

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 DAVID FLOYD, et al.,
3
4 Plaintiffs,

5 v. 08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,
6
7 Defendants.

8 -----x

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

10 Before:

11 HON. SHIRA A. SCHEINDLIN,
12
12 District Judge

13 APPEARANCES

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D4A9FLO1 Esposito - cross

1 THE COURT: Good morning everyone. Please be seated.

2 JOSEPH ESPOSITO, resumed

3 CROSS-EXAMINATION CONTINUED

4 BY MS. GROSSMAN:

5 Q. So, Chief, during your 44 years as a member of the police
6 department was there a time that you were a patrol officer?

7 A. Yes.

8 Q. And for how long were you a patrol officer?

9 A. About ten years.

10 Q. Where were you assigned as a patrol officer?

11 A. 77th precinct in Brooklyn North and 83rd precinct in
12 Bushwick in Brooklyn North also.

13 Q. And after ten years as a patrol officer were you promoted?

14 A. Yes. I went to narcotics bureau and I was an investigator,
15 detective, and an undercover for a couple of years.

16 Q. And you were promoted to detective and then to sergeant in
17 the same year, about 1983?

18 A. 1983. Spring of '83 detective; fall sergeant.

19 Q. Did you continue to rise up through the ranks after that?

20 A. Yes.

21 Q. What positions did you hold?

22 A. I was patrol sergeant.

23 When you get promoted, they send you back to patrol.

24 So I was on patrol as a sergeant in Manhattan. I went back
25 to -- then I went to the detective bureau as a supervisor in a

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1 squad in the 77th precinct.

2 Made lieutenant. Went to Brooklyn 66 precinct.
3 Became the commanding officer of that precinct, when I became
4 captain.

5 Was transferred up to Washington Heights. And was the
6 commanding officer of the 34th precinct. I was promoted
7 twice up there.

8 And then I went back to 83rd precinct as the CO and
9 was the commanding officer of the 83rd precinct.

10 And then ultimately to the borough of Brooklyn North
11 where I was the executive officer and the commanding officer.

12 Q. What area does the 83rd precinct cover?

13 A. 83rd is Bushwick.

14 Q. And the 66th precinct you were commanding officer there as
15 well?

16 A. 66th is Sunset Park, Borough Park.

17 Q. And the 34th precinct is which area?

18 A. Washington Heights.

19 Q. And you did serve in a position in the borough, at the
20 borough level?

21 A. Yes. After leaving the 83rd precinct, I was the executive
22 officer of Brooklyn North. They called it the strategic and
23 tactical command at that time. And ultimately the borough
24 commander.

25 Q. Now yesterday you gave some testimony about CompStat.

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1 Other than identifying crime conditions and what the boroughs
2 are doing, what else is assessed at the CompStat process just
3 briefly?

4 A. It's a management tool. We look at all the indicators of
5 the borough, the precincts that are up, the subunits that are
6 assigned to that borough. So it runs the gamut from domestic
7 violence, crime complaints, narcotics complaints, quality of
8 life, overtime, radio run response time.

9 It's a management of the -- it's the management of the
10 whole borough, the whole precinct.

11 Q. Do you also assess civilian complaints as well?

12 A. We look at civilian complaints, yeah.

13 Q. How long do these CompStat meetings usually last?

14 A. Three hours.

15 Q. So it's during those three hours that you cover all of
16 these various issues?

17 A. Yes.

18 Q. Now, how do you prepare for these weekly CompStat meetings?

19 A. My staff and the staff of some of the other bureaus, but in
20 particular deputy commissioner of operations, will do research
21 on the precincts and the boroughs and units that are coming in
22 and we have pre-meetings usually the day before and the morning
23 of CompStat.

24 Q. And what materials are generally prepared every week for
25 use at the CompStat meetings?

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1 A. The things I talked about, you know, whether they be crime
2 numbers, activity numbers, the quality of some of the activity,
3 the quality of some of the radio runs, response time, overtime
4 numbers. Anything that we think we need to see if a place is
5 being managed and run effectively.

6 Q. And are certain statistics published on the NYPD website?

7 A. Yes. The crime statistics are generally put on the
8 website.

9 Q. Now are you also looking at the -- during CompStat, are you
10 also looking at how commands and boroughs are look at crime in
11 real time, for example, in the last 24 hours?

12 A. Sure.

13 Q. How come?

14 A. What we normally do, when we do a CompStat meeting it will
15 go until Sunday of the week before. If we have a meeting on a
16 Thursday, the numbers we look at generally will be up until
17 Sunday of the week before, four days prior. But on occasion
18 we'll look at the last 24 hours, the last 48 hours, sure.

19 Q. Why do you want to look at the last 24 hours or the last 48
20 hours?

21 A. Well it's important that we react -- identify a problem as
22 soon as possible and react to it as quickly as possible to stop
23 it.

24 Q. Now, are there also occasions where members of your staff
25 go out and conduct videos of observations they make in

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1 particular commands that are up for a particular week?

2 A. Yeah. At times my staff will go out in an undercover
3 capacity, so to speak, and trying and look at some of the
4 conditions that are complained about by the community, some of
5 the narcotics allegations, the quality of life allegations. If
6 they're experiencing some crime spike in a certain area, we may
7 go to that area and see if we can pick out some areas that
8 perhaps are problematic with conditions that we should be
9 addressing.

10 Q. And how do you use those videos at CompStat?

11 A. Well typically an example would be if someone in the
12 community has complained about drug sales at a certain location
13 or in front of a certain location, we'll look at the
14 investigation that's being conducted by narcotics. We'll look
15 at it.

16 And at times it will be a negative investigation,
17 perhaps. The investigators say, Look, we don't see what this
18 person is complaining about. And at times our people will go
19 out and see exactly what the complainant has been complaining
20 about.

21 So a picture is worth a thousand words. We'll show
22 that picture and say, Well, your investigators weren't able to
23 see what the complainant talked about. Well, look at the
24 pictures. And it becomes obvious sometimes that the
25 investigation was not conducted as complete as it should have

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1 been.

2 Q. And what's your expectation with respect to what you want
3 the commanding officer to do when he leaves CompStat?

4 A. Well, at times it could be nothing. The presentation could
5 be that the captain, the inspector, the deputy inspector,
6 whoever we spoke to, did everything in his or her power to
7 accomplish the mission.

8 But if we talk about things that we think need to be
9 fine tuned or corrected, then we expect them to go back and
10 correct it.

11 Q. Now, during the CompStat process do you also look at what
12 the specialty units like the anticrime, SNEU, and conditions
13 units are doing?

14 A. Sure.

15 Q. Why do you analyze that?

16 A. Well we'll ask the commander what his or her deployment is
17 for a certain crime condition. And many times they'll tell us.

18 THE COURT: I have to interrupt. Can we get back to
19 the issues in the case on trial. I don't know what this has to
20 do -- it's interesting. I'm enjoying it. Very charming. Very
21 important. But it's got nothing to do with my case that I
22 know. So could we focus ourselves on the issues before me.

23 MS. GROSSMAN: Well, your Honor, I do think that it
24 does have what to do with the issue. The plaintiffs --

25 THE COURT: It doesn't. It doesn't. It's just

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1 general and broad, overbroad. It's not directed to this case
2 and this issue.

3 It's interesting. But this is not the right time or
4 place. Could we focus on what the issues are here.

5 BY MS. GROSSMAN:

6 Q. Well, Chief, some critics of the CompStat process believe
7 that it's used to pressure officers to make unconstitutional
8 stops. Do you agree with that?

9 A. Not at all.

10 MR. MOORE: Object to the form of the question.

11 THE COURT: We didn't expect him to agree with that.

12 So that's okay.

13 What's the next question.

14 BY MS. GROSSMAN:

15 Q. Why do you believe that the CompStat doesn't bring about
16 pressure to engage in unconstitutional stops?

17 A. I'm sorry.

18 MR. MOORE: Objection to the leading nature.

19 THE COURT: I'll allow the question.

20 Do you remember the question?

21 THE WITNESS: No, I don't.

22 THE COURT: Basically it's why did you give the answer
23 you gave?

24 THE WITNESS: Why what?

25 THE COURT: Why did you give the answer you just gave,

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1 why do you believe it doesn't cause pressure?

2 THE WITNESS: Because we look at quality. We look
3 at -- we don't just look at numbers. You know, what we're
4 looking for in -- I said it yesterday. I'm looking for no
5 crime and no activity. And when we do have activity, and we do
6 have crime, I'm looking for the right activity to address that
7 crime.

8 When I say right activity, it's got to be in line with
9 the plan that the commander has put forward. Are these arrests
10 being done at the right spot? Are the summonses being given
11 for the right offense? Are the stops being done at the right
12 time for the right reason, in the right place?

13 Just to get back to the point. If the commander's
14 plan is saying he wants the specialty units in sector Adam,
15 because that's where the crime is happening, that's where I
16 expect you to do your enforcement, your 250s.

17 Now we'll look at the map. We have mapping. If we
18 see that the anticrime is on the other end of the precinct,
19 they have to explain why. And that's what we're talking about
20 when we're talking about quality.

21 Q. Now, if there's a drop in UF 250s and a spike in crime,
22 what does that tell you?

23 A. Well it's something that has to be explained. Just on the
24 base of it, it doesn't say anything. It says that crime is up
25 and the numbers are down. But there could be an explanation

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1 for that. So the commander will be asked, and we would expect
2 an answer. And it may be part of their plan.

3 Q. And now likewise if there's a drop in UF 250s and a
4 decrease in crime, what does that tell you?

5 A. Again, it's an indicator that everything is working
6 correctly.

7 Again, ultimately I want no crime and no activity.

8 Q. Now yesterday you gave some testimony regarding chief of
9 department investigations. I wanted to ask you just a brief
10 question about the benefits that you believe are -- exist when
11 a direct supervisor conducts the investigation, meaning a
12 supervisor of an individual officer on a squad.

13 What are the benefits of that supervisor doing the
14 investigation in your opinion?

15 A. Well that supervisor has the most intimate knowledge of the
16 officer. I think he or she is best suited to see if that
17 officer is -- they have the whole package. They have the whole
18 information on that officer.

19 An investigation might not just be focused on that one
20 incident. It may be the officer's conduct with other
21 performance indicators. So it's important that the supervisor
22 who knows that officer the best does the investigation.

23 And then it's -- that investigation is signed off on
24 at a number of levels. So if there's a deficiency in that
25 investigation, it would be hopefully identified as it goes up

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1 the ranks.

2 Q. Moving on to UF 250s, the old and narrative -- the old
3 narrative UF 250 versus the new UF 250 with the check-off
4 boxes.

5 Yesterday you testified about that old narrative
6 UF 250, right?

7 A. Yes.

8 Q. And you testified that one of the problems with the form
9 was that the form was filled out -- wasn't filled out as
10 accurate as they could have been, right?

11 A. At times.

12 Q. Now was there also a concern that the forms were also not
13 being filled out at all?

14 A. Sure.

15 Q. And so now as a result of the stipulation of settlement in
16 Daniels do you have an understanding that one of the purposes
17 of the Daniels settlement was so that officers would actually
18 fill out the forms?

19 MR. MOORE: I'm going to object to the form of that
20 question; suggests a knowledge on his part that I don't think
21 he's testified to as yet.

22 THE COURT: Are you familiar with the details of the
23 Daniels settlement?

24 THE WITNESS: Some of them, sure.

25 THE COURT: Well can you answer the question she just

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1 asked?

2 THE WITNESS: I believe I can.

3 THE COURT: You think you can? Okay. Go ahead.

4 THE WITNESS: I don't think she's finished the
5 question.

6 MR. MOORE: Also leading.

7 THE WITNESS: Daniels spoke about -- do you want me to
8 continue?

9 THE COURT: No.

10 MS. GROSSMAN: Let me just --

11 THE COURT: Do you want to just repeat the question.

12 Q. Mr. Moore showed you the Daniels stipulation of settlement
13 yesterday, Plaintiffs' Exhibit 114.14 THE COURT: Just reading from the settlement is not
15 going to help. You asked him an important question.16 You said was the change in the 250 done in part so the
17 officers would fill it out better.

18 THE WITNESS: Yes.

19 MR. MOORE: I'm sorry.

20 MS. GROSSMAN: And actually fill it out?

21 MR. MOORE: What was the question you asked. I didn't
22 hear.23 THE COURT: I said was one of the purposes of the
24 settlement that the new UF 250 form would actually be filled
25 out better by the officers and he said yes.

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1 MS. GROSSMAN: And it should actually be filled out.

2 MR. MOORE: Judge, that's absolutely incorrect

3 because --

4 THE COURT: You're not testifying. So that's that.

5 She asked and he answered.

6 MR. MOORE: All right.

7 THE COURT: That's the way it is.

8 Go ahead, Ms. Grossman.

9 Q. Chief, I'm going to refer you to Plaintiffs' Exhibit 114.
10 It's the Daniels stipulation.

11 THE COURT: But the point is if it's in evidence you
12 can read from it.

13 MS. GROSSMAN: But I want the witness to look at it.

14 THE COURT: If you just want to read from that, go
15 ahead, that's fine. So reading from Exhibit 114.

16 MS. GROSSMAN: Fine. Okay.

17 So, referring to page 6, paragraph (a).

18 Let me start with the sentence before sub (a).

19 "Municipal defendants have provided class counsel --

20 THE COURT: Slower.

21 MS. GROSSMAN: "Municipal defendants have provided
22 class counsel with an audit outline that includes these
23 protocols. QADs shall conduct audits that at a minimum address
24 the following issues: (a) whether and to what extent
25 documents; i.e., 250s that have been filled out by officers to

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1 record stop, question and frisk activity have been completed in
2 accordance with NYPD regulations; and (b) and whether and to
3 what extent the audited stop, question and frisk activity is
4 based upon reasonable suspicion as reflected in the UF 250
5 form."

6 THE COURT: Pause for a minute.

7 Could one of you put that on the screen, so we get
8 that, (a) and (b), so everybody can see it.

9 So now it's in front of you too. You heard it and you
10 see it.

11 Now what's the question.

12 Q. So referring to (a), is one of the purposes of the new form
13 to actually make sure that officers fill out the form, not just
14 about the accuracy but that they're actually filling out the
15 form?

16 MR. MOORE: Objection, Judge, to the form of the
17 question again.

18 MS. GROSSMAN: Is that your understanding?

19 THE COURT: Overruled.

20 Go ahead.

21 THE WITNESS: Answer, your Honor?

22 THE COURT: Yes.

23 THE WITNESS: Yes.

24 Q. And so yesterday when Mr. Moore suggested when he showed
25 you the chart that I believe he suggested represented a

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1 700 percent increase in stops from -- during your tenure as
2 chief of department, would you say that the 700 -- 700 percent
3 increase is only attributed to the number of stops that
4 occurred or because officers are actually filling out the
5 paperwork?

6 MR. MOORE: Just objection to the form.

7 THE COURT: Overruled.

8 Do you understand the question?

9 THE WITNESS: Yeah, sure.

10 THE COURT: Okay.

11 THE WITNESS: I think it's a combination of both.

12 I think they're filling out -- I think they are --
13 because of the new form, I think it accomplished its mission.
14 I think it's an easier form to do. And I think they're filling
15 it out.

16 THE COURT: That wasn't the question. She asked
17 whether the reason that the number of stops rose so
18 dramatically.

19 THE WITNESS: In part.

20 THE COURT: In part, okay.

21 Q. Now, the old form which required narrative, do you have an
22 opinion from your own personal experience about looking at
23 those forms whether the narrative content was legible enough to
24 put into a database?

25 MR. MOORE: Same objection, Judge.

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1 THE COURT: I'll allow it. He's seen them. Is that
2 an issue, legibility?

3 THE WITNESS: Sure. There was a number of issues with
4 the old form.

5 THE COURT: Was that one of them?

6 THE WITNESS: Yes.

7 Q. Are you aware that the police department must report
8 quarterly information about its stop, question and frisks to
9 the city council?

10 A. Yes.

11 Q. Do you know where that information comes from the
12 reports -- comes from for the reports?

13 A. A database that's produced.

14 Q. And do you have an opinion about whether the check-box
15 nature of the 250 allows for easier and more accurate reporting
16 on stops than a narrative form would?

17 A. Much easier.

18 Q. Now yesterday you were asked a series of questions about
19 supervision. Can you please explain in your own words what you
20 believe occurs with supervision and 250s.

21 A. (No response).

22 Q. Meaning --

23 THE COURT: You want to know what's supposed to occur,
24 or what he thinks actually takes place.

25 MS. GROSSMAN: What he believe actually occurs.

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1 THE COURT: I'd like to also understand the basis of
2 your knowledge of the answer. When you explain your answer,
3 explain how you know it.

4 THE WITNESS: Well, I've been at every rank just about
5 in the New York City Police Department. Being precinct CO of
6 three different precincts, I have an intimate knowledge of what
7 happens on the street. And I have seen my supervisors that
8 I've supervised over all these years. And a good supervisor,
9 and the vast majority of our supervisors in the NYPD are
10 excellent quality, they take it seriously about the quality of
11 the work of the people that work for them.

12 THE COURT: That wasn't what she asked. What do they
13 do to supervise?

14 THE WITNESS: What they do --

15 THE COURT: You're talking about 250s?

16 MS. GROSSMAN: Yes, and stops.

17 THE COURT: Focus on these stops.

18 THE WITNESS: The answer is different for different
19 units.

20 If you have an anticrime unit, many times the
21 anticrime supervisor is with the officers when they make those
22 stops. We mandate that there is a supervisor right there all
23 the time with those officers. So many times they're riding
24 with those officers.

25 Talk about a street narcotics unit, again, they're an
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1 integral part of that team. They're always on the street with
2 them. So they're right there when they're making those stops.
3 So it's very much a personal observation.

4 Now your patrol supervisor we would expect -- and this
5 is what happens by my own personal observations -- is that
6 they're there. Many of the times the supervisors respond to
7 these jobs. They're over the radio. An officer will put over
8 the air someone stopped. And the supervisor is going to
9 respond there. Or have intimate knowledge of working knowledge
10 of the people that work for him or her.

11 They're out there working with them day in and day
12 out. They're on jobs with them. They see how they work. And
13 they make personal observations. And that's what I expect.

14 THE COURT: Wait. So I'm not sure I understand.

15 So in those units, are they actually there when the
16 stop's initiated, or do they respond after the stop was made
17 and then the officer calls them to the scene?

18 THE WITNESS: Combination of both.

19 THE COURT: Okay.

20 Q. And are there opportunities for supervisors to also respond
21 to arrests that are triggered by a reasonable suspicion stop?

22 A. All things being perfect, we would like the supervisor to
23 respond to every arrest while it's on the street. Doesn't
24 always happen. It's busy. A lot of times we can't get to the
25 scene. We want to get the prisoner off the scene as soon as

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1 possible, or just the sergeant is hung up with something else.
2 But we would like to have that sergeant respond to the scene
3 and verify it.

4 And then there's the impact people that I don't know
5 if we've talked about. When they come out of the academy, the
6 impact units, and we have handpicked sergeants that supervise
7 them. And we expect them to be with them on many of their
8 encounters, right there at the scene when they do the
9 encounters.

10 MS. GROSSMAN: Now your Honor --
11 Q. Chief, could you explain to the Court about the impact
12 officers and the geographic region that these impact officers
13 generally cover and explain how the supervision is able to
14 occur so that the supervisor sees what the officers are doing.

15 MR. MOORE: How many questions do you want him to
16 answer?

17 THE COURT: That one was too complicated, right.
18 Rephrase that.

19 Well I can just clarify. Basically she's asking about
20 the impact units and the geographic reasons they cover.

21 Can you just explain how the supervision works in
22 those units?

23 THE WITNESS: Sure.

24 I think part of it is impact, how it's picked. What
25 happens is when a class is ready to graduate from the academy,

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1 we look at the maps. We look at all the precincts. An area
2 where you think influx of uniformed officers would benefit the
3 crime picture, make it go down, that may be identified as an
4 impact zone. We'll send officers there.

5 When they go there, we determine what hours they
6 should be working, again, coinciding with when the crime is
7 happening, and it's vast majority is foot patrol, on the
8 street, walking the beat, looking for the crime conditions that
9 would tell the officers about --

10 THE COURT: Did you say these are brand new officers?

11 THE WITNESS: Yes. These are brand new officers. But
12 there is a percentage of senior officers in there with them
13 that help them learn the street. And then, again, the
14 supervisors are handpicked. The sergeants, lieutenants, they
15 have an impact captain that's assigned just for the impact
16 zone, all for the reason of mentoring these officers to be the
17 best that they can be.

18 And, again, when they do any type of activity, we try
19 and get a sergeant, lieutenant, or captain right on that scene
20 before they do it or really as it's started.

21 Q. Can you just give the Court an example of a particular
22 impact zone just to illustrate how close the officers are all
23 working in that particular zone?

24 A. Well we try and make the zone too large --

25 THE COURT: You try to make it?

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1 THE WITNESS: We try not to make it too large.

2 THE COURT: Not to make it too large.

3 THE WITNESS: If we do, it just -- the idea is a high
4 concentration of uniformed officers in a small area where
5 there's a concentration of crime. That's what we find works.

6 So it could be 20 blocks by 20 blocks. It could be
7 ten blocks. There's one in the 79th precinct in Brooklyn
8 that's just a linear post along Fulton Street.

9 So it runs -- again, it really does depend on the
10 crime picture and the concentration of the crime.

11 Q. So generally what would be an average number of officers in
12 impact assigned to a particular impact zone in any given tour?

13 A. There really isn't an average number. We look at the
14 geographic make-up of it, how densely populated it is, the
15 density of the crime. And it could be 40 cops. It could be a
16 hundred cops.

17 THE COURT: In one tour?

18 THE WITNESS: I'm sorry?

19 THE COURT: She said in one tour.

20 THE WITNESS: Well that would be the impact zone.
21 Then they have to cover the hours.

22 THE COURT: Right. So she said in any one tour.

23 THE WITNESS: It could be 40. It could be 60. It
24 depends on the particular zone.

25 Q. And so if it's a small zone and you have supervisors there

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1 in that small zone, many of the officers and sergeants are --
2 have opportunities to observe one another; is that right?

3 A. Sure.

4 Q. And there is an opportunity for closer supervision,
5 correct?

6 A. Without a doubt.

7 Q. Now, yesterday I believe you gave testimony -- Mr. Moore
8 asked you a few questions about discipline -- the rate of
9 discipline with respect to substantiated CCRBs.

10 Do you remember the testimony from yesterday?

11 A. Yes.

12 Q. Let me refer you to the exact page number and line number
13 of the testimony. At the transcript 2846, line 15 through 23.
14 The question was: "With respect to these elements of what you
15 believe to be the checks and balances, would you agree with me
16 that the rate of discipline with respect to substantiated CCRB
17 complaints has decreased over the last few years?"

18 Your answer was, "I'm not sure. I don't know."

19 "Q. Do you know whether the discipline by the police
20 department of officers who have substantiated CCRB complaints
21 has been going down in the last few years?

22 "A. I believe it has."

23 Since yesterday's testimony do you have clarification
24 to make?

25 A. Yes. It went down last year. But a couple years prior to

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D4A9FL01 Esposito - cross

1 that it went up. So it was -- I misspoke. It was just 2012
2 where it went down.

3 Q. Now in your long experience at the NYPD have you come
4 across a situation where officers have agreed among themselves
5 to only do a certain amount of work in a month?

6 A. Yes.

7 Q. And sort of an officer-imposed quota?

8 A. Yeah, you could call it that.

9 Q. In your experience would this be a high amount of activity
10 or a low amount?

11 A. A low number.

12 Q. Can you elaborate?

13 A. Sure. I mean, look, you have -- you have a hundred percent
14 of the cops in the precinct. You have ten percent that will
15 work as hard as they can, whenever they can, no matter how bad
16 we treat them, how bad the conditions are. They love being
17 cops and they're going to do it no matter what. You have ten
18 percent on the other side that are complete malcontents that
19 will do as little as possible no matter how well you treat
20 them. And many times that ten percent will try and convince
21 that remaining 80 percent to do as little as possible. Because
22 that ten percent doesn't want to look bad. So if they set a
23 standard, a very low standard of activity, and everybody
24 complies, well everybody sees the same. It protects that ten
25 percent on the losing end, the malcontent end.

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D4A9FLO1 Esposito - cross

1 Q. Are you aware of occasions where officers with high
2 activity have been mistreated by other officers?

3 A. Sure.

4 Q. Can you explain.

5 A. Well if an officer doesn't fall into line, so to speak,
6 sometimes with these -- with the profile of the precinct, let's
7 say, there's mandated quota, then they could wind up with a
8 locker turned upside down sometimes, a locker put in the
9 shower, some graffiti on their locker. It's happened from time
10 to time.

11 Q. Have you heard the term zeros applied to police officers?

12 A. Sure.

13 Q. What do you understand that to mean?

14 A. A malcontent, a person who is trying to do as little as
15 possible and still get paid.

16 Q. Now, Chief, does the police department have a policy of
17 setting quotas?

18 A. No.

19 Q. Now, did there come a time that you learned that Senator
20 Eric Adams excused Police Commissioner Kelly of saying that the
21 NYPD targets its stop-and-frisk activity at young black and
22 Latino men because its wants to instill fear in members of
23 these two populations that they could be stopped and frisked
24 every time they leave their homes so that they are less likely
25 to carry weapons?

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D4A9FL01 Esposito - cross

1 A. I was aware that he made --

2 MR. MOORE: I'm going to object. I don't know.

3 THE COURT: She's just asking if he's aware of the
4 senator's --

5 MR. MOORE: He wasn't there.

6 THE COURT: Aware of the senator's allegation. That's
7 all.

8 MR. MOORE: He's aware of that allegation, that it was
9 made in this courtroom?

10 THE COURT: No. Whenever the senator made it.
11 Probably in the press. I don't know.

12 Were you aware of it generally speaking?

13 THE WITNESS: Yeah. I was aware that he made that
14 allegation.

15 THE COURT: If you want to know --

16 MR. MOORE: Can we find out when he became aware of
17 it.

18 THE COURT: Do you want to know? Okay.

19 Were you aware at the time?

20 THE WITNESS: I was aware when I read it in the paper,
21 that the allegation was made.

22 MR. MOORE: About the paper -- coverage of this case
23 or the coverage --

24 THE COURT: No. At the time the senator was talking
25 about it, right?

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D4A9FLO1 Esposito - cross

1 THE WITNESS: Yeah, right.

2 Q. Is that your understanding of the NYPD's practice?

3 A. Of course not.

4 MR. MOORE: Objection to the form, Judge.

5 Q. Have you communicated to police personnel that they should
6 target stop-and-frisk activity at young black and Latino men to
7 instill fear in members of these two populations that they
8 could be stopped and frisked every time they leave their homes
9 so they're less likely to carry weapons?

10 A. Of course not.

11 Q. Have you communicated this view down the chain of command?

12 A. Of course not.

13 Q. Has the police commissioner expressed to you that he wants
14 police officers to target stop-and-frisk activity at young
15 black and Latino men without regard for reasonable suspicion?

16 MR. MOORE: Objection.

17 THE COURT: I'm sustaining that. We're not going to
18 have what the commissioner told him about anything. If he
19 wants to come in and testify, he's welcome here.

20 Q. Are you aware of allegations in the press and media that
21 the NYPD racially profiles young black and Hispanic males?

22 A. Yes.

23 Q. Have you heard allegations of racial profiling from the
24 communities that NYPD serves?

25 A. About racial profiling?

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D4A9FL01 Esposito - cross

1 Q. Right.

2 A. No.

3 Q. Well have you heard complaints about stop, question and
4 frisk from the communities that the NYPD serves?

5 A. Yes.

6 Q. And are those complaints about being stopped just based on
7 race?

8 A. No.

9 Q. What are they about?

10 THE COURT: No, can't -- if you want that --

11 MR. MOORE: I'm going to object, Judge.

12 THE COURT: You object. Sustained.

13 Q. Well the complaints --

14 MS. GROSSMAN: Your Honor, why wouldn't the witness be
15 able to talk about --

16 THE COURT: It's all hearsay.

17 MS. GROSSMAN: -- the nature of the complaints.

18 THE COURT: It's all hearsay.

19 MS. GROSSMAN: It informs. There's a lot of testimony
20 that Mr. Moore was able to elicit.

21 THE COURT: I'm not going to allow it. There were
22 lots of complaints from lots of communities. You'd have to
23 tell me every one of them to make it fair. It can't be just
24 the ones that are handpicked by one side or the other. There's
25 too many complaints.

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D4A9FL01

Esposito - cross

1 BY MS. GROSSMAN:

2 Q. Well do you have an understanding of the nature of the
3 complaints?

4 MR. MOORE: Same objection, Judge.

5 THE COURT: Sustained.

6 Q. How do you know that racial profiling is not happening in
7 your view, in the police department?8 A. Well we don't get complaints about it. And I think our
9 supervision --

10 THE COURT: You said you don't get complaints?

11 THE WITNESS: About racial profiling?

12 THE COURT: You never heard a complaint from any
13 community about that?14 THE WITNESS: What I hear is certain groups, groups
15 like the New York Civil Liberties will get up and say it, but I
16 don't get complaints from --

17 THE COURT: No resident groups?

18 THE WITNESS: I don't get a complaint from a civilian
19 saying I was stopped because --

20 THE COURT: I didn't ask about one single civilian.

21 You've never heard complaints from any community
22 organization?

23 THE WITNESS: Community organizations, yes.

24 THE COURT: In the community. I don't mean the Civil
25 Liberties Union. I mean the residents of a community, a

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D4A9FL01 Esposito - cross

1 housing building?

2 THE WITNESS: No. I get it from elected officials.

3 THE COURT: That's one possibility.

4 THE WITNESS: Yeah.

5 THE COURT: You have heard that?

6 THE WITNESS: Elected officials, sure.

7 THE COURT: How about from community people?

8 THE WITNESS: No.

9 THE COURT: The housing people -- the people in the
10 housing projects?

11 THE WITNESS: No. They complain about --

12 THE COURT: Neighborhood association?

13 THE WITNESS: They complain about the stop, question
14 and frisk. Not about racial profiling.

15 What they complain about is, at times, how they were
16 stopped. The officers didn't tell me why I was stopped. The
17 officer was rude, would not give me his name or badge number.

18 THE COURT: But you never heard them complain that it
19 was racial?

20 THE WITNESS: I have not had anyone come and tell me I
21 was stopped because I was a person of color.

22 THE COURT: Not a single stop.

23 Our kids are being stopped. You've never heard that
24 from any community group?

25 THE WITNESS: Just the ones that I just talked about.

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D4A9FL01 Esposito - cross

1 Elected officials. Community groups. National Action
2 Committee. Is that a community group?

3 THE COURT: I don't know.

4 THE WITNESS: If it is, then I've heard it from Al
5 Sharpton's group.

6 Q. So, you are aware of complaints from elected officials that
7 a disproportionate number of black and Latino men are stopped,
8 questioned and frisk, right?

9 A. I'm sorry. Say it again.

10 Q. Are you aware of complaints from elected officials that a
11 disproportionate number of black and Latino men are stopped,
12 questioned and frisked?

13 A. Yes.

14 Q. And do you believe the disparities in stop, question and
15 frisks among black and Latino men is evidence of racial
16 profiling?

17 MR. MOORE: Object to the form.

18 THE COURT: It's just not worth the objection. You
19 don't believe that, right?

20 THE WITNESS: I didn't hear it. I'm sorry.

21 Q. Do you believe the disparity in stop, question and frisk
22 among black and Latino men is evidence of racial profiling?

23 A. No. I don't believe that.

24 Q. Why don't you believe that?

25 A. Because the stops are based on complaints that we get from

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D4A9FL01 Esposito - cross

1 the public.

2 THE COURT: Try it again.

3 The stops are based on complaints that you get from
4 the public?

5 THE WITNESS: Many times.

6 Well, we look at the descriptions that are given to us
7 from the people that are victims of the crimes. We look at the
8 description. If they describe a certain group of people, then
9 we're going to look in that area where those crimes are
10 happening and say, well, the fellow with the blue pants and the
11 white sneakers who's six feet tall, that's the fellow who is
12 doing the robbery. Well let's go look for that fellow.

13 THE COURT: That's one basis for stops, is a
14 description of a suspect.

15 THE WITNESS: Sure.

16 THE COURT: But there are many street stops that have
17 nothing to do with complaints, right?

18 THE WITNESS: Correct.

19 THE COURT: It's observed conduct.

20 THE WITNESS: Hopefully it's observed conduct in an
21 area where we're sending our officers because of a certain
22 crime condition.

23 THE COURT: I understand. It's not based on a
24 complaint of a victim.

25 THE WITNESS: It's based on the totality of, okay, who
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D4A9FLO1 Esposito - cross

1 is committing the -- who is getting shot in a certain area?

2 Well it's young men of color in their late teens, early 20s.

3 Well who is doing those shootings? Well, it's young
4 men of color in their late teens, early 20s.

5 So when we're out there we're going to try and prevent
6 the young men of -- getting shot. So that's -- I'm sorry.

7 Q. And so when you send officers out to those areas where the
8 shootings are occurring, what information is usually available
9 to those officers when they're going out to those areas?

10 A. What's available to them is the crime picture. What crime
11 is happening. How it's happening. The description of the
12 people that are committing the crimes. The description of the
13 people that are being victimized. How the crime is occurring.
14 What time it's occurring. We try to give as much information
15 as possible on that crime pattern.

16 Q. And just to be clear, Chief, when you know that shootings
17 have occurred in a particular area, a general description that
18 someone is black or Hispanic between 14 and 21 is not enough to
19 actually stop every black and Hispanic young male between 14
20 and 21; is that right?

21 A. No. As I said yesterday, it's all based on reasonable
22 suspicion.

23 Q. And so that information may justify sending officers to a
24 particular area, but then it's up to those officers to make
25 reasonable suspicion observations before they actually make a

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D4A9FL01 Esposito - cross

1 stop; is that right?

2 MR. MOORE: Object to the form.

3 THE COURT: Well it certainly was -- you may give the
4 answer, but I guess you agree with it, right.

5 THE WITNESS: Yeah, no, I agree with that. That's why
6 we talked about the CompStat process where we see if those
7 stops are being conducted in the areas we want, at the times we
8 want, for the reasons that we want.

9 Q. Do Blacks and Hispanics account for a disproportionate
10 share of violent crime victims?

11 MR. MOORE: Objection.

12 THE COURT: No. I'll allow it. He certainly would
13 know that.

14 THE WITNESS: Again, please.

15 Q. Do Blacks and Hispanics account for a disproportionate
16 share of violent crime victims?

17 A. Violent crime, yes.

18 Q. And which neighborhoods account for the largest amount of
19 violent crime?

20 A. Generally speaking, the minority areas.

21 Q. Does the police department send police officers to minority
22 neighborhoods based on race?

23 A. No. We send them there based on the concentration of
24 crime.

25 Q. And Chief, what is the demographic make-up of the police

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1 officers in the NYPD?

2 THE COURT: Today?

3 MS. GROSSMAN: Today. As of today.

4 THE COURT: I read that in the paper.

5 THE WITNESS: You did?

6 THE COURT: So I think I know the answer.

7 THE WITNESS: Hopefully I read the same answer.

8 THE COURT: Today.

9 THE WITNESS: The majority are minority.

10 THE COURT: That's right. I think I just read that
11 for the first time.

12 MS. GROSSMAN: Can I have a moment?

13 THE COURT: Yeah. Do you know when it happened that
14 it became the majority are minority?

15 THE WITNESS: It's been a few years now.

16 THE COURT: Is that right? I thought I just read
17 that.

18 MS. GROSSMAN: I have no further questions, your
19 Honor.

20 I would just note that the chief has personal
21 obligations after and I'm just hoping we don't go over
22 everything we went over yesterday with Mr. Moore when he does
23 his redirect because that tends to be what often happens. So I
24 just want to caution.

25 MR. MOORE: Is this really necessary?

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D4A9FLO1 Esposito - cross

1 THE COURT: I guess she feels I need to hear this.

2 MS. GROSSMAN: I do.

3 THE COURT: She's lecturing me, not you, she's
4 lecturing me.

5 MR. CHARNEY: Or criticizing him.

6 THE COURT: Yes. But I'm being told to keep a tighter
7 reign.

8 I could use the coaching. I've only been doing it 24
9 years.

10 REDIRECT EXAMINATION

11 BY MR. MOORE:

12 Q. Good morning, Chief.

13 A. Good morning.

14 Q. How are you doing?

15 A. Good.

16 THE COURT: You mean you want to know if he likes
17 this?

18 Q. So, you said in your examination by Ms. Grossman that ten
19 percent of the police officers in the City of New York are
20 malcontents, right?

21 A. Yeah.

22 Q. So that's about 3500 officers at present?

23 A. I guess it could be.

24 Q. So that's a fairly large number of officers who you believe
25 are not really out there trying to do the job to protect the

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D4A9FL01 Esposito - redirect

1 citizens of the City of New York from crime, correct? 3500
2 officers?

3 A. Well, look, that's --

4 Q. That was your number, right?

5 A. Yeah, it's an example.

6 Q. I'm not asking you for an example.

7 A. What I'm saying is that do I know it's ten percent, no.

8 Q. There is no question pending now, Chief Esposito?

9 A. Counselor.

10 THE COURT: Wait, gentlemen.

11 That's all I wanted to say.

12 Go ahead Mr. Moore.

13 Q. Those 3500 officers are capable of doing almost anything
14 since they're malcontents, right? Would you agree with that?

15 A. Yeah.

16 Q. And that means they --

17 A. Well, no, I don't agree with that. I don't agree with
18 that.

19 THE COURT: That's his answer. He doesn't agree that
20 they're capable of doing almost anything. That's a bit
21 extreme.

22 Q. So those 3500 officers would be capable of, if they wanted
23 to make it look like they were doing work, just doing a UF 250
24 so they can satisfy their supervisor that I they're doing work.
25 They would be capable of doing that, correct?

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D4A9FLO1 Esposito - redirect

1 A. Correct.

2 Q. And one of the things you talked about was this whole
3 notion of a quality -- quality stops.

4 Do you remember that?

5 A. Yes.

6 Q. Quality stops are stops that are in the right place at the
7 right time, right?

8 A. I'm sorry.

9 Q. Quality stops are stops that are in the right place at the
10 right time, correct?

11 A. Yes.

12 Q. And targeting the right --

13 A. That --

14 Q. Targeting the right people, correct?

15 A. Among other things.

16 Q. And the right people would be young black and Hispanic
17 youths 14 to 20, correct?

18 A. At times.

19 You failed to mention reasonable suspicion.

20 Q. I was talking about targeting and focusing, okay.

21 You agree with me that you would want to target the
22 right people at the right place at the right time, correct?

23 A. No. We don't target.

24 THE COURT: We're not talking about stopping anymore.
25 We're talking about where you're going to go look.

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D4A9FL01 Esposito - redirect

1 THE WITNESS: Made sound like we're targeting, we're
2 going after a certain group.

3 What you have to bring into the equation the
4 reasonable suspicion.

5 THE COURT: That takes us to the stop. He's not
6 saying that.

7 When you allocate the resources, are you looking for
8 the right people, at the right place, at the right time?

9 THE WITNESS: Yeah. I think you're looking at the
10 information that we have on a certain crime pattern or trend.
11 Q. And so as long as the police department is satisfied that
12 these are quality stops, they're not really going to look at
13 whether there's reasonable suspicion for the stop? If the
14 stops are occurring at the right place and the right time,
15 that's -- in your judgment, that's a quality stop, and that's
16 as far as the inquiry goes, correct?

17 A. A hundred percent wrong.

18 Q. Well --

19 A. As I talked about yesterday and I --

20 THE COURT: Let him finish.

21 You go ahead.

22 THE WITNESS: I go?

23 THE COURT: Yes.

24 THE WITNESS: It goes to the supervisor again. We
25 expect the supervisor to be there or interact with the officers

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D4A9FL01 Esposito - redirect

1 to ensure that the stop is based on reasonable suspicion.

2 Q. But you talked about at CompStat you're looking at --
3 you're trying to determine whether the stops, and you map it
4 up, you matched the stops, compared to the crime pattern, and
5 you're trying to figure out whether these are quality stops?
6 You're talking at CompStat, correct?

7 A. Correct.

8 Q. At CompStat you're not reviewing individual 250s, right?

9 A. We take the information --

10 THE COURT: No. No. You can answer that. You're not
11 looking at individual 250s at the CompStat meeting?

12 THE WITNESS: We go to the database. We download the
13 information from the database.

14 Q. So as long as you -- because you have this abiding trust in
15 your supervisory system, as long as you see the targets -- the
16 stops targeted in the right place, at the right time, that's
17 enough for you in terms of whether the stops are quality
18 stops --

19 A. No, no.

20 Q. When you're looking at it at CompStat?

21 A. No. That's not enough.

22 That's an indication. That's all it is, is an
23 indication that they are conducting the enforcement where it
24 should be done at the time it should be done.

25 The fact that it's a quality stop is more important

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D4A9FL01 Esposito - redirect

1 that that job is done on the street by the people who are
2 supervising the officers that are making those stops.

3 Q. Chief Esposito, Ms. Grossman asked you about the Daniels
4 settlement and about how the 250 form came about, the new 250
5 form?

6 A. Correct.

7 Q. Do you remember her asking about that?

8 A. Yeah.

9 Q. Do you recall that the Daniels settlement invites terms
10 such as: The NYPD shall continue its requirement that all NYPD
11 officers document stop, question and frisk activity in UF 250
12 reports.

13 That's the language from the decree, correct?

14 A. I believe so.

15 Q. And so that UF 250 form was changed before that -- the
16 settlement decree was -- the settlement -- stipulation and
17 settlement was signed, correct?

18 A. I believe so.

19 Q. The NYPD did that on its own, correct?

20 A. I believe so.

21 Q. They didn't do that because NYC LU or any lawyer in Daniels
22 asked them to do it, right? The NYPD did it on its own,
23 correct?

24 A. For the most part, yeah.

25 Q. You testified yesterday that one of your concerns when

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D4A9FL01 Esposito - redirect

1 looking at stops is a lot of stops are occurring on overtime as
2 compared to straight time.

3 Do you remember that?

4 A. Yes.

5 Q. And if you see stops on -- a lot of stops on overtime, that
6 suggests to you that cops aren't doing their work on straight
7 time, correct?

8 A. It's a possibility, correct.

9 Q. Well that's what you testified to?

10 A. Yeah.

11 Q. Do you remember that?

12 A. That's a possibility, yeah.

13 Q. The other possibility is that on overtime, when officers
14 get time-and-a-half, in order to justify the continued
15 overtime, they make stops to show that they're being productive
16 so they can continue to get overtime.

17 That's another possibility, right?

18 A. They may work -- yeah, they may work harder on overtime
19 than on straight time, yeah, you're a hundred percent correct.

20 Q. No. They may be making stops that aren't justified in
21 order to -- in order to get numbers so they can justify
22 continued overtime. That may be what's happening as well,
23 correct?

24 A. I think just the opposite. I think they're looking harder
25 on overtime. They're not looking -- they perhaps are not

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D4A9FL01 Esposito - redirect

1 looking as hard on straight time.

2 Q. And is that all cops, or is that just that ten percent
3 malcontent in the police department?

4 A. It's tough to tell.

5 As I said earlier, the vast majority of our officers
6 are hardworking cops that want to do the job. They leave their
7 house everyday to go to work to protect the city. They have
8 the best intentions all the time, and they do it. There is a
9 small percentage, and we're locking on that ten percent. It
10 could be two percent. But we're talking about in any
11 profession there is a group that will try to do the least
12 amount and get paid the most.

13 Q. The vast majority of cops, is that that ten percent or is
14 that somewhere in between the ten percent malcontents and the
15 ten percent stellar performers?

16 A. So now we're talking about the 80 percent?

17 THE COURT: He said ten at top, ten at the bottom.

18 THE WITNESS: So the 80 percent are good cops that we
19 don't want to get swayed by the ten percent that's bad. We
20 want the ten percent that are superstars to affect the
21 80 percent.

22 Q. What percent of the 80 percent is closer to the
23 malcontents?

24 THE COURT: I think we're getting a little bit out of
25 hand.

D4A9FL01 Esposito - redirect

1 Q. One of the things that Ms. Grossman showed you yesterday
2 was a document that said -- a change in the auditing process
3 where now the audit is being done in the precincts by -- the
4 self-inspection audits are being done by the executive officer,
5 correct?

6 A. Correct.

7 Q. Do you remember that? She showed you a document about
8 that?

9 A. Yes.

10 Q. And that's the only change that you're aware of that's
11 taking place in the auditing process, right?

12 A. I believe so.

13 Q. They changed the person who does the audit from the --
14 generally the integrity control officer, who is the lieutenant,
15 to the executive officer, who may be a captain, correct?

16 A. Correct.

17 (Continued on next page)

18

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D4A8FLO2 Esposito - redirect

1 Q. Do you remember we talked yesterday about the 75th
2 Precinct?

3 A. Yes.

4 Q. And the officers complained about quotas there?

5 A. Yes.

6 MS. GROSSMAN: This is beyond the scope. I didn't
7 cover the 75th Precinct.

8 THE COURT: Redirect is supposed to respond to what
9 happened on cross.

10 MR. MOORE: If I could ask the next question, I can
11 demonstrate why.

12 Q. Do you consider those officers in the 75th Precinct who
13 complained about quotas, a complaint that was sustained in
14 arbitration, do you consider them malcontents?

15 A. I am sure there is a certain percent there.

16 MR. MOORE: One second, Judge.

17 Q. So, Chief Esposito, is it your testimony that you rely on
18 your supervisors to take affirmative action to make sure that
19 officers are complying with the rules with respect to stop,
20 question and frisk? If they see something, they should respond
21 to it, correct?

22 A. I expect my sergeants, my supervisors, lieutenants,
23 captains, to supervise their people, and correct what has to be
24 corrected no matter what it is.

25 Q. If they see something wrong, they should correct it?

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D4A8FLO2 Esposito - redirect

1 A. Sure.

2 MR. MOORE: One more inquiry, Judge. I told you I
3 would be short.

4 Nothing further, Judge.

5 MS. GROSSMAN: No further questions.

6 THE COURT: You're done. Thank you.

7 MR. DUNN: Before he is dismissed.

8 THE COURT: I forgot Mr. Dunn.

9 MR. DUNN: As you may recall, there was this issue
10 about the timing of the remedy brief in Ligon and Chief
11 Esposito's testimony.

12 THE COURT: Right.

13 MR. DUNN: Following that exchange last week, the law
14 department talked to me and made some representations about
15 their Ligon remedy brief. In light of those representations,
16 we are going to forgo any questioning of Chief Esposito. If it
17 turns out the brief is different than represented, which I do
18 not expect, we will have to revisit it, but we don't have any
19 questions.

20 THE WITNESS: Thank you, Mr. Dunn.

21 MR. DUNN: You're welcome, Chief Esposito.

22 THE WITNESS: It's been a pleasure. Thank you.

23 THE COURT: Thank you.

24 MS. BORCHETTA: There was a question of who was going
25 next because of scheduling, but we are calling Brian Kovall.

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D4A8FLO2 Esposito - redirect

1 BRIAN KOVALL,

2 called as a witness by the plaintiffs,

3 having been duly sworn, testified as follows:

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

6 THE WITNESS: My name is Brian, B-R-I-A-N, Kovall,
7 K-O-V-A-L-L.

8 THE COURT: Thank you.

9 DIRECT EXAMINATION

10 BY MS. MARTINI:

11 Q. Good morning, Officer Kovall.

12 A. Good morning.

13 Q. You joined the NYPD in July of 2006, correct?

14 A. Yes.

15 Q. You're currently assigned to patrol in the 23rd Precinct?

16 A. Yes.

17 Q. That was also your assignment in February of 2008, correct?

18 A. Yes.

19 Q. And on February 5, 2008, you were patrolling with Officer
20 Edward Arias, correct?

21 A. Yes.

22 Q. And on that night, you stopped a man by the name of Clive
23 Lino, correct?

24 A. Yes.

25 Q. At approximately 8 p.m.?

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D4A8FLO2 Kovall - direct

- 1 A. Yes, I believe so.
2 Q. On the corner of 103rd and Lexington Avenue, correct?
3 A. Yes.
4 Q. You don't remember what the weather was that night,
5 correct?
6 A. No, I do not.
7 Q. You stopped Mr. Lino on suspicion of robbery, correct?
8 A. Yes.
9 Q. And you stopped Mr. Lino and his friend because, according
10 to you -- I'm sorry. You also stopped another individual who
11 was with Mr. Lino on the corner, correct?
12 A. Yes.
13 Q. And you stopped Mr. Lino and his friend because, according
14 to you, they matched the description of two males that were
15 wanted for a robbery, correct?
16 A. Yes, among other things.
17 Q. They were wanted for other things?
18 A. No. I stopped them because of other things.
19 Q. But you stopped the men because you believed that they fit
20 the description of suspects wanted for a robbery, correct?
21 A. Yes, among other things.
22 Q. And the basis for your belief that they matched the
23 description of the suspects was a surveillance video, correct?
24 A. Yes. That was the main reason.
25 Q. And you were shown the video at the beginning of your tour

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D4A8FLO2 Kovall - direct

1 that day?

2 A. Yes.

3 Q. And the video depicted two males, is that correct?

4 A. Yes.

5 Q. One male wearing a black jacket and one male wearing a blue
6 jacket?

7 A. Was that a question?

8 Q. I am asking you. Correct?

9 A. Yes. That's correct.

10 Q. And according to you, the men in the video were wearing
11 winter jackets, correct?

12 A. Yes.

13 Q. Officer Kovall, I would like to play a video that has been
14 marked as Defendants' Trial Exhibit M13.

15 MS. MARTINI: And before we play it, I would like to
16 move the video into evidence, your Honor. The parties have
17 stipulated to the authenticity of the video.

18 MR. KUNZ: That's correct, your Honor.

19 THE COURT: OK.

20 (Defendants' Exhibit M13 received in evidence)

21 THE COURT: How long is this video?

22 MS. MARTINI: It's a little over one minute.

23 THE COURT: You can see it on your screen?

24 THE WITNESS: Yes, your Honor.

25 (Videotape played)

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D4A8FLO2 Kovall - direct

1 MR. KUNZ: Just for the record, I think we started it
2 at the 29 second mark.

3 MS. HOFF VARNER: Let me start it at the beginning.
4 There we go.

5 (Videotape played)

6 Q. Officer Kovall, this is the video that was played for you
7 at the beginning of your tour on February 5, 2008, correct?

8 A. Yes.

9 Q. We might need to pull it back up. The date at the bottom
10 of the video says January 30, 2008, correct?

11 A. I don't have it up right now.

12 Yes. That's correct.

13 Q. The time of the video is a little bit after 12:00 noon?

14 A. Yes. That's what it says.

15 Q. One of the men is wearing a blue jacket and dark pants in
16 the video, correct?

17 A. Yes.

18 Q. Another man shown in the video is wearing a black jacket
19 and light or khaki pants?

20 A. Can you play it one more time?

21 (Videotape played)

22 Q. While we are watching it, just to be clear, the two males
23 that you believe were wanted in connection to a robbery are the
24 males that are running in the video on either side of the
25 street, correct?

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D4A8FLO2 Kovall - direct

- 1 A. Yes. That's correct. And, yes, the other male was wearing
2 light pants.
3 Q. And a black jacket, correct?
4 A. Yes. That's correct.
5 Q. When you were shown the video, you were told there had been
6 a robbery or a string of robberies in the general vicinity,
7 correct?
8 A. Yeah. The vicinity of where the video was captured.
9 Q. But you don't know how many robberies had occurred,
10 correct?
11 A. Not at that time, no.
12 Q. And you didn't see any documents about the robberies prior
13 to stopping Mr. Lino, correct?
14 A. Yes. That's correct.
15 Q. You observed Mr. Lino and his friend standing in front of a
16 Chinese restaurant, correct?
17 A. Yes. That's correct.
18 Q. The Chinese restaurant was on the corner of 103rd and
19 Lexington?
20 A. The northeast corner to be specific.
21 Q. When you approached them, you asked them to take their
22 hands out of their pockets, right?
23 A. Yes.
24 Q. And they complied, right?
25 A. After a few attempts, yes.

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D4A8FLO2 Kovall - direct

1 Q. After a few attempts at asking them or a few attempts of
2 them taking their hands out of their pockets?

3 A. A few times of me asking them.

4 Q. So they had their hands in their pockets for more than a
5 second while you were standing there?

6 A. Yes.

7 Q. You also asked them why they were standing there, correct?

8 A. Yes. That's correct.

9 Q. And they told you that they were waiting for Chinese food
10 that they had just ordered, correct?

11 A. Yes.

12 Q. While you and Officer Arias were stopping them, Mr. Lino
13 and his friend were not free to leave, correct?

14 A. Yes.

15 THE COURT: Yes, they were not?

16 THE WITNESS: Yes, they were not free to leave.

17 Q. Now, either you or Officer Arias frisked Mr. Lino, correct?

18 A. Yes. I'm not sure which one of us did. It was about five
19 years ago.

20 Q. But Mr. Lino was frisked by either you or your partner that
21 night?

22 A. Yes. That's correct.

23 Q. In fact, both men were frisked, correct?

24 A. Yes.

25 Q. According to you, Mr. Lino was frisked because he matched

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D4A8FLO2

Kovall - direct

1 the description of a person who you believed was armed and
2 dangerous, correct?

3 A. Yes.

4 Q. And because of furtive movements that Mr. Lino was making
5 toward his waist area, correct?

6 A. As I stated in my deposition, I don't remember which male
7 was Mr. Lino or the other male. I don't remember if one or
8 both of them were making the furtive movements towards their
9 waist area, but at least one of them did.

10 Q. And you can't describe the furtive movements in any further
11 detail, correct?

12 A. Other than that they were towards their waist area, no.

13 Q. And you don't recall whether the one individual who was
14 making the furtive movements actually touched his waistband or
15 was just moving his hand near his waistband?

16 A. Can you repeat that one more time?

17 Q. You don't recall whether the furtive movement was actually
18 just near the waistband or was actually physically touching the
19 waistband, correct?

20 A. Yes. That's correct.

21 Q. So sitting here today, you're not sure whether Mr. Lino
22 made any furtive movements, correct?

23 A. Yes. That's correct.

24 Let me reiterate. I am not 100 percent sure due to my
25 recollection. At the time, it may have, yes.

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1 Q. I am not sure what you mean by that. I will just ask the
2 question again.

3 You're not sure whether Mr. Lino made any furtive
4 movements, correct?

5 A. Where I sit presently, no, I'm not sure. But at the time
6 of the stop, I was sure.

7 Q. At the time of the stop, you're sure Mr. Lino made furtive
8 movements?

9 A. If that's what I had checked on the 250, then yes.

10 Q. You just said a moment ago that you weren't sure which of
11 the men made furtive movements, but one of them did?

12 A. From where I sit now, five years past the incident, you're
13 asking of my recollection, no, I don't recall specifically.

14 Q. And you just testified that when you approached the two men
15 their hands were in their pockets, correct?

16 A. Yes.

17 Q. You didn't believe that both men were armed, correct?

18 A. I didn't know if either man was armed.

19 Q. But you didn't believe that both of them were, correct?

20 A. I believed in the possibility that either of them were.

21 Q. You only believed that one of them was armed, correct?

22 A. No.

23 Q. You took a deposition in this case, correct?

24 A. Yes.

25 Q. And you swore to tell the truth?

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Kovall - direct

1 A. Yes.

2 Q. And you did tell the truth in that deposition, correct?

3 A. Yes, I did.

4 Q. I am handing you your deposition in this case.

5 A. Thank you.

6 Q. If you would like, you could turn to page 78. I am going
7 to read lines 15 to 20.8 Were you asked the following question and did you give
9 the following answer:10 "Q. And you believed that the basis of your belief that he was
11 armed was what?12 "A. Again, let me reiterate, I don't know specifically if it
13 was Mr. Lino who I believed that was armed, but one of the two
14 men that I stopped I did believe was armed."15 Were you asked that question and did you provide that
16 answer?

17 A. Yes.

18 MR. KUNZ: Just for completeness, on the very next
19 page, there is a question and answer that clarifies this I
20 think.

21 Page 79, lines 15 through 17:

22 "Q. Was it your belief that only one of the two men was armed?

23 "A. I don't remember."

24 A. And also the very next question. "Do you remember
25 if" -- I'm sorry. I apologize.

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D4A8FLO2 Kovall - direct

1 BY MR. KUNZ:

2 "Q. Do you remember if one or both of the men were frisked?

3 "A. I believe both."

4 BY MS. MARTINI:

5 Q. You filled out a UF-250 for the stop of Mr. Lino, correct?

6 A. Yes.

7 Q. I am showing you what has been marked as Plaintiffs' Trial
8 Exhibit 211.

9 Officer Kovall, do you recognize that document?

10 A. Can I have a moment to look at it?

11 Q. Absolutely.

12 A. Yes. I do recognize it.

13 Q. That's the UF-250 you filled out for the stop of Mr. Lino,
14 correct?

15 A. Yes.

16 MS. MARTINI: We'd like to move Plaintiffs' Trial
17 Exhibit 211 into evidence.

18 MR. KUNZ: No objection.

19 THE COURT: 211 received.

20 (Plaintiff's Exhibit 211 received in evidence)

21 Q. On the second page here, which is actually the back of the
22 form, correct?

23 A. Yes.

24 Q. That's your signature at the bottom?

25 A. Correct.

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D4A8FLO2 Kovall - direct

1 Q. And you filled out this form after stopping Mr. Lino,
2 correct?

3 A. Yes.

4 Q. On the front of the form under, "what were circumstances
5 which led to the stop," you checked "fits description,"
6 correct?

7 A. On the front of the form?

8 Q. Yes.

9 A. Yes. That's correct.

10 Q. You also checked several boxes on the back of this form,
11 correct?

12 A. Yes.

13 Q. Under "additional circumstances/factors check all that
14 apply," you checked "area has high incidence of reported
15 offense of type under investigation," correct?

16 A. That's correct.

17 Q. That refers to the robbery that you had been told about?

18 A. It refers to robberies in general.

19 Q. You also checked "time of day, day of week, season
20 corresponding to reports of criminal activity," correct?

21 A. That's correct.

22 Q. That also refers to the robbery that you were told about,
23 correct?

24 A. No. That refers to my personal knowledge of the area, and
25 that's the tour that I work, and I know that during that tour

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D4A8FLO2 Kovall - direct

1 there are criminal activities that take place.

2 Q. But the basis of your belief that Mr. Lino was a suspect
3 that had recently committed robberies was the video that you
4 watched earlier that tour, correct?

5 A. As I said before, that was one of the reasons.

6 Q. The video that we watched was taken around noon, correct?

7 A. Yes. That's correct.

8 Q. It was daylight?

9 A. That's correct.

10 Q. And you stopped Mr. Lino at around 8:00 at night?

11 A. Yes.

12 Q. And the video wasn't taken the day that you stopped Mr.
13 Lino, correct?

14 A. According to the date on the video, no.

15 Q. And the video wasn't taken the same day of the week as the
16 stop of Mr. Lino, correct?

17 A. I don't know what day of the week it was.

18 Q. Well, the day you stopped Mr. Lino was February 5 and the
19 day of the video was January 30?

20 A. OK.

21 Q. Those are six days apart?

22 A. Then no, it wouldn't be.

23 Q. You also checked "ongoing investigations, e.g., robbery
24 pattern." That also refers to the robbery pattern that you
25 stopped Mr. Lino on the suspicion of, correct?

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D4A8FLO2 Kovall - direct

1 A. Yes. That's correct.

2 Q. Looking up to the box entitled, "Was the person frisked?,"
3 you checked "violent crime suspected."

4 That also refers to the suspected robbery, correct?

5 A. Yes.

6 Q. And you also checked "knowledge of suspect's prior criminal
7 violent behavior/use of force/use of weapon," correct?

8 A. Yes. That's correct.

9 Q. That also refers only to the robbery pattern, though,
10 nothing specific to Mr. Lino, correct?

11 A. Before this incident, I had no knowledge that Mr. Lino even
12 existed or what he had done in the past. So no. It refers to
13 the suspect I was looking for, not to Mr. Lino himself.

14 Q. You also checked "refusal to comply with officer's
15 directions," correct?

16 A. Yes.

17 Q. But Mr. Lino complied with your direction to remove his
18 hands from his pockets, correct?

19 A. Not at first.

20 Q. But Mr. Lino didn't do anything to make you think he was
21 refusing to comply with directions, correct?

22 A. I'm sorry. Can you repeat that?

23 Q. You don't think that Mr. Lino did anything to make you
24 think that he was refusing to comply with your directions?

25 A. Can you repeat that again? I am very confused by that

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D4A8FLO2 Kovall - direct

1 question.

2 THE COURT: What did he do that made you think he
3 wasn't complying with your directions?

4 THE WITNESS: He failed to comply with my direction.

5 THE COURT: That was to take his hands out of his
6 pockets?

7 THE WITNESS: Correct.

8 Q. If you could turn to your deposition at page 98. I am
9 going to read lines 22, through page 99, line 8.

10 MR. KUNZ: One second.

11 Go ahead.

12 "Q. What, if anything, did Mr. Lino do that made you think he
13 was refusing to comply with directions?"

14 A. What line are we at?

15 Q. 22.

16 A. 22? OK. Proceed.

17 "Q. What, if anything, did Mr. Lino do that made you
18 think -- "

19 MR. KUNZ: I think she is misleading. It actually
20 says, "What did Mr. Lino say?"

21 THE COURT: Can you read it again?

22 Do you have different transcripts?

23 MR. KUNZ: I am looking at page 98, line 22. "What,
24 if anything, did Mr. Lino say --"

25 THE COURT: Let's see if that's what she wanted to

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D4A8FLO2

Kovall - direct

1 use.

2 Ms. Martini, your group is trying to help you.

3 MR. CHARNEY: 99, line 2.

4 MS. MARTINI: Apologies, your Honor.

5 Page 99, beginning at line 2.

6 "Q. What, if anything, did Mr. Lino do that made you think he
7 was refusing to comply with your directions?

8 "A. I can't remember."

9 Were you asked that question and did you give the
10 following answer?

11 A. Yes.

12 THE COURT: At that time, you didn't remember what he
13 did?14 THE WITNESS: Since the time of this deposition, I was
15 able to review the transcript of my CCRB hearing in regards to
16 this which did refresh my recollection.17 Q. Do you see the box where it states on the UF-250, "Were
18 other persons stopped, questioned and frisked?"

19 A. Yes.

20 Q. And "no" is checked, correct?

21 A. That's correct.

22 Q. But that's false, right?

23 A. Yes. There was another person stopped.

24 Q. So there is at least one error on this UF-250 form, right?

25 A. Yes.

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D4A8FLO2 Kovall - direct

1 Q. After the men were frisked, a lieutenant and two other
2 officers arrived on the scene, correct?

3 A. Yes.

4 Q. The lieutenant was Lieutenant Gaglio?

5 A. Yes.

6 Q. And Lieutenant Gaglio told you that Mr. Lino and his friend
7 were not the men wanted for the robbery, correct?

8 A. That's correct.

9 Q. You carry a personal cell phone with you when you're on
10 patrol, correct?

11 A. Yes, I do.

12 Q. To your knowledge, Officer Arias normally does as well?

13 A. Yes. That's correct.

14 Q. It's not unusual for you to get a personal call on your
15 cell phone when you're out on patrol, correct?

16 A. Yes. It's correct.

17 Q. You don't recall whether Officer Arias received a personal
18 phone call during the stop of Clive Lino, correct?

19 A. Yes. That's correct.

20 MS. MARTINI: No further questions, your Honor.

21 THE COURT: Thank you.

22 Mr. Kunz.

23 MR. KUNZ: Yes, your Honor.

24 CROSS-EXAMINATION

25 BY MR. KUNZ:

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D4A8FLO2

Kovall - cross

1 Q. Good morning. Before we get into the incident, I wonder if
2 you could just tell the Court what sort of work you did before
3 you joined the NYPD?

4 A. I was a cashier at a supermarket, a waiter at a few
5 different restaurants.

6 Q. What is your educational background?

7 A. I have about 90 college credits. I didn't graduate.

8 Q. Could you briefly walk the Court through your various
9 assignments with the NYPD?

10 A. Sure. For the first six months with the NYPD, I was
11 assigned to the police academy where I received training.
12 After that I was deployed to the 23rd Precinct for an
13 additional six months as part of the impact program. After
14 that, as a supplement to patrol, I was assigned to a tracer
15 unit also at the 23rd Precinct for a few years. After that, I
16 went to a plain clothes unit called anticrime, also at the 23rd
17 Precinct.

18 THE COURT: Where is the 23rd?

19 THE WITNESS: The 23rd covers from 96th Street to
20 115th Street, from the East River to Central Park, in
21 Manhattan.

22 Q. That would be East Harlem?

23 A. That's correct.

24 Q. After the anticrime unit?

25 A. After anticrime, I went back to patrol, where I currently

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D4A8FLO2 Kovall - cross

1 am assigned.

2 THE COURT: At the same precinct?

3 THE WITNESS: Yes, your Honor.

4 Q. So is it fair to say then that in -- about how many years
5 have you been in the 23rd Precinct?

6 A. It will be seven -- at the 23rd Precinct, six years.

7 Q. Is it fair to say that in your seven years at the 23rd
8 Precinct, you have learned a lot about the crime conditions in
9 the 23rd Precinct?

10 A. Yes.

11 Q. Could you tell the Court how you become aware of the crime
12 conditions going on in the 23rd Precinct?

13 A. Just basically by being out there and working every day
14 within the confines of that precinct. It's my personal
15 observations as well as training I received.

16 Q. Do you ever speak with fellow officers about the crime
17 going on?

18 A. Yes. It's talking shop, if you will.

19 Q. How about with people from the community?

20 A. Yes.

21 Q. Now, on the day of the incident, February 5, 2008, do you
22 remember what your tour was?

23 A. I believe it was 1500 by 2335.

24 Q. So that's in the afternoon and evening?

25 A. Yeah. It's 3:00 in the afternoon until 11:35 at night.

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D4A8FLO2

Kovall - cross

1 Q. When you started your tour that day, did you have a roll
2 call?

3 A. Yes.

4 Q. Can you explain to the Court what happened at that roll
5 call?

6 A. At the roll call, I was given my assignment for the day,
7 told who my partner was going to be, as well as we were shown
8 the video that we have all just previously watched, with a
9 presentation by -- I forget who showed the video, but they had
10 discussed, in substance, the robbery pattern the video
11 correlated to, that they were looking for two individuals who
12 fit the description of the video, and that a string of
13 robberies had occurred in that general area.

14 Q. Now, sitting here today, do you remember the exact
15 addresses where these string of robberies had occurred?

16 A. No, I don't.

17 Q. Is there anything that would refresh your recollection
18 about that?

19 A. Yeah. There was a robbery pattern sheet.

20 MS. MARTINI: Objection, your Honor. Officer Kovall
21 just testified that he didn't review any documents prior to
22 stopping Mr. Lino. So I think this is improper and irrelevant.

23 MR. KUNZ: It's to refresh his recollection.

24 THE COURT: He said he didn't review any documents
25 prior to the stop, right?

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D4A8FLO2

Kovall - cross

1 Q. You did say at the roll call the person who showed you the
2 video briefed you guys on the pattern?

3 A. Yes.

4 THE COURT: That's fine. But he didn't see any
5 documents.

6 THE WITNESS: No, I didn't see any.

7 Q. When they briefed you on the pattern, did they talk about
8 where the robberies had occurred?

9 A. Yes.

10 THE COURT: Do you recall what they said?

11 THE WITNESS: Not specific locations, but the general
12 vicinity.

13 THE COURT: What did they say generally?

14 THE WITNESS: Around 103rd and Lexington and the
15 avenues around there.

16 Q. Is there anything that would refresh your recollection
17 about the specific locations that they told you?

18 THE COURT: He just would be reading the document. He
19 just gave us his recollection.

20 What did you say?

21 THE WITNESS: 103rd Street and Lexington Avenue.

22 THE COURT: That's very specific. 103rd and Lexington
23 Avenue is a specific corner in New York.

24 MR. KUNZ: I am trying to save time because there is a
25 detective who is assigned to the pattern that we can call.

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D4A8FLO2

Kovall - cross

1 THE COURT: You may have to because he doesn't know
2 it.

3 In any event, it's time for the morning recess. So we
4 are going to stop now and reconvene at approximately 20 of.

5 (Recess)

6 BY MR. KUNZ:

7 Q. Officer, before the break we were talking about the roll
8 call that you attended before you started your tour that day
9 and you said that the person who conducted or the person who
10 introduced the video also briefed you on some details of the
11 robberies connected with the video, is that correct?

12 A. That's correct.

13 Q. What did that person tell you about the robberies connected
14 with the video?

15 A. He gave a description of the suspects. He also told us
16 that the robberies involved the use of a firearm and that what
17 the reoccurring thing was was that they would produce the
18 firearm and demand property from the victims, the property
19 included mobile electronic devices as well as clothing and
20 money.

21 Q. When you said that the person who did this introduction
22 briefed you about the description of the suspects, what did
23 they tell you about the description of the suspects?

24 A. They said there were two male blacks, in their early to
25 mid-20s. They gave a height description of approximately, I

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D4A8FLO2 Kovall - cross

1 think, 5'8" to 6'2". And that the -- I'm sorry. Can you
2 repeat the last part of the question?

3 Q. You said 5'8" to 6'2". Did they also give an estimated
4 weight?

5 A. An estimated weight of around 170 to 200 pounds.

6 Q. Now, when you were shown the video, were you just shown it
7 one time?

8 A. No. The video was on a loop throughout the entire tour,
9 not just the roll call. In the muster room, where we conduct
10 our roll calls, there is a large flat panel television, and
11 that is where it was played over and over again.

12 Q. Is it fair to say that you saw the same video multiple
13 times at the start of your tour?

14 A. Yes.

15 Q. I am going to hand you a document that I believe is in
16 evidence. It's H10.

17 MR. KUNZ: If someone wants to check with me, I can
18 just publish it.

19 MS. MARTINI: I believe it is.

20 MR. KUNZ: Could you switch to the elmo?

21 Q. So Defendants' Exhibit H10, I am going to flip to the
22 backside because it's zoomed in a little more on the map.

23 Does this map show the area right around where you
24 encountered Clive Lino?

25 A. Yes. It's a map of what appears to be the area on and
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D4A8FLO2 Kovall - cross

1 around 103rd and Lexington Avenue.

2 Q. So the robberies that you were briefed on, what is your
3 understanding of where they occurred?

4 A. I believe they occurred, one was right here next to 103rd
5 and Lexington.

6 Q. I will bring you this copy and you can go ahead and look.

7 A. I apologize.

8 Q. If you want to put, I guess, a CL on the corner where you
9 stopped Clive Lino?

10 A. Sure. OK.

11 Q. Then I guess a 1 and a 2 for the crime pattern robberies
12 that you were aware of?

13 A. Just to reiterate, I'm not sure what order they occurred
14 in, but this is basically where they occurred. One occurred
15 there, there and there. I marked the 3 with an arrow pointing
16 to it because it was outside the scope of the map.

17 Q. So the CL here, I guess this is the northeast corner of
18 103rd and Lexington?

19 A. Correct.

20 Q. Then the 1 and the 2, these are the locations of two of the
21 robberies?

22 A. I believe number 1 was a check cashing establishment, and 2
23 and 3 were residences.

24 Q. Then 3 is, I guess, off the map a little bit. Do you know
25 how far off the map it is?

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D4A8FLO2 Kovall - cross

1 A. Another block over, to the west I believe.

2 Q. I am going to show you what is entered into evidence as
3 Defendants' Exhibit M10. What is this, Officer?

4 A. That appears to be a photograph of the corner of 103rd and
5 Lexington Avenue, from the south looking north I believe.

6 Q. So the street down here that is visible about a fourth of
7 the way up?

8 A. That would be 103rd Street.

9 Q. Then the blue awning here, what is that?

10 A. That would be the Chinese restaurant in which I stopped Mr.
11 Lino in front of.

12 Q. How about this yellow awning, what is that?

13 A. That's the check cashing establishment that I just
14 previously mentioned where one of the robberies took place.

15 Q. You see this metal thing protruding here from the left-hand
16 side about a fourth of the way up with the green circle on top?

17 A. Can you point to it again?

18 Q. Right here.

19 A. Yes. That's a subway station. There is one there and one
20 on the other side of the street as well.

21 Q. So you were out on patrol that day and you got to this
22 vicinity and what did you see?

23 A. I saw Mr. Lino and another gentleman standing in front of
24 that Chinese restaurant wearing jackets that matched the
25 description of the video that I saw, as well as the approximate

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1 age, height, and description of the person himself, not just
2 the jacket.

3 Q. Now, was there anything about -- I'm sorry. Withdrawn.

4 Going back to the map, where on the map was the video
5 taken, to the best of your knowledge?

6 A. The video, I believe it was taken, if you can see where I
7 marked CL on 103rd Street where the stop took place, on the
8 other side of Lexington Avenue, from there to -- if you
9 continue westbound, where it says Mercedes Liquor Store, that
10 whole block there, 103rd Street between Lexington and Park
11 Avenue, I believe that's where the video took place on each
12 side of the street running in a westbound direction.

13 Q. I am just going to have you mark here with a "V"
14 approximately where the two cameras were that captured the two
15 men running.

16 A. I will put one on each side of the street.

17 Q. That's fine.

18 A. I drew an arrow to indicate the direction of travel.

19 Q. So the videos were, I guess, about halfway up the block
20 from Lexington Avenue, and they captured the men running in the
21 direction of your arrows here?

22 A. I can tell that, because you can't see it in the map, but
23 there is park on the north side of the street, which you can
24 clearly see in the video.

25 Q. So looking at this frozen frame here, which direction is

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Kovall - cross

1 this looking?

2 A. This would be a camera on the south side of the street
3 looking northbound facing with a slight east direction.

4 THE COURT: Where is this camera?

5 THE WITNESS: I believe it's on a building, your
6 Honor. It's a security surveillance camera.

7 THE COURT: Nothing to do with the police department?

8 THE WITNESS: No.

9 THE COURT: A private building has a camera?

10 THE WITNESS: That's right.

11 Q. What would be the next intersection there looking up the
12 photograph?

13 A. If you continued to the right of the photograph, that would
14 be traveling towards Lexington Avenue. If you went to the left
15 of the photograph, it would be Park Avenue.

16 Q. Then the next block here is 103rd and Lexington Avenue
17 where you stopped Clive Lino?

18 A. Correct.

19 Q. How long did you observe the men before conducting the
20 stop?

21 A. Approximately 45 seconds to a minute.

22 Q. What happened after you observed them?

23 A. After we observed them, I believe I had a brief discussion
24 with my partner about stopping the individuals, at which point
25 we exited the vehicle and performed the stop.

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Kovall - cross

1 Q. What happened when you performed the stop?

2 A. We asked the gentlemen to take their hands out of their
3 pockets, which took a couple of requests for them to comply.
4 We then -- I don't remember if it was myself or Officer Arias
5 frisked the individuals, at which point after that we gathered
6 their information, pedigree information, and we had the
7 lieutenant respond over to the scene to verify if it was in
8 fact the individuals we were looking for.

9 Q. Why were the men frisked?

10 A. For my safety. The crime that was suspected was a robbery
11 with the use of a firearm. I did not want to be the victim of
12 a firearm. They also -- I don't remember which individual or
13 if it was both of the individuals made a furtive movement
14 toward their waist, which indicated the possibility of a
15 firearm being there. And just to ensure the safety of myself,
16 my partner and the individuals themselves, one of us frisked
17 them.

18 Q. Can you explain to the Court why you thought it was a
19 furtive movement for an individual to move his hand near his
20 waist?

21 A. Yes. Throughout my personal experience with carrying a
22 firearm, the weight of the firearm itself, it's normally kept
23 on your waistband area, can require constant attention and
24 adjustment. I also use a holster, which I believe a lot of
25 people who use firearms illegally do not, just through personal

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1 experience.

2 THE WITNESS: Can I tell you a short story, your
3 Honor?

4 THE COURT: No.

5 A. Just basically, yes, it always requires constant attention
6 that it can move around in the waist area.

7 Q. What were the men's demeanor when you first encountered
8 them?

9 A. They wanted nothing to do with us you could tell from
10 encountering them. Stubborn would be a good thing. They
11 needed constant justification for the directions that we gave
12 them.

13 Q. You said you're not sure which one of the men you frisked,
14 but you did frisk one of them?

15 A. I'm not sure if I frisked one or both.

16 Q. Can you describe for the Court the frisk that you
17 conducted?

18 A. No. I can't really recall.

19 Q. Did you search the men?

20 A. No.

21 THE COURT: I don't understand necessarily the
22 difference. Did you go to inside pockets?

23 THE WITNESS: No, your Honor.

24 THE COURT: You didn't go inside any pocket, outer or
25 inner?

D4A8FLO2

Kovall - cross

1 THE WITNESS: No.
2 THE COURT: You just did a pat-down?
3 THE WITNESS: Yes.
4 THE COURT: It was just an outer pat-down?
5 THE WITNESS: Correct.

6 Q. So what happened after the frisk?

7 A. After the frisk, we got in touch with the
8 lieutenant -- first, I guess we obtained their pedigree
9 information, names, date of birth, and addresses. Then we
10 called the lieutenant -- I forget whether it was via radio or
11 cell phone -- to the scene to confirm that these were in fact
12 the individuals we were looking for.

13 Q. How long did it take for the lieutenant to get there?

14 A. I don't recall exactly. I would say approximately five to
15 ten minutes.

16 Q. What, if anything, happened during that time?

17 A. I believe one of the individuals went and actually got the
18 food that they were waiting for while we waited the arrival of
19 the lieutenant.

20 Q. Why did you allow one of the men to go into the Chinese
21 food restaurant to get the food?

22 A. At that time, I was satisfied that there were absolutely no
23 weapons on either individual. I felt comfortable and safe at
24 that point. I felt no reason to deny him any reason to get his
25 food that he was waiting for.

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Kovall - cross

- 1 Q. Did the fact that they went in and picked up food inform
2 your thinking about the situation at all?
- 3 A. It definitely gave credence to what they told me that they
4 were in fact waiting for food.
- 5 Q. At some point the lieutenant arrived?
- 6 A. Correct.
- 7 Q. What happened when he arrived?
- 8 A. The lieutenant arrived on the scene. He informed us that,
9 although it looked like the individuals in the video that we
10 were looking for, it wasn't in fact them. I believe he had
11 more of the knowledge of the pattern than myself or Officer
12 Arias. He told us to record the stop on a UF-250 and then told
13 us to let the individuals go.
- 14 Q. Did he tell you why he thought they were not the men wanted
15 in connection with the robberies?
- 16 A. No, not that I recall.
- 17 Q. At any point when the lieutenant was there, did you see the
18 lieutenant touch either of the men?
- 19 A. Not that I recall, no.
- 20 Q. The lieutenant came with one or two other officers?
- 21 A. Correct.
- 22 Q. Did you see either of the other officers that came with the
23 lieutenant touch either of the men?
- 24 A. Not that I recall, no.
- 25 Q. So the lieutenant got there, said it wasn't them. What

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Kovall - cross

1 happened next?

2 A. We already had their information so we told them they were
3 free to go on their way.

4 Q. Did they go on their way?

5 A. I forget if they lingered around or if they did in fact
6 leave. I really don't remember.

7 Q. How long did the entire encounter last?

8 A. I guess, at most, 20 minutes.

9 Q. During your direct examination today you were asked some
10 questions on the UF-250 that you filled out. Do you remember
11 that?

12 A. Yes.

13 Q. Have you received any training at the academy on accurately
14 filling out reports?

15 A. Yes.

16 Q. What type of training did you receive?

17 A. We received -- let's see. There were a few lectures, a few
18 PowerPoint presentations in which they showed us a copy of the
19 UF-250 and explained in detail each entry that needed to be
20 made in order to complete a UF-250.

21 Q. How about in regard to truthfully filling out a UF-250, did
22 you receive any training on that topic?

23 A. Yes. We have always been told to tell the truth. That's
24 part of our job.

25 Q. You say you were always told that. Were you told that at

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Kovall - cross

1 the academy?

2 A. Yes.

3 Q. Have you been told that since the academy?

4 A. Yes.

5 Q. Do you recall any specific incidences when you were at roll
6 call where you were trained on truthfully filling out forms?

7 A. Yes. There was a time, I believe, our training sergeant
8 came in to do what is called a training session with us, and he
9 had told us that a detective was arrested under the charge of
10 perjury, and was explaining to us how imperative it is to tell
11 the truth and just be completely 100 percent honest any time
12 you're doing anything related to the job.

13 Q. After the stop occurred, did anyone within the NYPD ever
14 speak to you about the stop or the incident?

15 A. The incident involving Mr. Lino?

16 Q. Yes.

17 A. Yes. Just when they notified me to go to the Civilian
18 Complaint Review Board.

19 Q. Other than being spoken to about this particular stop, have
20 supervisors from your command ever spoken to you about other
21 stops you have conducted?

22 A. Yes.

23 Q. How many times do you think that happened?

24 A. I don't know a specific number. I can remember at least
25 two incidents specifically.

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Kovall - cross

1 Q. Do you know, has one of your stops ever been part of a
2 precinct self-inspection?

3 A. Yes.

4 Q. Tell me about that.

5 A. I remember one time the sergeant had me go and retrieve a
6 former memo book that I had filled out, and he told me he was
7 doing what is called a self-inspection and wanted to know about
8 the incident. He wanted to check it for completeness and make
9 sure that I had the required information in the memo book. He
10 checked it and everything to him was good, told me good job,
11 and I carried on.

12 There was also another time where a supervisor did the
13 same thing, checked my memo book and the information was
14 lacking, and he told me that I needed to add more information
15 with regard to stops, in which I complied with that order.

16 Q. Now, on direct examination earlier today you were asked a
17 question about whether or not you had -- I want to get the
18 phrasing just right -- about what, if anything, Mr. Lino did
19 that made you think he was refusing to comply with officer
20 directions. Do you remember being asked questions about that
21 earlier today?

22 A. Can you repeat that one more time?

23 Q. Do you remember being asked questions earlier today about
24 what, if anything, Mr. Lino did that made you think he was
25 refusing to comply with your directions?

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Kovall - cross

1 A. Yes.

2 Q. Now, at your deposition, did you explain under questioning
3 what it was specifically that Mr. Lino did that made you feel
4 like he wasn't complying with directions?

5 A. No, not at the deposition.

6 Q. Now, sitting here today, did Mr. Lino do anything that made
7 you feel like he was not complying with directions?

8 A. Yes.

9 Q. What was that?

10 A. Refusing to take his hands out of his pockets the first
11 time I asked him.

12 Q. Now, looking at the video that is shown here, it's paused
13 at 12:14 and 24 seconds, and you see a man in a blue coat
14 running down the street?

15 A. Yes. I see that.

16 Q. Now, when you first saw Mr. Lino and the other man standing
17 on the corner, did you believe that they looked like this man
18 that was running?

19 A. Yes.

20 Q. What about it made you believe they could be the same
21 people?

22 A. Their race was the same, their approximate age was the
23 same, being that it was early 20s. Apparent height and weight
24 from the video, the gentleman in this video doesn't look
25 extremely skinny or fat. He looked like -- I don't want to say

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Kovall - cross

1 a normal person, but of a medium stature, as well as so did Mr.
2 Lino and the other gentleman stopped.

3 Q. How about the way the coat is fitting on him?

4 A. It looks rather big and baggy, as did the coat on the
5 gentlemen that we stopped.

6 MR. KUNZ: Sorry, your Honor. Just one second.

7 Q. Then during direct you were also speaking about the
8 particular location where this happened and you said in your
9 experience this location has a problem with robberies. Could
10 you tell the Court a little bit more about why this particular
11 location has a problem with robberies?

12 A. As I stated before when I was pointing out on one of the
13 photographs you showed me, there is a train station on that
14 corner. We have noticed, at least in my precinct, that many
15 robberies occur in close proximity to the train stations, in
16 part, because it gives the robbers a fresh, I guess, crop of
17 victims, if you will, every time the train unloads. It also
18 provides a means for escape.

19 MR. KUNZ: I don't have any other questions at this
20 time.

21 THE COURT: Any redirect?

22 MS. MARTINI: Yes, your Honor.

23 REDIRECT EXAMINATION

24 BY MS. MARTINI:

25 Q. On the UF-250 that you filled out for the stop with Mr.

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D4A8FLO2 Kovall - redirect

- 1 Lino, there is an area for you to fill in the sort of
2 description or specifications of the individual, correct? Do
3 you see under build it says muscular, right?
4 A. Correct.
5 Q. And you just testified that the jackets that Mr. Lino and
6 his friend were wearing matched the jackets that you observed
7 in the video, correct?
8 A. Yes. That's correct.
9 Q. You said that Mr. Lino's jacket or his friend's were big
10 and baggy, correct?
11 A. Correct.
12 Q. But at the time of your deposition, you couldn't recall
13 anything else about Mr. Lino's jacket and his friend's jacket
14 other than the color, correct?
15 A. Yes. That's correct.
16 Q. And you just testified --
17 A. I'm sorry. That's not correct. I believe I also stated
18 they were winter jackets.
19 Q. Other than the fact that they were winter and the color,
20 you couldn't remember anything else?
21 A. That's correct.
22 Q. And you just testified that you were provided their age,
23 height and weight of the suspects?
24 A. I testified that seeing the video, and also the description
25 provided by the person presenting the video, yes.

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D4A8FLO2 Kovall - redirect

- 1 Q. So the person presenting the video provided you with their
2 age, height and weight?
3 A. Approximate.
4 Q. But that's not what you told the CCRB just months after the
5 stop, correct?
6 A. I'm not sure.
7 Q. I would like to show you the transcript of your CCRB
8 interview to refresh your recollection. If you would just look
9 at the typewritten at the bottom of page 10, please read it
10 silently to yourself and let me know if that refreshes your
11 recollection.
12 A. The part indicated in pen?
13 Q. Yes. Bracketed.
14 MR. KUNZ: Which page?
15 MS. MARTINI: Bottom of page 10.
16 A. OK.
17 Q. Does that refresh your recollection?
18 A. Yes.
19 Q. So, in fact, just months after the stop, you told the CCRB
20 that -- you did not tell the CCRB that you were provided the
21 suspect's age, height and weight, correct?
22 A. That's correct.
23 Q. And you told the truth to the CCRB, correct?
24 A. Yes. That's the truth.
25 Q. You were also asked some questions about Mr. Lino's refusal

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D4A8FLO2 Kovall - redirect

- 1 to comply with your directions, and you just testified that he
2 only took his hands out of his pockets after you requested it
3 several times, correct?
4 A. Correct. I don't know if I used the word several, but
5 that's the general idea.
6 Q. But it's your testimony that you had to ask him more than
7 once?
8 A. Correct.
9 Q. That's the basis for your belief that he was refusing to
10 comply with your directions, correct?
11 A. Correct.
12 Q. And you said that you didn't say that at the time of your
13 deposition because your memory had been refreshed by your CCRB
14 interview after the time of your deposition, correct?
15 A. Yes. That's correct.
16 Q. But you had listened to your CCRB interview before your
17 deposition, correct?
18 A. Not in entirety.
19 Q. You only listened to a portion of your CCRB interview?
20 A. At the deposition? It was very brief.
21 Q. I'm sorry. Before your deposition, in preparation for your
22 deposition.
23 A. I don't believe I listened to the entire thing, no.
24 Q. So in preparation for your deposition, you only listened to
25 a portion of your CCRB interview?

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D4A8FLO2 Kovall - redirect

1 A. I'm not even sure if I listened to it at all.

2 Q. Would it refresh your recollection --

3 MR. KUNZ: Objection. I don't see the relevance of
4 how he prepared for his deposition, and it also gets into
5 attorney-client privilege obviously.

6 THE COURT: What is your response, Ms. Martini? Do
7 you need this?

8 MS. MARTINI: I don't. We can go directly to better
9 things.

10 Q. You gave an interview to the CCRB, correct?

11 A. Yes. That's correct.

12 Q. You told the truth to the CCRB, correct?

13 A. Yes. That's correct.

14 Q. It was your testimony just a few moments ago that it was
15 that interview that refreshed your recollection that you had to
16 ask the men several times, or at least more than once, to take
17 their hands out of their pocket until they complied, correct?

18 A. Yes. That's correct.

19 Q. You didn't tell that to the CCRB, correct?

20 A. If you have a transcript of the CCRB, I can show you where
21 I did.

22 May I have a moment to look it over?

23 Q. Sure.

24 A. Thank you.

25 Q. It might aid you to look at page 5.

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D4A8FLO2

Kovall - redirect

1 A. Which part?

2 MR. KUNZ: I believe he was going to look through the
3 transcript to find where specifically he did talk about this.

4 THE COURT: If she could direct him to it, that would
5 save some time.

6 MS. MARTINI: Maybe to save time I will withdraw that
7 question and try a different approach.

8 THE COURT: OK.

9 Q. The CCRB investigator asked you if you gave Mr. Lino and
10 his friend any orders as you approached them, correct?

11 A. Can you repeat that?

12 Q. The CCRB investigator asked you if you gave them any orders
13 as you approached them, correct?

14 A. Yes.

15 Q. And you told the investigator that you asked the men to
16 take their hands out of their pockets, correct?

17 A. Yes.

18 Q. And the investigator asked you if they were compliant with
19 that order, correct?

20 A. Yes.

21 Q. And your response was yes, correct?

22 A. Yes.

23 Q. And you didn't mention that you had asked them several
24 times or that you had asked them more than once, correct?

25 A. If you will allow me to find the part I was talking about,

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D4A8FLO2 Kovall - redirect

1 I can show you where I referred to that.

2 MR. KUNZ: I could help out. I believe it's at the
3 top of page 10 is the section the witness is referring to.

4 A. Yes. I see it there. On page 10, if you look a little bit
5 higher than mid-page. I was asked, "At any point did they not
6 comply with you?" I answered, "I can't remember specifically,
7 but they were not combative. I guess that wouldn't be the
8 correct term, but not compliant either."

9 Q. And nothing on that page refers to your order to take their
10 hands out of their pockets, correct?

11 A. That's correct.

12 Q. And nothing on that page refers to them refusing to take
13 their hands out of their pockets, correct?

14 A. Yes, that would refer to it.

15 Q. That's not what it says, correct? The words on the page do
16 not mention the pockets or the order or the hands, correct?

17 A. It doesn't mention that it doesn't. You know what I mean?
18 It's a very broad statement and that's what I was implying.

19 Q. And you also mentioned a self-inspection when Mr. Kunz was
20 asking you some questions, is that correct?

21 A. Yes. That's correct.

22 Q. And during the self-inspection, where the sergeant checked
23 your memo book, did he ask you questions about the underlying
24 circumstances of the stop or did he just review the memo book?

25 A. Can you go into more detail about what you mean by

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D4A8FLO2

Kovall - redirect

1 underlying questions, or underlying circumstances?

2 (Continued on next page)

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D4a9flo3

Kovall - redirect

1 MS. MARTINI: Withdrawn, your Honor. No further
2 questions.

3 THE COURT: Okay.

4 MR. KUNZ: Two quick clarifications.

5 RE CROSS EXAMINATION

6 BY MR. KUNZ:

7 Q. During your CCRB interview, were you asked specifically
8 about the men not taking their hands out of their pockets?

9 MR. CHARNEY: He was. He just read it.

10 A. Yeah, I was asked what directions I gave them. But as far
11 as asked specifically -- I'm sorry. Can you repeat that?

12 Q. At the deposition were you asked specifically about --

13 MR. CHARNEY: The deposition or the CCRB interview?

14 MR. KUNZ: Thank you, Mr. Charney. I appreciate that.

15 Q. At the CCRB interview, were you asked, other than this
16 question at the top of page ten here which says did you -- I
17 think this is probably mistyped. "Now did you hear that there
18 is a refusal to comply can officers' directions? At any point
19 did they --

20 MS. MARTINI: Could you just indicate where you're
21 reading.

22 MR. KUNZ: Page ten. The exact section you just read.

23 "At any point did they not comply with you or --

24 And then answer, "I can't remember specifically but
25 they were not combative, I guess would be the correct term, but

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D4a9flo3 Kovall - recross

1 not compliant either."

2 Do you see that?

3 A. Yes.

4 Q. Were you asked any follow-up questions about what you meant
5 by that?

6 A. After that, no.

7 MS. MARTINI: Can I just fill in the next line.

8 The investigator then said, "Okay. Have you told me
9 everything you remember regarding this incident?"

10 "A. Yes, I have."

11 MR. KUNZ: I don't have any other questions, your
12 Honor.

13 THE COURT: Okay. Next. You're all done.

14 THE WITNESS: Thank you very much. Do you want me to
15 leave this paperwork here?

16 MS. MARTINI: I'll take it.

17 (Witness excused)

18 MR. CHARNEY: Your Honor, the plaintiffs call Officer
19 Luke White.

20 LUKE WHITE,

21 called as a witness by the Plaintiffs,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. CHARNEY:

25 Q. Good afternoon, Officer White.

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D4a9flo3 White - direct

- 1 A. Good afternoon.
2 Q. Now you joined the New York police department in July of
3 2008, correct?
4 A. Correct.
5 Q. And your first assignment out of the police academy was in
6 January of 2009, correct?
7 A. Correct.
8 Q. And that first assignment was the midtown south precinct?
9 A. Yes.
10 Q. And you were assigned to an operation impact squad,
11 correct?
12 A. Yes.
13 Q. And your impact squad had about 30 officers patrolling at
14 one time; is that right?
15 A. Approximately that number per tour.
16 Q. And usually then per tour you had about two to three
17 supervisors supervising those 30 officers; is that right?
18 A. Correct.
19 Q. And all the officers in your impact squad, you were either
20 right out of or recently out of the police academy, correct?
21 A. There was a few that had about six more months of
22 experience than us, but yes.
23 Q. And you -- when you were in that impact squad you patrolled
24 primarily by foot, correct?
25 A. Correct.

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1 Q. But your supervisors were in vehicles most of the time,
2 right?

3 A. Most of the time, yes.

4 Q. And when you were in that impact zone -- I'm sorry -- squad
5 you patrolled primarily in an impact zone in the midtown south
6 precinct, correct?

7 A. Correct.

8 Q. And that impact zone was the Times Square area?

9 A. That's true.

10 Q. Okay. And the conditions you focused on in the Times
11 Square area were primarily quality of life conditions, right?

12 A. Correct.

13 Q. And so by quality of life that includes, for example,
14 public consumption of alcohol, public urination, and offenses
15 of that nature, correct?

16 A. Correct.

17 Q. Quality of life conditions does not include things like
18 robbery, assault, grand larceny auto, correct?

19 A. Well if those conditions occurred on our posts we were to
20 handle them as well but our primary concern was quality of
21 life.

22 Q. And you stayed in this impact squad until approximately the
23 summer of 2010; is that right?

24 A. Approximately.

25 Q. Now, you had an encounter with a man by the name of

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1 Dominique Sindayiganza on February 12, 2010; is that correct?

2 A. Correct.

3 Q. And it was in the evening time?

4 A. Correct.

5 Q. Around 6:30 or so?

6 A. Approximately.

7 Q. And this encounter took place in the Union Square area of
8 Manhattan, right?

9 A. Correct.

10 Q. And Union Square is not in the midtown south precinct,
11 right?

12 A. No.

13 Q. It's in the 13th precinct?

14 A. Correct.

15 Q. And so you were detailed to the 13th precinct on this
16 day, February 12, 2010?

17 A. Yes.

18 Q. And the reason for that detail is because the 13th
19 precinct was having quality of life conditions near Union
20 Square, correct?

21 A. Near Union Square and up to along Broadway.

22 Q. And again by quality of life conditions we're talking about
23 things like public urination, shoplifting, things like that
24 correct, right?

25 A. Correct.

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D4a9flo3

White - direct

1 Q. But you don't recall being told that they were having
2 problems in this area with panhandling, do you?

3 THE COURT: With what?

4 MR. CHARNEY: Panhandling.

5 Q. You know what I mean by panhandling, right?

6 A. Yeah.

7 No. We were not told that.

8 Q. Now the encounter took place right in front of the Petco
9 store, right, on East 17th Street and Broadway?

10 A. Correct.

11 Q. I want to show you -- I think this is already in evidence.
12 It's X10. But I want to give a copy to -- actually I'll put it
13 up here.

14 MS. PUBLICKER: I think that maybe only a page was
15 admitted into the evidence.

16 THE COURT: That page is in evidence.

17 MS. PUBLICKER: That's a different page actually.

18 THE COURT: Well I remember the photograph.

19 MR. CHARNEY: Well let me --

20 THE COURT: I remember seeing the photograph.

21 MS. PUBLICKER: I don't object.

22 THE COURT: She doesn't object.

23 MS. PUBLICKER: It's a different page, but I don't
24 object to the admission.

25 THE COURT: Right.

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D4a9flo3 White - direct

1 MR. CHARNEY: So we move for the admission of X10 page
2 NYC_225734 with no markings on it.

3 THE COURT: Fine. 734 is received.

4 (Plaintiffs' Exhibit X10 received in evidence)

5 Q. Officer White, does this photograph look familiar to you?

6 A. Yes.

7 Q. Does this photograph accurately depict the area where the
8 encounter with Mr. Sindayiganza took place?

9 A. Yes.

10 Q. Now at the time of the encounter you were with
11 approximately four to five other officers from your impact
12 squad, correct?

13 A. Correct.

14 Q. And were you all patrolling on foot at the time, right?

15 A. Correct.

16 Q. And at the time of the encounter there was no supervisor
17 present with you on the street, right?

18 A. Correct.

19 Q. And the way that this encounter came about was you and the
20 other officers were flagged down by a Petco store employee
21 while you were standing on the other side of the -- of Broadway
22 opposite from where the Petco store was, correct?

23 A. Correct.

24 Q. So you were on the west side of Broadway; is that right?

25 A. Yes.

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D4a9flo3 White - direct

1 Q. And the store is on the east side of Broadway, correct?

2 A. Correct.

3 Q. Now, the employee did not walk across the street to talk to
4 you but instead waved at you to come over to where the store
5 was, correct?

6 A. Correct.

7 Q. And in response you and at least one other officer went
8 across the street to go into the Petco store, correct?

9 A. Correct.

10 Q. And prior to this Petco employee waving you over, you had
11 not noticed Mr. Sindayiganza in the vicinity of the Petco
12 store, right?

13 A. I did not.

14 Q. And then after the employee flagged you over while you were
15 crossing the street to enter the store you also at that point
16 did not notice Mr. Sindayiganza anywhere near the store,
17 correct?

18 A. I'm sorry. Could you just repeat that.

19 Q. I'm sorry.

20 So at the point where the employee has flagged you or
21 waved at you and you are now crossing the street to enter the
22 store, at that point in time you also did not notice
23 Mr. Sindayiganza in the vicinity of the store, correct?

24 A. Correct.

25 Q. So then you went into the store and you spoke to this

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- 1 employee, correct?
2 A. Yes.
3 Q. And he told you that there was an unidentified female in
4 the store who needed police assistance, correct?
5 A. Correct.
6 Q. And then the employee brought the woman to your attention,
7 right?
8 A. Correct.
9 Q. And you spoke to the woman inside the store, right?
10 A. Yes.
11 Q. And she told you that she had been walking down Broadway,
12 in other words downtown on Broadway, towards the subway station
13 at Union Square, correct?
14 A. Yeah, she was walking with her child.
15 Q. And that she also told you that a man was following her and
16 asking her for money, right?
17 A. That's what she said.
18 Q. And she told you that, you know, she refused to give him
19 money and that he continued to ask her for it and that that
20 caused her alarm, correct?
21 A. Correct.
22 Q. And she gave you a description of the man and that
23 description said that he was light skinned, correct?
24 A. There were other details to the description but light
25 skinned was one of them.

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White - direct

- 1 Q. Now when she was describing to you what the man had done,
2 she didn't say that he had verbally threatened her, right?
3 A. In what way?
4 Q. Well, he didn't make threats to her verbally, didn't say
5 things like -- he didn't verbally threaten her with words?
6 A. Not that I know of, no.
7 Q. She didn't tell you that he had made any attempt to
8 physically touch her, correct?
9 A. Correct.
10 Q. Now at this point when you were talking to the woman in the
11 store and she was giving you this description, you did not take
12 the woman's name or address or any personal -- other personal
13 identifying information, right?
14 A. I did not, no.
15 Q. Now you were in the store for approximately 20 minutes,
16 correct?
17 A. No. That's not correct.
18 Q. Okay. Do you remember being deposed in this case?
19 A. I do.
20 Q. It was by me, right?
21 A. Yes.
22 Q. And that was in December, this past December?
23 A. Yes.
24 Q. And you recall being -- taking an oath to tell the truth?
25 A. Yes.

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White - direct

1 Q. So all your answers at that deposition were truthful,
2 right?

3 A. Yes.

4 Q. I'm handing you a copy of your deposition. I want you to
5 turn to page -- this is confusing because it's double-sided and
6 also we got a four -- four on -- four things on the page.

7 Look at -- I guess starting on line 48 -- I'm sorry,
8 page 48, line 2 and going to I guess -- well do you see where
9 it says, starting page 48, line 2, it says, "After fifteen
10 minutes speaking with the female, do you see that, yes, is this
11 about how long you spoke to this female complainant?

12 "A. I would say so."

13 So I guess we know at least you were in there for
14 fifteen minutes, correct?

15 A. No. I believe after the deposition we corrected the
16 statement that the entire encounter took approximately 20
17 minutes. I spoke briefly to the female while inside the first
18 time.

19 Q. You also spoke to the employee, right, while you were in
20 the store?

21 A. To the extent of him waving us down and saying there was a
22 female that needed the police.

23 MR. CHARNEY: Well I don't know how this works, your
24 Honor, but I'm looking at the errata and I don't see a
25 correction for page 48.

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White - direct

1 So I see a correction on page 50 where I guess on page
2 50 he originally answered, "I would say 20 minutes or so." And
3 then it was to the -- he changed it, "To the best of my
4 recollection it was under ten minutes."

5 THE COURT: Okay.

6 Q. What has changed since your deposition that has refreshed
7 your recollection about the length of time you were at the
8 store?

9 A. Looking back at my memo book entries, and the timeframe
10 between them, me being in the store for 20 minutes doesn't add
11 up with what I wrote down that day.

12 THE COURT: Well is the ten accurate?

13 THE WITNESS: When I first got in there to talk to the
14 female I would say I was talking with her for no more than
15 five. The entire encounter took about 20 minutes.

16 THE COURT: So how long were you in the store?

17 THE WITNESS: I went in and out of the store, in the
18 encounter. Which spot, which times are you talking about?

19 THE COURT: I guess the first time.

20 THE WITNESS: The first time, I wouldn't say any more
21 than five.

22 MR. CHARNEY: Your Honor, the original deposition
23 testimony I can read from page 49, line 24 to page 50 line 6,
24 the question was asked, "From the point in time where the
25 employee flagged you in and you went in to the point in time

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White - direct

1 when you then went out to look to see if you could find the
2 person that was following this woman.
3 "A. Yes, I would say 20 minutes or so."
4 MS. PUBLICKER: And then again the errata sheet.
5 MR. CHARNEY: So the errata sheet changes the 20
6 minutes to 10.
7 MS. PUBLICKER: Under ten minutes.
8 MR. CHARNEY: But that's referring to the time in the
9 store.
10 THE COURT: Right.
11 MR. CHARNEY: Not the time of the entire encounter.
12 THE COURT: No. That's right.
13 You're still saying the time of the total encounter
14 was how long, the total time of the encounter?
15 THE WITNESS: From which encounter? Are you talking
16 with the female?
17 THE COURT: With this guy, I forget his name, long
18 name.
19 MR. CHARNEY: Sindayiganza.
20 THE WITNESS: I said I believe from the memo book
21 entries the entire encounter took approximately 20 minutes,
22 half an hour.
23 Q. Let's move on then.
24 So the woman gives you the description. And then
25 after you finish speaking to her you did go outside of the

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D4a9flo3

White - direct

1 store to see if you could find a man fitting the description
2 which the woman was giving you, correct?

3 A. Correct.

4 Q. And when you came back outside you say that you saw
5 Mr. Sindayiganza standing about 30 feet to the east of the
6 Petco store; is that right?

7 A. To the east of the entrance.

8 Q. The entrance. I'm sorry.

9 Of the Petco store, correct?

10 A. Correct.

11 Q. I want to, with this Exhibit 10, if we can have you mark on
12 this with a pen where you recall -- approximately where you
13 recall seeing Mr. Sindayiganza standing.

14 A. How do you want me to mark it, an X?

15 MR. CHARNEY: A little X if you can and then we'll see
16 if it shows up on the ELMO.

17 THE WITNESS: I don't know if you can really tell.

18 MR. CHARNEY: I think that's good. Let me make it a
19 little darker. All right. Thank you.

20 Q. So let me see if I can zoom in here.

21 MS. PUBLICKER: I've got a marker.

22 MR. CHARNEY: Thank you, Ms. Publicker. I appreciate
23 it.

24 I'm going to make this a little darker with this.

25 Q. Looking at X10. Do you see where the X is marked. Is that

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1 approximately where you recall seeing Mr. Sindayiganza for the
2 first time?

3 A. Approximately, yes.

4 THE COURT: But sadly can you just put the pen.

5 MR. CHARNEY: Right there, your Honor.

6 THE COURT: Now I see. Thank you.

7 Q. And is it correct that the entrance to the Petco store is
8 here right on the intersection of East 17th and Broadway?

9 A. There are two entrances to the store.

10 Q. So there's that one. And where is the other one? Is it to
11 the west?

12 A. Directly north on Broadway, the one where you see the first
13 red awning. That's another door.

14 Q. So the two entrances are here and here?

15 A. Correct.

16 Q. And just so we know, this street that runs here is East
17 17th, right?

18 A. Correct.

19 Q. And this is Broadway, the one that runs kind of along the
20 Petco store, right?

21 A. Right.

22 THE COURT: And East 17th goes west?

23 MR. CHARNEY: Runs east/west.

24 THE COURT: It goes west, yeah.

25 THE WITNESS: From this picture, yes.

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White - direct

1 THE COURT: That's the way it goes.

2 THE WITNESS: I haven't worked in Manhattan in like
3 three years now, so.

4 Q. So maybe this will help. So East 17th Street runs
5 east/west kind of crosstown in Manhattan?

6 THE COURT: It goes west.

7 MR. CHARNEY: If it's a one way street, it would have
8 to be west, looking at the picture.

9 Q. And then Broadway runs I guess from north to south, right?
10 It runs from uptown downtown?

11 A. Yes.

12 MR. CHARNEY: I was actually, your Honor, going to
13 maybe to make this more organized maybe we can mark this as
14 like X10W or something so we know this is the version that
15 Officer White marked on. Because I know we've submitted
16 several versions of this photo.

17 THE COURT: Okay.

18 MR. CHARNEY: I'm going to say this is X10W just so
19 the W for Officer White.

20 THE COURT: Okay.

21 Q. So, you spotted Mr. Sindayiganza about 30 feet to the east
22 of the entrance of the store.

23 Now when you saw him, he didn't have anything in his
24 hands, right?

25 A. Not that I remember.

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D4a9flo3 White - direct

1 Q. You didn't notice at that point any suspicious bulges in
2 any of his clothing, right?

3 A. No.

4 Q. And at the time you saw him, I think you said earlier it
5 was about 6:30 in the evening time?

6 A. Correct.

7 Q. And this is February, correct?

8 A. Yes.

9 Q. So the sun was either down or almost down at that time,
10 right?

11 A. I can't remember the exact settings of the sun that day.

12 THE COURT: What was the date again?

13 MR. CHARNEY: February 12, 2010. I don't know if you
14 know the answer to this but that's before we switched the
15 clocks to daylight savings.

16 THE COURT: I'll take notice of that. I know it's
17 before.

18 What time was this?

19 MR. CHARNEY: This is about 6:30 p.m.

20 THE COURT: So I take notice the sun was down.

21 MR. CHARNEY: Okay.

22 Q. So at that point when you saw Mr. Sindyiganza, you and at
23 least one other officer from the group you had been patrolling
24 with approached Mr. Sindyiganza and began to ask him
25 questions, right?

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D4a9flo3

White - direct

- 1 A. Right.
- 2 Q. Questions like what was he doing there, did he have a
3 reason to be there, right?
- 4 A. Along those lines.
- 5 Q. And you also asked him if he had been following anybody,
6 correct?
- 7 A. Correct.
- 8 Q. At that point you did not ask him to leave the area,
9 correct?
- 10 A. Correct.
- 11 Q. And then at a certain point you went back inside to get the
12 woman to come outside and take a look at Mr. Sindayiganza to
13 see if she could identify him, right?
- 14 A. Well I wanted to make sure that she could -- if this was
15 the individual that was following her, if she was going to
16 point him out and say this is the person we have and we have
17 him stopped.
- 18 Q. Okay. And when you went inside, other officers who you had
19 been patrolling with stayed outside, standing with
20 Mr. Sindayiganza, correct?
- 21 A. Correct.
- 22 Q. And they continued to engage him in conversation, right?
- 23 A. I can't speak to what any other officers did while I wasn't
24 there.
- 25 Q. But you do know that they remained outside standing next to

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1 him, correct?

2 A. Correct.

3 Q. Now, at the time you initially approached Mr. Sindayiganza,
4 the first time, before you had brought the woman out, you did
5 not have reasonable suspicion to believe he had committed a
6 crime, correct?

7 A. No, I did.

8 THE COURT: You did?

9 THE WITNESS: I did have reasonable suspicion.

10 Q. Turn to the deposition, page 106. And I think there may be
11 an errata but I first want to read what it originally said.

12 So 106, line 12. Do you remember being asked this
13 question and giving this answer?

14 "Q. So you're saying that at a point you first started
15 questioning him you did not have reasonable suspicion to
16 believe that he had committed any crime?"

17 "A. When I first approached him, no."

18 Now the errata, I believe, was changed from, "When I
19 first approached him, no." To, "We did have reasonable
20 suspicion to believe he had committed a crime based on him
21 matching the physical description provided by the victim and
22 based on his proximity to the location of the crime."

23 That's a completely different answer. Why did you
24 change your answer from December of 2012?

25 A. Well, I was just a little confused on the topic at hand.

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D4a9flo3 White - direct

1 But the fact is that we had the matching description. And his
2 proximity to a crime location gave me reasonable suspicion.

3 Q. Moving on.

4 Now at the point that you first walked in -- I'm sorry
5 not first.

6 At the point you went back into the store to retrieve
7 the woman, at that point in time it's your position that
8 Mr. Sindayiganza was free to leave, correct?

9 A. Well, no. He was not free to leave because we had the
10 reasonable suspicion that he committed the crime.

11 Q. And, again, I'm going to point you to your deposition
12 pre-errata version, page 107, line 15.

13 Do you remember being asked this question and giving
14 this answer.

15 "Your testimony is also at that point that he was free
16 to leave when you were questioning him at that point?

17 "A. When we talked to him, yes, if he wanted to go, he could
18 go, yes."

19 So what is your -- can you explain to me why you have
20 again completely changed your answer since your deposition?

21 A. Well, like I said, I was just confused on the question, I
22 guess. But the fact is we had reasonable suspicion because the
23 description matched the description provided by the complainant
24 and his proximity to the possible crime location.

25 Q. Isn't it also true that you've met with your counsel since

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1 the deposition?

2 A. Yes, it's true.

3 THE COURT: And before you filed the errata sheet, the
4 error sheet. Between the time of the deposition and between
5 the time of filing the error sheet, the corrections, you met
6 with counsel?

7 THE WITNESS: I believe so. We met a couple times.

8 MR. CHARNEY: I'm sorry. I didn't hear that answer.

9 THE COURT: I think the answer was yes.

10 Q. So you did go into the store and retrieve the woman,
11 correct?

12 A. Correct.

13 Q. You brought her outside to see if she recognized
14 Mr. Sindyiganza, correct?

15 A. I brought her out to see if he recognized anybody. I
16 didn't ask her specifically.

17 MR. CHARNEY: Thank you for the clarification.

18 Q. And when you brought her outside, Mr. Sindyiganza was
19 still standing about 30 feet to the east of the store entrance,
20 correct?

21 A. Correct.

22 Q. And there were other police officers standing around him,
23 correct?

24 A. Correct.

25 Q. And you say that the woman pointed out Mr. Sindyiganza

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D4a9flo3

White - direct

- 1 almost immediately after coming outside, correct?
2 A. Correct.
3 Q. So it's fair to say that at the time she pointed him out
4 she was standing right in front of the store entrance, correct?
5 A. I would say she was standing pretty much along with the
6 light pole on the intersection.
7 Q. So we're saying this, the pole with the lamppost?
8 A. Yes.
9 Q. So it's fair to say she was about 30 feet away from
10 Mr. Sindayiganza when she pointed him out, correct?
11 A. Correct.
12 Q. Okay. And at the time she pointed him out, only the side
13 profile of his face was visible from where you and she were
14 standing, correct?
15 A. Correct.
16 Q. And as far as you know Mr. Sindayiganza could not see the
17 woman at the point that she pointed him out, could he?
18 A. As far as I know, correct.
19 Q. So after she pointed him out, you took her back into the
20 store, right?
21 A. Right.
22 Q. And at that point you asked her if she wanted him to be
23 arrested for harassment, correct?
24 A. No. I asked her what she wanted to do.
25 Q. And her response was she just wanted him to leave, right?

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D4a9flo3

White - direct

1 A. Correct.

2 Q. She didn't tell you she wanted him arrested at that point,
3 right?

4 A. No.

5 Q. Just to clarify again, and I think you already answered
6 this, and I apologize because I know we're trying to move this
7 along.

8 But at the point when the woman -- you say the woman
9 did recognize him, pointed him out, there were other officers
10 standing around Mr. Sindayiganza at that point?

11 A. Correct.

12 MR. CHARNEY: Okay.

13 Q. Do you remember how many approximately?

14 A. No.

15 Q. So, again, going back to -- or going forward now to where
16 you're in the store, you've asked her what she wanted to do,
17 she's told you she wanted him to leave. At that point you
18 still have not taken down the woman's name or address or any
19 other personal identifying information, correct?

20 A. Correct.

21 Q. So she's told you that she wants him to leave, and at that
22 point you go back outside to tell him to leave, correct?

23 A. Correct.

24 Q. And what you tell him is that you -- or you direct him to
25 walk north on Broadway, correct?

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D4a9flo3

White - direct

1 A. No. I told him it would be in his best interests if he
2 walked north, I believe it's Park Avenue, if you continue
3 walking east on East 17th Street. I didn't want him walking
4 up past the complainant.

5 Q. So you're saying you told him to walk east on 17th Street
6 to Park Avenue and then north?

7 A. Whatever the next street -- next avenue that intersects
8 with East 17th Street, I directed him in that location.

9 Q. But that would be to the east of the store, correct?

10 A. Yes.

11 Q. What wouldn't be north, correct?

12 A. To go east, and then turn north to go on the avenue.

13 THE COURT: Did you permit him to go south?

14 THE WITNESS: Well I didn't want him going south
15 because the complainant was going south to the Union Square
16 train station. And she didn't feel comfortable with him going
17 there. She said that she wanted him to go away.

18 Q. Can you turn to page 66 of your deposition, line 20.

19 Actually starting an line 11. It says:

20 "A. Well she said she did not want to press charges. She just
21 wanted to go to her subway stop, the Union Square subway stop.

22 MS. PUBLICKER: Your Honor, this is not inconsistent
23 with what Officer White just testified to.

24 MR. CHARNEY: It is. Because if you go down, it says,
25 I just told him it would be -- let me just -- I understand,

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D4a9flo3 White - direct

1 your Honor. I know you want to move this along.

2 Go to line 20. It says, "I told him I don't remember
3 exactly -- I just -- I told him it would be in everyone's best
4 interests if you would go north on a different street to
5 another subway stop."

6 Q. That's your testimony, correct?

7 A. Correct.

8 Q. So you didn't say go east to Park and then go up Park
9 Avenue, right?

10 A. Well I didn't specifically say go north on Broadway either.

11 Q. All right.

12 THE COURT: Okay. I think we're going to stop now for
13 lunch recess. I have a question for you before we break. I'm
14 looking at the chart you originally gave me on witnesses. I'm
15 just curious. For the 10th, that's today, there are only
16 three names that are on the chart that haven't been called yet
17 that are live. And that is Gillespie, Ortiz and McHugh.

18 MR. CHARNEY: So our plan is to do McHugh and
19 Gillespie today. And I think Ortiz will be on Monday.

20 THE COURT: Okay. Thank you. That's helpful to know.
21 I just dread the thought that we're falling behind instead of
22 getting ahead.

23 MR. CHARNEY: I guess we're only one witness behind
24 now which is better than --

25 THE COURT: Yes. That's true. And there's only eight
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D4a9flo3

White - direct

1 of the remaining entries that are depositions. Well that's not
2 true. There's ten if you count -- but they are today.

3 So after today there's only eight which were by deps.

4 I'm hoping you'll finish early because the city talked
5 about needing that extra week and I can't do it.

6 MS. BORCHETTA: Your Honor, we intend to give the
7 court an updated schedule based on the removal of deposition
8 designations. We're just working with the city on the movement
9 of certain witnesses.

10 MR. MOORE: Just on the extra week that they wanted it
11 was based on, as I heard it, the fact that we were taking
12 witnesses off, so it's not --

13 THE COURT: Right.

14 MR. MOORE: I don't understand how that lengthens it.

15 THE COURT: Because it may have taken them off before
16 you gave me this schedule. So the schedule ran through
17 whatever, I don't know what date you have -- but they were
18 already off when you gave them this. So now the city has to
19 add them in. And they only have a week or two left. Anyway,
20 it's a long story. I don't know if I can explain it any
21 better.

22 MR. MOORE: That was good.

23 THE COURT: But it's not what you just said. Anyway
24 see you at five after two.

25 (Luncheon recess)

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AFTERNOON SESSION

2:09 p.m.

THE COURT: Please be seated.

DIRECT EXAMINATION CONTINUED

BY MR. CHARNEY:

Q. Good afternoon, Officer White.

A. Good afternoon.

Q. So before the break we were talking about the point in time with Mr. Sindayiganza where you went back outside to try to get him to leave the scene.

Do you remember that?

A. Yes.

Q. And you told him, I guess you say now that you told him to walk east on East 17th Street and then north on Park Avenue. I know at your deposition you weren't that specific.

In any event, you did tell him to walk a direction other than south to the Union Square subway station, right?

A. Correct.

Q. But Mr. Sindayiganza told you he wanted to go to the Union Square subway station to take the train home, right?

A. I can't recall specifically but he said he was going that general direction.

Q. Now, when he told you that, you didn't at that point escort him to the station to make sure he got on the train, right?

A. No.

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1 Q. But you could have done that, right?

2 A. Could have.

3 Q. Okay. So then at that point you walked back into the
4 store, correct?

5 A. Correct.

6 Q. And you told the woman that Mr. Sindyiganza was refusing
7 to leave the scene of where you guys were, right?

8 A. Correct.

9 Q. And it was only at this point, right, after you told the
10 woman that Mr. Sindyiganza was not going to leave that this is
11 the first time she told you that she wanted him arrested,
12 right?

13 A. Correct.

14 Q. And it was at this point in time that you made the decision
15 to place him under arrest, correct?

16 A. Yes.

17 Q. And until she had told you she wanted him arrested, it's
18 your position that you did not have the authority to arrest
19 him, right?

20 A. Well before she said she wanted to press charges, I had the
21 witness corroborated his description, I had probable cause to
22 effect an arrest, I just didn't have the complainant willing to
23 press charges.

24 Q. So that means you at that point, until she said I want to
25 press charges, you had no intention of arresting him, right?

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White - direct

1 A. Correct.

2 Q. And so then after she told you she wanted you to arrest
3 him, you did place him under arrest, correct?

4 A. Correct.

5 Q. And did you that by placing handcuffs on him, right?

6 A. Correct.

7 Q. Now during this encounter you frisked Mr. Sindyiganza,
8 correct?

9 A. No.

10 Q. You did not frisk him?

11 A. No.

12 Q. Take a look at page 80 of your deposition, line 8.

13 You were asked this question and gave this answer.

14 And this is -- this question refers to I think the CCRB
15 recording of your interview with the CCRB. The question is,
16 "And you heard yourself saying you did frisk Mr. Sindyiganza?
17 "A. Yes."

18 So did you get that question and give that answer?

19 A. Yes. I was explaining to the CCRB investigator my motions.
20 It wasn't a frisk as the definition of a frisk. I patted down
21 his pockets before I was going to search him incident to a
22 lawful arrest.

23 I used the word frisk just to describe my motions to
24 the CCRB investigator who might not have been that sure.

25 Q. We're going to come back to that.

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White - direct

1 First of all, you know what the definition of frisk is
2 from your training in the NYPD, correct?

3 A. Correct.

4 Q. So it has a very specific meaning to you, right?

5 A. Correct.

6 Q. And you said that you were using the term to pat down the
7 outside of Mr. Sindayiganza's clothing; is that right?

8 A. Well I wanted to search -- before I was going to search his
9 pockets, I wanted to make sure he wasn't carrying any
10 contraband like a needle or a knife that would have stuck me in
11 any way.

12 Q. I understand that but you say that to do that you patted
13 down the outside of his clothing, right?

14 A. I felt and I patted.

15 Q. Isn't that what a frisk is under NYPD procedures?

16 A. Well to me the frisk would be the -- a pat-down on the
17 outside area if you considered him to be armed or have a
18 suspicious bulge.

19 Q. So, the physical action of patting some -- the outside of
20 somebody's clothing, to feel to see if they have contraband or
21 weapons, that's not a frisk to you?

22 A. Well we don't frisk to find contraband. We frisk to find
23 weapons.

24 Q. But the act itself --

25 THE COURT: He's saying the physical actions you take
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1 are the same.

2 THE WITNESS: Well if, since he was being placed under
3 arrest, I felt the entire body of him. Down to his legs. We
4 don't do that necessarily for a frisk. We do --

5 THE COURT: So is it more than a frisk?

6 THE WITNESS: It would be search, yes, because he was
7 being arrested.

8 THE COURT: Okay. So that time it was a search.

9 THE WITNESS: Yeah.

10 Q. So this -- let's talk about this act that you told the
11 CCRB -- you called it a frisk but today you're saying it's not
12 a frisk -- this act of patting down the outside of
13 Mr. Sindayiganza's clothing to see if he had contraband or a
14 needle before you searched him. I want to ask you about what
15 point in time this act occurred. Okay?

16 A. Okay.

17 Q. This act of patting him down occurred before you placed him
18 in handcuffs, correct?

19 A. I don't remember if it was before or after I placed him in
20 handcuffs, but it was all a continuous event.

21 Q. But before you placed him in handcuffs he wasn't under
22 arrest, right?

23 A. What do you mean?

24 Q. In other words, you had not already made the decision to
25 place him under arrest at the time that you patted down the

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D4A9FLO3 White - direct

1 outside of his clothes?

2 A. As soon as the complainant stated she wanted to press
3 charges, in my view he was under arrest.

4 Q. So you're saying that the pat-down occurred after she told
5 you she wanted to press charges?

6 A. Correct.

7 Q. So you did give an interview to the CCRB, correct?

8 A. Correct.

9 Q. And you told the truth during that interview, right?

10 A. Correct.

11 Q. Do you recall telling the CCRB -- well actually you told
12 the CCRB investigator that you patted him down before the woman
13 told you she wanted to press charges, right?

14 A. Not to my knowledge, no.

15 Q. I'm going to hand you -- this is a transcript.

16 I want to hand you a transcript of your CCRB
17 interview. And if you can turn to page 15 of that interview,
18 line 13.

19 Do you see where -- let me know when you're there.

20 Do you see where it says the investigator Buchter
21 says: This is like relative to when you spoke to the female,
22 was he frisked after she had said she had wanted him arrested
23 and you say he was frisked before that.

24 Do you see that?

25 A. I do.

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D4A9FLO3 White - direct

1 Q. So you did tell the CCRB that he was frisked before she
2 told you she wanted him arrested, right?

3 A. Right.

4 Q. And at the time that you frisked him, patted him down, you
5 didn't have reasonable suspicion that he had a weapon him,
6 right?

7 A. Not that he had a weapon, no.

8 THE COURT: So what did you have reasonable suspicion
9 of?

10 THE WITNESS: Well I had reasonable suspicion that he
11 committed the crime of the aggravated harassment due to his
12 description and the proximity of the crime location.

13 THE COURT: Right. But did that justify a frisk?

14 THE WITNESS: Like I said, when I told the word frisk
15 to the CCRB investigator, it was more so to explain my actions.
16 It wasn't a frisk as defined in the stop, question and possible
17 frisk.

18 THE COURT: What was it?

19 THE WITNESS: I was searching incident to lawful
20 arrest beforehand.

21 THE COURT: I've thought we were not up to the arrest.

22 MR. CHARNEY: Yeah, we're before the arrest.

23 THE COURT: We're before the arrest.

24 This is not after you decided to arrest, when the
25 complainant said she wanted you to arrest him.

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White - direct

1 THE WITNESS: Like I said, when she pointed him out,
2 there was a possibility of an arrest scenario.
3 THE COURT: Right.
4 THE WITNESS: Yes.
5 THE COURT: There was an arrest.
6 THE WITNESS: We still needed her to confirm, but
7 there was a possibility he could have been arrested.
8 THE COURT: Yes. So it can't be a search incident to
9 an arrest because you were not about to do an arrest, right?
10 THE WITNESS: Not at that time.
11 THE COURT: Right. So given that it was not a search
12 incident to arrest, what was it?
13 THE WITNESS: Like I said, I didn't frisk him. It was
14 all during the one continuous event.
15 THE COURT: Who put their hands on who?
16 THE WITNESS: I know I did at one point. I can't
17 speak for any other officers the rest of the time.
18 THE COURT: That's fine. Why did you do that?
19 THE WITNESS: It was when I was placing him under
20 arrest.
21 THE COURT: That was the later touching, not the first
22 one?
23 THE WITNESS: No.
24 THE COURT: You didn't do the first one?
25 THE WITNESS: Not that I know of.

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White - direct

1 THE COURT: So you don't know why that officer did.

2 THE WITNESS: I can't speak for their actions.

3 Q. I'm a little confused, Officer White. In the CCRB
4 interview that we just read you were asked if you frisk
5 Mr. Sindayiganza before the woman told you she wanted him
6 arrested and you said yes.

7 A. Like I said, I didn't have my memo book during the CCRB
8 investigation so I might not have been as clear, the events and
9 how they took place.

10 Q. Is your testimony that your memo book describes what point
11 in time you patted him down?

12 A. I didn't have -- I wasn't fully recollection with that. I
13 didn't have all my --

14 THE COURT: He's saying now if you looked at the memo
15 book, does it tell?

16 THE WITNESS: I don't believe it does. But I wasn't
17 fully refreshed with the incident at the CCRB interview.

18 THE COURT: Right. But if the memo book doesn't tell
19 you anyway what happened at what time, then looking at it
20 wouldn't change your recollection, would it?

21 THE WITNESS: Well it would jog my memory to the facts
22 of case, the entire thing.

23 THE COURT: Even without telling you the times and the
24 order of things?

25 THE WITNESS: No.

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D4A9FLO3 White - direct

1 Q. We're going to look at your memo book in a second. I'm
2 going to move on then.

3 So you placed Mr. Sindayiganza under arrest, correct?

4 A. Correct.

5 Q. And you were arresting him for, you said, aggravated
6 harassment?

7 A. Yes.

8 Q. And what is your understanding of -- I know you're not an
9 attorney -- but what is your understanding of the elements of
10 the crime of aggravated harassment?

11 A. I believe it's when a person repeatedly causes alarm, panic
12 to a person in a public setting. And that was what the victim
13 described.

14 Q. And it's a misdemeanor, right?

15 A. To the best of my knowledge, yeah.

16 Q. It's not a violent felony, right?

17 A. No.

18 Q. So you placed him under arrest. And then you took him in a
19 police vehicle to the 13th precinct, correct?

20 A. Correct.

21 Q. But at the time you placed him under arrest there was no
22 supervisor on the scene, correct?

23 A. Correct.

24 Q. When you took him to the precinct, you actually never did
25 an arrest report for aggravated harassment, did you?

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D4A9FLO3

White - direct

1 A. Correct.

2 Q. You ended up simply issuing him a summons for disorderly
3 conduct, right?

4 A. Correct.

5 Q. And are you aware that that summons was dismissed for legal
6 insufficiency?

7 MS. PUBLICKER: Objection, your Honor.

8 We're getting beyond the scope. He's talking about
9 the outcome of the summons issued to Mr. Sindayiganza, which
10 you did not permit Mr. Sindayiganza to testify to earlier this
11 week.

12 MR. CHARNEY: You did allow him to testify whether he
13 had been prosecuted for the summons.

14 MS. PUBLICKER: But not about the outcome of that
15 summons.

16 THE COURT: Did he tell us what the outcome of the
17 summons was or --

18 MS. PUBLICKER: They asked if he had been prosecuted.

19 THE COURT: Right. He said no.

20 MR. CHARNEY: Isn't that the outcome?

21 THE COURT: That means they didn't proceed. So we
22 already know that.

23 MS. PUBLICKER: But that's not what Mr. Charney just
24 stated in the question.

25 THE COURT: Sustained. The summons was dismissed.

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D4A9FLO3 White - direct

1 There was no prosecution. That's what he said. Okay.

2 MR. CHARNEY: All right.

3 Q. So why did you not proceed with the arrest for the
4 aggravated harassment which was the reason that you stopped
5 Mr. Sindayiganza?

6 A. When I returned to the 13th precinct, the 13th precinct
7 desk sergeant, upon hearing the facts of the -- which I
8 described to him, said it would be better if we let him loose
9 on a dis con summons.

10 Q. Did he tell you why it would be better to give him a dis
11 con summons?

12 MS. PUBLICKER: Objection, your Honor. We're getting
13 beyond the scope of the stop at this point.

14 MR. CHARNEY: This goes to the rationale of the stop.

15 THE COURT: I think it does. I'm going to allow it.

16 THE WITNESS: Can you just repeat the question.

17 Q. Why did the sergeant -- did the sergeant tell you why you
18 should give him a summons for dis con instead of processing the
19 arrest for aggravated harassment?

20 A. He didn't tell me.

21 Q. Okay. And the disorderly conduct charge was not based on
22 the information that the woman gave you about what
23 Mr. Sindayiganza had allegedly done to her, right?

24 A. Correct.

25 Q. So the summons had nothing to do with the charge of

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1 harassment against the woman, right?

2 A. Correct.

3 Q. Now we talked earlier about whether you at any point got
4 the woman's personal identifying information. And you know you
5 were asked whether you got it at the point you first spoke to
6 her. And you said -- you were asked if you got it at the point
7 that she identified Mr. Sindayiganza and she said no. Or you
8 said no.

9 Did you ever get her personal identifying information?

10 A. Yes.

11 Q. Do you remember what her name was?

12 A. No.

13 Q. Do you have that written down anywhere in your memo book?

14 A. No.

15 Q. It wasn't written on the summons, right?

16 A. No.

17 Q. Why didn't you write it down in your memo book?

18 A. At the time when she said she wanted to press charges I
19 think another officer took down her information on just a piece
20 of paper and then when that officer was getting the information
21 I went out and effected the arrest.

22 Q. Okay. But your testimony is, is that you at some point got
23 possession of her personal identifying information?

24 A. Yes, on that piece of paper.

25 Q. But you threw the piece of paper away, right?

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D4A9FLO3

White - direct

- 1 A. Correct.
- 2 Q. And you threw it away at the police precinct, right?
- 3 A. Yes.
- 4 Q. But isn't it true that the sole basis for the arrest was
- 5 the woman's physical identification of Mr. Sindyiganza?
- 6 A. Well at the time I threw it out we were not placing him
- 7 under arrest for that charge anymore.
- 8 Q. So you didn't write her name down in your memo book, right?
- 9 A. Correct.
- 10 Q. And there is no arrest report with her name on it, right?
- 11 A. Correct.
- 12 Q. And there is no UF 250 for this stop, right?
- 13 A. Correct.
- 14 Q. So there's -- at this point in time there is no written
- 15 documentation of the person who identified Mr. Sindyiganza as
- 16 a suspected harasser, correct?
- 17 A. Correct.
- 18 Q. And you also didn't -- now you called in a Sprint report
- 19 for this incident, correct?
- 20 A. Excuse me?
- 21 Q. In other words, did you call in dispatch and report to them
- 22 that you had made a stop?
- 23 A. Yes.
- 24 Q. So there is a Sprint report that you know of that records
- 25 the summary of what you told the dispatch?

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White - direct

- 1 A. Yes.
- 2 Q. And that Sprint report also doesn't have any information
3 about this woman that accused Mr. Sindyiganza of harassment,
4 right?
- 5 A. Well since she didn't call 911 there was no information
6 provided through the Sprint printout.
- 7 Q. But didn't you call in the dispatch -- aren't you the
8 source of the Sprint printout?
- 9 A. Well I put over the radio that we had one male stopped.
- 10 Q. You didn't put over the radio that there had been a victim
11 or witness who had identified the person who was stopped,
12 right?
- 13 A. Right.
- 14 Q. Even though the reason for the stop was a witness
15 identification, right?
- 16 A. Correct.
- 17 Q. So at this point sitting here today we have no written
18 documentation, do we, of the basis for your stop of
19 Mr. Sindyiganza, right?
- 20 A. Could you just repeat the question.
- 21 Q. At this point sitting here today we have no written
22 documentation of any kind of the reason that you stopped
23 Mr. Sindyiganza, correct?
- 24 A. Nothing written.
- 25 Q. Now you testified at your deposition that the reason you

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D4A9FLO3

White - direct

- 1 didn't do a UF 250 was because this in your view was a summary
2 arrest, correct?
3 A. Correct.
4 Q. And so a summary arrest is when you immediately have
5 probable cause at the beginning of the encounter, right?
6 A. Correct.
7 Q. But you just testified earlier today that before you had
8 probable cause you had reasonable suspicion, correct?
9 A. I believe during the deposition since my level of suspicion
10 was raised so fast from reasonable suspicion to probable cause
11 I assumed there was a summary arrest.
12 Q. But you didn't have probable cause until you brought the
13 woman out to ID Mr. Sindayiganza, right?
14 A. Yeah, it was right after he was stopped.
15 Q. But when you first stopped him you didn't have probable
16 cause, right?
17 A. I had reasonable suspicion.
18 Q. So my question is in that situation where you initially had
19 reasonable suspicion and then during the encounter it was
20 raised to probable cause, that's not a summary arrest, is it?
21 A. No.
22 Q. So, you violated NYPD policy by not filling out a 250,
23 correct?
24 A. Well I assumed all the pedigree information of
25 Mr. Sindayiganza was going to be completed with my arrest

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D4A9FLO3 White - direct

1 paperwork.

2 Q. But my question is you violated NYPD policy by not doing a
3 250, correct?

4 A. Like I said, I thought it would be all pertinent on the
5 arrest paperwork.

6 Q. I'm asking you a yes-or-no question. Did you violate NYPD
7 policy by failing to write a 250 for this encounter?

8 A. Yes.

9 Q. And then as we've already covered, there was no arrest
10 report, right?

11 A. Correct.

12 Q. And the summons doesn't talk about the harassment or the
13 woman or her ID of Mr. Sindayiganza, right?

14 A. Correct.

15 Q. And just to clarify. So at your deposition when you said
16 you didn't have reasonable suspicion when you first stopped
17 him.

18 Do you remember that?

19 A. Yes.

20 Q. And you also said that you didn't do a 250 because you
21 didn't have reasonable suspicion, right?

22 A. What was that?

23 Q. You didn't do a 250 because you didn't have reasonable
24 suspicion?

25 A. Well I didn't do a 250 because I thought all the

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D4A9FLO3 White - direct

1 information would be involved in the arrest paperwork.

2 Q. I'm going to show you I think what's been previously marked
3 as Plaintiffs' 161.

4 Do you recognize this document, Officer White?

5 A. Yes.

6 Q. What is this document?

7 A. It's a copy of my memo book.

8 Q. And this includes the date of this encounter with
9 Mr. Sindayiganza, right, February 12, 2010?

10 A. Correct.

11 MR. CHARNEY: I move to admit this into evidence, your
12 Honor.

13 MS. PUBLICKER: The only objection being that I
14 believe Mr. Sindayiganza's personal information is on this
15 document but otherwise no objection, your Honor.

16 THE COURT: All right. Please redact it as
17 appropriate; otherwise, it's received.

18 What's the exhibit number again?

19 MR. CHARNEY: This is Plaintiffs' 161.

20 THE COURT: So 161 is received.

21 (Plaintiffs' Exhibit 161 received in evidence)

22 (Continued on next page)

23

24

25

D4A8FLO4

White - direct

- 1 THE COURT: Is that what you are calling the second
2 page, page 3 of 4?
3 MR. CHARNEY: The Bates number is NYC_2_21577.
4 THE COURT: OK.
5 Q. So this page includes your entries from the date and time
6 when you stopped Mr. Sindayiganza, correct?
7 A. Correct.
8 Q. So you see there we have, I think it says 1830, it says one
9 male stopped, right?
10 A. Correct.
11 Q. It says East 17th and Broadway, correct?
12 A. Correct.
13 Q. So it's fair to say that entry is the entry that documents
14 your stop of Mr. Sindayiganza on suspicion of what you said was
15 aggravated harassment, correct?
16 A. Correct.
17 Q. This entry doesn't include a suspected crime, does it?
18 A. No.
19 Q. It doesn't include any details about what the basis for
20 your suspicion was, right?
21 A. Right.
22 Q. It doesn't say anything about a witness pointing him out,
23 right?
24 A. Right.
25 Q. It doesn't have any information about who this witness was,

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D4A8FLO4 White - direct

- 1 right?
2 A. Right.
3 Q. All it says is that there was a man stopped and it says
4 where the stop happened, right?
5 A. Correct.
6 Q. The next entry is 1845, which is 6:45 p.m., right?
7 A. Correct.
8 Q. That's about 15 minutes later, right?
9 A. Right.
10 Q. 92C, is that a notation that corresponds to an arrest?
11 A. Yes.
12 Q. So this entry means that you placed Mr. Sindyiganza under
13 arrest at 6:45?
14 A. Yes.
15 Q. So that means that, and I think you testified to this
16 earlier, the encounter from the time you stopped him to the
17 time you arrested him was about 15 minutes?
18 A. From the time I stopped him to the time he is placed under
19 arrest, according to my memo book, is 15 minutes.
20 Q. And again, with respect to this notation for the arrest,
21 there are no details about what the charge is, correct?
22 A. Correct.
23 Q. No details about what the basis for the probable cause is,
24 right?
25 A. Correct.

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D4A8FLO4 White - direct

- 1 Q. It just simply says 92C, correct?
2 A. Correct.
3 Q. Is that just some kind of NYPD code for arrest?
4 A. That's a radio code that describes an arrest.
5 Q. Then going a little further down, about an hour and ten
6 minutes later, 1955, which is 7:55 p.m. Do you see that?
7 A. Yes.
8 Q. There you have Mr. Sindyiganza's name and date of birth,
9 right?
10 A. Yes.
11 Q. Then it says "dis con," right?
12 A. Yes.
13 Q. Then underneath that is a number. Is that the summons
14 number?
15 A. Yes.
16 Q. So again, here there is no information about the reason you
17 initially stopped him, right?
18 A. Well, after 1905, if I was going to proceed with the
19 arrest, the information would be put in that part of -- the
20 complainant's name would have been there, why he was arrested
21 would have been there. But since the desk sergeant said not to
22 arrest him, I did not put it in.
23 Q. I understand that. I am just simply trying to establish,
24 there is nothing on this page in your memo book which explains
25 the reason that you stopped Mr. Sindyiganza, correct?

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D4A8FLO4 White - direct

- 1 A. Nothing on the memo book.
2 Q. Turning to the third page, which is 21578, again, there is
3 nothing on this page that explains the reason you stopped Mr.
4 Sindayiganza, right?
5 A. Correct.
6 Q. You have been trained in both the police academy and on the
7 job about memo book entries, correct?
8 A. Correct.
9 Q. It's your understanding, is it not, that for every stop you
10 do, you have to make a memo book entry, correct?
11 A. Correct.
12 Q. You didn't do that in this situation, right?
13 A. I made the memo book entry, yes.
14 Q. Do you think your memo book entry is sufficient?
15 A. No.
16 Q. You're also supposed to make a memo book entry for every
17 arrest that you make, right?
18 A. Correct.
19 Q. Is it your understanding that even for arrests, you have to
20 include some narrative details about the basis for an arrest,
21 right?
22 A. Like I said, if I was to proceed with the arrest, there
23 would have been a narrative detail at the precinct. You're
24 supposed to make memo book entries as long as they are
25 pertinent and it's feasible.

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D4A8FLO4 White - direct

1 Q. I don't want to belabor the point, but when you went back
2 to the precinct, at that point in time, you filled out a
3 summons for him, right, Mr. Sindyiganza?

4 A. After being told to do so by the desk sergeant, yes.

5 Q. Then you gave him the summons, right?

6 A. Correct.

7 Q. Then he went on his way, correct?

8 A. Correct.

9 Q. So at that point in time, you did have time to actually do
10 a memo book entry about the arrest, right?

11 A. Well, since there is no arrest, there is no entry for it.

12 Q. But it was feasible, in other words, you had the time to do
13 it?

14 A. That's why I filled out the entries for the summons.

15 Q. But my question was, it was feasible, in other words, you
16 had the time to do a memo book entry for the arrest if you had
17 wanted to?

18 MS. PUBLICKER: Objection, your Honor. We are getting
19 into the possible questions again.

20 THE COURT: I don't think that's not the same. There
21 was enough time to do it if that's what he wanted to do, right?
22 There was a physical amount of time in which you could have
23 done it?

24 THE WITNESS: I could have done it, but --

25 THE COURT: That's all I am asking you, if there was
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D4A8FLO4 White - direct

1 enough time to do it.

2 Q. I didn't hear the answer.

3 THE COURT: He said, yes, there was enough time to do
4 it.

5 Q. It's your understanding, right, based on your training and
6 your understanding of NYPD policies, that even for arrests,
7 you're supposed to include the narrative details about the
8 reason for the arrest in your memo book, right?

9 A. Yes.

10 Q. The same goes for summonses, correct?

11 A. Yes.

12 Q. And this memo book entry that we are looking at, Exhibit
13 161, turning back to the second page, the summons is noted
14 there, but there is no information about what the basis for the
15 summons is, right?

16 A. The information for that would be on the front and back of
17 the C summons, which is turned into the precinct.

18 Q. I understand that. But didn't you just testify that NYPD
19 policy requires that you still put the information about the
20 reason for the summons in your memo book even if it's also on
21 the summons?

22 A. I said I have the dis con in there, the summons number, the
23 pedigree information for the individual.

24 Q. But you don't put the behavior or conduct that led you to
25 issue the summons, right?

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D4A8FLO4 White - direct

- 1 A. That was on the back of the summons.
2 Q. But it's not in your memo book, right?
3 A. No.
4 Q. And NYPD policy requires that you do put it in your memo
5 book, right?
6 A. They require that you put whatever entries you feel
7 necessary to put in as long as they jog your memory. At that
8 time, I thought that would be good enough.
9 Q. Again, just so we are clear on the record, nowhere in your
10 memo book do you actually record the physical description that
11 the woman gave you of the man that was following her, right?
12 A. Correct.
13 Q. That's obviously not on the summons either, right?
14 A. No.
15 Q. You didn't call it in to the dispatch when you radioed in,
16 right?
17 A. I called in that we had a male stopped.
18 Q. You didn't give a description, right?
19 A. For the male stopped?
20 Q. Yes.
21 A. No.
22 Q. You just stated that all that you are required to do per
23 NYPD policy with respect to your memo book entries is put
24 enough details to jog your memory, right?
25 A. Right.

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D4A8FLO4 White - direct

1 Q. To you, right, your understanding of what is necessary to
2 jog your memory is simply to record pedigree information, the
3 charge, in other words, the criminal charge for suspected
4 crime, and the location of the encounter, right?

5 A. Well, at the time, that's what I put down. My memo book
6 entries are a lot more detailed now.

7 Q. But back then that was your understanding of the only thing
8 you were supposed to put in your memo book about a stop, right?

9 A. Correct.

10 MR. CHARNEY: One minute, your Honor.

11 Q. A couple of more questions.

12 Earlier when we were talking about whether or not you
13 had reasonable suspicion to make this stop, your answer changed
14 since your deposition, right?

15 A. We changed it after the deposition.

16 Q. You and your attorney, right?

17 A. Yes.

18 Q. I think the reason you gave on the errata sheet is you
19 didn't understand the question, right?

20 A. Yes.

21 Q. So I want you to turn to page 105 of your original
22 deposition transcript. I am turning to line --

23 MS. PUBLICKER: I am just going to state you haven't
24 asked him this question yet, I don't believe, on 105. I am not
25 sure what the point is.

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D4A8FLO4 White - direct

1 MR. CHARNEY: I can do it this way.

2 Q. Do you remember being asked at your deposition --

3 MR. CHARNEY: I'm sorry. I apologize to both the
4 witness, the Court, and Ms. Publicker. I meant page 106.

5 Q. Page 106, do you remember being asked this question:

6 "Q. So you are saying at the point you first started
7 questioning him you did not have reasonable suspicion to
8 believe that he had committed any crime?"

9 And the answer you gave was, "When I first approached
10 him, no."

11 So I guess my question is, is that the question that
12 you didn't understand at the time of your deposition? Page
13 106, line 12.

14 A. The thing that I was confused about is whether or not the
15 reasonable suspicion was in fact there. But seeing that we had
16 a matching description and the location of the crime, I did
17 have reasonable suspicion.

18 Q. You were confused at your deposition whether you had
19 reasonable suspicion, correct?

20 A. Correct.

21 Q. But after meeting with your lawyer after the deposition,
22 you weren't confused anymore?

23 A. Like I said, reasonable suspicion, proximity of crime
24 location, good description.

25 Q. That's not my question. My question is, after you met with

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D4A8FLO4 White - direct

1 your lawyer, you weren't confused anymore, right?

2 A. I also looked up some stuff in the patrol guide as well.

3 Q. Can you answer my question yes or no? After you met with
4 your lawyer, you were no longer confused about whether you had
5 reasonable suspicion?

6 A. Correct.

7 Q. Just a couple of more questions.

8 So at the point that this encounter happened, you had
9 been on the job for just about a year, right?

10 A. Approximately.

11 Q. All the other officers who were patrolling with you at the
12 time you said were roughly about your level of experience,
13 maybe six months more, right?

14 A. That's correct.

15 Q. Again, there was no supervisor with you present during this
16 encounter, right?

17 A. Not during the stop, no.

18 THE COURT: When did the supervisor first show up?

19 THE WITNESS: There was a supervisor when we first
20 arrived at the detail location. He never showed up during the
21 encounter that we had.

22 THE COURT: He never showed up again?

23 THE WITNESS: No.

24 Q. The first time you spoke to a supervisor about this is when
25 you got back to the 13th Precinct, right?

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D4A8FLO4 White - direct

1 A. No. I called our detail supervisor to elaborate what
2 happened during the stop, and he said, OK, place the arrest.

3 Q. No supervisor has ever told you that the stop you made was
4 in any way improper, right?

5 A. Not to my knowledge, no.

6 Q. No supervisor has ever told you that the pat-down you
7 conducted of Mr. Sindayiganza was improper, right?

8 A. Correct.

9 Q. No one ever told you that the arrest you made was improper,
10 right?

11 A. Correct.

12 Q. No one ever told you your memo book entries for this
13 encounter were inadequate, right?

14 A. Correct.

15 Q. I think I already asked you this. At the time of this
16 encounter, you were working in an impact squad, correct?

17 A. What do you mean working in?

18 THE COURT: You were assigned to an impact squad?

19 THE WITNESS: I was assigned to the impact detail.

20 THE COURT: OK.

21 MR. CHARNEY: No other questions.

22 THE COURT: Ms. Publicker.

23 CROSS-EXAMINATION

24 BY MS. PUBLICKER:

25 Q. Good afternoon, Officer White.

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D4A8FLO4 White - cross

- 1 A. Good afternoon.
2 Q. How long have you been employed by the New York City Police
3 Department?
4 A. It's going to be five years this July.
5 Q. Did you go to college?
6 A. Yes.
7 Q. Where did you go to college?
8 A. SUNY Albany.
9 Q. Did you graduate with a degree?
10 A. Yes.
11 Q. What was that degree?
12 A. Bachelor's.
13 Q. For the record, what color is your hair?
14 A. Red.
15 Q. Has your hair ever been described as blond or blondish?
16 A. No.
17 Q. How long were you assigned to the Midtown South impact?
18 A. Approximately a year and a half.
19 Q. I believe you said at the time of the stop you had been
20 assigned to the impact unit for about a year?
21 A. Correct.
22 Q. When you were assigned to Midtown South, did you have
23 occasion to work outside of that impact zone?
24 A. Yes.
25 Q. When would that occur?

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D4A8FLO4 White - cross

1 A. It was variable. There was never a set occurrence.

2 Q. What types of assignments would take you out of Midtown
3 South?

4 A. If there is a parade going on and needed extra manpower, if
5 there is a demonstration going on, or if there is a quality of
6 life concern in other precincts, they would use the impact
7 squad to fulfill that.

8 Q. Is that the type of assignment you were working on February
9 12, 2010?

10 A. Correct.

11 Q. And which precinct were you assigned to that day?

12 A. 13th.

13 Q. Were you working with a partner that day?

14 A. I wasn't assigned a specific partner. We had adjoining
15 posts, which is that if you had two blocks as your foot post,
16 there would be another post another two blocks down below you.

17 Q. I believe you testified earlier that you were at the corner
18 of East 17th and Broadway when you were first approached by the
19 Petco manager, is that correct?

20 A. Correct.

21 Q. Why were you at that corner at that time?

22 A. That was the meeting spot for the police van to come pick
23 us up and bring us back to Midtown South.

24 Q. So it was the end of your patrol at the 13th Precinct?

25 A. Almost.

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D4A8FLO4 White - cross

- 1 Q. Could you describe the employee that approached you?
2 A. The first employee that approached me was a young man in a
3 Petco shirt.
4 Q. You spoke to more than one Petco employee that day?
5 A. Yes.
6 Q. How many Petco employees did you speak to?
7 A. Two.
8 Q. How many times did you enter and exit the Petco that day?
9 A. I'd say no less than three.
10 Q. I believe you said you spoke to the female complainant that
11 day inside the Petco?
12 A. Correct.
13 Q. Where in the Petco did you speak to her?
14 A. Immediately after entering the doors.
15 Q. What did that woman look like?
16 A. She was a small Caucasian female with a 3-year-old child
17 with her. She had dark hair.
18 Q. What did the woman tell you?
19 A. In so many words, she said she was walking to the Union
20 Square train station. She was approached by a male. She gave
21 a description of the male. He was asking for money. She said
22 no, and he continued to follow her and continued to ask for
23 money.
24 Q. Did she describe the individual who had been harassing her?
25 A. Yes.

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D4A8FLO4 White - cross

1 Q. How did she describe that individual?

2 A. She said he was a tall, light-skinned male, dark hair, big
3 backpack, glasses, and green jacket, green pants.

4 Q. What happened after you received that description?

5 A. Well, we went outside of the Petco to see if we could spot
6 anybody that fit that description.

7 Q. Did you see anyone who fit that description?

8 A. Yes.

9 Q. Who was that?

10 A. Mr. Sindayiganza.

11 Q. Did you see any other individuals who fit that description
12 in the area?

13 A. No.

14 Q. When you saw Mr. Sindayiganza, you stopped him, right?

15 A. Correct.

16 Q. And you asked him questions?

17 A. Yes.

18 Q. Was he free to leave at that point?

19 A. No.

20 Q. What happened after you first stopped him and questioned
21 him?

22 A. We asked him what he was doing here, if he was asking
23 anybody for money. At that point, he became a little indignant
24 and he seemed almost offended that we were asking these
25 questions.

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D4A8FLO4 White - cross

1 Q. So what did you do after he denied asking this woman for
2 money?

3 A. Other officers stayed with him. I went back inside to
4 retrieve the female. I wanted her to say if this was the man
5 or not.

6 Q. How far away was the victim from Mr. Sindayiganza at that
7 time?

8 A. Approximately around 30 feet.

9 Q. Again, this was around 6:30 at night in February, correct?

10 A. Correct.

11 Q. Could you still see Mr. Sindayiganza clearly from where you
12 were standing?

13 A. Yes.

14 Q. How so?

15 A. Well, it was a -- there's many streetlights there. We had
16 lights from the businesses that were coming out of the windows.

17 Q. I am handing you Defendants' Exhibit X10.

18 MS. PUBLICKER: Do you have the W one, Mr. Charney?

19 MR. CHARNEY: Yes. Sorry about that.

20 Q. This is W. I am going to ask you to circle the
21 streetlights you just mentioned. Thank you.

22 I know it's a little difficult to see, but is this the
23 streetlight -- one of the streetlights you just circled?

24 A. Yes.

25 Q. Is this the second one?

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D4A8FLO4

White - cross

1 A. Yes.

2 Q. Thank you.

3 So after the woman had identified Mr. Sindayiganza as
4 the man who had been harassing her, what did you do next?

5 A. I took her back inside of the Petco.

6 Q. Did you speak to her at that time?

7 A. Yes. I asked her what she wanted to do about this.

8 Q. What did she say?

9 A. She said that she really just wanted to get to her train
10 station with her son, and she wanted to just go home.

11 Q. What did you do next?

12 A. Well, I offered, I said, I can ask him to go north or to a
13 different location, would that satisfy her? She said, yes,
14 that would.15 Q. So is that when you went outside and spoke to Mr.
16 Sindayiganza again?

17 A. Yes.

18 Q. What did you say to Mr. Sindayiganza at that point?

19 A. At that point, I told him it's in his best interest if he
20 would just go north to a different train station.

21 Q. What did he say in response?

22 A. I don't remember specifically, but it was along the lines,
23 I don't have to do that, I can go to whatever train station I
24 want.

25 Q. Was he free to leave at that point?

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D4A8FLO4

White - cross

- 1 A. No.
- 2 Q. Was he free to leave if he walked north?
- 3 A. Yes.
- 4 Q. So what happened after he refused to walk north?
- 5 A. We asked him a couple more times that he should go up north
- 6 to a different train station. He still refused. At that
- 7 point, I walked back and started to tell the victim what was
- 8 going on.
- 9 Q. What was Mr. Sindayiganza's demeanor when you told him to
- 10 go north?
- 11 A. I said before he seemed almost offended that we were
- 12 stopping him and talking to him. He wasn't yelling, but he was
- 13 raising his voice louder than normal talking volume.
- 14 Q. What happened when you went back into the Petco store?
- 15 A. I told the complainant that he was refusing to go north.
- 16 Q. What did she say in response?
- 17 A. She said that, is there any other way that he could get out
- 18 from that area? And she said she wanted to press charges to
- 19 ensure that he wouldn't be following her.
- 20 Q. What happened then?
- 21 A. At that point, I walked back outside and I placed Mr.
- 22 Sindayiganza under arrest.
- 23 Q. When you first placed hands on Mr. Sindayiganza, was he
- 24 under arrest?
- 25 A. It was in the act of placing him under arrest, yes.

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D4A8FLO4 White - cross

- 1 Q. Is it your recollection sitting here today that you only
2 put hands on Mr. Sindayiganza after she stated that she would
3 like to press charges?
4 A. Yes.
5 Q. What happened after you placed Mr. Sindayiganza in
6 handcuffs?
7 A. Well, after I conducted the search, placed him in
8 handcuffs, I don't know if it was before or after I placed him
9 in handcuffs whether I did the search or not, but he was placed
10 under arrest, and I put it over the radio and I requested for a
11 unit to transport us back to the 13th Precinct.
12 Q. Did the unit arrive to transport you?
13 A. Eventually, yes.
14 Q. How long did it take for that unit to arrive?
15 A. I would have to -- originally a sector car was supposed to
16 pick us up, but they ultimately said they didn't come because
17 they were busy with something else. So a plain clothes unit
18 came down to pick us up. It wasn't that long.
19 Q. You went back to the 13th Precinct?
20 A. Correct.
21 Q. But that was not your home precinct, right?
22 A. No.
23 Q. You stated earlier that you began the arrest paperwork,
24 correct?
25 A. Correct.

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D4A8FLO4

White - cross

1 Q. But you did not finish that paperwork?

2 A. Correct.

3 Q. Had you arrested Mr. Sindayiganza for the aggravated
4 harassment, would you have thrown out the victim's contact
5 information?

6 A. Not without documenting it on department paperwork.

7 Q. Did you fill out a stop, question and frisk 250 form for
8 this incident?

9 A. No.

10 Q. Sitting here today, do you believe you should have?

11 A. Sitting here today, I believe any encounter, regardless of
12 the outcome, that involves reasonable suspicion or probable
13 cause deserves to have a UF-250 filled out.

14 Q. I believe you testified at the CCRB that you would have
15 issued Mr. Sindayiganza a 250 had he walked away and gone
16 north, is that correct?

17 A. Correct.

18 Q. So you did know at the time of your CCRB testimony that you
19 had reasonable suspicion for the stop of Mr. Sindayiganza?

20 MR. CHARNEY: Objection, your Honor.

21 THE COURT: Sustained.

22 Q. What is your understanding of when you fill out a 250 form?

23 A. Any street encounter that involves reasonable suspicion or
24 probable cause.

25 Q. I believe you stated earlier that you put it over the radio

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D4A8FLO4 White - cross

1 when you stopped Mr. Sindayiganza?

2 A. Correct.

3 Q. When Mr. Sindayiganza was arrested?

4 A. Correct.

5 Q. When you asked for him to be transported to the 13th
6 Precinct?

7 A. Correct.

8 Q. And when the unit arrived, is that correct?

9 A. I don't know if I put it over the radio when the unit
10 arrived.

11 Q. I am going to show you Defendants' Exhibit T7. Just review
12 that, please. Do you recognize that document?

13 A. Yes.

14 Q. What do you recognize that document to be?

15 A. It's a Sprint printout from our department.

16 MS. PUBLICKER: I am going to move the admission of
17 T7.

18 MR. CHARNEY: No objection.

19 (Defendants' Exhibit T7 received in evidence)

20 Q. This is Defendants' Exhibit T7. I am going to turn to the
21 third page NYC-00021589.

22 What time does this document indicate that you stopped
23 Mr. Sindayiganza?

24 A. It says around 1838.

25 Q. At what time did you arrest Mr. Sindayiganza?

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D4A8FLO4 White - cross

1 A. 1845.

2 Q. At what time did you request transportation to the 13th
3 Precinct?

4 A. 1846.

5 Q. At what time did the specialty unit arrive to transport
6 you?

7 A. 1858.

8 Q. Thank you.

9 Have you ever been trained on accurately filling out
10 police reports?

11 A. Yes.

12 Q. When have you been trained on that?

13 A. During the academy and throughout my career.

14 Q. Have you been trained on telling the truth in police
15 reports and forms?

16 A. Yes.

17 Q. Have you been trained on that since you left the police
18 academy?

19 A. Yes.

20 Q. What is your understanding of what happens to a police
21 officer who lies on a police report?

22 A. That they are subject to discipline.

23 Q. I believe you stated that your memo book practice has
24 changed over time on cross, is that correct?

25 A. Yes.

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D4A8FLO4 White - cross

1 Q. How has your practice of what you include in your memo book
2 changed over time?

3 A. Well, throughout my career I have learned it's always best
4 to be as detailed as possible as you can.

5 Q. Do your supervisors review your memo book?

6 A. What do you mean review?

7 Q. Do they ever look at your memo book entries and read them?

8 A. Yes.

9 Q. Has a supervisor ever compared a 250 form that you filled
10 out to a memo book entry?

11 A. Yes.

12 Q. Could you tell us about a time when that has happened?

13 A. Well, I remember I had to get a 250 signed off by the desk,
14 and he wanted to see my memo book entries before signing off on
15 the 250 to ensure that I had properly filled out enough
16 details.

17 Q. Did he ask you questions about the stop at that time?

18 A. Yes.

19 Q. When did this encounter happen?

20 A. I'd say last month maybe.

21 Q. Have you ever discussed your memo book entries with a
22 supervisor?

23 A. Yes.

24 Q. What is the content of those conversations?

25 THE COURT: You're calling for the contents of that
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D4A8FLO4 White - cross

1 conversation?

2 MS. PUBLICKER: Yes. What he has been told by a
3 supervisor.

4 MR. CHARNEY: It's hearsay.

5 THE COURT: Sustained.

6 MR. MOORE: I have a problem with this line of
7 questioning because, as you know, there was a document that the
8 city tried to get in, which was dated March 5, with respect to
9 some --

10 MS. PUBLICKER: This has nothing to do with that
11 document.

12 MR. MOORE: He said within the last month.

13 THE COURT: I just sustained objection to this
14 conversation. You're saying the previous question and answer
15 should also be struck --

16 MR. MOORE: I think so.

17 THE COURT: -- because it's within the last month.

18 I think that's right. It's too current.

19 (Pause)

20 MS. GROSSMAN: I just wanted to ask that the Court
21 reconsider its ruling, because this is a case seeking
22 injunctive relief, and the witness has just testified to events
23 that occurred within the last month, and I think that's
24 relevant to the claims being made in this case and the claims
25 for injunctive and remedial relief. So I just wanted to ask

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D4A8FLO4 White - cross

1 that the Court to reconsider.

2 THE COURT: It wouldn't cause any change in the last
3 ruling which called for hearsay. On the one before that, where
4 we talked about --

5 MR. MOORE: Changes in the last --

6 THE COURT: The previous question, I will let it stand
7 in the record. You already answered it. But I am not going to
8 take the conversation that calls for hearsay.

9 MS. PUBLICKER: Yes, your Honor.

10 THE COURT: That's enough of this. I am not going to
11 go over it a third time and then maybe I will change. I am not
12 really like that. I see the point. I am allowing it.

13 Can we move on?

14 MS. PUBLICKER: Yes, your Honor.

15 BY MS. PUBLICKER:

16 Q. Have you ever been subject to a quota?

17 A. No.

18 Q. Have you ever been pressured to conduct a certain number of
19 stops, arrests or summonses?

20 A. No.

21 Q. Have you ever felt that you did not conduct a certain
22 number of stops, arrests or summonses that you would be
23 punished?

24 MR. CHARNEY: This testimony is cumulative.

25 THE COURT: It is, but it goes at the end of every

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D4A8FLO4 White - cross

1 police witness, every witness gets the same five questions at
2 the end.

3 Go ahead.

4 Q. Have you ever felt pressured to make unconstitutional
5 stops, summonses or arrests?

6 A. No.

7 MS. PUBLICKER: Your Honor, would you like a copy as
8 well?

9 THE COURT: Sure.

10 Q. Officer White, could you describe the document I just
11 handed you?

12 A. These are police officers' monthly performance reports.

13 Q. These are your monthly performance reports?

14 A. Yes.

15 Q. For what time period?

16 A. January through March 2010.

17 Q. That includes the time period of Mr. Sindayiganza's stop?

18 A. Yes.

19 MS. PUBLICKER: I move the admission of these
20 documents.

21 MR. CHARNEY: No objection.

22 MS. PUBLICKER: This is Defendants' P13.

23 THE COURT: P13 is received.

24 (Defendants' Exhibit P13 received in evidence)

25 Q. Officer White, in January of 2010, what was your declared

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D4A8FLO4 White - cross

1 condition?

2 A. Grand larceny prevention.

3 Q. That's listed here under category number 2?

4 A. Correct.

5 Q. Why was that your chosen condition?

6 A. Working in Times Square, we had a lot of grand larcenies
7 coming from the surrounding restaurants, businesses.

8 Q. How would you indicate on this form how you addressed that
9 condition?

10 A. I would indicate it through marking my activity down on the
11 front and on the back under section 2, declared condition.

12 Q. During the month of January 2010, how many days on patrol
13 did you work?

14 A. 12.

15 Q. That doesn't mean you only worked 12 days that month
16 though, correct?

17 A. Correct.

18 Q. How many vertical patrols did you respond to that month?

19 A. I performed 35 vertical patrols the month of January.

20 Q. Were those residential vertical patrols?

21 A. They are mainly restaurants, businesses, in the impact
22 zone.

23 Q. How many parking violations did you have that month?

24 A. 14.

25 MR. CHARNEY: In the interest of time and trying to
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D4A8FLO4 White - cross

1 avoid cumulative testimony, I really object to this line of
2 questioning. The document speaks for itself. It says how many
3 vertical patrols there are. It says how many summonses.

4 THE COURT: That is all true. What are you trying to
5 bring out?

6 Q. Did you make any arrests that month?

7 A. No.

8 Q. Were you punished in any way for not making any arrests
9 that month?

10 A. No.

11 Q. Turning to the back of that form, can you indicate the way
12 in which you responded to your declared condition?

13 A. Under number 2, in declared condition, I placed down the
14 locations where I have done community visits and verticals.

15 Q. So you had no, quote unquote, enforcement activity to
16 address your declared condition, correct?

17 A. Correct.

18 Q. Turning to February of 2010, what was your declared
19 condition that month?

20 A. Grand larceny prevention.

21 Q. How many vertical patrols did you conduct that month?

22 A. 46.

23 Q. The number of parking violations you issued dropped from
24 January to February, correct?

25 A. Correct.

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D4A8FLO4 White - cross

1 MR. CHARNEY: Same objection. The document speaks for
2 itself.

3 THE COURT: You put it in evidence. I see it.

4 Q. Did anyone speak to you in any way about the number of
5 parking violations you issued having dropped from one month to
6 the next?

7 A. No.

8 Q. You only had one stop, question and frisk that month?

9 A. Correct. Although there should be another mark for Mr.
10 Sindayiganza.

11 Q. Turning to the back of that form, what did you do to
12 address your declared condition that month?

13 A. I performed a number of verticals and I listed the
14 locations in which they were performed.

15 Q. So there were no summonses, arrests or 250s to address your
16 declared condition that month?

17 A. No.

18 Q. Were you spoken to by anyone?

19 A. No.

20 Q. Were you told to increase your numbers?

21 A. No.

22 Q. Finally, moving on to March of 2010, what was your declared
23 condition that month?

24 A. Grand larceny prevention.

25 Q. And you again only had one stop, question and frisk that

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D4A8FLO4 White - cross

1 month?

2 A. Correct.

3 Q. To address your declared condition in March of 2010, can
4 you tell the Court the activity that you conducted?

5 A. To address the grand larcenies in that impact zone, I
6 performed a number of verticals and community visits at the
7 listed locations.

8 Q. So for a third straight month you had not conducted a
9 single stop, issued a single summons, or conducted an arrest in
10 regards to your declared condition, is that correct?

11 A. Yes.

12 Q. Were you punished in any way for that?

13 A. No.

14 Q. Officer White, would you have arrested Mr. Sindyiganza if
15 the female complainant had not pointed him out to you?

16 A. No.

17 Q. How many times did you tell Mr. Sindyiganza to go north
18 that day?

19 A. No less than three.

20 Q. Had he walked north, would he have been arrested or
21 summonsed?

22 A. No.

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

24 REDIRECT EXAMINATION

25 BY MR. CHARNEY:

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D4A8FLO4 White - redirect

1 Q. Officer White, you testified on direct when Ms. Publicker
2 asked you that you didn't put your hands on Mr. Sindayiganza
3 until after you had placed him under arrest, is that right?

4 A. Correct.

5 Q. But you testified on direct that you told the CCRB that you
6 in fact frisked him before the woman told you that she wanted
7 him arrested, right?

8 A. Like I said, I might have been confused on the timetable,
9 but I didn't touch him until he was under arrest.

10 Q. So your testimony --

11 THE COURT: You didn't but somebody else did, right?

12 THE WITNESS: I can't speak for anybody else who was
13 there because I was going back and forth.

14 THE COURT: You didn't see it?

15 THE WITNESS: I didn't see it.

16 THE COURT: OK.

17 Q. I am not talking about the other person. I am talking
18 about you. You told the CCRB that you frisked him before the
19 woman told you --

20 THE COURT: We have been over and over this. He said
21 he said that, but that he was mistaken.

22 Q. And your CCRB interview was in October 2010, right? Do you
23 have that in front of you?

24 A. I don't think I have the --

25 THE COURT: That's the date on the transcript.

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D4A8FLO4 White - redirect

1 Q. That was only eight months after the incident?

2 A. Correct.

3 Q. But your testimony today, we are more than three years
4 after the incident, right?

5 A. Correct.

6 Q. Now, at the time that you encountered Mr. Sindayiganza,
7 it's fair to say it was probably pretty crowded in that area of
8 Union Square, right?

9 A. For the most part.

10 Q. So there were a lot of people there?

11 A. Yes.

12 Q. It was winter?

13 A. Correct.

14 Q. A lot of people had winter coats on?

15 A. Correct.

16 Q. I wanted to ask you real briefly about the document Ms.
17 Publicker just showed you, Defendants' P13, your monthly
18 performance reports.

19 Can you turn to the last page, the back of the last
20 page 22725?

21 You see there is a section there for supervisor's
22 quarterly review?

23 A. Yes.

24 Q. Now, that's blank on this page, right?

25 A. Correct.

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D4A8FLO4 White - redirect

1 Q. But this is the monthly performance report for March 2010,
2 right?

3 A. Correct.

4 Q. Isn't it your understanding that the quarterly reviews are
5 supposed to be conducted every three months on the back of the
6 monthly performance report?

7 A. I think we are looking at a copy of my monthly before I
8 turned it into my supervisor. So I doubt his comments would be
9 on there.

10 Q. Do you remember testifying at your deposition that, in your
11 experience, when you turn the form in, you don't actually ever
12 see the evaluation that the supervisor does, right?

13 A. Until he gives it back to me to sign off for the quarterly,
14 no.

15 Q. So you don't actually have a discussion with him about what
16 his evaluation of your performance is, right?

17 A. Unless he says something to me that I need to pick it up or
18 anything, no.

19 MR. CHARNEY: No further questions.

20 THE COURT: Are we done with this witness, Ms.

21 Publicker?

22 MS. PUBLICKER: No further questions.

23 THE COURT: Thank you.

24 The next witness.

25 MR. CHARNEY: It's going to be Inspector Donald

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D4A8FLO4 White - redirect

1 McHugh.

2 MS. GROSSMAN: I just want to ask plaintiffs' counsel
3 to give me the exhibits that they just sent last night that I
4 was not aware of before the examination begins so we don't have
5 to interrupt the proceedings and I can have them as I was
6 supposed to have them.

7 MR. CHARNEY: First of all, just to let you know so
8 the record is clear, because I know the city is trying to build
9 a record that we are not complying with your order, we actually
10 provided our initial list of exhibits for Inspector McHugh the
11 first week of this trial. So they actually have them for about
12 three weeks. There may be a couple of other ones. I have
13 enough copies for everybody. I don't know which ones I am
14 going to use, but I can hand them over now if you think that's
15 easier.

16 THE COURT: OK.

17 MS. GROSSMAN: Thank you.

18 DONALD McHUGH,

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

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

23 THE WITNESS: My name is Donald J. McHugh,
24 D-O-N-A-L-D, M-C-H-U-G-H.

25 THE COURT: Thank you.

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D4A8FLO4 White - redirect

1 DIRECT EXAMINATION
2 BY MR. CHARNEY:
3 Q. Good afternoon, Inspector McHugh.
4 A. Good afternoon, sir.
5 Q. Are you an inspector?
6 A. I am, sir. Yes.
7 Q. Now, what is your current assignment in the NYPD?
8 A. I am the commanding officer of the World Trade Center.
9 Q. When did you become the commanding officer of the World
10 Trade Center?
11 A. I believe in like late 2010 or early 2011.
12 Q. Prior to that, you were the commanding officer of the 41st
13 Precinct, is that right?
14 A. Yes.
15 Q. That's in the Bronx, correct?
16 A. Yes.
17 Q. You became the commanding officer of the 41st Precinct on
18 or about February of 2008, is that correct?
19 A. That's correct.
20 Q. You were the commander up until you say either late 2010 or
21 early 2011, right?
22 A. I believe in late 2010, yes. In the fall of 2010.
23 Q. While you were the commander of the 41st Precinct, you
24 reported directly to Chief Thomas Purtell, correct?
25 A. Yes.

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D4A8FLO4 McHugh - direct

1 Q. He was the commander of patrol borough Bronx at that time?

2 A. Yes.

3 Q. While you were the commander of the 41st Precinct, one of
4 the platoon commanders who worked under you was Andrew
5 Valenzano, correct?

6 A. Yes.

7 Q. One of the squad sergeants who worked under you was
8 Sergeant Mervin Bennett?

9 A. Correct.

10 Q. Was there also a sergeant who worked in the 41st Precinct
11 by the name of Christopher Groben?

12 A. Correct. He was a lieutenant.

13 Q. I'm sorry. He was a lieutenant.

14 MS. GROSSMAN: In terms of testimony regarding
15 Mr. Groben, we believe that the plaintiffs are expecting to go
16 into matters that this Court has ruled in limine on in the
17 past. So I just wanted to alert the Court to that in the event
18 that that other matter should be pursued.

19 MR. CHARNEY: I can tell you right now that we plan to
20 ask him about his knowledge of a lawsuit that was brought
21 against him concerning quotas, which we think is clearly
22 relevant to this case. I don't plan to go into the details of
23 the outcome of that lawsuit. I am more interested in what the
24 NYPD's response was to the lawsuit. I am not trying to get him
25 to incriminate himself or any of that kind of thing.

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D4A8FLO4 McHugh - direct

1 MS. GROSSMAN: It's a pending lawsuit. So a response
2 from the police department in terms of a pending lawsuit I
3 don't think has a place in this proceeding.

4 THE COURT: There is a pending lawsuit where?

5 MR. CHARNEY: I believe it's in the New York County
6 supreme court.

7 THE COURT: So then your response is public.

8 MS. GROSSMAN: I am just suggesting, I am asserting an
9 objection that this is not something that the witness should be
10 asked questions about in the context of this proceeding. It's
11 not like there is a final outcome.

12 THE COURT: I know there is not a final outcome, but
13 if the city has taken a position, there may be judicial
14 estoppel. I don't know what the position is. Surely you have
15 heard of judicial estoppel. You take a position in a lawsuit
16 with the same party, then that position that you take cannot be
17 contrary to it. That's all.

18 MS. GROSSMAN: It's a denial.

19 THE COURT: Now you have told me what the position is.
20 That's apparently what he would have asked.

21 MR. CHARNEY: I was not even going to ask him what
22 their litigation position is. I was going to ask him if the
23 NYPD had conducted any investigation in response to these
24 allegations. That's what I was going to ask him about.

25 THE COURT: What if he said yes, what would you ask

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McHugh - direct

1 next?

2 MR. CHARNEY: It seems to me we need to know the
3 extent of what they have done to investigate because it goes to
4 issue of deliberate indifference. There is an allegation of
5 quotas.

6 THE COURT: I am afraid you would be treading there on
7 possibly attorney-client privilege or attorney work product. I
8 would take the yes or no, but for them to say what he did,
9 maybe their attorney told him to collect certain data.

10 MR. CHARNEY: I agree. I am not going to ask him
11 about any conversations he had with any legal authorities.

12 THE COURT: Even to say, what investigation did you
13 undertake, may indeed call for privileged and/or work product
14 material because there is a pending lawsuit.

15 MR. CHARNEY: We can deal with that depending on what
16 the question is and what the answer is. If it's related to
17 conversations he had with non-legal personnel, I don't think
18 that would be privileged.

19 THE COURT: If he did that in furtherance of a
20 response in a lawsuit, it's not privileged, it's work product.

21 MR. CHARNEY: I am not asking about how they responded
22 to the lawsuit.

23 THE COURT: You're exactly asking for that. You said,
24 The lawsuit is filed. What efforts did you undertake to
25 respond in terms of investigation? What investigation did you

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1 conduct? And I am saying maybe counsel asked him to conduct an
2 investigation.

3 MR. CHARNEY: I understand. I guess what I am saying
4 is I think there are two types of investigations. There is an
5 investigation to prepare a response to the lawsuit. And then
6 there is an investigation because a serious allegation about
7 quotas has been made against a member of the police department,
8 and we have already heard testimony that there have been other
9 allegations and that those are investigated, separate and apart
10 from the litigation.

11 THE COURT: But this isn't separate and apart. You
12 are calling for what they did in response to the lawsuit. It's
13 a pending lawsuit.

14 MR. CHARNEY: Maybe when we get to the question, they
15 can lodge their objection and you can rule on it.

16 THE COURT: I thought I just did. You can't call for
17 privilege or work product information.

18 MR. CHARNEY: I understand. I will try not to do
19 that.

20 THE COURT: All right.

21 MR. CHARNEY: We are going to get to that later, the
22 Christopher Groben matter.

23 BY MR. CHARNEY:

24 Q. I want to start by showing you -- I think this is already
25 in evidence.

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D4A8FLO4

McHugh - direct

1 MS. GROSSMAN: Your Honor, my apologies. I know we
2 have an application on a separate matter regarding the expert
3 report. We had requested a brief extension of, I believe, two
4 days because our expert is sick and has been out on
5 bereavement, and we have not been able to reach our expert
6 because I think there is some health issues. We just need at
7 least two days, and we are just asking if we can have that
8 time. I wouldn't raise it now, but because we know our report
9 is due forthwith, I just wanted to make sure that I brought it
10 up with you.

11 THE COURT: I think maybe that's the e-mail I am just
12 getting now from the clerk who is out sick today, saying that
13 he received something from you. That might be it.

14 MS. GROSSMAN: Yes. We did send it last night.

15 THE COURT: Well, he didn't transmit it until right
16 now. Defendants request until 5 p.m. Monday to serve
17 plaintiffs with their expert remedy report and remedies brief.

18 Then there is a response from you, Ms. Patel?

19 MS. PATEL: Yes.

20 THE COURT: Why do we have to do this now in the
21 middle of the trial day?

22 MS. GROSSMAN: Because if we don't get the extension,
23 it's due tomorrow, and we have not been able to reach our
24 expert as we speak. So we are just hoping that the Court will
25 give us until Monday.

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D4A8FLO4

McHugh - direct

1 THE COURT: I haven't had a chance to read your letter
2 or her letter.

3 I don't understand your letter. What you don't
4 comment on is the apparent story about the expert being ill or
5 his family. That's the unanticipated circumstance. If they
6 would just say, we need more time, we didn't get our work done,
7 then I would understand your letter completely. If somebody
8 represents that somebody has taken ill, or a member of their
9 family, what would you like me to do? Say no, I'm sorry, you
10 can't get a day? What is the difference in the real world
11 whether this report comes in Monday?

12 Is the man ill or his family?

13 MS. GROSSMAN: It's both.

14 THE COURT: Great.

15 MS. PATEL: It makes a difference because our expert
16 originally made plans for us to work around the April 5
17 deadline and then it was changed to April 11. The Court
18 specifically said that it would grant the extension because we
19 have a recess from the 11th to the 14th. So everyone scheduled
20 around that.

21 THE COURT: It is an unanticipated circumstance of
22 somebody being ill. What would you like me to do?

23 MS. PATEL: This was something that happened last week
24 and this is being raised today. In addition, I think the brief
25 itself, I don't see why that should be extended at all. That's

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D4A8FLO4 McHugh - direct

1 something they have had even more than two or three extensions.

2 THE COURT: Why can't you get the brief in without the
3 expert?

4 MS. GROSSMAN: Because the remedy brief is based on
5 the expert report.

6 THE COURT: It's just not right. They will have to
7 write the brief without that part and then supplement it when
8 you get his report. The brief has got to come in when it's
9 supposed to come in. Which is tomorrow? When you get the
10 expert report on Monday you will supplement it with a couple of
11 pages saying what that adds. The brief is well beyond this one
12 expert.

13 MS. GROSSMAN: Can we at least have one day?

14 THE COURT: I don't know. There is a recess from the
15 11th to the 14th, which everybody knew about and everybody
16 counted on. I understand the personal circumstances of
17 somebody being ill and his family. I really do. So his report
18 can come in on the 15th. But there is no reason your brief
19 can't come in when it is supposed to.

20 Can we get on with the witness who is sitting here
21 while we discuss this?

22 MS. PATEL: Just for the record --

23 THE COURT: You can't say just for the record. There
24 is no more time for speaking for the record.

25 Mr. Charney, your next question, please.

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D4A8FLO4 McHugh - direct

1 BY MR. CHARNEY:

2 Q. So I wanted to show you what has been previously admitted
3 into evidence as Defendants' Exhibit D12, if we can pull it up
4 on the screen.

5 Inspector, do you recognize this document?

6 A. Yes.

7 Q. What is this document?

8 A. This is the patrol guide duties and responsibilities of a
9 commanding officer.

10 Q. So this document sets forth all of the required duties and
11 responsibilities of a precinct commander as you understood them
12 when you were the CO of the 41st Precinct?

13 A. Yes. It's the general guide.

14 Q. Now, if we can zoom in to the bottom of the page, paragraph
15 11 talks about, it says, "Review activities of members of
16 command each month." Do you see that?

17 THE COURT: Where are we?

18 MS. GROSSMAN: I don't know that this has been
19 admitted into evidence.

20 MR. CHARNEY: It's on our list as having been
21 admitted.

22 THE COURT: It's a police department document. I am
23 sure you're not going to object.

24 Where is the paragraph about reviewing something?

25 MR. CHARNEY: The one that is darkened.

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D4A8FLO4

McHugh - direct

1 THE COURT: I can't read on the screen anyway.

2 What is the number of this exhibit?

3 MR. CHARNEY: D12.

4 THE COURT: Ms. Grossman is absolutely right. You
5 have to move exhibits in evidence before they are shown. That
6 is all she is trying to say. Before something is shown in open
7 court it should be admitted. This is not objectionable. It's
8 a police department document. For future reference, don't show
9 it till it's in evidence.

10 D12 is received.

11 MR. CHARNEY: Your Honor, just to make the record --

12 THE COURT: I don't want to go over it. D12 is
13 received, and I can't read that paragraph.

14 (Defendants' Exhibit D12 received in evidence)

15 MR. CHARNEY: I would just like to put on the
16 record --

17 THE COURT: I am not letting anybody speak for the
18 record. That time has passed.

19 I can't read the paragraph.

20 MR. CHARNEY: I ask that the defendants not make
21 speaking objections.

22 THE COURT: I will not listen to your telling me that.

23 I can't read the blacked-out part. If you want to
24 read it slowly into the record, you may.

25 BY MR. CHARNEY:

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D4A8FLO4 McHugh - direct

1 Q. Do you see, Inspector, where it says --

2 THE COURT: Can you read it?

3 THE WITNESS: I can make it out.

4 THE COURT: I can't. But that's OK. He can.

5 Q. Do you agree with me that it says, "Review activities of
6 members of command each month"?

7 A. Yes.

8 Q. Did you, in fact, do that when you were the commander of
9 the 41st Precinct?

10 A. Yes.

11 Q. I want to show you what has also previously been admitted
12 as Exhibit X11.

13 MR. CHARNEY: Did you hear me, defense counsel?

14 MS. GROSSMAN: If the plaintiffs had given me these
15 exhibits as they were supposed to, this would not be an issue.

16 THE COURT: You know that X11 is in evidence, right?

17 MS. GROSSMAN: Yes.

18 THE COURT: Go ahead.

19 Q. Do you know what this document is, Inspector?

20 A. This is the monthly sergeant's squad recapitulation for
21 Sergeant Edgar Padilla and the members in his team.

22 Q. Is this one of the documents you would review each month to
23 review activity of officers that worked under your command?

24 A. Correct.

25 Q. I want to turn to, I believe it's the third page with the
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D4A8FLO4 McHugh - direct

1 Bates number 18938 at the bottom.

2 Am I correct that this is a supervisor --

3 MS. GROSSMAN: Is that page 4?

4 MR. CHARNEY: Whichever one has 938 at the bottom.

5 THE COURT: I see it says 938.

6 Q. This is the supervisor's recapitulation for Sergeant
7 Padilla's squad for August of 2009, correct?

8 A. Yes.

9 Q. You see there is a note there at the bottom, a handwritten
10 note, starts with the number 7? Maybe we can blow it up a
11 little bit.

12 A. I can read it.

13 Q. Can you read to me what it says?

14 A. Yes. "7 MOS," which means members of the service,
15 referring to police officers in squad. "No SQFs," which refers
16 to stop, question and frisk, "impossible in a car break-in
17 pattern."

18 Q. Do you know whether you wrote that handwritten note?

19 A. I did write that.

20 Q. You were referring to the number of stops or lack of stops
21 that the officers in this squad had done for that month,
22 correct?

23 A. When looking at this, I thought they had done none,
24 correct.

25 Q. Is it correct to say that when you would review officers'

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D4A8FLO4 McHugh - direct

1 monthly activity, one of the things you were reviewing was the
2 number of stops that the officers conducted in that month?

3 A. It was one of the categories, correct.

4 Q. You were also reviewing the number of arrests that they
5 made in a month?

6 A. Correct.

7 Q. And the number of summonses they made in a month?

8 A. Correct.

9 Q. Now, in addition to reviewing the monthly activity of
10 officers in your precinct, you also checked the weekly numbers
11 of 250s and summonses for officers in your precinct, right?

12 A. I don't know -- weekly? I may have had that ability in the
13 database, and yes, it's a possibility.

14 Q. I am asking not whether it was a possibility, whether in
15 fact you did do that when you were commander of the 41st
16 Precinct?

17 A. There may have been times I did look at it. There may have
18 been times I did not. I am saying there is a distinct
19 possibility, but I am not 100 percent sure if I did it every
20 single week.

21 Q. Do you remember being deposed in this case?

22 A. I do.

23 Q. I just want to show you this to see if it refreshes your
24 recollection about whether or not you did in fact check
25 officers' weekly activity. If you start on page 44?

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D4A8FLO4 McHugh - direct

1 A. I can't actually read this, counselor, even with my
2 glasses. I am sure though -- I did receive my deposition. I
3 am sure if it's in there, you repeat it to me, I will
4 acknowledge that.

5 MR. CHARNEY: Should I just read it, your Honor?

6 THE COURT: Sure.

7 A. I would just ask, if you're going to ask me questions on
8 anything in the future, I can't see it all with this.

9 Q. I apologize. I can see if maybe we have larger version.
10 We are going to go look right now.

11 I am going to read from page 44, line 23.

12 "Q. What about the statistics for the UF-250s, do you ever go
13 on that CompStat icon on your computer to get that information
14 for your precinct?"

15 A. Yes.

16 THE COURT: He is asking you to listen.

17 "A. Do you mean the gross amount of 250s?"

18 "Q. Yes, the gross amount. Let's say for a particular time
19 period, whether it be for a week or a month.

20 "A. Yes. On a weekly basis, I get a printout of the crime
21 statistics, the domestic violence, the gun arrests, summonses
22 that we have had, the arrests, the 250s for the precinct, yes."

23 A. And that refers to, counselor, the CompStat sheet that's
24 published also. I didn't get a form like this every week.
25 That's what I was referring to.

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D4A8FLO4 McHugh - direct

1 Q. I guess based on that CompStat sheet, it's your
2 recollection that you did review on a weekly basis the gross
3 number of 250s that officers in your precinct did?

4 A. The gross number, correct.

5 MR. CHARNEY: I am going to hand this to the witness.

6 Q. This is actually a full-sized transcript. So hopefully it
7 will make it easier on your eyes as we go forward.

8 A. Thank you very much.

9 Q. You also, isn't it true, would use these CompStat documents
10 to review the weekly summons activity that was done in your
11 precinct?

12 A. Correct.

13 Q. With respect to these weekly summons numbers, there were in
14 fact times when you were the commander of the 41st Precinct
15 that you determined those weekly summons numbers were too low,
16 correct?

17 A. In what context?

18 Q. Well, I am asking in any context. You felt that they were
19 too low, there were times when you felt they had done too few
20 number of summonses in a given week?

21 A. They may have been, but that would depend upon other
22 factors. So, yes, but I would have to know what was going on
23 that particular week.

24 For example, there are weeks that we have to furnish a
25 lot of people for details in Manhattan or something like that,

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D4a9flo5 McHugh - direct

- 1 Q. But the fact is that there were weeks where you said you
2 know what I'm looking at the summonses that were done by my
3 officers on this week, that's just not enough summonses?
4 MS. GROSSMAN: Objection.
5 THE COURT: I can't -- I don't have the feed.
6 MR. CHARNEY: I'm sorry. I'll repeat the question.
7 Q. There were weeks while were you the commanding officer of
8 the 41st precinct where you determined based on your review of
9 the weekly summons statistics that your officers had not done
10 in your judgment enough summonses in that week?
11 THE COURT: Why is that objectionable?
12 MS. GROSSMAN: That wasn't the question.
13 THE COURT: This one is fine. Go ahead and answer.
14 THE WITNESS: Yes. It's a possibility.
15 Q. Was it a possibility or did it actually happen?
16 A. It may have, yes.
17 Q. Did it actually happen?
18 A. On a weekly basis or a monthly basis?
19 Q. I'm talking about weekly right now.
20 A. Generally it would occur, I'd really look at it on a
21 monthly basis when I got the individualized squads.
22 Q. If you can turn to page 48 of your deposition, line 25.
23 Hopefully it's big enough for you to read.
24 A. I just couldn't see the other one.
25 Q. I know. I completely understand.

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D4a9flo5 McHugh - direct

1 A. Okay. What line? I'm sorry.

2 Q. Twenty-five the last line. Do you see where it says:

3 "Q. Have you ever, when you looked at the summons statistics,
4 concluded that the summons numbers were too low in your
5 precinct for that particular week?

6 "A. Oh, yes, absolutely."

7 A. Yes.

8 Q. Okay. Now, there came a time when you were the commanding
9 officer of the 41st precinct where you had a meeting with --

10 MS. GROSSMAN: Your Honor I just want to read onto the
11 context for the -- of the following question and answer. It
12 says.

13 "Q. And what -- and when you made that determination, what
14 action, if any, did you take? Well I think it's important our
15 officers, especially where I am work and work with a purpose,
16 meaning we make meaningful differences, especially, again, in
17 my robbery, shooting and drug dealing locations. So I want
18 them to make sure they deal with the quality of life at those
19 locations. I really don't care about the quantity. It's the
20 quality that I'm interested in. That we're going to the areas
21 that were getting 911 complaints, 311 complaints, community
22 complaints, and we go to those communities and make sure we're
23 trying to do something about it, whether it's the blasting of
24 the car radios, because a lot of times I'll have officers --

25 THE COURT: Well I don't know what this is adding.

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D4a9flo5 McHugh - direct

1 This is a speech, like we've had speeches at this trial. That
2 was not necessary to complete the point that Mr. Charney was
3 trying to make. It was just an opportunity to read his speech
4 into the record.

5 So, therefore, I'm going to strike it from the record.
6 That entire reading was not necessary.

7 Now what's your question, Mr. Charney?

8 MR. CHARNEY: Sorry, your Honor.

9 Q. I wanted to ask you about a meeting that you attended with
10 the other commanders of the other precincts in the Bronx patrol
11 borough, where Chief Purtell was also present, and Chief of
12 Patrol Robert Giannelli was present and the summons numbers of
13 the Bronx were discussed.

14 Do you remember that meeting?

15 A. I do.

16 Q. And at that meeting, in fact, Chief of Patrol Giannelli
17 yelled at Chief Purtell and said that the numbers of the
18 summonses in the Bronx were too low, correct?

19 A. I think I corrected that in my deposition. I said I didn't
20 literally see him yell at him. I made that assumption when I
21 am recorded in a transcript saying to the officers that the
22 chief yelled at him. That was wrong. I think I corrected that
23 on the --

24 THE COURT: Well, what was the correction?

25 THE WITNESS: The correction was he brought him out of
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D4a9flo5

McHugh - direct

1 the room, your Honor, and I thought my chief was being
2 reinstructed by a higher chief. So during the course of
3 business, obviously, when a higher ranking calls him back and
4 he comes back a little bit, I kind of thought, oh boy, we're in
5 trouble, that type of thing. That's what I thought.

6 Q. Putting aside whether he, in fact, yelled at him or you
7 know --

8 THE COURT: Reprimanded him or dressed him down.

9 Q. The message that was given was that the summons numbers in
10 the Bronx were too low for Chief Giannelli -- from Chief
11 Giannelli's perspective, right?

12 A. The discussion was he reviewed the commands, all of them.
13 And reviewed the individual squads. And felt as though, with
14 the conditions and crimes that we were having, that the
15 individual patrol officers -- not all the officers, but the
16 officers in RMPs weren't engaged as much as they probably
17 could. In the Bronx he did state, to the best of my
18 recollection, had a lower amount of summonses as compared to
19 other boroughs.

20 THE COURT: So in sum and substance, the numbers were
21 too low; is that right?

22 THE WITNESS: When reviewing it, yes.

23 Q. And you, in fact, relayed the sum and substance of this
24 meeting you attended to the officers in your precinct, correct?

25 A. I did.

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D4a9flo5 McHugh - direct

1 Q. And you did it at a roll call, right?

2 A. I spoke at a roll call.

3 Q. About this meeting, right?

4 A. I did.

5 Q. And I want to --

6 MR. CHARNEY: Your Honor, this is already admitted in
7 evidence. And we now have transcripts for your Honor. So this
8 will be a little easier. This is one of the recordings we
9 played the first week from the 41st precinct.

10 Transcripts have been agreed to -- I have an extra
11 copy -- by the parties. I have a copy for yourself and I have
12 a copy for the witness.

13 This is marked as 284T, Plaintiffs' 284T because the
14 recording was Plaintiffs' 284.

15 So we would move for the admission of this into
16 evidence.

17 THE COURT: It's not in evidence. But it's an aid to
18 the tape. Right.

19 MR. CHARNEY: So if we could play track 3.

20 MS. GROSSMAN: If we're trying to facilitate, we can
21 go to the transcript.

22 THE COURT: If that's fine with you, that's fine with
23 me.

24 MR. CHARNEY: I didn't know if the witness wanted to
25 hear the actual recording.

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D4a9flo5 McHugh - direct

1 THE WITNESS: I would just like to make the statement
2 so, your Honor, you understand with this. I have no problem
3 following this. But when you deposed me, I only received
4 snippets. And then for the first time I got the context of all
5 of the tapes when I got all -- to hear them all.

6 And so I just would reserve the right, your Honor, if
7 I can explain some of the sequencing in it. Because as it was
8 presented to me in the deposition, it was different. And now
9 that I have them all, I have a better grasp of what was going
10 on.

11 THE COURT: You understand that the lawyers have
12 worked together on this transcript and they agree it's
13 accurate.

14 THE WITNESS: I agree.

15 THE COURT: Okay.

16 MS. GROSSMAN: Your Honor, maybe just the first one,
17 we should play the first tape and then --

18 THE COURT: Are you not the one who just said we've
19 all agreed on the transcript we don't have to hear --

20 MS. GROSSMAN: I did. I'm being mindful of what the
21 witness just said. So, I'm just saying for the first tape
22 perhaps.

23 MR. CHARNEY: The first tape, your Honor, is almost
24 four minutes.

25 THE WITNESS: I have no problem, your Honor, with the
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McHugh - direct

1 A. That's correct.

2 Q. And so you said on the recording, "But the summonses go
3 full circle again but they didn't deliver in all the boroughs.
4 The Bronx came in worst in the city, and Chief Giannelli then
5 came in and pulled out Chief Purtell -- we were having a
6 supervisors meeting and he lit up Purtell."

7 So you did say that on the tape, right?

8 THE COURT: You don't have to ask that. He's accepted
9 the transcript as accurate because both lawyers agree.

10 Q. So "lit up Purtell" that means you told your officers that
11 Giannelli yelled at Purtell?

12 THE COURT: No. No. Giannelli reamed them out or
13 criticized them or took them to task or any of those words.

14 THE WITNESS: Similar to what I have seen you do,
15 Judge.

16 Q. So it's fair to say that he criticized him for the low
17 summons numbers?

18 THE COURT: That's a good word. Criticize would be
19 fair?

20 THE WITNESS: Yes. I think it was two points -- we
21 have a lot of pride in the Bronx. Our guys are doing a lot of
22 hard and dangerous work. And we have more conditions and
23 crimes and quality of life than other boroughs. So I think for
24 all of us, in terms of pride, is that the chief of patrol would
25 come in and say, you know, we came in last place -- not to say

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1 last place, but that our enforcement wasn't comparable to other
2 people. We have some pride, yes.

3 THE COURT: But the point is the chief criticized
4 Purtell for low numbers.

5 THE WITNESS: I didn't hear that direct conversation.
6 But then when he came in, in the whole meeting --

7 THE COURT: That was your take?

8 THE WITNESS: That was my take on it, yes.

9 THE COURT: And that's what you told the men?

10 THE WITNESS: That's correct.

11 THE COURT: Or the officers, whatever.

12 THE WITNESS: Yes.

13 Q. And Chief Giannelli was the at the time the chief of patrol
14 of the entire police department, right?

15 A. Correct.

16 Q. So he worked at headquarters, right?

17 A. Yes. His office was there, yes.

18 Q. So he was part of the central administration of the police
19 department, right?

20 A. Yes.

21 Q. Now it goes on and you say, "And I know the chief -- and
22 then there's an unintelligible part -- and the trustees and I
23 think basically the conversation was 'hey, guys, my bosses or
24 my captains, are we trying to harpoon people? Are we trying to
25 give them the business that they're involved in an off-duty

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1 situation? Are we trying to be fair in that?' How many people
2 alone have an off-duty situation?

3 "Okay? Did I personally speak with you about it?
4 Some of you are actually chilled up right in the hospital, but
5 you got them, right? I care. Things happen. That's part of
6 our job, we are all family. We have to stick together and back
7 each other up."

8 Now this I think this part is pretty self-explanatory.
9 You're expressing your support for the men that work under you,
10 right? The support, what they're doing, you care about those
11 people?

12 A. Correct.

13 Q. "Sometimes we're going to be upset at things but we channel
14 our anger, we get mad, we get over it and things like that.
15 Unintelligible phrase. Let people know about it, let your
16 delegates know about it and we'll take care of what we can do."

17 Now I want to focus on this part.

18 "When the chief came in, now our chief, it's out of
19 his hands, right? Headquarters is now yelling at Chief
20 Purtell, and he's given the business."

21 Now you did tell your men that headquarters was
22 yelling at Chief Purtell, right?

23 THE COURT: Nobody takes the word "yelling" literally.

24 THE WITNESS: That's correct.

25 THE COURT: He was reamed out, criticized, or

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McHugh - direct

1 Now my question about that is you told your officers
2 that they were doing basically a good job at bringing crime
3 down, right?

4 A. (No response).

5 Q. Didn't you just say?

6 A. Here? Where is that? You're doing a good job.

7 Yes. I'm giving a pep talk to the officers, to
8 outgoing platoon, absolutely.

9 Q. You also said, We really can't reduce crime much more,"
10 right?

11 A. I did.

12 Q. But then you're still at the same time telling them that
13 they have to pick up their summons activity, right?

14 A. It was part of a conversation, yes.

15 Q. So what other reason, besides bringing crime down, would
16 you want officers to increase their summons activity for?

17 A. What other reason would I want officers to write summonses
18 rather than keep activity down?

19 THE COURT: No. He said other than reducing crime,
20 why would you want them to write more summonses? What other
21 motive could there be?

22 THE WITNESS: The biggest factor here is also the
23 maintenance of low crime. If I don't enforce, for example, the
24 drinking in public, the dice, and some of the quality of life
25 issues there, that's where we get into the people fighting on

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D4a9flo5 McHugh - direct

1 one another. They get disorderly. Someone gets mad, has an
2 argument. I had numerous shootings over what we call dissing.
3 What happened? He dissed me. Go inside. They get a gun. And
4 we have a shooting.

5 So some of the maintenance of what we do it's required
6 that we take summons activity where we have quality of life
7 infractions.

8 Q. Now earlier --

9 A. There's a second part to this, if I might add.

10 Summons are also issued -- I had the largest produce
11 market, meat market, and fish market in the entire nation. I
12 had truckers and delivery trucks rolling down all the time on
13 their cellphones, not stopping at stop signs. And the
14 community was insistent that we do something to prevent these
15 drivers who were coming in close proximity to their children,
16 to the school kids everyday. And when you see some of the
17 accidents that result, which can be quite horrific, one of the
18 reasons we issue summonses is to prevent injury.

19 So there's a couple of purposes to summonses.

20 Q. I understand. But the message you gave the officers was:
21 You brought crime down. I don't really know if you can bring
22 it down any further. But I still want you to go out and write
23 more tickets, right? That's what you told them?

24 THE COURT: And he just told you why.

25 Q. I want to make sure the message -- you agree the message

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D4a9flo5 McHugh - direct

1 you sent?

2 THE COURT: Mr. Charney, it's right there in black and
3 white and in English. I don't need an interpretation of
4 English.

5 MR. CHARNEY: Got it, your Honor. So I'll move on.

6 Q. Now continuing it says, "And that's all we're asking you to
7 do. That's all. That's all. And if we do that, everyone
8 chips in, it's fine. It's really nonnegotiable."

9 A. Correct.

10 Q. So what you were telling your officers was that this was
11 mandatory for them to increase their summons activity, right?

12 A. Mandatory? No -- well, yes. The answer, as I think I've
13 already said, I wanted them to issue summonses. Everyday I
14 said that. I thought they should be able to issue a summons
15 with all the conditions I had.

16 But the purpose here, when I heard the tapes, as a
17 whole here, is we had some people that were told that there
18 was -- they had to issue a certain amount of summonses and they
19 were upset. And basically saying no one can tell me to write
20 summonses.

21 Q. Inspector, my question was you communicated to them that
22 this was mandatory --

23 THE COURT: Yes. He said nonnegotiable. That means
24 mandatory.

25 THE WITNESS: Yes.

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McHugh - direct

1 And when you come on the job as a police department,
2 the job description says effect arrests and issue summonses.
3 It's part of what we do.

4 Q. And then you go on and say, "because if you don't do it
5 now, I'm going to have you work with the boss to make sure it
6 happens."

7 And that means that you're going to have them patrol
8 with supervisors to make sure that their numbers go up, right?
9 A. Absolutely. If they weren't taking care of the crime
10 conditions and violations in their sector, I would have them
11 work with the boss to make sure they did it. Yes.

12 MR. CHARNEY: Your Honor, I don't need to read the
13 rest of it. I mean it's in evidence. So I mean obviously it's
14 in the record. I'm just trying to save time. This was the
15 part I was interested in.

16 THE COURT: Okay.

17 MR. CHARNEY: So I can move on.

18 THE COURT: Okay.

19 Q. I think you just mentioned a minute ago that you did have
20 expectations that your officers would do -- issue summonses
21 everyday, right?

22 A. Absolutely.

23 Q. And, in fact, when you were the precinct commander of the
24 41st precinct your expectation was that officers do between 25
25 and 30 summonses a month, right?

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D4a9flo5 McHugh - direct

1 A. I felt an officer, to address the readily and visible
2 violations and conditions we had, that were open and notorious
3 everyday in my precinct, they should do something everyday.
4 And that would equate to 20, 25 summonses, yes.

5 Q. Actually said 25 to 30 at your deposition?

6 A. I would have liked them to even have more at certain
7 locations.

8 Q. And you, in fact, communicated this expectation about the
9 25 and 30 to the sergeants and lieutenants in the precinct,
10 didn't you?

11 A. I did.

12 Q. And your expectation -- or you knew, in fact, that they
13 communicated the expectation to the officers, right?

14 A. Can you just -- so I understand that one more time, can you
15 just say that to me again, counselor? Thank you.

16 Q. Let me maybe do it this way.

17 You would agree that the police department operates
18 through a chain of command, correct?

19 A. Absolute.

20 Q. So you as the precinct commander, if you want your officers
21 to do something, you'll talk to the sergeants and lieutenants
22 about what you want them to do, right?

23 A. Yes.

24 Q. And your expectation is those lieutenants and sergeants
25 will then communicate your directives to the officers that they

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1 supervise?

2 A. Yes.

3 Q. And so all I'm asking is: Isn't it true that when you
4 communicated this 25 to 30 summons a month expectation, your
5 expectation was that your sergeants and lieutenants would
6 communicate that to the officers in the precinct?

7 A. And I personally communicated to them. I said that I
8 believed everyone should be able to do something everyday to
9 address the conditions we have. And one way we did that was
10 with summonses and arrests. Absolutely.

11 MR. CHARNEY: Now actually, you know what, your Honor,
12 I was mistaken. I did want to go back to the transcript and
13 just read a portion at the end.

14 Go to I believe it's the second page of this
15 transcript.

16 THE COURT: Sorry. Second page of which?

17 MR. CHARNEY: Of this transcript. Track three. The
18 one we were looking at.

19 So go down to the bottom. You see the third to last
20 line from the bottom it says, "Because you know what?"

21 Do you see that?

22 MS. GROSSMAN: I don't see it.

23 THE COURT: It's page two of track three.

24 Q. So do you see at the bottom it says, "Because you know
25 what? They control the overtime too, guys. If they think

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D4a9flo5 McHugh - direct

1 we're a bad borough they won't give us overtime."

2 Going on to the next page.

3 "I just got a call for some overtime today and you
4 know what? That's a good thing when we get that. But we don't
5 want headquarters turning around and out and out not being fair
6 with the boss or some guy in the cap in front of Macy's that
7 doesn't do God's work, like you guys do -- is now going to get
8 paid time-and-a-half and have more money for his family for
9 Christmas presents."

10 And then it goes on, "Or holiday or whatever it is you
11 may go to. Everyone explain that? That's basically what it
12 is. It's a paramilitary organization and sometimes we just
13 never know."

14 Now you told, right -- so it's your understanding
15 that -- or the message that you conveyed, I want to make sure I
16 understand, is that if central administration of the NYPD
17 thought that the numbers were too low, they weren't going to
18 give you guys overtime tours in your precinct?

19 A. No. I previously -- I testified in the deposition, I
20 believe, is that the only overtime we got was violent crime
21 reduction overtime.

22 However, there were times periodically where they
23 would give us overtime. And it was a good thing. My community
24 wanted to see more cops. I needed more resources. And when
25 they were looking at us, obviously, as you sit in the chain of

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1 command, I wanted them to know I was managing my personnel
2 effectively. And if we got overtime, if we were
3 underperforming, that would be something that, you know, I
4 would say to them is -- we want to make sure that we're able to
5 get all the resources we can. And listen, overtime is always a
6 good thing for everyone and their families.

7 Q. No. Absolutely. But I guess the message you sent to your
8 officers during this roll call is that if the central
9 headquarters thinks that we're not productive enough, we don't
10 have enough activity, they're not going to give us overtime,
11 right?

12 A. The way I communicated it, absolutely. But in the
13 deposition I did say that the only time we got overtime was for
14 the violent crime reduction overtime.

15 Q. I understand, Inspector. But what I'm concerned about is
16 the message you're sending to your officers.

17 And you would agree that the message you sent them
18 was --

19 THE COURT: No point in doing this a third time. I
20 see words.

21 MR. CHARNEY: Moving on. We're going to move on.

22 I want to now actually turn to the prior transcript,
23 track two, which is fortunately much shorter.

24 I don't know about much, but somewhat shorter.

25 Is everyone there?

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D4a9flo5

McHugh - direct

1 THE COURT: Starts with Sergeant Bennett?

2 MR. CHARNEY: Yes.

3 Q. It's only a couple pages prior, Inspector. And again
4 Sergeant Bennett was a patrol squad supervisor in the precinct
5 41st when you were the commander, correct?

6 A. Correct.

7 Q. So on this recording he says to the officers at roll call,
8 "Break your, bust your ass, get to that cop and handle whatever
9 you need to handle and make sure that cop goes home. And I go
10 home. That's how you feel about it. I'm going to come get you
11 if you're in trouble. That's what should be felt. Everyday
12 you walk in here. Now those little politics that go on with
13 the department or this precinct. Make sure you get your meal
14 and you're taking care of each other. That's the most
15 important shit. Okay. Because next week it could be 25 and 1.
16 It could be 35 and 1. It could be that and ten other different
17 things. And guess what, until you decide you're going to quit
18 this job and go become a Pizza Hut deliveryman, this is what
19 you're going to be doing until then. So but up until then
20 you're taking care of each other."

21 You remember hearing this recording prior to today,
22 right, Inspector?

23 A. Yes. The first time I heard about it was on a television
24 station, correct.

25 Q. And that was in approximately March of 2010, right?

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D4a9flo5

McHugh - direct

1 A. Correct.

2 Q. Now in this recording Sergeant Bennett is actually quoting
3 specific numbers that he wants officers to meet, right?

4 A. He did.

5 Q. And in your view was this an appropriate thing for him to
6 be directing officers to do?

7 A. I don't think it's a hundred percent always to cite a
8 number. However, if I might, as I requested in the context, as
9 you correctly stated, counselor, the chief spoke to us about
10 summonses. I spoke with my delegates. And I spoke with my
11 officers. And, again, in a pep, in an animated way, the
12 sergeant was trying to encourage them to make sure that we were
13 moving in the direction that they wanted.

14 So that is the spirit in which this was said,
15 according to the way I read the entire tapes now.

16 Q. I understand. But do you think it's appropriate for a
17 squad sergeant to be directing his officers to meet specific
18 numbers of enforcement activity like this?

19 A. If we have the conditions and crime that would necessitate
20 the officers taking summary arrests and issuing summonses, I
21 don't think it would be grossly inappropriate. But it is --
22 but it is, let me add, it is morally offensive I think to a lot
23 of people to hear a direct number. And I agree with that, that
24 shouldn't be stated.

25 Q. So you would agree that Sergeant Bennett shouldn't have

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1 said this to the officers at roll call, right?

2 A. After everything that's gone on today, yes.

3 Q. But at the time you heard it, you didn't think he should do
4 it?

5 A. At that time, no.

6 Q. You don't think he should have said it, right?

7 A. At the time, probably not, no. It could have been phrased
8 in a better way.

9 Q. But you never spoke to Sergeant Bennett about this
10 statement that he made on the tape, right?

11 A. I -- no, I don't think I directly did speak with him about
12 it, no.

13 Q. In fact, you never spoke to any of the supervisors in your
14 precinct, the 41st precinct, about this comment or similar
15 comments and the fact that you thought such comments were not
16 proper to say to officers, right?

17 A. No. I did not.

18 Q. Now you were never disciplined by the NYPD for any of the
19 statements made on either of the recordings that we have read
20 today, right?

21 A. The statements made by me or statements made by my
22 personnel?

23 Q. Either.

24 A. No.

25 Q. Did you ever speak to Commissioner Kelly about those tapes

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1 where you were heard speaking?

2 A. No.

3 Q. Did you ever speak to Chief Purtell about it?

4 A. I informed Chief Purtell that there was an ABC report
5 regarding me. But he never questioned me about the tapes.

6 Q. Did you ever speak to Chief Giannelli about it?

7 A. No.

8 Q. What about Chief James Hall?

9 A. No.

10 Q. Chief Esposito?

11 A. No.

12 Q. Did IAD ever interview you about it?

13 A. Oh, yes.

14 Q. They did. Okay.

15 But you weren't ever disciplined for it, right?

16 A. I don't know if they're finished with their whole
17 investigation. I know it was a serious, and parts of an
18 ongoing investigation. I was brought in to give a statement
19 under oath.

20 Q. But up until now you have not been disciplined as far as
21 you know?

22 A. No.

23 Q. Now, you -- it's true, right, Inspector, that in the fall
24 of I believe it was August of 2011 there was a lawsuit filed
25 against you by Lieutenant Groben?

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1 MS. GROSSMAN: We're going into the --

2 THE COURT: I know. And so far that's okay. The
3 answer is.

4 THE WITNESS: Yes.

5 Q. And the allegations were that you had imposed summons
6 quotas in the 41st precinct, right?

7 A. That was in the complaint against me, yes.

8 Q. And there were also allegations that you were ordering
9 officers to make improper vehicle stops; is that true?

10 A. That was one of the allegations, correct.

11 MS. GROSSMAN: Your Honor, I guess --

12 THE COURT: This is a publicly filed complaint in the
13 New York state. There's nothing so far that's troubling.

14 THE WITNESS: It's in the federal court, your Honor.

15 THE COURT: Somebody said state.

16 THE WITNESS: Federal court.

17 THE COURT: Then publicly filed. I can pull it right
18 up on ECF if I wanted to. So that's what the complaint says
19 okay.

20 Q. Again, have you ever spoken to Chief Purtell about this,
21 these allegations?

22 A. I received this complaint in '11, two years after all of
23 what went on. So no, he was no longer my chief.

24 Q. Who was the chief at the time you received the complaint?

25 A. At the time of the complaint it would be Chief Waters.

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1 Q. Have you ever spoke to Chief Waters about it?

2 A. I informed -- I have to report that I'm subject of a
3 criminal complaint. I was served. And it was in the --

4 THE COURT: Civil.

5 THE WITNESS: Civil. I'm sorry, your Honor. It's
6 definitely not criminal. And it was in the paper as well.

7 Q. So you informed him. Did he say anything to you about?

8 THE COURT: No. That I'm not taking. I don't want to
9 go into that.

10 MR. CHARNEY: I mean he's not a lawyer.

11 THE COURT: I understand.

12 I don't know why they were meeting. Could have been a
13 session that their lawyer wanted them to have. I don't know.

14 Q. Did you ever speak to Chief Hall about it?

15 A. No, he never --

16 Q. What about Chief Esposito?

17 A. No.

18 Q. Or Commissioner Kelly?

19 A. No. No.

20 Q. I want to show you what has been previously admitted as
21 Plaintiffs' Exhibit 98.

22 This is the patrol guide section regarding stop and
23 frisk which we've looked at a million times.

24 Do you recognize this document, Inspector McHugh?

25 A. I do. And you furnished to me prior to this today.

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1 Q. Oh, okay. I got it right for once.

2 I want to focus on paragraph ten which is on the
3 second page of the document.

4 Do you see at the top? We can zoom in on it there.

5 A. Yes.

6 Q. So this paragraph sets out what the responsibilities of a
7 supervisor are when they review a UF 250 form, right?

8 A. Correct.

9 Q. Now when you were the commander of the 41st precinct, your
10 expectation for supervisory review of a completed 250 was that
11 the supervisor review the form and make sure that the officer
12 had documented the suspected crime for which the person had
13 been stopped and that all of the boxes on the form were filled
14 out, right?

15 THE COURT: I'm sorry. Where is that?

16 MR. CHARNEY: That's not on this form.

17 THE COURT: That's fine.

18 MR. CHARNEY: Let me rephrase.

19 Q. So with respect to this responsibility, which is review
20 each stop, question and frisk report worksheet submitted,
21 your -- when you were the 41st precinct commander, your
22 expectation was that for this kind of supervisory review that a
23 supervisor review the form to make sure that the officer had
24 documented the suspected crime and that all of the boxes on the
25 form were filled out, right?

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1 A. Correct.

2 Q. Now, if we could now put up Plaintiffs' Exhibit 85 which is
3 also in evidence.

4 This is the UF 250 form.

5 MS. GROSSMAN: I'm sorry, 85?

6 MR. CHARNEY: Yes.

7 Q. Do you recognize this document?

8 A. I do.

9 Q. And this is a sample of a UF 250 form, correct?

10 A. It's an exact copy.

11 Q. You see in the middle section of the first page, the
12 circumstances which led to stop section?

13 A. Yes.

14 Q. Now, when you were the 41st precinct commander, you
15 would -- you were satisfied with respect to a completed UF 250
16 as long as -- I'm sorry. Let me -- withdrawn.

17 From your perspective as the precinct commander of the
18 41st precinct, you would be -- you were satisfied that this
19 section of the UF 250 form was filled out correctly as long as
20 one box was checked off, right?

21 A. So long as only one box was checked off?

22 Q. Yeah.

23 A. Well as many as need be, depending upon what went on.

24 Q. But as long as one was checked off, you would be satisfied
25 that the form was filled out correctly, right?

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1 A. Just one?

2 THE COURT: Did you ever say that anywhere?

3 THE WITNESS: I don't recall ever making that
4 statement, your Honor.

5 Q. You don't remember testifying to that at your deposition?

6 A. I could have. Absolutely.

7 Q. Do you want to turn to page 145, line 21.

8 A. I got it.

9 "Q. So for example looking at the section entitled what were
10 circumstances which led to stop."

11 Do you see that?

12 A. Yes.

13 Q. Answer: "Yes.

14 "And there's a list of boxes there.

15 "A. Yes.

16 "So is it your view that as long as an officer has
17 checked one or more boxes in that particular section, that's
18 good enough to complete that section of the form?

19 "Ms. Grossman: Objection.

20 "A. Can you just repeat that. I think I understand what
21 you're saying. I just want to make sure it's clear. So you're
22 saying if an officer checks one box, it's good?

23 "Q. As long as he checks something. That's enough to satisfy
24 you and you would be -- and would be enough to satisfy the
25 reviewer that this section of the form was completed correctly?

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1 "For the most part, yes, I would."

2 Do you remember giving that answer?

3 A. That's the statement I made, yes.

4 Q. Now, it's also your opinion, though, however, right, that
5 the level of detail provided on a completed UF 250 is not
6 enough to establish that a stop was based on reasonable
7 articulable suspicion; isn't that true?

8 A. Can you repeat that one more time, please.

9 Q. In your view, the information provided on a completed
10 UF 250 form is not sufficient -- the level of detail -- I'm
11 sorry -- the level of detail provided on a completed UF 250 is
12 not enough to establish that a stop was based on reasonable
13 articulable suspicion? Isn't that your view?

14 A. I'm trying to be -- can you -- I just want -- lost a little
15 bit here. Can you just repeat that one more time or just read
16 it back? It's my own fault.

17 THE COURT: That the level of detail provided on a
18 completed UF 250 is not enough to establish that a stop was
19 based on reasonable suspicion; is that true?

20 THE WITNESS: Yes. That's correct. I think I stated
21 that it would also require the independent observations of the
22 officers to be discussed. I think I said that in my
23 deposition.

24 And with respect to the one question you asked me,
25 too, about checking one box. I think you also asked me is

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1 furtive movement enough.

2 MR. CHARNEY: We're going to get --

3 THE WITNESS: Okay.

4 MR. CHARNEY: I just want to -- on this question.

5 Q. So you agree with me that the information on the form alone
6 is not enough for a reviewing supervisor to determine if the
7 stop was based on reasonable suspicion, correct?

8 A. It may be. I think there is enough -- there is a lot of
9 information in here.

10 Q. Okay. Can you turn to page 152 of your deposition, line
11 22.

12 A. Okay.

13 "Q. Do you believe that the level of detail that's required on
14 the UF 250 form is sufficient to establish whether the officer
15 had reasonable suspicion or not to stop a person?

16 "A. No. I think that every time you do this, including court
17 cases, I still have to come in and personally explain what my
18 observations are and whether they are reasonable."

19 A. Yeah. That's definitely true. Yes. I'm sorry.

20 Q. That's okay.

21 A. I don't know if I had the form in front of me when you gave
22 me this deposition. I'm just trying to --

23 Q. No. I just wanted to make sure I understood your answer.

24 Okay. Now going back to Exhibit 98. I'm sorry to be
25 flipping back and forth. The patrol guide section.

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1 A. No. I never did.

2 Q. In fact, you never advised them one way or the other about
3 what level of detail you expected them to include in their
4 activity logs when it came to stop and frisk?

5 A. Correct.

6 Q. Now, I wanted to ask you about this furtive movement
7 question.

8 So, I think you mentioned earlier one of the
9 circumstances that could be checked off on the first page of
10 the 250 is furtive movements, right?

11 A. Correct.

12 Q. And it's your view that if that's all that's checked the
13 supervisor would have to go to the memo book, right, to
14 determine whether or not reasonable suspicion existed for that
15 stop, right?

16 A. Or interview the officer or have been present at the scene,
17 yes.

18 Q. Got it.

19 But you never instructed the supervisors in your
20 precinct that they had to review the memo book entries
21 concurrently with their review of the completed UF 250, right?

22 A. You're correct.

23 Q. And, in fact, the patrol guide section doesn't require that
24 either, does it?

25 A. No, it does not.

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1 Q. Inspector, you're familiar with the quality assurance
2 division of the police department?

3 A. I am.

4 Q. And you know that each year once a year they conduct audits
5 of the stop-and-frisk paperwork in every precinct in the police
6 department?

7 A. Yes.

8 Q. And, in fact, you are aware and you knew that during the
9 time you were the precinct commander of the 41st precinct QAD
10 was conducting those audits of your precinct?

11 A. They did. I think they did a couple times a year. Not
12 just once.

13 Q. But at least once a year, right?

14 A. Absolutely.

15 Q. And so would it be fair to say that you were the commander
16 of the 41st precinct for three rounds of these audits?

17 A. Yes.

18 Q. And do you recall when the audits were completed, did you
19 as the precinct commander, receive a report with the results of
20 the audit for your precinct?

21 A. I do.

22 Q. And you would get that every year when they would finish
23 the audit, right?

24 A. Yes. It's a big to-do.

25 Q. Now, you don't recall -- I'm sorry.

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1 During the time you were the 41st precinct commander,
2 you were never informed by QAD that you had failed the portion
3 of the QAD stop and frisk audit that related specifically to
4 officers recording stops in their memo books, right?

5 A. We do get a report on it. I just don't remember -- I think
6 I said that in the deposition as well.

7 Q. You said you don't remember?

8 A. We definitely got the report. It was filtered down to me.
9 But the subcategories, all of them, I just don't recall them
10 all in detail. It's a pretty big report.

11 Q. I understand.

12 If you could turn to page 154 of your deposition?

13 A. Correct.

14 Q. Line 19.

15 Again, you said you don't recall but here it says.

16 "Q. Since you've been the CO of the 41st precinct, has QAD
17 ever informed you that your precinct has a problem with failing
18 to report stops and frisks in officers' activity logs?"

19 And your answer was no.

20 MS. GROSSMAN: Your Honor, if you wouldn't mind, you
21 go to the questions before, at line 13, "So you've never seen
22 any of the reports that they put out on the audits of the stop,
23 question and frisk? No. I will if we're deficient in an area
24 in QAD, like memo books, it is then brought to my attention if
25 we fail it."

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1 THE COURT: Okay.

2 MS. GROSSMAN: So I just wanted to.

3 MR. CHARNEY: Okay.

4 Q. Your testimony at your deposition was, right, that you were
5 actually never informed that you guys were deficient in that
6 area, right?

7 A. Correct.

8 Q. And so you never took any corrective action when you were
9 this CO of the 41st precinct to address problems with your
10 officers failing to report stops in their activity logs, did
11 you?

12 A. Well, I delegate, counsel, with respect to the QADs. If
13 we're deficient in an area, the administrative lieutenant, then
14 we direct a training sergeant to conduct training with the
15 areas that that we were deficient. But I never -- this never
16 came specifically to my attention. But there is a procedure in
17 place I would adhere to. So everything I said here is correct.
18 So, you know.

19 Q. So you would agree with me that at your deposition you said
20 that -- and I can refer you to page 159, line 19.

21 A. Right.

22 Q. You would agree with this statement -- I'm sorry. Your
23 answer to this question.

24 The question was, "Have you, since you've been the
25 precinct commander in the 41st precinct taken any corrective

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1 action with respect to a failure by officers to enter
2 stop-and-frisk details in their activity logs?"

3 And your answer was: "No, I don't think I have."

4 A. No. That's correct. I don't think I have. That's
5 correct.

6 Q. Now you said you've seen these reports that the QAD puts
7 out each year about the stop and frisk audits in all the
8 precincts?

9 A. You know, I may have come across one. I was -- I don't
10 remember them off the top of my head.

11 Q. I'm going to show you a document and you can tell me if
12 you've seen it before, and then we might move it into evidence.

13 This is Plaintiffs' Exhibit 95. I gave you a copy of
14 this.

15 Does this document look familiar to you?

16 A. I don't think I, prior to today, I don't think I personally
17 looked at one of these documents, no.

18 Q. Have you ever seen a document that looks like this prior to
19 today?

20 A. I have not reviewed one prior to today, sir, no.

21 Q. But you did say that you, when you were the precinct
22 commander, would receive the audit results from QAD, right?

23 A. That's correct.

24 Q. And what form did those audit results come in?

25 A. Again, that would be something that I had my administrative

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1 lieutenant handle. I didn't do -- I didn't handle this report
2 directly. I never looked at this prior to today.

3 Q. So your testimony is that when the QAD audits would come in
4 to your precinct and they were audits of the performance of
5 your precinct, you wouldn't yourself look at those QAD
6 documents?

7 A. The administrative lieutenant would come in and tell me the
8 status of the QAD report. And I would be notified that we
9 passed or failed. And I would delegate her to take remedial
10 measures with the training office, what areas we have been
11 deficient in.

12 Q. Do you recall being told at some point in early 2009 after
13 the 2008 audit was done by your administrative lieutenant,
14 being told by your administrative lieutenant that your precinct
15 had failed the portion of the stop and frisk audit related to
16 memo book entries?

17 A. No I don't remember that at all.

18 Q. Do you think by looking at this document it may refresh
19 your recollection as to whether, in fact, you were told that?

20 Turn to page Bates number NYC 4308.

21 I'm not going to read it but I'm going ask you to look
22 at where it says 41?

23 A. I got you. Go ahead.

24 Q. So looking at the results for the row that says 41, looking
25 all the way across to the second from the right column, does

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1 precinct had also failed that same item on the 2009 QAD audit?

2 I haven't shown you a document yet.

3 A. Okay.

4 Q. I'm just asking you first if you recall ever learning that,
5 that you had failed the 2009 QAD audit?

6 A. I could have been told that and I don't remember exactly.

7 Q. I'm going to show you a document. The Bates number is
8 18527. And looking at this document, again, looking under the
9 row where it says 41.

10 A. I got it.

11 Q. Do you see by looking at that document, does that refresh
12 your recollection as to whether you ever learned that your
13 precinct had failed that item on this stop and frisk audit for
14 2009?

15 A. Again, we get -- we passed the overall but we failed in
16 that one component. You're correct.

17 Q. And, again, you don't recall taking any corrective action
18 yourself to address this failure, right?

19 A. No, I did not, counsel, no.

20 Q. And lastly, do you recall whether or not you ever learned
21 that your precinct had failed this -- again, this activity log
22 entry item on the 2010 QAD stop and frisk audit?

23 A. No. We -- I did not.

24 Q. I'm showing you a document that's marked -- this one
25 actually I forgot to give you.

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1 I'm going to show you a document and the Bates number
2 is NYC_2_21744?

3 A. Okay.

4 Q. Looking at this and again looking at the row marked 41,
5 does this refresh your recollection as to whether you ever
6 learned that your precinct had failed the 2010 item on the
7 audit for activity log entries?

8 A. That's the one with the number one, right?

9 Q. Yes.

10 A. We -- yes. We failed that again.

11 Q. And, again, you don't recall personally taking any
12 corrective action to address this failure, right?

13 A. No. I never -- with one proviso. I did come a time that I
14 found out that some of my supervisors weren't inspecting memo
15 books and signing their officers' memo books. So when I was
16 aware of a -- one particular sergeant, one time. But overall,
17 no. I did not.

18 Q. Okay.

19 A. And I didn't take remedial measures. I expressly directed,
20 as a result of this failure, I delegated that to the
21 administrative lieutenant.

22 Q. You said you delegated it to the administrative lieutenant.
23 So you told the administrative lieutenant to talk to the
24 training sergeant, right?

25 A. That would be our procedure. Correct.

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McHugh - direct

1 Q. And you did that, you think you did that after the 2008
2 audit?

3 A. All the areas that were -- when QAD comes in and we're
4 notified of all the areas we're deficient in, the
5 administrative lieutenant comes to me, we sit down and review
6 it. And I don't remember these areas I failed in. It's
7 embarrassing, obviously, now that you're telling me this here
8 that we failed this, and I don't recall making remedial, proper
9 measures to do this. But I do go to the training officer to
10 identify areas we're deficient in and trying to improve them.
11 And clearly here I did not do that.

12 Q. Last exhibit I'm going to show you is Plaintiffs' -- this
13 is also admitted already, Plaintiffs' Exhibit 184. Looked at
14 this quite a bit in this trial as well.

15 If we can -- again, I apologize for the darkened
16 portion of it. If we could blow it up a little bit.

17 Do you, Inspector, recognize this document?

18 A. I do.

19 Q. And what is this document?

20 A. It's the department policy regarding racial profiling.

21 Q. And this was the policy that was in effect at the time you
22 were the commanding officer of the 41st precinct, correct?

23 A. Correct.

24 Q. And you see looking at paragraph 5, do you see that?

25 A. Yes.

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1 Q. And it says there, "Commanding officers will ensure that
2 the contents of this order are brought to the attention of the
3 members of their commands."

4 Do you see that?

5 A. Correct.

6 Q. You were aware of this provision at the time you were the
7 41st precinct commander, correct?

8 A. Yes, sir.

9 Q. But when you were the precinct commander in the 41st you
10 never discussed this racial profiling policy with the officers
11 in the precinct, did you?

12 A. No. I don't recall specific, you know, comments made by me
13 regarding racial profiling other than we knew it was strictly
14 prohibited.

15 Q. But you never actually talked about the contents of this
16 policy with your officers, right?

17 A. This specific policy? No.

18 Q. And then looking at paragraph 4, you see there, the last
19 sentence of that paragraph says, "Performance in this area will
20 also be included in the CompStat review."

21 Do you see that?

22 A. Correct.

23 Q. But when you were the precinct commander of the 41st
24 precinct you went to CompStat reviews, correct?

25 A. I did.

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D4a9flo5 McHugh - direct

1 Q. Fairly frequently, right?

2 A. Unfortunately, yes.

3 Q. But you don't recall at any of those meetings discussing
4 racial profiling -- this racial profiling policy with the
5 members of the NYPD central administration, do you?

6 A. I don't think it was ever brought up at CompStat that I
7 recall to me, no.

8 MR. CHARNEY: One minute, your Honor.

9 (Pause)

10 MR. CHARNEY: No further questions.

11 CROSS-EXAMINATION

12 BY MS. GROSSMAN:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Can you describe your educational background.

16 A. I have a bachelor's -- I have an A.A.S. in marketing
17 administration. I have a bachelor's degree. Most of my
18 credits of my MBA. An I have a J.D.

19 Q. Now what are the boundaries of the 41 precinct?

20 A. We go from the -- excuse me. We go from the Bronx River
21 Parkway, 147th Street, Hunts Point Terminal Market to 167th
22 Street.

23 Q. And when you were the CO of the 41 precinct what were the
24 conditions that were confronted with -- I'm sorry. Let me
25 rephrase that question.

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McHugh - cross

1 When you were the CO of the 41 precinct, what were the
2 conditions that you were addressing?

3 A. The crimes or --

4 Q. The crime conditions.

5 A. We received about two hundred crimes a month.

6 We received about three -- or 3500 quality of life
7 jobs a month. We received about a hundred narco radio runs in
8 the precinct. Twenty-four shots fired averaging a month in the
9 precinct. And we charged approximately two people a week with
10 possession of a firearm.

11 We had a chronic ingrained prostitution,
12 unfortunately. We were the pimp and prostitution center for a
13 good part of the area. We had large strip clubs. Entrenched
14 gangs. Substantial narcotics. Robbery. Grand larcenies.

15 Q. What about the quality of life conditions?

16 A. The neighborhood -- the community was mostly, obviously,
17 concerned with the street conduct, meaning blasting of car
18 radios. We had open parks where people were smoking marijuana,
19 drinking beer and urinating where the Little League parks were,
20 Kelly Park specifically in the precinct.

21 And they were very concerned about the truckers down
22 in Hunts Point because they were there with the schools. And
23 also the environmental concerns which was always raised at the
24 community board meetings.

25 And the real traffic problems I had.

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McHugh - cross

1 Q. Now you were asked on direct some questions about -- you
2 testified on direct about delegating to your administrative
3 lieutenant responsibilities regarding the QAD audits, correct?

4 A. I did.

5 Q. Can you explain to the court how it is that this function
6 is delegated to the administrative lieutenant and why?

7 A. Well there's a lot of -- there's a lot of areas that
8 require retraining. And we have to address every single
9 platoon. The midnights, the day tour, and the four to twelve.
10 So I can't personally go to all of them.

11 So I have the training sergeant there at meetings with
12 the platoons like I did previously, talked about the platoon on
13 tape. And the department has tapes and different procedures to
14 train them in these areas.

15 Q. Now was the administrative lieutenant also responsible or
16 the ICO also responsible for actually doing self-inspections of
17 these QAD audits in the command?

18 A. I really don't remember exactly -- we had to do
19 self-inspections. I don't know. I don't remember exactly.

20 Q. Now referring to Defendants' Exhibit X11.

21 Do you see the reference down below, 7MOS in squad no
22 SQFs. Impossible with a car break pattern.

23 A. Correct.

24 Q. Can you explain to the court what you meant by those -- by
25 that entry.

D4a9flo5

McHugh - cross

1 A. I testified in my deposition that when I originally
2 reviewed this, your Honor, and I saw no stop, question and
3 frisk, we have so many jobs that the officers go to, as I just
4 stated, with shots fired, guns, and robberies, and domestic
5 violence where you don't know what's happening, that it would
6 be inconceivable to me that we didn't have any stop, questions,
7 and frisks. So I made the comment there. That's what I put
8 down on the sheet.

9 Q. So was this -- this was not your intention to note that
10 there was no stops being done. It's the fact that the stop,
11 question and frisk reports weren't filled out?

12 MR. CHARNEY: Objection, your Honor. Leading.

13 THE COURT: Sustained. It says what it says.

14 All right. Looks like you didn't finish this witness
15 today, much less Gillespie we had hoped to get to this
16 afternoon. If we can't keep to this schedule, we're going to
17 have to find a way to extend the trial day. We can either work
18 nights, or we can work six days a week. I have to finish this
19 trial.

20 MR. CHARNEY: I was going to say I think Officer
21 Gillespie is going to be very quick.

22 THE COURT: That's what you always say. You thought
23 we would get to him this afternoon. But we didn't even finish
24 this witness.

25 MS. BORCHETTA: Your Honor, the list that you have
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McHugh - cross

1 also, there have been some witnesses who have been removed.

2 THE COURT: You did say that.

3 MS. BORCHETTA: We do believe that with taking out the
4 deposition designations. We plan tomorrow, hopefully, to work
5 with the city on finalizing the rest of our schedule. And that
6 it will be a few days cut off of our anticipated length of
7 trial.

8 THE COURT: So when will I see the new schedule?

9 MS. BORCHETTA: We could submit it to you the next
10 couple of days. We planned to give it to you on Monday, but if
11 you'd like it sooner, we could do that.

12 THE COURT: The sooner or better. We're going to have
13 to start scheduling nights or weekends. I have to finish this
14 trial. I really don't know where to turn.

15 Unfortunately, we have to pick up with you again on
16 Monday.

17 THE WITNESS: Yes, your Honor.

18 THE COURT: We're not sitting Thursday and Friday.
19 And you're not finished. So you have to come back Monday at
20 10:00.

21 All right. If nothing further, see you all Monday.
22 (Adjourned to April 15, 2013 at 10:00 a.m.)

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