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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

New York, N.Y.
April 8, 2013
10:07 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

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1 (In open court; trial resumed)

2 THE COURT: Good morning everyone.

3 MS. GROSSMAN: Your Honor, I was wondering if now is a
4 good time to just raise a scheduling concern that we have
5 regarding the days left for trial. We believe that our
6 original estimate for the defendants' case of the two weeks may
7 be too short. We believe we may need an extra week.

8 Many of the witnesses that the plaintiffs had put on
9 their witness list that they expected to complete within the
10 time that they estimated have now dropped off the plaintiffs'
11 witness list and have come onto our witness list. So as a
12 result we believe we may need an extra week.

13 I just wanted to let the Court know sooner rather than
14 later.

15 THE COURT: That's a real problem. I don't have an
16 extra week. I don't know what to do about that.

17 I'll just have to ask everybody to be as efficient
18 with their time as they possibly can. I think you all had
19 always known that I had a major trial following this major
20 trial, almost as major. I pushed them back one week as it is.
21 I can't push them two because it's a two-month trial.
22 Vacations, out of town, next case. All kinds of other
23 problems.

24 So everybody is going to just work harder to be
25 faster. Particularly plaintiffs not you. I mean you haven't

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1 been slow because you haven't had any witnesses. The
2 plaintiffs have to go faster. We'll just have to see how it
3 goes.

4 It's not a jury. Maybe we'll be able to finish in
5 September. I don't really believe that, but we'll see.

6 Thank you for the heads-up. All right.

7 ELI SILVERMAN, resumed.

8 CROSS-EXAMINATION CONTINUED

9 BY MR. KUNZ:

10 Q. Good morning, Professor.

11 A. Good morning, Counselor.

12 Q. Before I just talk to you about a few other issues I wanted
13 to present a demonstrative that I created over the weekend to
14 illustrate the numbers that we've put on the record. I'm going
15 to show it to the witness first.

16 THE COURT: Have you shown it to counsel?

17 MR. KUNZ: I sent it to counsel last night, yes.

18 THE COURT: Good. You've seen it?

19 MR. AZMY: Yes, your Honor. We have an objection to
20 it.

21 MR. KUNZ: You do or don't?

22 MR. AZMY: Do.

23 THE COURT: Well this is another one of those problems
24 where I'm really not anxious to look at it if there's an
25 objection because it's nonjury.

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1 What is the chart? How would you describe this thing
2 and why do you object to it?

3 MR. KUNZ: I would describe it as -- your Honor may
4 recall I asked the witness questions about how many survey
5 respondents were officers, how many survey respondents were
6 sergeants, how many survey respondents were lieutenants, and
7 how those percentages were different than the actual number of
8 retired officers, sergeants, lieutenants.

9 THE COURT: Yes.

10 MR. KUNZ: So I just put together a chart that lays
11 out those exact numbers.

12 THE COURT: What's the problem with that?

13 MR. AZMY: The problem is the actual numbers can't
14 come from counsel. These are facts not in evidence. And
15 Professor Silverman testified he didn't know what the actual
16 numbers are, so.

17 THE COURT: The actual number of retirees?

18 MR. AZMY: Yes. The actual number of retirees or the
19 actual number of retired sergeants, captains, lieutenants, etc.
20 That's coming from counsel, not from any fact witness.

21 THE COURT: Fair enough. Here we are talking about
22 timing. You want him to call a witness to repeat those exact
23 numbers? I'm sure he got them from somebody in the police
24 department. If you really want him to, we'll drag somebody in
25 to say I went through the police records. These are the

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1 retiree numbers.

2 If you want somebody under oath to say it, I will.
3 I'll tell the defendant to do it. You're right that he doesn't
4 have a witness with that evidence.

5 Or maybe he would tell you who you could speak to and
6 satisfy yourself outside, and then stipulate to it.

7 MR. AZMY: Why don't we pursue that option.

8 THE COURT: Mr. Kunz, maybe you can let plaintiffs'
9 counsel with, of course, with you on the phone speak to a city
10 employee who will confirm those numbers how he generated them,
11 how he did it. And if they're satisfied, then just stipulate
12 to it. If they're not satisfied, you'll have to call a live
13 witness to be cross-examined.

14 So I'll do it conditionally. I'll accept it
15 conditionally now and then you'll work with counsel to see, do
16 a telephone interview. If that satisfies you; if not, you'll
17 call a live witness.

18 THE WITNESS: May I enter objection to this?

19 THE COURT: I don't know. What's your objection?

20 THE WITNESS: My objection is this is bogus. Because
21 this is based on what counsel says the actual percentage of
22 retired officers. And our survey was a subsample of that. And
23 that was those who are enrolled, who designated themselves as
24 active retirees. Not all retirees.

25 THE COURT: What's an active retiree?

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1 THE WITNESS: An active retiree is someone who
2 self-designates himself to be on that NYPD list. And by
3 doing --

4 THE COURT: So some retirees are not?

5 THE WITNESS: That's correct.

6 THE COURT: Oh.

7 THE WITNESS: And so that's why this is a very
8 misleading chart.

9 THE COURT: Because you only wrote to active retirees?

10 THE WITNESS: We only accessed those who were on that
11 website because the police department is obviously not as open
12 with us as they would be with them.

13 THE COURT: You just wrote to those who designated
14 themselves as active retirees?

15 THE WITNESS: That's correct.

16 THE COURT: You don't know what percentage of retirees
17 designate themselves as active retirees?

18 THE WITNESS: That's correct. So this was not our
19 sample. And he's making our sample --

20 THE COURT: I can't do it then, Mr. Kunz. I see the
21 point. He didn't write to all retirees so the number of all
22 retirees is kind of irrelevant.

23 MR. KUNZ: That's actually the point, your Honor, is
24 that the survey is not representative of the actual pool of
25 retirees.

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1 THE COURT: It's representative of the pool of active
2 retirees. And you don't have the breakdown of that.

3 MR. KUNZ: I'm just trying to explore the bounds of
4 the survey.

5 THE COURT: Yes. But the survey was sent to active
6 retirees which are made up of X percent sergeants, X percent
7 captains, X percent deputy inspectors, X percent inspectors --
8 I don't know what those Xs are -- of the active retiree pool.
9 Then the results come back. And you can say, Oh, the results
10 have X percent sergeants, lieutenants, captains, whatever,
11 deputies, inspectors. So you see it reflects that to whom it
12 was mailed. The responses reflect the pool. You don't have
13 the right pool. So I can't allow where you want to go in the
14 end. So just saved your telephone interview.

15 MR. KUNZ: As long as we're clear that the survey is
16 not representative of the actual pool of retirees and instead
17 reflects the active list.

18 THE COURT: What we're clear on is we don't know the
19 breakdown of all retirees. That's not in evidence. And it
20 wasn't sent to all retirees anyway. It was sent to the subset
21 called active retirees. So I know what it is and what it
22 isn't.

23 MR. KUNZ: So I'll move on then.
24 Q. So your survey was -- the first survey was conducted in
25 2008; isn't that correct?

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1 A. Yes.

2 THE COURT: Is that true, by the way, of both surveys,
3 what you just explained about active retirees?

4 THE WITNESS: The first survey were those who were
5 enrolled in the captains endowment association, on their
6 membership list.

7 THE COURT: Which is this thing called active
8 retirees?

9 THE WITNESS: No. They are just called those who are
10 retired and wish to be associated with the union, so to speak,
11 that represents them.

12 THE COURT: That's the first survey.

13 The second?

14 THE WITNESS: The second one was sent to a website
15 that's only accessible to active retirees. And an active
16 retiree has to designate himself or herself to be on that list.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: And that was our subsample.

19 THE COURT: Okay.

20 Q. So, at the time that you conducted the first survey, the
21 2008 survey, CompStat had been in existence for 14 years?

22 A. CompStat came into existence in 1994.

23 Q. So then in 2008 that's about 14 years?

24 A. Sounds that.

25 Q. So then the people who were pre-CompStat in the 2008 survey

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1 had been out of the police department for about 14 years when
2 they filled out the survey, if not more?

3 A. I would -- that makes sense.

4 Q. And the survey just shows a snapshot in time, correct? It
5 just shows what the responses were at the moment the survey was
6 taken?

7 A. Do you know of a survey that doesn't do that?

8 Q. Well, I guess my question is: You didn't ask the same
9 questions, you know, every year over the course of a number of
10 years?

11 THE COURT: You know that. He did two surveys. One
12 in 2008 and one --

13 THE WITNESS: 2012.

14 THE COURT: 2012.

15 Q. So you've never done any research on what people reported
16 in terms of pressure in 1980, in 1990, in 1995?

17 A. Well, there's a partial answer to that. Because in their
18 comments which you requested, and the plaintiffs' attorney
19 provided to you, they indicated some of the pressures. And
20 some of them indicated them by year.

21 THE COURT: Be that as it may, to answer his question,
22 I just want to be sure myself, there aren't other surveys --

23 THE WITNESS: No, there are no --

24 THE COURT: -- to which you did not testify?

25 THE WITNESS: No. Those -- if that's the question,

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1 those were the only two surveys.

2 THE COURT: Okay.

3 THE WITNESS: Thank you, your Honor.

4 Q. Now for the 2008 survey, you had 491 responses?

5 A. I believe that's the number.

6 Q. I'm going to show you a demonstrative that the plaintiffs
7 put in. I'm not a hundred percent sure of the number that it
8 got assigned during the testimony on Friday. But this is the
9 demonstrative on the 2008 increased summons categorized. I
10 think it's 441.

11 The total here is 554?

12 THE COURT: No. 454.

13 Q. I'm sorry. 454?

14 A. Yes.

15 Q. So with 491 responses and 454 included in this list, there
16 were 37 people who responded to the survey but did not make it
17 into this demonstrative?

18 A. Everyone didn't have to answer every question. So, yes.

19 Q. So of those 37 people, some of them are ones who did not
20 answer the specific subcategories of question 1?

21 A. It seems that way.

22 Q. And then there's also another group of people that did not
23 provide to you their year of retirement so you couldn't
24 determine if they were pre-CompStat or post-CompStat?

25 A. That's not accurate.

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1 Q. So everyone provided pre-CompStat, post-CompStat data?

2 A. Yes.

3 Q. So the 37 missing from this is entirely made up of people
4 who for whatever reason did not answer that specific question?

5 A. I need you to rephrase that please.

6 THE COURT: The 37 figure that isn't there, they
7 didn't answer this question?

8 THE WITNESS: Yeah. I thought I said that.

9 THE COURT: Oh, well.

10 Q. And there is no way to tell the reason why people didn't
11 answer that question, correct?

12 A. I don't know of a way.

13 Q. So then it's possible that some people who did not answer
14 that question were meaning to indicate --

15 THE COURT: No. "It is possible" is an inappropriate
16 question at all times. Something is always possible. Tells us
17 nothing. So I don't allow it.

18 Q. Well, looking at the survey instrument from 2008 which is
19 in evidence as Plaintiffs' 300, there is no zero on this
20 survey, correct?

21 A. We discussed that last time.

22 THE COURT: And the answer is there is no zero.

23 Q. So, looking at this demonstrative here, if -- well your
24 Honor I wanted to ask him a hypothetical question about the
25 effect that those 37 answers, and depending on where they went.

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1 So, taking the first demonstrative, for example, if
2 you take the 37 people who are not included and assume that
3 they reported --

4 THE COURT: Don't call it "who are not included." Who
5 didn't answer this question.

6 MR. KUNZ: Who didn't answer this question. For
7 whatever reason.

8 Q. And assume that they reported high pressure and that they
9 retired before CompStat, the 37 -- I'm sorry, the 36 here would
10 be increased by 37. So that would go up to 73. And then the
11 total --

12 THE COURT: 73, the raw number.

13 Q. And the total would go up to 178, correct?

14 THE COURT: That's just half.

15 THE WITNESS: But you're --

16 THE COURT: Go ahead. Finish your hypothetical. If
17 all of them, who didn't answer, answered high, and all of them
18 were --

19 MR. KUNZ: Right. So then 73 divided, out of 178 is
20 about 41 percent.

21 THE COURT: Okay.

22 Q. So isn't it true then that depending on the answer that
23 those 37 people would have given or meant to give, it could
24 significantly --

25 THE COURT: Not "or meant to give." That's just an
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1 unfair question. Rephrase it and start again. Depending on
2 the -- go ahead.

3 Q. Isn't it true that depending on the answer that those 37
4 people --

5 THE COURT: Might have given.

6 MR. KUNZ: Might have given.

7 THE COURT: Yes.

8 Q. It would significantly change the results of your survey?

9 A. I would say you could say that about any survey. You don't
10 speculate that those who don't respond, what they were
11 thinking. It's presumptuous for me to speculate their
12 thinking.

13 We are just trying to report what we -- what the data
14 shows. And to go one way -- maybe they -- 37 went the low.
15 I'm not going to say that. I can't speculate how people --

16 THE COURT: I'll help you out, Mr. Kunz.

17 But if they all fell in one group high, low or
18 anywhere else, it would change the outcome.

19 That's what you want? Yes, obviously.

20 If they all fell in one spot, which is highly unlikely
21 given the spread.

22 But if they all fell in one spot, it would change the
23 analysis.

24 Q. Now, looking at this same demonstrative here, there were
25 141 respondents from the pre-CompStat era and 313 from the

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1 post- CompStat era, correct?

2 A. Yes.

3 Q. So then there were about twice as many respondents from the
4 post-CompStat era?

5 A. Yes.

6 Q. And that fact too could significantly impact the results of
7 your survey?

8 THE COURT: I don't get it.

9 MR. KUNZ: The differences in sample sizes between the
10 pre-CompStat and post-CompStat.

11 THE WITNESS: No. Because we're still looking at
12 percentages. And as you know from the outset, the rough
13 distribution of people who responded was 33 percent, roughly,
14 one-third pre-CompStat and two-thirds post-CompStat. So we're
15 still looking at percentages here. That's why we provide the
16 percentages as opposed to just providing the numbers. That
17 makes for a more equitable comparison.

18 Q. So talking about the 2012 survey, at that point in 2012
19 CompStat had been in existence for about 18 years?

20 A. Yes.

21 Q. Now -- so then for some of the officers who responded to
22 the 2012 survey, they had spent the bulk of their career under
23 the CompStat process?

24 A. I would hazard a guess that would be correct. I can't tell
25 you categorically that's correct.

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D489FLO1 Silverman - cross

1 Q. And when you prepared your survey findings -- I'll use the
2 summons pressure categorized. Again, I'm not a hundred percent
3 sure of that exhibit number it's assigned.

4 This is 444 in evidence.

5 THE COURT: Which survey is this?

6 MR. KUNZ: This is the 2012 survey. It's the
7 demonstrative on summons pressure.

8 THE COURT: Right.

9 Q. So you broke the 2012 survey down into three distinct time
10 periods, correct?

11 A. That's correct.

12 Q. That's the before 1994, 1995 and 2001, and 2002 to 2012?

13 A. Yes.

14 Q. Now each of these time periods covers a significantly
15 different number of years, correct?

16 A. One covers -- they all -- they cover different periods of
17 years. That's correct.

18 Q. So 2001 to 1995, that's six years, the first six years of
19 CompStat?

20 A. That's correct.

21 Q. 2002 to 2012 is ten years?

22 A. Right.

23 Q. And then the other one, the before 1994, I think the oldest
24 survey respondent retired in 1941, I think is what your summary
25 said?

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D489FLO1 Silverman - cross

1 A. I don't recall that -- the oldest one. I think -- that
2 sounds familiar, but I don't recall.

3 Q. So if that was the case, if the oldest survey respondent
4 retired in 1941, then the pre-CompStat era would cover 53 years
5 of retirees?

6 A. For that individual, yes.

7 MR. MOORE: Actually it's 54.

8 Q. Now the number of respondents you received from each time
9 period was also different, correct?

10 A. Yes. Surveys usually do have different numbers. This is
11 not unique.

12 Q. You had 514 from the pre-CompStat era, 346 from the middle
13 years, and 814 from the later years?

14 A. I don't see the same numbers as you --

15 MR. KUNZ: I'm sorry. This is the stop pressure
16 category demonstrative here.

17 THE COURT: He switched to a different demonstrative.

18 THE WITNESS: Could you just make it -- lower it a
19 little please, thank you.

20 MR. KUNZ: 446 in evidence, your Honor.

21 THE COURT: Okay.

22 Q. So you see how each time period has different numbers of
23 respondents?

24 A. That's correct.

25 Q. If you drew the time periods differently, the survey would

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1 have obviously revealed different results, correct?

2 A. I don't know that.

3 Q. You never drew the time periods differently?

4 A. No. But I explained why we drew the time periods as we
5 did. If you want me to explain it again, I will.

6 Q. I think everyone is clear.

7 A. Then I wasn't clear why you asked me.

8 Q. So for the 2012 survey you had 1962 responses; is that
9 correct? Total?

10 A. Yes, yeah.

11 Q. So in this demonstrative, for example, there's 1701
12 included?

13 A. I didn't count them, but if you say so -- on the right. I
14 see.

15 Q. So then that's -- what is that missing 231, something like
16 that?

17 A. (No response).

18 Q. How about 231 people who filled up the survey for whatever
19 reason did not respond to this question?

20 A. Yes, sir.

21 Q. And like the 2008 survey, depending on what those people
22 would have answered, the results of the survey could be very
23 different?

24 A. If I had a hundred additional dollars, I'd be richer a
25 hundred dollars.

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D489FL01 Silverman - cross

1 I don't understand the point. Yes, if people added
2 they could have gone anywhere. But people choose -- in surveys
3 people choose not to answer every question. This is not a
4 unique phenomenon. So, yes -- I mean as far as I'm concerned
5 you're stating the obvious. That if people choose X over Y,
6 then they would have a preference for X.

7 Q. Finally, Professor, looking at this demonstrative from your
8 2008 report --

9 A. Yes.

10 Q. Part of which has gone in. These numbers here, the
11 increased summons here?

12 A. Yes.

13 Q. 5.48 I guess was the mean of people who were not in the
14 CompStat era?

15 A. Correct.

16 Q. And 6.94 was the mean of people who were in the CompStat
17 era?

18 A. Right.

19 Q. So you have the difference there of 1.46, correct?

20 A. Right.

21 Q. And you said that that's a significant difference?

22 A. Yes, it is. If you put the -- if you can show the whole --
23 the whole screen there, it's significant at .001, which would
24 be the chances of that happening be -- the likelihood of that
25 happening by chance would be like one in a thousand.

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D489FL01 Silverman - cross

1 Q. Now, the largest single mean difference on your survey is
2 the third one down, correct?

3 A. Yes.

4 Q. Decreased index crime.

5 So in the pre-CompStat era the average was 5.66?

6 A. Yes.

7 Q. And in the post-CompStat era the average was 8.26?

8 A. Yes.

9 Q. And that's the largest spread, right?

10 A. If you'd like me to discuss --

11 Q. Just yes or no.

12 THE COURT: Yes. I can see that. I don't need an
13 expert to read the chart. Yeah, that's the biggest one.

14 Q. So what are index crimes?

15 A. Murder, rape, larceny, grand auto larceny, assault,
16 burglary.

17 Q. So then by far the largest effect that your survey showed
18 was increased pressure to decrease those serious crimes; isn't
19 that correct?

20 A. Yes.

21 MR. KUNZ: No further questions, your Honor.

22 THE COURT: Mr. Azmy, redirect.

23 REDIRECT EXAMINATION

24 BY MR. AZMY:

25 Q. Professor Silverman, good morning?

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D489FL01 Silverman - redirect

1 A. Good morning, sir.

2 Q. On cross-examination on Friday you were asked about your
3 use of a null hypothesis, correct?

4 A. Yes.

5 Q. Is it common for social scientists to establish a null
6 hypothesis before undertaking a research experiment?

7 A. It's very common in the social sciences if you want to do
8 survey research. And survey research is the most frequent
9 mechanism to elicit information on social life.

10 Q. And did you pose your null hypothesis to the IRB along with
11 your survey submission?

12 A. Yes. They had -- the IRB not only looks at the scientific
13 aspect of it but the ethical aspect.

14 And as a matter of fact in response to your original
15 examination of me when you asked the purpose of the essential
16 elements of design, of a survey design, one is ethical.

17 And when I have any students, I have them read the
18 National Statistics Association and the agency, the National
19 Statistics Agency. And the first thing they premise is that a
20 survey should be done independent of those in power and not
21 under the control of those in power as opposed to being
22 delegated to some outside group.

23 Q. So the IRB approved the null hypothesis?

24 A. Yes. We had to go -- it's a very laborious process.

25 Q. Did you design the 2008 experiment in order to produce some

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D489FLO1 Silverman - redirect

1 predetermined outcome?

2 A. No.

3 Q. The 2012 experiment?

4 A. No, sir.

5 Q. And were you, in fact, surprised by the outcomes of that
6 survey?

7 A. Yes. I think I used the word floored.

8 And actually, I don't know if it's appropriate now,
9 your Honor, but I notice in the transcript that was written as
10 F-L-A-W-E-D. I said -- I think I used that phrase and I think
11 you repeated at some point.

12 THE COURT: You said floored, not flawed?

13 THE WITNESS: Yes.

14 THE COURT: The transcript should be corrected. I
15 remember you saying you were floored.

16 THE WITNESS: Thank you, your Honor.

17 Q. Also on cross you were asked about your use of the term
18 pressure?

19 A. Yes.

20 Q. Did you intend for that term to necessarily have a negative
21 connotation?

22 A. No. I had no preconceived notion of it. In the literature
23 there's a great deal of discussion what pressure is; in the
24 police literature, in the social science literature, and in the
25 business literature.

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D489FLO1 Silverman - redirect

1 Q. And you would agree that the term pressure may include some
2 subjectivity in it from respondent to respondent, correct?

3 A. Different people have different views of what pressure is.

4 Q. So in the literature and methodology around opinion
5 surveys, is it inherently problematic that a term might include
6 some subjectivity?

7 A. No. Because people respond to surveys based on their own
8 personal experience, their background, who they are. And
9 different people may view different phenomenon as pressure.

10 Q. So is that potential subjectivity problematic from the
11 perspective --

12 A. No, it's not problematic. Because surveys are designed to
13 extract people's perceptions and views.

14 Q. Did widening the Likert scale to one to ten, as opposed to
15 one to three or one to five, help modulate subjectivity in any
16 way?

17 A. Yes. It does because it gives a range for people to make
18 ingredient changes, ingredient points.

19 And very often people tend to try to split the
20 difference and say between low, medium, and high, they go to
21 medium. But here we have -- we have one, two, three was low;
22 four through seven -- so we have four for medium; and eight,
23 nine, ten for high. So we gave an opportunity for people to
24 express their views as precise as we can possibly extract them.

25 Q. And you didn't include in your Likert scale an option for

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1 zero, correct?

2 A. That's correct.

3 Q. Why not?

4 A. Well, for two reasons. One is most people prefer if you
5 ask them to rate a product or something, they're asked one to
6 ten. But also I cited a psychology article that had -- did a
7 survey, another survey, if you will, of what scale most people
8 prefer. And most people prefer a one to ten as opposed to one
9 to seven, one to nine. Those were the two that followed it.
10 But the most favored scale of people was one to ten.

11 Q. And if you had included a zero scale and maybe made it --
12 placed response -- zero responses in the low pressure category,
13 do you think that would have substantially changed your
14 results?

15 A. No, I don't. Because most people prefer, if they want to
16 put low, they prefer to put one. Most people don't like a
17 zero.

18 Q. You were asked on cross-examination why you didn't include
19 other certain dependent variables in either your 2012 or 2008
20 survey such as pressure, increased radio runs, verticals
21 patrols, etc.

22 Do you remember being asked about that?

23 A. I do remember.

24 Q. Why didn't you include some of those other variables?

25 A. Because these are the variables that have come to public

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1 attention.

2 Q. Which are?

3 A. The variables that we used.

4 As you'll recall them, our major concern was
5 downgrading index crime to non-index crime. That's what our
6 book is about, The Crime Numbers Game. That's what its
7 primarily focuses on.

8 But we included other things like summonses, arrests,
9 and stop and frisk, which goes along with that in terms of the
10 main activities that are -- have been in the news. And if you
11 had all of the activities, you would have such a lengthy --
12 police do a lot of work. I'm the first to admit that and
13 acknowledge it and spent a lot of time with it.

14 But you can't put everything in a survey otherwise
15 it's too lengthy. People will not fill it out. That's why we
16 designed the survey as we did, two pages back to back.

17 Q. So you were asked on cross-examination if your survey
18 addressed the underlying validity of a particular summons or
19 arrest.

20 Do you remember that?

21 A. You mean whether it was good or bad.

22 Q. A good or bad summons?

23 A. Yes. I remember being asked that.

24 Q. And you didn't try and measure that?

25 A. No.

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1 Q. Did your 2012 survey attempt to measure in any way a
2 correlation with the legality of officers' practices over time,
3 the 2012 survey?

4 A. The 2012 survey included whether or not there was pressure
5 to obey constitutional legal rights.

6 Q. Can you look at the demonstrative that's in evidence as
7 Plaintiffs' 447.

8 A. Yes.

9 Q. Does that tabulate that correlation?

10 A. Yes. It's a -- the main thing about this -- this cross-tab
11 is that it's the only one that shows a negative relationship.
12 The association is slight. It's small. That's why we have
13 those Gamma and the Kendall's tau b. They both show a small
14 association, but statistically significant.

15 Q. Can you just for the record describe the change in the high
16 pressure to obey constitutional rules in the second and third
17 period?

18 A. Well, you see in the second period high, 1995 to 2001 there
19 was more -- it went up slightly to obey constitutional legal
20 rights. But then when you go to the third period, there's a
21 very -- that's why -- there's a very significant drop. There's
22 a drop of over eleven percent.

23 I might add that that's why overall the association is
24 small, minus 106. But nevertheless, because that Gamma and
25 that Kendall's tau b reflects all the numbers in this chart, in

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1 this tab. But as far as we're concerned, what stood out was of
2 all the other pressures, the other pressures increased. And
3 here in the final period they decreased.

4 Q. On cross-examination you agreed with counsel. You
5 testified on direct that the 2008 survey sample did not include
6 police officers, sergeants, or lieutenants?

7 THE COURT: This one I'm looking at is 2000 --

8 MR. AZMY: That's 2012.

9 THE COURT: And you switched to eight in your
10 question.

11 MR. AZMY: Sorry. I'm moving on.

12 THE COURT: That's fair. But I just wanted to make
13 sure.

14 Q. You didn't ask about obeying legal constitutional rules in
15 2008, did you?

16 A. No, we didn't.

17 Q. Why did you choose to include in the 2012 survey this
18 additional question?

19 A. Because we piloted both surveys with former and current
20 police officers and we -- in drawing up this instrument. And
21 one of the members of the group that we pilot -- actually not
22 piloted, but we designed it with, commented that he thought
23 that might be an interesting item to include. He's a former
24 high ranking official in the police department.

25 Q. So putting aside this exhibit and just focusing on the 2008

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1 survey you didn't include officers, lieutenants, and sergeants
2 in that survey pool of captains -- members of the captains
3 endowment association; is that correct?

4 A. That's correct.

5 THE COURT: I'm sorry. Let me read what you said for
6 a minute.

7 MR. AZMY: I can unpack that.

8 THE COURT: Are you saying there was no lieutenants
9 and sergeants in the 2008 group? Is that what you're saying?

10 MR. AZMY: Professor Silverman.

11 THE WITNESS: I thought you were asking him, your
12 Honor.

13 Yes. There were just captains and higher.

14 THE COURT: I didn't know the order of rank. That
15 means no sergeants or lieutenants?

16 THE WITNESS: That's correct, your Honor.

17 Q. And were officers, sergeants, and lieutenants included in
18 the 2012 survey?

19 A. Yes.

20 Q. And in the 2012 survey, in your opinion, did you get a
21 roughly distributive response rate from those different ranks?

22 A. Yes, from the --

23 MR. KUNZ: Objection, your Honor. This is exactly --

24 THE COURT: It depends if he knows.

25 In other words, you know percentages that you sent

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1 out, right? What --
2 THE WITNESS: We know the percentage that responded.
3 THE COURT: No. No. But that you sent out.
4 THE WITNESS: We know the number we sent out.
5 THE COURT: Do you know whether they were captains and
6 inspectors and deputies?
7 THE WITNESS: Oh, yes.
8 THE COURT: You do?
9 THE WITNESS: The first one, yes.
10 THE COURT: Are you talking about 2008?
11 MR. AZMY: I'm talking about 2012.
12 THE COURT: So 2012 when you sent it out, did you know
13 what percentage went to sergeants and --
14 THE WITNESS: No.
15 THE COURT: You didn't?
16 THE WITNESS: No.
17 THE COURT: So you don't know if the response
18 reflects --
19 THE WITNESS: No, we don't.
20 THE COURT: Okay.
21 Q. So --
22 A. We know -- no more.
23 THE COURT: Okay.
24 Q. But there was a distribution that tends to mirror, in your
25 experience, the -- roughly the proper portion of ranks in the

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1 police department at large; in other words, there are more
2 police officers --

3 A. Yes.

4 THE COURT: It's a pyramidal structure.

5 THE WITNESS: It's a pyramidal structure.

6 And, if I might add, the distribution that we received
7 far exceeds the distribution that is used in very common, well
8 known surveys.

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

10 THE WITNESS: Let me give -- may I give an example?
11 The gala poll --

12 THE COURT: You're talking -- what was the total
13 respondents in 2012?

14 THE WITNESS: The total response? 1,967, I think.

15 THE COURT: And you can break that down now into
16 sergeants.

17 THE WITNESS: Oh, yeah.

18 THE COURT: Lieutenants, captains.

19 THE WITNESS: We did break that down.

20 THE COURT: So you know the percentage each of those
21 ranks?

22 THE WITNESS: That's right. I don't have them in my
23 head.

24 THE COURT: How do you know that that reflects the
25 percentage of the police department, of those ranks?

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1 THE WITNESS: We don't know that.

2 THE COURT: Okay.

3 THE WITNESS: We don't know that because we were never
4 given that. I have to be very candid.

5 THE COURT: Right. Of course.

6 But you do know that the pyramid --

7 THE WITNESS: Absolutely.

8 THE COURT: More sergeants and less inspectors?

9 THE WITNESS: We do, yes.

10 THE COURT: So only have a rough -- a rough notion.

11 THE WITNESS: Right.

12 THE COURT: Okay.

13 MR. AZMY: Just a couple more questions, Professor
14 Silverman.

15 Q. With respect to the 2008 survey, do you have any reason to
16 think that members of the captains endowment association would
17 be biased in one way or another towards the NYPD or the
18 questions you were asks?

19 MR. KUNZ: Objection, your Honor.

20 THE COURT: Sustained. He'd be speculating. He
21 doesn't. He has no view one way or the other.

22 THE WITNESS: I do have a view.

23 THE COURT: On who joins the captains endowment
24 association?

25 THE WITNESS: Yes.

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1 THE COURT: What's it based on?

2 THE WITNESS: My view that people who associate with
3 an organization when they retire generally have an affiliation
4 with that organization. And so my view is that they would be
5 more supportive. In fact, I would be -- and Dr. Eterno would
6 be very happy if the police department would give us the entire
7 membership. We could do the survey and hopefully provide it to
8 the court. We'd be pleased to do that. And we'd be pleased to
9 do it with both groups.

10 THE COURT: What's both groups?

11 THE WITNESS: Well the captains -- all ranks. Give us
12 all ranks and we'll be pleased to do it.

13 My supposition is that if this --

14 MR. KUNZ: Your Honor, I'd just like to object. It is
15 his supposition. And I'd also like to strike the previous --

16 THE COURT: No. The part about those who join their
17 retirement union generally associate with the organization,
18 that's his view. He is a survey research specialist. So I
19 would allow that.

20 But his next comment that please give me everything,
21 I'd be happy to do it, that's sort of gratuitous.

22 Of course if you want to give him all retirees, that's
23 fine.

24 MR. AZMY: No further questions, your Honor.

25 MR. KUNZ: So I just renew our request to put in this

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1 demonstrative demonstrating the actual breakdown. The
2 professor said it's a pyramidal structure and he believes his
3 survey is representative of that.

4 THE WITNESS: No. I didn't say that.

5 THE COURT: No. You didn't say the second half. So
6 the first half.

7 THE WITNESS: That's right. I find this a misleading
8 chart.

9 THE COURT: No. I understand why.

10 RECROSS EXAMINATION

11 BY MR. KUNZ:

12 Q. But you did testify you don't know the breakdown, correct?

13 THE WITNESS: That's irrelevant to this chart.

14 THE COURT: That's not his question.

15 THE WITNESS: Yes. I'm sorry. I did.

16 MR. KUNZ: So now I'd like to show the Court the
17 demonstrative to demonstrate.

18 THE COURT: First of all, you don't have a witness
19 yet. We talked about a procedure for doing that.

20 MR. KUNZ: Okay.

21 THE COURT: But second of all, the professor is still
22 saying how does that relate to his work. He did not send a
23 survey to those percentages because he never had that pool.

24 MR. KUNZ: Well it relates to his work because it
25 demonstrates that the survey is limited in that it is not

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D489FLO1 Silverman - recross

1 representative of the actual breakdown of officers --

2 THE COURT: That's simply not fair. It's
3 representative of the group that it was sent to. That's what
4 he can say, especially -- actually not sure he can say it for
5 either group.

6 In one of the groups I asked you whether you know the
7 breakdown of the group to which you sent it. You said no.

8 THE WITNESS: Right.

9 THE COURT: You don't know their ranks.

10 Is that true for both 2008 and 2012?

11 THE WITNESS: We were told for the first --

12 THE COURT: That's truth for both? You don't know.

13 THE WITNESS: I have a partial answer. And that was
14 the first one, we were told by the president of the captains
15 endowment association that what we retrieved, what was sent
16 back to us was representative.

17 THE COURT: That's hearsay. I can't have what
18 somebody else told you.

19 But the bottomline is you don't know as a researcher
20 the breakdown of those to whom you sent it? You can't say it
21 was X percent sergeants?

22 THE WITNESS: That's correct.

23 THE COURT: That's in evidence. He doesn't know
24 whether the responses reflect even the pool to which he sent
25 it, much less the larger pool of all retirees. And I

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1 understand that without the chart.

2 MR. KUNZ: I understand, your Honor.

3 If your Honor would be interested to know the actual
4 percentages, we'll put it in. But otherwise we'll move on.

5 No further questions.

6 THE COURT: You're welcome to prove your case as you
7 wish. You want to call a witness, you will.

8 Anything more for this witness?

9 MR. KUNZ: Not from me, your Honor.

10 MR. AZMY: No, your Honor. Thank you.

11 THE COURT: Okay. You're done.

12 (Witness excused)

13 THE COURT: Next witness, please.

14 MR. CHARNEY: Plaintiffs call Dominique Sindyiganza.

15 DOMINIQUE SINDYIGANZA,

16 called as a witness by the Plaintiffs,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. PATEL:

20 Q. Good morning, Mr. Sindyiganza.

21 A. Good morning.

22 Q. Are you a class member in this case?

23 A. Yes, I am.

24 Q. Where do you live?

25 A. I live in Jamaica, Queens.

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1 Q. What's your highest level of education?

2 A. I have a master's degree.

3 Q. Who did you live with?

4 A. I live with my wife and two daughters who are in the room,
5 Serene and Joy-Shanti.

6 Q. What is your job?

7 A. I'm currently a freelance photographer. And I spend a lot
8 of time in the home taking care of our daughters.

9 Q. Since when have you been a freelance photographer?

10 A. Since October of last year.

11 Q. And how did it come that you decided to be a freelance
12 photographer?

13 A. I've worked for a nonprofit organization in the previous
14 five years. And my wife spends a lot of time being on the road
15 as a performing poet and college teacher. So we decided in our
16 family that it's good for me to take a step back, pursue my
17 passion for photography, and spend some time with picking up --
18 bringing the girls to school, picking them up from school, and
19 being more of a presence at home.

20 Q. How long have you lived in New York?

21 A. I've lived in New York for about six years.

22 Q. And why did you decide to move to New York?

23 A. We decided to move to New York because we lived in Belgium
24 before where I'm born and raised, where I'm from.

25 MS. PUBLICKER: Objection, your Honor. The relevance
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1 of this. This is why these witnesses are taking so long.

2 MS. PATEL: This is the last question about background
3 and it is relevant to his ties to New York. Standing issues.

4 THE COURT: I'll allow it.

5 THE WITNESS: Yeah. We were living in Belgium before.
6 My wife's parents are aging. She wanted to be closer to her
7 parents. And also we like, you know, the culture and diversity
8 and art that the city has to offer. In comparison to Belgium
9 it's very different.

10 Q. Let's turn to the stop at issue in this case. Do you
11 recall being stopped by New York police department officers on
12 Friday, February 12, 2010?

13 A. Yes, I do.

14 Q. What was the weather like that evening?

15 A. It was cold. It was a February evening. The sun was gone.
16 It was late. And it was cold, freezing.

17 Q. What were you wearing that day?

18 A. I was wearing winter clothes. I was wearing my pants. I
19 had a rain pants on top of my regular pants just to block out
20 some of the cold. And I was wearing my winter jacket. It was
21 either my gray one or my green one. I had two jackets at the
22 time.

23 Q. Were you carrying a backpack?

24 A. I was also carrying a backpack, yes.

25 Q. What did you do that day?

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1 A. That day, Friday, I worked at the office of nonprofit
2 organization Global Kids between nine to five. It was a
3 regular kind of day at the office.

4 Q. And where is the office located?

5 A. The office is located across the street from Baruch College
6 on Lexington and 25th Street.

7 Q. Around what time did you leave the Global Kids office that
8 day?

9 A. I left the office around 5:30.

10 Q. Did you go to Union Square after leaving work?

11 A. Yes, I did.

12 Q. And what did you do at Union Square? What was the first
13 thing you did?

14 A. I went to a store called Paragon Sports to pick up some bug
15 spray in preparation for an upcoming leadership retreat that I
16 had with some students in upstate New York. They said there
17 were ticks. So I went to that store to buy tick spray.

18 THE COURT: That was around 5:45 or something?

19 THE WITNESS: I might have arrived at the store around
20 that time. I'm glad I kept the receipts of my payments which
21 says that I left the store at I think about 6:12 or 6:13.

22 Q. And I'm sorry. You said that you left the store at what
23 time?

24 A. I think the receipt says 6:12 or 6:13 p.m.

25 THE COURT: Was it dark?

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D489FLO1 Sindayiganza - direct

1 THE WITNESS: It was getting dark. Yeah.

2 Q. I would like to show the witness what's been marked as
3 Plaintiffs' Exhibit 448.

4 THE COURT: That's the receipt?

5 MS. PATEL: It's the receipt.

6 THE COURT: Any objection to the receipt,
7 Ms. Publicker?

8 MS. PUBLICKER: No. Only to the extent we only
9 received it yesterday for the first time.

10 THE COURT: But it's that date and it's that time?

11 MS. PUBLICKER: Yes, your Honor.

12 THE COURT: I'll take it in evidence. What's the
13 exhibit number?

14 MS. PATEL: 448.

15 THE COURT: It shows he left the store at 6:12 or 13.

16 MS. PATEL: 6:12 p.m.

17 THE COURT: What's the date again?

18 MS. PATEL: February 12, 2010.

19 THE COURT: Okay. Thank you.

20 (Plaintiffs' Exhibit 448 received in evidence)

21 Q. So between 5:30 and 6:12 p.m. you walked from 25th and
22 Lexington to Union Square, you went into Paragon Sports, you
23 found the bug spray?

24 MS. PUBLICKER: Objection, your Honor. She's leading.

25 THE COURT: Why are you doing that?

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D489FL01 Sindayiganza - direct

1 I heard all that. I got it.

2 Then he finished. And he left the store at 6:12.

3 Okay.

4 Q. Where did you go after leaving -- I'm sorry. What did you
5 do after leaving Paragon Sports?

6 A. After leaving Paragon Sports I walked down south on
7 Broadway on my way home towards the F train, on 14th Street
8 and 6th Avenue which takes me straight home.

9 Q. Then what happened before you went to the train?

10 A. So before -- you know, walking down Broadway with my hat,
11 planning to go home, on the left side there was a store that I
12 looked at and I -- what I thought I saw was children's clothes;
13 so, colorful, little dresses or jackets. And I decided, since
14 I have two daughters, you know, let me just go in and check out
15 the clothes.

16 Q. And what happened?

17 A. Very quickly, upon entering the store, I realized it was a
18 pet store. And so the colorful things hanging were like
19 jackets for dogs or -- so I immediately realized like, okay,
20 this is obviously not a place where I need to be and, you know,
21 it was my plan to just walk out and then, you know, go home.

22 Q. And what store was it?

23 A. It was a store called Petco P-E-T-C-O.

24 Q. And where is the Petco located?

25 A. The Petco is located exactly on the corner of Broadway and
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1 East 17th Street. It's the northeastern section of the
2 intersection.

3 MS. PATEL: I'd like to show the witness --
4 NYC-2-25747 which is a page from Defendants' Exhibit X10.

5 Q. Do you recognize what's depicted in this photograph?

6 A. Yes, I do.

7 Q. What is it?

8 A. This is exactly the corner I was stopped at. And the
9 Petco store is visible. And also the Paragon Sports store
10 across the street is also visible.

11 MS. PATEL: I'd like to move this into evidence.

12 THE COURT: Any objection?

13 MS. PUBLICKER: No objection, your Honor.

14 THE COURT: What's the exhibit number again?

15 MS. PATEL: X10. And for defendants' it's

16 NYC-2-25747.

17 THE COURT: X10 is received.

18 (Defendants' Exhibit X10 received in evidence)

19 MS. PATEL: We're just entering this particular page.

20 THE COURT: That one page of X10 ending in 747 is
21 received.

22 Q. I'm sorry. Can you just tell us. What is this again?

23 A. This is the corner of East 17th Street, Broadway. And
24 you just zoomed out -- in a little too much. Paragon is not
25 visible anymore. But to the left of this is the Paragon Sports

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1 store. And then the Petco store is the store where I was
2 stopped.

3 Q. And about how long were you inside Petco?

4 A. I was in there very briefly. I would say 30 seconds. Less
5 than a minute.

6 Q. What happened as you tried to exit the store?

7 A. As I tried to exit the store, turning around, making my way
8 out of the store, all of a sudden I hear a voice saying this is
9 the guy, this is the guy. Before I really realized what
10 happened, I was surrounded by a uniformed -- four uniformed
11 police officers.

12 Q. And what do you mean when you say they surrounded you?

13 A. Well they came up very -- closely up to me, they surrounded
14 me from all sides. And they were shouting: This is the guy.
15 This is the guy.

16 And they told me to follow them -- they escorted me
17 out. They told me to follow them outside the store.

18 Q. You said they escorted you out. Did that mean that there
19 were police officers in front of you?

20 A. Yeah, yeah.

21 Q. And were there police officers behind you?

22 A. Mm-hmm. Yes.

23 Q. So you walked outside with them?

24 A. Yes.

25 Q. What would have happened if you didn't walk outside?

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D489FLO1 Sindayiganza - direct

1 MS. PUBLICKER: Objection, your Honor.

2 THE COURT: You don't know.

3 Objection sustained as to what would have happened.

4 But to his perception, his state of mind. What did you think

5 would have happened? What was your state of mind? Did you

6 think you were free to go?

7 THE WITNESS: No. That was not an option. The
8 aggressive nature of how they approached me and how they were
9 yelling at me, you know, I was forced to walk outside with
10 them. There was --

11 THE COURT: I'll allow that as his state of mind as to
12 whether he felt free to go.

13 MS. PATEL: Thank you, your Honor.

14 Q. Can you describe, using the photograph, where they took you
15 approximately to the best of your recollection where they took
16 you outside?

17 A. Okay. So walking out of the Petco store they took me --
18 making a left so you see where that falafel stand is in front
19 of the store. Can you see the falafel stand. So between the
20 falafel stand and those three first red windows, that was the
21 part where they told me to stand.

22 Q. When you were standing outside in that location, where were
23 the officers standing in relation to you?

24 A. They were surrounding me.

25 Q. So there were officers standing between you and the street?

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- 1 A. Yes.
- 2 Q. And in sum and substance what did they accuse you of doing?
- 3 A. What is the first part of your question?
- 4 Q. Just in general. In summary, what did they accuse you of
- 5 doing?
- 6 A. They accused me of following a lady, asking a lady for
- 7 money, asking a lady for nine dollars. Yeah. Nine dollars.
- 8 Q. And were there any other questions that they asked you?
- 9 A. Yeah. They asked me all kinds of questions. You want me
- 10 to go into the questions?
- 11 They told me: What are you doing here? Where are you
- 12 coming from? Do you have any sharp objects in your pockets?
- 13 Do you have any weapons on you? Did you take any drugs? You
- 14 know, how long have you been hanging out here? Yelling,
- 15 aggressively like all in my face.
- 16 Q. Did you ever learn what lady they were referring to?
- 17 A. No, I don't.
- 18 Q. Did you know what lady they were referring to?
- 19 A. No, I don't.
- 20 Q. And what did they state was the basis of these accusations?
- 21 A. They told me the lady had identified me and the store
- 22 manager had also identified me.
- 23 Q. Was there any other basis of their accusation that you can
- 24 identify?
- 25 A. Yeah. One of the officers mentions that there was video

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D488FLO2 Sindyiganza - direct

1 Q. Did you ever learn the names of any of the officers?

2 A. Yes, I did.

3 Q. What were those names?

4 A. One of the officer's name was White, W-H-I-T-E. And
5 another officer is called Gillispie, G-I-L-L-E-S-P-I-E.

6 Q. How did you learn their names?

7 A. They had nametags on.

8 Q. How did you respond to the accusations and questions?

9 A. I answered -- every question they asked me, I answered
10 them.

11 Q. How did you answer them?

12 A. You mean the manner in which or the answer that I gave to
13 them?

14 Q. The answers you gave them.

15 A. I told them I'm an educator, because one of the questions
16 was, where you coming from, what are you doing here? I told
17 them, I am planning a retreat for the students, public high
18 school students I work with. I bought some bug spray in the
19 store, and I am on my way home. I work in public high schools
20 and going back to Jamaica, Queens, where I live with my wife,
21 my children. I tried to answer the questions. And to the
22 question of why I was following a lady, I told them I didn't
23 follow a lady.

24 Q. Did you make any suggestion about clearing up the
25 situation?

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1 A. Yes. I asked him if it was possible for me to see the lady
2 or to see a store manager to clear -- I don't know, because I
3 know I didn't do anything.

4 Q. Did they let you speak to anyone?

5 A. No. One of the officers told me I could not and he called
6 me an asshole.

7 Q. What did he say, if you recall?

8 A. He told me, "You have to shut up, asshole."

9 Q. Which officer was that?

10 A. That was Officer Gillespie.

11 Q. At some point during this interaction did two other
12 officers arrive while this other group of officers were
13 surrounding you?

14 A. Yes. Two older officers arrived also.

15 Q. What can you say about -- you characterized them as older.
16 How would you characterize the four officers or the three or
17 four officers that were surrounding you?

18 A. The four officers that initially, you know, surrounded me,
19 were yelling at me, I would call them mild language, like
20 rookie cops. What I mean is they looked very young. I work
21 with high school students. I think they were in their mid 20s.
22 Those two other officers that arrived on the scene, they were
23 obviously older. I would think they were in their, maybe, late
24 40s. And they stood a little bit more -- they stood by the
25 entrance of the store, so they didn't come around the corner,

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1 but they were clearly within sight of what was happening and
2 they were communicating with the four younger officers that
3 were surrounding me.

4 Q. What was the race of those four officers that were
5 surrounding you?

6 A. They were all white.

7 Q. At some point did you give your identification to Officer
8 White?

9 A. Yes, I did.

10 Q. And he walked away with your identification, right?

11 MS. PUBLICKER: Leading again. She is leading again.

12 She said, he walked away with your identification,
13 right?

14 THE COURT: Right. It doesn't seem to make any
15 difference. It's not an important issue. She could have said,
16 what did he do then?

17 You said he walked away with your ID?

18 THE WITNESS: He walked away with my ID.

19 Q. How long would you say, approximately, that he was gone
20 for?

21 A. It was a while. I would say between 5 to 15 minutes.

22 Q. Do you recall which direction you were facing while this
23 yelling was going on?

24 A. Since the officers were all around me, I'm sure I did a
25 little bit of turning around, in terms of where the questions

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1 were coming from.

2 Q. Throughout this interaction, did you ever get upset with
3 the officers?

4 A. It was very uncomfortable to be yelled at like that, but I
5 know from working with high school students and from, you
6 know -- we teach that when you are dealing with New York City
7 police officers, it is important to stay calm. We teach that
8 you don't want things to escalate. So in terms of my demeanor,
9 yes, I felt uncomfortable, but I answered them politely and,
10 you know, I made sure that I didn't do anything or behave in
11 such a way that it would antagonize any of the officers.

12 Q. How old were you at the time this happened?

13 A. I'm 38 now. So 35.

14 Q. How long would you say that this yelling and answering
15 questions happened?

16 A. This happened for the entire duration until Officer White
17 came back with my ID.

18 Q. What did Officer White say when he returned with your ID?

19 A. When he came back with the ID, he handed it back to me and
20 he told me, you should go. And he added to that, you have to
21 walk up north on Broadway.

22 Q. What were you thinking when he instructed you to walk north
23 on Broadway?

24 A. Well, the first thing I am thinking is relief because he
25 gives me the ID back and he says, you should go. OK. I'm

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1 going home finally. But when he tells me to walk up north on
2 Broadway, I was very confused. It was very vague because, you
3 know, I suggested to him that the train to take home was right
4 across the street from this photo, right across the street is
5 the 4 train, which I can take all the way to Queens, or I asked
6 if I could go to the F train on Sixth Avenue, and he said I
7 couldn't. So I was very confused.

8 Q. Did you try to seek further clarification?

9 A. Yes. I asked him, since I am free to go, I didn't
10 understand why I couldn't go to the train that would take me
11 straight home.

12 Q. What did he say in response?

13 A. At that point, he told me that he was going to teach me a
14 lesson, and he called me a wise guy, and he told me to put my
15 hands against the wall.

16 Q. Were you handcuffed?

17 A. Yes, I was handcuffed.

18 Q. Then what happened?

19 A. He told me to sit down on the cold floor. It was freezing.
20 He told me to sit down. I asked if I could please get up
21 because I was so cold. He cursed at me. He said no, and he
22 called me a dick.

23 THE COURT: When you said the cold floor, you mean the
24 sidewalk?

25 THE WITNESS: Yes.

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1 Q. Where did they tell you to sit down?

2 A. They told me to sit down against the wall of the Petco
3 store.

4 Q. At some point you took your backpack off?

5 A. Yes. They had told me to take my backpack off before they
6 handcuff me.

7 Q. Did you observe them do anything with your backpack?

8 A. Yes. Once I was handcuffed and sitting on the floor, an
9 officer went through the backpack taking things out, looking at
10 it, putting it back in.

11 Q. Were you ever allowed to stand up?

12 A. Yes. Another officer who I asked, because I was really
13 cold, I asked another officer if I could please get up. He
14 allowed me to get up. I also asked him, you know, why I was
15 being arrested. He said for excessive panhandling.

16 THE COURT: For what?

17 THE WITNESS: Excessive panhandling.

18 THE COURT: Excessive panhandling?

19 THE WITNESS: I never heard that phrase. So I didn't
20 know what that meant, but I remember I was figuring out what
21 does that mean.

22 Q. Then were you pat-down and searched?

23 A. Yes. They opened -- while handcuffed, they opened my
24 jacket, they looked about on my body, in my pockets. It was
25 very cold so I asked them if they could please zip the jacket

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1 back up, and they zipped it up to my bellybutton, and they were
2 laughing and asked if I wanted a back rub too. They didn't zip
3 it all the way up. They just asked if I wanted a back rub too
4 and they were laughing.

5 Q. Did you ever give the NYPD officers permission to frisk
6 you?

7 A. No, I did not.

8 Q. Or to search your backpack?

9 A. No, I did not.

10 Q. Or to search your body?

11 A. No, I did not.

12 Q. Were you put into a police car and taken to the precinct?

13 A. Yes, I was.

14 Q. Did you ever learn what the charges were brought against
15 you?

16 MS. PUBLICKER: Objection, your Honor. We are getting
17 beyond the scope of the stop.

18 THE COURT: The claim is whether there was reasonable
19 suspicion for the charge.

20 What were you being charged for?

21 THE WITNESS: The summons that was given to me said
22 disorderly conduct.

23 Q. Were you ever prosecuted for that?

24 MS. PUBLICKER: At this point, again, this is beyond.

25 THE COURT: I think this is beyond.

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1 MS. PATEL: From the other stops where there had been
2 arrests the Court has permitted at least the answer to was it
3 prosecuted.

4 THE COURT: Yes or no?

5 Was it?

6 THE WITNESS: No, it was not.

7 It was like legally insufficient or something.

8 MS. PUBLICKER: Objection.

9 THE COURT: That's stricken. Go ahead.

10 Q. Finally, how did you feel about this incident?

11 A. I felt -- when you sit on the cold floor with your
12 handcuffs behind your back, not knowing how long before you
13 could get up, and when people have been yelling at you and
14 calling you names, I felt disrespected, humiliated. I
15 definitely felt like the police officers were trying to kind of
16 teach me a lesson, put me in my place, something like that.
17 It's hard to undergo all of it when you're in a position when
18 you know you cannot do anything. There's an element of feeling
19 powerlessness because you know there is nothing you can do,
20 except just witness it and make sure you don't do anything to
21 add to it.

22 I feel, especially at the end, when I get the
23 disorderly conduct charge and Officer White tells me that, you
24 know, he thinks I'm a good guy and just the wrong person at the
25 wrong place, and then he tells me to put my shoelaces on, I

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1 cannot do that in the precinct, but I have to go outside in the
2 cold and put my shoelaces on there, it's like from beginning to
3 end I felt these young officers seem to really enjoy -- it's
4 like bullies. I tell my girls --

5 MS. PUBLICKER: Objection. He is speculating at this
6 point.

7 THE WITNESS: This is how I feel.

8 THE COURT: I understand that. He is not speculating.
9 I think he is trying to describe his own reaction.

10 That's true. He can't say how the officers felt. I
11 will strike that.

12 Q. How did you feel?

13 A. I felt bullied.

14 Q. Why did you decide to become a witness in this case?

15 A. I think it's important to share my story, you know,
16 when -- I tell my girls all the time, if something happens that
17 is not right, you have the right and the responsibility to
18 stand up and speak out, right? And so when something happens
19 to me, I also feel that I need to stand up and speak out. I
20 need to say what has happened to me, and I need to share with
21 whoever is willing to listen that this is -- things need to
22 change. So when I found out about the CCR trying to go through
23 this whole procedure to implement policy change, if my story
24 can be part of that, yeah, it's important for me to do that.

25 MS. PATEL: Thank you.

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D488FLO2 Sindayiganza - direct

1 THE COURT: Ms. Publicker.

2 CROSS-EXAMINATION

3 BY MS. PUBLICKER:

4 Q. Good morning.

5 A. Good morning.

6 Q. You were in Union Square shopping for tick spray, is that
7 right?

8 A. Yes.

9 Q. You were familiar with the Union Square area at that time?

10 A. Yes, I was.

11 Q. You had been there no less than four times, hadn't you?

12 A. More than four times, yes.

13 Q. You had been to Paragon Sports many times, right?

14 A. I wouldn't say many, but I know the store. I have bought
15 items there.

16 Q. When you went to the store that day, you knew exactly where
17 to go to get the tick spray, right?

18 A. I know it was on the second floor, yes.

19 Q. You were in and out of the Paragon Sports within five to
20 ten minutes, is that correct?

21 A. That sounds accurate, yes.

22 Q. You were carrying a large backpack that day, weren't you?

23 A. Yes. It my backpack.

24 Q. It had a capacity, I believe you said previously, of 35
25 meters?

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D488FLO2 Sindayiganza - cross

- 1 A. That's the type of backpack it is.
2 Q. You didn't see anyone else in the area of 17th Street and
3 Broadway with a large backpack, did you?
4 A. I didn't pay attention to that, no.
5 Q. You were wearing dark blue rain pants that day?
6 A. Yes.
7 Q. And a green coat, correct?
8 A. I'm not sure if the jacket that I was wearing at the time,
9 because I have two winter jackets, I am not sure if it was my
10 green or my gray jacket.
11 Q. Do you recall testifying at your deposition that it was a
12 green jacket?
13 A. I know that, because I have spoken about this case a couple
14 of times, I don't know in which of the versions I have said
15 green or gray. If I have to be really accurate, I would have
16 to see the document that you're referring to.
17 Q. So you have told different people under oath that you were
18 wearing a gray jacket and other people that you were wearing a
19 green jacket, is that correct?
20 A. I'm not sure about the color of the jacket.
21 Q. You had glasses on that day?
22 A. Yes, I did.
23 Q. Your hair is dark, isn't it?
24 A. I have black hair.
25 Q. You could describe your skin tone as light skinned,

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D488FLO2 Sindayiganza - cross

1 couldn't you?

2 THE COURT: I don't know how he is supposed to answer
3 that.

4 MS. PUBLICKER: I will move on.

5 THE COURT: OK.

6 Q. You claim that you left Paragon Sports at 6:12 p.m.,
7 correct?

8 A. The receipt is stamped 6:12, yes.

9 Q. That's when you would have left the Paragon Sports?

10 A. It might be one minute later, but I didn't do anything
11 besides purchasing it on the second floor and then going down.

12 Q. You say that this encounter with the police began at 6:17
13 p.m.?

14 A. That feels accurate, yes.

15 Q. It was only around five minutes between leaving the Paragon
16 store and being stopped by the police?

17 A. Yes.

18 Q. Now, you spoke to the CCRB the day after the incident,
19 didn't you?

20 A. I don't think I spoke to the CCRB the day after.

21 Q. You submitted a complaint the day after, right?

22 A. Yes. I wrote something up.

23 Q. In that complaint you said that the stop happened at 7:17
24 p.m.?

25 A. That was my mistake.

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D488FLO2 Sindayiganza - cross

- 1 Q. And the declaration that you swore to in this case also
2 stated that the stop occurred at 7:17 p.m., right?
3 A. I think in that same declaration I made a note to point
4 that out. Right?
5 Q. You wrote in the declaration itself that it was --
6 A. I read one of the declarations in which I point out, OK, I
7 said 7:17, but it's really 6:17.
8 Q. You signed that declaration in November of 2011?
9 A. I don't exactly remember which date I signed the document.
10 Q. When you left Paragon Sports, you were heading home, right?
11 A. Yes.
12 Q. You were planning to take the F train at Sixth Avenue and
13 14th Street?
14 A. Yes.
15 Q. That F train stop is southwest from the Paragon Sports,
16 correct?
17 A. Southwest, correct.
18 Q. But you actually crossed Broadway walking to the east to go
19 to the Petco, right?
20 A. Yes.
21 Q. And you walked into the Petco, right?
22 A. Yes, I did.
23 Q. You don't have a pet, do you?
24 A. No, I don't.
25 Q. You went to exit the Petco, right?

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D488FLO2

Sindayiganza - cross

- 1 A. Sorry?
- 2 Q. You went to exit the Petco after walking in?
- 3 A. I didn't get a chance to exit the store.
- 4 Q. You took a few steps in to the Petco?
- 5 A. I made five, six steps in.
- 6 Q. Then less than a minute later you decided to leave?
- 7 A. Yeah, definitely. As soon as I realized that this was not
- 8 for children, I knew there was no reason for me to be in that
- 9 store.
- 10 Q. As you were exiting the Petco, you claimed to have been
- 11 stopped by police officers, right?
- 12 A. Say that again.
- 13 Q. As you were exiting the Petco, you claim to have been
- 14 stopped by police officers, right?
- 15 A. Yes.
- 16 Q. They started asking you questions immediately?
- 17 A. No. The questions came -- most of the questions came after
- 18 they had ordered me to step outside with them.
- 19 Q. When they started asking you questions, they asked you why
- 20 you had been following a woman, right?
- 21 A. Yes.
- 22 Q. They asked you why you were harassing her, didn't they?
- 23 A. Yes.
- 24 Q. They asked you about whether you had been asking that woman
- 25 for money, right?

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D488FLO2

Sindayiganza - cross

- 1 A. Yes.
- 2 Q. You were upset about those questions, weren't you?
- 3 A. No. I wasn't upset about those questions.
- 4 Q. I am handing you your deposition.
- 5 You were very upset about being stopped, weren't you?
- 6 A. I don't remember being very upset. It was very
- 7 uncomfortable to be yelled at like that.
- 8 Q. But you don't remember if you were very upset?
- 9 A. I wasn't very upset. I tried to go home, you know.
- 10 Q. I am going to direct your attention to page 62, lines 20 to
- 11 24. On the date of your deposition, that was October 23, 2012,
- 12 is that correct?
- 13 A. Sorry. You want me to read a specific page?
- 14 Q. I will. First if you could answer whether you had your
- 15 deposition taken on October 23, 2012?
- 16 A. Yes.
- 17 Q. You swore to tell the truth at that deposition?
- 18 A. Yes.
- 19 Q. Did you did tell the truth?
- 20 A. Yes.
- 21 Q. Now, I would ask you to turn to page 62, lines 20 to 24.
- 22 Were you asked the following questions and did you give the
- 23 following answers:
- 24 "Q. Were you upset about being stopped by the police?
- 25 "A. Yes.

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D488FLO2 Sindayiganza - cross

1 "Q. How upset were you?

2 "A. Very upset."

3 Were you asked those questions and did you give those
4 answers?

5 A. Yes, I did.

6 MS. PATEL: Can I just complete?

7 THE COURT: Sure.

8 BY MS. PATEL:

9 "Q. At any point on February 12, in your interaction with the
10 police, did you yell?

11 "A. No.

12 "Q. Did you --"

13 MS. PUBLICKER: That's beyond my question.

14 THE COURT: It is. All she wanted to know is whether
15 he felt upset. And the deposition said he was very upset.

16 BY MS. PUBLICKER:

17 Q. You were very upset, Mr. Sindayiganza, because you said you
18 were not following a woman, right?

19 THE COURT: Because you said what?

20 Q. You told them you were not following that woman, right?

21 A. I wasn't following the woman, yes.

22 Q. You were upset because you told the police officers that
23 you had not asked anyone for money that day?

24 A. To say that I am upset because I asked them that? What I
25 told them is I didn't follow a lady.

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D488FLO2

Sindayiganza - cross

1 A. Yes, I did.

2 Q. You did not at any point on October 23, 2012 describe
3 Officer White as having red hair, did you?

4 A. No, I did not.

5 Q. The officers immediately ordered you to take your hands out
6 of your pockets, didn't they?

7 A. Yes.

8 Q. Now, on direct by your attorney, you were testifying about
9 two older officers who appeared later on, is that right?

10 A. Yes.

11 Q. What color was their uniform?

12 A. I don't remember.

13 Q. Did they have any stripes on their uniforms?

14 A. I don't remember, Miss.

15 Q. Any stars?

16 A. I don't remember.

17 Q. At some point after stopping you Officer White left you
18 with the other officers, right?

19 A. Yes, he did.

20 Q. He went back into the Petco?

21 A. I didn't see where he went.

22 Q. At the time, you were on the 17th Street facade of the
23 Petco, is that right?

24 A. Yes, just around the corner.

25 Q. You weren't on the Broadway side?

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D488FLO2

Sindayiganza - cross

- 1 A. No.
- 2 Q. Your back was to the Petco store?
- 3 A. As I was saying earlier, because the questions came from
4 all over the place, it wasn't like I was standing in one
5 position for the entire time.
- 6 Q. Did there ever come a time, besides when you were
7 handcuffed, when you were facing the Petco?
- 8 A. Facing the Petco? Yeah. I am sure there must have been.
- 9 Q. The officers were asking you questions while Officer White
10 was in the Petco, right?
- 11 A. I don't know if he was in the Petco, Miss.
- 12 Q. While he left you, the other officers asked you questions,
13 right?
- 14 A. Yes, they did.
- 15 Q. You were doing your best to answer those questions?
- 16 A. Yes, I did.
- 17 Q. While you were answering those questions, you didn't see
18 anyone enter or exit the Petco, right?
- 19 A. I didn't pay attention to the entrance of people going in.
- 20 Q. Because you were focused on the officers speaking to you,
21 is that right?
- 22 A. I don't know why. When you asked me the question, I don't
23 recall -- your question was if I saw anybody go in the Petco
24 store?
- 25 Q. In or out?

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D488FLO2 Sindayiganza - cross

1 A. I don't remember.

2 Q. At some point Officer White came back to speak to you,
3 right?

4 A. Yes.

5 Q. And that was, I believe you said, between 5 and 15 minutes
6 later?

7 A. Something like that, yeah.

8 Q. The officers told you that there was a woman who said that
9 she recognized you, right?

10 A. Yes.

11 Q. And that she had accused you of harassing her?

12 A. Yes. Harassing me -- I was harassing a lady. I was asking
13 a lady for money, nine dollars.

14 Q. When Officer White returned from inside the Petco, he told
15 you to leave the area, didn't he?

16 A. Again, I don't know if Officer White left the Petco, but he
17 told me to go.

18 Q. So when he returned from inside the Petco -- I keep saying
19 that. When he returned to the group, he told you to leave,
20 right?

21 A. He gave me my ID back and he told me to leave.

22 Q. He told you to go north, didn't he?

23 A. Yes, he did.

24 Q. But you didn't go north?

25 A. It was very -- that part of the story --

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D488FLO2 Sindyiganza - cross

1 MS. PATEL: Objection. That's not what he testified
2 to earlier.

3 THE COURT: I think it is, actually.

4 Were you arrested first or were you frisked first?

5 THE WITNESS: I was definitely frisked while being in
6 handcuffs. I don't recall when the barrage of questions came,
7 when it was take your hands out of your pockets, I don't
8 exactly --

9 THE COURT: You don't know the exact moment of arrest?

10 THE WITNESS: What I am saying is I don't know if
11 previous to the arrest if they frisked me. Because when they
12 asked me, do you have any sharp objects in your pockets, take
13 your hands out of your pockets, where are you coming from, did
14 you take any drugs, they might have also, but I don't remember.

15 THE COURT: How do you know the exact moment of
16 arrest? Did somebody say, you're under arrest?

17 THE WITNESS: Officer White said, this is a wise guy,
18 I am going to teach him a lesson. He tells me then, put your
19 hands against the wall. Then he puts the handcuffs on me.

20 THE COURT: Right. He doesn't say, I am placing you
21 under arrest, or, you're under arrest?

22 THE WITNESS: I think he said something like, I am
23 going to arrest you now.

24 Q. You never told the CCRB that you were frisked before being
25 arrested, did you?

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D488FLO2 Sindayiganza - cross

- 1 A. I don't recall.
2 Q. You never told them that you were searched before being
3 arrested?
4 A. I also don't recall, Miss.
5 Q. Your backpack was only searched after you were handcuffed,
6 right?
7 A. Yes.
8 Q. So I believe you stated earlier that you complained to the
9 CCRB about this incident, right?
10 A. Sorry. What was the first part?
11 Q. As you stated earlier, you complained to the CCRB about
12 this incident?
13 A. I wrote to the CCRB about this, yes.
14 Q. That was the next day?
15 A. I don't exactly know if it was the next day or two days
16 later, but it was very soon right after, yes.
17 Q. You did that through the online CCRB Web site?
18 A. Yes.
19 Q. When you did that, you filled out a form, correct?
20 A. Yes.
21 Q. And you gave a brief description of the incident?
22 A. Yes.
23 Q. You didn't indicate in that brief description that you were
24 frisked or searched prior to being handcuffed, did you?
25 A. I don't remember. I would have to see it, Miss.

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D488FLO2 Sindyiganza - cross

1 Q. So this is six pages.

2 A. Can I speak now?

3 THE COURT: Only if she asks a question.

4 Q. Have you had a chance to review that, Mr. Sindyiganza?

5 A. Do you want me to read the whole thing?

6 Q. Your complaint, which is on the pages I pointed out to you.

7 THE COURT: If he is going to review the document, it
8 may be a good time for our morning recess. So let's reconvene
9 at quarter to 12 on that clock.

10 (Recess)

11 BY MS. PUBLICKER:

12 Q. You have had a chance to review your original complaint to
13 the CCRB?

14 A. Yes, I did.

15 Q. You did not indicate in that complaint that you were
16 frisked or searched prior to being handcuffed, did you?

17 A. No, I did not.

18 Q. So you first complained to the CCRB on February 13, 2010,
19 right?

20 A. Yes, I did.

21 Q. But you didn't provide a sworn verbal statement to the CCRB
22 until September 2010, is that right?

23 A. Yes. It took a while. I don't know when it was, but it
24 took a while.

25 Q. The CCRB first called you on February 24, 2010, didn't

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1 they?

2 A. I don't recall the exact date.

3 Q. It's around that time?

4 A. Around that time, yes.

5 Q. You told the investigator at that point that you did not
6 want to pursue your CCRB case because you hadn't yet been to
7 court for the summons you received?

8 A. Yes, exactly.

9 Q. And you told her that you didn't think it was wise for you
10 to give her any statements, right?

11 A. Yes.

12 Q. So the CCRB called you back a week later on March 1, 2010?

13 A. I remember they called me, yeah.

14 Q. And you told them at that time that you hadn't decided
15 whether or not you wanted to pursue your CCRB case?

16 A. Yes.

17 Q. And the CCRB sent you a letter on March 1, 2010, right?

18 A. As far as the dates, it's hard for me to know.

19 Q. I will direct your attention to the packet I gave you, to
20 NYC_2_00021597. Does that refresh your recollection about the
21 date?

22 MS. PATEL: Can you repeat that?

23 MS. PUBLICKER: 597.

24 A. Yes.

25 Q. On March 3, 2010, you were sent an e-mail from the CCRB?

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D488FLO2

Sindayiganza - cross

- 1 On the next page.
2 A. Yes.
3 Q. And on March 3, you also received a third phone call from
4 the CCRB, correct?
5 A. Which page is that, Miss?
6 Q. It's not a page. I am asking you if that's correct.
7 A. I don't remember.
8 Q. During that March 3rd or thereabouts phone call, you told
9 the CCRB that you would not come in to give a statement until
10 after your court date, right?
11 A. Yeah. That was my overall -- I didn't know if it was a
12 good idea to speak to the CCRB because I am not familiar with
13 the legal proceedings and, you know, I just wanted to make sure
14 that first I go to court so that my summons gets, how you say,
15 cleared?
16 Q. The CCRB told you, though, that if did you not take any
17 investigative steps for two months, that they would have to
18 close the investigation, right?
19 A. I asked them if I could reopen it.
20 Q. And they told you that you could reopen it, right?
21 A. Yes.
22 Q. The CCRB offered you mediation, right?
23 A. That's in writing, Miss?
24 Q. That was in a phone call.
25 A. I don't recall.

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D488FLO2 Sindayiganza - cross

1 Q. You don't remember that? You don't remember refusing
2 mediation?

3 A. I do remember it, up until having to appear to get my
4 summons cleared, I didn't feel comfortable really speak to the
5 CCRB.

6 Q. On March 8, 2010, you were sent a third e-mail from the
7 CCRB?

8 MS. PATEL: I just object to the relevance of this.
9 They have asked us not to ask questions about CCRB
10 investigations.

11 THE COURT: I agree. It is time-consuming. I don't
12 know what it is proving.

13 MS. PUBLICKER: I will shorten it, your Honor.

14 Q. So you received over a dozen contacts from the CCRB during
15 the course of this?

16 A. A dozen?

17 THE COURT: You just said you were going to stop doing
18 it.

19 MS. PUBLICKER: I was going to shorten it.

20 THE COURT: What do I care about a dozen contacts or
21 three contacts? What does it have to do with this case?

22 MS. PUBLICKER: Because he did not provide a sworn
23 statement until eight months later and the officers were,
24 therefore, not questioned until eight months after the initial
25 incident.

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D488FLO2 Sindyiganza - cross

1 THE COURT: Could we just get to that? I will take
2 that.

3 Ms. Patel, I am taking it.

4 Q. You did not provide a sworn statement to the CCRB until
5 September of 2010, correct?

6 A. September, that's the date, right? Yes.

7 Q. So your first sworn statement was seven months after the
8 incident?

9 A. Correct.

10 Q. The receipt that Ms. Patel put on the elmo this morning,
11 you never gave that receipt to the CCRB, did you?

12 A. I don't recall. I'm sure if they would have asked it, I
13 told the police officers on the scene that I have a receipt
14 that proves I was just there, but they weren't interested in
15 seeing that.

16 Q. My question was, did you give that receipt to the CCRB?

17 A. I don't recall. If they would have asked, I would have
18 given it.

19 Q. You called the Petco the day after the incident, didn't
20 you?

21 MS. PATEL: I am going to object.

22 THE COURT: You called the what?

23 MS. PUBLICKER: Petco.

24 THE COURT: What is the relevance of that?

25 MS. PUBLICKER: He spoke to the manager that day.

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D488FLO2 Sindyiganza - cross

1 THE COURT: So what?

2 MS. PUBLICKER: Because he made untrue statements at
3 his deposition about the content of the recording of that phone
4 call.

5 THE COURT: Untrue statements about the recording of
6 that phone call?

7 MS. PUBLICKER: He testified at his deposition that
8 the manager of Petco unequivocally stated that he did not speak
9 to the police on February 12, 2010. However, the recording
10 provided, which was not provided to the CCRB, the manager did
11 say --

12 THE COURT: What recording?

13 MS. PUBLICKER: He recorded a phone call, Mr.
14 Sindyiganza did.

15 THE COURT: Yes.

16 MS. PUBLICKER: With the manager of the Petco. And in
17 that recording, the manager of Petco said that he had in fact
18 spoken to the police on the date of incident. That's different
19 from what he told me at his deposition before we had received
20 the video recording.

21 MS. PATEL: I would just say the video recording --

22 THE COURT: Video recording?

23 MS. PUBLICKER: It's a video recording of a phone
24 call.

25 THE COURT: A video recording?

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D488FLO2 Sindayiganza - cross

1 THE COURT: Sure.

2 BY MS. PUBLICKER:

3 Q. The manager of the Petco told you that he spoke to the
4 police, did he not?

5 A. Yes, he did.

6 Q. And he told you that the police have asked him to
7 retrieve --

8 THE COURT: I thought I said I was not going to take
9 the statements of the manager, that they are hearsay. Those
10 statements are hearsay.

11 Q. You never spoke to the Petco employee that actually flagged
12 down the NYPD on February 12, 2010, did you?

13 MS. PATEL: Objection.

14 THE COURT: I will allow that.

15 Did you speak to that person?

16 THE WITNESS: When you say the person that flagged
17 down the NYPD?

18 THE COURT: That's what she said. An employee of
19 Petco. Did you speak to such an employee?

20 THE WITNESS: I don't know -- I don't know who the
21 woman was or who the employee was. I don't know anything.

22 THE COURT: So the answer is no?

23 THE WITNESS: Well, I spoke to somebody on the phone,
24 and I have a recording of that.

25 THE COURT: OK. You don't know if it's the employee

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D488FLO2 Sindayiganza - redirect

1 A. No, I did not scream.

2 Q. Were you hostile in any way?

3 A. No, I was not.

4 Q. Were you agitated?

5 A. No, I was not.

6 Q. Was there a crowd forming around you and the other officer?

7 A. No, there was no crowd.

8 Q. Why did you want to wait until your summons was resolved to
9 provide a sworn statement to the CCRB?

10 A. OK. Yes. I'm not a legal expert. I have a green card
11 that's very precious to me. It's very important for me for
12 that first summons to be cleared. I was 100 percent sure that
13 it was going to be cleared so I didn't want to say anything to
14 anybody else that could be misconstrued or -- I don't know how
15 legal proceedings work. I didn't want to have a conversation
16 with anybody who later on would say, here you said this and
17 here you said that and let's find something now to prove.

18 So I felt like the best thing I can do is don't say a
19 word until I go to court and find out what they will say about
20 the summons. After that I am more than willing to do whatever
21 it takes, whether it's appearing here in court or to speak to
22 the CCRB, which I did. But the first thing, the most important
23 thing, my green card is the only reason why I can be legally
24 here. I don't know the legal proceedings. I didn't want to do
25 anything that would jeopardize so I just decided let me clear

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D488FLO2 Sindayiganza - redirect

1 my slate, which was cleared. So that's why -- when I first
2 filed with the CCRB, I don't know the rules. On the evening
3 that it happened, I filled out the report as best as, you know,
4 I could. So I didn't know about how quickly -- the lady on the
5 phone from the CCRB told me, if you file a report, you have to
6 come in to talk to us soon. I explained to her on the phone, I
7 don't really feel comfortable doing that if I don't fully
8 understand what --

9 THE COURT: Are you still here on a green card?

10 THE WITNESS: No.

11 THE COURT: You're not a citizen?

12 THE WITNESS: No, I'm not a citizen.

13 Q. There were some questions regarding the time that you left
14 Paragon Sports and the time of this incident. Do you recall
15 being asked those questions on cross?

16 A. Yes.

17 Q. Isn't it true that at your deposition you clarified the
18 time that was on the receipt?

19 A. Yeah. It should be in writing. Yes, I did.

20 Q. So you clarified that you had mistakenly said 7:17?

21 A. Exactly. Yeah, yeah.

22 Q. In fact, you had written an e-mail the evening --

23 MS. PUBLICKER: Objection. She is offering an
24 out-of-court statement for her own client.

25 MS. PATEL: It's to rebut what was considered --

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D488FLO2 Sindayiganza - redirect

1 THE COURT: To rebut a charge of recent fabrication.
2 They are not saying he recently fabricated it. I am not going
3 to allow it.

4 Q. You were asked some questions on cross regarding the
5 location of the train stations and not walking north. Do you
6 recall that?

7 A. Yes.

8 Q. From where you were standing outside of the Petco, where
9 was the 4 train?

10 THE COURT: We have done that. I will not have this
11 twice. I made a request this morning that everybody move
12 along, and I am getting a repeat of the direct? No way. He
13 testified where the train was. Anything new you want to ask
14 the witness on redirect?

15 MS. PATEL: No.

16 THE COURT: If there is nothing else, who is the next
17 witness? Who is the next witness I asked.

18 MS. PATEL: Lalit Clarkson.

19 LALIT CLARKSON,
20 called as a witness by the plaintiffs,
21 having been duly sworn, testified as follows:

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

24 THE WITNESS: Lalit Clarkson, L-A-L-I-T,
25 C-L-A-R-K-S-O-N.

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D488FLO2 Sindayiganza - redirect

1 THE COURT: Thank you.

2 DIRECT EXAMINATION

3 BY MS. PATEL:

4 Q. Mr. Clarkson, are you a named plaintiff in this case?

5 A. Yes, I am.

6 Q. How old are you?

7 A. I am 31 years old.

8 Q. Do you have any children?

9 A. No. But my fiance is currently. We are expecting our
10 first child.

11 Q. What is your highest level of education?

12 A. Bachelor's degree.

13 Q. Are you currently employed?

14 A. Yes.

15 Q. Where are you employed?

16 A. I am a union organizer for SEIU, Local 32BJ.

17 Q. Why did you decide to become a union organizer?

18 A. I decided to become a union organizer because I had been
19 working with kids, and I enjoy doing community work, and I felt
20 like education was helping with -- you know, bring up education
21 in the community and with unions, it's helping our communities
22 with economic justice.

23 Q. What SEIU office do you report to?

24 A. The campaign I currently work on, I report to the New York
25 Camden, New Jersey office.

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D488FLO2 Clarkson - direct

1 Q. Where in New Jersey?

2 THE COURT: Why do I care where in New Jersey?

3 MS. PATEL: He lives in New Jersey, and I wanted to
4 establish for standing purposes. He comes to New York
5 regularly.

6 THE COURT: Anybody challenging that?

7 Do you come to New York regularly?

8 THE WITNESS: Yes, I do.

9 Q. Let's turn to the matter in this case. Do you recall being
10 stopped by New York Police Department officers in January of
11 2006?

12 A. Yes.

13 Q. What were you doing when you were stopped by NYPD officers?

14 A. I was returning back to the school I work from a lunch
15 break.

16 Q. Can you remember more specifically when in January of 2006
17 this stop occurred?

18 A. I remember it had to have been before Martin Luther King
19 Day, and it had to have been within the first two weeks of
20 January and a school day obviously.

21 Q. A weekday?

22 A. Yes.

23 THE COURT: Where was the school you worked at?

24 THE WITNESS: Grand Concourse Academy.

25 THE COURT: In New York?

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D488FLO2 Clarkson - direct

1 THE WITNESS: It's in New York.

2 Q. Around what time would you approximate that the stop
3 occurred?

4 A. It probably happened somewhere around 1:00 in the
5 afternoon.

6 Q. You said you were working at Grand Concourse Academy?
7 Where is that located?

8 A. Grand Concourse Academy is located on 169th Street, between
9 Walton and the Grand Concourse.

10 Q. That's in the Bronx?

11 A. Yes.

12 Q. What was your position?

13 A. I was a teacher's assistant.

14 Q. At the time of the stop, what grades of students did you
15 work with?

16 A. I worked with second graders.

17 Q. What were you wearing that day, to the best of your
18 knowledge?

19 A. The code for the school is that all teachers had to wear
20 slacks, ties and a collared shirt. So I would have been
21 wearing that.

22 Q. Where did you go for lunch?

23 A. I went to a Subway restaurant.

24 Q. Did you go to that Subway often?

25 A. Yes.

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D488FLO2 Clarkson - direct

1 Q. How far is the subway, approximately, from Grand Concourse
2 Academy?

3 A. The subway restaurant is a couple of blocks away.

4 Q. Did you do anything on your walk back to Grand Concourse
5 Academy?

6 A. I stopped at a bodega on the corner of 169th and Walton.

7 Q. That bodega is across the street from the school?

8 A. This is correct.

9 Q. When you entered the bodega, did you have anything in your
10 hands?

11 A. Yes. I had a Subway bag, a clear Subway bag with my
12 sandwich in it.

13 MS. PATEL: I am going to show the witness Defendants'
14 Exhibit O10NYP2-28753.

15 Q. Do you know what is depicted in this photograph?

16 A. Yes. This is the intersection of 169th and Walton Avenue.

17 MS. PATEL: I would like to enter it into evidence.

18 MR. KUNZ: No objection.

19 THE COURT: When you say Exhibit 010?

20 MS. PATEL: O10.

21 THE COURT: Received.

22 (Defendants' Exhibit O10NYP2-28753 received in
23 evidence)

24 Q. You said this was the intersection of 169th and Walton, is
25 that right?

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D488FLO2 Clarkson - direct

1 A. Yes. That is correct.

2 Q. Is there anything with this photograph that is different
3 than from January 2006?

4 A. Yes. There is an orange box that is on the Walton side of
5 the bodega that wasn't there in 2006 January. And this red
6 awning, which looks like it has a fruit stand in front of it,
7 at that time, that that was a botanica, and the awning may or
8 may not have been there.

9 THE COURT: What is a botanica?

10 THE WITNESS: A religious store.

11 Q. Which direction does 169th run?

12 A. 169th runs east to west.

13 Q. What about Walton?

14 A. Walton runs north/south.

15 Q. Who do you recall observing, if anyone, inside the bodega
16 when you entered?

17 A. I saw two police officers that were standing in the back
18 and the store clerk.

19 THE COURT: They were in uniform, is that how you
20 knew?

21 THE WITNESS: They were not in uniform.

22 THE COURT: How did you know they were two police
23 officers?

24 THE WITNESS: There was a white gentleman and a Latino
25 gentleman, and in that community it's a bit uncommon to be

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1 standing there. So their presence standing there, but then
2 moving forward after I left the store, they announced
3 themselves as police officers.

4 THE COURT: When you first saw them, did you also know
5 they were police officers instinctively?

6 THE WITNESS: When I first saw them, just from my
7 experience in the neighborhood, they appeared to be police
8 officers, but they validated that after I left the store.
9 Q. From which direction were you walking prior to entering the
10 bodega?

11 A. I was walking north up Walton from 168th.

12 Q. You were walking north on which street?

13 A. Walton avenue.

14 Q. What did do you at the bodega?

15 A. I purchased a food item, put it in my pocket, and I left
16 the store.

17 Q. What were the races of the two officers you observed?

18 THE COURT: He just told us one white, one Latino.

19 Q. Did you interact with them at all while you were in the
20 bodega?

21 A. No, I did not.

22 Q. What happened when you left the bodega to return to school?

23 A. When I left, as I was about to cross the street to go to
24 school, I heard a voice from behind me say, Hey. I was kind of
25 confused. I turned around and the white officer said, Come

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D488FLO2 Clarkson - direct

1 over here. And so I went over there.

2 Q. He also said, Can I talk to you?

3 A. Yes, he did.

4 Q. What did you do?

5 A. I went over there. I didn't know what to do so I went over
6 there.

7 Q. As they said, Hey, can I talk to you, come over here, did
8 they do anything else?

9 A. They took out their badges and said police.

10 Q. Can you describe the badges?

11 A. It was a black casing. There was a bar with numbers on it,
12 gold or silver. There was an emblem that was gold or silver.

13 Q. How is the badge -- you said they pulled it out. How was
14 it on their body?

15 A. I guess like the pearl necklaces, like the metal necklaces.

16 Q. Why did you walk over to them?

17 A. I walked over to them, the way they said, Come over here, I
18 felt like if I didn't come over there, I don't know what would
19 have happened to me. So I went over there.

20 Q. When you walked over to them, you were standing near the
21 bodega wall?

22 A. Yes, as I was walking over.

23 Q. Can you tell us on this photograph where you ended up
24 standing?

25 A. Where the orange box is, right above it is a 24-hour

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D488FLO2 Clarkson - direct

1 window. When I first came over there, my left shoulder was
2 kind of right next to the bodega window, the 24-hour window.

3 Q. Where were the officers standing in relation to you?

4 A. They were in front of me.

5 Q. How close to you were they?

6 A. They were close, close enough to touch.

7 Q. How tall would you approximate were the officers?

8 A. Probably about maybe this tall.

9 THE COURT: What does that mean, a head taller than
10 you?

11 THE WITNESS: About six inches.

12 THE COURT: You are how tall?

13 THE WITNESS: 5'4".

14 THE COURT: So they were about 5'10"?

15 THE WITNESS: Yes.

16 Q. What was the white officer's -- what did he look like, what
17 was his description?

18 A. Skinny, short haircut, brownish hair, dark blue pants on,
19 late 30s. There was no facial hair. He had a coat that sort
20 of was like thigh length. So between his thigh and his knee.

21 (Continued on next page)

22

23

24

25

D489flo3 Clarkson - direct

1 Q. Do you remember what kind of coat it was?

2 A. It was either like a suit jacket or a peacoat.

3 Q. And can you describe the Latino officer?

4 A. The Latino officer was darker than the Caucasian officer,
5 shorter hair, kind of like a Cesar, like gray sweatpants. He
6 had a fuller length peacoat that sort of went down to the
7 ankles.

8 Q. And you begin interacting with them?

9 A. Yes.

10 Q. And did there ever come a time when your back was against
11 the bodega wall?

12 A. Yes. As they were asking me questions, they began to come
13 closer. And I'm stand withing my left shoulder to the bodega
14 wall. They start to turn and so my back is facing the wall and
15 they are directly in front of me blocking my path from the
16 school.

17 Q. So they are standing between you and the street?

18 A. This is correct.

19 Q. What were you thinking as they were standing there in front
20 of you with your back against the wall?

21 A. I was thinking like why are you stopping me. I'm just
22 coming back to school from my lunch break to teach my kids.

23 Q. Is there anything else you were feeling at the time?

24 A. I was feeling scared because I was like I don't know what's
25 going on. I don't know what's happening.

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D489flo3 Clarkson - direct

- 1 Q. Did they say anything or did they tell you why you were
2 stopped?
- 3 A. Yes, they did. They had pointed down the block and said
4 oh, we saw you walking past the drug building.
- 5 Q. Can you tell us on this photograph where -- which building
6 you believe that they were referring to?
- 7 A. The residential building that's next to the strip of
8 commercial stores. It's brown with a fire escape on it.
- 9 Q. You're referring to this?
- 10 A. Yes.
- 11 Q. Mark an X, your Honor, to indicate where he was --
12 Had you walked past that building?
- 13 A. Yes, I did.
- 14 Q. Why did you walk past that building?
- 15 A. Because that was the route that I was taking to come back
16 to school.
- 17 Q. Did you stop in front of that building?
- 18 A. No, I did not.
- 19 Q. Did you pause in front of the building?
- 20 A. No, I did not.
- 21 Q. Did you stop to say hello to anyone in the courtyard?
- 22 A. No, I did not.
- 23 Q. Did the officers accuse you of having contraband?
- 24 A. Yes, they did.
- 25 Q. More than once?

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D489flo3 Clarkson - direct

1 A. Yes. They accused me three times.

2 THE COURT: What did they say?

3 THE WITNESS: What they said was: Do you have any
4 contraband on you? And then I said no.

5 And then they said: Do you have any contraband on
6 you? And I said no.

7 And then this third time they said: So you're telling
8 me that if I go in your pockets you don't have anything on you?
9 And I kept saying no, I don't.

10 Q. Did you give the officers permission to search you?

11 A. No, I did not.

12 Q. How did you respond --

13 THE COURT: Did they search you?

14 THE WITNESS: No, they did not.

15 Q. And how did you respond when they asked to search you?

16 A. I said I don't have anything on me and I don't consent to a
17 search.

18 Q. How long do you think the stop lasted?

19 A. A couple of minutes. I mean it felt like a long time but
20 it was probably a couple minutes.

21 Q. At any point from the time they told to you come over to
22 them until they walked -- I'm sorry.

23 What happened next?

24 A. So after the third time when the officer said: Oh, are you
25 sure? Do you have anything on you? I said no, I don't consent

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1 to a search. And after the third time, the officers left.

2 Q. And at any point from the time that they left -- from the
3 time you walked over to them, did you feel free to leave?

4 A. No, I did not.

5 Q. Why not?

6 A. Well first when they called me over I felt like they were
7 commanding me. And I was scared if I walked away what might
8 happen. And then as they were questioning me, they stood
9 directly in front of me, blocking my path. So at that point I
10 still didn't feel like I was free to go.

11 Q. How did you feel as you were returning to work after the
12 stop?

13 A. As I was returning back to work I was -- I was thinking
14 about my -- the students that I was teaching like, you know,
15 what would they think if they saw Mr. Clarkson being stopped by
16 the police.

17 I thought about, you know, what -- is this something
18 that's going to happen to me tomorrow? Is this something
19 that's going to happen to me, you know, next month where --

20 MR. KUNZ: Your Honor, I object. I don't see the
21 relevance of this.

22 THE COURT: You're right. Sustained. And I'll strike
23 the last answer about what he thought his kids would think.
24 Okay.

25 MS. PATEL: Doesn't that go to his state of mind, what
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D489flo3 Clarkson - direct

1 he was thinking at the time?

2 THE COURT: No. The only part of state of mind I was
3 interested in was the free to leave part, and he explained
4 that.

5 Q. Why did you decide to become a named plaintiff in this
6 case, Mr. Clarkson?

7 A. I decided to become a named plaintiff in this case, one,
8 because with that stop and with other stops I felt like that
9 there are policies and issues within the New York City Police
10 Department that we should change for better police community
11 relations. And being a named plaintiff I felt like would help
12 to raise that level of awareness.

13 THE COURT: When you say other stops, were you stopped
14 other times or other people were stopped?

15 THE WITNESS: Myself and with other people that I've
16 interacted with that have told me about stops.

17 THE COURT: So both you and others?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Was this your first stop?

20 THE WITNESS: No, it was not, ma'am.

21 THE COURT: Okay.

22 MS. PATEL: That's it.

23 THE COURT: Okay. Thank you.

24 Mr. Kunz.

25 (Continued on next page)

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D489flo3 Clarkson - direct

1 CROSS-EXAMINATION

2 BY MR. KUNZ:

3 Q. Good afternoon, Mr. Clarkson.

4 A. Good afternoon.

5 Q. So, you said that the incident happened sometime in the
6 first several weeks of January 2006?

7 A. This is correct.

8 Q. But you don't know which particular day?

9 A. No, I do not know the particular day.

10 Q. And you said you were wearing the outfit that you normally
11 wore to work but you don't remember specifically what you were
12 wearing that day?

13 A. This is correct.

14 Q. Now, I'm going to show you what's been marked as
15 Defendants' J10 for purposes of this trial.

16 Do you recognize what that is?

17 A. Yes, I do.

18 Q. And what is it?

19 A. It's a Google map of the area around the school.

20 MR. KUNZ: I'd move this into evidence, your Honor.

21 MS. PATEL: No objection.

22 THE COURT: J10 is received.

23 (Defendants' Exhibit J10 received in evidence)

24 Q. Now if you would, would you draw a line on the map from the
25 Subway restaurant, the route that you took back to the school?

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D489flo3 Clarkson - cross

1 A. On -- there's two particular routes that I take, so would
2 you like me to draw both routes?

3 Q. So it's possible that you took one of two routes and you're
4 not sure which one?

5 A. Yes. But both routes put me at 168.

6 Q. So if you could just draw both routes on the map.

7 A. No problem.

8 Q. If you could just put an S where the school is.

9 And a B where the bodega is.

10 And then maybe -- I guess have you a circle where the
11 Subway restaurant is?

12 A. Yes.

13 Q. Okay. Thank you.

14 So just so we're all on the same page, the circle here
15 that you drew, this is the Subway restaurant that you went to?

16 A. That is correct.

17 Q. And then you took, after the Subway restaurant, you walked
18 either to Girard Avenue or Walton Avenue and then went up?

19 A. This is correct.

20 Q. And then either way, at 168th Street you ended up on
21 Walton, and you walked the rest of the way up the block?

22 A. This is correct.

23 Q. And the bodega would have been on your left?

24 A. If I'm walking from -- yes, this is correct.

25 Q. And then the school is just across the street?

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D489flo3 Clarkson - cross

- 1 A. This is correct.
2 Q. So when you walked into the bodega you saw two men,
3 correct?
4 A. This is correct.
5 Q. Had you seen those two men on the street before you walked
6 into the bodega?
7 A. No, I had not.
8 Q. And as soon as you saw them you thought they were police
9 officers, correct?
10 A. I thought that they appeared to be police officers. This
11 is correct.
12 Q. And you said before the reason you thought that is because
13 one of them was white and you thought that he stuck out as a
14 white person in that neighborhood?
15 A. Yes. Just their sort of presence and standing there
16 talking, they appeared to be police officers.
17 Q. And one of them was Caucasian? One was Latino?
18 A. This is what I believe.
19 Q. And the Caucasian officer was about five-ten?
20 A. About six inches taller than me, yes This is correct.
21 Q. No facial hair?
22 A. This is correct.
23 Q. Light brown hair?
24 A. This is correct.
25 Q. No glasses?

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D489flo3

Clarkson - cross

1 A. This is correct.

2 Q. In his late 30s?

3 A. This is correct.

4 Q. And of medium build?

5 A. I said he was skinny. He was sort of on the skinnier side.

6 Q. And did you testify at your deposition, did you describe
7 him as an average build?

8 A. I need my memory refreshed.

9 Q. I'm going to hand you a copy of your deposition.

10 On what date did you give this deposition?

11 A. Say that again.

12 Q. On what date did you give the deposition?

13 A. It says May 6, 2009 on the deposition.

14 Q. May 6, 2009?

15 A. Yes, sir.

16 Q. And before you answered questions, did you take an oath to
17 tell the truth?

18 A. This is correct.

19 Q. So, directing your attention to page 134, lines 15 through
20 19.

21 Did you give the following answer to the following
22 question.

23 "Q. How would you describe his build, athletic, overweight,
24 thin?

25 "A. He wasn't overweight. He wasn't extremely skinny. He

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D489flo3 Clarkson - cross

- 1 didn't look all that necessarily athletic. So I would guess
2 skinny might be the word to describe. Average, skinny."
3 Q. Did you give that answer to that question?
4 A. Yes, I did.
5 Q. So skinny or average, in that range, is his build?
6 A. This is correct.
7 Q. And this Caucasian officer that you saw, you never saw a
8 gun on him, correct?
9 A. I don't recall.
10 Q. And you never saw handcuffs on him?
11 A. I do not recall.
12 Q. You don't recall ever seeing --
13 A. I don't recall seeing handcuffs. Yes. That is correct.
14 Q. You don't recall seeing a gun?
15 A. I don't recall seeing a gun. That is correct.
16 Q. You didn't see a nightstick on him either, correct?
17 A. I don't recall seeing a nightstick.
18 Q. Now, the Latino officer, he was about the same height as
19 the Caucasian officer?
20 A. Yes.
21 Q. And you described his haircut as a Cesar haircut?
22 A. Yes.
23 Q. With black hair?
24 A. Yes.
25 Q. And he had a little bigger build than the white officer?

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D489flo3 Clarkson - cross

- 1 A. He was a bit fatter, yes.
2 Q. But I think you set not fat, just a little bigger?
3 A. I said he was fatter. He was a bit rounder.
4 Q. And, yeah, he didn't have glasses either, correct?
5 A. This is correct.
6 Q. Now when you saw the Latino officer, you never saw a gun on
7 him either, did you?
8 A. This is correct -- I don't recall seeing a gun. This is
9 correct.
10 Q. And you never saw handcuffs on the Latino officer, correct?
11 A. I don't recall seeing handcuffs on the Latino officer.
12 Q. And you never saw a nightstick on him either, correct?
13 A. I don't recall seeing a nightstick. This is correct.
14 Q. So you went in the bodega. You saw these two men standing
15 there. You purchased something. And then you walked outside
16 the bodega?
17 A. That is correct.
18 Q. And you made it a few steps, I believe you said at your
19 deposition, you were about three-fourths of the way towards the
20 street? Across the sidewalk?
21 A. Yes. I was at the curb. About to cross the street. Yes.
22 Q. Well, not quite at the curb. About three-fourths of the
23 way there?
24 A. I need my memory refreshed.
25 Q. So directing your attention to page 148, lines 17 through

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D489flo3

Clarkson - cross

1 24.

2 You can read lines 17 through 24 to yourself and let
3 me know if that refreshes your recollection about how far
4 across the sidewalk you were.

5 A. Okay.

6 Q. So does that refresh your recollection about how far across
7 the sidewalk you were?

8 A. In the deposition it says that I said that I was less than
9 three-fourths, yes.

10 Q. And sitting here today do you have a different
11 recollection?

12 A. In my mind, I felt like I was closer to the edge of the
13 sidewalk when the police officers came up.

14 Q. So -- but you never actually stepped onto the street to go
15 across?

16 A. No, I did not.

17 Q. Now when you were at this position on the sidewalk, the two
18 men came out of the store and one of them said something to
19 you?

20 A. Yes. This is correct.

21 Q. In fact, the first thing you heard him say was: Hey, can I
22 talk to you.

23 Isn't that right?

24 A. I heard him say hey.

25 I turned around, confused. And then he said: Come

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D489flo3 Clarkson - cross

1 over here.

2 Q. At your deposition did you give the following answer to the
3 following question.

4 "Q. And how did you come to realize that the two individuals
5 were approaching you?

6 I'm sorry. Page 149, lines 12 through 15.

7 "Q. And how did you come to realize that the two individuals
8 were approaching you?

9 "A. The two individuals came outside of the bodega and the
10 Caucasian officer said: Hey, can I talk to you."

11 Did you give that answer to that question?

12 MS. PATEL: I just need to read the rest.

13 MR. CHARNEY: The rest of the testimony.

14 MS. PATEL: The next two lines:

15 "Q. When he said that to you, was your back to him?

16 "A. He said hey, first, to get my attention. And when I
17 turned around, he said: Come over here. I want to talk to
18 you."

19 That's page 149, lines 16 through 18.

20 BY MR. KUNZ:

21 Q. So that's the first thing you remember the officer saying
22 is: Hey, can I talk to you?

23 A. The first thing I remember is: Hey. Then I turned around.
24 And then he said: Come over here.

25 Q. Well, you also remember the officer saying: Can I talk to

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D489flo3 Clarkson - cross

- 1 A. This is correct.
2 THE COURT: They used that word, contraband?
3 THE WITNESS: Yes.
4 THE COURT: Never said drugs?
5 THE WITNESS: No. That's why I remember it.
6 THE COURT: They just kept saying contraband?
7 THE WITNESS: Yes, ma'am.
8 Q. Now when the officers -- when you were standing in front of
9 the bodega the officers were about three feet away from you,
10 maybe?
11 A. They were close.
12 Q. But about three feet?
13 A. When they came out of the bodega?
14 Q. Well, when they showed you their badges, when you were
15 talking to them in front of bodega, they were about three feet
16 away from you?
17 A. Approximately.
18 Q. And the officers did not search you, correct?
19 A. This is correct.
20 Q. And they did not go into your pockets?
21 A. This is correct.
22 Q. And they did not frisk you?
23 A. This is correct.
24 Q. And they didn't touch you at all, in fact?
25 A. This is correct.

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D489flo3 Clarkson - cross

1 Q. And the officers never told you that you could not leave?

2 A. This is correct.

3 Q. And the incident ended after you said I don't consent to
4 being searched and the officers just turned around and left?

5 A. After the third time of asking me the same question, yes,
6 they left.

7 Q. And the whole thing, the whole incident lasted about a
8 minute?

9 A. Yes. Like I said, it felt like a long time but in
10 actuality, yes.

11 Q. And during the entire incident no officer ever said
12 anything about your race, correct?

13 A. This is correct.

14 MR. KUNZ: I have no further questions.

15 THE COURT: Anything further of this witness,
16 Ms. Patel?

17 MS. PATEL: Just two questions.

18 REDIRECT EXAMINATION

19 BY MS. PATEL:

20 Q. On your way to -- from -- as you walked from the Subway to
21 the bodega, did you stop at any building?

22 A. No, I did not.

23 Q. You said that the officers left after you said I don't
24 consent to the search the third time, correct?

25 A. Yes.

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D489flo3 Clarkson - redirect

1 Q. Was there anything else that was happening that you think
2 might have led the officers to walk away?

3 A. After the officer's voice that was asking me got
4 increasingly louder, so after the third time some people had
5 sort of come out of some of the other stores and that might
6 have had something to do with it. I don't -- I'm not going to
7 say definitively, but after the third time.

8 MR. KUNZ: I'm going to object and move to strike.
9 He's speculating.

10 MS. PATEL: I'm just trying to get the fact out what
11 happened.

12 THE COURT: One second, please. Let me rule on that.

13 MS. PATEL: I'm sorry, your Honor.

14 THE COURT: I'll grant the motion to strike.

15 MS. PATEL: I'll rephrase.

16 Q. What else happened after you -- after the third time you
17 said I don't consent?

18 A. After that some people came out of some of the other
19 stores.

20 Q. And what would you say was the tone in which the officers
21 were talking to you at that point?

22 A. By the third time it was definitely an aggressive tone. As
23 I said, their voices got louder as they were asking the same
24 question.

25 MS. PATEL: Nothing further.

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D489flo3 Clarkson - redirect

1 MR. KUNZ: Nothing further, your Honor.

2 THE COURT: Okay. Thank you Mr. Clarkson.

3 (Witness excused)

4 MS. BORCHETTA: Your Honor, the plaintiffs call

5 Detective Louis DeMarco.

6 MR. MARUTOLLO: As Detective DeMarco is coming to the
7 stand, since he'll be testifying about the Acevedo incident, is
8 it all right if we read into the record a stipulation agreed to
9 by the parties.

10 THE COURT: Sure.

11 MR. MARUTOLLO: Entered into by parties that
12 Ms. Acevedo did not mention that Detective Hawkins searched her
13 shorts, her pockets at any of her CCRB interviews.

14 Ms. Acevedo did not mention that Detective Hawkins
15 banged her head against the UPS truck at any of her CCRB
16 interviews.

17 Ms. Acevedo did not mention that the dark haired
18 officer searched her bag at any of her CCRB interviews.

19 Ms. Acevedo did not affirmatively tell the CCRB
20 interviewer that she was frisked or searched and did not
21 mention being frisked or searched in her initial complaint to
22 CCRB.

23 Ms. Acevedo was not asked during any CCRB interview
24 whether she was frisked.

25 Ms. Acevedo was not asked during any CCRB interview

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1 whether she was searched.

2 Ms. Acevedo told the CCRB they were roughing me up,
3 referring to the detectives.

4 Ms. Acevedo told the CCRB: The woman officer grabbed
5 me by my wrist, slammed my arm and back into the UPS truck.

6 And finally, Ms. Acevedo told the CCRB the dark haired
7 officer with the badge put his hand into her purse to return
8 the ID.

9 LOUIS DEMARCO,
10 called as a witness by the Plaintiffs,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. BORCHETTA:

14 Q. Good afternoon, Detective DeMarco.

15 A. Good afternoon.

16 Q. You are currently a member of the NYPD, correct?

17 A. Yes.

18 Q. And you graduated from the police academy?

19 A. Yes.

20 Q. In what year?

21 A. 2000.

22 Q. You are currently a detective in Queens narcotics, correct?

23 A. Yes.

24 Q. On May 29, 2007 you had an encounter with Kristianna
25 Acevedo, correct?

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D489flo3

DeMarco - direct

1 A. Yes.

2 Q. And at the time you were working as a detective in Queens
3 narcotics, right?

4 A. Yes.

5 Q. Am I correct that your primary duties and responsibilities
6 as a Queens narcotics detective include conducting buy-and-bust
7 operations and investigations?

8 A. Yes.

9 Q. And that means, in part, working with undercover officers
10 to purchase narcotics from dealers and to effect arrests of
11 those dealers, right?

12 A. Yes.

13 Q. And it also means in part driving around in certain
14 neighborhoods and conducting observations to see if you spot
15 people selling drugs, right?

16 A. Yes.

17 Q. Now, before going into the details of your interaction with
18 Ms. Acevedo, I want to make one thing clear. In your opinion
19 you do not believe that your interaction was Ms. Acevedo on
20 May 29, 2007 was a stop, right?

21 A. Correct.

22 Q. And that's because you didn't have reasonable suspicion
23 that she was engaging in crime at the time, right?

24 A. Correct.

25 Q. So let's go through your encounter with Ms. Acevedo.

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D489flo3 DeMarco - direct

1 At the time you were in a van, correct?

2 A. Yes.

3 Q. And that was a police van?

4 A. That was a mini van.

5 THE COURT: Was it marked or unmarked?

6 THE WITNESS: Unmarked.

7 Q. And you were seated in the front passenger's seat, correct?

8 A. Yes.

9 Q. Detective Damian Vizcarrondo was also in the van, correct?

10 A. Yes.

11 Q. And he was driving?

12 A. Yes.

13 Q. Detective Michele Hawkins was also in the van, right?

14 A. Yes.

15 Q. And she was seated somewhere in the passenger row behind
16 you, right?

17 A. Correct.

18 Q. And at about 5:30 p.m. you observed Ms. Acevedo, correct?

19 A. Yes.

20 Q. And you observed her walking on the sidewalk of 34th
21 Street in the Woodside area of Queens?

22 A. No. 43rd Street.

23 Q. I'm sorry. Well at about 5:30 you observed her walking on
24 the sidewalk of 43rd Street in the Woodside area of Queens?

25 A. Yes.

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D489flo3 DeMarco - direct

1 Q. Just prior to when you first saw Ms. Acevedo, Detective
2 Vizcarrondo and Detective Hawkins had been driving in the van,
3 right?

4 A. Correct.

5 Q. And you had been driving the van for about an hour, right?

6 A. Yes. Give or take.

7 Q. Let's go back for a moment to before the three of you
8 left -- headed out that day in the van.

9 Prior to heading out in the van that day you attended
10 a tac meeting, right?

11 MS. BORCHETTA: For the court reporter that's T-A-C,
12 right?

13 A. Yes.

14 Q. And am I correct that tac stands for tactical?

15 A. Yes.

16 Q. And a tac meeting is with members of the team and the
17 Queens narcotics unit and the supervisor, right?

18 A. Correct.

19 Q. And that usually happens at the beginning of your shift,
20 right?

21 A. Yes.

22 Q. I'm going to show you a document that's been marked as
23 Plaintiffs' Exhibit 6.

24 Detective do you recognize this document?

25 A. Yes.

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D489flo3 DeMarco - direct

1 Q. What is this document?

2 A. That's the tac plan or tactical plan.

3 MS. BORCHETTA: Move to admit Plaintiffs' Exhibit 6.

4 MR. MARUTOLLO: No objection.

5 THE COURT: Six is received.

6 (Plaintiffs' Exhibit 6 received in evidence)

7 Q. Now you don't recall specifically whether you actually
8 received a copy of this tac plan on May 29, 2007, right?

9 A. Correct.

10 Q. But in your experience as a Queens narcotics detective you
11 routinely received information from the tac plan at the tac
12 meetings, right?

13 A. Yes.

14 Q. And at the bottom of the tac plan there are locations
15 indicated, right?

16 A. Yes.

17 Q. And corresponding to those locations there are also a list
18 of drug names, right?

19 A. Yes.

20 Q. And am I correct that those locations indicate where these
21 drugs might have been sold?

22 A. Correct.

23 Q. And on May 29, 2007 when you were driving around in that
24 hour or so prior to first observing Ms. Acevedo you were going
25 to the locations that are listed at the bottom of that tac

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D489flo3

DeMarco - direct

1 plan, right?

2 A. We could have been going or coming from several different
3 of those location, yes.4 Q. But in that hour or so before observing Ms. Acevedo you
5 were either going from or to the locations listed at the bottom
6 of the tac plan?

7 A. Yes.

8 Q. And one purpose of going to the locations listed on the tac
9 plan is to gain intelligence, right?

10 A. Correct.

11 Q. And in the hour or so that you were driving around before
12 the encounter with Ms. Acevedo you were looking for suspicious
13 activity, right?

14 A. More or less, yes.

15 Q. Now, returning to the encounter with Ms. Acevedo. The
16 location where you encountered her, that's in the vicinity of
17 the locations that are listed on the bottom of the tac plan,
18 right?

19 A. In the general area, yes.

20 Q. And you were -- you agree that the area in which you first
21 saw Ms. Acevedo was desolate, right?

22 A. Yes.

23 Q. You did not observe anyone else walking on that street at
24 the time, right?

25 A. No.

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D489flo3 DeMarco - direct

- 1 Q. After you first saw Ms. Acevedo, you communicated to
2 Detective Vizcarrondo, who was driving, that you wanted to
3 speak to her, right?
4 A. I don't recall if I actually communicated to him but I may
5 have motioned to him that I would like to speak to the
6 individual walking down the street.
7 Q. So you communicated to him either in words or gestures that
8 you would like to speak to her, right?
9 A. Yes.
10 Q. And then the van pulled up alongside her, right?
11 A. Yes.
12 Q. And you believe the van stopped at some point, right?
13 A. I believe it slowed down to a very slow pace or it stopped.
14 Q. So it may have stopped, right?
15 A. Yes.
16 Q. And, again, you were in the front passenger's seat at the
17 time?
18 A. Yes.
19 Q. And you said to Ms. Acevedo police, right?
20 A. In sum and substance I said: Hi. Police. How are you
21 doing? Can I talk to you?
22 Q. Well but you said police, right?
23 A. Yes.
24 Q. And is it fair to say that you believe that she heard you
25 say police?

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D489flo3

DeMarco - direct

- 1 A. Yes.
- 2 Q. And you held up, you said, your police badge, right?
- 3 A. Correct.
- 4 Q. And you say you asked to speak with her, right?
- 5 A. Yes.
- 6 Q. And you believe in sum or substance you asked her -- you
- 7 said to her that you wanted to ask her a question, right?
- 8 A. Correct.
- 9 Q. And you also wanted to ask her if she lived in the
- 10 neighborhood, right?
- 11 A. Yes.
- 12 Q. And you wanted to know if she lived in the neighborhood in
- 13 part to gain intelligence, right?
- 14 A. Correct.
- 15 Q. And according to you, Ms. Acevedo then responded: Fuck
- 16 you. You're not a cop. And took off running, right?
- 17 A. Correct.
- 18 Q. Then Detective Vizcarrondo drove the van in reverse
- 19 following her, right?
- 20 A. Yes.
- 21 Q. And the van stopped, right?
- 22 A. Yes.
- 23 Q. And you exited the van, right?
- 24 A. Yes.
- 25 Q. And you approached Ms. Acevedo on the sidewalk, right?

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D489flo3

DeMarco - direct

- 1 A. Correct.
- 2 Q. And then at some point you got back into the van, right?
- 3 A. Yes.
- 4 Q. And you say the entire period that you were outside of the
5 van was about 20 seconds, right?
- 6 A. Give or take, yes.
- 7 Q. And in what you say was a 20-second period, you told her
8 you were an officer, right?
- 9 A. Yes.
- 10 Q. And in what you say was a 20-second period, you told her
11 you wanted to ask if she lived in the area, right?
- 12 A. That's -- my was my intention to ask her if -- that I had
13 wanted to ask her if she lived in the neighborhood, yes.
- 14 Q. And that you wanted to see whether she was okay, right?
- 15 A. Not initially, no.
- 16 Q. You said to her that you wanted to see whether she was
17 okay, right?
- 18 A. Yes. As oppose today why she began running.
- 19 Q. I'm sorry. Could you repeat that?
- 20 A. As opposed to my initial stop, to talk to her. And then
21 she took off running down the block. When I initially went
22 back up to her and identified myself as a police officer once
23 again, I had mentioned to her that the reason why I got out was
24 because I wanted to see if she was okay and if she lived in the
25 area.

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D489flo3 DeMarco - direct

1 Q. So you wanted to see if she was okay. That's what you say,
2 right?

3 A. Yes.

4 Q. And you asked her why she was running, right?

5 A. No. I don't believe I asked her why she was running.

6 Q. I'm going to show you -- well do you recall that you were
7 interviewed by the CCRB related to the Acevedo incident?

8 A. Yes.

9 Q. I'm going to show you a transcript of the testimony that
10 you gave to CCRB.

11 MR. MARUTOLLO: What page number?

12 MS. BORCHETTA: I'll get it.

13 If you would turn to page 5, please, line 16.

14 If you read that where it indicates Detective DeMarco,
15 that sentence there to yourself, would you tell me if that
16 refreshes your memory about whether you asked her if she was
17 running.

18 THE WITNESS: Yes, it does.

19 Q. And you did ask her that, right?

20 A. Yes.

21 Q. And according to you, your purpose in exiting the van and
22 approaching Ms. Acevedo was just to identify yourself as a
23 police officer and tell her you weren't trying to hurt her?

24 A. Yes.

25 Q. And you say your purpose was to deescalate the situation,

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D489flo3 DeMarco - direct

1 right?

2 A. More or less I wanted just to let her know that I wasn't
3 trying to hurt her, that I was, in fact, a cop.

4 Q. And right -- your purpose was to deescalate the situation,
5 right?

6 A. Yes.

7 Q. And you wanted to deescalate the situation you say because
8 she appeared distraught to you, right?

9 A. At that point, yes.

10 Q. But after you exited the van she continued, you say, to be
11 belligerent, right?

12 A. Yes.

13 Q. She was screaming according to you?

14 A. She was yelling, yes.

15 Q. And she said I have a witness here, right?

16 A. Yes.

17 Q. And, in fact, her behavior didn't change in any way,
18 according to you, after you exited the van and approached her,
19 right?

20 A. No.

21 Q. And despite the fact that you say your purpose in exiting
22 the vehicle was to calm her down, you got back into the van,
23 after what you say was a 20-second effort to calm her down,
24 right?

25 A. Correct.

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D489flo3 DeMarco - direct

1 Q. And despite the fact that your 20-second effort had not
2 calmed her down, right?

3 A. Correct.

4 Q. So isn't it true that, in fact, you got out of the van and
5 you stopped Ms. Acevedo and engaged her for a longer period of
6 time?

7 A. No.

8 MR. MARUTOLLO: Objection. That's argumentative. She
9 said stopped. He's already testified that he had not stopped
10 her.

11 THE COURT: I don't know what word to use. Approached
12 her.

13 THE WITNESS: Could you repeat the question.

14 Q. Isn't it true that you detained Ms. Acevedo?

15 THE COURT: Now you switched to detained. Let's hear
16 the whole sentence.

17 MS. BORCHETTA: What I originally asked?

18 THE COURT: The way you want to ask it now.

19 Q. Isn't it true that you engaged Ms. Acevedo for a period
20 longer than 20 seconds?

21 THE COURT: I'll allow that.

22 A. No, it's not true.

23 Q. Let's talk about the CCRB investigation. The CCRB
24 substantiated an allegation against you for abuse of authority
25 related to a stop of Ms. Acevedo, right?

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DeMarco - direct

1 A. Correct.

2 Q. And I believe you had a discussion with an integrity
3 control officer about that, right?

4 A. Correct.

5 Q. You'll understand if I say ICO, I'm referring to integrity
6 control officer?

7 A. Yes.

8 Q. And you discussed with the ICO that you were being issued a
9 command discipline, right?

10 A. Correct.

11 Q. You lost one vacation day, right?

12 A. Yes.

13 Q. But your understanding is that you received that discipline
14 for failing to be more specific about things leading up to the
15 incident with Ms. Acevedo in your memo book, right?

16 A. Correct.

17 Q. I'm going to show you a document that's been marked as
18 Plaintiffs' Exhibit 9.

19 Detective, do you recognize this document?

20 A. Yes.

21 Q. What is this document?

22 A. My memo book.

23 MS. BORCHETTA: I'd move the admission of Plaintiffs'

24 9.

25 MR. MARUTOLLO: No objection, your Honor.

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DeMarco - direct

1 THE COURT: Plaintiffs' Exhibit 9 is received.
2 (Plaintiffs' Exhibit 9 received in evidence)

3 Q. It's fair to say this is an excerpt of your memo book,
4 right?

5 A. Yes.

6 Q. And would you please just read for the court --

7 A. Actually making it worse doing that.

8 THE COURT: Did she give you the paper or just the
9 screen?

10 MS. BORCHETTA: I will give you the paper. I think
11 the black is causing the ELMO to have some reading problems.

12 THE COURT: Paper would be easier.

13 Can you read it now?

14 THE WITNESS: Yes.

15 Tuesday, 5-29-07. The tour would be 1327 by 2200.
16 The assignment would be NBQ which is narcotics borough Queens.
17 1327. Present for duty at the narcotics borough Queens. 1700
18 would be en route to the VO, which is vicinity of, 114 precinct
19 in regards to buy-and-bust operation. 2200 end of tour. With
20 my signature and shield.

21 THE COURT: Okay. We're going to break now for the
22 luncheon recess and reconvene at 5 after 2 on that clock.

23 (Luncheon recess)
24
25

D489flo3

DeMarco - direct
AFTERNOON SESSION

2:13 p.m.

THE COURT: Please be seated.

Ms. Borchetta.

DIRECT EXAMINATION CONTINUED

BY MS. BORCHETTA:

Q. Good afternoon again, Detective DeMarco?

A. Good afternoon.

Q. We have just a little bit more to go through.

Before we took the lunch recess I was asking you
questions about the CCRB investigation into the encounter with
Ms. Acevedo, correct?

A. Yes.

Q. And I had asked you whether it was correct that your
understanding that you received a command discipline related to
that CCRB investigation only with respect to a memo book entry;
is that right?

A. Correct.

Q. And it is not your understanding that you received the
command discipline for improperly conducting a stop, right?A. It was -- under my understanding it was based on improperly
conducting the stop which led to a deficiency in my memo book.Q. Detective DeMarco, I'm sorry. I'm not sure I understood
your prior answer. Is it correct that it was not your
understanding that you received a command discipline for

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D489FLO3 DeMarco - direct

1 improperly conducting a stop?

2 A. No.

3 Q. That was not your understanding, correct?

4 A. Yes.

5 Q. And no superior officer ever told you in sum or substance
6 that your interaction with Ms. Acevedo rose to the level of a
7 stop, right?

8 A. Correct.

9 Q. And you were never told by anyone in the NYPD that you
10 should have handled the interaction with Ms. Acevedo
11 differently than you did, right?

12 A. Correct.

13 Q. And sitting here today you don't believe there was anything
14 you did wrong in your interaction with Ms. Acevedo, right?

15 A. Correct.

16 Q. And that's despite that the CCRB substantiated an
17 allegation against you for abuse of authority in stopping
18 Ms. Acevedo, right?

19 A. Yes.

20 Q. And am I correct that your understanding of whether a stop
21 has occurred depends on your level of suspicion?

22 A. Correct.

23 Q. And the determination to you of whether a stop occurs is
24 determined by the level of suspicion you as an officer have,
25 right?

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D489FLO3 DeMarco - direct

1 A. Yes.

2 Q. I want to turn now to supervision.

3 After handing in the 250, a UF 250 to a supervisor,
4 you have never discussed with the supervisor whether you have
5 reasonable suspicion for the documented stop, right?

6 A. Correct.

7 Q. And you have never, after handing in a UF 250 to a
8 supervisor, discussed with that supervisor the circumstances
9 leading to the stop, right?

10 A. Correct.

11 Q. And no supervisor has ever said to you in sum or substance
12 that he or she thought you didn't have reasonable suspicion to
13 conduct a stop, right?

14 A. Correct.

15 Q. You've also never discussed with a supervisor the subject
16 of racial profiling, right?

17 A. I believe I have.

18 Q. Do you recall being deposed in this case?

19 A. Yes.

20 Q. Going to hand you a transcript of that deposition.

21 This deposition was taken on January 30, 2013, right?

22 A. Yes.

23 Q. And you were under oath when you testified at this
24 deposition, right?

25 A. Yes.

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D489FLO3 DeMarco - direct

1 Q. And you told the truth, right?

2 A. Yes.

3 Q. If you could please turn to page 98.

4 MR. MARUTOLLO: Your Honor, I think this is improper
5 impeachment.

6 If the counsel starts at 97, line 20, then we'd have
7 no objection. However, there is more to this than what I
8 anticipate is coming next.

9 THE COURT: I don't know -- I don't have the document.

10 MS. BORCHETTA: 97, line 20 is what you just said,
11 Mr. Marutollo?

12 MR. MARUTOLLO: So 97 line 20 it says, Question --

13 MS. BORCHETTA: Hold on.

14 Q. Let me ask you before we turn to this page: Have you ever
15 discussed with a supervisor within the NYPD the subject of
16 racial profiling?

17 A. Yes.

18 Q. Turning now to page 98, line 16. Do you recall the
19 following question and the following answer.

20 "Q. Have you ever discussed the subject of racial profiling
21 with a supervisor within the NYPD?

22 "A. No."

23 Did you give that answer to that question?

24 MR. MARUTOLLO: Your Honor, I'd just like to again
25 restate the same objection.

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D489FLO3 DeMarco - direct

1 On page 97 from line 20 it says:

2 "Q. Did you also receive the training regarding the NYPD's
3 racial profiling policy, received it in the past year?

4 "A. Yes.

5 "Q. What was the training?

6 "A. It was discussed by myself and the training officer.

7 "Q. Was this a one-on-one meeting?

8 "A. Yes."

9 The training officer, from what I understand, is a
10 supervisory position.

11 MS. BORCHETTA: Your Honor, I would object to counsel
12 testifying. And the record is clear.

13 Q. Did you give those answers to those questions?

14 A. Yes.

15 Q. And no supervisor that you've had in the NYPD --

16 THE COURT: Isn't a training officer a supervisor?

17 THE WITNESS: In the precinct level, it's a
18 supervisor. But now in my current position as detective
19 it's -- it could be a training detective as well. So I have
20 received training in this area from a supervisor throughout my
21 career with the NYPD. But within the last year it has been
22 from a detective.

23 THE COURT: Just the last year?

24 THE WITNESS: Yes.

25 Q. Indeed, the first time that you saw the NYPD's policy

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D489FLO3 DeMarco - direct

1 regarding racial profiling, that was within the last year too,
2 right?

3 A. Yes.

4 Q. And aside from a training officer, no supervisor has ever
5 given you instructions regarding racial profiling, right?

6 A. Correct.

7 THE COURT: Pause for a moment.

8 We're ready to go again. Thank you.

9 MS. BORCHETTA: No further questions, your Honor.

10 THE COURT: Thank you, Ms. Borchetta.

11 Mr. Marutollo.

12 CROSS-EXAMINATION

13 BY MR. MARUTOLLO:

14 Q. Good afternoon, Detective DeMarco.

15 A. Good afternoon, sir.

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

17 A. This June will be starting my 16th year.

18 Q. And what's your educational background?

19 A. I have a bachelor's degree in criminal justice from
20 St. John's University.

21 Q. What's your present rank with the NYPD?

22 A. Detective.

23 Q. When were you promoted to detective?

24 A. 2007.

25 Q. And what is your current command?

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D489flo3 DeMarco - cross

1 A. Narcotics borough of Queens.

2 Q. How long have you been working in narcotics borough of
3 Queens?

4 A. Since 2005.

5 Q. What are your day-to-day duties and responsibilities in
6 narcotics borough of Queens?

7 A. Based on the day-to-day we attend tac meetings, we execute
8 search warrants. We conduct buy-and-bust operations. We try
9 and gain intel from people in the community, to gather
10 information where the drugs are being sold in that nature, and
11 we do investigations and observations.

12 Q. When you say gather intel, do you mean gather intelligence?

13 A. Yes.

14 Q. How do you gather intelligence?

15 A. From community complaints, trying to talk to people in the
16 street, seeing if they have any information about where drugs
17 are being sold, who is selling them.

18 Q. And have you learned anything about narcotics activity as a
19 result of your interactions with the community?

20 A. Yes.

21 Q. What have you learned?

22 A. (No response).

23 Q. About narcotics activity?

24 A. The general areas where they are being sold, how they are
25 being sold, people -- where they deliver, you know, the drugs

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D489flo3 DeMarco - cross

1 from, things of that nature.

2 Q. Now, as a member of the narcotics borough of Queens you
3 testified that you attend tac meetings?

4 A. Yes.

5 Q. And what again is a tac meeting?

6 A. A tac meeting is a meeting we attend before we go out to do
7 our enforcement, of buy-and-bust operations where we learn of
8 different strategies, what's going on in the neighborhood, what
9 crime trends we have to address, what tactics are being
10 discussed and actually what areas we are going to do our
11 buy-and-bust operations in.

12 Q. How often do you attend tac meetings?

13 A. Everyday.

14 Q. When in your tour do you attend these tac meetings?

15 A. Within the first two hours.

16 Q. Have you ever received training on stop, question and frisk
17 at tac meetings?

18 A. Yes.

19 Q. When was the last time you received training on stop,
20 question and frisk at a tac meeting?

21 A. Actually it was last Thursday.

22 Q. What training was discussed at last Thursday's tac meeting
23 regarding stop, question and frisk?

24 A. Our supervisor basically told us when we're out in the
25 field conducting our observations if we develop reasonable

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D489flo3 DeMarco - cross

1 suspicion to stop, question and frisk an individual we should
2 properly fill out a UF 250 and make sure we have the correct
3 basis for making the stop, question and frisk.

4 Q. Now at these tac meetings, has your supervisor ever told
5 you that you needed to complete a certain number of stops,
6 arrests or summonses?

7 A. No.

8 Q. Has any superior officer ever pressured you to make
9 unconstitutional stops?

10 A. No.

11 Q. Now turning your attention to May 29, 2007. You testified
12 that you were working in narcotics borough Queens that day,
13 correct?

14 A. Yes.

15 Q. On May 29, 2007 did you attend a tac meeting?

16 A. Yes.

17 Q. Do you remember what was discussed at that tac meeting on
18 May 29, 2007?

19 A. Yes.

20 Q. What was discussed that day?

21 A. The color of the day. What the crime patterns were in the
22 area. And the tactics discussed. What my assignment was. And
23 what locations we would be visiting on the tac plan to conduct
24 a buy-and-bust operation.

25 Q. Were you assigned to gather intelligence regarding

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D489flo3 DeMarco - cross

1 narcotics sales that day?

2 A. Yes.

3 Q. Did your supervisor tell you at a tac meeting on May 29,
4 2007 that you needed to make a certain number of stops that
5 day?

6 A. No.

7 Q. What crime patterns, if any, were discussed at the tac
8 meeting on May 29, 2007?

9 A. Robbery and burglary patterns.

10 Q. Did there come a point in time on May 29, 2007 when you saw
11 an individual who you now know to be Kristianna Acevedo?

12 A. Yes.

13 Q. Where were you when you first saw her?

14 A. I was in the passenger's seat of a mini van driving on
15 43rd Street.

16 Q. And who, if anyone, were you working with on May 29, 2007?

17 A. Detective Vizcarrondo and Detective Hawkins.

18 Q. Can you describe Detective Vizcarrondo and Detective
19 Hawkins physically?

20 A. Detective Vizcarrondo is a male Hispanic approximately
21 5/10, shaved head.

22 Q. And Detective Hawkins?

23 A. She's an African-American female approximately 5/9, black
24 hair.

25 Q. I'm sorry. Go ahead.

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D489flo3

DeMarco - cross

- 1 A. Black hair.
2 Q. Was Detective Vizcarrondo, was his head shaved in 2007?
3 A. Yes.
4 Q. And where were you seated in the vehicle?
5 A. Passenger's seat.
6 Q. And where was Detective Hawkins seated?
7 A. In the rear seat.
8 Q. Did the van have windows?
9 A. Yes.
10 Q. Were the windows tinted?
11 A. Yes, they were. Slightly.
12 Q. Could you see through the windows?
13 A. Yes.
14 Q. At the time of your encounter with Ms. Acevedo, was your
15 window up or down?
16 A. It was down.
17 Q. Were you wearing your shield?
18 A. Yes.
19 Q. Where were you wearing it?
20 A. Around my neck.
21 Q. Now where was the mini van when you first observed
22 Ms. Acevedo?
23 A. Approximately five car lengths from her.
24 Q. And it was on 43rd Street?
25 A. Yes.

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D489flo3 DeMarco - cross

1 Q. Are you familiar with the area around 43 Street?

2 A. Yes.

3 Q. How are you familiar with that area?

4 A. We've had prior knowledge of narcotics sales to undercover
5 cops in the vicinity of, in the past.

6 Q. Have you ever made drug arrests in the vicinity of the
7 location where you had interaction with Ms. Acevedo?

8 A. Yes.

9 Q. Do you remember where those arrests were?

10 A. I believe in early May.

11 Q. Of 2007?

12 A. Yes.

13 Q. Can you describe the area where you first observed
14 Ms. Acevedo?

15 A. It was mostly desolate. A lot of abandoned warehouses and
16 abandoned buildings and some active warehouses as well.

17 Q. What drew your attention to Ms. Acevedo?

18 A. She was the only one walking down the street at that time.
19 And she appeared to be looking over her shoulder as if someone
20 might have been following her.

21 Q. After you first observed Ms. Acevedo in some and substance
22 what was the first thing that you said to her?

23 A. Hi. Police. How are you doing? Can I talk to you?

24 Q. And what, if anything, did she say in response?

25 A. I believe she said I don't have time for this.

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DeMarco - cross

- 1 Q. And in some and substance what, if anything, did you say
2 next?
- 3 A. I believe I stated that I just wanted to ask her a
4 question, see if she lived in the neighborhood.
- 5 Q. And what, if anything, did she say at that point?
- 6 A. At that point she said: Fuck you. You're not a cop. And
7 began running down the street.
- 8 Q. Why did you want to see if Ms. Acevedo lived in the
9 neighborhood?
- 10 A. I thought that would be a good opportunity to take -- to
11 try and gain some intelligence to see if she was familiar with
12 the neighborhood, if she had any narcotics knowledge to offer
13 to us.
- 14 Q. At this point how did you identify yourself as a police
15 officer?
- 16 A. I said verbally police. And I had my shield around my
17 neck.
- 18 Q. Did you display your shield to her in any way?
- 19 A. Yes.
- 20 Q. How did you do that?
- 21 A. I showed it to her with my hands. I picked it up.
- 22 Q. What tone of voice were you using throughout this exchange?
- 23 A. I was calm.
- 24 Q. And why were you being calm?
- 25 A. I had no reason not to be anything else. I found that in

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D489flo3 DeMarco - cross

1 my course of talking to people, people actually talk to you
2 when you're nice to them.

3 Q. Now did you or anyone else ask to see Ms. Acevedo's
4 tattoos?

5 A. No.

6 Q. After this initial exchange what happened next?

7 A. She began running down the street.

8 Q. And I believe you testified on direct that the vehicle then
9 went in reverse?

10 A. Yes.

11 Q. Do you know why the vehicle went in reverse?

12 A. So I could talk to Ms. Acevedo.

13 Q. And why did you want to talk to her?

14 A. To let her know that I was a cop, again, and, in fact, I
15 wasn't trying to hurt her.

16 Q. Did Ms. Acevedo stop running at some point?

17 A. Yes.

18 Q. Did you observe what caused Ms. Acevedo to stop running?

19 A. She stopped when she seen the UPS truck.

20 Q. So what happened next?

21 A. Myself and Detective Hawkins exited the vehicle at which
22 time I identified myself as a police officer again and I stated
23 to her that I wanted to talk to her, to see if she lived in the
24 neighborhood.

25 Q. And what, if anything, did Ms. Acevedo say to you at this

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D489flo3

DeMarco - cross

1 point?

2 A. I don't remember exactly what she said to me but she began
3 cursing and she was belligerent towards me.4 Q. And what, if anything, did you say to Ms. Acevedo at the
5 end of this exchange?6 A. I believe I stated: Well I could see you're okay. Have a
7 nice day.

8 Q. Did you ever ask Ms. Acevedo for her ID?

9 A. No.

10 Q. Ms. Acevedo ask to see your shield?

11 A. No.

12 Q. Now going back for a moment when you exited the vehicle,
13 you testified that you exited with Detective Hawkins?

14 A. Yes.

15 Q. After exiting the vehicle, could you see and hear Detective
16 Hawkins throughout the entire encounter with Ms. Acevedo?

17 A. Yes. She was standing right next to me.

18 Q. Did you hear Detective Hawkins say, "When you hear police
19 you stop" to Ms. Acevedo?

20 A. No.

21 Q. Did Detective Hawkins pull Ms. Acevedo out of the UPS truck
22 and shake her?

23 A. No.

24 Q. Did Detective Hawkins hit Ms. Acevedo's head against the
25 side of the UPS truck?

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DeMarco - cross

- 1 A. No.
2 Q. Did Detective Hawkins hold Ms. Acevedo by her wrist?
3 A. No.
4 Q. Did you ever search Ms. Acevedo's bag?
5 A. No.
6 Q. Did Detective Vizcarrondo or Detective Hawkins ever search
7 Ms. Acevedo's bag?
8 A. No.
9 Q. Did you hear Detective Hawkins or Detective Vizcarrondo ask
10 Ms. Acevedo for her ID?
11 A. No, I did not.
12 Q. Did Detective Hawkins search Ms. Acevedo's shorts or her
13 shorts pockets?
14 A. No.
15 Q. Did you or any of the other officers say that Ms. Acevedo
16 forgot to take her medication?
17 A. No.
18 Q. Did you touch Ms. Acevedo at any point?
19 A. No.
20 Q. Did you observe any of the other officers touching her at
21 any point?
22 A. No.
23 Q. Did you frisk or search Ms. Acevedo at any point?
24 A. No.
25 Q. Did you observe the other officers frisk or search

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DeMarco - cross

1 Ms. Acevedo?

2 A. No.

3 Q. At any point during this encounter did you or any of the
4 other officers ever ask Ms. Acevedo to stop?

5 A. No.

6 Q. You testified earlier during direct examination that you
7 did not put an entry regarding the Acevedo incident in your
8 memo book; is that right?

9 A. That's correct.

10 Q. In retrospect do you believe that you should have?

11 A. Yes.

12 Q. Why is that?

13 A. Couldn't hurt to have more detailed information, especially
14 for court purposes.15 Q. Now you also testified regarding, during your direct
16 examination, the discipline you received for this incident?

17 A. Yes.

18 Q. Have you received any discipline related to stop, question
19 or frisk since this incident in 2007?

20 A. No.

21 Q. Turning your attention to training. Have you received any
22 training on stop, question and frisk throughout your NYPD
23 career?

24 A. Yes.

25 Q. What kind of training have you received from the NYPD

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D489flo3 DeMarco - cross

1 related to stop, question and frisk?

2 A. Received training in the police academy, add Rodman's Neck.

3 At the Brooklyn Army Terminal. Throughout role calls.

4 Throughout my training officers. And on the street from

5 seasoned officers and supervisors.

6 Q. Now turning your attention to the racial profiling policy

7 that was discussed on direct.

8 How long have you been aware of the NYPD's policy

9 prohibiting racial profiling?

10 A. Since I became a New York City police officer.

11 Q. Why did you testify at your deposition that the first time

12 that you saw the NYPD policy related to racial profiling in

13 writing was in 2012?

14 A. Because I got confused with the updated version and the

15 actual interim order and the operations order.

16 Q. Are you referring to the 2002 order?

17 A. Yes.

18 Q. And are you then also referring to you got confused with

19 the 2012 order --

20 A. Yes.

21 Q. -- when you received that?

22 Did you receive the 2012 order regarding prohibiting

23 racial profiling?

24 A. Yes, I did.

25 Q. And what do you understand the NYPD's policy prohibiting

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D489flo3 DeMarco - cross

1 racial profiling to be?

2 A. That you cannot stop someone solely based on race, color,
3 ethnicity, sexual orientation or gender.

4 Q. At any point during your career did you ever feel pressured
5 to make an unconstitutional stop?

6 A. No.

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

8 THE COURT: Thank you.

9 Anything further for this witness?

10 MS. BORCHETTA: Just briefly, your Honor.

11 REDIRECT EXAMINATION

12 BY MS. BORCHETTA:

13 Q. Detective DeMarco, you've just testified about training you
14 received regarding stop and frisk at tac meetings, correct?

15 A. Correct.

16 Q. But the only training you ever got at those tac meetings
17 had to do with instructions that if you conduct a stop based on
18 reasonable suspicion you should complete a UF 250, right?

19 A. Correct?

20 Q. That was the extent of those trainings?

21 A. Yes. And when not to fill out a UF 250. What level of
22 suspicion you need to actually stop, question and frisk an
23 individual.

24 Q. Well, you still have your deposition in front of you,
25 correct?

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D489flo3

DeMarco - redirect

1 A. Yes.

2 Q. Turn to page 90. Beginning at page 90, line 4.

3 "Q. Did your supervisor ever discuss during those tac meetings
4 the appropriate basis for doing a stop?

5 "A. Yes.

6 "Q. Can you give me an example of that?

7 "Again, can you give me examples of a supervisor
8 giving you instructions about the basis for stops at a tac
9 meeting?

10 "A. I can't provide specific, you know, specifics.

11 "Q. Can you give me any example of when that's happened?

12 "A. During the tactics discussed and training would be, you
13 know, when to properly fill out a UF 250 based on reasonable
14 suspicion.15 "Q. When you say it was about when to properly fill out a
16 UF 250, what do you mean?

17 "A. Certain levels of suspicion to fill out a 250.

18 "Q. Have you ever received instructions from a supervisor
19 during a tac meeting about what type of interaction constitutes
20 a stop?

21 "A. I would say yes.

22 "Q. Can you give me an example?

23 "A. The only thing I could think of off the top of my head
24 would be a stop based on reasonable suspicion would require a
25 UF 250 be prepared.

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D489flo3

DeMarco - redirect

1 "Q. So the only example you can think of right now of a
2 supervisor giving you instructions on the type of activity that
3 constitutes a stop is a supervisor giving you instructions that
4 a stop based on reasonable suspicion should lead to completion
5 of a 250?

6 "A. Yes."

7 You gave those answers to those questions, right?

8 A. Yes.

9 Q. You testified just now about Ms. Acevedo looking over her
10 shoulder, right?

11 A. Yes.

12 Q. And, in fact, your attention was brought to her because of
13 her looking over her shoulder because you thought someone might
14 be following her, right?

15 MR. MARUTOLLO: Objection. I think that
16 mischaracterizes his testimony. I think that was one factor.

17 THE COURT: That was one factor. That's fair.

18 Q. But you thought that someone might be following her, right?

19 A. Based on how she was looking over her shoulder, yes.

20 Q. And then you, in an unmarked van, in plain clothes, began
21 speaking to her, right?

22 A. Yes.

23 Q. And she took off running, right?

24 A. After I said I was police and showed her my shield, yes.

25 Q. But you already thought that someone might be following

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D489flo3

DeMarco - redirect

1 her, right?

2 A. Yes.

3 Q. So she might be afraid, right?

4 A. She could have, but.

5 MR. MARUTOLLO: Objection, your Honor.

6 THE COURT: Counsel is asking him to read her mind.

7 But he is a policeman.

8 If somebody thinks they're being followed, they're
9 generally a little worried about that, right?

10 THE WITNESS: Correct.

11 But after I verbally said to her that I was police and
12 I showed her my shield, if she was being followed, that could
13 have been the time to turn around and say someone is following
14 me. But she didn't do that.

15 Q. My question was actually for what you thought at the time.
16 Did you believe that she appeared afraid at the time?

17 A. I wouldn't necessarily say afraid, but it appeared to me
18 that she was looking over her shoulder at someone that could
19 have been following her.

20 Q. And she was in a desolate area, right?

21 A. Yes.

22 Q. And do you recall testifying about whether you've had any
23 pressure to conduct certain amounts of activity?

24 A. Yes.

25 Q. But no supervisor in the NYPD has ever told you that quotas

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1 are not allowed, right?

2 A. Correct.

3 Q. And no supervisor in the NYPD has ever told you that
4 superiors are not allowed to require their subordinates to
5 conduct a certain amount of activity in a certain amount of
6 time, right?

7 A. Yes.

8 MS. BORCHETTA: No further questions, your Honor.

9 THE COURT: Okay.

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

11 THE COURT: Thank you.

12 THE WITNESS: You want to take these back?

13 MS. BORCHETTA: I will. Thank you.

14 (Witness excused)

15 THE COURT: Your next witness.

16 MS. MARTINI: Plaintiffs call Officer Daniel Leek.

17 DANIEL LEEK,

18 called as a witness by the Plaintiffs,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. MARTINI:

22 Q. Good afternoon, Officer Leek.

23 A. Good afternoon.

24 Q. You joined the NYPD in 2008, correct?

25 A. Yes.

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D489flo3 Leek - direct

- 1 Q. And in February 2011 you worked in the 23rd precinct?
2 A. Yes.
3 Q. You were assigned to the tracer unit in 2011?
4 A. That's correct.
5 Q. The tracer unit focuses on quality of life violations,
6 correct?
7 A. It's one of the focus points, yes.
8 Q. You stopped Clive Lino on February 24, 2011, correct?
9 A. Yes.
10 Q. And on that night you were conducting a directed patrol?
11 A. Yes.
12 Q. In the subway station located at East 103rd Street and
13 Lexington Avenue?
14 A. That's correct.
15 Q. You were patrolling that night with your former partner,
16 officer Edgar Figueroa, correct?
17 A. That's correct.
18 Q. You observed Mr. Lino enter the turnstile at the station?
19 A. Yes.
20 Q. You observed him pay the fare and then proceed to the
21 subway platform, correct?
22 A. Yes.
23 Q. Then you and Officer Figueroa followed him downstairs to
24 the platform, correct?
25 A. Yes.

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D489flo3 Leek - direct

1 Q. You approached Mr. Lino on the platform and stopped him,
2 right?

3 A. Yes. I approached him and I asked him a question.

4 Q. When you approached Mr. Lino you were in front of him?

5 A. Yes.

6 Q. And Officer Figueroa was behind him?

7 A. Officer Figueroa went around him and ended up behind him,
8 yes.

9 Q. So Officer Figueroa was behind him?

10 A. Yes.

11 Q. You stopped Mr. Lino because you believed he fit the
12 description of a homicide suspect, correct?

13 A. Yes.

14 Q. And you were informed of the suspect from a poster?

15 A. A wanted request for information.

16 THE COURT: I'm sorry?

17 Forgive me totally, but I don't remember. Did we hear
18 from Mr. Lino?

19 MS. MARTINI: We did, your Honor.

20 THE COURT: I don't remember.

21 MS. MARTINI: Last Monday afternoon he testified after
22 Ms. Acevedo.

23 THE COURT: I remember Ms. Acevedo and tell me
24 something about him.

25 MS. MARTINI: Mr. Lino was stopped on the subway

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D489flo3 Leek - direct

1 platform. He had two stops. He had the cellphone -- the
2 officer's cellphone rang during the third stop. There was a
3 second stop outside of a Chinese restaurant. He went into the
4 housing at the Washington houses. Mr. Kunz asked him a few
5 questions.

6 MS. COOKE: Pelle Pelle jacket.

7 THE COURT: That helped a little. I can picture.

8 MS. MARTINI: Would a photo help?

9 THE COURT: I don't remember too much about it. It
10 was a whole week ago.

11 MS. MARTINI: Yes, your Honor.

12 THE COURT: And you're going over -- there were three
13 different stops he testified to?

14 MS. MARTINI: Two -- yes. And this is one encounter
15 that Officer Leek was present for.

16 THE COURT: On a subway platform.

17 MS. MARTINI: Yes. It began on a subway platform.

18 THE COURT: Okay.

19 THE WITNESS: Can you repeat your last question. I
20 forgot.

21 MS. MARTINI: Sure.

22 Q. You were informed of the suspect from a poster?

23 A. Yes. A request for information wanted poster that was
24 issued to us.

25 Q. Could you speak up a little bit.

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D489flo3 Leek - direct

1 A. A request for information wanted poster that was given to
2 us.

3 Q. And you were given the poster at your beginning of your
4 tour that day?

5 A. Yes.

6 Q. And your sergeant, Sergeant Shirvis gave you the poster?

7 A. Yes.

8 Q. Officer Leek, I'm handing you what's been marked as
9 Plaintiffs' Trial Exhibit 187. This is a copy of the poster
10 Sergeant Shirvis gave you at the roll call that day, correct?

11 A. Yes, it is.

12 MS. MARTINI: Your Honor, I'd like to move Plaintiffs'
13 Exhibit Trial Exhibit 187 into evidence.

14 MR. KUNZ: No objection.

15 THE COURT: 187 is received.

16 (Plaintiffs' Exhibit 187 received in evidence)

17 Q. The poster says that the crime took place on February 10,
18 2011, correct?

19 A. Yes.

20 Q. That was a full 14 days, two weeks before the day that you
21 stopped Mr. Lino, correct?

22 A. Yes.

23 Q. And the poster says the crime occurred on 108th Street and
24 Madison Avenue; is that correct?

25 A. Yes.

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- 1 Q. That's seven blocks away from the station at 103rd Street
2 and Lexington Avenue?
3 A. Give or take. It's two avenues and about six blocks.
4 Q. Two avenues and six blocks you said?
5 A. Yeah.
6 Q. And the description of the suspect provided in the poster
7 says male black approximately five-foot-nine to six-foot tall,
8 correct?
9 A. Yes.
10 Q. And it shows a photo of the individual and two photos of a
11 jacket; is that correct?
12 A. Yes.
13 Q. And no other description of the suspect is provided in the
14 poster, correct?
15 A. No. There is no other description. That's correct.
16 Q. And the poster states the above male black approximately
17 five-foot-nine to six-foot tall wearing the above jacket was
18 involved in a homicide, correct?
19 A. Yes.
20 Q. When Sergeant Shirvis gave you the poster he advised you to
21 read it and keep a copy, correct?
22 A. Yes.
23 Q. He did not say anything else when he gave you the poster,
24 correct?
25 A. No. That was it.

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- 1 Q. And you were not given any other details about the crime or
2 the suspect description, correct?
3 A. Just the location was -- what was stated on the poster was
4 just reaffirmed, where the location was.
5 Q. You and Officer Figueroa both frisked Mr. Lino, correct?
6 A. Yes.
7 Q. And you frisked him on the train platform, right?
8 A. Yes.
9 Q. And according to you Mr. Lino consented to the frisk,
10 correct?
11 A. Yes. That's correct.
12 Q. But Mr. Lino was protesting the stop, correct?
13 A. Yes, he was.
14 Q. He was speaking loudly?
15 A. Yes.
16 Q. And he was hostile?
17 A. Yes, he was.
18 Q. And according to you he was irate?
19 A. Yes, he was.
20 Q. And he didn't want to listen to your questions?
21 A. That's correct.
22 Q. You claim you feared for your safety because you stopped
23 Mr. Lino in reference to a violent crime, correct?
24 A. Yes.
25 Q. But Mr. Lino didn't do anything prior to you frisking him

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1 that made you fear for his safety -- fear for your safety,
2 correct?

3 A. Not to my knowledge.

4 Q. Right. So to your knowledge at that time --

5 A. You asked me if he did anything that would make me fear for
6 my safety. To my knowledge, no, he did not.

7 Q. Before you frisked him, correct?

8 A. Yes.

9 THE COURT: Did you frisk him anyway?

10 THE WITNESS: I mean I can explain why I frisked him
11 but that's not what she asked me.

12 THE COURT: You're right.

13 Q. And during the frisk Mr. Lino kept his hands to his side,
14 correct?

15 A. Yes.

16 Q. And you didn't find anything when you frisked him?

17 A. No, I did not.

18 Q. And after you and Officer Figueroa frisked him you made him
19 exit the train station, correct?

20 A. Yes.

21 Q. You told him he had to go upstairs, correct?

22 A. Yes.

23 Q. Mr. Lino did not want to go upstairs, did he?

24 A. No, he did not.

25 Q. In fact, he asked you if he was under arrest?

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1 A. Yes, he did.

2 THE COURT: And the answer was.

3 THE WITNESS: He was not under arrest at that time.

4 THE COURT: Why did he have to leave the train
5 station.

6 THE WITNESS: I can explain but it's a detailed
7 explanation.

8 THE COURT: It is? Can you make it simple?

9 THE WITNESS: Basically it came down to I wanted to
10 show him a copy of the poster, why we stopped him. And there
11 was a vehicle upstairs waiting for us. I couldn't leave him in
12 the station with my partner because our radios don't work
13 downstairs, and I wouldn't leave any partner alone with him.
14 So all three of us exited the train station.

15 I tried to attain a copy of the poster to show him. I
16 was unable to do that.

17 I took his information and sent him on his way after
18 that.

19 And we put him back -- I didn't make him pay for the
20 train again. We put him back on the train. That's it in a
21 nutshell.

22 Q. So I think you just said that you took him outside because
23 you wanted to get a copy of the poster?

24 A. That's correct.

25 Q. The poster that's shown here in the court today?

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1 A. That's correct.

2 Q. To show Mr. Lino why you stopped him, correct?

3 A. Yes. That's correct.

4 Q. But Mr. Lino didn't want you to show him why you stopped
5 him, correct?

6 A. No, he didn't.

7 Q. He didn't ask to be taken outside of the train station,
8 correct?

9 A. No, he didn't.

10 Q. And he didn't ask to see the poster?

11 A. No, he didn't.

12 Q. You went to great lengths to show Mr. Lino why you stopped
13 him though, correct?

14 A. Yes, I did.

15 Q. Mr. Lino was upset?

16 A. Yes, he was.

17 Q. So instead of letting him go on his way after you frisked
18 him and didn't find anything, you made him leave the train
19 station, correct?

20 A. As part of our investigation, yes.

21 Q. You made him walk up several flights of stairs?

22 THE COURT: I'm sorry. Why was it part of your
23 investigation?

24 THE WITNESS: We were still trying to determine if he
25 had any information in regards to this, or if he knew persons,

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1 or if he was, in fact, that person.

2 THE COURT: You didn't determine by then that he
3 wasn't that person?

4 THE WITNESS: No, not at that point.

5 THE COURT: And showing him the poster would help to
6 determine that he wasn't that person?

7 THE WITNESS: In my opinion it might have.

8 THE COURT: How is that?

9 Why would showing him the poster help you determine
10 whether he was that person?

11 THE WITNESS: Well it was -- it was a request for
12 information. If you read the top heading, it's information
13 needed regarding a homicide, if he knew something about it or
14 if he was involved in any way. The poster might help him
15 recall that. That was basically what I was trying to get at.

16 Q. So once you got upstairs outside of the train platform you
17 went to a patrol van that was parked nearby to see if you could
18 get a copy of the poster, correct?

19 A. Yes.

20 Q. The patrol van was about 30 feet away?

21 A. Yes.

22 Q. And Sergeant Shirvis was inside the patrol van, correct?

23 A. Yes, he was.

24 Q. Sergeant Shirvis was the same sergeant that gave you the
25 poster earlier in that day at the roll call, correct?

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1 A. Yes.

2 Q. And you told Sergeant Shirvis in the van that you had
3 stopped someone, correct?

4 A. Yes.

5 (Continued on next page)

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D488FLO4 Leek - direct

1 Q. You didn't ask Sergeant Shirvis if Mr. Lino was the man
2 wanted in reference to the homicide, did you?

3 A. No, I did not.

4 Q. You didn't ask Sergeant Shirvis to walk 30 feet over to
5 where you had Mr. Lino detained in reference to the homicide to
6 have Sergeant Shirvis confirm whether or not he was the
7 suspect?

8 A. No, I did not.

9 Q. In fact, to your knowledge, Sergeant Shirvis never saw Mr.
10 Lino during the stop, correct?

11 A. Correct.

12 Q. And you didn't call anyone while were you in the van to
13 find out further information, correct?

14 A. No, I did not.

15 Q. You didn't take Mr. Lino into the precinct for questioning?

16 A. No, I did not.

17 Q. Your entire encounter with Mr. Lino took approximately 15
18 to 20 minutes, correct?

19 A. Estimated. I didn't look my watch at that time, but yes, I
20 would say about 15, 20 minutes.

21 Q. You believe you had reasonable suspicion to stop Mr. Lino,
22 correct?

23 A. Yes.

24 Q. You're aware, are you not, that Mr. Lino filed a CCRB
25 complaint against you?

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D488FLO4 Leek - direct

1 A. Yes, I am.

2 Q. You were informed of the results of the CCRB's
3 investigation, correct?

4 A. Yes.

5 Q. You received a letter from the CCRB through the department
6 mail, correct?

7 A. Yes.

8 Q. Officer Leek, I would like to show you what has been marked
9 as Plaintiffs' Trial Exhibit 217.

10 This is a copy of the letter you received from the
11 CCRB, correct?

12 A. Yes.

13 MS. MARTINI: I would like to move Plaintiffs' Trial
14 Exhibit 217 into evidence.

15 MR. KUNZ: No objection.

16 THE COURT: 217 is received.

17 (Plaintiffs' Exhibit 217 received in evidence)

18 Q. Officer Leek, after you received this letter, you placed it
19 in your locker, correct?

20 A. Yes.

21 Q. In fact, six months after receiving the letter, at the time
22 of your deposition, the letter was still in your locker,
23 correct?

24 A. Yes. So far as I know, yes.

25 Q. Are you aware that when the CCRB substantiates a complaint

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1 against an officer, it can make recommendations as to whether
2 or not the officer should be disciplined or instructed?

3 A. Yes. It states that in the letter, I believe.

4 Q. Looking at the first page of the letter, do you see where
5 it says "charges" next to substantiated under subheading A?

6 A. Yes.

7 Q. If you turn to the second page of the letter. Do you see
8 where it says that, "The CCRB is forwarding this case to the
9 police commissioner and the department advocate's office of the
10 New York City Police Department, which is responsible for
11 prosecuting administrative charges against police officers"?

12 A. Yes.

13 Q. But your supervisor never discussed this letter with you,
14 correct?

15 A. No, he did not.

16 Q. In fact, no one from the NYPD ever discussed this letter
17 with you, correct?

18 A. This letter? No, no one did.

19 Q. No administrative charges were brought against you in
20 regard to this incident with Mr. Lino, correct?

21 A. Not to my knowledge.

22 Q. You weren't reprimanded in any way?

23 A. Not up until this point, no.

24 Q. You weren't given any training?

25 A. Training with regards to?

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D488FLO4 Leek - direct

- 1 Q. Training in response to the CCRB's substantiated finding
2 related to the incident with Mr. Lino?
3 A. This particular CCRB, no.
4 Q. You weren't put on monitoring as a result of Mr. Lino's
5 complaint or the CCRB findings?
6 A. As a result of this CCRB? No. I was on monitoring, but
7 not as a result of this CCRB.
8 Q. Sitting here today, it's your position that you had
9 reasonable suspicion to stop Mr. Lino, correct?
10 A. Yes.
11 Q. The NYPD has what you call performance objectives, correct?
12 A. Yes.
13 Q. These are the same as performance goals, correct?
14 A. Similar, yes.
15 Q. And you would describe these as certain criteria of
16 productivity that they expect you to reach within any given
17 period of time?
18 A. Yes.
19 Q. An example of a performance objective would be issuing a
20 certain number of summonses in a certain period of time, right?
21 A. Not a specific number, but a certain number, yes.
22 Q. A certain number?
23 A. Yes.
24 Q. Officer Leek, I am showing you what has been marked as
25 Plaintiffs' Trial Exhibit 219. This is a copy of your monthly

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1 performance report for February and March 2011, correct? Take
2 a minute to look at it.

3 A. You gave me two copies.

4 Q. Thank you. I will hang on to one.

5 A. Yeah. That's correct.

6 MS. MARTINI: I would like to move Plaintiffs' Trial
7 Exhibit 219 into evidence.

8 MR. KUNZ: No objection.

9 THE COURT: 219 is received.

10 (Plaintiffs' Exhibit 219 received in evidence)

11 Q. Looking here at the first page of your monthly performance
12 report, it shows how many summonses you issued within a certain
13 period of time, correct?

14 A. Yes.

15 Q. Here being the time period being a month, correct?

16 A. Yes.

17 Q. It shows how many stop, question and frisks you did per
18 month also, correct?

19 A. For that month, yes.

20 Q. Looking here in February 2011, it says you have conducted
21 14 stop and frisks, is that correct?

22 A. Yes.

23 Q. And looking to March of 2011, it says you have conducted
24 13, is that correct?

25 A. Yes.

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D488FLO4 Leek - direct

- 1 Q. This report does not include any details about the stop and
2 frisk other than the number that you did, correct?
3 A. Yes.
4 Q. Turning to the last page of this exhibit.
5 A. Which last page, February or March?
6 Q. The last page of the packet which is numbered at the bottom
7 23834?
8 A. I've got it.
9 Q. Do you see where it says, "To be completed by police
10 officer, list significant achievements"?
11 A. Yes.
12 Q. Under the box entitled "declared condition," there are a
13 series of lines indicating how many vertical patrols you
14 completed that month and how many UF-250s you completed that
15 month, correct?
16 A. Yes.
17 Q. And 93Q here, that means other report prepared, correct?
18 A. Yeah. It's a radio code for UF-250.
19 Q. So the 93Q is referring to the fact that a UF-250 was
20 prepared?
21 A. Yes.
22 Q. So this box here also lists the number of UF-250 reports
23 filled out during the time period March 2011?
24 A. Which box?
25 Q. This box under declared condition where it says 6 and 7?

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- 1 A. Yes. That's the tally for that week, the dates are to the
2 left.
- 3 Q. There is not any substantive information about the stop
4 included in this list of significant achievements, correct?
- 5 A. No, there is not.
- 6 Q. The only information included is the type of enforcement
7 activity and the number completed, correct?
- 8 A. Yes.
- 9 Q. And the numbers here indicate that you did 41 vertical
10 patrols and 13 stop, question and frisks in March 2011?
- 11 A. I have to look at the front, but I believe so, yes. Yes,
12 that's correct.
- 13 Q. To the right of that box there are several numbers,
14 referred to as the supervisor's quarterly rating, correct?
- 15 A. Yes.
- 16 Q. And here the number 3 is circled, correct?
- 17 A. Yes.
- 18 Q. That's the highest rating available for selection, correct?
- 19 A. On that document, yes.
- 20 Q. Do you see toward the bottom where it says, "This
21 performance report and future conditions to be addressed were
22 discussed with officer on April 2, 2011"?
- 23 A. Yes. I see it.
- 24 Q. In 2011, your supervisor regularly met with you to go over
25 this monthly performance report, correct?

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Leek - direct

- 1 A. Yes.
- 2 Q. But when you and he discussed it, he never discussed with
3 you the substance of a particular UF-250 summons or arrest
4 listed on a report, correct?
- 5 A. Which time? At the time you're referencing on the bottom
6 of the date or on a daily basis?
- 7 Q. At any time when your supervisor met with you to go over
8 your monthly performance report?
- 9 A. So repeat the question now that I know what day you're
10 referring to.
- 11 Q. When you and he discussed your monthly performance report,
12 he never discussed with you the substance of a particular
13 UF-250 summons or arrest listed on the report?
- 14 A. No. Not a particular one, no.
- 15 Q. Officer Leek, you joined the NYPD because you have an
16 interest in law enforcement, correct?
- 17 A. That's correct.
- 18 Q. And you understand that racial profiling is against the
19 law, right?
- 20 A. Yes.
- 21 Q. And you're aware that stopping an individual without
22 reasonable suspicion is also against the law, correct?
- 23 A. Yes.
- 24 Q. You were trained on these subjects by the NYPD, correct?
- 25 A. Yes, I was.

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D488FLO4 Leek - direct

- 1 Q. But if you observed a fellow police officer stop someone
2 for no reason at all, you wouldn't tell a supervisor, correct?
3 A. If I had time to address it, I would reference it with that
4 officer first.
5 Q. But you wouldn't tell a supervisor?
6 A. If I was questioned about it, I would.
7 Q. So you wouldn't tell a supervisor unless the supervisor
8 independently asked you about it, correct?
9 A. It's not my stop. So yes.
10 Q. If you knew that a fellow police officer was racially
11 profiling, you also wouldn't tell a supervisor, correct?
12 A. If I was asked about it, I would.
13 Q. Go ahead. I think I cut you off accidentally. Could you
14 repeat your answer?
15 A. If I was asked about it, I would.
16 Q. If you witnessed another officer use a racial slur or
17 epithet, you wouldn't tell a supervisor either, would you?
18 A. If I was asked about it, I would.
19 Q. Both you and Officer Figueroa gave Mr. Lino your names and
20 shield numbers, correct?
21 A. Yes.
22 Q. But if you witnessed another officer refuse to give his
23 name or shield number, you wouldn't report it, correct?
24 A. I would discuss it with that officer.
25 Q. You wouldn't tell a supervisor?

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1 A. If I was asked about it, I would.

2 MS. MARTINI: No further questions.

3 THE COURT: Mr. Kunz.

4 CROSS-EXAMINATION

5 BY MR. KUNZ:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. Before we get into the incident, I wonder if you could tell
9 the Court a little bit about your educational background?

10 A. Criminal justice degree, associate's degree in criminal
11 justice.

12 Q. What sort of work did you do before you joined the NYPD?

13 A. I was a public safety officer for the town of Huntington
14 and in the U.S. military for eight years.

15 Q. Could you briefly walk the Court through your various
16 assignments with the NYPD?

17 A. When I first was assigned, I was to assigned to 115
18 precinct in Queens. I was part of an impact unit. I worked
19 there for 18 months. I was transferred to the 32 precinct in
20 Harlem, also part of an impact unit. I worked there for an
21 additional seven and a half months. And then I was transferred
22 to the 23rd Precinct, where I started out as a tracer unit, and
23 I moved on to patrol in the same precinct.

24 Q. Could you briefly tell the Court what a tracer unit does?

25 A. A tracer unit basically focuses on quality-of-life crimes

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1 and high crime areas. We don't respond to radio runs, but we
2 can still do basic policing enforcement in the areas that we
3 patrol.

4 Q. On February 24, 2011, what particular tour were you
5 working?

6 A. I believe it was the 1600, which is 4 p.m. to midnight 35.

7 Q. Can you tell the Court what neighborhood is covered by the
8 23rd Precinct?

9 A. East Harlem.

10 Q. Please tell the Court what that area is like.

11 A. It consists of two hospitals, 13 housing projects, various
12 schools, public transportation, as far as subway and MTA
13 transit.

14 Q. How about the mix of residential and commercial, what is
15 the area like?

16 A. Mostly avenues that run north/south is a commercial area.
17 Most of the east/west are residential blocks. It's a small
18 area. It's from the north end of 96th Street to the south end
19 of 115th Street, from Fifth Avenue to the river. It's actually
20 a very small precinct.

21 Q. When you were working in the tracer unit in February of
22 2011, were you aware of the crime conditions going on in the
23 area?

24 A. Yes.

25 Q. How did you become aware of the crime conditions that were

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1 going on in the area?

2 A. We would be periodically briefed at roll call, at the start
3 of roll call, a sergeant would tell us different factors that
4 were going on in the precinct during the day or at night.
5 Also, in our roll call room there is a map, I think currently
6 they actually put up a flat screen TV instead of the old pin
7 maps, and it would show violent crime areas, robberies,
8 homicides, shootings, any major crimes, strictly focused on our
9 precinct.

10 Q. So other than being briefed at roll call and looking at
11 these pin maps, was there any other way that you became aware
12 of crime conditions going on in the 23rd Precinct?

13 A. Interaction with either the public or interaction with
14 other officers, different tours, we would speak to each other
15 on occasion or in passing, hey, this happened here or that
16 happened there, and it would be discussed that way.

17 Q. You just said interaction with members of the public.
18 Could you tell the Court a little bit about that?

19 A. Yeah. I will give you an example. Security at Mt. Sinai
20 Hospital, which we cover, they have their own private security,
21 but they are very good with us, and they will tell us if they
22 are having problems, if something is going on or if there are
23 things for us to look out for, and vice versa. They are very
24 forward with sharing information with us and let us know, as
25 well as different bodega owners that we speak to.

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1 Q. Now, how would your knowledge of crime conditions affect
2 the way you would go about your daily activities?

3 A. It would help us to focus on certain locations. Obviously,
4 if there is nothing going on at 96th Street and Lexington
5 Avenue, we are not going to stand there all night and focus on
6 that area. We are going to go to a location where there is
7 more incidents or pattern locations or high traffic locations.

8 Q. Now, on direct examination you were asked some questions
9 about the proximity of the location of the shooting to the
10 location where you encountered Mr. Clive Lino. Do you remember
11 being asked those questions?

12 A. Yes.

13 Q. How far away did you say it was, about?

14 A. Two avenues and about five, six blocks.

15 Q. In your experience as a police officer in the 23rd
16 Precinct, does a criminal, after they commit a crime, stay in
17 the direct vicinity where they committed the crime?

18 A. No. Generally, they flee because they know we are
19 responding to that location.

20 Q. Do you have any personal experience with that sort of
21 incident?

22 A. Yes. If I could give an example?

23 THE COURT: Sure.

24 A. Recently we had a radio run of a gunpoint robbery in, I
25 believe it was in June, and the call came over as two males,

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1 they robbed two males at gunpoint at 106 and Madison. I was
2 coming up from Park Avenue to 106 Street. The robbery would
3 have been to my left so I made a right. I went another block
4 over, and the description of the two males fit the description
5 of two males I observed sitting at a bus stop. And it was 6
6 a.m. on a Saturday morning, not a lot of people in the bus
7 stop, and they were at 106 and Lex, which is a good two avenues
8 over, and this was a matter of minutes from the time the call
9 came over. And they fit the description to a T, clothing,
10 height, weight, it was spot on to the information we got over
11 the radio.

12 Q. So what did you do?

13 A. Myself and my partner, I was driving an RMP. I pulled up
14 in front of the bus stop. Another RMP pulled up behind us. We
15 exited and went to stop the male. One male, he pushed
16 through --

17 MS. MARTINI: Objection. I think we are getting far
18 afield from the scope of this witness's testimony at this
19 trial.

20 THE COURT: Is he not describing a stop?

21 MR. KUNZ: He is describing a stop and how in his
22 experience he can apprehend someone --

23 MS. MARTINI: Not this stop.

24 THE COURT: Not this stop, but a stop. That in his
25 experience what?

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1 MR. KUNZ: In his experience, you can find a suspect
2 of a crime several blocks away from where the crime was
3 committed.

4 THE COURT: I will allow it. He asked me if he could
5 give an example, and I said yes. So he can finish.

6 MR. KUNZ: We will finish up quickly for the sake of
7 time.

8 Q. Were the men apprehended?

9 A. Yes.

10 Q. Were they identified by the victims as the perpetrators?

11 A. Yes, they were.

12 Q. Now, focusing on this incident, the stop of Mr. Clive Lino,
13 was there any reason that you thought a person who committed a
14 homicide or was involved in the commission of a homicide on
15 108th and Madison might be at the train station at 103rd and
16 Lexington?

17 A. It's a five minute walk and it's a main thoroughfare. It's
18 a transit location. There's two transit locations from there.
19 There is 110 and Lex and 103 and Lex. So you pretty much have
20 a choice of going in either direction. That's why we would be
21 at that location. It's a high traffic area, as far as
22 pedestrian traffic.

23 Q. So you were in uniform on the day of the stop, correct?

24 A. Yes.

25 Q. You were working with Officer Figueroa?

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Leek - cross

1 A. Yes.

2 Q. Did you normally work with Officer Figueroa?

3 A. Yes.

4 Q. How often?

5 A. As far as the tracer unit, every time we were out we worked
6 together.7 Q. About how long had you been working together at the time of
8 the incident?

9 A. At least three years.

10 Q. Would the two of you have similar assignments during the
11 times you worked together?12 A. Not the same assignments. But the posts are solo posts,
13 but your adjoining post you get to work with. If you want to
14 do any kind of enforcement or stopping of people, you have a
15 partner, so you're not working by yourself.

16 Q. So if you were on a foot post, he was on a foot post?

17 A. Not my foot post, but an adjoining foot post.

18 Q. If you were in a vehicle, he would be in a vehicle?

19 A. Yes.

20 Q. So you said you attended a roll call that morning?

21 A. Yes, afternoon.

22 Q. What happened during the roll call?

23 A. Assignments are given out. We are briefed on the color of
24 the day, the return date for criminal court summonses, and
25 assignments and any conditions. And then, for example,

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1 anything that's pertinent, you know, that needs to be
2 addressed, is given out at that time.

3 Q. The wanted poster --

4 A. 187 I think was the number on the bottom.

5 MS. MARTINI: Here it is.

6 Q. I think you testified at the roll call is when you received
7 this wanted poster?

8 A. Yes.

9 Q. Could you explain to the Court what the pictures in the
10 wanted poster show?

11 A. Yeah. The first two pictures, the center picture and the
12 picture to the left, are just stock photos of a Pelle Pelle
13 jacket, a red Pelle Pelle jacket. They are not the actual
14 photos of the jacket.

15 The third picture to the right is a security camera
16 footage of the suspect leaving the scene of the shooting that's
17 noted on the date and time and in the text below the pictures.

18 Q. So when you were given this poster at the roll call, was
19 that your understanding of what the picture showed?

20 A. Yes.

21 Q. Looking at the photograph on the right, I think that's the
22 one you described as being an actual crime scene photograph?

23 A. Yes.

24 Q. Could you explain to the Court what you took away from that
25 photograph?

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D488FLO4 Leek - cross

1 A. Well, obviously, the main point is the color and style of
2 the jacket, the mark on the arm. If you look at the back
3 pattern, it has like a blue almost emblem along the back. And
4 then, obviously, his height, his weight and complexion, and you
5 can kind of estimate his age.

6 THE COURT: From that picture you can tell the age?

7 THE WITNESS: The right photo.

8 THE COURT: You can tell the age?

9 THE WITNESS: I am going to say, it's a rough
10 estimate, but he is definitely not a teenager, and he is
11 not -- I would say he is probably between 18 and 30. It's a
12 rough estimate.

13 THE COURT: Really?

14 Q. Other than what you have just said -- withdrawn.

15 THE COURT: Can I see the paper version?

16 THE WITNESS: You want mine?

17 THE COURT: Yes. OK. Thanks.

18 Q. Now, prior to being given the wanted poster, the
19 information needed poster, at the roll call that day, were you
20 aware of the homicide?

21 A. No.

22 Q. During the roll call that day, did Sergeant Shirvis or
23 anyone else tell you that you needed to conduct a certain
24 number of stop, question and frisks?

25 A. No.

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D488FLO4

Leek - cross

1 Q. Now, did the poster impact the work that you did that day?

2 A. I mean, as far as this incident, yes, it did.

3 Q. How so?

4 A. Well, when I saw him enter the station, in my mind, he fit
5 the description of the pictures from the poster and the actual
6 text description. So it led me to stop him for that reason.

7 Q. Now, before we get into the actual stop, when you started
8 your tour, what assignment did you have?

9 A. I was, I believe, post 10.

10 Q. What type of post is that?

11 A. It's a foot post from 109 to 110 on Madison Avenue?

12 Q. Did you consider that foot post a form of punishment?

13 A. No.

14 Q. At some point during the day did your foot post change?

15 A. No, it didn't change. We were picked up by the sergeant to
16 do patrol, directed patrols in different areas.

17 Q. At some point during the tour you got picked up by the
18 sergeant to go do directed patrols?

19 A. Yes.

20 Q. Did you consider being picked up by the sergeant to do
21 directed patrols, did you consider that a form of punishment?

22 A. No.

23 Q. Now, once you were with Sergeant Shirvis, how were you
24 traveling?

25 A. By marked police van.

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D488FLO4

Leek - cross

1 Q. How did you end up in the vicinity of 103rd and Lexington
2 Avenue?

3 A. I believe I was driving, and I parked the van -- I came
4 southbound on Lexington and made a right on to 103 and parked
5 the van.

6 Q. My question should have been, why did you go to that
7 location?

8 A. Because of the train station, to do a directed patrol
9 within the confines of the train station.

10 Q. Why did you want to do a directed patrol within the
11 confines of the train station?

12 A. It has -- like I was saying before, it has a high
13 pedestrian traffic area, high rate of crimes, whether jumping
14 the turnstile, theft of service, petit larceny or larceny from
15 a person or robberies. The sheer volume of people that go in
16 and out, it's a higher rate of crime at that location.

17 Q. What did you do when you got to the train station?

18 A. We put over a radio transmission that we were going down
19 into the train station.

20 Q. Then what happened?

21 A. Then we proceeded down to the train station through the
22 gate and then we waited to the left of the turnstiles.

23 Q. Who went down with you?

24 A. Just myself and Officer Figueroa.

25 Q. Where was Shirvis?

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D488FLO4

Leek - cross

- 1 A. He was in the van.
2 Q. Do your police radios work in the subway station?
3 A. No, they do not.
4 Q. You said once you went through the turnstiles and then
5 stood in the mezzanine area of the train station?
6 A. Yes. After you pay on the other side of the actual
7 turnstiles.
8 Q. What happened next?
9 A. We were just observing pedestrian traffic coming through.
10 Q. Is there anything that caught your attention?
11 A. I observed a male pay and pass through the turnstile
12 closest to us, and he had a bright red leather jacket on and
13 that caught my attention.
14 Q. What about the bright leather jacket caught your attention?
15 A. It was very similar to the one that we were given the
16 information about on this poster earlier in the tour.
17 Q. What about it was similar?
18 A. The style, the make, the color, the striping on the sleeve,
19 the pattern on the back, the brand obviously, and the -- I
20 don't even know what you call them, the little shiny buttons
21 that make up the letters.
22 Q. Now, was there anything about the man that caught your
23 attention?
24 A. His height, his description, basically his complexion and
25 his height, which is all the information they provided to us.

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D488FLO4

Leek - cross

1 Q. How about a combination of the two, the man in the jacket,
2 was there anything about that that peaked your suspicion?

3 A. The way the jacket fit on him. It was bulky and a loose
4 fitting jacket. It wasn't tight. It wasn't a tight jacket.

5 Q. I am going to show you an exhibit that's already in
6 evidence. It's Defendants' Exhibit A9. I am showing you the
7 page marked NYC_2_0002387.

8 Is this the man that you stopped that day?

9 A. Yes.

10 Q. Is there anything about the way he appears in this
11 photograph that's different than the way he appeared that day?

12 A. He had less facial hair and less hair on his head.

13 Actually, he was a little bit thinner.

14 Q. In this photo he is a little bit bigger than he looked that
15 day?

16 A. Yes.

17 Q. In this photograph he has a beard, but when you saw him he
18 didn't?

19 A. To my knowledge, from what I recall, he did not.

20 Q. You also said the hair was a little shorter?

21 A. When I stopped him, his hair was more close cut.

22 Q. So after you saw this man walk through the
23 turnstiles -- before we get to there, after you saw the man
24 walk through the turnstiles, what did the man do?

25 A. He proceeded to the right, which is I think -- I am not 100

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D488FLO4 Leek - cross

1 percent. It's either uptown or downtown, but he proceeded to
2 the right and he went downstairs to the platform.

3 Q. How long was he in your sight from the moment you noticed
4 him until he went out of sight down to the platform?

5 A. A few seconds.

6 Q. What happened next?

7 A. I advised Officer Figueroa that I wanted to go stop the
8 gentleman that went through the turnstiles, and we all
9 proceeded to go down the stairs.

10 Q. Did you have any conversation with Officer Figueroa
11 upstairs before you went down?

12 A. No.

13 Q. What happened next?

14 A. We went down two flights of stairs and ended up on the
15 platform, and we saw Mr. Lino and we approached him.

16 Q. Why didn't you stop him up on the mezzanine when you first
17 saw him? Why did you let him walk down the stairs?

18 A. I wanted to observe his gate, how he was walking, just to
19 reaffirm what I was actually seeing. It was quick. There is
20 not a lot of time from the turnstile to the stairs.

21 Q. So then you went downstairs to the train platform and what
22 happened when you got down there?

23 A. I approached Mr. Lino and I asked him if I could ask him
24 some questions.

25 Q. I am going to show you another exhibit that's already in

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D488FLO4 Leek - cross

1 evidence. It's Defendants' Exhibit M10.

2 Is this the train platform where you had the encounter
3 with Mr. Lino?

4 A. Yes.

5 Q. Approximately, do you know how far down the platform it
6 was?

7 A. Not far, just past where you see that 103 Street and
8 Lexington Avenue sign, that's the actual stair entranceway
9 coming from the right to the left in the picture. So it wasn't
10 far down.

11 Q. What happened when you first approached Mr. Lino?

12 A. I asked him if I could ask him some questions.

13 Q. What happened next?

14 A. He had a bag in his hands. I asked him to place the bag
15 down. He refused.

16 Q. When you first approached him, what was your tone of voice?

17 A. Just normal speaking manner.

18 Q. When Mr. Lino responded, what was his tone of voice?

19 A. He was agitated and using a louder tone of voice. He was
20 irate.

21 Q. Then you mentioned something about a bag that he had in his
22 hand?

23 A. He had a shopping bag with maybe a paper bag inside it,
24 like a cellophane plastic shopping bag in his right hand.

25 MS. MARTINI: Could you speak up? I didn't hear the
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D488FLO4

Leek - cross

1 answer.

2 A. He had a plastic bag in his right hand.

3 Q. If you could pull the mike a little closer to you or maybe
4 move forward a little bit.

5 A. Sorry.

6 Q. What did you say, if anything, to him about the bag?

7 A. I asked him if he would place the bag down.

8 Q. What was his response?

9 A. He refused.

10 Q. Then what happened?

11 A. I asked him again. I asked him repeatedly. He said it was
12 food. I believe we were close to a bench so I asked him to
13 place it on the bench and he complied.

14 Q. Why did you want him to put the bag down?

15 A. I don't know what is in it. It could be used as a weapon.
16 It could be swung at us. Just for my own safety basically.

17 Q. So what happened after he put the bag down?

18 A. I asked him if he had anything on him that he wasn't
19 supposed to have or anything dangerous on him.

20 Q. Then what happened?

21 A. He said no. I asked him, do you mind if we check? He
22 said, no, go ahead.

23 Q. What happened then?

24 A. I frisked his front waist area. My partner, Officer
25 Figueroa, standing behind him, frisked his back pockets in the

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D488FLO4 Leek - cross

- 1 back of his waist area, and we determined that he had no
2 dangerous weapons on him at that time.
3 Q. Now, when you say frisk, what do you mean?
4 A. Just a surface pat-down of the area, you know.
5 Q. Did anybody go into Mr. Lino's pockets at all?
6 A. No.
7 Q. Was Mr. Lino searched at all?
8 A. No.
9 Q. Were you able to complete the frisk or were you both able
10 to complete the frisk?
11 A. For the area we frisked, yes.
12 Q. Why did you do the frisk?
13 A. Well, the main reason we were stopping him was in regards
14 to a violent crime, a shooting. A jacket similar to that have
15 been known to -- you can conceal weapons in a bulky large
16 jacket, and if you look at the original photo, even Mr. Lino
17 being heavier, still wearing the jacket bulky you could conceal
18 a lot.
19 Q. You're referring to this photograph here?
20 A. Yes.
21 Q. So you thought this was bulky enough where there might be a
22 weapon underneath it?
23 A. Yes.
24 Q. Other than the nature of the crime and the fact that Mr.
25 Lino had this bulky jacket on, was there anything else that led

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D488FLO4

Leek - cross

1 you to frisk him?

2 A. Just the nature of what we do, the area that -- the crimes
3 that happen in our area, there is a lot of violent crimes in
4 our precinct.

5 Q. Did Mr. Lino's demeanor toward you affect your decision to
6 frisk him at all?

7 MS. MARTINI: Objection. Leading.

8 A. Yes. He was very agitated.

9 Q. In what way?

10 A. He was very agitated from the start. He didn't want any
11 interaction with us. He was very animated and aggressive and
12 irate. He didn't want to hear anything we had to say.

13 Q. I think during your direct today there was a question I was
14 a little confused by. I think you were asked, did Mr. Lino do
15 anything that made you concerned for your safety. Do you
16 remember being asked that question?

17 A. I think so.

18 Q. Do you know what you meant by -- what is the answer to that
19 question? Did Mr. Lino do anything that made you concerned for
20 your safety?

21 A. Yes.

22 Q. What did he do?

23 A. His reaction to us, his hostility and irateness towards us.
24 He elevated his level of aggression towards us, which puts us
25 on the defensive.

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D488FLO4 Leek - cross

1 Q. So what happened after the frisk?

2 A. I believe I asked -- I was trying to explain to Mr. Lino
3 why we stopped him. I couldn't even get the questions out. He
4 would just overtalk me. He didn't want to hear anything I had
5 to say. I was trying to offer him a reasonable explanation,
6 and he just didn't want to hear it.

7 Q. What happened next?

8 A. I had the idea that maybe there was a poster -- the poster
9 in the van upstairs, and I wanted to take him upstairs and show
10 him.

11 Q. Was there anything about the location where you were having
12 this encounter with Mr. Lino that led to the desire to go
13 upstairs?

14 A. If you look at the platform, there is one person walking
15 around the corner right there. It's very hard to fit another
16 person past that person. It's a narrow platform. People get
17 pushed on the tracks. It's not a safe location to interact
18 with someone.

19 Q. You didn't have the poster on you, correct?

20 A. No, I did not.

21 Q. So you couldn't compare the poster with Mr. Lino down
22 there, correct?

23 A. No, I could not.

24 Q. Then I think you said you made the decision to bring the
25 encounter upstairs?

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D488FLO4

Leek - cross

1 A. Yes.

2 Q. What happened next?

3 A. Myself, Mr. Lino and Officer Figueroa went upstairs. Mr.
4 Lino had asked me progressively slowly as we went upstairs if
5 he was under arrest. I told him he was not. We went upstairs
6 to the corner of 103 and Lex. Officer Figueroa stayed with Mr.
7 Lino at that corner, and I walked over to the van to see if
8 there was a poster.

9 Q. When you brought Mr. Lino upstairs, was your investigative
10 stop into whether or not he was involved in this crime
11 completed at that point?

12 A. No, it wasn't.

13 Q. Now, at the van, did you run his ID?

14 A. No, I did not.

15 Q. Why not?

16 A. Because he hadn't committed a crime, to my knowledge, at
17 that point.

18 Q. What happened at the van? What did you do at the van?

19 A. I opened the door, and I looked around on the floor to see
20 if we had a copy of the poster, and I asked Sergeant Shirvis if
21 he had a copy, and he said no.

22 Q. Then what did you do?

23 A. I returned to Mr. Lino and Officer Figueroa, and I wrote
24 down Mr. Lino's identification on my fly page in my memo book,
25 and I proceeded to put him back into the train station.

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D488FLO4

Leek - cross

1 Q. What do you mean you proceeded to put him back into the
2 train station?

3 A. We weren't ejecting him from the train station. He already
4 paid. I observed him pay. So I was going to bring him back
5 downstairs and advise the booth clerk to let him in so he
6 didn't have to pay a second time.

7 Q. Did you do that?

8 A. Yes.

9 Q. What happened after you put him back into the turnstiles?

10 A. We walked with him back to the platform where the initial
11 stop started, and then we told him he could go on his way.

12 Q. At any point during the -- withdrawn.

13 I am going to show you what has been marked as
14 Defendants' Exhibit 216 for purposes of this trial. Do you
15 recognize that?

16 A. Yes, I do.

17 Q. What is it?

18 A. It's copies of my memo book from the date of the incident.

19 MR. KUNZ: We would move this into evidence, your

20 Honor.

21 MS. MARTINI: No objection.

22 THE COURT: 216 is received.

23 (Defendants' Exhibit 216 received in evidence)

24 MR. KUNZ: I believe I have redacted all the dates of
25 birth out of this. If I missed one, we will take it out.

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D488FLO4 Leek - cross

- 1 Q. So this is the front page of your memo book here that I am
2 showing the Court?
3 A. That's correct.
4 Q. On the second page here, Bates stamp number ending 810?
5 A. Yes.
6 Q. This is the entry you made to start your tour?
7 A. Yes.
8 Q. So 2/24 is the date, Thursday, and the tour that you worked
9 1600 by 0035?
10 A. That's correct.
11 Q. Then this entry here, this is the fly page that you
12 referenced where you wrote down his pedigree information?
13 A. Yes.
14 Q. Then beginning on page ending in 812, is this the -- 2130,
15 is that the beginning of your directed patrol down to the train
16 station?
17 A. That's correct.
18 Q. Could you just read and explain your entries with regard to
19 this stop to the Court?
20 A. OK. 2130, we conducted a 1075 David, which is the radio
21 code for directed 1075D at 103 and Lexington.
22 "At 2145, one male observed entering the 103 Street
23 and Lexington Avenue train station wearing a bright red Pelle
24 Pelle leather jacket, fit description of male wanted for
25 information in regards to homicide on 2/10/11 at East 108th and
SOUTHERN DISTRICT REPORTERS, P.C.
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D488FLO4 Leek - cross

1 Madison Avenue.

2 "Lino, Clive E, 210 East 102 Street, apartment AG, New
3 York, New York 10029."

4 I won't read his date of birth.

5 Q. The next line is his ID number from his license?

6 A. Yes.

7 Q. The next is his date of birth?

8 A. Yes.

9 Q. So picking up after that.

10 A. "5'10", black male, 170 pounds, 30 years old. Male became
11 irate, hostile and aggressive."

12 I will flip over to the next page.

13 Q. So this is flipping on to the page ending in 814.

14 A. To continue, "Male became irate, hostile and aggressive
15 during stop. Male was frisked for weapons at scene, becoming
16 increasingly hostile. Male did give permission to be frisked
17 when asked by this officer."

18 UF-250 was prepared in regards to the stop. And at
19 2230 I gave over the final, which is the radio code for 93
20 Queen, which is the other report prepared, which is the 250.
21 And the Sprint number is in reference to that actual radio
22 transmission, which is 1541.

23 Q. You had a lot of detail in this memo book about the stop,
24 is that fair to say?

25 A. Yes.

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D488FLO4 Leek - cross

1 Q. Is that your normal practice?

2 A. Yes.

3 Q. Have you been trained by the NYPD on the amount of detail
4 that's supposed to be included in a memo book?

5 A. Yes, I have.

6 Q. Now, you also said that you filled out UF-250 report?

7 A. Yes, I did.

8 Q. I am going to show you what has been marked as Defendants'
9 Exhibit 188 for purposes of this deposition.

10 MS. MARTINI: You mean plaintiffs.

11 MR. KUNZ: Plaintiffs' Exhibit 188 for purposes of
12 this trial.

13 Q. Is this the UF-250 that you prepared in regards to the stop
14 of Clive Lino?

15 A. This is a copy of it, yes.

16 MR. KUNZ: I move it in evidence.

17 MS. MARTINI: No objection.

18 THE COURT: 188 received.

19 (Plaintiffs' Exhibit 188 received in evidence)

20 Q. When did you prepare this report?

21 A. Before the end of the shift that night, probably a little
22 while after the stop.

23 Q. How about your memo book entry, when did you prepare that?

24 A. The same, pretty much a little while after the stop.

25 Q. Now, during your examination earlier today, you were asked

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D488FLO4

Leek - cross

1 about a Civilian Complaint Review Board investigation into this
2 incident?

3 A. Yes.

4 Q. To your knowledge, did the NYPD independently investigate
5 this incident?

6 A. Not to my knowledge.

7 Q. I am going to show you what has been marked as Plaintiffs'
8 Exhibit 224. Do you recognize that?

9 A. Yes.

10 Q. What is that?

11 A. Can I retract my statement? They do investigate. I was
12 confused. They investigated the CCRB complaint. They have a
13 supervisor who calls you and asks you what happened prior or
14 post to you going down to the Civilian Complaint Review Board.

15 MR. KUNZ: We will move this into evidence.

16 MS. MARTINI: Objection. Lack of foundation.

17 THE COURT: What is this again?

18 MR. KUNZ: This is an OCD file that the office of the
19 chief of department file in regards to the NYPD's investigation
20 into the stop. If there is authentication problems, we
21 obviously have people on our list --

22 MS. MARTINI: The witness has not testified that he
23 has ever received or seen this document prior to this day.

24 THE COURT: You have not seen this document before
25 today?

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D488FLO4 Leek - cross

1 THE WITNESS: I have seen it.

2 THE COURT: When did you see it?

3 THE WITNESS: It was brought to my attention recently,
4 but I had seen it when I -- I hadn't seen this actual document
5 when I spoke to the sergeant about it. He produced the
6 document after speaking to me at the time.

7 THE COURT: You hadn't seen it at the time?

8 THE WITNESS: No. At the time speaking to him, it
9 still had to be composed.

10 THE COURT: When did you first see it?

11 THE WITNESS: When my attorney had brought it to my
12 attention a few weeks ago.

13 THE COURT: Not at the time of the events?

14 THE WITNESS: No.

15 THE COURT: I think the objection should be sustained.

16 MR. KUNZ: I would just point out the plaintiffs have
17 put in similar documents.

18 THE COURT: They can put in a statement of party
19 opponent.

20 MR. KUNZ: We will put it in through another witness
21 that we have.

22 BY MR. KUNZ:

23 Q. Just to be clear, did you speak to a supervisor in your
24 precinct about this stop?

25 A. Yes.

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D488FLO4

Leek - cross

1 Q. Do you know the results of your supervisor's investigation
2 into the stop?

3 A. He forwarded his results to the CCRB.

4 Q. Do you know, was it substantiated, unsubstantiated,
5 unfounded, anything like that?

6 A. As far as his results, it was unfounded. As far as the
7 CCRB, they substantiated the one that was shown to me earlier.

8 Q. The CCRB substantiated it?

9 A. Yes. Not the department.

10 Q. So just to be clear, when the department investigated, they
11 unsubstantiated the allegation?

12 A. Yes.

13 Q. Now, you were also asked a question about performance
14 objectives, is that correct?

15 A. Yes.

16 Q. When you say performance objectives, what do you mean?

17 A. Just part of doing your job, you know, going out -- can I
18 give an example?

19 Q. Sure.

20 A. If you're given a particular assignment on an evening to
21 patrol and look for people using cell phones while they are
22 driving, which is a VTL violation, a performance objective
23 could be to bring in one summons or five summonses. You're
24 objective is to patrol for that for that evening. It's a
25 performance objective. In performance of your duties, you're

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D488FLO4 Leek - cross

1 looking for that.

2 Q. So when a supervisor explains this performance objective,
3 to make enforcement in regard to people driving with cell
4 phones, do they tell you that you have to make a certain number
5 of stops in that regard?

6 A. No.

7 Q. What do they tell you about that performance objective?

8 A. Just go out and try to enforce it at this time. There is
9 never a set number because the shift -- the particular shift I
10 work, I work midnight, there are not a lot of people driving on
11 a Monday or Tuesday night, or whatever night I happen to be
12 working, using a cell phone. If you work during the day, your
13 personal objective might be higher or lower. It's all
14 situation dictates.

15 Q. At any point during your career at the NYPD, have you ever
16 been told that you have to conduct a certain amount of activity
17 within a certain time period?

18 A. No.

19 Q. Have you ever been disciplined for having low activity?

20 A. No.

21 Q. Have you ever been transferred for having low activity?

22 A. No.

23 Q. Have you ever received a low evaluation for having low
24 activity?

25 A. No.

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D488FLO4 Leek - cross

1 Q. How about the opposite, have you ever been rewarded for
2 having high activity?

3 A. Not rewarded, no.

4 Q. Have you ever been transferred to a better assignment for
5 having more assignment?

6 A. No.

7 Q. Or received a high evaluation because of high activity?

8 A. No.

9 Q. Also, during your examination today, you were asked if you
10 ever spoke with supervisors about specific UF-250s while they
11 examined your monthly activity report. Do you remember being
12 asked that question?

13 A. Yes, I do.

14 Q. Other than at that moment when a supervisor is examining
15 your monthly activity reports, do you ever speak with
16 supervisors about UF-250s?

17 A. When you complete them, they need to sign off on them.
18 Before you can turn it in, it has to be signed off by a
19 supervisor.

20 Q. Have you ever conducted a stop of a person, a reasonable
21 suspicion stop of a person in the presence of a supervisor?

22 A. Yes, I have.

23 Q. You were asked a series of questions during your
24 examination earlier today about what you would do
25 hypothetically if you ever saw another officer racially

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D488FLO4 Leek - cross

1 profile?

2 A. Yes.

3 Q. Have you ever seen that?

4 A. No.

5 Q. Are you aware of the NYPD's policy in regard to racially
6 profiling?

7 A. Yes. I am aware of it.

8 Q. What is that policy?

9 A. It's not allowed. You're not allowed to stop people for
10 race, creed, ethnicity, or sexual orientation.

11 Q. Have you received training on that policy?

12 A. Yes, I have.

13 Q. Where have you received training on that policy?

14 A. Through class lecture in the police academy, class lecture
15 at Rodman's Neck, class lecture at One Police Plaza, various
16 times at roll call through the training sergeant.

17 MR. KUNZ: No further questions.

18 THE COURT: Ms. Martini.

19 MS. MARTINI: One moment, your Honor.

20 REDIRECT EXAMINATION

21 BY MS. MARTINI:

22 Q. Officer Leek, Mr. Kunz asked you several questions about
23 your frisk of Mr. Lino. Do you recall that?

24 A. Yes.

25 Q. You said that neither you nor Officer Figueroa went into

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D488FLO4 Leek - redirect

1 Mr. Lino's pockets, correct?

2 A. Yes.

3 Q. But you couldn't see Officer Figueroa's hands during the
4 entire encounter, correct?

5 A. I couldn't see his hands?

6 Q. There were times during the encounter where you could not
7 see Officer Figueroa's hands, correct?

8 A. From my vantage point? No.

9 Q. In fact, when you approached him, Officer Figueroa was
10 behind Mr. Lino and you were in front of Mr. Lino, correct?

11 A. Yes.

12 Q. When you brought him upstairs, you went to the van and
13 Officer Figueroa stayed with Mr. Lino, correct?

14 A. Yes.

15 Q. And when I asked you several questions on direct, you told
16 me that Mr. Lino didn't do anything that made you fear for your
17 safety before you frisked him. Do you recall testifying to
18 that?

19 A. To my knowledge, yes.

20 Q. Then when Mr. Kunz asked you the exact same question, you
21 said that he did do something that made you fear for your
22 safety, correct?

23 A. Yes.

24 Q. You said that it was his demeanor that affected your
25 decision to frisk him, correct?

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D488FLO4 Leek - redirect

1 A. It was one factor.

2 Q. You said that according to you, he was aggressive and irate
3 and was elevating the situation, or something to that effect,
4 correct?

5 A. Yes.

6 Q. But it's still your position that he consented to the
7 frisk?

8 A. Yes, he did.

9 Q. You also just testified that you took Mr. Lino upstairs, in
10 part, because the investigation was not over, correct?

11 A. Yes.

12 Q. The stop was not over, you still wanted to ask him
13 questions about the suspect poster, correct?

14 A. Yes.

15 Q. But you never found the poster, correct?

16 A. No, I did not.

17 Q. You never spoke to Sergeant Shirvis about Mr. Lino,
18 correct?

19 A. No. I did.

20 Q. Other than telling him that you had someone stopped?

21 A. That's correct.

22 Q. You didn't run Mr. Lino's ID?

23 A. No, I did not.

24 Q. So you didn't have any additional information after you let
25 Mr. Lino go than you did at the time that you took him

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D488FLO4 Leek - redirect

1 upstairs, correct?

2 A. Correct.

3 THE COURT: Your answer was?

4 THE WITNESS: Correct. I was unable to determine
5 anything else at that time. So I wasn't going to waste his
6 time anymore. I was going to let him go. That's what it came
7 down to.

8 THE COURT: OK.

9 Q. You said you had never received a high evaluation because
10 of high activity, is that correct?

11 A. For that reason? Yes, that's correct. That's what I said.

12 Q. Just a few moments ago I showed you your monthly
13 performance report from May 2011. Do you recall that?

14 A. Yes, I do.

15 Q. I believe you testified that the rating that you got in
16 this middle section for March 2011, you received a 3, correct?

17 A. Yes.

18 Q. The only information indicated in this box next to the high
19 rating 3 is the amount of enforcement activities and the tours
20 and the hours, correct?

21 A. Yes.

22 THE WITNESS: Can I ask you a question though?

23 THE COURT: No.

24 Q. The NYPD is a paramilitary organization, correct?

25 A. Yes.

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D488FLO4 Leek - redirect

1 Q. With a chain of command?

2 A. Yes.

3 MR. KUNZ: Objection. This is beyond the scope of my
4 examination.

5 THE COURT: Where is that leading?

6 MS. MARTINI: To the next question, something Mr. Kunz
7 followed up on, made the performance goals and objectives set
8 by supervisors. It's very brief, your Honor.

9 THE COURT: Also, I obviously know it's a paramilitary
10 organization right now. But go ahead.

11 Q. You would agree that a performance goal is an expectation,
12 correct?

13 A. Yes.

14 Q. You do your very best to meet your supervisor's
15 expectations of you, correct?

16 A. As far as I can, yes.

17 MS. MARTINI: Nothing further.

18 THE COURT: Anything further, Mr. Kunz?

19 MR. KUNZ: Yes, unfortunately.

20 MS. MARTINI: Can I have just one moment, your Honor?

21 THE COURT: All right.

22 MS. MARTINI: Nothing further.

23 THE COURT: Mr. Kunz.

24 RECROSS-EXAMINATION

25 BY MR. KUNZ:

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D488FLO4 Leek - recross

1 Q. Just in regard to that last topic, has a supervisor in the
2 NYPD ever told you to make an unconstitutional stop?

3 A. No.

4 Q. Has a supervisor in the NYPD ever told you to issue someone
5 a summons or arrest someone without probable cause?

6 A. No.

7 Q. The stop, question and frisk report that you filled out in
8 regard to the incident, Plaintiffs' Trial Exhibit 188, in the
9 top here, which says --

10 MS. MARTINI: Objection, your Honor. This is beyond
11 the scope of my redirect.

12 THE COURT: I think it is.

13 MR. KUNZ: It's directly on point. She asked him
14 questions about whether or not he indicated that Mr. Lino did
15 anything that peaked his fear for his safety.

16 THE COURT: In terms of the frisk?

17 MR. KUNZ: Right.

18 THE COURT: She brought up the demeanor, and he said
19 that was one of the reasons.

20 MR. KUNZ: I just want to ask the witness if that is
21 indicated on the 250 as one of the bases for the frisk.

22 THE COURT: He said that is one of the bases for the
23 frisk. You just want to show it's not the first time he is
24 saying it?

25 MR. KUNZ: Yes.

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D488FLO4 Leek - recross

1 THE COURT: She didn't accuse him of saying it for the
2 first time. She didn't say that was a recent fabrication.

3 MR. KUNZ: She absolutely did imply that.

4 THE COURT: Did you?

5 MS. MARTINI: I was implying that he said two
6 different things here today.

7 THE COURT: Namely, there was no --

8 MS. MARTINI: He didn't do anything to make him fear
9 him for his safety before he frisked him.

10 THE COURT: Then I will allow it.

11 Q. Do you see the box on this form that says "refusal to
12 comply with officer's directions"?

13 A. Yes.

14 Q. That's in the box that deals with the basis for the frisk,
15 correct?

16 A. Yes.

17 Q. Can you tell the Court again why you checked that box?

18 A. When we initially stopped him, like I stated before, he
19 refused to put the bag down. I didn't know what was in the bag
20 or the contents of the bag that he had in his hand.

21 Q. Now, looking back at Plaintiffs' Exhibit 219, where this
22 rating here is 3. Do you see that?

23 A. Yes.

24 Q. Did you fill that out?

25 A. No, I did not.

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D488FLO4 Leek - recross

1 Q. Do you know who did fill it out?

2 A. My supervisor, I believe, at the time Sergeant Shirvis,
3 that's his signature on the bottom.

4 Q. On this particular day, you were out in the field with
5 Sergeant Shirvis, correct?

6 A. Yes.

7 Q. Was it common for you to go out in the field with Sergeant
8 Shirvis?

9 A. At times, yes. He was our immediate supervisor.

10 Q. When you were out in the field with him, did he ever watch
11 you conduct enforcement activities?

12 A. He was alongside us many times, yes.

13 Q. There is other information in here besides the numbers,
14 correct? The top here, it says the types of summonses that you
15 issued?

16 MS. MARTINI: Objection. It misstates the prior
17 testimony. I asked about the second box only.

18 THE COURT: You did ask about the second box only.
19 Declared condition, right?

20 MS. MARTINI: Yes.

21 MR. KUNZ: That's the point. There is much more to
22 the form than that one tiny box.

23 MS. MARTINI: I only asked about the rating for that
24 box.

25 THE COURT: The document is in evidence.

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D488FLO4 Leek - recross

1 MS. MARTINI: I think it is beyond the scope.

2 THE COURT: It probably is. People go on and on in
3 these questions. That's why the trial is taking so long. The
4 man is here. He is only going to be here once. So I am going
5 to let the city ask him what they want to ask him. The
6 document is in evidence.

7 Q. In the additional supervisory comment section, there is a
8 five line written review of you?

9 A. Yes.

10 Q. Then above that, in the courtesy and respect column, there
11 is another one that says, "P.O. Leek is courteous and
12 respectful to his peers, supervisors, and the precinct
13 community"?

14 A. Yes.

15 MR. KUNZ: I don't have any other questions, your
16 Honor.

17 THE COURT: Anything else for this witness?

18 MS. MARTINI: One moment, your Honor.

19 Very brief, your Honor.

20 REDIRECT EXAMINATION

21 BY MS. MARTINI:

22 Q. You checked refusal to comply with officer's directions on
23 the UF-250 form?

24 A. Yes.

25 Q. But it's your testimony that he consented to the search?

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D488FLO4 Leek - redirect

1 A. Yes. That's not why I checked it.

2 Q. It's also your testimony that Mr. Lino put down the bag,
3 correct?

4 A. After repeated questioning. He first refused. He
5 specifically said no.

6 Q. But he put down the bag?

7 A. After repeated requests, yes.

8 Q. And he put down the bag after he told you that there was
9 food in the bag, correct?

10 A. No. After I told him to place it on the bench.

11 Q. He told you there was food in the bag?

12 A. Yes.

13 Q. After he put the bag of food down, that's when you frisked
14 him?

15 A. Yes.

16 MS. MARTINI: Nothing further.

17 THE COURT: I don't think they are done.

18 MR. KUNZ: Just one really brief clarification here.

19 RECROSS-EXAMINATION

20 BY MR. KUNZ:

21 Q. Just a second ago you were asked if Mr. Lino consented to a
22 search, I believe was the word used?

23 Was Mr. Lino searched?

24 A. No, he was not. He was frisked.

25 Q. When you said he consented, what did you mean?

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D488FLO4

Leek - recross

1 A. He consented to a frisk. I apologize.

2 MR. KUNZ: No further questions.

3 THE COURT: How did he do that? Did he say, go ahead,
4 you can frisk me?

5 THE WITNESS: I asked him -- when I approached him, I
6 asked him if he had anything on him that he wasn't supposed to
7 have. He said no. I said, do you mind if we check? And he
8 said no.

9 THE COURT: That's when he consented?

10 THE WITNESS: Yes.

11 THE COURT: We are done with this witness?

12 OK. Thank you.

13 MS. MARTINI: Plaintiffs call officer Edgar Figueroa.

14 EDGAR FIGUEROA,

15 called as a witness by the plaintiffs,

16 having been duly sworn, testified as follows:

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

19 THE WITNESS: Officer Edgar Figueroa, E-D-G-A-R,
20 F-I-G-U-E-R-O-A.

21 DIRECT EXAMINATION

22 BY MS. MARTINI:

23 Q. Good afternoon, Officer Figueroa.

24 A. Good afternoon.

25 Q. You joined the NYPD in 2008, correct?

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D489flo5

Figueroa - direct

- 1 at the NYPD about the CCRB substantiated complaint, correct?
2 A. Correct.
3 Q. You weren't disciplined in any way for the substantiated
4 complaint, correct?
5 A. That's correct.
6 Q. You weren't assigned to a different tour?
7 A. No, I was not.
8 Q. You didn't receive a command discipline?
9 A. No, I did not.
10 Q. You weren't denied overtime?
11 A. No, I was not.
12 Q. And you currently work at headquarter security, at One
13 Police Plaza; is that correct?
14 A. Yes. That's correct.
15 Q. And you don't do street patrols in your current assignment?
16 A. No, I do not.
17 Q. But you previously worked in the 115th precinct in Queens,
18 correct?
19 A. My first rookie year, yes, I did.
20 Q. And when you were in the 115th precinct, performance goals
21 were set for you, correct?
22 A. Yes, that's correct.
23 Q. And the performance goal that was set for you was two
24 arrests and 30 summonses, correct?
25 A. Yes. That's correct.

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D489flo5

Figueroa - cross

1 THE COURT: He'll be later? Well there's not much
2 more to this week.

3 MS. BORCHETTA: Wednesday. I'm sorry.

4 THE COURT: Okay. So regroup, given my new ruling on
5 deposition. That may mean you've got to get people up front
6 that you didn't expect to have.

7 MS. BORCHETTA: Your Honor, our only question would be
8 how the court would like us to handle exhibits that we intended
9 to put with the depositions. We can work --

10 THE COURT: Exhibit A, B, C behind the pages you give
11 me before you put a divider -- before you put a tab for the
12 next deposition witness, put the person's deposition and then
13 Exhibits A, B, C, D, then the tab, then the next witness, the
14 next witness. That's already agreeing to read -- that's 14 or
15 so people that I'm agreeing to read, which is a lot, a really
16 lot. But what can I do. I forgot Ruggiero. Then maybe
17 fifteen people. I didn't mention Ruggiero before.

18 MS. GROSSMAN: I'm not sure that I anticipate many
19 objections with the exhibits to the deposition designations.
20 However, if there are some we just want to make sure at some
21 point in time we alert you to that so that we can address that.

22 THE COURT: You can work together. For those that
23 have no objections, start submitting them and I can start
24 reading whenever I find five minutes, which is a big question.
25 But the ones that have a problem, don't submit them yet until

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EDGAR FIGUEROA
Direct By Ms. Martini2754
Cross By Mr. Kunz2767

PLAINTIFF EXHIBITS

Exhibit No.	Received
448 . . . . .	.2589
6 . . . . .	.2662
9 . . . . .	.2671
187 . . . . .	.2698
217 . . . . .	.2707
219 . . . . .	.2710
188 . . . . .	.2738
208 . . . . .	.2764

DEFENDANT EXHIBITS

Exhibit No.	Received
X10 . . . . .	.2591
O10NYP2-28753 . . . . .	.2635
J10 . . . . .	.2645
216 . . . . .	.2735

