his firearm: What can he do? We have guns.

24 She was questioned: Where are you going? Where are  
25 you coming from? Where do you live?

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1 Her purse was searched and her ID taken. Again, the  
2 officers found no weapons, no contraband or any other evidence  
3 of a crime.

4 And you will hear, in fact, later on today from Devin  
5 Almonor who, as a 13-year-old African-American boy was walking  
6 down a Harlem street on a March evening in 2010 on his way home  
7 from a local bodega around the corner from his home. But he  
8 never made it home. Because he was stopped, questioned, thrown  
9 against the hood of a police car, frisked and handcuffed by two  
10 NYPD officers. The reason that the officers gave for the stop?  
11 Well, you'll hear the officers themselves testify at this trial  
12 that they stopped Devin for supposed furtive movements which  
13 they cannot articulate in any specific way. You'll hear the  
14 officers say that they stopped him for fitting a suspect  
15 description, which in actuality said nothing more than a male  
16 black. And although their stop paperwork indicated that they  
17 observed a suspicious bulge in Devin's clothing, you will hear  
18 these officers admit in this trial that they did not actually  
19 see any suspicious bulge.

20 These incidents, along with the many others you will  
21 hear the named plaintiffs and class member witnesses testify  
22 about at this trial, illustrate why being stopped and frisked  
23 is not just a minor inconvenience like getting stuck in an  
24 elevator or traffic jam, but a frightening and degrading  
25 experience and a serious deprivation of liberty which should

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1 fundamental constitutional guarantee of equal protection under  
2 law and the right to be free from unreasonable searches and  
3 seizures are afforded to all New Yorkers and the NYPD is  
4 supposed to protect and serve regardless of the color of their  
5 skin or what neighborhood in the city they live in.

6 We are also here today because the serious  
7 constitutional problems with the NYPD stop-and-frisk practices  
8 have been with us for more than a decade and the NYPD has  
9 proven unwilling and/or unable to address them on its own.

10 As this court is obviously very well aware, the NYPD  
11 stop-and-frisk practices were first presented to this court in  
12 1999 in the Daniels v. City of New York case.

13 And I have the timeline over here for the court to  
14 follow along with as I speak.

15 Now that same -- now that case, the Daniels case, as  
16 your Honor is well aware, challenged the constitutionality of  
17 the stop-and-frisk practices of the infamous street crimes  
18 unit, one of the most aggressive practitioners of stop and  
19 frisk, who was responsible for the tragic killing of Amadou  
20 Diallo in February of 1999 that sparked so much outrage in this  
21 city and throughout the nation.

22 That same year, 1999, the New York State Attorney  
23 General's Office issued its damning analysis of the New York  
24 Police Department's stop-and-frisk practices which found severe  
25 racial disparities in who was being stopped and frisked that

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1 detail, I just want to summarize what plaintiffs believe is the  
2 central question for this court to resolve during this trial.  
3 And that question is this: That the NYPD engaged in a  
4 long-standing and widespread pattern and practice of stops made  
5 without reasonable articulable suspicion and on the basis of  
6 race in violation of the Fourth and Fourteenth Amendments of  
7 the constitution and Title VI of the Civil Rights Act of 1964.

8 Plaintiffs submit that the stop and frisk incidents,  
9 statistics, and history I have just summarized, along with a  
10 mountain of additional evidence which I will discuss in a  
11 moment, show that the answer to this question is yes.

12 Defendants, on the other hand, will claim that the  
13 millions of stops of primarily Black and Latino New Yorkers  
14 over the past eight years which have recovered little to no  
15 evidence of any crime are simply the result of proactive  
16 policing tactics motivated not by race but by a desire to  
17 reduce crime.

18 But proactive or not, stops and frisks can only be  
19 made upon reasonable articulable suspicion that criminal  
20 activity is afoot. And as the evidence will show, that has not  
21 happened in thousands of NYPD stops over the last eight years.

22 And while the NYPD may be trying to fight crime, the  
23 evidence will show that the means they have chosen to do so is  
24 race-based stop and frisk.

25 So in sum, the overwhelming weight of the evidence

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1 this court will hear will show that the answer to the question  
2 I posed has to be yes.

3 I will now summarize that evidence in a little more  
4 detail.

5 Plaintiffs have asserted two claims in this case. And  
6 I will talk about the evidence for each claim separately.

7 First, under the Fourth Amendment that the NYPD has a  
8 policy and/or widespread custom or practice of stopping and  
9 frisking individuals without reasonable articulable suspicion.  
10 And two, that they are stopping and frisking people on the  
11 basis of race in violation of the equal protection clause of  
12 the Fourteenth Amendment and Title VI of the Civil Rights Act  
13 of 1964.

14 I would like to talk first about the evidence  
15 plaintiffs will offer in support of our Fourth Amendment claim.

16 Plaintiffs will offer powerful testimony and  
17 statistical evidence showing that since the beginning of the  
18 class period in 2005 NYPD officers have repeatedly stopped,  
19 questioned and frisked pedestrians in New York City without  
20 reasonable articulable suspicion. This testimonial evidence  
21 will include the testimony of the four named plaintiffs, some  
22 of which I've already summarized, and the eight additional  
23 class member witnesses about their experiences being stopped,  
24 questioned, frisked, and in some cases even searched by NYPD  
25 officers who had no basis to suspect that they had committed,

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1 were committing, or were about to commit a crime.

2 But this testimonial evidence will also include the  
3 testimony of several of the officers who stopped these twelve  
4 individuals and who, in their own accounts of the incidents,  
5 cannot articulate facts that establish reasonable suspicion.

6 The stops of the named plaintiffs and class member  
7 witnesses provide powerful concrete examples of a city-wide  
8 pattern of suspicion of stop and frisk which is further  
9 revealed by the statistical analysis of the NYPD's own stop and  
10 frisk data performed by plaintiffs' testifying expert,  
11 Professor Jeffrey Fagan of Columbia University.

12 Dr. Fagan is a nationally recognized expert in  
13 criminology, race and policing, who has published numerous  
14 articles on the New York police department's stop-and-frisk  
15 practices over the past decade, including the statistical  
16 analysis portion of the aforementioned Attorney General's study  
17 from 1999.

18 As this court knows, NYPD procedures require officers  
19 to fill out a form called a UF 250 for every stop they make, on  
20 which they indicate the reason or reasons that they believed  
21 they had reasonable suspicion necessary under the constitution  
22 to make the stop.

23 The NYPD records all of this information on each  
24 UF 250 in an electronic database. Professor Fagan analyzed the  
25 UF 250 database for the 4.4 million stops the NYPD made from

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1 fifths, and each quintile is based on the crime rate in that  
2 census tract. So, for example, for quintile one you have the  
3 highest -- census tracts with the highest crime rate and then  
4 quintile five you have the census tracts with the lowest crime  
5 rate.

6 But what you can see is that regardless of which kind  
7 of census tract the stop is done in -- in other words, if it's  
8 done in a high crime census tract or a low crime census tract,  
9 it appears that officers are using high crime area as a stop  
10 justification roughly the same amount of time.

11 This analysis that I'm giving -- so this was the  
12 analysis for the data from 2004 through 2009. The next slide  
13 shows the same analysis for 2010 through 2012.

14 Now, you'll notice there are actually two different  
15 color bars. There is a black bar and a gray bar. The black  
16 bar is, again, high crime area, the percentage of time the high  
17 crime area is checked off as a stop factor. And the gray bar  
18 is furtive movements, the other stop factor which is used very  
19 commonly. And, again, you can see that doesn't really matter  
20 if you're in a high crime census tract or a low crime census  
21 tract, these stop factors are being checked off roughly the  
22 same amount of time.

23 Now the reason this is important, obviously is because  
24 it calls into question whether or not officers are, in fact,  
25 accurately reporting the reasons they are stopping people. But

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1 starts at the top and ends with the stop. In other words, the  
2 widespread pattern of unconstitutional stops is the result of  
3 both affirmative department policies and practices that have  
4 encouraged unconstitutional stops on the part of NYPD officers  
5 and a deliberately indifferent failure on the part of NYPD's  
6 central administration and mid level supervisors to enact and  
7 implement policies and practices to prevent such  
8 unconstitutional behavior.

9 Now I'm going to summarize the evidence in both of  
10 these categories in a second. But I want to first note that  
11 defendants will no doubt repeat throughout this trial that the  
12 NYPD's formal written policies, procedures, and training  
13 guidelines have no constitutional problems. However, we will  
14 present extensive evidence showing first that some of these  
15 formal policies are at best unclear and at worst misstated  
16 constitutional standards; and two, that there is a huge  
17 disconnect between what these formal policies say on paper and  
18 how they are implemented in practice.

19 The first example of this is the issue of quotas or  
20 productivity or performance standards, pressure on officers to  
21 increase their stop and frisk arrest and summons activity.

22 The NYPD will no doubt say and offer evidence at this  
23 trial that there is no formal department policy permitting  
24 quotas and, in fact, formal department policy prohibits it.  
25 But the evidence that we will present, and I will summarize it

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1 precinct, as well as several officers. And these recordings  
2 and testimony will all corroborate the fact that there were, in  
3 fact, quotas or performance standards being imposed on officer  
4 stop activity.

5 There will also be recordings played from the 40th  
6 precinct in the Bronx which will, again, confirm the existence  
7 of such quotas and will also show that officers who failed to  
8 meet them often suffer negative employment action such as lost  
9 vacation days, low performance evaluations, and being required  
10 to actually patrol with supervisors to get their numbers up.

11 Finally, you will hear recordings from the 81st  
12 precinct in Brooklyn and will hear testimony from the former  
13 precinct commander of that precinct as well as the executive  
14 officer of the patrol borough, Brooklyn North, which oversaw  
15 that precinct which will again confirm the existence of such  
16 quotas and also the existence of negative consequences for  
17 officers who don't meet those quotas.

18 And you will hear, finally, from several other  
19 precinct commanders who will corroborate the types of evidence  
20 I just summarized by explaining their own practices which  
21 include, again, using strict numerical standards to evaluate  
22 officer performance.

23 But beyond this testimonial and audio evidence, you  
24 will also hear statistical evidence. By that I mean you will  
25 hear the results of two surveys that were done in 2008 and 2012

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1 set performance goals for their officers.

2 You will hear testimony and you will see documents  
3 that show that, in fact, these performance goals can be  
4 numerical standards for stop and frisk, arrest, and summons.  
5 So plaintiffs content that, in fact, this problem of quotas and  
6 pressure and performance standards has not only spread widely  
7 throughout the department as a matter of practice but has now  
8 been codified in NYPD policy.

9 Now this evidence confirms what this court has said in  
10 its class cert decision very correctly which is that regardless  
11 of whether you call it a quota or not, this widespread practice  
12 of pressuring officers to increase their stop and frisk  
13 activity leads to unconstitutional stop and frisks. And this  
14 pressure to produce numbers is part of what the NYPD means when  
15 it says proactive policing.

16 So that is the -- that evidence that I've just  
17 discussed really fits into the affirmative policy and practice  
18 section of the police department's unconstitutional behavior.  
19 But as I've mentioned, there has also been a deliberately  
20 indifferent failure to adequately oversee officers'  
21 stop-and-frisk activity. And I want to talk about the evidence  
22 that we will present on that issue.

23 You will hear testimony from the chief of department  
24 Joseph Esposito and the former chief of patrol Robert Giannelli  
25 who will testify how the NYPD relies on its chain of command to

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1           Officer Salmeron was the subject of a civilian  
2 complaint in 2006 for an improper stop during which the  
3 civilian complainant's arm was broken. The CCRB investigated  
4 this stop and substantiated the claims that the stop was both  
5 improper -- in other words, that there was no basis for it --  
6 and that the officers acted inappropriately during the stop.  
7 However, Officer Salmeron was never disciplined by the NYPD for  
8 this particular incident. And then, less than two years later,  
9 she, again, illegally stopped plaintiff Deon Dennis in January  
10 of 2008.

11           So, again, when it comes to discipline we believe that  
12 the evidence will show that the necessary disciplinary  
13 mechanisms to ensure constitutional behavior do not exist.

14           Then when we talk about training here, again, I want  
15 to come back to a point I made earlier which is the disconnect  
16 between what's on paper in the NYPD and what happens in  
17 practice. What the evidence will show at this trial is that  
18 the NYPD has consistently failed to reinforce what is set forth  
19 in the formal training materials provided in the police  
20 academy. They fail to do so because they don't do it in their  
21 roll call training. They don't do it in field training. And  
22 they don't reinforce important concepts in these types of  
23 training such as reasonable articulable suspicion and racial  
24 profiling.

25           But you will also hear evidence that even some of

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1 claim or the final piece of evidence that I want to talk about  
2 is evidence that will establish that the NYPD's chief  
3 policymakers have been aware of the constitutional problems  
4 with their stop-and-frisk policies or practices for many, many  
5 years.

6 As we go back to the timeline, we know that, and the  
7 police department has known since at least 1999, that there may  
8 be problems with officers committing race-based and  
9 suspicionless stops. And we know that because that was the  
10 year that the New York Attorney General's Office released its  
11 study on the NYPD's stop-and-frisk practices.

12 Now 1999 was also the year that NYPD commissioner  
13 Howard Safir testified at the city council. And he testified  
14 specifically about the inadequacy of paperwork audits to ensure  
15 that police officer stop-and-frisk behavior was constitutional.  
16 And, again, paperwork audits are all that the NYPD uses at this  
17 point to monitor stop-and-frisk activity to see if it complies  
18 with the constitution.

19 Also we know that since 2003 the police department has  
20 been very well aware that its officers are consistently failing  
21 to record stop-and-frisk details in their memo books which, as  
22 I mentioned earlier, is really the best source of information  
23 for a stop because the UF 250 itself doesn't provide enough  
24 information.

25 And we know that since at least 2007 the police

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1 department has been aware of a second outside study of its  
2 stop-and-frisk practices which, contrary to defendants'  
3 characterization, actually did identify several areas where  
4 there appeared to be significant racial disparities in who was  
5 being stopped and included several recommendations for the NYPD  
6 to address those problems which the NYPD never implemented.

7 Finally, in 2011 I wanted to again mention Operations  
8 Order 52. The reason why the timing of this is important is  
9 because the policy was issued in 2011, which was a year after  
10 all of the recordings or many of the recordings I referred to  
11 earlier went public. It's after the New York state legislature  
12 had passed an amendment to its anti quota law which now  
13 included stop and frisk as a quota that was a prohibited  
14 activity. And it's also after this court's August 2011 summary  
15 judgment decision in which the court expressed serious concerns  
16 about the possible presence of quotas in the police department.

17 So I think the timeline, in sum, that I've just  
18 reviewed really shows that the police department has been on  
19 notice for many years about the problems that the plaintiffs  
20 are challenging in this case and yet have been unable or  
21 unwilling to address them which we believe will establish their  
22 deliberate indifference to hold them liable for the Fourth  
23 Amendment violations.

24 So, that in a nutshell is really our evidence around  
25 our Fourth Amendment claim. I now wanted to turn to the Equal

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1 arrested while white pedestrians were significantly more likely  
2 to simply receive a summons for the same crime. Again, what  
3 these statistics show is what proactive policing looks like in  
4 New York City.

5 Now, the city and their experts will criticize  
6 Professor Fagan's analysis. They'll say he chose the wrong  
7 benchmark to measure the racial disparities in NYPD stop  
8 patterns. They will argue that rather than using local  
9 population and crime levels, he should have used the race of  
10 crime suspects in New York City as a benchmark, which they  
11 claim is much more strongly correlated with the racial  
12 breakdown of the persons who get stopped by the NYPD, and which  
13 they claim shows that black and Latino pedestrians are not  
14 stopped at disproportionately high rates.

15 But as Professor Fagan will testify there are several  
16 problems with the benchmark that the city and the defendants  
17 are proposing, which is the crime suspect benchmark. The first  
18 problem is that "fits suspect description" is checked off as a  
19 stop rationale in only about 13 percent of all stops which a  
20 police department does.

21 Second, the race of crime suspects is actually unknown  
22 in almost 50 percent of the reported crimes between 2004 and  
23 2009. And in almost 40 percent of the reported crimes between  
24 2010 and 2011.

25 Thus, using only the data on those crimes where

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1 motion against Professor Smith, courts, legal scholars, and the  
2 United States department of justice have long held that law  
3 enforcement tactics that target particular racial groups, even  
4 when undertaken in the name of crime control rather than racial  
5 animus, still constitute racial profiling, which violates the  
6 Equal Protection clause of the Fourteenth Amendment. These  
7 authorities define racial profiling not in terms of racial  
8 animus but in terms of stereotyping; that is, a belief that a  
9 person should be investigated by police because members of his  
10 racial or ethnic group are more likely to commit crimes than is  
11 the population at large or, as the DOJ put it in its 2003  
12 guidance on racial profiling for law enforcement, race is used  
13 as a proxy for criminality.

14 Now plaintiffs will present extensive evidence at this  
15 trial of just this kind of racially stereotypical thinking and  
16 views on the part of the NYPD. The first example is the quote  
17 we just looked at from defendants' expert which uses language  
18 eerily similar to the DOJ definition of racial profiling.

19 But beyond that, you will hear testimony from NYPD  
20 personnel themselves, which really exemplifies this kind of  
21 stereotypical thinking.

22 You will hear on those recordings I mentioned earlier  
23 from the 81st precinct platoon commander Jean Delafuente, who  
24 will be heard on these tapes saying: This is Bed Sty -- which  
25 is a majority black community in Brooklyn -- everybody has a

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1 warrant.

2 You'll also hear on the recording from the 40th  
3 precinct, the precinct commander of that precinct who in a  
4 meeting only about a month ago told the patrol officer he  
5 should be stopping the right people. When asked who the right  
6 people were, he said black males between the ages of 14 and 21  
7 because they are the ones committing all the robberies.

8 You will also hear the testimony of plaintiff David  
9 Ourlicht about what happened to him in February of 2008 when he  
10 was walking from his home near St. John's University at the  
11 time to the subway with his friend who was white about the same  
12 age. They were class -- schoolmates. Dressed almost  
13 identically. When an unmarked NYPD car pulled up and four  
14 plainclothes officers got out and all of them rushed only at  
15 David, searched only David, frisked only David, and questioned  
16 only David.

17 And finally and perhaps most powerfully you will hear  
18 the testimony of Senator -- New York State Senator Eric Adams,  
19 himself a 21-year veteran of the New York police department.  
20 Senator Adams will testify about a meeting he had with  
21 Commissioner Raymond Kelly in July of 2010 during which Senator  
22 Adams expressed his concern to commissioner Kelly about the  
23 fact that so many young black and Latino men were being stopped  
24 and frisked by the NYPD. And Senator Adams will testify that  
25 Commissioner Kelly said to him in response that the reason the

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1 NYPD targets these groups, in other words young black and  
2 Latino men, is because they want to instill in them the belief  
3 that they could be stopped any time they leave their home.  
4 That way they will be more likely to leave their guns at home.

5 Now plaintiffs submit that this statement of  
6 Commissioner Kelly again states very clearly what proactive  
7 policing means in New York City.

8 The final point I want to make just briefly on the  
9 Equal Protection claim is again going back to the RAND  
10 Corporation report on the NYPD's stop-and-frisk practices.

11 The city will argue that the report which they  
12 commissioned provided results which gave them no reason to  
13 think as of 2007 that their officers were engaged in racial  
14 profiling.

15 (Continued on next page)

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D3I8FLO2 Opening - Mr. Charney

1 MR. CHARNEY: But as the evidence will show, the RAND  
2 report in fact did identify significant racial disparities and  
3 stops of Latinos and weapons stops of Blacks and in post-stop  
4 outcomes in certain parts of the city.

5 The report also identified 15 New York Police  
6 Department officers, which the RAND researchers had determined  
7 had overstopped minority pedestrians in 2006.

8 And the report made two recommendations to address  
9 both the disparities with the post-stop outcomes and these 15  
10 officers, neither of which the New York Police Department ever  
11 adopted.

12 Furthermore, as Professor Fagan will testify, the RAND  
13 analysis was full of such serious methodological flaws that it  
14 was really unreasonable for the police department to have  
15 relied on it at all.

16 Thus, the evidence at trial will show that not only  
17 was the city's reliance on the validity of RAND's findings  
18 unreasonable, but in actuality, the RAND report did identify  
19 some significant racial disparities which the NYPD chose to do  
20 nothing about.

21 Now, I do also want to talk a little about the remedy  
22 evidence, but before I do that, I just wanted to clarify what  
23 this case is not about, because I think this will help both the  
24 Court and I think the parties really tailor their evidence in a  
25 proper way.

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D3I8FLO2

Opening - Mr. Charney

1           The first thing this case is not about is not about an  
2 effort on the part of the plaintiffs to eliminate stop and  
3 frisk as a crime fighting tool for the New York Police  
4 Department.

5           The U.S. Supreme Court gave legal sanction to stop and  
6 frisk as a policing tactic more than 40 years ago in Terry v.  
7 Ohio, and plaintiffs are not seeking to overturn Terry.

8           Instead, we submit that it is the NYPD in the name of  
9 proactive policing which is a systematic violation of the  
10 Supreme Court's directive in Terry, and the plaintiffs are  
11 simply seeking to ensure that going forward the NYPD complies  
12 with the requirements of Terry and its progeny that all stops  
13 and frisks be based on reasonable articulable suspicion that  
14 the person being stopped has committed, is committing, or is  
15 about to commit a crime.

16           Second, the plaintiffs are not challenging the NYPD's  
17 decision to deploy more police officers to high crime areas of  
18 the city. What we are challenging is the way that the police  
19 officers deployed to these areas behave; in other words, the  
20 tactics they use which we believe include suspicionless and  
21 race-based stops.

22           Now I would like to finally discuss the evidence  
23 regarding remedies, which is going to be a part of this trial  
24 as well.

25           The city will no doubt point to changes that were made

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Opening - Mr. Charney

1 last spring and summer in some of its stop and risk related  
2 policies and practices. We submit that the evidence will show  
3 at this trial that much of these changes were meaningless.

4 First, you will hear evidence, and your Honor has in  
5 fact already heard evidence, about the training at Rodman's  
6 Neck last summer, which the Court has already ruled in many  
7 respects still misstated the law under the Fourth Amendment and  
8 therefore made it more likely that officers would commit  
9 unconstitutional stops.

10 You will also hear that the police department issued,  
11 what they like to call, a new racial profiling policy on May  
12 16, 2012, which, as your Honor may recall, is the very same day  
13 that you certified the class in this case. However, that  
14 racial profiling policy is worded almost identically to the old  
15 one that was instituted in 2002. And, more importantly, it  
16 doesn't address the problems which the plaintiffs are most  
17 concerned with, which is the implementation of the policy, how  
18 it's being carried out in practice in the precincts and on the  
19 streets of New York City.

20 And you will hear about changes to those audits I  
21 mentioned earlier, which, again, were announced about the same  
22 time that the class was certified in this case. But the  
23 evidence will show that the only actual change made to the  
24 audit protocols was the rank of the person in each precinct who  
25 conducts them. There is no other change to the way the audits

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D3I8FLO2 Opening - Mr. Charney

1 are conducted.

2 So in sum, I would say that these changes really do  
3 not in any way eliminate the need for this Court to act boldly  
4 and broadly to remedy the unconstitutional policies and  
5 practices that plaintiffs will prove at this trial.

6 The plaintiffs will also put on further evidence that  
7 we believe will support a broad remedy in this case. That  
8 evidence will be primarily provided through the testimony of  
9 Professor Samuel Walker of the University of Nebraska at Omaha.  
10 Professor Walker is a nationally recognized expert in police  
11 reform, police accountability, and police community relations,  
12 who has spent more than 30 years researching and helping large  
13 urban police departments around the country to implement  
14 reforms designed to bring these departments' policies and  
15 practices in compliance with the Constitution.

16 Professor Walker will testify about the need for the  
17 remedy in this case to be:

18 One, comprehensive, addressing all aspects of the New  
19 York Police Department's stop and frisk program, including  
20 training, supervision, monitoring, officer discipline, and  
21 performance evaluations.

22 Second, the need for any remedy to include the input  
23 of those communities most impacted by the NYPD stop and frisk  
24 practices, input into both the development and implementation  
25 of the remedial measures.

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Opening - Mr. Charney

1 Third, and perhaps most importantly, he will testify  
2 about the need for a court appointed monitor to assist with and  
3 monitor the city's implementation of all court ordered remedies  
4 in this case.

5 Plaintiffs believe that our powerful liability  
6 evidence and the testimony of Professor Walker will clearly  
7 establish the need for the Court to act boldly and broadly to  
8 long last remedy what has been a serious and intractable  
9 constitutional problem that has plagued this city for more than  
10 a decade.

11 Thank you.

12 THE COURT: Thank you, Mr. Charney.

13 Before we begin the open statement for the city, I  
14 thought we would take a ten minute recess, and we will  
15 reconvene at 20 after 11 on that clock.

16 (Recess)

17 THE COURT: Ms. Grossman, are you going to begin?

18 MS. GROSSMAN: Yes, your Honor.

19 May it please the Court.

20 Your Honor, the evidence at trial will demonstrate  
21 that the NYPD is fully committed to policing New York City  
22 within the bounds of the law. From the police academy to the  
23 precincts and the city streets, officers are trained to follow  
24 the law, including the Fourth and Fourteenth amendment.  
25 Officers fully understand the need for reasonable suspicion to

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Opening - Ms. Grossman

1 make a Terry stop and the department explicitly prohibits  
2 racial profiling. The plaintiffs will not meet their burden.

3 By way of introduction, New York City is a big place.  
4 Keeping the city safe and secure is an enormously complex  
5 undertaking. And to put the number of stops police make each  
6 year in perspective, we live in a city of over 8 million  
7 people, not to mention hundreds of thousands of visitors each  
8 day, 50 million tourists per year, and the NYPD has over 23  
9 million contacts with the public every year. Millions of  
10 requests for assistance, upwards of 4 million radio runs,  
11 500,000 crime complaints. Officers affect 900,000 arrests and  
12 summons per year. And in 2011, a high of 685,000 stops, actual  
13 Terry stops, investigatory detentions, down to 535,000 stops in  
14 2012. All part of the department's tireless efforts to keep  
15 everyone in the city safe and secure day in and day out, week  
16 in and week out, throughout the year. Considering the number  
17 of officers on the street who generally carry out such stops,  
18 and as compared with the number of arrests and summonses, that  
19 is the number of stops one would expect.

20 Notably, crime is not distributed evenly among the  
21 precincts of New York. Minority neighborhoods overwhelmingly  
22 bear the brunt of crime, and blacks and Hispanics account for a  
23 disproportionate share of crime victims, and also crime  
24 perpetrators. Plaintiffs are right, this case is about people,  
25 and over 90 percent of shooting victims are black and Hispanic.

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Opening - Ms. Grossman

1 Approximately 83 percent of all known crime suspects and 90  
2 percent of all violent crime suspects are black and Hispanic.  
3 And blacks and Hispanics represent 87 percent of persons  
4 stopped.

5 To address these realities, the NYPD has focused a  
6 disproportionate share of its resources on the minority  
7 neighborhoods where crime is highest. And this is not limited  
8 to gun violence. Because these neighborhoods demand and  
9 deserve the department's protection. The department follows  
10 the crime and it follows that crime in real time. That is the  
11 nature of hot spot policing post CompStat. It is not racial  
12 profiling.

13 Years ago police generally responded to crime for  
14 reactive policing, responding to calls for service and 911  
15 calls, that is, responding to crime after it had occurred.  
16 Crime was rampant, and in the 90s the city's policing expanded  
17 to include a proactive approach.

18 In 1994, with the adoption of the CompStat process,  
19 the police were able to map crime and identify high crime and  
20 problematic areas, track patterns and track trends. Using this  
21 information, police were sent to crime ridden areas to seek and  
22 prevent crime from happening. Police officers were expected to  
23 actively engage in the community, keep their eyes open, develop  
24 intelligence, and take enforcement action, all within the  
25 boundaries of the law.

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Opening - Ms. Grossman

1 By the late 90s, New York began to experience  
2 historical drops in crime, which has continued to this day.  
3 Despite the success, violence continues to plague certain  
4 neighborhoods. African American and Hispanic citizens make up  
5 the vast majority of violent crime victims in this city.  
6 Police are given an awesome responsibility, one of which is to  
7 bring down crime and keep people safe, and they recognize the  
8 importance of doing their jobs within the boundaries of the  
9 law.

10 And plaintiffs will not establish otherwise. Only a  
11 dozen people will testify about allegedly unlawful stops, and  
12 even under Professor Fagan's analysis, the vast majority of  
13 stops are lawful. And although plaintiffs recognize in their  
14 remedy brief that you cannot tell from examining a UF-250 form  
15 alone whether a stop is supported by reasonable suspicion,  
16 their expert has purported to do just that, analyze forms to  
17 conclude how many stops are and are not supported by reasonable  
18 suspicion. By his most recent count, approximately 88 percent,  
19 close to nine in ten, of the Terry stops are lawful. Only 6  
20 percent in recent years are apparently unjustified and another  
21 6 percent are ungeneralizable.

22 As you will learn at this trial, and as Ms. Cooke will  
23 detail later, his reasoning is deeply flawed and cannot be  
24 relied on to support plaintiffs' pattern and practice claim for  
25 that reason.

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Opening - Ms. Grossman

1 But even if his analysis of the check boxes on the  
2 forms were sound, it would not support plaintiffs' pattern and  
3 practice claim because the form alone simply does not tell the  
4 whole story. And Professor Fagan cannot fill in the blanks by  
5 attacking the information on the form or speculating about  
6 information that is not on the form.

7 Nor will plaintiffs' quota allegations advance their  
8 case, because there is no evidence whatsoever that alleged  
9 quotas or performance goals are the moving force behind any  
10 unlawful constitutional stop. Plaintiffs' quota theory cannot  
11 be reconciled with the fact that officers who generally work 20  
12 days a month, a little over eight hours a day, generally  
13 account for very few stops on average. Patrol officers' stop,  
14 question and frisk average range from anywhere between one and  
15 three stops a month. Specialty units, who I will discuss about  
16 later, represent about five to eight per month.

17 The idea that pressure to make stops results in bad  
18 stops is a notion that sounds appealing in theory, and one that  
19 has gained some traction among advocates and in the press, but  
20 this case is not about theories and speculation. It's about  
21 evidence. We ask your Honor to evaluate that evidence, what is  
22 presented in the courtroom and what is admissible under the  
23 rules of evidence, and not what has been discussed in the  
24 press, not what has been theorized by various academics, not  
25 what has been advanced by politicians and others who have

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1 jumped on the "let's criticize the NYPD" bandwagon. And that  
2 evidence will show that the NYPD has a policy of acting  
3 lawfully in all respects, and that it strives in all respects  
4 to carry out that policy, while doing its utmost to keep the  
5 city safe and secure.

6 With that by way of introduction, let me turn now to  
7 what the evidence will show.

8 I will be discussing various NYPD systems in place to  
9 monitor stop, question and frisk and the plaintiffs' and  
10 certain class members' individual incidents, and my colleague,  
11 Ms. Cooke, will be discussing the expert piece of this case.  
12 But first, before I get to these systems, I would like to  
13 address the Daniels stipulation.

14 Plaintiffs would have you think that the stipulation  
15 of settlement in the Daniels litigation represented promises by  
16 NYPD to change its stop, question and frisk activity.

17 First, there was no finding that the NYPD stop,  
18 question and frisk practices were unconstitutional. A simple  
19 reading of that short document shows that mostly what  
20 plaintiffs agreed to, and what NYPD promised, and what this  
21 Court so ordered, was that the NYPD would continue what it had  
22 already been doing.

23 Here is what NYPD promised in Daniels. It would  
24 continue to train all officers on the law of stop, question and  
25 frisk. That it would continue its policy prohibiting racial

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1 profiling, which it has and recently reaffirmed. And that it  
2 would continue to document stops on forms called UF-250s, the  
3 very form that plaintiffs agreed to and now criticize because  
4 it does not have a narrative.

5 NYPD did all of these things and continues to do them  
6 this day, long after the Daniels stipulation expired in  
7 December of 2007. Yet, ironically, one of the things  
8 plaintiffs have most criticized NYPD for since the Daniels  
9 litigation is the increased number of stops documented in the  
10 UF-250s, which is likely the result not of greater stop  
11 activity, or a stop, question and frisk program fueled by  
12 pressure to meet quotas, but of better and more consistent  
13 documentation of stop activity brought on by the very promises  
14 the NYPD made in response to plaintiffs in Daniels.

15 But there is so much more that the NYPD has done and  
16 is doing than what was in the Daniels stipulation. In Daniels,  
17 the NYPD promised to conduct audits and self-inspection related  
18 to stop, question and frisk activity. Audits and  
19 self-inspections, I might add, that class counsel in Daniels,  
20 the same who represent the Floyd class here, reviewed and  
21 agreed to prior to executing the settlement. And that did not  
22 include interviews with officers or interviews with the  
23 civilians.

24 It started these in 2003 with an annual citywide audit  
25 of 250s by the quality assurance division, and two monthly

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D3I8FLO2 Opening - Ms. Grossman

1 command level inspections of UF-250s and arrests, instigated by  
2 police initiated enforcement activity to determine if the  
3 UF-250 was completed documenting a legal basis for the  
4 activity.

5 Today there is also an annual citywide audit by QAD of  
6 officer activity logs to determine, among other things, if an  
7 officer has completed a detailed narrative entry in his  
8 activity log when he conducts a stop, question and frisk. And  
9 there is a parallel monthly self-inspection which does the  
10 same.

11 QAD also conducts a quarterly survey of three commands  
12 of the highest increase in UF-250s as compared to the same  
13 period in the prior year. And QAD conducts another annual  
14 audit which is aimed at determining if officers are actually  
15 documenting stops and starts by listening to calls for  
16 assistance that are likely to have resulted in stop activity,  
17 and then tracing the activity of the responding officers to see  
18 if a 250 was ever created.

19 In Daniels, the NYPD promised to and did revise the  
20 pamphlet entitled "Understanding your Rights," and that was for  
21 public dissemination, which included information of stop,  
22 question and frisk encounters between police and citizens.

23 NYPD also created a palm card for public dissemination  
24 with information and procedures for citizens who had concerns  
25 about stop, question and frisk encounters, and it included the

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1 telephone number of the CCRB.

2 In Daniels, the NYPD also promised and did hold  
3 upwards of 50 high school workshops about stop, question and  
4 frisk. None of these efforts required the cooperation of the  
5 Daniels plaintiffs and NYPD accomplished them without  
6 hesitation.

7 But NYPD's involvement in the community and  
8 communication with the public about stop, question and frisk  
9 was never limited to the Daniels stipulation. To the contrary,  
10 it is widespread. Opportunities for members of the public to  
11 address any concerns they may have about stop, question and  
12 frisk are informally available every minute of every day, as  
13 the city's precinct doors are always open and 311 lines are  
14 always operating.

15 Patrol officers routinely maintain a visible presence  
16 in neighborhoods and impact officers in high crime areas are  
17 often on foot posts interacting with and available to the  
18 community.

19 More formally, every month all NYPD precinct  
20 commanders must attend community council meetings where the  
21 public airs concerns about local crime conditions and issues.

22 NYPD has numerous programs aimed at engaging and  
23 interacting with youth. The press reports regularly on  
24 high-level NYPD officials attending community meetings in  
25 churches, housing developments, and other local forums.

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Opening - Ms. Grossman

1           What else has the NYPD done regarding stop, question  
2 and frisk? We heard about the RAND study. In 2007, NYPD  
3 decided to have an outside independent entity look at stop,  
4 question and frisk practices to determine if they were  
5 improperly based on race instead of reasonable suspicion. And  
6 the RAND Institute undertook this study.

7           RAND made some recommendations for improvements,  
8 almost all of which NYPD implemented in some form. These  
9 included the inclusion of a separate training lesson on stop,  
10 question and frisk and the racial profiling policy in the  
11 training materials that all impact officers receive and must  
12 master within six months after graduation from the academy.

13           The requirement that all probationary officers'  
14 training sergeants sign off on that officer's UF-250 so that  
15 the direct supervisor can more readily identify officers in  
16 need of instruction.

17           The patrol guide revision formalizing that officers  
18 explain the reasons for their stops to people that they stop  
19 when stops do not evolve into arrests and the development of a  
20 card with information on what a person can do if he or she has  
21 concerns about a stop, question and frisk encounter.

22           The QAD audit, a call for service, to identify whether  
23 250s are created for responses that would likely result in  
24 stops as I just described before.

25           And the purchase of software to identify officers

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1 whose patterns are out of the ordinary when compared to  
2 officers in similar locations at similar times.

3 This is the same software that RAND researchers used  
4 when they identified 15 out of about 18,000 officers whose stop  
5 patterns in 2006 showed higher stop rates than officers  
6 similarly situated to them. RAND did not identify the officers  
7 because of privacy issues. Plaintiffs complained that the NYPD  
8 never replicated that 2006 radio run. However, the NYPD did  
9 run the software in either 2007 or 2008, which resulted in the  
10 identification only of officers whose stop patterns were lower  
11 than the officers similarly situated to them.

12 In addition to these developments, NYPD, in or around  
13 2008, instituted audits that I mentioned before of officer  
14 activity logs to determine if stops were recorded and described  
15 in detail in the activity logs. These audits were one part of  
16 a training and monitoring push to encourage detailed narrative  
17 entries about stops. And for activity logs that omitted  
18 references to stops completely, NYPD now requires the officer  
19 be disciplined with a B level command discipline, which could  
20 carry a penalty of lost vacation days.

21 In the summer of last year, the NYPD rolled out a new  
22 mandatory training session at Rodman's Neck in the Bronx  
23 focused exclusively on stop, question and frisk activity. A  
24 half day training involved both lecture and role-play  
25 components. The first officers to attend were the newest

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Opening - Ms. Grossman

1           They also post information and precinct crime  
2 information centers with pertinent details, like the  
3 descriptions of the perpetrators, suspect photographs, patterns  
4 and trends which identify as much detail as possible about the  
5 manner in which a crime occurs.

6           This is all designed to provide as much information as  
7 possible to allow officers who go out and address the crime and  
8 conditions on their tour. Officer assignments may shift  
9 according to where the crime is happening, often within any  
10 24-hour period of time.

11          In addition to the crime analysis conducted at the  
12 precinct level, crime hot spots are identified yearly by the  
13 creation of impact zones. Through careful crime analysis,  
14 police look for pockets of crime within specific small  
15 geographic boundaries, and they flood officers to these pockets  
16 to address the crime. These pockets can be in low crime  
17 precincts, but they can be high crime areas within a larger  
18 precinct which is not known as a high crime precinct.

19          To address the many crimes and conditions of a  
20 precinct, there are different units within the police  
21 department with different missions.

22          For example, as I mentioned earlier, specialty units.  
23 Impact officers are officers in uniform, newly graduated from  
24 the police academy, and they are assigned to these impact  
25 zones. They usually cover these posts by foot. For example,

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Opening - Ms. Grossman

1 in any one impact zone, which could be a few block radius,  
2 there could be 40 or more officers patrolling any one impact  
3 zone.

4 We also have anticrime officers. They are plain  
5 clothes units. Their main focus is violent crimes, like  
6 robberies, shootings and felony assault or grand larceny and  
7 related type crime.

8 We have conditions units whose main mission is to  
9 address quality of life conditions.

10 And we have our special narcotics enforcement unit  
11 which focuses on drugs.

12 There is also the typical patrol officer who is in  
13 uniform, assigned to a sector car, and responds to calls for  
14 service ranging from domestic disputes, accidents, robberies,  
15 assaults in progress, cause for medical attention as well.

16 Another way that the police addresses crime in  
17 addition to these specialty units is when they use impact  
18 overtime. This impact overtime is used to address crime spikes  
19 in particular areas. And precincts may request overtime  
20 authority, which is known as impact overtime. Given that  
21 overtime is a limited resource, it is carefully monitored by  
22 the chief of patrol office to ensure that it is being used  
23 properly and that it is indeed addressing the crime spikes. If  
24 the overtime is not addressing crime spikes, it may be an  
25 indication that overtime is not authorized or that resources

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1 are not being maximized.

2 Then what do the police do when they actually get to  
3 the areas? The NYPD expects officers to address conditions,  
4 get out of the car, observe, engage, make community contacts,  
5 develop intelligence, open their eyes, and enforce the law when  
6 unlawful behavior is observed. Make arrests when they see  
7 criminal behavior. Issue summonses if they see summonable  
8 offenses and make stops when they have reasonable suspicion to  
9 believe that a crime has been, is being, or is going to be  
10 committed.

11 And all of these activities should be done within the  
12 boundaries of the law and based on the conditions in the unit.  
13 If the condition to be addressed is a robbery pattern, the NYPD  
14 does not expect officers to stop the little old lady or the  
15 little old man drinking with an open container of alcohol on  
16 the street. And if officers keep their eyes open, the NYPD  
17 expects to see a reduction in crime and conditions addressed to  
18 the satisfaction of the community.

19 But before any officer makes a stop, he or she is  
20 trained on what a stop is. Rest assured training is given from  
21 the minute they walk into the academy. The record evidence  
22 incorporated from the preliminary injunction hearing in Ligon  
23 shows the extensive training recruit officers receive during  
24 their six months at the academy prior to assignment as a police  
25 officer in the police department. The academy is accredited by

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1 several entities, including by CALEA in 2006, and received  
2 reaccreditation in 2009 and 2012, which even the plaintiffs'  
3 expert, Lou Reiter, acknowledges carries a presumption of  
4 adequacy for the content of the training materials.

5 In addition to the evidence from Ligon regarding  
6 extensive recruit training of stop, question and frisk,  
7 reasonable suspicion and trespass crimes, the evidence will  
8 show that recruits receive extensive training on penal laws and  
9 constitutional law, both New York state and federal. And I  
10 would note, your Honor, that innocent people can engage in  
11 conduct that gives rise to reasonable suspicion. That no  
12 arrest was made does not mean that the reasonable suspicion did  
13 not exist under the Fourth Amendment.

14 We also train on the department's policy against  
15 racial profiling. We train on impartial policing, the law of  
16 discretion, policing a multicultural city, tactics, memo book  
17 entries and memo book activity logs. And the training  
18 continues when they are first assigned to an impact zone out in  
19 the field. And throughout their careers, through roll call  
20 training, legal bulletins, informal on-the-job training, formal  
21 annual training, promotional training, even special training  
22 programs like the one I recently referred to at Rodman's Neck.

23 Whenever a stop is made based on reasonable suspicion,  
24 a police officer has to fill out a UF-250. And the pertinent  
25 details of a stop are supposed to be recorded in an officer's

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Opening - Ms. Grossman

1 activity log. Keep in mind that it's important to remember a  
2 250 need not be completed if the encounter does not give rise  
3 to legal suspicion or if the encounter is based on probable  
4 cause.

5 Plaintiffs state that the recording on a 250 is  
6 nothing more than a series of check-off boxes instead of  
7 explaining the reasons for a stop, and that no one is  
8 supervising whether the stops are made on reasonable suspicion.

9 As far as 250s, the officers do use check-off boxes,  
10 but the boxes, in addition to all the other information on the  
11 form, do explain the legal and factual basis for the stop.  
12 This form was agreed to by plaintiffs' counsel in Daniels.

13 Let me add that the activity logs also provide a place  
14 for officers to include other pertinent details of the stop.

15 In addition, further details about the stop can be  
16 obtained as cross-reference on the form itself, like summonses,  
17 arrest paperwork, Sprint reports, even trespass fax sheets that  
18 you heard a lot about in the Ligon proceeding.

19 While it has been a struggle to get officers to fill  
20 out activity logs with a great deal of detail, the NYPD did  
21 provide additional training on preparation of these logs. They  
22 did set up an audit and department wide audit to review these  
23 activity logs, and they did set up a system to impose  
24 discipline for failure to prepare these logs. Our QAD audits  
25 reflect significant improvement in filling out these logs.

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D3I8FLO2

Opening - Ms. Grossman

1 Now, getting back to the supervision, stops are  
2 supervised in a widespread fashion. First of all, 250s must be  
3 reviewed and signed off by a supervisor. Oftentimes this is  
4 the immediate supervisor of an officer. While the patrol guide  
5 requires at a minimum that the desk sergeant sign off on a 250,  
6 in practice, an officer's direct supervisor does sign off on  
7 the UF-250. This is the usual practice. This means that the  
8 supervisor who knows the officer the best and knows the  
9 conditions of the day is reviewing the form. That information  
10 informs his assessment of whether the stop is legal. And, of  
11 course, if the immediate supervisor has questions about a stop,  
12 he can ask.

13 And this supervision goes beyond paperwork.  
14 Supervisors are in close contact with officers during all  
15 shifts. They learn habits, strengths, weaknesses. A  
16 supervisor has daily interactions with his officers. A  
17 supervisor is responsible for the activities and conduct of his  
18 officers. And a supervisor shares the same shift and  
19 coordinates and directs where officers are supposed to go on  
20 patrol. Supervisors are keenly aware of conditions on any  
21 particular shift, and they are equipped with radios. They  
22 monitor all the calls for assistance that their officers are  
23 responding to, and officers and sergeants also communicate by  
24 radio.

25 Oftentimes a supervisor will accompany or show up when

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D3I8FLO2 Opening - Ms. Grossman

1 assess the officer's understanding of the law, including  
2 reasonable suspicion.

3 In fact, for anticrime units, both in the precincts  
4 and the bureaus, the squads are small. It could be around five  
5 officers per one sergeant on a tour. When plain clothes  
6 anticrime officers are in plain clothes, the sergeant is  
7 usually present with the officers. This presence also allows  
8 the sergeant to continually assess an officer's understanding  
9 of the propriety of any enforcement including stops.

10 Other opportunities for sergeants to interact and  
11 assess activity is when they sign activity logs and when arrest  
12 paperwork is reviewed later on at the precinct to see that the  
13 officer is able to articulate a proper basis for an arrest,  
14 including the details of a stop.

15 Like any organization, your Honor, these interactions  
16 between supervisors and subordinates allows supervisors to get  
17 to know the officers he works with and to determine whether or  
18 not he knows what he is doing, and to satisfy himself as a  
19 supervisor that the officer is following the law.

20 Some of this knowledge comes through basic informal  
21 and common everyday interaction. But they are not necessarily  
22 documented in a department form. As these relationships form  
23 over time, the supervisory structure allows these relationships  
24 to develop so that a sergeant knows the strengths and  
25 weaknesses of his officers and can address them appropriately.

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Opening - Ms. Grossman

1           The plaintiffs are going to tell you that there is a  
2 break in the chain of supervision such that it does not allow  
3 supervisors to do what I just said that they do. Let me tell  
4 you about how some of the other supervisors are supervised.

5           There are many ways. Every sergeant is supervised on  
6 every tour by a platoon lieutenant who is in charge of all the  
7 sergeants on duty for each tour. The platoon lieutenant can  
8 canvass the patrol area, observe the sergeants and their  
9 squads, also monitor the radio to see what the activity is, and  
10 show up at a scene at any time. A lieutenant is also  
11 responsible for checking the sergeants' activity logs during  
12 every tour. In this way, the lieutenants monitor and check on  
13 officer activity.

14           Every lieutenant is answerable to a captain and all  
15 higher ranks above him in the command, up to the commanding  
16 officer. All impact units at this point have a dedicated  
17 impact captain whose oversight is almost exclusively dedicated  
18 to the impact officers and their supervisors.

19           Every precinct has an integrity control officer, known  
20 as an ICO. The ICO is usually responsible for completing these  
21 monthly inspections about stop, question and frisk and activity  
22 logs, and it affords the ICO a scrutinized snapshot of an  
23 officer's stop activity and provides an opportunity to identify  
24 trends of problem areas across the precinct and across  
25 different kinds of officers and even for one officer. The ICO

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Opening - Ms. Grossman

1           The CO has access to a CCRB database, the discipline  
2 and complaint history of each of his officers, and ultimately  
3 approves their performance evaluations.

4           In doing so, the CO gets a comprehensive picture of  
5 the officers in his command and can identify any concerns about  
6 any given officer's stop practices.

7           The CO is also responsible for carrying out monitoring  
8 plans for each officer who had been placed in various  
9 monitoring programs, which can include officers who have had  
10 complaints from the public of improper stops, and which I will  
11 discuss shortly.

12          The CO, however, is not left unsupervised. The CO  
13 must then answer to all ranks above him. This includes the COs  
14 of the borough in which the precinct is located. The borough  
15 COs meet regularly with the precinct COs to go over crime  
16 conditions and emerging trends to determine appropriate  
17 responses.

18          And the same happens at the highest level, where both  
19 the commands and the boroughs are answerable to the chief of  
20 department at weekly CompStat meetings.

21          At the CompStat meeting, specific commanders are made  
22 to answer to the highest ranking officer about the crime  
23 conditions in his command and the types of enforcement activity  
24 and plans that are being employed to address the issues.

25          This can include the examination of equality of the

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Opening - Ms. Grossman

1 stop activity in the command. That is, when there is a known  
2 crime condition in the command, which is always somewhere,  
3 CompStat examines in the first instance if there is any related  
4 enforcement activity taking place, including stops, and if  
5 there is equality of that activity.

6 A commanding officer will never successfully pass  
7 CompStat review just by showing numbers of enforcement  
8 activity. But, instead, must show that the type of enforcement  
9 being done is likely to address an identified crime condition.

10 Now, plaintiffs make a lot of the quota issue, and we  
11 submit that these quota allegations are a sideshow. Generally,  
12 in business, it is expected that employers will check to see if  
13 their employees are doing their jobs. Their employees are  
14 getting paid and the employers want to be sure that they are  
15 being paid for doing what they are supposed to be doing and not  
16 being rewarded for not doing their jobs. That would not make  
17 business sense. It would not be fair to employees who were  
18 doing their jobs.

19 Like all employers, NYPD does this too. It checks to  
20 see if officers are out in the field engaging in enforcement  
21 activity and addressing existing crime conditions.

22 Like all employers, NYPD does this to make sure that  
23 its officers are getting paid with public funds for actually  
24 doing a job and are not being rewarded for inaction or  
25 laziness.

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Opening - Ms. Grossman

1 Unlike other employers, though, an officer's failure  
2 to do his job does not just mean that he is not earning his  
3 paycheck. It means that crime is not being addressed and the  
4 public's safety is at risk.

5 For some reason, though, despite the more serious  
6 consequences to public safety of an officer's failure to  
7 perform, when NYPD measures some performance, plaintiffs do not  
8 see the NYPD as an employer trying to get the serious job of  
9 crime fighting and public protection done. Instead, plaintiffs  
10 see it as NYPD setting quotas that plaintiffs would have you  
11 believe are inflexible numbers for various activities,  
12 including stops, that are required regardless of crime  
13 conditions and the need or basis for the stop, which, if not  
14 met, result in some sort of penalty to the officer.

15 Plaintiffs argue that this creates pressure that leads  
16 to a large number of stops without a legal basis. There is  
17 simply no logical or evidentiary support for this proposition.  
18 Plaintiffs will not be able to explain why an organization as  
19 large as NYPD would waste its limited resources on requiring  
20 activity for no reason other than to show a number.

21 Keep in mind that results for NYPD are measured by the  
22 rate of crime. Drops in crime are generally seen as a success,  
23 not a number of enforcement activities. As the chief of  
24 department will tell you, the best result is no crime and no  
25 enforcement activity. That is the mind-set of the department.

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1 Nor will plaintiffs offer testimony of any officers  
2 who have personally conducted a stop or other enforcement  
3 activity without having a legal reason to do so. So much for  
4 the argument that officers are forced to undertake stops  
5 without reasonable suspicion to show a certain number of  
6 UF-250s. No one says that they do that.

7 Let me be clear, NYPD is very interested in and  
8 monitors closely officers' activity including stops. That's  
9 because NYPD knows that although crime is at record lows, there  
10 are still calls for service, there are still crime victims,  
11 there are still citizens to protect, and that means that there  
12 is still suspicious activity likely to be observed if an  
13 officer is doing his or her job. That's why you will hear  
14 testimony that NYPD is not interested in numbers for numbers,  
15 but it is interested in officers actively engaging in the  
16 community and addressing crime conditions, be it on foot post,  
17 in patrol cars, or as members of specialty units.

18 Plaintiffs suggest that Operations Order 52, which is  
19 known as quest for excellence, which tallies officers' weekly  
20 activity and documents the crime conditions it is supposed to  
21 be addressing each week, is just a numbers to numbers game. In  
22 other words, it encourages enforcement activity, like arrests,  
23 summons and stops, just to meet a number and show activity,  
24 regardless of whether there is a legal basis for it.

25 They go on to argue that the fact that the quest for

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1 excellence requires NYPD to set performance goals is evidence  
2 of a quota, a quota that imposes pressure on police officers to  
3 stop, without reasonable suspicion, all to impress police brass  
4 and to avoid being questioned about inactivity when crime is  
5 present.

6 Plaintiffs actually seek to eliminate the quest, and  
7 we implore the Court not to allow that to happen. Let me tell  
8 you what quest is. It's a procedure to provide guidance to  
9 supervisors and officers about how to evaluate, how a command  
10 addresses crime conditions, precisely without setting a quota,  
11 in violation of New York State Labor Law, which prohibits  
12 negative employment action for an officer's failure to meet  
13 quotas.

14 The procedure is simple. Based on known crime and  
15 quality of life conditions, patterns and trends, a police  
16 officer, with the approval of supervisory personnel, identifies  
17 two conditions to be addressed each week. Police officers are  
18 expected to have a plan to address these identified crime  
19 conditions present in their command. And then they are  
20 expected to go out in the field and conduct appropriate  
21 enforcement activity to address these conditions. After each  
22 week a supervisor assesses how the officer addressed his  
23 identified crime condition and rates the officer accordingly.

24 By way of an example, if an officer notes a robbery  
25 pattern as one of the conditions he plans to address, but only

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1 issues summons for driving without a license, that officer  
2 would not be addressing the condition. Such an officer may be  
3 generating activity and numbers, but if the community is  
4 complaining about violent crime, supervisors may not be  
5 satisfied with the quality of the officer's performance and may  
6 redirect that officer's activity.

7 The concept of quantifying an officer's activity as a  
8 component of assessing the officer's performance, initiative  
9 and competence is acceptable in policing, even according to  
10 plaintiffs' own police practices expert, Lou Reiter, and  
11 coupling it with an assessment of whether the activities  
12 responsive to crime conditions, as quest for excellence and  
13 NYPD do, is an exemplary way to ensure that an officer's  
14 performance is meeting the needs of the community.

15 Your Honor, there is another side to the numbers  
16 story, and it's a side of some of the officers. Like all  
17 employees, NYPD officers are human and come to the department  
18 with varying degrees of motivation, initiative, ability and  
19 productivity. Every one of them, without exception, is trained  
20 and given the tools to accomplish the crime fighting mission of  
21 the department, and to fulfill this awesome responsibility they  
22 have to protect and safeguard New Yorkers.

23 Not every one of them will succeed, and some will need  
24 more attention and supervision than others. Some will need  
25 support to build more confidence in others. And some will have

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1 to realize that the job means working. You cannot become, as  
2 New York is, one of the world safest cities if your officers  
3 believe that their job is, as it is sometimes portrayed on  
4 television and media, to sit in a patrol car eating donuts,  
5 oblivious to the needs of the public surrounding them.

6 But the truth is that some officers will resist doing  
7 the hard work that the job requires. You will hear testimony  
8 that officers who are less interested in doing the hard work  
9 will harass officers who are active. You will hear testimony  
10 that groups of officers will agree among themselves to do only  
11 a certain amount of activity, a low amount of activity,  
12 regardless of the crime conditions, and will complain about  
13 officers who exceed this amount.

14 You will hear a sergeant on a taped roll call  
15 explaining this phenomena, with labels like zeros, officers who  
16 intentionally engage in low amounts of activity, and heros,  
17 high activity officers. It's an age-old human battle. Those  
18 who do not want to work hard do not want others to work hard  
19 because it will make them look bad. It will show supervisors  
20 that there is work that can be done, even though they would  
21 like it to appear that their low activity is because there is  
22 no other work to do. It's jarring and it's ugly and NYPD is no  
23 different in this respect than other employers dealing with  
24 employees' various abilities and motivations.

25 There is yet another side to this story, the side of  
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1 the person who is stopped. If a person who is stopped believes  
2 that a quota was responsible for a stop, which lacked  
3 reasonable suspicion, he or she could bring a complaint in a  
4 multitude of ways which will trigger an investigation by the  
5 police department. And the evidence will show that there is a  
6 complex network system, both between the NYPD and the  
7 independent Civilian Complaint Review Board and within the NYPD  
8 to investigate complaints of wrongdoing by officers. And that  
9 investigations are quality investigations after which  
10 discipline is imposed if warranted.

11 Complaints may be made to the CCRB, to the NYPD or to  
12 311 through various means of communication, including by  
13 person, by phone, mail, e-mail. All complaints, even those  
14 made anonymously, are referred to an office for investigation.  
15 The CCRB investigates complaints that fall within four  
16 categories identified by the acronym FADO, "F" for excessive  
17 force, "A" for abuse of authority, "D" for discourtesy, and "O"  
18 for offensive language. And if the complaint comes in directly  
19 to the Civilian Complaint Review Board, not to the police  
20 department, the CCRB will determine if it falls within one of  
21 those four categories.

22 If it does not fall within FADO, the CCRB will not  
23 investigate the complaint and will advise the complainant to go  
24 directly to the NYPD. If it does fall within FADO, the CCRB  
25 will conduct a full investigation on its own, including

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1 interviewing the complainant and identifying and interviewing  
2 any involved officers.

3           And if the CCRB substantiates a complaint, the CCRB  
4 will forward the case to the NYPD department advocate's office,  
5 usually with a recommendation for discipline. NYPD will review  
6 the case to determine if discipline is warranted. Recently,  
7 with the agreement of the NYPD, the CCRB rather than a  
8 department advocate lawyer is now able to prosecute some of the  
9 substantiating cases.

10           The CCRB may also find the complaint unsubstantiated  
11 or unfounded or may exonerate the officer. And the CCRB is  
12 also authorized by law to mediate claims, like those involving  
13 stops where there is no injury to property or arrest.

14           The CCRB maintains a database of all civilian  
15 complaints made against officers and the disposition to which  
16 the NYPD has access at various levels.

17           The CCRB complaints are also noted on every officer's  
18 central personnel index, or what we call CPI, which is  
19 accessible by every commander and is reviewed regularly to  
20 screen officers for the inclusion in a monitoring program,  
21 which is called the CCRB profile and assessment community  
22 review and performance monitoring.

23           So complaints received directly by the NYPD can be  
24 investigated through various different groups, including IAB  
25 for serious misconduct and corruption, borough and bureau

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Opening - Ms. Grossman

1           And instructions may also be issued in situations  
2 where a member of the service has committed misconduct. In  
3 cases when instructions are given, they often involve mistakes  
4 or misinterpretations of the law rather than intentional  
5 misconduct, and are usually addressed by training and direction  
6 from commanders or other appropriate units, the police academy  
7 or the legal bureau.

8           Formal discipline through the department advocate's  
9 office is initiated by the service of charges and  
10 specifications on an officer, which can be based on  
11 substantiated cases, from the CCRB, IAB, Office of Equal  
12 Employment, and occasionally from integrity control officers in  
13 command at the Department of Investigation.

14           The penalties for charges and specifications include  
15 termination or forfeiture of up to 30 vacation days or  
16 suspension days per offense. If a plea is not negotiated, the  
17 officer will be entitled to due process at a trial, where the  
18 department advocate has the burden of proving these charges by  
19 a preponderance of the evidence. After the trial, the deputy  
20 commissioner of trials prepares a written report and makes  
21 recommendations to the police commissioner who makes the final  
22 determination on guilt.

23           And in addition to all these internal checks on stop,  
24 question and frisk activity, NYPD relies on civilian  
25 complaints, complaints of the public made to the CCRB, as

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D3I8FLO2 Opening - Ms. Grossman

1 triggers for placing officers in formal monitoring programs,  
2 which can carry consequences ranging from customized training  
3 or discharge in some cases.

4 Plaintiffs and their remedies expert would have you  
5 think that such programs do not exist despite that plaintiffs  
6 learned about these extensive programs in discovery but did  
7 little follow-up on them.

8 In fact, these programs do exist. They are interwoven  
9 into the fabric of how NYPD monitors and supervises personnel  
10 and represents the opposite of deliberate indifference or  
11 apathy toward NYPD stop activity.

12 Generally, these programs are designed to identify,  
13 monitor, remediate, aid, and sometimes discharge officers with  
14 a history of poor performance conduct, which can include stop  
15 activity, as identified through complaints made to the CCRB.  
16 And this is so regardless of whether or not they are  
17 substantiated by the CCRB or the NYPD.

18 One of the programs where an officer with complaints  
19 about stop activity is likely to be monitored is called the  
20 CCRB profile and assessment program and committee, which meets  
21 quarterly and is chaired by the first deputy commissioner, made  
22 up of the highest level NYPD personnel.

23 An officer will automatically be reviewed for possible  
24 remedial action if one of three criteria are met. An officer  
25 has three or more CCRB complaints in the past 12 months, or an

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Opening - Ms. Grossman

1 officer has six or more CCRB complaints in the past five years,  
2 or an officer has two or more substantiated CCRB complaints in  
3 the past five years.

4 So even if one civilian complains to the CCRB about a  
5 stop by an officer, allegedly made without reasonable  
6 suspicion, if that officer has two other CCRB complaints of any  
7 type within 12 months of the stop, the committee will review  
8 the officer and his entire employment history for possible  
9 action to determine whether the officer needs training,  
10 targeted testing, changes in command assignment, transfer of  
11 duty, etc.

12 (Continued on next page)

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D3i9flo3 Opening - Ms. Grossman.

1 MS. GROSSMAN: (Continuing) The officer will continue  
2 to be monitored to determine if and when identified issues have  
3 been remedied.

4 But that's not all. There's a redundancy  
5 automatically built into the monitoring system such that in  
6 addition to being watched at the highest level, the officers  
7 are being monitored at the local precinct level as well.

8 For example, in addition to being reviewed by the CCRB  
9 profile and assessment committee, the same officer with one  
10 CCRB complaint of stop and two other CCRB complaints of any  
11 kind in the same twelve-month period would also be placed on  
12 what's called performance monitoring.

13 Performance monitoring is a tool for COs to monitor  
14 the performance of officers within their command with the  
15 simple goal of improving it. Tagging officers for  
16 consideration in performance monitoring is done by the  
17 performance monitoring unit independent of the command and is  
18 based on several independent indicators including CCRB  
19 complaints and negative performance evaluations.

20 There are three levels of performance monitoring which  
21 increases with severity, with the third level designed to  
22 capture officers with continuous substandard conduct despite  
23 NYPD efforts to improve the conduct and find the right fit for  
24 the officer and the department. And it may be the last step  
25 before separation.

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D3i9flo3

Opening - Ms. Grossman.

1 Back to the example of the officer with one CCRB stop  
2 complaint and two other complaints in twelve months. These  
3 same CCRB civilian complaints would qualify the officer for  
4 level one performance monitoring. And at this level the CO  
5 must interview the officer and develop and implement a plan to  
6 address these officers' issues. The officer is evaluated in  
7 the tenth month of the monitoring to assess the need for  
8 continuation in level one monitoring or escalation to level two  
9 or later to level three monitoring should the issues persist.  
10 Each increasing level involves more formalized reporting of  
11 progress to higher levels of command, including the borough and  
12 first deputy commissioner.

13 Both the CCRB profile and assessment program and  
14 committee and performance monitoring are geared toward  
15 identifying solving problems and improving officer conduct,  
16 raising the level as it were. They represent a huge investment  
17 of time and resources in the NYPD officers, aimed at getting  
18 things right.

19 It is noteworthy that among the officers upon whom  
20 plaintiffs rely to establish a quota system, at least one of  
21 them alleges that he received a negative performance evaluation  
22 for failure to make a certain number of stops. In considering  
23 the credibility of this alleged evidence of quotas, the court  
24 should note that an officer has a self-interest in contesting a  
25 negative performance evaluation so that he can avoid closer

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Opening - Ms. Grossman.

1 scrutiny by being placed on performance monitoring. It  
2 benefits him to put the blame on the command and allege that  
3 they have instituted a quota in violation of New York state  
4 labor law because an officer who is not motivated to engage in  
5 much activity is not likely to want to have his activity  
6 watched either more closely and directly by the CO.

7 Now moving on to the plaintiffs' allegations. Despite  
8 the thousands of individuals that plaintiffs and their expert  
9 would have you believe have been illegally stopped, questioned  
10 and frisked, you will hear testimony about alleged stops from  
11 only twelve witnesses who claim they were stopped. Four of  
12 them are named plaintiffs, serving as class representatives.  
13 Eight of these -- eight of these twelve are class member  
14 witnesses. In total, these twelve witnesses will testify about  
15 19 alleged stops. Four of these witnesses will testify about  
16 eleven of these stops. And of these eleven stops, five will  
17 involve identified officers but six will not. For the  
18 remaining eight stops, eight witnesses will testify about one  
19 stop each. Seven of these stops will involve identified NYPD  
20 officers. One will not. In total, twelve alleged stops will  
21 involve identified NYPD officers. Seven will not.

22 Each of the twelve plaintiff witnesses was  
23 specifically selected by the plaintiffs to offer proof in this  
24 case. Of the 19 alleged stops, 14 of them are alleged to have  
25 occurred in 2009 or earlier, back to 2006. Only five allegedly

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D3i9flo3 Opening - Ms. Grossman.

1 occurred after 2009, with three in 2010, only two in 2011. And  
2 in two of these five, no NYPD officers were identified.

3 It is notable that in all the time since the  
4 commencement of this action in 2008 and despite class counsel  
5 sending out mailings as recently as this past fall 2012 to  
6 thousands of alleged class members and being given provisional  
7 permission to present at least 25 witnesses, plaintiffs are  
8 only able to present testimony regarding five stops that have  
9 allegedly occurred in 2010 and 2011. They will not present  
10 testimony by anyone stopped in 2012.

11 As for the alleged encounters, in no less than seven  
12 involving David Floyd, Clive Lino, Devin Almonor, Nicholas  
13 Peart, Dominique Sindayiganza, and Cornelio McDonald, the  
14 individual stopped at least matched the physical and/or  
15 specific clothing description and/or in some instances were in  
16 a location at a time that matched a specific known burglary or  
17 robbery pattern or a description of suspicious behavior  
18 complained by a member of the public.

19 In at least four instances involving David Floyd,  
20 Lalit Clarkson, David Ourlicht and Kristianna Acevedo, the  
21 alleged encounters do not even rise to the level of a stop  
22 requiring a reasonable suspicion as the witnesses voluntarily  
23 approached, stopped, or walked away from the officers after the  
24 officers asked to speak with them, with no indication of raised  
25 or commanding voices or that they were being detained in any

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D3i9flo3

Opening - Ms. Grossman.

1 way.

2 In at least three encounters involving Ian Provost,  
3 Leroy Downs, and Deon Dennis the witnesses admit that they were  
4 engaging in all or some of the very behavior that gave rise to  
5 the officers' reasonable suspicion, or in some instances  
6 probable cause, including Ian Provost's admission that he had a  
7 knife in his back pocket.

8 In three of Nicholas Peart's alleged stops he cannot  
9 identify NYPD officers and in some cases cannot even identify  
10 their gender or race or the date on which he was allegedly  
11 stopped. In two of these encounters, he alleged that the  
12 unidentified officers told him that he matched the description  
13 of someone who was trying to enter NYCHA housing or that he was  
14 stopped because of a series of burglaries in the neighborhood.

15 And in one of David Ourlicht's remaining two  
16 encounters, he admits that everyone outside of public housing  
17 building, all African-American males, were commanded to get on  
18 the ground and searched as more officers arrived at and entered  
19 the building and explained that they had an emergency call  
20 about a gun in the immediate vicinity of the men.

21 And regarding David Ourlicht's final alleged  
22 encounter, an identified NYPD officer explained that he stopped  
23 David Ourlicht on reasonable suspicion of criminal possession  
24 of a weapon after he observed him for two minutes walking in a  
25 manner consistent with hiding a weapon and observed a

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1 suspicious bulge in David Ourlicht's right side hip area.

2 The named plaintiffs and class members only make  
3 complaints to the CCRB for 9 out of the alleged 19 stops, less  
4 than half of them. Of these nine complaints, the CCRB  
5 substantiated three. Only one-third of the complaints.

6 Interestingly, of the nine complaints, all nine were  
7 for alleged stops where NYPD officers were identified. For the  
8 seven purported stops in which NYPD officers were not  
9 identified, there was zero civilian complaints.

10 For example, for the four stops alleged by Nicholas  
11 Peart, he only filed the CCRB complaint for the single alleged  
12 stop in which he identified NYPD officers. He did not do so  
13 for the remaining three alleged stops where he did not identify  
14 NYPD officers. This failure to make a CCRB complaint on his  
15 part is curious since he clearly knew how to do so.

16 Similarly, David Ourlicht only made a CCRB complaint  
17 for the one alleged stop where he identified NYPD officers and  
18 not for the other two where he did not identify NYPD officers.

19 Notably, of the five most recent stops where NYPD  
20 officers are only identified in three, only two produced CCRB  
21 complaints and only one was substantiated.

22 No CCRB complaint was brought at all in three alleged  
23 stops involving identified NYPD officers.

24 And as for the seven stops with unidentified officers,  
25 defendants investigated whether NYPD officers could have been

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1 involved through, among other things, photo arrays, review of  
2 paper and electronic 250s, and meetings with officers.  
3 Defendants' investigators were unable to identify any NYPD  
4 officers for these alleged stops despite their best efforts to  
5 scour data responsive to plaintiffs' vague, inconsistent and  
6 changing allegations as to when the alleged stopped occurred.  
7 For example, in 2008 in the second amended complaint  
8 David Floyd alleged that he was stopped on Friday, April 20,  
9 2007. Then, in 2011 he claimed that the same purported stop  
10 occurred on a Saturday in April 2007. Then Floyd testified at  
11 his deposition in 2009 that this same stopped occurred at noon  
12 but in 2011. He signed an affidavit saying that the same stop  
13 occurred just before 3:00 p.m. Nonetheless, Floyd was shown a  
14 photo array of officers who may have been working on the date  
15 it's issue. But even then he could not definitively identify a  
16 single officer as having been part of a purported stop.

17 Plaintiffs have handpicked 19 alleged stops not only  
18 to demonstrate their theory that stops are not based on  
19 reasonable suspicion but to show that stops are conducted based  
20 on race in the absence of reasonable suspicion. Yet, there is  
21 no evidence for a single one of these 19 police encounters to  
22 indicate that the incident was based on race. The plaintiffs  
23 themselves do not report that any words were used that would  
24 indicate a race-based stop or that anyone else of a different  
25 race was present and treated more favorably.

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1           Indeed, in each one of the police encounters where  
2 there are identified police officers, the officers explained  
3 why they approached the person. They matched a description.  
4 They were seen in possession of a weapon or alcohol. Or they  
5 were doing some action that was furtive and suspicious. Thus,  
6 the evidence of these witnesses does not support that they were  
7 approached by the police because of their skin color or for any  
8 reason other than reasonable suspicion.

9           Now, turning to the remedies that the plaintiffs have  
10 addressed.

11           Plaintiffs' allegations of deficiency in the NYPD  
12 systems and their vision of remedies are designed to fix a  
13 problem which does not exist. Plaintiffs seem to think that  
14 they, the court, or some kind of monitor can run the world's  
15 largest police department constitutionally better than the NYPD  
16 which has made New York City one of the safest cities in the  
17 world. We implore the court to look hard at what plaintiffs  
18 allege as the basis for finding a constitutional violation --  
19 for a finding of constitutional violations caused by alleged  
20 deliberate indifference and at their suggestion of a change and  
21 see how they simply do not comport with reality and cannot be  
22 relied on.

23           For example, plaintiffs' expert proof of a widespread  
24 pattern of suspicionless stops, which Ms. Cooke will address  
25 more fully, has had to change over time to acknowledge that at

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1 least 88 percent of NYPD stops are apparently justified.  
2 Plaintiffs' view that it is necessary to include a narrative on  
3 the UF 250 is an about-face from the acceptance of the  
4 check-box format of the 250 form by the plaintiffs in the  
5 earlier Daniels class action who were represented by some of  
6 the same class counsel in this case. It also blatantly  
7 disregards that NYPD officers take the job to help people, not  
8 to be writers and that NYPD officers hale from 40 to 50  
9 different countries, may not speak or write English as their  
10 first language.

11 Plaintiffs' view further ignores that the check-box  
12 format captures more information than was being captured on the  
13 narrative forms which were often not completed or were  
14 illegible when completed. And the check-box format enables  
15 categorical reporting and information gathering about stops  
16 which plaintiffs' own expert relies on and on which the city is  
17 required to transmit quarterly to the New York City council and  
18 that NYPD strongly encourages that narrative information about  
19 stops be included in an officer's activity log.

20 Plaintiffs' alleged proof of a break in supervision  
21 boils down in large part to a complaint that not every  
22 discussion that supervisors have at various levels about stop,  
23 question, and frisk practices is documented. And not every  
24 exchange between supervisors and officers on the job is  
25 recorded.

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1 First of all, plaintiffs fail to take into account the  
2 reality that if officers had to document and report everything  
3 that plaintiffs would like to have reported, there would be no  
4 time for policing.

5 What's more, plaintiffs' criticisms suggest that  
6 NYPD's systems are somehow constitutionally infirm because they  
7 include the fostering of basic human interactions that none of  
8 us document, that everyone experiences and uses to inform us  
9 about our colleagues and environments. These kinds of  
10 interactions enable officers to put their lives in danger at  
11 any given moment on the street and to rely on their fellow  
12 officers to do their best to safeguard them while they are  
13 protecting the public; yet, somehow they are not reliable  
14 enough to form the basis for supervisory judgment or the  
15 propriety of an officer's stop practices. How can that be?

16 Plaintiffs value form over substance by alleging that  
17 because phrases like reasonable suspicion or racial profiling  
18 may not be used between officers and supervisors or in the NYPD  
19 training as much as plaintiffs think is necessary, that the  
20 message about how to conduct proper stop, question, and frisk  
21 is not being communicated by supervisors. But the real world  
22 does not operate on such inflexible formalism. The evidence  
23 will show that the training at all levels, including in the  
24 field, focuses on the need to have a proper basis for a stop  
25 and that a stop or any enforcement activity must not be made

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1 solely on race. These requirements are reinforced in the  
2 documentation that must be completed for every single  
3 reasonable suspicion stop.

4 It is unnatural and unreasonable to expect that every  
5 time a stop is discussed reasonable suspicion or racial  
6 profiling must also be mentioned. It is like explaining why it  
7 is that two plus two equals four every time you do the addition  
8 in your head, or it's like saying don't lie and don't make  
9 false statements every time someone speaks.

10 In seeking to do away with Quest, plaintiffs  
11 contradict what their own expert has said about performance  
12 goals being an acceptable measure of police performance and  
13 certainly a comparative indicator of performance when assessing  
14 officers on similar assignments. Effectively, plaintiffs seek  
15 to divest the NYPD of a legitimate tool to measure officer  
16 productivity, a tool that is used in all employment contexts.  
17 And leave NYPD with what?

18 Plaintiffs' evidence will not tell you that, nor will  
19 plaintiffs' evidence tell you how not using activity as a  
20 measure of quality performance will further the safeguarding of  
21 the life and property of the public.

22 Plaintiffs seemingly would rather foster an  
23 environment where officers who are not motivated to work can  
24 benefit at the economic and safety expense of the public.

25 Plaintiffs would also have you believe that somehow

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1 NYPD officers, 52 percent of whom are minorities themselves,  
2 target young male blacks and Hispanics for stops without  
3 suspecting them of criminal activity just because they are  
4 Black and Hispanic.

5 Plaintiffs don't really take issue with the fact that  
6 NYPD deploys its limited resources in areas where crime is the  
7 greatest and that those areas tend to be majority minority  
8 neighborhoods in New York City. Yet they suggest that what  
9 NYPD officers do when they get to those areas, many of which  
10 cry out for even greater police presence when their children  
11 get caught in the crossfire of gun shots, is somehow different  
12 than what they would do if, for example, Whites lived in those  
13 neighborhoods. Once again, plaintiffs simply ignore reality  
14 and speculate about circumstances for which they have no  
15 comparison.

16 In another stunning avoidance of reality, plaintiffs  
17 insist that the NYPD does not engage the community in its  
18 policing efforts. They will cite public demonstration, city  
19 council meetings and isolated town hall gatherings where  
20 complaints about stop, question, and frisk activities were  
21 voiced by the public and then conclude that because there were  
22 complaints NYPD engages in widespread suspicionless stops and  
23 ignores the communities that it serves. But that is not at all  
24 what the evidence will show.

25 The evidence will show that NYPD is engaged in the  
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1 community in many ways where there is always opportunity for  
2 the public to share its concerns and where concerns about stops  
3 arise with no greater frequency than other complaints. Not all  
4 people who live in majority minority neighborhoods share  
5 plaintiffs' concerns.

6 For instance, NYPD is engaged with COs who attend  
7 monthly council and board meetings where issues are raised and  
8 addressed. NYPD has institutionalized its community outreach  
9 in its community affairs bureau. Among the initiatives are  
10 various focus groups that the community affairs bureau has  
11 hosted with clergy, community organizations, and police  
12 personnel to gather information and promote stronger  
13 relationships.

14 In all of these various layers of NYPD's proactive  
15 involvement with the community, combined with other independent  
16 forums for complaints like the CCRB, any significant concern  
17 about the constitutionality of NYPD's stop practices by people  
18 who are actually being stopped and not just by advocates would  
19 be evident. It could not be silenced or ignored.

20 To be sure, as with any large agency interacting with  
21 a diverse public that makes up the city of New York, there is  
22 always room for change and improvement in community  
23 interaction. There is always a need to foster respect and  
24 cooperation. And there will be mistakes made at times. But  
25 there is no evidence proved that there is a widespread pattern

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1 of illegal stops happening. The complaints are not there, or  
2 that NYPD turns a deaf ear to these complaints. The systems in  
3 place simply do not allow for that.

4 Your Honor, by putting in issue NYPD's stop practices  
5 and attacking its fundamental systems as constitutionally  
6 deficient, plaintiffs have afforded us the opportunity to  
7 explain what NYPD's full mission is: To enhance the quality of  
8 life in our city by working in partnership with the community  
9 and in accordance with constitutional rights to enforce the  
10 laws, preserve the peace, reduce fear and provide a safe  
11 environment.

12 Plaintiffs will not be able to meet their burden of  
13 proving that the city of New York has a policy or practice of  
14 conducting stop, question, and frisk without reasonable  
15 suspicion and on the basis of race. Nor will plaintiffs meet  
16 their burden of proving that there are deficiencies in NYPD's  
17 system of training, supervision, monitoring, discipline, or  
18 auditing that render the city in any way deliberately  
19 indifferent to the constitutional rights of those who are  
20 stopped.

21 Plaintiffs will simply not be able to prove that any  
22 policy of the city of New York acts as a moving force or the  
23 proximate cause of any widespread pattern.

24 Like I said, New York is a big place. And the NYPD is  
25 large and sophisticated -- and is a sophisticated police

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1 department with multifaceted and layered systems in place to  
2 make sure that its officers get the job of policing done and  
3 done properly under the constitution. Errors or mistakes may  
4 happen occasionally in the area of stops and frisks. But  
5 mistakes are not evidence of a constitutionally deficient  
6 policy or a widespread practice. There are ample systems in  
7 place to vindicate the rights of people against whom mistakes  
8 are made including through the court system. Plaintiffs are  
9 seeking structural injunction for the management of a social  
10 institution that is the NYPD and to turn every error by a  
11 police officer into a petition to hold the police officer or  
12 the city in contempt of court. This court need not succumb to  
13 plaintiffs' unnecessary and improper attempt to divest the NYPD  
14 of control over how the police investigate crime and conduct  
15 stop activity.

16 Your Honor, I thank you for your attention and now I  
17 turn this over to my colleague, Ms. Cooke, who will discuss the  
18 flaws raised in Professor Fagan's report.

19 THE COURT: Thank you, Ms. Grossman.

20 Ms. Cooke.

21 MS. COOKE: Thank you, your Honor.

22 In this trial plaintiffs will rely on flawed and  
23 unreliable analysis by Professor Fagan to support their claims  
24 that stops made by the NYPD are not supported by reasonable  
25 suspicion; that the NYPD is making stops impermissibly on the

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1 basis of someone's race; and that the stops have an  
2 impermissible disparate impact on Blacks and Hispanics.  
3 However, the evidence will show that Professor Fagan's analysis  
4 of eight years worth of data, totaling approximately 4.5  
5 million stops, contained within seven reports and declarations  
6 provided by Professor Fagan, utterly fails to support  
7 plaintiffs' claims.

8 What the evidence will show is that even on Professor  
9 Fagan's admittedly flawed analysis, his most recent report  
10 provides that the NYPD makes stops that are apparently based on  
11 reasonable suspicion 88 percent of the time.

12 For two-and-a-half years Professor Fagan has been  
13 issuing these reports, analyzing data recorded on millions of  
14 UF 250 forms. He draws conclusions about whether an NYPD  
15 officer had reasonable suspicion to make each stop. He has  
16 done this all without speaking to a single NYPD officer to find  
17 out what they intended when they filled out that form. He  
18 hasn't considered any information outside the form.

19 When Professor Fagan issued his original report in  
20 October of 2010 he analyzed 2.8 million forms from 2004 to  
21 2009. He concluded that 69 percent of the stops were  
22 apparently justified; 24 percent were not generalizable; and  
23 7 percent were apparently unjustified by reasonable suspicion.  
24 Thereafter, through rebuttal reports by the defendants' experts  
25 and a Daubert motion paper and hearing, the defendants

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1 identified many significant errors committed by Professor Fagan  
2 in his analysis and offered very valid criticisms to Professor  
3 Fagan's methodology.

4 In response, Professor Fagan was forced to acknowledge  
5 there was a significant error in his analysis. It had inflated  
6 the number of ungeneralizable stops by nearly 40 percent. And  
7 it had deflated the number of apparently justified stops by  
8 13.5 percent.

9 These were errors in the plaintiffs' favor. And when  
10 they were identified by the defendants, the numbers shifted to  
11 the defendants' favor. It resulted in an increase in the  
12 number of apparently justified stops between 2004 through 2009  
13 to a total of 78 percent. It reduced the number of apparently  
14 unjustified stops to 6 percent.

15 The court also ordered Professor Fagan to correct  
16 several other errors pursuant to the Court's Daubert ruling.

17 In Professor Fagan's second supplemental report which  
18 he served in November of 2012, he analyzed 1.6 million UF 250  
19 forms between 2010 and the second quarter of 2012. To be  
20 clear, he still did not consider information outside of the  
21 form. Professor Fagan concluded that the vast majority of  
22 stops, as I told you, 88 percent, were apparently justified by  
23 reasonable suspicion. He could not generalize the status of  
24 approximately 6 percent of those stops. And he determined  
25 6 percent were apparently unjustified by reasonable suspicion.

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1           The evidence presented at this trial will show that in  
2 order to further manipulate the results in his 2012 report  
3 Professor Fagan engaged in a flawed analysis of the handwritten  
4 narrative that is contained on the form when an officer checks  
5 the box "other."

6           Importantly, this analysis, as the court may recall,  
7 is the analysis that was discussed in February and March of  
8 2012 during the Daubert proceedings, during which time  
9 Professor Fagan asserted, in both sworn declarations and  
10 testimony in this courtroom, that trying to classify those  
11 narratives where the officer populates the line for "other"  
12 with handwriting would, "Invite a host of potential biases and  
13 errors and renders conclusions statistically meaningless."  
14 That was why he had not done so as of February, March of 2012.

15           He declined to analyze the handwritten narratives on  
16 the acknowledgment that, "the same or similar utterance may  
17 have very different intended meanings depending on, among other  
18 things, the situation and experience of the officer. Analysis  
19 that attributed the same meaning to such similar utterances  
20 would risk errors since there is no way to ascertain agreement  
21 amongst officers -- different officers as to the meanings of  
22 those utterances. No such dilemma exists among the checkbox  
23 circumstances where training and feedback can and should create  
24 a shared meaning of those established categories."

25           The evidence presented at this trial will show,

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1 populated. Instead, he engaged in flawed sampling methodology  
2 replete with errors. Professor Fagan purported -- as you will  
3 hear from Professor Robert Patel and Dennis Smith, the  
4 defendants' experts in this case, Professor Fagan purported to  
5 draw a sample of 3,710 UF 250s from that universe of 156,090  
6 stops. But you will hear from the testimony of the defendants'  
7 experts, Professor Fagan didn't do that. He drew a sample from  
8 a far smaller universe than 156,000 per his coding  
9 instructions. Further, the sample drawn was not representative  
10 in all manners of the population he was drawing the sample  
11 from.

12 As defendants' experts will testify, this means he  
13 didn't compare his sample to the overall pool to demonstrate it  
14 had the same characteristics, the same demography, the same  
15 representation of public housing units, the same time of day of  
16 occurrence, the same number of radio runs such that it would  
17 closely represent the pool of data from which the sample was  
18 derived.

19 The evidence will show that Professor Fagan's analysis  
20 of the narrative text strings on those sample 3,710 UF 250s was  
21 an effort to draw conclusions about the existence or lack  
22 thereof of apparent reasonable suspicion but it was flawed, it  
23 was biased, and it was unreliable for many of the same reasons  
24 that Professor Fagan articulated in May -- I'm sorry in  
25 February and March of 2012.

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1 Defendants' experts will explain that the problem of  
2 the sample set of such importance to Professor Fagan's results  
3 are not reliable regarding the apparent reasonable suspicion  
4 for the UF 250s with the "other" and the narrative checkbox.

5 The evidence will show in reaching his conclusions  
6 Professor Fagan also determined -- failed to consider  
7 additional information on the UF 250 form that we have  
8 previously discussed and identified as problematic of Professor  
9 Fagan's analysis.

10 For example, UF 250 forms are populated with a field  
11 for a period of observation prior to the stop. Professor Fagan  
12 refuses to consider that information in his analyses. And the  
13 defendants submit that information is relevant to whether or  
14 not reasonable suspicion was determined.

15 Professor Fagan also did not include in his analyses  
16 information regarding the duration of the stop which is also  
17 information available on the UF 250 form.

18 In addition to the form, there's information outside  
19 the form. You heard plaintiffs' counsel this morning in  
20 opening talk about the important location of the memo book  
21 where memo books indicate additional information that officers  
22 document about the stop. Curiously plaintiffs' counsel find  
23 the memo book a source of information about the stop, but the  
24 memo books are completely ignored by Professor Fagan in his  
25 analysis.

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1 Professor Fagan also didn't consider documents that  
2 are generated when a stop results in an arrest or a summons  
3 that could be not limited to arrest and complaint reports,  
4 trespass crime fact sheets, owners' affidavits, criminal court  
5 complaints, all of which could be a source of detail regarding  
6 the circumstance of the stop.

7 The evidence will show that every time Professor Fagan  
8 revises his report in this case and issues new opinions either  
9 in response to errors and criticism identified by the  
10 defendants' experts or by order of this court, or because new  
11 quarters of data have been have become available for him to  
12 review, his analysis demonstrates that a greater percentage of  
13 stops conducted by the NYPD are apparently justified by  
14 reasonable suspicion. Remarkably, however, his opinion remains  
15 unchanged. He finds evidence that the NYPD has engaged in a  
16 pattern and practice of unconstitutional stops of city  
17 residents that are more likely to affect black and Hispanic  
18 residents.

19 We're currently at 88 percent of the stops as  
20 apparently justified by reasonable suspicion under Professor  
21 Fagan's flawed analysis. At this rate it seems entirely  
22 possible that if Professor Fagan were to conduct analysis of  
23 additional UF 250s, defendants' experts were to continue to  
24 identify errors and raise concerns that require correction, we  
25 could reach a point where Professor Fagan's analysis shows

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1 nearly one hundred percent of the stops conducted by NYPD are  
2 supported by reasonable suspicion.

3           The question is: How close to perfect does the NYPD  
4 have to be even under Professor Fagan's analysis for him to  
5 change his ultimate conclusion? And how close to perfect does  
6 the NYPD have to be for the court to acknowledge a lack of  
7 reliable statistical evidence of widespread unconstitutional  
8 conduct?

9           The evidence will show that Professor Fagan's reliance  
10 on the stops, quote, hit rate -- that is the intention of how  
11 many guns or weapons are found, how many summonses were issued,  
12 and how many arrests were made as a result of the stop -- is  
13 not an appropriate measure of the success of a stop. This is  
14 misleading and irrelevant to the issues before the court.

15           First, by definition, one instance in which a stop may  
16 occur is when an officer has reasonable suspicion that a crime  
17 is about to be committed. Therefore, it's entirely possible  
18 that the stop prevented the commission of a crime. The  
19 quantification of how many crimes were thwarted by stops is not  
20 able to be determined.

21           Second, the fact a gun or a weapon is not found does  
22 not vitiate the reasonable suspicion present to have made the  
23 stop.

24           Third, judging from whether an officer had reasonable  
25 suspicion to make a stop on whether the officer had a

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1 heightened level of probable cause necessary to issue a summons  
2 or make an arrest is absolutely inappropriate.

3 In this trial plaintiffs will also rely on the  
4 analysis and conclusions of Professor Fagan to support their  
5 Fourteenth Amendment claim that the NYPD's pattern and practice  
6 of unconstitutional stops has an impermissible disparate impact  
7 on Blacks and Hispanics.

8 To reach the conclusions in support of this claim  
9 Professor Fagan conducts regression analyses based on a model  
10 that he formulated. Using regression analyses Professor Fagan,  
11 as you heard, concludes that a person's race predicts whether  
12 they will be stopped. However, Professor Fagan uses the wrong  
13 benchmark. He use population.

14 This choice of the wrong benchmark is absolutely fatal  
15 to the reliability of any of Professor Fagan's conclusions  
16 drawn from his regression analysis.

17 The use of population as a benchmark has been  
18 discredited by the criminal justice field. The use of the  
19 wrong benchmark materially impacts the entirety of Professor  
20 Fagan's analysis, rendering his results unreliable.

21 Crime suspect data is the better and more appropriate  
22 benchmark. Professor Fagan knows this.

23 The evidence will show that Professor Fagan has used  
24 crime suspect data as the benchmark in prior research. And  
25 when Professor Fagan did so he stated in that article that, "a

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1 more relevant comparison is the number of crimes committed by  
2 each ethnic group."

3 This is because crime suspect data estimates the  
4 supply of targeted behavior. Put another way, crime suspect  
5 data estimates the available pool of persons exhibiting  
6 suspicious behavior that could be observed by the police.  
7 Population merely estimates the potential number of persons in  
8 a certain area.

9 The evidence will show that Professor Fagan's  
10 criticism of the use of crime suspect data as a benchmark for  
11 analysis in this case is without merit. He criticizes it on  
12 the grounds that the race of some percentage of suspects of the  
13 crimes are unknown.

14 Professor Fagan's own prior work, however, when he  
15 relied on crime suspect data also was missing a percentage of  
16 the suspect race.

17 Defendants' experts will also testify about alternate  
18 regression analyses that they conducted and how their analyses  
19 reveal that race as a predictor of who is stopped virtually  
20 disappears when you use the appropriate benchmark.

21 Further evidence of the fact that the proper benchmark  
22 is crime suspect data is the comparison of actual 2011 NYPD  
23 precinct stop data with suspect description data.

24 The evidence at this trial will show there is a clear  
25 correlation between suspect description and the description of

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1 those stopped.

2 In 2011, approximately 83 percent of all known crime  
3 suspects and 90 percent of all violent crime suspects were  
4 Black and Hispanic. In 2011, Blacks and Hispanics represented  
5 87 percent of persons stopped. That's a close correlation.

6 The evidence will also show that even with precincts  
7 where the majority of the population is white there's a clear  
8 correlation between suspect description and the -- the  
9 description of those stopped.

10 In 2011, in the 122nd precinct in Staten Island Whites  
11 comprised approximately 77 percent of the population. Whites  
12 were 64 percent of all known crime suspects and 46 percent of  
13 all violent crime suspects. That year, in 2011, Whites  
14 represented 63 percent of persons stopped in the 122nd  
15 precinct.

16 Similarly, with precincts where the majority of the  
17 population is black, there is a correlation between the suspect  
18 description and the description of those stopped. Take, for  
19 example, the 73rd precinct in Brooklyn. In 2011 there was a  
20 black population of approximately 78 percent in that precinct.  
21 Blacks were 87 percent of all known crime suspects and  
22 91 percent of all violent crime suspects. And in 2011, in the  
23 73rd precinct Blacks represented 89 percent of the persons  
24 stopped. Another close correlation.

25 In addition to the evidence that Professor Fagan's use

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1 of population is a wholly improper benchmark, the evidence will  
2 show Professor Fagan failed to comply with department of  
3 justice standards for benchmarking that include quantity,  
4 location, and behavior.

5 The evidence will show that Professor Fagan's  
6 benchmark measures quantity in terms of population using  
7 estimated census data from 2007. But Professor Fagan had  
8 actual census for 2000 and 2010. But he did not use it. Nor  
9 did he trend population over that period.

10 This failure is critical because his model ignores the  
11 reality. Population, racial composition, gender, education  
12 level, unemployment, other relevant socioeconomic factors can  
13 all vary across time in a census tract hour by hour, day by  
14 day, month by month, season by season, year by year.

15 Professor Fagan's model assumes this information is  
16 static. Professor Fagan's regression also attempts to control  
17 for the probability that an officer will encounter someone  
18 exhibiting suspicious behavior. He does this by trying to  
19 calculate an estimate of patrol strength. The evidence will  
20 demonstrate, however, he did not even begin to properly  
21 estimate patrol strength in large part because he ignored the  
22 realities of how the NYPD deploys officers.

23 For example, Professor Fagan ignored the fact officers  
24 generally work in pairs or that specialty units work in teams  
25 of several officers, that patrol supervisors are present in a

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D3i9flo3 Opening - Ms. Cooke.

1 geographic area of the precinct throughout the tour, and that  
2 officers engage in a significant amount of responsibility  
3 during a tour that does not involve writing a 250.

4 Regarding location, Professor Fagan's regression  
5 analysis uses census tract data. This is notwithstanding the  
6 fact that estimates of minorities in small areas can be off by  
7 as much as 300 percent. Further, the evidence will show census  
8 tracts do not reflect the reality of NYPD application. Census  
9 tracts are not used by the NYPD as a unit of management. They  
10 are not used to report or track crime. They are not used to  
11 deploy resources. And they are not used to define patrol  
12 sectors.

13 Finally, regarding behavior, the evidence will show  
14 that the growing movement amongst criminal justice scholars is  
15 to include observed behavior in the study of disparate racial  
16 treatment. The UF 250 form contains details regarding the  
17 behaviors observed by the officer. Professor Fagan knows this.  
18 He used the information of observed behavior from the UF 250  
19 form for his Fourth Amendment analysis. However, he did not  
20 include any information of observed behavior in his Fourteenth  
21 Amendment regression analysis. In other words, Professor Fagan  
22 failed to control for reasonable suspicion in his regression  
23 model.

24 This is important. And you will learn and the  
25 evidence will show that his reports found the 78 percent and

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D3i9flo3

Opening - Ms. Cooke.

1 88 percent of the stops respectively were apparently justified  
2 by reasonable suspicion between 2004 and 2009 and 2010 to the  
3 second quarter of 2012. Beyond being baffling, the fact that  
4 Professor Fagan didn't control for reasonable suspicion in his  
5 regression analysis when he already determined that 78 and  
6 88 percent of the stops why justified by reasonable suspicion  
7 is that Professor Fagan's regression analysis was trying to  
8 determine whether the practice of unconstitutional stops have  
9 an impermissible disparate impact on Blacks and Hispanics.  
10 This failure to include reasonable suspicion, controlling for  
11 it in the regression unquestionably renders the results biased  
12 and unreliable.

13 Plaintiffs rely on Professor Fagan's regression  
14 analysis in support of its disparate impact claims but as  
15 defendants' experts will testify in order to be reliable the  
16 regression model must be properly specified. That means there  
17 shouldn't be missing variables. It must be properly  
18 operationalized, which means you turn a concept into numbers  
19 that can be included in a formula and finally must not have  
20 estimation issues.

21 The evidence will show and defendants' experts have  
22 repeatedly raised concerns regarding the structure of Professor  
23 Fagan's regression models. Nearly all of Professor Fagan's  
24 response rebuttal reports have failed to address these  
25 concerns.

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Opening - Ms. Cooke.

1           Importantly, defendants' experts will explain that  
2 Professor Fagan's calendar month crime log fails to include the  
3 most recent crime data involved -- available to the NYPD. In  
4 fact, his crime -- his model relies on crime data that is up to  
5 seven weeks old. He ignores the most current crime data. And  
6 the evidence will show this is not reality. The NYPD uses  
7 up-to-the-minute crime data in its police practices. Real  
8 crime in real time. And certainly the NYPD does not ignore the  
9 most recent crime data in favor of data that is up to seven  
10 weeks old which is the situation presented by Professor Fagan's  
11 model.

12           Similarly defendants' experts will testify that  
13 Professor Fagan's model includes a measure of crime which  
14 aggravates or totals crime categories. This means that  
15 Professor Fagan's model assumes that the police response --  
16 excuse me. This means that Professor Fagan's model assumes  
17 that the police response in terms of the number of stops  
18 conducted to a domestic homicide would be the same as the  
19 response to a gang homicide. We submit that it would not.  
20 Professor Fagan's model assumes that an increase of ten rapes  
21 would result in the same police response in terms of number of  
22 stops as an increase in ten grand larceny autos. Therefore,  
23 the evidence will show Professor Fagan's model does not reflect  
24 the reality of policing and the response by the police to  
25 crime.

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D3i9flo3

Opening - Ms. Cooke.

1           The evidence will show Professor Fagan failed to  
2 control for changes in police process and training that  
3 occurred over time even though Professor Fagan is well aware of  
4 these developments.

5           The evidence will also show Professor Fagan  
6 operationalized crime by logging it. This results in the  
7 smoothing of the existence of crime spikes and data. This  
8 fails to reflect the reality again of the NYPD and its use of  
9 crime data to make policing decisions.

10          For the NYPD, the observation of a spike in crime  
11 absolutely matters. In this day and age of historically low  
12 crime rates, spikes in crime receive significant and immediate  
13 attention. The evidence will show that Professor Fagan could  
14 have used crime rates in his analyses, obviating the need for  
15 logging and, therefore, avoiding crime spikes smoothing. But  
16 he did not.

17          The evidence will show that inconsistent with the  
18 practices of most criminologists to use trended variables for  
19 demographic factors, Professor Fagan's socioeconomic factors,  
20 population data, and race measures were frozen in time from the  
21 year in which they were selected.

22          Because he was analyzing eight years of data, this  
23 means that anywhere from 75 percent to 87 percent of the actual  
24 data is missing from Professor Fagan's dataset for his  
25 analyses.

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D3I8FLO4

Almonor - direct

AFTERNOON SESSION

2:15 p.m.

THE COURT: The first witness.

MR. MOORE: One housekeeping matter. Without objection, we are going to add Exhibit 422, which is just a Google map.

THE COURT: That's fine.

MR. MOORE: If you want me to hand a copy up. I will put it on the elmo.

The first witness, the plaintiff calls Devin Almonor.

THE COURT: Are there other exhibits that I have in a notebook in one of these boxes over here?

MR. MOORE: I'm sorry?

THE COURT: Are there copies of exhibits that I have in one of these boxes over here that I should reach into and find my copy?

MR. MOORE: This and one defendants' exhibit are the only exhibits we are going to use in this examination.

DEVIN ALMONOR,

called as a witness by the plaintiffs,

having been duly sworn, testified as follows:

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

THE WITNESS: My name is Devin Almonor, D-E-V-I-N, last name A-L-M-O-N-O-R.

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D3I8FLO4 Almonor - direct

1 DIRECT EXAMINATION

2 BY MR. MOORE:

3 Q. Good afternoon, Mr. Almonor.

4 Can you tell us what your date of birth is?

5 A. July 17, 1996.

6 Q. So at present you're 16 years old?

7 A. Yes.

8 Q. Where do you live?

9 A. I live at 626 Riverside Drive, apartment number 8B, 139th  
10 Street, between Broadway and Riverside.

11 Q. If you could try to get a little closer to the microphone.  
12 Maybe lift it up a little bit and pull your chair in a little  
13 bit so everyone can hear you.

14 A. OK.

15 Q. What is the cross street of that address? What are the  
16 numerical cross streets?

17 A. 139th and 140th.

18 Q. How long have you lived there?

19 A. All my life.

20 Q. Can you tell us who your parents are?

21 A. My parents are Wilma Dore-Almonor and my father is Merault  
22 Almonor.

23 Q. They are in court today?

24 A. Yes.

25 Q. What does your father presently do for a living?

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D3I8FLO4 Almonor - direct

1 A. He works as a security officer.

2 Q. Did he retire from a position that you're aware of?

3 A. Yes.

4 Q. What position was that?

5 A. He was a police officer at the 23rd precinct -- 20th  
6 precinct.

7 Q. How long was he in the police department, if you know?

8 A. I don't recall.

9 Q. But that's the New York City Police Department, correct?

10 A. Yes.

11 Q. Do you have any other police officers in your family, or  
12 did you have any other police officers in your family?

13 MS. PUBLICKER: Objection. Your Honor, what is the  
14 relevance of this?

15 THE COURT: I don't see any relevance. Objection  
16 sustained.

17 A. Yes.

18 MR. MOORE: The reason I think it is relevant is  
19 because it goes to counter what they are going to say is his  
20 bias.

21 THE COURT: Then I will just ask him a very general  
22 question. How many other police officers are there in your  
23 extended family.

24 THE WITNESS: There are three.

25 THE COURT: That's enough.

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D3I8FLO4 Almonor - direct

1 Q. Do you have any brothers or sisters?

2 A. Yes.

3 Q. What do you have?

4 A. I have one brother.

5 Q. What is his name?

6 A. Merault Malik Almonor.

7 Q. How long is he?

8 A. He is 18.

9 Q. Do you presently go to school?

10 A. Yes.

11 Q. Where do you go to school?

12 A. I go to All Hallows High School.

13 Q. Where is that?

14 A. In the Bronx, on 164th, between Walton and Gerard Avenue.

15 Q. That's a Catholic school?

16 A. Yes.

17 Q. What grade are you presently in?

18 A. 11th grade.

19 Q. Is it your intent to go on to college when you finish high  
20 school?

21 MS. PUBLICKER: Objection. What is the relevance of  
22 this?

23 THE COURT: I will allow that. That is general  
24 background.

25 Do you intend to go?

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D3I8FLO4 Almonor - direct

1 THE WITNESS: Yes.

2 Q. Where are you hoping to go?

3 A. I am hoping to go to McGill University.

4 Q. That's where?

5 A. In Canada, Montreal. Johns Hopkins University, Cornell  
6 University, and Temple University.

7 Q. Do you have an area of study that you're interested in?

8 A. Yes.

9 Q. What is that?

10 A. I am interested in Eastern medicine, wildlife biology, and  
11 French.

12 Q. Are you a member of any clubs at school?

13 A. Yes.

14 Q. What clubs are those or teams?

15 A. The track team, varsity track team and varsity soccer.

16 Q. What about clubs?

17 A. Clubs, I was in the officers club, and I am part of the Red  
18 Cross club association at my school.

19 Q. Now, at the time of the incident that we are going to talk  
20 about, which is March of 2010, where were you going to school?

21 A. Frederick Douglass Academy.

22 Q. What grade were you in in March of 2010?

23 A. 8th grade.

24 Q. Let me just ask you generally, how were you as a student at  
25 Frederick Douglass Academy?

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D3I8FLO4 Almonor - direct

- 1 MS. PUBLICKER: Objection. We are getting so far off  
2 the point here.  
3 MR. MOORE: It's just background.  
4 MS. PUBLICKER: There are no damages in this case.  
5 THE COURT: What was the question again?  
6 MR. MOORE: How are you as a student?  
7 THE COURT: I will take it generally speaking.  
8 Were you a good student?  
9 THE WITNESS: Yes.  
10 THE COURT: A lot of As?  
11 THE WITNESS: Yeah.  
12 THE COURT: Did you get more Bs or more As?  
13 THE WITNESS: Bs.  
14 Q. Are you nervous about testifying today?  
15 A. No.  
16 Q. All right. I want to direct your attention to March 20,  
17 2010. Do you remember that being a weekday or a weekend?  
18 A. Weekend.  
19 Q. What day of the weekend was it?  
20 A. Saturday.  
21 Q. How did you spend that day?  
22 A. I spent it with my friend.  
23 Q. What is your friend's name?  
24 A. Levon Loggins.  
25 Q. Tell us what you did.

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D3I8FLO4 Almonor - direct

- 1 A. We had ridden our bikes around the block and to the park,  
2 and then after that we went to my house to play video games.  
3 Q. When you were at your house, was anybody present from your  
4 family?  
5 A. Yes.  
6 Q. Who was present?  
7 A. My grandmother and my mother.  
8 Q. Your grandmother lives with you as well?  
9 A. Yes.  
10 Q. How did you know Mr. Loggins?  
11 A. We had grown up together. He used to go to my elementary  
12 school.  
13 Q. Did there come a time when Mr. Loggins had to leave?  
14 A. Yes.  
15 Q. Approximately what time was that?  
16 A. Approximately, about 8:45. It could have been later.  
17 Q. Do you know how he was getting home?  
18 A. Yes.  
19 Q. How was he getting home?  
20 A. By bus.  
21 Q. Where did he live?  
22 A. In the Bronx.  
23 Q. Do you know where the bus stop is located where he was  
24 going to get on the bus?  
25 A. Yes.

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D3I8FLO4 Almonor - direct

1 Q. Where is that?

2 A. 145th and Amsterdam.

3 MR. MOORE: Judge, may I display Plaintiffs' Exhibit  
4 422 on the screen?

5 Q. Mr. Almonor, I have displayed a map of your neighborhood.

6 MR. MOORE: It's Plaintiffs' Exhibit 422, which we  
7 would move into evidence, Judge. I don't think there is any  
8 objection.

9 MS. PUBLICKER: No objection.

10 THE COURT: Received.

11 (Plaintiffs' Exhibit 422 received in evidence)

12 Q. Just so we are clear, your residence was on Riverside  
13 between 139th and 140th, correct?

14 A. Yes.

15 MR. MOORE: With the Court's permission, I am going to  
16 put an X there, Judge.

17 THE COURT: Sure. That's fine.

18 Q. Can you tell me where the bus stop was where you were going  
19 to -- withdraw that.

20 Did you leave the house with Mr. Loggins to walk him  
21 to the bus stop?

22 A. Yes.

23 Q. Why did you do that?

24 A. Because he is my friend.

25 Q. What direction did you take when you left your house?

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D3I8FLO4 Almonor - direct

1 A. I walked from 139th and Broadway to 145th and Broadway, and  
2 then I made a right on Broadway to reach Amsterdam.

3 Q. You made a right on to 145th?

4 A. Yes.

5 Q. Where did you go then?

6 A. I waited at the bus stop.

7 Q. Did you go down to Amsterdam?

8 A. Yes.

9 Q. The bus stop is located at what corner of 145th and  
10 Amsterdam?

11 A. The southwest corner.

12 Q. I am going to put a 1 right there. OK?

13 Is that generally your recollection of where the bus  
14 stop was?

15 A. Yes.

16 MS. PUBLICKER: If I might, that appears to be the  
17 southeast corner. He testified it was the southwest corner.

18 Q. Did you say the southwest or southeast?

19 A. Southwest.

20 Q. Do you recall whether it was on the southwest or the  
21 southeast?

22 A. I recall it was on the southwest.

23 MR. MOORE: I apologize, Judge. I will move that one  
24 over there.

25 MS. PUBLICKER: Could we have the witness mark this

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D3I8FLO4 Almonor - direct  
1 map?

2 MR. MOORE: He will have to come down.

3 THE COURT: That's fine.

4 MR. MOORE: It's going to take a couple of minutes.

5 THE COURT: OK.

6 Q. The southwest corner where I put the 1, is that where you  
7 remember the bus stop was?

8 A. Yes.

9 Q. On the way to the bus stop with Mr. Loggins, did you notice  
10 anything unusual going on?

11 A. No.

12 Q. Did you notice any groups of kids running around?

13 A. No.

14 Q. Were you walking with a group of other kids when you were  
15 going to the bus stop?

16 A. No.

17 Q. So is it fair to say that your walk to the bus stop was  
18 uneventful?

19 A. Yes.

20 Q. Nothing happened unusual?

21 A. Nothing unusual.

22 Q. At some point Mr. Loggins got on the bus?

23 A. Yes.

24 Q. Did you then proceed to go back home?

25 A. Yes.

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D3I8FLO4 Almonor - direct

1 Q. What route did you take to get back home?

2 At least I know you didn't necessarily make it right  
3 then, but what route were you going to get back home?

4 A. I had taken the route on to Hamilton Place.

5 Q. So you went south on Amsterdam Avenue?

6 A. Yes.

7 Q. And then you took a slight right at Hamilton Place?

8 MS. PUBLICKER: He is leading the witness.

9 THE COURT: Be careful about leading.

10 Go ahead.

11 Q. Did you go on to another street after you were on Amsterdam  
12 Avenue?

13 A. Yes.

14 Q. What street was that?

15 A. I made my way to 141st Street.

16 Q. What street did you go down to get to 141st Street?

17 A. I went down Hamilton Place.

18 Q. On what side of the street were you walking when you were  
19 going down Hamilton Place?

20 A. I was walking on the right side.

21 Q. Would that be on the west side of Hamilton Place?

22 A. Yes.

23 Q. Did there come a time when you went across the street at  
24 Hamilton Place?

25 A. Yes.

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D3I8FLO4 Almonor - direct

- 1 Q. Where was that?  
2 A. At 142nd Street.  
3 Q. What corner did you cross on 142nd and Hamilton Place?  
4 A. Northwest I believe.  
5 Q. So you crossed 142nd -- tell me what direction. Did you go  
6 across 142nd first and then across Hamilton or did you go  
7 across Hamilton and then down 142nd, if you recall?  
8 A. I made my way from Hamilton Place on 142nd, then on to  
9 141st.  
10 Q. I am going to put a 2 right on the corner of 142nd and  
11 Hamilton. OK?  
12 A. Yes.  
13 Q. Now, when you got on to the east side of Hamilton Place,  
14 you proceeded to go down toward 141st?  
15 A. Yes.  
16 Q. Is there any kind of a business or establishment located at  
17 141st and Hamilton Place?  
18 A. Yes.  
19 Q. What is that?  
20 A. A deli.  
21 Q. Is that location where you had your encounter with officers  
22 of the New York City Police Department?  
23 A. Yes.  
24 Q. So I am going to put a 3 at the corner of 141st and  
25 Hamilton Place. OK?

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D3I8FLO4

Almonor - direct

1 I am going to show you what has been marked as  
2 Defendants' Exhibit T-10.

3 MR. MOORE: Which is a multipage document, Judge. I  
4 will identify each page I am using by Bates number, if that's  
5 OK.

6 THE COURT: That's fine.

7 Q. Can you tell me, Mr. Almonor, what is depicted in the slide  
8 that appears on the screen there? What is the intersection  
9 that's depicted there?

10 A. West 142nd Street and Hamilton Place.

11 Q. That intersection, that is where you crossed over from the  
12 west side of Hamilton Place to the east side, correct?

13 A. Yes.

14 MR. MOORE: If you would proceed then to slide number  
15 13.

16 MS. PUBLICKER: If you could just read the Bates  
17 number.

18 MR. MOORE: 25613.

19 Q. Can you tell us what this particular picture depicts?

20 A. It depicts a sidewalk. The store is to the left, at the  
21 left corner.

22 Q. Going down Hamilton Place?

23 A. Yes.

24 Q. Is there a location where you were headed that's depicted  
25 in this picture?

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D3I8FLO4 Almonor - direct

- 1 A. Yes.  
2 Q. Is that on the left where it says grocery?  
3 A. Yes.  
4 Q. Why were you headed to that grocery?  
5 A. To meet up with my brother.  
6 Q. Your brother Malik?  
7 A. Yes.  
8 Q. How did you arrange to meet with your brother Malik at that  
9 location?  
10 A. He had texted me before that he was at the store.  
11 Q. Can you say that again?  
12 A. He had texted me before that he was at the store.  
13 Q. Do you know what your brother Malik had been doing just  
14 before he texted you?  
15 A. He was ordering food.  
16 Q. Had he been with you in the house that day?  
17 A. No.  
18 Q. Do you know where he was?  
19 A. Yes.  
20 Q. Where was he?  
21 A. He was at the park playing basketball with his friends.  
22 Q. At some point did you get to the location in front of the  
23 bodega or deli?  
24 A. Yes.  
25 MR. MOORE: If you could go to slide 25616.

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D3I8FLO4 Almonor - direct

- 1 Q. Is that the deli that you have testified to is located at  
2 141st and Hamilton Place?  
3 A. Yes.  
4 Q. Did you see some young men out in front of that deli when  
5 you arrived there?  
6 A. Yes.  
7 Q. Who were those individuals? Did you know them?  
8 A. Yes.  
9 Q. Who were they?  
10 A. They were my friends and my brother's.  
11 Q. What were they doing?  
12 A. They were waiting for my brother to finish ordering his  
13 food and then to exit.  
14 Q. Did you then walk up and engage those individuals?  
15 A. Yes.  
16 Q. Did there come a time when you decided to leave that  
17 location at 141st and Fort Hamilton Place and go to another  
18 location?  
19 A. Yes.  
20 Q. Where were you going?  
21 A. I was going home.  
22 MR. MOORE: If you could go to slide 25618?  
23 Q. Can you tell us what is depicted in this picture, Mr.  
24 Almonor?  
25 A. What is depicted is the corner of where I decided to cross

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D3I8FLO4 Almonor - direct

1 the street.

2 Q. At 141st and Fort Hamilton Place?

3 A. Yes.

4 Q. Which crosswalk were you attempting to go across when you  
5 were stopped by the police? Was it the one on the left going  
6 down Fort Hamilton Place or the one crossing on 141st?

7 A. The one crossing on 141st.

8 Q. The one crossing 141st?

9 A. Yes.

10 Q. Were you in the crosswalk?

11 A. Yes.

12 Q. When you got to the crosswalk, did something unusual  
13 happen?

14 A. Yes.

15 Q. What happened?

16 A. An unmarked car pulled up beside me.

17 Q. Were there any individuals in that car?

18 A. Yes.

19 Q. Where were you when the car pulled up?

20 A. I was just about to make my way across the street.

21 Q. Had you stepped into the crosswalk yet?

22 A. Yes.

23 Q. When the car pulled up, did it stop?

24 A. Yes.

25 Q. What did you do?

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D3I8FLO4 Almonor - direct

- 1 A. I retreated to the sidewalk.  
2 Q. What did you next observe happen? What happened next?  
3 A. Two men made their way out of the car.  
4 Q. Two men?  
5 A. Yes.  
6 Q. Can you describe those two men?  
7 A. They are about yay high.  
8 Q. Yay high? What would that be?  
9 A. I am estimating 5'5". They weren't too tall, too short.  
10 Q. Can you tell us anything else about those two individuals?  
11 A. They had plain clothes and they were white.  
12 THE COURT: Did they both come out of the front seat,  
13 the two doors on the front? Do you remember that?  
14 THE WITNESS: I don't recall.  
15 THE COURT: Was anybody left in the car when those two  
16 came out?  
17 THE WITNESS: No.  
18 THE COURT: So one was clearly the driver?  
19 THE WITNESS: Yes.  
20 THE COURT: You don't know where the other was seated?  
21 THE WITNESS: I don't know.  
22 Q. Did you notice whether any of them had any facial hair?  
23 A. Yes.  
24 Q. Which one did you notice had facial hair?  
25 A. Dennis.

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D3I8FLO4 Almonor - direct

- 1 Q. You're saying Officer Dennis, who you now know to be  
2 Officer Dennis?  
3 A. I now know to be Officer Dennis.  
4 Q. At the time, you didn't know an Officer Dennis?  
5 A. No.  
6 Q. Do you know whether he came out of the driver's side or the  
7 passenger's side, if you know?  
8 A. I don't recall that.  
9 Q. What happened next after they got out of the car? What  
10 happened next?  
11 A. After they got out of the car, they began to ask me  
12 questions.  
13 Q. Did they come up to you and ask you questions?  
14 A. Yes.  
15 Q. Did they come up close to you?  
16 A. Yes.  
17 Q. What kind of questions were they asking you?  
18 A. Questions of my whereabouts. They were asking me how old  
19 was I, where was I going, questions of those sorts.  
20 Q. Did you have any understanding at the time as to whether  
21 those two individuals were police officers or not?  
22 A. I had no clue, but I had to presume that they were.  
23 Q. You presumed they were?  
24 A. Yes.  
25 Q. Did they show you any identification at that point?

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D3I8FLO4 Almonor - direct

- 1 A. No.  
2 Q. When they asked you how old you were, do you remember which  
3 one asked you how old you were?  
4 A. I believe both asked me.  
5 Q. What did you tell them? How old did you tell them you  
6 were?  
7 A. I told them I was 13.  
8 Q. You were 13 at the time?  
9 A. Yes.  
10 Q. You weren't being evasive, right?  
11 A. No.  
12 Q. Did you tell them where you were going?  
13 A. Yes.  
14 Q. What did you tell them?  
15 A. I told them that I was going to 626 Riverside Drive.  
16 Q. So you told them you were going home?  
17 A. Yeah, going home.  
18 Q. Did you tell them you were going home or did you give them  
19 a specific address?  
20 A. I told them that I was just a couple of blocks away from  
21 home.  
22 Q. You also, I believe, said they asked you where you lived,  
23 correct?  
24 A. Yes.  
25 Q. Did you tell them where you lived?

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D3I8FLO4 Almonor - direct

1 A. Yes.

2 Q. What happened after they asked you those questions and you  
3 gave them those answers, what happened then?

4 A. After that they began to grope me.

5 THE COURT: After that what?

6 THE WITNESS: They began to pat me down for any  
7 weapons.

8 Q. Can you describe, as best you can recall, how they patted  
9 you down, as you say?

10 A. From my feet to my waist. Then to my --

11 Q. Torso?

12 A. My torso.

13 Q. Did they go up each leg patting you down?

14 A. Yes.

15 Q. Did you have any understanding as to why they were doing  
16 that?

17 A. No.

18 Q. Did they tell you why they were doing that?

19 A. No.

20 Q. After they patted you down, as you say, what happened next?

21 A. After they patted me down, they began to handcuff me.

22 Q. Explain how they did that, what the actual physical  
23 movements were.

24 A. They pushed me up against the car of the passenger side and  
25 they began -- then they began to handcuff me.

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D3I8FLO4 Almonor - direct

- 1 Q. With your hands behind your back?  
2 A. Yes.  
3 Q. What was your reaction to being handcuffed at that point?  
4 A. Fear.  
5 Q. Anything else? Did you do anything at that point?  
6 A. I was crying.  
7 Q. You were crying?  
8 A. Yes.  
9 Q. Do you know if in the course of patting you down whether  
10 the officers ever actually found anything on you that they took  
11 off your person?  
12 A. No, they haven't.  
13 Q. What did you have on you at that point?  
14 A. I had my phone and a few dollars.  
15 Q. Did you have any identification at that point --  
16 A. No.  
17 Q. -- on you?  
18 A. No.  
19 Q. Did any of the officers -- withdraw that.  
20 At any time did any of the officers ask you for your  
21 home phone number?  
22 A. No.  
23 Q. Did any of the officers at any time ask you if any of your  
24 parents were home?  
25 A. No.

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D3I8FLO4 Almonor - direct

1 Q. What happened after you were handcuffed, put up against the  
2 car and handcuffed, what happened then?

3 MS. PUBLICKER: Objection, your Honor. We are getting  
4 to the post-stop consequences that you have already ruled don't  
5 come in in this matter.

6 THE COURT: I don't know what his answer is going to  
7 be so it's a little hard for me to make that ruling.

8 MS. PUBLICKER: He has already testified he was  
9 handcuffed at that point.

10 THE COURT: I do realize that. I don't know where he  
11 is going with this particular question.

12 Q. Did they put you in the car?

13 A. Yes.

14 Q. And they put you in the back seat of the car?

15 A. Yes.

16 Q. Were you handcuffed when you were in the back seat?

17 A. Yes.

18 Q. I don't want to get into what happened in the precinct, but  
19 at some point did they take you to a precinct?

20 A. Yes.

21 Q. On the way to the precinct, did the officers say anything  
22 to you?

23 A. Yes.

24 MS. PUBLICKER: Objection, your Honor. You have  
25 already stated that unless they said something after the

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D3I8FLO4

Almonor - direct

1 stop --

2 THE COURT: He just said, did they say anything to  
3 you? It may have to do with the stop itself. I don't know  
4 what the answer is going to be. It's a nonjury trial. I am  
5 sure I can sort it out.

6 What did they say to you?

7 THE WITNESS: Officer Dennis said, he asked, why are  
8 you crying like a little girl?

9 Q. Do you recall any other conversation on the way to the  
10 precinct?

11 A. They were talking to each other, but I wasn't listening.

12 Q. Can you tell the Court what you were feeling at that point  
13 after you had been stopped on the street, handcuffed, put in a  
14 car and were being driven to the precinct? What were you  
15 feeling at that point?

16 MS. PUBLICKER: Objection, your Honor.

17 THE COURT: I am going to allow it. Whatever he felt  
18 as part of being stopped. I can't slice it stop versus arrest.  
19 He is asking how he felt about the incident. Ms. Publicker, I  
20 am going to allow it.

21 How did you feel about it?

22 THE WITNESS: I had feelings of trepidation, confusion  
23 and anger.

24 Q. Why were you angry?

25 A. I was angry because at the time I didn't know what was

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D3I8FLO4 Almonor - direct

1 going on, and I had no reason of suspicion.

2 Q. Why were you confused?

3 A. Because everything was going by way too fast, and I didn't  
4 realize what was going to happen next.

5 Q. Other than the cell phone that you had and some money, at  
6 any time, either going to the bus stop or coming back from the  
7 bus stop, were you carrying anything?

8 A. No.

9 Q. Did you pick up anything along the way, a stick or  
10 anything?

11 A. No.

12 Q. At some point when you were in the car at 141st and Fort  
13 Hamilton Place, or Hamilton Place, did you see your brother?

14 A. Yes.

15 Q. Did he come up to the car?

16 A. Yes.

17 Q. Did he have a conversation with the officers at that point?

18 A. Yes.

19 Q. I am not going to ask you what he said to the officers, but  
20 what did the officers say to your brother at that point?

21 A. He said, well, if your father is a cop, tell him to pick  
22 him up.

23 Q. Do you remember what officer said that?

24 A. Officer Korabel.

25 MR. MOORE: Just a couple more questions, your Honor.

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D3I8FLO4 Almonor - direct

1 Q. Can you tell us, Mr. Almonor, how this experience made you  
2 feel?

3 A. It made me feel scared.

4 Q. Why were you scared?

5 A. Because that incident had never happened to me ever.

6 Q. Why are you testifying in this case, Mr. Almonor?

7 A. Because I believe that -- I don't want anyone else to go  
8 through this incident because it's very frightful, and I am  
9 willing to fight against injustices.

10 MR. MOORE: I have nothing further at this point, your  
11 Honor. Thank you.

12 CROSS-EXAMINATION

13 BY MS. PUBLICKER:

14 Q. So to make sure I understand, you just testified that you  
15 walked your friend Levon to a bus stop at 145th and Amsterdam,  
16 is that correct?

17 A. Yes.

18 Q. And then you left the bus stop and headed down on Hamilton  
19 Place, is that correct?

20 A. Yes.

21 Q. And you went to a bodega?

22 A. Yes.

23 Q. And you actually reached that bodega, is that correct?

24 A. Yes.

25 Q. And you saw a group of men standing outside, is that

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D3I8FLO4 Almonor - cross

1 correct?

2 A. Yes.

3 Q. Did you enter the bodega at that time?

4 A. No.

5 Q. Where did you say you went next?

6 A. I started to make my way across the street.

7 Q. Where were you going?

8 A. I was going home.

9 Q. So you were going home by going from the east side of the  
10 street to the west side of the street when you were stopped?

11 A. From 142nd to 141st.

12 Q. So you were going from the north side of the street to the  
13 south side, is that what I understand?

14 A. Yes.

15 Q. And this happened at around 8 p.m.?

16 A. It could have been later.

17 Q. You testified today that it happened at around 8:45, is  
18 that correct?

19 MR. MOORE: I don't think that's his testimony. He  
20 testified that's when he left.

21 THE COURT: Left where?

22 MR. MOORE: His house.

23 THE COURT: It was even later than 8:45?

24 Q. You testified you left your house at 8:45 p.m.?

25 A. Yes.

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D3I8FLO4 Almonor - cross

1 MR. MOORE: He testified approximate. He wasn't sure  
2 of the time, Judge.

3 Q. You gave a deposition in this case on October 17, 2012, is  
4 that correct?

5 A. Yes.

6 Q. And at that deposition you were asked questions, is that  
7 correct?

8 A. Yes.

9 Q. And you gave answers to those questions?

10 A. Yes.

11 Q. And you swore to tell the truth at that deposition?

12 A. Yes.

13 Q. And the oath that you took at that deposition is the same  
14 oath you took today, is that correct?

15 A. Yes.

16 Q. Do you recall testifying at that deposition that you left  
17 your house --

18 MR. MOORE: Page and line number, please.

19 MS. PUBLICKER: I am asking him if he recalls.

20 THE COURT: You should always give counsel a page and  
21 line so he can look along with you.

22 MS. PUBLICKER: Page 30, starting around line 20.

23 Q. Do you recall being asked the following questions and  
24 giving the following answers:

25 "Q. When was that?

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D3I8FLO4 Almonor - cross

1 "A. When he needed to go home, I had to walk him. Well, I  
2 went to walk him to the bus stop.

3 "Q. Do you know what time of day that was?

4 "A. Around 8."

5 So you testified on October 17, 2012 that you left  
6 your home around 8, is that correct?

7 A. I don't recall.

8 Q. You don't recall testifying to that?

9 A. I recall testifying, but I don't recall the time.

10 Q. Today you said that you left your house about 45 minutes  
11 later, is that correct?

12 A. Approximately.

13 Q. And you weren't stopped by the police until about 10:00 at  
14 night, is that correct?

15 A. I don't recall what time.

16 Q. How long was it between the time you left your house and  
17 the time you were stopped by the police?

18 A. Approximately 30, 30 to 35 minutes.

19 Q. 30 to 35 minutes?

20 A. Yes.

21 Q. During that time, you walked the seven or so blocks to the  
22 bus stop, is that correct?

23 A. Yes.

24 Q. And then the seven or so blocks down to the bodega?

25 A. Yes.

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D3I8FLO4 Almonor - cross

1 Q. How long were you at the bodega?

2 A. I don't recall.

3 Q. More than ten minutes?

4 A. I don't recall the time.

5 Q. More than 20 minutes?

6 A. I don't recall.

7 Q. Could you have been there more than 30 minutes?

8 A. I don't recall.

9 Q. So is that possible?

10 A. I don't recall.

11 Q. Could you have been there more than an hour?

12 A. I don't recall.

13 Q. You have no recollection of whether you were there for five  
14 minutes or an hour?

15 A. No.

16 Q. No? OK.

17 And you were how old on March 20, 2010?

18 A. 13.

19 Q. You were out by yourself at 9:00 at night?

20 MR. MOORE: Object. It misstates his testimony.

21 THE COURT: Which part?

22 MR. MOORE: He wasn't out by himself.

23 THE COURT: You were eventually by yourself at some  
24 point?

25 THE WITNESS: Yes.

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D3I8FLO4 Almonor - cross

- 1 Q. Besides your brother and friends, you didn't see any groups  
2 of people that night?  
3 A. No.  
4 Q. You didn't see any groups of people fighting?  
5 A. No.  
6 Q. You didn't notice any garbage on the ground, did you?  
7 A. No.  
8 Q. You didn't see any garbage cans overturned?  
9 A. No.  
10 Q. No broken bottles?  
11 A. No.  
12 Q. According to you, the streets on Hamilton Place were  
13 completely clean, is that correct?  
14 A. Yes.  
15 Q. Now, today you testified that the bodega you went to was on  
16 141st Street, is that correct?  
17 A. Yes.  
18 MS. PUBLICKER: I will point opposing counsel and the  
19 Court to page 33, starting at line 1 to line 4.  
20 Q. Do you recall being asked the following questions at your  
21 deposition and giving the following answers:  
22 MS. PUBLICKER: I'm sorry. Page 32, line 24.  
23 "Q. Where were you meeting your brother?  
24 "A. At the store.  
25 "Q. What store?

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D3I8FLO4 Almonor - cross

1 "A. The deli store.

2 "Q. Where is the store located?

3 "A. 142nd."

4 So is the bodega you went to on 142nd Street or 141st  
5 Street?

6 MR. MOORE: Improper question based on what she just  
7 said.

8 THE COURT: Sorry?

9 MR. MOORE: She asked him if he testified to that.  
10 She didn't ask him if that was his testimony yet.

11 Q. Was that your testimony?

12 THE COURT: She is reading it right out of the  
13 transcript.

14 That was your testimony, right, if she says it's right  
15 in the transcript?

16 THE WITNESS: Yes.

17 THE COURT: Do you know whether it was 142nd or 141st?

18 THE WITNESS: I had made a mistake. It's on 141st.

19 THE COURT: It's on 141st?

20 THE WITNESS: Yes.

21 Q. So when you were crossing to go to the other side of the  
22 street when you were stopped by the police, you did not cross  
23 in the pedestrian crosswalk, did you?

24 A. Excuse me?

25 Q. When you crossed the street at the time that you were

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D3I8FLO4 Almonor - cross

1 confronted by the police, you were not in the pedestrian  
2 crosswalk, were you?

3 A. I was walking across the street.

4 THE COURT: Were you in the pedestrian crosswalk is  
5 what she is saying. Were you walking from the north corner to  
6 the south corner?

7 THE WITNESS: Yes.

8 THE COURT: You weren't doing it in the middle of the  
9 street, were you?

10 THE WITNESS: No.

11 THE COURT: Were you jaywalking, going diagonal?

12 THE WITNESS: I don't recall.

13 THE COURT: You don't know if you were going straight  
14 across or diagonal?

15 THE WITNESS: I went straight across.

16 MS. PUBLICKER: I am going to point the Court's  
17 attention to page 34, line 10 to 15.

18 Q. Do you recall being asked the following questions and  
19 giving the following answers:

20 "Q. You were in the crosswalk?

21 "A. No. I was -- well, there is a road and right as I was  
22 making my way across the street, I was at the middle. I  
23 guess -- and then the cop car just pulled over, pulled by me,  
24 and it was like the middle of the street, and the cop car just  
25 pulled up beside me. That is what it is. Yeah."

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D3I8FLO4 Almonor - cross

1 Do you recall being asked those questions and giving  
2 those answers?

3 A. Yes.

4 Q. According to your deposition testimony, you did not cross  
5 in the pedestrian crosswalk, did you?

6 A. Could you explain to me --

7 THE COURT: Do you want to read it for yourself?

8 THE WITNESS: Sure.

9 THE COURT: Show him the page.

10 Q. Here is your deposition.

11 A. Yes.

12 THE COURT: You have had a chance to read it?

13 THE WITNESS: Yes.

14 THE COURT: She is now saying, were you in the  
15 crosswalk or weren't you in the crosswalk when you were  
16 crossing the street?

17 THE WITNESS: I was.

18 THE COURT: You were in the crosswalk?

19 THE WITNESS: Yes.

20 THE COURT: OK.

21 Q. That evening you were carrying your cell phone in your  
22 front right pocket, isn't that correct?

23 A. Yes.

24 Q. And the cell phone in your pocket, it created a bulge in  
25 your jeans, didn't it?

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D3I8FLO4 Almonor - cross

1 MR. MOORE: Object to the form, Judge.

2 THE COURT: I will allow it.

3 Do you know if it causes like a bulge or a bump where  
4 the cell phone is?

5 THE WITNESS: Yeah.

6 Q. Today you testified that when the officers exited their  
7 vehicles they immediately started to ask you questions,  
8 correct?

9 A. Yes.

10 Q. And that you were only frisked after they asked you  
11 questions?

12 A. While.

13 Q. While they were asking you questions?

14 A. Yes.

15 Q. When the officers questioned you, they asked you how old  
16 you were, didn't they?

17 A. Yes.

18 Q. And you told them that you were 13?

19 A. Yes.

20 Q. But they didn't believe you, did they?

21 A. No.

22 Q. How tall are you, Mr. Almonor?

23 A. 5'11".

24 Q. How tall were you in 2010?

25 A. Five ten and a half.

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D3I8FLO4 Almonor - cross

1 Q. So you were pretty tall for your age at 13, weren't you?

2 A. Yes.

3 Q. How much do you weigh?

4 A. 150.

5 Q. You weighed approximately the same amount then as you do  
6 today?

7 A. I believe so.

8 Q. I see that you're wearing glasses today. But you weren't  
9 wearing glasses on the date of the incident, were you?

10 A. No.

11 Q. The officers asked you where you lived when they questioned  
12 you, didn't they?

13 A. Yes.

14 Q. But you wouldn't tell them your exact address, correct?

15 A. I did. And then I told them that I lived a few blocks up.

16 THE COURT: Did you tell them your address or not?

17 THE WITNESS: At first I told them I lived just a few  
18 blocks away.

19 THE COURT: Did you eventually tell them your address?

20 THE WITNESS: Yes.

21 THE COURT: When did you tell them the address?

22 Before or after the handcuffs, for example?

23 THE WITNESS: During the interrogation, they asked me  
24 where I lived and I told them I lived a few blocks up.

25 THE COURT: When did you tell them the address, before

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D3I8FLO4 Almonor - cross

1 or after the handcuffs?

2 THE WITNESS: Before.

3 Q. So when they first asked you, you did not give them an  
4 exact address, did you?

5 A. No.

6 Q. And you also didn't tell them your full name, did you?

7 A. I believe I did.

8 Q. You didn't tell them that your name was Al Devin?

9 A. Devin Al.

10 Q. Devin Al?

11 A. Devin Al. Devin is my first name and Al is my last name,  
12 Almonor, it's an abbreviation.

13 Q. But your name is not Devin Al, is it?

14 A. No. But it's -- Devin is my name but Al is the shortened  
15 version of my last name. So it's Devin Al.

16 Q. You did not give them your full name?

17 A. No.

18 Q. It wasn't your correct name, was it?

19 A. It was.

20 Q. Your last name is Devin Al?

21 A. Devin Almonor.

22 Q. Almonor, not Al?

23 A. Yes.

24 Q. Thank you.

25 A. It was shortened.

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D3I8FLO4 Almonor - cross

1 Q. You didn't have any identification on you that night, did  
2 you?

3 A. No.

4 Q. And you had nothing on your person to verify your age or  
5 address to the police officers?

6 A. No.

7 Q. I believe you testified that the police officers did not  
8 ask you for your phone number?

9 A. No.

10 Q. So you never gave the police officers your home phone  
11 number?

12 A. They never asked me for my phone number.

13 Q. You never gave them your home phone number?

14 A. They never asked me for my phone number.

15 THE COURT: They didn't ask and you didn't offer it,  
16 right?

17 THE WITNESS: Well, at the moment I really -- I was  
18 really confused.

19 THE COURT: Be that as it may, you didn't offer them  
20 your phone number?

21 THE WITNESS: No.

22 Q. So at no point on that day, on March 20, 2010, did you give  
23 them your home phone number?

24 A. No.

25 MR. MOORE: Are you referring to the precinct or are  
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D3I8FLO4 Almonor - cross

1 you referring to --

2 THE COURT: She said at any time that day.

3 MR. MOORE: I thought we were not going into what  
4 happened.

5 THE COURT: You went into it. She is finishing up.

6 MR. MOORE: So we can go into what happened at the  
7 precinct?

8 THE COURT: No. Whatever you did you did. She has to  
9 do whatever. If I say she can do it, she can do it.

10 Q. When the officers were questioning you, you don't recall  
11 whether or not they told you to stop fiddling with your  
12 waistband, do you?

13 A. I don't recall.

14 Q. So you may have been fiddling with your waistband, you just  
15 don't recall?

16 A. I wasn't.

17 Q. You don't recall if the officers told you that they wanted  
18 you to stop doing that?

19 MR. MOORE: Asked and answered.

20 THE COURT: You don't recall that?

21 THE WITNESS: I don't recall.

22 Q. You also don't recall whether or not you turned and twisted  
23 your body away from the police officers, do you?

24 A. I don't.

25 Q. So you may have turned or twisted your body, you just don't

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D3I8FLO4

Almonor - cross

1 recall?

2 A. I may have, but it wasn't as -- because I didn't know what  
3 they were doing. So it was just at the moment of shock I was  
4 moving.

5 Q. You believed that they were frisking you to see if you had  
6 a gun or a weapon, isn't that right?

7 A. Yes.

8 Q. And you believe that you were stopped on account of your  
9 race, don't you?

10 A. Yes.

11 Q. But the officers made no reference to your race during the  
12 stop, did they?

13 A. Yes. They didn't make any reference.

14 Q. You just believe that you were stopped on account of your  
15 race because the officers did not find a weapon on you, isn't  
16 that true?

17 MR. MOORE: Object to the form.

18 THE COURT: Sustained as to that one.

19 If you want him tell us why, that's OK. Do you want  
20 him to tell us why he thought so or not?

21 MS. PUBLICKER: No. I will move on.

22 Q. You believe that officers need a warrant every time they  
23 stop someone, don't you?

24 A. Yes.

25 MR. MOORE: Objection.

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D3I8FLO4

Almonor - cross

1 THE COURT: That's his subjective view for what it's  
2 worth.

3 Q. You just testified that you were placed in handcuffs and  
4 then put into the police officers' vehicle?

5 A. Yes.

6 Q. You stated that you began to cry?

7 A. Yes.

8 Q. And you claim that Officer Dennis asked you why you were  
9 crying like a little girl?

10 A. Yes.

11 Q. But that wasn't the whole statement that Officer Dennis  
12 made to you, was it?

13 A. It was.

14 Q. He did not ask you, in sum and substance, why you were  
15 crying like a little girl after having fought with him like a  
16 man in the street?

17 MR. MOORE: Objection to form.

18 THE COURT: Is that what he said to you?

19 A. No.

20 Q. I believe you stated on direct that your father was a  
21 police officer with the NYPD, is that correct?

22 A. Yes.

23 Q. And you look up to your father, don't you?

24 A. Of course.

25 Q. And he left the police department before your stop in 2010,

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D3I8FLO4 Almonor - cross

1 is that correct?

2 A. Yes.

3 Q. And he told you a lot about the police department?

4 MR. MOORE: Objection.

5 THE COURT: I don't know what the relevance of that  
6 is, that he told you a lot about the police department.

7 MS. PUBLICKER: If you will indulge me for just a  
8 couple of questions.

9 THE COURT: We will see.

10 Did he tell you a lot about it?

11 Q. Your father told you that the NYPD has a few --

12 THE COURT: I am not going to take his statement.  
13 That is hearsay.

14 He told you a lot about the police department over the  
15 years or not?

16 THE WITNESS: Yeah.

17 THE COURT: OK.

18 Q. And your opinion of the police is colored by your father's  
19 opinions?

20 MR. MOORE: Object to the foundation, Judge. Also, I  
21 think it's irrelevant.

22 THE COURT: I think I will sustain objection to that.

23 Q. You created a movie pertaining to the incident on March 20,  
24 2010, is that correct?

25 A. Yes.

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D3I8FLO4 Almonor - cross

1 Q. And you wanted to make this movie to show that the NYPD  
2 does heinous, under-the-table stuff, isn't that correct?

3 A. No.

4 MS. PUBLICKER: I would like to direct the Court's  
5 attention to page 10, line 21, through page 11, line 4.

6 Q. Were you asked the following question and did you give the  
7 following answer:

8 MR. MOORE: What page is that again?

9 MS. PUBLICKER: 10.

10 "Q. Why did you decide to make this movie?

11 "A. I have made the movie too, since it was pretty recent at  
12 that time, it caused a great impact on my life so I wanted to  
13 show the world that the NYPD, that they have done pretty wrong  
14 things, like very, I guess, heinous things, like  
15 under-the-table stuff, like that. Just to show the injustice  
16 cannot hide under the cloak for too long and that people need  
17 to realize that and that the cops are -- well, some need to be  
18 reprimanded."

19 Do you recall being asked that question and giving  
20 that answer?

21 A. Yes.

22 Q. So I will ask again, you wanted to make this movie to show  
23 that the NYPD does very heinous, under-the-table stuff?

24 A. No.

25 Q. What was incorrect about that statement?

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D3I8FLO4 Almonor - cross

1 A. Well, the movie that I made was a satire, it was a comedy  
2 that showed -- it didn't depict my incident, but it showed how  
3 some police officers are incapable of having that position.

4 THE COURT: Incapable of what?

5 THE WITNESS: Incapable of having a position as a  
6 police officer.

7 MS. PUBLICKER: Your Honor --

8 MR. MOORE: Was he finished?

9 THE COURT: He was finished.

10 MS. PUBLICKER: I move to strike that answer as it's  
11 nonresponsive to the question, which is --

12 THE COURT: I thought you asked him why he made the  
13 movie.

14 MS. PUBLICKER: I asked him what about the statement  
15 the heinous, under-the-table things is incorrect based on your  
16 prior testimony?

17 THE COURT: He answered you.

18 Q. Your parents helped you write that script, didn't they?

19 MR. MOORE: Object to the form.

20 THE COURT: I will allow it.

21 Did they help you write the movie script?

22 THE WITNESS: They reviewed it.

23 THE COURT: They didn't help you write it?

24 THE WITNESS: No.

25 MS. PUBLICKER: I will turn your attention to page 11,

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D3I8FLO4 Almonor - cross

1 starting at line 19.

2 "Q. Did anyone in your family help you write the script?

3 "A. Yes.

4 "Q. Who in your family?

5 "A. Well, my parents."

6 Do you recall being asked that question and giving  
7 that answer?

8 THE COURT: I will allow it.

9 MR. MOORE: It's an incomplete --

10 THE COURT: Then you will fill it in as soon as we get  
11 the answer to this question.

12 You gave that answer to that question?

13 THE WITNESS: Yes.

14 THE COURT: What did you want to add, Mr. Moore?

15 You can read the next line, if you wish, or whatever  
16 it is that makes it complete.

17 MR. MOORE: Yes, Judge.

18 "Q. Anyone else besides your parents?

19 "A. No.

20 "Q. Did your parents write portions of the script or just  
21 review what you had written?

22 "A. Review."

23 THE COURT: You gave those answers to those questions  
24 too?

25 THE WITNESS: Yes.

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D3I8FLO4 Almonor - cross

1 Q. You believe that the video you made shows the  
2 characteristics of many police officers, isn't that right?

3 A. No.

4 MS. PUBLICKER: Page 17, line 20.

5 "Q. What do you mean by it concerns it?

6 "A. What I mean by that, it shows the characteristics of many  
7 police officers, but -- and that is pretty much it."

8 Do you recall being asked that question and giving  
9 that answer?

10 A. Yes.

11 Q. At the end of the video, one of the main police officers in  
12 that video was revealed to have a lazy eye, is that correct?

13 MR. MOORE: Object to the form.

14 THE COURT: Do you understand the question?

15 THE WITNESS: Yes.

16 THE COURT: And the answer is?

17 THE WITNESS: Yes.

18 Q. The video shows police officers as unintelligent, is that  
19 correct?

20 MR. MOORE: Object to the form.

21 THE COURT: Is that how you would describe it?

22 THE WITNESS: No.

23 Q. The title of the video is "I Cops for Dummies," isn't it?

24 A. Yes.

25 Q. You don't believe the point of that video is to show police

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D3I8FLO4 Almonor - cross

1 officers as unintelligent?

2 A. Actually, it's considered a comedy with a message. So what  
3 I made as a tragedy in my life as a comedy, as a message, that  
4 some police officers are inane and that they need assistance  
5 with their working in the NYPD.

6 Q. And vision?

7 A. Yes.

8 MS. PUBLICKER: Strike that.

9 Q. You don't respect police officers, do you, Mr. Almonor?

10 A. Yes, I do respect police officers.

11 MS. PUBLICKER: Your Honor, if I could just have one  
12 minute to confer?

13 THE COURT: Sure.

14 MS. PUBLICKER: No further questions, your Honor.

15 THE COURT: Anything further, Mr. Moore?

16 MR. MOORE: Just a couple of things, Judge.

17 REDIRECT EXAMINATION

18 BY MR. MOORE:

19 Q. Ms. Publicker asked you some questions about how long it  
20 took you before you got to the location of 141st and Hamilton  
21 Place. Do you recall that?

22 A. I don't.

23 THE COURT: You recall that she asked you that  
24 question?

25 A. Yes.

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D3I8FLO4

Almonor - redirect

1 Q. She said you went there to 145th and Amsterdam and then you  
2 came back?

3 A. Came back to 142?

4 Q. In addition to walking to 145th and Amsterdam to take your  
5 friend to the bus, and in addition to walking back to 141st and  
6 Hamilton Place, you also waited for a time at the bus stop for  
7 the bus to come, right?

8 A. Yes.

9 Q. Do you know how long that was?

10 A. For a while.

11 Q. When you were walking down Hamilton Place between 142nd and  
12 145th, how did you have your hands?

13 A. By my side.

14 Q. Were they near your waist?

15 A. No.

16 Q. At any time before the police officers came to you, did you  
17 have your hands near your waist?

18 A. No.

19 Q. When you had stepped into the crosswalk and this car came  
20 up and you said you went back on to the sidewalk, correct?

21 A. Yes.

22 Q. Is it possible you could have turned your body when you  
23 went back to the sidewalk?

24 A. No.

25 Q. You don't remember that?

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D3I8FLO4 Almonor - redirect

1 A. I don't remember that.

2 MS. PUBLICKER: It's a mischaracterization, your  
3 Honor. He said he did not turn his body, and Mr. Moore  
4 mischaracterized it as you don't recall.

5 THE COURT: He asked, is it possible you could have  
6 turned your body when you went back to the sidewalk? And you  
7 said no. It's not possible that you did?

8 THE WITNESS: It could have been possible.

9 THE COURT: It could have been possible. OK.

10 Do you have a precise memory of that one way or the  
11 other?

12 THE WITNESS: No.

13 Q. Did you fight with any of the police officers who came up  
14 and searched you and arrested you?

15 A. No.

16 Q. At any time did you resist any effort the police officers  
17 made to either search you, cuff you or put you in the squad  
18 car?

19 A. No.

20 Q. Did you flail your arms in any way?

21 A. No.

22 Q. No?

23 A. No.

24 Q. Did you try to run away from them?

25 A. No.

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D3I8FLO4

Almonor - redirect

1 MR. MOORE: One second, your Honor.

2 Q. Now, can you tell us since the city didn't want to ask you,  
3 can you tell us why you believe you were stopped based on your  
4 race?

5 A. I believe I was stopped because of my race, because I had  
6 no reason of suspicion, and I didn't have any weapons. I was  
7 going to get my brother and then just go home.

8 Q. In your experience, have you seen other black and Hispanic  
9 youths stopped by white police officers?

10 MS. PUBLICKER: Objection, your Honor. This has  
11 already been the subject of rulings by this Court.

12 MR. MOORE: She asked the question, Judge.

13 MS. PUBLICKER: No, I did not.

14 THE COURT: One second.

15 I am not going to allow that question, have you seen  
16 other black and Hispanic youths stopped? That's objectionable.  
17 I sustain the objection.

18 If you want to ask, why do you believe you were  
19 stopped, Ms. Publicker said she didn't want to ask that. She  
20 did open the door. You can ask that, but you can't ask the  
21 question you asked.

22 Q. You already provided some answer as to why you believed it  
23 was based on race. Is there any other reason you can offer to  
24 the Court why you believe the stop you experienced on March 20,  
25 2010 was based on race, anything else you want to offer to the

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D3I8FLO4

Almonor - redirect

1 Court about that?

2 A. There is no other reason.

3 Q. You believe there is no other reason other than your race,  
4 correct?

5 A. Yes.

6 Q. Do you believe you were doing anything wrong on March 20,  
7 2010?

8 A. No.

9 Q. You don't have any hatred towards police officers, right?

10 A. No.

11 Q. In fact, your father was a police officer. You're proud of  
12 him, right?

13 A. Yes.

14 MS. PUBLICKER: Objection. Asked and answered.

15 MR. MOORE: Nothing further, Judge.

16 THE COURT: Anything further for this witness?

17 MS. PUBLICKER: No, your Honor.

18 THE COURT: OK. All right. All set. Thank you.

19 THE WITNESS: Thank you for your time.

20 THE COURT: Next witness.

21 MR. CHARNEY: Our next witness is David Floyd. Ms.

22 Patel is going to question him. She just ran to the rest room.

23 She should be back in a minute.

24 (Continued on next page)

25

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D3I8FLO4

Almonor - redirect

1 DAVID FLOYD,

2 called as a witness by the plaintiffs,

3 having been duly sworn, testified as follows:

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

6 THE WITNESS: David Floyd, D-A-V-I-D, F-L-O-Y-D.

7 THE COURT: Thank you.

8 DIRECT EXAMINATION

9 BY MS. PATEL:

10 Q. Mr. Floyd, are you a named plaintiff in this case?

11 A. Yes, I am.

12 Q. How old are you?

13 A. 33.

14 Q. Where did you graduate from college?

15 A. I originally graduated from Syracuse University.

16 Q. What was your degree?

17 A. A bachelor of arts in television, radio and film.

18 Q. Are you currently in school?

19 A. Yes, I am.

20 Q. Where are you in school?

21 A. The Latin American Medical School in Havana, Cuba.

22 Q. Since when have you been in medical school?

23 A. Since, approximately, 2010.

24 Q. Prior to starting school, where did you live?

25 A. I lived in the Bronx, New York, at 1359 Beach Avenue.

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D3i9flo5 Floyd - direct

1 MS. PATEL: Your Honor, if I may I'm going to place  
2 the second page of what's been marked as Defendant's Exhibit  
3 I-10.

4 Sorry, your Honor.

5 Q. Mr. Floyd what does this map depict?

6 A. The map depicts a number of blocks surrounding my home.

7 Q. And am I correct that Beach Avenue is represented on this  
8 map?

9 A. Yes.

10 Q. And Mr. Floyd do you see an X on this map?

11 A. Yes, I do.

12 Q. Do you know how this X came to be drawn on this map?

13 A. Yes. I placed it there.

14 Q. When did you do that?

15 A. Today.

16 Q. What does this X indicate?

17 A. My home, where I lived at the time, 1359 Beach Avenue.

18 Q. And can you please tell me what is the intersecting street  
19 closest to your home if you are traveling down Beach Avenue?

20 A. It's East 172nd Street.

21 Q. What about the street that's -- excuse me. What is this  
22 street?

23 A. That street is I believe it's called McGraw.

24 Q. Can you spell that?

25 A. I don't know if it's M-A-C-G-R-A-W or M-C-G-R-A-W.

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D3i9flo5 Floyd - direct

1 Q. Thank you.

2 What's the name of the street parallel to Beach Avenue  
3 if you were traveling down 172nd Street?

4 A. If I was traveling down 172nd Street. I believe this is  
5 Commonwealth Avenue. And then the next one is St. Lawrence  
6 Avenue.

7 Q. And was it your testimony that you were walking on beach  
8 Avenue -- I'm sorry. In which direction were you walking  
9 home -- towards your home on April 20, 2007?

10 A. I was walking down Beach Avenue headed west towards my  
11 home.

12 Q. And this map doesn't indicate east or west, does it?

13 A. No, it doesn't.

14 Q. So were you walking in the direction of traffic on that  
15 day?

16 A. Yes, yes. Towards the Cross Bronx.

17 Q. And did you notice -- where were you when you first noticed  
18 New York police department officers on that day?

19 A. I was crossing actually East 172nd Street as I was headed  
20 home.

21 MS. PATEL: If I may, your Honor, I'd like to have the  
22 witness just mark?

23 THE COURT: Okay.

24 Q. From where were you standing, how far away were the  
25 officers?

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D3i9flo5 Floyd - direct

- 1 A. I would say they were about a block-and-a-half away.  
2 Q. Is it accurate that they were between St. Lawrence and  
3 Commonwealth?  
4 A. Yes, on East 172nd Street.  
5 Q. What did you observe them doing?  
6 A. They were talking, interacting with someone else.  
7 Q. Could you determine the race of that other person?  
8 A. They looked like they were black.  
9 Q. But you're not sure; is that true?  
10 A. No.  
11 Q. How many officers did you observe at that time?  
12 A. Two. Two officers.  
13 Q. Approximately how long did you observe the interaction  
14 between the police officers and this person?  
15 A. It was for about maybe ten, fifteen seconds.  
16 Q. Then what happened?  
17 A. And then I continued up the block towards my home.  
18 Q. What did you see -- observe the officers do during that  
19 ten, fifteen --  
20 A. I observed the officers talking to this person. And then  
21 they turned around and got into their vehicle and began to come  
22 up the block.  
23 Q. Did you observe them getting into the vehicle?  
24 A. Yes.  
25 Q. What kind of vehicle was it?

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D3i9flo5 Floyd - direct

- 1 A. It was a van, a dark colored van.  
2 Q. And you started walking down Beach Avenue; is that right?  
3 A. Yes.  
4 Q. Where were you going?  
5 A. I was headed home.  
6 Q. And then what happened?  
7 A. I was on the sidewalk, headed home, when the officers --  
8 the van with the officers in it pulled up beside me.  
9 Q. And what happened?  
10 A. The officer in the driver's side said -- he said something  
11 to the extent that made me slow down and eventually stop.  
12 Q. And after the van pulled up and stopped walking, what did  
13 the officers do?  
14 A. The officer, he asked me for -- he asked me for my  
15 identification. And they were coming out of the vehicle  
16 towards me.  
17 Q. And how many officers came out of the van?  
18 A. Three in total.  
19 Q. Can you please describe the driver of the vehicle -- of the  
20 van?  
21 A. The driver was a Latino male with dark hair. I remember  
22 him being tall, muscular, muscular guy. And he was -- he was a  
23 big guy. I think he was probably somewhere around two hundred  
24 something pounds. And maybe about six -- six/one in height,  
25 six/two.

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D3i9flo5 Floyd - direct

1 Q. Can you describe the officer who was sitting in the  
2 passenger's seat of the van or was there an officer sitting in  
3 the passenger's seat of the van?

4 A. Yes.

5 Q. Can you describe that officer?

6 A. The other officer, the officer in the passenger's side was  
7 a white male shorter than the Latino officer. He was about --  
8 I don't know, maybe five/ten, five/eleven, also clean shaven  
9 with sort of blondish brownish hair. I remember him also -- he  
10 was shorter than the other officer but I remember that he was  
11 also built.

12 Q. You said there was a third officer. How would you describe  
13 that third officer?

14 A. The third officer was a female officer. She was -- I  
15 remember her being slim and she had sort of, as well, sort of  
16 blondish, brownish colored hair.

17 Q. Where was she sitting in the van?

18 A. She was sitting behind the two officers that were in front.

19 Q. What were the officers wearing?

20 A. They were wearing police uniforms, dark -- dark colored --  
21 I couldn't remember whether it was black or blue.

22 Q. Was there anything about what the police officers were  
23 wearing or had on that made you think they were police  
24 officers?

25 A. Definitely the uniforms in and of themselves. I felt -- I

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D3i9flo5 Floyd - direct

1 feel like I remember seeing something on the uniform that made  
2 me -- that made me think that there were New York City  
3 officers. Definitely the weapons that they had. And the  
4 female officer she had -- I remember she had a radio,  
5 walkie-talkie radio in her hand. And there were -- there were  
6 calls that were kind of coming through as the stop was  
7 happening.

8 Q. You said there were weapons. What kind of weapons did you  
9 observe?

10 A. Guns.

11 Q. What did you do when the driver of the vehicle asked you  
12 for your ID?

13 A. When he asked me for my ID, I, you know -- I responded  
14 questioning -- I have to show you ID even though I live on this  
15 block?

16 He asked me again for my ID. And at that point in  
17 time I produced it and gave it to him.

18 Q. Mr. Floyd, did you feel you had -- you were free not to  
19 give him your ID?

20 A. I didn't think it was smart not to. No, I did not feel  
21 free to not give it to him.

22 Q. Where were you standing at this point?

23 A. At this point I was on the sidewalk, on Beach Avenue, the  
24 same place where I stopped at originally. And I was facing the  
25 three officers who were in front of me, I was facing the

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D3i9flo5 Floyd - direct

1 street.

2 Q. So was your back to a wall?

3 A. Yes. Yes.

4 Q. And where was the female officer standing? Can you be more  
5 specific.

6 A. The female officer was also in front of me. She was  
7 standing in front of the van, closer to the van than the other  
8 two officers, towards the back portion of the van.

9 Q. And what about the two male officers? Where were they  
10 standing?

11 A. The two male officers were much closer to me. And  
12 slightly -- slightly to my left.

13 Q. Mr. Floyd, what were you thinking at this time?

14 A. I didn't know what to think, to tell you the truth. I was  
15 thinking that I did not know what was going to happen. Yeah, I  
16 had no clue.

17 Q. And then what happened?

18 A. After that, the officer had my ID and I wanted to ask them  
19 for their names and badge numbers. So I went into my pocket  
20 for either my pen or my cellphone to try to notate what I was  
21 going to ask them, which was for their names and badge numbers.

22 Q. And prior to reaching into your pocket did you say anything  
23 to the officers?

24 A. No, I did not.

25 Q. What happened when you reached for -- in your pocket?

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D3i9flo5 Floyd - direct

1 A. When I reached in my pocket, the -- one of the officers,  
2 the white male officer, he immediately jumped towards me. And  
3 I immediately stopped what I was doing.

4 Q. What did you do in response?

5 A. I stopped what I was doing and I -- you know, I told him, I  
6 was like it's a cellphone, it's a cellphone, and I put my hands  
7 up.

8 MS. PATEL: Let the record reflect that the witness is  
9 putting -- motioning for his hands towards his upper body area.

10 THE COURT: The record will so reflect.

11 Q. And then what happened?

12 A. I had my hands up and the officer -- I remember him saying  
13 that, you know, he said I get nervous when I see people putting  
14 their hands in their pockets.

15 Q. Then what did he do?

16 A. And then he proceeded to pat me down.

17 Q. Will you describe the pat-down.

18 A. He started off grabbing my waist and feeling around my  
19 waistline level. And then he was patting my pockets. And then  
20 he was grabbing them. So that you could sort of see the bulge  
21 of my cellphone that was in my pocket. He was grabbing that.

22 He continued going down my legs, patting me down and,  
23 you know, it was one leg going from my groin all the way down  
24 to my ankle. And then the other leg, doing the same thing.

25 At some point in time during, you know, during this

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D3i9flo5 Floyd - direct

1 whole process the cellphone, he used one of his -- he used one  
2 of his fingers to go inside my pants and was feeling around.  
3 And he used his other hand to sort of push up, push the  
4 cellphone partially up out of my pocket.

5 Q. Did the officer at any point ask you for permission to pat  
6 you down?

7 A. No.

8 Q. Did you ever give him permission to pat you down?

9 A. No.

10 Q. Did he --

11 A. I'm sorry.

12 Q. Please.

13 A. I was just going to say, in fact, I actually told him -- he  
14 asked me if I had a weapon. I told him no and that I don't  
15 consent to this search.

16 Q. So at any point did he ask you for permission to go into  
17 your pockets?

18 A. No, he did not.

19 Q. And did you ever give him that permission?

20 A. No.

21 Q. Did the officer say anything else to you while he was  
22 frisking you?

23 A. No. No. He asked me -- he did ask me again, a second  
24 time, if I had a weapon. And I repeated no, that I don't and  
25 that I don't consent to this search.

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D3i9flo5 Floyd - direct

- 1 Q. Did you ever ask why you were being stopped?  
2 A. No, I didn't.  
3 Q. Mr. Floyd how long did the pat-down and the search last?  
4 A. It seemed like it just continued. It was probably about  
5 five to ten minutes.  
6 Q. Excuse me. Can you just say that again. It was what --  
7 A. It was probably about five to ten minutes.  
8 Q. I'm sorry. That's the pat-down?  
9 A. The entire stop.  
10 Q. Okay. And what about the pat-down and the search? How  
11 long would you estimate that lasted?  
12 A. A matter of seconds. I don't know. Maybe -- maybe 30, 45  
13 seconds.  
14 Q. Then what happened -- what happened next?  
15 A. After that, the police officer who had frisked me, he took  
16 a step back and the officer -- the other officer, the driver  
17 who had my ID, he -- he eventually gave me the ID back and  
18 started basically telling me that it was illegal for me to not  
19 have a New York City license.  
20 Q. And then what happened?  
21 A. They -- after he finished speaking, they got back in the  
22 vehicle and -- yeah, all three officers reentered the vehicle.  
23 Q. Just to clarify. Were you testifying you had an  
24 out-of-state ID?  
25 A. Yes. Yes.

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D3i9flo5 Floyd - direct

- 1 Q. Once they got into the vehicle, did you say anything to  
2 them?  
3 A. I did. I asked them for their names and badge numbers.  
4 Q. Did they provide them?  
5 A. Yes.  
6 Q. What did they tell you?  
7 A. They told me officer Rodriguez and Goodman.  
8 Q. Did they provide you badge numbers?  
9 A. Yes, they did.  
10 Q. What did you do with that information?  
11 A. I put it down in my cellphone.  
12 Q. And then at that point did they drive away?  
13 A. Yes.  
14 Q. And was that the point when you decided to walk home?  
15 A. Yes. After they drove away, I continued down the block  
16 towards my home.  
17 Q. How did you feel as you were walking home?  
18 A. Definitely frustrated, humiliated, because it was -- it was  
19 on my block. It's where I live. And I wasn't doing anything  
20 except for headed home.  
21 So, I -- at that point I just -- I really remember  
22 just wanting to get home, just wanting to kind of be in my own  
23 space. Yeah.  
24 Q. Just a couple questions about the van. How many doors did  
25 it have, if you recall?

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D3i9flo5 Floyd - direct

- 1 A. I remember seeing -- I remember seeing two doors.  
2 Q. And what about -- what color was it?  
3 A. It was a dark colored van. I don't know if it was black or  
4 blue but I remember it being very dark colored.  
5 Q. Was it marked?  
6 A. With NYPD? No.  
7 Q. Mr. Floyd, were you stopped again on February 27, 2008?  
8 A. Yes. Yes, I was.  
9 Q. Where did you live on that date?  
10 A. At the same location, 1359 Beach Avenue.  
11 Q. What type of residence is 1359 Beach Avenue?  
12 A. It is -- it's a large home, three-story home. And there is  
13 a smaller sort of cottage house that is in the back.  
14 Q. And is the larger three-story home and the cottage  
15 connected?  
16 A. No, they are not.  
17 Q. How would you reach your -- the little cottage from the  
18 street?  
19 A. You have to -- you walk through a gate and there's a small  
20 walkway on the side of the house that leads to the back where  
21 my home was.  
22 Q. And did anyone else live in that home?  
23 A. The larger home, the three-story home, there were three  
24 families essentially that lived in it.  
25 Q. Tell me who lived in there.

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D3i9flo5 Floyd - direct

1 A. On the top floor my Godmother lived. And the second floor  
2 is where one of the other tenants lived. And there's a  
3 basement apartment that's sort of ground level which is where  
4 another group of tenants lived.

5 Q. I'm going to place on the ELMO a photograph from  
6 Defendant's Exhibit N-10. It's a picture Bates stamped  
7 NYC-2-0028757.

8 Can you tell us what this photograph depicts.

9 A. Yes. This is the property, the home at 1359 Beach Avenue.

10 Q. And is that walkway near the -- there's a black gate that  
11 indicates how you would need to exit from your -- from that  
12 building; is that correct?

13 A. Correct.

14 Q. And you would -- can you describe on this picture where you  
15 would walk from to get to the street?

16 A. When you enter the gate, you immediately take a right and  
17 then you continue walking down towards the back of the house.  
18 That's the walkway.

19 Q. And you indicated there was a basement tenant; is that  
20 right?

21 A. Correct.

22 Q. And where on this map -- actually, sorry.

23 Do you see that there's an X on this photograph?

24 A. Yes.

25 Q. Do you know how that X got there?

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1 A. I placed it there.

2 Q. And what does that X indicate?

3 A. The X indicates the front door to the bottom apartment and  
4 where we were eventually stopped.

5 Q. The bottom apartment meaning the basement apartment?

6 A. Basement apartment.

7 Q. And what was the race of the person who lived there?

8 A. Black.

9 Q. Do you recall around what time you left your home on  
10 February --

11 A. I remember it being maybe around -- around 3:00 in the  
12 afternoon.

13 Q. Were you -- where were you going?

14 A. I was headed to school.

15 Q. Were you carrying anything when you left your house?

16 A. I had my book bag as well as the items in my pocket, my  
17 wallet.

18 Q. And what was in your backpack, if you recall?

19 A. Books.

20 Q. Was there -- what happened when you left your home and  
21 started walking on the pathway to go to the street?

22 A. So I left my home, like I said I was headed to school. And  
23 at some point along -- along the path as I was headed towards  
24 the front I ran into my neighbor, the gentleman that lived in  
25 the basement apartment. And he -- he told me that he had

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- 1 Q. And before the officer reached into your pocket did he ask  
2 you for permission to do that?  
3 A. No, he did not.  
4 Q. Did you ever give him permission to search in your pocket?  
5 A. No.  
6 Q. What did you have in your pockets that day?  
7 A. I remember I had my cellphone. I had my wallet in my back  
8 pocket. My keys. And some change.  
9 Q. How many keys do you keep on your keyring?  
10 A. Two or three.  
11 Q. Were any of the items in your pocket shaped like a gun?  
12 A. No.  
13 Q. And then what happened? What happened next?  
14 A. And so at that point we were turned around so that at this  
15 point our back was facing the front door of my neighbor's home.  
16 Of the apartment. We were facing the officer's, facing the  
17 street. And they asked for identification from us.  
18 Q. How many officers did you observe at that point?  
19 A. At that point, three.  
20 Q. What did you do after they asked you for identification?  
21 A. To produce the identification, gave it to him.  
22 Q. Was there anything else that you had to show them besides  
23 your identification?  
24 A. Yes. Later on I had to show them a ConEd bill with my name  
25 on it and the address, 1359 Beach Avenue.

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1 Q. And why was that?

2 A. Because my identification, my driver's license was an  
3 out-of-state driver's license.

4 Q. Did you observe your -- the basement tenant, your neighbor,  
5 did you observe him providing his identification to the  
6 officers?

7 A. Yes.

8 Q. And at that point did you say anything to the officers?

9 A. Yeah, yeah, I did. I asked them why, why I was stopped.

10 Q. What was the reason that they gave?

11 A. They said that there had been a pattern of robberies in the  
12 area.

13 Q. Did they give you any other reason?

14 A. No.

15 Q. What happened next?

16 A. At that point we were -- at that point the interaction --  
17 the interaction was over. They got back in their cars and  
18 left. But before that -- I'm sorry. I did end up asking them  
19 for their names and badge numbers.

20 Q. And besides mentioning that there had been a number of  
21 robberies in the area, if you recall, did they give you any  
22 other reason for stopping you?

23 A. No.

24 Q. How did you feel after this incident, Mr. Floyd?

25 A. I think that -- I think that it was, again, the

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D3i9flo5 Floyd - direct

1 humiliation. I think it was a little bit more though than the  
2 first time because it was the second time, because it wasn't --  
3 it wasn't down the block. It wasn't another neighborhood. It  
4 was actually on the property that I lived on and paid rent on  
5 every month. And, you know, I felt like -- I felt like I was  
6 being told that I should not leave my home. Whether -- and it  
7 didn't matter whether I was going to school. It didn't matter  
8 whether I was going to work or, you know, whatever it was that  
9 I need to stay in my place, and my place is in my home.

10 Q. Mr. Floyd, why did you decide to serve as a plaintiff in  
11 this case against the New York police department?

12 A. Well for me, first and foremost, you know, I didn't do  
13 anything. And, you know, I feel like I want to make that  
14 clear. I am not a criminal. I didn't commit any criminal  
15 acts. I am not guilty of anything and therefore I should not  
16 have been detained at any point in time.

17 I think that for me personally, my personal character,  
18 you know, I'm big on justice and I'm big on responsibility.  
19 And if, you know, if there is no responsibility, if -- in these  
20 instances police officers, you know, who are individuals  
21 carrying weapons. They are carrying guns. And if they're not  
22 being responsible, then, you know, to me it's -- it just makes  
23 for a dangerous situation. It makes for a dangerous situation.  
24 And, you know, whatever it looks like, an irresponsible person  
25 with a gun is dangerous.

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Floyd - direct

1 And so with those two things in mind, to me is, you  
2 know, it was important to become a part of this.  
3 Q. Based on your experience with the New York police  
4 department and stop and frisk, what kind of changes do you want  
5 to see implemented within the police department following this  
6 lawsuit?

7 MR. KUNZ: Objection, your Honor.

8 THE COURT: Sustained.

9 MS. PATEL: I would say that to the extent that our  
10 remedy is calling for community input, it is important to know  
11 what he thinks.

12 THE COURT: Community input.

13 Do you want to see more participation by the  
14 community?

15 THE WITNESS: Yeah. I think it's necessary.

16 THE COURT: I'll allow that.

17 THE WITNESS: And accountability.

18 MS. PATEL: One moment, your Honor.

19 Your Honor I would just -- I would like to move --  
20 this one page of Defendants' Exhibit N-10 into evidence.

21 THE COURT: No objection to that?

22 MR. KUNZ: No objection.

23 THE COURT: Fine. All right.

24 (Defendants' Exhibit N-10 received in evidence)

25 THE COURT: Are you finished, Ms. Patel?

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1 MS. PATEL: Yes, I am, your Honor.

2 THE COURT: Mr. Kunz.

3 MR. KUNZ: Your Honor, if you're ready.

4 THE COURT: Yes.

5 CROSS-EXAMINATION

6 BY MR. KUNZ:

7 Q. Good afternoon, Mr. Floyd. Thank you for coming to testify  
8 today.

9 I just want to start real quick where you ended your  
10 testimony. And you said that you want to see more community  
11 involvement in stop-question-frisk issues.

12 Have you ever been to a community board meeting where  
13 these were discussed?

14 A. I have been to one or two community board meetings.

15 Q. And there were NYPD officials present at those meetings,  
16 correct?

17 A. Yes.

18 Q. And have you ever been to city council meetings on these  
19 issues?

20 A. I don't know. I don't recall.

21 Q. And also as you were closing your direct testimony you said  
22 that you joined this case because you didn't do anything wrong;  
23 is that correct?

24 A. It's one of the reasons, correct.

25 Q. Do you think that the police can only approach someone if

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D3i9flo5 Floyd - cross

1 they are guilty of something?

2 MS. PATEL: Objection. Calls for a legal conclusion.

3 THE COURT: I know but he gave his opinion so now he  
4 can finish.

5 THE WITNESS: Again, I'm not an attorney so, you know,  
6 I don't know.

7 Q. But you said that you think that the reason the stop was  
8 invalid was because you were not guilty of something.

9 So do you think the police can approach someone even  
10 if they're not guilty?

11 MS. PATEL: Objection. I think he's mischaracterizing  
12 his testimony.

13 THE COURT: I think he characterized it fine, but I  
14 think he already answered that and said he's not a lawyer and  
15 he doesn't know.

16 Q. So we're here today to talk about two occasions where you  
17 have interacted with the police; is that correct?

18 A. Yes.

19 Q. The first occasion occurred sometime in April of 2007?

20 A. Yes.

21 Q. And the second was February 27, 2008, correct?

22 A. Correct.

23 Q. You've talked about these incidents quite a bit, haven't  
24 you?

25 A. Meaning?

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D3i9flo5 Floyd - cross

1 Q. Well, you've explained the story of what happened many  
2 times?

3 A. You mean in court?

4 Q. In court, have you explained of what happened to you many  
5 times in court?

6 A. I mean we did it today.

7 Q. And you've explained the story of what happened to friends,  
8 correct?

9 A. Maybe -- maybe one or two.

10 Q. And to family members?

11 A. Mother and father, probably.

12 THE COURT: You're going to have to keep your voice  
13 up.

14 THE WITNESS: I'm sorry. Probably my mother and  
15 father.

16 Q. And you've spoken to the media about what happened on those  
17 dates, haven't you?

18 A. I've spoken to a few media, yes.

19 Q. So you've spoken to the mediate several times about what  
20 happened?

21 A. Several different media, yeah.

22 Q. You've spoken to other activists about what happened on  
23 those occasions?

24 A. I don't know. I probably have. I'm not sure.

25 MS. PATEL: Your Honor, can we get to whatever the  
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1 question is supposed to be.

2 MR. KUNZ: Sure. Absolutely.

3 Q. And the more times you've told this story, the more it got  
4 reinforced in your mind, correct?

5 A. How do you mean?

6 Q. The more times you tell this story of what happens, the  
7 story gets reinforced in your mind as you tell it over and over  
8 again, right?

9 A. What happened during the stops is what reinforced it.

10 Q. And over time your story has changed hasn't it, Mr. Floyd?

11 A. How?

12 Q. Well we'll get into that but I'm just asking you over time,  
13 the more times you've told this story, it's changed, hasn't it?

14 A. I don't -- I don't know.

15 Q. You've done activism around stop-question-frisk issues for  
16 quite a while, haven't you?

17 A. Mm-hmm. I have.

18 Q. You've done radio interviews?

19 A. I'm remembering one radio interview.

20 Q. That's the law and disorder interview you did?

21 A. Which was on --

22 Q. February 22, 2010?

23 A. WBAI?

24 Q. Yes.

25 A. Yes.

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D3i9flo5 Floyd - cross

1 Q. You've also written about what happened on those occasions  
2 and you've written about stop-question-frisk, haven't you?

3 A. Where?

4 Q. Have you ever written about stop-question-frisk?

5 A. In terms of in the media?

6 Q. Yeah.

7 A. Which media --

8 THE COURT: Well have you ever written an article?

9 THE WITNESS: I remember answering questions.

10 THE COURT: Did you ever yourself write an article or  
11 anything like that?

12 THE WITNESS: I don't remember. I don't remember  
13 writing an article.

14 Q. Before you ever got involved in this case, you were doing  
15 activism around police issues, right?

16 MS. PATEL: Your Honor, I would just object. What is  
17 the relevance of activism around --

18 THE COURT: I'll allow it.

19 Were you? Do you know what he's asking you?

20 THE WITNESS: Yes.

21 THE COURT: Before you were ever -- did you say  
22 involved in this case?

23 MR. KUNZ: Right.

24 Before you were ever involved in this case, you were  
25 doing activism around police issues and stop-question-frisk?

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D3i9flo5 Floyd - cross

1 THE WITNESS: Yes.

2 THE COURT: Was that after you were stopped?

3 THE WITNESS: It was before.

4 THE COURT: Before you were stopped either time?

5 THE WITNESS: Before the initial stop --

6 MR. KUNZ: Your Honor actually anticipated my  
7 question.

8 MR. MOORE: Judge, Judge, can he --

9 MR. KUNZ: -- which is before 2006 isn't it true --

10 MR. MOORE: Excuse me.

11 Judge, object. Can he let the witness finish the  
12 question.

13 THE COURT: Now we're all talking at once and not  
14 getting any clearer. It's getting less clearer.

15 The first of the two stops was what year?

16 THE WITNESS: Was in 2007.

17 THE COURT: And so you were active on this issue  
18 before that first stop?

19 THE WITNESS: Correct.

20 MS. PATEL: And, your Honor, I think he's asked two  
21 questions, stop and frisk and police issues. And it is  
22 somewhat significant.

23 THE COURT: We've got that straightened out.

24 You were active before your first stop.

25 Go ahead, Mr. Kunz.

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D3i9flo5 Floyd - cross

1 BY MR. KUNZ:

2 Q. And the activism you've done is on both stop-question-frisk  
3 and police issues in general, correct?

4 A. Which police issues?

5 Q. The issues of policing, racial disparities and policing,  
6 issues like that?

7 A. Particularly I mean community and police relations.

8 THE COURT: That's what you were active in, community  
9 police relations?

10 THE WITNESS: Which is why I was at a couple of board  
11 meetings, speaking to the community that sort of thing.

12 Q. And so you've done this work in New York City?

13 A. Yes.

14 Q. And you've also done it in other states, correct?

15 A. No.

16 Q. You didn't do any activism in Louisiana after Hurricane  
17 Katrina?

18 A. I was in Louisiana. I didn't do any police stuff while I  
19 was out there.

20 THE COURT: What were you doing there?

21 THE WITNESS: It was -- I was helping to organize  
22 around housing after Hurricane Katrina and participated in  
23 putting together a trip, you know, where members of the  
24 community talk about their experiences after Hurricane Katrina.

25 Q. You gave a deposition in this case?

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Floyd - cross

1 A. In --

2 Q. In this case you testified under oath at a deposition?

3 A. Yes.

4 Q. And that took place on April 30, 2009?

5 A. Yes.

6 Q. Directing the Court's attention to page 152, line 3.

7 MS. PATEL: One second.

8 Q. Were you asked the following question --

9 THE COURT: Are you there, Ms. Patel?

10 MS. PATEL: Yes.

11 Q. -- and did you give the following answer: "What did you do  
12 with that organization?13 "A. I primarily worked to coordinate and put together this  
14 tribunal that occurred toward the end of the summer in New  
15 Orleans.

16 "Q. What type of tribunal?

17 "A. It was specifically dealing with human rights violations  
18 that occurred during and after Hurricane Katrina and Rita."

19 A. Mm-hmm.

20 Q. So did you give those answers to those questions?

21 A. Yes.

22 Q. And so -- excuse me. The human rights work that you were  
23 doing in New Orleans, did it have to do with police issues?

24 A. No. It had to do with collecting people's stories.

25 THE COURT: Collecting people's stories?

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D3i9flo5 Floyd - cross

1 THE WITNESS: Stories, correct.

2 Q. You were aware of what the Civilian Complaint and Review  
3 Board is, correct?

4 A. Yes. Yes. I remember something.

5 Q. Well, you understand that the Civilian Complaint and Review  
6 Board investigates citizen allegations of police misconduct?

7 A. Yes.

8 Q. And you knew what the Civilian Complaint and Review Board  
9 was before either of the stops in this incident happened?

10 A. Yes.

11 Q. Now, you've also done work with a group called the Malcolm  
12 X Grassroots Movement, correct?

13 A. Yes.

14 Q. In fact, in your work with the Malcolm X Grassroots  
15 Movement you got to know another plaintiff in this case, didn't  
16 you?

17 A. Whom?

18 Q. Lalit Clarkson?

19 A. Yes.

20 Q. You met him doing activism with the Malcolm X Grassroots  
21 Movement?

22 A. Yes.

23 Q. And you're friends with Mr. Clarkson, correct?

24 A. Yes.

25 Q. And you've spoken to him about your experiences and he's

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1 spoken to you about his?

2 A. I don't know. I don't remember.

3 Q. So, the years of activism that you've been doing around  
4 these issues has -- you have very strong opinions about these  
5 issues, don't you?

6 A. I have --

7 MS. PATEL: Your Honor, I think -- I'm sorry. There's  
8 a lot of vague opinions. Activism. He's like very vague  
9 terms. These issues. It's unclear.

10 THE COURT: I think it's police community issues.  
11 That's what I thought you meant by "these issues." You have  
12 strong feelings about the relations between police and the  
13 community?

14 THE WITNESS: Yes.

15 THE COURT: Is that what you would define as "these  
16 issues" or anything else?

17 THE WITNESS: Yes. Yes.

18 Q. And you work to get others involved in your activism,  
19 right?

20 A. I work to try to educate folks.

21 Q. And you want other people to become active in these issues  
22 just like you are?

23 THE COURT: Mr. Kunz, are you using "these issues" the  
24 same way I am?

25 MR. KUNZ: I am, your Honor, yes.

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D3i9flo5 Floyd - cross

1 THE COURT: Police community interaction.

2 MR. KUNZ: Yes. Police community interaction.

3 THE COURT: So we've all defined it. Police community  
4 interaction.

5 THE WITNESS: Mm-hmm.

6 Q. Just to be perfectly clear. You also testified earlier  
7 that the activism that you did, in New York City at least, went  
8 beyond police community issues and was specifically on  
9 stop-question-frisk, correct?

10 A. Can you repeat the question, please.

11 Q. Sure. Well I asked you earlier when we started. Before  
12 you ever started being involved in this case, if you had done  
13 activism around stop-question-frisk. And you said yes.  
14 Correct?

15 MS. PATEL: I don't think -- I think that there's a  
16 mischaracterization of the testimony, your Honor. I'm sorry.  
17 I previously made this same objection and I think that this  
18 is -- this is a little bit confusing around what is activism,  
19 what's issues?

20 THE COURT: Frankly, I think you're confused. I don't  
21 think anybody else is. All he's clarifying now is in addition  
22 to community police relations or not in addition to but as  
23 subset of it. Were you actually involved with  
24 stop-question-frisk issues before your first stop?

25 Do you recall?

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1 THE WITNESS: The question that I remember was the  
2 stop and frisk as well as community police relations.

3 THE COURT: Right.

4 THE WITNESS: And yes. Yes.

5 Q. And you have said that you consider stop and frisk a form  
6 of violence, correct?

7 A. When it's done illegally, yes.

8 THE COURT: When it's done what?

9 THE WITNESS: Illegally.

10 THE COURT: Illegally. All right.

11 Q. And as you said before, you think it's illegal when the  
12 person is not guilty of anything?

13 THE COURT: He didn't say that. That he didn't say.  
14 You are putting words in his mouth. He said I'm not a lawyer,  
15 I don't know. He said he would discuss it because he knew he  
16 wasn't guilty of anything. He didn't say what you just said.

17 Q. So your strong feelings on this issue, have they affected  
18 the way you testified today?

19 A. My feelings about this issue is really just about my  
20 experience.

21 Q. Okay. So let's get into the incidents. The first one  
22 happened in April 2007, correct?

23 A. Yes.

24 Q. And directly after the April 2007 incident you went home  
25 and you wrote a statement about what occurred that day, right?

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D3i9flo5

Floyd - cross

1 A. Yes, I did.

2 Q. And you typed this statement on your home computer?

3 A. Yes.

4 Q. And in this statement you wrote that the incident occurred  
5 on Saturday, April 20, 2007, correct?

6 A. If that's what it says.

7 Q. Would you like do see it?

8 THE COURT: Well he accepts it if that's what it says  
9 Mr. Kunz. Is that what the statement, written statement says?

10 MR. KUNZ: Yes.

11 THE COURT: Then he accepts that. Go ahead.

12 THE WITNESS: Thank you.

13 Q. Are you aware that April 20, 2007 was not a Saturday?

14 A. What day was it?

15 Q. Well okay. Do you need to have your memory refreshed?

16 THE COURT: Do you know the answer?

17 MR. KUNZ: I do know. It was a Friday.

18 THE COURT: It was a Friday. Do you know if you were  
19 stopped on a Friday or a Saturday?

20 THE WITNESS: I don't remember.

21 THE COURT: Okay.

22 Q. So you're uncertain if it was a Saturday, correct?

23 A. Correct.

24 Q. Are you certain it was April 20?

25 A. Again, I put April 20. I don't remember -- I don't

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D3i9flo5 Floyd - cross

1 remember exactly.

2 Q. Okay. So in the statement you wrote directly after the  
3 incident you wrote Saturday, April 20, 2007 but you're not sure  
4 if either of those are correct?

5 A. Correct.

6 Q. And in the second amended complaint that was filed in this  
7 case -- you reviewed the complaints that were filed in this  
8 case, correct?

9 A. I'm pretty sure I reviewed everything, yes.

10 Q. And in the second amended complaint it states that the  
11 incident took place on April 20, 2007, correct?

12 A. Mm-hmm. Yes.

13 Q. And when you were asked about the second amended complaint  
14 during your deposition you stated that it was correct, right?

15 A. Yes.

16 Q. But, again, you're not sure if it actually happened on  
17 April 20?

18 A. Right now, no.

19 Q. And then in 2009 at your deposition you said you didn't  
20 know what day of the week the stop occurred on, right?

21 A. Correct.

22 Q. But then later in your deposition you went back to  
23 Saturday, April 20, 2007, right?

24 A. I guess so. I don't remember.

25 MS. PATEL: Your Honor, he's asking him questions.

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D3i9flo5 Floyd - cross

1 It's confusing.

2 THE COURT: Ms. Patel, I don't think these objections  
3 are well founded. It's cross-examination. He has a right to  
4 explore his memory of the dates and days.

5 The weight, of course, is for the court.

6 Go ahead, Mr. Kunz.

7 Q. You also signed a sworn declaration in this case?

8 A. Yes.

9 Q. And you did that in 2011?

10 A. Yes.

11 Q. So just we have the timeline. The incident is 2007. You  
12 do your deposition in 2009. Sign the declaration in 2011.

13 Right?

14 A. Correct.

15 Q. And you submitted the declaration in support of these very  
16 proceedings, in support of this case?

17 A. Yes.

18 Q. To try to get class certification?

19 A. I believe that's what it was for.

20 Q. And in the 2011 declaration you stated that the police  
21 encounter occurred on, "on or around April 20, 2007," right?

22 A. Yes.

23 Q. And then you also stated in that same declaration that it  
24 occurred, "on a Saturday" in April 2011, right?

25 A. I guess so, yes.

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D3i9flo5 Floyd - cross

1 Q. So sitting here today do you believe that the incident  
2 happened on April 20, 2007?

3 A. From everything I know and remember, yes. On April 20.

4 Q. Sitting here today do you believe the incident happened on  
5 a Saturday?

6 MS. PATEL: Asked and answered.

7 THE COURT: I'll allow it.

8 Do you think it was a Saturday, or you don't remember  
9 it?

10 THE WITNESS: The day of the week, I don't remember.

11 Q. So when you signed your name to the 2011 declaration  
12 swearing that the incident happened on a Saturday in April,  
13 that was actually incorrect, right? You don't actually  
14 remember what day of the week it happened?

15 A. No. No, I don't. I don't remember what day of the week.

16 Q. So -- are you sure the incident happened in April?

17 A. Yes.

18 Q. Could it have been in late March 2007?

19 A. April.

20 Q. Could it have been in early May 2007?

21 A. April.

22 Q. In the summary of the incident that you typed out directly  
23 after it happened you wrote that it occurred at 2:45 p.m.,  
24 correct?

25 A. Mm-hmm. Yes. I'm sorry.

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D3i9flo5 Floyd - cross

- 1 Q. But in your 2009 deposition you testified that the police  
2 encounter occurred at midday or noon, right?  
3 A. Yes.  
4 Q. So then in the -- and then in the 2011 declaration you said  
5 it occurred just before 3:00 p.m., right?  
6 A. Yes.  
7 Q. So your testimony there has changed, right?  
8 A. Yes.  
9 Q. You've also described the physical appearance of the  
10 officers that were involved in this April 2007 stop?  
11 A. Mm-hmm. Yes, I have.  
12 Q. There was two men and one woman, correct?  
13 A. Correct.  
14 Q. And they were wearing uniforms?  
15 A. Yes.  
16 Q. Now, you said during your direct testimony on this case  
17 that the uniforms -- that there was something about the  
18 uniforms but you couldn't remember what it was that made you  
19 think they were NYPD officers. Do you remember saying that  
20 earlier today?  
21 A. Yes.  
22 Q. But in your deposition you were asked a lot of detail about  
23 the uniforms and you said you didn't remember anything about  
24 them, right?  
25 A. Correct.

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D3i9flo5 Floyd - cross

1 MS. PATEL: Your Honor, can I know where he's looking  
2 in the deposition so that I can check? Can he show it to the  
3 witness?

4 THE COURT: He's asking questions. Going over  
5 testimony, he has to give you a page and line. But he's not  
6 doing that right now.

7 MR. KUNZ: Right.

8 Q. So you described the male officer that was driving as a  
9 darker skinned Latino, correct?

10 A. Latino, yeah.

11 Q. Fairly clean shaven maybe with a mustache or goatee?

12 A. Correct.

13 Q. About six foot to six/one, 190 to 220 pounds?

14 A. Yes.

15 Q. You also said in your deposition that you didn't know what  
16 hair color he had and you didn't know what his eye color was,  
17 correct?

18 MS. PATEL: Your Honor, I think that's a  
19 mischaracterization of the deposition testimony.

20 THE COURT: What page and line are you reading from?

21 MR. KUNZ: 110 7 through 114. Sorry. Page 110, line  
22 7 through page 114, line 13.

23 MS. PATEL: Say that again. 110, line 7 through what?

24 MR. KUNZ: Through page 114, line 13.

25 Is there a particular part of it that you --

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D3i9flo5

Floyd - cross

1 MS. PATEL: Hair color. What else? The last question  
2 you just asked.

3 THE COURT: His question was he didn't know what hair  
4 color he had and you didn't know what his eye color was,  
5 correct?

6 MR. KUNZ: The witness agreed to it.

7 THE COURT: Then you objected at that point,  
8 Ms. Patel.

9 MS. PATEL: I don't see anything about --

10 MR. KUNZ: Look at 117, lines 1 through 4.

11 MS. PATEL: So not the -- Your Honor, it states what  
12 about his hair color, I believe it was dark.

13 MR. KUNZ: The question actually says: "The Latino,  
14 do you remember his eye color?

15 "A. No.

16 "Q. What about his hair color?

17 "A. I believe it was dark."

18 Did you give those answers to those questions during  
19 your deposition?

20 A. Yes.

21 Q. Now, the other male officer you've described as a white  
22 male, correct?

23 A. Correct.

24 Q. And you said he's approximately five/nine to five/ten?

25 A. Yes.

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D3i9flo5

Floyd - cross

1 A. Correct.

2 Q. So the best you were able to do was to narrow it down to  
3 44?

4 A. Correct.

5 Q. So if the best you were able to do is to narrow it down to  
6 44, is it fair to say that you don't really remember what the  
7 officers looked like?

8 MS. PATEL: Objection.

9 THE COURT: It's an argumentative question.

10 Sustained as to form.

11 Q. In the summary of the incident you wrote directly after it  
12 happened you noted the names of the police officers, correct?

13 A. Yes.

14 Q. You wrote that one of them was named Rodriguez with a badge  
15 number 12141?

16 A. Yes.

17 Q. And the other one you said was named Goodman with a badge  
18 number 9292?

19 A. Yes.

20 Q. Would it surprise you to learn that shield number 12141  
21 which you said belonged to Officer Rodriguez was actually  
22 assigned to a female officer whose last name is not Rodriguez  
23 and who was working in Manhattan in April 2007?

24 A. That's information that the officers gave me.

25 Q. And would it surprise you to learn that shield number 929

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D3i9flo5 Floyd - cross

1 which you said belonged to Officer Goodman was assigned to an  
2 officer working in Queens April 2007?

3 A. Again, that's information that the officers gave me.

4 Q. So, as we've just gone over, there's aspects of this  
5 encounter that you don't remember, right?

6 A. Such as -- yeah, yeah.

7 Q. So, for example, you don't remember what you were doing  
8 directly before the encounter, right?

9 A. Correct.

10 Q. You know you were walking home but you're not sure where  
11 you were coming from?

12 A. No, I don't remember.

13 MS. PATEL: I don't think that's what he testified to.

14 MR. KUNZ: 66, lines 11 through 13.

15 MS. PATEL: I'm saying that's not what he testified to  
16 today.

17 If it's from the deposition, that's a different  
18 question.

19 THE COURT: He wasn't doing either. He says you know  
20 you were walking home but you're not sure where you're coming  
21 from.

22 Just tell us. Is that correct or not correct?

23 THE WITNESS: That's correct.

24 THE COURT: That is correct. Okay.

25 Q. And you don't remember what you were wearing that day?

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D3I8FLO6 Floyd - cross

1 Q. At your deposition, were you asked the following question  
2 and did you give the following answer:

3 MS. PATEL: Can I get the line and page?

4 MR. KUNZ: 68, line 12 and 13.

5 MS. PATEL: One second.

6 "Q. What were you wearing?

7 "A. That I don't remember."

8 Did you give that answer to that question?

9 A. Yes, I did.

10 MS. PATEL: Your Honor, can I give the rest of the  
11 answer?

12 THE COURT: Sure.

13 MR. KUNZ: I can keep reading if you want.

14 "Q. Were you wearing short sleeves or long sleeves?

15 "A. Again, I do not remember.

16 "Q. Were you wearing shorts or pants?

17 "A. I never wear shorts.

18 "Q. What type of pants were you wearing?

19 "A. That I don't remember."

20 MS. PATEL: "I had on jeans."

21 "Q. What type of footwear were you wearing?

22 "A. I don't even remember. I had on jeans.

23 "Q. What color jeans?

24 "A. I don't remember."

25 The point here, Mr. Floyd, is that you testified at

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D3I8FLO6

Floyd - cross

1 your deposition that you don't remember what you were wearing  
2 that day and you just said today you do remember.

3 THE COURT: He testified at his deposition that he was  
4 wearing jeans.

5 MS. PATEL: Your Honor, he also says, at page 69, line  
6 1:

7 "What do you mean style? Were they baggy type fit?

8 "Regular fitting? Most jeans are like that. I had on  
9 jeans. I know I had sneakers on."

10 THE COURT: I know I had what?

11 MS. PATEL: Sneakers on.

12 THE COURT: At your deposition, you knew you were  
13 wearing jeans and sneakers, which is just what you said here  
14 today.

15 THE WITNESS: Yes.

16 Q. Initially at your deposition --

17 THE COURT: I just heard the whole thing, the way the  
18 questions were asked, and he knew it was jeans and sneakers.

19 MR. KUNZ: If I could just ask that plaintiffs'  
20 counsel stop with the under the breath side bars?

21 THE COURT: I don't hear that, but you do have to give  
22 her page and line.

23 MR. KUNZ: Mr. Moore just made a comment.

24 THE COURT: Luckily my hearing is not as good as  
25 yours. So not to worry. I am the trier of fact. So don't

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D3I8FLO6 Floyd - cross

1 worry. I missed it all.

2 MR. KUNZ: So in the future can he refrain from making  
3 comments?

4 THE COURT: I don't know. I didn't hear it.

5 Can we move on, Mr. Kunz?

6 Q. So I am going to show you the document that your attorney  
7 was asking you about. It's Defendants' Exhibit I-10. It bears  
8 Bates stamp number NYC underscore 2 underscore 00025277.

9 MR. KUNZ: I don't believe this was admitted in  
10 evidence, your Honor, so I would just move that it be admitted  
11 at this point.

12 MS. PATEL: No objection.

13 THE COURT: It's received. It's received as what,  
14 plaintiffs' exhibit what? Did you give it a plaintiffs'  
15 exhibit number?

16 MR. KUNZ: It is Defendants' Exhibit I-10.

17 THE COURT: OK. That's fine.

18 MS. PATEL: Only this particular page.

19 THE COURT: Defendants' Exhibit I-10 this particular  
20 page.

21 (Defendants' Exhibit I-10 received in evidence)

22 Q. So when the incident happened, you were walking up Beach  
23 Avenue, correct?

24 A. Up as in towards Cross Bronx.

25 THE COURT: Toward the Cross Bronx.

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D3I8FLO6

Floyd - cross

- 1 A. Yes.  
2 Q. With traffic?  
3 A. Yes.  
4 Q. When you reached the intersection of Beach Avenue and 172nd  
5 Street, you looked down 172nd Street and saw police officers?  
6 A. Correct.  
7 Q. Now, at your deposition, you didn't know that it was 172nd  
8 Street, right, you said it was 170 something?  
9 A. Correct.  
10 Q. But today you're sure it's 172nd Street that you were  
11 looking down?  
12 A. Yes.  
13 Q. The police officers you saw, they were about a block and a  
14 half away?  
15 A. Yes.  
16 Q. They were interacting with another person?  
17 A. Correct.  
18 Q. You watched them interact with this person, correct?  
19 A. Yes.  
20 Q. I think this was a little confusing during the direct, but  
21 you only watched them interact with this person for about 10 to  
22 15 seconds?  
23 A. Correct.  
24 Q. Not minutes?  
25 A. Correct.

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D3I8FLO6 Floyd - cross

1 MS. PATEL: I would just like to say we don't know who  
2 took these photos or where they were taken, and I think maybe  
3 when you see them, I am afraid that the angle is a little  
4 distorted.

5 THE COURT: We can ask the witness if they are a fair  
6 and accurate representation of the area.

7 MR. KUNZ: That's exactly what I intend to do.

8 Q. Do you recognize what this is a photograph of, Mr. Floyd?

9 A. Yes.

10 Q. What is this a photograph of?

11 A. This is Beach Avenue.

12 Q. Is this looking up the sidewalk that you were walking on?

13 A. Correct.

14 Q. The intersection that's visible just ahead, that's the  
15 intersection that you slowed down, looked down, and saw the  
16 police officers?

17 A. Correct.

18 THE COURT: That is a fair and accurate representation  
19 of the area?

20 THE WITNESS: Of the block? Yes.

21 MR. KUNZ: Then I would just move this into evidence,  
22 your Honor.

23 THE COURT: I assume there is no objection.

24 MS. PATEL: Can I just ask for clarification?

25 Which street is Beach Avenue on this photograph?

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D3I8FLO6

Floyd - cross

1 THE COURT: Is Beach Avenue where the cars are parked?

2 THE WITNESS: Yes.

3 MS. PATEL: No objection.

4 THE COURT: This is received.

5 (Defendants' Exhibit N-10 received in evidence)

6 Q. Now, when the officers first pulled up in the van, they  
7 said to you, "Excuse me, may I speak to you, sir?", correct?

8 A. Again, they said something that made me slow down and stop.  
9 I don't remember right now what they actually said.

10 THE COURT: You don't remember those words that Mr.  
11 Kunz just used?

12 THE WITNESS: I don't remember exactly what they said  
13 to me.

14 THE COURT: OK. You don't accept the words he just  
15 said?

16 THE WITNESS: I don't know.

17 Q. In the summary that you wrote of this incident directly  
18 after it happened, did you in fact write, "The officer rolled  
19 up slowly beside me in a black van and said, 'Excuse me, may I  
20 speak to you, sir?'" Did you write that directly after the  
21 incident?

22 A. Yes.

23 Q. One of the officers also asked you for your ID, correct?

24 A. Yes.

25 Q. In the summary of the incident that you wrote, they first

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D3I8FLO6 Floyd - cross

1 asked you for your ID after they were already out of their  
2 vehicle, correct?

3 A. Honestly, I don't remember. I just remember it all kind of  
4 happening at the same time, getting out of the vehicle, asking  
5 me for my identification.

6 Q. In your 2009 deposition, you stated that the officer asked  
7 you to --

8 MS. PATEL: Can I get the line again? He is quoting.

9 THE COURT: Yes. You said in your 2009, you stated.  
10 You have to give a page and line.

11 MR. KUNZ: 94, line 23, through 95, line 7.

12 MS. PATEL: What are the lines again?

13 MR. KUNZ: 94, 23, through 95, line 7.

14 MS. PATEL: Thank you.

15 Q. So the question was, in your 2009 deposition, you stated  
16 that the officer asked to see your ID when he was still in the  
17 vehicle, correct?

18 A. Yes.

19 Q. But in the summary of the incident that you wrote, you said  
20 that he first asked you for ID after he was already out of the  
21 vehicle, right?

22 A. Repeat that, please.

23 Q. In the summary of the incident that you wrote, directly  
24 after it happened, you said that the officer first asked you  
25 for ID after he was already out of the vehicle?

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D3I8FLO6

Floyd - cross

1 A. Yes.

2 Q. So that's another area where your story has changed over  
3 time, correct?

4 MS. PATEL: Objection.

5 THE COURT: I will allow it.

6 Is it different then than it is now in terms of where  
7 the officer was when he made the request for ID?

8 THE WITNESS: Yes.

9 THE COURT: So what is your best recollection now?

10 THE WITNESS: That, like I said, it all kind of  
11 happened at the same time.

12 THE COURT: OK.

13 Q. When the officer pulled up in the van, he asked if he could  
14 see your ID, correct?

15 A. Yes.

16 Q. He didn't order you to give his ID, he said may I see your  
17 ID?

18 A. Yes.

19 Q. And your response to being asked was to slow down, stop  
20 walking, and you didn't say anything, right?21 A. Well, I eventually asked him, even though I live on this  
22 block.23 Q. Initially, your initial response was just to slow down and  
24 stop walking, right?

25 A. Again, what I said was, even though I live on this block.

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D3I8FLO6 Floyd - cross

1 Q. You never said to them you didn't want to talk to them,  
2 right?

3 A. No, I did not.

4 Q. In response to being asked if they could see your ID, you  
5 voluntarily took your ID out of your pocket, correct?

6 A. In response to them asking me for my ID, I produced the ID  
7 for them.

8 THE COURT: It's 4:30 so we will stop here now. I  
9 always try to stop right at 4:30. That means you will have to  
10 come back tomorrow to finish the cross and have the redirect.  
11 We will start at 10:00.

12 We are done for the day. We will start at 10:00.

13 MR. MOORE: Can I raise one matter? It will be very  
14 quick. I neglected to move the admission of those four  
15 photographs. I just wanted to do that. I don't think there is  
16 any objection.

17 MS. COOKE: No.

18 (Defendants' Exhibit T-10 received in evidence)

19 MR. KUNZ: I just have one clarification. Obviously,  
20 the witness is still under oath. So he cannot be spoken to.

21 THE COURT: Not that he is under oath. It is that he  
22 is on cross-examination. So you can't speak with the  
23 plaintiffs' lawyers.

24 Thank you.

25 (Adjourned to March 19, 2013, at 10:00 a.m.)

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