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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

New York, N.Y.
April 29, 2013
10:08 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

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1 (In open court; Trial resumed)

2 JAMES SHEA, resumed.

3 MS. COOKE: Housekeeping matter before we begin.

4 Reviewing the transcript there are some errors with
5 respect to admissions of exhibits from the record I just wanted
6 to clear up.

7 Defendants O3 and C4 were mistakenly recorded as O4
8 and C3 when they were listed as admitted so I like to correct
9 the record. It's O3 and C4 were admitted.

10 Further, N5 was not transcribed as received but the
11 Court received N5.

12 And, finally, T11 doesn't indicate it was accepted
13 into evidence but it was.

14 THE COURT: It was.

15 MS. COOKE: So just those four items.

16 THE COURT: Thank you.

17 (Defendants' Exhibits O3, C4, N5, and T11 received in
18 evidence)

19 CROSS-EXAMINATION CONTINUED

20 BY MS. HOFF VARNER:

21 Q. Good morning.

22 A. Good morning.

23 Q. Thank you for coming back.

24 You testified on Thursday that prior to serving as the
25 commanding officer for the police academy you were a precinct

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1 commander for the 47th and 49th precincts, correct?

2 A. Not immediately prior. But yes, I was.

3 THE COURT: What borough are those?

4 THE WITNESS: In the Bronx.

5 Q. I just was going to ask for what years were you the
6 precinct commander for the 47th?

7 A. (No response).

8 Q. Approximately is fine.

9 A. Two thousand two, three, four, somewhere around there.

10 Q. What about the 49th?

11 A. 2000 until whenever I left for the 47. So I was up
12 there -- like I got to the -- I took over the -- I took over
13 the 49 either at the end of 2000 or beginning of 2001. And I
14 was there for about three years, I think. And then I moved to
15 the 47.

16 Q. Okay.

17 A. And I stayed there about two-and-a-half years.

18 Q. Okay. Thank you.

19 I want to turn your attention to Exhibit R3 which was
20 admitted into evidence, Bates stamped NYC_2_00005854 through
21 58.

22 This is the lesson plan coversheet for the sergeant's
23 leadership course that you testified a little bit about on
24 Thursday.

25 A. Okay.

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D4t9flol Shea - cross

1 Q. Turn to the second page of this document. We'll pull it up
2 on the screen too.

3 This sets forth the various obligations of sergeants
4 serving as the desk officer, correct?

5 A. Yes, it does.

6 Q. And this is the training guide -- sorry. This is the
7 lesson plan that cues instructors on how to train newly
8 promoted sergeants, correct?

9 A. Yes.

10 Q. You testified on Thursday that sergeants are trained to
11 review every street stop for reasonable suspicion, correct?

12 A. Trained to review every street stop completely, yes.

13 Q. And that would include reviewing it for reasonable
14 suspicion?

15 A. Yes.

16 Q. But if you look at this -- at section one of this document
17 which is R3, it doesn't tell sergeants or desk officers to
18 review street stops for reasonable suspicion, does it?

19 A. It doesn't use the words reasonable suspicion, no.

20 Q. And it doesn't use the words legal basis, does it?

21 A. No, it does not.

22 Q. And it doesn't train sergeants on how to evaluate UF 250s
23 to determine whether there was reasonable suspicion, does it?

24 A. Pardon me, ma'am?

25 Q. Well it instructs desk officers to review UF 250s, correct?

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1 A. Yes.

2 Q. But it doesn't instruct officers on how they might look at
3 a UF 250 to determine if there was reasonable suspicion for the
4 stop, correct?

5 A. The lesson plan doesn't reflect that, no.

6 Q. In addition to this leadership course for sergeants,
7 sergeants also get the Rodman's neck training, the stop,
8 question and frisk refresher course; isn't that right?

9 A. Yes.

10 Q. That's the same course that the impact officers and the
11 patrol officers have all received?

12 A. Yes.

13 I apologize when you said sergeants you were still
14 referring to newly promoted sergeants?

15 Q. Yes.

16 A. Then my answer remains, yes.

17 Q. So just for the record newly promoted sergeants all get
18 that Rodman's Neck refresher training?

19 A. Yes.

20 Q. And lieutenants -- newly promoted lieutenants and captains
21 get that same Rodman's Neck training?

22 A. Yes.

23 Q. So let's turn back now to Defendants' Exhibit S11, which is
24 the July 2012 draft of the training guide section titled police
25 student's guide, policing a multiple cultural society. For the

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1 record this is Bates NYC_2_00025858 through 25954.

2 This guide, S11, provides information about various
3 cultural and ethnic groups that are part of New York City,
4 correct?

5 A. Yes.

6 Q. And it makes the point that some groups are likely to have
7 distrust or fear of the police, correct?

8 A. Yes.

9 But I mean are we -- do you want to point to a
10 particular -- it does make that point but I don't know if
11 you're pointing to a particular thing. I'm not sure it's in
12 what I'm reading right in front of me.

13 Q. Well, for example, let's look at page 11.

14 A. Thank you.

15 Q. NYC_2_00025868. If you look at the -- I think it's the
16 second paragraph it reads that, "Populations who come from
17 countries with repressive governments tend to be more fearful
18 of police than those who have not."

19 Do you see?

20 A. Yes.

21 Q. It cites groups from Guatemala, Haiti, El Salvador
22 Argentina and parts of Africa as places where people from those
23 places of the world might be fearful of the police, correct?

24 A. Yes.

25 Q. If you turn to page 31 which is NYC_2_00025888.

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Shea - cross

1 That states that African-Americans similarly have
2 reasons to be suspicious or distrustful of the police; isn't
3 that correct?

4 A. Yes.

5 Q. People who fear or distrust the police might avoid
6 interacting with police officers they see on the street; isn't
7 that right?

8 A. Yes.

9 Q. And they might avoid making eye contact with the police?

10 A. Yes.

11 Q. They might get nervous when they see a police officer?

12 A. Yes.

13 Q. But isn't it true that the NYPD trains officers that all of
14 these things, avoiding officers, avoiding eye contact, getting
15 nervous, are characteristics of armed suspects?

16 A. Possible characteristics, yes.

17 Q. So let's take a look at Defendants' Exhibit C8 which is the
18 PowerPoint on the characteristics of armed suspects that was
19 introduced into evidence on Thursday. Just for the record this
20 is the same presentation that was offered as part of the
21 refresher course at Rodman's Neck, correct?

22 A. I'm looking for it.

23 MS. COOKE: Chief, it's to your right there.

24 THE COURT: It was your left. She said it was to your
25 right.

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1 MS. COOKE: I'm sorry. Your left. My right.

2 THE WITNESS: I think I have it. What page are we on,
3 attitude and behavior?

4 Q. It's slide 28, yes. Attitude and behavior.

5 A. Okay.

6 Q. It's on the screen.

7 And this indicates that one characteristic of an armed
8 suspect is the reaction to law enforcement passing by, for
9 example, going into a building to avoid detection, correct?

10 A. Yes.

11 Q. And if you turn to slide 38, another characteristic of an
12 armed suspect is walking away from the police or abruptly
13 changing direction; isn't that correct?

14 A. Yes.

15 Q. And if you look at slide 41, another characteristic --
16 sorry. The NYPD also trains officers that behaviors like eye
17 contact and nervousness can also be characteristics of armed
18 suspects?

19 A. Yes.

20 Q. So isn't it true that the NYPD is training officers that
21 the characteristics associated with minority groups who are
22 fearful of the police are the exact same characteristics
23 associated with armed suspects?

24 A. No. I wouldn't agree with that statement.

25 Q. Why not?

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1 A. Because everything -- it's not in context. We train the
2 officers to be aware of possible reactions among various
3 minority groups. I think I testified about that on direct. So
4 that they're aware of them. So that when they're dealing with
5 people they're aware of the life experiences they're bringing
6 to them. And in that context, then the same characteristics
7 can be characteristic of someone who is armed and is afraid of
8 the police because they're armed. So we're training them both
9 so that they're aware of both when they are evaluating the
10 circumstance and deciding: What am I dealing with? Do I have
11 reasonable suspicion?

12 Like we don't -- it's impossible to say, "Eye contact
13 is possibly because they don't like the police, so don't
14 consider that they might be armed and avoiding eye contact."

15 We have to make them aware of both so that they can
16 then judge in the context they're dealing with at that moment
17 exactly what they're dealing with.

18 Q. I think that similarly you testified on Thursday that
19 officers are trained that a single behavior doesn't create
20 reasonable suspicion?

21 A. Did you say "does not"?

22 Q. A single behavior does not create reasonable suspicion. Do
23 you remember testifying that on Thursday?

24 A. Yes. What I think I said it's the totality of the
25 circumstances.

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1 THE COURT: All she's saying any -- just one of
2 these -- if somebody happens to be a stutterer, that's not
3 going to do it. It can't be any one alone. Reasonable
4 suspicion is always the totality of the circumstances.

5 Q. But that training that any single behavior does not alone
6 create reasonable suspicion isn't included in this PowerPoint
7 presentation, is it?

8 A. That line?

9 Q. That line or that message in sum or substance.

10 A. No.

11 THE COURT: Taking this PowerPoint alone?

12 THE WITNESS: No.

13 THE COURT: Right. You wouldn't know.

14 Q. And that message that a single behavior alone isn't enough
15 to create reasonable suspicion isn't part of the lesson plan
16 that goes with this presentation, is it?

17 A. No, it's not.

18 Q. Similarly, you testified about various physical
19 characteristics like an asymmetry in someone's jacket that
20 could lead officers to believe that the suspect is armed,
21 correct?

22 A. Yes.

23 Q. And you testified on Thursday that an asymmetry in
24 someone's jacket pockets isn't enough to create reasonable
25 suspicion.

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1 Do you remember making that point on Thursday?

2 A. In and of itself, yes.

3 Q. Right. But that point, that the asymmetry alone isn't
4 enough, isn't included in this PowerPoint, is it?

5 A. No, it's not.

6 Q. And it's also not part of the lesson plan that goes with
7 this PowerPoint, is it?

8 A. No, it's not.

9 Q. And finally, you discussed a series of unusual firearms on
10 Thursday, including a pen knife, a mobile cellphone gun and
11 others.

12 Do you remember discussing those?

13 A. A pen gun, I believe.

14 Q. A pen gun.

15 A. Yes, I do.

16 Q. And with respect to a mobile cellphone gun, you testified
17 that these are rare; isn't that right?

18 A. Relatively rare, yes.

19 Q. I think at some point you even used the word pass?

20 A. I said the model that it's based on is pass.

21 Q. Right. And with respect to pen guns, you testified that
22 those are very distinctive from an ordinary pen and that you
23 only find one every now and then?

24 A. I said -- I hope I didn't misspeak. I said they're
25 distinctive upon investigation. It looks like a pen but if you

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1 investigate further it's heavier and slightly -- it has the
2 little nob out the side but if it was just sticking out of the
3 top of someone's pocket maybe you couldn't tell.

4 Q. But, in fact, the lesson plan that goes with this
5 presentation of the characteristics of armed suspects which is
6 Exhibit W3, trains officers -- trains instructors to tell
7 officers that they should always be alert for these firearms
8 because there are many devices like these that are capable of
9 firing a shot; isn't that right?

10 A. Yes.

11 MS. HOFF VARNER: Just one moment.

12 (Pause)

13 Q. So if we look at Exhibit W3 which is already up on the
14 screen. Thank you, Ms. Martini.

15 We look at page 20 of that exhibit, which is Bates
16 stamped NYC_2_00023125, this is the section that refers to
17 unusual firearms, correct?

18 A. Yes.

19 Q. And this trains the instructors that unusual firearms
20 include cellphone guns, pen guns, ballistic knives, knife guns,
21 Derringers, zip guns, and more, correct?

22 A. Yes.

23 Q. And it trains instructors that they should tell officers
24 that today, "There are all times of firearms that don't look
25 like firearms and there are many devices capable of firing a

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1 shot," correct?

2 A. That's correct.

3 Q. And it trains instructors to tell their officers that,
4 "With this in mind, officers should always be alert to these
5 firearms and the potential that they could be in the possession
6 of the next person encountered," correct?

7 A. Correct.

8 MS. HOFF VARNER: No further questions from me. Thank
9 you.

10 THE COURT: Thank you.

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

12 REDIRECT EXAMINATION

13 BY MS. COOKE:

14 Q. Good morning, Chief Shea.

15 A. Good morning.

16 Q. You testified on cross-examination on Thursday with respect
17 to the free-to-leave test, the reasonable person feeling free
18 to leave.

19 Do you recall those questions?

20 A. Yes.

21 Q. Generally.

22 What are recruit officers trained regarding when an
23 individual is free to leave?

24 A. They are trained that any -- that unless they have
25 reasonable suspicion that the person is committing or is about

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1 to commit or has committed a felony or a misdemeanor described
2 in the penal law, the person is free to leave the encounter at
3 any time.

4 Q. And what about the objective test as to whether or not a
5 person feels free to leave in a circumstance as a police
6 officer? What are recruit officers trained regarding that
7 concept?

8 A. They're trained -- I believe I mentioned it before --
9 they're trained that they have to keep in mind that the test is
10 not whether the person in front of them feels free to leave.
11 It's whether a reasonable person would. And they are trained
12 that that -- that everything they do impacts on that fear so
13 they have to be aware of how they stand, how they're speaking
14 to the person, interrogatory nature of questions as opposed to
15 just simple questioning. The person's ability to leave that
16 area, blocking someone in a doorway as opposed to standing next
17 to somebody on the street. It's almost -- again, you know, the
18 possibilities they could encounter are infinite.

19 Q. Directing your attention to Exhibit Q12 already in evidence
20 which is the police student's guide on policing legally street
21 encounters, page 13, carry over to 14.

22 Q11?

23 A. Q11?

24 Q. Yes. Q11.

25 It's on the screen as well.

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1 But on page 13, at the bottom of the screen, there's a
2 heading for the section the stop and the use of reasonable
3 force?

4 Do you see that?

5 A. Yes.

6 Q. And then carrying over to page 14, the top paragraph.

7 Do you see that?

8 A. Yes.

9 Q. And is that paragraph providing written instruction to
10 police recruits regarding the concepts you just discussed where
11 an officer could be behaving in a manner which might lead a
12 reasonable person to believe they're not free to leave?

13 A. This would be their homework, for lack of a better word.
14 They would be required to read this before the class. There
15 would be teaching in addition to this.

16 Q. Gut generally this paragraph represents the concepts you
17 were just discussing?

18 A. Yes, it does. It talks about how a forcible stop can be
19 constructive, or actually stopping a person, and it lists some
20 of the things.

21 Q. And directing your attention to pages 2 and 3 of this
22 police student's guide, Exhibit Q11.

23 Do you see the mandatory legal bureau bulletins
24 reading?

25 A. Yes.

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1 Q. Could you explain what those are and the purpose of those
2 for the recruit officer training?

3 A. Accepting my description before, that this is homework that
4 has to be done before they attend the class on stop, question
5 and frisk. In addition to this student's guide they receive
6 the actual patrol guide and legal bureau bulletins that affect
7 this chapter and they're required to read those also. These
8 are approximately two dozen legal bureau bulletins over the
9 years, all of which address one or more element of stop,
10 question and frisk or stopping -- stopping someone because
11 sometimes it actually deals with DeBour.

12 Q. Chief Shea, directing your attention to questions you were
13 asked during cross-examination on Thursday regarding the
14 scenarios and role plays for the street encounters for police
15 recruits.

16 A. Yes.

17 Q. Do any of those scenarios or role plays involve the concept
18 of an officer dealing with this reasonable person feeling free
19 to leave?

20 A. Yes. They have to -- there are several -- separating the
21 scenarios and role plays and, again, we do the mock precinct at
22 the end of their training. The difference is that during the
23 scenario role plays the instructor will sometimes stop and
24 immediately instruct an officer; whereas, in the mock precinct
25 we allow them to continue and we do an evaluation upon

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1 completion.

2 There are multiple scenarios in which they will have
3 to deal with people out in the street in a variety of
4 circumstances and they will have to decide. They will have to
5 make decisions what level of intrusion am I permitted during
6 this scenario.

7 For instance, in the mock precinct there will be
8 people fitting descriptions that are in the crime information
9 center. There will be people leaving buildings at
10 inappropriate times. There will be -- multiple encounters that
11 we built in. One, a mother reports a young girl missing and
12 then the officer sees the girl walking with an older man --
13 sees a girl fitting the description walking with an older man
14 and he has to approach and request information. And depending
15 on how it goes, the man will speak to the young girl in a
16 foreign language so that the officer doesn't know what he just
17 said. The girl will claim I'm not missing; my mother is crazy.
18 We have all kinds -- and the officer will have to -- and then
19 the man will try to leave, will take the girl's hand and try to
20 pull her away. The officer will have to decide: What level of
21 suspicion am I at? What am I allowed to do at this level?

22 And there is no real right or wrong for them at that
23 point because they're new and they're starting out and if they
24 don't feel that reasonable suspicion, then they're not --
25 because they have to feel and be comfortable that they can

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1 articulate it.

2 Q. What about the scenarios currently at use in the Rodman's
3 Neck stop, question and frisk refresher course? Are any of
4 those scenarios -- do any of those scenarios include the
5 situation where someone tells the officer they want to leave?

6 A. All three do.

7 Q. And what is the -- in order to successfully complete that
8 scenario, what is the officer -- what should the officer do in
9 that situation?

10 A. In the first scenario which deals with an anonymous call of
11 drug sales, he or she should allow anyone to leave who wants
12 to.

13 In the second scenario which involves two people
14 fitting a description of an immediately past robbery. He
15 should not allow the person to try to leave because he clearly
16 has reasonable suspicion that they did it based on the
17 proximity, the amount of time and the identical clothing from
18 the description, and distinctive.

19 And in the third scenario, it's a vertical in a
20 housing development and someone leaving and he has to allow the
21 people to leave who want to leave.

22 Q. Chief Shea, with respect to the scenarios regarding stops
23 and street encounters, the documents we looked at which
24 identify lesson plans for those scenarios generally had some
25 type of description or a 911 call or something the radio

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1 dispatcher was providing to the officers.

2 Do you recall that?

3 A. Yes, I do.

4 Q. And why is that, that the scenarios aren't set up so that
5 they are based on the officers wandering around making
6 observations and conducting stops thereafter?

7 A. That's a -- that's for our training purposes. For lack of
8 a better word, we can force the action by giving a radio run
9 with a description. If I just had a scenario where the officer
10 was just wandering and making his own observations, the first
11 officer to do it could just wander all day for lack of a
12 better -- and might not be able to observe or articulate
13 anything and we wouldn't get any training out of that and we'd
14 grind to a halt, quite frankly.

15 We have to get a large number of people through this
16 training and make sure everyone does it. So the way to make
17 sure that the stop or the situation emerges is we have to give
18 them the radio run with the description.

19 Q. In the mock precinct situation you were discussing that the
20 recruits attend at the end of their time at the academy, is
21 there the opportunity there for officers to conduct patrol,
22 make observations and make stops that wouldn't be forced, for
23 lack of a better word, like the scenarios we were just
24 discussing?

25 A. Yes, there are.

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- 1 Q. And do, in fact, recruits make observations of reasonably
2 suspicious behavior during the mock precincts and conduct
3 street stops?
4 A. Some do. Some don't.
5 Q. Directing your attention to Q11 again, page 20.
6 A. Yes.
7 Q. This is the section titled preparation of department form,
8 stop-and-frisk report worksheet.
9 A. Yes.
10 Q. When are recruit officers trained that they should complete
11 a stop-and-frisk report worksheet?
12 A. They are trained that they are required to complete a
13 stop-and-frisk report worksheet any time they stop someone
14 based on reasonable suspicion and the person is not free to
15 leave.
16 Q. Is that regardless of whether or not the situation results
17 in arrest?
18 A. Yes. The outcome is immaterial. The reason for the -- the
19 initial reason for your stop is what controls whether you
20 should do a 250.
21 Q. And, in fact, is that instruction that regardless of the
22 outcome included in these paragraphs under the title
23 preparation of department form? Directing your attention to
24 the --
25 A. Yes. It says there are two possible outcomes. You develop

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1 probable cause and place the suspect under arrest or you do not
2 lead to probable cause and you release the suspect. In either
3 case, it is important to record all the details.

4 Q. And this section here we're referring to on page 20, this
5 is the section of the police student's guide that follows the
6 discussion on page 11 -- I'm sorry on page 14 about the
7 reasonable person feeling free to leave test, correct?

8 A. Yes.

9 Q. Directing your attention to Exhibit R3, which is the lesson
10 plan coversheet for newly promoted sergeants that counsel
11 questioned you about on cross this morning.

12 A. Yes.

13 Q. Now, we've looked at several lesson plans and R3 is one of
14 them.

15 Are the lesson plans a script?

16 A. No, they are not.

17 Q. So is the content imparted by the instructor during the
18 lesson to newly promoted sergeants necessarily more detailed
19 than what is provided here in the lesson plan coversheet
20 material?

21 A. The lesson plan is the guide, for lack of a better word,
22 this guides them in what -- pardon me -- in what the lesson
23 content should include so that it stays consistent among
24 varying instructors.

25 But yes, of course they can add to it and enlarge upon

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1 it while they're teaching.

2 Q. So if certain words or phrases aren't present in the lesson
3 plan is the instructor prevented from using those words or
4 phrases in their instruction?

5 A. No.

6 Q. And on cross-examination you were asked questions regarding
7 the characteristics of armed suspects PowerPoint?

8 A. Yes.

9 Q. And specifically those -- the list of behaviors, and it was
10 in the context of discussing the policing a multicultural
11 society.

12 Do you recall that? The list was --

13 A. The multi cultural society is not in this PowerPoint.

14 Q. No. It was the list of characteristics such as blushing or
15 stuttering.

16 A. Yes.

17 Q. And counsel asked you questions about whether or not
18 anywhere in that PowerPoint it said that any single one of
19 those characteristics would not be sufficient for reasonable
20 suspicion, correct?

21 A. Yes.

22 Q. And you said that that phrase or language wasn't present in
23 the PowerPoint.

24 Do you recall that?

25 A. Correct.

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D4t9fl01 Shea - redirect

1 Q. I'd like to show you now the video that accompanies the
2 lesson plan with respect to characteristics of armed suspects,
3 a portion of it, and we'll ask you a question again.

4 THE COURT: How long is this?

5 MS. COOKE: Just a clip, your Honor. We watched the
6 whole video on Thursday. It's that same video. We're going to
7 redirect the witness to a portion.

8 Beginning at 4:08.

9 (Videotape played)

10 MS. COOKE: That was ending at 5:25. That's the video
11 that is in evidence as Exhibit C8.

12 Q. So Chief Shea in the training video are officers, in fact,
13 instructed that single characteristics alone are insufficient
14 for reasonable suspicion?

15 A. They're trained that all of these characteristics may be
16 insufficient for reasonable suspicion, yes.

17 Q. And the last characteristic we saw in the video there was
18 someone abruptly turning away and running away from an officer
19 upon sight, correct?

20 A. Yes.

21 Q. Is that one of the characteristics you were discussing
22 earlier in the multicultural society context where officers --
23 where individuals from different cultures might have different
24 impressions of the police?

25 A. Yes.

D4t9fl01 Shea - redirect

1 Q. And therefore may have different reactions upon seeing the
2 police?

3 A. Yes.

4 Q. And what is the point of training officers with respect to
5 varying cultures experiences with law enforcement?

6 A. I believe I testified already. We want to make sure -- the
7 NYPD wants to make sure its officers know that New York City
8 has a multitude of people from different areas, all of them
9 bring different life experiences to their interactions with the
10 police and you can't -- there is no cookie cutter approach to
11 policing in New York City. People react differently. You have
12 to be aware -- to the extent you can, you have to try to be
13 aware of their prior experiences, etc. and how they may react
14 to you. Because, for instance an abrupt turning could be
15 indicative of somebody suspicious of the police in general or
16 it could be indicative of somebody having a reason to be
17 suspicious of the police at that moment.

18 So you have to be aware that there's two possible
19 explanations for it so that you can keep that awareness in the
20 totality of the circumstances. You have to consider
21 everything. You can't just assume that they're turning away
22 because they're armed. They may be turning away because
23 they're historically suspicious of the police and have no
24 historic memory of good experiences with the police.

25 MS. COOKE: No further questions for this witness,

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D4t9flol Shea - redirect

1 your Honor.

2 MS. HOFF VARNER: No recross, your Honor.

3 THE COURT: Okay. You're done. Thank you.

4 (Witness excused)

5 MR. MARUTOLLO: Your Honor, the defendants call
6 Detective Damian Vizcarrondo to the stand.

7 DAMIAN VIZCARRONDO,

8 called as a witness by the Defendants,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MARUTOLLO:

12 Q. Good morning, Detective Vizcarrondo.

13 A. Good morning.

14 Q. Are you currently employed?

15 A. Yes, I am.

16 Q. Where are you employed?

17 A. New York City Police Department.

18 Q. How long have you been employed by the New York City Police
19 Department?

20 A. Approximately twelve years.

21 Q. Did you attend and graduate from the police academy?

22 A. I did.

23 Q. And when was that?

24 A. March of 2002.

25 Q. What is your present rank with the NYPD?

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D4t9fl01 Vizcarrondo - direct

- 1 A. Detective.
2 Q. When were you promoted to detective?
3 A. Approximately November of 2006.
4 Q. And what is your current command?
5 A. I'm currently assigned to organized crime investigation
6 division; more specifically, joint organized crime task force.
7 Q. When were you assigned there?
8 A. Recently. 2013. March.
9 Q. Before you joined the organized crime intelligence
10 division, what command were you assigned?
11 A. Narcotics Borough Queens.
12 Q. And what was your position when you were at Narcotics
13 Borough Queens?
14 A. Detective investigator.
15 Q. For how many years were you in Narcotics Borough Queens?
16 A. Approximately eight years.
17 Q. What were your day-to-day duties and responsibilities in
18 Narcotics Borough Queens?
19 A. Day-to-day duties consist of addressing community -- issues
20 in the community as well as gathering intelligence, fostering
21 relationships with confidential informants and things of that
22 nature.
23 Q. While in Narcotics Borough Queens how, if at all, did you
24 gather intelligence from the community?
25 A. Several ways. One of the ways was simply just engaging the

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D4t9flol Vizcarrondo - direct

1 public and addressing people, whether it be at a market, you
2 know, on the street, people that you encounter throughout your
3 day.

4 Q. Now have you learned anything about narcotics activity as a
5 result of these community interactions?

6 A. I have.

7 Q. What have you learned?

8 A. Well through engaging the public I've learned specific
9 locations where narcotics were believed to be sold, types of
10 narcotics, you know, what their street names were, cost, street
11 value, and things like that.

12 Q. Do you remember any specific encounters with pedestrians
13 where you gained knowledge of narcotics activity?

14 A. Yeah, absolutely.

15 Q. Can you describe such an encounter?

16 A. Sure. Late 2012, I was in the vicinity of 133rd Avenue and
17 96 Street, just in the area of patrolling speed, around
18 20 miles an hour. I saw a gentleman on the street. He was
19 packing and unpacking his vehicle. I waved hello to him. He
20 returned the hello. Approached the vehicle. Apparently knew
21 who I was. And we engaged in a brief conversation where he
22 proceeded to tell me about a location right down the block that
23 he believed to be a narcotics prone location or an area where
24 drugs were being sold.

25 He described individuals exiting the house,

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D4t9flol Vizcarrondo - direct

1 interacting and engaging with vehicles, approaching them on the
2 street. And you know shortly thereafter, after doing a few
3 observations, we, in fact, did affect several arrests at the
4 location based on that information provided.

5 Q. Now, just going back to Narcotics Borough Queens in
6 general. Did you attend tactical meetings also referred to as
7 tac meetings while a detective in Narcotics Borough Queens?

8 A. Yes, absolutely.

9 Q. What is a tac meeting?

10 A. A tac meeting is a brief period prior to going onto the
11 street where we discuss the plan for the day, areas that we
12 plan on visiting as well as crime trends, each individual's
13 assignment on the buy-and-bust team, and what their assignments
14 consist of.

15 Q. How often did you attend these tac meetings?

16 A. Anytime that we went out to the street to either do
17 buy-and-bust, or observations, or anything like that, we would
18 have a tac meeting.

19 Q. Did you receive any training at these tac meetings?

20 A. We did. There was training at every tac meeting. It was
21 part of the actual tac plan.

22 Q. Have you ever received training on stop, question and frisk
23 at the tac meetings?

24 A. Yes.

25 Q. What kind of training in this area did you receive?

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D4t9flol Vizcarrondo - direct

1 A. Well, we received training on several occasions at the tac
2 meeting. We received training as far as the proper ways of
3 filling out stop, question and frisk. The different levels of
4 stop. And things like that.

5 Q. Now, at these tac meetings did your supervisor ever tell
6 you that you needed to complete a certain number of stops?

7 A. No.

8 Q. Turning your attention to May 29, 2007. What unit were you
9 working on, again, on the date of this incident?

10 A. I was in Narcotics Queens.

11 Q. And were you actually working on May 29, 2007?

12 A. Yes.

13 Q. And what hours were you working that day?

14 A. 1327 by 2200 hours, what we commonly refer to as the two
15 the ten.

16 THE COURT: As what?

17 THE WITNESS: Two to ten, 1327.

18 Q. Did you go to a tac meeting on May 29, 2007?

19 A. Yes, I did.

20 Q. What was discussed at the tac meeting on May 29, 2007?

21 A. Again, we discussed the locations that we planned on
22 visiting, each individual's assignments. We did also discuss
23 crime trends and patterns within the precinct.

24 Q. Were you made aware of a tactical plan or tac plan at the
25 May 29 meeting?

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D4t9flol Vizcarrondo - direct

- 1 A. Yes, I was.
2 Q. Now, what is a tac plan?
3 A. A tac plan is a sheet of paper which consists of all the
4 information that I just described; again, the locations that we
5 planned to visit as well as the -- each individual's
6 assignments on the team, any crime trends within the confines
7 that we are assigned to work. Those would all be policed on
8 the tac plan.
9 Q. What crime patterns, if any, were discussed at the tac
10 meeting on May 29, 2007?
11 A. I believe on that day it was robberies and burglaries.
12 Q. Now, on May 29, 2007 did your supervisor tell you that you
13 needed to make a certain number of stops that day?
14 A. No. Absolutely not.
15 Q. Who, if anyone, were you working with on May 29, 2007?
16 A. I was working with Detective DeMarco as well as Detective
17 Hawkins.
18 Q. How were you traveling that day?
19 A. Motor vehicle.
20 Q. Were you driving?
21 A. Yes, I was.
22 Q. Do you remember what kind of vehicle you were driving?
23 A. Yes. It was a blue mini van if I recall correctly.
24 Q. Were you in uniform?
25 A. No, I was not.

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D4t9flol Vizcarrondo - direct

1 Q. And I notice that your head is shaved. Was your head
2 completely shaved at the time of this incident?

3 A. Yes, it was.

4 Q. Did you have your shield displayed?

5 A. Yes, I did.

6 Q. Where was your shield displayed?

7 MS. BORCHETTA: Objection. Just time period for what
8 he's talking about displaying the shield.

9 Q. While you're out in the van on May 29, 2007 where was your
10 shield displayed?

11 A. Around my neck on a lanyard and it was positioned directly
12 in front of my ballistic vest.

13 Q. Did there come a point in time on May 29, 2007 where you
14 saw an individual whom you now know to be Kristianna Acevedo?

15 A. Yes.

16 Q. Where were you when you first saw her?

17 A. I was driving southbound on 43rd Street.

18 Q. At the time you first observed her where was your van
19 going?

20 A. We were traveling between locations, again, on 43rd
21 Street.

22 Q. Can you describe the area where you first observed
23 Ms. Acevedo.

24 A. It's an industrial area, commercial, a lot of garages. It
25 was desolate. There wasn't too much going on.

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D4t9flol Vizcarrondo - direct

1 Q. What first drew your attention to Ms. Acevedo?

2 A. Well, I recall she -- her walking down the street at a fast
3 rate of speed and she was repeatedly looking over her shoulder.
4 I just got the impression that she was nervous, upset about
5 something.

6 Q. What made you think she was upset?

7 A. Again, just the rate of speed that she was walking at and
8 the repeated glancing over the shoulder.

9 Q. Did you believe she was suspicious?

10 A. No.

11 Q. When you first saw Ms. Acevedo, how far away was your mini
12 van from her?

13 A. Approximately three car lengths away.

14 Q. And where was Ms. Acevedo when you first saw her?

15 A. On the sidewalk.

16 Q. Did you observe anyone else on the street when you first
17 saw Ms. Acevedo?

18 A. No, I did not.

19 Q. Upon seeing her did you slow your vehicle down?

20 A. I did. I was traveling at a relatively slow rate of speed
21 to begin with and then I further slowed my vehicle down. My
22 partner seated in the front seat seemed to lower his window so
23 I slowed down.

24 Q. And your partner sitting in the front seat, was that
25 Detective DeMarco?

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D4t9flol

Vizcarrondo - direct

1 A. Yes, it was.

2 Q. So why did you slow the vehicle down?

3 A. Well in part I just wanted to ascertain whether or not
4 everything was okay, make sure that she wasn't in any sort of
5 distress and, again, my partner lowered the window, appeared to
6 take interest in her as well. So I slowed the vehicle down.

7 Q. What, if anything, did you hear Detective DeMarco say to
8 Ms. Acevedo when you slowed down the vehicle?

9 A. I don't recall exactly but in sum and substance it was
10 something to the effect of whether or not she was okay and just
11 letting her know that we were the police.

12 Q. Did you or anyone else ask to see Ms. Acevedo's tattoos?

13 A. No, I did not.

14 Q. Do you remember exactly what Ms. Acevedo said initially to
15 Detective DeMarco?

16 A. I don't recall verbatim what was said, no.

17 Q. But do you remember her demeanor?

18 A. Yes. She was upset, clearly.

19 Q. And where was your shield again at this point?

20 A. It was on the -- hanging from my neck outside -- what we
21 like to say the outermost garment but it was in front of my
22 ballistic vest because that was, in fact, my outermost garment.

23 Q. What happened next?

24 A. After that point after slowing the vehicle down she began
25 to run on 43rd Street opposite the direction I was traveling

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D4t9fl01 Vizcarrondo - direct

1 in.

2 Q. And what did you do next?

3 A. I placed the car in reverse.

4 Q. And why did you put the vehicle in reverse?

5 A. Well seeing as how she was obviously upset I wanted to just
6 go in reverse address her and let her know that we were, in
7 fact, the police; that she wasn't in any type of harm; and,
8 again, just to make sure that she was okay; and, again, just
9 any opportunity that I have to engage the public and anyone in
10 the community is at the very least an opportunity for me to
11 gather intelligence.

12 Q. Did there come a point when Ms. Acevedo stopped running?

13 A. Yes.

14 Q. When did she stop running?

15 A. She stopped running -- she met an individual on the
16 sidewalk that appeared to be a UPS worker, if I recall.

17 Q. And after she reached that UPS worker, what happened next?

18 A. Well, I exited the vehicle. And again just approached her,
19 identified myself and I made it a point to make sure that my
20 shield was visible. Again, it was there. And explained to her
21 that we were the police and wanted to make sure that she was
22 okay and she understood that.

23 Q. Did you do anything with your shield?

24 A. Again, other than just making -- taking a look at it and
25 making a point to make sure that it was visible, no.

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D4t9flol Vizcarrondo - direct

- 1 Q. Did Detective DeMarco and Detective Hawkins also identify
2 themselves as police officers?
3 A. Yeah, I believe they did.
4 Q. How long was your interaction with Ms. Acevedo after you
5 exited the van?
6 A. It was brief. Again, I can't put an exact time on it. But
7 I'd say a minute or so.
8 Q. At any point during the encounter did you ever ask
9 Ms. Acevedo to stop?
10 A. No.
11 Q. Did you hear Detective Hawkins say, "When you hear police
12 you stop"?
13 A. No, I did not.
14 Q. Did you say to Ms. Acevedo, "Did you forget to take your
15 medication?"
16 A. No.
17 Q. Did you hear anyone else say that?
18 A. No.
19 Q. Did you or anyone else say, "How could he help? We have
20 guns"?
21 A. No.
22 Q. Did you ever touch Ms. Acevedo during the encounter?
23 A. Did not.
24 Q. Did you ever see Detective DeMarco or Detective Hawkins
25 ever touch Ms. Acevedo?

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D4t9flol Vizcarrondo - direct

- 1 A. Did not.
2 Q. Did you ever reach into Ms. Acevedo's bag?
3 A. No, sir.
4 Q. Did you ever take any of her belongings?
5 A. No, we did not.
6 Q. Did you ever ask for her identification?
7 A. No, I did not.
8 Q. Did you or any of the other officers bang Ms. Acevedo's
9 head against anything?
10 A. No.
11 Q. Now, did you receive any discipline from the NYPD for this
12 incident?
13 A. Yes, I did.
14 Q. And what discipline did you receive?
15 A. Forfeited one vacation day.
16 Q. Was that discipline related to Ms. Acevedo's CCRB
17 complaint?
18 A. Yes, it was.
19 Q. And did you meet with the -- your precinct's integrity
20 control officer regarding this complaint?
21 A. Yes, I did.
22 Q. And during your meeting with the integrity control officer
23 what, if anything, did you discuss?
24 A. Again, I don't recall exactly but we discussed the general
25 stop and the fact that I was -- it was recommended I give up

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D4t9flol Vizcarrondo - direct

1 one vacation day.

2 THE COURT: What were you disciplined for?

3 THE WITNESS: It was in relation to the stop. I
4 believe it was improper memo book entries.

5 THE COURT: Improper memo book?

6 THE WITNESS: I believe that was the -- yes.

7 Q. Were there allegations -- to your knowledge were there
8 allegations in the CCRB complaint related to Ms. Acevedo's
9 perception that this was a stop?

10 A. I'm sorry. Could you repeat that question.

11 Q. Sure. Were -- are you aware of any allegations from the
12 CCRB complaint related to Ms. Acevedo's stop on that day, in
13 addition to the memo book entries?

14 A. Well, yeah. There were I believe several allegations made.
15 I don't remember exactly what they were. But, yeah, that was
16 the reason for the Civilian Complaint and Review Board's
17 interaction.

18 Q. And you indicated that you lost one vacation day?

19 A. That is correct, yes.

20 Q. Have you received any discipline related to stop, question
21 and frisk since this incident in 2007?

22 A. No, I have not.

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

24 THE COURT: Thank you.

25 Ms. Borchetta.

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D4t9flol Vizcarrondo - direct

1 MS. BORCHETTA: One moment, your Honor.

2 (Pause)

3 CROSS-EXAMINATION

4 BY MS. BORCHETTA:

5 Q. Good morning, Detective Vizcarrondo.

6 A. Good morning.

7 Q. You testified that you've recently joined the organized
8 crime division, correct?

9 A. Organized crime investigation division, yes, that's
10 correct.

11 Q. Did you consider that a promotion?

12 A. Yes.

13 Q. You just testified about a CCRB complaint related to the
14 incident with Ms. Acevedo, correct?

15 A. Yes.

16 Q. And you're aware that the CCRB substantiated an allegation
17 for an abuse of authority related to the stop of Ms. Acevedo,
18 right?

19 A. I believe it was substantiated. For what reasons exactly,
20 I don't recall exactly.

21 Q. But you believe it was a substantiated allegation related
22 to a stop, right?

23 A. Yes.

24 Q. Did that substantiated CCRB complaint, to your knowledge,
25 factor into your assignment to the organized crime division?

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D4t9flol Vizcarrondo - cross

1 A. I don't know if it did or it didn't.

2 Q. So to your knowledge it didn't in any way affect that
3 promotion, right?

4 MR. MARUTOLLO: Objection, your Honor. I believe that
5 misstates the testimony.

6 THE COURT: Sorry?

7 MR. MARUTOLLO: I think that misstates --

8 THE COURT: No. It exactly states it. He said he
9 doesn't have any idea.

10 MR. MARUTOLLO: I think the question didn't say that.
11 Perhaps I just misheard the question.

12 THE COURT: Or me. But the bottomline is: You have
13 no idea if that had any effect on the promotion?

14 THE WITNESS: Yeah. I don't know if that was factored
15 in.

16 Q. You testified also about community policing, correct?

17 A. I have, yes.

18 Q. And in your understanding of community policing, that would
19 be the same as your understanding of a request for information
20 encounter, right?

21 A. In community policing is anytime I say hello to the public,
22 anytime -- maybe if the community, you know, addresses me. So,
23 yes. That would also be included, yes.

24 Q. Well, you understand that you as a detective at the NYPD
25 are required to have certain levels of suspicion to engage in

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D4t9flol Vizcarrondo - cross

1 certain encounters with the public, right?

2 A. Yes.

3 Q. And you understand that there is one level that is a
4 request for information, right?

5 A. Yes.

6 Q. And to your understanding, that level of suspicion is the
7 level you would need in order to engage in community policing,
8 right?

9 A. Again, I don't necessarily have to be -- I don't
10 necessarily need to request information, in my opinion, to
11 engage in community policing. Being friendly and just being an
12 outgoing person and having an outgoing personality I think is
13 part of good community policing.

14 Q. You, Detective DeMarco, and Detective Hawkins were all
15 working in the Queens narcotics division at the time of your
16 encounter with Ms. Acevedo, right?

17 A. Yes. That's correct.

18 Q. And the three of you were still working together in Queens
19 narcotics when you were called for an interview with the CCRB
20 regarding that encounter, right?

21 A. That, I can't -- I don't recall. I've been on several
22 teams while in narcotics borough Queens.

23 Q. But you were aware they were still in Queens narcotics at
24 the same time that you were called in for a CCRB interview
25 related to that incident, right?

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D4t9flol Vizcarrondo - cross

1 A. Yes. That's a fair statement.

2 Q. And the three of you were all working together in Queens
3 narcotics when you were deposed in this case, right?

4 A. Working in the same building, yes.

5 Q. Now, you say that your attention was drawn to Ms. Acevedo
6 because she seemed upset to you, right?

7 A. That's correct.

8 Q. In fact, she was, according to you, clearly upset, right?

9 A. Yes.

10 Q. And you wanted to ascertain, you say, whether or not she
11 was okay, right?

12 A. Yes. That's correct.

13 Q. Now, before Detective DeMarco began speaking to
14 Ms. Acevedo, you say that there was no discussion among the
15 three of you in the van about Ms. Acevedo, right?

16 A. That is correct.

17 Q. And you also say that you were at the time that you
18 encountered Ms. Acevedo between locations.

19 Do you recall testifying to that?

20 A. Yes.

21 Q. And by that you mean you were going between the locations
22 listed on the tac plan, right?

23 A. Not necessarily. I was clearly just -- I was traveling.

24 Q. But you received a list of locations on the tac plan,
25 right?

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D4t9fl01 Vizcarrondo - cross

1 A. Yes. That's correct.

2 Q. And that day that you encountered Ms. Acevedo you received
3 a list of locations on the tac plan, right?

4 A. Yes.

5 Q. And that list of locations included areas where there
6 was -- it was thought that there would be -- there might be
7 drug transactions, right?

8 A. Yes. The location were narcotic prone locations.

9 Q. And in driving around in the van just before the encounter
10 with Ms. Acevedo, your turn was driving around to visit the
11 locations where there might be narcotic sales, right?

12 A. We traveled through the confines of the precinct we were
13 assigned to, yes, for that purpose.

14 Q. Now, after you heard Detective DeMarco say something to
15 Ms. Acevedo, she started running, right?

16 A. At some point between the time I initially saw her and --
17 you know, I don't recall exactly at what point she did start
18 running but she did run opposite the direction that we were
19 traveling in.

20 Q. And you heard her yelling for help when she started
21 running, right?

22 A. I don't recall if that's -- like I said, there was an
23 exchange, verbal exchange. What exactly was said, you know, I
24 don't recall.

25 Q. Going to show you your deposition transcript in this case

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D4t9flol Vizcarrondo - cross

1 and see if it refreshes your recollection on whether you heard
2 her yelling for help.

3 Do you recall being deposed in this case on
4 January 22, 2013?

5 A. Yes.

6 Q. Handing you a transcript of that deposition.

7 A. Thank you.

8 Q. You took an oath to tell the truth during that deposition,
9 correct?

10 A. Yes. That's correct.

11 Q. And you did tell the truth, right?

12 A. Yes.

13 Q. If you turn to page 67.

14 A. Okay.

15 Q. And see at page 67 if you just read to yourself lines 9
16 through 11. And I'll ask you.

17 You do recall her yelling for help, right?

18 A. Yes. I said yes. That is correct.

19 Q. And from the time you put the van in reverse and the time
20 you stopped the van, the three of you in the van said nothing
21 to each other about Ms. Acevedo, right?

22 A. That's correct.

23 Q. And you say that the three of you did not communicate at
24 all about Ms. Acevedo between the time you first saw her and
25 the time you all got out of the van to approach her, right?

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D4t9flol

Vizcarrondo - cross

1 A. Correct.

2 Q. Now your purpose in putting the van in reverse and
3 following her and getting out of the van was to let her know
4 that she was okay, right?

5 A. Correct.

6 Q. And your purpose, you say, was to make sure she was okay,
7 right?

8 A. Yes.

9 Q. And even though your intent was to ensure she was okay,
10 because she clearly seemed upset to you, you still say, you
11 just testified that you saw this as an opportunity to gain
12 intelligence, right?

13 A. At the very minute I, you know, interact with anyone in the
14 public it's an opportunity, yes.

15 Q. And that's despite the fact that you were going to ensure
16 someone that they were okay who seemed upset to you?

17 A. Would you rephrase the question? I'm sorry.

18 Q. You thought it was an opportunity to gain intelligence
19 despite the fact that she seemed upset to you, right?

20 A. She was upset, correct.

21 And like I said, an interaction with the public where
22 I can, you know, interact with them, at the very least, is an
23 opportunity to gain intelligence, that's correct.

24 Q. So it's fair to say that at least one purpose in putting
25 the van in reverse was to see whether you could gain

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D4t9flol Vizcarrondo - cross

1 intelligence?

2 A. You have to understand the thought process when this is all
3 going on when she begins to run. It's very quick. So this
4 happened in a very short period of time. And there's a number
5 of factors that factor in. But yeah, absolutely, that was one
6 of them.

7 Q. Now your intent was in part to calm her down, right?

8 A. Yes. She was upset. Of course.

9 Q. And then you spent, you say, a minute or so trying to calm
10 her down, right?

11 A. That's correct, yes.

12 Q. And during that minute or so that you say is the entirety
13 of the time that you interacted with Ms. Acevedo outside of the
14 van, she still seemed upset to you, right?

15 A. She did.

16 Q. And you got back into the van after only a minute or so,
17 you say, even though she still seemed upset to you, right?

18 A. Yes.

19 But the fact that she stopped running and met with an
20 individual that alone was proof that she had -- she felt some
21 sort of security and rather than escalate or make her anymore
22 upset she wasn't -- you know, there was no purpose in staying
23 there any longer.

24 Q. But she wasn't at ease when you left her, right?

25 A. That's -- yeah. That's an emotional state. I have a hard

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1 time -- I can't tell you what, you know, what she felt, whether
2 or not she was at ease.

3 But like I said she was aware that, you know, we were
4 law enforcement and didn't mean her any harm.

5 Q. So you're not able to say whether she wasn't at ease when
6 you got back into the van?

7 MR. MARUTOLLO: Objection, your Honor.

8 THE COURT: Well because it calls for her state of
9 mind?

10 MR. MARUTOLLO: Yes, your Honor.

11 THE COURT: Yeah, right.

12 MS. BORCHETTA: Well.

13 THE COURT: The answer is inherent in the question.

14 Q. You approached her wanting to put her at ease, right?

15 A. I approached her. That was -- that would be ideal, as well
16 as, again, just to make sure that she knew we were the police
17 and we weren't -- you know, we didn't mean her any harm.

18 Q. So the answer is yes, right?

19 A. That was factored in, yes.

20 Q. And when you left her, your perception was that she was not
21 at ease, right?

22 A. She was still -- she wasn't happy. She wasn't in good
23 spirits. But, again, the fact that she stopped running and
24 that she was well aware of the fact that we were the police,
25 she was better off than she was initially when she started

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1 running.

2 Q. If you would turn to your deposition, page 79.

3 Do you recall giving the following answer to the
4 following question, lines 18 to 21.

5 "Q. So you were identifying yourselves to put her at ease but
6 she wasn't at ease when you left, right?

7 "A. Correct."

8 Did you give that answer to that question?

9 A. Yes.

10 Q. Now, you determine whether an encounter that you're having
11 with a pedestrian is a stop based on whether or not you have
12 reasonable suspicion, right?

13 A. I'm sorry?

14 Q. Do you need me to rephrase it?

15 A. Please, yeah, or repeat it.

16 Q. You determine whether or not an encounter you have with a
17 pedestrian rises to the level of a stop based on whether or not
18 you have reasonable suspicion, right?

19 A. That is correct.

20 Q. And you don't necessarily do anything that indicates to the
21 person stopped that he or she is not free to leave, right?

22 A. I don't do -- could you repeat that question. I'm sorry.

23 Q. There's nothing that you necessarily do when you're
24 encountering someone and you believe it's a stop to indicate to
25 that person that he is not free leave, right?

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1 A. Well if it's necessary to indicate it to them, yes, I do.

2 Q. But as a matter of practice you don't necessarily do that,
3 right?

4 A. Again, you know, each situation is unique. Again, if
5 there's a need for me to refrain that person from leaving, then
6 I will do so.

7 Q. But you don't always specifically tell the person that he's
8 not free to leave, right?

9 A. No. Sometimes it's not necessary.

10 Q. Now, no one in the NYPD has ever told you that one reason
11 for including a stop and frisk in your memo book is to be able
12 to look back and determine the constitutionality of the stop,
13 right?

14 A. Specifically, no. But it's implied. When stopping and
15 questioning someone, we're New York City Police Department, it
16 should and shall be within the constitutional boundaries.

17 Q. But you've never specifically been told that looking back
18 at the constitutionality of a stop is one reason to include
19 information about a stop in your memo book, right?

20 A. I don't know, Ms. Borchetta, I don't know if that language
21 has been specifically used. So I mean I would have to say -- I
22 would have to answer no to that.

23 Q. You just testified about a meeting with an ICO regarding
24 the CCRB allegations for the Ms. Acevedo stop, right?

25 A. That's correct.

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1 Q. The ICO did not discuss with you anything about how you
2 should handle the incident with Ms. Acevedo, right?

3 A. No.

4 Q. And the ICO didn't say anything other than something about
5 your memo book, right?

6 A. Correct.

7 Q. And the ICO didn't give you any instructions about how to
8 conduct stops in the future, right?

9 A. Correct.

10 Q. And after the incident with Ms. Acevedo, no superior
11 officer ever discussed with you the incident with Ms. Acevedo,
12 right?

13 A. No.

14 Q. You testified just now about some trainings at tac
15 meetings.

16 Do you recall that?

17 A. Yes.

18 Q. But even though you say that there are meetings -- I'm
19 sorry.

20 Even though you say that there are trainings at tac
21 meetings, you can't provide any details about those trainings,
22 right?

23 A. Well, I could tell you that the training that I've
24 received, you know, in the academy as well as during tac
25 meetings and, you know, on the field, they have included the

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1 different levels of stop, question and frisk. Proper ways of
2 filling out, you know, a stop, question and frisk. But -- and,
3 again, not specific to the encounter with Ms. Acevedo but just
4 regarding any interaction with the public.

5 Q. So you're saying that at some tac meetings superior
6 officers have discussed the levels of suspicion, right?

7 A. Yes.

8 Q. But other than that you can't give any details about what
9 it is they've trained you on at tac meetings with respect to
10 the levels of suspicion, right?

11 A. Detailed, no.

12 Q. And at the tac meetings no supervisor has ever discussed an
13 example of a stop that a detective in the division conducted,
14 right?

15 A. Again, stops have been discussed. The particulars of each
16 individual stop, it varied. There's so many variables.

17 Again whether or not it was a specific stop or not,
18 again, it's hard for me to testify to that.

19 Q. Well were you able to testify to that at your deposition?
20 Do you recall that?

21 A. If I can refresh my memory, I could tell you.

22 Q. At page 130. Beginning at line 25 going to page 131, line
23 5 do you recall giving the following testimony?

24 "Q. Okay. At any of these tac meetings --

25 MR. MARUTOLLO: Objection. I think he asked her to
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1 have his memory refreshed. I don't think there's a line of
2 impeachment here.

3 THE COURT: That's fair.

4 Do you want to show him that portion?

5 MS. BORCHETTA: I can show -- you can read that
6 portion. I do think it impeaches previous testimony.

7 THE COURT: Read that to yourself.

8 THE WITNESS: I'm sorry. What line?

9 THE COURT: What line?

10 MS. BORCHETTA: Line 25 to page 131, line 5.

11 THE WITNESS: You said lines 25 through?

12 MS. BORCHETTA: Page 130, line 25 to page 131, line 5.

13 THE WITNESS: Okay. Yes.

14 Q. So I'll ask you again. At any of the meetings, the tac
15 meetings, has a supervisor ever discussed an example of a stop
16 that an officer detective within the division had conducted?

17 A. Again, I think I just -- I believe -- and I apologize if I
18 didn't but I -- that's what I just said.

19 It's, again to the specifics of whether or not it was
20 a specific stop, again, I would -- the answer would be no.

21 But, again, the stops, they -- there are too many variables.

22 So again --

23 Q. So it is correct that at any of the tac meetings a
24 supervisor has never discussed an example of a stop that an
25 officer detective within the division had conducted, right?

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1 A. Whether or not it was a specific stop, like I said before,
2 the answer would have to be no, I don't know whether it was or
3 not.

4 Q. Well your answer at that deposition to that exact question
5 was no; is that correct?

6 A. Yes. That's correct.

7 Q. Without any caveats, right?

8 MR. MARUTOLLO: Objection, your Honor. The next line
9 says, "No?"

10 "A. A specific stop incident."

11 So I mean he's testifying consistent with what he's
12 testifying to here today.

13 Q. And a supervisor has never discussed a specific stop
14 incident at a tac meeting when you were present, right?

15 A. Not that they have not -- it's not that they haven't -- I'm
16 sorry. Excuse me. It's not that they haven't instructed me
17 about a specific stop. It's I don't know -- I can't recall
18 specifics of that. And I don't -- I know that I've been
19 instructed on stops. But to testify to the specificity of it,
20 I, you know.

21 Q. Well I understand that you're testifying about general
22 training that you've received. But I'm asking you whether a
23 supervisor has ever discussed a specific stop incident with you
24 at a tac meeting.

25 A. Again, I'm sure that they have. Do I recall a specific

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1 incident or specific stop with detailed instruction, no, I do
2 not.

3 Q. Okay. Page 131 of your transcript, lines 12 to 14.

4 Do you recall giving the following testimony?

5 "Q. So a supervisor has never discussed a specific stop
6 incident at a tac meeting with you?

7 "A. No."

8 You gave that testimony, right?

9 A. Page 131, could you repeat the lines again?

10 Q. 12 to 14.

11 A. That's the answer. Yes. Correct.

12 Q. No one within the NYPD has ever discussed with you that the
13 NYPD prohibits quotas, right?

14 A. I've never -- it's not really an issue that's been
15 discussed, quotas, within the ranks.

16 Q. So no one within the NYPD has ever discussed the NYPD's
17 prohibition on quotas with you, right?

18 A. Correct.

19 Q. And no one within the NYPD has ever discussed with you that
20 the NYPD prohibits requiring a certain number of stops in a
21 certain timeframe, right?

22 A. Again, yeah, that's an accurate statement.

23 MS. BORCHETTA: No further questions.

24 THE COURT: Anything further?

25 Yes. Mr. Marutollo.

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1 MR. MARUTOLLO: No further questions.

2 THE COURT: Okay. You're done. Thank you.

3 (Witness excused)

4 MR. MARUTOLLO: Your Honor, we would note that the
5 next scheduled witness is Detective Michele Hawkins. However,
6 she's unavailable at this time. She may still be coming in
7 today. But we do have our next witness that's ready.

8 THE COURT: All right.

9 MR. MARUTOLLO: So we can call Lieutenant Dewkoemar
10 Mohan.

11 DEWKOEMAR MOHAN,
12 called as a witness by the Defendants,
13 having been duly sworn, testified as follows:

14 BY MR. MARUTOLLO:

15 Q. Good morning, Lieutenant Mohan.

16 A. Good morning.

17 Q. Are you currently employed by the NYPD?

18 A. Yes.

19 Q. And where were you born?

20 A. I was born in South America. A country called Suriname,
21 south America. Small country.

22 Q. What's your educational background?

23 A. I'm currently finishing up my master's in criminal justice
24 from John Jay.

25 Q. Do you have a bachelor's degree?

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Vizcarrondo - cross

- 1 A. Yes.
- 2 Q. How long have you been employed by the New York City Police
3 Department?
- 4 A. Approximately 16 years.
- 5 Q. And did you enter and graduate from the police academy?
- 6 A. Yes.
- 7 Q. And when did you graduate from the police academy?
- 8 A. I graduated from the police academy in December of 19 -- I
9 entered, actually, in December of 1997. Graduated, I believe
10 it was in June of '98.
- 11 Q. After graduating from the police academy where were you
12 assigned?
- 13 A. I was immediately assigned to transit district 11 which is
14 in the Bronx, mainly patrolling the trains.
- 15 Q. How long were you assigned to district 11 in the Bronx?
- 16 A. Approximately seven years.
- 17 Q. What were your duties and responsibilities in district 11?
- 18 A. Mainly patrolling the trains, subway patrol.
- 19 Q. Did there come a time when you were promoted to sergeant?
- 20 A. Yes. I was promoted to sergeant in October of 2005.
- 21 Q. How did you receive that promotion?
- 22 A. Through the sergeant's test.
- 23 Q. Upon being promoted to sergeant did you receive any
24 training?
- 25 A. Yes. The training consists of about approximately a month

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D4t9flol Vizcarrondo - cross

1 in the police academy leadership training.

2 Q. And after your promotion to sergeant, where were you
3 assigned?

4 A. In the 40th precinct in the Bronx.

5 Q. What were your duties and responsibilities as a sergeant in
6 the 40th precinct in the Bronx?

7 A. Mainly supervising my subordinates.

8 Q. And did you work as a patrol squad supervisor at any point?

9 A. I was patrol squad, correct.

10 Q. Did there come a time when you were promoted to lieutenant?

11 A. Yes. I was promoted to lieutenant in March of 2012.

12 Q. And where were you assigned as a lieutenant?

13 A. I am currently assigned in the 44th precinct in the Bronx.

14 Q. What are your duties and responsibilities as a lieutenant
15 in the 44th precinct?

16 A. I supervise the command operations in the 44th precinct on
17 my tour.

18 Q. Do you attend roll call every time you're working as a
19 lieutenant?

20 A. Yes.

21 Q. Do you ever speak at roll call?

22 A. All the time.

23 Q. And what do you speak about at roll call as a lieutenant?

24 A. Speak about --

25 MR. MOORE: Judge, I'm going to object. I think it's

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1 beyond the scope of what this witness was called to testify to.
2 It's my understanding he was called to testify with regard to
3 Officer Serrano. And he wasn't promoted to a lieutenant until
4 March 12.

5 THE COURT: March 12 of.

6 MR. MOORE: March of 2012. He was in a different
7 precinct, so.

8 MR. MARUTOLLO: I think it still goes to the
9 plaintiffs' Monell claim about supervisory liability.

10 THE COURT: It may. I don't think that was the point
11 of the objection. I think the point of the objection was the
12 lack of notice to the plaintiffs that he was being called to
13 discuss roll call --

14 MR. MARUTOLLO: Just one question.

15 THE COURT: -- roll calls at precincts.

16 All right. One question.

17 THE WITNESS: Well, I'm mainly responsible -- mainly
18 talk about matters of importance, anything that the commanding
19 officer would tell me to relate to the officers at roll call.
20 We talk about bulletins, any new interim orders that came
21 about; also messages from the precinct detective units,
22 anything that would, you know, fight crime pretty much. That's
23 what we discuss.

24 Q. So Lieutenant Mohan, going back to your time at the 40th
25 precinct what area does the 40th precinct cover?

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- 1 A. It covers mainly the South Bronx area.
2 Q. And when you were a sergeant at the 40th precinct how did
3 you ensure that officers under your supervision conducted stops
4 based on reasonable suspicion?
5 A. Well, we talk about it in roll call. We will respond to
6 individual stops when an officer would have that. We also
7 respond to major radio runs making sure we get there and verify
8 that the officers, indeed, have reasonable suspicion to stop
9 individuals, make sure they have the proper memo book entries
10 in that stop; also making sure that they offer them the
11 tear-out, what is the stop and frisk -- question, frisk
12 encounter. Sometimes individuals, they take them. Sometimes
13 they don't. But it's offered to them all the time.
14 Q. Do you -- did you ever review UF 250s during your time as a
15 sergeant in the 40th precinct?
16 A. All the time.
17 Q. And how often would you review UF 250s from your officers
18 in your squad?
19 A. On a daily basis at the end of the tour before we go.
20 Q. Now while in the 40th precinct did you ever speak with
21 your officers about their stops when reviewing the UF 250s?
22 A. All the time, yes.
23 Q. And while in the 40th precinct did you ever assign
24 officers under your supervision to be your driver?
25 A. Yes.

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1 Q. And why did you do that?

2 A. We take officers to driver us mainly to gauge their
3 experience actually to see if they're lacking any kind of
4 training needs. And if they do, we will address it. How to
5 interact with the public. Things to that nature.

6 Q. Did you ever consider that assignment to be a punishment?

7 A. Never.

8 Q. Are you familiar with an officer named Pedro Serrano?

9 A. Yes.

10 Q. What is your familiarity with officer Pedro Serrano?

11 A. I have seen Officer Serrano in and out of the precinct on
12 most occasions. I was never his direct supervisor. And I also
13 believe that he was on my roster for violence reduction
14 overtime. I don't remember how many times.

15 MR. MOORE: I'm sorry. I didn't hear that last.
16 Could you just repeat that last answer, that last -- repeat the
17 answer.

18 THE WITNESS: He was on my roster for violence
19 reduction overtime.

20 MR. MOORE: He was in your woster?

21 THE WITNESS: Roster. R-O-S-T-E-R. Roster.

22 MR. MOORE: That's the word I didn't understand.

23 THE WITNESS: We just use a sheet basically to put
24 officers down for that particular overtime, or any details that
25 we go to.

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1 Q. What would you base that, the names on those sheets on?
2 How would you assign -- I'm sorry. Withdrawn.

3 How would you assign, if at all, officers to get
4 violence reduction overtime?

5 A. Violence reduction overtime is strictly voluntary.

6 However, sometimes it's not feasible to get that
7 amount of people on the roster. So based on the department
8 needs, will have to pick somebody that's available.

9 Q. Did you ever consider assigning violence reduction overtime
10 to be punishment?

11 A. Never.

12 Q. Did you ever tell Officer Serrano to go out and get five
13 summonses during a tour?

14 A. No. Never.

15 Q. Did you ever tell Officer Serrano to get any predetermined
16 number of summonses during a tour?

17 A. No.

18 Q. Did you ever tell Officer Serrano that he needed to
19 increase the number of summonses he issued during the violence
20 reduction overtime tour from two to five?

21 A. I would never do that, no.

22 MR. MOORE: Judge, I would object.

23 One, to the leading nature of the question; and two,
24 if he was never his direct supervisor, I don't know how this
25 testimony is relevant.

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1 MR. MARUTOLLO: I believe Lieutenant Mohan testified
2 that he was at times his violence reduction impact overtime
3 supervisor.

4 THE COURT: You did say that, right?

5 THE WITNESS: Yes.

6 THE COURT: So you can answer the question.

7 MR. MOORE: Also, judge --

8 THE COURT: It was leading.

9 MR. MOORE: Leading.

10 THE COURT: I know.

11 You can answer the question.

12 Do you remember the last question?

13 Did you ever tell him to do a certain number of stops?

14 THE WITNESS: No. I never did that.

15 Q. Did you ever call Officer Serrano and tell him to meet you
16 in the vicinity of the Grand Concourse and 138th Street in
17 order to assign him an arrest of an individual for driving
18 while intoxicated?

19 MR. MOORE: Judge, just object on the leading nature.

20 THE COURT: There is no other way to ask that question
21 so I would definitely allow that one.

22 Did you ever do that?

23 THE WITNESS: No.

24 Q. By the way, is it any violation of NYPD policy to assign an
25 officer to process an arrest actually made by another officer?

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D4t9flol

Vizcarrondo - cross

1 A. Actually no, it's not. We do that all the time. It's
2 called reassigning an arrest to somebody else.

3 Q. Did you ever tell Officer Serrano to sign any document
4 indicating that he saw something that he did not actually see?

5 A. No.

6 MR. MOORE: Judge, again, just the leading nature.

7 THE COURT: It's really not leading. These are
8 eliciting denials. There is no other way to put it. He's not
9 trying to get information. It's to elicit a denial. There is
10 no other way to elicit a denial than to state the proposition
11 and he says no. That's it.

12 MR. MARUTOLLO: This is a direct rebuttal to Officer
13 Serrano.

14 THE COURT: I realize. I know exactly what you're
15 doing.

16 Q. Have you ever told an officer to perjure himself by saying
17 that he observed something he did not actually observe?

18 MR. MOORE: Objection, Judge.

19 THE WITNESS: No. Never. That's absurd.

20 THE COURT: It's not leading. I don't understand your
21 objection.

22 Sorry. Your answer was?

23 THE WITNESS: No.

24 THE COURT: Okay.

25 Q. Now Lieutenant Mohan, do you know if the NYPD has a policy

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1 prohibiting racial profiling?

2 A. Yes.

3 Q. And what do you understand that policy to be?

4 A. I believe there is interim order 2012 that came out, and we
5 discuss this interim order regularly at roll call. And up to
6 this date we still do. The officers are reminded of that
7 interim order.

8 Q. Were you aware of the racial profiling prohibition prior to
9 this interim order 2012?

10 A. Yes.

11 Q. Were you familiar with that throughout your time as a
12 sergeant in the 40th precinct?

13 A. Yes. It's directly taught in the police academy.

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

15 THE COURT: All right.

16 (Pause)

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

18 THE COURT: Okay.

19 Who -- Mr. Moore.

20 MR. MOORE: Yes, your Honor.

21 Because I didn't anticipate he would be coming on now

22 I have some documents in the back because remember we skipped a
23 witness?

24 THE COURT: So maybe.

25 MR. MOORE: Maybe we should take the break now.

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D4t9fl01 Vizcarrondo - cross

1 THE COURT: I thought it would be just very few
2 questions. But, okay, let's take about ten minutes and
3 reconvene.

4 (Recess)

5 (Continued on next page)

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D4T8FLO2 Mohan - cross

1 CROSS-EXAMINATION

2 BY MR. MOORE:

3 Q. Good morning, Lieutenant Mohan.

4 A. Good morning.

5 Q. You said that you were never the patrol supervisor of
6 Officer Serrano, correct?

7 A. Yes, that's correct.

8 Q. On occasion you would supervise him in an impact overtime
9 assignment?

10 A. That's correct.

11 Q. That was pretty rare though, wasn't it?

12 A. Yes.

13 Q. You also said that one of the things you do when you
14 supervise your officers is to make sure they make proper memo
15 book entries, right?

16 A. Correct.

17 Q. You're one of a number of supervisors at the 40th Precinct,
18 correct?

19 A. Correct.

20 Q. Sometime in 2005 until 2012 you were a sergeant and you
21 supervised patrols?

22 A. Yes.

23 Q. Did you do that for the entire time you were a sergeant at
24 the 40th Precinct?

25 A. Yes.

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D4T8FLO2

Mohan - cross

1 Q. During that time you would have meetings with other
2 supervisors, correct?

3 A. Yes.

4 Q. And with the commanding officer of the precinct?

5 A. That's correct.

6 Q. And the executive officer?

7 A. That's correct.

8 Q. And integrity control officer?

9 A. That's correct.

10 Q. They never told you that there was a problem with respect
11 to memo book entries being filled out by officers, did they?

12 A. That was never discussed.

13 Q. Did they tell you that each year from 2005 to 2012 the
14 precinct failed the audit with respect to whether officers were
15 preparing memo book entries related to stop and frisk?

16 MR. MARUTOLLO: Objection. This is beyond the scope
17 of the direct examination.

18 THE COURT: I will allow it.

19 A. I'm not aware of that, no.

20 Q. You also testified that there was -- you would never tell
21 somebody to -- it's OK to assign an arrest to another officer
22 who wasn't present, right?

23 A. That's correct.

24 Q. But it's not OK to tell an officer to say that they
25 personally witnessed an arrest if they were not present,

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D4T8FLO2

Mohan - cross

1 correct?

2 A. Could you rephrase that again, sir?

3 Q. It's not OK to tell an officer to say that they personally
4 witnessed an arrest if they didn't, right, even though they are
5 being assigned the arrest, that's not OK, right?

6 A. That's not OK, no.

7 Q. That would be a violation of department of regulations,
8 right? Correct?9 A. I don't think I am understanding you correctly. We always
10 do that, I mean, regularly do that. It's not a violation
11 against department policy. So you could assign an arrest to
12 another officer.13 Q. Right. You can assign an arrest, but you can't -- if there
14 is paperwork that would require the officer to say I personally
15 observed somebody do something, you can't direct them to sign
16 that paperwork if they weren't personally present, right?17 A. The paperwork, when they do the arrest processing, it will
18 be in the arrest processing whether -- you have to indicate
19 whether you're the arresting officer or you're the assigned
20 officer on the arrest paperwork.21 THE COURT: I was going to say you didn't answer his
22 question. Let him try one more time.23 Q. It would be a violation of department policy for an officer
24 to say they personally observed an arrest when they didn't do
25 that, correct?

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D4T8FLO2

Mohan - cross

1 A. Correct.

2 Q. Have you been present at roll calls when Lieutenant Barrett
3 or Lieutenant Doute have led the roll calls?

4 A. No.

5 Q. You have never been present when either of them did the
6 roll calls?

7 A. No.

8 Q. You don't usually go to the patrol roll calls then,
9 correct?10 MR. MARUTOLLO: Objection. It was asked and answered
11 in his direct examination. He testified about that already.

12 MR. MOORE: We cannot have a speaking objection.

13 THE COURT: Do you attend patrol roll calls or not?

14 THE WITNESS: I always attend patrol roll calls.

15 THE COURT: If you always attend them, how come you
16 have never heard these two lieutenants do roll calls?17 THE WITNESS: Because Lieutenant Doute was assigned
18 after I left the 40th Precinct.

19 THE COURT: And the other one?

20 THE WITNESS: Lieutenant Barrett, I know her briefly
21 in the 40th Precinct, maybe a couple of months.22 THE COURT: But if you always attend the roll calls,
23 then one would think you would have heard them.24 THE WITNESS: Judge, it depends. I was working the
25 midnight to 2 in the 40th Precinct and mostly the ICO, which

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D4T8FLO2 Mohan - cross

1 Lieutenant Barrett was the ICO in the 40th Precinct, she
2 probably would be working the second platoon. And Lieutenant
3 Doute, I believe he was the ICO for a brief period of time in
4 the 40th Precinct. I don't know him.
5 Q. Well, you were in the 40th Precinct in July of 2010,
6 correct?
7 A. July of 2010, no, I wasn't.
8 Q. I'm sorry. I thought you said you were in the 40th
9 Precinct until 2012.
10 A. No.
11 Q. Before you got promoted to lieutenant?
12 A. I was in the 40th Precinct up until 2009. I was
13 transferred to the 30th Precinct in January of 2010.
14 Q. OK. I don't think you testified to that on direct. That's
15 why I was confused.
16 After 2009, you weren't at the 40th Precinct?
17 A. That's correct.
18 Q. In any of the roll calls, did any of the people conducting
19 the roll calls ever mention numbers, like we would like to see
20 a certain amount of summonses, a certain amount of arrests, a
21 certain amount of 250s, anybody ever mention numbers?
22 A. No.
23 Q. You have never heard that at any roll call you ever
24 attended as a member of the New York City Police Department, is
25 that correct?

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D4T8FLO2

Mohan - cross

- 1 A. That's correct.
- 2 Q. From time to time in the precinct, when you were at the
- 3 40th Precinct, you would get reports from your supervisors
- 4 saying there is a spike in crime in a certain area, correct?
- 5 A. That's correct.
- 6 Q. And your supervisors -- would it be your understanding that
- 7 your supervisors would expect you as a patrol supervisor to
- 8 address that condition?
- 9 A. That's correct.
- 10 Q. One of the ways of addressing that condition would be to
- 11 engage in enforcement activity, correct?
- 12 A. That's correct.
- 13 Q. And enforcement activity often includes arrest?
- 14 A. Yes.
- 15 Q. Summons?
- 16 A. Summons.
- 17 Q. Is that correct?
- 18 A. Yes.
- 19 Q. And also stop activity, filling out 250s, correct?
- 20 A. That's correct.
- 21 Q. In terms of measuring whether that condition was being
- 22 addressed by enforcement activity, your supervisors would look
- 23 at the number of summonses, the number of arrests and the
- 24 number of 250s being generated, correct?
- 25 A. Yes, that's correct.

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Mohan - cross

1 Q. If the numbers were too low in relation to the condition,
2 there would be questions addressed to you and other supervisors
3 about the low nature of those numbers, correct?

4 A. No, that's not correct.

5 Q. That never happened?

6 A. That never happened.

7 Q. So they would just mention the numbers but they wouldn't
8 discuss it any further?

9 A. They expect the officers to go out there to address
10 conditions. That could be arrests, summonses or stop, question
11 and frisk. But there was never any numbers mentioned, whether
12 they were low or high, it was never mentioned.

13 Q. The question was, they would look at the numbers to
14 determine whether enforcement activity is addressing that
15 condition, right? Isn't that what you just testified to a
16 minute ago?

17 A. I testified that, yes, they expect you to go out there and
18 address the condition, whether it's in the form of arrests,
19 250s, or summonses.

20 Q. Right. And part of the determination by the supervisors at
21 the precinct, in terms of whether a condition is being
22 addressed, is to look at the numbers in each of those
23 categories of enforcement activity, right?

24 MR. MARUTOLLO: It calls for speculation that
25 question.

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D4T8FLO2

Mohan - cross

1 MR. MOORE: I don't think so.

2 THE COURT: Do you make those determinations as a
3 supervisor yourself?

4 THE WITNESS: No, I don't.

5 THE COURT: Objection sustained.

6 Q. But in the meetings you have attended, there have been
7 discussions, have there not, about the numbers in each of those
8 enforcement activities, correct?

9 A. I have never discussed those numbers with my superiors.

10 THE COURT: Superiors, equal or below, have you
11 discussed it at any meeting?

12 THE WITNESS: No.

13 MR. MOORE: I have nothing further.

14 THE COURT: Anything further for this witness?

15 MR. MARUTOLLO: Can I have one moment, your Honor?

16 THE COURT: Yes.

17 REDIRECT EXAMINATION

18 BY MR. MARUTOLLO:

19 Q. A few questions, Lieutenant Mohan. When you were working
20 at the 40th Precinct, did you conduct roll calls with other
21 supervisors, present?

22 A. Yes.

23 Q. Were there any other superior officers with you at these
24 roll calls?

25 A. No superiors, just other officers. The officers and maybe

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D4T8FLO2

Mohan - redirect

1 another sergeant.

2 Q. Would Lieutenant Barrett then not be at the roll calls you
3 were present at?

4 A. If I am working, it all depends what tour she was working.
5 I believe she probably was at certain roll calls addressing ICO
6 related issues.

7 MR. MARUTOLLO: One moment, your Honor.

8 No further questions.

9 THE COURT: Thank you.

10 Anything further?

11 MR. MOORE: No.

12 THE COURT: All set. Thank you.

13 MR. MARUTOLLO: The defendants call Sergeant Eduardo
14 Silva.

15 MR. MOORE: I am just going to observe that Sergeant
16 Silva has been in the courtroom.

17 THE COURT: He has. I observed it, but nobody said
18 anything.

19 MR. MOORE: There is an order.

20 THE COURT: I understand but nobody said anything.

21 MR. MOORE: I just noticed it.

22 THE COURT: There is another officer stepping out.

23 EDUARDO SILVA,

24 called as a witness by the defendants,
25 having been duly sworn, testified as follows:

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D4T8FLO2 Mohan - redirect

1 THE COURT: State your full name, your first and last,
2 spelling both names for the record.

3 THE WITNESS: Eduardo Silva, E-D-U-A-R-D-O, S-I-L-V-A.

4 DIRECT EXAMINATION

5 BY MR. MARUTOLLO:

6 Q. Good morning, Sergeant Silva.

7 Are you currently employed by the NYPD?

8 A. Yes, I am.

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

10 A. Approximately ten years.

11 Q. What is your educational background?

12 A. I am presently in school right now finishing my college
13 degree.

14 Q. Did you enter and graduate from the police academy?

15 A. Yes, I did.

16 Q. When did you graduate from the police academy?

17 A. December 2003.

18 Q. After graduating from the police academy, where were you
19 assigned?

20 A. I was assigned to the 115th Precinct in Queens North, which
21 covers Jackson Heights, Corona, Elmhurst and East Elmhurst.

22 Q. What were your duties and responsibilities in the 115th
23 Precinct?

24 A. I was assigned to operation impact. My general duties and
25 responsibilities were to keep the peace, prevent crime, general

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1 enforcement in order to improve the quality of life in the
2 neighborhood.

3 Q. How long were you assigned to that precinct?

4 A. Up until July 2004.

5 Q. Where were you assigned next?

6 A. July 2008, I was promoted and I was assigned to the 40th
7 Precinct.

8 Q. You say you were promoted?

9 A. I'm sorry. I am going to correct myself. From the 115th
10 Precinct, I was transferred to the 112th Precinct in July of
11 2004, and that's in Queens North also, which covers Forest
12 Hills and Rego Park.

13 Q. What were your duties and responsibilities in the 112th
14 Precinct?

15 A. In the 112th Precinct, I was assigned to patrol duties,
16 keeping the peace, preventing crime, and general enforcement to
17 improve the quality of life in the neighborhood.

18 Q. Did there come a time when you were promoted to sergeant?

19 A. Yes.

20 Q. When was that?

21 A. That was in July of 2008.

22 Q. Now, upon being promoted to sergeant, did you receive any
23 training?

24 A. Yes.

25 Q. After your promotion to sergeant, where were you assigned?

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D4T8FLO2 Silva - direct

- 1 A. I was assigned to the 40th Precinct in the Bronx.
2 Q. Is that your current assignment?
3 A. Yes, it is.
4 Q. What area does the 40th Precinct cover?
5 A. It covers Mott Haven and Melrose in the South Bronx.
6 Q. What is your current assignment within the 40th Precinct?
7 A. I am the business conditions sergeant.
8 Q. What are your duties and responsibilities as the business
9 conditions sergeant?
10 A. I lead a team of nine officers whose duties and
11 responsibilities are to address general enforcement and quality
12 of life conditions in the area.
13 Q. How long have you been the business conditions sergeant at
14 the 40th Precinct?
15 A. Approximately, I would have to say going on a year.
16 Q. As the business conditions sergeant for the 40th Precinct,
17 do you review UF-250s completed by officers under your
18 supervision?
19 A. Yes, I do.
20 Q. Do you discuss the underlying facts of the UF-250s with
21 officers under your supervision?
22 A. Yes.
23 Q. Now, prior to your current duties as the business
24 conditions sergeant, what was your assignment?
25 A. I was the anticrime supervisor.

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1 Q. How long were you the anticrime supervisor?

2 A. Approximately one year and a half.

3 Q. What were your duties and responsibilities as the anticrime
4 supervisor?

5 A. I led a team of four officers to patrol the confines of the
6 40th Precinct in plain clothes and unmarked vehicles in order
7 to address high crime activity.

8 Q. Prior to working as the anticrime supervisor, what was your
9 assignment?

10 A. I was assigned as a C2 supervisor and patrol.

11 Q. This is still when you're a sergeant at the 40th Precinct?

12 A. Yes.

13 Q. Now, over the course of your almost five years at the 40th
14 Precinct, how would you describe the crime levels in that
15 precinct?

16 A. It's a very high crime precinct.

17 Q. What are you basing that on?

18 A. I am basing it on my experience of the five years I have
19 been there. I have responded to numerous shootings, robberies,
20 stabbings, chain snatchers, phone snatchers. I review
21 complaint forms every day prior to turning out my cops.

22 Q. Now, as a sergeant, do you ever speak with your officers
23 about the crime conditions that they are trying to address?

24 A. Yes, on a daily basis.

25 Q. How do you inform your officers of these crime conditions?

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D4T8FLO2 Silva - direct

1 A. Prior to turning them out on roll call, I address all of
2 the conditions that are going on in the command at the time.

3 Q. How do officers under your supervision address crime
4 conditions?

5 A. They address it through general enforcement, summonses,
6 effecting arrests, doing directives, community interaction, and
7 just by mere presence.

8 Q. When you say directives, what are you referring to?

9 A. Directives is when I have them go to particular locations.
10 Let's say, for example, say we have a bank robbery, I have them
11 go to different banks in the location and conduct directives
12 there.

13 Q. On July 31, 2010, what was your assignment?

14 A. I was assigned as the violence reduction overtime
15 supervisor.

16 Q. What tour were you working that day?

17 A. I was 2130 by 0605 in the morning.

18 Q. What is the violence reduction tour?

19 A. It's a tour that is requested by the command in order to
20 address specific crime conditions in our command.

21 Q. Do you know how precincts receive violence reduction tour
22 assignments?

23 A. To the best of my knowledge, it's either requested by the
24 commanding officer or it's actually given to us by the patrol
25 borough, in this case, patrol borough Bronx, to address

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D4T8FLO2 Silva - direct

1 high-crime conditions.

2 Q. In 2010, how often would the 40th Precinct receive violence
3 reduction tour overtime?

4 A. Approximately, three times a week.

5 Q. Why is that?

6 A. It's a high crime precinct, and from the time I have been
7 in the 40, we get a vast amount of shootings during the summer
8 period.

9 MR. MOORE: Object to the characterization of a vast
10 amount of shootings. I ask that that be stricken.

11 THE COURT: That's his characterization of it. I am
12 not going to strike it. I don't know exactly what it means
13 obviously in numbers, but it certainly means high.

14 THE WITNESS: I have worked in other commands where we
15 have never had a shooting at all, and since I have been here,
16 numerous amount of shootings.

17 Q. How are officers selected to work the violence reduction
18 tour?

19 A. For the most part, it was on a volunteer basis. If you
20 were scheduling a day off, you were able to do the overtime.
21 Obviously, if you were sick or on vacation you were not able to
22 do the overtime.

23 Q. Were officers assigned to overtime as the month progressed?

24 A. Yes, they were.

25 Q. Why was that?

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D4T8FLO2 Silva - direct

1 A. We had to fill the spots.

2 Q. Now, what were your duties and responsibilities as a
3 sergeant working in the violence reduction tour on July 31,
4 2010?

5 A. I was in charge of the roll call. I had to address my
6 officers about specific conditions going on in the command. I
7 would have to respond to any arrest incidents, respond to any
8 unusual incidents would be any robberies, shootings, any major
9 crimes that occurred within the area that I was covering, and
10 just reviewing all of my officers' paperwork.

11 Q. Did you review the audio that was secretly recorded by
12 Officer Serrano on July 31, 2010?

13 A. Yes, I did.

14 THE COURT: When did you do that?

15 THE WITNESS: I reviewed it in my lawyer's office.

16 THE COURT: When?

17 THE WITNESS: I would say approximately six to eight
18 weeks ago.

19 Q. Was the audio a complete recording of the July 31, 2010
20 roll call?

21 A. No, it was not.

22 Q. What was missing from the audio of the roll call?

23 A. Pretty much the entire roll call. My officers were not
24 given their specific assignments, their vehicle assignments,
25 their meal times, the color of the day, the return date. They

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1 weren't trained. Every roll call has a small portion that is
2 directed towards training.

3 Q. Was there any discussion of crime conditions or crime
4 patterns that was not included on that audio?

5 A. They weren't included at all in that audio.

6 THE COURT: Was there any discussion that day?

7 THE WITNESS: I discussed it, but it wasn't on the
8 tape.

9 THE COURT: You know you discussed it on that very
10 day?

11 THE WITNESS: Yes. Every roll call, you have to
12 address your officers on the conditions out there, any
13 shootings that happen, any robberies, any particular areas in
14 the zones that we are covering so they will be aware of it so
15 they won't be in any danger and able to address it.

16 Q. What was your role at the roll call on July 31, 2010?

17 A. Specifically everything I already mentioned, plus I would
18 give my officers my phone number so they can reach out to me,
19 check in, and let me know what's going on.

20 Q. You indicated that your officers would check in with you at
21 certain points during the tour, is that right?

22 A. Yes, sir.

23 Q. Is that check-in, is that something you would do on a
24 regular tour, in other words, not a crime reduction tour?

25 A. On a regular tour.

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Silva - direct

1 Q. Why would you do that? Why would you have them check in?

2 A. I am the direct supervisor. I am in charge of them. I am
3 responsible for them. I had a few officers I know who were
4 ordered to do overtime that I was afraid they were going to be
5 malingering. So I need for them to know that they are going to
6 be in touch with me and vice versa.

7 Q. What, if anything, did you hear Officer Serrano ask you
8 during this roll call?

9 A. He had suggested that I said that I wanted five Cs, five
10 250s, and that's why I said, Serrano, I just cut him off, and
11 he just started giggling, and I guess the rest of the officers
12 present started laughing.

13 Q. What was your understanding of Lieutenant Doute's comments
14 at this roll call regarding any fives?

15 MR. MOORE: Object to the foundation.

16 THE COURT: Did you hear Doute say that on the tape?

17 THE WITNESS: Yes.

18 THE COURT: You heard what he said?

19 THE WITNESS: Yes.

20 THE COURT: What is your question?

21 Q. Did you hear Lieutenant Doute say "any fives"?

22 A. Yes, I did.

23 THE COURT: What did that mean to you?

24 THE WITNESS: In my opinion, it's that Lieutenant
25 Doute was --

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D4T8FLO2

Silva - direct

1 THE COURT: I am not interested in what you think he
2 meant. What did it mean to you?

3 THE WITNESS: To go out and address the crime
4 conditions and performance goals set that day would have been
5 five criminal court summonses or an arrest.

6 Q. Did you believe that, again, did you believe that
7 Lieutenant Doute mandated five C summonses, five verticals and
8 five 250s during this tour?

9 A. No, I did not. Neither I or Lieutenant Doute ever mandated
10 any officer at a command of anything.

11 Q. Did you hear anyone on the audio -- withdrawn.

12 At any point during this roll call on July 31, 2010,
13 did any superior officer threaten punishment if officers did
14 not reach a certain level of activity?

15 A. No.

16 Q. Did Lieutenant Doute instruct you to do a status check at
17 any point during the tour?

18 A. Yes. In the beginning of the tour.

19 Q. What did that status check mean to you?

20 A. It goes back to having my officers check in with me because
21 there are a few officers it is known that they're going to come
22 to work and basically not address any conditions.

23 Q. When you say not address conditions, what do you mean?

24 A. Basically, come in to get paid and do nothing.

25 Q. Have you ever punished or retaliated against in any way any

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1 officers who worked under you for failing to reach a certain
2 amount of activity?

3 A. Never.

4 Q. Sergeant Silva, I am handing you what has been premarked
5 for identification as Defendants' Exhibit D10.

6 What is this document?

7 A. This is a report I submitted at the end of my violence
8 reduction tour.

9 Q. Did you complete this document?

10 A. Yes, I did.

11 Q. Are you familiar with this document?

12 A. Yes.

13 MR. MARUTOLLO: I would like to enter this document
14 into evidence, Defendants' Exhibit D10.

15 MR. MOORE: No objection.

16 THE COURT: D10 is received.

17 (Defendants' Exhibit D10 received in evidence)

18 Q. Sergeant Silva, according to this document, what activity
19 overall was conducted during the July 31, 2010 violence
20 reduction overtime tour?

21 A. There was one arrest effected for driving a vehicle for
22 suspended license. There were a total of 15 criminal court
23 summonses issued, six for consumption of alcohol, one for
24 public urination, seven for disorderly conduct, one for
25 excessive noise, and those 15 criminal court summonses resulted

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1 in two return on warrants and also two verticals.

2 Q. How many UF-250s were conducted during this tour?

3 A. None.

4 Q. Did you punish any of the officers who worked during this
5 violence reduction tour for failing to complete any UF-250s?

6 A. No, I did not.

7 Q. Did the 40th Precinct receive violence reduction overtime
8 tours in August 2010, in other words, after this July 31, 2010
9 tour?

10 A. Yes, they did.

11 Q. Did they receive that overtime tour even though there were
12 no UF-250s?

13 MR. MOORE: Object to the form, Judge. How does he
14 know why they were directed.

15 MR. MARUTOLLO: I can rephrase.

16 Q. Were you still a sergeant in the 40th Precinct in August of
17 2010?

18 A. Yes, I was.

19 Q. Did you supervise any violence reduction overtime tours in
20 August of 2010?

21 A. I am aware that there were. I am not too sure if I did or
22 not.

23 Q. Did you ever serve as Officer Serrano's direct supervisor
24 on any other occasion besides July 31, 2010?

25 A. Yes. I was his direct supervisor for approximately two and

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D4T8FLO2

Silva - direct

1 a half years.

2 Q. How would you describe Officer Serrano as a police officer?

3 MR. MOORE: Can we first establish the period of time
4 he supervised him?

5 THE COURT: Yes.

6 Do you recall?

7 MR. MOORE: Also, Judge --

8 THE COURT: I can only do one thing at a time.

9 Do you recall when you supervised him?

10 THE WITNESS: Yes. From the time I got to the
11 command, which was August 2008, up until December of 2010.

12 THE COURT: What was your other problem, Mr. Moore?

13 MR. MOORE: If he is going to talk about evaluations,
14 the city never produced the evaluations of Officer Serrano. So
15 we are a little bit at a disadvantage.

16 THE COURT: Were they called for?

17 MR. MARUTOLLO: They were never requested.

18 MR. MOORE: If he is going to ask him to testify about
19 it?

20 THE COURT: Then they will have to produce them to you
21 during a break, but they are not at fault for not doing it
22 since they weren't called with.

23 If you want to get into the area of evaluations, then
24 you will have to go and find them.

25 MR. MARUTOLLO: Can I have a moment, your Honor?

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D4T8FLO2 Silva - direct

1 THE COURT: Sure.

2 MR. MARUTOLLO: Your Honor, defendants will not ask
3 any questions about the evaluations that were conducted. We
4 just want a general question about a description of Officer
5 Serrano as a police officer, not necessarily about evaluations.

6 THE COURT: OK.

7 MR. MOORE: Note my objection, Judge, unless we can
8 see the evaluations.

9 THE COURT: I will allow that.

10 You are not allowed to talk about evaluations, but
11 what is your own opinion or evaluation of this officer?

12 THE WITNESS: My opinion of Officer Serrano is a basic
13 average officer. The only thing that really pops out from the
14 time that I supervised him was that on frequent occasion he
15 would have me respond to almost three quarters of his jobs
16 because he was very reluctant in making decisions. So he would
17 want me to come over there and make a decision for him. That's
18 the only thing that stands out.

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

20 THE COURT: Mr. Moore.

21 CROSS-EXAMINATION

22 BY MR. MOORE:

23 Q. During the time you were the sergeant -- are you still in
24 the 40th?

25 A. Yes, sir.

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D4T8FLO2 Silva - cross

- 1 Q. During that period of time, have there been any discussions
2 in the 40th Precinct about the fact that officers are not
3 putting into their memo books details of their stop and frisk
4 activity, ever recall any discussion about that?
5 A. Can you repeat that, sir?
6 Q. Do you recall any discussion during the time you have been
7 in the 40th Precinct, any discussion of the fact that officers
8 who are engaging in stop and frisk activity are not putting
9 into their memo books details of those stop and frisks?
10 A. No, sir.
11 Q. Officers are required to do that, correct?
12 A. Yes, they are.
13 Q. Are you aware that during the time you have been a
14 supervisor at the 40th Precinct that the 40th Precinct has
15 consistently failed the audit with respect to whether officers
16 are filling in the details of their stop and frisk activity in
17 their memo books, are you aware of that?
18 A. No, sir.
19 Q. Nobody in the precinct ever discussed that with you?
20 A. No, sir.
21 Q. Your commanding officer or the executive officer never
22 talked to you about that?
23 A. No, sir.
24 Q. Now, you listened to the tape that Mr. Serrano made of a
25 roll call on July 31, 2010, correct?

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D4T8FLO2

Silva - cross

1 A. Yes, sir.

2 Q. Have you seen the transcript, a portion of the transcript
3 of that?

4 THE COURT: Have you seen the transcript?

5 THE WITNESS: Yes, your Honor.

6 MR. MOORE: Judge, I am going to show him what has
7 already been marked as 297T2.

8 THE COURT: It's in evidence?

9 MR. MOORE: In evidence.

10 MR. MARUTOLLO: Just for the record, I don't believe
11 the transcript itself is in evidence. I know the audio is.

12 MR. MOORE: I thought we had an agreement with respect
13 to the transcript. If it's not in, we would move it.

14 THE COURT: There was one day they read a lot of T
15 numbers in.

16 MS. BORCHETTA: We specifically moved this into
17 evidence.

18 MR. MARUTOLLO: Sorry.

19 Q. You recognize here the name of Lieutenant Doute, correct?

20 A. Yes.

21 Q. If you go down the page, it indicates that you were also
22 present at this roll call, correct?

23 A. Yes, I was.

24 Q. You see in the first paragraph there Lieutenant Doute is
25 talking about conditions, correct?

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D4T8FLO2

Silva - cross

1 A. Line 6?

2 Q. Line 6.

3 A. Yes.

4 Q. He says, "In the meantime, I will try to keep the rest of
5 my dogs off the conditions guys to give you and to let your
6 feeding frenzy first and then I will let them do the rest. You
7 know what I mean. So any questions regarding that? Five,
8 five, five. Five, five, five, any questions?" Do you see
9 that?

10 A. Yes, sir.

11 Q. You said you remember actually being at this roll call, you
12 said that on your direct, correct?

13 A. I was present at the roll call.

14 Q. You remember Lieutenant Doute saying "five, five, five,"
15 right?

16 A. Yes, sir.

17 Q. And that's five, five, five areas of enforcement activity
18 he is looking for, correct?

19 MR. MARUTOLLO: Objection. I would note for the
20 record there are unintelligible phrases that were on this audio
21 that aren't listed on this transcript, in the five, five, five
22 section.

23 THE COURT: That's not a basis for the objection. But
24 the question was improper because you're asking what the
25 speaker said.

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D4T8FLO2 Silva - cross

1 Q. Did you understand that five, five, five to -- withdraw.

2 You understood that five, five, five to be referring
3 to enforcement activity that Lieutenant Doute wanted the
4 officers to engage in, correct?

5 A. That was the performance goal for violence reduction.

6 Q. So with respect to the performance goal, it would be five
7 summonses, five arrests, and five what else, five stops?

8 A. It's basically -- somewhere down there it says five of
9 anything.

10 Q. What do the fives refer it?

11 A. It can be any type of general enforcement, summonses --

12 Q. It could be 250s?

13 A. UF-250s.

14 Q. You wouldn't call that a quota, would you?

15 A. No.

16 Q. You would call it a performance goal though?

17 A. Yes, sir.

18 Q. You are aware that officers are evaluated based upon how
19 they meet their performance goals, correct?

20 A. Officers are evaluated for --

21 Q. Can you just answer that question, Sergeant?

22 MR. MARUTOLLO: He was trying to answer that question.

23 THE COURT: Were you interrupted?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: Go ahead.

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D4T8FLO2 Silva - cross

1 A. Officers are evaluated on performance goals plus other
2 things.

3 Q. I understand. But part of what their evaluation is based
4 upon whether they meet the performance goals that are set for
5 them, correct?

6 A. Yes. But their overall evaluation is not concerned about
7 performance goals.

8 THE COURT: But it's one component?

9 THE WITNESS: Yes, ma'am.

10 Q. You know who Captain Materasso is, correct?

11 A. Yes, I do.

12 Q. Is she still in the 40th Precinct?

13 A. Yes, she is.

14 Q. Did she ever tell you that 50 percent of the officers'
15 evaluation would be based on meeting performance goals?

16 A. No.

17 Q. Were you aware that she had that standard in mind in
18 evaluating officers?

19 A. No.

20 Q. So although it's only a part of the evaluation, still
21 performance goals would be a part of an officer's evaluation,
22 correct?

23 A. Yes.

24 Q. If they failed to meet the standards set for them in the
25 performance goals, it could lead to them having some adverse

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D4T8FLO2 Silva - cross

1 employment consequences, correct?

2 A. What do you mean by that?

3 Q. They could get a new assignment, they could be put on a
4 different shift. There's all kinds of things that could happen
5 to them if they don't meet the performance goals set for them,
6 correct?

7 A. Not that I am aware of.

8 THE COURT: You think there is no consequence at all
9 for not meeting performance goals?

10 THE WITNESS: It depends where -- I don't know where
11 his question is coming from.

12 THE COURT: I am just asking you, aren't are
13 consequences if you don't meet your performance goals?

14 THE WITNESS: Yes.

15 THE COURT: What might those consequences be?

16 THE WITNESS: Exactly what counsel said.

17 THE COURT: Like, in your words?

18 THE WITNESS: Change of assignment possibly, change of
19 partnership.

20 Q. They could even be transferred out of the precinct,
21 correct?

22 A. Not that I am aware of, no.

23 Q. So this transcript indicates that you were present while
24 the phrase "five, five, five" was mentioned, right?

25 A. Yes.

D4T8FLO2 Silva - cross

1 Q. At some point Officer Serrano says, "You said five Cs, five
2 250s and what else?" Do you see that?

3 A. Yes.

4 Q. Then you say, "Serrano." You're trying to stop Serrano
5 from talking, right?

6 A. Pretty much.

7 Q. You wanted to stop him because he was getting too specific
8 about the actual numbers of types of enforcement activity that
9 were being expected, right?

10 A. Not at all, sir.

11 Q. After you say "Serrano," then Lieutenant Doute says, he
12 repeats "five, five, five." Do you see that?

13 A. Yes, sir.

14 Q. He repeats it again, "five, five, five. OK." Then he says,
15 "Any five, you know what I mean." Correct?

16 A. Yes, sir.

17 Q. Did you understand when he said, "you know what I mean" to
18 be, you know you have certain performance goals and you have
19 got to go out and meet it, right?

20 A. Yes.

21 MR. MOORE: One second, Judge.

22 Nothing further, Judge.

23 THE COURT: Thank you, Mr. Moore.

24 MR. MARUTOLLO: A few questions.

25 THE COURT: All right.

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D4T8FLO2 Silva - cross

1 REDIRECT EXAMINATION

2 BY MR. MARUTOLLO:

3 Q. Sergeant Silva, Mr. Moore asked you questions about officer
4 memo books during the cross-examination. While a sergeant at
5 the 40th Precinct, do you review officer memo books?

6 A. Yes, I do.

7 Q. Do you scratch or sign officer memo book entries?

8 A. On a daily basis.

9 Q. Do you review entries related to stop, question and
10 possibly frisk in these memo book entries?

11 A. Yes, I do.

12 THE COURT: Did you ever find these entries not
13 complete enough?

14 THE WITNESS: I review more the form itself.

15 THE COURT: The UF-250 form more than the memo book?

16 THE WITNESS: Yes. But I also instruct my officers
17 exactly what to put down in the memo books.

18 THE COURT: Do you check the memo books?

19 THE WITNESS: Yes.

20 THE COURT: Did you ever find an insufficient
21 description in the memo books?

22 THE WITNESS: No.

23 THE COURT: Never? They were all perfect?

24 THE WITNESS: Pretty much, your Honor.

25 Q. Just going back for a second to the transcript of

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D4T8FLO2 Silva - redirect

1 Lieutenant Doute indicating "five, five and five," did you
2 understand that to mean a total amount of activity of 15 of
3 something?

4 A. No.

5 MR. MARUTOLLO: Can I have one moment, your Honor?

6 No further questions, your Honor.

7 THE COURT: Thank you.

8 Anything further?

9 MR. MOORE: No.

10 THE COURT: All set. Thank you.

11 MR. MARUTOLLO: Defendants call Sergeant Stephen
12 Monroe.

13 MS. BORCHETTA: Can we raise one issue? According to
14 the city's list of witnesses, this is the final witness
15 identified for today, except for Detective Hawkins who might
16 come.

17 THE COURT: Do you have your revised list in front of
18 you? I left my in chambers.

19 One second. OK.

20 MS. BORCHETTA: If they need to move up any witnesses,
21 we might need to get attorneys who are not here here. So we
22 would just ask that if somebody from the city could identify
23 anybody else being called today by 1:00.

24 MR. MARUTOLLO: We can do that right now. Detective
25 Hawkins, who was here last Wednesday and Thursday, we were

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D4T8FLO2 Silva - redirect

1 hoping that she will be here. However, we are not 100 percent
2 sure on that. If Detective Hawkins is not here in the
3 afternoon, we will continue with the order, which is, I
4 believe, Detective Santos Albino and then Sergeant Justin
5 Dengler.

6 THE COURT: OK.

7 In the meantime, we have Sergeant Monroe.

8 STEPHEN MONROE,

9 called as a witness by the defendants,
10 having been duly sworn, testified as follows:

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

13 THE WITNESS: Sergeant Stephen Monroe, S-T-E-P-H-E-N,
14 M-O-N-R-O-E.

15 DIRECT EXAMINATION

16 BY MR. MARUTOLLO:

17 Q. Good afternoon, Sergeant Monroe.

18 A. Good afternoon.

19 Q. Are you currently employed by the NYPD?

20 A. Yes, I am.

21 Q. What is your educational background?

22 A. I have a BF degree in behavioral science.

23 Q. How long have you been employed by the New York Police
24 Department?

25 A. Approximately 20 years.

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D4T8FLO2 Monroe - direct

1 Q. When did you join the NYPD?

2 A. August 1993.

3 Q. Did you enter and graduate from the police academy?

4 A. Yes, I did.

5 Q. When did you graduate from the police academy?

6 A. March 1, '94.

7 Q. After graduating from the police academy, where were you
8 assigned?

9 A. 70 Precinct, Brooklyn South.

10 Q. How long were you assigned to the 70 Precinct?

11 A. Approximately six years.

12 Q. What were your duties and responsibilities as an officer in
13 the 70 Precinct?

14 THE COURT: What borough is that?

15 THE WITNESS: Brooklyn. Brooklyn South, ma'am.

16 THE COURT: Thank you.

17 Then he asked for your duties and responsibilities you
18 had in that precinct.

19 A. I did patrol and general enforcement.

20 Q. Where were you assigned next?

21 A. The 60 Precinct in Brooklyn South.

22 THE COURT: Also Brooklyn South?

23 THE WITNESS: Yes, ma'am.

24 Q. What were your duties and responsibilities as an officer in
25 the 60 Precinct in Brooklyn South?

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D4T8FLO2 Monroe - direct

- 1 A. I did patrol, general enforcement, I was the truancy
2 officer, and conditions.
3 Q. How long were you assigned to the 60 Precinct?
4 A. About ten years.
5 Q. Did there come a time when you were promoted to sergeant?
6 A. Yes, sir.
7 Q. How did you attain the position of sergeant?
8 A. I took a test.
9 Q. Why did you want to become a sergeant?
10 A. To use my knowledge and my experience to help other police
11 officers.
12 Q. When were you promoted to sergeant?
13 A. October 2010.
14 Q. So just to be clear, prior to being promoted to sergeant,
15 did you have at least 15 years of patrol officer experience?
16 A. Yes, I did.
17 Q. Upon being promoted to sergeant, did you receive any
18 training?
19 A. Yes. I took a leadership management course.
20 Q. After your promotion to sergeant, where were you assigned?
21 A. The 40th Precinct in South Bronx.
22 Q. Is that your current assignment?
23 A. Yes, it is.
24 Q. Again, you said that covers the South Bronx?
25 A. South Bronx, Mott Haven.

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D4T8FLO2 Monroe - direct

1 Q. What are your duties and responsibilities as a sergeant in
2 the 40th Precinct?

3 A. I am a patrol supervisor. I supervise approximately ten
4 police officers. I supervise their patrol duties. I supervise
5 their paperwork and their arrestees.

6 Q. How would you describe the crime levels in the 40th
7 Precinct?

8 A. It's very high.

9 Q. How do you know that?

10 A. From my experience there and the crime statistics of the
11 precinct.

12 Q. What kind of crime conditions are prevalent in the 40th
13 Precinct, if any?

14 A. It's a lot of robberies, a lot of assaults and shootings.

15 Q. Now, what is your understanding of the racial makeup of the
16 officers working at the 40th Precinct?

17 A. It's mostly Hispanic and black.

18 Q. As a sergeant, do you ever speak with your officers about
19 the crime conditions that they are trying to address?

20 A. Yes, I do.

21 Q. How do you inform your officers of these crime conditions?

22 A. I speak with them about crime conditions at roll call. I
23 will address like what type of robbery patterns, type of
24 larceny patterns. Also, there is a quest for excellence form
25 that is given to each sector, and I will explain that. Each

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D4T8FLO2

Monroe - direct

- 1 sector -- a precinct is broke down in four sectors: Adam Boy,
2 David, Frank, George, Henry and John. Those are the four
3 sectors. The quest is a precinct condition for each sector.
4 Like, for example, Sector Adam would have maybe a robbery
5 pattern in a certain area or a quality of life condition or
6 maybe an auto condition, traffic.
- 7 Q. Would you communicate the information on these quest for
8 excellence condition reports to your officers?
- 9 A. Yes, I would. I would hand them out. Also, I would tell
10 them each sector, what the most important condition in the
11 sector they should address.
- 12 Q. Are you familiar with the NYPD's Operations Order 52?
- 13 A. Yes, I am.
- 14 Q. Pursuant to Operations Order 52, do you review officer
15 monthly conditions impact measurement reports?
- 16 A. Yes, I do.
- 17 Q. How do you review these reports?
- 18 A. Well, I sign them three times a month and I also review
19 their memo books.
- 20 Q. You discuss these reports with your officers?
- 21 A. Yes.
- 22 Q. As a sergeant, how do you ensure that officers under your
23 supervision are conducting lawful stops based on reasonable
24 suspicion?
- 25 A. Well, in the field we get radio runs. Most of the radio

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D4T8FLO2

Monroe - direct

- 1 runs usually have some type of description. I usually go to
2 the location of where the call is given with my officers, and I
3 observe the stops looking for safety and their approach of the
4 suspect.
- 5 Q. Will you ever physically witness a stop while out on patrol
6 with these officers?
- 7 A. Yes, I will. I am out there monitoring the radio runs.
- 8 Q. Do you ever review UF-250s of officers in your squad?
- 9 A. Yes, daily.
- 10 Q. Do you review officers' memo books of officers in your
11 squad?
- 12 A. Yes, I do. When I am on patrol, I will usually sign them
13 and review them.
- 14 Q. Do you ever speak with officers about stops that they have
15 made?
- 16 A. Yes, I do.
- 17 Q. What do you speak to them about regarding these stops?
- 18 A. I talk to them about their approach, their safety, the type
19 of condition that is addressed.
- 20 Q. Now, just going back for a second to UF-250s. During your
21 review of these UF-250s, do you pay any attention or any
22 special attention to the location listed on the UF-250?
- 23 A. Yes, I do.
- 24 Q. Why do you do that?
- 25 A. Depending on the condition of that sector, like maybe a

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D4T8FLO2 Monroe - direct

1 robbery pattern, assault pattern, or maybe there was a shooting
2 in that area.

3 Q. So do you see if the locations match up with the conditions
4 that are to be addressed?

5 A. Yes, I do.

6 Q. Have you ever punished an officer under your supervision by
7 assigning them to work as your driver?

8 A. No.

9 Q. Why would you assign an officer to work as your driver?

10 A. Mostly because I needed a driver.

11 Q. I'm sorry?

12 A. Because I needed a driver.

13 Q. As a supervisor, have you ever subjected officers under
14 your command to a quota?

15 A. Never.

16 THE COURT: Have you ever reviewed a memo book entry
17 that you considered inadequate?

18 THE WITNESS: Ma'am, when you say inadequate?

19 THE COURT: When you reviewed the memo book entry for
20 a UF-250 stop, did you ever think the memo book entry was not
21 completed or not complete at all?

22 THE WITNESS: If the officer needs instruction in the
23 accuracy or completeness of the memo book entry, yes, I will.

24 THE COURT: So you have seen entries that were not
25 complete enough or were not accurate enough over the years?

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D4T8FLO2 Monroe - direct

1 THE WITNESS: Yes, I have.

2 THE COURT: Each time you saw that, you told the
3 officer?

4 THE WITNESS: I instructed them on the proper way to
5 fill them out.

6 Q. As a sergeant, have you ever punished an officer under your
7 command for failing to conduct a certain number of stops,
8 summonses or arrests?

9 A. No.

10 THE COURT: Are you aware of performance goals?

11 THE WITNESS: Yes, I am.

12 THE COURT: What is a performance goal?

13 THE WITNESS: A performance goal would be addressing
14 your conditions.

15 THE COURT: I'm sorry?

16 THE WITNESS: Addressing your conditions in your
17 sector or specified in the quest.

18 THE COURT: Or specified?

19 THE WITNESS: When I say conditions, like in the
20 quest, different quality of life conditions, shooting patterns,
21 when they go in and they talk to the public, when they go to
22 areas where there are shootings, they do verticals and
23 directive patrols.

24 THE COURT: So the performance goals are never
25 numerical?

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D4T8FLO2 Monroe - direct

1 THE WITNESS: Numerical in what way?

2 THE COURT: Numbers. Performance goals are never
3 stated in terms of numbers?

4 THE WITNESS: For the officer?

5 THE COURT: Officers or the precinct or the tour, did
6 anybody ever say a performance goal is numbers?

7 THE WITNESS: No.

8 THE COURT: You never heard that?

9 THE WITNESS: Not for the officers, no.

10 THE COURT: For who? If it's not for the officers,
11 then for who?

12 THE WITNESS: When you say performance goals, you are
13 talking about?

14 THE COURT: Did anybody in a supervisory level state
15 to the officers during roll call or during -- I guess roll
16 call, the performance goals that are expected?

17 THE WITNESS: They are expected to address the
18 conditions in sectors.

19 THE COURT: They are never numerical?

20 THE WITNESS: Never.

21 BY MR. MARUTOLLO:

22 Q. Sergeant Monroe, how do you evaluate officers who are
23 working under your supervision?

24 A. Well, through my 15 years on patrol and my three years of
25 supervising, I evaluate officers by their conditions, address

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D4T8FLO2 Monroe - direct

1 their conditions, how they interact with the public, their
2 accuracy and completeness of the reports.

3 Q. You are familiar with an officer named Pedro Serrano?

4 A. Yes, I am.

5 Q. How long have you been Pedro Serrano's immediate
6 supervisor?

7 A. Approximately two years.

8 Q. Over the course of your supervision of Officer Serrano, how
9 would you evaluate Officer Serrano's job performance?

10 A. Over my two years?

11 Q. Yes.

12 A. Mediocre.

13 Q. Going back for a second, did you have any input on Officer
14 Serrano's 2010 performance evaluation?

15 A. No, I did not.

16 Q. So what year did you first begin to evaluate Officer
17 Serrano?

18 A. I believe 2011.

19 Q. With respect to this first evaluation, do you remember what
20 score you gave Officer Serrano during this 2011 performance
21 evaluation period?

22 A. A 3.

23 Q. That is on a scale of 1 to 5, with 1 being the lowest and 5
24 being the highest, correct?

25 A. Yes.

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D4T8FLO2 Monroe - direct

1 Q. Why did you give Officer Serrano a score of 3 in 2011?

2 A. He showed lack and drive.

3 THE COURT: He what?

4 THE WITNESS: He showed lack of initiative and drive.

5 Q. Did you also evaluate Officer Serrano in 2012?

6 A. Yes, I did.

7 Q. What score did you give Officer Serrano during the 2012
8 evaluation period?

9 A. I believe a 3.

10 Q. Why did you give Officer Serrano a 3 in 2012?

11 A. From my two evaluations, 2012 he regressed somewhat. Most
12 of the calls or jobs that I go to -- we call assignments over
13 the radio jobs, whereas you would call them assignments or
14 assignments. For an officer to have his amount of time, which
15 was eight years, he called me regularly to most of his jobs to
16 supervise him or answer questions that I felt that he should
17 already know if he had patrol experience.

18 Q. How would you evaluate Officer Serrano's decision-making
19 ability in 2012?

20 A. Poor.

21 Q. Why is that?

22 A. Well, if he is calling me to a large amount of his jobs to
23 answer questions that he should know, that I feel he should
24 know, in my 15 years of experience on patrol and three years as
25 a supervisor, he is calling me to ask questions and make

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D4T8FLO2 Monroe - direct

1 decisions for him.

2 Q. Did you consider Officer Serrano's decision-making ability
3 to be problematic for you?

4 A. Well, if I am going --

5 MR. MOORE: Object to the form. I don't know what
6 that means.

7 THE COURT: Was he an officer that you felt needed
8 more supervision than other officers?

9 THE WITNESS: Yes.

10 THE COURT: That creates a problem for you, is that
11 right?

12 THE WITNESS: Officer Serrano had eight years of
13 patrol experience. In my 15 years on patrol, I wouldn't call a
14 supervisor as much as he called the supervisor to his location.
15 And the questions that he asked me were not questions that were
16 to help him solve a problem. He wanted me to go there and
17 solve the problem.

18 THE COURT: OK.

19 Q. Is it fair to say when you had to respond to Officer
20 Serrano, that you could not therefore be physically with other
21 officers?

22 A. If I am going to a majority of his jobs, I can't fairly
23 supervise other younger police officers on patrol.

24 Q. Sergeant Monroe, do you remember a June 2012 meeting with
25 Captain Martine Materasso and Officer Serrano?

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D4T8FLO2 Monroe - direct

1 A. Yes.

2 Q. Why were you present at that meeting?

3 A. We were -- his evaluation, he was appealing it.

4 Q. Was that his 2011 evaluation?

5 A. Yes, it was.

6 Q. What, if anything, occurred at the meeting?

7 A. We discussed his evaluation and him addressing his
8 conditions. I think we discussed, if he addressed his
9 conditions a little better, we would do an interim eval.

10 MR. MOORE: Would do a what?

11 A. Interim eval.

12 THE COURT: Interim evaluation.

13 A. So if he addressed his conditions more better, we would do
14 a better interim eval for him, meaning we would give him a
15 better score.

16 Q. Was that raised with Officer Serrano in the room?

17 A. Yes, it was.

18 Q. Did Captain Materasso receive a phone call during this
19 meeting?

20 A. Yes, she did.

21 Q. What was your understanding of that phone call?

22 THE COURT: He didn't have any understanding of the
23 phone call.

24 You weren't on the phone call, were you?

25 THE WITNESS: No, I wasn't.

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D4T8FLO2 Monroe - direct

1 THE COURT: I can't allow that.

2 Q. Did you indicate to Officer Serrano that he needed to do a
3 certain amount of activity at that meeting?

4 A. I indicated he needed to address his conditions in the
5 sector.

6 MR. MARUTOLLO: Can I have one moment?

7 THE COURT: Did you tell him that he had to increase
8 his numbers?

9 THE WITNESS: No, ma'am.

10 THE COURT: He didn't have to increase his stops,
11 summonses or arrests?

12 THE WITNESS: No. He had to address his conditions.

13 THE COURT: I know. But you didn't tell him to pick
14 up his activity level?

15 THE WITNESS: I told him to address his conditions in
16 the sector.

17 THE COURT: All right.

18 Q. Sergeant Monroe, what happened after Captain Materasso
19 received that phone call?

20 A. Herself and Officer Serrano -- she asked Officer Serrano to
21 go with her to some type of narcotics location.

22 Q. Sergeant Monroe, I would like to show you what has already
23 been entered into evidence as Defendants' Exhibit B10.

24 I will hand you a hard copy.

25 THE COURT: You said that's already in evidence?

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D4T8FLO2 Monroe - direct

1 MR. MARUTOLLO: Yes.

2 THE COURT: It's on the screen, right?

3 MR. MARUTOLLO: Yes.

4 Q. Before we talk about Exhibit B10, Sergeant Monroe, can
5 conditions in a sector be addressed without enforcement
6 activity?

7 A. Without enforcement activity?

8 THE COURT: You kept answering before that you told
9 him to address conditions, and I kept saying, did you tell him
10 to pick up activity? So I guess what the counsel is saying,
11 can you address conditions without increasing enforcement
12 activity, was that the way you addressed conditions?

13 THE WITNESS: It depends on the condition.

14 Q. If there was a robbery at a location, would there be ways
15 to address that condition without stops, arrests or summonses?

16 A. A robbery location?

17 THE COURT: If you had a robbery condition, is there a
18 way to address it other than stops, summonses, arrests?

19 THE WITNESS: It depends on.

20 THE COURT: The answer is?

21 THE WITNESS: It depends.

22 THE COURT: Even on the robbery condition?

23 THE WITNESS: It depends.

24 Now, here he has directive patrols. If that's a
25 robbery pattern in that location, the officer should be going

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D4T8FLO2 Monroe - direct

1 to the location and serving the area for suspicious activity,
2 any type of suspicious activity or whatever the officer feels
3 would bring his level of suspicion up or just serving the area.

4 If on the quest sheets -- let me go back. On the
5 quest sheets, for that particular sector, there is usually like
6 a description of -- say it's a robbery pattern. There is
7 usually a description of a perpetrator doing the robbery, some
8 type of general description.

9 Q. Can physical presence by uniformed officers address
10 conditions?

11 MR. MOORE: Object to the leading nature of that
12 question.

13 THE COURT: Sustained.

14 Q. Turning to Defendants' Exhibit B10, which is already on the
15 screen, Sergeant Monroe, do you recognize this document?

16 A. Yes.

17 Q. This document is Officer Serrano's October 2012 monthly
18 performance report, right?

19 A. Yes.

20 Q. I'm sorry. Monthly conditions impact measurement report,
21 right?

22 A. Yes.

23 THE COURT: You said October '12?

24 MR. MARUTOLLO: Yes.

25 THE COURT: Wasn't it signed in April '12?

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D4T8FLO2 Monroe - direct

1 MR. MARUTOLLO: On the top right-hand corner it says
2 October 2012.

3 THE COURT: Later on I thought it was signed April
4 '12.

5 Is that 11? Somebody in your group said 11. I saw it
6 as a 4, but I'm told it's 11.

7 Well, on that most interesting note, we will reconvene
8 at 5 after 2. We are taking our lunch recess now.

9 (Luncheon recess)

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AFTERNOON SESSION

2:11 p.m.

(In open court; trial resumed)

MS. BORCHETTA: Your Honor, I'm sorry. We need to interject an objection hopefully with time for the city potentially to respond to it.

We object to the witnesses the city has indicated they would call if we finish early, which it looks like we would today, which is Detective Albino and Sergeant Dengler. And our objection begins with the fact that we were supposed to question Detective Hawkins this morning. The first we learned that we weren't going to be questioning Detective Hawkins was when the city said during court that the next witness it was calling was Detective Vizcarrondo, skipping her. We still don't know why she isn't here.

And we, therefore, had no notice that Sergeant Dengler and Detective Albino might go today.

We understand that it's the way of proceedings that sometimes we do go faster. However, we're particularly burdened by calling these two witnesses early.

These two witnesses conducted searches into NYPD records to identify John Does. It involves a number of stops. It involves a lot of documents. It is also the subject of an extensive fact specific stipulation between the parties that was not finalized until late last night.

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1 And our entire cross-examination of them is tailored
2 necessarily to that stipulation, which we could not begin
3 preparing until today. There are also a number of documents
4 that we agreed to produce for -- as part of the city's
5 stipulations when those witnesses appeared that we literally
6 physically have not had time to get together. My understanding
7 is it's about 60 exhibits.

8 THE COURT: All right. Look. That's very convincing.

9 MR. MARUTOLLO: Your Honor, may I --

10 THE COURT: Can we skip over those two and bring in
11 more ordinary people? Who else are you going to object to if
12 they said well we'll skip --

13 MS. BORCHETTA: Your Honor, we said at the beginning
14 of the lunch break that we would be willing to move on to
15 Inspector Lehr or Sergeant Marino.

16 MR. MARUTOLLO: May I be heard regarding --

17 THE COURT: It's a waste of my time to hear these
18 arguments. It truly is. It's a convincing enough case. She's
19 got to get 60 exhibits together. The stip wasn't reached until
20 late last night. They're not ready for the cross. I don't
21 need a counterargument. I'm not going to go forward with it.
22 Either I'm going to stop at 2:30, which is a true waste of my
23 time. It will throw us off the schedule for summations, which
24 is not critical to everybody, or you're going to bring in two
25 more -- I don't know what word to use -- ordinary witnesses

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1 that don't require special preparation. They are perfectly
2 prepared to go with Lehr or she said Marino. I don't know
3 what's wrong with Cirabisi. Any of these people. Even the
4 stop people. I can't imagine why you can't go with Barrett or
5 White. They're all the same. Five choices to find two people
6 so we use the afternoon.

7 I'm just asking you to be flexible and do it. I don't
8 want an argument.

9 MR. MARUTOLLO: No, your Honor.

10 One note I was offering perhaps to might help the
11 situation is the parties have indeed reached a stipulation
12 regarding, in lieu of direct live testimony, which is about I
13 believe it's ten pages long, single-spaced, which frankly I was
14 planning on reading into the record, which may take some time.

15 Additionally, Ms. Patel has e-mailed and indicated
16 that Sergeant Dengler, who was one of the individuals who will
17 be testifying, that there is an exhibit ready and that they are
18 I believe prepared for Sergeant Dengler to go first instead of
19 Detective Albino who has the more extensive investigation.

20 I not sure if that will be of any assistance because
21 it seems that, at the very least, Sergeant Dengler will be able
22 to testify today particularly as the stipulation has been -- it
23 was finalized last night, your Honor, but it was sent from last
24 Sunday, a week before, have been discussing it all week and at
25 plaintiffs' request it was discussed --

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1 THE COURT: It didn't get done until last night. They
2 didn't expect the witness today. They got 60 exhibits to put
3 together. They're not ready for their cross. There's a lot of
4 other people you could call who are more ordinary or plain
5 vanilla -- that was the word I was looking for.

6 Call some of these people. Call their precincts. See
7 if Lehr can come down. See if Marino can come down. I don't
8 see what's wrong with Barrett or White. Then you'd take these
9 people and be done with it. We spend more time talking about
10 it.

11 MS. RICHARDSON: Your Honor, in an effort to try to
12 assist, I've already reached out to Sergeant Marino. The
13 problem is that he was not scheduled to testify until later
14 this week and he is in New Jersey. He does not believe that he
15 can get back before 4:30 today. So he's unavailable.

16 THE COURT: There's one. There were other choices
17 here. There's Lehr in the 67th precinct. I don't know why
18 there can't be Cirabisi in the 107. I don't know there can't
19 be White. I don't know why there can't be Barrett. There's a
20 lot of other choices.

21 MR. MOORE: And then there's Hawkins. We haven't
22 heard any explanation why she didn't show up.

23 THE COURT: I don't know if the defendants know. My
24 impression was they were thinking she might walk through the
25 door any minute earlier this morning.

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1 MR. MARUTOLLO: It was intended to be about the same
2 amount of time for Detective Hawkins as was for Detective
3 Vizcarrondo.

4 THE COURT: But you haven't found her, or she's not
5 here, either one or the other.

6 MS. PUBLICKER: Just briefly we have been calling
7 other witnesses and we've had the issue that some of them have
8 criminal trials going on that our notifications can't
9 supersede.

10 THE COURT: I don't believe all the five names I just
11 brought up are in criminal trials. There aren't enough going
12 on to keep five of them busy.

13 So somebody should go out in the hall and call all
14 five that I mentioned to see what you can do to fill the day;
15 otherwise, I'm going to stop. But then you're going to suffer
16 at the end of this. That's what's going to happen. I'm not
17 staying a day after the 20th at 5:00, as we've discussed.

18 MR. MARUTOLLO: May I proceed your Honor?

19 THE COURT: With this witness.

20 I don't see anybody from the defense team leaving to
21 make phonecalls. I asked them to. Maybe I should just direct
22 it. Would somebody leave the room and make phonecalls of the
23 five names I suggested.

24 MS. PUBLICKER: Yes, your Honor.

25 THE COURT: Thank you.

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1 STEPHEN MONROE, resumed.

2 DIRECT EXAMINATION

3 BY MR. MARUTOLLO:

4 Q. Sergeant Monroe, before the break we were discussing your
5 June 2012 meeting with captain Martine Materasso. Do you
6 recall that?

7 A. Yes.

8 Q. And you indicated that you told Officer Serrano, during
9 that meeting with Captain Materasso, that he needed to address
10 his conditions?

11 A. Yes.

12 Q. What did you mean when you told Officer Serrano that he
13 needed to address his conditions?

14 A. What I meant by addressing conditions was depending on what
15 the condition is, might be shooting condition or robbery
16 location or shooting location -- we've had shootings in the
17 past -- I meant by him addressing the condition, going to the
18 location. His very presence as an officer, when you go to the
19 locations, interactions with the public, surveying the
20 location, looking for suspicious activity.

21 When you address the public and you're out there.
22 Visibility to the public. They'll come to you and they'll tell
23 you what's going on, or you'll see what's going on.

24 With his eight years of experience as a patrol officer
25 in the South Bronx I would assume that he -- when I go address

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Monroe - direct

1 conditions, he can go out and survey the locations; survey the
2 shooting locations or robbery locations specified in the
3 request sheets.

4 Some of these locations that they have may be
5 descriptions of like gang members or -- descriptions of robbery
6 patterns, some type of description. Address the conditions by
7 going on the location and surveying, looking for suspicious
8 activity and asking the question why, what's going on here,
9 what's out of place. And then you go from there.

10 Q. So if a shooting occurred in a given location, how would
11 you expect officers under your supervision to address that kind
12 of condition?

13 A. Well I would expect them to go to locations, survey the
14 area, do verticals, directed patrols, looking for something
15 that's out of place. You go from there and --

16 Q. Would you ever consider their presence alone to be
17 sufficient?

18 A. Yes.

19 Q. And when you mentioned verticals, what did you mean by
20 that?

21 A. Verticals. Verticals are when -- say we get -- give you an
22 example of the location where they had maybe shootings. When
23 you go into a building, do verticals. You go into the
24 building. You're entering the building. You're going into the
25 lobby. You're going into the vestibule. You're going to the

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Monroe - direct

1 roof. You're going down the stairwells. You're looking for
2 suspicious activity. Probably maybe -- depends on what the
3 officer notices, encounters.

4 Q. I'd like to turn your attention back to Defendants' Exhibit
5 B10 which has already been entered into evidence.

6 Again, Sergeant Monroe, what is this document? I know
7 you have a hard copy in your hand.

8 A. This is a performance conditions impact measurement report.

9 Q. Is this from October 2012?

10 A. Yes, it is.

11 Q. Did you complete any part of this document?

12 A. Yes. I signed it three times.

13 Q. And on the back page of this document did you complete any
14 other sections?

15 A. Yes. I made comment in the supervisor's comment section.

16 Q. First, Sergeant Monroe, with respect to this document, what
17 are the conditions that are to be addressed by Officer Serrano
18 during October 2012?

19 A. Shootings and robberies.

20 Q. And how many days --

21 THE COURT: Does it say that on the form somewhere?

22 Is it on the top?

23 MR. MARUTOLLO: It's not on the very top, your Honor.

24 It's on -- you can see right here. Robberies and shootings.

25 THE COURT: But those are individual days, aren't

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D4t9flo3 Monroe - direct
1 they?

2 MR. MARUTOLLO: Right.

3 THE COURT: So for some days, the conditions to be
4 addressed are shooting and robberies, right?

5 THE WITNESS: The days he was on patrol.

6 THE COURT: All the days he was on patrol?

7 THE WITNESS: Yeah. Now you see --

8 Q. What do you mean when you say that the days he's on patrol
9 he was assigned to address robberies and shootings?

10 A. Some of these days he has what CRV, that's something
11 outside -- like detail outside of command. He's RDO.

12 Q. Are you referring to his assignments?

13 A. Yes.

14 THE COURT: I guess he's saying whenever it doesn't
15 say shootings and robberies it's because he's assigned to
16 something else or on an RDO.

17 THE WITNESS: Except five and six he doesn't have any
18 conditions.

19 Q. During this period, October 2012 --

20 A. Yes.

21 Q. -- does it indicate how many days Officer Serrano was on
22 patrol?

23 A. Thirteen.

24 Q. And approximately how long is each day on patrol?

25 A. Eight hours and 30 minutes.

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Monroe - direct

- 1 Q. Now, the patrol time in your platoon during this period was
2 usually between the hours of 4:00 p.m. and midnight, right?
3 A. Yes.
4 Q. Now during your career you've worked two other platoons,
5 right?
6 A. Yes.
7 Q. And those were platoons, the day tour from eight to four
8 and midnights from twelve to eight; is that right?
9 A. Yes.
10 Q. In your own experience do you find there are more or less
11 crimes during the four to twelve tour?
12 A. On the four to twelve there are more crimes.
13 Q. And in your experience what are you basing that on?
14 A. My experience there and the statistics. The stats of the
15 precinct.
16 Q. Looking at Defendants' Exhibit B10 there's a box there
17 that's checked and also circled that says ineffective. Did you
18 check and circle that box?
19 A. Yes.
20 Q. Underneath that box are also handwritten comments in the
21 box stating officer's impact on declared conditions; is that
22 right?
23 A. Yes.
24 Q. And the comments in that section indicate that "P.O.
25 Serrano indicates he had 20 car related stops. However, his

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Monroe - direct

1 activity does not reflect effective policing. P.O. Serrano
2 only has one B summons and no UF 250s."

3 Did you write those comments?

4 A. Yes, I did.

5 Q. And you rated him as ineffective in response to how he
6 addressed his declared conditions?

7 A. Yes.

8 Q. How would you compare Officer Serrano to other officers
9 under your supervision working in the same tour and same sector
10 as Officer Serrano?

11 MR. MOORE: I'm going to object to that, Judge, unless
12 we have some evidence similar to what's being presented here.

13 There is no way to verify what he's going to say in terms of --

14 MR. MARUTOLLO: It's his personal knowledge, your
15 Honor.

16 MR. MOORE: How he rates with the other officers.

17 THE COURT: When you say you rated him as ineffective
18 is that on the form?

19 THE WITNESS: Yes. Right there. It's an X and a
20 circle.

21 THE COURT: Right.

22 How many other officers were under your supervision on
23 the same tour and the same sector as Officer Serrano?

24 THE WITNESS: During that month of October?

25 THE COURT: Yes. Let's say that.

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Monroe - direct

1 How many were under your supervision in the same
2 sector and the same tour?

3 THE WITNESS: About five or six.

4 THE COURT: Five or six others?

5 THE WITNESS: Yes. Six.

6 THE COURT: And do you recall whether they were
7 rated -- any of them were rated ineffective or were they all
8 rated effective?

9 THE WITNESS: Some of these officers I wasn't their
10 squad supervisor so I wouldn't know what their --

11 THE COURT: So how many of those six did you
12 personally rate? Any?

13 THE WITNESS: Four.

14 THE COURT: You rated four others?

15 THE WITNESS: Mm-hmm.

16 THE COURT: Did you rate any of those four
17 ineffective?

18 THE WITNESS: No.

19 Q. Why didn't you rate those four officers ineffective?

20 MR. MOORE: Once again, I think he's trying to elicit
21 testimony that we have no way of verifying its accuracy.

22 THE COURT: It's under oath. He says he personally
23 rated them and he rated none of them ineffective. I take his
24 word for that.

25 MR. MOORE: Beyond that why should it be -- I

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1 understand that's what he said. Now he's going to go into
2 details.

3 THE COURT: Not much detail. He's going to say why
4 did you rate them effective or, in the negative, why didn't you
5 rate them ineffective?

6 I'll allow that. Why didn't you rate them
7 ineffective?

8 THE WITNESS: Why didn't I? In comparison?

9 THE COURT: I didn't ask that.

10 Why were they rated effective, those four; or put in
11 the negative, why weren't they rated ineffective?

12 THE WITNESS: Okay. Well the other officers in my
13 squad answered, you know, just as many -- I wouldn't say they
14 answered -- I don't recall how many jobs they answered but it
15 was, you know, it was a high amount of jobs. And on their
16 impact mission form, they addressed the conditions more
17 vigorously.

18 Q. Now --

19 A. In comparison to Officer Serrano.

20 Q. Now Officer Serrano lists 161 radio runs during October of
21 2012; is that right?

22 A. Yes.

23 Q. According to this document?

24 A. Yes.

25 Q. First, can you explain to the court how officers respond to

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1 radio runs?

2 A. Well we receive the radio runs over central, 911. You call
3 911 and 911 calls central. You call 911 with say it was a
4 robbery, for an example. You'll call 911. Say I've been
5 robbed at this location. You'll give a brief description. Say
6 send the police.

7 911 will dispatch that to our central, which will come
8 over the air, dispatch a sector with the location where you're
9 at and maybe a description if you gave one.

10 In my fifteen years on patrol and my three years as a
11 supervisor, Officer Serrano if he had like maybe --

12 MR. MOORE: He's going beyond what the question was at
13 this point.

14 THE WITNESS: I'm answering the question.

15 THE COURT: One second.

16 I'll strike starting with "in my fifteen years"
17 because that was no longer responsive to, "Can you explain how
18 officers respond to radio runs?" He finished explaining that
19 and suddenly came up Officer Serrano's name, which had nothing
20 to do with the question.

21 Q. Just going back, Sergeant Monroe, is there a primary sector
22 officer assigned when there's a radio run?

23 A. (No response).

24 Q. First -- so, is there?

25 A. Yes.

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1 Q. And what does that mean?

2 A. Well the primary sector would be the sector that central
3 designates to go to that particular location or job.

4 Q. Is there a secondary officer assigned to the sector?

5 A. Depending on the job. If there's a robbery in progress or
6 maybe an assault in progress or maybe a shooting with -- or a
7 man with a gun with a description, there will be a backing
8 sector.

9 Q. So, turn your attention to Officer Serrano. What did it
10 mean to you that Officer Serrano had 161 radio runs in October
11 of 2012 and no UF 250s?

12 A. Well that --

13 MR. MOORE: I'm going to object to that question,
14 Judge.

15 THE COURT: Why?

16 MR. MOORE: Because I think he's asking a compound
17 question. He's comparing apples and oranges on some level.

18 THE COURT: Overruled.

19 What does it mean to you that he had 161 radio runs
20 and no UF 250s?

21 THE WITNESS: Judge, it means to me if he's a primary
22 sector going to say for example a robbery job or a person that
23 states that they've been robbed. He gets to there. He's
24 supposed to be doing a canvass making some type of
25 investigation.

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Monroe - direct

1 If he's the backing sector, all right -- if he's the
2 primary sector he should get their further information, should
3 be putting over a description of the perpetrator.

4 If he's the backing sector, he's going to be going to
5 the location; if he's getting the description, he's going to be
6 doing a canvass also for that perpetrator.

7 Now if you're doing a canvass, if you're doing police
8 work in the South Bronx, it's -- it was a very high crime
9 sector, you're going to make an investigation. You're going to
10 canvass the area. You're looking for possible individuals
11 fitting those descriptions.

12 THE COURT: Yeah.

13 THE WITNESS: And you're going to possibly make a
14 stop.

15 THE COURT: Possibly.

16 THE WITNESS: If they fit the descriptions that the
17 sector or the central put over. In the general area.

18 Q. Now, were you familiar with these radio runs in
19 October 2012?

20 A. Yes. Most of them, yes.

21 Q. Did you monitor the radio as part of your duties as
22 sergeant?

23 A. I monitored the radio constantly.

24 Q. And do you recall if any of these radio runs had detailed
25 descriptions related to them?

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1 A. In my experience --

2 MR. MOORE: This is based on his personal knowledge.

3 THE COURT: Yes. He said he monitored the radio.

4 THE WITNESS: In my experience, depending on the jobs,
5 30 was to be a robbery, an assault in progress --

6 THE COURT: That's not the question. The question was
7 very specific to October 2012. When you heard the radio, did
8 some of the radio calls have descriptions?

9 THE WITNESS: Yes, they did.

10 THE COURT: All right.

11 Q. And if they had descriptions what did that mean to you then
12 that Officer Serrano had zero 250s in response to these 161
13 radio runs?

14 A. Well that means he's going to the location or going to the
15 job and he's not doing a canvass. He's just taking a report.

16 THE COURT: Wait a minute. He's not doing a canvass.
17 Would you write a UF 250 if you just asked questions of
18 somebody?

19 THE WITNESS: Okay. If you're going to the location.
20 Someone, say we're using a robbery for an example, and the
21 person says okay this -- a person had a particular clothing or
22 whatever the case may be and he went southbound on 138 Street
23 or northbound, whatever. And you get there in a reasonable
24 amount of time. You're supposed to do a canvass with the
25 complainant. Look for the perpetrator. Or if the complainant

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1 can't come with you, you still should be doing a canvass
2 looking for --

3 THE COURT: I'm sure that's true. But why would that
4 necessarily result in 250s?

5 THE WITNESS: Well it wouldn't necessarily result in a
6 250 unless you see a person fitting the description that the
7 complainant gave. Because you're only going to look for the
8 people that the description that the complainant gave.

9 Q. But in your experience in this South Bronx precinct what --
10 I mean did you have any -- what did you think, that there was
11 161 radio runs and he never found anyone that fit the
12 description?

13 MR. MOORE: Object to that, Judge.

14 THE COURT: That's sustained. I mean I don't know if
15 all 161 of those had a description. It's an unfair question
16 the way it was posed.

17 Q. Well did officers in your squad, Sergeant Monroe, during
18 the same time period fill out more UF 250s to address the same
19 condition?

20 A. Yes.

21 Q. And did other officers in your squad during the same time
22 period make more arrests and issue more summonses to address
23 the same conditions?

24 A. Yes.

25 Q. Now is there a certain number of UF 250s that Officer

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1 Serrano needed to complete each month?

2 A. No.

3 Q. So then why did you note on Exhibit B10 that he did not
4 complete any UF 250s? What was your purpose in doing that?

5 A. Well if he's going to 161 jobs with 13 days on patrol like
6 I said before he's either going to be the primary sector or the
7 backing sector. Now we have to at least make an attempt to
8 find the perpetrators or the perpetrators that did whatever
9 crime happened. We have to make an attempt. We are police
10 officers. Make an investigation. Make an attempt. We have to
11 go out there and try to find the person. If this is a
12 reasonable amount of time. And in my opinion he didn't make
13 any attempts.

14 MR. MOORE: I'm sorry. I didn't hear.

15 THE WITNESS: In my opinion he didn't make any
16 attempts.

17 Q. I'd like to show you what's already been entered into
18 evidence as Plaintiffs' Exhibit 296.

19 Sergeant Monroe, did you ever send a text message to
20 Officer Serrano indicating that you need to do more 250?

21 A. Yes.

22 Q. And first were there more texts between you and Officer
23 Serrano than what's shown on the screen right now in
24 Plaintiffs' Exhibit 296?

25 A. Yes, there was.

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1 Q. And do you remember what these other texts were referring
2 to?

3 A. I needed to do the -- I needed to calculate all my squad
4 members' activity. I didn't have his. So I texted him, I
5 don't have your activity report. He sent me a picture of his
6 activity report. And I couldn't make out the numbers on the
7 bottom of it because the picture was kind of faded. So I asked
8 him, you know, the number of days and the number of radio runs
9 he had.

10 Q. Just the activity report that you're referring to, is that
11 Defendants' Exhibit B10, is that the report you're talking
12 about?

13 A. Yes.

14 Q. Now it says on here, on Plaintiffs' Exhibit 296 that
15 there's 14 days on patrol and 109 radio runs?

16 A. He's got 13 and he lists nine radio runs. But he has 161
17 radio runs.

18 Q. So why did you state to Officer Serrano that he needed to
19 do more UF 250s in a text message?

20 A. Well if you're going to -- let me see. Okay.

21 He listed here -- I think 12 directed patrols.

22 Q. Twelve directed patrols you say?

23 A. And one vertical.

24 MR. MOORE: He's now referring to a document. The
25 question is why did he list on the -- why did he indicate on

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D4t9flo3 Monroe - direct

1 the text message that there was --

2 THE COURT: Yes. Why did you say to Officer Serrano
3 that he needed to do more 250s in a text message?

4 THE WITNESS: He's going to -- he has 13 days on
5 patrol. 161 jobs that he answered. Now, in that many jobs,
6 and that area is a high crime area. Some of the jobs -- I
7 can't tell you how many are jobs like robberies in progress,
8 assaults in progress, assaults in the past where he would have
9 been, again, the primary sector or the backing sector. He --
10 he doesn't seem to me that he did any type of canvass for
11 anybody or looked for anybody.

12 THE COURT: And you base that on the absence of 250s?

13 THE WITNESS: If there's a detailed description and
14 you're looking for the perpetrator in a reasonable amount of
15 time there should be some type of UF 250.

16 THE COURT: Okay.

17 Q. Now, during the course of your supervision of Officer
18 Serrano, did you ever review his paperwork such as his activity
19 log?

20 A. Yes.

21 Q. And how often would you review his activity log?

22 A. When I did patrol daily.

23 Q. What conclusions, if any, did you reach regarding Officer
24 Serrano's activity log and paperwork?

25 A. Well he's listing that he has like on -- on this report

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D4t9flo3 Monroe - direct

1 he's listing 20 -- 20 car stops. Directed conditions. By
2 verticals. And directed patrols. All right.

3 Here he has one B summons -- I mean one mover. That's
4 a vehicle summons. If he's doing car stops you have to stop a
5 person for an infraction. Some type of infraction. That's why
6 you make a car stop. You don't just systematically stop people
7 in cars. We have APL locations where there's accidents, a
8 large amount of accidents like pedestrian crosswalks, people
9 yielding -- not yielding to the right of way. Not yielding
10 to -- not obeying pavement markings. If he's stopping these
11 people he's not documenting it in his activity report.

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

13 THE COURT: Yes.

14 (Pause)

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

16 THE COURT: All right. Mr. Moore.

17 MR. MOORE: Yes, Judge.

18 CROSS-EXAMINATION

19 BY MR. MOORE:

20 Q. Sergeant Monroe you're still at the 40th precinct,
21 correct?

22 A. Yes. Yes, sir.

23 Q. And you're aware, are you not, that after Officer Serrano
24 testified in court he was transferred out of the 40th
25 precinct?

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D4t9flo3

Monroe - cross

1 MR. MARUTOLLO: Objection, your Honor.

2 THE COURT: I'll allow. Do you know if he was
3 transferred?

4 THE WITNESS: Yes. He was transferred.

5 THE COURT: When was he transferred?

6 THE WITNESS: Where?

7 THE COURT: When? How long ago was he transferred
8 out?

9 THE WITNESS: I don't recall.

10 THE COURT: Roughly. Was it a year, a month, a week?
11 Roughly.

12 THE WITNESS: Roughly, maybe a week ago. Maybe.

13 THE COURT: Okay.

14 Q. And he was -- when he was in the 40th precinct he was
15 working a four to twelve shift, correct?

16 A. Yes.

17 Q. And you're aware that one of the reasons he was working a
18 four to twelve shift is because he has two young children,
19 right?

20 MR. MARUTOLLO: Objection, your Honor. What's the
21 relevance?

22 THE COURT: We'll see.

23 Did you know that?

24 THE WITNESS: I knew he had a -- he just recently had
25 a daughter. But I wasn't aware of the reason that's why he was

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D4t9flo3 Monroe - cross

1 working the four to twelve.

2 Q. You're aware now that he's -- the shift he's on is a
3 midnight shift, twelve to eight?

4 A. I was unaware of that.

5 Q. Let's take a look at Exhibit B10. In 13 days of work
6 Officer Serrano responded to 161 radio runs, correct?

7 A. Yes.

8 Q. There's a number right here.

9 Now, the other officers you supervised, the other four
10 or five you supervised, none of them did 161 radio runs in 13
11 days, did they?

12 A. (No response).

13 Q. Yes or no, Officer, if you remember.

14 A. Did I remember?

15 Q. Do you remember whether any of the other ones did 161 radio
16 runs in 13 days of patrol?

17 A. They did close to it.

18 Q. Do you know any who did less than 161 radio runs?

19 A. Not off the top of my head.

20 Q. In 13 days?

21 A. Not off the top of my head.

22 Q. Do you know of any who did more than 161 in 13 days of
23 patrol duty?

24 A. There probably are but I don't know off the top of my head.

25 Q. So you don't know whether Serrano's radio runs are better

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D4t9flo3

Monroe - cross

- 1 or worse than anybody else on the -- that you were supervising
2 in October of 2012, correct?
3 A. In the amount of jobs on the four to twelve it's about
4 average.
5 Q. You're not aware whether it's more or less than the
6 average, right? As you sit here today you can't tell me
7 whether it's more or less than the average; is that correct?
8 A. It's about the average.
9 Q. So it's about -- so you think it's about the average of all
10 the other officers you were supervising, right?
11 A. On the four to twelve?
12 Q. Right.
13 A. On the four to twelve. Yes. Exactly.
14 Q. Whatever shift you were working when you were supervising
15 Serrano, that was the four to twelve, right?
16 A. Yes, that is.
17 Q. And you see there there's an indication for directed
18 patrol. There's a category for that, right?
19 A. Yes.
20 Q. And what is a directed patrol, that category up here?
21 A. (No response).
22 Q. What is directed patrol?
23 A. Directed patrol is when an officer goes into a specified
24 location or to a specified location listed by conditions or
25 listed by the request sheet.

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D4t9flo3

Monroe - cross

- 1 Q. Do you know whether any officers under your supervision on
2 the four to twelve shift in October of 2012 did more or less
3 than the number of directed patrols that Officer Serrano did?
4 A. In my squad, yes.
5 Q. Do you know --
6 A. They did about as many, yes.
7 Q. As you sit here today, you're saying that all of them did
8 more?
9 A. All of them did more?
10 Q. Yeah.
11 A. I can't say that, because by looking -- all of their
12 activity reports for that month.
13 Q. Well, you're saying -- you said here in court or before
14 lunch that you considered Officer Serrano a mediocre officer.
15 Do you remember that?
16 A. Yes.
17 Q. So how many officers in your squad in October of 2012 did
18 more directed patrols than Officer Serrano?
19 A. (No response).
20 Q. Or can you tell us? You don't know one way or the other?
21 A. Not off the top of my head, no.
22 Q. The primary responsibility of an officer on patrol in a
23 patrol car is to respond to radio runs, correct?
24 A. Yes.
25 Q. So that would be the majority of the statistics that are

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D4t9flo3

Monroe - cross

- 1 captured in this form for a patrol officer would be the number
2 of radio runs they're assigned to, correct? That would be the
3 overwhelmingly large statistics that's being captured in this
4 document, correct?
5 A. When you say statistics, what do you mean?
6 THE COURT: That's the largest category for numbers,
7 is the number of radio runs, right?
8 THE WITNESS: Yes.
9 Q. And how many officers -- do you know the exact number of UF
10 250s that the other officers on your squad did in October of
11 2012?
12 A. I would have to review the supervisor's -- the calculation
13 for that month.
14 Q. You don't have that information as you sit here today,
15 right?
16 A. No. Not off the top of my head, no.
17 Q. Do you know the number of C summonses or A summonses or B
18 summonses that the other members of that squad wrote in
19 October 2012 as you sit here today?
20 A. Not off the top of my head, no.
21 Q. Do you know the number of arrests the other officers on
22 that squad made during this period of time, October 2012?
23 A. (No response).
24 Q. As you sit here today?
25 A. Not off the top of my head.

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D4t9flo3

Monroe - cross

1 Q. And you say that you believe that the number -- that his
2 activity does not reflect effective policing. Do you see that?

3 A. (No response).

4 Q. That's what you said, right?

5 MR. MARUTOLLO: Objection to the form of the question.

6 MR. MOORE: I'm sorry.

7 Q. That's what's written in the report, correct?

8 A. Where? I said ineffective. You're saying effective?

9 THE COURT: There's a phrase, "However his activity
10 does not reflect effective policing." It says it right there.

11 THE WITNESS: It says ineffective.

12 THE COURT: No. No. No. A sentence in your
13 handwriting, "Police officer Serrano indicates he had '20 car
14 related stops' however his activity does not reflect effective
15 policing."

16 Do you see that now?

17 THE WITNESS: Yes. That's true.

18 THE COURT: So the question is.

19 Q. And you're basing that on the fact that he did so many
20 radio runs, correct?

21 A. Yes.

22 Q. And it's your belief that had he been doing effective
23 policing he would have been making summonses and arrests and
24 stops given that large amount of radio runs, correct?

25 A. No.

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D4t9flo3

Monroe - cross

1 Q. What is -- why does the number of stops indicate to you
2 that he's not doing effective policing?

3 A. Well if he's going out and he's being an assertive and
4 effective police officer and he's asking questions making
5 investigations.

6 Now the 40 precinct is a high crime area. Now in that
7 number of days, in that number of time -- amount of jobs, he
8 should be, in my opinion, writing more UF 250s if he's going
9 out and being an effective assertive police officer.

10 Q. Do you know what he was actually doing in response to those
11 160 radio runs? Do you know as you sit here today?

12 A. Well --

13 Q. Yes or no. Do you know as you sit here today what he was
14 doing on these 160 radio runs?

15 MR. MARUTOLLO: Objection.

16 THE WITNESS: When you say what he was doing, what do
17 you mean by that?

18 THE COURT: What was he actually doing in the field on
19 those days, do you know, personally?

20 THE WITNESS: Yes. I was his patrol supervisor. I
21 was there.

22 THE COURT: Okay. So what was he doing?

23 THE WITNESS: I was on the desk or on patrol.

24 THE COURT: So what was he doing?

25 THE WITNESS: He's going to the jobs and he's not, you
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D4t9flo3

Monroe - cross

1 know, he's obviously not doing canvasses. He's obviously
2 not --

3 Q. You were there, Officer. What was he doing? Not
4 obviously.

5 What was he doing or not doing? You said --

6 THE COURT: Don't ask both at once. That makes it
7 tougher.

8 What was he doing? You said -- you tried to tell us
9 what he was not doing.

10 THE WITNESS: Going to jobs and writing reports.

11 THE COURT: He was going to jobs and writing reports?

12 THE WITNESS: And writing reports, yes.

13 Q. And there were -- and this is what you personally observed,
14 right?

15 THE COURT: You personally observed him going to jobs
16 and writing reports?

17 THE WITNESS: Not all the jobs, no.

18 Q. How many -- what percentage of these 161 jobs were you
19 personally present at?

20 A. Off the top of my head I couldn't tell you.

21 Q. Well, you said he used to call you all the time because
22 he'd always have questions. Would you say you were present for
23 50 percent of these radio runs?

24 A. In his case?

25 Q. Yeah.

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D4t9flo3

Monroe - cross

1 A. He would call me a good amount of times, yes.

2 Q. What percentage of these radio runs that he responded to
3 were you present and observing what he was doing?

4 A. I'd say about half.

5 Q. So for 80 -- for 80 of these runs were there and you
6 observed what he was doing, correct?

7 A. When he called me to the scene or when I scratched him.
8 That means when I, you know, when I want to go to a job, he was
9 there, and scratch his memo book and reviewed his memo book.

10 Q. Sergeant Monroe, you testified on direct that one of the
11 reasons you considered Serrano to be a mediocre police officer
12 is that he would call you to the scene and he would ask you
13 questions about what to do all the time. And you felt, based
14 on his experience, that was -- you shouldn't be doing that
15 after eight years as a police officer, right?

16 A. That was my assessment over a year of evaluations, over the
17 twelve months.

18 Q. Right. So tell me what you --

19 A. None of specifically the month of October. That assessment
20 was over the year, over the twelve months.

21 Q. So do you think October is different than any other month
22 given your assessment of Officer Serrano?

23 A. When you say different --

24 Q. Well you're trying to say --

25 THE COURT: Was it an unusual month or was it a

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D4t9flo3

Monroe - cross

1 typical month?

2 THE WITNESS: It was probably a typical month.

3 Q. So typically when you would respond to 50 percent of these
4 radio runs and you would have concerns that he was being
5 mediocre, what wasn't he doing that you were concerned about?
6 What wasn't he doing?

7 A. Well the jobs he would call me to would be like regular --
8 simple jobs that he wouldn't need supervision for. But he
9 would ask for supervision or ask for the answer. When in my
10 experience, with his eight years on patrol, he should already
11 know the answer.

12 Q. So can you tell us as you sit here today anything that you
13 believe he should have been doing that he wasn't doing on the
14 80 or so runs that you actually responded to him on?

15 A. What I believe he wasn't doing, making a proper
16 investigation.

17 Q. Making identification of what?

18 A. No. A proper investigation.

19 Q. By doing what or not doing -- withdraw that.

20 What was he doing that led you to conclude he wasn't
21 doing proper investigation?

22 A. He didn't ask the questions.

23 THE COURT: He wasn't asking questions, you said, of
24 people.

25 THE WITNESS: When you go to a job, and they need
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D4t9flo3

Monroe - cross

1 help, or a robbery happened, or something happened, all right.
2 It's our job to get the information from them to help them. If
3 we don't get the proper information from -- then we can't help
4 them properly, can we?
5 Q. You're saying he wasn't even getting the information from
6 the person who was the victim?
7 A. Not when I come there and I'm getting it from them.
8 Q. So that's sort of the most basic fundamental activity for a
9 police officer to do, right? When they respond to a call and
10 they get the information from the victim about what happened,
11 right?
12 A. Mm-hmm.
13 Q. And you're saying he didn't do that? You had to instruct
14 him constantly about that, right?
15 A. Most times, yes.
16 Q. And yet you still gave him a three on the evaluation,
17 right?
18 A. Yes.
19 Q. And before -- are you aware that before in the years before
20 that Officer Serrano consistently got fours on his evaluation.
21 Are you aware of that?
22 A. I'm unaware of that.
23 THE COURT: I'm sorry. Before that, before what?
24 MR. MOORE: Before the evaluation he gave him in --
25 for 2011.

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D4t9flo3

Monroe - cross

1 THE COURT: So he's saying before your 2011 evaluation
2 did you know he had received fours?

3 THE WITNESS: I was unaware of that.

4 THE COURT: Okay.

5 Q. When you gave him the evaluation for 2011 and it was a
6 three he obviously appealed it, right? You're aware of that,
7 right?

8 A. 2011?

9 Q. Yes.

10 And he appealed it because the three was less than
11 what he had been getting in the past from evaluations from his
12 supervisors, right?

13 A. Yes.

14 Q. Now, I just want to check because it says here officer's
15 impact on declared conditions.

16 Do you see that?

17 And it looks like both effective and ineffective are
18 checked, right?

19 THE COURT: First there was a mark on --

20 THE WITNESS: That was an initial error on my part.
21 But I put an X and I put a circle so you knew exactly what it
22 meant.

23 Q. Does that mean that -- did you change that because your
24 supervisor said he wanted you to change it from effective to
25 ineffective?

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D4t9flo3 Monroe - cross

1 A. No. That was an error on my part.

2 Q. Now, in a situation where there's a radio run reporting
3 a -- let's say a robbery and the suspect is a black male 14 to
4 21, what would you expect Officer Serrano to do in that
5 context?

6 A. (No response).

7 Q. When he responds?

8 A. Repeat that question.

9 THE COURT: If the description that's put out is black
10 male 14 to 21, what would you expect him to do when he got to
11 the area?

12 THE WITNESS: When he's the primary sector?

13 THE COURT: Yes. Let's say that.

14 THE WITNESS: I expect him to get a further
15 description.

16 (Continued on next page)

17

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D4T8FLO4

Monroe - cross

- 1 Q. What if the only description he has is a black male 14 to
2 21, would you expect him to go out and stop all black males 14
3 to 21 to determine if they are perpetrator?
4 A. No.
5 Q. Maybe not all, but simply go focus on black males 14 to 21
6 to look for the perpetrator?
7 A. I expect him to go to the scene and get a further
8 description.
9 Q. What if he can't get any further description than that,
10 what if there is no further description?
11 A. Well, we do a general canvass and go from there.
12 Q. You would stop all males 14 to 21 to determine if they --
13 A. No.
14 Q. When you say a general canvass, a general canvass is you're
15 going up and stopping people, right?
16 A. It doesn't mean that.
17 Q. What does a general canvass mean?
18 A. You're surveying the initial area, the immediate area.
19 Q. One of the ways you survey is you look for people who are
20 around the area, right?
21 A. No. You're looking for suspicious activity, something
22 that's out of place.
23 Q. Now, these radio runs that you're talking about, they don't
24 distinguish between whether he is the primary responder or a
25 back-up responder, correct?

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D4T8FLO4

Monroe - cross

1 A. Yes, they do.

2 Q. You can tell from looking at this form whether --

3 A. You're talking about the form?

4 Q. Yes, I am.

5 A. No, it doesn't.

6 Q. In these 161 radio runs, which are reflected in Defendants'
7 Exhibit B10, you can't tell me, as you sit here, can you,
8 whether those radio runs are runs where he was the primary
9 responder or a back-up responder?

10 A. Not by this one, no.

11 Q. So you would just be speculating as to the amount of runs
12 that were either primary or backup, correct?

13 A. I couldn't give you a specific number, no.

14 Q. Now, radio runs are not police initiated enforcement
15 efforts, correct?

16 A. What do you mean by that?

17 THE COURT: We have heard the testimony here about
18 self-initiated stops versus responses to radio runs. They are
19 different, right?

20 THE WITNESS: Self-initiating stops, it depends -- it
21 would depending on -- we are talking about --

22 THE COURT: Self-initiated is you're just doing patrol
23 and just observe something and you stop somebody. It's not
24 responding to a radio run, it's an observation, right?

25 THE WITNESS: It would be an observation, but

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D4T8FLO4 Monroe - cross

1 depending on the condition, depending on the location,
2 depending on time of day, depending on what you're stopping
3 them for.

4 THE COURT: But it's not a response to a radio run.
5 There is no radio call saying, suspect fleeing, red jacket,
6 it's not like that?

7 THE WITNESS: If the officer is driving along on
8 patrol and he is surveying a sector and sees suspicious
9 activity.

10 THE COURT: Correct. That's self-initiated as opposed
11 to responding to a radio run?

12 THE WITNESS: Yes.

13 BY MR. MOORE:

14 Q. Self-initiated are where most of the stops and frisks take
15 place, correct?

16 A. No.

17 Q. In your experience, you said 15 years -- how long have you
18 been a police officer?

19 A. 20.

20 THE COURT: Do you know whether the majority are
21 self-initiated or a response to radio runs?

22 THE WITNESS: The majority?

23 THE COURT: Of stops, UF-250 stops.

24 THE WITNESS: That depends on the precinct. That
25 depends on the time of day. That depends on the conditions.

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D4T8FLO4

Monroe - cross

1 THE COURT: Overall, do you know the statistics for
2 the City of New York overall?

3 THE WITNESS: Not off the top of my head, no.

4 Q. You also indicated in answer to your counsel's question
5 that you had a problem with how Serrano filled out his memo
6 books, correct?

7 A. Yes.

8 Q. Did you have a problem with the way any of your other
9 officers filled out their memo books?

10 A. It depends on the officer.

11 THE COURT: All he is asking you, were there any other
12 officers where their entries in memo books were not perfect,
13 were not up to par?

14 THE WITNESS: Of course, yes.

15 Q. In fact, that was a problem in the 40th Precinct while you
16 were there as a sergeant, correct?

17 A. What do you mean by that?

18 Q. That officers were failing to fill out the details of stops
19 and frisks in their memo book, that was a problem that existed
20 in the 40th Precinct when you were there?

21 A. Precinct wide, I don't know.

22 Q. I'm sorry?

23 A. The 40th Precinct itself, I don't know that to be true.

24 Q. What about your officers?

25 A. It depends on the officer.

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D4T8FLO4

Monroe - cross

1 Q. So there were some officers who had problems with filling
2 out their memo books --

3 MR. MARUTOLLO: Objection. Asked and answered.

4 Q. -- with the information about a stop and frisk?

5 THE COURT: I will allow it. We are limiting it now
6 to his officers.

7 A. If they did, I would correct them and instruct them.

8 THE COURT: The question is only, was that a problem
9 that was common among your officers, not just one officer, but
10 a lot of the guys had problems with filling out the memo book
11 correctly and it was generally a common problem?

12 THE WITNESS: Amongst my guys, it wasn't that
13 prevalent, it wasn't that often.

14 THE COURT: You don't know about the whole precinct?

15 THE WITNESS: I don't know about the whole precinct.

16 Q. When did you become a sergeant, October of 2010?

17 A. Yes.

18 Q. That's when you went to the 40th Precinct?

19 A. Yes.

20 Q. From time to time you had meetings with your fellow
21 supervisors in the 40th Precinct, correct?

22 A. When you say meetings, what do you mean by that?

23 Q. You discussed police matters within the 40th Precinct with
24 your fellow supervisors?

25 A. We discussed conditions to be met, crime conditions.

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D4T8FLO4 Monroe - cross

1 Q. It's a simple question. Did you used to meet regularly
2 with your fellow supervisors in the 40th Precinct?

3 MR. MARUTOLLO: Objection. Asked and answered. He
4 said they would meet for conditions.

5 THE COURT: I will allow the question. All he is
6 asking you is did you meet with your fellow supervisors on a
7 regular basis in the 40th Precinct?

8 THE WITNESS: When you say meeting --

9 THE COURT: Did the supervisors get together and talk
10 about things?

11 THE WITNESS: Was this a scheduled meeting?

12 THE COURT: I don't care if it's scheduled or
13 unscheduled.

14 THE WITNESS: We had scheduled meetings with the CO.

15 Q. The executive officer would be present as well sometimes?

16 A. Yes.

17 Q. The integrity control officer, correct?

18 A. Sometimes.

19 Q. The platoon lieutenants would be present sometimes?

20 A. Yes.

21 Q. Do you recall anybody ever mentioning in those meetings,
22 those regularly scheduled meetings, that officers in the 40th
23 Precinct --

24 A. They weren't regularly scheduled. The CO would schedule
25 them.

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D4T8FLO4

Monroe - cross

- 1 Q. Whether they were regularly scheduled or just happened, you
2 had meetings with your command structure in the 40th Precinct,
3 correct?
4 A. Yes.
5 Q. During those meetings, nobody ever told you there was a
6 problem with respect to officers filling out their memo books
7 with the details of stop and frisks, right?
8 A. When I went to the meeting, I never heard that.
9 Q. Nobody ever told you that for the years that you were
10 there, as a supervisor in the 40th Precinct, that the precinct
11 failed the audit with respect to memo books and putting details
12 of stop and frisk in memo books, nobody ever told you that,
13 right?
14 A. No, I never heard that.
15 Q. Nobody ever gave you any specific direction or directives
16 to try to fix that problem since you have been a sergeant in
17 the 40th Precinct, correct?
18 A. When you say nobody?
19 Q. Nobody in the command structure of the 40th Precinct.
20 A. I don't recall.
21 Q. Now, you have done two evaluations of Officer Serrano,
22 correct?
23 A. Yes.
24 Q. I am showing you what has already been entered into
25 evidence as Defendants' Exhibit C10. Do you recognize this as

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D4T8FLO4 Monroe - cross

1 a performance evaluation of Officer Serrano for the rating
2 period December 2010 to December 2011?

3 A. Yes.

4 Q. You're identified here as the rater on the first page,
5 Stephen Monroe, that's you?

6 A. Yes, that's me.

7 Q. He wasn't listed as chronic sick, right?

8 You see it says not chronic, right?

9 A. Not chronic, yes.

10 Q. So he was a dependable officer in terms of showing up for
11 work, correct?

12 A. Yes.

13 Q. In the evaluation you are asked to check off or put a
14 rating number for each of these different areas, performance
15 areas and behavioral dimensions, correct?

16 A. Yes.

17 Q. You have a 3 in all those categories, right?

18 A. Yes.

19 Q. You see here that you added also some additional
20 information with respect to this evaluation, right?

21 A. Yes.

22 Q. With respect to category number 13, which goes to the
23 question of police ethics and integrity, read for us what you
24 wrote there.

25 MR. MARUTOLLO: Objection. This document is already
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D4T8FLO4 Monroe - cross

1 in evidence.

2 THE COURT: There is no reason that the witness has to
3 read it.

4 "Police Officer Serrano adheres to the ethics of the
5 department and guidelines."

6 Q. You wrote that, correct?

7 A. Yes.

8 Q. When you wrote it, you believed it at the time, right?

9 A. Yes.

10 Q. And you believed he was a person of integrity, right?

11 A. When you say integrity?

12 THE COURT: One that adheres to the ethics usually
13 means --

14 A. I believe he adheres to the ethics of the guidelines of the
15 department.

16 Q. If he is somebody with integrity, he is somebody who tells
17 the truth, right?

18 A. Well --

19 Q. Is that how you would understand the term integrity to
20 mean?

21 A. Well, when he adheres to the ethics of the department, I am
22 relating to his ethics towards the police guidelines.

23 Q. It actually says "police ethics/integrity."

24 THE COURT: You mean category 13 on the front page?

25 MR. MOORE: Yes.

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D4T8FLO4

Monroe - cross

1 THE COURT: Can I see that again?

2 "13. Police ethics/integrity." OK.

3 Q. It's really putting the two of those things together. But
4 don't you understand, Sergeant Monroe, that when somebody has
5 good integrity that they are somebody who tells the truth?

6 A. Yeah.

7 Q. You also write, with respect to his judgment, that's
8 another category, right?

9 You write, "PO Serrano always demonstrates an ability
10 to sound decisions." What you meant there was to make sound
11 decisions, right?

12 A. I said what I meant. Ability to make sound decisions.

13 Q. Make wasn't in there. That's why I said to make sound
14 decisions.

15 So you considered Police Officer Serrano as somebody
16 who had the ability to make sound decisions, right?

17 A. In 2011, yes.

18 Q. We don't have his 2012 evaluation. Do you think that in
19 2012, he all of a sudden became somebody who didn't have the
20 ability to make sound decisions?

21 A. In my opinion, he regressed.

22 Q. In your opinion what?

23 A. He regressed.

24 Q. His activity actually increased though, right, in 2012?

25 A. I have to look at the --

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D4T8FLO4 Monroe - cross

1 Q. Do you know whether his arrest numbers increased in 2012?

2 A. Again, I have to go back.

3 THE COURT: He doesn't know. He would have to look at
4 the forms he says.

5 MR. MOORE: That's why I asking his memory, Judge.

6 THE COURT: He said he would have to look at the
7 forms.

8 Q. Do you recall whether his summons activity, sitting here
9 today without looking at the form, whether that increased or
10 decreased in 2012?

11 A. To give an accurate answer, I will have to go back and
12 look.

13 THE COURT: Let's go on.

14 On interpersonal he said, "Officer Serrano handles
15 sensitive situation with a care and empathy."

16 "Overall, Serrano is a competent police officer and
17 has the ability to be a leader."

18 Q. So you don't mention in here anything about him being a
19 mediocre police officer, right?

20 THE COURT: Look at the recommendation on the front
21 page.

22 There. "Continue in present assignment." That's what
23 you recommended, that he stay right where he was, right?

24 THE WITNESS: Yes.

25 Q. But you don't say anywhere in here that he is a mediocre

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1 police officer, right? You don't use that term.

2 A. In this form, no. But there is a -- they left off one of
3 the items because it's -- can you put that up again, please?

4 Q. Sure. Which one are you referring to?

5 A. This is from 26 to 13. They left off the latter comments
6 that I made. The one comment I made that he --

7 Q. Wait. I'm sorry. Are you saying this form is not
8 complete?

9 A. No, it's not complete. It's abbreviated.

10 Q. Before you say what is there, this is a document that was
11 produced by the city and it has a Bates stamp number on it. So
12 if you're going to talk --

13 MR. MOORE: Judge, if he is going to talk about a
14 document that has different information on it, we should at
15 least have it.

16 THE COURT: That would be a different document. This
17 document is complete. It says page 2 of 2. So this is a
18 complete document.

19 THE WITNESS: Then it's complete.

20 THE COURT: There may be another document you're
21 referring to.

22 THE WITNESS: No. It's complete then.

23 THE COURT: This one is complete.

24 Q. Now, following this evaluation, you're aware that Officer
25 Serrano appealed the evaluation, right?

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D4T8FLO4

Monroe - cross

1 A. Yes.

2 Q. And he has a right to do that, right?

3 A. Yes, he does.

4 Q. Did you say you were present at a meeting where his appeal
5 was discussed with Captain Materasso?

6 A. Yes, I was.

7 Q. Did you take any notes of that meeting or do you have any
8 notes from that meeting?

9 A. No, I didn't.

10 Q. Do you recall that meeting taking place sometime in June of
11 2012?

12 A. To my recollection, yes.

13 Q. Besides yourself, Captain Materasso and Officer Serrano
14 were present, right?

15 A. Yes.

16 Q. Was there anybody else present?

17 A. I don't recall.

18 MR. MOORE: One second, Judge.

19 Q. Do you recall Captain Materasso saying to Officer Serrano
20 in that meeting that the reason he got a 3 on his evaluation
21 was because his activity wasn't high enough?

22 A. No.

23 Q. Do you recall her mentioning anything about the need to
24 increase his activity in terms of C summonses, arrests and
25 250s? Do you recall anything about that?

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D4T8FLO4 Monroe - cross

1 A. I don't recall that.

2 Q. Do you recall Captain Materasso saying that 50 percent of
3 an officer's evaluation in her precinct was based on their
4 activity? Do you recall her saying that?

5 A. No, I don't recall that.

6 Q. Did she ever say that to you?

7 A. No.

8 Q. In any event, Captain Materasso denied the appeal, right?

9 A. Excuse me?

10 Q. She denied the appeal, right?

11 A. What do you mean denied the appeal?

12 Q. He was appealing his evaluation.

13 THE COURT: The evaluation didn't change, she didn't
14 reverse it?

15 THE WITNESS: She did not reverse it.

16 Q. Then the next year, for the year 2012, you gave him another
17 3 on his evaluation, correct?

18 A. Yes.

19 Q. He appealed that as well, correct?

20 A. Yes.

21 Q. He had a meeting with Deputy Inspector McCormack, are you
22 aware of that?

23 A. Yes.

24 Q. Were you present for that?

25 A. No, I was not.

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D4T8FLO4 Monroe - cross

1 Q. Why weren't you present for that?

2 A. I believe I took my son to the doctor that day.

3 Q. That's a good reason.

4 MR. MOORE: One second, your Honor.

5 Q. Now, you mentioned in your testimony --

6 MR. MOORE: Just a couple more questions judge.

7 Q. You mentioned in your testimony that you became aware of
8 Operations Order 52, right?

9 A. Yes.

10 Q. How did you become aware of that?

11 A. How did I become aware of it?

12 Q. Yes. Was it distributed to you and you read it? Was it
13 discussed in the precinct?

14 A. I believe it was distributed.

15 Q. I'm sorry?

16 A. I believe it was distributed.

17 Q. Showing you what was previously marked as Plaintiffs'
18 Exhibit 285 in evidence. Can you identify this as Operations
19 Order 52? Can you recognize this document as Operations Order
20 52?

21 A. Yes, it is.

22 Q. You have read it before?

23 A. Yes.

24 Q. It talks about department managers, you see that in
25 paragraph 3, where it says "department managers can and must

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1 set performance goals." Do you see that?

2 A. Yes.

3 Q. You're a department manager, right?

4 A. Yes.

5 Q. As a sergeant, you're a department manager, correct?

6 A. Yes.

7 Q. It indicates that performance goals have to be -- well,
8 this is in the context of talking about proactive enforcement
9 activity, right? You see the phrase in the first paragraph,
10 "proactive enforcement activity"?

11 A. Yes.

12 Q. Proactive enforcement activity includes arrests, summonses,
13 and 250s, right?

14 A. No.

15 Q. You say that doesn't include that?

16 THE COURT: What does proactive enforcement activity
17 mean?

18 THE WITNESS: It means going out into the public and
19 being visible and being assertive.

20 THE COURT: It might result in UF-250s or summonses?

21 THE WITNESS: If necessary.

22 Q. Officers are evaluated based, in part, on their performance
23 activity, correct?

24 A. Only?

25 Q. I said in part. That's part of the evaluation on their

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1 enforcement activity?

2 A. When you say performance?

3 Q. I misspoke. Their enforcement activities, that's part of
4 how you evaluate an officer, correct, partly?

5 A. When you say enforcement?

6 Q. Arrests, summonses, 250s. That's part of how you evaluate
7 an officer.

8 A. It depends on the officer.

9 Q. That's what you referred to in your quarterly evaluation
10 that we looked at earlier, right?

11 A. It depends on the officer.

12 Q. Pardon?

13 A. It depends on the officer.

14 THE COURT: It depends on the officer.

15 Q. I don't think that answers my question. The question is,
16 are you saying some officers are evaluated on enforcement
17 activity and some aren't?

18 A. It depends on their duties.

19 Q. For a patrol officer on duty in a precinct, part of how you
20 evaluate him is based upon their enforcement activity, right?

21 A. I evaluate them on how they address the conditions. That
22 means, when they go out and they aggressively go out and be
23 visible and address their conditions by going to the public,
24 asking questions, if they need to make arrests and 250s, yes.

25 Q. So that's a yes, right?

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D4T8FLO4

Monroe - cross

- 1 In evaluating an officer, if you believe they don't
2 have sufficient enforcement activity, you can take adverse
3 employment consequences against them, correct?
- 4 A. Adverse? No.
- 5 Q. You can affect their employment in a negative way?
- 6 A. No.
- 7 Q. No, you can't? You can't give them a bad evaluation?
- 8 A. A bad evaluation?
- 9 Q. An evaluation that is below standard or substandard?
- 10 A. I wouldn't do that.
- 11 Q. Well, look at paragraph 14 and 15 in this document.
- 12 Look at paragraph 15. It says, "Uniformed members of
13 the service who remain ineffective, who do not demonstrate
14 activities impacting on identified crime and conditions, or who
15 fail to engage in proactive activities despite the existence of
16 crime conditions and public safety concerns, will be evaluated
17 accordingly and their assignments reassessed."
- 18 You agree with that, right?
- 19 A. It depends on the officer.
- 20 Q. I don't know what that means. Is it dependent on whether
21 you like the officer?
- 22 A. I depends on how he addresses his conditions. Each officer
23 has his own way of doing things.
- 24 Q. Well, I am talking about the way the police department
25 wants officers to do business, OK, not how each officer wants

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1 to do their own business. I am talking about how the police
2 department wants their officers to perform.

3 In that context, would you agree with me that the
4 amount of enforcement activity an officer takes, in terms of
5 their proactive activities, can be used to reassess them in
6 terms of their employment with the police department?

7 A. No.

8 Q. Even though that's what it says in this operations order,
9 right?

10 A. I think what they mean is for the officer to be visible,
11 the officer should go out and make an investigation, and be
12 assertive in the public.

13 Q. That's what you think it means?

14 A. If in their investigation, in surveying the locations, in
15 interaction with the public, and from surveying suspicion
16 activity, if a summons or arrest should be made from that, yes.

17 Q. If they are not doing that, then they can be subject to
18 having their employment reassessed, right?

19 A. It depends on the officer.

20 Q. Presumably it depends on the supervisor as well, right?

21 A. It depends on the officer.

22 Q. When you say it depends on the officer, what do you mean?

23 A. Well, visibility to the public, he is going out and making
24 himself available to the public, that's how we get information,
25 that's how we get information as to the criminal activity, when

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Monroe - cross

1 the officer goes out and addresses that. He is being
2 assertive.

3 MR. MOORE: I have nothing further.

4 THE COURT: Any redirect?

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

6 THE COURT: Sure.

7 REDIRECT EXAMINATION

8 BY MR. MARUTOLLO:

9 Q. Sergeant Monroe, do you have the ability to transfer
10 officers out of a precinct?

11 A. No, I do not.

12 Q. Did you have any involvement in the decision to transfer
13 Officer Serrano?

14 A. No, I did not.

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

16 MR. MOORE: Nothing.

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

18 THE WITNESS: Thank you.

19 THE COURT: What are we doing next?

20 MS. GROSSMAN: We were able to locate Inspector Lehr.

21 THE COURT: Do you expect Hawkins tomorrow?

22 MS. GROSSMAN: No.

23 THE COURT: Do you expect her ever?

24 MS. GROSSMAN: Yes.

25 THE COURT: Who do we have for tomorrow? Who is on

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1 tap?

2 MR. MARUTOLLO: Detective Albino and Sergeant Dengler
3 who will be first tomorrow.

4 THE COURT: I notice Ms. Borchetta is not here.

5 MR. CHARNEY: That's fine.

6 THE COURT: You know you're getting Albino and Dengler
7 tomorrow.

8 Who else?

9 MS. RICHARDSON: We also have Sergeant Marino,
10 Lieutenant Telford, and we also have Police Officer Kha Dang.

11 KENNETH LEHR,

12 called as a witness by the defendants,

13 having been duly sworn, testified as follows:

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

16 THE WITNESS: Sergeant Kenneth Lehr, K-E-N-N-E-T-H,
17 L-E-H-R.

18 MS. GROSSMAN: Your Honor, I just wanted to alert the
19 Court to the fact that Inspector Lehr testified in the Ligon
20 proceedings. So we are going to try to avoid duplicating the
21 testimony, but there may be a few questions that we just have
22 to ask just to move on to other topics.

23 THE COURT: OK.

24 (Continued on next page)

25 DIRECT EXAMINATION

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D4T8FLO4 Lehr - direct

1 BY MS. GROSSMAN:

2 Q. Inspector Lehr, good afternoon.

3 A. Good afternoon.

4 Q. Can you tell us when you became employed with the police
5 department?

6 A. January 20, 1987.

7 Q. When did you become promoted to sergeant?

8 A. November 25, 1997.

9 Q. What is your current assignment now?

10 A. I am the commanding officer of the 67 Precinct.

11 THE COURT: Where is that?

12 THE WITNESS: East Flatbush.

13 Q. When did you become the commanding officer of the 67
14 Precinct?

15 A. January 30, 2012.

16 Q. That's a position that you hold now?

17 A. That's correct.

18 Q. Were you commanding officer of any other precinct?

19 A. Yes.

20 Q. Which one?

21 A. Prior to my current assignment, I was the commanding
22 officer of the 9th Precinct from January 30, 2010 to
23 January -- excuse me -- January 3, 2010 -- January 30, 2010, to
24 January 3, 2012.

25 THE COURT: Where is that one?

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1 THE WITNESS: That would be Alphabet City in the East
2 Village.

3 Q. Prior to your time as CO in the 9th Precinct, were you the
4 commanding officer of any other command?

5 A. Yes. From May 20, 2006, through January of 2010, I was
6 commanding officer of Transit District 33.

7 Q. Now, you gave testimony on or about October 19, 2012 in the
8 Ligon matter. Do you remember that?

9 A. Yes, I do.

10 Q. Did you have an opportunity to review your trial testimony
11 in the Ligon proceeding?

12 A. Yes, I did.

13 Q. Do you adopt that testimony here today in the Floyd matter?

14 A. Yes.

15 MS. GROSSMAN: I understand we are going to be
16 designating appropriate portions of the transcript for the
17 court.

18 THE COURT: Thank you.

19 Q. Now, can you just tell the Court the boundaries of the 67
20 Precinct?

21 A. The 67 Precinct, if you go north to south, the north
22 portion is East New York Avenue, down to Avenue H, as in Henry.
23 East to west, it would be East 98th Street to Bedford Avenue.

24 Q. What are the demographics of the 67 Precinct?

25 A. The 67 Precinct is 90 percent black, 7 percent Hispanic,

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1 and white and Asian Pacific, pretty much evenly split, one and
2 a half each.

3 Q. Generally, what are the crime conditions that you are
4 confronting in the 67 Precinct?

5 A. The 67 Precinct is one of the busier precincts in the city.
6 We address all seven major index crimes, which is murder, rape,
7 robbery, felony assault, burglary, grand larceny, grand larceny
8 auto, and also shootings are a big part of what we do.

9 Q. How many officers are assigned to the 67 Precinct?

10 A. I have 188 police officers on my command roster that have a
11 67 Precinct command card. In addition to that, I have an
12 impact zone, which is policed by 64 police officers, and I have
13 an impact response team which consists of 24 officers, making
14 the total officers that turn out at the 67 Precinct 276.

15 Q. How many anticrime officers do you have?

16 A. Ten.

17 Q. How many teams does that make up?

18 A. It's two teams, each supervised by one sergeant, two teams
19 of one and five.

20 Q. Who supervises the anticrime unit in the 67 Precinct?

21 A. The specials operations lieutenant.

22 Q. How many officers are assigned to your conditions teams?

23 A. One sergeant, five police officers.

24 Q. Is there only one conditions team?

25 A. That's correct.

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1 Q. With respect to your impact zones in the 67, where are they
2 located?

3 A. The impact zone is from East New York Avenue down to Avenue
4 B, as in boy, and it runs from east to west, it would be 98th
5 Street to 93rd Street, so it's five blocks wide if you go east
6 and west and eight avenues long north and south.

7 Q. What is the supervisor to officer ratio for those officers
8 assigned to impact?

9 A. The impact officers are supervised by one lieutenant and
10 six sergeants.

11 Q. On any given tour, how many officers would you find
12 assigned to this particular impact zone?

13 A. If everybody was scheduled to work and not on vacation,
14 you're looking at about 42 per tour.

15 Q. How many lieutenants and sergeants assigned to those 42
16 officers?

17 A. On a given night, when two squads are in, one lieutenant
18 and four sergeants.

19 Q. With respect to the impact response team, how many squads
20 make up the impact response team?

21 A. Three squads, each consisting of one sergeant and eight
22 police officers, and they are also supervised by a lieutenant.

23 Q. Can you explain to the Court how you determine how to
24 deploy officers in the 67 Precinct?

25 A. We review -- in real-time, we read crime reports as they

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1 crime that we continue to take over a six- or seven-week
2 period, and we look at that because if we are still taking it,
3 then we probably have been ineffective in eradicating it so we
4 may have to address what our approach has been.

5 Q. Would it be fair to say that the majority of your command
6 resources are in response to real-time crime conditions?

7 A. Yes.

8 Q. Who in your command is actually making the decisions about
9 where to send officers?

10 A. I do.

11 Q. Now, are the officers broken up into particular sectors?

12 A. Yes. I mean, baseline coverage when we turn out a platoon,
13 there's 14 sectors in the confines of the 67 Precinct. It's
14 about three and a half miles square, pretty expansive. The 14
15 sectors, there will be a radio car, we turn out a platoon, a
16 radio car, and we will have responsibility for every one of
17 those sectors. And then the way that works, if a call gets
18 dispatched to 911, that call will ultimately get called out
19 over the air and assigned to one of the sectors, and if that
20 sector is tied up, then the next closest available.

21 Q. Do you have a sector map in your precinct?

22 A. I do.

23 Q. I am going to show you what has been marked as Defendants'
24 Exhibit J14.

25 MS. HOFF VARNER: If I could just ask you to move it

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1 into evidence before putting it on the screen.

2 MS. GROSSMAN: Sure. We ask for admission of J14.

3 MS. HOFF VARNER: No objection on authenticity, but I
4 do question the relevance of this document.

5 THE COURT: I don't know that yet. I can't rule on
6 relevance. Whatever it is, it's harmless. It is an accurate
7 map. I will let in J14 and see what the relevance is.

8 (Defendants' Exhibit J14 received in evidence)

9 Q. Inspector, are the demographics that you described in terms
10 of the 67 Precinct equally distributed throughout the 67
11 Precinct?

12 A. Yes.

13 Q. How do you use a sector map in order to determine how you
14 assign officers?

15 A. Well, as we record crimes, my crime analysis staff will use
16 a map and have an indication on that map of where the crimes
17 are occurring, and they will basically indicate these symbols
18 of where the crimes are happening, different for the three
19 tours, whether it's the midnight tour, the day tour, or the
20 third platoon which is 4 to 12.

21 Based on that, we will deploy our resources
22 geographically to -- we will draw a correlation between -- we
23 are trying to deploy exactly at the right time of day, in the
24 right geographic area, where we are recording crimes.

25 Q. What are the top three sectors in terms of recorded seven

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1 major index crimes?

2 A. Through April 14, which I believe was week 15 for the
3 calendar year, the top sectors were Sector Adam, Sector David,
4 and Sector Ida, in that order.

5 Q. So right here on the sector map, you see an A?

6 A. That's correct.

7 Q. Does that represent Sector Adam?

8 A. It does.

9 Q. And right over here, does this say Sector D?

10 A. Yes.

11 Q. Does that represent Sector David?

12 A. Yes, it does.

13 Q. What was the third sector that you mentioned?

14 A. I, as in Ida. It's a little bit harder to see on this map,
15 but if you go from A right across, the next one over is H, as
16 in Henry, and then it looks like a triangle is Sector Ida as it
17 goes up. Correct. That's Sector Ida. It looks like a
18 triangle.

19 Q. I just took the liberty of circling Sector A for Adam,
20 Sector D for David, and Sector I for Ida.

21 Now, is there any correlation between the crime in
22 these sectors and stop, question and frisk encounters that have
23 occurred in these sectors?

24 A. Yes.

25 Q. What correlation do you see in Sector Adam?

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D4T8FLO4 Lehr - direct

- 1 A. Well, through April 14, Sector Adam was -- we recorded 15
2 percent of the total index crimes year to date in Sector Adam.
3 In looking at the stop, question and frisk encounters by 67
4 Precinct personnel in the same time period, it was a percentage
5 of 17 percent of the overall total. So it was 15 percent of
6 the crime, 17 percent of the stop, question and frisk
7 encounters.
- 8 Q. What about Sector David?
- 9 A. Sector David, for the same time period, accounted for 10
10 percent of the total major index crimes recorded, and 12
11 percent of the stop, question and frisk encounters performed by
12 67 Precinct personnel.
- 13 Q. What about Sector Ida?
- 14 A. Sector Ida came in at about 8-1/2 percent of the crime, and
15 we recorded, I believe, 10 percent of the stop, question and
16 frisk encounters by 67 Precinct personnel.
- 17 Q. What are the sectors with the least amount of the seven
18 major index crimes recorded in the 67 Precinct?
- 19 A. Sector Eddie and P as in Peter.
- 20 Q. Is there any correlation between the crime in these sectors
21 and the stop, question and frisk encounters?
- 22 A. Yes.
- 23 Q. Can you explain?
- 24 A. Well, Sector Eddie and Peter -- I mean, Frank and Peter,
25 excuse me. The two sectors that were the lowest were F as in

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D4T8FLO4 Lehr - direct

1 Frank and P as in Peter. They each represented about 4 percent
2 of the total index crimes through April 14. And they also
3 accounted for about 8 percent of the total stop, question and
4 frisk encounters when you combine the two sectors by 67
5 Precinct personnel.

6 Q. Looking on the map, you see I am circling Sector F over
7 here. Is that Sector Frank?

8 A. Yes.

9 Q. And Sector P is here to the right?

10 A. Correct.

11 Q. What do these statistics tell you, in terms of the way
12 you're managing your personnel in the 67 Precinct?

13 A. Well, what I am looking for is a correlation between our
14 enforcement efforts and the crime, and what it tells me is
15 that, if you look at the way -- the percentage of encounters
16 are consistent with the percentage of crime. That's at the top
17 end of the spectrum and the bottom end.

18 Q. Now, how do you identify command conditions for the
19 personnel in at your precinct?

20 A. Excuse me?

21 Q. How do you identify the command conditions, crime
22 conditions?

23 A. Well, we review a number of things, which include 311 calls
24 for quality of life complaints, 911 calls, particularly if they
25 pertain to narcotics locations and shots fired jobs. Of

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D4T8FLO4

Lehr - direct

1 course, we review the crime reports that we are recording
2 and -- as I said, we break them down into time of day, what
3 particular tour, and geographically as well. Then we break
4 them down into, what is it emanating from? In other words, if
5 there is a condition that happens on the midnight shift, and
6 it's in a particular sector, is it specific to a night-life
7 condition where it's emanating from a club situation? Or is it
8 a daytime condition, where it is close to a school corridor
9 where it's specific to a school condition? Because these are
10 factors that come into the thought process and who we are going
11 to assign to address that particular condition.

12 Q. How do you communicate these conditions to the officers in
13 your command?

14 A. When we're reviewing the stuff, I turn out a lot of roll
15 calls. I speak to my supervisors, particularly the supervisors
16 who have a specific task in special operations and are very
17 specifically focused on individual type of crimes, specific
18 type of crimes. In addition to that, we detail the crimes and
19 the conditions in the quest for excellence, which we make
20 available to everybody in the precinct, supervisors and police
21 officers.

22 Q. Do you post any of the information in the precinct?

23 A. Yes.

24 Q. Where is the information posted?

25 A. It's posted in the muster room as well as it's kept at the

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1 desk for the supervisors. So it's in the muster room for
2 anybody's perusal and it's at the desk for supervisors so they
3 can quickly -- you just have it available.

4 Q. What is your understanding of the purpose of quest?

5 A. Quest, it provides structure and guidance in terms of
6 enforcement efforts.

7 Q. How do you evaluate now whether your officers in the 67
8 Precinct are actually addressing these crime conditions?

9 A. Well, what we are looking for is a reduction in the rate of
10 occurrence on these conditions, reduction in crime and
11 reduction in quality of life conditions. If we are not seeing
12 the reduction in crime, what I am looking for is to see, are we
13 still recording crimes but for a different reason? In other
14 words, is it the same thing reoccurring or is it a different
15 condition that we have to adjust our approach?

16 Q. How do you ensure that officers in your command are not
17 going out and just trying to bring in numbers for numbers'
18 sake?

19 A. Well, what I do is I give very specific instruction on what
20 we are looking to combat, and we measure the results of that in
21 real-time, just like we are looking at the crimes as well. I
22 am looking -- we are always measuring to see if there is a
23 direct correlation between the enforcement contacts and what
24 the police officer is doing in the field with the crime
25 conditions, and we will see if we are having a positive effect

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1 and slowing down the rate of occurrence or eradicating the
2 crime completely.

3 Q. How do you know that supervisors are actually out there
4 supervising officers who are making stops?

5 A. Well, I listen to the radio a lot. The 67 Precinct is a
6 very busy precinct and you can hear it on the radio, you will
7 hear it. So you could hear the response to radio runs when
8 they come over. I also see it. Myself, I do respond -- I do
9 spend a fair amount of time in the field. I do respond to a
10 pretty good number of live active radio runs, and I am able to
11 see the performance of my supervisors in the field and, you
12 know, I watch very closely the guidance they are giving to the
13 officers; whether it's at a crime scene or a commercial armed
14 robbery or a shooting scene, I pay very close attention to the
15 direction that the supervisor is giving to the officers.

16 So I hear it, I see it, and then I review the results
17 in terms of, you know, the reports that come out, how many
18 times they are on the scene, if that's indicated on the
19 reports. So I am pretty comfortable saying that they are out
20 there giving proper direction in that regard.

21 Q. Now, have there been occasions when you have had to attend
22 CompStat meetings?

23 A. Yes.

24 Q. Do you feel pressure from those CompStat meetings to
25 increase your enforcement activity?

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1 A. No.

2 Q. What message do you receive from these CompStat meetings?

3 A. I think the CompStat meetings are an opportunity to
4 demonstrate that we are addressing the conditions properly.5 Q. Now, are you aware of investigations that are conducted by
6 the office of chief of department?

7 A. Yes.

8 Q. Are you as a commanding officer responsible for making sure
9 that the investigations, we will call them OCD investigations,
10 are distributed to the appropriate personnel in your precinct?

11 A. Yes.

12 Q. Who is responsible for conducting the OCD investigations in
13 your command?14 A. They get distributed to different supervisors. The admin
15 lieutenant will distribute them, and they will go out to
16 lieutenants and sergeants.17 Q. Who is responsible for managing the intake of these OCD
18 investigations?19 A. The administrative lieutenant, he distributes them and is
20 responsible for the retrieval.

21 Q. What exactly is he trying to retrieve?

22 A. When the investigation is completed, they will go back to
23 him, and then they come to me or my executive officer for
24 review.25 Q. What paperwork is generated in response to an office of
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1 chief of department investigation?

2 A. That would depend on the type of investigation. If it's
3 for something -- we will just take a situation, if the
4 investigation is in regard to an incident in the street, and
5 let's say, for instance, the officer initially is unidentified,
6 there is a whole host of paperwork that would have to be
7 generated. Even if the officer is identified, we are going to
8 pull the Sprint job, the 911 if it's a radio run, because
9 sometimes that contains information that can add to the
10 information. The officer's activity log would be included in
11 what would be retrieved in addition to. If there was any type
12 of reports taken, in terms of a complaint report; if there was
13 an arrest made, an online booking sheet; if it was a stop,
14 question and frisk encounter, the stop, question and frisk
15 report. All these things would be compiled and part of the
16 investigation.

17 Q. Now, prior to becoming commanding officer, did you serve as
18 the integrity control officer in any of your prior assignments?

19 A. Yes, I did.

20 Q. When did you hold that position of integrity control
21 officer?

22 A. From December of 2000 to December of 2005.

23 Q. What precinct did you serve as ICO?

24 A. 66.

25 Q. As ICO, did you have responsibility for conducting OCD

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1 investigations?

2 A. Yes.

3 Q. How many of those OCD investigations would you say you
4 conducted, approximately?

5 A. Well over 100.

6 Q. When you were sergeant, did you also conduct OCD
7 investigations as a sergeant?

8 A. I did.

9 Q. How is it that you went about conducting an OCD
10 investigation in those roles?

11 A. Well, the first thing, obviously, when you get assigned the
12 investigation, the first thing I like to do is contact the
13 complainant. Before I do anything else, I want to speak to the
14 complainant and find out if the information that I have on that
15 written report details the whole encounter. If there is any
16 more information that I can get, I will add that to my own
17 file, build out on it so I can identify exactly what the
18 complaint is about.

19 Q. The written report that you just made reference to, is that
20 a summary from the Civilian Complaint Review Board, a summary
21 of the allegations?

22 A. Yes.

23 Q. OK. Go on.

24 A. Then once I have a preliminary interview with the
25 complainant, then I will talk to the subject officer or

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1 officers and get any pertinent paperwork in regard to it and
2 conduct an investigation.

3 Q. So let's say a complaint comes in regarding an unidentified
4 officer. What steps would you take to try and identify that
5 officer?

6 A. Well, like I said, the first thing I do is interview the
7 complainant because I may be able to find out some additional
8 info.

9 Q. What kind of information would you hope to find out?

10 A. The location is good because then I can run the location
11 and Sprint to see if there was a radio run at the same time and
12 I can see basically if anybody went over the radio to say they
13 were responding. Then I can take a look at the precinct roll
14 calls and I can track down any officers that were working that
15 particular tour, collect their activity log entries to see if
16 they were there, and any other pertinent reports that were
17 taken from there.

18 Q. What information that you would get from the complainants
19 might help you identify the officer, the unknown officer?

20 A. I mean, what happens typically, the first thing you would
21 ask is, was the officer in uniform or was he in plain clothes,
22 what is the physical description of the officer, did you get a
23 radio car number or a shield number or a name, you know, hair
24 color, these type of things.

25 Q. Now, in terms of a complaint where you actually had an

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1 identified officer, do you also interview the officers?

2 A. Yes.

3 Q. Do you document that in the work that you're doing when
4 you're keeping track of the steps you're taking with respect to
5 your OCD investigation?

6 A. Yes.

7 Q. Now, did you interview the complainants over the phone or
8 in person?

9 A. Well, going back to December 2000 and 2005, if my memory
10 serves correct, I just got a cell phone around that time. So
11 back then it was pretty common to have to go out to somebody's
12 residence and try and make personal contact. But with cell
13 phones it's made it much easier to contact people either
14 through an e-mail or via phone. Basically, what I would do at
15 that point is by phone or in person.

16 Q. If the complainant wants to being speak over the phone, do
17 you just accommodate -- let me rephrase the question.

18 What determines whether you're going to speak to the
19 complainant by phone or in person?

20 A. I always like to take into consideration, if somebody took
21 the time out to file a complaint, then they have already had a
22 negative interaction with the police. So I always would extend
23 myself and ask what is most convenient for the complainant, and
24 I would make arrangements to be available for them just so the
25 process didn't further inconvenience them.

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1 Q. If a complainant wanted to speak to you in person, would
2 you make arrangements to speak to the complainant in person?

3 A. Yes.

4 Q. Now, what happens if you made attempts to reach out to the
5 complainant but you didn't receive any return calls, what would
6 you do next?

7 A. Well, if we were unable to make contact through phone, we
8 would go to the house if there was an address provided. I used
9 to go a minimum of three different times. I would go in the
10 daytime and go in the evening, just in case the person had a
11 day job or a night job, I wouldn't know that usually in
12 advance. If that was also unsuccessful, I would leave a letter
13 at the address provided, if I had the address. I would leave a
14 letter with my contact information. I had an answering machine
15 in the office and sometimes that worked.

16 Q. When you were unable to make contact with the complainant,
17 did you then continue with the investigation anyway?

18 A. Well, yes. I would still have to -- I would still have an
19 interview with the officers responsible for generating the
20 complaint in the first place and try and find out exactly, you
21 know, what could they have done better, or could we have done
22 something better to not have the complaint in the first place.

23 Q. After you do your interviews and gather all the paperwork,
24 what happens next, in terms of -- let me rephrase the question.

25 After gathering the paperwork in connection with the
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1 OCD investigation, what would you do with that paperwork?

2 A. I would type up the findings of my investigation and turn
3 it into my commanding officer for review.

4 Q. Where was that paperwork maintained?

5 A. Which paperwork?

6 Q. The OCD paperwork.

7 A. I would give it to my commanding officer for review.

8 Q. Now, when you were done with the OCD investigation, did you
9 actually transmit the paperwork and arrange to send that off
10 through channels to the office of chief of department?

11 A. The investigations they have, there is an official
12 department form which you type the results of the investigation
13 on. The corresponding paperwork that I would compile for the
14 investigation, what I used to do is I would make my own file on
15 it. I had a filing cabinet where I would keep a folder with
16 all the accompanying documents for every chief of department
17 communication that I did.

18 I did that because when I first started doing the job,
19 there would be occasions where, let's say I was doing an
20 investigation and then sometime later, maybe a third party
21 would call in a similar complaint, it would come in under a
22 different number, but it would become evident it was the same
23 thing. So rather than go back and retrieve all the documents
24 again, I found it was easier to just keep everything on file,
25 which is what I did.

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1 Q. Does the police department require that the underlying
2 paperwork in support of an OCD investigation be transmitted up
3 to the office of chief of department?

4 A. That was not a requirement. It's just something that I did
5 to cut down on having to redo it again in the event that
6 another complaint came in for the same incident.

7 Q. Now, as the commanding officer of the 67 Precinct, are OCD
8 investigations handled in the same way that you just described?

9 A. Yes.
10 Q. When officers in your command now, in the 67 Precinct, are
11 finished with their OCD investigations, how are the results
12 communicated up through channels to the office of chief of
13 department?

14 A. The administrative lieutenant will -- they will be turned
15 in to him. He will review them. When he feels that they are
16 ready for my review, they will come to me. I will either,
17 based on what I see, sign it or send it back for further
18 investigation if I am not satisfied with it. And then I will
19 endorse it and it will go back up through channels.

20 Q. The document that actually gets transmitted up through
21 channels, is that an OCD disposition and penalty report?

22 A. Yes, it is.

23 Q. As the CO of the 67 Precinct, are there occasions when you
24 substantiated charges against an officer in connection with
25 these OCD investigations?

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1 A. Yes.

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1 Q. And in your role as ICO and sergeant were there occasions
2 when you held those positions that you substantiated charges
3 against officers for OCD -- are there occasions when you were
4 the ICO and the sergeant that you substantiated some of the OCD
5 charges?

6 A. Yes.

7 Q. And so what encounters represent the largest portion of the
8 complaints concerning encounters with the police that you have
9 reviewed at the OCD level?

10 A. Most often it's either -- it's the manner in which the
11 encounter takes place. There's -- the narratives will describe
12 some sort of rude behavior by the police officer. So it's
13 either a rude encounter or somebody doesn't understand -- or it
14 was failed to be explained to them why they were engaged in the
15 first place.

16 So more than anything else what I'm seeing when I
17 review these is either a situation where the officer could have
18 maybe navigated it better or did not communicate exactly what
19 was going on at the time.

20 Q. Are officers expected to, when possible, explain the reason
21 for a stop?

22 A. Yes.

23 Q. And are some of the OCD complaints that you received, do
24 they indicate to you that officers could have done a better job
25 in explaining the reason why a person was stopped?

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1 A. Yes.

2 Q. Now, the OCD disposition and penalty report, does that then
3 get sent to the borough command?

4 A. Yes.

5 Q. Now when you're looking at an OCD report and disposition,
6 what are you looking for as the CO of the 67 precinct?7 A. The first thing I'd be looking for is the interview with
8 the complainant. I want to make sure that we interviewed the
9 complainant, got all the facts; and plus, it's important for
10 the complainant to know that the police department followed up
11 and is actually following up and taking some action on whatever
12 was the source of the complaint.13 The other thing I'm looking for is the -- what did
14 they find out from the officers? What did the officers say was
15 the reason for the encounter and what exactly happened?16 Then I'm looking for the accompanying documents that
17 would support that.18 Q. Are there occasions when you disagreed with the disposition
19 of the OCD investigation noted by a supervisor?

20 A. Yes.

21 Q. And what have you done about that?

22 A. I have had it returned with some instructions on whatever I
23 felt needed to be included in the investigation or another step
24 that needed to be taken or two.

25 Q. What are examples of occasions when you've returned the OCD

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1 investigation to one of your supervisors for further work?

2 A. A lot of times it has to do with a disposition. I mean
3 I've had cases where the -- maybe the disposition was
4 exonerated and what happens is there was either a failure to or
5 would have been unable to contact the complainant and that's,
6 you know -- by definition to have an exonerated disposition,
7 the parties would have to be, both parties would have to be
8 interviewed.

9 Q. So if someone was not interviewed and there was an
10 exoneration, would that be a change that you would make if that
11 came across your desk?

12 A. Yes.

13 Q. And what would you change that disposition to?

14 A. Depending on -- at minimum -- it could be an
15 unsubstantiated or based on the other factors involved with the
16 case it could be something that was maybe substantiated against
17 the officer.

18 Q. Approximately how many OCD investigations are investigated
19 in your command per month?

20 A. In 2012 we averaged 70 per month roughly.

21 Q. Now can the direct supervisor of the officer who is the
22 subject of the complaint conduct the investigation?

23 A. Yes.

24 Q. Under what circumstances?

25 A. (No response).

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1 Q. When can that happen?

2 A. If the administrative lieutenant assigns it to him they
3 will conduct that investigation.

4 Q. Now if that supervisor was involved in the actual stop,
5 would that supervisor then be responsible for conducting an
6 investigation of the officer who is the subject of the OCD
7 investigation?

8 A. Typically if that supervisor is named in the complaint or
9 is somehow involved is going to be a subject or a witness, so
10 no. Somebody else would be responsible for conducting that
11 investigation.

12 Q. Now are there occasions when the supervisor who might have
13 signed off on a 250, for example, but was not present during a
14 stop, could that sergeant or supervisor conduct the OCD
15 investigation?

16 A. Yes.

17 Q. Do you have any concerns that a direct supervisor under
18 that circumstance might not be able to be impartial?

19 A. No.

20 Q. Or let me ask it differently that's a double -- do you have
21 concerns about whether that supervisor would be impartial?

22 A. No.

23 Q. How come?

24 A. Because ultimately the investigation upon completion is
25 going to be brought back to me for review. And based on the --

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1 what's noted in the final disposition I'll be able to make a
2 determination whether or not it was properly conducted.

3 Q. Now, in the 67 precinct has your command received OCD
4 complaints alleging that a person was stopped for no reason?

5 A. Yes.

6 Q. In the last month what percentage of the OCD complaints
7 involved stop, question and frisk encounters?

8 A. I had taken a look at the first hundred for the year and of
9 those first hundred there were five that I would put in that
10 category.

11 Q. What was the nature of those complaints?

12 A. There were stops, encounters, and basically what's been
13 described as either rude behavior by the police officer or
14 they -- it was not explained to them why they were stopped in
15 the first place.

16 MS. HOFF VARNER: Your Honor, if I may, I think I need
17 to raise an objection to the prior line of questioning. But I
18 just want to consult with my colleague very briefly.

19 (Pause)

20 Your Honor, I'd like to object to the prior line of
21 questioning about the OCD complaints that were received at the
22 67 precinct, to the numbers of complaints and the substance
23 thereof. And I object on at least two grounds. I'll start
24 with the first one which is that years ago we asked for
25 information about OCD investigations and complaints. The city

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1 designated Julie Schwartz and Helen McAleer as their 30(b)(6)
2 witnesses to testify about all of these areas. Neither witness
3 was able to give us any of the information that Commanding
4 Officer Lehr just provided.

5 THE COURT: Which in particular.

6 MS. HOFF VARNER: For example, the appropriate ways in
7 which ICOs or other officers should conduct investigations, the
8 percentage of complaints that were relevant to stop, question
9 and frisk.

10 THE COURT: That was very recent.

11 Wasn't that very recent based on only this year?

12 THE WITNESS: Yes.

13 THE COURT: Yes. The question was: I have taken a
14 look at first hundred for this year and only five would be in
15 the category complaining about the stop and frisk for no
16 reason.

17 That's 2013. I thought that was going to be your
18 objection, you hadn't gotten any 2013 data.

19 MS. HOFF VARNER: That's part two of the objection
20 which is that we have no documents -- the city has produced
21 nothing that would allow us to cross-examine this witness or to
22 verify that what he's saying is consistent with the
23 documentation.

24 THE COURT: Right.

25 When did you do the work that told you that of the
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1 first hundred complaints in 2013 only five had to do with
2 complaining about a stop and frisk for no reason. When did you
3 put that together?

4 THE WITNESS: I just looked at that in the last two
5 weeks.

6 THE COURT: Who asked you to do that?

7 THE WITNESS: Well after consultation with counsel, I
8 took a look at that.

9 THE COURT: Well then, yeah, I think you should have
10 turned over the results of that. If you asked this witness to
11 prepare these statistics, they should have made that known to
12 the plaintiffs' counsel.

13 MS. GROSSMAN: Your Honor, I'm just trying to give a
14 context for --

15 THE COURT: I know what you're trying to do. But he
16 went and got new statistics for 2013 in the last two weeks
17 because you asked him to. If you were going to ask him to
18 update his statistics in 2013 surely that should have been made
19 known to the plaintiffs.

20 We've had objections before in this case to material
21 developed in the last four months. Unless it was produced in
22 discovery and everybody had a fair chance to deal with it, I'm
23 not going to allow it.

24 MS. GROSSMAN: Well, your Honor, first of all the
25 discovery demands were very specific to particular commands.

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1 So Inspector Lehr is of the 67 precinct. No discovery has been
2 sought by other precincts. Because the plaintiffs wanted to
3 focus on particular precincts and we provided documents in
4 response to that.

5 This is a case challenging the entire city.

6 THE COURT: I know what the case is about, actually,
7 Ms. Grossman. I've been living with it for a lot of years, as
8 you often point out. The point is that there were two
9 witnesses designated on this subject. It's not this witness.
10 And he's done some statistical work in the last couple weeks
11 that was not made known to the plaintiffs.

12 It doesn't seem to me, to use a word that you use
13 frequently, fair.

14 So what would you like to do? Do you want to just put
15 off the cross until tomorrow, which is what's going to happen
16 anyway. It's ten after four.

17 MS. HOFF VARNER: More specifically, plaintiffs move
18 to strike the testimony both about the recent statistical
19 analysis, the -- what happens with respect to OCD
20 investigations in the 67 precinct and the testimony about the
21 appropriateness and the sort of standards for OCD investigation
22 to the extent that he testified beyond his personal experience.

23 THE COURT: He didn't, really.

24 Isn't all that you've talked about based on your
25 personal experience as the precinct commander?

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1 THE WITNESS: Well in terms of if you're talking about
2 what I did when I conducted chief of department that was -- I
3 actually did that work as a lieutenant when I was -- the
4 question was, was I previously an integrity control officer?
5 And I said yes.

6 THE COURT: You were an integrity officer where?

7 THE WITNESS: I was for five years.

8 THE COURT: Where?

9 THE WITNESS: In the 66.

10 THE COURT: So that was based on personal experience.

11 MS. HOFF VARNER: To the extent that he's testified
12 about his personal experience conducting OCD investigations as
13 an ICO or lieutenant, that's fine. To the extent it's gone
14 beyond that.

15 THE COURT: To what extent has it gone beyond that?

16 MS. HOFF VARNER: I don't think it has.

17 MR. MOORE: He's talked about what he did in the last
18 two weeks.

19 THE COURT: That I know. That's a different subject.
20 We're getting to that.

21 MS. HOFF VARNER: To the extent that he's talked about
22 the --

23 THE COURT: Number of complaints that he looked at in
24 2013, there were about a hundred, only five of them had to do
25 with stop and frisk for no reason, and he put that together in

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1 the last two weeks.

2 How did you do that? What did you look at to compile
3 that number?

4 THE WITNESS: I had my admin lieutenant, who actually
5 distributes those, take a look through. I said take a look.
6 See if there's something that would fall under this criteria.

7 THE COURT: Take a look at what? Pieces of paper?

8 THE WITNESS: The actual complaints. And of those --
9 try and identify any that would be in relationship to a stop
10 and, you know, let me know.

11 THE COURT: And you told this administrative assistant
12 to look at all the complaints in 2013 to date?

13 THE WITNESS: No. I took a sample -- I took the first
14 hundred. It was a sample. We had 70 a month from last year.
15 So it would have been --

16 THE COURT: This is this year. I thought this was
17 2013, I thought you said.

18 THE WITNESS: Yes. The first hundred from this year.

19 THE COURT: The first hundred in 2013?

20 THE WITNESS: Right.

21 THE COURT: So.

22 MS. HOFF VARNER: We would ask to strike all of that
23 testimony.

24 THE COURT: We could ask the city to produce the first
25 hundred in 2013, and you could look through them.

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1 MS. HOFF VARNER: I think in the alternative we would
2 request all of the OCD investigations from -- at least for 2013
3 and preferably from 2012 when he became the commanding officer
4 of the 67 so we have an opportunity to test this evidence that
5 he's providing about the statistics.

6 THE COURT: I think that's fair.
7 How hard was that for this administrative assistant to
8 gather the complaints? Are they all in one place? Are they
9 paper or computer? How does one gather --

10 THE WITNESS: They are hard copy paper.

11 THE COURT: They are hard copy paper. Are they filed
12 together?

13 THE WITNESS: Yes.

14 THE COURT: You could easily bring in the first
15 hundred or you could bring in all of them from 2013, right?

16 No. It's not for Ms. Grossman. It's for you.

17 That would be easy to do, to bring in all the physical
18 complaints from 2013?

19 THE WITNESS: Yes.

20 THE COURT: Is it about 70 a month because you said
21 that.

22 THE WITNESS: That was the average. When we averaged
23 out 2012, that was our average.

24 THE COURT: So you don't know the total number for
25 2013 to date?

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THE WITNESS: No.

THE COURT: How long are they, each complaint? Is it just one page each?

THE WITNESS: It depends on the narrative. It's typed out.

THE COURT: So is it a page or two each?

THE WITNESS: Roughly.

THE COURT: Yeah. Page or two each.

What's your position, Ms. Grossman?

MS. GROSSMAN: Well, your Honor, you asked me to immediately find a witness today. He was --

THE COURT: I appreciate that. What's your position on producing these pieces of paper?

MS. GROSSMAN: I think, if you wouldn't mind, I think a hundred for the first -- if we can narrow it to the testimony, we can see where that goes. Because the burden in the middle of all that we're doing right now, I am just asking that we limit retrieval of the documents to what he testified to.

THE COURT: I don't think so. The point is to test the assertion that it's about a five percent rate on these complaints. You raised it. You didn't have to raise it. So I'm not worried about burden. You raised it. You wanted to put this statistic into evidence. So it seems to me that to get sort of a fair look it should be all of them from 2013 to

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1 date. I don't know that it's a big burden.

2 MS. GROSSMAN: We'll look and find out what is
3 involved.

4 THE COURT: I think he just told us what's involved.
5 They're a page or two each on average. There may be by now as
6 many as 280 or 300. And they're physical pieces of paper.
7 That's it.

8 MS. HOFF VARNER: Your Honor, we would also --

9 MS. GROSSMAN: We need to also consider redactions of
10 confidential information. I just don't know what we're going
11 to be seeing. So we'll look for that document in response to
12 the Court's order.

13 THE COURT: You can get the administrative assistant
14 to start pulling them right now, get them together. As soon as
15 you leave court, make a call and get them put together. I mean
16 they already put the first hundred together. So put the rest
17 together. And then give them to counsel, Ms. Grossman, so she
18 can look at them for redaction purposes.

19 MS. GROSSMAN: Your Honor, I just want to just make
20 clear that neither Commissioner Schwartz nor McAleer were
21 responsible for actually conducting the OCD investigations.

22 So to the extent that the plaintiffs are saying that
23 these witnesses provided testimony and they weren't on notice,
24 they didn't seek this information out in discovery.

25 MS. HOFF VARNER: Your Honor, with all --

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1 THE COURT: Folks one at a time. One at a time. Not
2 two or three.

3 MS. GROSSMAN: Of all the precincts.

4 THE COURT: Oh, no. I understand. They never sought
5 all the precincts in the City of New York. Absolutely not.
6 But you asked this question. You got this answer.

7 What is it?

8 MR. CHARNEY: I was just going to say that that's just
9 not true. We served a 30(b)(6) deposition notice in the summer
10 of 2009 on the policies and practices and procedures for
11 conducting OCD investigations.

12 THE COURT: I understand. All that Ms. Grossman has
13 said is that you didn't seek it precinct-by-precinct. You
14 didn't ask every precinct to produce all its complaint reports.

15 MR. CHARNEY: We didn't realize that was going to
16 become an issue in this case until today.

17 THE COURT: I understand that.

18 MS. HOFF VARNER: Your Honor, I'd also request that if
19 the city produces the disposition reports for these one hundred
20 OCD investigations that they also produce any supporting
21 documentation which, according to the witness, would include
22 the activity logs or the UF 250s.

23 THE COURT: I'm not going to be able to do that.

24 It is in the middle of the trial. That would be
25 burdensome, to start going back and looking for all the

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1 documentation for 280 complaints. I can't do that. If you
2 want that, I will give you ten. That's not going to happen.
3 That would be burdensome.

4 That's not what his administrator did. Your
5 administrator just pulled the complaints and just counted up
6 and tried to identify which ones were based on a stop and frisk
7 allegedly for no reason. And they came to five percent. And
8 that's what you want him to check.

9 MS. HOFF VARNER: Although, I think that the witness
10 testified, and perhaps I'm incorrect, but I believe he
11 testified that that paperwork was generated as part of the
12 investigation and that it was all compiled as part of the
13 disposition report in the final -- the final disposition.

14 THE COURT: It may have been that's not what the
15 administrative assistant pulled together and checked. I don't
16 think that's what you said. I think they checked the complaint
17 report.

18 THE WITNESS: Right.

19 THE COURT: To determine whether it was based --
20 whether the basis of the complaint was an alleged stop and
21 frisk for no reason. And you asked that person to identify any
22 that looked like that and the person said five out of a
23 hundred.

24 THE WITNESS: That's correct.

25 THE COURT: Yeah. So that's it.

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1 MS. HOFF VARNER: And we would also ask for a
2 reasonable amount of time to consider whatever documents are
3 turned over.

4 THE COURT: I understand.

5 MS. HOFF VARNER: Thank you, your Honor.

6 BY MS. GROSSMAN:

7 Q. Inspector are you notified when civilian complaints are
8 brought in to police officers?

9 A. Yes.

10 Q. How are you notified?

11 A. My integrity control officer monitors the civilian
12 complaints and he reports to me. Every week we talk about
13 what's -- how we're doing in that regard, recaps at the end of
14 the month with an updated sheet on how we're doing; how we did
15 for the month and how we're doing for the year.

16 Q. Do you get monthly reports of the officers who receive
17 CCRBs in your command?

18 A. I do.

19 Q. And does anyone speak with officers about the civilian
20 complaints?

21 A. Yes.

22 Q. Who does?

23 A. Well, the integrity control officer, as the civilian
24 complaint reports get filed, will speak to the supervisor or
25 the officer, if it's a police officer, and the police officer

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1 and the supervisor. They will be appraised of the contents of
2 the CCRB report. And typically what happens is he'll start
3 collecting paperwork that's going to be sent to the Civilian
4 Complaint Review Board for review.

5 MS. HOFF VARNER: I would just object to the answer to
6 the extent that it's unclear as to whether he's speaking of his
7 personal experience or of general practices in the police
8 department.

9 MS. GROSSMAN: He's the commanding officer of the 67
10 precinct and is responsible for knowing what's going on in his
11 command.

12 THE COURT: That sounds right.

13 Is this what goes on in your precinct where you're the
14 commander?

15 THE WITNESS: Yes.

16 THE COURT: Is this the procedure that's followed?

17 THE WITNESS: Yes.

18 THE COURT: I'll allow it.

19 Q. Did you follow the same procedure when you were the ICO,
20 did you also have conversations with officers who had civilian
21 complaints?

22 A. Yes.

23 Q. And do you let the sergeants who supervise these subject
24 officers know about the fact that civilian complaints have been
25 filed against a particular officer?

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1 A. Yes.

2 Q. And how come you do that?

3 A. Excuse me?

4 Q. How come you do that?

5 A. Because I want the supervisors to monitor the performance
6 of the officers and be aware of exactly how to perform out
7 there, keep an eye on them, and give them some guidance.8 Q. Now what do you expect a supervisor to do if an officer he
9 supervises receives more than one CCRB within a six-month
10 period?11 A. Well, with that there's an added responsibility on the
12 supervisor to try and provide some guidance to the officer, to
13 try and navigate the situation a little bit better,
14 particularly if it's for the same reason that he's compiling
15 these civilian complaints.16 What we do if he had two civilian complaints and it
17 was for the same type of behavior or action, that would be
18 something we would be able to talk to the officer about. And I
19 would want the sergeant to specifically address that issue.20 Q. Now, are you aware of the department's procedures regarding
21 monitoring and assistance programs?

22 A. Yes.

23 Q. I'm going to show you what's been admitted as Defendants'
24 Exhibit Z3.

25 Now have officers on your command been placed on

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1 performance monitoring?

2 A. Yes.

3 Q. Now looking at Defendants' Exhibit Z3, are you familiar
4 with this document?

5 A. Yes, I am.

6 Q. Now referring to Bates number NYC_2_00006350.

7 THE COURT: Mine are all illegible. I can't read any
8 Bates numbers on the copy you gave me. They just come off as a
9 group of dashes.

10 MS. GROSSMAN: On the screen.

11 THE COURT: Do you know how far into the document that
12 is, roughly?

13 MS. PUBLICKER: About 16.

14 THE COURT: I think I found it. Thank you. Okay.

15 Q. So Inspector, are you familiar with the criteria for an
16 officer, the criteria that places an officer in performance
17 monitoring?

18 A. Yes.

19 Q. And what are your responsibilities as a CO when an officer
20 is placed in performance monitoring at the level I?

21 A. I'll meet with the officer. I have to sit down with him.
22 I'll -- or her. I'll discuss the -- whatever the issue is that
23 got them into performance monitoring in the first place, what
24 exactly the program entails, and what their responsibility is
25 to successfully improve to the point where they can ultimately

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1 get out of the program.

2 Q. And so how do you learn when an officer is placed in
3 performance monitoring.

4 A. You get a notification from the employee management
5 section.

6 Q. And what kind of report is sent to you from employee
7 management?

8 A. I'll get a report detailing what exactly -- what happened
9 that got the officer into the program in the first place.

10 Q. So now looking at level I, second bullet point, 3 or more
11 CCRBs in one year.

12 Do you actually know the summary? Do you receive a
13 summary of what those three CCRBs are about?

14 A. Yes.

15 Q. And what other information is provided by employee
16 management?

17 A. Basically we have access to -- well, what I'll get from
18 employee management is the notification that the person's
19 enrolled in a program, and the CCRBs. And the other stuff we
20 could just compile at the command.

21 Q. Do you get the CCRB history of an officer?

22 A. Yes.

23 Q. And do you get the disposition of those CCRB complaints?

24 A. If there is a disposition it would be part of the file,
25 yes.

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1 Q. And is it your understanding that when an officer is placed
2 in performance monitoring it -- that the numbers that trigger
3 placement in the performance monitoring, it does not matter if
4 the CCRB is substantiated or unsubstantiated?

5 MS. HOFF VARNER: Objection to the leading nature of
6 the question.

7 MS. GROSSMAN: I'm sorry. I could ask that better.
8 Sorry.

9 Q. Do you have an understanding as to whether the criteria
10 that places an officer in performance monitoring requires an
11 unsubstantiated CCRB or a substantiated CCRB?

12 A. No. The fact that the CCRBs are generated in the first
13 place is enough that would enter them in the program.

14 Q. Now when an officer is on level II, what other
15 documentation is provided to you --

16 A. Level.

17 Q. -- by employee management?

18 A. Well level II differs from level I in that it requires
19 quarterly reports on the performance of the subject officers.
20 So in addition to everything that would in a level I folder
21 there are evaluation reports that have to go back up to
22 employee management quarterly on the officer's progress.

23 Q. And what information are you required to include in the
24 quarterly report?

25 A. They record different things such as sick, was the officer

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1 subject to any disciplinary action during the rating period
2 such as command disciplines or minor violations, also demeanor
3 of the person, and then arrest and summons activity will all be
4 captured in that report. There's also a narrative where -- for
5 some comments on an officer's performance.

6 Q. And when an officer in your command is placed in a
7 monitoring program, what are you as the CO required to do?

8 A. I meet with the officer. We'll sit down. We'll discuss
9 the factors that got them into the program.

10 I will give them all the parameters of the program and
11 how he or she can successfully get through that program. And
12 explain to them exactly the fact that they will be monitored.
13 There will be interim reports that go up every quarter.

14 Q. And do you discuss steps that the officer needs to take to
15 get off the monitoring program?

16 A. Yes.

17 Q. And do you also speak with the immediate supervisor?

18 A. Yes.

19 As well as the platoon commander or the lieutenant
20 that's responsible for the officer.

21 Q. Do you actually go through the civilian complaints with
22 that officer?

23 A. Yes.

24 Q. And what -- in terms of stops, have you had occasion to
25 monitor officers who have had CCRBs concerning improper stops?

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1 A. In my experience what's happening on these stops, it's
2 the -- it's the manner in which the stop is made. It's more
3 about rudeness. And I find it's either going to be the way
4 that the officer spoke to the person or not explaining why the
5 stop happened in the first place.

6 MS. HOFF VARNER: Your Honor, I would object to that
7 question and answer to the extent that it relies on information
8 that he pulled together based on the 2013 analysis that we just
9 discussed.

10 THE COURT: Is that based on the review of the 2013
11 information?

12 THE WITNESS: We're talking about civilian complaints
13 now?

14 MS. GROSSMAN: Just generally.

15 THE WITNESS: No. It's separate.

16 THE COURT: Objection overruled.

17 Okay. It's 4:30. We need to stop for the day anyway.
18 So I am going to direct that he speak to his administrative
19 person and gather all of the 2013 complaints, just the one or
20 two page summary of each complaint, so that it can be produced
21 to your counsel for potential redaction and then to plaintiffs'
22 counsel.

23 See you tomorrow.

24 MR. MOORE: Judge, can I have a word with you
25 unrelated to the case?

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THE COURT: Yes. Sure.
MS. HOFF VARNER: Your Honor, can I just ask for a
deadline or some sort of date certain by which --
THE COURT: I'm hoping. But he has to call his person
first to see.
(Adjourned to April 30, 2013 at 10:00 a.m.)

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Exhibit No.	Received
O3, C4, N5, and T115167
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