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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

8 New York, N.Y.  
9 May 10, 2013  
9 10:11 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

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15 Attorneys for Plaintiffs

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APPEARANCES (Cont'd)

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1 (In open court; trial resumed)  
2 THE COURT: Good morning, everyone.  
3 Please be seated.  
4 MR. MOORE: Good morning, Judge.  
5 No letters? Nothing to talk about?  
6 THE COURT: Sorry?  
7 MR. MOORE: No letters to talk about?  
8 THE COURT: There is, but I'm not going to do it now.  
9 MR. MOORE: Okay.

10 William Morris, resumed.

11 CROSS-EXAMINATION CONTINUED

12 BY MR. MOORE:

13 Q. Good morning, Chief Morris.

14 A. Good morning, sir.

15 Q. We were talking yesterday at the end about -- we were just  
16 going to get into this question of the review that you directed  
17 to be done following your receipt of the March 5, 2013 memo.  
18 You directed a review of 250s to be done in four precincts of  
19 the patrol borough Manhattan North?

20 A. Yes, sir, I did.

21 Q. And you directed Captain Natale to be responsible for that  
22 review, correct?

23 A. Yes, I did.

24 Q. And he didn't actually do the review. He directed somebody  
25 else to do it, correct?

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D5a9fl01 Morris - cross

- 1 A. That's my understanding.  
2 Q. And so as far as you know, Captain Natale never actually  
3 looked at those 250s, correct?  
4 A. I don't know the answer to that.  
5 Q. You never looked at them though, right?  
6 A. No, sir, I did not.  
7 Q. And those -- 40 of those -- ten 250s were examined from  
8 four precincts in the patrol borough, correct?  
9 A. Yes, sir.  
10 Q. And do you know where that examination took place?  
11 A. I'm sorry?  
12 Q. Do you know where that examination took place?  
13 A. It took place both at the precinct, the individual precinct  
14 involved and also back at the office of the Manhattan north  
15 investigations unit.  
16 Q. Where are those forty 250s now, do you know?  
17 A. They are either back at the original precincts where they  
18 came from.  
19 Q. Either or?  
20           Because you started by saying either.  
21 A. The 250s themselves are back at -- they're at the precincts  
22 where they were taken from.  
23 Q. So, after this review they were taken back to the precinct  
24 and just distributed into the four different precincts; is that  
25 correct?

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D5a9flol Morris - cross

- 1 A. Yes, sir.  
2 Q. And nobody asked you to preserve those 40 UF 250s?  
3 A. No, sir.  
4 Q. This was a -- were you directed by anybody to do this  
5 review?  
6 A. Yes, sir, I was.  
7 Q. Who directed you to do that review?  
8 A. Chief Hall.  
9 Q. Do you know if he was directed by anybody to do that  
10 review?  
11 A. I don't know the answer to that.  
12 Q. So, you said in your declaration, you may recall, that the  
13 testimony contained in your declaration is based on personal  
14 knowledge and your review of NYPD records, correct?  
15 A. Yes, sir.  
16 Q. You don't have any personal knowledge of this review of the  
17 forty 250s, do you?  
18 A. I have the report that -- the verbal report that Captain  
19 Natale gave me.  
20 Q. In terms of personal knowledge, you never reviewed the  
21 250s, correct?  
22 A. No, sir. I did not.  
23 Q. You didn't review those records, correct, the 250s, you  
24 didn't review them?  
25 A. Not the actual 250s.

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D5a9fl01 Morris - cross

1 Q. Right. Okay.

2 Did you receive -- to your knowledge the 250s had a  
3 photocopy -- I was going to say Xerox -- photocopy of the memo  
4 books attached to them; is that correct?

5 A. Could you ask that again.

6 Q. I'm sorry.

7 To your knowledge, the forty UF 250s that were  
8 reviewed under the direction of Captain Natale had attached to  
9 them or stapled to them photocopies of the memo books related  
10 to those 250s?

11 A. Yes, sir. That's what I was told.

12 Q. And did you review any of those memo books?

13 A. No, sir. I didn't.

14 Q. And you found that of the -- so when I say you had no  
15 personal knowledge, you don't have any personal knowledge as to  
16 whether any of those 40 UF 250s are in compliance with the  
17 departmental guidelines, correct?

18 A. I know based on what Captain Natale told me.

19 Q. So what he told you is just hearsay though, right? You're  
20 a lawyer, right?

21 A. Yes, sir.

22 Q. You're trained as a lawyer?

23 A. I do not practice.

24 Q. So when I say personal knowledge, you're relying on what  
25 Captain Natale told you?

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D5a9fl01 Morris - cross

1 A. Yes, sir. That's correct.

2 Q. And even in that --

3 MS. GROSSMAN: Your Honor, I would just note that the  
4 declaration states just that, what the reliance was.

5 MR. MOORE: I'm not sure what that statement means.  
6 The declaration says the testimony contained in this  
7 declaration is based on personal knowledge and on my review of  
8 NYPD records.

9 So to be accurate to what the declaration says.

10 Q. In any event, let's go back to this review. So 40 of these  
11 UF 250s were reviewed according to what you learned, correct?

12 A. I'm sorry, sir?

13 Q. Forty of the UF 250s were reviewed -- forty UF 250s were  
14 reviewed, correct?

15 A. Yes, sir.

16 Q. And even in that review it became clear to you that  
17 officers were still failing to follow the directives from the  
18 NYPD with regard to putting the details of their stops in their  
19 memo books, correct?

20 A. Yes, sir.

21 Q. And, in fact, the pass rate, if you would, on this forty in  
22 terms of whether they were complying with NYPD directives was  
23 in effect sixty percent, right?

24 A. I'm not sure of the rate.

25 I know that 16 of those 40 had either an inadequate or  
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D5a9fl01 Morris - cross

1 no explanation for the exact reason for the stop; 24 had it.

2 Q. Right. So, just simple math. Full compliance was

3 60 percent, right?

4 24 divided by 40 comes out to 60 percent?

5 A. Okay. I'll accept that.

6 MR. MOORE: The Court can take judicial notice of  
7 that.

8 THE COURT: Correct.

9 Q. And so if you were -- if this was a QAD audit, the score on  
10 the quad audit would be a two, right?

11 A. I'm not sure how QAD would score that.

12 Q. Well, you're familiar with the QAD audits, correct?

13 A. Yes, sir. I am.

14 MS. GROSSMAN: Your Honor, this is highly  
15 inappropriate because this rating has to do with something -- a  
16 different audit. This is not a rating parameter for what the  
17 chief was just testifying.

18 THE COURT: One of the subjects in the QAD audits was  
19 the adequacy of the memo books. Apparently there is a  
20 mathematical formula for the rating we're about to see. So I'd  
21 like to see the mathematical formula. I don't see what's  
22 highly anything about it.

23 MS. GROSSMAN: Well, no. It's related to a different  
24 audit.

25 THE COURT: I understand that. He's saying were the  
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Morris - cross

1 audit -- the QAD audit conducted on just 40 UF 250s and were  
2 only 60 percent in compliance, wouldn't that have been scored a  
3 two? So we're going to see how the scoring --

4 MS. GROSSMAN: It doesn't have it in there.

5 THE COURT: If he can't prove it, he can't prove it.  
6 He put something up on the board which I haven't looked at yet.

7 What were you going to say, Mr. Moore?

8 MR. MOORE: I'm showing you --

9 THE COURT: You don't need to ask him anything. It's  
10 in evidence. You read it.

11 What does it say?

12 This is in evidence, right?

13 MR. MOORE: This is in evidence, Judge. Plaintiffs'  
14 Exhibit 62.

15 THE COURT: What does it say?

16 MR. MOORE: This is the rating parameters for the QAD  
17 audit of stop, question and frisk based on worksheet 802 which  
18 as you recall reviews five UF 250s -- I'm sorry five memo book  
19 entries. And the rating parameters are when you -- when there  
20 are two errors out of five the rating is a two.

21 THE COURT: I see.

22 MR. CHARNEY: Three out of five is sixty percent.

23 BY MR. MOORE:

24 Q. Accepting that formula, Chief Morris, as the rating --

25 THE COURT: So when there's a 40 percent error rate

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D5a9fl01 Morris - cross

1 the rating is two?

2 MR. MOORE: Correct.

3 THE COURT: What do you not see in there,  
4 Ms. Grossman?

5 MS. GROSSMAN: Well as Chief Cronin testified about  
6 what it is that -- how the development of the rating parameters  
7 occurred. This is a different audit and the purpose of the  
8 audit is different from that.

9 THE COURT: That all may be but if there is a  
10 40 percent error rate you get a rating of two. It's right on  
11 there. Two out of five is 40.

12 MS. GROSSMAN: I understand that.

13 THE COURT: Good.

14 MS. GROSSMAN: I understand that. If this was a  
15 different audit might be a different rating.

16 THE COURT: You're right. Anything is possible. But  
17 if these 40 were the sample and there was a 40 percent error  
18 rate of these 40, the rating would be two.

19 MS. GROSSMAN: But what QAD is auditing is different  
20 than this.

21 THE COURT: Okay. You've certainly made your point.  
22 That's fine.

23 Q. Now clearly a 40 percent failure rate on the audit was not  
24 something you were happy with, though, right?

25 MS. GROSSMAN: I'm sorry. What are we talking about?

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D5a9fl01 Morris - cross

1 THE COURT: The 40 that were reviewed -- were you  
2 happy that 40 percent of those were inadequate? Did that make  
3 you happy that day, or were you somewhat less than happy?

4 THE WITNESS: I was less than happy.

5 THE COURT: Okay. I would think so.

6 MS. GROSSMAN: The question is the asking about the  
7 audit. It's the audit rating, referring to this.

8 THE COURT: That's stricken. I asked him. I  
9 rephrased. I said --

10 MS. GROSSMAN: That fine, your Honor.

11 THE COURT: Thank you, Ms. Grossman.

12 I said: Did the 40 percent error rate make you less  
13 than happy that day? He agreed. It wasn't the happiest day on  
14 the job.

15 Q. And what steps --

16 THE COURT: Because you would have loved to see a  
17 hundred percent were correct, isn't that it? That would have  
18 been a happy thing if all were right?

19 THE WITNESS: I'm always achieving to do the best.

20 THE COURT: So a hundred percent would have been a  
21 happier thing?

22 THE WITNESS: Yes, your Honor.

23 THE COURT: Sure.

24 Q. And what steps did you take, if any, following your report  
25 from Captain Natale to you that there was a 40 percent

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Morris - cross

1 deficiency rate, what steps did you take to remedy that, if  
2 any?  
3 A. I reported the results back to my superior.  
4 Q. To Chief Hall, correct?  
5 A. Yes, sir.  
6 Q. And how did you do that? Did you do that in -- in a  
7 memorandum form or did you do that orally?  
8 A. No. I made some notes on what Captain Natale told me  
9 verbally and then I reported that verbally to Chief Hall.  
10 Q. Do you still have a copy of those notes that Captain  
11 Natale -- that you made from your conversation with Captain  
12 Natale?  
13 A. Yes, sir.  
14 Q. Do you have them with you?  
15 A. No, sir.  
16 Q. And so you reported them verbally to Chief Hall and what  
17 happened after that?  
18 A. (No response).  
19 Q. Anything? Did you have any further discussion?  
20 THE COURT: Let him think. You asked the question.  
21 Now let him think about it.  
22 MR. MOORE: Okay.  
23 THE WITNESS: I'm not a hundred percent about the  
24 sequence of events but there came a point where we sent out an  
25 e-mail from the borough to the precincts that work for me where  
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D5a9fl01 Morris - cross

1 they had to report back about the training that persons had  
2 gotten in the precincts regarding the March 5 memo.

3 MR. MOORE: I would just note for the record, Judge,  
4 we haven't been provided with a copy of that as well, so.

5 In any event, that's the answer.

6 Q. So, anything else that you've done with respect to doing  
7 anything regarding this deficiency rate that was noted from the  
8 review done by Captain Natale other than what you've just  
9 testified to?

10 A. Just -- as I believe I testified to before, the ongoing  
11 point about training on the front end and then the way that we  
12 reviewed the QAD audits, the deficiency memos on the other  
13 side.

14 Q. Now speaking of the QAD audits you've been the commanding  
15 officer of patrol borough Brooklyn North -- I'm sorry,  
16 Manhattan North -- thank you, Mr. Charney -- for almost three  
17 years now, correct?

18 A. Yes, sir.

19 Q. The 2010 audit done by QAD for patrol borough Manhattan  
20 North showed that you got an average of -- for the patrol  
21 borough, boroughwide the average -- the audit score for that  
22 category of whether officers are putting the details of their  
23 stops in their memo books for 2010 was 1.6. Were you aware of  
24 that?

25 A. I've been shown that report, yes.

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D5a9fl01 Morris - cross

1 Q. So, I don't need to show it to you again, right? You're  
2 aware it was 1.6?

3 MR. MOORE: Would you like to see it, judge?

4 THE COURT: No.

5 Q. You're aware that the 2011 audit went down slightly to 1.5,  
6 correct?

7 A. I know that the numbers have varied over time. I don't  
8 know the exact numbers.

9 THE COURT: I'm sure he'll accept your representation.  
10 That's what the chart shows.

11 THE WITNESS: Yes, your Honor.

12 Q. The average for 2012 went up to 2.4.

13 Will you accept that representation?

14 A. Yes, sir.

15 Q. So, notwithstanding that it went up to 2.4 in all three  
16 years that you've been head of the patrol borough Manhattan  
17 North, with respect to that category of the audit, the patrol  
18 borough has failed that portion of the audit, correct?

19 A. Based on those numbers that you've cited here, yes, sir.

20 Q. And you don't disagree with those numbers? You don't  
21 dispute those numbers, right?

22 A. No, sir.

23 Q. Now you indicated in your direct testimony that you have  
24 borough CompStat meetings, correct?

25 A. Yes, sir.

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D5a9fl01 Morris - cross

1 Q. And in those borough CompStat meetings they're run somewhat  
2 similar to the departmentwide CompStat meetings, correct?

3 A. Similar. Yes, sir.

4 Q. And you try to look at and identify spikes in crime as one  
5 of the things you do, correct?

6 A. Yes, sir.

7 Q. And then you try to -- you also look at the -- if you're  
8 looking at a particular precinct or selection of precincts you  
9 would look at the number of arrests, summonses and 250s that  
10 took place in those precincts for a certain period of time,  
11 correct?

12 A. Yes, sir.

13 Q. And is one of the messages that you intend to send to your  
14 commanders when you do those borough CompStat meetings is that  
15 when there's a spike in crime you expect them to focus their  
16 enforcement activity in those areas where there's a spike in  
17 crime?

18 A. Yes, sir.

19 Q. And is one of the ways you measure whether they are being  
20 successful is you look at the numbers of arrests -- in part you  
21 look at the number of arrests, summonses and 250s that have  
22 been generated in those areas targeted, correct?

23 A. Yes, sir.

24 Q. And those numbers are maintained not just on a daily or a  
25 weekly but also monthly and a yearly basis, correct?

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D5a9fl01 Morris - cross

1 A. The enforcement numbers?

2 Q. Yes.

3 A. Yes, sir.

4 Q. And that's true not only on the borough level but on the  
5 citywide CompStat meetings, a similar process of looking at the  
6 numbers and looking at them for different periods of time takes  
7 place at the CompStat meetings down at One Police Plaza,  
8 correct?

9 A. Yes, sir.

10 Q. Now, you also talked a little bit about community  
11 complaints. That -- you recall referring to community  
12 complaints?

13 A. Yes, sir.

14 Q. In your direct testimony.

15 And I believe your testimony was that you've never  
16 received a complaint by anybody in the community about racial  
17 profiling?

18 A. Nobody has ever complained to me about racial profiling.

19 Q. Has anybody complained to you -- is it that term that  
20 they've never complained about or is it just that term, or is  
21 it the fact that nobody has ever complained that they've been  
22 targeted for their -- for enforcement activity because they're  
23 Black. Has anybody ever said that to you?

24 A. Could you say that question --

25 Q. That was a convoluted question.

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Morris - cross

1 Are you aware of any complaints that have been  
2 received in the borough that enforcement activity has targeted  
3 people because they are Black or because they're Hispanic. Set  
4 aside the term racial profiling.

5 A. I've been aware of complaints regarding stops -- you know,  
6 I've read them in the media. I've followed this case. I've  
7 heard, you know, discussions in public, you know, community  
8 groups about it. That specific question.

9 I can't recall anybody ever saying to me, you know,  
10 stopped because I was Black. I can't recall that.

11 Q. Or Hispanic?

12 A. No. No. I can't recall that.

13 Q. There's a large Hispanic community in patrol borough  
14 Manhattan North, correct?

15 A. Yes, sir.

16 Q. And is it your testimony that the only complaints you've  
17 heard about with relation to stop is that people are being  
18 stopped for no reason, right?

19 A. I've heard that, yes, being stopped for no reason.

20 Q. And you've heard that at community meetings that you  
21 attend?

22 A. Yes, sir.

23 Q. Let's set aside for a moment media reports. I don't want  
24 to talk about what you might have read in the media. I want to  
25 talk about what you personally became aware of by attending

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1 community meetings.

2 Have you -- you said you've heard complaints being  
3 raised by people -- members of the community about being  
4 stopped for no reason, correct?

5 A. It's just been like a general statement. Kids are being  
6 stopped for no reason.

7 Q. Right. And that's coming from not only politicians in the  
8 community but also members of the community, correct?

9 A. Yes. Yes, sir.

10 Q. There's open mic at these community meetings where people  
11 in the community can come up and voice whatever they want to  
12 say to the officers who are present, correct?

13 A. Certainly, yes, sir.

14 Q. And when those complaints are made, do you make any effort  
15 to investigate those complaints?

16 A. No. Because it was a general statement that was made.

17 Q. And one of the things you've also heard is that cops are  
18 being disrespectful when they stop people, correct?

19 A. Yes, sir.

20 Q. Have you done any effort to investigate those complaints?

21 A. To investigate -- no. Because I don't have -- it didn't  
22 come to me as like a particular complaint. It was a more of a  
23 generalized statement.

24 Q. Well if somebody -- some individual gets up at a community  
25 meeting saying we have a problem because police officers are

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D5a9fl01 Morris - cross

1 being disrespectful in how they treat people when they stop  
2 them. That's coming from a specific individual. Do you take  
3 any steps to follow up with that specific individual about that  
4 complaint?

5 A. When I've had complaints like that, I've directed usually  
6 my community affairs person to go over and speak to the person  
7 to see what it's regarding.

8 Q. And in no cases have they reported back that there's any  
9 reason to be concerned, correct?

10 A. No. I wouldn't say that.

11 Q. Well have you investigated then -- or are you aware of  
12 investigations that have gone forward beyond just sending your  
13 community affairs person over?

14 A. No, I'm not.

15 Q. And you say -- you said in your declaration that was  
16 provided to us before your testimony that the most common kind  
17 of complaints that I have heard are about the misperception  
18 that stops are conducted for no reason at all.

19 A. Yes, sir.

20 Q. Do you recall saying that in your declaration?

21 A. Yes, I did, sir.

22 Q. Well misperception, that's a conclusion that you're putting  
23 on those complaints, right?

24 A. Yes. That's my view of them.

25 MR. MOORE: One second, your Honor.

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Morris - cross

1 (Pause)

2 MR. MOORE: Thank you, Chief Morris. I have no  
3 further questions.

4 THE COURT: Ms. Grossman.

5 REDIRECT EXAMINATION

6 BY MS. GROSSMAN:

7 Q. Good morning, Chief.

8 A. Good morning, ma'am.

9 Q. Are there mechanisms in place that you're aware of where  
10 the community can file complaints with the Civilian Complaint  
11 and Review Board or the Internal Affairs Bureau?

12 A. Yes, ma'am.

13 Q. And when you attend community meetings is that communicated  
14 to the community generally?

15 A. Not specifically.

16 Q. Now, if anyone were to come to you with a particular  
17 complaint about racial profiling or stop, question and frisk,  
18 is there -- would you expect -- I'm sorry. Let me rephrase it.

19 If a community member came to one of your community  
20 affairs officers to complain about a specific occasion where  
21 they were subject to an unconstitutional stop or they believed  
22 they were racially profiled, would you expect your community  
23 affairs person to refer that person to the Civilian Complaint  
24 and Review Board or to the Internal Affairs Bureau?

25 MR. MOORE: Object to the form, would you expect.

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Morris - redirect

1 THE COURT: No. That's exactly what she wants to ask.  
2 I'll allow that.

3 THE WITNESS: If it was a particular complaint  
4 involving a particular person, I would expect my personnel to  
5 appropriately refer that or to take the complaint themselves  
6 and make the notifications.

7 THE COURT: What if it wasn't about a particular  
8 officer but rather what the complainant viewed as a policy or a  
9 practice, then would you expect it to go to CCRB or IAB?

10 THE WITNESS: No, your Honor.

11 THE COURT: So if the person said we think there's  
12 this policy, what would be the right place to refer that  
13 complaint?

14 THE WITNESS: It would kind of be a basis of knowledge  
15 for me about what the community thinks is going on in terms of  
16 that. And that goes to the police community relationship  
17 moving forward. I would view that differently as opposed to a  
18 specific complaint about a person being stopped  
19 inappropriately.

20 THE COURT: Okay.

21 MS. GROSSMAN: Your Honor, forgive me. Yesterday I  
22 failed to offer a particular document into evidence and it's  
23 just a patrol guide procedure regarding borough commander  
24 duties and responsibilities. So I'm going to show a copy of  
25 this to the witness. It's Defendants' Exhibit E5.

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Morris - redirect

1 MR. MOORE: I have no objection.

2 THE COURT: E5 is received.

3 (Defendant's Exhibit E5 received in evidence)

4 Q. Are you familiar with this document, Chief?

5 A. Yes, ma'am, I am.

6 Q. What is it?

7 A. It's the patrol guide section enumerating the duties of a  
8 borough commander.

9 MS. GROSSMAN: I have no further questions, your  
10 Honor.

11 THE COURT: Anything further for this witness?

12 MR. MOORE: Nothing further.

13 THE COURT: Okay. Thank you for coming back. You're  
14 all done.

15 THE WITNESS: Thank you, your Honor. Good day.

16 THE COURT: Thank you. You too.

17 (Witness excused)

18 MS. COOKE: Your Honor, defendants call Captain  
19 Martine Materasso.

20 MARTINE MATERASSO,

21 called as a witness by the Defendants,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. COOKE:

25 Q. Good morning, Captain Materasso.

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MATERASSO - DIRECT

1 A. Good morning.

2 Q. Could you describe your educational background for the  
3 Court, please.

4 A. Sure. I have bachelor's degree.

5 Q. What your bachelor's degree in?

6 A. Criminal law justice.

7 Q. Where did you receive that degree?

8 A. Florida International University.

9 Q. You are currently employed with the NYPD?

10 A. Yes.

11 Q. When did you become employed with the NYPD?

12 A. March of 2000.

13 Q. Could you briefly describe your assignments you've held  
14 with the NYPD beginning following your graduation from the  
15 police academy.

16 A. Yes. I was -- once I graduated the police academy in  
17 October 2000 I was assigned to the 52 precinct.

18 Then I was assigned about a year-and-a-half later to  
19 Bronx vice.

20 I got promoted to sergeant, was assigned to the 43  
21 precinct.

22 Then I got promoted to lieutenant. I was assigned to  
23 Manhattan North 30 precinct and Manhattan North auto larceny.

24 Then I was promoted to captain. I was assigned a  
25 short time to the 47 precinct. And currently to the 40

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1 precinct.

2 Q. The precincts you mentioned beginning with the 52, could  
3 you identify the boroughs they are located in.

4 A. The 52 is in the Bronx. I was in Bronx vice.

5 The 43 is also in the Bronx.

6 Manhattan North is Manhattan North. The 30.  
7 Manhattan North.

8 And back to the Bronx, the 47, and the 40.

9 Q. What were your duties and responsibilities in Bronx vice?

10 A. In Bronx vice I was an investigator in there. We were  
11 assigned precincts. I covered the 45 precinct. There we would  
12 do gambling, untaxed cigarettes, prostitution, A, B, C  
13 violations.14 Q. What kind of -- when you said you were an investigator,  
15 what did that mean?16 A. We were assigned case, complaints from the public or  
17 self-generated cases.

18 Q. How would you investigate them?

19 A. We would go out and do observations. Sometimes undercover  
20 buys. Depending on the case itself.

21 Q. And how long were you in Bronx vice?

22 A. A little bit over two years.

23 Q. Your current position at the 40 precinct is captain?

24 A. Yes.

25 Q. Are you also the executive officer of the precinct?

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1 A. Yes.

2 Q. How long have you held that position?

3 A. I was promoted in October 2011.

4 Q. Did you arrive at the 40 precinct in 2011?

5 A. January of 2012.

6 Q. And you've been the executive officer of the 40 precinct  
7 the entire time?

8 A. Yes.

9 Q. Could you generally describe your duties and  
10 responsibilities as an executive officer at the 40th  
11 precinct.12 A. Yes. I actually do -- hold two hats. I'm the executive  
13 officer as well as the impact captain, which means I'm assigned  
14 to train and watch over the impact officers that are assigned  
15 coming out of the police academy.16 As the executive officer duties, daily I review all  
17 paperwork regarding accident reports, 61 reports, UF 250  
18 reports. I oversee the special operations units, anticrime,  
19 SNEU, the school unit, domestic violence unit.

20 THE COURT: Could you speak a little slower.

21 THE WITNESS: Sure. Sorry.

22 So, special operations unit, within there, I oversee  
23 the traffic unit in the precinct, the training unit, things of  
24 that nature.25 THE COURT: What's the geographic boundaries of the --  
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1 THE WITNESS: Of the 40?

2 It's the southernmost part of the Bronx. So that  
3 encompasses right over to Willis Avenue, the Third Avenue  
4 bridge right there, the southern end 132 Street; going north to  
5 163; going west to the Major Deegan; and then going east to  
6 Prospect.

7 THE COURT: Thank you.

8 Q. In terms of geographic area, is the 40 comparatively a  
9 small precinct in the Bronx or a large precinct in the Bronx?

10 A. Probably not the biggest as in like the 43. But  
11 definitely -- it's a little bit over 2.2 square miles.

12 THE COURT: What was the population size?

13 THE WITNESS: I'm not exactly sure of the exact  
14 population.

15 THE COURT: Not exact.

16 THE WITNESS: I mean we have some industrial, which is  
17 in that southern end of the precinct where there are trucking  
18 companies and things of that nature.

19 THE COURT: You promised to speak slower.

20 THE WITNESS: I did. I'm sorry. I apologize.

21 And we do have six housing developments as well as --  
22 not so much private houses as much as other just regular six-  
23 to eight-story buildings.

24 Q. With respect to the impact officers, how many impact  
25 officers do you supervise as the impact captain?

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1 A. Currently I have one lieutenant, four sergeants and 55  
2 officers.

3 Q. What about the remaining officers of the 40 precinct?  
4 What's the number of officers?

5 A. Approximately two hundred including supervisors.

6 THE COURT: Including what?

7 THE WITNESS: Supervisors.

8 MR. MOORE: I didn't hear the number, Judge.

9 THE COURT: Two hundred including supervisors.

10 Q. Do you have any roles and responsibilities with respect to  
11 training officers at the 40th precinct?

12 A. I do oversee the training unit. And if something does come  
13 across, I either receive an e-mail or through department mail.  
14 I do make it a point to then speak to the training officer or I  
15 speak to the lieutenant or the sergeant may be conducting roll  
16 call for that day and I will have him address it.

17 Q. Do you yourself stand roll call or conduct roll call at any  
18 time?

19 A. I do sometimes go in there, yes.

20 Q. And on what indications would you stand for roll call,  
21 address roll call?

22 A. If there was maybe a meeting regarding a pressing issue or  
23 something of you know -- significant importance that we wanted  
24 to address and possibly get done immediately I will go in there  
25 and address it.

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1 Q. With respect to your supervisory responsibilities you  
2 mentioned that you review a lot of paperwork, 61s, accident  
3 reports, and the like.

4 Do you review all paperwork or what's your practice  
5 with respect to the review of the paperwork?

6 A. With the review of the paperwork I will daily review at the  
7 desk area when the officers do hand in the paperwork, at the  
8 end of their tour. Throughout their tour I will review that  
9 while standing there possibly engaging in another conversation.  
10 I do receive certain paperwork on my desk in terms of crimes  
11 for the day.

12 Q. What about the impact officers? Do you have any regular  
13 practices with respect to review of their paperwork they  
14 generate?

15 A. Not a regular review but I will not only review it at the  
16 precinct but in the field if I do hear an instance come over  
17 the radio that they might be at an accident scene, a person  
18 stop scene, or just another crime, I will go there.

19 Q. You mentioned listening to the radio. What is your  
20 practice with respect to listening to the police radio while on  
21 duty?

22 A. Whether I'm in my office or in the field on patrol, I will  
23 always have the radio on. Constantly monitoring it.

24 Q. What's the purpose of monitoring the radio?

25 A. Just so I could gauge exactly what's going on in the

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1 precinct. Whether we're holding possibly jobs, to verify that  
2 the units are answering the jobs in a timely manner,  
3 accountability.

4 Q. What are you able to tell about the work of your  
5 supervisors by monitoring the radio?

6 A. I'm able to gauge when they are on the radio possibly  
7 asking for, they call them rundowns, which is accountability of  
8 where each sector is, what job they might be on and what  
9 they're doing throughout the tour.

10 Q. What about meetings with supervisors, sergeants and  
11 lieutenants in the command? Do you have meetings with the  
12 supervisors?

13 A. We do have approximately monthly meetings. They are called  
14 commanding officer meetings. And we do discuss there topics  
15 that we need to either address and improve or also things we've  
16 done that are very positive.

17 Q. And what about officer memo books? What responsibility do  
18 you have with respect to reviewing officer memo books?

19 A. Well I do conduct the 250 self-inspection that I do review  
20 officers' memo books. Also throughout the day if I am going to  
21 review say a 250 that was handed in, I will then review a copy  
22 of the memo book that is attached.

23 Q. And when conducting the review --

24 THE COURT: Since when were the memo books attached to  
25 the 250s?

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MATERASSO - DIRECT

1 THE WITNESS: Yes. Since -- since recently, ma'am.

2 THE COURT: When?

3 THE WITNESS: In March.

4 THE COURT: March 2013?

5 THE WITNESS: Yes.

6 THE COURT: Before that they weren't attached?

7 THE WITNESS: Correct.

8 THE COURT: Before that you didn't review them  
9 together?

10 THE WITNESS: During the self-inspection when I would  
11 do the inspection, I would request the memo books.

12 Q. Prior to March when you reviewed the 250 at the desk and  
13 picked up a 250 to take a look at it, were there occasions  
14 where you might speak to the officer about that 250?

15 A. Yes.

16 Q. And were there occasions where you might speak to the  
17 officer and ask to look at their memo book with respect to that  
18 250?

19 A. Yes.

20 Q. Were there occasions where you identify 250s that have been  
21 completed improperly, missing information, or something like  
22 that?

23 A. Yes.

24 Q. And what do you do on those occasions?

25 A. I will speak to the officer. I will either have them come

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1 in from patrol or I will speak to them the next day.

2 Q. What about occasions where you've requested to look at  
3 the -- prior to March where you've had to request to look at  
4 the officer's, a copy of the memo book, what were you looking  
5 for in the memo book with respect to the 250?

6 A. I was looking for an entry regarding the actual stop.

7 Q. And were there occasions where you found the entries in the  
8 officers' memo books to be insufficient?

9 A. Yes.

10 Q. What would you do on those indications?

11 A. I would instruct the officer that they put in a more  
12 detailed description of what actually occurred.

13 Q. Are you able to issue discipline to officers who failed to  
14 enter UF 250 information in the memo books?

15 A. Yes.

16 Q. And have you done that?

17 A. No.

18 Q. Are you aware that officers at the command have received  
19 discipline for failing to enter entries in their memo books for  
20 UF 250s?

21 A. Yes.

22 MR. MOORE: Judge, I think she's should say how she's  
23 aware otherwise that's hearsay testimony.

24 THE COURT: Are you aware that officers in the command  
25 have received discipline for failing to enter entries in their

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1 memo books. I mean she's the XO, aren't you?

2 THE WITNESS: Yes.

3 THE COURT: She would know -- you know about all  
4 disciplines in the command, don't you?

5 THE WITNESS: Yes.

6 MR. MOORE: I'm sorry. I didn't hear your question.

7 THE COURT: You're aware of all disciplines in the  
8 command. She said sure. I mean she is the XO. So I don't  
9 have a problem with that question.

10 Q. Captain Materasso, are you familiar with an officer --

11 THE COURT: I'm not sure you ever got an answer to  
12 your question, which was: Are you aware that officers at the  
13 command have received discipline for failing to enter entries  
14 in their memo books for the 250s?

15 THE WITNESS: Yes, your Honor.

16 THE COURT: Okay.

17 Q. Captain Materasso, are you familiar with an officer Pedro  
18 Serrano --

19 A. Yes.

20 Q. -- in the 40 precinct?

21 How are you familiar with Officer Pedro Serrano?

22 A. I know he's an officer on the four-to-twelve unit. In  
23 early 2000 when I was assigned to the precinct in January, I  
24 did actually -- I was newly assigned there and there was an  
25 incident where -- to boost moral, because moral in the precinct

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1 itself was a little --

2 MR. MOORE: Judge this is a period of time outside of  
3 the lawsuit that she's now referring to.

4 MS. COOKE: 2012. I think she misspoke.

5 MR. MOORE: She said 2000.

6 THE COURT: I heard 2012.

7 MR. MOORE: Okay. Then I misunderstood.

8 THE COURT: You said 2012, right?

9 MS. COOKE: I heard 2012. If she said 2012 and you  
10 heard it, then we just heard it as 2000 and we're here.

11 THE WITNESS: Twelve, yes.

12 THE COURT: She did say twelve. I heard it.

13 MR. MOORE: On this side we both heard 2000 and that  
14 makes me feel better.

15 Q. So early 2012 you were saying moral --

16 A. So I was newly assigned to the precinct. Within a week, or  
17 week or two previous to that, at which time I said to the roll  
18 call, I went in, I had introduced myself.

19 THE COURT: Please, please.

20 THE WITNESS: I apologize.

21 I did go into the roll call. I did introduce myself.  
22 And I did offer to the platoon that we were going to order in  
23 some food and if they would like to order in to see me after.  
24 And actually Officer Serrano is the one who came up to me and  
25 he just wanted to express that he was looking forward to

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1 working with myself and the CO. And that he was apologetic to  
2 the fact that everybody looked at me kind of with a cross eye  
3 because they weren't used to having somebody offer in a  
4 positive way to the platoon the way I was, so.

5 Q. And throughout 2012 how frequently would you see and  
6 interact with Officer Serrano?

7 A. I would see him a couple times during the week throughout  
8 because I didn't -- I did majority third platoon tours myself  
9 as the XO. So I would see him and the other members of the  
10 third platoon in passing.

11 Q. And prior to June of 2012 what was your understanding of  
12 Officer Serrano as he conducted himself as a police officer?

13 A. I didn't hear anything positive nor negative towards --  
14 about him.

15 MS. COOKE: We could put Defendants' Exhibit C10.  
16 It's already in evidence. On the screen. I'll hand up paper  
17 copies if you'd like.

18 Do you recognize Defendants' Exhibit C10?

19 THE WITNESS: Yes.

20 Q. And what do you recognize it to be?

21 A. Officer Serrano's evaluation.

22 Q. For what period?

23 A. For the year of 2011.

24 THE COURT: You were there that year?

25 THE WITNESS: No, I was not, your Honor.

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MATERASSO - DIRECT

1 THE COURT: You were not there that year?

2 THE WITNESS: No.

3 Q. Did Officer Serrano appeal his performance evaluation from  
4 2011?

5 A. Yes.

6 Q. What year did he appeal it?

7 A. 2012.

8 Q. Did you conduct the review of -- well the appeal meeting  
9 for his appeal of this evaluation?

10 A. Yes, I did.

11 Q. And what overall score did Officer Serrano receive on this  
12 evaluation?

13 A. He received a three.

14 THE COURT: Where is that overall rating?

15 MS. COOKE: The bottom left, your Honor.

16 THE COURT: I see it. Yes. It's out of four?

17 THE WITNESS: Yes -- oh, no, five.

18 THE COURT: Out of five.

19 Q. Is a five considered meeting standards?

20 A. Is a three?

21 Q. I'm sorry. Three considered meeting standards?

22 A. Yes.

23 Q. And officer -- on the back -- I'm sorry. On the front  
24 Officer Serrano's sergeant who conducted -- who performed this  
25 evaluation is Steven Monroe, correct?

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MATERASSO - DIRECT

- 1 A. Correct.
- 2 Q. Were you familiar with Sergeant Monroe?
- 3 A. Yes.
- 4 Q. Was Officer Serrano put on performance monitoring as a  
5 result of this evaluation?
- 6 A. No.
- 7 Q. What score triggers performance monitoring on the annual  
8 evaluation?
- 9 A. 2.5 or lower.
- 10 Q. Was Officer Serrano's assignment switched as a result of  
11 this evaluation?
- 12 A. No.
- 13 Q. In fact, the recommendation on this evaluation is that he  
14 continue in his present assignment, correct?
- 15 A. Yes.
- 16 Q. When did you hear the appeal of Officer Serrano's  
17 performance evaluation for 2011?
- 18 A. June of 2012.
- 19 Q. And who attended the meeting?
- 20 A. Myself, my administrative lieutenant, the immediate  
21 supervisor Sergeant Monroe and Officer Serrano.
- 22 Q. Where did the meeting take place?
- 23 A. In my office.
- 24 Q. And when -- what time of day did the meeting take place?
- 25 A. Sometime after roll call which is usually conducted about

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MATERASSO - DIRECT

1 1505 hours.

2 Q. What time is that?

3 A. 3:05 p.m.

4 Q. So sometime after 3:00 p.m. you began this evaluation  
5 appeal meeting?

6 A. Yes.

7 Q. Who spoke first at the meeting?

8 A. Well once everybody came into my office I spoke first and I  
9 had asked the sergeant if he believed that this was the score,  
10 the rating that this officer should receive. And he had said  
11 yes.

12 Q. And what happened next?

13 A. Then I had asked Officer Serrano: You're here to appeal  
14 this evaluation? He said yes.15 And then I said on what basis? And he told me that he  
16 wanted to just express that he felt that the CO and myself  
17 believe that if he did not arrest, summons a lot of people we  
18 didn't think he was doing his job.

19 Q. What did you say in response to that?

20 A. I told him that is not the case at all. He is to address  
21 his conditions while on patrol.22 Q. What did you mean when you said he needs to address his  
23 conditions while on patrol?24 A. Pertaining to whatever sector or post he was assigned for  
25 the day. There could be traffic conditions that needed

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MATERASSO - DIRECT

1 attention. There could be accident prone locations within that  
2 traffic plan. There could be patterns of robbers that are out  
3 there. There could be -- you know, other instances of  
4 disorderly groups that needed to be addressed, things of that  
5 nature.

6 Q. Prior to commencing this performance evaluation appeal  
7 meeting did you review Officer Serrano's enforcement activity  
8 from 2011?

9 A. Yes.

10 Q. How would Officer Serrano be aware of these conditions in  
11 the 40 precinct that he would need to address?

12 A. Daily at roll call they are informed of the platoon's prior  
13 crime occurrences or traffic occurrences as well as on the  
14 computer. Everybody in the precinct has access to all the  
15 crimes, all the 61s that they are able to review daily. As  
16 well as just your knowledge of everyday patrol, what has  
17 occurred on the previous days you have worked.

18 Q. During this meeting did you talk about Officer Serrano's  
19 2011 enforcement activity numbers, the arrest summonses and  
20 250s he conducted?

21 A. Not in a specific manner.

22 Q. Did Sergeant Monroe or Lieutenant Natale speak at any point  
23 during this meeting?

24 A. Not other than the questions that I asked Sergeant Monroe.

25 Q. What was the result of the evaluation appeal?

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MATERASSO - DIRECT

1 A. Once Officer Serrano had made that statement to me and I  
2 had explained to him regarding addressing the conditions. I  
3 had asked him if he would like to take this to the next step  
4 which would be appealing to the borough level or would he like  
5 to sign the evaluation.

6 Q. And what did he do?

7 A. He signed the evaluation.

8 Q. Officer Serrano has claimed that during this appeal meeting  
9 he explained himself using the 28 criteria on the front of the  
10 evaluation.

11 Do you agree that that happened during the meeting?

12 A. No. We did not discuss any of those areas.

13 Q. Officer Serrano claims that during this appeal meeting you  
14 told him enforcement activity counted for 50 percent of this  
15 evaluation.

16 Did you say that?

17 A. No, I did not.

18 Q. Did you suggest to Officer Serrano in any way that there  
19 was a numerical weight assigned to his enforcement activity for  
20 an annual evaluation?

21 A. No, I did not.

22 Q. Officer Serrano claims that in response to you telling him  
23 there was 50 percent weight for enforcement activity, he said  
24 that's a quota.

25 Did he say that to you?

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MATERASSO - DIRECT

1 A. No.

2 Q. Officer Serrano also claims he told you that quota wasn't  
3 written down anywhere and you said it was in Operations Order  
4 52.

5 Did you say that?

6 A. No, I did not.

7 Q. Did Officer Serrano mention quotas at all during his  
8 evaluation appeal meeting?

9 A. No, he did not.

10 Q. Did Officer Serrano say anything to you during his  
11 evaluation appeal meeting that you were describing or requiring  
12 him to engage in illegal conduct?

13 A. No, he did not.

14 Q. Officer Serrano claims when he -- he told you, you were  
15 talking about a quota that was illegal, you told him, "I can do  
16 that."

17 Did you say that?

18 A. No, I did not.

19 Q. Was Operations Order 52 even mentioned during Officer  
20 Serrano's appeal meeting?

21 A. No, it was not.

22 Q. Officer Serrano has claimed that he wanted to review  
23 Operations Order 52 before he signed this 2011 evaluation but  
24 that you forced him to sign it before he could.

25 Did you do that?

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MATERASSO - DIRECT

- 1 A. No, I did not.  
2 Q. Did Officer Serrano tell you he wanted to review something  
3 called Operations Order 52 before signing his evaluation?  
4 A. No, he did not.  
5 Q. Did you tell Officer Serrano he had to sign the evaluation  
6 before leaving your office during this meeting?  
7 A. No, I did not.  
8 Q. Could he have signed it later?  
9 A. Yes.  
10 Q. During his performance evaluation appeal meeting did you  
11 pressure Officer Serrano to increase his enforcement activity?  
12 A. No, I did not.  
13 Q. During this meeting did you pressure Officer Serrano to  
14 comply with quotas regarding enforcement activity?  
15 A. No, I did not.  
16 Q. Officer Serrano has claimed that supervisors at the 40th  
17 precinct have told him in sum and substance that there are  
18 quotas at the 40th precinct.  
19 Are there quotas at the 40 precinct?  
20 A. No, there are not.  
21 (Continued on next page)  
22  
23  
24  
25

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D5A8FLO2

Materasso - direct

1 Q. Officer Serrano claims that you have talked to him about  
2 failing to meet quotas. Have you had those conversations with  
3 Officer Serrano?

4 A. No, I have not.

5 Q. Officer Serrano claims that Deputy Inspector McCormack has  
6 spoken to him about failing to meet quotas. Are you aware that  
7 Deputy Inspector McCormack has said any such thing to Officer  
8 Serrano?

9 THE COURT: Wait a minute. I'm not sure that one was  
10 a fair question. Were you present every time McCormack spoke  
11 with Serrano?

12 THE WITNESS: No, I was not.

13 THE COURT: She doesn't know.

14 Q. At any time you were present when Deputy Inspector  
15 McCormack spoke to Officer Serrano, did you hear Deputy  
16 Inspector McCormack speak to Officer Serrano about quotas?

17 A. No.

18 Q. Officer Serrano claims that the quota at the 40th Precinct  
19 is 20 summonses and one arrest. Are you aware of any numerical  
20 quota of 20 summonses and one arrest at the 40th Precinct?

21 A. No.

22 Q. Officer Serrano also claims there are quotas for UF-250s at  
23 the 40th Precinct. Are there quotas for UF-250 activity at the  
24 40th Precinct?

25 A. No.

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D5A8FLO2

Materasso - direct

1 Q. Officer Serrano claims that the reason he received a 3 on  
2 the 2011 performance evaluation is because he failed to meet  
3 quotas. Do you agree with that statement?

4 A. No.

5 MR. MOORE: Asked and answered already too.

6 MS. COOKE: With respect to the evaluation it was not  
7 asked and answered.

8 MR. MOORE: I believe it was. But she answered it  
9 anyway.

10 Q. Officer Serrano claims that following this performance  
11 evaluation appeal meeting, you illegally stopped and searched  
12 three black men while Officer Serrano was present. Did you do  
13 that?

14 A. No.

15 Q. What did happen following the performance evaluation appeal  
16 meeting?

17 A. I received a phone call from Deputy Inspector McCormack,  
18 and he stated that the narcotics team that had a major federal  
19 case going on needed an ID on two subjects.

20 Q. Was Officer Serrano still present in your office when you  
21 received this telephone call?

22 A. Yes.

23 Q. Who else was still present?

24 A. I can't say for sure if the administrative lieutenant was  
25 present or if Sergeant Monroe was present.

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D5A8FLO2

Materasso - direct

1 Q. What did you do after receiving this telephone call from  
2 Deputy Inspector McCormack?

3 A. I did call the narcotic sergeant Vargas on the telephone.  
4 I stated to him that I was going to get dressed and come out  
5 and do the ID for him.

6 Q. Why didn't Deputy Inspector McCormack do the  
7 identification?

8 MR. MOORE: Object to that, Judge.

9 THE COURT: I am not sure exactly what the question  
10 means.

11 Why did you do it? I will start with that.

12 THE WITNESS: Deputy Inspector McCormack was not  
13 working at the time so he had called me to do it.

14 Q. What did you say to Officer Serrano after you received the  
15 phone call from Deputy Inspector McCormack and then called  
16 Sergeant Vargas?

17 A. I had asked Officer Serrano if he received a car during  
18 roll call, at which time he said yes. I said, OK, we need to  
19 take a ride. Officer Serrano then went to hand me the keys. I  
20 said, No, I need you to come with me.

21 Q. Did Officer Serrano tell you he didn't want to come with  
22 you?

23 A. No.

24 Q. What information did Sergeant Vargas provide during the  
25 phone call in your office at the 40th Precinct about the task

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Materasso - direct

1 he was asking you to do?

2 MR. MOORE: Objection. That's hearsay.

3 THE COURT: There has been a lot of hearsay that you  
4 have been sitting here accepting.

5 Yes, that is hearsay. Objection sustained.

6 Q. What did you understand Sergeant Vargas needed you to do?

7 MR. MOORE: Same objection.

8 THE COURT: Sustained.

9 As a result of the phone call, did you take certain  
10 action?

11 THE WITNESS: Yes, I did.

12 THE COURT: What action did you take?

13 THE WITNESS: Once I got into the vehicle with Officer  
14 Serrano, we drove to the location where he would like me to ID  
15 these two individuals. On the ride over to this location, I  
16 did recall him back on the telephone, and I stated in the  
17 automobile on my way, Can you please guide me into the location  
18 of where the individuals are?

19 Q. Were you provided with a physical description of the  
20 individuals you were supposed to ID?

21 A. Yes, I was.

22 Q. What was that description?

23 MR. MOORE: Objection, Judge.

24 THE COURT: It really doesn't matter.

25 You were given a description and then you saw the men?

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Materasso - direct

1 THE WITNESS: Yes.

2 THE COURT: Did they match the description?

3 THE WITNESS: Yes.

4 Q. Why did you need to ID these two individuals for the  
5 narcotics investigation?

6 A. Sergeant Vargas had explained to me that --

7 MR. MOORE: Objection, Judge.

8 THE COURT: What he said is an out-of-court statement.

9 Was it part of the investigation to make a physical

10 ID?

11 THE WITNESS: A physical ID for what the case -- for  
12 what had just occurred, yes. I was given information from the  
13 sergeant on the New York City Police Department that an  
14 undercover had just purchased crack in the hallway of a  
15 building and that they needed for this federal case to have  
16 these individuals ID'd for the case, so when the case takedown  
17 would occur, they will be able to issue these arrest warrants.

18 Q. Have you conducted this kind of investigative ID before?

19 A. Yes, I have.

20 Q. Under what circumstance?

21 A. When I was in Bronx vice, I was on a team and we conducted  
22 two major cases for gambling.

23 Q. In the course of investigating those cases, you conducted  
24 investigative IDs of individuals after crimes of criminal  
25 activity?

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Materasso - direct

1 A. Yes.

2 Q. Was there probable cause to arrest these two persons that  
3 you were ID'ing with Officer Serrano for the sale of crack  
4 cocaine?

5 A. Yes.

6 Q. Why weren't they arrested at that time for the sale of  
7 crack cocaine?

8 A. Because it was part of an ongoing federal major case.

9 Q. So when you arrived -- first of all, what was the location  
10 you arrived at?

11 A. In front of 281 East 143.

12 Q. What is that address?

13 A. It's in front of a housing development.

14 Q. Which housing development?

15 A. Patterson.

16 Q. Are you familiar with the Patterson houses?

17 A. Yes.

18 Q. Are you familiar with crime conditions occurring in  
19 Patterson?

20 A. Yes.

21 Q. What were those crime conditions in June 2012?

22 A. Well, I am aware that the original reason of starting this  
23 major case was due to approximately ten shootings leading up  
24 to --

25

MR. MOORE: This answer is not responsive to the  
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Materasso - direct

1 question. It was, what were the crime conditions at the time?

2 THE COURT: What were the crime conditions in June

3 2012?

4 A. Including up until June 2012, violence, straight-up  
5 shootings.

6 Q. When had this narcotics investigation begun?

7 A. In 2011.

8 Q. How were you aware of the narcotics investigation?

9 A. We had monthly strategy meetings in the precinct  
10 collectively, including housing, narcotics, gang, Bronx vice,  
11 deputy commission operations office, different units that were  
12 involved in this major case.

13 Q. How long did this case major case investigation go on?

14 A. Approximately a year.

15 Q. So when you arrived at 281 East 143rd Street, the Patterson  
16 Houses, what did you do?

17 A. Once I confirmed on the phone that I was walking up to the  
18 correct individuals with Sergeant Vargas, I did exactly see the  
19 description that he was -- that he gave to me over the  
20 telephone. Myself and Officer Serrano did engage the  
21 individuals in a conversation.

22 Q. How many people did Sergeant Vargas describe to you prior  
23 to your arrival at the location?

24 A. Two.

25 Q. When you arrived at the location, you saw the two

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1 individuals fitting that description?

2 A. Yes.

3 Q. Were there any other individuals present?

4 A. Yes. There was a third male.

5 Q. Was it your understanding that you were to identify the  
6 third male?

7 A. No.

8 Q. Why not?

9 A. He had nothing to do with the undercover sales.

10 Q. So you got out of the car and you approached these three  
11 individuals. What happened next?

12 A. The three individuals were standing there. They were  
13 standing in front of an electrical box, approximately three  
14 feet long say, at which time the third individual that was not  
15 asked to be ID'd was sitting on the top portion of it. I had  
16 asked him just to get down, just to not be at a tactical  
17 disadvantage, just to be on the safe side. Then I did engage  
18 conversation with the other two males. I did tell them that  
19 they were being questioned regarding a complaint I had received  
20 from 911 regarding a disorderly group with bats.

21 Q. Why did you tell them that?

22 A. They had a bat at their feet.

23 THE COURT: A what?

24 THE WITNESS: A baseball bat.

25 Q. Had you in fact received a 911 call for disorderly conduct

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Materasso - direct

1 for kids with bats?

2 A. No.

3 Q. So why did you tell them that?

4 A. Because not to compromise a major case investigation, do  
5 some sort of a ruse or a little bit of a deception.

6 Q. But they did in fact have a bat?

7 A. Yes.

8 Q. What happened with the bat?

9 A. Officer Serrano removed the bat from the male wearing  
10 the -- because I did have a detailed description. He did  
11 remove the bat from the male with the striped blue shirt on  
12 from his feet.

13 Q. Were you in uniform?

14 A. I was wearing a raid jacket.

15 Q. Does that identify NYPD on the jacket?

16 A. Yes.

17 Q. Was Officer Serrano in uniform?

18 A. Yes.

19 Q. So after you informed the men that you received a 911 call,  
20 what happened next?

21 A. Due to the increase of violence and the shooting location  
22 in and around that area, for my safety I did frisk them.

23 MR. MOORE: Objection to that answer. I ask that it  
24 be stricken.

25 THE COURT: What is the objection?

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Materasso - direct

1 MR. MOORE: It is a gratuitous comment about trying to  
2 inflame the record with unsubstantiated claims about what is  
3 going on.

4 THE COURT: I don't really understand that.

5 The question was, What happened next? And the answer  
6 was basically a frisk, and she gave the reason for the frisk.

7 So the question was, What happened next? The real  
8 answer was a frisk. What she added was why she did it, but  
9 that would have been the next question anyway. I don't see any  
10 harm.

11 MR. MOORE: Could I then have the answer read back?  
12 Or maybe we can just ask her again.

13 THE COURT: "Due to the increase of violence and the  
14 shooting location in and around that location, for my safety I  
15 did frisk them."

16 The answer would have been, What happened next? I did  
17 a frisk. The question would have been why, and it would have  
18 been the same answer.

19 MR. MOORE: Thank you, Judge.

20 BY MS. COOKE:

21 Q. Were all three men frisked?

22 A. No, they were not.

23 Q. Who was frisked?

24 A. The two with the detailed description I had received from  
25 the sergeant.

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Materasso - direct

- 1 Q. Who conducted the frisk of those two men?  
2 A. I did.  
3 Q. Did Officer Serrano conduct any frisks?  
4 A. No.  
5 Q. When you frisked those two men, did you also conduct any  
6 search?  
7 A. No.  
8 Q. Did you remove anything from either of the two men's  
9 pockets?  
10 A. Yes.  
11 Q. Starting with the first man you searched, I believe you  
12 said one man had a striped shirt?  
13 A. Yes.  
14 Q. Starting with the man with the striped shirt, what did you  
15 remove from his pockets?  
16 A. In his right pants pocket, he had a hard object, which I  
17 asked him, What is this? He stated to me, It's just rolls of  
18 money. At which time he said, You could take it out. I placed  
19 it right in front of him on the electrical box.  
20 Q. You removed an object from one pocket?  
21 A. Yes.  
22 Q. It's an object that you had felt a hard object during  
23 conducting the frisk?  
24 A. Yes.  
25 Q. Did you remove anything else from that man with the striped

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Materasso - direct

1 shirt's pockets?

2 A. No.

3 Q. The second individual, you frisked him?

4 A. Yes.

5 Q. And you didn't search him?

6 A. No.

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

8 Q. What did you feel during the frisk of the second gentleman?

9 A. In the left rear pants pocket, I felt a hard object. I  
10 also asked him what that was. He had stated it was a wallet.

11 Q. So what happened when he stated it was a wallet?

12 A. He was wearing a type of jeans that had a flap over it. At  
13 which time I couldn't totally tell exactly what it was because  
14 it's uncommon during my daily routine to see an actual wallet  
15 in someone's pocket.

16 Q. What did you do when he said it was a wallet?

17 A. I looked inside to verify it was a wallet.

18 Q. Was it a wallet?

19 A. Yes.

20 Q. Did you remove the wallet?

21 A. No.

22 Q. Officer Serrano claims that you went into the inside of the  
23 pockets of all three of these men during this encounter and  
24 pulled everything out of their pockets. Is that what happened?

25 A. No.

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Materasso - direct

- 1 Q. After you conducted the frisk for your safety, what  
2 happened next?
- 3 A. I then asked the two individuals for their identification.  
4 I wrote it down on a piece of paper.
- 5 Q. Did they provide you physical ID or did they just orally  
6 provide it?
- 7 A. Physical New York State.
- 8 Q. What was Officer Serrano doing while you were writing down  
9 the pedigree information?
- 10 A. Standing next to me.
- 11 Q. Was Officer Serrano writing anything down?
- 12 A. No.
- 13 Q. Officer Serrano claims that while this was happening, some  
14 people from the housing development came around and started  
15 yelling at you. Did that happen?
- 16 A. No.
- 17 Q. Officer Serrano claims that they were yelling, Why are you  
18 harassing them? Did people yell that at you?
- 19 A. No.
- 20 Q. Were people present in the area while you were speaking to  
21 these three men?
- 22 A. There were people going about their daily routine, yes.
- 23 Q. What, if anything, did any of them say to you?
- 24 A. No one said anything to me.
- 25 Q. Officer Serrano claims that at this point you got very

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Materasso - direct

1 derogatory and started saying nasty things about them. Is that  
2 what happened?

3 A. No.

4 Q. What do you recall the tone was of this encounter?

5 A. Very cordial tone.

6 Q. Officer Serrano claims --

7 THE COURT: I just want to review that last answer.

8 "What do you recall the tone was of this encounter?"

9 You said "very cordial tone"?

10 THE WITNESS: Yes.

11 Q. What was the demeanor of the gentlemen you had encountered  
12 on the street?

13 A. Very nice and calm.

14 Q. When you were asking them for their pedigree information,  
15 how were they responding?

16 A. Without any problem.

17 Q. Officer Serrano claims that you did not have reasonable  
18 suspicion to make this stop. Do you agree with that statement?

19 A. No, I do not.

20 Q. Why not?

21 A. This was not a stop. This was an ID procedure.

22 THE COURT: Well, it was an ID procedure by you. But  
23 from the perspective of the people you were talking to, was it  
24 a stop?

25 THE WITNESS: I don't know if I could answer what they

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Materasso - direct

1 perceived.

2 THE COURT: Well, they were frisked.

3 THE WITNESS: The people I was speaking with?

4 THE COURT: I guess they were stopped.

5 THE WITNESS: I assume they were very happy they  
6 weren't arrested at that time.

7 THE COURT: They were stopped?

8 THE WITNESS: Yes.

9 THE COURT: You would agree they were stopped?

10 THE WITNESS: Yes.

11 Q. Did you have probable cause to arrest those two men at that  
12 time?13 THE COURT: You already asked that, and she said yes,  
14 and she didn't do it because it was an ongoing federal  
15 investigation.

16 MS. COOKE: Thank you, your Honor.

17 Q. Were UF-250s prepared for this encounter?

18 A. Not by me, no.

19 Q. Why not?

20 A. Because it was not a stop.

21 THE COURT: I thought we just agreed there was a stop.  
22 But that's OK.23 THE WITNESS: Perceived by them. But it was not a  
24 stop by me. I had probable cause.

25 THE COURT: I understand the two of them.

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Materasso - direct

1 Q. What did you do with the information you took down from the  
2 men you ID'd?

3 A. I gave it to the narcotics officers.

4 Q. So what happened after you got the ID information from the  
5 two men you encountered?

6 A. We got in the car and went back to the precinct.

7 Q. What was discussed between you and Officer Serrano on the  
8 ride back to the precinct?

9 A. On the ride back to the precinct, I thought it might be a  
10 nice opportunity for a training experience for him. Actually,  
11 earlier in the appeal, he did mention to me that he does a lot  
12 of warning admonishing and a lot of moving of groups. So I had  
13 mentioned to him, here, for instance, if you got a 911 call  
14 that someone in this building called and said these kids are  
15 selling drugs and loitering in the lobby, and you went there,  
16 do you think you would have looked further into the  
17 investigative part of it, or would you have just moved that  
18 group? He had said he probably would have just moved that  
19 group.

20 Q. What, if anything, did you say in response to that?

21 A. Nothing.

22 Q. Are you aware of what happened with the narcotics  
23 investigation with respect to the two men you ID'd?

24 MR. MOORE: Judge, I don't think that should be  
25 permitted.

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Materasso - direct

1 THE COURT: What is the question?

2 MR. MOORE: Are you aware of what happened in this  
3 narcotics investigation?

4 THE COURT: I agree. Objection sustained.

5 Q. Were the two men arrested?

6 MR. MOORE: Objection.

7 THE COURT: Objection sustained. I am only interested  
8 in the stop that occurred then. She calls it the ID, but I  
9 call it the stop. In any event, it's over when it's over.  
10 Subsequent information is not relevant.

11 Q. When did the narcotics investigation end in the 40th  
12 Precinct?

13 A. The case takedown was in December --

14 MR. MOORE: Objection.

15 THE COURT: I thought I decided I was not going to go  
16 to the post-stop conduct.

17 MS. COOKE: It's not going to the post-stop conduct.  
18 It's going to crimes conditions in the 40th Precinct.

19 MR. MOORE: I misunderstood that question.

20 Q. When did the narcotics operation --

21 THE COURT: Then she started talking about the  
22 takedown, which is the arrest.

23 MS. COOKE: I am not getting into the arrest. I am  
24 getting into the crime conditions.

25 THE COURT: But she answered the takedown occurred.

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D5A8FLO2 Materasso - direct

1 So that's stricken.

2 Tell us about the crime conditions.

3 THE WITNESS: OK.

4 Q. At the conclusion of the narcotics investigation, what  
5 effect did that have on the crime conditions in the 40th  
6 Precinct?

7 A. A dramatic increase in and around that area where the case  
8 was focused on.

9 Q. An increase at the conclusion or a decrease at the  
10 conclusion?

11 A. Decrease.

12 MR. MOORE: I thought you said increase.

13 THE WITNESS: I believe I said a dramatic decrease.

14 MS. COOKE: I just ask that Mr. Moore stop talking to  
15 the witness from counsel table.

16 THE COURT: I think he is talking to himself. Many  
17 people have talked to themselves during this trial.

18 If you're going to talk to yourself, do it silently,  
19 Mr. Moore.

20 Q. Captain Materasso, are you aware that Officer Serrano  
21 recorded a performance evaluation appeal meeting in 2013 with  
22 Deputy Inspector McCormack?

23 A. Yes.

24 Q. Have you heard the audio recording of that meeting?

25 A. Yes.

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Materasso - direct

1 Q. When Deputy Inspector McCormack identified Mott Haven as a  
2 location within the 40th Precinct with crime problems,  
3 specifically, grand larcenies and robberies, did you agree with  
4 that statement?

5 MR. MOORE: I don't think this is appropriate for  
6 counsel to ask this witness to comment on what is before you,  
7 which is the statements of Deputy Inspector McCormack and  
8 Officer Serrano on that statement.

9 THE COURT: Again, this was during the time she was  
10 the XO or captain or both at the precinct, and all that's  
11 really being asked is, Do you agree that there were crime  
12 problems at the 40th Precinct, such as larcenies?

13 MS. COOKE: Grand larcenies and robberies at Mott  
14 Haven.

15 MR. MOORE: If she wants to ask that without relation  
16 to the statement.

17 THE COURT: You're right. You could say, putting  
18 aside the statement, do you agree that there were? She is  
19 thereby putting it together and making it easier to find it in  
20 the transcript.

21 The bottom line is, do you agree there was a grand  
22 larceny and robbery condition at Mott Haven when?

23 MS. COOKE: In 2012.

24 THE COURT: In 2012?

25 THE WITNESS: Yes, I agree.

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Materasso - direct

- 1 Q. When Deputy Inspector McCormack described the suspects of  
2 those robberies and grand larcenies in 2012 in Mott Haven as  
3 male blacks, 14 to 20 or 21, do you agree with that statement?  
4 A. Yes.  
5 Q. Why?  
6 A. Because that is the information that we were able to gather  
7 from the complaint reports that the victims are reporting who  
8 committed these crimes against them.  
9 Q. Was it also descriptions of people who you knew at the 40th  
10 Precinct got arrested for those crimes?  
11 A. Yes.  
12 Q. Is that description, male black, ages 14 to 21, sufficient  
13 information alone for reasonable suspicion to stop someone in  
14 Mott Haven?  
15 A. Absolutely not.  
16 Q. Why not?  
17 A. Because you need a lot more than that to conduct a  
18 reasonable suspicion stop.  
19 Q. Officer Serrano claims that in order to force him to  
20 increase his enforcement numbers, he was identified as the  
21 arresting officer for arrests he did not make. Is it a  
22 violation of department policy to process the arrest of another  
23 officer?  
24 A. No, it's not.  
25 Q. Is there anything illegal about that conduct?

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Materasso - direct

1 A. No.

2 Q. When an officer acts as the arresting officer, does the  
3 officer complete paperwork indicating the arrest information is  
4 learned from others?

5 A. Yes.

6 Q. When officers rely upon information supplied by other  
7 officers, is that appropriate?

8 A. Yes.

9 Q. When an officer is assigned an arrest, can the officer take  
10 steps to gain personal knowledge about the circumstances of the  
11 arrest?

12 A. Yes.

13 Q. Officer Serrano claims that in order to force him to  
14 increase his numbers of enforcement activity he had to ride  
15 with a supervisor. Is that the reason an officer rides with a  
16 supervisor at the 40th Precinct?

17 A. No.

18 Q. Did you ever order Officer Serrano to ride with a  
19 supervisor?

20 A. No.

21 Q. Officer Serrano alleges that in order to force him to  
22 increase his enforcement numbers, he had to write summonses.  
23 Have you ever ordered Officer Serrano to write summonses?

24 A. No.

25 Q. Are you aware of Officer Serrano's summons activity while

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D5A8FLO2 Materasso - direct

1 he was an officer at the 40th Precinct?

2 A. Yes, I am.

3 Q. What was generally Officer Serrano's summons activity  
4 you're aware of?

5 A. What I am aware of, because I do review daily what is  
6 conducted within the confines of the precinct, I am aware that  
7 it is significantly low.

8 Q. Are you aware of what kinds of summonses Officer Serrano  
9 was issuing in the 40th Precinct?

10 A. Yes, I am.

11 Q. What generally was the nature of those summonses?

12 A. When I do look at those summonses, they are issued in a  
13 desolate, non-residentially populated area of the precinct, and  
14 the enforcement is related -- the top two are for detached  
15 trailers and wheel chocks.

16 Q. What is a detailed trailer or wheel chock summons?

17 A. That's when the cab is removed from the trailer and it's  
18 just down on its front legs, and then behind it the wheels  
19 should have these rubber apparatuses so they don't roll.

20 Q. So the trailer won't roll away?

21 A. Yes.

22 Q. What conditions in the 40th Precinct would detached  
23 trailers and missing wheel chock summonses be correcting?

24 A. As long as I have been in the precinct, which is a little  
25 over a year, we haven't received any complaints via 911,

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Materasso - direct

1 letters or 311 calls regarding detached trailers.

2 Q. Do you in fact receive complaints via the methods you just  
3 described about other summonable offenses in the 40th Precinct?

4 A. Yes.

5 Q. What kind of summonable offenses do you receive complaints  
6 about?

7 A. We receive numerous letters from lots of residents, in the  
8 vicinity of 138th Street, that would just like some enforcement  
9 conducted to help the safety of their children. Some women  
10 have written letters that they feel they can't cross the  
11 street, that the cars are not yielding for them in the  
12 crosswalks. And any time a condition like this is brought to  
13 our attention, we review these letters at roll call and we tell  
14 the officers to please, the community is asking for your help,  
15 you need to address these conditions.

16 Q. What are the primary traffic conditions that need to be  
17 addressed in the 40th Precinct?

18 A. Since the 40th Precinct does encompass two major highways,  
19 the Bruckner Expressway and the Major Deegan, as well as three  
20 toll-free access points in and out of Manhattan, unfortunately,  
21 those areas get very congested. We have numerous calls for  
22 congestion via the 311 system as well as numerous letters. We  
23 have accident-prone locations at the majority of the foots of  
24 those access points in and out of the city, which the  
25 accident-prone location means that a certain number of

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1 accidents or injuries occurred at that specific location.

2 Q. What do you expect officers in the 40th Precinct to do to  
3 correct these conditions you have just described?

4 A. We do analyze each location. So, for instance, if one  
5 location the main contributing factor was a spill-back or a  
6 rear end, we would expect the officers to enforce and issue  
7 those types of summonses to prevent accidents and save lives.

8 Q. Officer Serrano claims that in order to force him to  
9 increase his enforcement activity, he had to work checkpoints.  
10 Did you ever order Officer Serrano to work a checkpoint?

11 A. No.

12 Q. Are checkpoints illegal?

13 A. No.

14 Q. Officer Serrano alleges that he has been subject to adverse  
15 employment action because he failed to meet quotas at the 40th  
16 Precinct. Have you taken adverse employment action against  
17 Officer Serrano for failure to meet quotas?

18 A. No.

19 Q. Have you taken adverse employment action against Officer  
20 Serrano at all?

21 A. No.

22 Q. Have you directed any other person at the 40th Precinct to  
23 take adverse employment action against Officer Serrano?

24 A. No.

25 Q. Are you aware that any other person at the 40th Precinct

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Materasso - direct

1 has taken adverse employment action against Officer Serrano?

2 A. No.

3 Q. Officer Serrano claims that this adverse employment action  
4 includes poor performance evaluations in 2011 and 2012. Are  
5 you aware what score Officer Serrano received on his  
6 performance evaluation in 2012?

7 A. Yes.

8 Q. What was that score?

9 A. A 3.0.

10 Q. Do you believe Officer Serrano received poor performance  
11 evaluations in 2011 and 2012?

12 A. No.

13 Q. Have you ever received a 3 on a performance evaluation as a  
14 police officer?

15 A. Yes, I have.

16 Q. Officer Serrano claims that Deputy Inspector McCormack, in  
17 and around November of 2012, threatened to switch Officer  
18 Serrano's shift. Are you aware that Deputy Inspector McCormack  
19 ever threatened to switch Officer Serrano's shift?

20 A. No.

21 THE COURT: Again, you could not have been present  
22 every time they interacted, right?

23 THE WITNESS: Right.

24 THE COURT: So when you were present, you never heard  
25 any such thing?

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Materasso - direct

1 THE WITNESS: Correct.

2 Q. Have you ever had any conversations with Deputy Inspector  
3 McCormack about switching Officer Serrano's shift?

4 THE COURT: I would only take a yes or no to that.

5 A. No.

6 Q. Have you had, yes or no, have you had any such  
7 conversations with anyone else at the 40th Precinct?

8 A. No.

9 Q. Officer Serrano claims he has been assigned unusual posts  
10 in retaliation for the complaints he has voiced here in this  
11 lawsuit about quotas. When did you first learn about Officer  
12 Serrano's complaints about quotas?

13 A. January of 2013.

14 THE COURT: How did you learn?

15 THE WITNESS: I was advised by counsel.

16 MR. MOORE: I didn't hear the answer.

17 THE COURT: I was advised by counsel. I asked her how  
18 she learned. I was advised by counsel.

19 Q. Since that time, January of 2013, did you assign Officer  
20 Serrano to any unusual posts?

21 A. No, I did not.

22 Q. Prior to January 2013, had you assigned Officer Serrano to  
23 any unusual posts?

24 A. No.

25 Q. Officer Serrano identifies these unusual posts were outside  
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Materasso - direct

1 the precinct in the Rockaways following Hurricane Sandy. Did,  
2 in fact, the 40th Precinct send Officer Serrano to the  
3 Rockaways following the hurricane?

4 MR. MOORE: That misstates Officer Serrano's  
5 testimony. He did refer to that, but I don't think he limited  
6 it to that.

7 THE COURT: He may have said that was one example. I  
8 thought he testified he was aware many officers were sent to  
9 help out in the Rockaways. I would have to go way back to the  
10 transcript to see if that is an accurate way of phrasing it.

11 But the bottom line is, were other officers sent to  
12 the Rockaways?

13 THE WITNESS: Yes.

14 Q. Is there anything unusual about the police department  
15 redeploying resources after an event such as Hurricane Sandy?

16 A. No.

17 Q. Officer Serrano claims another unusual post assignment --

18 THE COURT: I don't know about another. I am not sure  
19 of the context in which he mentioned the Rockaways. So  
20 rephrase it.

21 Q. Officer Serrano claims an unusual post assignment is a foot  
22 post. Are foot posts punishment?

23 A. No.

24 THE COURT: Actually, what he said there was that a  
25 foot post is unusual for his level of seniority, I think. My

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Materasso - direct

1 memory is the more lower, the newer officers are assigned to  
2 foot posts, but usually the more senior people are not.

3 Is that sort of true? Is that an entry level  
4 assignment and the more senior you get the less you do foot  
5 posts?

6 THE WITNESS: When you're first assigned by impact,  
7 they are all on foot. But when they are on patrol, the  
8 assignments all vary and should have no bearing on how long you  
9 have been there. There should be no bearing on that.

10 THE COURT: So it's not true that the more junior  
11 people get foot posts and the more senior you get you get  
12 assigned to the vehicles?

13 THE WITNESS: There's not that many foot posts, but  
14 they should always be on a rotational basis. So if we had a  
15 steady foot post, it should rotate no matter what.  
16 Q. In 2013, did the 40th Precinct have --

17 THE COURT: Can I ask how much longer your direct is?  
18 Because I was thinking I could take the break after the direct,  
19 but maybe not. Just roughly.

20 MS. COOKE: According to my number, it looks like I  
21 have 15 to 20 minutes.

22 THE COURT: Let's take our break now and reconvene  
23 somewhere between quarter of and ten of.

24 (Recess)

25 THE COURT: I see the witness isn't here yet.

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Materasso - direct

1 MS. GROSSMAN: If I may just for a brief moment  
2 interrupt this witness. Earlier today Chief Morris provided  
3 testimony and there was a question about the basis of the  
4 declaration and the basis of his testimony based on personal  
5 knowledge that Mr. Moore asked.

6 The witness would like to make sure that it's  
7 understood that, based on the declaration that he submitted,  
8 that it is based on -- he submitted a declaration in this case,  
9 at your Honor's direction, and in it there's many, many  
10 different topics that he provided information on. And some of  
11 the information that he provided was based on review of  
12 documents and some was based on personal knowledge.

13 The questions that Mr. Moore asked about the personal  
14 knowledge regarding the 40 UF-250s that were reviewed were  
15 based on Captain Natale's statements to him. And I just want  
16 to make clear from the declaration that that statement was  
17 based on what Captain Natale told him. And the witness is here  
18 prepared to explain that.

19 THE COURT: He doesn't need to explain that. He  
20 already explained it. I understood it.

21 MS. GROSSMAN: I just want it to be clear that the  
22 personal knowledge was based on Captain Natale, not to suggest  
23 that he misrepresented that he looked personally at the 250s.

24 THE COURT: There was no such inference argued or  
25 drawn.

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Materasso - direct

1 MS. GROSSMAN: Very good, your Honor.

2 MR. MOORE: And he testified to this. I asked him  
3 questions.

4 MS. GROSSMAN: I just wanted to make sure that's  
5 clear.

6 THE COURT: Captain, just a minute.

7 I think it is the time of the day where I should  
8 address the scheduling for Monday, which was raised by the  
9 letters submitted by the city on May 8 and the plaintiffs on  
10 May 9 as to whether or not Dr. Fagan should be allowed to  
11 testify once again in rebuttal to the most recent round of  
12 testimony as between Dr. Fagan and Dr. Smith and Purtell.

13 There seemed to be four categories at issue, and I  
14 studied all four and studied both letters. I said on the  
15 record already, with respect to one of these categories, "We do  
16 have to get to the bottom of it. It's an important case."  
17 That was a quote with respect to the third of these categories,  
18 based on certain new calculations that Dr. Fagan made using  
19 Dr. Purtell's coding instructions.

20 Without going into the specifics of each of the four  
21 categories and the reasons for my ruling, the real bottom line  
22 is exactly what I said there. We do have to get to the bottom  
23 of it. It's an important case. In all of these instances, I  
24 conclude that I should hear the testimony. There were  
25 last-minute changes in the titles of tables, in the description

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Materasso - direct

1 of columns in the tables. There was new calculations being  
2 done that at one point the plaintiffs had done, but the city  
3 didn't have time to review. I now think it's wise to have  
4 everybody say what they have to say about each other's work in  
5 these four specific areas, and the way I am going to do it is  
6 this.

7 Dr. Fagan can be recalled. His testimony -- direct,  
8 cross and redirect -- cannot, cannot exceed 90 minutes.  
9 Dr. Purtell or Smith, whichever, can also be recalled after  
10 hearing Dr. Fagan, and he will have the last word. It has to  
11 end somewhere. So he can have the last word, that is Dr. Smith  
12 or Purtell, I don't know which, not to exceed 90 months no  
13 matter what. And I hope both will come in at less, but that's  
14 the outside maximum. And nobody can create anything new that  
15 the other side hasn't seen after, shall we say, noon tomorrow,  
16 because you didn't have notice that you would be estopped.

17 So if there are any more little charts that Dr. Fagan  
18 is preparing, or any more little charts that Dr. Smith or  
19 Purtell are preparing, they have to be exchanged by noon  
20 tomorrow. If you tell me you know they are working on it, you  
21 would like till 5:00 tomorrow, that's OK too. But that has to  
22 end too. Neither one can walk in on Monday morning with a new  
23 demonstrative, a new chart, a new calculation. We are only  
24 going to run into the same problem. Whatever side hasn't seen  
25 it will say, we never saw this before, it's not fair, and I am

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Materasso - direct

1 going to agree with that. So you can tell me whether you want  
2 noon or 5, but there has to be a hard stop. Any new  
3 demonstrative from either of these two, I call it two because I  
4 don't care if you pick Smith or Purtell, from either side, any  
5 new demonstrative, any new calculation, any changes in any  
6 material already in evidence, oh, we have made an error, we  
7 have to change this title, anything that has to be done has to  
8 be done by -- you tell me, Ms. Cooke, noon or 5?

9 MS. COOKE: I would prefer 5.

10 THE COURT: By 5 p.m. tomorrow. That's it. Anything  
11 produced by either party after that is precluded.

12 MS. COOKE: I would like, though, to clarify that  
13 whatever it is by 5 tomorrow is not new analysis. It's just a  
14 demonstrative of existing opinions because --

15 THE COURT: Whatever it is though, the other side  
16 hasn't seen. If it's a piece of paper, which looks like a  
17 demonstrative or chart or anything else, or new math, I don't  
18 care what it is, it has to be exchanged by 5:00 tomorrow.

19 MS. COOKE: With respect to the new math, new analyses  
20 were provided by the plaintiffs, brand-new analyses, brand-new  
21 coding files, brand-new analyses conducted by Professor Fagan,  
22 which is clearly expressing a new opinion.

23 THE COURT: It's in your letter.

24 MS. COOKE: Yes.

25 THE COURT: I read your letter. I don't know which of  
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Materasso - direct

1 the four categories you are referring to.

2 MS. COOKE: It falls into category one and it falls  
3 into category two.

4 THE COURT: Category one is further question about  
5 this population averaging effect. I am interested in that. I  
6 want to hear what he has to say about it and your expert can  
7 say whatever they have to say again about it. I hope it won't  
8 be repetitive. You say he already had the opportunity, but  
9 apparently wants to explain it further. That's not a big  
10 surprise with this long trial. It's happened before. I have  
11 heard plenty of repetitive and cumulative testimony from your  
12 senior people. I would like to get this straightened out and  
13 understand everybody's statistics. I am no expert in  
14 statistics. It's hard to absorb. The more I hear, the more I  
15 am going to understand. So that's not a problem.

16 You said it also relates to category four.

17 MS. COOKE: Category two.

18 THE COURT: I thought you said one and four.

19 MS. COOKE: Category two, and category three, and,  
20 frankly, also category four.

21 THE COURT: Now you're telling me he's done four  
22 different new analyses, one in every category. That's not how  
23 I read your letter. So that seems to be a change in the  
24 letter. I did not read the letter to say in every one of these  
25 four categories, there is a brand new, totally new mathematical

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Materasso - direct

1 analysis that we never saw before. Now you're saying that?

2 MS. COOKE: I am looking at my letter and I am  
3 identifying it for your Honor.

4 With respect to the first category --

5 THE COURT: I thought we just covered the first  
6 category. I am interested in the population averaging issue.  
7 I don't think that was clearly discussed by either. I think  
8 N14 was -- let me just make sure. That's the one that had the  
9 mislabeled fourth row. That was corrected only on May 5. So  
10 there is a basis to say that was somewhat of a last-minute  
11 change on the defense side that the plaintiffs should have  
12 further opportunity to discuss. So I don't know what the  
13 problem is.

14 MS. COOKE: I guess the actual demonstrative, the  
15 language was --

16 THE COURT: I am not really interested in rearguing  
17 this. Again I have made a ruling. That's what it's going to  
18 be. I am going to hear from Dr. Fagan. I am going to hear  
19 from Dr. Smith or Purtell. They are limited to 90 minutes  
20 each. And I have ruled.

21 MS. COOKE: If I might, your Honor, with respect to  
22 the new analyses, to the extent that --

23 THE COURT: You can't be general. What new analysis?

24 MS. COOKE: The second category.

25 THE COURT: That's the one about the zeros?

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Materasso - direct

1 MS. COOKE: Yes.

2 THE COURT: It was for the first time that Professor  
3 Purtell explained how this Stata automatically dropped, what it  
4 dropped, and it accounted for the 14,000. It wasn't just the  
5 zero census tract months. It wasn't just the ones. It wasn't  
6 just the twos. It was even the ones that had a substantial  
7 number of zeros, and because of the way the estimates are  
8 calculated, it had to be dropped so they are automatically  
9 dropped. It seems to me that based on the misleading title of  
10 that one, which had implied initially that only zero census  
11 tract months were dropped, he wasn't fully understood.

12 MS. COOKE: All of the coding instructions for that  
13 table --

14 THE COURT: Maybe he was misled by the title. The  
15 title implied zero census tract months.

16 MS. COOKE: Now that he understands -- he has provided  
17 the coding instructions in February.

18 THE COURT: I agree with you. I don't question you on  
19 that. But the title said zero census tract months.

20 MS. COOKE: My point is what I received from the  
21 plaintiffs, with respect to the new analysis with respect to  
22 this item, item number two, it is based on a misstatement of  
23 Professor Purtell's testimony. What I received was new  
24 analyses that reflects what is done when only the zero, one and  
25 two counts, as I identified the transcript section of the

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Materasso - direct

1 record. So the opinion is inappropriate because it rebuts  
2 nothing because it misrepresents Professor Purtell's testimony.  
3 So I don't think that's proper rebuttal testimony or exhibits.

4 THE COURT: He better get it right. If he is going to  
5 talk about those numbers, and those numbers clearly include  
6 more than zeros, ones and twos, because Professor Purtell  
7 specifically said, in essence, census tracts had a substantial  
8 number of zeros in them, and because of the way the estimates  
9 are calculated, it's impossible to use that data in a  
10 regression, so Stata automatically drops those. You know it's  
11 not just from zero, one and two. There is apparently a group  
12 where there is a substantial number of zeros that just get  
13 thrown out by the program.

14 MR. HELLERMAN: Professor Fagan will address  
15 everything that got thrown out.

16 MS. COOKE: But the exhibit I have been provided --

17 THE COURT: That's the good news. That's why they  
18 have till 5:00. Maybe they better correct that exhibit in view  
19 of this conversation. Otherwise it's just going to get  
20 disregarded as a useless opinion because it doesn't relate to  
21 what actually occurred in the Purtell/Smith analysis. You will  
22 win the point. If he gets it wrong, it's useless.

23 MR. HELLERMAN: The demonstrative that was provided  
24 does not deal with the 14,000, but the testimony will.

25 THE COURT: Make a demonstrative that's useful then to  
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Materasso - direct

1 the Court. You have till 5:00 to do it. If the testimony will  
2 but the demonstrative doesn't, then there is a disconnect.  
3 Connect the demonstrative to the proposed testimony.

4 Go ahead.

5 MS. COOKE: With respect to the third category, your  
6 Honor, table 8, again, what I understand that the plaintiffs'  
7 expert, Professor Fagan, has done here is he has gone and taken  
8 table 8, as he was aware and made aware and knew of it as of  
9 February, and has now inserted new variables and new  
10 information and rerun a new regression and reflecting what was  
11 done.

12 THE COURT: Because Dr. Fagan says it was not clear  
13 until May 6 what Dr. Purtell had excluded from table 8 based on  
14 a misleading title. He had assumed that it had been just zero  
15 census tract months. That was the title. You have to correct  
16 it. I am not criticizing that at all, but apparently he was  
17 misled by it, and he said, and of course Mr. Hellerman says in  
18 the letter, that upon having realized that, he felt he had to  
19 go back.

20 MS. COOKE: I do believe that's a new analysis. He  
21 had all the underlying data.

22 THE COURT: We are not in disagreement on the  
23 underlying facts. We are disagreeing on the outcome. I know  
24 he had all the underlying data. I understand that. But it may  
25 be, that with all that was going on here, busy work from all

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Materasso - direct

1 sides, he missed it because the title said zero census tract  
2 months. It's not your fault or my fault. It was an error.

3 MS. COOKE: I have the same position with respect to  
4 table 10. Again, all of the information was provided in the  
5 underlying data, the Stata code, with respect to table 10. I  
6 know table 10 was not mentioned as a table when Professor Fagan  
7 and Professor Purtell testified on Monday the 6th in rebuttal.  
8 It was not identified that there would be new analyses prepared  
9 and provided on table 10. Now I have been prepared new  
10 analyses on table 10. I think that was a new opinion. We  
11 weren't on notice of it. It's a third bite.

12 THE COURT: That one may be confusing me the most  
13 because I said at the time, if needed, if it's something that  
14 really makes a difference. And Mr. Hellerman says, it really  
15 makes a difference because it shows that even using the  
16 Smith/Purtell data, the racial composition of census tracts has  
17 a more statistically significant effect on stops. I kind of  
18 agree with you, Ms Cooke. I don't know why that is coming now.  
19 That's an old issue. Why is it new?

20 MR. CHARNEY: If you remember when I was  
21 cross-examining Professor Purtell on Friday, May 2nd, this  
22 issue of the standard errors came up, and those standard errors  
23 are what Professor Fagan uses to make this. Those weren't  
24 provided.

25 MS. COOKE: They were provided in the code. They were

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Materasso - direct

1 all provided in the Stata code and the information provided  
2 with the report. They weren't listed specifically.

3 THE COURT: They are not in the chart in brackets like  
4 they are in the plaintiffs'.

5 MS. COOKE: But that information was already there and  
6 available in the code.

7 THE COURT: One at a time. Don't interrupt, Ms.  
8 Cooke.

9 MS. COOKE: We then did provide, for the convenience  
10 of Professor Fagan, we redid a table and just put a column.

11 THE COURT: With the standard error.

12 MS. COOKE: But those numbers were already produced  
13 and available to him.

14 THE COURT: You see, I am not enough of a scientist or  
15 a statistician or whatever it is called to know whether one  
16 would see in the code the standard error.

17 MS. COOKE: It's present. It's visible. I don't have  
18 a copy of a sample of the Stata print with me. There are  
19 instructions and it appears in brackets. It appears as that  
20 number, as that standard error deviation.

21 THE COURT: It says it right there, standard error  
22 deviation?

23 MS. COOKE: Yes.

24 MR. CHARNEY: Your Honor directed the defendants to  
25 produce those standard errors, which they did produce on

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Materasso - direct

1 Sunday, May 5.

2 THE COURT: She is saying now he had it. He is a  
3 statistical person, he is the doctor, and he had it all along.  
4 You may not have known it, I may not have known it, but he  
5 clearly should have known it. It says right there standard  
6 error deviation.

7 MR. CHARNEY: Your Honor had asked that this  
8 information be provided to you. I don't think it's ever been  
9 provided to you.

10 MS. COOKE: We can provide to you the table that we  
11 prepared which identifies the standard error in brackets.

12 We also did it for table 9.

13 THE COURT: All she is saying is she can provide it to  
14 me as a courtesy, but that isn't the point. He had the  
15 standard error deviation all along. So why is it fair to have  
16 him do the fourth issue on Monday?

17 MR. CHARNEY: As your Honor is well aware, this is  
18 actually just simple arithmetic where you divide the  
19 coefficient by the standard error. This is something Professor  
20 Fagan testified to at length about his own table. So the  
21 purpose of these standard errors is for you to then compare the  
22 coefficients in table 10 of the Purtell report so that you  
23 could do your own arithmetic and determine --

24 THE COURT: So all the testimony is going to do is  
25 save me the arithmetic? I would like that. That's it? It's

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Materasso - direct

1 not going to be a new calculus, not a new opinion. He is going  
2 to say, I am saving you the trouble of math. I have divided  
3 the coefficient by the standard error throughout their table  
4 10.

5 MR. HELLERMAN: That's right.

6 THE COURT: I will take his doing the calculus for me.

7 MS. COOKE: With that limitation, because it's not my  
8 understanding of the demonstrative that's been provided to me  
9 that that's a limitation.

10 THE COURT: Now, if I limit it to his doing the math  
11 instead of me, I would be delighted not to have to divide each  
12 coefficient by the standard error. If that's all he is going  
13 to say, great.

14 MR. HELLERMAN: Your Honor, I also intend to ask him  
15 to comment on the significance of the numbers in the chart.

16 MR. CHARNEY: Based on that arithmetic.

17 THE COURT: I understand.

18 MS. COOKE: But not performing any additional  
19 analyses.

20 THE COURT: Not performing any additional analyses.

21 MS. COOKE: That I do understand has been done, and I  
22 would like to preclude any additional analyses or opinions.

23 THE COURT: I agree with you on category 4. Just the  
24 math that divides the coefficient by the standard error and  
25 what it means. That's a clarification.

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Materasso - direct

1           Again, where she pointed out that one of the  
2 demonstratives is a disconnect in his testimony, let him bring  
3 his demonstrative in light of his testimony by 5:00 tomorrow.  
4 And we will have these two back to back and that's the end of  
5 it. Smith Purtell gets the last word. That's it. Time  
6 limits.

7           MS. COOKE: Any additional demonstratives are just a  
8 demonstrative expressing something that already exists. It's  
9 not a new calculation.

10          THE COURT: Correct. Even then, it has to be  
11 exchanged by 5:00.

12          MS. COOKE: Correct.

13          THE COURT: Are we done with this?

14          Can the Smith/Purtell person be here Monday?

15          MS. COOKE: I am not sure about that. Professor  
16 Purtell is in Albany. I have asked him to see if he can adjust  
17 his schedule. There are finals and he is a professor. I have  
18 an e-mail out to him to see if we can make that happen. I  
19 understand.

20          THE COURT: I am not insisting they be back to back,  
21 but usually you like him here to hear what is being said. It's  
22 not critical because he can read it. So I am not saying it has  
23 to be Monday. He can come Tuesday, Wednesday, Thursday or  
24 Friday. I will hear him. He won't be able to help you with  
25 the cross. That's the only thing. But he will be able to read

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Materasso - direct

1 the transcript and be ready to say what he has to say. But no  
2 new demonstratives or charts. He can take the stand a  
3 different day because the notice is so short. That's not a  
4 problem to me.

5 MS. COOKE: Thank you.

6 THE COURT: All right, Captain. We are back to you.

7 MARTINE MATERASSO, resumed.

8 BY MS. COOKE:

9 Q. Good afternoon, Captain Materasso.

10 Before the break, we were talking about unusual posts  
11 or assignments in the 40th Precinct. Do you recall?

12 A. Yes.

13 Q. Were there school bus driver strike posts in the 40th  
14 Precinct in 2013?

15 A. Yes.

16 Q. Would you describe for the Court why you had school bus  
17 driver strike posts?

18 THE COURT: I don't know what the word "strike post"  
19 means?

20 THE WITNESS: During the bus strike.

21 THE COURT: Now I know.

22 Q. Why did you have those in the 40th Precinct?

23 A. We had three locations within the confines of the 40, which  
24 was three depots that the buses were parked at.

25 Q. What was the purpose of putting officers on foot post at

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1 the strike post locations?

2 A. Just to make sure that everything was orderly and there was  
3 no incidents occurring there.

4 Q. How many hours a day did the 40th Precinct have officers  
5 covering strike posts?

6 A. 24 hours a day.

7 Q. For how many weeks, approximately, did this school bus  
8 driver strike last?

9 A. Six to eight.

10 Q. How were the officers assigned to the strike post  
11 assignments?

12 A. They were mandated to be two man coverage.

13 Q. Who decided which officers were assigned to a strike post  
14 at any given day or tour?

15 A. The department.

16 Q. Did you make a decision to assign Officer Serrano to a  
17 school bus driver strike post in 2013?

18 A. No.

19 Q. Were you aware that Officer Serrano covered a school bus  
20 driver strike post in 2013?

21 A. Yes.

22 Q. How were you aware?

23 A. One day I was on patrol with Deputy Inspector McCormack, at  
24 which time we visited all the locations, including the one he  
25 was at.

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Materasso - direct

1 Q. Why did you visit the strike post locations?

2 A. As per the executive within your command while you're  
3 working, or if you have borough wide coverage, you are mandated  
4 at least once per tour to visit these locations.

5 Q. Why?

6 A. Just to verify that the officers were there and they were  
7 covered.

8 Q. You said the executive. Are you referring to someone at  
9 the borough level?

10 A. Captains and above.

11 Q. Officer Serrano claims that he has been forced to work  
12 overtime that he has not requested since making his complaints  
13 in this case. Is overtime a punishment?

14 A. No.

15 MR. MOORE: Actually, that's not his testimony, Judge.  
16 What she started to say was since he filed his EEO charge. I  
17 believe that's what the testimony was.

18 THE COURT: I of course don't know what the testimony  
19 was. Best recollection is the only question asked of counsel.

20 I have to go with your best recollection, Ms. Cooke.

21 Q. Is overtime a punishment, Captain Materasso?

22 A. No.

23 Q. Are officers compensated for their overtime hours?

24 A. Yes.

25 Q. Officer Serrano complains he has been sent to additional

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D5A8FLO2

Materasso - direct

1 training in retaliation for making the complaints he has made  
2 here. Did you send Officer Serrano to additional training in  
3 retaliation?

4 A. No.

5 (Continued on next page)  
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D5a9flo3

Materasso -direct

- 1 Q. Is the stop and frisk course at Rodman's Neck a punishment?  
2 A. No.  
3 Q. Is Officer Serrano the only officer from the 40 precinct  
4 you're aware of that has attended that course?  
5 A. No.  
6 Q. Officer Serrano testified that he's been picked apart for  
7 command disciplines at the 40th precinct and identifies in  
8 particular a request by you for a memo book of his in February  
9 of 2013. Do you recall the incident Officer Serrano is  
10 referring to?  
11 A. Yes.  
12 Q. Why did you request a copy of Officer Serrano's memo book  
13 in February of 2013?  
14 A. On the day in question I was performing some sort of a  
15 four-to-twelve tour, at which time throughout my daily routine  
16 I do review the roll call from the day tour, at which time I  
17 noticed there was a few officers that did not sign out from  
18 court as well as one officer who had signed out at a future  
19 time that did not occur yet.  
20 Q. Who was the officer who signed out at a time in the future?  
21 A. Officer Serrano.  
22 Q. Is it appropriate to sign out at a time that hasn't  
23 occurred yet?  
24 A. No.  
25 Q. What did you do when you identified this sign out at a time

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D5a9flo3 Materasso -direct

1 in the future by Officer Serrano?

2 A. I brought this to the attention of the ICO's office.

3 Q. What did you ask the ICO to do?

4 A. To conduct an investigation.

5 Q. What did that investigation reveal?

6 MR. MOORE: Judge, we were not made aware of this. I  
7 don't think it's -- I won't say it's fair -- I don't think it's  
8 appropriate to permit her to testify about an investigation  
9 that we were not made aware of.

10 MS. COOKE: Officer Serrano specifically identified  
11 that he was picked apart for command disciplines.

12 THE COURT: I remember that phrase.

13 MS. COOKE: Selecting a memo book by Captain  
14 Materasso.

15 THE COURT: I don't remember too much about the sign  
16 out. What was that about, Ms. Cooke?

17 MS. COOKE: As Captain Materasso just testified, the  
18 reason she requested Officer Serrano's memo book was because  
19 she identified on the day in question that Officer Serrano had  
20 signed out at a time --

21 THE COURT: That's not my question exactly. Did he  
22 talk about the sign out as an issue?

23 MS. COOKE: He identified he had no reason to believe  
24 she needed his memo book. She requested his memo book. He was  
25 getting picked apart and overly --

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D5a9flo3

Materasso -direct

1 THE COURT: She's saying the reason why she wanted to  
2 check --

3 MS. COOKE: The memo book was because to find out what  
4 he had been doing that day and why he had signed out at a  
5 future time which --

6 MR. MOORE: My concern is -- that's fine.

7 THE COURT: Not what happened with the subsequent  
8 investigation.

9 MR. MOORE: Right. With the investigation.

10 MS. COOKE: But his testimony was he's being picked  
11 apart for command discipline, which is punishment for  
12 wrongdoing.

13 THE COURT: She responded why she pulled the memo  
14 book. She wanted to verify when and why he signed out.

15 MS. COOKE: Am I permitted to ask the witness if he  
16 was disciplined for this incident because he's been saying he's  
17 been picked apart --

18 THE COURT: You want to ask her if he was disciplined?

19 MS. COOKE: For this incident, that she's described  
20 she requested the memo book for.

21 THE COURT: I'll take a yes or no.  
22 He said he picked apart for command discipline. Was  
23 he disciplined for this one?

24 THE WITNESS: He received a command discipline, yes.

25 THE COURT: Well then there's sort of an agreement.

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D5a9flo3 Materasso -direct

1 He was disciplined. Okay.

2 Q. Officer Serrano also claims that supervisors had been  
3 checking on him an unusual number of times during his tour.

4 Are you aware that supervisors are checking on Officer Serrano  
5 an unusual number of times?

6 A. No.

7 Q. As the executive officer of the 40 precinct, do you receive  
8 complaints from members of the community about their  
9 interactions with police officers?

10 A. Yes.

11 Q. What kind of complaints do you receive?

12 A. The majority are they believe they should not have received  
13 a summons or been arrested.

14 Q. What --

15 MR. MOORE: Judge, let me just say. I mean we may get  
16 this, but this was -- it was my understanding that Captain  
17 Materasso was identified as a witness to respond to the  
18 allegations made by Officer Serrano. And so this is now  
19 venturing into an area, first of all, we've heard a lot of  
20 testimony about it generally.

21 THE COURT: Certainly have.

22 MR. MOORE: It's in an area that we've had no notice  
23 of, that we're going to talk about.

24 THE COURT: I'm less concerned about that.

25 But is it an area you might yourself want to go into

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Materasso -direct

1 of what complaints she heard from the community. You've asked  
2 that of many witnesses. She's is an XO in a precinct in the  
3 Bronx. I don't know if you wanted to go into that yourself.

4 MR. MOORE: The problem is we're at a severe  
5 disadvantage because we were not able to do her deposition, so  
6 we don't have any idea what the answers to any of the questions  
7 are.

8 THE COURT: Do you want to or not, go into that area?

9 MR. MOORE: I do not, Judge.

10 MS. COOKE: Officer Serrano has testified --

11 THE COURT: The plaintiffs don't intend to go into  
12 that area. There was no notice she was going to go into the  
13 area. And I have heard a lot about the area. So, really, I  
14 don't think you should be asking about community complaints.

15 MS. COOKE: Your Honor, to the extent that Officer  
16 Serrano has testified that there are illegal stops, questions,  
17 frisks, summonses, and arrests occurring at that time  
18 direction -- you know, complicit from -- acquiescence of the  
19 executive officer and the commanding officer and supervisors at  
20 this precinct, I think it's directly relevant to that point.

21 THE COURT: I don't. I don't. That's what he says.  
22 It has nothing to do with what the community is complaining.  
23 I've had commanding officer after commanding officer say what  
24 they've heard or what they haven't heard. Pretty much they say  
25 people say they were stopped for no reason. People never seem

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D5a9flo3 Materasso -direct

1 to say I'm disproportionately stopped because we're Blacks or  
2 Hispanics, or the word racial profiling. That they've never  
3 heard. But they have heard repeatedly either the officers were  
4 rude or we should never have been stopped in the first place.

5 So I'm aware of that. That is what the community is  
6 telling the commanding officers, and I'm sure the borough  
7 commander said the same thing.

8 MR. MOORE: Deputy Inspector McCormack will testify --

9 THE COURT: Exactly.

10 Say that again.

11 MR. MOORE: Deputy Inspector McCormack, who is  
12 scheduled to testify.

13 THE COURT: Will probably cover that too.

14 I'm done with that, given the other deputy inspectors.

15 MS. COOKE: So I can cover it with Deputy Inspector  
16 McCormack?

17 THE COURT: I think we're all in agreement with that.

18 MR. MOORE: Subject to me hearing the questions,

19 Judge.

20 THE COURT: Well the questions are: Have you heard  
21 complaints --

22 MR. MOORE: If that's an area they want to cover, then  
23 I'm on notice and that's fine.

24 THE COURT: Fine. Okay. Yes.

25 So the answer is yes.

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D5a9flo3

Materasso -direct

1 BY MS. COOKE:

2 Q. Following Officer Serrano's testimony in this case, was  
3 there any response you received from the community of the 40  
4 precinct about Officer Serrano's allegations?

5 A. No.

6 MR. MOORE: Object to -- I don't -- whatever she would  
7 hear would be hearsay, Judge.

8 THE COURT: We know that.

9 MS. COOKE: I said was there any response.

10 MR. MOORE: Well, yes.

11 THE COURT: Let me read it again.

12 Following his testimony in this case?

13 MS. COOKE: It was widely publicized in the news, your  
14 Honor.

15 THE COURT: I don't see the relevance to my trial  
16 though, what response there was in the precinct or the  
17 community.

18 No. I'm not going to allow that. I'm not going to  
19 allow about how people felt about his testimony.

20 MS. COOKE: With respect to the allegations he made  
21 about wrongdoing by officers.

22 THE COURT: That would be hearsay. Because then it  
23 would be offered for truth of it.

24 MS. COOKE: No. Was there a response.

25 THE COURT: No. No. I'm not taking it.

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Materasso -direct

1 MS. COOKE: Your Honor, I have no further questions at  
2 this time.

3 THE COURT: All right. Mr. Moore.

4 MR. MOORE: Judge, first of all, you asked what the  
5 population --

6 THE COURT: I did.

7 MR. MOORE: -- of the 40 precinct was. And according  
8 to this exhibit Y8 which is the 2011 "Reasonable suspicion  
9 stops," there's information with respect to that provided right  
10 here.

11 THE COURT: What does it say? I can't make it out.  
12 Residential population.

13 MR. MOORE: Of the 81 precinct.

14 MR. CHARNEY: Forty precinct.

15 MR. MOORE: Yes.

16 THE COURT: I see. So about 81,000 people, give or  
17 take.

18 MR. MOORE: Right.

19 THE COURT: Does that look right to you?

20 THE WITNESS: Yes.

21 MR. MOORE: And I would just point out, since this  
22 exhibit is in evidence, that the Black population is  
23 26.2 percent of the 40 precinct, that they make up 53 percent  
24 of the persons stopped.

25 THE COURT: Right.

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D5a9flo3 Materasso -direct

1 MR. MOORE: And 44 percent --

2 THE COURT: He's allowed to read from an exhibit in  
3 evidence.

4 Go ahead. And what?

5 MR. MOORE: And 44.9 percent of all known crime  
6 suspects.

7 THE COURT: That's what it says.

8 Good for you to see it too. Okay.

9 And that's a police department document?

10 MR. MOORE: That's their document.

11 THE COURT: So we all assume the accuracy of it.

12 MR. MOORE: I assume it's accurate.

13 THE COURT: Yes.

14 Have you seen that before, by the way?

15 THE WITNESS: I have, yes.

16 THE COURT: You have?

17 THE WITNESS: I have.

18 THE COURT: So you were familiar with it.

19 THE WITNESS: Yes. I have seen it.

20 CROSS-EXAMINATION

21 BY MR. MOORE:

22 Q. Good afternoon, Captain Materasso.

23 A. Good afternoon.

24 Q. You talked on direct about how sometimes officers pass  
25 their arrests over to another officer. There's a procedure for

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D5a9flo3 Materasso - cross

1 that in the police department, right?

2 A. Yes.

3 Q. And that could be for a number of reasons, could occur for  
4 a number of reasons, correct?

5 A. Well they can't just decide to do it. A supervisor has to  
6 do it.

7 Q. Correct. And doing that doesn't violate any departmental  
8 regulations, correct?

9 A. No.

10 Q. It would be a violation of the department regulations to  
11 ask an officer to swear to something that they didn't see,  
12 correct?

13 A. Yes.

14 Q. And do you understand that that was what Officer Serrano's  
15 objection to being asked to take another arrest, that he was  
16 being asked to swear to something he didn't see? Do you know  
17 anything about that?

18 A. Can you -- I don't understand the question.

19 THE COURT: That -- what he complained of is that  
20 somebody asked him to swear to something he didn't see.

21 Did you know that that was his complaint.

22 THE WITNESS: This was -- a police officer that asked  
23 him to do this?

24 MR. MOORE: Yes. In the 40th precinct.

25 THE WITNESS: Can you name this person?

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Materasso - cross

1 MR. MOORE: Yes, he did actually.

2 THE COURT: I don't know.

3 My question is: Did you know that that was one of his  
4 complaints?

5 THE WITNESS: I heard a complaint that he was  
6 supposed -- take an arrest that he wasn't on the initial scene  
7 for.

8 THE COURT: That wasn't my question to you.

9 Did you know that he says that he was asked to swear  
10 to something he didn't see?

11 THE WITNESS: No, I didn't know.

12 THE COURT: That's fine.

13 MS. COOKE: Your Honor, note for the record that that  
14 predates -- that incident that Officer Serrano predates her  
15 time at the precinct.

16 THE COURT: It's not a problem. I just wanted to know  
17 if she knew that was his complaint.

18 She said she doesn't know.

19 MS. COOKE: Just identify the incident that he  
20 complained of occurs before she arrived at the precinct.

21 THE COURT: That's all fine. She doesn't know about  
22 it. That's fine.

23 BY MR. MOORE:

24 Q. Actually, Captain, Officer Serrano's time, his work in the  
25 40 precinct during 2011 predated your being in the 40 precinct,

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Materasso - cross

1 correct.

2 A. Yes.

3 Q. And even though you weren't there for any of the period of  
4 time that you were evaluating, you still -- that he was being  
5 evaluated for, you still heard the appeal of that evaluation,  
6 correct?

7 A. Yes.

8 Q. And at the time in 2011 who was the precinct commander of  
9 the 40 precinct?

10 A. Deputy Inspector Nikas.

11 Q. When did Deputy Inspector McCormack become the precinct  
12 commander?

13 A. October of 2011, I believe.

14 Possibly September. I'm not a hundred percent sure.

15 Q. We'll find out next week.

16 Presumably he would -- if it's September or October,  
17 he would have been present for some period of time while, in  
18 2011, while Officer Serrano was working in the 40 precinct,  
19 correct?

20 A. Yes.

21 Q. And presumably he would have had some personal knowledge of  
22 Officer Serrano's performance as an officer in 2011, correct?

23 MS. COOKE: Objection, your Honor, to the extent it's  
24 calling for the witness to speculate about presumed knowledge  
25 by Deputy Inspector McCormack about Officer Serrano in 2011.

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Materasso - cross

1 THE COURT: One moment.

2 He was the precinct commander. I guess he's really  
3 just asking: Is the precinct commander, in your experience,  
4 generally knowledgeable, at least somewhat, about all of the  
5 officers in the precinct?

6 THE WITNESS: Being fair, if you just got there for  
7 three months, I don't believe so, that he would have been able  
8 to see everybody, no.

9 Q. May not have been able to see anybody?

10 A. Everybody.

11 Q. He might have been familiar with Officer Serrano?

12 THE COURT: That's speculation. He might have been.  
13 He might not have been.

14 I asked her generally. She said generally, she said  
15 in three months the deputy inspector might not know everybody  
16 in the precinct.

17 Q. In any event you weren't there at all in 2011, correct?

18 A. Correct. I already answered that, yes.

19 Q. So when you sat down with Officer Serrano and the other  
20 gentlemen to do the appeal of his evaluation, you had no  
21 personal knowledge of how Officer Serrano performed in 2011,  
22 correct?

23 A. Correct.

24 Q. You did have access to his prior performance evaluations,  
25 though, right?

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D5a9flo3 Materasso - cross

1 A. If I needed to, yes.

2 Q. And when you became the XO of the precinct, wouldn't that  
3 have been standard practice for a new XO to review the  
4 personnel in the precinct?

5 A. Standard to review all the officers?

6 Q. Was it your -- withdraw that.

7 When you became the XO of the 40 precinct did you  
8 review your personnel who you were going to be commanding?

9 A. Each and every personnel no.

10 Q. Any of them?

11 A. I reviewed those that were on level monitoring, yes.

12 Q. So you didn't review, as a matter of course, review the  
13 personnel files of all the officers in the precinct?

14 A. No.

15 Q. When it came time to do the evaluation -- I mean the appeal  
16 of the evaluation of Officer Serrano, did you then access his  
17 prior personnel evaluations?

18 A. No.

19 Q. Did you think -- why didn't you do that?

20 A. Because you're not being evaluated on those years. You're  
21 being evaluated on the year that's current.

22 Q. Of which you had no knowledge of, right?

23 A. I didn't do the evaluation. The sergeant did.

24 Q. So, you didn't think it would be a good idea, since you had  
25 no knowledge of Officer Serrano in 2011, to look at his prior

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Materasso - cross

1 evaluations to see how he had done on those prior evaluations?

2 A. Not when the sergeant is the one doing the evaluation, no  
3 because he --

4 THE COURT: I think he's saying you were doing the  
5 appeal, though. You were looking at the appeal though, right?

6 THE WITNESS: Yes.

7 THE COURT: So he's saying do you think at sort of the  
8 appellate level it would have been wise to look at prior  
9 evaluations?

10 THE WITNESS: I'm just saying in my opinion, no,  
11 because you're being evaluated on that year.

12 Q. In any event, you didn't do that?

13 A. No.

14 Q. And did any of the other people in the meeting, did they do  
15 that? Did they look at his prior evaluations?

16 A. I can't answer for them.

17 Q. Was there a discussion with any of those folks about what  
18 Officer Serrano's evaluation was in 2010?

19 A. No.

20 Q. Were you aware that his evaluation was higher than a three  
21 in 2010?

22 A. No.

23 Q. Were you aware at any point that he got a four or a 3.5 in  
24 the years prior to 2011?

25 A. I had not reviewed any of his information.

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Materasso - cross

1 Q. Did he tell you that that was why he was appealing this  
2 evaluation, because it was lower than what he previously had  
3 gotten?

4 A. No.

5 Q. Did that make sense to you?

6 THE COURT: Does what make sense?

7 Q. That he would -- wouldn't be appealing a three if he had  
8 gotten a three the year before?

9 MS. COOKE: Objection.

10 THE COURT: That calls for speculation. That's  
11 sustained.

12 MR. MOORE: It calls for her speculation.

13 THE COURT: That's what I mean. It calls for the  
14 witness to speculate. That's the basis of the objection.

15 MR. MOORE: So it's not her. It's just the  
16 speculation part, Judge?

17 THE COURT: It calls for the witness to speculate.  
18 That's why it's an appropriate objection that Ms. Cooke made.

19 Q. So, you didn't look at his prior performance evaluations.

20 Did you look at his monthly performance reports before  
21 you did the appeal of his evaluation?

22 A. I did see his yearly enforcement, yes.

23 Q. So you did think it was a good idea to look at the prior  
24 monthly performance reports but not the -- not his prior  
25 evaluations, correct?

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Materasso - cross

1 A. Well that's how they have them packaged together.

2 THE COURT: Wait. You looked at the month -- no, no,  
3 for 2011?

4 THE WITNESS: Yes.

5 THE COURT: Not 2010?

6 THE WITNESS: No.

7 THE COURT: And not 12. Just 2011?

8 THE WITNESS: Correct.

9 THE COURT: Okay.

10 Q. Well did you have the 2012 with you at the evaluation?

11 A. Not that I remember.

12 Q. When you say they're packaged together, where would they  
13 be?

14 A. That's just the way the administrative lieutenant had the  
15 appeals that we were going to be doing.

16 Q. Where would they be -- kept somewhere in --

17 THE COURT: Physically? Are they in a file drawer?

18 THE WITNESS: No. I mean that particular thing was  
19 just whoever was going to appeal the evaluation was connected  
20 to the year printout. For that officer. The year printout.  
21 The printout.

22 THE COURT: I thought he said the monthly report.

23 THE WITNESS: Well, it's the same thing. Instead of  
24 monthly, it's one whole year.

25 THE COURT: In one printout?

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D5a9flo3 Materasso - cross

1 THE WITNESS: Yes.

2 Q. So the monthly performance reports are summarized in one  
3 document for the whole year? Is that what you're saying?

4 A. Correct.

5 THE COURT: Did you have to ask for that printout or  
6 is it stored somewhere?

7 THE WITNESS: It justified happened to be my  
8 administrative lieutenant already had everything together for  
9 those who were asking for an appeal.

10 Q. So, you had this meeting in June of 2012. Why did you do  
11 the evaluation and not Deputy Inspector McCormack?

12 A. It was just that I was there that day.

13 Q. How was it decided that the evaluation was going to be  
14 conducted on that day, if you know? If you remember?

15 A. There's nothing --

16 Q. I'm sorry. The appeal of the evaluation.

17 A. Yeah. There is no set rules or regulations we follow. It  
18 happened to be that he was in probably for that tour, and I was  
19 working that day.

20 Q. Does the officer have to give the command some notice that  
21 he wants to appeal the evaluation?

22 A. On the computer you would. There's -- actually select that  
23 box.

24 Q. And did you have a discussion with Deputy Inspector  
25 McCormack about whether he would do the appeal or whether you

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D5a9flo3 Materasso - cross

1 would do the appeal?

2 A. No.

3 Q. You just took it on your own to do it that day?

4 A. Well I had done other ones as well.

5 Q. And were you concerned in doing -- looking at -- in this  
6 appeal of his evaluation, did you have any discussion with  
7 Officer Serrano about his enforcement activity?

8 A. We did discuss it, yes.

9 Q. Did you talk about the number of his arrests?

10 A. I don't remember specifics, how it was discussed.

11 Q. Did you talk about whether his number of -- the number of  
12 summons he was -- had generated for the year?

13 A. No. Like I just said, we didn't talk about specifics.

14 Q. Did you talk about the number of 250s he had generated?

15 A. No.

16 Q. Well part of what -- the performance -- monthly performance  
17 reports are really a collection of numbers, correct?

18 A. If you look at it that way, they could be.

19 Q. Well, Exhibit B10, which I believe is in evidence. Do you  
20 recognize this document?

21 A. Yes. It says monthly activity report.

22 Q. I'll identify it for the record as the monthly activity  
23 report for Officer Serrano for the year -- for the month and  
24 year October 2012.

25 And what you have been -- would have been looking at

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D5a9flo3

Materasso - cross

- 1 on the appeal would be a compilation of his monthly -- of these  
2 monthly reports over a year's time in 2011, correct?  
3 A. Yes.  
4 Q. And the front page of this document -- in fact, even the  
5 back page, as I understand we'll see in a minute -- is really a  
6 tabulation of the types of enforcement activity he took during  
7 a month, correct?  
8 A. Certain days, yes.  
9 Q. On the days when he's working, obviously?  
10 A. Well there's some days that he's working, but he puts down  
11 that he's not doing a tour on patrol.  
12 Q. Correct. So in terms of his enforcement activity, if he is  
13 assigned to 1PP he's probably not going to be doing enforcement  
14 activity, correct?  
15 A. Nor paperwork.  
16 Q. Right. The second page of this document has -- collects  
17 more numbers. And then there's a narrative portion, correct?  
18 A. Yes.  
19 Q. Now the summaries that you get, the yearly summary, is it  
20 just the yearly summary of the numbers?  
21 A. Yes.  
22 Q. So there is no narrative portion in the yearly summary that  
23 you have, correct?  
24 A. Correct.  
25 Q. So really all you're looking at in terms of looking at his

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Materasso - cross

1 prior year's production is the numbers, right?

2 A. Yes.

3 Q. And do you recall telling him that -- having looked at  
4 those numbers, that he didn't have enough arrests or enough  
5 250s or enough summonses?

6 A. Absolutely not.

7 Q. And you don't recall him saying anything about, this sounds  
8 like an illegal quota, right?

9 A. Absolutely not.

10 Q. And you don't recall him -- you don't recall raising with  
11 him Operations Order 52?

12 A. Absolutely not.

13 Q. Were you aware of Operations Order 52 at that point?

14 A. I was unaware that that was the number for it, but I'm  
15 familiar with the Quest program, yes.

16 Q. In your testimony on direct you were asked a lot of  
17 questions about quotas.

18 Did you discuss whether Officer Serrano had met his  
19 numerical goals that you think he should have met for 2011?

20 A. No, there are no numerical goals.

21 THE COURT: Have you ever heard the phrase performance  
22 goals?

23 THE WITNESS: Yes.

24 THE COURT: You have. Do you know if any  
25 commanders -- that's probably the wrong word but --

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1 MR. CHARNEY: Supervisors.

2 THE COURT: Supervisors ever set numbers for  
3 performance goals; like I'm looking for 21, or I'm looking for  
4 five and five as performance goals.

5 Have you ever heard anything like that?

6 THE WITNESS: Nothing specific like that.

7 But we do tell them everyday you're out there, you  
8 should be addressing your conditions or helping the people that  
9 need your help.

10 THE COURT: I know that.

11 I want you know if you've ever heard numbers related  
12 to performance goals.

13 THE WITNESS: No.

14 THE COURT: Never?

15 THE WITNESS: No.

16 Q. You know who Lieutenant Barrett is, correct?

17 A. No, I do not.

18 Q. She's not -- she wasn't in the 40 precinct when you were  
19 there?

20 A. No.

21 Q. Do you know who Lieutenant Doute or Sergeant Silva are?

22 A. I know who Sergeant Silva is.

23 THE COURT: Let me ask this question. If a supervisor  
24 anywhere, your precinct or anywhere, said something like I'm  
25 looking for 21 or I'm looking for five, five, and five, would

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1 you think that was wrong?

2 THE WITNESS: Yeah, because I haven't --

3 THE COURT: You think that would be wrong?

4 THE WITNESS: Yes. In that aspect, yes.

5 Because we're not telling people that you should go do  
6 this certain number of things.

7 THE COURT: Okay.

8 Q. And you think that would be wrong because that would give  
9 the wrong impression to the officer that they have to go  
10 basically satisfy a numerical number, correct?

11 A. Exactly.

12 Q. Now, you're aware, are you not, Officer -- I'm sorry,  
13 Captain Materasso.

14 A. That's okay.

15 Q. That Officer Serrano was also -- also appealed his 2011  
16 evaluation?

17 MR. CHARNEY: Twelve.

18 Q. 2012 evaluation, correct?

19 A. I'm aware, yes.

20 Q. And did you have any discussions with Deputy Inspector  
21 McCormack about that?

22 A. No.

23 Q. You recall no discussions with him about that?

24 A. No.

25 Q. Now you say that at some point -- I think you said after

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Materasso - cross

- 1 the appeal was concluded, you and Officer Serrano went to some  
2 location in the Bronx to engage in some type of activity,  
3 correct?  
4 A. Within the precinct, five blocks from the precinct, we did,  
5 yes.  
6 Q. And what was the address again?  
7 A. 281 143.  
8 Q. East 143rd Street, correct?  
9 A. Yes.  
10 Q. And when you got there, you saw three black males standing  
11 on the sidewalk, right?  
12 A. No.  
13 Q. You didn't see three black males?  
14 A. No. Two black males one Hispanic male.  
15 Q. Okay. Was the Hispanic male light skinned or dark skinned?  
16 A. Medium complexion.  
17 Q. Were there any other officers present when you got there?  
18 A. Physically that we could see, no.  
19 Q. Were you aware that there were other officers observing?  
20 A. Yes.  
21 Q. And you got out of the car and you went up to those three  
22 individuals, correct, with Officer Serrano?  
23 A. Yes.  
24 Q. And -- but your attention was really, you were only focused  
25 on two of them, correct?

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Materasso - cross

- 1 A. Correct.
- 2 Q. But the third one, you had no idea who that third person
- 3 was, right?
- 4 A. Correct.
- 5 Q. You didn't know what the relationship was between him and
- 6 those two people, right?
- 7 A. Correct.
- 8 Q. But you never paid any attention to that third one, right?
- 9 A. He just stood on the side.
- 10 Q. You didn't ask him to -- you didn't go up to him and frisk
- 11 him for any reason?
- 12 A. No, I didn't. I only asked him to step off of the
- 13 electrical box.
- 14 Q. But you did go up and frisk the other two individuals,
- 15 correct?
- 16 A. Yes.
- 17 Q. Because you were in fear for your safety?
- 18 A. Yes.
- 19 Q. Is that why?
- 20 But you weren't in fear for your safety from the third
- 21 individual, right?
- 22 A. Correct.
- 23 Q. The bat that you described, that was on the ground?
- 24 A. Yes.
- 25 Q. Was it in close proximity when you arrived to all three

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Materasso - cross

1 individuals?

2 A. It was more in between the two identified individuals that  
3 I was going to ID.

4 Q. In any event, it's your testimony that you had no concern  
5 for your safety with the third individual so that's why you  
6 didn't focus your attention on him, correct?

7 A. Correct.

8 Q. Did you ask Serrano to frisk that person?

9 A. No, I did not.

10 Q. Now you say you didn't search them but you did search them,  
11 right?

12 A. Search the one pocket that I felt the hard object in, yes.

13 Q. You put your hand in the pocket, right?

14 A. Yes.

15 Q. And you took what was in the pocket out of the pocket,  
16 correct?

17 A. Out of that specific one, yes.

18 Q. And that's a search, correct?

19 A. Of that pocket, yes.

20 Q. That's a search, right?

21 MS. COOKE: Asked and answered, your Honor.

22 Q. And you made no record of this activity you engaged in that  
23 day, right?

24 A. I did hand the information to the narcotics officers.

25 Q. Did you make -- you didn't do any -- you didn't generate

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Materasso - cross

- 1 any document in your memo book, on any kind of departmental  
2 form, any kind of UF 250 that recorded what you did on that  
3 day, correct?  
4 A. I do not carry a memo book. So, no, I did not put it in my  
5 memo book.  
6 Q. You didn't record it in any document in the police  
7 department, correct?  
8 A. I didn't, but I handed it to the narcotics officers who put  
9 it in their investigative file.  
10 Q. And I'm asking -- my question was you didn't record  
11 anything, right?  
12 A. I did not record it anywhere, no.  
13 Q. And what you handed to the officers was just a name, right?  
14 A. Their information, yes.  
15 Q. Their information meaning their name, the pedigree  
16 information?  
17 A. Yes.  
18 Q. So with regard -- nothing in what you handed to the  
19 officers talked about any of the circumstances of the stop,  
20 right?  
21 A. Correct.  
22 Q. And those two people -- when you walked up to that group of  
23 three people, they were not free to leave, right?  
24 A. The third one was.  
25 Q. Well, did you tell him he was free to leave?

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1 A. He didn't ask. He was just standing on the side.

2 Q. Well two officers walked up to three people standing  
3 together, right?

4 A. He was standing on the side, as I explained.

5 Q. But you walked -- when you walked up, there were three  
6 people standing together, right?

7 A. Like I just said, they weren't standing together. They  
8 were on this electrical box.

9 THE COURT: I guess he's trying to say: Did you  
10 perceive them to be together? Were the three together?

11 THE WITNESS: They were speaking. I can't say for  
12 sure what they were doing but they were -- the other gentleman  
13 was not identified in the original --

14 THE COURT: I got that. But they were speaking to  
15 each other?

16 THE WITNESS: Yes.

17 THE COURT: So they were three people together at that  
18 moment?

19 THE WITNESS: Yes.

20 THE COURT: Sure. Okay.

21 Q. And you -- when you walked up, did you take your gun out or  
22 anything? Or you just walked up?

23 A. No.

24 Q. But you and Officer Serrano positioned yourselves so that  
25 you would be able to be in the best position if something

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1 happened, correct?

2 A. I would say so, yes.

3 Q. And that meant that -- have you ever heard the term  
4 triangulation?

5 A. Through the department training or something?

6 Q. Yes.

7 A. No.

8 Q. Well, is it fair to say that Officer Serrano positioned --  
9 you and Officer Serrano positioned yourself where you were able  
10 to see what all three people were doing?

11 A. No. The one gentleman had nothing to do with it, was  
12 completely to my left. If this was the box in front of me, the  
13 gentleman with the striped shirt was in front of me here. And  
14 the other gentleman was to my right. And Officer Serrano was  
15 standing back here.

16 THE COURT: Are you saying you couldn't see the third  
17 person?

18 THE WITNESS: He was only to my left. He was around  
19 the side. No, I mean he wasn't --

20 THE COURT: I got -- I got that. I just want to know  
21 if you could see him from where you were standing.

22 THE WITNESS: You could see him.

23 THE COURT: You could observe him?

24 THE WITNESS: Yeah.

25 Q. And these were individuals who were involved, as you said,

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1 in a major federal drug conspiracy, right?

2 A. A case, yes.

3 Q. And they were with somebody who you had no knowledge of,  
4 right?

5 A. Yes.

6 Q. But you weren't concerned about him?

7 A. No, I was not.

8 Q. Let's take a look at the Officer Serrano's 2011 evaluation.

9 You had this with you at the appeal hearing -- appeal  
10 conversation?

11 A. Yes.

12 Q. Are you required to write down -- make a written report of  
13 the appeal?

14 A. No.

15 Q. What's the process?

16 You make a phonecall and indicate that he's -- an  
17 appeal? Or what's the process if he wants to continue to  
18 appeal?

19 A. He's required to do the next couple of steps.

20 Q. But you're not required to do anything, correct?

21 A. No.

22 Q. And is it your testimony that you don't recall discussion  
23 in any of these categories?

24 A. No.

25 Q. That appear on this form?

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Materasso - cross

- 1 A. No.
- 2 Q. And you looked at the entire form, correct? The entire  
3 evaluation?
- 4 A. Yes. The front and the back, yes.
- 5 Q. And you noticed the written comments by the reviewer -- by  
6 the rater, that appear on page two, right?
- 7 A. By the reviewer? By the lieutenant?
- 8 Q. No. But the rater. I'm sorry. Steven Monroe.
- 9 A. Yes.
- 10 Q. And he says that Serrano adheres to the ethics of the  
11 department and guidelines, right?
- 12 A. Yes.
- 13 Q. So that's a good thing, right?
- 14 A. Yes.
- 15 Q. And on that -- that's related to the box which says number  
16 13, right?
- 17 A. Yes.
- 18 Q. Which on the front page do you see the box that says ethics  
19 integrity?
- 20 A. Yes.
- 21 Q. He got a three and then the written comment is, relates to  
22 that particular box, right?
- 23 A. Yes.
- 24 Q. But he only got a three out of five on that particular box,  
25 right?

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Materasso - cross

1 A. Yes.

2 Q. On that particular behavioral dimension, you call it,  
3 right?4 How could he have done better -- given what's written  
5 there, how could he have done better -- withdraw that.6 Given what's written there, why didn't he get a five  
7 in that particular -- for that particular --8 THE COURT: I think that's an inappropriate question.  
9 She didn't rate him and she wasn't there.

10 MR. MOORE: Okay.

11 MS. COOKE: That was my objection.

12 THE COURT: Okay.

13 Q. Have you had experience in rating police officers for  
14 evaluations?

15 A. I rated police officers and sergeants, yes.

16 Q. Many, right?

17 A. Yes. I'm not going to say that many, but I rated.

18 Q. Well, you rated also police officers in the past?

19 A. When I was a squad sergeant, yes.

20 Q. And you used this form?

21 A. No.

22 Q. Did you use a form that asked for how the officer performed  
23 in terms of their police ethics and integrity?

24 A. Yes.

25 THE COURT: I'm going to interrupt now. We're just

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Materasso - cross

1 not going to finish you in time for the lunch break, that's  
2 clear, because that's one minute away.

3 MR. MOORE: I didn't realize what time it is.

4 THE COURT: We're going to stop now. You weren't one  
5 question away?

6 MR. MOORE: No.

7 THE COURT: So we're going to start again at five  
8 after two.

9 MR. MOORE: All right. Thank you.  
10 (Luncheon recess)

11  
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D5a9flo3

Materasso - cross

AFTERNOON SESSION

2:07 p.m.

THE COURT: Mr. Moore.

MR. MOORE: Thank you, Judge.

Martine Materasso, resumed.

CROSS-EXAMINATION CONTINUED

BY MR. MOORE:

Q. Captain Materasso, I want to go back just a bit before we go on with the evaluation to the -- hold on one second.

I want to talk about the evaluation or the appeal.

At the appeal of the evaluation, you were present. There were two other officers present, correct?

A. Two supervisors.

Q. Did you have a conversation with them before the appeal?

A. No.

Q. Did they speak during the appeal?

A. Just the one question that I asked Sergeant Monroe.

Q. And that one question again was what?

A. I asked him when we first entered the room: Do you agree that this is the overall evaluation score he should have received?

Q. Right. And he had done the evaluation, of course?

A. Correct.

Q. And he didn't change his mind based on that one question, right?

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Materasso - cross

1 A. No.

2 Q. So, you had access -- the only access you had in terms of  
3 documents related to Serrano was the yearly summary of his  
4 enforcement activity, correct?

5 MS. COOKE: Objection, your Honor.

6 This mischaracterizes that the only access she had was  
7 to those documents.8 I believe her testimony those were the only documents  
9 she had at the time of the appeal hearing.

10 MR. MOORE: That's fair enough.

11 Q. The only document you looked at prior to the appeal  
12 hearing, appeal conversation was that yearly summary of his  
13 activity, correct?

14 A. Yes.

15 Q. So the only information you really based your -- other  
16 than -- and the conversation with Serrano you had, there was a  
17 conversation with him in this appeal, correct?

18 A. Yes.

19 Q. And he said he thought he should get a higher rating,  
20 correct?

21 A. No. That's not what I said.

22 Q. He said.

23 A. No. He didn't say that.

24 Q. Well, what was he appealing?

25 A. That's exactly the point. There's only one reason that you

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Materasso - cross

1 could actually appeal an evaluation, and that's based on  
2 factual error. You can't say I'm going to appeal my evaluation  
3 because last year I got a higher score.

4 Q. Exactly.

5 And that's why he went through or tried to go through  
6 all these categories on his evaluation, right?

7 A. No. With me he did not even bring that up at all.

8 The statement that I said earlier regarding what his  
9 view was of myself and the CO was the only thing he said. This  
10 was -- appeal took maximum five minutes.

11 Q. So you're sitting here and telling this Court that Officer  
12 Serrano went through the process of trying to appeal his  
13 evaluation and he didn't raise anything about his performance  
14 as a police officer in 2011 with you?

15 A. No, he did not.

16 Q. Is that your testimony?

17 A. Yes, it is.

18 Q. Now, you have from time to time at the break we were  
19 talking about the fact that you have experience in being the  
20 rater of officers being evaluated, correct?

21 A. Yes.

22 Q. And so you're familiar with these categories of -- that are  
23 rated like police ethics and integrity, correct?

24 A. Yes.

25 Q. And you're familiar with the category of judgment, right?

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Materasso - cross

1 A. Yes.

2 Q. And you're familiar with the category of interpersonal  
3 skills, right?

4 A. Yes.

5 Q. Now, in your experience as a rater with respect to police  
6 ethics and integrity, if the comment is that Serrano adheres to  
7 the ethics of the department and guidelines, wouldn't that  
8 qualify him for a higher rating than three?9 MS. COOKE: Objection, your Honor. To the extent it  
10 calls for speculation.11 She can answer, I suppose, to the rating that is there  
12 and what she knew about Officer Serrano and the appeal. But to  
13 speculate as to what it would qualify for, she wasn't the  
14 rater.15 THE COURT: But we had a similar question before and I  
16 sustained the objection. But I think this is phrased in a  
17 careful enough way that it's different.18 Right. It has to do with her experience as a rater.  
19 I guess you could divorce it from Serrano.20 If someone adheres to the ethics of the department and  
21 guidelines, wouldn't that qualify that person with a higher  
22 rating than three?

23 THE WITNESS: It could possibly.

24 Q. Well what would you have to have more than the statement  
25 that he adheres to the ethics of the department and guidelines

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Materasso - cross

1 to, in your experience as somebody who has rated officers, what  
2 would that person have to have more than what is stated in this  
3 particular document to qualify that person for a higher than a  
4 three?

5 A. I don't believe I could answer that because every  
6 supervisor rates their cops differently.

7 Q. Well, there was no question -- you had no question while  
8 you were talking with Serrano with respect to whether he  
9 adhered to the ethics of the department, did you?

10 MS. COOKE: Objection, your Honor, to the extent  
11 either it's presuming facts not in evidence. She hasn't  
12 testified that she had no question. This question presumes she  
13 had none.

14 THE COURT: She didn't know his work in 2011. So  
15 obviously during that --

16 THE WITNESS: Yes, your Honor. Just one other thing.  
17 You cannot actually appeal any comment on that. They're not  
18 even up for discussion in the appeal process. So it's null and  
19 void. You can't speak about it.

20 Q. So the facts that he could talk about was his performance,  
21 right?

22 A. It would have to be that we based the appeal on a factual  
23 error of some sort. It doesn't clarify what that error could  
24 be. But it specifically says you cannot appeal comments.

25 Q. But you can appeal the score?

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Materasso - cross

1 A. You could appeal the overall evaluation, yes. But not  
2 specific comments.

3 Q. Presumably you can appeal, in the course of appealing the  
4 overall score, you could appeal a particular score in a  
5 particular category, right?

6 A. You could.

7 Q. And so in your experience as a rater, can you tell this  
8 Court what else an officer would have to have to get a higher  
9 score than three given that if you had the statement that the  
10 officer adheres to the ethics of the department and guidelines?

11 MS. COOKE: Again, your Honor, I'm going to object.  
12 It's calling for speculation as to what a hypothetical officer  
13 would hypothetically have to have in order to get a three when  
14 the three is assigned in this evaluation to a particular  
15 officer for particular circumstances.

16 THE COURT: No. This is what I said I would allow.  
17 This is the way I rephrased the question. I said if an officer  
18 adheres to the guidelines in this category --

19 THE WITNESS: In my past experience, your Honor, for  
20 instance, I had -- one of the units I was supervising, we had a  
21 bribery arrest. So in that aspect, those officers adhere to a  
22 higher standard. In that particular instance, I would probably  
23 give them a higher score.

24 But, you know, there might have been another call for  
25 found money.

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Materasso - cross

1           There are different instances that could have happened  
2 that might have brought my attention to say, wow, this person  
3 really conducts themselves in the highest standards of the  
4 department. So it's hard to say pertaining to him because I am  
5 not rating him.

6 Q. But you're doing the appeal of the rating that he was  
7 given?

8 A. He's not appealing the score to me. That never came up to  
9 me.

10 Q. So I guess I don't understand then why you're even having a  
11 conversation with him.

12           Part of the appeal process of an evaluation is that  
13 you meet with your commanding officer or the XO, correct?

14 A. Yes.

15 Q. And what's that for?

16 A. He's supposed to form a basis of why the score he received  
17 he was not worthy of. And then from there, we would make that  
18 decision say, you know what, yes, your appeal is based on  
19 factual error. It seems like you're correct. We're going to  
20 go to the next level, and then we're going to go to the next  
21 step, which is above us.

22 Q. And to do that, if an officer wanted to do that in your  
23 experience, they would talk about how they felt they performed  
24 in the areas that they were supposed to perform in and how they  
25 had the behavioral dimensions they were supposed to have,

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D5A9FLO3 Materasso - cross

1 correct?

2 A. Anyone of the areas on this form, yes.

3 Q. If the appeal involved -- the person hearing, doing the  
4 appeal, the CO or the XO, saying I don't want to talk about  
5 those areas, I want to talk about your performance, that would  
6 be incorrect, right?

7 A. I don't believe I understand the question.

8 Q. I want to talk about your enforcement activity. That would  
9 not be something that the person in your position as the XO or  
10 a captain should do, right?

11 A. Well, it's also a category on the sheet.

12 Q. What category is that?

13 A. Well it could be -- any one of them. It could be  
14 processing arrests. It could be victim/prisoner interaction.

15 Q. How about apprehension intervention?

16 A. I would say that would be a category also.

17 Q. And it's your testimony that there was no discussion in  
18 this conversation with Officer Serrano having anything to do  
19 with his numbers in terms of his arrests, his summonses, or his  
20 250 activity in 2011. Is that your testimony?

21 A. Rephrase that.

22 Q. Was there any discussion in this conversation you had with  
23 Officer Serrano about his -- the numbers of his enforcement  
24 activity in his summonses, arrests, or 250s?

25 A. When he did say that original statement, the general

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D5A9FLO3 Materasso - cross

1 enforcement was discussed. But nothing specific like you're  
2 saying that he didn't bring up a specific category to me, no.  
3 Q. So he did say generally what? What did he say generally?  
4 When you said --

5 A. I'm sure we could read that back what I said before was, in  
6 sum and substance, that he stated that he believed myself and  
7 the CO did not believe he was doing a good job unless he  
8 arrested summonsed and 250'd people.

9 Q. So did he talk about his numbers?

10 A. (No response).

11 Q. His actual numbers?

12 A. Maybe in a general term but nothing specific like you're  
13 saying.

14 Q. You had those numbers though, right?

15 A. I had the paper, yes.

16 Q. And so did you talk to him about those numbers and say well  
17 the numbers aren't high enough?

18 A. No. I never said that.

19 Q. Did you look -- did you form an opinion that the numbers  
20 weren't high enough?

21 A. There is no set form that I should --

22 Q. I'm not asking whether there's a set form. I'm asking  
23 whether you formed an opinion, as you sat there in that  
24 meeting, that Officer Serrano was not performing at a high  
25 enough level in terms of his enforcement activity?

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Materasso - cross

1 A. Did I believe that he was everyday out there serving the  
2 people of the 40 like he should be? I don't believe he was.  
3 That's just an opinion though.

4 THE COURT: You said you don't believe he was -- you  
5 said you don't believe he was out there serving the people. Is  
6 that based on --

7 THE WITNESS: That is my opinion.

8 THE COURT: Was it based on looking at lower numbers  
9 than you would have expected?

10 THE WITNESS: No, not numbers. Also, where he wasn't  
11 doing that enforcement, like I discussed with those parking,  
12 summonses and things of that nature.

13 THE COURT: You said "also" that. So was it also that  
14 you saw the numbers, the totals when you looked at those  
15 monthly reports on that printout?

16 THE WITNESS: Some officers sometimes don't have the  
17 opportunity maybe to be out there because they are busy with  
18 their -- they have a lot of things going on. So we understand  
19 that's not an issue.

20 But when you are going to do the targeted enforcement,  
21 and you're going to go to those areas that need help, then you  
22 should at least be targeting the right things. If the traffic  
23 is the condition, you should be targeting the traffic.

24 THE COURT: I got that, that you noticed the type of  
25 summonses he was giving.

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D5A9FLO3 Materasso - cross

1 THE WITNESS: Yes.

2 THE COURT: That was not impressive. But did you also  
3 notice the numbers themselves?

4 THE WITNESS: Yeah. That's what I'm trying to say,  
5 that the numbers don't really mean anything. Well what -- even  
6 if you wrote one summons for the whole year, was it something  
7 that was effective, that might have saved somebody's life?  
8 That's what we're looking for, not just a number. And it's not  
9 just a number to have a parking summons. You should be issuing  
10 a summons that's hazardous or that could help somebody.

11 Q. I thought all you had before you when you had this  
12 conversation with Serrano, was the sheet that summarizes yearly  
13 numbers. That's the only document you had before you, right?

14 A. Yes.

15 Q. And the evaluation?

16 A. Yes.

17 Q. And the only conversation you had with either Monroe or the  
18 admin lieutenant was the one statement you said Sergeant Monroe  
19 made, correct?

20 A. To my question, yes.

21 Q. So where did you get the information that his summons  
22 activity was targeted at a particular location you thought was  
23 inappropriate? Where did you get --

24 A. I explained that before.

25 Q. Hold on. Where did you get that information?

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D5A9FLO3 Materasso - cross

1 A. Daily we receive information from all the squads.

2 THE COURT: I'm sorry. Would that be 2012 or '11.

3 THE WITNESS: In 2012.

4 THE COURT: But you were reviewing '11.

5 THE WITNESS: '11. Yes.

6 THE COURT: So what he's saying when you were  
7 reviewing '11 you just had that printout.

8 THE WITNESS: So as I was going through 2012. Those  
9 are the ones I had been daily reviewing.

10 Q. I'm not talking about -- the appeal of the 2011 evaluation.

11 A. No. No. I understand that question. So I got a little  
12 bit mixed up in terms of what I was reviewing. I apologize.

13 THE COURT: So all that you were reviewing was the  
14 yearly printout.

15 THE WITNESS: Yes.

16 THE COURT: Which had total numbers of activity.

17 THE WITNESS: Yes. Yes. I apologize.

18 Q. So does that now refresh your recollection that you -- the  
19 conversation was about his enforcement activity in terms of his  
20 numbers and not about where he was targeting?

21 A. No. We didn't really speak about specific numbers, no.

22 Q. Now you're saying you didn't --

23 THE COURT: Not specific numbers. But did you feel  
24 the numbers were low? That he wasn't doing his job well  
25 enough?

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D5A9FLO3

Materasso - cross

1 THE WITNESS: That was just my opinion.

2 THE COURT: It was your opinion?

3 THE WITNESS: Yes.

4 THE COURT: Okay.

5 Q. So it was your opinion, but you didn't express it to him?

6 A. No.

7 Q. I believe you said that you've never issued a command  
8 discipline for an improper 250 or memo book, correct?

9 A. Correct.

10 Q. And I believe you said on direct -- correct me if I'm  
11 wrong -- that the only time you looked at memo books before  
12 recently was when you were involved in self-inspections?

13 MS. COOKE: Objection, your Honor. That misstates the  
14 witness's prior testimony.

15 MR. MOORE: She can answer if that's her testimony,  
16 Judge.

17 THE WITNESS: You're saying that I just said that  
18 earlier, that the only time I ever look at a memo book is then?

19 THE COURT: He believes you said on direct -- he  
20 invites you to correct him if he's wrong -- that the only time  
21 you looked at memo books recently was when you were doing  
22 self-inspections.

23 THE WITNESS: I don't believe I said that. We could  
24 look back at that or --

25 THE COURT: That's okay. What do you think you said

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D5A9FLO3

Materasso - cross

1 about looking at memo books? Before March of 2013, what do you  
2 think?

3 THE WITNESS: For that specific 250?

4 THE COURT: No. No. No. When did you look at memo  
5 books before March of 2013?

6 THE WITNESS: Just general when I would scratch a  
7 sector, a post, a supervisor.

8 MR. MOORE: I'm sorry. Say that again.

9 THE COURT: Would scratch.

10 THE WITNESS: When you scratch.

11 Q. But that's not -- that's just scratching to show that you  
12 visited the officer at the scene. You don't really do a  
13 substantive review of the memo book?

14 A. I will review the day.

15 Q. That means you would review both the 250 that the officer  
16 had written during the day and the memo book?

17 A. I'm not only looking for 250s.

18 Q. I understand. I'm asking about 250s though.

19 A. So in --

20 Q. When you do that scratch of an officer's memo book, do you  
21 look at the memo book and the 250 at the same time?

22 A. So if I reviewed an officer's memo book that had written  
23 that he did a 250 in there, would I look --

24 Q. Yes.

25 A. Maybe if he had, I would look; maybe I wouldn't look; maybe

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D5A9FLO3 Materasso - cross

1 I would look at it at the precinct. I mean there's different  
2 circumstances.

3 Q. Or maybe you wouldn't look at it at all, right?

4 A. Possibly.

5 Q. Did you do -- were you involved in any of the QAD  
6 self-inspections of the 40th precinct?

7 A. Do I conduct --

8 Q. Are you involved in any of those?

9 THE COURT: Were you involved in those?

10 THE WITNESS: I don't understand the question.

11 THE COURT: Were you involved in the QAD

12 self-inspections conducted at the 40 precinct?

13 THE WITNESS: I conduct the 250 self-inspection.

14 THE COURT: Okay.

15 Q. And for what years -- you've been -- you were there in  
16 2012, right?

17 A. Yes.

18 Q. And do you know how the precinct did on the 2012 stop,  
19 question and frisk audit with respect to whether officers were  
20 checking their memo book or putting details of the stops in  
21 their memo book? Do you know how the precinct did in 2012?

22 A. Yes. I'm aware we scored very low.

23 Q. Well, you couldn't have gotten any lower, right?

24 A. I suppose.

25 Q. 1.0 is the lowest you can get, right?

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D5A9FLO3

Materasso - cross

1 A. Yes.

2 Q. And you were there -- you didn't get there until 2012,  
3 right?

4 THE COURT: We've had that a dozen times.

5 MR. MOORE: I have nothing further, Judge.

6 MS. COOKE: Just a couple, your Honor.

7 REDIRECT EXAMINATION

8 BY MS. COOKE:

9 Q. When did the appeal meeting with Officer Serrano take  
10 place?

11 A. Mid-June 2012.

12 Q. How many months had you been at the 40 precinct as of that  
13 time?

14 A. Almost five.

15 Q. And in those months had you reviewed summonses for Officer  
16 Serrano as you described during cross-examination with  
17 Mr. Moore?18 MR. MOORE: Judge, it would be improper for her to  
19 have based her evaluation --

20 THE COURT: I understand.

21 MR. MOORE: Her appeal of a 2011 evaluation on what  
22 she learned in 2012.23 MS. COOKE: It's not the intent or import of my  
24 question.

25 MR. MOORE: There could be no other intent.

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D5A9FLO3 Materasso - redirect

1 THE COURT: Go ahead.

2 MS. COOKE: Do you want me to repeat the question?

3 THE WITNESS: Yes, please.

4 Q. In those months, had you reviewed summonses, as you  
5 described during cross-examination, with respect to Officer  
6 Serrano?

7 A. Yes.

8 MS. COOKE: No further questions, your Honor.

9 RECROSS EXAMINATION

10 BY MR. MOORE:

11 Q. But you didn't review the summons for 2011, right?

12 A. No.

13 MR. MOORE: Okay. Nothing further.

14 THE COURT: Okay. You're done. Thank you.

15 (Witness excused)

16 MS. PUBLICKER: Defendants call officer Angel Herran.

17 ANGEL HERRAN,

18 called as a witness by the Defendants,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. PUBLICKER:

22 Q. Good afternoon, Officer Herran.

23 A. Good afternoon.

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

25 A. Approximately 18 years.

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D5A9FLO3 Herran - direct

- 1 Q. Where are you currently assigned?  
2 A. 41 precinct.  
3 Q. How long have you been assigned to the 41 precinct?  
4 A. Eighteen years.  
5 Q. Other than your regular police duties, do you serve any  
6 other role in the 41 precinct?  
7 A. Yes, I do. I'm a PBA delegate.  
8 Q. And as that the Patrolmen's Benevolent Association?  
9 A. Correct.  
10 Q. What is the Patrolmen's Benevolent Association?  
11 A. It's the union.  
12 Q. How long have you been a delegate for the PBA?  
13 A. Approximately ten years.  
14 Q. How did you first become a delegate?  
15 A. I was appointed I believe back in 2005 there was an  
16 officer -- there was a delegate that couldn't perform his  
17 duties anymore as a union rep and he went out under disability  
18 and he appointed me as a delegate.  
19 Q. Are union delegates usually elected?  
20 A. Yes, they are.  
21 Q. How long was your first term as a delegate?  
22 A. I would say approximately seven to eight months.  
23 Q. And what happened after that first term?  
24 A. Then there was an election.  
25 Q. And were you elected at that time?

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D5A9FLO3

Herran - direct

1 A. Yes, I was.

2 Q. How long was that term?

3 A. Four years.

4 Q. And did there come a time when you were reelected a second  
5 time?

6 A. Yes, in 2010.

7 Q. And you were reelected in 2010. Was that after the roll  
8 calls happened that Officer Polanco reported of you?

9 A. Yes.

10 Q. As the delegate, what do you do?

11 A. I represent officers, their legal right to have a union rep  
12 there on any disciplinary hearings that the department has, any  
13 investigation that the department has.

14 I also, as a communication between officers and  
15 myself, and I educate them on whatever they need to know in  
16 regards to pensions or the union.

17 Q. There are other sorts of union officials, correct?

18 A. Correct.

19 Q. And are those trustees, for example?

20 A. Yes, there is.

21 Q. Could you explain the difference to the Court between a  
22 delegate and a trustee.

23 A. Well a delegate basically his duties are at the command  
24 level; whereas, trustee has police excusals. He's excused from  
25 any police duties and they work out of the union office.

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D5A9FLO3 Herran - direct

- 1 Q. So the trustees don't work within the command?  
2 A. No, they do not.  
3 Q. But the union delegates do?  
4 A. Yes, they do.  
5 Q. How many delegates are assigned per command?  
6 A. Approximately three.  
7 Q. And trustees, they're assigned by borough, correct?  
8 A. Yeah, correct.  
9 Q. How many trustees are assigned per borough?  
10 A. Two.  
11 Q. How do you interact with the trustees as a delegate?  
12 A. Majority of the times I would perform them of any off duty  
13 incidents, any officers that is -- possibly that would need an  
14 attorney, I would have to inform them -- I would have to inform  
15 the higher level of rank as a union rep, which is a trustee.  
16 Q. The trustees, however, aren't attorneys, correct?  
17 A. No.  
18 Q. They would contact an attorney?  
19 A. Correct. They have access to contact attorneys.  
20 Q. How frequently do you meet with other union delegates and  
21 trustees?  
22 A. The union delegates, probably -- we'll see each other in  
23 the command but maybe to get together maybe twice a month.  
24 Q. And with trustees?  
25 A. Trustees, the one time that we're at the PBA meeting.

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D5A9FLO3 Herran - direct

1 Q. What is discussed at the PBA meetings?

2 A. Well they could discuss health benefits, anything that --  
3 any contracts, any new law that went into effect, any new  
4 policies. That's where they were discussed, at the meetings.

5 Q. What do you do with the information that you learn from  
6 these PBA meetings?

7 A. I would come back, myself and the two other delegates, and  
8 come back and inform the officers.

9 Q. Are you paid more as a delegate?

10 A. Yes, I am.

11 Q. Does the NYPD pay you that extra income?

12 A. No.

13 Q. Who does?

14 A. The union.

15 Q. In your work as a union delegate do you ever mediate or  
16 become involved in officers' performance evaluations or  
17 appeals?

18 A. No.

19 Q. In your work as a union delegate do you ever mediate or  
20 become involved in the adjudication of officers' command  
21 disciplines?

22 A. Yes, I do.

23 Q. And what is your role in the adjudication of an officer's  
24 command discipline?

25 A. Well they need a union rep to represent them. I would go

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D5A9FLO3 Herran - direct

1 there and help mediate adjudication meeting between the CO and  
2 the officer.

3 Q. So who typically attends a command discipline adjudication?

4 A. The CO, the administrative -- I mean, I'm sorry. The ICO,  
5 the officer, and myself.

6 Q. What types of command disciplines do you typically help to  
7 adjudicate?

8 A. It could go as low as -- being off post, smoking cigarette  
9 on post, losing department property, improper memo book. It  
10 varies. But they are low violations.

11 (Continued on next page)

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D5A8FLO4

Herran - direct

1 Q. How would you try to help officers or represent them in an  
2 adjudication for disciplinary issues such as being caught off  
3 post?

4 A. Well, the first thing I would do is I would read the  
5 command discipline, wanted to see if it was written correctly.  
6 Two, I would see where the command discipline, the violation  
7 occurred, to see if the officer was near his post and taking  
8 some sort of action off post.

9 Q. Is there anything else that you would use in an  
10 adjudication of a disciplinary issue such as being caught off  
11 post?

12 A. Knowing that there is a possibility that the officer is  
13 going to lose time, I would probably inform the CO of the  
14 activity of that particular day. Also, this guy, he is doing  
15 something so I wouldn't know why he would be written up for  
16 that particular thing.

17 Q. Can you explain further how you might use activity when  
18 helping to represent an officer in a command discipline  
19 adjudication?

20 A. Well, that particular violation, whatever, would be written  
21 that the officer was off post. I would look into his activity  
22 and see if any activity was done for that particular day being  
23 that he was off post.

24 Q. Have you ever seen a supervisor bring up or use a monthly  
25 activity report while adjudicating a CD?

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D5A8FLO4

Herran - direct

1 A. No.

2 Q. Have you personally ever used a monthly activity report  
3 when adjudicating a CD?

4 A. No.

5 Q. In circumstances where you have used an officer's activity  
6 during your representation of them, are you saying that an  
7 officer with high activity could get off without discipline  
8 while a low performing officer may not?9 A. No, not necessarily. I would find what the circumstances  
10 are. If I know I could help the officer by using activity, or  
11 possibly using that he was the cop of the month, or he stopped  
12 some robbery pattern, I would help them to lose less time.13 Q. Do you know what the supervisor, be it the ICO or the CO,  
14 bases his opinion on when he makes the final adjudication?

15 A. No.

16 Q. Have there been times when you have advocated for an  
17 officer and he received the maximum penalty?

18 A. Yes.

19 Q. Have there been times where you have not used an officer's  
20 activity to advocate for that officer, but he nevertheless  
21 receives the minimum penalty?

22 A. There are times, yes.

23 Q. When you attend these CD adjudications, are you aware of  
24 the officer's prior disciplinary history?

25 A. Majority of the times, yes.

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D5A8FLO4 Herran - direct

1 Q. How are you aware of their prior disciplinary history?

2 A. The officer will inform me, or if I had represented him  
3 previously, I would know.

4 Q. So are there times when you have sat in on adjudications  
5 for the same officer on multiple occasions?

6 A. Yes.

7 Q. Have you ever seen an officer receive the same discipline  
8 twice for the same offense?

9 A. No.

10 Q. So if an officer, for example, receives warn and admonish  
11 for the first time offense, would you see that officer get warn  
12 and admonish for any subsequent offenses for the same conduct?

13 A. No, he would lose some time.

14 Q. As a union delegate, is filing grievances related to the  
15 union's contract one of your duties?

16 A. Yes.

17 Q. When would you file a grievance as a union delegate?

18 A. Anything that's against the contract, anything that's  
19 against the law, I would inform the lawyer, a grievance lawyer  
20 from the union.

21 Q. Would a quota from NYPD management violate the union's  
22 contract with the NYPD?

23 A. Yes, it would.

24 Q. Has a police officer ever come to you in the command to  
25 file a grievance relating to a quota?

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D5A8FLO4 Herran - direct

- 1 A. No.  
2 Q. If you believed that management were instituting a quota,  
3 would you file a grievance?  
4 A. Yes, I would.  
5 Q. As delegate, have you ever discussed a quota with  
6 management at your precinct?  
7 A. No.  
8 Q. As a delegate, have you ever heard complaints from officers  
9 that they have been threatened with discipline for not meeting  
10 a certain number of summonses, arrests or UF-250s?  
11 A. No.  
12 Q. In your work as a union delegate, do you ever mediate or  
13 become involved in officers' complaints about a shift change?  
14 A. Am I involved in that? Yes.  
15 Q. How are you involved in that?  
16 A. The officer will inform me that his shift was changed, why,  
17 and I would find out what it was. Majority of the times is  
18 they were put on some sort of level, level one monitoring,  
19 which they wouldn't be able to do the midnight shift.  
20 Q. So officers on level one monitoring are not permitted to  
21 work the midnight shift?  
22 A. No.  
23 Q. Has any officer ever complained to you that their shift was  
24 changed as a result of a quota?  
25 A. No.

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D5A8FLO4 Herran - direct

1 Q. Have you ever had an officer complain to you about being  
2 made to be a sergeant's operator?

3 A. Complain? No.

4 Q. In your experience, do supervisors write summonses for  
5 violations that the supervisor observes?

6 A. They could write them, but majority of times, they have the  
7 officers write the summonses for them.

8 Q. Do you know why that is?

9 A. Sergeants usually don't have summonses on them.

10 Q. So what would happen when a supervisor such as a sergeant  
11 would observe a summonable violation?

12 A. They would call an officer to whatever location they are  
13 at.

14 Q. Can a police officer sign his name to a summons for a  
15 violation that he or she did not observe?

16 A. No.

17 Q. So when called to the scene of a supervisor's violation,  
18 what are the options available to a police officer?

19 A. When an officer is called to the scene where a sergeant  
20 observes some sort of violation, he would order the officer to  
21 write the summons. The officer would then write the top part  
22 of the summons, and on the bottom he would usually line out I  
23 personally observed, and then have the sergeant sign it.

24 Q. If you as delegate had heard that supervisors were  
25 instructing officers to sign summonses that the police officer

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D5A8FLO4 Herran - direct

1 had not observed, what would you do?

2 A. I would, one, go to the sergeant, find out the  
3 circumstances; two, go to the commanding officer; and then  
4 three, I would inform my trustee.

5 Q. Why would you do that?

6 A. It's a violation. It's against the law to do that.

7 Q. Have you ever been told by a police officer that they were  
8 asked to sign a summons for a supervisor, the violation of  
9 which the officer had not observed?

10 A. No.

11 Q. Have officers in the 41st Precinct ever set numbers of  
12 summonses and/or arrests that they should reach on a monthly  
13 basis?

14 A. Yes, they have.

15 Q. How would the officers come up with that number?

16 A. They would talk in general what goal -- performance goal  
17 they want to reach. It's been going on since I first came on  
18 the job. Between the platoon or the squad, we will come up  
19 with some particular number to come in with.

20 Q. Would management or bosses ever be involved in that  
21 conversation?

22 A. No.

23 Q. Why would an officer choose -- strike that.

24 Why would officers choose to set numbers for  
25 themselves?

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D5A8FLO4 Herran - direct

- 1 A. I would assume they want to know what is the average, if  
2 you're below average, if you're above average. We would  
3 normally call it like zeros or heroes. I'm assuming the  
4 officers want to know what is the average, how would they stand  
5 in the platoon or in the squad.  
6 Q. When you first came on the job, what was the number?  
7 A. The number was 25, 5 and 2.  
8 Q. What did the 25 refer to?  
9 A. Book of summonses, A summonses.  
10 Q. Are those parkers?  
11 A. Correct.  
12 Q. What did the five refer to?  
13 A. The B summonses, the moving violations.  
14 Q. What did the two refer to?  
15 A. The quality of life summonses, which we also call the C  
16 summonses.  
17 Q. Those are criminal court summonses?  
18 A. Correct.  
19 Q. Did there come a time when that number changed?  
20 A. Yes.  
21 Q. When did that change?  
22 A. I believe when the book, the summons book went down to 20  
23 summonses.  
24 Q. So what did the numbers change to?  
25 A. 20 and 1.

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D5A8FLO4 Herran - direct

1 Q. What did the 20 refer to?

2 A. The 20 referred to summonses and the one was arrest.

3 Q. At the time of the Polanco recordings, what was the number?

4 A. 20 and 1.

5 Q. Is that 20 number tied to a certain number of days on  
6 patrol?

7 MR. CHARNEY: Objection. Leading.

8 THE COURT: I will allow it.

9 Do you know the answer?

10 THE WITNESS: I'm sorry.

11 THE COURT: She said, Is that 20 number tied to a  
12 certain number of days on patrol?

13 THE WITNESS: Yes.

14 Q. How many days on patrol is that number tied to?

15 A. Approximately 20 to 22 days on patrol.

16 Q. So would an officer's expectations for activity depend on  
17 how many tours that officer worked per month?

18 A. Yes.

19 Q. Are those numbers still in place in the 41st Precinct?

20 A. No, they are not.

21 Q. When did you stop agreeing on numbers with other officers?

22 A. When it came into law about the quota.

23 Q. Do you recall when that was?

24 A. I believe in 2010.

25 Q. Do you know if that was before or after the recordings that

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D5A8FLO4 Herran - direct

1 Officer Polanco made of you?

2 A. That was after.

3 Q. When these numbers were in place, was there ever any  
4 punishment for failing to reach the numbers?

5 A. No.

6 Q. What would happen, for example, if somebody worked on crime  
7 analysis and only had five days on patrol, but did not reach  
8 that 20 and 1 number?

9 A. Nothing would happen.

10 Q. In 2009, was it difficult to issue 20 summonses in a single  
11 month in the 41st Precinct?

12 MR. CHARNEY: Objection, your Honor.

13 THE COURT: Sustained.

14 MS. PUBLICKER: Your Honor, I asked --

15 THE COURT: I know what you're asking.

16 It says, "In 2009, was it difficult to issue 20  
17 summonses in a single month in the 41st Precinct?"

18 I am sustaining the objection because I consider the  
19 phrase "difficult" to be vague.

20 MS. PUBLICKER: If I asked him based on his personal  
21 experience, whether he observed, for example, at least 20  
22 summonses per month in the 41st Precinct?

23 THE COURT: You can't ask that either, but you can  
24 say, Did you issue 20 summonses a month, was that difficult for  
25 you? What kind of summonses did you issue? You can ask him

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D5A8FLO4 Herran - direct

1 about his own summonses, but not about the precinct, not about  
2 others, not about whether it was difficult in the general  
3 sense. You can ask him about his work.

4 MS. PUBLICKER: If I could have just one moment, your  
5 Honor.

6 BY MS. PUBLICKER:

7 Q. To which officers in the command did the 20 and 1 number  
8 apply?

9 A. To the patrol officers.

10 Q. Did officers ever set a goal for the number of UF-250 forms  
11 that they should complete?

12 A. No.

13 Q. Did officers ever set a goal for the number of reasonable  
14 suspicion stops that they should conduct?

15 A. No.

16 Q. Have you ever heard officers complain that they were being  
17 forced to write a certain number of UF-250s on a monthly basis?

18 A. No.

19 Q. Why do you believe it is OK for officers to set a goal for  
20 the numbers of activity that they conduct per month, but you  
21 don't believe it's OK for management to do so?

22 A. Officers, they always compete among each other and they  
23 always want to know where you stand, if it's an average  
24 officer, if you're a good officer, a bad officer. They always  
25 want to know some sort of average. That's what I believe. I

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D5A8FLO4 Herran - direct

1 think officers want some average and know where they stand in  
2 the platoon or in the squad.

3 Q. How is that different from the number that they would  
4 receive from management?

5 A. They never received anything from management.

6 Q. Have you heard the recordings made by Officer Polanco?

7 A. Yes.

8 Q. When did you first hear those recordings?

9 A. I don't know exactly when I did hear it. I think I was  
10 informed that I was on YouTube, or something like that, and  
11 that's when I heard -- the first time that I heard I was being  
12 recorded.

13 Q. Do you recall what year that happened in?

14 A. 2009, possibly.

15 Q. Do you know the date that you were recorded by Officer  
16 Polanco?

17 A. The date, no.

18 Q. Do you have an understanding of when the recordings were  
19 made?

20 A. Yes.

21 Q. How do you have an understanding of when the recordings  
22 were made?

23 A. Actually, I was on vacation for approximately two weeks. I  
24 returned back for my first day of duty, and I was informed by  
25 several officers that they weren't too happy with my

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1 co-delegate, and it was in regards to the amount of summonses  
2 that he had written. I informed them that I would speak to  
3 them all together, and we did. We went and we spoke in the  
4 lunchroom, and they informed me that they saw the delegate's  
5 activity and it was higher than what they wanted.

6 So at that point I went and I spoke to my co-delegate  
7 at the time. He informed me that, yes, he had written more  
8 than the performance goal for the platoon, and it was only  
9 because he had several other overtime shifts and he had written  
10 many more summonses because of the extra tours that he did.

11 Q. I'm sorry if you said it, but what was the name of that  
12 delegate?

13 A. Officer Fundaro.

14 Q. Was Officer Fundaro with you when you spoke with the other  
15 police officers?

16 A. Yes. I'm sorry. At the lunchroom?

17 Q. At the lunch room?

18 A. No.

19 Q. What did you do when you first got into the precinct that  
20 day?

21 A. I went in and I spoke to the commanding officer at the time  
22 to just let him know I was here. We had spoken about how was  
23 vacation. I also informed him if anything was going on, if  
24 there were any homicides or any patterns or anything new in the  
25 command.

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1 MR. CHARNEY: I think it's unclear when this was. I  
2 think there was a question about the understanding of when,  
3 approximately, this was, and I don't think we have ever had any  
4 indication.

5 MS. PUBLICKER: I asked him if he knew when it  
6 happened. He said he did not recall the date, but he knew it  
7 was after he returned from a vacation.

8 MR. CHARNEY: He never said when the vacation was.

9 THE COURT: Roughly, what year, what month?

10 THE WITNESS: I would say November.

11 THE COURT: Of what year?

12 THE WITNESS: 2009.

13 THE COURT: Thank you.

14 Q. Who was the commanding officer at that time?

15 A. Inspector McHugh.

16 Q. For how long did you speak with Inspector McHugh?

17 A. I would say approximately about an hour.

18 Q. Did you discuss numbers or activity during this meeting  
19 with Inspector McHugh?

20 A. No, I did not.

21 Q. Did Inspector McHugh tell you that the union and management  
22 had agreed on a 20 summonses and one arrest quota?

23 A. No.

24 Q. What did you do after you spoke to Inspector McHugh that  
25 day?

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1 A. I went and I spoke to the officers that wanted to speak to  
2 me in regards to my co-delegate's activity.

3 Q. This was the meeting in the lunchroom you referred to?

4 A. Correct.

5 Q. Again, just to clarify, your Honor, this was a meeting with  
6 other police officers but that Officer Fundaro was not present  
7 for?

8 A. Correct.

9 Q. I believe you stated that you then went and had a  
10 conversation with Officer Fundaro?

11 A. Yes, I did.

12 Q. Besides speaking with Officer Fundaro, did you speak to the  
13 union before the roll call that day?

14 A. No.

15 Q. Now, on the recording Officer Polanco made of you, you  
16 state that the union is backing, quote unquote, 20 and 1. Is  
17 that correct?

18 A. In the recording, did I hear that? Yes.

19 Q. Why did you believe at the time that the union was backing  
20 a number of 20 and 1?

21 A. Well, also, at the time, when I spoke to Officer Fundaro in  
22 regards to his activity that the other officers in the platoon  
23 weren't happy with, he had informed me that the union -- that  
24 he had heard some rumor that the union and the bosses met and  
25 that there was agreement on 20 and 1.

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1 Q. Before that day, had you ever heard of the union and  
2 management agreeing on a number for officers in the 41st  
3 Precinct?  
4 A. Absolutely not.  
5 Q. Or anywhere else in the NYPD?  
6 A. Absolutely not.  
7 Q. Did that strike as you as strange?  
8 A. Yes, it did.  
9 Q. Why did that strike you as strange?  
10 A. I have never heard of it.  
11 Q. Did you ever look into this allegation by Officer Fundaro  
12 further?  
13 A. Yes, I did.  
14 Q. When did you do that?  
15 A. After the roll call, I called the trustee, Joe Anthony, and  
16 I asked him in regards to, if there was any meeting while I was  
17 away on vacation in regards to the union agreeing with the  
18 bosses, or the bosses agreeing with the union, in regards to 20  
19 and 1. And he told me absolutely not. And I said, OK, thank  
20 you, I will speak to you later. At which time I went back -- I  
21 informed the sergeant that was addressing the roll call if I  
22 could have a couple of more minutes with the officers, at which  
23 time I instructed the officers and informed them that there was  
24 no such meeting ever, and whatever you guys agreed on in the  
25 lunchroom, if that's what you guys want to do, then go ahead

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1 and do it.

2 Q. Have you ever heard that part of the roll call on any  
3 recording?

4 A. No.

5 Q. Now, these recordings that Officer Polanco made of you, you  
6 have heard these recordings?

7 A. Yes.

8 Q. Are these recordings a full and complete recording of you  
9 addressing the roll call that day?

10 A. No.

11 Q. Do you have an understanding of when track one and track  
12 six on which your voice appears, when these recordings were  
13 made in relation to each other?

14 A. I don't understand.

15 Q. Do you know if these recordings were made on the same day?

16 A. Yes, they were, yes.

17 Q. Now, you stated that you did not believe these recordings  
18 were a full and complete recording of you addressing roll call,  
19 correct?

20 A. Correct.

21 Q. What is missing?

22 A. A lot of the middle of the recording and definitely the end  
23 of the recording.

24 Q. How do you know that?

25 A. I know it because what I said towards the end of this roll

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1 call, that wasn't on the recording.

2 Q. Now, on the track one recording, Officer Fundaro speaks  
3 after you speak in the roll call, is that correct?

4 A. Correct.

5 Q. Were you present for Officer Fundaro addressing the  
6 officers at that point?

7 A. No, I wasn't.

8 Q. In the track one recording, you reference a sheet that the  
9 platoon commander gave out. Do you recall that?

10 A. Yes.

11 Q. What was the sheet that you were referring to?

12 A. There is a sheet that the platoon commander has that he has  
13 to fill out, a daily tally of whatever activity was done for  
14 the particular day.

15 Q. Did that sheet require a specific amount of activities on  
16 the part of the officer?

17 A. No. It just actually tallied whatever activity the  
18 officers did.

19 Q. But it was different than a police officer's monthly  
20 activity report?

21 A. Oh, yes, yes.

22 Q. At some point on the recording you state, "The sheet don't  
23 exist." Do you remember that?

24 A. Yes.

25 Q. What did you mean by that?

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1 A. When I found out that the sheet was being passed around or  
2 was going to be a police officer's duty to fill out, I went  
3 into the CO and said, this is not a police officer's duty to do  
4 this sheet, and it's not even a form that the NYPD has for an  
5 officer to fill out. And right after that the sheet no longer  
6 exist.

7 Q. Do you have an understanding if that was the result of you  
8 speaking to the commanding officer?

9 A. Yes.

10 Q. Was it a result of you speaking to the commanding officer?

11 A. Yes, it was.

12 Q. In the track one recording, you also make reference to  
13 crushing the city. Do you remember that?

14 A. Yes.

15 Q. What did you mean by that?

16 A. What I meant by that, I think during that discussion there  
17 was in regards to assigning arrest. The officers are not too  
18 happy when they're assigned arrest. So they inform me that  
19 they will be assigned arrest, and I kind of motivate them by  
20 telling them crush the city. Pretty much they could assign you  
21 the arrest. I know you're upset because it's a possibility you  
22 might have to do something that night, or do something the next  
23 day, but make your money, you're going to get paid overtime for  
24 it.

25 Q. When you say the officers might have something to do that

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1 night or the next day, how would being assigned another  
2 officer's arrest impact their plans that evening or the next  
3 day?

4 A. If they are doing a 4 to 12 and they had to do something  
5 that night, they would have to stay and do all the paperwork  
6 and process the arrest, and then possibility to go to court the  
7 next day.

8 Q. If they did have to stay to process the arrest or go to  
9 work the next day, would they make overtime for that work?

10 A. Yes, they will.

11 Q. Is that overtime time and a half pay?

12 A. Yes, time and a half.

13 Q. So when you stated crush the city, are you referring to the  
14 amount of money the officer would make from that reassigned  
15 arrest?

16 A. Yes, that's the same.

17 Q. Is it acceptable to assign an arrest from one police  
18 officer to another?

19 A. Yes.

20 Q. In what circumstances?

21 A. It might be a sergeant got hurt; he might have to go to the  
22 hospital and it would be reassigned to another officer. There  
23 is also a possibility that the sergeant or lieutenant, captain,  
24 might observe some violation, lawful arrest, and it's assigned  
25 to an officer.

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- 1 Q. An officer who is assigned a different officer's arrest,  
2 would their paperwork be prepared any differently?  
3 A. No.  
4 Q. Would they sign paperwork any differently?  
5 A. They will be informed by that officer.  
6 Q. Could you explain that for the Court, what you mean by  
7 informed by?  
8 A. If I was assigned the arrest from another officer, one, I  
9 will speak with the officer, find out the circumstances of the  
10 arrest, do the paperwork, but also have him sign that he is  
11 informing me of the particular charges or what he observed.  
12 Q. So if you were doing your own arrest, you would not include  
13 the language of, I am informed by, is that correct?  
14 A. That's correct.  
15 Q. You also heard the track six recording made of you by  
16 Officer Polanco, correct?  
17 A. Correct.  
18 Q. Where was that recording made?  
19 A. In the roll call.  
20 Q. The same day as the recording on track one?  
21 A. Yes.  
22 Q. On that recording, you make reference to the bible in  
23 regards to the adjudication of CDs. Do you remember that?  
24 A. Yes.  
25 Q. Are you aware that Officer Polanco testified that he

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1 believed you were referring to monthly activity reports when  
2 you used the term "the bible"?

3 A. Yes.

4 Q. Is that what you were referring to?

5 A. No.

6 Q. To what were you referring when you used the term "the  
7 bible"?

8 A. We call the patrol guide the bible.

9 Q. How would you use the patrol guide when adjudicating CDs?

10 A. When they are adjudicating CDs, there's certain procedures  
11 that you would do on particular jobs. If the officer  
12 fails -- if there's six procedures and he fails to do one of  
13 them, he is going to be written up for violation of that  
14 procedure.

15 Q. You state on the recording as well that it's impossible to  
16 have 25 to 26 days on patrol and have no activity, correct?

17 A. Correct.

18 Q. Why did you believe that was true?

19 A. My personal experience being on patrol, there's always some  
20 sort of moving violation, parking, summonses, quality of life  
21 summonses, there is some sort of activity, whether it's a  
22 summonses, whether it's an accident report, whether it's a  
23 complaint report, whether it's an aided report, whether it's an  
24 alarm report, there is something to do within those 25 days.  
25 It's impossible not to have any sort of activity in the 41

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1 Precinct.

2 Q. Have you heard other recordings that Officer Polanco made  
3 in the 41st Precinct?

4 A. Yes.

5 Q. When did you hear those recordings?

6 A. Also on YouTube.

7 Q. Were you present at the roll calls in those recordings in  
8 which your voice does not appear?

9 A. No.

10 Q. Officer Polanco testified here in court that he went to you  
11 several times regarding numbers and quotas. Did Officer  
12 Polanco ever approach you regarding numbers or quotas?

13 A. No, he did not.

14 Q. Officer Polanco also testified that you told him that  
15 everything was dealt with in the contract and that the union  
16 was backing it up in reference to a number. Have you ever seen  
17 the union's contract?

18 A. Yes.

19 Q. Have you ever seen a clause in the union contract setting a  
20 performance goal for officers?

21 A. No.

22 Q. Have you ever seen a clause regarding a quota?

23 A. No.

24 Q. Or numbers in any manner?

25 A. No.

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1 Q. Officer Polanco testified that in track six you were  
2 referring to Lieutenant Valenzano when you mentioned having  
3 been in a car and writing summonses with the supervisor. Do  
4 you recall that section of the recording?

5 A. No.

6 Q. Do you recall a section of the recording where you talk  
7 about seeing activity when in the vehicle with the supervisor?

8 A. Yes.

9 Q. Were you referring to Lieutenant Valenzano at that point?

10 A. No.

11 Q. To whom were you referring?

12 A. To any supervisor that you're in the car with.

13 Q. So you were speaking generally?

14 A. Correct.

15 MS. PUBLICKER: Your Honor, if I could have just one  
16 moment.

17 Thank you, your Honor. No further questions.

18 THE COURT: Mr. Charney.

19 CROSS-EXAMINATION

20 BY MR. CHARNEY:

21 Q. Good afternoon, Officer Herran.

22 A. Good afternoon.

23 Q. Now, you testified on direct that the 20 and 1 performance  
24 goal was something that officers in the 41st Precinct set  
25 themselves, is that right?

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1 A. Absolutely.

2 Q. So that did not come from anybody higher in the chain of  
3 command in the NYPD?

4 A. No, it did not.

5 Q. You mentioned that you did listen to some of the other  
6 recordings that Officer Polanco made other than the ones that  
7 your voice is heard on, right?

8 A. Correct.

9 Q. So you heard the one where Sergeant Stukes was heard  
10 speaking to roll call?

11 MS. PUBLICKER: No.

12 A. I don't know who Sergeant Stukes is.

13 Q. I'm sorry. Sergeant Bennett. You heard Sergeant Bennett  
14 speaking on a recording?

15 A. Yeah.

16 Q. You heard Sergeant Bennett make reference to 25 and 1, 35  
17 and 1?

18 A. Correct.

19 Q. And Sergeant Bennett is a sergeant in the 41st Precinct,  
20 right?

21 A. Correct.

22 Q. He is not a patrol officer, right?

23 A. No, he is not.

24 THE COURT: Does that make him a supervisor?

25 THE WITNESS: Correct.

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1 Q. Now, you also said that track one, which is you speaking,  
2 right, it's your testimony that that is a roll call in which  
3 you addressed the officers on two different occasions in the  
4 same roll call, is that your testimony?

5 A. I addressed that roll call one time, and then yes, I came  
6 back afterwards.

7 Q. It's your testimony that when you came back, which that  
8 portion is not heard on the recording, that's when you  
9 clarified that the union and management had not agreed on the  
10 20 and 1, is that right?

11 A. Absolutely.

12 Q. Now, you're aware that Officer Polanco has testified that  
13 it's his understanding that the 20 and 1 did come from up above  
14 in the chain of command in the NYPD, correct?

15 A. Correct.

16 Q. Was there an officer Victor Marrero who also worked in the  
17 41st Precinct at the time that Officer Polanco did?

18 A. Yes, there was.

19 Q. Are you aware that his deposition testimony has been read  
20 into the record in this trial?

21 A. I wasn't aware of that, no.

22 Q. Are you aware that he also understands that the 20 and 1  
23 requirement came from up the chain of command in the NYPD?

24 A. OK.

25 Q. If you agree with me on both of those, are you at all

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1 concerned that there was an understanding amongst police  
2 officers in the 41st Precinct that the 20 and 1 requirement was  
3 coming from above in the chain of command in the NYPD?

4 MS. PUBLICKER: Objection, your Honor. He has  
5 testified that he is only aware of it because Mr. Charney just  
6 told him that. It is speculation.

7 Q. If we assume, it's a hypothetical, if that were true, would  
8 you be concerned at all that officers in the 41st Precinct  
9 understood that their superiors were setting a performance goal  
10 of 20 and 1?

11 MS. PUBLICKER: Objection, your Honor.

12 A. Within that roll call?

13 THE COURT: I don't think you can combine that  
14 hypothetical and then a concern on behalf of actual people in  
15 the actual precinct.

16 Q. If two officers in the precinct that you worked in, who  
17 were at the roll calls that you addressed, if they understood  
18 that this 20 and 1 requirement came from above, the chain of  
19 command in the NYPD above a police officer, would you be at all  
20 concerned about that?

21 MS. PUBLICKER: Objection.

22 THE COURT: If Polanco and Marrero thought that, would  
23 that concern you?

24 THE WITNESS: Of course it would concern me.

25 Q. Did you listen to the recording that Officer Polanco made

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1 of Inspector McHugh addressing the roll call?

2 A. No.

3 Q. Do you recall being at a roll call in which Inspector  
4 McHugh discussed how the borough commander wanted the 41st  
5 Precinct summons activity to increase?

6 A. No, I wasn't there.

7 Q. So you were not at a roll call where Inspector McHugh  
8 stated to the officers that the increase was nonnegotiable?

9 A. I wasn't there for that.

10 MR. CHARNEY: One minute, your Honor.

11 Q. Now, do I have your testimony correct from direct that  
12 prior to speaking to the officers at the roll call that's on  
13 track one, you had a conversation with Inspector McHugh, is  
14 that right?

15 A. Yes, I did.

16 Q. It's your testimony that during that discussion, you did  
17 not discuss the 20 and 1 requirement?

18 A. I did not discuss that at all.

19 MR. CHARNEY: Your Honor, I want to show the witness  
20 an exhibit that's already in evidence. This is the transcript  
21 from the Polanco recordings, 284T.

22 Does your Honor want a copy? I was going to put it on  
23 the elmo.

24 THE COURT: That's fine.

25 Q. Officer Herran, I know you have listened to the recordings.

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1 Have you reviewed the transcripts of the recordings?

2 A. Of which recordings? My recordings?

3 Q. Track one and track six?

4 A. My recordings, yes.

5 Q. This is 284T. This is track one.

6 You agree that track one, the first portion, 3:03 to  
7 8:01, that is you speaking on that portion?

8 THE COURT: The first five minutes.

9 Q. The first five minutes or so is you?

10 THE WITNESS: What he is showing me here, I remember  
11 that.

12 Q. Do you see here where it says, "I spoke to the CO for about  
13 an hour and a half on the activity, 20 and 1." Do you see  
14 that?

15 MS. PUBLICKER: I would just note there is a hyphen,  
16 dashes in between the hour and a half.

17 MR. CHARNEY: We can play it.

18 THE COURT: I see the dashes, but what is the point of  
19 it?

20 MS. PUBLICKER: That they are two different thoughts.

21 MR. CHARNEY: Based on counsel's interpretation.

22 THE COURT: One second.

23 MR. CHARNEY: We can play it.

24 THE COURT: Then what?

25 BY MR. CHARNEY:

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1 Q. I guess my question is, based on your review of this and  
2 your having listened to the tape, isn't it correct that you did  
3 tell the officers at roll call that you spoke to Inspector  
4 McHugh about the activity, 20 and 1?

5 A. What I said in the roll call is I spoke to the CO. I might  
6 have put it all together. I spoke to the CO for about an hour.  
7 I wasn't referring to activity with the CO. I never spoke to  
8 the CO in regards to activity.

9 Q. I guess my question is --

10 A. This part here, when I speak about 20 and 1, the union is  
11 backing up, this is where I spoke to the co-delegate, which is  
12 Officer Fundaro. I never spoke to the CO in regards to  
13 activity.

14 THE COURT: Why don't you play it.

15 MR. CHARNEY: Can we play the first section?

16 (Audiotape played)

17 Q. Having heard that, do you have any concern that the  
18 officers at the roll call having heard that would have  
19 interpreted what you said as you spoke to Inspector McHugh  
20 about the 20 and 1?

21 A. Absolutely, the way I said that, yes.

22 THE COURT: I'm sorry. What? What is your answer?

23 THE WITNESS: Yes.

24 THE COURT: Yes what?

25 THE WITNESS: They would have interpreted it that way,

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Herran - cross

1 the way I said it.

2 Q. Now, I know your testimony is that you, in fact, never  
3 spoke to Inspector McHugh about the 20 and 1. But based on  
4 your experience in the 41st Precinct, is it fair to say that  
5 the supervisors were aware that the officers themselves had  
6 this 20 and 1 requirement that they had created for themselves?

7 A. I don't know if the supervisors were aware of it, but I  
8 know all the officers were aware of it.

9 Q. You know that Sergeant Bennett mentioned it, right?

10 A. He mentioned 25 and 1, 35 and 1.

11 Q. So at minimum, it would be fair to say that supervisor  
12 Bennett, Sergeant Bennett was aware of it, right?

13 MS. PUBLICKER: Objection, your Honor. Speculating on  
14 somebody else's knowledge.

15 THE COURT: One moment, please.

16 It's not so much a matter of speculating on someone  
17 else's knowledge, but I don't understand the relationship  
18 between Sergeant Bennett having mentioned 25 and 1, 35 and 1.

19 You gave that answer?

20 THE WITNESS: Correct.

21 THE COURT: So then the lawyer said, So at minimum,  
22 it's fair to say that supervisor Bennett was aware of it,  
23 right? Then she said objection.

24 THE WITNESS: I don't know what Bennett -- like I  
25 said, it was just the officers that --

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Herran - cross

1 THE COURT: Even though you know that Sergeant Bennett  
2 mentioned --

3 THE WITNESS: I heard it on the recordings earlier.

4 THE COURT: If he mentioned it, wouldn't that mean he  
5 was aware of it?

6 THE WITNESS: Aware of the 20 and 1?

7 THE COURT: Yes.

8 THE WITNESS: I'm assuming. I don't know.

9 THE COURT: That's his answer.

10 Q. You don't have any knowledge as to whether any sergeant,  
11 lieutenant, captain or CO in the 41st Precinct was aware of  
12 this 20 and 1 requirement?

13 A. Absolutely not.

14 Q. Do you know whether any sergeants or lieutenants were  
15 present at the roll call you were speaking at where you  
16 mentioned the 20 and 1?

17 A. No, they were not there.

18 Q. Now, were you present for the portion of the roll call on  
19 track one where Officer Fundaro was addressing the officers?

20 A. No.

21 Q. But you have heard that recording, right?

22 A. A limited part of it.

23 Q. Have you heard the part where Officer Fundaro mentions the  
24 20 and 1?

25 A. I believe so.

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1 Q. Where he says that it's going to get a lot worse?

2 A. Right.

3 Q. Do you know what he meant by that?

4 MS. PUBLICKER: Objection. Testifying to what another  
5 officer meant.

6 Q. What did you understand him to mean by saying it's going to  
7 get a lot worse?

8 THE COURT: That I will allow. I always allow what  
9 the person understood.

10 What did you understand it to mean?

11 MS. PUBLICKER: I would only object to the extent that  
12 Officer Fundaro is not present.

13 THE COURT: I understand he wasn't present, but he has  
14 heard it.

15 What was your understanding of that statement, it's  
16 going to get a lot worse?

17 THE WITNESS: There is not going to be much help. He  
18 always complained about not having enough patrolmen.

19 Q. So you didn't understand that to mean that the performance  
20 goals for officers were going to get more demanding?

21 A. No.

22 Q. Now, you also mentioned that you have never received a  
23 grievance regarding quotas, is that right?

24 A. Correct.

25 Q. Are you aware that the PBA has since 2010 filed nine

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1 grievances related to quotas for police officers?

2 A. I am aware of it, yes. They also have an ad in regards to  
3 it.

4 THE COURT: They also what?

5 THE WITNESS: Have an ad, advertising.

6 Q. You go to meetings with trustees and PBA delegates  
7 regularly, right?

8 A. Once a month.

9 Q. Has the issue of quotas ever been discussed at any of those  
10 meetings?

11 A. Absolutely not.

12 Q. But is it your understanding, based on your involvement  
13 with PBA and you having reviewed these ads and your knowledge  
14 of these grievances, that PBA as an organization believes that  
15 there are quotas in the police department regarding enforcement  
16 activity?

17 A. I am sure they have, but nothing was discussed in a meeting  
18 about that.

19 MR. CHARNEY: One minute, your Honor.

20 Q. I want to actually show you, this is page 2 of Exhibit  
21 284T. This is again track one, the portion you were speaking.

22 Do you see here on line 12 it says, "Now, the reason  
23 we brought all the --"

24 THE COURT: "The reason is."

25 Q. "The reason is -- we brought all the supervisors. I sat in  
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D5A8FLO4 Herran - cross

1 there because corporal had a situation that he said it was 25.  
2 They start to move up (unintelligible phrase). Supposedly,  
3 it's not 25. He made a mistake. Inspector -- he said, 'Well,  
4 when I first came on, it was 25, 10 and 2.'"

5 Do you see that?

6 A. Yes.

7 Q. Are you referring there to what you had talked about on  
8 direct as to what the summons requirements were when you first  
9 came on the job?

10 A. Yes.

11 Q. Now, you had said, I believe on direct, that those  
12 requirements were again entirely set by officers themselves,  
13 right?

14 A. Correct.

15 Q. But here aren't you talking about a conversation or a  
16 meeting you had with supervisors?

17 A. No. I never had a meeting with supervisors.

18 Q. Do you recall what you meant here by, "We brought all the  
19 supervisors. I sat in there"?

20 A. I don't even remember that five, six lines there.

21 THE COURT: Why don't we play it?

22 MR. CHARNEY: I don't know where on the recording it  
23 is. It's later than the portion we just listened to, but we  
24 might have to listen for a little while.

25 Why don't we just pick up from exactly where we

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Herran - cross

1 stopped, which was right after the first 20 and 1 reference.

2 We can start from the beginning, 3:03.

3 THE COURT: We don't want the beginning.

4 MR. CHARNEY: This is within those first five minutes.

5 THE COURT: OK. All right.

6 Can I see the page again?

7 MR. CHARNEY: This is the second page of the  
8 transcript. It's line 12.

9 THE COURT: OK.

10 (Audiotape played)

11 BY MR. CHARNEY:

12 Q. Having listened to that, do you now remember what you were  
13 talking about when you were talking about "we brought all the  
14 supervisors"?

15 A. I'll be honest with you, I don't understand what that  
16 means. I don't know who corporal is. I don't know who  
17 Inspector Wen is. I really don't know.

18 Q. What about this portion where he said he put people on foot  
19 post because they weren't coming in with their F'ing 25?

20 A. I don't know what that is. I really don't know.

21 THE COURT: You don't know what that means? You said  
22 it and you don't know?

23 THE WITNESS: I don't know if I said something or  
24 something was said to me. It doesn't make any sense. I don't  
25 know who corporal is. I don't know who Inspector Wen is. If I

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D5A8FLO4 Herran - cross

1 was talking with regards to 25, 10 and 2, maybe it was when I  
2 first came on. That's the only thing I can talk about.

3 Q. Then earlier in that portion we heard where you say,  
4 "Fundaro, myself and Manzi," and those are the three PBA  
5 delegates in the precinct?

6 A. Correct.

7 Q. "Got to go in there and adjudicate F'ing CDs on your  
8 activity."

9 A. Right.

10 Q. Now, you testified a little bit about this on direct, but  
11 can you tell me what you meant by that?

12 A. What I meant by that, like I said, sometimes I would go in  
13 in the adjudication meetings, and knowing that the officer is  
14 going to lose a substantial amount of time, I might use  
15 activity as one to have less time taken away from them. I  
16 might use cop of the month, or I might use they stopped a  
17 pattern. I have got to try to get the least time I possibly  
18 could for the officers.

19 Q. In other words, you would try to get a more lenient  
20 punishment for an officer whose activity levels were higher  
21 than, say, another officer's, right?

22 A. Not necessarily. It wouldn't just be activity. It could  
23 be other things. The guy wasn't out sick. The guy did a lot  
24 of days on patrol. He got a good medal. He stopped a robbery  
25 pattern. It wouldn't just be activity, but it's something that

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D5A8FLO4 Herran - cross

1 I would have in case I needed it.

2 Q. Were you ever successful in certain situations in getting a  
3 more lenient discipline penalty for an officer because you were  
4 able to point to the fact his activity was high?

5 A. No. I wish I could have.

6 Q. So you're saying there were never situations --

7 A. Majority of the times they had their goal, their set  
8 punishment.

9 Q. I just want to make sure I have the terminology right.  
10 When you were referring to the 20 and 1, is it correct that  
11 that is a performance goal that is set for officers?

12 A. Correct.

13 Q. Is another term for that a productivity goal?

14 A. You call it productivity goal, performance goal.

15 Q. Are you familiar with Operations Order 52, speaking of  
16 performance goals?

17 MS. PUBLICKER: Objection. This is beyond the scope  
18 of my direct.

19 MR. CHARNEY: I just wanted to ask about the term  
20 performance goal.

21 THE COURT: I will allow it.

22 MS. PUBLICKER: Operations Order 52 came out years  
23 after this recording was made.

24 THE COURT: I know that. I will allow it.

25 Q. Are you familiar with that operations order?

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Herran - cross

1 A. Yes.

2 Q. Are you aware that they use the same term performance goal  
3 in that operations order?

4 THE COURT: The same term as what?

5 Q. As I just asked you, that 20 and 1 was a performance goal.  
6 Are you aware that they use the term performance goal in  
7 Operations Order 52?

8 A. Yes.

9 Q. Based on what you think a performance goal is, would you  
10 believe that the 20 and 1 would be an example of a performance  
11 goal that would be permitted under Operations Order 52?

12 A. I would say yes.

13 MR. CHARNEY: No further questions.

14 MS. PUBLICKER: One moment, your Honor.

15 REDIRECT EXAMINATION

16 BY MS. PUBLICKER:

17 Q. With respect to representing an officer during a command  
18 discipline adjudication, does pointing out the activity of that  
19 officer on the day he is accused of being off post, for  
20 example, help show the commanding officer that the subject  
21 officer was still working?

22 A. Yes.

23 MS. PUBLICKER: No further questions.

24 MR. CHARNEY: No further questions.

25 THE COURT: Thank you.

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1 MR. KUNZ: Next, your Honor, we are going to read in  
2 some stipulations that the parties have reached in regard to  
3 two witnesses related to the David Floyd stop.

4 MR. MOORE: Is that the end of the testimony for  
5 today?

6 THE COURT: Let me just double-check. I forgot to  
7 bring the revised list.

8 That puts us on schedule for the 13th.

9 Did you find out whether your expert can come, Ms.  
10 Cooke, on the 13th?

11 MS. COOKE: I haven't heard back from him yet.

12 THE COURT: Have we heard yet from the part one judge?

13 MR. KUNZ: I checked half an hour ago, and I haven't  
14 seen.

15 THE COURT: All right.

16 MR. KUNZ: Before I read in the actual stipulations,  
17 the parties have agreed to the admission of six exhibits. So I  
18 would just would like to move the admission of Exhibit R13,  
19 S13, T13, X13, Y13, and S14.

20 MR. CHARNEY: No objection.

21 THE COURT: They are all received.

22 (Defendants' Exhibits R13, S13, T13, X13, Y13, and S14  
23 received in evidence)

24 MR. KUNZ: To give your Honor a little context on the  
25 first stipulation, I just want to publish an exhibit that's

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1 already in evidence. This is Exhibit K13. You may recall this  
2 map from the David Floyd stop in the examination of Officer  
3 Hernandez.

4 So the first stipulation is: 1359 Beach Avenue is at  
5 most 0.8 miles --

6 THE COURT: I'm sorry. Can you point that out?  
7 Thank you.

8 MR. KUNZ: Is at most 0.8 miles away from each of the  
9 seven burglary pattern locations identified in Defendants' L4.  
10 L4 is again the pattern sheet itself.

11 This is the next stipulation, the same exhibit here.

12 The farthest distance between any of the burglary  
13 pattern locations identified in Defendants' L4 is 0.6 miles.  
14 (1352 Elder Avenue to 1149 Stratford Avenue).

15 So that would be this dot here and that dot there.

16 THE COURT: Now that you showed me the dots, would you  
17 read the sentence again?

18 MR. KUNZ: The farthest distance between any of the  
19 burglary pattern locations identified in Defendants' Exhibit L4  
20 is 0.6 miles.

21 THE COURT: I see.

22 MR. KUNZ: This is Exhibit N10. It's also in  
23 evidence. This is the house where David Floyd was stopped in  
24 front of, 1359 Beach Avenue.  
25

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1 MR. KUNZ: And then this shot is also in evidence.  
2 This is a better shot of the entire street. And just for the  
3 record I was showing the Court Bates stamp numbers ending in  
4 8757 and 8758.

5 So the next stipulation is Defendant's Exhibit R13 is  
6 a fair and accurate depiction of 1240 Ward Avenue and 1228 Ward  
7 Avenue (Two of the burglary locations identified in defendants  
8 L4). The parties agree to admit the document into evidence.

9 The next is Defendant's Exhibit S13 is a fair and  
10 accurate depiction of 1149 Stratford Avenue, 1187 Stratford  
11 Avenue, and 1161 Stratford Avenue (Three of the burglary  
12 locations identified in Defendants' Exhibit L4). The parties  
13 agree to admit the document into evidence.

14 Defendant's Exhibit T13 is a fair and accurate  
15 depiction of 1342 Elder Avenue and 1352 Elder Avenue (Two of  
16 the burglary locations identified in Defendant's Exhibit L4).  
17 The parties agree to admit the document into evidence.

18 Briefly, going back to Defendant's K13. The next two  
19 exhibits have to do with the Bronx River Parkway that there was  
20 testimony about.

21 Defendant's Exhibit X13 is a fair and accurate  
22 depiction of East 172nd Street as it crosses the Bronx River  
23 Parkway. The parties agree to admit the document into  
24 evidence.

25 Defendant's Exhibit Y13 is a fair and accurate

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1 depiction Of east 174th Street as it crosses the Bronx River  
2 Parkway. The parties agree to admit the document into  
3 evidence.

4 The next stipulation does not have to do with any  
5 exhibit so I'll just read it.

6 Floyd did not state in his deposition that he was  
7 forced to stand against a wall.

8 The next four stipulations have to do with Defendant's  
9 Exhibit S14. Your Honor has not seen this exhibit before.

10 According to the 2004-2008 NYPD complaint report  
11 database, in January and February 2008, there were 66  
12 complaints of burglaries within the 43rd precinct.

13 Of the 66 burglary complaints, 62 occurred within one  
14 mile of 1359 Beach Avenue.

15 THE COURT: I know this isn't part of the stipulation.  
16 I know you're not a witness. But I thought one of my opinions  
17 way back I had a question about the timeframe how current they  
18 were to this stop. Do you remember that. Because I think at  
19 first I dismissed the claim and then I put it back in because  
20 it turned out they were not that current.

21 MR. CHARNEY: It was a couple things.

22 THE COURT: Anybody else recollect this besides me?

23 MR. CHARNEY: It was the time period and also the  
24 distance.

25 THE COURT: There was a question about time period?

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1 MR. CHARNEY: Some of these stipulations are going to  
2 refer to January and February and some are going to refer to a  
3 longer period of time. So -- I mean just so your Honor knows  
4 all of this comes from a declaration that was submitted by  
5 Ms. Mulet in regards to that motion that you ruled on. Instead  
6 of her coming and reciting all of this, we stipulated to it  
7 because it was in her declaration anyway.

8 THE COURT: Can we mark the declaration? Because that  
9 must be what I relied on at the time of the motion.

10 MR. CHARNEY: You relied on that and then Professor  
11 Fagan also put it in, but he's already testified.

12 THE COURT: Put aside him. But can we get that  
13 declaration back so I don't have to dig it out and mark it as  
14 an exhibit here so it will be part of this trial record?

15 MR. KUNZ: Sure.

16 THE COURT: Go ahead with what you were reading. You  
17 were up to there were 66.

18 MR. KUNZ: So, I think I did the 62 occurred within  
19 one mile of 1359 Beach Avenue.

20 Of the 66 burglary complaints, 28 occurred within  
21 one-half mile of 1359 Beach Avenue.

22 Defendant's Exhibit S14 is a fair and accurate  
23 depiction of what it purports to be -- namely, a map plotting  
24 the location of the 66 burglary complaints made in the 43rd  
25 precinct in January and February 2008. The map shows the

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1 location where David Floyd was stopped on February 28, 2008,  
2 with one and one-half mile radius around that address  
3 indicated. In addition, the map displays the boundaries of the  
4 43 precinct, as well as census tracts, parks and NYCHA property  
5 in the 43 precinct. The parties agree to admit the document  
6 into evidence.

7 THE COURT: I have to ask is the NYCHA property the  
8 light brown?

9 MR. KUNZ: Yes. The key on the --

10 THE COURT: I see it. Thank you.

11 MR. KUNZ: According to the 2004-2008 NYPD complaint  
12 report database, in January and February 2008 there were seven  
13 complaints of possession of stolen property within the 43  
14 precinct.

15 According to the 2004-2008 NYPD complaint report  
16 database, from July 1, 2007 until December 31, 2007 there were  
17 233 complaints of burglaries and 19 complaints of possession of  
18 stolen property within the 43rd precinct.

19 According --

20 THE COURT: One second, please.

21 Can you remind me when the Floyd stop was?

22 MR. CHARNEY: February 27, 2008.

23 THE COURT: Thank you.

24 MR. KUNZ: I think that's right and I'm just realizing  
25 that -- there there's a typo in the 12th stipulation that I

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1 read, which indicated that the stop was on February 28 -- I'm  
2 sorry February 28. It was, in fact, February 27.

3 THE COURT: Thank you.

4 MR. KUNZ: According to the 2004-2008 NYPD complaint  
5 report database, in January and February 2008 there were 560  
6 complaints of burglary, 106 complaints of possession of stolen  
7 property, and 6 complaints of possession of burglary tools  
8 within the Bronx.

9 According to the 2004-2008 NYPD complaint report  
10 database, from July 1, 2007 until December 31, 2007, there were  
11 2,213 complaints of burglaries, 300 --

12 THE COURT: I'm sorry. Are we going to get to it in  
13 the Bronx?

14 MR. KUNZ: This is in the Bronx as well.

15 THE COURT: I'm sorry to interrupt. Go ahead.

16 MR. KUNZ: 310 complaints of possession of stolen  
17 property and 10 complaints of possession of burglary tools  
18 within the Bronx.

19 According to the 2004-2008 NYPD complaint report  
20 database, in January 2008, there was only one reported burglary  
21 in census tract No. 66, the census tract in which 1359 Beach  
22 Avenue was located, and zero reported burglaries in the  
23 immediately adjacent census tract No. 214.

24 As Your Honor can --

25 THE COURT: Is part of your stip did you cover

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1 February 2008?

2 MR. CHARNEY: That's in the last one.

3 MR. KUNZ: The next one is according to the 2004-2008  
4 NYPD complaint report database, in February 2008, there were  
5 zero reported burglaries in census tracts Nos. 66 and 214.

6 I was just going to point out, as your Honor can see,  
7 the census tracts are indicated on this map with the red lines.  
8 I can zoom in a little bit. It's may be hard to see.

9 MR. CHARNEY: See the two up there, 66 and 214?  
10 Do you see where the star is?

11 THE COURT: Yes. Thank you.

12 All those other numbers, 208 -- these are all census,  
13 all the red figures?

14 MR. CHARNEY: Yes.

15 MR. KUNZ: So that's the end of the stipulations. I  
16 believe I actually may have a copy of the Tracy Mulet  
17 declaration with me.

18 THE COURT: Then if you do -- which side will mark it  
19 as an exhibit? Does it matter?

20 MR. KUNZ: We can mark it.

21 THE COURT: So it will be exhibit.

22 MR. KUNZ: I'll have to check.

23 Y14.

24 (Defendant's Exhibit Y14 received in evidence)

25 MR. KUNZ: And there was also exhibits that Ms. Mulet

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1 referred to which listed the actual addresses. We'll put those  
2 in as well.

3 THE COURT: They can just be exhibits to the  
4 declaration.

5 MR. KUNZ: Exactly. It will just be the entire  
6 declaration with exhibits.

7 THE COURT: Okay. Sounds like we're done. Maybe --  
8 what?

9 MR. CHARNEY: We had a question about the closing but  
10 if your Honor wants to --

11 THE COURT: We can do that.

12 What I was going to say if -- Ms. Cooke, if you would  
13 e-mail my clerk whenever you hear from Dr. Purtell or Dr. Smith  
14 as to whether we're expecting them Monday or at what time. I  
15 guess plaintiffs certainly want to know too so let us both  
16 know.

17 MS. COOKE: My understanding, regardless, Professor  
18 Fagan is Monday morning.

19 THE COURT: That is true because I was told that was  
20 the only time he had the whole week.

21 MR. MOORE: It is.

22 THE COURT: What did you want to ask about?

23 MR. CHARNEY: We wanted to make sure we were on the  
24 same page with respect to the closings. I guess two questions.  
25 One is how much time each side is allotted and then the order.

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1 THE COURT: The order is you're last. You have the  
2 burden of proof. That is standard in every civil case.

3 MR. CHARNEY: So that's easy.

4 THE COURT: There's only one summation each. We don't  
5 do rebuttal summations in civil cases. So it's defense and  
6 then plaintiff. As far as the time, I'm pretty open. What you  
7 ask for is what you get. That has been my view up until now.

8 MR. CHARNEY: So is the entire day of May 20, ten to  
9 four available?

10 THE COURT: Its available, if you can talk that long.

11 MR. CHARNEY: How long do you guys anticipate?

12 MS. GROSSMAN: I know we took an hour-and-a-half for  
13 the opening so I know we'll need more than that.

14 THE COURT: So what do you think? Just basically you  
15 want half of the full day?

16 MS. GROSSMAN: I think that makes sense, to allot  
17 that. If we finish sooner --

18 THE COURT: So a full day is usually two and quarter  
19 hours in the morning -- no, two-and-a-half. We go  
20 two-and-a-half in the morning and we always go two-and-a-half  
21 in the afternoon. So it sounds like you get 2:00 to 4:30. And  
22 they get 10:00 to 12:45 with a fifteen-minute break.

23 MR. CHARNEY: That works for us.

24 THE COURT: If you're going to use any demonstratives,  
25 I'll say it over and over again, you must show them to the

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1 other side unless they are already in evidence, if you create  
2 another demonstrative for the purpose of summation.

3 MR. MOORE: Anything new.

4 THE COURT: Anything new. Sometimes lawyers use  
5 PowerPoints or demonstratives during the summation. If you  
6 plan to do that, you must show it to the other side first.

7 MR. CHARNEY: Thank you, your Honor.

8 THE COURT: Let's say by close of business Thursday so  
9 there is no surprise -- no last minute surprises.

10 MR. CHARNEY: Yes, your Honor.

11 THE COURT: All right. I guess that's it.

12 MR. CHARNEY: Thank you your Honor.

13 THE COURT: See you Monday.

14 (Adjourned to May 13, 2013 at 10:00 a.m.)

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