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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 30, 2013
10:05 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

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21 CENTER FOR CONSTITUTIONAL RIGHTS
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APPEARANCES (Cont'd)

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1 (Trial resumed)

2 KENNETH LEHR, resumed.

3 MS. BORCHETTA: The parties have a brief stipulation
4 that we would like to put on the record.

5 The parties have stipulated to the following facts.
6 Inspector Helen McAleer's testimony at trial transcript pages
7 3998, line 25, from the sentence beginning "and unfortunately,"
8 to 3999, line 1, and 4010, lines 1 to 2, that the NYPD
9 conducted an investigation into the November 2008 racial
10 profiling allegation against Police Officer Jonathan
11 Rothenberg, OCD case number 0854288, is stricken from the
12 record. And the NYPD is unable to determine whether or not an
13 investigation into the November 2008 racial profiling
14 allegation against Police Officer Jonathan Rothenberg was
15 conducted.

16 THE COURT: I am looking confused because it's unusual
17 to strike ten pages of testimony.

18 MS. COOKE: It was one page, 3998 to 3999, a couple of
19 sentences. And on 4010, those two lines. It's a total of four
20 lines of testimony.

21 THE COURT: Anyway, what is it all about?

22 MS. COOKE: If you recall, Inspector McAleer testified
23 with respect to paperwork that her staff had called PS2
24 regarding an investigation filed, the case filed that Ms.
25 Borchetta mentioned. We then, in response to plaintiffs'

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1 counsel request, provided a declaration from the individual
2 whom Inspector McAleer's staff had spoken to and who had
3 conducted the search for that relevant paperwork, which could
4 not be identified because there had been flooding of raw sewage
5 related to Hurricane Sandy in the basement storage records room
6 of PS2. So because paperwork was destroyed and could not be
7 identified, it can't be identified whether or not, in fact, the
8 investigation steps were taken and what those were and what the
9 disposition was. So we have stricken four lines of testimony
10 to clarify that.

11 THE COURT: OK. I think I understand.

12 I also received a letter through my law clerk from Ms.
13 Borchetta. It's dated last night at 10 after 8. Essentially
14 asking for proffers of certain remaining witnesses.

15 Does the city want to respond to that in writing or
16 orally?

17 MS. GROSSMAN: I didn't have a chance to review that
18 letter, but we would like to respond in writing if that's
19 possible.

20 THE COURT: Maybe not. Maybe when you review it, you
21 will decide you don't have to.

22 MS. GROSSMAN: If I may just have an opportunity to
23 review it and at lunchtime I can look at it.

24 THE COURT: And let me know how you want to proceed.
25 You may not want to respond in writing because maybe you will

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1 be able to respond or do what she asks. OK. So we will
2 address that later today.

3 Inspector Lehr, we are continuing.

4 DIRECT EXAMINATION (Cont'd)

5 BY MS. GROSSMAN:

6 Q. Good morning, Inspector.

7 A. Good morning.

8 Q. Yesterday you testified that the 67 Precinct --

9 THE COURT: Can I interrupt?

10 Were you able to sort of give that homework assignment
11 to the administrative person in the precinct?

12 THE WITNESS: Yes, your Honor.

13 THE COURT: Are they working on it as we speak or is
14 it done already?

15 THE WITNESS: It's completed.

16 MS. GROSSMAN: Your Honor, it's in the works, and we
17 are getting documents as we speak. So we are going to have
18 someone redact them and try to make arrangements for
19 production. So I have to go back to my office later at the end
20 of the day and see where they stand and then assess the
21 redaction process. But I don't anticipate that it will take
22 more than a day or two. We will try to turn that around as
23 quickly as possible.

24 MS. HOFF VARNER: In the interim, I just wanted to
25 renew our motion to strike the relevant testimony from

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1 yesterday. If the city produces the documents, they will have
2 an opportunity to elicit it again, and until that point, we
3 think it should be deleted.

4 THE COURT: I will just hold off on that request until
5 you get the documents, assess it, figure out what to do about
6 it.

7 It may mean you may have to come back for some
8 questions. That's the only thing. Once the city turns it over
9 to the plaintiff, the plaintiff may have some questions and you
10 may have to come back.

11 THE WITNESS: I understand.

12 THE COURT: Now we are ready to proceed.

13 BY MS. GROSSMAN:

14 Q. Yesterday you testified that the 67 Precinct conducted
15 about 70 OCD investigations per month. Do you recall that
16 testimony?

17 A. Yes.

18 Q. Now, since complying with the Court's order from yesterday,
19 did you have occasion to find out the total number of OCD
20 investigations that were actually --

21 THE COURT: In what period?

22 Q. From the beginning of January 2013 to present?

23 THE COURT: That's fair.

24 What is the problem? I would like to know the answer.

25 MS. HOFF VARNER: I'm sorry. The question?

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1 THE COURT: How many investigations between January 1,
2 2013 to date?

3 A. I would just like to clarify. Yesterday I said that the 67
4 Precinct averaged 70 of those investigations per month going
5 back to 2012. When we actually looked at that, that was the
6 total number of communications of which the chief of department
7 communications are a subtotal.

8 So we boiled it down for the new year, for 2013, how
9 many of the total communications, which year to date we had
10 278, how many of those -- which were still about 70 per month
11 through April -- how many of those were chief of department
12 communications, which was what we were talking about here. It
13 turned out we had 107 year to date what we are talking about
14 here. So our real average for those specific type of
15 communications was about 26, 27 per month for the year.

16 THE COURT: That's from the chief of department. What
17 was the 70 referred to?

18 THE WITNESS: What happens is that number is inflated
19 by other things that get numbers. It could be memos, it could
20 be some directives that come down from overhead commands,
21 meaning the borough, patrol service bureau or chief of
22 department. When I had asked my administrative lieutenant for
23 an average of how many we were getting per month, there was a
24 breakdown of communication on my part. I should have clarified
25 that we were just talking specifically about chief of

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1 department investigations, and he included the total number.
2 So I am sorry for any confusion with that.

3 THE COURT: That's fine. I am glad we straightened it
4 out.

5 Q. So there are about 25 average office of chief of department
6 investigations relating to police encounters with the public?

7 A. Yes. For 2013, the first four months, it's roughly 25, 26.

8 Q. Of those, approximately how many relate to stop, question
9 and frisk?

10 MS. GROSSMAN: Subject to proving up --

11 THE COURT: I understand.

12 In 2013, of the 107, how many relate to stop and
13 frisk?

14 THE WITNESS: I had my staff at a glance go through
15 them manually last night, and what they identified were six
16 that possibly stem from a stop, question and frisk situation
17 that we have identified, but they will all be available.

18 THE COURT: To your knowledge, this hasn't been done
19 for 2012, this analysis?

20 THE WITNESS: No, it hasn't.

21 THE COURT: I just want to make sure.

22 So it was done at my request for 2013?

23 THE WITNESS: Yes. They worked through the night to
24 get me that information.

25 Q. Now, when you were the integrity control officer, did you

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1 there was actually an interview with the complainant?

2 MS. HOFF VARNER: Objection. All of this was asked
3 and answered from yesterday's testimony.

4 THE COURT: We are focusing on OCD complaints. I will
5 allow it.

6 A. Yes.

7 THE COURT: It would be best if she would just ask you
8 what was done rather than a leading question.

9 Q. What have you looked at to determine the adequacy of the
10 OCD investigations that you have reviewed?

11 A. Just to reiterate, the important thing is that all parties
12 are interviewed so we can get all sides of the story. The
13 complainant, number one, that's the person who is generating
14 the complaint in the first place; any members of the service
15 that may have been involved in this so we can get different
16 perspectives on whatever happened; any corresponding department
17 records that would add to the investigation to make sure that
18 we have got everybody included that was there and maybe has a
19 vantage point that can shed some light, further light on the
20 situation. And then any corrective action that needs to be
21 taken.

22 Q. So now returning back to, we started talking about
23 performance monitoring yesterday so I just want to return to
24 that topic referring to Defendants' Exhibit Z3.

25 MS. GROSSMAN: Your Honor, do you need another copy?

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1 THE COURT: Which one is it again?

2 MS. GROSSMAN: Defendants' Z3.

3 THE COURT: I have it.

4 Q. I think we put on the screen NYC_2_00006350. That was the
5 performance monitoring criteria.

6 Now, we discussed yesterday some of the steps that you
7 as commanding officer would take once you are noticed that an
8 officer is on performance monitoring. At some point you
9 mentioned you would actually bring the officer in and have a
10 face-to-face meeting, right?

11 A. Yes.

12 Q. Can you tell the Court what it is that you discuss with
13 that officer and what your goal is when you have such a
14 meeting?

15 A. Well, we will review the actions that got them in trouble
16 in the first place and got them into the performance monitoring
17 program. We will take a look -- in one of these cases, it's
18 usually a compilation of things that happened. We will review
19 that and look for a common thread. Are they making the same
20 mistake over and over again, or is it more of a widespread
21 approach to the way they are going about their work?

22 Once I identify the weaknesses in the officer's
23 approach, we will discuss that. Also, come up with, depending
24 on what those findings are, basically some recommendations on
25 how they can correct their action and maybe better navigate

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1 these types of situations without getting into a problem.

2 Q. Do you actually discuss the civilian complaints that are
3 attached to the file that you receive?

4 A. Yes. If they are entered because of an accumulation of
5 CCRBs, we will go through their whole history with civilian
6 complaints. Also, I will discuss with them exactly what their
7 obligations are to successfully complete the program, what the
8 time limits on the program are, and what the ramifications are
9 at the end of the road, in terms of basically the whole
10 perspective on what the performance monitoring program is, I
11 apprise them of all of that.

12 Q. Are there discussions about the impact that being on
13 performance monitoring has on an officer's career in the police
14 department?

15 A. Yes.

16 Q. Can you explain what you discuss with the officers?

17 A. Well, I take the opportunity, while I have them in front of
18 me, to discuss with them -- I will ask them, what are your
19 career goals? What are your aspirations within the NYPD?
20 There are a lot of different avenues you can go down in the
21 NYPD, whether you want to go to emergency service, if you want
22 to try and become a detective, but there is a lot of different
23 career paths. No matter what path they are looking to go to,
24 their inclusion in the performance monitoring program, it's
25 going to impede their career, and if they are serious about

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1 being a police officer and making this their career, then they
2 are going to have to successfully get through this program and
3 hopefully not return back into it. So I will lay all that out,
4 and I will talk about how it can hurt them when they are in
5 competition for a career path opportunity with somebody who
6 maybe doesn't have negative or performance monitoring in their
7 history.

8 Q. Now, are you aware of occasions where officers have been
9 held up in terms of promotion because they have been on
10 performance monitoring?

11 A. Yes.

12 Q. Now, specifically, with respect to some of the discussions
13 you had regarding civilian complaints when an officer is on
14 monitoring, what are some of the specifics that you are looking
15 for when you're looking at the CCRB cases?

16 A. Well, the CCRB criteria, you're talking about FADO
17 allegations -- force, abuse of authority, discourtesy, obscene
18 language, discourtesy. What I will do is I will take a look.
19 If they are accumulating multiple CCRBs, are they falling into
20 the same category?

21 Q. What kind of categories?

22 A. If it's for force, then I would talk -- let's say somebody
23 got three, the minimum criteria to get into the program. If
24 all three are force, then I want to focus in on exactly -- I
25 will get into the CCRBs, what is in the text of the complaint

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1 and try and identify what is happening here, why is this
2 officer getting these type of complaints? If it's discourtesy,
3 I will look for a common thread. Is there a remark that the
4 officer is making repeatedly? If there is something that they
5 purge from their interaction with the complainant, can they
6 maybe not fall into a situation -- can they not get into a
7 situation where they are disrespecting somebody else to the
8 point where it's going to generate a CCRB on them and they are
9 going to have to be disciplined for it.

10 So I will look for these type of things because,
11 basically, I will be able to more accurately give
12 recommendations to the specific officer on how to correct their
13 actions.

14 Q. What are some of the available options for you to remediate
15 a problem with an officer who is on monitoring?

16 A. Well, the officers in the 67 who have gone into performance
17 monitoring, we send them to training. There is a two day
18 training course which is designed and aimed at, you know,
19 basically focusing in on the department's commitment to
20 courtesy, professionalism, and respect, and raise their
21 awareness of these things.

22 Q. Do you have options available in terms of reassigning
23 officers from one tour to another or in other -- let me
24 rephrase it.

25 Do you have other options available to you in terms of

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1 changing an officer's assignment?

2 A. Yes.

3 Q. What would be examples of circumstances where you might
4 change an officer's assignment?

5 A. If somebody in say a specialized unit was accumulating
6 CCRBs and I felt like they were not -- I sat down with them and
7 discussed what the issue was, and I felt like they weren't
8 making adjustments in their approach by my own observations, I
9 have moved people out of assignments and put them back into a
10 uniformed assignment for that.

11 Q. Now, are you required to document the fact that you had a
12 meeting with an officer on performance monitoring?

13 A. Yes.

14 Q. Is that required by the employee management division?

15 A. Yes.

16 Q. How do you go about documenting that meeting?

17 A. There is a form that requires a signature of myself as well
18 as the subject officer.

19 Q. Is that form generally attached to the packet of material
20 that the employee management division sends to you?

21 A. It comes down with the folder down through channels. It
22 gets endorsed by myself and the subject officer and goes back
23 up to employee management division.

24 Q. So the subject officer also has to sign this piece of
25 paper?

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1 A. Yes.

2 Q. Do you also speak to an officer's immediate supervisor and
3 the lieutenant about an officer who is on monitoring?

4 A. Yes.

5 Q. What is the purpose of that meeting with the lieutenant and
6 direct supervisor?7 A. I want them to be aware of what the problem is, and I
8 expect them to increase the level of supervision and provide
9 some guidance to the officer.10 Q. With respect to officers who are on performance monitoring,
11 what role do you have your ICO play in monitoring an officer?12 A. The ICO has to have -- what I direct them to do, and what
13 they are doing, is having consistent interaction with the
14 subject officers and monitoring their performance, both by
15 engaging them in a dialogue as well as making patrol
16 observations on how they are doing in the street and their
17 interaction with the public, even in a station house setting as
18 well.19 Q. Are these observations in the presence of the officer or
20 from a distance from the officer?

21 A. Both.

22 Q. How long is an officer on performance monitoring?

23 A. One year.

24 Q. At level one, looking at the different levels, there is
25 level one, level two, and I think if you go down a little there

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1 is level three?

2 A. Correct.

3 Q. How long is an officer on performance monitoring when it's
4 level one?

5 A. One year.

6 Q. Do you have to evaluate the officer after a certain period
7 of time?

8 A. Yes. At the ten month mark, I have to make a
9 recommendation on -- I have to report on and make
10 recommendation on, number one, the officer's performance, how
11 have they done since they were put in performance monitoring?
12 I have to make recommendation on whether I believe they should
13 continue to be in level one monitoring or if I make a
14 recommendation that their behavior is to the point where they
15 need to be elevated to a level two or three.

16 Q. What are some of the considerations you take into account
17 when you are making that recommendation?

18 A. What I am looking for is, did the officer who had the
19 problem in the first place make an adjustment to the way that
20 they are policing? That's what I am looking for. I am looking
21 for them to correct the deficient behavior.

22 Q. Now, are you also considering whether there are additional
23 civilian complaints that have been lodged against that officer?

24 A. The way the program works is if they get another civilian
25 complaint after being entered into the program, the clock

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1 starts over. So that one year period that we discussed for
2 level one monitoring, if a police officer goes through a nine
3 month period without a civilian complaint but then gets one,
4 the clock starts all over. So they are still going to be in
5 the performance monitoring program. They have to go a year
6 without a another one to rotate out of the program.

7 Q. During your years as commanding officer of the various
8 commands, in Transit District, 9th Precinct and 67 Precinct,
9 have you had occasion to remove an officer from enforcement
10 duties as a result of being on performance monitoring?

11 A. Yes.

12 Q. When the clock starts running again when an officer
13 receives a civilian complaint, does it matter if that civilian
14 complaint is substantiated or unsubstantiated?

15 A. The disposition is separate and apart. The fact that the
16 civilian complaint is lodged is enough to get the officer
17 entered in the program and to extend it.

18 Q. Now, does the receipt of an OCD complaint factor into your
19 decision whether to remove the officer from level one
20 monitoring?

21 A. Yes.

22 Q. How so?

23 A. Depending on the nature of the complaint, if it's
24 consistent or somehow an indication that the officer is still
25 performing in a way that got them in trouble in the first

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1 officer receives a command discipline for failure to make an
2 activity log?

3 A. The memo book entry deficiencies are a scheduled B, C, D,
4 which means they can be anything from a warn and admonishment
5 to a maximum of ten days penalty.

6 Q. Inspector, I am going to move on to 802 QAD audits. Are
7 you familiar with the 802 QAD audits?

8 A. Yes.

9 Q. Referring to Defendants' Exhibit G6.

10 MS. GROSSMAN: Your Honor, I have a courtesy copy. We
11 are not really going to spend much time with the document. We
12 are going to try to use the screen, but I just want to give
13 this to the witness.

14 THE COURT: OK.

15 Q. Can you just take a moment to look at that document,
16 Inspector?

17 Now, when were you the commanding officer of the
18 Transit District 33, you were responsible and had oversight for
19 the 802 QAD audits, right?

20 A. Yes.

21 Q. Can you just remind the Court when you were the commanding
22 officer of Transit District 33?

23 A. May 20, 2006, through January of 2010.

24 Q. So referring to the 2007 audit at Bates number
25 NYC-00004296, do you see to the left the results of the transit

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1 bureau audits are on the screen?

2 A. Yes.

3 Q. You see to the left it has the list of the transit
4 districts?

5 A. Yes.

6 Q. Looking at Transit District 33, do you see the results of
7 the activity log portion of the audit while you were the
8 commanding officer of Transit District 33?

9 What are the results? Do you see to the far right
10 check members activity log?

11 A. It's a 4.

12 Q. The overall rating for the stop, question and frisk for
13 Transit District 33?

14 A. 3.9.

15 Q. Moving on to the 2008 audit at NYC-00004314.

16 Now, I don't know that the screen is able to see, but
17 maybe you can zoom out a little. To the left do you see
18 Transit District 33?

19 A. Yes.

20 Q. Moving over to the right, do you see the results of the
21 activity log portion of the audit?

22 A. Yes.

23 Q. What is it?

24 A. 4.

25 Q. What is the overall rating?

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1 A. 4.

2 Q. Then moving on to the 2009 audit at NYC_2_00018533, you see
3 to left Transit District 33?

4 A. Yes.

5 Q. You see the results for the activity log portion of the
6 audit?

7 A. 4.

8 Q. What is the overall for stop, question and frisk?

9 A. 4.

10 Q. So then there came a time that you were transferred to the
11 9th Precinct, right?

12 A. Correct.

13 Q. You were transferred in January 2010?

14 A. Correct.

15 Q. So now let's move on to the 2010 802 audit. And we are
16 going to NYC_2_00021742.

17 Looking at the activity log rating to the right, you
18 see the 9th Precinct received a 1 on the activity log?

19 A. Yes.

20 Q. And an overall of 3.2?

21 A. Correct.

22 Q. So what steps did you take to try to correct that
23 deficiency when you were at the 9th precinct?

24 A. I had circulated a memo and instructed my desk officers to
25 spot-check the officers' activity logs. As they came into the

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1 station house to turn in stop, question and frisk reports, I
2 had mandated that the sergeants or lieutenants on the desk take
3 the stop, question and frisk reports and spot-check the
4 officers' activity logs to ensure that they were making
5 activity log entries.
6 Q. Now, moving on to 2011, 802 for the 9th Precinct, again,
7 the activity log rating for the 9th precinct was again a 1?
8 A. Yes.
9 Q. And the overall was a 3.1?
10 A. Correct.
11 Q. So what additional efforts did you take to try to remediate
12 that problem?
13 A. At that point, obviously, the first attempt at correcting
14 this failed to have the desired result. At that point, I had
15 my integrity control officer take a more active role in
16 ensuring that this was actually getting done and spot-check
17 himself on these.
18 Q. So then moving on to 2012, the 802 9th Precinct, looking
19 over to the 9th Precinct, what was the rating for the activity
20 log entry?
21 A. 3.
22 Q. The overall rating was a 3.6?
23 A. Correct.
24 Q. Now, you were no longer the commanding officer at the time
25 that this rating came in, right?

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1 A. Correct.

2 Q. By that time you were transferred to another precinct?

3 A. The 67.

4 Q. Do you believe that your steps played a role in bringing
5 about the change in the activity log rating?

6 MS. HOFF VARNER: Objection. Calls for speculation.

7 THE COURT: I will allow it.

8 A. I like to think that it did. I think we got the ball
9 rolling. But the person who succeeded me there deserves some
10 of the credit as well.

11 Q. So now referring to the 2012 802 audit for the 67 Precinct,
12 at NYC_2_00027860, looking at the results of the audit for the
13 67 Precinct, what was the rating under the activity log portion
14 for the 67 Precinct in 2012?

15 A. 4.

16 Q. What was the overall rating for the stop, question and
17 frisk?

18 A. 3.8.

19 Q. Now, moving on to UF-250s, are you aware that the patrol
20 guide procedure regarding stop, question and frisk requires the
21 desk officer to sign the UF-250s?

22 A. Yes.

23 Q. In practice, are the squad supervisors actually signing the
24 250s in the 67 Precinct?

25 A. Yes.

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1 Q. How do you know that?

2 A. Just in the review process of the stop, question and frisk,
3 any glance at the index, you will see that a number of
4 supervisors that are in the field are endorsing a large portion
5 of the stop, question and frisk reports.

6 Q. Have you provided instruction to the supervisors in your
7 command that you expect, when possible, that squad supervisors
8 sign the 250s?

9 A. Yes.

10 Q. Now, while you were the CO in the 67 Precinct, how many
11 officers received 2.5 or lower on their evaluation?

12 A. None.

13 Q. Last year?

14 A. None.

15 Q. Now, going back to the questions that I asked you about the
16 civilian complaints, do you have an understanding of
17 approximately how many civilian complaints were filed against
18 officers in your command last year, just ballpark?

19 A. I think it was 46 or 49, around that range. I want to say
20 49, roughly.

21 THE COURT: By last year you mean all of 2012?

22 THE WITNESS: All of 2012.

23 Q. Now, what are the demographics of the officers in your
24 command?

25 MS. HOFF VARNER: Objection.

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Lehr - direct

1 MS. GROSSMAN: Did I ask that yesterday?

2 MS. HOFF VARNER: I do object on relevance.

3 THE COURT: I don't know what the relevance is myself.

4 MS. GROSSMAN: The demographic composition of the
5 officers.

6 THE COURT: What is the relevance?

7 MS. GROSSMAN: I think that in terms of the
8 sensitivity to --

9 THE COURT: I don't think that's fair to make any
10 inference that one race is more sensitive to another race or
11 their own race or anybody else. So I am not going to allow
12 that. That would require him to draw an inference about race,
13 which I don't think is appropriate.

14 Q. Now, are the uniformed staff in your command deployed
15 evenly throughout the precinct?

16 A. No.

17 Q. What determines the deployment of the uniformed staff?

18 MS. HOFF VARNER: Objection. I think all of these
19 questions about deployment were asked and answered yesterday.

20 MS. GROSSMAN: Not these specific questions.

21 THE COURT: Do you think you talked about this
22 yesterday, this particular question?

23 THE WITNESS: Not this particular one.

24 THE COURT: Go ahead.

25 A. The deployment is based on current crime trends and

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1 conditions.

2 Q. Now, how do you go about reinforcing the racial profiling
3 policy in your command?

4 A. As soon as officers get assigned to the precinct, we have
5 an orientation at the command. As part of that orientation, we
6 invite and have members of the community in the 67 Precinct,
7 including local politicians, local clergy, community council
8 representatives, prominent members of the community, all come
9 in and introduce themselves to the police officers. So we do
10 that.

11 We also have some of the officers who have been in the
12 precinct for a long time and have some standing speak to the
13 officers about what they can expect, different conditions that
14 are unique to the 67.

15 One of the other things we do is, when I have a new
16 group of officers like that, I will take a number of them and
17 have them attend the community council meetings so they can
18 introduce themselves to the community and then make
19 observations on what the community concerns are. Because in
20 that setting the people who attend those meetings have an
21 opportunity to talk about things that concern them, things that
22 are important to them, and I want the young officers to be able
23 to see that, and so they may hopefully have a better
24 understanding of how their actions on the street really affect
25 the relationship between the police officers and the community

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1 we serve.

2 THE COURT: Does the topic of stop and frisk ever come
3 up at any of these community meetings?

4 THE WITNESS: A whole broad range of topics come up,
5 disputed arrests, disputed summonses, stop, question and frisk,
6 requests for more officers in my side of the precinct rather
7 than somewhere else, a whole host of things come up.

8 THE COURT: I asked specifically about stop, question
9 and frisk. Does that come up?

10 THE WITNESS: It does.

11 Q. What specifically about stop, question and frisk does come
12 up?

13 A. Depending on the specific scenario, a lot of times it's got
14 to do with the treatment, people feel like they were not
15 treated properly and were not apprised of the reason for the
16 stop. So they will ask questions about that.

17 One of the things we do at community council meetings
18 is I have some staff members there, including my community
19 affairs staff. When we get a complaint like that, we will
20 exchange information. If the officer is readily available, we
21 will basically try and repair the relationship there. If there
22 is a negative interaction, anything along those lines, where
23 somebody feels they had a negative interaction with the police,
24 if we have an opportunity to somehow repair that, we try and do
25 that. We will exchange information and follow up with them.

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1 Q. Now, is Jumaane Williams, does he serve in the 67 Precinct,
2 or does the 67 Precinct cover the area that he serves?

3 THE COURT: Who?

4 MS. GROSSMAN: Jumaane Williams.

5 A. He is a local City Council representative for a large
6 portion of the East Flatbush area.

7 Q. Does he attend some of your community meetings?

8 A. He regularly attends just about all of the public meetings.
9 He is a regular at the community council meetings, a regular at
10 the community board meetings. If he is not available for
11 cabinet meetings, he will have a representative from his staff
12 there. But Councilman Williams and myself, several times a
13 month we are in the same setting, and we are together a lot
14 every month at different meetings.

15 Q. What is the sum and substance of some of the comments he
16 has made to you?

17 MS. HOFF VARNER: Objection. Calls for hearsay.

18 THE COURT: Sustained.

19 MS. GROSSMAN: It's about the notification of concerns
20 about the community regarding stop, question and frisk.

21 MS. HOFF VARNER: I would still object. It still
22 calls for hearsay.

23 THE COURT: No. Not if it's not offered for the truth
24 but merely to show the notice the police officers had. But
25 then it can't be offered for the truth, but just to show the

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1 statements or complaints that he made.

2 Go ahead.

3 A. Councilman Williams is an outspoken critic of stop,
4 question and frisk. He is an opponent of stop, question and
5 frisk. He will voice that regularly at the meetings that we
6 both attend. However, he is very complimentary to me
7 personally and my staff. He will usually preface his comments
8 about stop, question and frisk as a whole with a compliment to
9 the members of the 67 Precinct.

10 THE COURT: I don't think that last part went to
11 notice, I must say. It's nice to know.

12 Q. Generally, in terms of the community council meetings,
13 approximately how many members of the community generally
14 attend that meeting?

15 A. At least 40.

16 Q. What about community board meetings?

17 A. The community board meetings, I would say anywhere from 70
18 to 100.

19 Q. Now, has the community voiced concerns in ways other than
20 at these community meetings about stop, question and frisk?

21 MS. HOFF VARNER: Objection again on hearsay, except
22 to the extent it goes to notice.

23 THE COURT: I will allow it for that purpose.

24 You can answer.

25 Q. Outside the context of these community meetings, have you

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1 become aware that there has been some concern in your community
2 about stop, question and frisk?

3 A. Well, yes. Back on March 9 --

4 THE COURT: Of this year?

5 THE WITNESS: Of this year.

6 A. There was a police involved shooting in which a 16-year-old
7 was killed. In the wake of that incident, there were a number
8 of demonstrations that took place in the 67 Precinct for
9 several weeks. During the course of those demonstrations,
10 there was a vigil set up on 55th Street and Church Avenue.
11 There were a number of marches that took place from that
12 location to the shooting location, which was on 52nd Street
13 between Snyder and Tilden. Also, some of these marches
14 proceeded down to Nostrand and Snyder, the site of the 67
15 Precinct. Within the demonstration area participants, there
16 were a number of banners which voiced or basically were
17 concerns about police and stop, question and frisk was also
18 represented in some of the banners. There was some anti police
19 stuff as well as stop, question and frisk.

20 Q. Other than what we have discussed, are you aware of
21 complaints that citizens have made about racial profiling?

22 A. No.

23 Q. In terms of specific complaints that are brought to your
24 attention in your command?

25 MS. HOFF VARNER: Objection. Asked and answered.

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1 A. Not specifically.

2 THE COURT: I didn't hear.

3 MS. HOFF VARNER: I objected on the grounds that it
4 was asked and answered.

5 THE COURT: He answered again. That's OK.

6 Q. You mentioned you have a community affairs officer?

7 A. I have two.

8 Q. What are their responsibilities?

9 A. They are the bridge between the 67 Precinct and the
10 community, the liaison. They establish relationships with
11 people in the community. They are there to basically -- they
12 attend all the public meetings with me. They establish
13 relationships with the staff and local politicians, prominent
14 members of the community, and that's it.

15 MS. GROSSMAN: I am just going to go back to a few
16 questions from the beginning of yesterday that I failed to ask,
17 and I think I will be just a few more minutes.

18 Q. When you identified crime trends, how does that influence
19 the adjustment of your deployment?

20 A. Well, it could be an adjustment in the time of day that my
21 officers are working. We will look at the time that it's
22 occurring and the location where it's occurring. If the
23 officers -- if I have a group of officers that I feel are best
24 suited to eradicate that particular condition, I will just
25 assign them geographically and give them the information I have

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1 yesterday. I just wanted to ask one follow-up.

2 You mentioned that the, I think the integrity control
3 officer goes out and does some field observations in the field?

4 A. Yes.

5 Q. How do you know that the ICO is doing this?

6 A. Well, I have been out with the ICO personally. We have
7 gone out on a number of occasions and worked together. I was
8 an ICO in the past. I like to see the way he works. In
9 addition to that, he reports back to me on his observations,
10 how many hours he spends out making observations, and he tells
11 me what he sees and the corrective action that he takes.

12 Q. Now, plaintiffs' expert claims that there is over-policing
13 in majority of minority neighborhoods, like the 67 Precinct
14 where you serve as CO. Do you agree that there is
15 over-policing?

16 MS. HOFF VARNER: I am going to object to the extent
17 that that requires him to interpret what our expert means by
18 over-policing.

19 THE COURT: I think that's right. There is no
20 definition of the term that's in common.

21 You haven't read this expert report, have you?

22 THE WITNESS: No.

23 THE COURT: Objection sustained.

24 Q. Separate and apart from what the expert said, do you
25 believe there is too much policing in the 67 Precinct?

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1 MS. HOFF VARNER: Actually, I think your Honor has
2 allowed them to say that they have received the memo.

3 THE COURT: Did you receive the memo?

4 THE WITNESS: Yes.

5 THE COURT: And?

6 MS. HOFF VARNER: And nothing further.

7 THE COURT: OK. I can't recall. You two seem to
8 recall. We have now gotten the answer the memo is received,
9 yes.

10 MS. GROSSMAN: I think I would like to be able to ask
11 the witness whether he is following --

12 THE COURT: I assume he follows orders all the time.
13 You're following whatever the memo tells you to do?

14 THE WITNESS: Yes, your Honor.

15 THE COURT: All right.

16 MS. GROSSMAN: May I make an offer of proof?

17 THE COURT: I don't know what that means. I ruled on
18 this already apparently. The memo itself and the contents of
19 it won't come in until Chief Hall testifies. But he has said
20 he received it and is following it.

21 MS. GROSSMAN: Just a couple of more minutes.

22 Q. Since March 5, have you instituted new procedures regarding
23 the activity logs?

24 THE COURT: One second.

25 The problem with that?

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D4U8FLO1 Lehr - direct

1 MS. HOFF VARNER: This is effectively the same
2 question. He has already said that he has complied with
3 whatever the requirements of the memo are.

4 THE COURT: So you're asking the same question another
5 way? You're saying since March 5 what are you doing? But
6 that's whatever the memo says he should do. I said I am going
7 to put the memo off until Chief Hall comes.

8 MS. GROSSMAN: OK, your Honor.

9 (Continued on next page)

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D4u9flo2 Lehr - cross

1 MS. GROSSMAN: I have no further questions.

2 CROSS-EXAMINATION

3 BY MS. HOFF VARNER:

4 Q. Good morning, Inspector Lehr.

5 A. Good morning.

6 Q. As the commanding officer of the 67 precinct, are you aware
7 that there were over ten thousand UF 250s completed in your
8 precinct for 2012?

9 A. I don't know the number off the top of my head but okay.

10 THE COURT: Does that sound -- that could be in the
11 ballpark?

12 THE WITNESS: Yes.

13 THE COURT: Yes.

14 Q. And you testified that there's a correlation between the
15 sectors in your precinct that have the highest numbers of index
16 crimes and the sectors that have the highest numbers of stop,
17 question and frisk activity, correct?

18 A. For 2013 through April 14, which was week 15 of this year.

19 Q. The way that you just said that, is that correlation that
20 you identified based on a regular report that the precinct
21 produces?

22 A. No. That was based on me retrieving information from the
23 department databases and just cross-referencing where the
24 crimes were occurring and where the UF 250 encounters were
25 occurring.

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D4u9flo2

Lehr - cross

1 Q. Was this generated in order to -- for you to allow you to
2 testify at this trial?

3 A. No. I regularly -- I have -- part of my oversight in terms
4 of -- in measurements on how we perform is -- I do that.

5 Q. So how often do you look at the correlation between the
6 index of major crimes and the sectors where those crimes are
7 occurring and the sectors where the stops are occurring?

8 A. Regularly.

9 Q. How often, once a month? Once every six months?

10 A. Regularly.

11 THE COURT: I know. So she's trying to get the
12 interval. When you say regularly, do you try to do it once a
13 month?

14 THE WITNESS: What happens is we prepare for -- it's
15 part of like something that I look at. If I'm preparing for a
16 CompStat meeting or a borough meeting where I have to discuss
17 the transit conditions in my command, that would be part of my
18 normal oversight. So it's something that I do look at. I've
19 regularly looked at. It goes back to the days when I was in
20 district 33 in transit. Just where it comes from, in transit,
21 you know -- I had 51 train stations in district 33. So it was
22 just part of my thought process. We would always take a look
23 at where were the crimes occurring and if we had any type of
24 activity, did it correlate to the right tour and the right
25 location.

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Lehr - cross

1 And this is basically the same thing. Broken down by
2 sector. If I have a number of crimes, I'll always try and
3 identify my top sector for crime and I'll always have to have a
4 response in terms of what I've done to try and address that.

5 So deploying personnel would be one aspect of that.
6 Then part of the CompStat process is: Okay, you identify a
7 problem. You have to respond to it. Then take a look at
8 what's being done in response to that. So I'll take a look
9 afterwards to see: Did that crime that we deployed the people
10 for, whether it was a robbery condition or a burglary
11 condition, when we identified it, we're taking out a rate of
12 maybe one per day. Now we make the deployment. Are we now
13 taking at a lower rate? Is it happening twice per week rather
14 than seven times per week? Are we having a positive impact?
15 It's just another measurement of that.

16 Q. To look at that measurement you're looking at the map of
17 where the crime happens and where the activity happens,
18 correct?

19 A. Yes.

20 Q. So as long as your officers are making stops in the places
21 or the sectors that have the highest crime, you're satisfied
22 that those are quality stops, correct?

23 A. No. Not at all.

24 Q. Well you're satisfied that those stops are addressing the
25 conditions that you've identified, correct?

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D4u9flo2

Lehr - cross

1 A. What I'm saying is geographically my officers are in their
2 location more so that -- for instance, if I was taking a look
3 at that same -- the same formula that I'm using here and I
4 found that my number one sector where we're recording the most
5 stop, question and frisk encounters was in sector King however
6 sector King is a section where I was not recording crimes I
7 would look at that as a problem perhaps.

8 Q. I understand. But that's --

9 A. I would have to look into those and say why are we engaging
10 it over here in sector King when we have a problem in sector
11 Adam.

12 Q. I understand that. But that wasn't my question.

13 My question was whether or not if your officers are
14 making stops in the right places in the sectors that have the
15 highest crimes at that point you would be satisfied that those
16 are quality stops?

17 A. No. We look further also. If you look the year-to-date
18 through that same time period, April 14. One of the other
19 things I look at as another measurement in terms of is it
20 quality? Yes, geographically is one aspect of that.

21 What I also look at is the time of day. If you look
22 at the crimes for that same time period in the 67 precinct
23 year-to-date through April 14 the number one platoon which
24 recorded the most crimes was the third platoon. The second --
25 the number two platoon for recorded crime, for rate of

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D4u9flo2 Lehr - cross

1 occurrence was the day tour. And the third was the midnight
2 shift.

3 When I look at the stop, question and frisk encounters
4 that were incurred for the same time period, the third platoon
5 had the highest rate. The second platoon had the second
6 highest rate and the midnight had the third.

7 So geographically is one aspect. What I'm also
8 looking for is the time of day.

9 Another measurement is what are we stopping them for.
10 If we're trying to address a burglary condition, is that what
11 we're doing there? Is that what we're trying to have an effect
12 on?

13 But first what I'm looking at, before anything else,
14 is are we slowing down the rate of occurrence on the condition
15 that we're looking to eradicate.

16 Q. So you just identified I think one, two, three, four
17 factors that you look at in determining whether your stops are
18 quality stops. And those were high crime, where -- the
19 geographic location, the time, what the person was being
20 stopped for, and the rate of occurrence.

21 Do I understand that correctly?

22 A. Those are the things I look at, yes.

23 Q. Those are the things you look at.

24 You would agree with me though that just because a
25 stop takes place in a high crime area doesn't necessarily mean

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Lehr - cross

1 that there is reasonable individualized suspicion for the stop,
2 correct?

3 A. Repeat that, please.

4 Q. You would agree with me that just because a stop takes
5 place in a high crime area doesn't mean that there's
6 necessarily reasonable individualized suspicion for that stop,
7 correct?

8 A. No.

9 THE COURT: You don't agree with her or you do agree
10 with her?

11 THE WITNESS: I agree -- yes, I agree.

12 Q. So you agree that high crime area doesn't necessarily
13 mean --

14 THE COURT: He just said that. High crime area alone
15 wouldn't be enough for reasonable articulable suspicion, right?

16 Okay.

17 Q. Similarly the time of day wouldn't necessarily mean --

18 THE COURT: Alone? Time of day alone?

19 MS. HOFF VARNER: Yes.

20 THE WITNESS: Yes.

21 Q. And similarly what the form says that the individual is
22 being stopped for wouldn't necessarily mean that there was
23 reasonable individualized suspicion, correct?

24 A. Yes.

25 Q. And the same thing would be true even if the stops happened

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Lehr - cross

1 to correlate with a decrease in a crime condition, that
2 wouldn't necessarily mean that any individual stop had
3 reasonable individualized suspicion, correct?

4 A. Yes.

5 Q. Are you aware that in 2011 only approximately six percent
6 of the stops in the 67th precinct resulted in a summons or
7 arrest?

8 A. I was not in the 67 in 2011.

9 Q. That wasn't my question.

10 Are you aware that in 2011 approximately six percent
11 of the stops resulted in a summons or arrest?

12 A. I was not aware of that.

13 Q. You were not aware of that.

14 Are you aware that in the last quarter of 2012 only
15 3.5 percent of the stops made in the 67th precinct resulted in
16 an arrest?

17 A. Yes.

18 Q. And are you aware that in the last quarter of 2012 less
19 than one percent of the stops made in the 67th precinct
20 resulted in a summons?

21 A. Yes.

22 Q. Has anyone above you in the NYPD chain of command ever
23 spoken with you about the number of arrests that the stop,
24 question and frisk activity in your precinct is generating?

25 A. No.

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Lehr - cross

1 Q. Are you at all concerned that the low numbers of arrests
2 and summonses resulting from stop, question and frisk might
3 mean that officers are making stops without reasonable
4 suspicion?

5 A. What I do to try and ensure that that's not happening is
6 reinforce what we teach the officers and reinstruct the
7 officers on.

8 THE COURT: That's not answering.

9 Are you concerned that if the arrests and summonses
10 together is only four percent of the stops, does that concern
11 you?

12 THE WITNESS: Yes.

13 THE COURT: That maybe the stops are not based on
14 reasonable suspicion?

15 THE WITNESS: Yes.

16 THE COURT: Is the answer yes?

17 THE WITNESS: The answer is yes.

18 THE COURT: That's all it calls for right now.

19 Q. And you testified earlier today that people in the 67th
20 precinct have made complaints about racial profiling in the
21 precinct by the NYPD, correct?

22 A. I did not say that they were complaining about racial
23 profiling, no.

24 Q. Okay. Isn't it true that people in the 67th precinct have
25 demonstrated against the NYPD, for example, in reaction to the

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D4u9flo2 Lehr - cross

1 Kimani Gray killing?

2 A. Yes.

3 Q. And in response to the Kimani Gray killing, those protests
4 explicitly included banners that talked about racism in the
5 NYPD, correct?

6 A. Yes.

7 Q. But you don't think that that's a complaint about racial
8 profiling?

9 A. In that -- okay. That -- well these complaints have not
10 come to me. And we also talked about the community settings.

11 I'm not saying that that did not happen at the
12 demonstrations. At the demonstrations there were a number of
13 banners that were up for a range of anti police or problems
14 with police. That is true.

15 What I also said was at the community meetings when I
16 interact with the community and they have an opportunity to
17 talk to me, racial profiling has not come up in a one-on-one --
18 someone hasn't come up to me and said, hey, you know what, the
19 cops in the 67, they stopped me because of -- they're
20 profiling. That particular complaint has not come to me
21 personally, directed at me personally.

22 But in the demonstration setting, yes, there were a
23 number of anti police banners that were up across a range of
24 subjects. But yes.

25 THE COURT: Never in the community meetings when they

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Lehr - cross

1 complained about stop, question and frisk as an activity, no
2 one ever said what we don't like about it is the racial
3 profiling?

4 THE WITNESS: Correct.

5 THE COURT: Never said that?

6 THE WITNESS: Correct.

7 THE COURT: They just said they didn't like it but
8 didn't say why?

9 THE WITNESS: That's correct.

10 Q. And I think you said that 90 or more than 90 percent of the
11 67th precinct is African-American or Black; is that right?

12 A. Yes.

13 Q. And so is it your testimony that in order to count as a
14 community complaint it has to be a complaint that's directed to
15 you at a community council meeting?

16 A. No.

17 Q. So complaints in demonstrations would certainly count as a
18 complaint about racism or racial profiling, correct?

19 A. Yes. I'm acknowledging that. Yes.

20 Q. Those complaints about racism in the wake of the death of
21 Kimani Gray, is it your testimony that those complaints about
22 racism were not related to stop, question and frisk?

23 A. No. I didn't say that. I said that there were a number of
24 banners with different messages, anti police. And stop,
25 question and frisk was one of those -- would fall into one of

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D4u9flo2 Lehr - cross

1 those categories, yes.

2 Q. So stop, question and frisk and police racial profiling or
3 racism were all complaints raised as part of this protest,
4 correct?

5 A. Yes.

6 Q. And you testified that other than the Kimani Gray incident
7 you were not aware of other problems or complaints about racial
8 profiling in the 67th precinct, correct?

9 A. I -- yes.

10 Q. But isn't it true that after the 2011 West Indian parade
11 there were -- there were officers quoted on Facebook pages
12 making racist comments about policing that parade?

13 A. The West Indian parade is in the 71 precinct and 2011 I was
14 in the 9th precinct in Manhattan.

15 I am aware that that happened. It was in the news at
16 the time. I don't know any of the officers who were involved
17 in that. They never worked for me. I was not connected in any
18 way to that incident. And it didn't -- it didn't overlap into
19 my tenure when I got to the 67. There were no issues that I
20 was involved with, with that incident.

21 Q. So you're not aware of at least one of the officers making
22 racist comments on Facebook about the West Indian parade was
23 actually a member of the 67 precinct?

24 A. Do you have his name? Because I don't think he was there
25 while I was there.

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Lehr - cross

1 Q. I don't have his name but I'm going to show you a document
2 to see if it refreshes your recollection.

3 THE COURT: It's marked as?

4 MS. HOFF VARNER: We can mark it for identification
5 only, because I don't intend to admit it, as 585. Plaintiffs'
6 585.

7 THE COURT: This is shown to you just to see if it
8 refreshes your recollection. Either it does or it doesn't.

9 MS. HOFF VARNER: Because it's small print I put a
10 mark next to the paragraph that I'm referring to.

11 THE WITNESS: Is his name here?

12 MS. HOFF VARNER: His name is not there.

13 Q. If you look at the paragraph that I've indicated?

14 MS. GROSSMAN: I don't even know what publication that
15 this is.

16 MS. HOFF VARNER: You can see at the bottom, this is
17 NY Carib News dot com.

18 THE COURT: It's just shown to refresh his
19 recollection. Either it does or it doesn't.

20 Q. So if you look at the paragraph that I've indicated.

21 MS. GROSSMAN: Which paragraph?

22 THE COURT: You're not going to read from this
23 document?

24 MS. HOFF VARNER: I'm not.

25 THE COURT: So he's looking at the paragraph you
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Lehr - cross

1 indicated. Either it refreshes his recollection or it doesn't.

2 Does it?

3 THE WITNESS: No. I wasn't there at the time and --

4 THE COURT: No worry. Hello. The answer is no.

5 Q. And you testified that elected representatives in the 67th
6 precinct have expressed concern about the stop, question and
7 frisk practices in the 67, correct?

8 A. No. In fact --

9 THE COURT: I thought you did say that.

10 THE WITNESS: Not in the 67. What I said --

11 THE COURT: Not in the 67. At the community meetings
12 didn't you say some people did express concern about the stop,
13 question and frisk?

14 THE WITNESS: She specified an elected official,
15 didn't you?

16 THE COURT: You mean the name you mentioned before?

17 Q. Jumaane Williams?

18 A. What I'm saying is --

19 THE COURT: He told you he was a critic of stop,
20 question and frisk?

21 THE WITNESS: He's a well known outspoken critic of
22 stop, question and frisk. However his comments are prefaced
23 with compliments to me and my staff.

24 THE COURT: Then went on to say after the preface that
25 he didn't like the activity; is that right?

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Lehr - cross

1 THE WITNESS: Yes. He's against stop, question and
2 frisk.

3 Q. Have you or your staff in the 67th precinct heard
4 complaints from councilmember Williams or other community
5 members that police officers are stopping people illegally
6 without reasonable individualized suspicion on the basis of
7 race? I'm not --

8 THE COURT: Is that a complaint you've heard from the
9 councilman or anybody else?

10 THE WITNESS: No.

11 THE COURT: No.

12 THE WITNESS: He has -- we have had a number of
13 discussions in my tenure in the 67 precinct where he contacted
14 me and had concerns about an arrest situation on at least two
15 occasions off the top of my head that I can think of where he
16 had gotten some calls into his office.

17 THE COURT: But he never has talked about stop,
18 question and frisk in terms of racial bias?

19 THE WITNESS: Not with me about a specific incident
20 for the 67 in that regard.

21 THE COURT: Or even overall, he never said.

22 THE WITNESS: No, he hasn't.

23 THE COURT: Never tied his criticism to race issues.

24 THE WITNESS: No. But we have had a couple of
25 discussions where his office received some calls or he knew

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Lehr - cross

1 somebody that had been arrested and inquired about the
2 particulars and we had discussions about that. That's taken
3 place.

4 Q. What about other community members? Have you heard
5 complaints from them that officers are stopping people
6 illegally without reasonable suspicion?

7 A. No.

8 Q. I think you testified that stop, question and frisk does
9 come up at community meetings and you specifically indicated
10 that people express concern about their treatment at the hands
11 of officers; is that correct?

12 A. Yes.

13 Q. But it's your testimony that those people don't make any
14 complaints that that treatment was related to race or that the
15 stop was related to race?

16 A. In the discussions that I've had with community members in
17 my -- in my interactions and the stuff that's been communicated
18 to me personally, there have been issues where stop, question
19 and frisk has come up. But it's the -- in listening to the
20 details of the complaint where people are conveying their
21 complaint to me, they haven't said this officer stopped me
22 because of a race issue.

23 It's been more about I was stopped for no reason or,
24 you know, the officer didn't explain, you know, why I was being
25 stopped and those type of scenarios. I've had a number of

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1 those type of conversations. Yes.

2 Q. And in those scenarios, has the person complaining about
3 the stop been African-American or black?

4 A. Yes.

5 Q. You testified that in those instances you would try put the
6 stopped person together with the officer who made the stop to
7 help them -- to explain what had happened, correct?

8 A. That was in a larger context when we were talking about how
9 the community council meetings go. Whether the complaint --
10 you're narrowing it to just stop, question and frisk. What I'm
11 saying is if I get a complaint from somebody and they've had a
12 negative interaction with one of my officers and I have an
13 opportunity to repair that, whether it's for a disputed
14 summons, an arrest, a stop-question-and-frisk encounter, or a
15 quality of life condition that they've called the police a
16 number of times and it just persists and they're frustrated
17 that the police have been unable to repair it or fix the
18 problem, in any of these type of instances if I have an
19 opportunity to get the two together, if it is a specific
20 officer being complained about or if it's a larger issue that I
21 can try and have an impact on, yeah, I'm going to try and help
22 that person out.

23 Q. But you would agree with me that if, hypothetically, a stop
24 is based on race or is made without reasonable suspicion, an
25 explanation given to the person who is stopped is not going to

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1 fix that problem, correct?

2 MS. GROSSMAN: Objection.

3 THE COURT: One moment, please.

4 Sustained.

5 Q. The community meeting -- you testified about the community
6 orientation meetings that you host for new officers at the 67th
7 precinct. That meeting is something you decided to do on your
8 own, correct?

9 A. No. In fact, it's been going on for a number of years at
10 the 67. It was integrated to the program a number of years ago
11 before my tenure. It was something that I definitely liked and
12 tried to expand on.

13 Q. But you don't have any personal knowledge of whether that
14 same program happens in other precincts, do you?

15 A. I'm talking -- I don't.

16 Q. And you weren't directed to engage in this community
17 orientation program by the borough commander or NYPD
18 headquarters, correct?

19 A. I don't know if it's a boroughwide thing. It's possible.
20 But I can only speak to the 67. It was in place before I got
21 there. I thought it was a great thing. And I tried it and am
22 trying to grow it.

23 Q. There's nothing in the NYPD patrol guide or any other NYPD
24 policies or procedures that requires precinct commanders to
25 hold meetings with community members to discuss stop, question

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D4u9flo2 Lehr - cross

1 corresponds to a UF 250, then that's enough to pass the audit,
2 correct?

3 A. I never worked in QAD. It's -- I don't know the answer to
4 that.

5 Q. Have you ever personally reviewed the memo books that QAD
6 audits as part of these annual audits?

7 A. No.

8 Q. We saw some of your QAD audit results from when you were
9 the commanding officer of transit district 33. Do you remember
10 that?

11 A. Yes.

12 Q. Where is transit district 33?

13 A. Transit district 33 station house is at the Broadway
14 junction, East New York station. It's on the border of
15 Brownsville, East New York. Covers four different train lines:
16 The AC line, the J line, the L line, and the M. Has a total of
17 51 stations in nine different precincts, in three different
18 patrol boroughs.

19 Q. There's surveillance cameras in the subway stations in
20 New York, aren't there?

21 A. In some, yes.

22 Q. When you were the commanding officer of the 9th precinct,
23 did anyone within the NYPD chain of command ever speak to you
24 about the low -- the low scores that you were receiving on the
25 QAD audits?

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Lehr - cross

1 A. Yes.

2 Q. Who was that?

3 A. Specifically I don't remember but I'm required when you get
4 a failing grade like that to make some adjustments and try and
5 correct the problem. And then you have to send a response back
6 up to quality assurance division on the steps you're taking to
7 fix the problem. So that goes back up through channels. So
8 the borough does get involved in that. They are directly
9 involved in that. That particular one could have been a number
10 of people.

11 Q. And in 2009 you did take steps to try to solve the problem
12 of the failing audit scores, correct?

13 A. Yes.

14 Q. But in 2010 the 9th precinct failed the audit again,
15 correct?

16 A. Yes. The record will show that I failed to correct the
17 problem.

18 Q. You attended a stop, question and frisk refresher training
19 course at Rodman's Neck, correct?

20 A. No.

21 Q. Well, you did receive a stop, question and frisk refresher
22 training, correct?

23 A. Yes. I believe that was at the police academy.

24 Q. Okay. And there was a member of the legal bureau who
25 attended that presentation?

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Lehr - cross

1 A. Correct.

2 Q. And you saw a PowerPoint presentation as part of the
3 refresher training, correct?

4 A. Yes.

5 Q. In your view was that training session accurate and
6 consistent with the law?

7 A. Yes.

8 Q. In the Ligon hearing back in October you testified that
9 you, on a regular basis, take a sampling of stop, question and
10 frisk reports and read them to see how they're completed,
11 correct?

12 A. Yes.

13 Q. Do you continue to do that today?

14 A. I do.

15 THE COURT: When you say those reports you're
16 referring to the UF 250s?

17 THE WITNESS: Yes. The hard copies.

18 THE COURT: The what?

19 THE WITNESS: The actual.

20 THE COURT: Hard copy.

21 Q. So you're looking at the actual physical UF 250 forms,
22 correct?

23 A. Yes.

24 Q. But you can't determine whether there's reasonable
25 individualized suspicion for a stop based solely on the UF 250

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D4u9flo2 Lehr - cross

1 form; isn't that true?

2 A. Yes.

3 Q. So let's talk a little bit about the OCD investigations.

4 You testified that as the ICO of the 66th precinct -- you were
5 in that position from 2000 to 2005, correct?

6 A. Yes.

7 Q. And between 2000 and 2005 when you were investigating OCD
8 complaints you found that it was appropriate to speak to the
9 officer and speak to the complainant, correct?

10 A. Yes.

11 Q. If you received an OCD report where the investigator never
12 spoke to the stopping officer, you would find that to be
13 inadequate, correct?

14 A. If the officer was available? Yes.

15 Q. And your testimony -- strike that.

16 You also testified about your understanding as the
17 commanding officer of the 67th precinct of how complaints are
18 handled at the 67th precinct.

19 Do you remember that testimony?

20 A. Yes.

21 Q. And that testimony was based on your personal knowledge of
22 what happens at the 67th, correct?

23 A. Yes.

24 Q. It was not based on any knowledge about what might happen
25 at other commands or other precincts, correct?

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1 A. I'm not sure what you mean.

2 I mean I take a level of experience with me that --
3 I've worked in a number of commands. So my thought process
4 is -- I mean, yeah, my experiences in other commands are
5 present.

6 Q. You don't have any personal knowledge about what goes on or
7 how other commanding officers in precincts where you haven't
8 worked might handle OCD investigations?

9 A. I do not.

10 Q. In fact, the patrol guide does not provide any instruction
11 on how to properly conduct an OCD investigation into a civilian
12 complaint, correct?

13 A. You're talking about the actual, like an outline best
14 practice? I'm not sure what you mean.

15 THE COURT: I think it's self-explanatory she does say
16 in the patrol guide are there instructions on how to conduct an
17 OCD investigation.

18 THE WITNESS: No.

19 THE COURT: Thank you.

20 Q. There is no written requirement in the patrol guide that a
21 person investigating an OCD complaint must interview all of the
22 witnesses, correct?

23 A. Correct.

24 Q. There is no written requirement that the person
25 investigating the OCD complaint must review documents in

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1 conducting the investigation, correct?

2 A. Correct.

3 Q. And there is no written guideline for people investigating
4 the OCD complaints that enumerates the documents that should be
5 reviewed, correct?

6 A. Correct.

7 THE COURT: How much more do you think, Ms. Hoff
8 Varner? I'm just trying to decide whether to take the morning
9 break. You're not in the range of a minute?

10 MS. HOFF VARNER: Ten minutes maybe.

11 THE COURT: Let's take our morning recess now then.
12 We'll reconvene at quarter to twelve.

13 MS. HOFF VARNER: Thank you.

14 (Recess)

15 Q. Before we get started I want to ask you, Inspector Lehr, if
16 you consulted with your attorney at all during the break of
17 your cross-examination?

18 A. No.

19 Q. Yesterday you testified that you get monthly reports of the
20 officers who receive CCRBs in your command.

21 Do you remember that testimony?

22 A. Yes.

23 Q. And you testified that the integrity control officer will
24 speak to a supervisor or the officer, correct?

25 A. Yes.

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Lehr - cross

- 1 Q. The purpose of that initial conversation is to allow the
2 integrity control officer to collect the paperwork to send to
3 the CCRB, correct?
- 4 A. In part. The -- we have to -- the officer needs to be
5 appraised that he got the CCRB as well. So it's part of --
6 there are several reasons why we get the -- we share this
7 information. We want the officer to know that his actions
8 resulted in a CCRB. We want the supervisor to understand what
9 the officer did to get the CCRB. We want them to be aware of
10 what happened.
- 11 Q. But at that point this initial point, the command level --
12 no one in the command level personally conducts an
13 investigation of that CCRB complaint, correct?
- 14 A. Correct.
- 15 Q. You also testified that the sergeants who supervise the
16 subject officers are informed that civilian complaints have
17 been filed against their officers, correct?
- 18 A. Correct.
- 19 Q. And you testified that you do that because you want the
20 supervisors to monitor the performance of the officers,
21 correct?
- 22 A. Yes.
- 23 Q. But there is no police requirement that the supervisors
24 monitor those officers who have a single CCRB complaint,
25 correct?

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Lehr - cross

1 A. Well the supervisor responsible for supervising the
2 officers' overall performance in which their interaction with
3 the community is a part.

4 Q. But that wasn't my question. My question, I think, was
5 that there is no police requirement that the supervisors
6 particularly monitor those officers who have a single CCRB
7 complaint?

8 A. Correct.

9 Q. And, in fact, if you look at Defendants' Exhibit Z3. This
10 is the performance monitoring criteria that Ms. Grossman showed
11 you earlier. And that makes it clear that performance
12 monitoring is only required at the point where there are three
13 or more CCRBs in one year, correct?

14 A. Or six in five years; or if you go down to level II, two or
15 more substantiated complaints in four years. So there are
16 several instances where this would kick in.

17 Q. But there is no requirement that performance monitoring
18 kick in when there's just one civilian -- one CCRB complaint?

19 A. That's correct.

20 Q. How many officers under your supervision have been in
21 monitoring for conduct related to stop, question and frisk?

22 A. I don't have it broken down like that.

23 I currently have, out of 276 officers assigned -- that
24 turn out of the 67, that includes the 67 precinct personnel and
25 the impact personnel, I have 13 officers that are in

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1 performance monitoring. Of the 13 that are in performance
2 monitoring, six are in performance monitoring due to civilian
3 complaints. Of the subcat -- and those civilian complaints are
4 generated for a range of issues, of which stop, question and
5 frisk is a part in some instances. But I don't have that
6 specific breakdown for you.

7 Q. And so you also probably don't have a specific breakdown
8 for how many officers under your supervision have been in
9 monitoring for alleged racial profiling, correct?

10 A. Correct.

11 Q. You personally, as the commanding officer of the 67th
12 precinct, you don't select the officers who are placed on
13 monitoring, correct?

14 A. I don't select but I can recommend.

15 THE COURT: Who do you recommend to?

16 THE WITNESS: To employee management division. They
17 would have the say.

18 Q. And you don't know whether every person in your command who
19 qualifies for performance monitoring is, in fact, placed on
20 performance monitoring, correct?

21 A. If they meet the criteria, they're going to be -- they're
22 going to be placed on performance monitoring.

23 Q. If a police officer in your command against whom a CCRB
24 complaint is brought is then assigned to a different command,
25 then that command would have no information about any

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1 monitoring that you did at the 67th precinct for that officer,
2 correct?

3 A. That's really not the way it works.

4 What happens is if somebody is in performance
5 monitoring even if I wanted to change their -- if they were
6 going to be transferred, that transfer would go through the
7 employee management division who really oversees this program.

8 So any change in assignment I would probably be
9 required to -- I would be required to do an interim evaluation,
10 which would basically be a reflection of the officer's
11 performance while in performance monitoring.

12 In addition to that, in level II and level III
13 monitoring -- in level II monitoring there are quarterly
14 reports that are required. In level III monitoring there are
15 monthly reports that are required. So those files are built up
16 as the person is in that program.

17 Q. I understand your answer with respect to formal monitoring
18 with the employment management?

19 A. Employment management, yes.

20 Q. I understand your answer with respect to the formal
21 performance monitoring.

22 My question is about the informal monitoring that you
23 testified about, about telling sergeants that they should
24 closely supervise their officers who have a single CCRB
25 complaint. Those officers aren't placed in a formal monitoring

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1 program, correct?

2 A. Correct. Yes.

3 Q. And those -- and that informal monitoring would not be
4 transferred to another precinct along with the officer?

5 A. That's correct.

6 MS. HOFF VARNER: Just one second, your Honor.

7 (Pause)

8 No further questions. Thank you.

9 THE COURT: That turned out to be four minutes.

10 Probably could have done it before the break. Oh, well.

11 All right, Ms. Grossman.

12 MS. HOFF VARNER: The break made it shorter.

13 REDIRECT EXAMINATION

14 BY MS. GROSSMAN:

15 Q. Plaintiffs' counsel asked you a few questions about the
16 patrol guide and does it set out the investigative steps that
17 need to be taken for an OCD investigation.

18 A. Yes.

19 Q. ICOs do receive training by the internal affairs bureau; is
20 that right?

21 A. Correct.

22 Q. And can you describe when you attended the ICO -- sorry.
23 When you attended the training by the IAB, in sum and substance
24 what was the training that you received regarding conducting an
25 investigation? In summary?

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1 MS. HOFF VARNER: I'm raising an objection.

2 MS. BORCHETTA: I'm sorry, your Honor. Just is it --
3 she asked investigations and the question needs a clarification
4 of whether she's asking about OCD investigations or IAB
5 investigations.

6 THE COURT: Which did you mean? It seemed like you
7 meant IAB but maybe I'm wrong.

8 BY MS. GROSSMAN:

9 Q. There is training on investigations provided to ICO by the
10 IAB. So I wanted the witness to explain the nature of the
11 training.

12 A. Okay. I received that training roughly twelve years ago
13 but what happens is -- the training is in regard to
14 investigations as a whole because ICOs will do investigations
15 on OCD investigations. They'll also do misconduct cases at
16 times that come down to the command level. So there are a
17 number of different kind of investigations that an ICO has to
18 conduct. However, the approach to the investigations is the
19 same, whether -- no matter what category it's in, it's about
20 fact finding and documenting and getting to the bottom -- into
21 the heart of the matter. So, yes, we receive the training for
22 that.

23 Q. Plaintiffs' counsel asked you some questions about the
24 officers on monitoring, if you're aware if anyone has been on
25 monitoring for racial profiling. Are you aware of any officers

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1 A. It's twelve years. I'm twelve years removed from that. I
2 don't -- I couldn't say specifically yes or no. I'm sorry.

3 MS. HOFF VARNER: No further questions.

4 THE COURT: All right. Are we done with this witness?

5 MS. GROSSMAN: Yes.

6 THE COURT: Sorry about that. We could have finished
7 it all before the break.

8 We're done with you for now. She may need you back.

9 THE WITNESS: I understand. Thank you very much.

10 THE COURT: Mr. Marutollo.

11 MR. MARUTOLLO: Defendants call Detective Michele
12 Hawkins.

13 MICHELE HAWKINS,

14 called as a witness by the Defendants,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MARUTOLLO:

18 Q. Good afternoon, Detective Hawkins.

19 A. Good afternoon.

20 Q. Are you currently employed?

21 A. Yes, I am.

22 Q. Where are you employed?

23 A. New York City Police Department.

24 Q. How long have you been employed by the NYPD?

25 A. Nineteen years.

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Hawkins - direct

- 1 Q. Did you attend and graduate from the police academy?
2 A. Yes, I did.
3 Q. When did you graduate?
4 A. In 1994.
5 Q. What is your present rank with the NYPD?
6 A. Police detective.
7 Q. And when were you promoted to detective?
8 A. The year 2000.
9 Q. What is your current command?
10 A. Narcotics Borough Queens.
11 Q. How long have you been working in Narcotics Borough Queens?
12 A. Queens, I've been working there for eleven years.
13 Q. Turning your attention to May 29, 2007. What unit were you
14 working in on May 29, 2007?
15 A. Narcotics.
16 Q. And do you remember what hours you were working that day?
17 A. Yes. I was working the two to ten p.m.
18 Q. And on May 29, 2007 did you attend a tactical meeting or a
19 tac meeting?
20 A. Yes, I did.
21 Q. Was that at the start of your tour?
22 A. Yes.
23 Q. On May 29, 2007 what was discussed at the tac meeting?
24 A. Well actually the tac meeting is where we discuss the
25 tactics before we leave the base and we discuss robbery trends,

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D4u9flo2 Hawkins - direct

1 whatever is going on, robbery trends, burglary trends, and
2 actually we discuss the places that we're going to go to, the
3 sets.

4 Q. Were you made aware of a tactical plan or tac plan?

5 A. Yes.

6 Q. At the May 29, 2007 meeting?

7 A. Yes.

8 Q. Did there come a point in time on May 29, 2007 when you saw
9 an individual who you now know to be Kristianna Acevedo?

10 A. Yes.

11 Q. Where were you when you first saw Ms. Acevedo?

12 A. Actually I was on 43rd Street and I was in the back of
13 the van seated in the back seat.

14 Q. And who if anyone were you working with on May 29, 2007?

15 A. I was working with Detective Vizcarrondo and Detective
16 DeMarco.

17 Q. During the month of May 2007 did you work with other
18 detectives beside Detective Vizcarrondo and DeMarco?

19 A. Yes, I did.

20 Q. How frequently would you do that?

21 A. Everyday.

22 Q. Now going back to May 29, 2007. Where in the van were
23 Detective Vizcarrondo and Detective DeMarco seated?

24 A. Up front.

25 Q. And were you in uniform that day?

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Hawkins - direct

1 A. No.

2 Q. Were you wearing your shield?

3 A. Yes.

4 Q. And do you remember where you were wearing it?

5 MS. BORCHETTA: Objection, your Honor. Just for
6 clarification to that question about the period of time he's
7 asking for that question.

8 THE COURT: The time during the day of shift?

9 MS. BORCHETTA: There's some question about whether
10 this detective provided identification. So the question is
11 whether -- where he's asking her -- he's asking her when she
12 was wearing this shield.13 THE COURT: Did you have your shield out on your
14 clothes the whole time during the shift?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: The whole time?

17 THE WITNESS: Yes.

18 THE COURT: That takes care of time.

19 Q. Can you describe your shield.

20 A. It's circular and it's -- it has my shield numbers at the
21 bottom of the circle and it's gold in color.

22 Q. Where was your van when you first observed Ms. Acevedo?

23 A. Actually on 43rd Street.

24 Q. Can you describe the area where you first observed
25 Ms. Acevedo?

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D4u9flo2 Hawkins - direct

- 1 A. Actually it was a very desolate area. Not a lot of people
2 around. Was warehouses in that area. Basically commercial.
3 Q. How long did you observe Ms. Acevedo for?
4 A. Basically a few seconds.
5 Q. What obstructions, if any, were in your view of Ms. Acevedo
6 when you first saw her?
7 A. I was actually seated in the back seat so it was Detective
8 DeMarco and Detective Vizcarrondo that obstructed my view a
9 little.
10 Q. Did there come a time when you actually saw Ms. Acevedo?
11 A. Yes.
12 Q. While you were still in the vehicle?
13 A. Yes.
14 Q. After you first observed Ms. Acevedo, what happened next?
15 A. Detective DeMarco spoke to her through his window. He
16 said: Hi, New York City Police Department. In substance.
17 Q. And how would you describe Detective DeMarco's tone of
18 voice?
19 A. Actually he was trying to be friendly.
20 Q. Where was Ms. Acevedo when Detective DeMarco was speaking
21 to her?
22 A. She was walking on the sidewalk.
23 Q. And what, if anything, did Ms. Acevedo say in response to
24 Detective DeMarco?
25 A. She said you're no F'ing cops.

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Hawkins - direct

1 Q. Did she actually use the full curse word?

2 A. Yes, she did.

3 Q. What was your reaction to Ms. Acevedo's comment?

4 A. Well actually she said you're no F'ing cops and then she
5 bolted. She just ran. And after she ran we just looked at
6 each other in disbelief because we couldn't believe that she
7 ran.

8 Q. Did you think she was afraid?

9 A. Yes. So I actually said I think we need to identify
10 ourselves a little better than that.

11 Q. Why did you think she was afraid?

12 A. Basically at that time there was a segment on the news
13 stating that there were people going around robbing people with
14 police shields. So if, in fact, that you are a little leery
15 about whether the person is, in fact, a police officer you
16 should show -- ask them for their police ID.

17 Q. So after this initial exchange what happened next?

18 A. The van was backed up. I got out the van. And I actually
19 had my shield in one hand and my ID card in the other hand.
20 Like this: I had my shield in this hand and I had my ID card
21 in the other hand. I said: We are, in fact, police officers.
22 This is my shield. And I had my ID card -- I took it out and I
23 had it in this hand already. I said this is my shield and this
24 is my ID card. We are, in fact, police officers so you don't
25 have to be afraid.

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D4u9flo2

Hawkins - direct

1 THE COURT: So indicating for the record that she's
2 showing her shield in the left hand and putting both HANDS up
3 in front of her to demonstrate the way she showed Ms. Acevedo.

4 Q. Just to be clear in your other hand was your police
5 identification card?

6 A. Yes. That's correct.

7 Q. Why did you show her both your shield and your police
8 identification card?

9 A. Because the news segment said if you're, in fact, leery
10 that they're, in fact, police officers to ask for the police
11 identification card; since everyone was showing shields,
12 robbing people.

13 Q. So what, if anything, did Ms. Acevedo say in response to
14 your display?

15 A. Well actually she didn't want anything to do with us. She
16 said: You're not F'ing police. You're not F'ing police.

17 But I -- my concern is I wanted to allay her concerns
18 that she wasn't being a victim or she wasn't being robbed.

19 Q. And what was her tone of voice at this point?

20 A. A bit hostile.

21 Q. What happened next?

22 A. Basically left. She continued walking. And we left, said:
23 Have a nice day.

24 Q. Did Ms. Acevedo actually ever stop walking during this
25 encounter with you?

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D4u9flo2 Hawkins - direct

- 1 A. No. She continued walking.
2 Q. At any point did you say to Ms. Acevedo when you hear
3 police you stop?
4 A. No, I did not.
5 Q. Did you hear anyone else say that?
6 A. No.
7 Q. Did you ever pull Ms. Acevedo out of a van?
8 A. No, I did not.
9 Q. Did you ever push her against the side of a van?
10 A. No, I did not.
11 Q. Did you ever shake her by her shoulders?
12 A. No.
13 Q. Did you ever hit Ms. Acevedo's head against the side of a
14 truck or van?
15 A. No. Absolutely not.
16 Q. Did you ever hold Ms. Acevedo by her wrists?
17 A. No.
18 Q. Did you ever search Ms. Acevedo in any way?
19 A. No. Didn't touch her.
20 Q. Did you ever even touch Ms. Acevedo?
21 A. No.
22 Q. Did you ever say that she forgot -- I'm sorry. Did you
23 ever say that she forgot to take her medication?
24 A. No, I did not.
25 Q. And how long would you describe your interaction with

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D4u9flo2 Hawkins - direct

1 Ms. Acevedo after you exited the police van?

2 A. Basically it was about a minute, minute-and-a-half, at
3 most.

4 Q. Now, did you receive any discipline from the NYPD for this
5 incident?

6 A. Yes, I did.

7 Q. And what discipline did you receive?

8 A. Actually they took a day.

9 THE COURT: For what? What were you disciplined for?

10 THE WITNESS: Basically CCRB indicated that it was a
11 bad stop and also failure to provide memo book entries.

12 Q. And did you meet with the integrity control officer
13 regarding this disciplinary action?

14 A. Yes, I did.

15 Q. And I think you may have said this but what punishment, if
16 any, did you receive?

17 A. They took a day.

18 Q. One vacation day?

19 A. Yes.

20 MR. MARUTOLLO: No further questions, your Honor.

21 THE COURT: All right. Thank you.

22 Ms. Borchetta.

23 (Continued on next page)

24
25

D4U8FLO3 Hawkins - cross

1 CROSS-EXAMINATION

2 BY MS. BORCHETTA:

3 Q. Good afternoon Detective Hawkins.

4 A. Hi. How are you?

5 Q. You just testified regarding a tac plan. Do you recall
6 that?

7 A. Yes, I did.

8 Q. I am going to show you a document that's previously been
9 admitted into evidence, which is Plaintiffs' Exhibit 6.

10 A. Thank you.

11 Q. This is the tac plan that you received on the date of the
12 incident with -- this is the tac plan that would have been
13 discussed at the tac meeting that you had the date of the
14 incident with Ms. Acevedo, correct?

15 A. Yes.

16 Q. And there are locations listed at the bottom of the tac
17 plan, correct?

18 A. Yes.

19 Q. And those indicate locations where there might be drug
20 sales, correct?

21 A. Yes.

22 Q. On the day of the incident with Ms. Acevedo, you were
23 driving in the van intending to go to the locations listed on
24 this tac plan, right?

25 A. That's correct.

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D4U8FLO3

Hawkins - cross

- 1 Q. Your intent in going to those locations on that day was to
2 conduct buy and bust operations and to gain intelligence on
3 narcotic sales, right?
4 A. Yes, primarily.
5 Q. Now, you agree that the area in which you encountered Ms.
6 Acevedo was desolate, right?
7 A. Yes.
8 Q. And when you first saw Ms. Acevedo, she appeared to you to
9 be someone from whom you can gain intelligence about narcotic
10 sales, right?
11 A. Yes.
12 Q. She appeared to you at that time to be familiar with the
13 area, right?
14 A. Yes. That's correct.
15 Q. You didn't observe her looking over her shoulder, right?
16 A. Not where I was seated.
17 Q. It appeared to you when you first saw her, that she
18 wouldn't be afraid to speak with you?
19 A. That's correct.
20 Q. The windows on the van that you were in were tinted,
21 correct?
22 A. Yes.
23 Q. And you believed that Ms. Acevedo would not have been able
24 to see you from where she was on the sidewalk when you first
25 saw her from the van, right?

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D4U8FLO3

Hawkins - cross

1 A. Yes.

2 Q. Now, turning to the point when you were outside of the van
3 engaging Ms. Acevedo, your focus in getting out of the van was
4 to allay her concerns and make sure she was OK, right?

5 A. That's correct.

6 Q. And you just testified that you had known at the time of
7 reports that people had been driving in a van impersonating
8 officers and robbing people, right?

9 MR. MARUTOLLO: Objection, your Honor.

10 A. I did not say that.

11 THE COURT: She's answered. She says she didn't say
12 that.13 Q. You had heard at the time that there been people
14 impersonating police officers and robbing people?

15 A. That's correct.

16 Q. When Ms. Acevedo ran, in part, you wanted to allay her
17 concerns that she might be the victim of a robbery, right?

18 A. Yes. That she was not a victim of a robbery.

19 Q. Yet you were only outside of the van, you say, for a minute
20 to a minute and a half, right?

21 A. Yes.

22 Q. Now, you say that Ms. Acevedo ran down the street yelling,
23 right?

24 A. Yeah. She ran down the street; she ran away from the van.

25 Q. You testified that she was cursing?

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D4U8FLO3

Hawkins - cross

1 A. Yes, she was.

2 Q. That was after Detective DeMarco had spoken to her from the
3 van window?

4 A. Yes.

5 Q. And though she was in a desolate area and you were aware of
6 people who were impersonating police and robbing people, and
7 she ran and she was cursing, and you wanted to --

8 MR. MARUTOLLO: Objection.

9 THE COURT: We have had this already. This is all a
10 big lead up.

11 Q. Given all of the things that you were aware of at that
12 moment when you exited the van with Ms. Acevedo, you wanted to
13 allay her concerns?

14 A. Yes.

15 Q. And yet you say you were only outside of the van attempting
16 to allay her concerns for a maximum of 90 seconds, right?

17 MR. MARUTOLLO: Objection.

18 THE COURT: I will allow it. Is that accurate or not?

19 A. Can you repeat the question?

20 THE COURT: She was saying you wanted to allay her
21 concerns, but you were only out of the van for 90 seconds, is
22 that correct?

23 THE WITNESS: Yes.

24 Q. And you got back into the van even though you say she
25 continued to be concerned that you were not police officers,

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D4U8FLO3 Hawkins - cross

1 right?

2 A. I got back into the van even though what?

3 Q. When you got back into the van, at that point Ms. Acevedo
4 still appeared to you to have concerns that you were not police
5 officers, right?

6 A. She said -- she just said, "You're no F'ing police." But I
7 showed my shield and I showed my ID card. I said, we are in
8 fact police officers.

9 Q. So according to what you're saying, Ms. Acevedo indicated
10 that she didn't believe that you were officers, right?

11 A. Yes.

12 Q. And you still got back into the van, right?

13 A. Yes.

14 Q. Now, you understand that there are levels of suspicion that
15 an NYPD detective must have to engage in certain encounters
16 with the public, right?

17 MR. MARUTOLLO: Objection, your Honor. This goes
18 outside the scope of the direct examination. It was limited to
19 the incident at issue.

20 THE COURT: This is part of the incident at issue.
21 They thought she might have information.

22 Do you understand there are different levels?

23 THE WITNESS: Yes, I do.

24 THE COURT: You do.

25 THE WITNESS: Yes.

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D4U8FLO3

Hawkins - cross

- 1 Q. You understand that the second level of suspicion is a
2 common law right of inquiry, right?
3 A. Yes.
4 Q. And the third level you understand to be reasonable
5 suspicion?
6 A. Yes.
7 Q. And your understanding is that a level two encounter, so a
8 common law right of inquiry, you as an NYPD detective may ask a
9 person accusatory questions that suggest the person is engaged
10 in crime, right?
11 A. Yes.
12 Q. And that understanding is consistent with your training,
13 right?
14 A. Yes.
15 Q. Now, you testified just now about a CCRB substantiation of
16 a complaint related to the encounter with Ms. Acevedo, right?
17 A. Yes.
18 Q. Now, you learned that you received a substantiated CCRB
19 complaint related to the incident with Ms. Acevedo from an ICO,
20 right?
21 A. Yes.
22 Q. And you met with the ICO to discuss the discipline you were
23 receiving related to that substantiated CCRB complaint, right?
24 A. Yes.
25 Q. And the ICO told you that you received the substantiated

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D4U8FLO3

Hawkins - cross

1 CCRB complaint because the CCRB deemed that you had done an
2 improper stop and an improper memo book entry, right?
3 A. Yes. CCRB.
4 Q. The ICO never said you had done an improper stop?
5 A. No.
6 Q. And the ICO never said that your memo book entry was
7 improper, right?
8 A. No.
9 Q. And you don't remember the ICO asking you anything about
10 the incident with Ms. Acevedo, right?
11 A. No, I don't.
12 Q. I want to show you what has been marked as Plaintiffs'
13 Trial Exhibit 13. It's a poor copy, but do you recognize this
14 to be an excerpt of your memo book?
15 A. Yes, I do.
16 MS. BORCHETTA: I move the admission of Plaintiffs'
17 13.
18 MR. MARUTOLLO: No objection.
19 THE COURT: Plaintiffs' 13 is received.
20 (Plaintiffs' Exhibit 13 received in evidence)
21 Q. Now, this handwriting is terrible, but --
22 MR. MARUTOLLO: Objection.
23 THE COURT: I think she meant it's hard to read.
24 MS. BORCHETTA: I meant the copy, I did not mean to
25 insult Detective Hawkins.

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D4U8FLO3

Hawkins - cross

1 THE COURT: She meant hard to read.

2 Q. You can read it, correct, the copy I have handed you?

3 THE COURT: Why don't you look at the hard copy.

4 Would that be easier?

5 THE WITNESS: I will try.

6 A. Thursday, May 29, 2007 --

7 Q. You don't need to read it into the record. I am going to
8 ask you a question and you can look at it for reference.

9 You did not include any information about the
10 encounter of Ms. Acevedo in this memo book entry?

11 A. No.

12 Q. And no superior in the NYPD ever told you that you should
13 have included information about the encounter with Ms. Acevedo
14 in your memo book, right?

15 A. No, because it wasn't an encounter, it wasn't a stop.

16 Q. And you still don't believe that you should have included
17 information about your encounter with Ms. Acevedo in your memo
18 book, right?

19 A. I sure don't.

20 Q. Despite the CCRB substantiation of an allegation against
21 you for abuse of authority in conducting a stop, you still
22 don't believe that it was a stop, right?

23 A. I believe it didn't escalate to a stop. May I?

24 Q. So the answer is yes?

25 THE COURT: You can explain. You started to say you
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D4U8FLO3 Hawkins - cross

1 didn't think it escalated to stop.

2 A. I didn't believe it escalated to a stop because, basically,
3 it was a request for information and it did not lead to a stop
4 because she wasn't a subject of an investigation at all. It
5 was just a friendly encounter, as I thought. She wasn't a
6 subject of any investigation.

7 Q. No one in the NYPD ever told you that your understanding of
8 the encounter with Ms. Acevedo was incorrect, right?

9 A. No.

10 Q. Now, you had an OCD allegation against you for an improper
11 stop and arrest, right?

12 MR. MARUTOLLO: Objection, your Honor. This line of
13 questioning has no foundation.

14 THE COURT: I assume Ms. Borchetta has a good faith
15 basis to ask the question. But if it has no basis, she will
16 say she wasn't and then that will be the end of it because I
17 won't allow impeachment with extrinsic evidence.

18 Do you remember the question?

19 THE WITNESS: Actually, it was in regards to an OCD
20 stop, question and frisk.

21 A. Actually, before I conferred with my attorney, I had no
22 knowledge of it. And, basically, it seemed like a dispute from
23 an arrest that I made. But I have no knowledge of that.

24 Q. You have no knowledge of that.

25 So no one ever discussed with you that this allegation

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D4U8FLO3 Hawkins - cross

1 had been brought other than your attorneys?

2 A. No, absolutely not.

3 Q. To your knowledge, no one interviewed you about it within
4 the NYPD?

5 A. No.

6 MS. BORCHETTA: No further questions.

7 THE COURT: Anything further?

8 MR. MARUTOLLO: Nothing further.

9 THE COURT: You're all set. Thank you.

10 MR. MARUTOLLO: We would like to call Sergeant Justin
11 Dengler. If we could just have one moment, your Honor.

12 JUSTIN DENGLER,

13 called as a witness by the defendants,

14 having been duly sworn, testified as follows:

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

17 THE WITNESS: Sergeant Justin Dengler, J-U-S-T-I-N,
18 D-E-N-G-L-E-R.

19 MR. MARUTOLLO: The parties have agreed in lieu of
20 direct examination to have written stipulations read into the
21 record.

22 THE COURT: Is this the ten page, single-spaced that
23 you referred to yesterday?

24 MR. MARUTOLLO: Yes, it is.

25 The parties have helpfully prepared the stipulation.

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Hawkins - cross

1 We have provided a copy to the court reporter and the exhibits
2 mentioned are also in that binder. I think for purposes of
3 saving time, I won't actually cite to every Bates stamp number,
4 but they are all in the exhibits, and I think they will be on
5 the record with the court reporter.

6 First, Detective Santos Albino of the Special
7 Litigation Support Unit of the New York City Police Department
8 conducted -- the stipulations are for both Inspector Albino and
9 Sergeant Dengler. Detective Albino is in the courtroom as
10 well.

11 THE COURT: OK.

12 MR. MARUTOLLO: Detective Santos Albino of the Special
13 Litigation Support Unit of the New York City Police Department
14 conducted an investigation into the identities of John Doe
15 officers involved in the alleged stops of David Ourlicht, Lalit
16 Clarkson, and Nicholas Peart.

17 Detective Albino conducted a search to identify four
18 plainclothes officers in an unmarked, black Lincoln Town Car
19 who allegedly stopped plaintiff David Ourlicht on or about
20 February 21, 2008.

21 Two Lincoln Town Cars were assigned to NYPD commands
22 in Queens, both black in color, on February 21, 2008.

23 On August 24, 2009, Detective Albino was present at
24 the photo array procedure in which David Ourlicht viewed photo
25 arrays that included officers from the 107th Precinct and

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1 Patrol Borough Queens South Anticrime Unit on duty in February
2 2008.

3 The photo arrays included photographs of officers from
4 the 107th Precinct and Patrol Borough Queens South Anticrime
5 Unit on duty in February 2008, as well as fillers (photographs
6 of officers who were not on duty in those commands).

7 Of the officers from the 107th Precinct and Patrol
8 Borough Queens South Anticrime Unit on duty in February 2008,
9 the arrays only included officers fitting the following
10 description: White males, from mid 20s to mid 30s.

11 On August 24, 2009, Mr. Ourlicht identified seven
12 officers who may have possibly been the police officers present
13 at the alleged February 21, 2008 incident and who were actually
14 employed by the NYPD at that time.

15 Five of the officers identified during the photo array
16 were fillers. Two officers identified during the August 24,
17 2009 photo array (Officers James Conaghan and Christopher
18 Tzimoritas) were on duty in the 107th Precinct at the time of
19 the incident.

20 Police Officer Conaghan was assigned to anticrime on
21 February 21, 2008. Officer Conaghan's partners on February 21,
22 2008 were Officers Matilda Leonardi and Andrew Alloro. Officer
23 Conaghan was driving van number 5.

24 Officer Tzimoritas was working on February 21, 2008 in
25 the anticrime unit in plainclothes. Detective Albino learned

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1 that Officer Tzimoritas was on tour with Sergeant William
2 Sommer and Officer Jonathan Jordan on February 21, 2008.

3 Officers Conaghan and Tzimoritas were deposed in the
4 present litigation.

5 On January 12, 2010, Mr. Ourlicht met with his
6 attorneys, without defense counsel present, and a photo array
7 was conducted without fillers. During this array, Mr. Ourlicht
8 identified the following officers -- whose photographs were
9 present in the original array -- as officers who could have
10 been involved with his stop on February 21, 2008: Officer
11 Kenneth Winters, Officer Conaghan, Officer Sean Ring, Sergeant
12 William Sommer, Officer Jonathan Jordan, Officer Christopher
13 Tzimoritas and Sergeant Edward Goutnik.

14 On or about June 2009 through December 2009, Detective
15 Albino reviewed the activity log entries of Officer Kenneth
16 Winters, Officer Sean Ring, Sergeant William Sommer, Officer
17 Jonathan Jordan, Sergeant Edward Goutnik, Officer Conaghan, and
18 Officer Tzimoritas for the alleged February 21, 2008 incident.
19 There are portions of their activity logs that are illegible or
20 redacted.

21 During the course of discovery, Detective Albino
22 searched the electronic UF-250 database, and compared
23 information obtained from searches to Mr. Ourlicht's name, date
24 of birth, and the location of the alleged stop, namely, the
25 corner of Chapping Court and Chapping Parkway across from

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D4U8FLO3 Hawkins - cross

1 Jamaica High School in Queens, New York.

2 Based on Detective Albino's electronic UF-250 database
3 search, no UF-250 was found that could have corresponded to
4 Mr. Ourlicht's alleged stop.

5 Turning to the next incident, David Ourlicht's alleged
6 June 6 or June 9, 2008 incident.

7 On August 24, 2009, Detective Albino was present at
8 the photo array procedure at which David Ourlicht viewed the
9 photo arrays of the PSA 5 officers assigned to patrol at
10 approximately 10 a.m. on June 6, 2008 or June 9, 2008.

11 The photo arrays included photographs of officers from
12 PSA 5 on June 6 or June 9, 2008, as well as fillers
13 (photographs of officers who were not on duty in this command).

14 Mr. Ourlicht signed his name under 12 photographs of
15 police officers whom he thought may have been involved in his
16 alleged stop: Five photos from the June 6, 2008 array and
17 seven photos from the June 9, 2008 array. The 12 photos
18 depicted 11 officers. Sergeant Gordon Pekusic appeared in both
19 arrays and Mr. Ourlicht identified his photo twice.

20 Of the 11 photographs, Mr. Ourlicht identified ten
21 fillers.

22 Sergeant Gordon Pekusic was the only officer of these
23 11 who was assigned to PSA 5 on June 6, 2008 or June 9, 2008 at
24 the time of the alleged incident.

25 Sergeant Pekusic was the patrol supervisor on June 6,

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Hawkins - cross

1 2008.

2 On or about February 2013, Detective Albino spoke to
3 Sergeant Pekusic.4 On June 6, 2008, Sergeant Pekusic's activity log
5 shows, among other things, that: At 9:20 a.m., he indicated
6 "98Q" to #4141. At 9:35 a.m., he indicated "90Y." He also
7 indicated that he inspected Officers Ruggiero and Williams
8 while at the above location. At 10:00 a.m., he indicated "75C"
9 Harlem Hospital, which is located on Lenox Avenue between 135th
10 Street and 137th Street. At 10:10 a.m., he indicated -- I
11 think that part may be cut from this copy. We can return
12 there.13 On June 9, 2008, Sergeant Pekusic's activity log shows
14 that he was the desk officer.15 The van numbered 9466, which was identified by
16 Mr. Ourlicht, was assigned to PSA 5 on both June 6, 2008 and
17 June 9, 2008.18 The PSA 5 roll call indicates that on June 6, 2008,
19 van 9466 was assigned to Officers Negron, Goris and Delgado.20 The June 6, 2008 activity log entries for Officers
21 Negron and Goris indicate that they were assigned to van 9466
22 on truancy patrol and that they picked up numerous truants
23 beginning at 9:05 a.m. through 10:36 a.m. The activity logs
24 also indicate other activity, such as "10-98" around 11:00 a.m.
25 There are portions of their activity logs that are illegible or

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1 searched the electronic UF-250 database and compared
2 information obtained from searches to Mr. Ourlicht's name, date
3 of birth and the location of the alleged stop, namely, the
4 Johnson public housing complex (East 112th to East 115th
5 between Park and Lexington), Harlem, Manhattan.

6 Based on the search of the electronic UF-250 database,
7 no UF-250 was found that could have corresponded to
8 Mr. Ourlicht's alleged stop.

9 Turning to the Lalit Clarkson alleged January 2006
10 incident.

11 On August 24, 2009, Detective Albino was present at
12 the photo array in which Lalit Clarkson viewed photographs that
13 included plainclothes from the 44th Precinct in January 2006.
14 The photo arrays only included officers fitting the following
15 descriptions: First, male, Latino, with dark hair, and second,
16 male, Caucasian.

17 The arrays only contained fillers and photographs of
18 plainclothes officers from 44th Precinct in January 2006.

19 Mr. Clarkson identified two officers as possibly
20 having been involved in his alleged stop. Both officers
21 Mr. Clarkson identified were fillers.

22 On January 20, 2010, Mr. Clarkson met with his
23 attorneys, without defense counsel present, and a photo array
24 was conducted without fillers. He identified the following
25 officers -- whose photographs were present in the original

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Hawkins - cross

1 array -- as officers who could have been involved with his stop
2 in January 2006: Officer Conrad McDowell, Officer Peter Shine
3 and Officer Josh Kaveney.

4 On or about December 2009, Detective Albino learned
5 that Officer Conrad McDowell retired and his activity log
6 entries could not be obtained.

7 On or about December 2009, Detective Albino learned
8 that Officer Peter Shine retired and his activity log entries
9 could not be obtained.

10 On or about December 2009, Detective Albino reviewed
11 the activity log of Officer Kaveney.

12 On or about February 2013, Detective Albino spoke to
13 Officer Kaveney.

14 During the course of discovery, Detective Albino
15 searched the electronic UF-250 database, compared information
16 obtained from searches to Mr. Clarkson's name, date of birth
17 and location of the alleged stop, namely, on the corner of
18 169th Street and Walton avenue.

19 Based on Detective Albino search of the electronic
20 UF-250 database, no UF-250 was found that could have
21 corresponded to Mr. Clarkson's alleged incident.

22 Turning to Nicholas Peart's spring 2008 alleged
23 incident.

24 On or about February 2013, Detective Albino searched
25 the 63rd Precinct personnel rosters and discovered that eight

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D4U8FLO3 Hawkins - cross

1 Asian officers were working in the 63rd Precinct from March 1
2 to June 30, 2008.

3 On or about February 2013, Detective Albino ran a
4 UF-250 search for these eight Asian officers from March 1 to
5 June 30, 2008, and learned that these officers completed 59
6 UF-250s.

7 Detective Albino then cross-referenced each of the 59
8 UF-250s with Mr. Peart's date of birth, age, location of
9 alleged stop (East 49th Street, Flatbush) and time of alleged
10 stop (from March 1 to June 30, 2008) and there were no matches
11 for a stop which could have corresponded to Mr. Peart's alleged
12 stop.

13 On or about February 2013, Detective Albino searched
14 NYPD personnel rosters and Detective Albino learned that there
15 were 19 Asian officers working in the neighboring 67th Precinct
16 from March 1 to June 30, 2008.

17 On or about February 2013, Detective Albino ran a
18 UF-250 search for each of the 19 Asian officers from March 1 to
19 June 30, 2008. These officers completed 45 UF-250s.

20 On or about February 2013, Detective Albino then
21 cross-referenced each of the 45 UF-250s with Mr. Peart's date
22 of birth, age, location of alleged stop (East 49th Street,
23 Flatbush, and time of alleged stop from March 1 to June 30,
24 2008) ("afternoon") and there were no matches that could have
25 corresponded to Mr. Peart's alleged stop.

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Hawkins - cross

1 On or about February 2013, Detective Albino searched
2 the electronic UF-250 database, compared information obtained
3 from the searches to Mr. Peart's date of birth and the location
4 of alleged stop (East 49th Street, Flatbush, and time of
5 alleged stop from March 1 to June 30, 2008) ("afternoon").

6 Based on Detective Albino's electronic UF-250 database
7 search, no UF-250 was found that could have corresponded to Mr.
8 Peart's alleged incident.

9 Turning to Nicholas Peart's September 2010 alleged
10 incident.

11 On or about February 2013, Detective Albino searched
12 NYPD personnel rosters and learned that there were 193 male
13 non-African American officers who were working in September
14 2010 in the 32nd Precinct and PSA 6.

15 On or about February 2013, Detective Albino searched
16 the electronic UF-250 database, compared information obtained
17 from searches to Mr. Peart's date of birth and of the location
18 of the alleged incident. (West 144th Street between 7th and
19 8th Avenues).

20 Based on Detective Albino's electronic UF-250 database
21 search, no UF-250 was found that could have corresponded to Mr.
22 Peart's alleged incident.

23 Turning to Nicholas Peart's April 13, 2011 alleged
24 incident.

25 Detective Albino learned that there were 94 male white

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D4U8FLO3

Hawkins - cross

1 officers who were working May 2011 in the 32nd Precinct and PSA
2 6.

3 On or about February 2013, Detective Albino searched
4 the electronic UF-250 database, compared information obtained
5 from searches to Mr. Peart's date of birth and the location of
6 the alleged incident, namely, 129 and 125 West 144th Street.

7 Based on Detective Albino's electronic UF-250 database
8 search, no UF-250 was found that could have corresponded to Mr.
9 Peart's alleged incident.

10 Finally, turning to David Floyd's alleged April 20,
11 2007 incident.

12 Sergeant Justin Dengler of the Special Litigation
13 Support Unit of the New York City Police Department conducted
14 an investigation into the identities of John Doe officers
15 involved in the alleged April 20, 2007 stop of David Floyd.

16 On or about December 2012, Sergeant Dengler determined
17 that shield number 12141 was assigned to a female police
18 officer, Mary Deacy, who was assigned to the 14th Precinct in
19 midtown Manhattan on April 20, 2007.

20 On or about December 2012, Sergeant Dengler further
21 determined that shield number 9292 was assigned to a male
22 police officer, Amador Ortiz, who was assigned to the Transit
23 Borough Queens Task Force in Queens on April 20, 2007.

24 On or about December 2012, Sergeant Dengler ran a
25 UF-250 search for Officers Ortiz and Deacy for April 20, 2007

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1 and found no UF-250s at 1359 Beach Avenue and/or 1.5 blocks
2 from 1359 Beach Avenue in the Bronx for April 20, 2007.

3 On or about December 2012, Sergeant Dengler searched
4 for the surname "Goodman" in the NYPD personnel history
5 database and learned that there were four male non-civilian
6 members of the service with the surname "Goodman" who were
7 employed by the NYPD in April 2007.

8 None of the four officers with the surname "Goodman"
9 were assigned to a Bronx command on April 20, 2007.

10 On or about December 2012, Sergeant Dengler ran a
11 UF-250 search for the four officers with the surname "Goodman"
12 and found no UF-250 entries on April 20, 2007 corresponding to
13 Mr. Floyd's date of birth, age, and the following locations:
14 Beach Avenue in the Bronx, New York and/or 1.5 blocks from the
15 address 1359 Beach Avenue.

16 On or about December 2012, Sergeant Dengler searched
17 the surname "Rodriguez" in the NYPD personnel history database
18 and learned that there were 225 male, non-civilian members of
19 the service with the surname "Rodriguez" who were employed by
20 the NYPD during April 2007, and that 84 were assigned to
21 commands in the Bronx.

22 Four officers named Rodriguez were working in the 43rd
23 Precinct and Police Service Area 8 on April 20, 2007.

24 Mr. Floyd did not recognize a photograph of one of
25 these officers (Julio Rodriguez) in the photo array conducted

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1 February 1, 2010.

2 On or about December 2012, Sergeant Dengler ran a
3 UF-250 search for these four officers with the surname
4 "Rodriguez" from the 43rd Precinct and PSA 8 for April 20, 2007
5 and Mr. Floyd's date of birth, age, and the following locations
6 of alleged stop: Beach Avenue in the Bronx and/or 1.5 blocks
7 from the address 1359 Beach Avenue for the entire day.

8 Based on Sergeant Dengler's search for Rodriguez there
9 were no matches for UF-250s that correspond to Mr. Floyd's
10 stop.

11 Mr. Floyd participated in a photo array with his
12 attorney and defendants. He identified 44 photographs of
13 officers depicted in the photo array as officers possibly
14 involved in the encounter.

15 The photo arrays created for the April 20, 2007 stop
16 consisted of photos of officers assigned to uniformed units
17 within the 40th Precinct on April 20, 2007 on the 4 to 12 and
18 12 to 8 tours. Additionally, the photographs included from
19 Bronx Task Force on April 20, 2007, and the photographs
20 contained photographs of officers from the Bronx evidence
21 collection team who were assigned to that team on April 20,
22 2007 at the time of the alleged incident.

23 The activity logs of 35 of the identified officers
24 were produced during the course of discovery. I am just going
25 to read their names: Pedro Almonte, Nestor Beaume, Vincent

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1 Carty, David Egan, Steven Fernandez, Edward Garmendiz, Matthew
2 Hayes, Sean Higgins, Kris Kalmanowicz, Anthony Leitao, J.
3 Lopez, Caren McCormick, Jose Medina, Ferdi Memodoski, James
4 Nelms, Angel Padilla, Martin Pastor, Martin Palazzo, Jorge
5 Perdomo, Victor Perez, Vito Plaia, Bennett Ramos, Druilio
6 Rivera, Manuel Rohena, William Sanchez, Roberto Santiago, Erik
7 Sherar, Bruce Taylor, Ruben Tengco, Alexander Valasques, Ronny
8 Valdez, Rafael Velazquez, Keith Walker, Michael Weiss, Kurt
9 Wiebke, Amable Lopez.

10 Officer Cliff Acosta, identified by David Floyd during
11 the photo array, was assigned to the 43rd Precinct on April 20,
12 2007. He lost his memo book for that date and therefore it was
13 not produced for the purposes of this litigation.

14 Officer Luis Algarin, identified by David Floyd during
15 the photo array, was assigned to Patrol Borough Task Force on
16 April 20, 2007. He retired and his activity log entries could
17 not be obtained.

18 Officer Mario Badia, identified by David Floyd during
19 the photo array, was assigned to Patrol Borough Bronx Task
20 Force on April 20, 2007. He retired and his activity log
21 entries could not be obtained.

22 No documentation or information relevant to the April
23 20, 2007 memo book for Officer Clayton, identified by David
24 Floyd during the photo array, was produced to plaintiffs during
25 the course of discovery.

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D4U8FLO3 Hawkins - cross

1 Officer Gabriel Cotto, identified by David Floyd
2 during the photo array, was assigned to Patrol Borough Bronx
3 Task Force on April 20, 2007. He was unable to locate his memo
4 book entries for April 20, 2007 and therefore it was not
5 produced for purposes of this litigation.

6 Officer Richard Fernandez, identified by David Floyd
7 during the photo array, was assigned to Patrol Borough bronx
8 Task Force on April 20, 2007. He resigned and therefore his
9 memo book entries were not produced for purposes of this
10 litigation.

11 Officer Luis Mendez, identified by David Floyd during
12 the photo array, was assigned to the 43rd Precinct on April 20,
13 2007. He lost his memo book covering that date and therefore
14 did not produce it for the purposes of this litigation.

15 Roll calls for the 43rd Precinct and the Bronx
16 evidence task force were produced during discovery.

17 THE COURT: This seems to have taken all the time
18 prior to the luncheon recess. So we didn't get any testimony
19 in, but we will reconvene at 5 after 2.

20 (Luncheon recess)
21
22
23
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D4U8FLO3

Hawkins - cross
AFTERNOON SESSION
2:05 p.m.

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JUSTIN DENGLER, resumed.

MR. MARUTOLLO: One final note with respect to the stipulations. We just wanted to make a record into evidence that we have agreed to admit Defendants' Exhibit F3, G3, and Plaintiffs' Exhibits 491 through 548, which are all in the binder.

THE COURT: But not C3? You didn't mention C3.

MR. MARUTOLLO: And C3.

THE COURT: C3, F3, G3 and 491 through?

MR. MARUTOLLO: 548.

THE COURT: All right. 491 through 548 are received, as is C3, F3 and G3.

(Plaintiffs' Exhibits 491 through 548 received in evidence)

(Defendants' Exhibits C3, F3 and G3 received in evidence)

THE COURT: That constitutes the direct.

Now, Ms. Patel.

CROSS-EXAMINATION

BY MS. PATEL:

Q. Good afternoon, Sergeant.

A. Good afternoon.

Q. I am going to start with the stop of David Floyd on April

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Dengler - cross

1 MS. PATEL: This witness is here to prove that they
2 have done an adequate search, and whether or not the photo
3 spread is a good photo spread or it was done in an appropriate
4 manner is potentially questioned. So whether or not this
5 witness or the police department should have investigated other
6 potential officers I think is an open question.

7 It's very few questions about this.

8 THE COURT: I don't care if there are very few
9 questions. It's cluttering the record. Is there anything in
10 these memo books that you have looked through that you have
11 found that the light went on and you said, that's it, that's
12 the stop? Do you have something like that?

13 MS. PATEL: I think the issue is, if I could just
14 show, this is where the stop happened, this red dot, and this
15 is where some of the activity is. So I think whether this was
16 investigated or not is part of the question with this witness.

17 THE COURT: The purpose of putting in the memo book,
18 what is the purpose of cluttering the record with a bunch more
19 memo books of the officers he didn't identify? I understand
20 that the identification may mean nothing, that the pictures may
21 be so different, uniform versus nonuniform, whatever. It may
22 not be meaningful that he picked some and not others. So you
23 went and collected the other memo books of everybody on duty at
24 that time. But is there anything in those memo books that
25 makes you say, oh, somebody recorded that stop, it's actually

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D4u9flo4 Dengler - cross

1 that exact question.

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

3 THE COURT: I know what they're supposed to do. It
4 doesn't matter what he thinks or his opinion or whatever.
5 Obviously, they're supposed to fill them out for all stops. Do
6 they fill them out for all stops? No.

7 MS. PATEL: I guess the reason for the question is
8 that to the extent his search was based on UF 250s.

9 THE COURT: I realize that. That's an argument for
10 summation. I understand that.

11 MS. PATEL: Okay.

12 Nothing further, your Honor.

13 MR. MARUTOLLO: A few brief questions, your Honor.

14 REDIRECT EXAMINATION

15 BY MR. MARUTOLLO:

16 Q. Sergeant Dengler, you testified during cross-examination
17 that you searched other dates besides April 20, 2007?

18 A. Yes, I did.

19 Q. Why did you do that?

20 MS. PATEL: Objection. He was not asked any questions
21 about anything related -- other than April 20, 2007.

22 MR. MARUTOLLO: But he did testify about that.

23 THE COURT: All she's saying is it's improper redirect
24 but.

25 MS. PATEL: Exactly.

D4u9flo4

Dengler - redirect

1 THE COURT: Since your direct was limited to the
2 stipulation, I'll allow you some leeway.

3 MS. PATEL: It's not limited to the stipulation. This
4 question is not --

5 THE COURT: No. I realize that. That's my point.
6 It's outside the stipulation.

7 MS. PATEL: That's right.

8 THE COURT: I know. I said since he limited the
9 direct to the stipulation, I'm going to allow him some latitude
10 on redirect.

11 Anyway, you did look at dates other than April 20,
12 right?

13 THE WITNESS: Yes, I did.

14 Q. Why did you do that?

15 A. The plaintiff changed his allegations in 2011 to include --
16 he stated that it may have been a Saturday in April. So I
17 checked every Saturday in April 2007, which was April 7, 14, 21
18 and 28.

19 Q. Now, besides the electronic database UF 250 search, did you
20 search -- did you conduct an investigation into any other
21 UF 250s related to this David Floyd allegation?

22 A. Yes, I did.

23 MS. PATEL: Objection, your Honor.

24 First of all, I did not ask any questions about his
25 UF 250 database search so it's outside the scope.

D4u9flo4

Dengler - redirect

1 THE COURT: That was -- your very last question
2 essentially was: You limited your search to the UF 250s? You
3 tried to say did you look at things other than -- no, you
4 started to say: Don't you realize that not everybody fills out
5 a 250. But it was clear that his search was limited to the
6 UF 250s.

7 Now the question is only: Did you limit yourself to
8 the electronic database, or did you actually look through I
9 guess hard copy 250s?

10 THE WITNESS: I did. At police headquarters all the
11 hard copies are stored and I manually searched through all the
12 hard copies physically.

13 THE COURT: I know it's still 250s, but it's beyond
14 the electronic database.

15 MS. PATEL: I would just say that should be stricken
16 because it's cumulative. The same search that was done during
17 the course of discovery would have covered anything that was
18 done manually because the only thing redacted is the names,
19 which would have been in the electronic search that was
20 conducted during the course of discovery.

21 THE COURT: I'm sorry. I apologize. I'm not
22 following this. But maybe -- let me make sure I understand.

23 Are the paper copies more complete than the database?

24 THE WITNESS: Well the paper copies are unredacted.
25 Basically in the UF 250 in the electronic database, if the

D4u9flo4

Dengler - redirect

1 person was not arrested or summonsed, their name and address is
2 correct.

3 THE COURT: Other than that, the electronic database
4 and the paper data, so to speak, should be identical?

5 THE WITNESS: Yes.

6 THE COURT: There's not more 250s in the paper world?

7 THE WITNESS: That's correct.

8 THE COURT: So.

9 MS. PATEL: But when this electronic search that we
10 stipulated to in the stipulation was conducted during the
11 course of discovery, during that time the electronic database
12 included the names.

13 So, therefore, whether or not the defendants
14 determined that they should do a manual search is irrelevant.

15 THE COURT: Maybe that's when you expand it to the
16 other Saturday -- the other days though when you went through
17 all the Saturdays in April?

18 THE WITNESS: Yes, I did. I did every Saturday in
19 April.

20 MS. PATEL: Again, your Honor, that's outside the
21 scope of discovery. Nothing was ever provided to the
22 plaintiffs.

23 THE COURT: What could they -- I'm sorry, Ms. Patel,
24 you're just managing to lose me today. What could they provide
25 you? A negative is a negative. What could they do? Say

D4u9flo4

Dengler - redirect

1 here's a negative.

2 All he's testifying to is he looked through all the
3 Saturdays in April and didn't find anything in the UF 250s.

4 Of course, your argument is there may have been no
5 250. I understand that argument.

6 MS. PATEL: And I just think the relevance of a search
7 that was done outside the scope of discovery, you know, I would
8 object -- any evidence that's --

9 THE COURT: The issue is prejudice. The issue is
10 always prejudice. But there's nothing that could -- there's
11 nothing prejudicial because there's nothing to give you in
12 discovery, other than to invite you to go down to headquarters
13 and look through all the 250s yourself which wouldn't turn up
14 anything else if you look.

15 MS. PATEL: If we had known that there was a further
16 search being conducted in December 2012 we could have deposed
17 the witness.

18 THE COURT: It would have been a pretty short
19 deposition. I looked through every Saturday in April in the
20 electronic database and hard copies and didn't find anything.

21 He didn't go beyond the 250s. So I don't know what
22 the deposition would have given you. What would you have asked
23 at deposition?

24 MS. PATEL: Well, your Honor, I mean the names that he
25 used, the locations that he narrowed.

D4u9flo4

Dengler - redirect

1 THE COURT: I'll allow you to do that on recross. You
2 can do that. That's fine. All right. Go ahead.

3 MR. MARUTOLLO: We would note, your Honor, we did
4 stipulate to those addresses and the locations in the direct
5 examination.

6 THE COURT: If she wants to ask that on recross she
7 can for the December 2012 search, which she never heard about
8 until, what, just now?

9 MS. PATEL: Well I mean a week ago when we discovered
10 that.

11 MR. MARUTOLLO: That's not accurate, your Honor. He's
12 been listed as a witness in place of Detective O'Gorman since
13 the beginning.

14 THE COURT: I'm asking when she first heard of the
15 December 2012 search.

16 And the answer is?

17 MS. PATEL: When we first received the draft
18 stipulation which was I don't know -- I don't have the exact
19 date but a week or two ago.

20 And we have objected to that.

21 MR. MARUTOLLO: May I have one moment, your Honor.

22 (Pause)

23 No further questions, your Honor.

24 THE COURT: Ms. Patel, go ahead and ask those
25 questions if you'd like.

D4u9flo4

Dengler - redirect

1 RE CROSS EXAMINATION

2 BY MS. PATEL:

3 Q. When you did your UF 250 search, did you search for McGraw
4 Avenue?5 A. Yes, I did. I searched for every 250 that was conducted in
6 the confines of the 43rd precinct on April 7, 14, 20, 21, and
7 28.

8 Q. And this was in your manual search?

9 A. Yes.

10 Q. How many UF 250s were there?

11 A. Hundreds. There were hundreds.

12 And it was also done in my electronic search as well.

13 MS. PATEL: Nothing further.

14 MR. MARUTOLLO: No further questions, your Honor.

15 THE COURT: Okay. Thank you.

16 (Witness excused)

17 MR. MARUTOLLO: We can call Detective Santos Albino.

18 Again, in lieu of the stipulation we'll waive our direct
19 examination.

20 SANTOS ALBINO,

21 called as a witness by the Defendant,

22 having been duly sworn, testified as follows:

23 CROSS-EXAMINATION

24 BY MS. PATEL:

25 Q. Detective Albino let's start with discussing the

D4u9flo4

Albino - cross

1 employees and their photos and it's renewed every five years.

2 THE COURT: So at any one time a particular person's
3 photo could be four-and-a-half years old?

4 THE WITNESS: That's correct.

5 THE COURT: For example?

6 THE WITNESS: Yes.

7 THE COURT: But it shouldn't be more than five years?

8 THE WITNESS: It's on their birthday every five years.

9 Q. And the photographs may or may not depict a different hair
10 color of the officer from February 21, 2008, correct?

11 A. That may be possible, yes.

12 Q. And whether or not they had different facial hair, correct?

13 A. Yes.

14 Q. And a different build, lost weight or gained weight? They
15 could be different from the photograph, right?

16 A. Yes, ma'am.

17 Q. And you would also agree, wouldn't you, that by using the
18 photo arrays, Mr. Ourlicht can't hear the sound of the person's
19 voice, right?

20 A. It's only a photo, ma'am. There is no sound.

21 Q. And there could be something that listening to the voice of
22 an officer that would assist in making an accurate
23 identification, right?

24 A. Only if the officers are present. If the officer was
25 present during the photo array.

D4u9flo4

Albino - cross

1 Q. My question is if a police officer -- if a person speaks,
2 the person making the identification, hearing the voice, that
3 can assist in making an accurate identification?

4 A. Yes, it may.

5 Q. But in any case at the time of the photo array that was
6 conducted for David Ourlicht in which you were present, he did
7 not know the identities of any of the officers who corresponded
8 to the photographs he was shown, right?

9 A. I'm sorry. Can you repeat the question.

10 Q. At the time of the photo array, David Ourlicht did not know
11 the identities of any of the police officers whom he was shown?

12 MR. MARUTOLLO: Objection. Calls for speculation,
13 your Honor.

14 THE COURT: Well if that's his testimony, then it's a
15 fair question.

16 To your knowledge he did not have a name and shield
17 number, did he?

18 THE WITNESS: No, he did not. He did not provide any
19 information.

20 THE COURT: So he didn't have the identities, to your
21 knowledge.

22 THE WITNESS: Yes, ma'am.

23 Q. And I was there at the photo array, correct?

24 A. I believe so, yes.

25 Q. Yes. We met there. And I didn't have that information

D4u9flo4

Albino - cross

- 1 Defendants' Exhibit F3, David Ourlicht was shown from
2 February 21, 2008 NYC 2-8733 to 41. And 8742 to 52.
3 Q. And then so, Detective Albino, you recall that he was shown
4 86 pages of photographs, correct?
5 A. I believe so, yes.
6 Q. And there were six photographs per page, correct?
7 A. That's correct. The photo array consists of six
8 photographs, yes.
9 Q. And only one of those photographs was an actual officer
10 from the 107th precinct roll call for Queens borough south?
11 A. That's correct.
12 Q. That's 516 pictures, correct?
13 A. Sounds about right.
14 Q. Why did -- I'm sorry. The six-shot photo arrays are
15 particularly used in criminal cases, correct?
16 A. They can be used for criminal case, yes, ma'am.
17 Q. Why were photo arrays used in this case?
18 A. It's my understanding --
19 MR. MARUTOLLO: Objection, your Honor.
20 THE COURT: I'll allow it.
21 THE WITNESS: It's my understanding that the courts
22 had ordered photo arrays to be produced for this specific
23 plaintiff, Mr. Ourlicht's case.
24 Q. My question was why did -- why was it decided to use
25 fillers?

D4u9flo4

Albino - cross

- 1 A. Well in order to do a proper photo array, it requires one
2 officer to be the -- in this case, an officer, to be the
3 subject officer, and five other fillers, in order to make a
4 proper photo array.
- 5 Q. That's typically for a criminal case, correct?
- 6 A. It's used in criminal cases, yes.
- 7 Q. And at the August 24, 2009 photo array, Mr. Ourlicht
8 identified Sergeant Gordon Pekusic, correct?
- 9 A. Yes, he did.
- 10 Q. And he identified him twice, correct?
- 11 A. Yes, he did.
- 12 Q. And that's because he saw his photograph in the photo array
13 for the February 21, 2008 incident and for the June 6 four
14 eight 2008 incident, correct?
- 15 A. That is incorrect.
- 16 Q. Excuse me. He saw his photograph twice because they were
17 in two separate exhibits for separate dates, correct?
- 18 A. That's correct.
- 19 Q. And the first time he identified Sergeant Pekusic he said
20 the face was one that stands out to me, right?
- 21 A. I don't recall that statement.
- 22 THE COURT: Do you have a transcript?
- 23 MS. PATEL: Yes, your Honor.
- 24 THE COURT: You ought to stipulate, if that's what he
25 said.

D4u9flo4

Albino - cross

1 MR. MARUTOLLO: I don't have the transcript.

2 THE COURT: Show it to Mr. Marutollo. If that's what
3 he said, I expect a stipulation.

4 MS. PATEL: One moment, your Honor. I have it.

5 MR. MARUTOLLO: Your Honor, I think maybe to expedite
6 matters we can stipulate to the fact that he may have possibly
7 been selected twice but --

8 THE COURT: Why don't you look at the transcript.

9 MS. PATEL: On page 42, line 15.

10 (Pause)

11 MR. MARUTOLLO: Your Honor, I would also note that
12 Mr. Ourlicht did testify and this was not raised during his
13 examination.

14 MS. PATEL: Your Honor, this is -- it's rebuttal
15 testimony, your Honor. And the parties stipulated to certain
16 facts in order -- in lieu of rebuttal testimony to make it
17 easier for the court and for the parties.

18 THE COURT: I understand. I'm still asking
19 Mr. Marutollo to look at the page of the transcript to see if
20 she accurately said what Mr. Ourlicht said.

21 MS. PATEL: Your Honor, for some reason this doesn't
22 have page numbers so it's just taking a moment.

23 I'll just come back to this, your Honor, while we look
24 for the citation.

25 THE COURT: Okay.

D4u9flo4

Albino - cross

1 Plaintiffs' Exhibit 500 Bates stamped NYC 2-7443 through 46.

2 This is a memo book for Lisa Negrón; is that correct?

3 A. Yes, it is.

4 Q. And then also turning your attention to Plaintiffs' Exhibit
5 501, NYC --

6 THE COURT: Did you want to point something out on the
7 first one? Why did you have him look at 500? Anything you
8 want to point out?

9 MS. PATEL: Yes, your Honor.

10 THE COURT: Why don't we do that before we turn to
11 501.

12 MS. PATEL: Sure.

13 Q. You see there's an indication on -- in the memo book next
14 to 9:10.

15 THE COURT: Which page?

16 MS. PATEL: 7444.

17 THE COURT: Okay.

18 MS. PATEL: That says.

19 THE COURT: One. Does that say one?

20 I can't read it. It ends.

21 MS. PATEL: The address 1760 Lexington is indicated.

22 Do you see that?

23 THE COURT: I see 1760 Lex. It's in evidence. I see
24 it.

25 MS. PATEL: And then at 9:11 a.m. it also states 1565

D4u9flo4

Albino - cross

1 Park.

2 THE COURT: Right.

3 MS. PATEL: And then at 9:21 it indicates, on the next
4 page, 7445.

5 THE COURT: Starts with four truants to school PS101.

6 Is that where it says four truant to school PS101,
7 right? And then five minutes later two truants to school.

8 MS. PATEL: Yes, your Honor.

9 I guess the other copy of this book has an address
10 that's not redacted, of this memo book, which we'll have to
11 work with defendants to see if we can stipulate to the address.

12 THE COURT: Okay.

13 MS. PATEL: And then if we look at 501.

14 THE COURT: Now we're at 501.

15 MS. PATEL: Which is NYC-2-5481 to 5484.

16 Q. This is a memo book for Officer Goris, correct?

17 A. That's correct.

18 Q. And the memo book indicates at 9:26 a.m. activity at 1680
19 Lexington Avenue, which is Heritage School?20 THE COURT: I'm sorry. Now I didn't see that. At
21 what time?

22 MS. PATEL: 9:26.

23 THE COURT: That's not 484. That's 483.

24 MS. PATEL: I was just reading the full Bates range.
25 At 5483.

D4u9flo4

Albino - cross

- 1 THE COURT: Right. At 9:26.
2 MS. PATEL: A.m. There is a notation for six -- a
3 location of 1680 Lexington Avenue, which is Heritage School.
4 THE COURT: I'm sorry. I don't see 16.
5 THE WITNESS: I don't see it.
6 THE COURT: Again, I don't see 16 anything.
7 MS. PATEL: Well it's Heritage School.
8 THE COURT: I see the words Heritage School. I don't
9 see an address.
10 Ms. Patel, did you just read an address. Didn't you
11 say 16 something?
12 MS. PATEL: Okay. Yes.
13 Q. Heritage school. Are you aware that that's 1680 Lexington
14 Avenue?
15 A. No. I'm not aware of that.
16 Q. At 9:35 a.m. it says -- on 5483 it says Third Avenue and
17 East 110th Street?
18 A. Says pick up four truants.
19 THE COURT: East 110 Street.
20 THE WITNESS: And Third Avenue.
21 MS. PATEL: Yes, your Honor.
22 And then I'm showing the witness 553.
23 Q. Is this a map?
24 A. Yes.
25 Q. And you see that it plots points that correspond to the

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1 addresses that we just covered?

2 A. Can I just review it?

3 MS. PATEL: Of course.

4 I seek for the admission and I can redact the entries
5 that we weren't able to find in the memo books.

6 MR. MARUTOLLO: Just object on the grounds of
7 relevance, your Honor, as these officers --

8 THE COURT: Can't hear you.

9 MR. MARUTOLLO: These officers are not selected in the
10 photo array by Mr. Ourlicht.

11 THE COURT: Right.

12 MR. MARUTOLLO: And --

13 THE COURT: That doesn't matter to me if they were
14 in -- I guess what precinct are we in now?

15 MS. PATEL: They were assigned to the 107th precinct.

16 THE COURT: They're assigned to the 107th. And the
17 memo books were pulled. And whether or not he was able to pick
18 them out. If she thinks this shows the vicinity and the time
19 and similarities to what he testified was the stop, I would
20 allow it. That's the relevance.

21 MS. PATEL: Your Honor, I would also note that on
22 direct in the stipulation there is testimony that these
23 officers were assigned to the van, the exact van that David
24 Ourlicht testified that were the -- was the van that stopped
25 him.

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Albino - cross

1 THE COURT: Okay.

2 THE WITNESS: Your Honor if I may. These officers
3 were not assigned to the 107th precinct. These officers are
4 assigned to Police Service Area number five. Which is a total
5 different location and a different borough. The 107 is in the
6 borough of Queens. PSA 5 is in the Borough of Manhattan.

7 THE COURT: But you're telling me, Ms. Patel, that
8 there's evidence that they were assigned to the van identified?

9 MS. PATEL: Yes, your Honor.

10 THE COURT: Well, that's -- you can't testify. Where
11 is the testimony about that?

12 MS. PATEL: It's in the stipulation.

13 THE COURT: Can you point me?

14 MS. PATEL: I can show you the paragraph.

15 MR. MARUTOLLO: Your Honor, it's in paragraph 11, page
16 5.

17 THE COURT: The PSA 5 roll call indicates that on
18 June 6, 2008 van 9466 was assigned to officers Negrón, Goris
19 and Delgado.

20 So it certainly is relevant what their memo book says.
21 Since they were assigned to that van on that date.

22 MR. MARUTOLLO: The one note we would additionally
23 indicate in terms of an objection is that David Ourlicht
24 testified at trial that the individuals who stopped him on the
25 date of this incident were males. And these three individuals

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Albino - cross

1 are females. And I think that's obviously a significant factor
2 in terms of our objection for this relevance.

3 MS. PATEL: Your Honor, he also testified that he was
4 on the ground and maybe couldn't see the officers.

5 THE COURT: All I know is he identified the van number
6 as 9466, right?

7 MS. PATEL: That's right.

8 THE COURT: And these folks were assigned to that van
9 on that date and their memo books reflect activity in the area
10 that this fellow described, right, Ourlicht described?

11 MS. PATEL: Yes, Judge.

12 THE COURT: So it's relevant.

13 MS. PATEL: I would move for admission of the map.

14 THE COURT: Which is exhibit what?

15 MS. PATEL: 551.

16 THE COURT: 551. All right. 551 is received.

17 (Plaintiff's Exhibit 551 received in evidence)

18 Q. And you're aware that David Ourlicht was stopped at the
19 Johnson houses, correct?

20 A. Yes. That's the allegation.

21 Q. And the Johnson houses complex in your stipulation you said
22 that it was between Lexington and Park at 112th and extending
23 to I believe it's 115 Street; is that right?

24 A. 115 Street is cut off on the map here.

25 Q. You'd agree with me that there's a notation here. This is

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Albino - cross

1 MS. PATEL: There's actually two times when he
2 identified him. The first.
3 THE COURT: Identified who?
4 MS. PATEL: Sergeant Gordon Pekusic.
5 And the first time he said, when she was shown the
6 photograph identified with the lineup ID NYC 2-12694 he said
7 that it's one of the ones -- quote, ones that stands out to me.
8 It's deposition 42 at line 15, starting at line 15.
9 MR. MARUTOLLO: Just to be clear. You say now I am
10 not sure but the ones that stands out to me are two and three.
11 MS. PATEL: That's right.
12 THE COURT: Any other quote.
13 MS. PATEL: And the other is on page 60.
14 And when shown the picture the second time he said
15 that the picture, quote, stands out.
16 MR. MARUTOLLO: Well I -- where does it say stands
17 out?
18 (Pause)
19 MR. MARUTOLLO: Your Honor, we would stipulate to the
20 fact that he answered, Mr. Ourlicht answered: I am not sure
21 but, one, Sergeant Pekusic, is the only one that stands out.
22 MS. PATEL: And the other one.
23 MR. MARUTOLLO: And the other one.
24 THE COURT: So both of those statements are now in the
25 record.

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Albino - cross

1 BY MS. PATEL:

2 Q. Detective Albino you're aware that Mr. Ourlicht viewed
3 another photo array without fillers, correct? That was in your
4 stipulation, correct?

5 A. He reviewed another photo array without fillers?

6 Q. Yes.

7 A. I'm sorry. Can you refresh my recollection?

8 THE COURT: What paragraph of the stipulation is that?

9 MS. PATEL: Yes, your Honor.

10 MR. MARUTOLLO: Paragraph 12, your Honor, on page 2.

11 Q. Does that refresh your recollection about whether

12 Mr. Ourlicht was shown a photo array --

13 A. Yes. I understand that there was a photo array.

14 Q. -- without fillers?

15 A. There was a photo array conducted not in the presence of
16 anyone from the law department, not in the presence of myself,
17 or not anyone from the police department. I do.

18 Q. And at that photo array he selected -- he identified
19 several police officers, correct?

20 MR. MARUTOLLO: Objection, your Honor. I think --

21 THE COURT: Well it's in the stip. During this array
22 Mr. Ourlicht identified the following officers as officers who
23 could have been involved with his stop on February 21, 2008.
24 Then there's a bunch much of names. There's nothing to object
25 to. It's in your stip.

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1 A. I'm not aware of that.

2 Q. Did you review -- Detective Albino, did you review the
3 subpoenaed response from Verizon concerning David Ourlicht's
4 cellphone record?

5 MS. PATEL: Your Honor, I object because this is not
6 in the scope of anything that's been testified about today and
7 Mr. Ourlicht did testify about these facts and that seems to be
8 the relevant person.

9 MR. MARUTOLLO: Your Honor, we actually attempted to
10 explore this with Mr. Ourlicht and I believe the ruling was
11 that if an investigator did conduct investigation, to talk to
12 the investigator about this allegation. I did want to,
13 obviously, try to stipulate to this on direct. We were not
14 able to reach an agreement.

15 So I just have two questions on this issue.

16 THE COURT: It's not a matter of the number of
17 questions. It's a matter of whether it's admissible.

18 So a subpoena was served by the police department on
19 Verizon; is that right?

20 Officer?

21 THE WITNESS: Sorry?

22 THE COURT: A subpoena was served by the police
23 department on Verizon?

24 THE WITNESS: Yes.

25 THE COURT: It was?

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Albino - redirect

1 THE WITNESS: It was served by the law department.
2 THE COURT: The law department?
3 THE WITNESS: Yes.
4 THE COURT: On Verizon?
5 THE WITNESS: Yes.
6 THE COURT: What number was in the subpoena?
7 MR. MARUTOLLO: I could refresh your memory.
8 THE COURT: I don't know if he has any memory to be
9 refreshed. You may just be telling him what to say.
10 Can't we do this by an offer of proof. A subpoena was
11 served by the law department. What number was on it?
12 MR. MARUTOLLO: The number that was on it, your Honor,
13 was (917)572-0847.
14 THE COURT: And another number?
15 MR. MARUTOLLO: That's the only number.
16 THE COURT: How was that number obtained?
17 MR. MARUTOLLO: That number was obtained from
18 Mr. Ourlicht during his deposition. He indicated that he used
19 that number immediately after one of his alleged stops.
20 THE COURT: And then you want this officer to testify
21 as to what was obtained through that subpoena?
22 MR. MARUTOLLO: Yes, your Honor.
23 MS. PATEL: I don't know that it's been established
24 that he has any knowledge of what happened.
25 THE COURT: That can be done but it really does seem

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Albino - redirect

1 that it makes more sense than bringing in somebody from Verizon
2 to give the same information. The subpoena was served.
3 Verizon searched. Whatever it found, it found. Or whatever it
4 didn't find, it didn't find. Do you really want somebody from
5 Verizon?

6 MS. PATEL: I'm just -- what's the relevance?

7 THE COURT: Well Mr. Ourlicht said he made a phonecall
8 on that cellphone right after the stop. The records would show
9 what they show, although I don't know what dates.

10 MR. MARUTOLLO: It was for February 21, 2008.

11 And it's particularly relevant because the timing of
12 the alleged stop, it would help in the investigation based on
13 whatever the cellphone records that came back. So if he made
14 the call at 3:00 we would be able to then narrow down the
15 search to the exact times.

16 THE COURT: Because his testimony was he used the
17 cellphone right after the stop.

18 MR. MARUTOLLO: Right.

19 THE COURT: For that date? He's sure of that date?

20 MR. MARUTOLLO: Yes, your Honor. February 21, 2008
21 for that alleged incident.

22 THE COURT: February.

23 MS. PATEL: Your Honor, he testified that he wasn't --
24 I don't remember. What did he say exactly?

25 MS. HOFF VARNER: At least with respect to his

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1 sorry, is it detective?

2 THE WITNESS: Detective.

3 THE COURT: -- detective who reviewed whatever was
4 sent back from Verizon. So it's up to you. If you want them
5 to subpoena the Verizon person, I can. But I don't think the
6 result will change. The records are the records. They are
7 what they are.

8 MS. PATEL: That's right, your Honor. I would just
9 say there's a potential hearsay objection.

10 THE COURT: I understand that. I'm trying to be
11 practical.

12 MS. PATEL: Of course.

13 THE COURT: You can subpoena somebody from Verizon but
14 why? It's the same records.

15 MS. PATEL: Okay, we'll --

16 THE COURT: All right.

17 Anyway she has no objection in the meantime. So did
18 you get the records from Verizon?

19 THE WITNESS: Yes. I reviewed those records.

20 THE COURT: Did you review them?

21 THE WITNESS: Yes.

22 THE COURT: And what did the records from Verizon show
23 with respect to February 21, 2008 for that particular cellphone
24 number?

25 THE WITNESS: The Verizon document revealed that the

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1 phone, there was no record for that phone being used on
2 February 21, 2008.

3 THE COURT: Is that in writing? Do you have that in
4 writing from Verizon?

5 THE WITNESS: I did have a copy of it but I don't have
6 it.

7 MR. MARUTOLLO: I have it, your Honor, if you need it.

8 THE COURT: Has Ms. Patel seen it?

9 MR. MARUTOLLO: Yes. It's on our exhibit list.

10 THE COURT: Then that's what Verizon found. No use of
11 the cellphone on the 21st.

12 MR. MARUTOLLO: This actually is not in the stipulated
13 binder, your Honor. But I mean we could enter it into
14 evidence. It was previously marked as Defendants' Trial
15 Exhibit Z2.

16 MS. PATEL: I think there was an objection to this.

17 THE COURT: We just covered that. I said do you want
18 to spend the time having the person from Verizon come in to
19 authenticate a Verizon document, or can you look at it and say,
20 yeah, that's what Verizon said for that phone number. I
21 realize it's limited to that phone number on that day but they
22 found no record of use. That's what Verizon found.

23 MS. PATEL: He's testified to that fact. I'm not sure
24 the necessity to have the document in.

25 THE COURT: The document is better evidence. He's

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1 testifying from the document. He didn't do the search of
2 Verizon.

3 This is what you received from Verizon, right?

4 THE WITNESS: That's correct.

5 THE COURT: This is one piece of paper?

6 THE WITNESS: Yes, one piece of paper.

7 THE COURT: It's better to have the piece of paper
8 from Verizon. I'll take the document. What number are you
9 calling it?

10 MR. MARUTOLLO: Z2, your Honor.

11 THE COURT: Z2 is received.

12 (Defendants' Exhibit Z2 received in evidence)

13 Q. Detect Albino with respect to your testimony regarding
14 Officers Negron, Goris and Delgado, you indicated that they
15 were on -- that there were truants in the vehicle with them on
16 the date of the June 6 or June 9 David Ourlicht incident.

17 What did that mean to you that there were truants in
18 the vehicle with them according to their memo book entries?

19 A. Well according to their memo book entries there were
20 approximately 24 truants in the car between 9:00 a.m. and 10:00
21 a.m. they were either in and out of the car. These children
22 were either being returned to school or a board of education
23 facility.

24 It's really my experience as a police officer and of
25 course at one time I was a youth officer so I came in contact

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1 A. Yes. The hard copies contained all the information from
2 the person that was stopped.

3 MS. PATEL: Objection.

4 I just want to renew my objection with this witness
5 because this witness, the stipulated facts, he himself did the
6 search in the course of discovery. There was, again, at that
7 time that he did the electronic search there were -- there was
8 no need to do a paper search because the names -- all the
9 information was indicated in the --

10 THE COURT: I understand.

11 MR. MARUTOLLO: Your Honor, respectfully, the Nicholas
12 Peart allegation took place after the law had changed in which
13 the names had been redacted in the electronic database. There
14 is no stipulation the parties have reached regarding the names,
15 just merely to show that the names were in the handwritten
16 documents.

17 THE COURT: Okay. I'm allowing anyway the testimony
18 about the search of the paper records.

19 Q. In the stipulations read during the direct examination
20 there's a reference to Nicholas Peart's alleged incident on
21 April 13, 2011. When did you first learn that Nicholas Peart's
22 alleged incident date was April 13, 2011?

23 A. During the trial.

24 Q. And why is that?

25 A. His first allegation of being stopped was in May of 2011.

D4u9flo4 Albino - redirect

1 Q. Did you follow up and search the UF 250 database and paper
2 UF 250s for any incident that may have occurred on April 13,
3 2011?

4 A. Yes. That's correct. I searched the database and the hand
5 copies for the whole month of April 2011 for the 63rd precinct
6 and the 67 precinct.

7 MR. MARUTOLLO: No further question, your Honor.

8 MS. PATEL: Nothing further.

9 THE COURT: Okay. You're done. Thank you.

10 THE WITNESS: Thank you, your Honor.

11 (Witness excused)

12 MS. RICHARDSON: Your Honor, defendant calls Sergeant
13 Joseph Marino.

14 JOSEPH MARINO,

15 called as a witness by the Defendant,

16 having been duly sworn, testified as follows:

17 MR. COREY: Your Honor, before this witness begins to
18 testify could I just ask defense counsel to confirm that
19 Officer Kha Dang is not in the courtroom.

20 THE COURT: I wondered about that too. Is he?

21 MS. RICHARDSON: No, your Honor, he is not.

22 (Continued on next page)

23

24

25

D4U8FLO5 Marino - direct

1 DIRECT EXAMINATION

2 BY MS. RICHARDSON:

3 Q. Good afternoon, Sergeant Marino.

4 A. Good afternoon.

5 Q. Are you currently employed?

6 A. Yes.

7 Q. By whom are you currently employed?

8 A. The New York City Police Department.

9 Q. How long have you been employed by the New York City Police
10 Department?

11 A. Just over 13 years.

12 Q. Did you attend and graduate from the New York City police
13 academy?

14 A. Yes.

15 Q. Could you please briefly walk the Court through your
16 various assignments with the NYPD starting from after the
17 academy to the present?

18 A. I was assigned to the police academy on March 1st of 2000.
19 I attended the police academy to late October of 2000. Upon
20 completion of the police academy, I was assigned to the 62
21 Precinct. Initially, I was assigned to a field training.
22 After approximately two or three months of field training, I
23 did 4 to 12 on patrol for approximately three years. Then for
24 about 9 or 10 months, I was assigned to a BAT team, which is a
25 burglary apprehension team, a plain clothes unit that

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1 investigates burglaries inside a command.

2 Then in September of 2005, I was promoted to sergeant.

3 I was assigned to a leadership course in the police academy for

4 about five or six weeks. Upon completion of that, I was

5 assigned to the 88 Precinct to a day tour patrol for

6 approximately three years. Then I was assigned to anticrime

7 just for under about a year. Then I was assigned to a

8 conditions team, that was probably around six months. After

9 that I was assigned back to that anticrime team. And up until

10 June 4th of 2012 -- I'm sorry, June 4, 2012, I was assigned to

11 the 122 Precinct in Staten Island where I do day tour patrol.

12 Q. After you were promoted to sergeant, you said you attended

13 a sergeant's leadership course?

14 A. Yes.

15 Q. What exactly is that?

16 A. Basically, it's a course in the police academy where they

17 train you in the difference between pretty much being a cop and

18 a supervisor, certain responsibilities you're going to have as

19 a supervisor that you didn't otherwise have as a police

20 officer. It entailed going over certain procedures, certain

21 paperwork for certain jobs. We had a few guest speakers that

22 were part of the department and outside of the department that

23 would come and speak to us and lecture us. That was about five

24 or six weeks.

25 Q. Now, you stated that your current assignment is at the

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1 122nd Precinct, correct?

2 A. Correct.

3 Q. You have been assigned there since what date?

4 A. June 4th of 2012.

5 Q. What are your current responsibilities?

6 THE COURT: Where is this precinct?

7 THE WITNESS: The 122 Precinct is in Staten Island.

8 Q. What are your current responsibilities as a sergeant
9 assigned to the 122nd Precinct?

10 A. I am a patrol supervisor. So as a patrol supervisor, you
11 normally either cover the desk. When you cover the desk, your
12 responsibilities basically are anything that's internal in the
13 precinct, whether it be securing property, make sure property
14 is accounted for, prisoners are accounted for, making sure
15 everybody that's supposed to be coming in that day is accounted
16 for. And when you're on patrol, you're in charge of pretty
17 much accounting for and assigning the cops that come in their
18 daily assignments, their meals, their RMPs, and you respond to
19 jobs also and make sure the units are responding to jobs in a
20 timely fashion.

21 Q. Prior to the 122nd, you were an anticrime sergeant in the
22 88th Precinct, correct?

23 A. Correct.

24 Q. Can you describe the role of an anticrime sergeant?

25 A. As an anticrime sergeant, it was myself and five other

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1 police officers. It's a plain clothes unit that drives around
2 in unmarked cars. My role with that was, when I would come in
3 in the beginning of my tour, I would review the previous
4 complaint reports, previous arrest reports. I would go over to
5 the detective squad and speak to them, pretty much find out
6 what is going on in the command at that time in relation to
7 crime, and based on that information, I would have my guys
8 focus -- my team focus their attention to certain areas within
9 the command.

10 Q. As a member of the anticrime team, did you address any
11 specific types of crime?

12 A. Yes.

13 Q. What specific types of crimes were you responsible for
14 addressing?

15 A. Normally, as an anticrime team, you're focusing your
16 attention on robberies, burglaries, shootings, anything where
17 there is an increase in the precinct. It doesn't have to
18 necessarily be those jobs. You could have an increase in car
19 break-ins or an increase in GLAs. So it's many different jobs.
20 It's usually dictated by what is going on in the command at any
21 given time.

22 Q. All of those crimes that you just mentioned, are those
23 considered the seven major felonies?

24 A. Not all the ones I named, but the robberies, burglaries,
25 felonious assaults. The car break-ins and larcenies are

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- 1 usually misdemeanors. The other ones are the seven majors.
2 Q. What area does the 88th Precinct cover?
3 A. Fort Greene.
4 Q. Can you please describe the Fort Greene area?
5 A. Yes. It's a residential area. We have some industrial
6 area along Flushing Avenue. There's commercial areas along
7 Flatbush Avenue, Atlantic Avenue, Fulton Street, Myrtle Avenue.
8 We have -- we had a mall. The precinct has since been
9 restructured since the opening of the Barclays Center. That's
10 about it.
11 Q. Were there any public housing developments located within
12 the confines of the 88th Precinct?
13 A. Correct.
14 Q. Which public housing developments are those?
15 A. There's two housing developments, one was the Women
16 Ingersoll Houses, and the second housing was Atlantic
17 Terminals.
18 Q. Now, as an anticrime sergeant, what role, if any, did you
19 play in determining where to deploy the anticrime officers who
20 were assigned to your team?
21 A. I had a good role in determining where my guys were going
22 to patrol, my team. Like I said, when I come in to work every
23 day, I would review the previous complaints reports for the
24 previous day, and if we were off, the previous couple of days,
25 the prior days. And based on that information and the

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1 information I am getting from the detective squad, we would
2 focus our area on any particular place that had an increase or
3 a spike in crime.

4 Q. As an anticrime sergeant, did you have any meetings with
5 your subordinate officers?

6 A. Yes.

7 Q. What would those meetings consist of?

8 A. Every day when we came into work, prior to us going out on
9 patrol, approximately anywhere between 30 minutes to an hour,
10 we would review complaint reports and speak to the detective
11 squad. I would speak to my bosses also, and from all that
12 information, I would pass that information along to them, and
13 whatever they had found out, let's say they came to work a
14 little before me, they would relay that information to me.

15 Q. Would you also have meetings with your supervisors?

16 A. Yes.

17 Q. Which supervisors would you meet with?

18 A. Well, my direct supervisor was my special operations
19 lieutenant, that was Lieutenant Barry Berger. And I would meet
20 with him, I wouldn't say daily, but almost every other day.
21 And approximately every two weeks we would have a meeting with
22 our commanding officer.

23 Q. When you met with Lieutenant Berger, what would you
24 discuss?

25 A. Pretty much the crime conditions, increases in crime in the

D4U8FLO5 Marino - direct

1 command, and basically where he wanted us to focus our
2 attention on also.

3 Q. With respect to the meetings with the commanding officer --

4 THE COURT: Could you please keep your voice up?

5 MS. RICHARDSON: Sorry, your Honor.

6 Q. With respect to the meetings that you would have with the
7 commanding officer approximately every two weeks, what would be
8 discussed at those meetings?

9 A. Those meetings usually took place in pay periods and any
10 supervisor who was working at that time would attend. There
11 were numerous issues that would be addressed. He would speak
12 about current conditions in the command. ICOs would speak also
13 about certain conditions. But in addition to that, he also met
14 with the special operations unit of the command afterwards, and
15 basically he would deploy -- he would give us like a weekly
16 deployment plan, which basically tells us where to focus our
17 attention on for that week. And like I said, we usually got
18 that paperwork through him, or sometimes if it wasn't directly
19 through him, through our special operations lieutenant.

20 Q. Now, what training, if any, did you receive in the police
21 academy regarding stop, question and frisk?

22 A. Obviously, the classroom lectures, and there was also times
23 where they did like role play scenarios in the auditorium,
24 where they would have a couple of instructors go up, they would
25 call up the recruits out of the audience, and we would do like

D4U8FLO5 Marino - direct

1 role play scenarios, and based on how the cops reacted or
2 didn't react, they would critique it.
3 Q. So based on your training and experience, when can you
4 forcibly stop a citizen?
5 A. When we have reasonable cause to believe that the person
6 that we are stopping committed -- they committed, is
7 committing, or about to commit either a felony or a penal law
8 misdemeanor.
9 Q. Is there any paperwork that you are required to fill out
10 when you conduct a stop?
11 A. Yes.
12 Q. What paperwork is that?
13 A. It's a UF-250, a stop, question and frisk report.
14 Q. What is your understanding of the term furtive movements?
15 A. Basically, it's any irregular movement. I can probably
16 explain it better through examples, if that's OK.
17 Q. Yes, please.
18 A. A furtive movement could be anything from where a person is
19 making -- adjusting, let's say, his waistband several times,
20 something that the average citizen wouldn't do. It could be
21 crossing the street as a -- you could have a person walk down
22 the street, and a person across the street following them, and
23 maybe enter into like a grocery store, and the person just lays
24 back, and when the person exits the store and crosses the
25 street, that person continues to follow them. It could be them

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1 changing their direction on the sight of us. It could be a
2 motion of throwing something to the ground.

3 Q. With respect to these examples that you just gave, why
4 would you consider those to be furtive?

5 A. Because it's not something that the average person on the
6 street normally would do. Most people, when they see the
7 police, they will abruptly change their direction as they are
8 walking down the street, and they don't normally like follow
9 other people's patterns of movement. That's not to say they
10 can't go in the same direction, but a person crosses the street
11 to go to the store and crosses again, and this person
12 automatically follows them, lays back a little bit, or even
13 ducks in between cars, the normal civilian on the street does
14 not do that.

15 Q. You also mentioned before the example of someone adjusting
16 their waistband. Why would you believe that that might be a
17 furtive movement?

18 A. Because I know prior to me becoming a cop, I never had any
19 real issues with me adjusting my waistband. I would wear a
20 belt and there would be no problem. But once I started
21 carrying a firearm, it's uncomfortable. I have been a cop for
22 13 years and it's uncomfortable carrying a firearm, and you
23 make certain gestures to conceal it or to make sure it's in the
24 right place. It's not something that you would see a normal
25 person do unless they are carrying a weapon.

D4U8FLO5

Marino - direct

1 Q. Can you stop somebody solely for exhibiting a furtive
2 movement?

3 A. No.

4 Q. What else would you need in order to conduct a stop of that
5 person?

6 A. There has to be an additional circumstance. It could
7 be -- you could receive a radio run of a male wearing a blue
8 jacket, blue pants, bald head, and he just committed assault,
9 and now let's say it's assault with a weapon, and at the sight
10 of you, you see that person making a motion as if he is
11 throwing something to the ground. So not just based on the
12 furtive movement, but there has to be some type of additional
13 circumstance with it.

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

16 A. Well, an individual could walk away from us any time,
17 unless we have that reasonable suspicion. Then at that point,
18 until our investigation is complete, that person has to stay
19 with us.

20 Q. So in your experience as a police officer, have you ever
21 spoken to an individual on the street and allowed that person
22 to walk away rather than speaking with you?

23 A. Yes.

24 Q. How often would you say that happens?

25 A. It happens -- you know, I wouldn't say 50 percent of the

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1 time, but it happens on a regular basis.

2 THE COURT: What happens on a regular basis?

3 THE WITNESS: You approach somebody on the street and
4 just ask him a few questions, but you don't have enough to
5 detain them, people do walk away.

6 THE COURT: When do they walk away?

7 THE WITNESS: As you approach them and start talking
8 to them. You can ask them a few questions. You might be doing
9 an investigation of a robbery that happened not too far away
10 and the person might have some similarities to the person
11 you're looking at, but not enough.

12 THE COURT: I just want to know when in the
13 conversation they would walk away.

14 THE WITNESS: Sometimes they just walk away as you
15 approach them. You will go up to them and can I ask you a
16 question? They will shout some obscenities at times and just
17 continue walking on their way.

18 THE COURT: That's happened to you?

19 THE WITNESS: Yeah, unfortunately.

20 BY MS. RICHARDSON:

21 Q. Now, based on your training and experience, when can you
22 frisk a citizen?

23 A. When I reasonably believe that the person has a weapon or
24 if I am stopping him for a violent crime.

25 Q. Is there any paperwork that you are required to fill out

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- 1 when you frisk a person?
2 A. Yes.
3 Q. What paperwork is that?
4 A. Stop, question and frisk, UF-250 report.
5 Q. Now, when you're conducting stops based on reasonable
6 suspicion, do you frisk every person that you stop?
7 A. No.
8 Q. Can you please describe for the Court, and you can use
9 words, or if it helps you, a physical example, what a frisk
10 actually is?
11 A. It's like a pat-down or a squeezing of the outermost
12 garment of an individual's clothing.
13 Q. What are you feeling for when you're conducting a frisk?
14 A. For any type of weapon.
15 Q. And if you feel an object that you believe might be a
16 weapon, what do you do next?
17 A. I would remove it from that person.
18 Q. So would you conduct a search by going into the area where
19 you feel the object?
20 A. Correct.
21 Q. Which areas of the body would you search?
22 A. Well, it all depends on the person. If it's a furtive
23 movement, as if the person is constantly reaching to their
24 waistband, that would be the area that I would frisk. If that
25 revealed a hard object in the shape of a weapon, that will be

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1 the area that I would search. Otherwise, if it was a violent
2 crime, normally it's a systematic pat-down of that person,
3 usually the waistband being the first.

4 Q. Have you ever conducted a search after feeling what you
5 thought could be a weapon and discovered that it was in fact
6 not a weapon?

7 A. Yes.

8 Q. What are some objects that you have thought upon a frisk
9 might be a weapon, but upon the search realized it was not in
10 fact one?

11 A. There's been screwdrivers, a hammer, a wrench on several
12 occasions.

13 Q. Sergeant Marino, do you know if the NYPD has a policy
14 regarding racial profiling?

15 A. Yes.

16 Q. What do you understand the policy regarding racial
17 profiling to be?

18 A. There is zero tolerance against it.

19 Q. When did you first learn about the policy prohibiting
20 racial profiling?

21 A. During my police academy training.

22 Q. Have you ever been trained on the policy prohibiting racial
23 profiling since the police academy?

24 A. I am sure I have. I just don't recall when.

25 Q. Have you ever received training on policing in a

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1 multicultural society?

2 A. I received training in behavioral science, but that
3 multicultural society, I guess it might be the same thing.

4 Q. What type of training did you receive in behavioral
5 science?

6 A. Our police academy is broken down in three sections. It's
7 the law section, police study section, which is department
8 guidelines, and then behavioral science, which pretty much has
9 you deal with -- I had to deal with certain sections of the
10 community, different races, religions, had to be more
11 understanding towards them. We even did a few field trips when
12 I was in the police academy.

13 Q. What field trips did you take as part of that behavioral
14 science course?

15 A. On one occasion we went down to the Museum for Jewish
16 Heritage in Battery Park. I know we went to a museum up in
17 Harlem on African arts. We did Ellis Island, Statue of Liberty
18 is also part of that course.

19 Q. What is a memo book?

20 A. It's basically a log where you chronologically record your
21 day's activities.

22 Q. What kind of activities and information is required to be
23 inside of a memo book?

24 A. Any job that you respond to during the course of your tour
25 and the finalization of that job.

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- 1 Q. Now, as an anticrime sergeant at the 88th Precinct, would
2 you review your officers' memo books?
3 A. On occasion.
4 Q. How would you review them?
5 A. I would look over them when I was in the office usually.
6 Q. What were you looking for when you reviewed them?
7 A. Just to make sure that they were entering their jobs and
8 entering finals.
9 Q. In your current role as a patrol sergeant in the 122nd
10 Precinct, do you also review officers' memo books?
11 A. Correct.
12 Q. What, if anything, are you looking for when you review memo
13 books now?
14 A. Pretty much the same thing. I am making sure that they put
15 in all the jobs they responded to and put in all their finals,
16 and make sure they are putting their finals in. As a patrol
17 supervisor, I am pretty much reviewing their book every day.
18 Q. I am going to turn your attention to the third quarter of
19 2009. And when I say third quarter, will you understand that I
20 mean July, August and September of that year?
21 A. Yes.
22 Q. Your role as an anticrime sergeant at the 88th Precinct
23 during the third quarter of 2009, did you supervise Police
24 Officer Kha Dang?
25 A. Correct.

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1 Q. Are you aware that during the third quarter of 2009, Police
2 Officer Dang was one of the officers in the NYPD who conducted
3 the most stop and frisks for that quarter?

4 A. Yes.

5 Q. How did you become aware of that fact?

6 A. Through this whole process that we are in today.

7 Q. Thinking back to that time, did you think that Officer Dang
8 was conducting more stop and frisks than his peers?

9 A. No.

10 Q. Do you have any belief about why Officer Dang was one of
11 the officers who conducted the most stops during that time
12 period?

13 A. Well, I would take Officer Dang as my driver a lot of
14 times.

15 THE COURT: Is there an objection?

16 MR. MOORE: I would object.

17 THE COURT: Sustained.

18 MS. RICHARDSON: I am not sure exactly what the
19 objection was.

20 THE COURT: It calls for speculation.

21 MS. RICHARDSON: I am asking for his personal belief.

22 THE COURT: I realize that. His personal belief is
23 exactly what is not evidence.

24 Q. As Officer Dang's supervisor during the third quarter of
25 2009, what was your understanding of why Officer Dang was

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1 conducting stops during that time period?

2 THE COURT: It's the same question. I have already
3 sustained an objection. That's my ruling. I know you don't
4 like it. Your objection is on the record.

5 Q. As Officer Dang's supervisor, did you ever have the
6 occasion to observe him making stops during the third quarter
7 of 2009?

8 A. Yes.

9 Q. Would you ever discuss those stops with Officer Dang?

10 A. Yes.

11 Q. What would you discuss?

12 THE COURT: You can't offer a statement of Officer
13 Dang or himself. Out-of-court statements are hearsay. The
14 adverse party can offer a statement of an adverse party. That
15 party cannot offer its own statement. I think we have covered
16 that. That's evidence 101.

17 MS. RICHARDSON: Yes, your Honor. We can move on.

18 Q. Prior to conducting a stop, would you ever discuss it
19 amongst yourselves?

20 A. Yes.

21 MR. COREY: Your Honor, I don't understand how that is
22 any different.

23 THE COURT: All it called for so far is yes or no.
24 Obviously, they had meetings. We have heard about many of
25 these meetings. Before they go out and make a stop, they have

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1 these conditions meetings. I have heard about it. You have
2 heard about it. That's all she was saying, I think.

3 MS. RICHARDSON: Yes.

4 THE COURT: They have meetings of the tactical plan of
5 the day, the conditions. So they discussed it before they went
6 out. I understand that.

7 Q. When considering whether to stop a person, what might draw
8 your attention to a person on the street?

9 A. There's many different factors in determining whether we
10 are going to stop somebody. A lot of time it depends on the
11 location of the stop, the time of the stop, and what behavior
12 that the person we are going to stop is exhibiting, what type
13 of behavior they are exhibiting. It could also be in regards
14 to like a 911 call or like a radio run description. There are
15 many different factors.

16 Q. As the supervisor of an anticrime team, what were your
17 daily responsibilities like, what would you do on an average
18 day?

19 A. On an average day, I would come in, I would review previous
20 complaint reports, review previous arrest reports. I would
21 confer with the detective squad and my bosses. And I would
22 pretty much brief my guys as to what's going on, and we would
23 deploy to certain areas of the precinct based on the condition
24 that we have going on in the command at any given time.

25 Q. Would you deploy with your officers?

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1 A. Correct.

2 Q. During the third quarter of 2009, would you ever deploy
3 with Officer Dang?

4 A. Many times.

5 Q. While you were on patrol with Officer Dang, have you ever
6 witnessed him conduct a stop that you believed there was not
7 reasonable suspicion for?

8 A. Never.

9 Q. Did you review the UF-250s prepared by Officer Dang for his
10 stops?

11 A. Yes.

12 Q. How often would you review them?

13 A. I would review all 250s that my team had conducted on a
14 daily basis at the end of the tour. I would come in
15 approximately a half hour early and review all 250s, any type
16 of paperwork that was done by my team I would review.

17 Q. At that time, when you were reviewing the UF-250s, would
18 you ever discuss with him the boxes that were checked off on
19 the 250?

20 A. There were occasions where I did, yes.

21 Q. Why would you do that?

22 A. Certain things I just wanted to inquire a little more about
23 and see if maybe he had some information, he developed some
24 information out on the street that I wasn't aware of. We would
25 just do that amongst each other.

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- 1 Q. Can you describe generally what the crime conditions were
2 like in the 88th Precinct when you were assigned there as an
3 anticrime sergeant?
4 A. For the third quarter or just in general?
5 Q. In general.
6 A. In general, robbery was a condition that we had to deal
7 with on a regular basis. We were dealing with a decent amount
8 of burglaries. We had occasional shootings, car break-ins was
9 an issue, grand larcenies from the mall was an issue, and
10 things along that nature.
11 Q. You said the mall. Which mall are you referring to?
12 A. The Atlantic mall. That's part of the area that's no
13 longer covered by the 88th Precinct.
14 Q. Now, you mentioned the third quarter of 2009. During the
15 third quarter of 2009, were there any specific crime conditions
16 or patterns that you were addressing?
17 A. Yes.
18 Q. What were those?
19 A. First off, we had a spike in shootings in the command. We
20 had a weekend where there was four shootings in the Women
21 Ingersoll housing development. We were also experiencing a
22 pattern, a robbery pattern, which involved two to four male
23 blacks, early to mid-teens, possibly carrying what was either a
24 cane or a stick. And at the same time, we also had a burglary
25 condition going on, where like iPhones, computers, any type of

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1 electronics was the focus of the theft.

2 Q. Now, with respect to those three conditions, were those
3 occurring throughout the entire precinct or within certain
4 areas?

5 A. Within certain areas.

6 Q. So thinking about the robberies that you mentioned with a
7 cane or a stick, where were those robberies occurring?

8 A. Those were occurring in and around Fort Greene Park.

9 Q. What about the burglaries that you mentioned?

10 A. If I remember correctly, I believe that was Sector Frank
11 and Sector George within the confines of the 88.

12 Q. If you remember, what area of the precinct is Sector Frank
13 and Sector George?

14 A. It's centralized, not too far away from the Women Ingersoll
15 housing. Not too far away from the Women Ingersoll housing,
16 pretty much centralized in the command.

17 Q. Did you have any information about the suspected
18 perpetrators of these crimes?

19 A. I know that the burglaries was a forced door or forced
20 windows. It didn't really have a description of a particular
21 perpetrator. But in regards to the robbery, we had
22 descriptions of particular perpetrators.

23 Q. And that's the description you mentioned before?

24 A. Correct.

25 Q. During the third quarter of 2009, were you aware of any

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1 gangs or crews operating within the 88th Precinct?

2 A. We had what I would describe as different crews operating
3 within the Women Ingersoll housing development.

4 Q. Can you explain what the difference is between a gang and a
5 crew?

6 A. I would say a gang is more structured, where there is
7 certain leadership and different ranks within the gang, like a
8 hierarchy. And crews, the way I describe them are a group of
9 people who are together pretty much engaging in some type of
10 criminal activity.

11 Q. How would you become aware of gangs or crews operating
12 within your command?

13 A. Obviously, number one would be out there every day in the
14 street, and also through our precinct intel.

15 Q. So how, if at all, were these crews or gangs that you were
16 aware of involved in the crime conditions that you were
17 addressing during the third quarter of 2009?

18 A. Well, in regards to Women Ingersoll, there's many what I
19 would call crews, and basically those crews, we would -- there
20 is a section of housing that was the Monument Walk, so that was
21 labeled as the Monument Walk crew. Then there was the Carlton
22 Avenue crew. There was more like a structured gang over by the
23 Fleet Walks. At that time, during the command we took three
24 shootings from inside the housing development and one right
25 across in Fort Greene Park all within, I believe it was a three

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1 day span.

2 Q. Did you believe that the shootings were connected to these
3 gangs or crews?

4 A. Yes. Yes, I do.

5 Q. Now, thinking about an average week when you were an
6 anticrime sergeant, how much of your time out on patrol would
7 be spent conducting stops?

8 A. It's hard for me to put an exact time on it, but we were
9 out in the street for approximately eight hours a day, whether
10 doing surveillance, doing stops. So it's hard to put an exact
11 number on the time frame that we used for the exact stops.

12 Q. On average, would you say that you conducted a stop every
13 day?

14 A. There were times, yes, where we did conduct stops every
15 day.

16 Q. What else would you be doing as an anticrime sergeant when
17 you were out on patrol?

18 A. We would also do surveillance. We would watch certain
19 locations.

20 Q. Sergeant Marino, I am showing you what has been marked for
21 identification as Defendants' Exhibit M12.

22 Sergeant Marino, do you recognize this document?

23 A. Yes.

24 Q. What do you recognize this to be?

25 A. It's a police officer's monthly performance report.

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1 Q. Are these monthly performance reports for a specific
2 officer?

3 A. Yes.

4 Q. Which officer is that?

5 A. That's Officer Kha Dang.

6 Q. What time period do these monthly performance reports
7 cover?

8 A. Calendar year 2009.

9 THE COURT: Are you offering these?

10 MS. RICHARDSON: Yes.

11 THE COURT: Any objection?

12 MR. COREY: No objection.

13 THE COURT: M12 is received. I can see it's all of
14 2009.

15 (Defendants' Exhibit M12 received in evidence)

16 Q. As Officer Dang's supervisor, was it your responsibility to
17 review these monthly performance reports?

18 A. Yes.

19 Q. Can you please describe what you would look for when you
20 would review these reports?

21 A. Obviously, I would tally up all the totals, but then also I
22 would make sure that we are addressing certain conditions
23 within the command, and that's on the rear of the complaint
24 reports. It pretty much documents all activity that we
25 conduct.

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- 1 Q. You said that you would look at the back of the document in
2 order to determine that?
3 A. Yes. That's part of it, yes.
4 Q. Is that here where it says "declared condition"?
5 A. Correct. On the front there's two sections. Number one is
6 the general enforcement against crime, quality of life, and
7 traffic infractions. And the second one is normally a declared
8 condition.
9 Q. Now, looking at the back of this form, and this is on the
10 second page ending in Bates number 15632, do you see right here
11 where it says, "This performance report and future conditions
12 to be addressed were discussed with officer on," and then there
13 is a date?
14 A. Yes.
15 Q. Would you discuss these reports with Police Officer Dang?
16 A. Yes.
17 Q. Do you see on the side here where it says "supervisor's
18 quarterly rating"?
19 A. Yes.
20 Q. Would you be responsible for filling that section out?
21 A. Yes.
22 Q. When would you fill that section out?
23 A. The last month of the quarter. So it would be March, June,
24 September and December.
25 Q. Turning to page, this is for June of 2009, it's the page

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1 with Bates stamp number 15641 to 15642. Is this an example of
2 the supervisor's quarterly rating when you had filled that out?

3 A. Yes.

4 Q. So looking at the top box on that screen, box number one
5 where it says, "General enforcement against crime, quality of
6 life and traffic violations"?

7 A. OK.

8 Q. What was your rating of Officer Dang with respect to
9 general enforcement for this quarter?

10 A. It was a 4.

11 Q. You can see here that Officer Dang has listed a certain
12 number of UF-250s that he performed, correct?

13 A. Correct.

14 Q. So you gave him a 4 for this quarter despite the fact that
15 he had conducted numerous 250s, correct?

16 A. Correct.

17 THE COURT: There is no choice for a 5. Do you recall
18 why he didn't get a 6?

19 THE WITNESS: Because there's other factors that play
20 into it for the month. He had a decent amount of stops for
21 that month, but usually it has to do with something
22 exceptional, something out of the norm.

23 THE COURT: Thank you.

24 Q. When considering what rating to give Officer Dang, or any
25 officer on a quarter, would you also consider the condition

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1 that's noted on the first page?

2 A. Yes.

3 Q. So for June of 2009, that was grand larceny, correct?

4 A. Correct.

5 Q. So the next quarter evaluation would have been performed in
6 September of 2009, correct?

7 A. Correct.

8 Q. And this is the page bearing Bates stamp number 15647 to
9 48.

10 Again, for this quarter, you gave him a 4 under the
11 general enforcement against crime and quality of life, correct?

12 A. Correct.

13 Q. Again, that is despite the fact that he did list several
14 250s there, correct?

15 A. Correct.

16 Q. What else might you take into consideration when
17 determining what rating to give an officer on the quarterly
18 rating form?

19 A. There's other factors. The officer always coming to work
20 on time; the officer is always prepared to do work when he
21 comes in; the investigative portion, when we come in and review
22 the complaint reports to see if the officer is a
23 self-motivating officer, which Officer Dang clearly is; their
24 knowledge, their interaction with other members of the
25 precinct, the detective squad, the supervisors, other cops.

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1 Q. In other words, when you're determining what quarterly
2 rating to give to an officer, you don't just take into
3 consideration the amount of enforcement actions that they took
4 during that quarter?

5 A. No.

6 Q. Now, in your current role as a patrol sergeant in the 122nd
7 precinct, do you still review officers' monthly performance
8 reports?

9 A. Correct.

10 Q. The print is small so I am going to hand you a copy of
11 Plaintiffs' Exhibit 205. I believe this is already in
12 evidence.

13 Is this the current form that is used for police
14 officer monthly performance reports?

15 A. Yes.

16 Q. So this is the police officer's monthly conditions impact
17 measurement report, right?

18 A. Correct.

19 Q. How, if at all, is this form different than the one that
20 you would complete when you were supervising Police Officer
21 Dang?

22 A. This report, as you see, after every seventh day requires
23 the supervisor to review it, and to sign off on that review.
24 Also, on the assignments, identify conditions, you will see on
25 the side of it. Assignment day one, there's two boxes, and

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1 that's where you're going to list the identified conditions,
2 which is also your declared condition.

3 Q. So officers are currently required to list the conditions
4 that they were addressing on each day that they were on patrol?

5 A. Correct.

6 Q. As a patrol sergeant, what are you looking for when you
7 review the police officer's monthly conditions impact
8 measurement report?

9 A. As a patrol supervisor, it's a little different, but
10 basically you look at the tours of patrol, and when you're on
11 patrol -- when you're a patrol supervisor, you have cops out on
12 patrol. You also are monitoring to see how many radios runs
13 they are responding to, making sure they are handling their
14 jobs appropriately. You might have eight to ten officers in
15 your squad so you want to make sure that they are all
16 responding to their number of jobs. You don't necessarily want
17 to see one officer handle 15 jobs a day, while another officer
18 is handling maybe five. And the same thing with taking
19 reports. If you see one officer has no reports for the month,
20 it's highly unlikely. So you want to inquire why that officer
21 is maybe not doing the complaint reports, the aided reports,
22 the vehicle accident reports.

23 Q. If you see that an officer has responded to a certain
24 number of radio runs within a month, but there are no other
25 reports listed on the police officer's monthly conditions

D4U8FLO5 Marino - direct

1 impact measurement report, would that raise any flags for you?

2 A. Yes, it would.

3 Q. Why is that?

4 A. Because if you're doing approximately 20 tours of patrol a
5 month, generally, out of 10 patrol cops, you're going to see
6 that there should be some type of police reports that they are
7 filling out. Because when you respond to these radio runs, a
8 lot of times these radio runs necessitate, there might be an
9 aided card, a complaint report. So if they don't have one for
10 a particular week, or for the month if they are low, I might
11 take them to the side and ask them, listen, I see that you have
12 no reports. Because you want to make sure these jobs are being
13 handled correctly, and the proper way is when there is
14 paperwork generated.

15 So they might be the vehicle operator for the entire
16 month, or they might have had a couple of occasions where they
17 were with hospitalized prisoners or transporting prisoners or
18 sitting on like a fixed post, a DOA. Or maybe they were
19 working with a partner who just liked to do paperwork for that
20 week. So you want to inquire and make sure they are doing the
21 job the right way and they are not just passing the buck off to
22 another cop.

23 Q. Now, Sergeant Marino, thinking back to when you were a
24 police officer, did you ever feel that if you did not conduct a
25 certain number of stops, summonses or arrests, that you would

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1 be punished?

2 A. No.

3 Q. Did you ever instruct Officer Dang that he had to perform a
4 certain number of stops on any given month?

5 A. No.

6 Q. And as a supervisor, have you ever punished an officer for
7 failing to conduct a certain number of stops, summonses or
8 arrests?

9 A. No.

10 MS. RICHARDSON: Can I have one minute, your Honor?

11 No further questions, your Honor.

12 THE COURT: Mr. Corey.

13 Your Honor, before I begin, we thought it would be
14 helpful to remind the Court that in the joint pretrial order in
15 this case, the parties stipulated to the following fact: That
16 Officers Michael Noboa, Edgar Gonzalez and Kha Dang are three
17 of the four NYPD officers who recorded the highest number of
18 stop, question and frisk encounters in the third quarter of
19 2009.

20 THE COURT: Thank you.

21 CROSS-EXAMINATION

22 BY MR. COREY:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Sergeant Marino, you just testified that a person is free

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1 to walk away any time you approach them, right?

2 A. Correct.

3 Q. But that would be a furtive movement, right?

4 A. Not necessarily.

5 Q. Didn't you say that when a person changes direction in the
6 sight of an officer is a furtive movement?

7 A. When there are additional circumstances involved in that
8 movement also.

9 Q. As you said, you supervise Officer Dang or you used to?

10 A. Correct.

11 Q. Officer Dang conducted 126 stops in the third quarter of
12 2009, is that right?

13 THE COURT: Can we have a stipulation to that effect?

14 MS. RICHARDSON: It might have been 127.

15 MR. COREY: I think there was one in Exhibit L12 from
16 June 30.

17 THE COURT: Anyway, 126 in the third quarter of 2009.

18 Q. I would just like to show you something that is already in
19 evidence.

20 Do you still have M12 in front of you?

21 A. Yes.

22 Q. Could you turn to page or Bates 15648?

23 So this is the supervisory review of Officer Dang's
24 work for the third quarter of '09, correct?

25 A. That is correct.

D4U8FLO5 Marino - cross

1 Q. You see item 7?

2 A. Yes.

3 Q. Can you read that out loud?

4 A. Yes. "Police Officer Dang is assigned to the 88th Precinct
5 anticrime team A. He is an aggressive police officer who
6 performs all duties with little or no supervision."

7 Q. I would like to show you what has been marked as
8 Defendants' Exhibit L12.

9 Do you recognize generally what those documents are?

10 A. Yes.

11 Q. What are they?

12 A. Stop, question and frisk report worksheet.

13 Q. Will you accept my representation that your name is written
14 on every 250 as the supervisor who reviewed the 250?

15 A. Yes.

16 Q. Will you also accept my representation that these are 127
17 UF-250s Officer Dang completed, specifically, one for June 30,
18 2009, and then 126 we just talked about for the third quarter?
19 Will you accept that representation?

20 A. Yes.

21 MR. COREY: Your Honor, would you like a copy?

22 THE COURT: No. What exhibit is this?

23 MR. COREY: Defendants' L12.

24 THE COURT: OK. Are you going to offer L12?

25 MR. COREY: Yes.

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Marino - cross

1 THE COURT: Any objection?
2 MS. RICHARDSON: No objection.
3 THE COURT: L12 is received.
4 (Defendants' Exhibit L12 received in evidence)
5 Q. Just put that aside for a second. And I would like to
6 display a summary exhibit.
7 THE COURT: Has the defense seen that?
8 MS. RICHARDSON: Yes.
9 THE COURT: Any objection to the use of the summary?
10 MS. RICHARDSON: No.
11 THE COURT: What is it marked as?
12 MR. COREY: It hasn't been marked yet.
13 THE COURT: It has to be marked.
14 MR. COREY: Plaintiffs' 565.
15 THE COURT: So received as a summary exhibit of L12.
16 (Plaintiffs' Exhibit 565 received in evidence)
17 THE COURT: How many stops are these again?
18 MR. COREY: 127.
19 THE COURT: Either 126 or 127. OK.
20 MR. COREY: In Exhibit L12, there's 127 UF-250s.
21 Do you need a hard copy, your Honor?
22 THE COURT: No. It's in evidence. I can read it.
23 A. Can I receive a hard copy? It will be easier for me to
24 read it.
25 Q. Sergeant Marino, in the table to the right, the reference

D4U8FLO5 Marino - cross

1 to high crime area in the third, fifth and sixth rows are just
2 shorthand for the actual language on the UF-250, which is area
3 has a high incidence of reported offense of type under
4 investigation.

5 And similarly, the reference to time of day, day of
6 week is shorthand for time of day, day of week corresponding to
7 reports of criminal activity.

8 Do you have any reason to think that any of these
9 numbers in this document are inaccurate, or will you accept my
10 representation that they are accurate?

11 THE COURT: I really think that's more for counsel.

12 You went through the 127 UF-250s. You probably
13 haven't had a chance to do the same count or maybe you have.

14 MS. RICHARDSON: I have actually, your Honor, and I
15 will accept the representation that it is correct.

16 THE COURT: You said you have done it?

17 MS. RICHARDSON: Yes, your Honor.

18 THE COURT: Good for you. That's impressive.

19 In any event, it's stipulated as accurate.

20 MR. COREY: We gave it to counsel last week.

21 THE COURT: Still, she did the work.

22 BY MR. COREY:

23 Q. Sergeant Marino, according to the demonstrative items
24 displayed here, what percent of the 127 people Officer Dang
25 stopped were black?

D4U8FLO5 Marino - cross

1 THE COURT: He doesn't have to answer that. It's on
2 the screen. 90.5 percent.

3 This is in evidence now. I can read from the record.
4 What else do you want me to read from the record?

5 MR. COREY: Nothing at this point.

6 I would like to show the witness another document.
7 This is Defendants' Exhibit Y8, or just two pages that I wanted
8 to show. It would be the cover, which is 24912, and the data
9 for the 88th Precinct.

10 THE COURT: You mean census data?

11 MR. COREY: This is actually the 2011 reasonable
12 suspicion stop report that we talked about with Sergeant
13 McGuire. It's already in evidence. Ms. Grossman offered it.

14 THE COURT: If it's in evidence, what part of it do
15 you want to read or show me on the screen?

16 MR. COREY: I would like to show the witness.

17 THE COURT: Put it on the screen. What part are you
18 going to show him?

19 BY MR. COREY:

20 Q. Sergeant Marino, according to this document, the percent
21 black of the 88th Precinct in 2010 was --

22 MS. GROSSMAN: I think all this data is about 2009
23 stops. So I don't know what this is relevant to.

24 THE COURT: What year is this, 2011?

25 MS. GROSSMAN: Right. So this isn't relevant to --

D4U8FLO5

Marino - cross

1 THE COURT: I don't know about that. It's pretty
2 close in time. We don't have mass migrations of people back
3 and forth.

4 Anyway, what is it that you wanted to point out?

5 MR. COREY: The percent black of the 88th Precinct.

6 THE COURT: In 2011 was? It is on the screen. What
7 is it?

8 MR. COREY: It's 43.3 percent. And I do think that
9 this data is from the 2010 census.

10 THE COURT: That's helpful.

11 So you see that, where it says 43.3 percent of the
12 residential population is black?

13 THE WITNESS: Yes.

14 Q. Sergeant Marino, were you ever concerned that 90 percent of
15 the people Officer Dang stopped were black in light of the
16 racial composition of the 88th Precinct?

17 A. No, I don't.

18 Q. You weren't?

19 A. If I may explain?

20 Q. You can probably explain, I am sure counsel is going to ask
21 you that question.

22 Did you ever discuss with anyone in the NYPD about the
23 rate at which Officer Dang stopped black people?

24 A. I'm sorry?

25 Q. Did you ever discuss with anyone in the NYPD about the rate

D4U8FLO5

Marino - cross

1 at which Officer Dang stopped black people?

2 A. No.

3 Q. As far as you know, did anyone in the NYPD even notice that
4 rate?

5 THE COURT: Objection sustained to that. He can't
6 know what everybody in the NYPD noticed or didn't notice.

7 I think we better stop for the day. It's 4:30. You
8 will have to come back tomorrow at 10:00 and pick up where we
9 left off.

10 I need to talk to counsel very briefly so I know the
11 schedule for tomorrow. I have only two and a half hours
12 tomorrow. I have 10 to 12:30. I will try to skip the morning
13 break so we can go two and a half hours and be done.

14 Who are we going to have after the sergeant?

15 MS. RICHARDSON: Can we have one minute?

16 MS. BORCHETTA: The Court asked this morning for the
17 city to provide an update on whether it intended to provide an
18 oral or written response to our request for proffers.

19 THE COURT: I did. The one about?

20 MS. BORCHETTA: The proffer for Inspector Catalina and
21 Chief Hall.

22 THE COURT: Because you have another letter
23 outstanding about James Stewart.

24 MS. BORCHETTA: That's with respect to expert reports.

25 THE COURT: You can step down. You're all set.

D4U8FLO5

1 THE WITNESS: Thank you, your Honor.

2 MS. GROSSMAN: I think we are going to be calling
3 Inspector Cirabisi and there may be another witness. We are
4 not sure if he is going to take up the whole time.

5 THE COURT: We have to finish Sergeant Marino.

6 MS. GROSSMAN: If Cirabisi finishes, then we have
7 Barrett lined up.

8 THE COURT: Lieutenant Stacy Barrett.

9 So that's your lineup for tomorrow: Sergeant Marino,
10 Deputy Inspector Cirabisi, and Lieutenant Stacy Barrett if we
11 get that far.

12 MR. COREY: Can I ask defense counsel to confirm they
13 are not calling Officer Dang?

14 MS. COOKE: We are not because we don't want to carry
15 over into Thursday when we have experts scheduled.

16 THE COURT: Ms. Borchetta pointed out that you said
17 you would try and let me know today whether you will respond in
18 writing or orally to her request for proffers.

19 MS. GROSSMAN: If I may have until tomorrow to respond
20 in writing.

21 THE COURT: You are going to make a written response?

22 MS. GROSSMAN: If it turns out by tonight that I can
23 make an oral response, I will do that.

24 THE COURT: OK.

25 (Adjourned to May 1, 2013, at 10:00 a.m.)

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21	PLAINTIFF EXHIBITS	
22	Exhibit No.	Received
23	135466
24	491 through 5485485
25	5515488

1	5515525
2	5655574

DEFENDANT EXHIBITS

4	Exhibit No.		Received
5	C3, F3 and G35485
6	Z25537
7	M125564
8	L125574

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