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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

New York, N.Y.  
April 25, 2013  
10:00 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

14 BELDOCK LEVINE & HOFFMAN, LLP  
15 Attorneys for Plaintiffs  
15 BY: JONATHAN MOORE  
16 JENN ROLNICK BORCHETTA

17 COVINGTON & BURLING, LLP  
18 Attorneys for Plaintiffs  
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19 GRETCHEN HOFF VARNER  
19 ERIC HELLERMAN  
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21 CENTER FOR CONSTITUTIONAL RIGHTS  
21 Attorneys for Plaintiffs  
22 BY: DARIUS CHARNEY  
22 SUNITA PATEL  
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APPEARANCES (Cont'd)

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1 (Trial resumed)

2 MR. MOORE: Can I raise one matter before we start?

3 Yesterday in the examination of Mr. Reiter, Ms.

4 Publicker asked him whether he knew whether his opinions had  
5 been ruled inadmissible in the Haus case. In fact, they were  
6 not ruled inadmissible. Judge Dolinger in a report and  
7 recommendation to Judge Sweet, which was on appeal at the time  
8 the case was settled, had indicated that he assumed his  
9 competence and expertise. He didn't rule it inadmissible. He  
10 just decided not to give it any weight in terms of his opinion  
11 on that summary judgment recommended decision. So I didn't  
12 want the impression to be left that he was found unqualified.

13 THE COURT: Obviously, the question was only did he  
14 know? A question is never evidence. He said he didn't know.  
15 So I wasn't going to consider it anyway. But you did the  
16 research. Do you have the docket number for that case? I can  
17 take judicial notice of the docket.

18 MR. MOORE: It's 03 Civ. 4915, Southern District of  
19 New York.

20 THE COURT: I will find the rest from the docket.

21 MR. MOORE: Document 180 in the docket.

22 THE COURT: It was only a question. His answer was,  
23 no, I never heard any such thing. So I never would have taken  
24 it as the truth anyway.

25 MR. MOORE: He was very upset about it.

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1 THE COURT: I don't want him to be upset.

2 MS. GROSSMAN: Just on the scheduling? No.

3 MS. BORCHETTA: Plaintiffs call James McCarthy.

4 JAMES McCARTHY,

5 called as a witness by the plaintiffs,

6 having been duly sworn, testified as follows:

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

9 THE WITNESS: Lieutenant James McCarthy, J-A-M-E-S,  
10 M-C-C-A-R-T-H-Y.

11 THE COURT: Thank you.

12 DIRECT EXAMINATION

13 BY MS. BORCHETTA:

14 Q. Good morning, Lieutenant McCarthy.

15 A. Good morning.

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

17 A. Yes.

18 Q. You graduated from the police academy in 1996?

19 A. Yes, ma'am.

20 Q. You were promoted to lieutenant on October 26, 2007,  
21 correct?

22 A. Yes, ma'am.

23 Q. What was your rank in January and February of 2008?

24 A. Lieutenant.

25 Q. That was in what precinct?

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D4P8FLO1

McCarthy - cross

1 Q. Did those officers receive any discipline for that?

2 A. They did, ma'am. They both received command disciplines.

3 Q. Prior to your current assignment, you were the special  
4 operations lieutenant in the 107th Precinct, correct?

5 A. Yes, ma'am.

6 Q. Can you describe briefly what a special operations  
7 lieutenant does?

8 A. The special operations lieutenant is tasked with being in  
9 charge of all the specialty units that operate outside -- well,  
10 most of the specialty units that operate outside the guise of  
11 patrol: The anticrime team, the school team, sometimes the  
12 traffic team, domestic.

13 Q. What area does the 107th Precinct cover?

14 A. That's Fresh Meadows, Queens, ma'am.

15 Q. How large is that command?

16 A. It's six square miles. It's a large command, ma'am.

17 Q. While you were assigned to the 107, how would you describe  
18 the crime conditions there?

19 A. The precinct is made up mostly of residential. It's upper  
20 middle class, most of it. But with that being said, there are  
21 pockets of violent areas. In the north end, there is a housing  
22 development Pomonok, and in the lower end of the precinct there  
23 is, in sector Charlie specifically, there's three high  
24 schools -- Thomas Jefferson, Jamaica High School and  
25 Hillcrest -- that all go to school and dismiss within an hour

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McCarthy - cross

1 THE COURT: If I said that already, then Chief Hall is  
2 the person who should testify about it.

3 Do you plan to call him?

4 MS. GROSSMAN: Yes, your Honor. But to the extent  
5 that the Court wanted to develop testimony that showed that  
6 this is indeed happening. Plaintiffs are suggesting that many  
7 of our policies are not being followed out at the ground level.  
8 So we want to develop testimony --

9 THE COURT: I think that was yesterday's testimony.  
10 It certainly didn't relate to the last six weeks. It related  
11 to a number of years. That was his whole point in talking  
12 about operational versus written policies.

13 But two questions. You are aware of this new policy  
14 and you're carrying it out?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: That's about it. Let's hear about the  
17 policy from Chief Hall. He says he carries it out. Fine.

18 BY MS. RICHARDSON:

19 Q. Based on your training and experience, when can you stop  
20 and question a citizen?

21 A. When you have reasonable suspicion to believe a crime was,  
22 is, or about to be committed.

23 Q. What paperwork, if any, are you required to fill out when  
24 you conduct a stop?

25 A. The UF-250 and the memo book, ma'am.

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D4P8FLO1

McCarthy - cross

- 1 Q. Are officers required to fill out a UF-250 every time they  
2 conduct a stop?  
3 A. No, ma'am.  
4 Q. When are they not required to fill out a UF-250?  
5 A. If an officer were to have probable cause before the stop,  
6 then they wouldn't be required to fill out a UF-250, ma'am.  
7 Q. That's because they would have probable cause to make an  
8 arrest?  
9 A. Yes, ma'am.  
10 Q. What is your understanding, if any, of the term furtive  
11 movements?  
12 A. I would define that as a suspicious movement.  
13 Q. What exactly do you mean by a suspicious movement?  
14 A. I would explain it in an example, if you were to look at  
15 somebody and they were ducking and hiding behind a car, trying  
16 numerous door handles on the car, looking up and down the  
17 street, maybe hiding behind the car at the sight of police.  
18 Q. Can you forcibly stop someone solely for exhibiting furtive  
19 movement?  
20 A. Absolutely not.  
21 Q. What else would you need in order to conduct a stop in that  
22 situation?  
23 A. The time of day, maybe the knowledge of that person, crime  
24 trends that are happening in the area, a bunch of things  
25 besides furtive movement you could use.

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1 Court deposition designations for the witnesses Barrelli and  
2 Provost, and we are working on those, and we will submit them  
3 to the Court hopefully very soon.

4 With respect to Mr. Provost's deposition designation,  
5 we just note that we will be submitting to the Court the  
6 deposition designations from both sides, as well as the  
7 objections, and the city has provided documents that they want  
8 admitted through that deposition designation, to which we  
9 object, and we will submit our objection when we submit the  
10 deposition designation about those exhibits.

11 As the Court might recall, we are incorporating  
12 certain parts of the Ligon injunction hearing into this case  
13 and some of them are whole cloth and some of them will be  
14 designations.

15 THE COURT: How are you doing that? You're doing it  
16 physically?

17 MS. BORCHETTA: That's what we were going to seek  
18 guidance from the Court. We didn't know whether the Court  
19 would want us to submit the transcripts again here or whether  
20 we should just submit the designations of the testimony that we  
21 are incorporating.

22 THE COURT: I don't know if we have a transcript.

23 If you would just tell us the date and pages and lines  
24 on the record here so that the record is clear as to what is  
25 being incorporating, that's fine.

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D4P8FLO1

1 MS. BORCHETTA: We will do that.

2 THE COURT: What about Walker?

3 MS. BORCHETTA: Your Honor, Walker is a remedies only  
4 witness. The Court has indicated that the remedies phase  
5 should happen once liability for both sides has finished. So  
6 we will be calling him whenever the liability evidence is  
7 completed.

8 THE COURT: Is the city's evidence bifurcated that  
9 way? I would think some of the policy people you're calling  
10 really go to both. I don't know. How does this work?

11 MS. GROSSMAN: I think that we have said that there is  
12 overlap. I think that's why the Court had Walker scheduled  
13 later in the case.

14 MR. CHARNEY: So he could hear the testimony of those  
15 policy people.

16 THE COURT: Then do you have an expert in that field  
17 too?

18 MS. GROSSMAN: Yes, we do. We just submitted a report  
19 two weeks ago.

20 THE COURT: From?

21 MS. GROSSMAN: From Chip Stewart.

22 THE COURT: So that would be at the end also?

23 MS. GROSSMAN: Yes.

24 THE COURT: OK.

25 MS. BORCHETTA: With respect to the incorporation of  
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1 Ligon testimony, some of the high-level witnesses who testified  
2 will be incorporated in their entirety, and we just note that  
3 the city is calling some of those people here, and the Court  
4 has already ruled that they cannot repeat their Ligon  
5 testimony. So we would object to the extent that these  
6 witnesses do repeat Ligon testimony.

7 THE COURT: I don't know how they can't. Give me an  
8 example of a real person that you're thinking of.

9 MS. BORCHETTA: Chief Shea, who is the next witness.

10 THE COURT: Is that the next witness that you intend  
11 to call?

12 MS. COOKE: The city's first witness on the case in  
13 chief.

14 THE COURT: How are you going to not repeat a question  
15 that happened in the Ligon case? I can't sit her and rule and  
16 say, yes, that was asked, you can't ask it.

17 MS. COOKE: It's not my intention to repeat the  
18 testimony that is in the transcript from the Ligon hearing.  
19 Chief Shea's testimony with respect to training in stop,  
20 question and frisk, and specifically focused on trespass  
21 arrests, will stand as it stands in Ligon and incorporated  
22 here. There are more expansive issues and materials and  
23 documents related to the issues of training in this case.

24 THE COURT: I am afraid I am going to have a  
25 plaintiffs' lawyer popping up every other question saying, that

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D4P8FLO1

1 was asked, that was asked. I don't have a transcript in front  
2 of me. I don't want to start looking at every question and  
3 answer and saying, you're right, you're wrong. I would really  
4 would find that to be burdensome.

5 MS. HOFF VARNER: Your Honor, if I may. The  
6 plaintiffs don't intend to object to questions that were asked  
7 in Ligon that would be necessary in this case for a foundation  
8 or context or to the extent that it is obviously more expansive  
9 than the narrow issues in Ligon. But Chief Shea did testify to  
10 broad training documents relative to stop, question and frisk.  
11 The testimony was not limited to the trespass issue. For  
12 example, he provided, I think, 26 pages of testimony about how  
13 officers were trained on the various factors, the check off  
14 boxes on the UF-250.

15 MS. COOKE: I don't intend to repeat any of that  
16 testimony.

17 THE COURT: Let's see what happens. I am just  
18 concerned that you will be popping up and down, and I am  
19 supposed to look through the transcript and say that exact  
20 question was asked. So try to keep your objections to a  
21 minimum.

22 MS. HOFF VARNER: We understand.

23 MS. BORCHETTA: Again, we seek guidance from the Court  
24 about the submission of transcripts that are tied to  
25 recordings. We have now agreed with the city on transcripts

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D4P8FLO1

1 for the various recordings that have been submitted to the  
2 Court.

3 THE COURT: I need all the transcripts.

4 MS. BORCHETTA: We will provide them to the Court. We  
5 didn't know whether the Court would like to move their  
6 admission, which we hadn't done.

7 THE COURT: They are all going to be T.

8 MS. BORCHETTA: I will move for the admission now of  
9 Plaintiffs' Exhibit 284T. Those are related to the Polanco  
10 exhibit.

11 THE COURT: That's fine. Do the whole list.

12 MS. BORCHETTA: Plaintiffs' 289T, Plaintiffs' 297T1,  
13 Plaintiffs' 297T2, and Plaintiffs' 332T.

14 THE COURT: They are all received.

15 (Plaintiffs' Exhibits 284T, 289T, 297T1, 297T2, and  
16 332T received in evidence)

17 MS. BORCHETTA: We also seek guidance on post-trial  
18 briefs. The parties had in the JPTO asked for three weeks once  
19 evidence closes, and we again seek guidance on whether the  
20 Court agrees with that schedule or whether the Court is going  
21 to order otherwise.

22 THE COURT: What do you expect to do in the post-trial  
23 briefs? Are you talking about briefs or findings of facts and  
24 conclusions of law where you key it to the transcript?

25 MS. BORCHETTA: Our understanding was that the Court  
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1 would require findings of fact, conclusions of law, and  
2 post-trial briefs, three documents, that are tied together  
3 essentially, but yes, tying it to the transcript. We had seen  
4 examples from other cases that this Court has heard.

5 THE COURT: Every case is unique. Sometimes I just  
6 say submit proposed findings of fact and conclusions of law  
7 that you key to the transcript. Really, I say go back to the  
8 ones you submitted before the trial and just put the pages in.

9 What is going to be in a post-trial brief?

10 MS. BORCHETTA: Our understanding was that was the  
11 Court's practice. Our understanding was that we would have the  
12 findings of fact, conclusions of law -- that the findings of  
13 fact will be tied to the transcript and that the conclusions of  
14 law would be very summary, and that the trial briefs would  
15 argue any issues of law that needed to be argued.

16 THE COURT: Haven't you done it already?

17 MS. BORCHETTA: We don't need to have it. It was our  
18 understanding it was this Court's practice.

19 THE COURT: Not necessarily if you did trial briefs  
20 already. Did we already have briefs?

21 MS. BORCHETTA: No, we did not. We had raised this  
22 before the trial and the Court said that we could do it at some  
23 point after the trial, and that's when the parties agreed to  
24 this three week timing in the joint pretrial order.

25 THE COURT: If you didn't have trial briefs before,

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D4P8FLO1

1 then it's OK to have it after.

2 MS. BORCHETTA: I guess the question is the amount of  
3 time.

4 THE COURT: Three weeks. But not responsive to each  
5 other. Both submit it simultaneously.

6 MS. BORCHETTA: Thank you.

7 Just for clarity, if the Court wanted briefs, we would  
8 submit them. What I am hearing is that the Court does not want  
9 briefs.

10 THE COURT: No. I thought we had them before.

11 MS. BORCHETTA: We did not.

12 THE COURT: We had a remedies brief.

13 MR. CHARNEY: Yes.

14 THE COURT: But we didn't have it on the substance.  
15 As long as we didn't have it already, it's fine. I didn't want  
16 it twice. I couldn't imagine what is left to say if you  
17 already said it before the trial started. But if you didn't,  
18 then that's fine.

19 MS. BORCHETTA: So then my understanding is we will  
20 submit findings of fact, conclusions of law, and a post-trial  
21 brief.

22 THE COURT: It's not three separate submissions. The  
23 proposed findings of facts and conclusions of law is usually  
24 one, and then one post-trial brief.

25 MS. BORCHETTA: The final issue that I need to raise

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D4P8FLO1

1 is related to Officer Dang. The Court will recall, at the  
2 close of testimony earlier this week, we raised that the city  
3 was seeking to admit an exhibit with 127 UF-250s, and that we  
4 did not object to the admission of that exhibit, and we would  
5 seek to use that exhibit, but we are concerned about how many  
6 of those stops, if any, the city was seeking to establish the  
7 legality of stops because we didn't have any opportunity to  
8 investigate those stops. And the city, pursuant to this  
9 Court's order, identified seven different groups of UF-250s  
10 that are 17 stops for that officer.

11 And again, while we don't object to the city's using  
12 those 250s, to the extent that they can elicit testimony on  
13 supervision related to them or monitoring related to them, we  
14 don't object. In fact, we would seek to use it for that  
15 purpose. But we do object to their seeking to establish the  
16 legality of 17 stops when we have no idea who those people  
17 stopped were, where they didn't ever indicate prior --

18 THE COURT: Is that the city's intention? Who is  
19 putting this witness on?

20 MS. RICHARDSON: We have no intention of attempting to  
21 establish the legality of the stops, but we believe that we  
22 should be able to elicit information. There are certain check  
23 boxes on the 250. Plaintiffs have indicated they are checked  
24 off at certain rates and that officers check off, for example,  
25 furtive movements and it's meaningless. So we believe that we

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1 should be permitted to question Officer Dang regarding these  
2 250s about why he checked off furtive movements and establish  
3 what his practice is with respect to them.

4 MS. BORCHETTA: If the testimony is so limited, then  
5 that resolves our objection.

6 The final issue, just noting for the record, there  
7 were two discovery issues that came up during plaintiffs  
8 questioning of witnesses. One was whether there was an  
9 investigation into a racial profiling allegation in an OCD  
10 complaint, and the city still owes us that response. So we  
11 don't want to lose the right to that.

12 MS. COOKE: We provided a letter with several  
13 attachments by e-mail on April 22 and a declaration.

14 MS. BORCHETTA: To the extent that we have any issue  
15 with that submission, then we just don't want to waive any  
16 rights to seek further information.

17 Also, with respect to discovery from the Department  
18 Advocate's Office on the supposed reason that there was an  
19 increase in the declines to issue discipline in 2012. So we  
20 just note that's not yet fully resolved.

21 THE COURT: Was that one of the two women?

22 MS. COOKE: Commissioner Schwartz. The request has  
23 been made to her.

24 THE COURT: She said she would go back and pull that  
25 from her computer.

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D4P8FLO1

1 MS. BORCHETTA: That's it.

2 MR. CHARNEY: One other issue related to the witnesses  
3 that the city is going to call. And this is related again to  
4 the Ligon issue.

5 Several of the high-level witnesses who are testifying  
6 in this case did testify in Ligon, and we talked about the try  
7 not to repeat the testimony. But our concern is that, to the  
8 extent they are testifying about matters that were not  
9 testified to in Ligon, these are witnesses we have never had a  
10 chance to depose.

11 THE COURT: Why is that? Everybody has been deposed.

12 MR. CHARNEY: Because they were not disclosed as  
13 witnesses in this case until February of this year.

14 What your Honor had ruled, I believe in the March 5  
15 conference, that three of those witnesses we would be permitted  
16 to depose. The city has decided not to call those three  
17 witnesses. So that's resolved.

18 There are still five others, and I guess our concern  
19 is, we realize they are going to try not to repeat their  
20 testimony from Ligon, but we don't really have any idea of what  
21 they are going to testify about if they are not going to  
22 testify about what they testified to in Ligon, and we have no  
23 proffer of any kind from the city about the subject matter of  
24 their testimony.

25 One of them is scheduled to testify tomorrow,

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D4P8FLO1

1 Inspector Lehr, who is a commanding officer from the 62nd  
2 Precinct. So we have no idea of what he is supposed to testify  
3 about, which we think is extremely prejudicial to us at this  
4 point. So we would request that the city provide us some kind  
5 of proffer of the subject matter of his testimony beyond the  
6 fact that it's not going to be overlapping with Ligon.

7 THE COURT: This one person?

8 MR. CHARNEY: There's four of them. There is  
9 Inspector Lehr, Inspector Catalina. Chief Hall, who is  
10 obviously a very important witness. We know he is going to  
11 talk about that one memo, but beyond that we have no idea what  
12 he is going to testify to. Then Brian McCarthy, who is simply  
13 identified as a remedies witness, but we have no idea what  
14 aspect of remedies. Because he is not their expert, he is a  
15 fact witness. We have no idea what he will testify about.

16 THE COURT: Is he a high level police department  
17 person?

18 MR. CHARNEY: He is identified as a chief. So we just  
19 would like some kind of proffer as to what these individuals  
20 will be testifying about.

21 THE COURT: Remind me again why they weren't deposed.  
22 Because I said no?

23 MR. CHARNEY: They had identified a slew of high-level  
24 people. The resolution that your Honor came to was pick three,  
25 and we picked three, and then they decided not to call those

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D4P8FLO1

1 three so we didn't have to depose those three. But there are  
2 these other four, who we didn't get to depose, and given where  
3 we are in the trial now, I don't know if that's something your  
4 Honor would allow us to do, especially since one of them is  
5 testifying tomorrow. I don't know if that's even possible. We  
6 just have no idea what they are going to testify about.

7 THE COURT: Which are the four names?

8 MR. CHARNEY: Kenneth Lehr. Then we have on the  
9 second page, number 30, we have Inspector Kevin Catalina. Then  
10 we have Chief James Hall and Chief Brian McCarthy.

11 THE COURT: Of those four, only Hall testified in the  
12 Ligon trial?

13 MR. CHARNEY: They all did. Your Honor said you  
14 didn't want repetition.

15 THE COURT: So you know very well who they are. They  
16 certainly described who they are.

17 MR. CHARNEY: Yes. We know two of them are precinct  
18 commanders.

19 THE COURT: Which two are precinct commanders?

20 MR. CHARNEY: Lehr and Catalina are precinct  
21 commanders. And we know, of course, Chief Hall is the chief of  
22 patrol. And I believe Chief McCarthy works in the chief of  
23 patrol's office. We know who they are and where they work, but  
24 we don't know what they are going to testify about. And we  
25 know what they said in Ligon, obviously, but beyond that we

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1 don't know what they are going to testify about here.

2 MS. GROSSMAN: First of all, they were all deposed in  
3 Ligon.

4 THE COURT: I understand that. But that was limited  
5 to the issues in Ligon.

6 MS. GROSSMAN: Whatever was testified to at the Ligon  
7 hearing wasn't the complete testimony that was contained in the  
8 depositions that were in Ligon. So the plaintiffs have been on  
9 notice of these witnesses in Ligon as far back as October.  
10 They had access to the depositions. I think what you were  
11 contemplating, as I recall, back when you ordered us to produce  
12 these three witnesses for deposition is that they were  
13 replacements, they were current borough commanders that  
14 replaced the older borough commanders. And to the extent that  
15 there were new procedures and new policies, and there was new  
16 information, it was updated, and so you believed at that time,  
17 as I understood it, that they should have an opportunity to  
18 depose those witnesses for that purpose. That's not the same  
19 case here with Lehr, Catalina and Hall.

20 On the McCarthy issue, which is this high-level  
21 witness that the plaintiffs referred to, my understanding is  
22 that Mr. Dunn -- that that witness is more related to the Ligon  
23 remedy phase, and we identified Chief McCarthy for that  
24 purpose. So I believe Mr. Dunn identified him for that  
25 purpose. So we have been in communication with NYCLU to find

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D4P8FLO1

1 out if they have intentions of calling Chief McCarthy, and we  
2 thought that it was resolved that they were not. But then last  
3 night there was a confusing e-mail that seems to reserve rights  
4 to call, but I am not really sure what that means.

5 THE COURT: And he was deposed in the Ligon case?

6 MS. GROSSMAN: He was deposed and testified.

7 THE COURT: Do you intend to call him as a remedies  
8 witness?

9 MR. DUNN: Your Honor, we haven't made a final  
10 decision on that, but I suspect we will not be calling him.  
11 Part of the confusion is the city has filed a brief, which you  
12 may not have read yet, in which they have basically not taken  
13 an issue with the remedies that you proposed in your order in  
14 Ligon. So there was some very small technical issues. So my  
15 guess is the factual presentation in the Ligon remedy is likely  
16 to disappear. I am not sure there is a dispute between the  
17 parties now about remedy.

18 MS. GROSSMAN: That is true if all the rulings  
19 have -- if there is an appeal of the decision in Ligon and the  
20 city does not prevail, then the remedy proposed is something  
21 that we represented in our brief should be fine as set forth in  
22 our brief. So I think that's why there would not be an issue  
23 with Chief McCarthy.

24 MR. DUNN: I am not suggesting they are agreeing to  
25 liability.

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D4P8FLO1

1 THE COURT: I got that clearly. But if the liability  
2 verdict were to be sustained, or not appealed, the remedies  
3 would be worked out.

4 MS. GROSSMAN: Right.

5 MR. DUNN: That seems to be the case, yes.

6 (Continued on next page)

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1 THE COURT: So you wouldn't be calling this chief or  
2 officer?

3 MR. DUNN: We wouldn't be calling anybody and I don't  
4 understand -- the city wouldn't be calling anybody, though they  
5 have not told us either. As you may recall, basically the way  
6 you're set up here --

7 THE COURT: I know. I was merging the remedies issue  
8 that was open in Ligon because we never had it here on the  
9 remedies issue with this trial. But you're saying the merger  
10 is now going to break off because if the liability verdict is  
11 upheld the two sides are in agreement.

12 MR. DUNN: On the Ligon remedies.

13 So to the extent that the city is saying Chief  
14 McCarthy is in play only because we had put him in play --

15 THE COURT: So is he a witness in the Floyd case?

16 MS. GROSSMAN: I was not contemplating at this time.

17 THE COURT: You were not contemplating calling him?

18 MS. GROSSMAN: It depended on what developed in the  
19 testimony here.

20 THE COURT: I understand. But right now it's not your  
21 intention?

22 MS. GROSSMAN: Not right now.

23 THE COURT: So there's three you're worried about now,  
24 Lehr, Catalina and Hall.

25 So the issue is whether you should make a proffer and

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D4p9flo2

1 it sounds like you should. What are these people going to  
2 testify to that's not repetitive of their testimony in Ligon  
3 since they weren't deposed in Floyd. I know they were deposed  
4 in Ligon. And I know that the plaintiffs team has had a chance  
5 to review that deposition. But they, I think, given the  
6 absence of a deposition, are entitled to some kind of proffer,  
7 just standing up orally saying these are the subject matters  
8 these three people intend to testify about.

9 One of them is tomorrow?

10 MR. CHARNEY: Yes.

11 THE COURT: And the other two are a ways off. So I  
12 don't need the proffer on the other two this minute. So if  
13 somebody -- it is --

14 MR. CHARNEY: Lehr.

15 THE COURT: So what is Lehr going to cover?

16 MS. GROSSMAN: Well, if I may just take a step back,  
17 your Honor.

18 The plaintiffs have been -- I understand and I know  
19 you know that they've been aware of the existence --

20 THE COURT: This is not helpful. I directed that the  
21 proffer be made. Make the proffer. Tell me what Lehr is going  
22 to cover.

23 He's a precinct commander.

24 MS. GROSSMAN: Probably very similar items to what  
25 Inspector Ortiz testified to. There's really no surprise.

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D4p9flo2

1 Every witness has been asked about the QAD audits, about  
2 supervision, about the role a commanding officer plays in a  
3 command, the way that they look at stop, question and frisk,  
4 summonses, arrests; how is it that they are deploying their  
5 resources.

6 I don't think there's any surprise. We have Chief of  
7 Department, Chief Esposito, who has testified. And to the  
8 extent everything drills down to the commanding officer, it's  
9 about how the systems work up and down the chain of command.

10 In fact, the borough commanders, there's deposition  
11 designations. Many of the deposition designations by borough  
12 commanders and commanding officers are submitted to your Honor.  
13 The outline is there. It's all the same type of testimony, and  
14 I don't know that there's any difference.

15 THE COURT: So that proffer was helpful.

16 MR. CHARNEY: The only other thing is exhibits.

17 THE COURT: I was going to ask that next myself.

18 Do you plan to offer new exhibits through Precinct  
19 Commander Lehr?

20 MS. GROSSMAN: The exhibits that are in the case are  
21 generally the type of exhibits we would be using but I have not  
22 had a chance to go through all the exhibits that I know that I  
23 want to use through Inspector Lehr.

24 Inspector Cirabisi -- we had Inspector Lehr and  
25 Inspector Cirabisi scheduled for tomorrow. I know that I

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D4p9flo2

1 raised at the very early part of today a question about  
2 scheduling, which you suggested I just hold off. Given what  
3 plaintiffs' counsel and defense counsel have discussed  
4 yesterday that may address one issue for tomorrow but I'd  
5 rather not address that now.

6 THE COURT: But in terms of these documents, the  
7 exhibits -- are there exhibits that are not already in evidence  
8 that you plan to offer in evidence through them?

9 MS. GROSSMAN: Maybe there would be a sector map, you  
10 know, just to illustrate from, you know, a perspective, of a  
11 commanding officer for demonstrative purposes, which is not  
12 unlike some of the Google maps that we've seen, but it's a  
13 sector map. I am trying to get a copy of that so I can  
14 immediately turn it over to the plaintiffs.

15 I think the other evidence would be part of what's  
16 part of the record here.

17 THE COURT: What's already in evidence?

18 MS. GROSSMAN: Yes. If there's one or two I will  
19 ascertain that and try to get that to defendants immediately.  
20 But I would not -- I don't believe Lehr, we're going to have  
21 time to get to Lehr tomorrow even if we were to go forward. So  
22 we can maybe bump Lehr to next week and maybe whatever exhibits  
23 I can gather and identify for the plaintiffs we can give that  
24 to them.

25 MR. CHARNEY: We would ask that at the very least,

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D4p9flo2

1 since we have been criticized for this numerous times, at least  
2 give us an idea. Are we talking about QAD audits? Are we  
3 talking about UF 250s? Just a sense of what --

4 MS. GROSSMAN: It's no surprise that -- the plaintiffs  
5 will ask every witness about the 107 -- let's say the 43  
6 precinct. You're looking at the QAD audits like we looked at  
7 yesterday and we looked at the trend.

8 THE COURT: Right.

9 MS. GROSSMAN: I don't know that there's anything  
10 magical here or secret. That's the type of information the  
11 plaintiffs --

12 THE COURT: I think you've got what you generally  
13 asked for, Mr. Charney, in terms of a proffer on the immediate  
14 witness. We didn't cover all -- the other two. We're not  
15 really doing McCarthy.

16 MS. GROSSMAN: It's the same for Catalina. And  
17 Cirabisi -- it's the same for Catalina.

18 THE COURT: So that leaves Hall. When are we reaching  
19 Hall? Next week?

20 MS. GROSSMAN: Not for a few weeks.

21 Hall, if you think about the chief of department's  
22 testimony, it's the role that Chief Hall, as chief of patrol,  
23 would play, which has been discussed. And there was testimony  
24 from Chief Giannelli who was a former chief of patrol. And so  
25 the type of testimony that was developed there and what is

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D4p9flo2

1 currently going on, if it's the same or different, would be the  
2 type of testimony we're talking about with Chief Hall in  
3 addition to the recent memo that we talked about.

4 MR. CHARNEY: With all due respect, that's just not in  
5 our view a sufficient proffer. The chief of patrol has so many  
6 areas of responsibility. I mean if they're going to stipulate  
7 that the topics that were covered in Chief Giannelli's  
8 deposition are the only topics they were going to ask him about  
9 that would be one thing.

10 THE COURT: She said and bringing it up to date. She  
11 said the type of testimony that was developed with Chief  
12 Giannelli and then what's currently going on. If it's  
13 different or if it's the same, in other words, bringing it  
14 current.

15 MR. CHARNEY: I guess my question is when they say  
16 type of testimony do they mean just the topics covered in that  
17 deposition or do they mean the responsibilities of the chief of  
18 patrol. Because there are many responsibilities of the chief  
19 of patrol that Chief Giannelli was not asked about.

20 THE COURT: Maybe they're not relevant to this case.  
21 We don't have to discuss it all further today. We have time to  
22 deal with that.

23 MS. BORCHETTA: Just one thing we need to clarify  
24 about exhibits. The plaintiffs have, despite the cherrypicked  
25 examples given to this Court, every week identified regardless

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D4p9flo2

1 of whether exhibits were already admitted into evidence what  
2 exhibits we would use with a witness. And the purpose, the  
3 reason for that was because this Court said that it wanted  
4 efficient testimony. And so if the parties knew the exhibits  
5 that were being used we could all ask our questions as  
6 efficiently as possible.

7 To now suggest that the defendants going forward only  
8 have to say any exhibit admitted into evidence is not what  
9 plaintiffs have done.

10 MS. GROSSMAN: That's what --

11 THE COURT: I think she said that in response to my  
12 question of whether there were going to be new exhibits through  
13 Precinct Commander Lehr, and she said maybe one or two like the  
14 map, but that it would otherwise be exhibits in evidence. That  
15 didn't mean she was relieved of the responsibility to tell you  
16 which. But for now she was saying there are no other new  
17 exhibits. You will know which exhibits.

18 MS. BORCHETTA: Except Lehr is tomorrow and she has  
19 identified no exhibits so we are entitled to know a week  
20 before.

21 THE COURT: It can't be a week before anymore.

22 MS. BORCHETTA: For the clarity of the record we're  
23 entitled to know a week before the witness's exhibits  
24 regardless of whether they've already been admitted.

25 THE COURT: All right. Your next witness.

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D4p9flo2

1 MS. GROSSMAN: Your Honor, before we move -- I don't  
2 know if the plaintiffs are resting now.

3 THE COURT: I don't know either because the way this  
4 is, they're calling some of their witnesses for scheduling  
5 purposes through your witnesses. So they aren't resting now.  
6 So obviously in terms of preserving the motion and making the  
7 motion this is not the time because they still have at a  
8 minimum --

9 MR. CHARNEY: At least three.

10 MS. BORCHETTA: And potentially, of course, rebuttal.

11 THE COURT: That's a different issue.

12 At a minimum, they have Cirabisi and Farell that they  
13 are calling on their case but at the time you call them. So  
14 they're not resting yet. We're taking witnesses out of order,  
15 which is not uncommon in a nonjury trial. So that's the  
16 answer. Not appropriate to make motions now. The plaintiffs  
17 are not resting.

18 Now your witness.

19 MS. COOKE: Your Honor, the city calls Chief Shea.

20 JAMES SHEA,

21 called as a witness by the Defendant,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. COOKE:

25 Q. Good morning, Chief Shea.

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D4p9flo2 Shea - direct

1 A. Good morning.

2 Q. Would you please provide your educational background for  
3 the court.

4 A. I graduated with a Bachelor of Science in police science  
5 from John Jay University. And I attended the police department  
6 and Columbia University Police Management Institute at the  
7 Columbia Business School.

8 Q. When did you first become employed by the NYPD?

9 A. In 1991.

10 Q. What position do you presently hold in the police  
11 department?

12 A. I'm presently a deputy chief assigned to the chief of  
13 departments office in charge of the department's anti crew/gang  
14 initiative.

15 THE COURT: Anti what?

16 THE WITNESS: Anti crew C-R-E-W like the loose gang.

17 THE COURT: You said anti crew?

18 THE WITNESS: Slash gang.

19 THE COURT: Thank you.

20 Q. How long have you held that position as the person  
21 responsible for the anti crew/gang initiative?

22 A. Since around last October.

23 Q. What position did you hold prior to your current position?

24 A. Immediately prior or --

25 Q. Immediately prior.

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D4p9flo2 Shea - direct

1 A. Immediately prior I was the commanding officer of the  
2 police academy.

3 Q. What were your responsibilities as the commanding officer  
4 of the police academy?

5 A. As the commanding officer of the police academy, I was  
6 responsible for all department training. It was broken down  
7 into recruit training for new police officers, school safety  
8 agents and traffic agents.

9 Then we had in-service training which is responsible  
10 for training officers after they graduate the police academy.

11 Then we had a specialized training session, and the  
12 leadership training school.

13 Q. How long did you serve as commanding officer of the police  
14 academy?

15 A. Roughly a little less than two years.

16 Q. And prior to serving as the commanding officer of the  
17 police academy what was your position?

18 A. I was the commanding officer of the joint terrorism task  
19 force.

20 Q. And what were your duties and responsibilities as the  
21 commanding officer of the joint terrorism task force?

22 A. I supervised police officers and agents and partner  
23 officers from other state and local and federal agencies in  
24 international and domestic terrorism cases.

25 Q. And how long did you serve in that position?

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D4p9flo2 Shea - direct

1 Prior to that I was the executive officer of the  
2 28th precinct in Manhattan. Prior -- that's the number two  
3 in the precinct.

4 Prior to that I served as lieutenant in the narcotics  
5 division covering the midtown and east side of Manhattan area.

6 And keep going back?

7 Q. Yes.

8 A. Prior to that I was a lieutenant in the 46 precinct in the  
9 Bronx and I served as a platoon commander on the day tour.

10 Before I made lieutenant, I was the SNEU sergeant,  
11 Street Narcotics Enforcement Unit, on the Lower East Side of  
12 Manhattan.

13 And I was also the community policing sergeant on the  
14 midnight, in the 9th precinct on the Lower East Side of  
15 Manhattan.

16 And I started out as a police officer in the 28th  
17 precinct in Harlem.

18 Q. Thank you. Chief Shea do you recall testifying as a  
19 witness in the Ligon v. City of New York preliminary injunction  
20 hearing in October of 2012?

21 A. Yes, I do.

22 Q. Do you recall that you testified over two days, October 19  
23 and October 22?

24 A. Yes.

25 Q. And have you had an opportunity to review your trial

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D4p9flo2 Shea - direct

1 testimony from the Ligon preliminary injunction hearing?

2 A. Yes.

3 Q. And do you adopt that testimony regarding NYPD training on  
4 stop, question and frisk and trespass stops here today?

5 A. Yes, I do.

6 Q. Chief Shea I'm handing you what have been marked for  
7 identification as Defendants' Exhibit W3 and Defendants'  
8 Exhibit C8. C8 I've also printed out one of the documents on  
9 the CD, which is a PowerPoint.

10 Chief Shea do you recognize the two documents I've  
11 handed you and the disk?

12 A. Yes, I do.

13 Q. And what is Exhibit W3?

14 A. It is a lesson plan for a lesson titled recognizing the  
15 characteristics of armed suspects.

16 Q. Are you familiar with the lesson plan, Defendants' Exhibit  
17 W3?

18 A. Yes.

19 Q. How are you familiar with it?

20 A. I reviewed it when we put this course into the stop,  
21 question and frisk course. And it was taught by the firearms  
22 and tactic section prior to that.

23 Q. Is this lesson also a recruit training lesson at the police  
24 academy?

25 A. Yes.

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D4p9flo2 Shea - direct

1 Q. Looking at Exhibit C8 which is a disk including a print of  
2 the PowerPoint, one of the pieces of material on the disk, are  
3 you familiar with those documents, C8?

4 A. Yes, the PowerPoint. This is the accompanying PowerPoint  
5 that can be used with this lesson plan.

6 Q. Are you aware that there's a video that accompanies this  
7 lesson plan on characteristics of armed suspects?

8 A. Yes.

9 Q. And have you viewed the video that's contained on C8?

10 A. Yes.

11 MS. COOKE: Your Honor, I would offer into evidence  
12 Exhibit C8 and Exhibit W3.

13 MS. HOFF VARNER: No objection, your Honor.

14 THE COURT: Both are received, W3 and C8.

15 MS. COOKE: Your Honor I'm now going to ask my  
16 colleague, we're going to play the video of characteristics of  
17 armed suspects training.

18 THE COURT: How long is that video?

19 MS. COOKE: Less than ten minutes. And then after the  
20 video we'll deal with the PowerPoint but first we'll play the  
21 video.

22 (Defendants' Exhibits C8 and W3 received in evidence)

23 (Videotape played)

24 Q. Chief Shea the video we just watched on Exhibit C8 that  
25 accompanies the lesson plan of Exhibit W3, is it common that

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D4p9flo2 Shea - direct

1 the training academy uses videos in connection with lesson  
2 plans?

3 A. Not always. But yes, they do.

4 Q. And what circumstances would videos commonly be used if at  
5 all?

6 A. If, like in this case, we feel it would enhance the lesson  
7 plan. Like in this case they felt that having the actual  
8 officers who have encountered these situations describing it to  
9 other police officers would help drive the lessons home.

10 Q. What about the content of the lesson? Was there something  
11 that lends itself to being shown on video so the officer can  
12 observe circumstances?

13 A. Well you're talking about bulges, about the way clothing  
14 hangs, about movements. So it clearly helps to see those  
15 actual movements other than seeing the instructor just  
16 demonstrating them.

17 Q. With respect to the content of this lesson plan,  
18 characteristics of armed suspects, why is that an important  
19 topic for both recruits and current members of the service to  
20 receive training on?

21 A. For two reasons. For safety purposes, characteristics of  
22 armed suspects. It provides the recruits and our experienced  
23 officers with as much information and knowledge for their own  
24 safety as possible. And also for the purposes of helping them  
25 determine if they have reasonable suspicion if someone is

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D4p9flo2

Shea - direct

1 armed.

2 Q. Is a component of this lesson plan an instruction on how to  
3 conduct a frisk?

4 A. Yes, it is.

5 Q. How is it that officers are trained to conduct a frisk?  
6 Explain and/or demonstrate for the Court.7 A. Officers are taught that a frisk is an external grabbing of  
8 the clothing where you just run your hands over the external  
9 clothing, feeling for a bulge or a weapon.

10 Q. Which part of the body are officers instructed to frisk?

11 A. That depends. If they're frisking for -- if they get a --  
12 if they have enough reasonable suspicion -- everything depends  
13 again, I've said before, fact patterns are infinite. But  
14 everything depends on the fact pattern you're dealing with.15 If you stop someone, for instance, and you suspect  
16 them of a robbery and you observe a bulge and you have  
17 reasonable suspicion that you're in danger because the totality  
18 of the circumstances lead you to believe you can articulate  
19 reasonable suspicion, if you pat down that bulge that you  
20 believe is a gun and it's clearly not, the frisk is over. You  
21 wouldn't continue the frisk.22 On the other hand, if the call was of a man fleeing a  
23 shooting and you stop someone fitting that description running  
24 away from the right area in the right time, you might frisk the  
25 entire body because he could have hidden the gun anywhere on

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D4p9flo2 Shea - direct

1 his body since the shooting. So it depends on the  
2 circumstances.

3 THE COURT: Okay. I know I'm interrupting right at a  
4 dramatic moment but it's time for the morning recess. We'll  
5 reconvene at a quarter to twelve.

6 If I can just see Ms. Grossman and Mr. Moore at the  
7 sidebar for a moment. Thank you.

8 (Sidebar discussion off the record).

9 (Recess)

10 Q. Chief Shea before the break we were discussing the training  
11 for officers with respect to conducting frisks. Do you recall  
12 that?

13 A. Yes, I do.

14 Q. What training are officers provided with respect to  
15 conducting searches in the characteristics of armed suspects  
16 lesson?

17 A. They're trained with the difference between a frisk and a  
18 search. The frisk is that methodical patting down of the outer  
19 clothing or an area where you feel the need to for your own  
20 safety. A search is actually reaching inside the clothing to  
21 remove something.

22 Q. And when is an officer trained that they are able to  
23 conduct a search?

24 A. Well, postarrest or if they feel a bulge that they believe,  
25 reasonably believe, is a weapon or something that could be used

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D4p9flo2

Shea - direct

1 to harm them.

2 Q. An what training are officers provided to be able to  
3 distinguish when they feel an object that they could  
4 potentially believe is a weapon?

5 A. It's done both in instruction and in the scenario phases.  
6 But basically we're back to that whole -- the fact patterns are  
7 infinite possibilities.

8 For instance, they're trained that a bulge is not  
9 automatically a weapon. You have to feel it. You have to be  
10 able to articulate why you felt that bulge is a weapon.

11 Cellphones, for instance, when I was a police officer  
12 if someone had a bulge at their waistband it was probably,  
13 unless they were carrying tools, it was probably a firearm.  
14 Now a majority of the population carries cellphones. So they  
15 had to be trained that you have to feel it. You know what  
16 people ordinarily carry.

17 In the movie, the wallet, a wallet is a wallet. But  
18 if you feel it and it feels unnaturally thick, unusually heavy,  
19 you can feel -- you have to make a decision. Is it a wallet or  
20 could it potentially be a firearm hidden in a wallet.

21 Again, the fact -- what they're trained is they have  
22 to be able to articulate through their training and experience  
23 why they felt that that bulge they touched or that item they  
24 touched was a weapon, that they suspected it enough to reach  
25 into someone's pocket and actually remove it.

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D4p9flo2 Shea - direct

1 Q. When you referred to the movie, you were referring to the  
2 video that accompanies this lesson plan that we viewed prior to  
3 your testimony?

4 A. Yes, I was.

5 Q. With respect to the training recruits and officers receive  
6 on characteristics of armed suspects, what are the categories  
7 of characteristics that the officers are trained to be alert  
8 to?

9 A. In this video, we talk about six characteristics of armed  
10 suspects. And the categories breakdown to -- they're listed on  
11 page -- page four.

12 Q. Are you referring to Exhibit W3?

13 A. Yes. I apologize.

14 Q. That's fine. Page four, I'll speak for the record, the  
15 Bates stamp is NYC\_2\_0023109.

16 A. Yes.

17 Q. And you referred that officers are trained on six  
18 categories?

19 A. Yes. They are listed in section seven here, VII, and they  
20 are behavior -- they breakdown to behavior, physics,  
21 appearance, clothing, intelligence, and environment.

22 Q. And those six categories or factors that you just listed,  
23 those were represented in the training video in the scenarios  
24 that were presented?

25 A. And in the PowerPoint, yes.

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D4p9flo2 Shea - direct

1 Q. And are officers trained that any one of those factors or  
2 categories are more important than another?

3 A. No. It's -- I want to be clear. These six aren't the only  
4 things that the officer would be considering. But they're  
5 broad categories that contain quite a few of the factors that  
6 can be used to develop reasonable suspicion whether or not  
7 someone is armed both for your own safety and to take police  
8 action.

9 Q. With respect to the factor of intelligence, what are  
10 officers trained that intelligence related to characteristics  
11 of armed suspects means?

12 A. Intelligence would relate to an officer's prior knowledge  
13 of the area, the time of day, the person they're dealing with,  
14 potential activity in that area. I'll make a few examples.

15 If somebody has contacted the precinct -- somebody  
16 from the community and said they overheard that tomorrow at  
17 high school dismissal there is going to be a big fight between  
18 two groups, that would be intelligence. You're aware that  
19 something might be happening.

20 If you're aware that there has been a higher than --  
21 high incidence of shooting incidents or 911 calls of shots  
22 fired in a particular area, that would be intelligence that  
23 you're aware of.

24 If you know that a particular individual is involved  
25 in an ongoing dispute with another dangerous individual to the

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D4p9flo2 Shea - direct

1 overly aggressive because they think you know or you suspect  
2 they have a weapon.

3 They can have subconscious movements that would be  
4 comparable to doing something embarrassing -- he describes it  
5 in the lesson plan pretty well -- they're comparable to you  
6 doing something embarrassing and you're trying to keep your  
7 cool but you're sweating and your face gets flush because  
8 you're embarrassed. There's all kinds of different things in  
9 the behavior.

10 Q. Are any -- are officers trained that observing a single  
11 behavior alone is reasonable suspicion to stop someone?

12 A. No. It can't be because all behavior, they're trained,  
13 exists -- I'll use the phrase, furtive movements. Every  
14 furtive movement could have an innocent explanation. So  
15 somebody -- the gentleman I referred to on the video who turned  
16 could have just remembered I left my keys home. He didn't even  
17 notice police officer there.

18 So each movement, again, has to be taken -- I'll call  
19 it in concert with everything else you know to create a  
20 totality of the circumstances that you'll consider when you  
21 decide whether you have reasonable suspicion.

22 Q. We saw in the video -- and I'm going to show now the  
23 PowerPoint presentation, but there was in the video there were  
24 physical characteristics. Would you agree that there were --  
25 the video included physical characteristics that could be

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(212) 805-0300



D4p9flo2

Shea - direct

1 Q. And turning to page in the PowerPoint two slides forward.  
2 We're looking at a photograph of a man's midsection with his  
3 hand at his waist.

4 What are officers trained that this physical behavior  
5 might be projecting?

6 A. It's called touching. And it's indicative of someone  
7 carrying a weapon is unnaturally aware of it. Again, because  
8 of the risk associated with carrying it.

9 And especially most criminals do not have the benefit  
10 of a holster. They spend money on guns, but they don't spend  
11 money on correct carrying systems to secure it. So usually  
12 they carry a weapon just tucked into their pants or using some  
13 kind of mock rigged method. So it's harder for them to move  
14 without worrying about it falling down. They have a tendency  
15 to touch it frequently to make sure that it's still there.

16 And again we relate it to all police officers --  
17 carrying a weapon, even legally in our society, is a huge  
18 responsibility. And every police officer does this at one time  
19 or another. They touch it to make sure that it's still there  
20 and safeguarded. So they understand the concept.

21 Q. Moving several slides in order in the PowerPoint to a  
22 photograph of a man directed at the side, wearing a jacket, in  
23 the photograph it is green jacket.

24 What are officers trained with respect to observing a  
25 man as he stands in this photograph?

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D4p9flo2

Shea - direct

1 A. You can see that his jacket on his right side is -- there's  
2 an unnaturally heavy object in it which is causing the jacket  
3 to sag. You can tell how heavy it is by how the material is  
4 almost tightened as it sags down.

5 Q. And what does that potentially indicate to the officer with  
6 respect to training for characteristics of armed suspects?

7 A. It indicates that it could possibly be a weapon because  
8 handguns are unnaturally heavy. For an item their size, they  
9 are one of the heaviest things I know of.

10 Q. If an officer were to make this observation of the man as  
11 he stands in this photograph, what would they be trained to do?

12 A. This, again, is only one factor.

13 You can see the jacket is sagging to the point where  
14 the material is tight. You can even see, though I wouldn't  
15 want to infer too much from a single angle photograph, that it  
16 seems to be hanging lower than the other side of the jacket,  
17 which also indicates a heavy object.

18 But my son is an iron worker and he carries tools home  
19 all the time, which is why I keep mentioning tools. He could  
20 look like this too while he's waiting for the subway.

21 So it's just one indicator. It's something to be  
22 aware of.

23 And in this case the man seems kind of calm. Probably  
24 the best thing to do would be to watch him and see if you get  
25 any other indicators.

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D4p9flo2

Shea - direct

1 But you may have that intelligence we spoke about.  
2 You may already know this gentleman is involved in an ongoing  
3 dispute or is a dangerous person known to carry weapons.

4 So absent knowing what other factors the police  
5 officer is aware of, I can't really say what they do at this  
6 second.

7 Q. But taking this photograph alone, it wouldn't be reasonable  
8 suspicion to stop this person?

9 A. No. Just if you came across this person in the street, no  
10 it would not.

11 Q. And then now we move two slides forward in the PowerPoint.  
12 Gentleman in the green jacket. Two photographs.

13 What are the officers trained with respect to  
14 observations and characteristics of armed suspects using this  
15 photograph?

16 A. Without even looking -- without looking at the PowerPoint,  
17 the same thing. The right side of the jacket is hanging lower  
18 than the left side. There's a heavy item in that jacket  
19 pocket. And it's something to be aware of.

20 Again, that is not reasonable suspicion in and of  
21 itself. But it's something we would want the officer to be  
22 aware of and an observant officer should notice that.

23 Q. And the next page in the PowerPoint is two more photographs  
24 of two more gentlemen in jackets. Are we looking at again a  
25 heavy object in the jacket?

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D4p9flo2

Shea - direct

1 A. Yes. The heavy object the picture on the bottom left, you  
2 have visible bulging now. It's not just heavy. It's  
3 substantial. And it's hanging down in the jacket.

4 In the upper right, in addition to the bulge, you have  
5 what I would consider touching -- in the upper right the right  
6 hand seems to be -- not only does he have an object in the  
7 jacket, the right hand seems to be touching it as he's crossing  
8 the street, that kind of reassuring touch that I mentioned  
9 before.

10 THE COURT: Can I interrupt. I just want to make sure  
11 I understand the bulge.

12 The one that has the bulge in the lower right hand,  
13 there's been several like that, where the right-hand side of  
14 the jacket hangs lower, and you even volunteered that your son  
15 carries tools, he might look the same because the tool is lower  
16 in the right or left-hand side of his jacket.

17 Would that alone be enough for a reasonable suspicion  
18 stop? In other words, is that what you teach? Would that  
19 asymmetry of the jacket, the right side hanging lower because  
20 of the bulge, would that in itself be enough for a reasonable  
21 suspicion stop based on suspicion of possession of a weapon?

22 THE WITNESS: No, ma'am.

23 THE COURT: Okay. Thank you.

24 Q. And referring to the photograph in the upper right corner  
25 of the slide. You referred to the man grasping. Are you

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D4p9flo2 Shea - direct

1 intentional, that the person just hid one side of their body  
2 from you.

3 Q. Are officers trained to blade their body with respect to  
4 the side of their body they carry a firearm on?

5 A. Yes, in certain circumstances. The other part of training  
6 about people blading their bodies is it's also potentially an  
7 aggressive stance. It's easier to fight in that stance than  
8 just loosely facing somebody completely exposed.

9 Officers are trained to watch out for that also. It  
10 doesn't necessarily mean it. But it's possible. And something  
11 you have to be aware of.

12 And as far as officers go, they're taught that if they  
13 blade their body and move their firearm away from the person,  
14 it makes it safer for them to retain their firearm if a  
15 situation turns physical.

16 Q. In the video, Chief Shea, there was a point in the video,  
17 the voiceover said something about a suspect's hands and then  
18 the video showed a gentleman putting his hands in the air.

19 What are officers trained with respect to the ability  
20 and the need to see someone's hands during a street encounter?

21 A. Well, it's -- during a street encounter depending on the  
22 intensity of the encounter or what your overall knowledge is,  
23 seeing someone's hands is crucial because hands are what human  
24 beings use to hurt other people with and if you can see their  
25 hands and they're empty and nonthreatening it takes the entire

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D4p9flo2

Shea - direct

1 on the street?

2 A. Your focus needs to remain on the person, especially if you  
3 suspect, as in this case we're discussing, that they might be  
4 armed. They can try to distract you themselves. They could  
5 try to pretend they were just a witness to a crime. They could  
6 try to get you to look in a different direction. Other  
7 members, friends or associates of theirs could try to distract  
8 you by being overly aggressive or overly friendly to give them  
9 time to move away or to hide or in the worst case scenario to  
10 prepare to attack you.

11 You could have inappropriate or unusual affection  
12 toward one other, people to pass a weapon from one person to  
13 another, from one sex to another. If they feel that the  
14 officer would be reluctant to search a female, that could be a  
15 distraction move.

16 You're never sure -- basically they are trained: If  
17 you feel the need to approach someone, a citizen, keep your  
18 attention on that person until your job is done. Do not allow  
19 them to distract you through any of these other methods.

20 But, again, some people are nervous and everybody  
21 reacts differently when they see the police. It doesn't  
22 necessarily mean anything. It has to be considered in the  
23 complete context.

24 Q. Chief Shea, in the training video there was discussion of  
25 firearms and unusual farms. Looking at the PowerPoint

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D4p9flo2 Shea - direct

1 presentation halfway through again -- apologize there are no  
2 page numbers -- there's a series of slides with respect to  
3 unusual firearms. And I'd just like to go through each slide  
4 and explain what a recruit officer is trained with respect to  
5 each potential firearm.

6 The first slide is a mobile cellphone gun.

7 What is it that officers and recruit officers are  
8 trained with respect to possible mobile cellphone guns?

9 THE COURT: Wait. What's a mobile cellphone gun?

10 THE WITNESS: It's a .22 caliber firearm disguised as  
11 an old style cellphone. It's a little outdated now.

12 THE COURT: Thank you.

13 THE WITNESS: The point of making recruits and  
14 in-service people aware of these weapons is just exactly that,  
15 making them aware of the existence of them so that they can be  
16 aware that they may come across them. Thankfully, they are  
17 rare. They are sold legally in certain parts of the country.

18 This one is, again, it's an old style phone. I think  
19 we'd pick this one up pretty quick these days because no  
20 self-respecting kid would carry it. It's an old style phone  
21 that at the time looked like a cellphone commonly carried. And  
22 it was actually a firearm. It was heavier, though.

23 Part of what we want to make the officer able to --  
24 just because you touch a phone you can't say that might be a  
25 cellphone phone.

D4p9flo2 Shea - direct

1 Q. A cellphone gun, you mean?

2 A. A cellphone gun. It was a very distinctive item. It was  
3 heavier than the average cellphone. There were ways to  
4 distinguish it. But we didn't want them firing it by accident  
5 so we made them aware of it.

6 THE COURT: Who manufactured these things?

7 THE WITNESS: I don't know.

8 THE COURT: Thank you.

9 Q. And two slides forward there's a pen gun. What are  
10 officers trained with respect to potential pen guns?

11 A. Again, the common name for this item, I've actually seen  
12 some of these, is a pen gun. But we train them and show them  
13 don't ignore what might be a pen. But it is different -- how  
14 to distinguish it from a pen. It is heavier. It is slightly  
15 thicker. But be aware that these items, it has that little  
16 knob on the side, which is the cocking mechanism. Be aware  
17 that they're out there. And if you feel something, take your  
18 time. Make sure you know what you're feeling.

19 THE COURT: Are these pass also?

20 THE WITNESS: No. Every now and then you come across  
21 one of these.

22 Q. And two slides forward there's a knife gun. What are the  
23 officers trained with respect to the knife gun?

24 A. This is a little easier. Again, a knife like this is a  
25 weapon in and of itself that would probably be removed during a

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D4p9flo2 Shea - direct

1 Q. One more unusual weapon. A few slides forward in the  
2 PowerPoint is a wallet gun. Can you describe what we're seeing  
3 in the training for officers as they're conducting frisks?

4 A. That's just a holster for a very small handgun. These are  
5 sold commercially also. They are holsters to hide smaller  
6 handguns and it's not actually a wallet as you can see but it's  
7 camouflaged as a wallet. So that you can put it in a back  
8 pocket like a wallet and hopefully no one will notice it.

9 Again, the training for everybody would be just as I  
10 alluded to in the thing. When you pat someone down, a wallet,  
11 that may seem like a wallet at first glance. But if you pat it  
12 well you'll feel -- you'll feel the gun or you'll feel that  
13 there's something unnaturally heavy in that wallet. You can  
14 ask for an explanation or you can -- if you're confident you  
15 have reasonable suspicion this may be a gun, you can remove it.

16 Q. When you refer to patting down, you're referring to a  
17 frisk?

18 A. Yes.

19 Q. Feeling that wallet or what appears to be a wallet during a  
20 frisk?

21 A. Yes.

22 Q. And a few slides forward in the PowerPoint there's a slide  
23 with two photographs of a gentleman with a red bandanna at his  
24 waist and the slide says flagging.

25 What is flagging, Chief Shea?

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D4p9flo2

Shea - direct

1 A. Flagging is a term used by some like street gangs where  
2 they wear a certain color bandanna to indicate their members in  
3 that gang.

4 These slides indicate how that in certain  
5 neighborhoods a common method of wearing this bandanna can be  
6 used to hide a firearm. And to be aware of it. They don't  
7 usually carry the bandanna in the front right like that. They  
8 usually carry it in the rear.

9 Again, doesn't necessarily mean that there's a gun but  
10 be aware that they have been used in the past to cover a  
11 weapon.

12 It's indicative also of how certain people like police  
13 officers you'll sometimes see coming to work will untuck  
14 one-half of their shirt to cover the firearm. And it's obvious  
15 that the shirt is not in or out. It's tucked in on one side  
16 and out on the other. It's obvious that they're covering a  
17 firearm with it.

18 This is kind of the same thing. They're using an item  
19 that they're wearing anyway just to cover the firearm. But  
20 it's a little unusual and should catch your notice.

21 Q. Finally, Chief Shea with respect to the lesson plan of  
22 characteristics of armed suspects. In the video we saw in  
23 several of the vignettes individuals either looking back or  
24 looking over their shoulder. What are officers trained with  
25 respect to that behavior and characteristics of armed suspects?

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D4p9flo2

Shea - direct

1 A. The -- again, that's one of the categories. That would fit  
2 in the category of behavior that we would teach them to be  
3 aware of. Most people, when they're walking, have somewhere to  
4 go. And they go in that direction. If you observe a street,  
5 you'll see that's the common pattern.

6       Someone who is constantly looking over his shoulder  
7 could be waiting for someone to join them. But it's a little  
8 different. And it's indicative -- people who carry guns  
9 frequently look around because, again, they know they're armed  
10 and they know that they're facing serious repercussions if  
11 they're caught. So they're trying to be more aware of the  
12 street.

13       In addition, most people who carry guns do so for a  
14 reason. And someone who is afraid someone else may try to hurt  
15 them and has armed himself to respond to that threat also is  
16 constantly looking around searching for that external threat  
17 like you might see an animal doing.

18       So they're looking, they're looking, they're looking  
19 because they're afraid someone is going to come and try to hurt  
20 them. That's also indicative. They might not be looking for  
21 the police. They may just be looking for anyone to come at  
22 them. Most people who are involved in that do not behave like  
23 that. So it should catch your attention and, as the lesson  
24 plan said, lead you to start watching to see what else you see  
25 about this person.

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D4p9flo2 Shea - direct

1 Q. Chief Shea I'm handing you two exhibits that have been  
2 marked Defendants' P11 and Defendants' V5 for identification.

3 Do you recognize those exhibits?

4 A. Yes, I do.

5 Q. And what do you recognize them to be?

6 A. They're part of the police student's guide that we give to  
7 the new recruit police officers when they attend the academy  
8 and that they're trained using.

9 Q. What part of the student's guide?

10 A. They deal with policing professionally.

11 MS. COOKE: Your Honor, I would offer these exhibits  
12 P5 -- I'm sorry P11 and V5 into evidence.

13 THE COURT: Any objection?

14 MS. HOFF VARNER: We don't really object. I do  
15 question the relevance of these sections of the police  
16 student's guide but I'm happy to let them in and see how far we  
17 go.

18 THE COURT: Okay. Both are received.

19 (Defendants' Exhibits P11 and V5 received in evidence)

20 Q. Chief Shea looking at these two exhibits, is Exhibit V5 an  
21 older version of Exhibit P11?

22 A. Yes.

23 Q. And P11 is dated July of 2012; is that correct?

24 A. Yes. That's the update.

25 Q. So we'll be referring to the most current selection of this

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D4p9flo2 Shea - direct

1 P11 for this testimony.

2 So this is a police student's guide titled policing  
3 professionally; is that correct?

4 A. Yes. It deals with policing professionally is the best way  
5 I can put it. Your everyday interactions as you go about the  
6 business of policing, how to do it with the professionalism  
7 that we expect from you in the NYPD.

8 Q. Would that involve policing professionally during street  
9 encounters?

10 A. Yes. During every aspect of policing.

11 Q. What's the format of this training, policing  
12 professionally?

13 A. It's formatted using mandatory patrol guide readings. So  
14 they have to read the civilian complaint, witness statement,  
15 and the processing civilian complaint section. And then they  
16 would go into actual lessons. And then it would be  
17 incorporated -- what they learned would be incorporated into  
18 scenarios and testing situations.

19 Q. So officers would be examined at the police academy on the  
20 content of policing professionally?

21 A. Yes, they would. There would not be a separate examination  
22 just on this. It would be part of their trimester exams.

23 Q. Looking at this police student's guide, discretion is the  
24 first item listed on the lower portion of page one?

25 A. Yes, it is.

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D4p9flo2

Shea - direct

1 Q. What are officers in the police academy trained with  
2 respect to discretion and its relationship to street  
3 encounters?

4 A. The first thing they're taught is that the proper exercise  
5 of discretion is essential to policing in a free society. And  
6 then they're taught what we consider discretion to be. We  
7 consider it to be an impartial use of your ability and  
8 authority to decide how you are going to deal with the  
9 situation you are involved in, considering the laws and the  
10 guidelines of the department. So sometimes officers have  
11 discretion to make -- you know, to decide how they're going to  
12 deal with it. Sometimes they do not.

13 Q. With respect to training on policing professionally, are  
14 officers trained on how to communicate with civilians during  
15 street encounters?

16 A. Yes. Oral communication and tactical communication are  
17 taught.

18 Oral communication is just how you speak to people.  
19 Tactical communication is trying, for lack of a better term,  
20 trying to achieve the outcome that you want in a way that  
21 leaves everybody happy -- or as happy as they can be.  
22 Sometimes in policing somebody is getting arrested or somebody  
23 is getting a summons and they will not be happy, but you should  
24 still be handling yourself professionally, impartially, and as  
25 calm as you can.

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D4p9flo2

Shea - direct

1 THE COURT: So just to interrupt. If somebody is  
2 stopped and the stop is over and then the person who is stopped  
3 says can you give me your name and badge number, what's the  
4 officer supposed to do?

5 THE WITNESS: The officer is required to give their  
6 name and badge number.

7 Q. With respect to perception, what are officers trained  
8 perception has to do with policing professionally?

9 A. Well, when we talk about perception, again, there's a lot  
10 of training goes into turning someone into a police officer.  
11 And a good part of that is policing -- one second.

12 Trying to explain to them or teach them that policing  
13 in a free society is, like all our other laws, dependent on the  
14 consent of the people you're policing. And it's important that  
15 you -- they perceive, since you are an arm of the government  
16 enforcing the laws -- it's important that they perceive that  
17 they are being enforced in a fair, impartial manner. And  
18 sometimes even if you are enforcing it in what you believe to  
19 be a fair and impartial manner, the method in which you do that  
20 leaves the perception that you weren't, and that's damaging.

21 So we try to make them aware of that all the time so  
22 that they're aware, constantly thinking not only of what  
23 they're doing but of what perception they're leaving in the  
24 mind of the person they're dealing with.

25 Q. And in what ways are officers trained they can improve or

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D4p9flo2

Shea - direct

1 should be aware that you stopped that person and they -- even  
2 though you had reasonable suspicion, they were not armed with a  
3 firearm. So you should take the time to explain to them why.

4 It can take a lot of methods, a lot of different ways.  
5 Good officers can always talk and explain their actions. You  
6 can do what we call ten five-ing which is just repeating the  
7 description from the radio dispatcher so the person hears and  
8 is aware that they fit the description.

9 Sometimes people are mad. It's not pleasant to be  
10 stopped by the police.

11 Even if they don't understand it at that moment, if  
12 you do the right thing, then maybe later even, it will sink in  
13 that -- and when they're not in the immediate moment of being  
14 stopped and they have a chance to think about it.

15 (Continued on next page)

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D4P8FLO3

Shea - direct

1 A. (Continuing) We teach every officer that every stop  
2 involves two people, the officer making the stop -- obviously  
3 there could be more, but the crucial two are the officer making  
4 the stop and the person being stopped.

5 If the person being stopped is determined to be mad at  
6 you, there is nothing you can do about that, except behave  
7 professionally. However, that is not most people. That is not  
8 the vast majority of people. The vast majority of people,  
9 while they might be mad or unhappy at that moment, can be, if  
10 spoken to properly and if handled impartially and  
11 professionally, will come to an understanding.

12 Q. With respect to perception, are officers trained regarding  
13 their perception of the public in relation to policing  
14 professionally?

15 A. Yes.

16 Q. What is that training with respect to officers' perceptions  
17 of the public?

18 A. New York City, our training -- it's not necessarily in this  
19 subject, in this chapter. New York City is a multicultural  
20 city. That brings many different points of view to the people  
21 we serve out in the city. And the officers are taught to  
22 remember again that there are two people at every encounter and  
23 the other person's life experiences may be vastly different  
24 from your own. And some of them -- we have immigrant  
25 populations, whose experience with the police in their last

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D4P8FLO3

Shea - direct

1 country is very negative, and they have very good reason to be  
2 apprehensive when approached by uniformed police officers. We  
3 have racial and ethnic groups in this country that have had  
4 historic problems with police officers.

5 We teach the officers the history behind that and to  
6 be aware of it. We actually make each officer in a class -- a  
7 class is approximately 30 students. Each officer has to select  
8 one of the ethnic groups or racial groups or just groups in New  
9 York City, religious groups, and do a report on it to the rest  
10 of the class, and it cannot be their own ethnicity. And we  
11 make them aware that you will be dealing with many different  
12 people, and you cannot assume that the person you're speaking  
13 to brings the same life experience to the table as you do, and  
14 you need to be aware of that when you are explaining yourself  
15 and when you are handling the job.

16 I don't mean to make -- you do have to handle the job.  
17 The laws of this country will be enforced impartially, and if  
18 you have, for instance, a possible man with a gun, you have to  
19 handle it in a tactical manner. But there are always times  
20 when that knowledge and awareness can help you handle it  
21 professionally.

22 Q. With respect to policing professionally, you mentioned at  
23 the beginning of this police student's guide some mandatory  
24 reading regarding civilian complaints. How are officers  
25 trained that civilian complaints relate to policing

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D4P8FLO3

Shea - direct

1 professionally?

2 A. In New York City, it is the right of any citizen, who has  
3 an interaction with the police and wishes to make a complaint  
4 about it, to lodge that complaint with any employee of the New  
5 York City Police Department. We will take the complaint, and  
6 depending upon the nature of the complaint, it will either be  
7 referred to the Civilian Complaint Review Board, they handle  
8 allegations of force or abuse of authority or discourtesy or  
9 offensive language by statute, or, if it is just a disputed  
10 police action that does not fall into those categories, for  
11 instance, the most common one is an officer gave me a summons  
12 and I didn't run the red light, that would be investigated by  
13 the chief of department.

14 THE COURT: Do you need an officer's name and shield  
15 number to make a complaint?

16 THE WITNESS: No, ma'am.

17 THE COURT: You can make it without that, by just  
18 describing the incident?

19 THE WITNESS: We teach that we are mandated to accept  
20 any report. If we know who the officer is, they will be  
21 identified on the civilian complaint form. If not, there are  
22 procedures that supervisors should follow to try to identify  
23 the officer. If at the end of the day we are unable to do  
24 that, the complaint will still be taken so that the  
25 investigators down the road can attempt to identify the

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D4P8FLO3

Shea - direct

1 subject.

2 Q. Are officers trained that civilian complaints will be part  
3 of the officer's history with the police department?

4 A. Yes.

5 Q. Do what are officers trained with respect to the police  
6 department's use of civilian complaints on their record?

7 A. It's a multifaceted question. You can get -- you can do  
8 your job correctly and receive a civilian complaint. The  
9 civilian has a right to complain if they feel they were treated  
10 improperly. Somebody who was stopped on suspicion of carrying  
11 a weapon and did not have a weapon may feel there was no basis  
12 for stopping them, and they were just singled out unfairly. It  
13 will then be investigated. I have had civilian complaints.  
14 They didn't unduly affect my career. Plenty of officers  
15 receive them at one time or another. But we will track them,  
16 and the police officers are taught that they will be tracked.  
17 They will be kept on record, and at any point during your  
18 career when we are considering you for a transfer or a  
19 promotion, they will be considered, and a pattern or an  
20 excessive amount, compared to other officers doing the same  
21 enforcement assignment as you, will be looked at to see if it's  
22 indicative of deficiencies in your performance instead of just  
23 bad luck.

24 Q. What are officers trained with respect to policing  
25 professionally regarding accountability for their actions as

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D4P8FLO3

Shea - direct

1 police officers?

2 A. Again, in this section, we teach that part of policing  
3 professionally is that we must hold you accountable for your  
4 actions. Again, it goes back to the compact between the people  
5 we police and ourselves. We police at the consent of the  
6 government. They have to feel that we are being impartial, and  
7 they have to feel that we will be accountable for our actions.  
8 Being a police officer is an awesome responsibility. You  
9 legally carry a weapon in a free society. You have the  
10 authority to stop someone who is going about their business on  
11 the street. Those authorities are granted by the people we  
12 serve, and they have to know that they are being carried out  
13 correctly and that there will be accountability if they are  
14 not. It's a 30,000 man force. People can do things wrong and  
15 things can be handled improperly, but there has to be  
16 accountability if there is.

17 Q. Chief Shea, I am handing you what have been marked for  
18 identification as Defendants' Exhibit R5 and Defendants'  
19 Exhibit U11.

20 THE COURT: Thank you.

21 Q. Do you recognize those documents?

22 A. Yes, I do.

23 Q. What do you recognize them to be?

24 A. These are two more sections of the police student's guide.  
25 Again, one is the older -- R5 is the older section. U11 is the

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D4P8FLO3 Shea - direct

1 update from July 2012 when they updated the guide. And they  
2 deal with what police officers need to know about discretion.

3 MS. COOKE: I would offer these Exhibits U11 and R5  
4 into evidence.

5 MS. HOFF VARNER: No objection.

6 THE COURT: Received.

7 (Defendants' Exhibits U11 and R5 received in evidence)

8 Q. Chief, I will be directing your attention to the most  
9 current version, which is U11. That's dated July 2012,  
10 correct?

11 A. Yes, it is.

12 Q. With respect to training that recruit police officers  
13 receive regarding discretion, my first question is what  
14 discretion do police officers have with respect to street  
15 encounters?

16 A. Specifically with respect to street encounters?

17 Q. Yes.

18 A. Discretion is defined here in the first line. The  
19 authority to decide how to resolve situations in different  
20 ways.

21 So in relation to street encounters, you have  
22 discretion, every officer encountering it has discretion how  
23 the encounter is going to move along. When they stop someone,  
24 they have the discretion of, do I have reasonable suspicion or  
25 do I not? Do I need to stop this person at this moment for

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D4P8FLO3

Shea - direct

1 what is going on, for whatever I suspect is happening? You  
2 have discretion -- short of domestic violence situations or  
3 areas that we have considered must arrests, officers always  
4 have discretion in how they are going to handle any individual  
5 encounter.

6 Q. How are officers trained to exercise that discretion with  
7 respect to issuing summonses?

8 A. It's not specifically to issuing summonses. I would  
9 consider that how would you exercise your discretion upon an  
10 observed traffic infraction? The discretion comes in before  
11 you issue the summons. If you observe a traffic infraction or  
12 a minor violation that would be a criminal summons or a parking  
13 summons, you have discretion whether to issue the summons or  
14 whether to warn and admonish the person, or in the case of  
15 parking, maybe to not issue the summons even if the person is  
16 not there.

17 For example, a double-parked car is outside a nursery  
18 school, where there is no parking and if the parents didn't  
19 stop for a second and grab their child, they would have to park  
20 two blocks away and walk through dangerous intersections. I  
21 would expect them to use discretion and allow them to double  
22 park. Double-parked cars that are creating a hazardous  
23 condition that could lead to a pedestrian being hit by a car,  
24 say on Queens Boulevard, it would not be appropriate.

25 The point is the discretion has to be done impartially

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D4P8FLO3

Shea - direct

1 and based on the factors and the conditions as you know them.  
2 It can't be based on any biases or prejudices of yours, and it  
3 cannot be based on any kind of subjective factors that might  
4 lead people to think you have biases or prejudices. It has to  
5 be dealing with the condition at hand.

6 Q. Is the department's policy prohibiting racial profiling a  
7 component of what officers are trained regarding discretion?

8 A. Yes, it is. It's reinforced that racial profiling is  
9 absolutely prohibited, and has been in the department even  
10 before the City Council made the rule against it.

11 Q. How are officers trained or police recruits trained that  
12 they might abuse their discretion and be improper?

13 A. That's a big a lesson. The first obvious way is the way I  
14 just alluded to. You're using your discretion based on  
15 subjective factors. Racial profiling would be the ugliest one.  
16 But you could decide, I don't write summonses to people in the  
17 construction industry because I have family members there.  
18 That's not fair either. Your using your own subjective  
19 feelings to make your decision instead of an objective view of  
20 what is happening at that moment.

21 In addition, you can abuse your discretion in the  
22 opposite direction too by over-using it, by which I mean you're  
23 never taking enforcement action. You always have to remember  
24 that enforcement action is unpleasant. It's part of the job  
25 though, but it's unpleasant. Every infraction you observe

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D4P8FLO3

Shea - direct

1           On N5, can you just break down which part is policing  
2 professionally and which part is policing with integrity?  
3           THE COURT: It says so in the title.  
4           MS. HOFF VARNER: It's a very long exhibit.  
5           THE COURT: I agree.  
6           MS. HOFF VARNER: It wasn't clear to me what the  
7 relationship between these two sections were.  
8           THE COURT: It says it in the subheading so I will  
9 just state the numbers.  
10          Policing professionally seems to end on Bates 2768,  
11 and policing with integrity seems to start on Bates 2475.  
12          MS. HOFF VARNER: Was the testimony that policing with  
13 integrity is the update of policing professionally?  
14          THE COURT: Policing with integrity is the update of  
15 policing with integrity.  
16          MS. HOFF VARNER: And policing professionally is a  
17 separate document?  
18          MS. COOKE: I don't have a copy of N5 at this point.  
19          THE COURT: The first 18 pages are policing  
20 professionally. And then we start again with page 1 called  
21 policing with integrity, but it's stapled together.  
22          MS. COOKE: It looks like we got part of policing  
23 professionally stapled to the beginning.  
24          THE COURT: Did you mean to do it that way?  
25          MS. COOKE: No.

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D4P8FLO3 Shea - direct

1 THE COURT: So basically she just wants policing with  
2 integrity from January '05 and policing with integrity from  
3 July 2012.

4 MS. HOFF VARNER: That's fine. Can I just put the  
5 Bates number on the record?

6 THE COURT: It begins with 2475 and it ends with 2108.

7 MS. HOFF VARNER: Perfect.

8 THE COURT: That's the January '05. And July 2012 is  
9 T11.

10 BY MS. COOKE:

11 Q. Referring, Chief Shea, to the most current version of  
12 policing with integrity?

13 THE COURT: That's T11. And the question is?

14 Q. The question is, what is the recruit officers training  
15 regarding integrity in street encounters?

16 THE COURT: Is there a particular page that addresses  
17 street encounters?

18 MS. COOKE: The concept of training is integrity, and  
19 I am trying to focus --

20 THE COURT: Is there a page that you're thinking of?

21 MS. COOKE: Not a page in the training. I am trying  
22 to focus the content of the testimony, your Honor.

23 THE COURT: OK.

24 A. The specific training about integrity in the police  
25 department is that it is of paramount importance at all times.

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D4P8FLO3 Shea - direct

1 I don't want to sound like I am repeating myself, but again, it  
2 goes back to --

3 THE COURT: You are in danger of that because I don't  
4 think that answers her question. Although I like at the  
5 consent of the government.

6 What is your question?

7 Q. What is the training that police recruits receive regarding  
8 integrity related to street encounters?

9 A. As related to street encounters, we expect the utmost  
10 integrity from them at all times with no exceptions, whether  
11 related to street encounters or anything else. If they do not  
12 display it, you see most of the homework assignment in the  
13 patrol guide deals with how we will handle people who display  
14 less than integrity.

15 Q. I see that activity logs is a patrol guide section?

16 THE COURT: 212-08.

17 A. Yes.

18 Q. Why is patrol guide section 212-08 on activity logs part of  
19 policing with integrity?

20 A. Because the activity log is a legal document and is used --  
21 that's why you're not allowed to tear any pages out or redact  
22 anything or cross anything. You can cross something out as  
23 long as it still can be read. Because that is where the  
24 officer will document their interactions and their police  
25 services and their assignments. And that's why it's considered

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D4P8FLO3

Shea - direct

1 part of integrity because we want to emphasize that this is  
2 where you are documenting your assignments and the police  
3 actions you have taken and it is a legal document that will be  
4 used to verify.

5 Q. What are officers trained with respect to issues of  
6 corruption in street encounters?

7 A. Corruption just applies to everything. It's not really  
8 corruption in street encounters, unless you're talking about  
9 you're afraid someone will steal something from someone.  
10 Street encounters would fall more into what we call misconduct,  
11 which means any misbehavior by police officers. Both of them  
12 are required to be reported by any officer who becomes aware of  
13 them and will be investigated by the Internal Affairs Bureau.  
14 That's 100 policy. The officer is not allowed to make any  
15 judgment as to the merits of the corruption or misconduct.  
16 They must report it to Internal Affairs, get a log number, and  
17 allow them to investigate it.

18 Q. How are recruit officers tested on their knowledge of  
19 integrity with respect to law enforcement?

20 A. Recruit officers, like everything else, they will learn the  
21 lesson. They will do the mandatory reading. They will attend  
22 the classes with their instructors. Then they will be tested  
23 in a variety of ways. The most formal is the trimester exams,  
24 where they will have to answer questions related to this  
25 material. They will also have testing in various scenarios,

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D4P8FLO3 Shea - direct

1 and they will go up to other parts of their training and it  
2 will be incorporated into other parts of their training, like  
3 the total integration training at the end of their time.

4 Q. Are integrity tests used for uniformed members of the  
5 service with respect to integrity?

6 A. Yes, they are.

7 Q. How?

8 A. The Internal Affairs Bureau has a unit that's dedicated to  
9 doing integrity testing of officers on patrol, and they will  
10 arrange for scenarios or situations -- I shouldn't call it a  
11 scenario because people believe it's real. They will arrange  
12 for situations that would allow the use of less integrity and  
13 they will test the officer to see how they handle that  
14 situation.

15 THE COURT: We are going to pause now for our luncheon  
16 recess and reconvene at five after two.

17 I do need to see the same two folks at the side bar,  
18 but the rest of you are excused until five after.

19 (Luncheon recess)

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D4P8FLO3

Shea - direct  
AFTERNOON SESSION  
2:05 p.m.

1

2

3

JAMES SHEA, resumed.

4

BY MS. COOKE:

5

Q. Chief Shea, I am handing you what has been marked for identification as Defendants' Exhibits V11 and M5. Do you recognize those exhibits?

6

7

A. Yes, I do.

8

9

Q. What do you recognize them to be?

10

11

A. They are the old police student's guide about policing impartially and the importance of doing so, and then the July 2012 update to the police student's guide about policing impartially and the importance of doing so. V11 is the update. M5 is the old one.

12

13

14

15

MS. COOKE: I would offer these Exhibits V11 and M5 into evidence.

16

17

MS. HOFF VARNER: No objection.

18

THE COURT: Both received.

19

(Defendants' Exhibits V11 and M5 received in evidence)

20

21

Q. Chief Shea, looking at V11, which is the most current version of the police student's guide on policing impartially, what are police recruits trained with respect to policing impartially?

22

23

24

A. Again, they are focused on the diverse nature of the population of New York City on a daily basis, and they are then

25

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D4P8FLO3

Shea - direct

1 trained on the importance of treating everybody impartially,  
2 because -- pardon me, on the importance of treating everybody  
3 impartially because it leads to that acceptance by everybody  
4 that we are treating everybody fairly and that they have the  
5 same rights under the police as anyone else. We don't want  
6 anyone to think there is favoritism toward anybody.

7 So this deals with the importance of treating people  
8 impartially. And then we go into the department policy  
9 prohibiting racial profiling is covered in this section. We  
10 talk about bias and prejudice in this section. We talk about  
11 the difference between criminally profiling and racially  
12 profiling, a lot about understanding bias and development of  
13 prejudice. Then we talk about the things that they have to be  
14 wary about while they are communicating with people, how they  
15 can possibly appear to be partial even if they are not.

16 Q. With respect to policing impartially, are recruits  
17 instructed on the policy prohibiting racial profiling?

18 A. Yes, they are.

19 Q. What are they instructed?

20 A. They are given the policy and then -- they are given the  
21 policy. They are instructed on how it's law and how racial  
22 profiling is forbidden in the NYPD. And as I stated before, it  
23 was forbidden even before the City Council made it law. Then  
24 they are also taught about how, in addition to it being  
25 forbidden and unlawful, it's bad police work. It says treating

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D4P8FLO3

Shea - direct

1 guidelines for interaction with limited English proficient  
2 persons, which is anyone that you're having a language barrier  
3 communicating with.

4 Then they are taught, as much as we can, they change  
5 daily, all the different communities that they will come into  
6 contact with in New York City, and the different lessons  
7 learned, that the police department has learned on dealing with  
8 each one. Every community brings their own culture here with  
9 them and their own, as I said before, their own previous  
10 experiences dealing with uniformed law enforcement, sometimes  
11 negative, from other countries. So we want to make sure that  
12 the officers are aware of all of that before they go out and  
13 have to deal with these communities.

14 Q. How important a part of a police officer's training at the  
15 police academy is the lesson and the instruction on policing a  
16 multicultural society?

17 A. It's very important. After they get this class, it also  
18 permeates all the other training, as I mentioned, the total  
19 integration training at the end, the scenarios, the role plays.  
20 Because once they graduate and go out into New York City and  
21 have to begin doing this, they now have to interact with  
22 multiple cultures on any given day, and it's impossible to  
23 guess because they could be working in one precinct and have to  
24 go to another precinct for the day, or have to go to a detail  
25 at a holiday parade. So they really need to know what cultures

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D4P8FLO3 Shea - direct

1 they will be coming into contact with.

2 But more important, that base lesson of don't assume  
3 that the person you're dealing with comes from the same life  
4 experience as you and is reacting the same way to what is  
5 happening. Certain cultures treat eye contact differently,  
6 treat touching differently, treat witnesses and children  
7 talking to other adults differently, and the more you're aware  
8 of it the better a job you can do.

9 Q. Turning your attention to P3, which is a lesson plan cover  
10 sheet, what is the lesson plan represented into P3?

11 A. It's a lesson plan for a scenario and what they call an  
12 assessment, a five- to ten-minute scenario and then an  
13 assessment. The scenario deals with a stop, but the officers  
14 will not be doing the stop; they are observing three plain  
15 clothes officers do a stop.

16 Q. Looking at the front page of P3 in the upper left corner  
17 under the word "course," it identifies this as part of a  
18 multicultural immersion course, advancing community trust  
19 together for united New York. What is that?

20 A. That's a three-day course that the newly promoted police  
21 officers, by which I mean the recruits who have just graduated  
22 from the police academy, their first three days as uniformed  
23 police officers, they attend this three day advancing community  
24 trust together course. It's in addition to everything they  
25 have learned in the academy, and they spend three days actually

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D4P8FLO3

Shea - direct

1 interacting with members of various communities in New York  
2 City. There is panel discussions. There are role plays and  
3 discussion groups.

4 Q. Where is this multicultural immersion course for three days  
5 held?

6 A. The first day is held in the Apollo theater up on 125th  
7 street, and there is a panel discussion moderated by the police  
8 commissioner. That's intended to drive home the importance of  
9 this training. And then there's break-out groups which meet in  
10 the police academy where the different community organizations  
11 get a chance to meet in smaller groups with the officers, and  
12 we cycle them through so everybody gets to deal with everybody.  
13 That's where the scenarios and the role plays and the  
14 discussion groups occur.

15 Q. Who identifies the members of the community that  
16 participate in this multicultural immersion course?

17 A. The community affairs office is heavily involved in this,  
18 the training bureau is involved in this, the police  
19 commissioner is involved, the police commissioner's community  
20 liaisons are involved, and we reach out sometimes to critics of  
21 the police department and invite them.

22 Q. Is it accurate to say there are varying views of the police  
23 represented by members of the community?

24 A. Yes.

25 Q. What is it that the police department intends for the

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D4P8FLO3 Shea - direct

1 officers to learn from these members of the community at this  
2 course?

3 A. The point is, after having trained them on the  
4 multicultural nature of New York, we now want them to see it  
5 and to deal with it firsthand, and to hear from the actual  
6 members of the community, some of their experiences with the  
7 police, whether positive or negative, and how it impacted them  
8 and their view of the police.

9 Q. So looking at the actual lesson plan that's represented in  
10 P3, could you briefly describe what the lesson is and what the  
11 police department intends the officer to learn from  
12 participating in this lesson?

13 A. This is what we call a scenario role play. The basic  
14 scenario is described. It will be the same for every group  
15 that comes in. You want me to go through what this particular  
16 one actually is?

17 Q. If you can generally describe it, yes.

18 A. It would open with a couple walking, a black man and a  
19 white woman. The man is asking the woman for a date. He is  
20 telling her what a good guy he is, what a great job he has.  
21 She is described here as responsive but cautious. She is just  
22 meeting him for the first. They are walking past two uniformed  
23 police officers. That would be two members of the class. They  
24 would be assigned as the rookie police officers that these  
25 people walk past. While they walk past, there is no

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D4P8FLO3

Shea - direct

1           In addition, to really do well on this scenario,  
2 nothing could stop the two officers from walking over and  
3 explaining to the man what happened, even though they weren't  
4 the ones who stopped him. And that's the point of the  
5 discussion afterwards. What was done improperly, the  
6 disengagement phase, what was done improperly by the officers  
7 we described? And then what you could have done, even though  
8 you weren't involved in the original action, kind of to protect  
9 the reputation of the police department, and, quite frankly,  
10 the man at that point deserves an explanation, and there is no  
11 reason why you can't give it to him.

12 Q. This is just one lesson plan, but are there other scenario  
13 based lesson plans that newly graduated officers participate in  
14 in the multicultural society immersion course?

15 A. There are a lot of them, because for one reason, we don't  
16 want them to tell everybody else what the scenario is, so we  
17 have to keep mixing them up on people from class to class. So  
18 they have a whole bank of scenarios that they will use.

19 Q. Is a repeated theme in there issues of race and cultural  
20 sensitivity?

21 A. The repeated themes for a stop and question, specifically  
22 ones, the repeated themes in stop and question scenarios would  
23 be, yes, policing in a multicultural society and sensitivity to  
24 those issues and the three parts of the stop, the approach, the  
25 actual stop, and the disengagement. This one dealt mostly with

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D4P8FLO3

Shea - direct

1 the disengagement because these officers didn't even do the  
2 approach and the stop, but there are others that include all  
3 three.

4 (Continued on next page)

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D4p9flo4 Shea - direct

1 Q. And with respect to the participation by members of the  
2 community in the multicultural emergent course, do members of  
3 the community share with the officers their experiences being  
4 stopped?

5 A. Yes. They do on -- they share their experiences. Some of  
6 them are community leaders sharing the complaints of their  
7 community members. Some of them --

8 THE COURT: Do some of those complaints involve racial  
9 profiling?

10 THE WITNESS: Yes, stopping and feeling they were  
11 racially profiled.

12 THE COURT: Some of the people complained that they  
13 were victims of racial profiling?

14 THE WITNESS: Yes. They feel the police action was  
15 taken on the basis of their race.

16 THE COURT: So there are community members that make  
17 those complaints?

18 THE WITNESS: Yes.

19 THE COURT: To whom do they make them?

20 THE WITNESS: To their community leaders, apparently.

21 THE COURT: Not to the police?

22 THE WITNESS: I've never -- I don't know.

23 THE COURT: Okay.

24 THE WITNESS: They do that and then they are also  
25 involved in some of the discussion groups. They would not be

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D4p9flo4 Shea - direct

1 actors for safety purposes and liability but they will be  
2 involved in the discussion groups after incidents like this.

3 Your Honor, could I answer your question earlier, the  
4 last question?

5 THE COURT: Sure.

6 THE WITNESS: When I was a precinct commander there  
7 were occasions when community members might come to a community  
8 meeting and claim a family member or themselves was the subject  
9 of police action and they fear it was influenced by their race.

10 THE COURT: So you heard that when you were a  
11 commander?

12 THE WITNESS: Yes.

13 THE COURT: That's what I was asking. Thank you.

14 Q. If I could have 184 on the screen. I believe it's already  
15 in evidence. Plaintiffs' 184.

16 Chief Shea, I apologize. It's a little hard to read.

17 Do you recognize Plaintiffs' 184. It's already  
18 offered into evidence.

19 A. Yes, I do.

20 Q. What is it?

21 A. It is an operations order from March 13, 2002 explaining  
22 the department's policy regarding racial profiling.

23 Q. Is this what you were referring to earlier when you  
24 referred to -- when you described that the racial profiling  
25 prohibition existed before the policy was written I guess is

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D4p9flo4 Shea - direct

1 what you said?

2 A. Partially because there's nothing in here that I didn't  
3 learn when I went to the academy in 1991. This is just  
4 codified here.

5 Q. So this would have been the department's policy prohibiting  
6 racial profiling that was used up and until -- I guess we'll  
7 show you Exhibit 183 which is already in evidence as well,  
8 which is a revision to the department's policy prohibiting  
9 racial profiling in May of last year?

10 A. Yes.

11 Q. So the recruits would have received these interim order and  
12 the operations order as part of their course materials,  
13 whichever was applicable for when they were in the academy?

14 A. Yes.

15 Q. Notwithstanding use of the actual interim order or  
16 operations order, was there discussion of the prohibition of  
17 racial profiling during the time a recruit was at the police  
18 academy?

19 A. Could you repeat the question.

20 MS. HOFF VARNER: Objection to the form.

21 THE COURT: Can you repeat the question anyway.

22 Q. Regardless of whether the actual paper, piece of paper was  
23 used, was there discussion of the policy prohibiting racial  
24 profiling with recruits while they were at the academy?

25 THE COURT: I'll allow that.

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D4p9flo4 Shea - direct

1 MS. HOFF VARNER: It's not clear to me at what time  
2 period she's talking about.

3 THE COURT: Could you give a timeframe.

4 BY MS. COOKE:

5 Q. Well for 184 it was in effect from 2002 through May of  
6 2012, correct?

7 A. Yes.

8 Q. So while recruits were at the academy between 2002 and  
9 2012, notwithstanding use of the actual paper, was racial  
10 profiling discussed?

11 A. Yes. In the policing impartially sections and in the  
12 community -- you know, the community section.

13 Q. Are you aware of anything that would prohibit an instructor  
14 of recruits at the police academy from discussing racial  
15 profiling in any course?

16 A. Would prohibit them from?

17 Q. Yes.

18 A. No.

19 Q. And the same question with respect to the revised racial  
20 profiling policy that was in May of 2012, Exhibit 183.  
21 Regardless of whether the piece of paper was used during  
22 instruction, are you aware that prohibition of racial profiling  
23 was discussed with recruits after May of 2012?

24 A. Was it? Yes, it was.

25 Q. And, again, is there anything prohibiting an instructor at

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D4p9flo4 Shea - direct

1 the police academy from discussing the policy prohibiting  
2 racial profiling regardless of the course material?

3 A. No, there's not.

4 Q. Are you aware of instances in which the discussion of the  
5 policy prohibiting racial profiling was discussed  
6 notwithstanding the fact it was not contained within a lesson  
7 plan for that course?

8 A. Yes. The policy against racial profiling was -- is  
9 discussed, again, during multiple times during the police  
10 academy. I sat in on classes and observed that.

11 Q. Chief Shea, I'm handing you what has been marked for  
12 identification as Defendants' R11. Do you recognize that  
13 document?

14 A. Yes, I do.

15 Q. What is it?

16 A. It's the section of the police student's guide dated  
17 July 2012 and it deals with the criminal procedure, the study  
18 of the laws and rules governing the criminal justice system.

19 MS. COOKE: Your Honor, I offer Exhibit R11 into  
20 evidence.

21 MS. HOFF VARNER: No objection.

22 THE COURT: R11 is received.

23 (Defendants' Exhibit R11 received in evidence)

24 Q. Chief Shea, looking at Exhibit R11 does the lesson and the  
25 training with respect to criminal procedures involve the law

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D4p9flo4 Shea - direct

1 of -- well does it involve the Fourth Amendment?

2 A. Yes, it does.

3 Q. Does it also involve a discussion of street encounters  
4 including stop, question and frisks?

5 A. Yes. It opens up with a discussion of the Fourth Amendment  
6 protections that every resident is entitled to. And then it  
7 goes into how that affects you as you're doing your job. And  
8 goes further and goes into the exceptions to the Fourth  
9 Amendment approved by the Supreme Court.

10 Q. At what trimester of the police academy would a police  
11 recruit receive criminal procedure instruction?

12 A. That's changed over the years. Only because law used to be  
13 separate. And I can't speak to when exactly they got to this  
14 lesson. But they learned this early because you can't start  
15 teaching anything else until they know the rules. So it's in  
16 the first trimester.

17 Q. In addition to the Fourth Amendment are recruit officers  
18 trained on New York state constitutional law?

19 A. Yes, they are. They're trained on -- as part of this  
20 lesson they're trained on New York state law and its  
21 relationship to the United States -- Supreme Court's decisions.  
22 And they're then trained on specifically, a huge one for us,  
23 they're trained on People v. DeBour which sets out the four  
24 levels of intrusiveness during street encounters.

25 There are probably two dozen what we call legal bureau

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D4p9flo4 Shea - direct

1 proper preparation of a stop, question and frisk report.

2 THE COURT: What are you referring to as report? You  
3 mean the UF 250?

4 THE WITNESS: Yes.

5 And J11 is the command level instructor's guide, like  
6 an instructor's guide and lesson plan coversheet for stop,  
7 question and frisk. That's an in-service guide.

8 Q. Chief Shea, with respect to your prior testimony in the  
9 Ligon preliminary injunction hearing do you recall testifying  
10 about preparation of the stop, question and frisk report?

11 A. Yes.

12 Q. Do you recognize C4 and O3 as materials relating to the  
13 Rodman's Neck refresher course training you testified about in  
14 Ligon?

15 A. Yes.

16 MS. COOKE: Your Honor, I offer C3 and O4 into  
17 evidence but intend to ask no questions as he's already  
18 testified.

19 MS. HOFF VARNER: No objection.

20 THE COURT: Received.

21 (Defendants' Exhibits C3 and O4 received in evidence)

22 Q. With respect to J11, Chief Shea, it's also a command level  
23 instructor's guide?

24 A. Yes, it.

25 Q. It predates the stop, question and frisk refresher course

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1 MS. HOFF VARNER: No objection.

2 THE COURT: T3 is received.

3 (Defendants' Exhibit T3 received in evidence)

4 Q. Chief Shea, T3 is dated on the front page as being prepared  
5 by the curriculum and evaluation unit in October of 2008.

6 Do you see that?

7 A. Yes.

8 Q. Is this generally the same forms workshop lesson plan that  
9 are in use presently at the police academy?

10 A. Yes.

11 Q. Would this instruction be for recruit level candidates or  
12 uniformed members of the service as well?

13 A. Recruit level.

14 There's nothing to prevent you from using these  
15 scenarios. They will apply in others. But they are prepared  
16 for the recruit level.

17 Q. In these forms workshop lesson plans, do you see a lesson  
18 plan with respect to preparing the stop, question and frisk  
19 report on page -- I guess it begins on page Bates stamp 4187.

20 A. I might have went past it.

21 Q. It's D24 on the pagination of the document by the police  
22 department.

23 A. Yes. 41 --

24 Q. -- 87?

25 A. 87. Begins form tutorial one. Stop, question and frisk

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D4p9flo4

Shea - direct

1 while in the criminal investigative course, I actually taught  
2 pattern crimes and pattern crime investigation.

3 Q. Are recruit officers trained at the police academy with  
4 respect to crime patterns?

5 A. Basic training, yes.

6 Q. And are uniformed members of the service, do they receive  
7 training with respect to crime patterns?

8 A. Yes, they do.

9 Q. In what context?

10 A. At command level training. They would receive training  
11 about patterns and then in their command they would be  
12 constantly being trained on existing patterns within the  
13 command and surrounding commands.

14 Q. What's the difference between a pattern and a trend?

15 A. A trend in -- in the NYPD, we define a trend as an increase  
16 or decrease in the frequency of a crime.

17 A pattern we define as having common characteristics  
18 that we believe it may be the same perpetrators committing the  
19 crime.

20 Q. Do officers at the police academy receive training on  
21 trends?

22 A. Yes. On what they -- officers -- by officers are you  
23 referring to recruits?

24 Q. Recruit officers, yes.

25 A. Recruit officers receive the basic training; what a pattern

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D4p9flo4                      Shea - direct

1 is, what a trend is, why it's important to you, why you should  
2 be aware of them before you go out on patrol.

3 Q. Why is it important that officers be aware of patterns or  
4 trends before they go on patrol?

5 A. It's important for safety purposes that they understand  
6 what's happening around them in the precinct. If there is a --  
7 gunpoint robbery pattern involving two individuals dressed in a  
8 certain type of clothing, we would want them to know that in  
9 case they encounter the individuals. It's important so that  
10 while doing police work they can make their contribution to  
11 ending the pattern and protecting the people that are the  
12 victims of it.

13                      And it's just important in general because when they  
14 do their police work -- it adds to what we discussed before in  
15 the characteristics of armed subjects, the environmental  
16 factors, being aware of what's happening around you and what's  
17 going on in your command.

18 Q. Can a pattern be precinctwide?

19                      THE COURT: I'm sorry?

20 Q. Can a pattern be precinctwide?

21 A. The most basic kind would be precinctwide -- pardon me. A  
22 pattern -- can I expand -- a pattern, when we establish  
23 patterns, they are either precinct level. We use the term  
24 precinct level patterns. That means the entirety of the  
25 pattern is remaining within one geographical precinct; then a

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D4p9flo4

Shea - direct

1 Every officer is required to check that crime  
2 information center at the beginning of their tour and make  
3 themselves aware of ongoing patterns. And it's actually part  
4 of our total integration training at the end of the academy  
5 when we do the mock precinct for the recruits. They have to  
6 check the crime information center and be aware.

7 Q. What about special officers such as anticrime or SNEU or  
8 conditions teams? What are they trained with respect to use of  
9 patterns in their police work?

10 A. Everyone is trained to be aware of the patterns.

11 Anticrime officers are specifically tasked with  
12 investigating and dealing with street level crimes. So they  
13 would actually change their -- they might -- I won't speak for  
14 everyone. They might actually change their patrol methods or  
15 their -- or what they're doing to address that pattern.

16 SNEU generally is assigned to street level narcotic  
17 sales but they would need to be aware of it.

18 Conditions teams, just like anticrime, might actually  
19 change their patrol methods to address the pattern.

20 Q. Chief Shea, I'm going to have displayed on the screen  
21 Plaintiffs' Exhibit 74 which is already in evidence. It's the  
22 revised most current version of the UF 250 form.

23 Is there a box on the UF 250 form where an officer  
24 could indicate awareness of pattern or trend as a basis for  
25 reasonable suspicion for the stop. If you could look at the

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D4p9flo4

Shea - direct

1 A. Yes.

2 Q. What's a sergeant's leadership course?

3 A. Newly promoted sergeants, before they go out onto the  
4 street, they're promoted to sergeant, but before they go out  
5 onto the street they attend the sergeant's leadership course.  
6 And they are trained in the difference between -- pardon me.  
7 They are trained in the difference between being a police  
8 supervisor as opposed to a police officer.

9 Q. With respect to street encounters you identified  
10 Defendants' Exhibit R3 as, in particular, being specific to a  
11 lesson plan on stop, question and frisk; is that correct?

12 A. Yes, it is.

13 Q. And what is it that sergeants are trained with respect to  
14 what their responsibilities in a stop, question and frisk in  
15 Exhibit R3?

16 A. Well, in addition to the review of everybody's legal  
17 responsibilities and racial profiling and impartial law, the  
18 desk officers are taught that they're required to review any  
19 reports that come before the desk. And that includes the  
20 UF 250 form. And then they also have some administrative  
21 duties as far as forwarding it to the correct location. And  
22 they instruct the members if they find them preparing  
23 incorrectly.

24 Q. I'm sorry?

25 A. The patrol supervisor should be responding, if they can, to  
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D4p9flo4 Shea - direct

1 the stop, should be responding and reviewing the UF 250 at the  
2 time and training the officer if there's any training issues  
3 that are identified.

4 Q. With respect to the lawfulness of street encounters, are  
5 sergeants trained that they're responsible for ensuring legal  
6 street stops?

7 A. Yes. They should be reviewing every street stop that  
8 they're aware of and ensuring that the officer can articulate  
9 the reasonable suspicion necessary for the forcible stop.

10 Again, the desk officer has the specifically itemized  
11 duty of instructing the officer if they feel that there was  
12 anything wrong with the stop or that the officer's articulation  
13 is not as thorough as we would like, or if the form is not  
14 prepared correctly.

15 Q. Turning your attention to Defendants' Exhibit Y3. Do you  
16 see that this lesson plan coversheet on the top right indicates  
17 time required, 14 hours?

18 A. Yes.

19 Q. So is this several days of instruction included in the  
20 lesson plan of Y3?

21 A. Yes. Because this isn't just academic. This is role plays  
22 and instruction.

23 Q. And what are the role plays that the sergeants in  
24 participating in the lesson plan in Exhibit Y3 would be engaged  
25 in?

D4p9flo4 Shea - direct

1 A. They would be engaged in all of them. The ones that refer  
2 to street stops would be the first one, identifying the  
3 procedures and performing the role of a patrol supervisor in a  
4 street encounter scenario.

5 Q. And would that involve the sergeant carrying out the duties  
6 you just described of reviewing UF 250s?

7 A. Yes. The difference between the training here and the  
8 training I talked about before, where we did scenarios and role  
9 call, is here the scenario is aimed at a responding supervisor  
10 not at the officers actually performing the stop.

11 So here what they tell the guide, the general guide is  
12 that the newly promoted sergeant will perform the role of a  
13 patrol supervisor in a stop, question and frisk scenario. They  
14 will respond to an arrest in the transit system. And the  
15 member will have previously stopped, questioned and frisked an  
16 unknown person based on a description of a man with a gun and  
17 no callback. Okay.

18 And then the sergeant arriving on the scene will be  
19 required to identify and utilize the correct procedures,  
20 validating if the person stopped was done so lawfully, ensuring  
21 that a stop, question and frisk report worksheet is completed,  
22 ensuring the proper memo book entries are made, verifying the  
23 arrest if one was made; and if the stop was unlawful, training  
24 the MOS on legal bureau bulletin Florida v. JL.

25 Q. Following the role play, is there a discussion and critique

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D4p9flo4 Shea - direct

1 of --

2 A. Yes.

3 Q. -- the sergeant's involvement in the roll play?

4 A. Always. Always. Especially at the supervisory level, we  
5 like to get everybody involved. And following the role play,  
6 the other students in the class would be talking about what  
7 could have been done better, what could have been done  
8 differently, ideas, best practices that they've seen in their  
9 experience. And they turn it into a classroom discussion.

10 Q. Chief Shea, I'm handing you three exhibits marked for  
11 identification Defendants' L3, Defendants' M3, and Defendants'  
12 E4.

13 MS. HOFF VARNER: Can I ask for the first exhibit  
14 number that you justify gave.

15 MS. COOKE: L3.

16 MS. HOFF VARNER: Thank you.

17 Q. Chief Shea, do you recognize these three exhibits?

18 A. Yes, I do.

19 Q. What do you recognize them to be?

20 A. L3 is a training bureau memo from Dr. O'Keefe who is the  
21 deputy commissioner of training in the NYPD. And it orders a  
22 stop, question and frisk review course.

23 THE COURT: When is this?

24 BY MS. COOKE:

25 Q. Is this the Rodman's Neck?

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1 A. The beginning of Rodman's Neck training.

2 THE COURT: Remind me. When is that?

3 MS. COOKE: Was it in the spring of 2012?

4 THE WITNESS: About late winter, like March, April,  
5 2012.

6 THE COURT: Thank you.

7 THE WITNESS: It lists the course objective, the  
8 learning outcomes and the audience that we are expected to  
9 train.

10 Q. And M3?

11 A. M3 is the review. This is the syllabus that was prepared  
12 in response to the learning objectives identified by  
13 Dr. O'Keefe.

14 Q. And E4?

15 A. E4 is the street encounters class PowerPoint presentation  
16 that was presented by the NYPD legal bureau as part of the  
17 course at Rodman's Neck. This is specifically the class by the  
18 legal bureau.

19 Q. And I would offer these three exhibits, your Honor, into  
20 evidence, L3, M3, and E4?

21 MS. HOFF VARNER: No objection.

22 THE COURT: One moment. They are all received. L3,  
23 M3, and E4.

24 (Defendants' Exhibits L3, M3, and E4 received in  
25 evidence)

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D4p9flo4

Shea - direct

1 MS. COOKE: Your Honor, I offer K3, E8, F8 and G8 into  
2 evidence.

3 MS. HOFF VARNER: No objection except to the -- to the  
4 extent that these include videos and scripts of videos, just  
5 not for the truth of the matter, just as training materials.

6 THE COURT: They are all training materials.

7 MS. HOFF VARNER: Yes.

8 THE COURT: Are you planning to play these videos?

9 MS. COOKE: No.

10 THE COURT: But you want to put them in evidence?

11 MS. COOKE: We could play them if --

12 THE COURT: If their in evidence my choice is to watch  
13 them in the courtroom or not in the courtroom, but if they're  
14 in evidence they should be watched.

15 MS. COOKE: Okay.

16 THE COURT: How long are they?

17 MS. COOKE: There's five of them, your Honor. I don't  
18 know the total. That's why I was not going to play them.

19 THE COURT: I know but I'm required to listen to them  
20 if they're in evidence. Things that are in evidence are  
21 supposed to be reviewed by the court otherwise it's not an  
22 honest notion of what's in evidence.

23 Can you find out. Do you know how long roughly each  
24 of those scenarios run?

25 MS. COOKE: We'll find out.

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D4p9flo4

Shea - direct

1 THE WITNESS: I'm thinking ten to fifteen minutes  
2 each.

3 THE COURT: We're not going to do it now that's for  
4 sure.

5 MS. COOKE: He'll check the time and we'll get back to  
6 you.

7 THE COURT: So in any event K3, F8, G8 and what was  
8 it?

9 MS. COOKE: E8 are the two disks.

10 THE COURT: E8 are received but we have to talk about  
11 when to watch the videos.

12 MS. COOKE: We'll get the time, your Honor.

13 Q. With respect to the stop, question and frisk videos how  
14 many are in the series, Chief Shea?

15 A. Five.

16 THE COURT: Maybe we should watch one of those --

17 MS. COOKE: Would you like to --

18 THE COURT: -- just to all get a sense of what it is.

19 MS. COOKE: The fifth one, your Honor?

20 THE COURT: I don't care.

21 MS. COOKE: That was the one that's most recent, the  
22 development of the Rodman's Neck refresher course. The other  
23 ones are more specific. One covers the reasonable suspicion.  
24 One covers I think the approach. And they are a little  
25 different. But the fifth one is more comprehensive.

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D4p9flo4

Shea - direct

1 THE COURT: Maybe we should watch the fifth one.

2 (Pause)

3 MS. HOFF VARNER: I said just for the record is this  
4 the same video that was viewed in part during the Ligon  
5 preliminary injunction hearing? And Ms. Cooke said that it  
6 was.

7 MS. COOKE: Your Honor, we don't have to offer the  
8 five videos into evidence, the testimony of -- is already in,  
9 in Ligon. It's not necessary.

10 THE COURT: So E8 is not in evidence.

11 MS. COOKE: We'll just forego that at this point.

12 THE COURT: All right.

13 Are you saying all five of those videos were in  
14 evidence in Ligon?

15 MS. COOKE: No just the fifth one. The one we were  
16 going to watch anyway. I believe. Actually now that I think  
17 about it, they might have been all five. But we only did watch  
18 part of the fifth one in Ligon.

19 MS. HOFF VARNER: I'm sorry. For the clarity of the  
20 record I understand that the court is not receiving E8.

21 THE COURT: Right.

22 MS. HOFF VARNER: But what about F8 and G8 which are  
23 the scripts of the videos that are in evidence.

24 THE COURT: Are you still offering those too?

25 MS. COOKE: I don't know that there's any problem with  
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D4p9flo4 Shea - direct

1 the script. The script -- it's not offered for the truth.

2 THE COURT: She's not saying that. She's just saying  
3 does it make sense to have the script without the video. If  
4 you don't need the video, you don't need the script. I think  
5 that's what she's saying.

6 MS. COOKE: I don't need the script.

7 THE COURT: All right. Neither F8 nor G8 are received  
8 in evidence.

9 MS. COOKE: Right.

10 (Defendants' Exhibit K3 received in evidence)

11 Q. Chief Shea, I'm handing you a document that's been marked  
12 for identification as Plaintiffs' Exhibit 387. Do you  
13 recognize that document?

14 A. Yes, I do.

15 Q. What do you recognize it to be?

16 A. It is the instructor assessment guide from the mock  
17 precinct scenarios which are done at the police academy.

18 Q. Is this is for recruit officers?

19 A. Yes, it is.

20 MS. COOKE: Your Honor, I would offer Plaintiffs'  
21 Exhibit 387 into evidence. I didn't give you a copy. I will  
22 publish it on the screen.

23 THE COURT: Any objection?

24 MS. HOFF VARNER: No objection.

25 THE COURT: 387 received.

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D4p9flo4 Shea - direct

1 being disrespectful to the individual or not behaving in a  
2 professional manner are automatic failures also.

3 And then when you get to the bottom, tactics --

4 Q. Chief Shea, let me stop you. Is that correct on the  
5 second, under courtesy, professionalism and respect, it says,  
6 "Did recruit behave in a professional manner," and a fail  
7 appears under yes?

8 A. No. That's a typo. It should be under no.

9 Q. And then under tactics?

10 A. Tactics is minus five for using incorrect tactics.

11 Q. So the metrics that a recruit would fail participation in  
12 this scenario are those related to courtesy, professionalism  
13 respect and knowledge of the law?

14 A. Those are the automatic failures. They could pass those  
15 and still fail if they accrue enough negative points for radio  
16 communications and tactics. Seventy-five is passing. They  
17 start at a hundred and they lose five for each thing they do  
18 incorrectly. So there's two ways they could fail.

19 Q. Automatic failure for knowledge of the law and courtesy,  
20 professionalism and respect?

21 A. Not all three. Any one. Any one of those being done  
22 incorrectly is an automatic failure. They have to be retrained  
23 and go through the scenario.

24 Q. Can a recruit graduate from the police academy without  
25 successfully passing this scenario with a pass?

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D4p9flo4 Shea - direct

1 A. A subway platform is inherently dangerous.

2 Yes, if you're stopping someone at a subway platform,  
3 I would much prefer to bring them up off the platform, even to  
4 the street. It's just safer. Moving trains are dangerous.  
5 You don't want to be in a fight or in a tussle with somebody.

6 Other example. I can probably think of others if I  
7 think. But the basic underlying concept is that for the safety  
8 of all concerned if you have to move them for either safety or  
9 to make the identification procedure more fair, you go ahead  
10 and do so.

11 MS. COOKE: Just one minute, your Honor.

12 (Pause)

13 I have no further questions -- just one second.

14 I have no further questions for this witness at this  
15 time.

16 THE COURT: Do you think it might be an improvement to  
17 do a find and replace, if you know what I mean, every time it  
18 says stop, question and frisk it should say stop, question and  
19 possibly frisk? Would that be an improvement?

20 THE WITNESS: We actually -- yes. We actually made  
21 that improvement on the Rodman's Neck training.

22 THE COURT: But I notice a lot of these, a lot of  
23 these from 2012 still say stop-question-frisk,  
24 stop-question-frisk as if it's all one continuous action, which  
25 I don't think it should be.

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D4p9flo4

Shea - cross

1 Q. And this is also sometimes called a forcible stop, correct?

2 A. Yes.

3 Q. So if I say forcible stop you'll understand that I mean a  
4 stop where a reasonable person does not feel free to leave,  
5 correct?

6 A. Yes.

7 Q. And under the constitution to make a forcible stop the  
8 officer must have reasonable suspicion that a person has just,  
9 is committing, or is about to commit a crime, correct?

10 A. Yes.

11 Q. And a police officer should fill out a UF 250 and enter  
12 details into their memo book whenever that police officer makes  
13 a forcible stop, correct?

14 A. Yes.

15 Q. But the recent training materials given to officers at  
16 Rodman's Neck did not instruct police officers on that  
17 standard, did it?

18 A. Pardon me?

19 Q. The recent training materials that were given to the active  
20 duty police officers who attended the training at Rodman's Neck  
21 didn't instruct officers on that standard, did it?

22 A. I believe it did.

23 (Continued on next page)

24

25

D4P8FLO5 Shea - cross

1 Q. Let's look at Exhibit C4. This was admitted in evidence  
2 with Ms. Cooke. These are the PowerPoint presentation slides  
3 for a presentation that you testified was given at Rodman's  
4 Neck entitled, "Properly preparing stop, question and frisk  
5 report."

6 Do you recognize this document?

7 A. Yes.

8 Q. This was the PowerPoint -- as you testified earlier -- this  
9 was the PowerPoint that was given to officers at that stop and  
10 frisk refresher course at Rodman's Neck, correct?

11 A. That was displayed to them. I don't think they left with  
12 it, but I think it was shown.

13 Q. So they were shown this presentation?

14 A. Yes.

15 Q. I think that you just testified that as of now, 6,000  
16 officers had attended the training at Rodman's Neck on the stop  
17 and frisk refresher course?

18 A. Yes.

19 Q. So let's go ahead and look at page 3 of the presentation.

20 This slide says that, "We should only be preparing a  
21 UF-250 for encounters that achieve reasonable suspicion, or  
22 lead up to probable cause."

23 Did I read that correctly?

24 A. Yes. That's correct.

25 Q. And isn't it true that this presentation instructs officers

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D4P8FLO5

Shea - cross

1 that they should prepare the UF-250 for encounters that achieve  
2 reasonable suspicion?

3 A. Yes. But that's the standard for the Terry stop, is  
4 reasonable suspicion.

5 Q. Isn't it true that this presentation does not instruct  
6 officers to fill out a UF-250 when they have made a forcible  
7 stop?

8 A. I would not agree with that statement.

9 Q. Can you tell me where it says on this page that they should  
10 prepare a UF-250 for encounters that are forcible stops?

11 A. It doesn't use the words forcible stops, but a reasonable  
12 suspicion stop is a forcible stop. They are interchangeable.

13 Q. So, in your view, any stop that has reasonable suspicion is  
14 a forcible stop?

15 A. If an officer stops someone at the level of reasonable  
16 suspicion, yes, that person is not free to leave until the  
17 investigation is completed. So that is by definition a  
18 forcible stop, even if you don't use force.

19 Q. But officers can sometimes make a forcible stop without  
20 reasonable suspicion, isn't that true?

21 A. No, they cannot.

22 Q. Isn't it true that in the real world, there are possibly  
23 officers who will make a forcible stop without proper  
24 reasonable suspicion?

25 THE COURT: You mean a bad stop?

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D4P8FLO5 Shea - cross

1 MS. HOFF VARNER: Yes.

2 THE COURT: I guess sometimes people make a bad stop.

3 A. Is it possible? Yes.

4 Q. And this document doesn't instruct officers, who make  
5 forcible stops but who lack reasonable suspicion, that they  
6 should fill out a UF-250, isn't that true?

7 A. They shouldn't be stopping the person at all if they lack  
8 reasonable suspicion.

9 THE COURT: What she is saying is, but if they do,  
10 which they shouldn't, they should still fill out the form? I  
11 guess that's what she is saying.

12 A. I don't think we would be training them though, if you do a  
13 bad stop, also fill out the form. I would be training them  
14 don't do the bad stop.

15 Q. I understand that you don't want any officers to make bad  
16 stops.

17 THE COURT: He's talking about training. He said he  
18 would never train somebody that if you make a bad stop, fill  
19 out the form. Because his training is don't make a bad stop.  
20 It's one thing to ask him what he thinks in the theoretical  
21 world, but in terms of training, he said he would never put  
22 down, if you make a bad stop, fill out a form.

23 Q. Would you ever tell officers that they should fill out a  
24 UF-250 whenever they have made a forcible stop?

25 A. Again, this is a -- I am telling them that. What we train

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D4P8FLO5

Shea - cross

1 them, a stop based on a reasonable suspicion means that the  
2 person is not free to leave until you have concluded your  
3 investigation of the offense you have the reasonable suspicion  
4 for. What we train them is, at that point it is a forcible  
5 stop, even if you do not use force. It doesn't even matter if  
6 the person thinks they are allowed to leave. If you know you  
7 wouldn't allow them to leave until the investigation is over,  
8 you have forcibly stopped them and you will document that on a  
9 250. So calling it a reasonable suspicion stop, to me it's  
10 synonymous with a forcible stop.

11 Q. Do you worry that officers, who don't maybe have the same  
12 background that you do, and who are seeing this on the screen,  
13 would perhaps interpret this as only filling out a UF-250 when  
14 they have reasonable suspicion?

15 A. No.

16 THE COURT: Well, I may understand where you're  
17 heading, but I am not sure we are on the same page.

18 Under the DeBour levels, there seems to be levels of  
19 questioning people or talking to people that are less than  
20 reasonable suspicion stops, right?

21 THE WITNESS: Yes.

22 THE COURT: They don't have to fill out a 250 for  
23 those, right?

24 THE WITNESS: No, they do not.

25 THE COURT: Is that what you're getting at?

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(212) 805-0300

D4P8FLO5 Shea - cross

1 Because those, in your view and in your training,  
2 don't require a UF-250?

3 THE WITNESS: No.

4 THE COURT: Only when it hits the level of reasonable  
5 suspicion.

6 THE WITNESS: Yes, ma'am.

7 Q. So what you're telling me is that whenever you say  
8 encounters that achieve reasonable suspicion, what you mean is  
9 forcible stops, correct?

10 THE COURT: He said yes three times because he defines  
11 them interchangeably.

12 MS. HOFF VARNER: That's all I am trying to get at.

13 THE COURT: He has done that. If you have gotten it,  
14 you don't need it a second or third time.

15 Q. This presentation does not include any written instructions  
16 that would help an officer assess when a reasonable person  
17 would not feel free to leave, isn't that correct?

18 A. Written instructions? Without going through it, we  
19 thoroughly cover the factors that would lead a reasonable  
20 person to not feel free to leave. I don't know if they are  
21 documented here. This seems to be mostly the actual UF-250  
22 report, filling it out correctly, and the disengagement.

23 Q. So your testimony is that this presentation doesn't include  
24 written training that would help an officer assess when a  
25 reasonable person would not feel free to leave?

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D4P8FLO5 Shea - cross

1 MS. COOKE: I would object to the mischaracterization  
2 of the witness's testimony.

3 THE COURT: I don't know that she said that. She is  
4 trying to ask that question. I don't think she is  
5 characterizing his testimony. She is trying to ask a question.

6 Maybe you did say, so you are saying, and that would  
7 be characterizing it.

8 Q. Perhaps I can ask it this way. Can you point me to any  
9 page of this presentation that provides written training to  
10 help an officer assess when a reasonable person he is stopping  
11 would not feel free to leave?

12 A. No.

13 Q. And this presentation emphasizes that preparing a UF-250  
14 for the wrong reason would actually be in error, isn't that  
15 correct? That's on NYC\_2\_--

16 THE COURT: Just give us the last four digits.

17 MS. HOFF VARNER: 3073.

18 THE COURT: That's way at the end.

19 "Remember, preparing UF-250 when not required and for  
20 the wrong reasons is preparing it in error." That's what it  
21 says, right?

22 THE WITNESS: Yes.

23 THE COURT: That seems self-explanatory.

24 Q. So now I would like to show you Exhibit O3, which was also  
25 admitted through Ms. Cooke, which is the lesson plan that goes

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D4P8FLO5 Shea - cross

1 with this PowerPoint presentation.

2 This is dated April 2012, right?

3 A. Yes.

4 Q. This is a lesson plan, and do I understand correctly that  
5 this is provided to the trainers so that they can then train  
6 the members of the service?

7 A. It's provided to the trainers teaching this course to keep  
8 the course consistent, yes.

9 Q. So this doesn't actually go to the members of the service  
10 that are receiving the training?

11 A. No.

12 Q. This corresponds to the PowerPoint that we just looked at,  
13 correct?

14 A. Yes.

15 Q. And this document, together with that same PowerPoint, are  
16 consistent with the training that the academy recruits get,  
17 isn't that right?

18 A. This document is consistent with the training that the  
19 existing officers get. The academy recruits get the same  
20 training, but this particular document was intended for  
21 officers post academy.

22 Q. So this document is actually the Rodman's Neck lesson plan,  
23 correct?

24 A. Yes.

25 Q. I guess what I am asking is, the substance of the document

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(212) 805-0300

D4P8FLO5 Shea - cross

1 is consistent with what the recruits would get at the academy?

2 A. Yes.

3 Q. Again, this document also specifically states that a UF-250  
4 should be prepared when the officer has reasonable suspicion,  
5 correct?

6 A. Yes.

7 Q. Again, this document doesn't include any written training  
8 that would help an officer assess when a reasonable person  
9 would not feel free to leave, isn't that right?

10 A. Yes.

11 Q. This document also emphasizes that preparing a UF-250 for  
12 the wrong reason would be in error. That's on page 5.

13 THE COURT: It's number 6 on page 5.

14 Q. It's in the bold capital letters?

15 A. Yes.

16 Q. So according to these 2012 training documents that have  
17 been now shown to 6,000 members of the service, if an officer  
18 interacts with a person at level 2, at the common law right of  
19 inquiry, but that person might nevertheless, or a reasonable  
20 person does not feel free to leave, the officer should not  
21 prepare a UF-250, correct?

22 A. I don't believe so.

23 MS. COOKE: I object to the form. She is  
24 characterizing that Exhibit O3 was shown to 6,000 members. It  
25 is a lesson plan. It went to instructors.

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(212) 805-0300

D4P8FLO5

Shea - cross

1 THE COURT: 6,000 members were trained pursuant to  
2 this lesson plan?

3 THE WITNESS: Yes.

4 THE COURT: So now you can ask your follow-up  
5 question.

6 Q. According to the PowerPoint presentation that we just saw,  
7 which has been shown to the 6,000 people, if an officer  
8 interacts with a person such that that person does not feel  
9 free to leave, that the officer lacks reasonable suspicion, the  
10 officer should not prepare a UF-250, correct?

11 A. No, I would not agree. The officers are trained that if  
12 the person has reasonable suspicion -- if you have reasonable  
13 suspicion, then continue your investigation, and they are not  
14 free to leave. However, they are also trained that if you are  
15 not at the level of reasonable suspicion, then you cannot  
16 forcibly stop someone, and that's defined as when a reasonable  
17 person would not feel free to leave. So to say that they could  
18 be at DeBour and a reasonable person would not feel free to  
19 leave, that is not how we train them. We train them that if  
20 they are at level two, they have to make sure that they are not  
21 causing a reasonable person to feel they are not free to leave.

22 THE COURT: Her problem is a police officer and a  
23 stopped person may have pretty different views as to when  
24 you're free to go. We have heard testimony at the trial that  
25 most people who are stopped by police say, you have got to be

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D4P8FLO5

Shea - cross

1 scenario portion of the training at Rodman's Neck, where we  
2 have people at the DeBour level, who just either leave or want  
3 to leave and ask the officer, can I leave? And the officer is  
4 then graded on whether they know what level they are?

5 One scenario involves people where you have reasonable  
6 suspicion against one person in a hallway, but there are others  
7 who you do not, and there's multiple things happening and the  
8 officer has to make snap judgments on who is allowed to leave  
9 and who is not.

10 THE COURT: We are having a little colloquy, the  
11 witness and myself. So you can continue to observe the  
12 colloquy.

13 The problem is you're interested in the officer's  
14 mind, but the standard is whether an objectively reasonable  
15 person would feel free to leave. So, really, that officer has  
16 to say, would a person feel free to leave under the  
17 circumstance; not what do I think, but what would a reasonable  
18 person think? I guess that's hard to train them.

19 THE WITNESS: It's very difficult. I agree. We do  
20 train them to remember their body positioning, that you could  
21 affect a person's ability or feeling to leave, whether you're  
22 in uniform or plain clothes, whether your weapon is out or  
23 whether it's holstered, the tone of voice you use in speaking  
24 to them. We point out in the scenarios how you position  
25 yourself can clearly affect the person's ability. But you're

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D4P8FLO5 Shea - cross

1 100 percent right, at the end, it's what the person believes  
2 despite what we do.

3 THE COURT: Not that person. That would be  
4 subjective. We say objectively.

5 I guess if we were having this conversation outside  
6 the courtroom, having a pleasant cup of coffee somewhere, I  
7 would suggest to you that nobody feels free to leave when the  
8 police are questioning them on the street, and that's a  
9 problem. I don't know how you overcome that problem, but I  
10 don't suspect the average citizen feels free to leave when  
11 being questioned by a police officer.

12 Here we are. We are back in the courtroom. We just  
13 had our little moment in the virtual coffee house.

14 BY MS. HOFF VARNER:

15 Q. Chief Shea, before you designed the training materials that  
16 we just looked at, you conducted several focus groups, isn't  
17 that right?

18 A. Yes. I was involved in the design. Other people helped,  
19 various instructors. I was kind of at the top.

20 Q. But you personally conducted the focus groups, correct?

21 A. Yes.

22 Q. The participants at these focus groups included officers  
23 who had recently graduated from the police academy, correct?

24 A. Yes.

25 Q. And in those focus groups, you learned that the UF-250 form

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D4P8FLO5 Shea - cross

1 was being overused, isn't that right?

2 MS. COOKE: I note an objection for the record that  
3 this is beyond the scope of my direct examination. I purposely  
4 didn't get into repeating testimony by the chief regarding the  
5 steps prior to the development of the course, the development  
6 of the course, and, in particular, plaintiffs' counsel raised  
7 the objection before I began that this not be repetitive.

8 THE COURT: Well, I have a problem. These plaintiffs'  
9 counsel were not present at Ligon. I have to give them some  
10 leeway. You were present. You the city were present. You had  
11 an opportunity to ask. I am not sure I can bind them to a  
12 question that they would have asked had they been there. Not  
13 that they are criticizing Mr. Dunn and his fine group, but they  
14 weren't the counsel. So I have to give them a little leeway to  
15 ask questions.

16 MS. COOKE: I am noting my objection for the record  
17 that we are appearing to retread testimony.

18 THE COURT: I hope it's not retreading. I hope she is  
19 asking a question that wasn't asked by plaintiffs' counsel. I  
20 have to give her a little leeway. I don't have the transcript  
21 in front of me. I don't want to look at page and line.

22 I have to trust as an officer of the court you're not  
23 asking an identical question that was asked in that trial.

24 MS. HOFF VARNER: I am just laying a little bit of  
25 foundation and then we will move on to my real points, which

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D4P8FLO5 Shea - cross

1 were not raised in the Ligon hearing.

2 THE COURT: All right.

3 Q. I don't think I got your answer to the last question.

4 A. Could you repeat it, please?

5 Q. Sure. In those focus groups, you learned that the UF-250  
6 was being overused, isn't that right?

7 A. I learned from officer -- yes, I learned that officers were  
8 filling out UF-250s when they didn't need to.

9 Q. The participants in the focus groups didn't provide any  
10 data for the assertion that the UF-250s were being overused,  
11 correct?

12 A. By data? No, it was focus groups. It was conversational  
13 and anecdotal.

14 Q. You didn't do any follow-up to investigate whether it was  
15 in fact true that officers were overusing the UF-250, isn't  
16 that right?

17 A. That's right.

18 Q. So you took the word of the officers?

19 A. That there was a potential training issue, yes.

20 Q. Actually, there was a training issue because they were  
21 being overused?

22 A. Yes.

23 Q. To deal with this issue, you developed the training that we  
24 just saw that's designed to ensure that officers fill out fewer  
25 UF-250s, isn't that correct?

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D4P8FLO5

Shea - cross

1 A. No, it's not.

2 Q. Well, isn't it true that the training materials that we  
3 just reviewed emphasize that officers should not fill out a  
4 report for the incorrect reason or at the incorrect level of  
5 suspicion? And I am looking at page 1 of the lesson plan,  
6 which was Exhibit O3.

7 A. When I said it wasn't, I meant the way you -- I designed  
8 the lesson plan to ensure that they filled out a UF-250 when  
9 they were required to. I had no interest in lowering the  
10 number, which is what you said. My interest was that the  
11 UF-250 was filled out when it was required to be filled out by  
12 department procedure.

13 Q. And only when it was required to be filled out?

14 A. Yes.

15 Q. Which was only when an officer had reasonable suspicion?

16 A. When an officer stopped someone based on reasonable  
17 suspicion.

18 Q. If you look at Exhibit C4, which is the PowerPoint  
19 presentation slides, this also addresses the concern that  
20 officers were filling out UF-250s -- were overusing the UF-250  
21 form, correct?

22 A. I don't know if I would characterize it as overusing, and I  
23 don't want to quibble here, but they were using it incorrectly.  
24 They were filling it out with -- they were using it to document  
25 encounters that by department guidelines should have been

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D4P8FLO5 Shea - cross

1 documented differently. So it's not overusing. It was  
2 misusing.

3 Q. You testified at the Ligon preliminary injunction hearing  
4 that the UF-250 form was being overused, isn't that right?

5 A. Yes, because they were using it when they shouldn't.

6 Q. I am just trying to clarify that the word you used in your  
7 testimony was overused.

8 A. If you say so. Again, when you just asked, my concern was  
9 it was being used when it shouldn't have been, and the  
10 encounters were not being documented as per department  
11 guidelines, if they required to be documented.

12 Q. So your concern was that officers who were not making  
13 forcible stops were nevertheless using a UF-250 to document  
14 their stop, is that right?

15 A. Yes. That officers who were not making forcible stops, who  
16 were just encountering people at level one or two, were  
17 documenting that on a UF-250 form which they didn't need to.  
18 Or officers who were making a summary arrest, for instance,  
19 observing someone stealing someone's gold chain, that's a  
20 classic example, but making a summary arrest, were doing a  
21 UF-250 when in fact they began the encounter at the level of  
22 probable cause.

23 Q. So let's go ahead and look at Exhibit E4, which was also in  
24 evidence. This is the street encounters PowerPoint presented  
25 by the legal bureau at the Rodman's Neck stop, question and

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(212) 805-0300

D4P8FLO5 Shea - cross

1 frisk refresher course.

2 A. You just need to give me one second.

3 Q. It's also on the screen.

4 A. OK.

5 Q. So this particular training in Exhibit E4 instructed  
6 officers on what they could do in making a level two encounter,  
7 correct?

8 A. Could you show me the part you're referring to?

9 Q. Yes.

10 A. Thank you.

11 Q. It starts on page 14.

12 A. I'm there.

13 Q. If you look at page 16, which ends in Bates stamp 3000,  
14 this document instructs officers that at level two they can ask  
15 accusatory questions that would lead a person to believe that  
16 the police consider him a suspect. Did I read that correctly?

17 A. Pardon? I think I am there now. I am looking at 3000?

18 Q. Yes.

19 A. Level two scope of questioning. Yes.

20 Q. The first bullet point on this slide states that a member  
21 of the service, an MOS, may ask accusatory questions that would  
22 lead a person to believe that the police consider him a  
23 suspect.

24 A. Yes.

25 Q. And the second bullet point says -- the third bullet point

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D4P8FLO5 Shea - cross

- 1 says that an individual can refuse to answer, answer only some  
2 questions, and may walk away, correct?  
3 A. Yes.  
4 Q. So this is a level two stop, the individual should be free  
5 to walk away?  
6 A. Yes.  
7 Q. And if you turn to page 18 of the document, which ends in  
8 3002.  
9 A. Thank you.  
10 Q. This states that the police can't use force to detain an  
11 individual at level two. And that's correct, isn't it?  
12 A. The police may not use force? That's correct.  
13 Q. But it also says that a member of the service may ask, and  
14 an individual may consent, to a search of personal property,  
15 correct?  
16 A. Correct.  
17 Q. And if you look at page 19, just the next page in the  
18 document, this instructs officers that at level two, without  
19 making a forcible stop, they could place their hands on a  
20 holstered firearm, correct?  
21 A. Yes.  
22 Q. And it also instructs officers that at level two, they can  
23 draw and conceal their weapon, correct?  
24 A. Yes.  
25 Q. And it also instructs officers that at level two, they

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(212) 805-0300

D4P8FLO5

Shea - cross

1 could ask an individual to remove his or her hands from her  
2 pockets, direct the individual to remove an item held in his or  
3 her hand, or forcibly remove the individual's hand from his  
4 pocket, correct?

5 A. Yes.

6 Q. These actions might suggest to a reasonable person that  
7 they weren't free to leave, isn't that right?

8 A. This is the legal bureau's training material and it's based  
9 on -- they are doing it based on New York state court  
10 decisions.

11 THE COURT: Well, I guess you're the witness. She is  
12 saying, you think a reasonable person would feel free to leave  
13 if an officer forcibly removed their hand from their pocket?  
14 It's a fair question.

15 THE WITNESS: Fair question.

16 Again, I don't mean to quibble. I guess it depends.  
17 Certain reasonable people might not feel free to leave if the  
18 officer put their hands on them and removes their hands from  
19 their pocket. In other areas, they may still --

20 THE COURT: At other times a citizen will say, get  
21 your hands off my hands, I am walking out of here?

22 THE WITNESS: A version of that has happened to me on  
23 various times, where they would say, take your hands off me, am  
24 I under arrest, I'm leaving, I'm walking out of here. It  
25 depends. I don't want to give an answer like, oh, I guarantee

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D4P8FLO5

Shea - cross

1 anybody would feel free to leave or the opposite because I  
2 think it probably falls somewhere. But the legal decision came  
3 down and said that that was permissible at that level.

4 Q. It's one thing for you to say, get your hands off of my  
5 pockets, because you have the training and experience.

6 THE COURT: He didn't say that.

7 I think you meant you were the officer?

8 THE WITNESS: I was the officer.

9 THE COURT: He said a citizen said.

10 MS. HOFF VARNER: Thank you for the clarification. I  
11 was going to ask a whole other set of questions just based on  
12 that.

13 Q. Even if these actions don't necessarily suggest to that  
14 reasonable person that he is free to leave, isn't it true that  
15 there is nothing in this presentation that actually gives  
16 officers training on how to assess whether a person might  
17 reasonably feel free to leave during this encounter?

18 A. Yes.

19 Q. And nothing in this presentation gives officers training on  
20 the lines between a level two stop and a forcible level three  
21 stop or a Terry stop?

22 A. I think the whole training, this particular lesson is about  
23 the legal differences between a level two and level three.

24 Q. This presentation, like the other that we looked at  
25 already, teaches officers that a UF-250 must be prepared when

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D4P8FLO5 Shea - cross

1 the individual is stopped based on reasonable suspicion, is  
2 that right? It's on page 33, which ends in 3017.

3 A. I've got it. Maybe I don't have it.

4 Q. It ends in 3017. It's on the screen as well.

5 A. Yes.

6 Q. The NYPD's training materials have changed over time, isn't  
7 that true?

8 A. Yes.

9 Q. I now would like to show you Defendants' Exhibit S3, which  
10 is a lesson plan cover sheet for the 2006 basic plain clothes  
11 training course.

12 A. Thank you.

13 THE COURT: This is S3?

14 MS. HOFF VARNER: This is Defendants' S3.

15 THE COURT: Are you offering it?

16 MS. HOFF VARNER: I am.

17 THE COURT: I assume you don't object to it?

18 MS. COOKE: No objection.

19 THE COURT: S3 is received.

20 (Defendants' Exhibit S3 received in evidence)

21 Q. I just want you to look at the last, I think it's the last  
22 ten pages or so of the document, which are under the caption of  
23 assorted law topics. The Bates stamp, just for clarification,  
24 ends in 5786.

25 A. I think I am there.

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D4P8FLO5

Shea - cross

1 Q. So this is defined as and it's labeled as, "Basic plain  
2 clothes training for police officers and sergeants," correct?

3 A. Yes.

4 Q. And it's dated May 16, 2006, correct?

5 A. Yes.

6 Q. So now go ahead and turn to what is labeled as the document  
7 page 10, Bates stamp ending in 5789.

8 A. Yes.

9 Q. Actually, let me just go back to the prior page, which  
10 starts off this discussion, "Under the common law right of  
11 inquiry." Do you see that?

12 A. I see the words "common law right of inquiry" preceded by  
13 number 2?

14 Q. We are in the same place.

15 If you look at subsection (g) under item 2, it says,  
16 "What three things can an officer do under CLRI?" Do you see  
17 that?

18 A. Yes.

19 Q. And CLRI is the common law right of inquiry?

20 THE COURT: Where is this?

21 Thank you. I have got it.

22 Q. So under this question, "What three things can an officer  
23 do under CLRI?", there are three items. The first is continue  
24 to observe the individual; the second is approach and use the  
25 common law right of inquiry to ask name, address and

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D4P8FLO5 Shea - cross

1 explanation of conduct; and the third is ask for consent to  
2 search a bag. That's correct, right?

3 A. Yes.

4 Q. But six years later in 2012, as we just saw in Exhibit E4,  
5 there was a much longer list of things that officers could do  
6 under the common law right of inquiry without elevating the  
7 encounter to a level three encounter, correct?

8 THE COURT: I would like to see those six again.  
9 Is somebody pulling that up?

10 MS. HOFF VARNER: E4, please.

11 THE COURT: I have already forgotten the six.

12 MS. HOFF VARNER: It's page 19. The Bates number ends  
13 in -- it started on 3000.

14 Q. So in 2012, members of the service were trained that they  
15 could ask accusatory questions. And then if you go on to page  
16 3003, they were trained that they could place their hand on  
17 their firearm.

18 THE COURT: I remember those.

19 Q. Draw and conceal a weapon or forcibly remove the hand from  
20 the pocket.

21 And none of those items are included in the 2006 plain  
22 clothes training document, are they?

23 A. No.

24 Q. If you turn back to the plain clothes training document, on  
25 page 11, as of 2006, plain clothes officers were being trained

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D4P8FLO5 Shea - cross

1 Defendants' Exhibit K3, which was already introduced. And I  
2 think you have a copy of it.

3 This is the command level instructor's guide for the  
4 stop, question and frisk video serious number 5, correct?

5 A. Yes, it is.

6 Q. It was drafted in June 2012?

7 A. Yes.

8 Q. Again, this is a document provided to the instructor, not  
9 to the individual officers, correct?

10 A. Yes.

11 Q. It provides instructors with cues to help them instruct  
12 uniformed members of the service on the legal basis for making  
13 the stops, right?

14 A. Yes, it does.

15 Q. I assume that this is to ensure consistency among all of  
16 the officers who see the video, correct?

17 A. Among the training, that's the purpose of the lesson plans,  
18 yes.

19 Q. I just want to point out that this lesson plan highlights  
20 factors that might contribute to reasonable suspicion, isn't  
21 that right?

22 A. Where?

23 Q. Looking at page 3, Bates stamp ending 3137.

24 A. I'm there.

25 Q. So it highlights factors that may contribute to reasonable

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D4P8FLO5

Shea - cross

- 1 Q. And there is no note that flight is not by itself enough to  
2 establish reasonable suspicion, correct?
- 3 A. Correct.
- 4 Q. These are the only factors that are highlighted in the  
5 lesson plan as the factors that could lead up to reasonable  
6 suspicion?
- 7 A. No. They just define them as factors. They don't say they  
8 are all inclusive or they are the only ones.
- 9 Q. I understand. But these are the only ones that are  
10 discussed?
- 11 A. No. They are the only ones that are documented here. The  
12 trainers can discuss any others that they want.
- 13 Q. So the trainers can discuss any other ones that they want,  
14 but there is no guidance in this document that tells  
15 instructors that they should discuss other factors?
- 16 A. Correct.
- 17 Q. Again, if you turn to page 5. If you look at item 3A1.
- 18 A. Roman numeral 3A1 beginning "in every stop situation"?
- 19 Q. That's it.
- 20 A. I'm there.
- 21 Q. "In every stop situation that is based on reasonable  
22 suspicion, this form" -- meaning the UF-250 -- "must be used."  
23 That's a correct statement of the training, correct?
- 24 A. Yes.
- 25 Q. And it also states under item 6 that, "Supervisors should

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D4P8FLO5 Shea - cross

1 be evaluating officers' field stops and searches for courtesy,  
2 professionalism and respect and ability to prevent and identify  
3 criminal activity."

4 This sentence that I just read does not include  
5 evaluating field stops to ensure that they are based on  
6 constitutional standards for reasonable suspicion, does it?

7 A. No.

8 Q. And it also states that -- actually, strike that.

9 I am now going to show you what I don't think -- I am  
10 actually not sure if this is in evidence, but it is Plaintiffs'  
11 Exhibit 368.

12 This is the script for film number 5, and it  
13 corresponds with the -- this is the script for the video that  
14 corresponds with the lesson plan that we just looked at,  
15 correct?

16 MS. COOKE: I think you objected to these scripts  
17 because the video wasn't coming in so neither of the scripts  
18 came in.

19 THE COURT: You said, if the video is not in, why  
20 should the script be in?

21 MS. HOFF VARNER: But I intend to introduce video  
22 number 5 alone, and only the portion that was already viewed by  
23 this Court in the Ligon injunctive relief hearing.

24 THE COURT: She does want video number 5. What you  
25 point out, Ms. Cooke, is in the record of the Ligon trial. I

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(212) 805-0300

D4P8FLO5

Shea - cross

1 don't remember everything that I heard in the Ligon trial. It  
2 was in October. So there is no problem in being sure that  
3 video 5 and the transcripts are in. So I will admit 368.

4 MS. COOKE: To the extent she is only admitting an  
5 excerpt of the video, it should only be an excerpt of the  
6 transcript.

7 MS. HOFF VARNER: That's fine.  
8 (Plaintiffs' Exhibit 368 received in evidence)

9 Q. I want to turn your attention to page 5 of this script.

10 THE COURT: Is that Bates 1363?

11 MS. HOFF VARNER: 1364.

12 THE COURT: Go ahead.

13 Q. Before we do this, do you recognize that this document is  
14 the script of video number 5 for the stop, question and frisk  
15 video series?

16 A. During June 2012, yes.

17 Q. Looking back on page 5, this script states that, "Usually  
18 just verbal commands, such as 'stop, police,' will not  
19 constitute a seizure." Do you see that line of the script?

20 A. Yes.

21 MS. HOFF VARNER: I would move that portion into  
22 evidence.

23 THE COURT: Right. That's fine. 1364 and 1365.

24 MS. COOKE: Of exhibit what?

25 MS. HOFF VARNER: Plaintiffs' Exhibit 368.

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(212) 805-0300

D4P8FLO5

Shea - cross

1           Actually, your Honor, I would also move the first page  
2 in just so --

3           THE COURT: Identifying it as film number 5?

4           MS. HOFF VARNER: So the Court can figure out what we  
5 are talking.

6           THE COURT: Sure. That's fine.

7           MS. HOFF VARNER: And that ends in Bates stamp 1359.

8 Q. I think you already testified that police officers are --  
9 virtually every police officer in the city has now seen this  
10 video, is that right?

11 A. The majority.

12           MS. COOKE: I would just raise an objection. Pursuant  
13 to the doctrine of completeness, I think that the entire video  
14 and the entire script should come in.

15           THE COURT: That's fine too. I am sure the plaintiff  
16 doesn't object. If that's more straightforward and simple,  
17 that's fine. The entire video and the entire transcript are  
18 now in evidence. Video number 5 and Plaintiffs' Exhibit 368  
19 are all in evidence. I think this is coming straight out of  
20 the opinion. It does sound familiar.

21           MS. HOFF VARNER: I also, pursuant to the doctrine of  
22 completeness, move to admit the video, which is marked as  
23 Plaintiffs' 369.

24           THE COURT: 369 is received.

25           (Plaintiffs' Exhibit 369 received in evidence)

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(212) 805-0300

D4P8FLO5 Shea - cross

1 MS. HOFF VARNER: And if defendants want to show it, I  
2 will be happy to bring popcorn.

3 THE COURT: I am afraid it will have to be virtual.

4 BY MS. HOFF VARNER:

5 Q. Chief Shea, at the end of the day, you would agree that as  
6 a result of the Rodman's Neck training, the NYPD was  
7 instructing officers to fill out UF-250s only when they have  
8 reasonable suspicion that the person stopped had committed, was  
9 committing, or was about to commit a crime?

10 A. Yes.

11 Q. The NYPD was training officers that they could ask  
12 accusatory questions, make demands, and even display their gun  
13 at a level two encounter, all without making a forcible stop,  
14 correct?

15 THE COURT: I don't think it said display gun.

16 A. It didn't.

17 THE COURT: You can put your hand on the gun and  
18 conceal it.

19 Q. Or place their hand on a holstered gun?

20 A. Yes.

21 Q. All without elevating the encounter to a level three  
22 encounter?

23 A. Yes.

24 Q. Even though, as you just testified, a reasonable person  
25 might feel that he or she was not free to leave under those

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(212) 805-0300

D4P8FLO5 Shea - cross

1 circumstances?

2 A. It's the totality of the circumstances. Could that  
3 contribute to it? Sure.

4 Q. And this training would result in fewer UF-250s being  
5 completed, isn't that correct?

6 MS. COOKE: Objection, your Honor. I think that calls  
7 for speculation.

8 THE COURT: No. I don't think it does. Basically, if  
9 you don't have to fill it out, it's less than if you did have  
10 to fill it out. It doesn't call for speculation. If you had  
11 to fill it out, under those circumstances, there would be more  
12 250s.

13 MS. COOKE: I guess speculative in terms of the number  
14 of 250s -- the number of stops that are occurring, period.

15 THE COURT: I didn't understand what you said.

16 MS. COOKE: It's speculative because it's presuming he  
17 is aware of the number of stops that would be --

18 THE COURT: No. She is just saying, whatever that  
19 number is, it would be more if it was these level two stops as  
20 defined in these training materials. If all of those level two  
21 as defined in these training material required a 250, it would  
22 be X plus.

23 MS. COOKE: It's more than one.

24 THE COURT: It's X plus something.

25 You don't disagree with that? If you had to fill them

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D4P8FLO5 Shea - cross

1 out, it would be more than it is now.

2 THE WITNESS: The purpose of the training -- as you  
3 pointed out, I didn't do any data checks after those focus  
4 groups. I was anecdotally told by a lot of people that they  
5 were doing them incorrectly, and we corrected that. I never  
6 did a data check to answer that officially.

7 Q. Actually, I think you said that they were overusing the  
8 UF-250 form, and then you corrected the overuse?

9 A. I am sorry I am using overuse and incorrect together. It's  
10 the same thing.

11 THE COURT: You mean to say there is both underuse and  
12 overuse?

13 THE WITNESS: Pardon me?

14 THE COURT: You mean to say there was both underuse  
15 and overuse?

16 THE WITNESS: Specifically what I got from the focus  
17 groups would be overuse. They were documenting stops that did  
18 not rise to the level of a reasonable suspicious stop. Not  
19 even a stop, just a street encounter; they were documenting a  
20 common street encounter on a UF-250.

21 Q. So by correcting that problem, that would result in fewer  
22 UF-250s being prepared, correct?

23 A. Yes. All I am pointing out, and again, I didn't do a data  
24 check to make sure that was true. I just took that anecdotal  
25 thing and said, we have to correct that if true and make sure

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D4P8FLO5 Shea - cross

1 that we reinforce the correct instructions.

2 Q. Are you aware that there were fewer UF-250s completed in  
3 2012 than there were in 2011?

4 A. Anecdotally.

5 Q. Anecdotally you are aware of that?

6 A. Yes.

7 THE COURT: Just anecdotally, you haven't seen the  
8 statistics on that?

9 THE WITNESS: No. I have been doing this gang thing.

10 THE COURT: That's true.

11 Q. I would now like to show you Defendants' Exhibit Q11, which  
12 is the 2012 draft of policing legally street encounters.

13 This is the section of the police student's guide that  
14 is specifically dedicated to training recruits about stop and  
15 frisk, correct?

16 A. About street encounters, yes, which include stop and frisk.

17 Q. Do you recognize this document Q11?

18 A. Yes.

19 MS. HOFF VARNER: I would move to have it admitted.

20 MS. COOKE: No objection.

21 THE COURT: Q11 is received.

22 (Defendants' Exhibit Q11 received in evidence)

23 Q. Turn your attention to page 16, Bates number 5787.

24 This document trains officers on a few common factors  
25 which would give officers reasonable suspicion, correct?

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D4P8FLO5 Shea - cross

1 A. Just to be specific, recruit officers. This is from the  
2 recruit school, yes.

3 Q. If you look at the section labeled, "Factors that may lead  
4 to reasonable suspicion," it states, "The courts, however, have  
5 identified a few common factors which would give an officer  
6 reasonable suspicion," correct?

7 A. Yes.

8 Q. And those factors include information from an informant?

9 A. Yes.

10 Q. And furtive behavior?

11 A. Yes.

12 Q. Resemblance to the suspect of a crime?

13 A. Yes.

14 Q. And flight, correct?

15 A. Yes.

16 Q. And you would agree that the description here provides some  
17 objective and written standards for those four factors that  
18 might lead to reasonable suspicion, correct?

19 A. Yes.

20 Q. But there is no written training on other factors that  
21 might lead to reasonable suspicion, is there?

22 THE COURT: What about this next sentence, "Patrol  
23 guide also states additional factors which could contribute to  
24 reasonable suspicion"?

25 Q. Let me go back. There also is a bullet-pointed list that

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(212) 805-0300

D4P8FLO5

Shea - cross

1 identifies other factors that can contribute to reasonable  
2 suspicion?

3 A. Yes.

4 Q. But there is no explanatory test, is there?

5 A. Not on the bullet-pointed list, no.

6 Q. There is no detailed description like the detailed  
7 description you see for furtive behavior or information from  
8 the informant?

9 THE COURT: He is going to say, yes, there is no  
10 narrative. But does one need a narrative for time of day or  
11 night? Some things don't need definitions and others might.

12 Q. Let's take one example of that. You would agree that there  
13 is no detailed training on the --

14 THE COURT: This is not going to be productive. None  
15 of these bullet points have narrative sections. I understand  
16 that. I am just pointing out for the record that some are  
17 self-explanatory, like time of day or night. Others might not  
18 be.

19 Q. You just testified that time of day or night could be one  
20 of the factors you check off with respect to a robbery pattern,  
21 correct?

22 A. If it's applicable.

23 Q. And you provided testimony about how time of day or night  
24 would factor into reasonable suspicion about a robbery pattern,  
25 correct?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D4P8FLO5 Shea - cross

1 A. I remember mentioning it. I don't remember testifying much  
2 about it.

3 Q. But that testimony, that description that you just gave,  
4 does not appear in Defendants' Exhibit Q11, does it?

5 A. No.

6 THE COURT: No description of the bullet points  
7 appears in Q11.

8 Q. Isn't it true that the high-crime area as a factor for  
9 reasonable suspicion could also encompass a whole range of  
10 circumstances that you can't figure out just by looking at the  
11 form?

12 THE COURT: Where is high-crime area? The particular  
13 streets and areas involved?

14 MS. HOFF VARNER: Yes, your Honor.

15 THE COURT: What is your question about that?

16 Q. Isn't it true that that particular factor could encompass a  
17 whole range of circumstances that you can't figure out just by  
18 checking off the box on the form?

19 A. It could encompass a whole range of factors that can't be  
20 identified just by a check box, that's what you're asking me?

21 Q. Yes.

22 A. Yes.

23 Q. Again, there is no detailed description --

24 THE COURT: Don't ask that again. There is no  
25 description for any of these bullet points. I see that. This

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(212) 805-0300

D4P8FLO5 Shea - cross

1 is a nonjury trial, remember? I know there is no detailed  
2 description of the bullet points. I have said it four times.  
3 Q. You testified that as part of the NYPD training you conduct  
4 role plays and scenarios, correct?  
5 A. Yes.  
6 Q. And I think you said that those were an important part of  
7 the curriculum?  
8 A. Yes.  
9 Q. I am going to show you what has been marked as Defendants'  
10 Exhibit N3, which was moved into evidence already. This is an  
11 instructor assessment guide, stop, question and frisk role  
12 play, December 18, 2003/2008.

13 MS. COOKE: I don't think N3 is in evidence.

14 MS. HOFF VARNER: Let me fix that.

15 THE COURT: Did you say N or M?

16 MS. HOFF VARNER: N, as in Nancy.

17 THE COURT: Any objection?

18 MS. COOKE: No, your Honor, except I used the most  
19 current version because I was trying to limit the paper.

20 THE COURT: Why are we using this older version, Ms.  
21 Hoff Varner?

22 We have a current version of this?

23 MS. COOKE: Plaintiffs' Trial Exhibit 287.

24 THE COURT: That's in evidence?

25 MS. COOKE: Yes.

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(212) 805-0300

D4P8FLO5

Shea - cross

1 THE COURT: Why aren't you using Plaintiffs' 287?  
2 You weren't even doing training in 2003, were you?

3 THE WITNESS: No, ma'am.

4 MS. HOFF VARNER: I would just note under the footer,  
5 it actually says, "Curriculum Development Unit October 2008."

6 THE COURT: Were you doing it then?

7 THE WITNESS: No, ma'am.

8 THE COURT: You don't want to use the current version?  
9 You want to use this old version? Go ahead if you really want  
10 to.

11 MS. HOFF VARNER: It was additional --

12 THE COURT: OK.

13 Q. All I want to do is show you the various fact patterns that  
14 have been the subject of scenarios at the police academy.

15 If you look at N3, scene one, which ends in Bates  
16 stamp 5803, this is a fact pattern for a stop, question and  
17 frisk role play, and it involves an anonymous informant who  
18 phones the police and gives a detailed description of a subject  
19 carrying a gun at the location, correct?

20 A. "Anonymous informant phones police, gives detailed  
21 description of a subject carrying gun at the location, suspect  
22 is waiting for the bus."

23 Q. If you turn to the next page, scene two, this again is a  
24 fact pattern about an identified caller who will state that he  
25 or she observed one individual passing a gun to another

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(212) 805-0300

D4P8FLO5 Shea - cross

1 individual, correct?

2 A. Yes.

3 Q. Both of these scenarios rely on some sort of a suspect  
4 description?

5 A. Yes.

6 Q. And if we were to look at Plaintiffs' Exhibit 387, which I  
7 now understand is the more updated version, those two scenarios  
8 also both involve some sort of a suspect description, correct?

9 A. Yes.

10 Q. Let's turn back to Defendants' Exhibit Q11, the policing  
11 legally street encounters guide. Pages 29 and 30 provide role  
12 play scenarios related to stop and frisk, correct?

13 A. Yes.

14 Q. On page 29, we have a scenario with a radio run of a man  
15 with a gun, and then there is also a robbery pattern involving  
16 a suspect with a specific description, correct?

17 A. Yes.

18 Q. And if you turn the page to page 30, scenario two is based  
19 on a radio run for a suspicious male with a gun who is later  
20 described by a complainant, correct?

21 A. Yes.

22 Q. And again, these scenarios rely on some sort of a suspect  
23 description, isn't that right?

24 A. Yes.

25 Q. I now want to show you what I think is in evidence as

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(212) 805-0300

D4P8FLO5 Shea - cross

1 Defendants' Exhibit Q3. This is the lesson plan cover sheet  
2 for the sergeant's leadership course.

3 You have testified that this includes live simulations  
4 that newly promoted sergeants go through as part of their  
5 leadership training?

6 A. Yes.

7 Q. If you look at page 2 of this document, there is a  
8 description of a live simulation of a stop based on a  
9 description of a man with a gun, correct?

10 A. Yes. You're not there yet, but yes.

11 Q. There is a description of a man with a gun, and this is a  
12 scenario for sergeant training, correct?

13 A. Yes.

14 Q. Of these scenarios, all of these scenarios that we just  
15 looked at, they are all based on some sort of a suspect  
16 description, correct?

17 A. Yes.

18 Q. And none of these role plays are based on furtive  
19 movements, correct?

20 A. No. There are furtive movements in addition to the  
21 description, or a lack of furtive movements in addition to the  
22 description described in some of these role plays, but they all  
23 begin with a radio run of a description.

24 Q. And because they all begin with a radio run of a  
25 description, none of these role plays involve a self-initiated

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(212) 805-0300

D4P8FLO5 Shea - cross

1 stop, isn't that correct?

2 A. Correct.

3 Q. I also just wanted to flag on the sergeant's training  
4 scenario, this scenario is designed to help sergeants  
5 understand how to deal with the charge of racial profiling,  
6 correct, at least in part?

7 A. You would have to show me the scenario we are discussing.

8 MS. HOFF VARNER: If we could just flip back to  
9 Defendants' Exhibit Q3.

10 If you go to the next page, please.

11 I think I have the wrong one.

12 THE COURT: Given that it's 4:30, and it's painfully  
13 apparent we are not going to finish your testimony today, we  
14 may as well stop. The Court has decided we are not sitting  
15 tomorrow. So we will not be reconvening until Monday. You're  
16 needed back on Monday at 10:00.

17 I think that's it, unless anybody has anything.

18 All right. See you Monday at 10:00.

19 (Adjourned to April 29, 2013, at 10:00 a.m.)

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INDEX OF EXAMINATION		
1		
2	Examination of:	Page
3	JAMES McCARTHY	
4	Direct By Ms. Borchetta . . . . .	.4969
5	Cross By Ms. Richardson . . . . .	.4979
6	Redirect By Ms. Borchetta . . . . .	.4992
7	JAMES SHEA	
8	Direct By Ms. Cooke . . . . .	.5016
9	Cross By Ms. Hoff Varner . . . . .	.5118
10	PLAINTIFF EXHIBITS	
11	Exhibit No.	Received
12	284T, 289T, 297T1, 297T2, and 332T . . . . .	.4998
13	387 . . . . .	.5112
14	368 . . . . .	.5149
15	369 . . . . .	.5150
16	DEFENDANT EXHIBITS	
17	Exhibit No.	Received
18	C8 and W3 . . . . .	.5022
19	P11 and V5 . . . . .	.5048
20	U11 and R5 . . . . .	.5059
21	V11 and M5 . . . . .	.5069
22	S11 and P3 . . . . .	.5073
23	R11 . . . . .	.5085
24	C3 and O4 . . . . .	.5088
25	J11 . . . . .	.5089

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1 T3 . . . . . .5090  
2 G4 . . . . . .5091  
3 Q3, R3, and Y3 . . . . . .5098  
4 L3, M3, and E4 . . . . . .5103  
5 K3 . . . . . .5111  
6 S3 . . . . . .5141  
7 Q11 . . . . . .5154  
8  
9  
10  
11  
12  
13  
14  
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18  
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