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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 2, 2013  
10:09 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

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15 Attorneys for Plaintiffs

15 BY: JENN ROLNICK BORCHETTA  
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21 BY: DARIUS CHARNEY  
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APPEARANCES (Cont'd)

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1 THE COURT: Good morning everyone. Please be seated.  
2 Are we starting with those tapes.

3 MR. CHARNEY: We are, your Honor. But I did want to  
4 ask. We had submitted a letter.

5 THE COURT: Yes. I read the letter.

6 MR. CHARNEY: Do you want us to wait to hold off to  
7 address that?

8 THE COURT: My problem is I'm sure the city wants to  
9 write a letter or be heard.

10 MR. CHARNEY: Then the only concern we have --

11 THE COURT: Tell us, Ms. Grossman. Do you want to be  
12 heard or write later or what?

13 MS. GROSSMAN: I think we can address it now.

14 THE COURT: So you don't want to write a letter?  
15 Okay. What do you want to say?

16 Ms. Grossman or Ms. Cooke.

17 MS. COOKE: Well two things, your Honor. I'll take  
18 the RAND report issue first. This was the subject of a motion  
19 in limine. On January 4 -- at the January 4, 2013 conference  
20 the defendants raised the intention of the RAND report as an  
21 exhibit. The plaintiffs objected on the very same grounds  
22 they're objecting now. You ruled that, in fact, the city  
23 intended to use it not for its truth but to show the lack --  
24 that we didn't -- weren't deliberately indifferent.

25 THE COURT: Sorry? Again.

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1 MS. COOKE: That we intend to use it to show that  
2 we're not deliberately indifferent. That's the purpose for  
3 which we'd use it.

4 Professor Fagan, and the plaintiffs as well, have  
5 taken testimony in depositions from city witnesses with respect  
6 to the RAND report and the city's work with respect to the RAND  
7 report. They're on notice of how we intend to use it. They're  
8 calling most of the city witnesses on their case in chief.

9 The suggestion that Professor Fagan should be  
10 permitted to be recalled to rebut makes no sense. He should be  
11 put to the end of the order if he wants to hear the city  
12 witnesses' testimony at trial with respect to the RAND report  
13 first before he testifies.

14 Professor Smith and Purtell, in their reports, have  
15 addressed the RAND report. That's in the report. To the  
16 extent that they will address it, it's in the four corners of  
17 their report. They're on notice of that.

18 We see no need to revisit the motion in limine ruling  
19 or permit Professor Fagan to take the stand twice in  
20 anticipation of what the plaintiffs will be presenting in their  
21 case.

22 THE COURT: I'll get to the RAND report later I  
23 actually thought the other issue was more important at the  
24 moment.

25 MS. COOKE: With respect to the other issue, your

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1 Honor, you know, it's 2012 data that's been recently produced  
2 to the plaintiffs in this case in December and in March of  
3 2013. This is a 2013 trial seeking injunctive relief,  
4 potentially awarding some time later in 2013. We think it's  
5 relevant that the court have all of the available 2012 data  
6 before the court at this trial. We did -- the experts did  
7 tallies of the data. The charts and figures represent tallies  
8 of the UF 250 data for the entirety of 2012. Because prior  
9 both experts' reports had only covered up through June of 2012.

10 THE COURT: Right. But we don't get the third and  
11 fourth quarter information until December 10, 2012 and March 8,  
12 2013. When that finally comes in on March 8 --

13 MS. COOKE: March 1.

14 THE COURT: It says March 8 in their letter.

15 MR. CHARNEY: We didn't get it until March 8.

16 MS. COOKE: Or March 8.

17 THE COURT: It seems to me that if you thought you  
18 wanted to use that information at this trial there were still  
19 ten days before we even began the trial when you should have  
20 said we've now produced the third and fourth quarters of 2012.  
21 We want our expert to analyze it. Obviously, the plaintiffs'  
22 expert will want to analyze it. They may reach different  
23 conclusions.

24 But nobody tells anybody anything. You don't tell the  
25 court. You don't tell the adversary.

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1 But on March 31, on a Sunday night in the middle of  
2 the trial, you produce a report with no permission, calling it  
3 a supplemental report, and you expect to be able to use it when  
4 they haven't had their expert look at this data, their expert  
5 test the report of your expert.

6 It's totally unfair and there was a way around it.  
7 All you had to do on March 8 or March 1 -- you had it on  
8 March 1, apparently the plaintiffs didn't get it until  
9 March 8 -- is somewhere between that time period you should  
10 have talked to me about it, said: We have two new quarters.  
11 We want to bring this current. We'll want our expert to do it.  
12 Surely the plaintiffs' expert will want to do the same thing.  
13 So why don't we talk together and give a date for both experts  
14 to analyze these two new quarters. And if they need to be --  
15 produce something in a short written report and be redeposed,  
16 we can work it all out. But instead silence. March 31.  
17 Mid trial. Out comes your report. I can't allow you to use  
18 it. There is no fairness to that. I just don't see the  
19 fairness. It's simple fairness. I know no way around that  
20 fairness problem now. So we have to just stop the data in  
21 June 2012 a if we just don't have those two quarters.

22 MS. COOKE: With all due respect --

23 THE COURT: With all due respect is not a helpful  
24 statement. It doesn't mean anything. Skip that and get to the  
25 point. Because it's not respectful. I just told you it lacks

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1 fairness. All I want is a fair trial. There are two new  
2 quarters of data. You knew about that March 1, for sure, the  
3 second of those two quarters. Why didn't you come to the court  
4 say we have to talk to you. We need a conference.

5 We were conferencing constantly. We conferenced right  
6 through I think March 15, the Friday before trial. Talk to me.  
7 Tell me the problem. Tell the plaintiffs the problem. Give --  
8 tell them what you intend to do and they will probably want to  
9 do the same and then we could have used it. Now I can't.  
10 There is no fairness. So skip the due respect and tell me your  
11 idea.

12 MS. COOKE: The second point, your Honor, with respect  
13 to the Ligon case, you specifically ordered in your liability  
14 finding in Ligon, you invited the city to review additional  
15 data.

16 THE COURT: You did.

17 MS. COOKE: We did attempt to produce and use in the  
18 Ligon liability phase of the preliminary injunction. We have  
19 done that. I have produced that on the same date, on Sunday,  
20 of the 2012 data.

21 THE COURT: I have no problem with the production of  
22 the data on December 10 and March 8 to the plaintiffs. But  
23 what didn't happen was your alerting people that you intended  
24 for the expert to do an analysis of this data and produce a new  
25 expert report in this case in the middle of trial three days

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1 before their expert takes the stand. Their expert hasn't done  
2 the same. Their expert hasn't seen Purtell's analysis, hasn't  
3 had a chance to question Purtell's analysis or try to replicate  
4 the work. I can't allow it. You've made it harder for me.  
5 There was a really easy way to do this. Say we're getting the  
6 new quarters coming in. We'd like to get our data current.  
7 We'd like both sides' experts to have a chance to look at it.  
8 Instead, you hit the ball.

9 MS. COOKE: I apologize your Honor we repeatedly told  
10 by the plaintiffs we have a continuing obligation to produce  
11 discovery and data in this case.

12 THE COURT: And you do. But data -- the data has been  
13 produced. I cannot let the Purtell analysis of that data in.  
14 That's what I can't do. If you can use the data in some way  
15 without an expert -- I don't know how, maybe you can put it in  
16 front of me -- say here's the data, Judge, you figure it out --  
17 I mean I'm allowed to look at the data.

18 I did ask you to keep it current. You've always  
19 produced quarters; quarter, after quarter, after quarter for  
20 years. That's fine. And the plaintiff had the data. Maybe  
21 not the same day you did, sounds like seven days later. But I  
22 can't have Purtell's analysis.

23 MS. COOKE: I think I'm mistaken on March 1. March 8  
24 was my birthday. I didn't think it was my birthday. But the  
25 letter does say March 8 the plaintiffs say we presented it, it

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1 was March 8. I apologize, your Honor, with respect to the lack  
2 of notice. It was my understanding --

3 THE COURT: But there's real prejudice. This is not  
4 just a little tiff where I say to lawyers: Oh, you should have  
5 written this letter or oh, you know, during the years of  
6 discovery. That would be a little problem. It would be a  
7 little slap on the wrist. We'd be done with it.

8 This is prejudicial. This is a problem. I have no  
9 way to cure that problem in the middle of this trial.

10 So yes, you had an ongoing obligation to produce this  
11 data, and the data can be brought current. But we can't have  
12 this report and analysis.

13 MS. COOKE: With respect to the Ligon, you  
14 specifically did invite the parties in the January decision --

15 THE COURT: I remember.

16 MS. COOKE: -- to update and provide.

17 THE COURT: You always had an obligation to update  
18 anyway.

19 MS. COOKE: No. To provide the updated analysis of  
20 2012 data. So with respect to that analyses, and the fact that  
21 the remedies phase of this trial is not for several weeks, I  
22 would ask that you be permitted to use those figures and charts  
23 with respect to the proximity stops for the Ligon remedy phase.

24 THE COURT: I don't have the Ligon plaintiffs' lawyer  
25 here. It would be inappropriate to discuss that now.

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1 MS. COOKE: I just wanted to raise it.

2 THE COURT: You raised it. But I can't possibly rule  
3 on it until the other side is here. So the next time you find  
4 Mr. Dunn in the court tell him we would like to have a  
5 conference.

6 MS. COOKE: So with respect to the 2012 data.

7 THE COURT: Of the last two quarters.

8 MS. COOKE: The last two quarters. To the extent the  
9 city can present tallies or counts of that data that's usable  
10 to the court, you would permit that.

11 THE COURT: The data is the data. The data --

12 MS. COOKE: Counts of how many --

13 THE COURT: Counsel has had the data the same time you  
14 had the data. You've had an obligation to update the data.  
15 What I can't allow is his analysis.

16 MS. COOKE: So counts of how many happened per month.

17 THE COURT: Just counting.

18 MS. COOKE: Counts.

19 THE COURT: I've guess so.

20 MR. CHARNEY: Then just to clarify, your Honor,  
21 because the stuff they produced on Sunday included --

22 THE COURT: I carefully didn't look at it.

23 See that's the point. This is a nonjury trial. So I  
24 read the three-page letter but I purposely did not look at the  
25 exhibits. Otherwise, I'm tainted. I don't want to look at

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1 what I'm not allowed to look at.

2 MR. CHARNEY: I understand.

3 So I'm just going to represent to you that we are a  
4 little unclear on what tallies mean because some of what they  
5 produced are simply --

6 THE COURT: Can you talk to each other and leave me  
7 out of it?

8 MR. CHARNEY: I understand.

9 THE COURT: The purpose of this --

10 MR. CHARNEY: We will do that.

11 THE COURT: Good.

12 MR. CHARNEY: Hopefully we can resolve it.

13 THE COURT: With the guidance of the ruling I just  
14 gave you, you have to learn to work it out.

15 Now -- now we can come back to the RAND report, which  
16 I thought was the lesser of the two problems.

17 Now you've heard, Mr. Charney, you've heard what  
18 Ms. Cooke said. Your response.

19 MR. CHARNEY: Our response is that we understand that  
20 your Honor has said it can come in on the deliberative  
21 indifference issue. But we still don't know exactly how the  
22 city plans to use it. Are they going to put a certain witness  
23 on to explain why they relied on it, or how they relied on it,  
24 or what portion of it they relied on? And at this point we  
25 really don't know what they're going to say about that because

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1 while we've deposed certain witnesses about the RAND report, it  
2 was about the actual development of it. We haven't really  
3 deposed anybody about, you know, what their view of what it  
4 says is, how they interpret it. That kind of thing.

5 We think the document pretty much speaks for itself.  
6 It has findings in it, right. But we don't know how the city  
7 plans to use it or with which witness.

8 THE COURT: Well I would think they would use it in  
9 the sense of what a percipient witness says. In other words, I  
10 received this and therefore I knew about these findings. In  
11 view of these findings I did X, Y, Z. In other words, not the  
12 kind of information that you would think your expert would need  
13 to talk about. Because what you want to say -- what you want  
14 your expert to say is we disagree with the findings. The  
15 analysis is bad. But that's not the purpose for which it's  
16 offered.

17 Nobody is saying the analysis is right. All they're  
18 saying is upon receipt, they were on notice of certain things  
19 that the report said, whether it's correct or not. And that's  
20 how I'm going to take it in a nonjury trial.

21 I don't know whether it's correct or not.  
22 Theoretically neither does the city. It doesn't matter. This  
23 is the notice they had. And this was their response to this  
24 notice.

25 So I assume, Ms. Cooke, that all your witnesses will

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1 say is when we learned of these findings we did X, Y, Z in  
2 response. Therefore, it wouldn't matter if it's true. And,  
3 therefore, I don't need Fagan to explain why it's not accurate.  
4 Because that's getting me into the substance of the findings,  
5 which is what I wouldn't let the city offer it for. But only  
6 to say: Having been aware of the findings, we did A, B, C in  
7 response.

8 MR. CHARNEY: I guess it was my understanding that  
9 they were going to do more than that. They were actually going  
10 to say in that in view of the findings we determined that we  
11 did not have a problem with racially-biased stops. And if  
12 that's the case --

13 THE COURT: But that's all right too in the sense that  
14 therefore we took no action. It seems to me you have an  
15 interesting rebuttal to that, but it's not my business.

16 In any event, if they say that in view of the RAND  
17 findings which we were put on notice of, we decided we didn't  
18 need to do anything, take that for what it's worth.

19 MR. CHARNEY: I guess. But they're going to say the  
20 basis for that decision is that we were told that we believed  
21 that the findings of this report were accurate and therefore --

22 THE COURT: That's right. But I don't. I don't. I'm  
23 not taking it for the truth. We discussed this. I'm not  
24 taking the RAND findings -- when I do my findings of fact and  
25 conclusions of law some day, God willing, in this case, some

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1 day, when I some day get to that, I'm not going to be able to  
2 say: I'm taking into account the substance of the RAND  
3 findings. All I'll be able to say is the city received the  
4 RAND findings and gave the following responses. They believed  
5 it to be true. They acted accordingly. But that's like an  
6 immunity argument. In other words, if they had a reasonable  
7 belief and it's true, that's what they're going to have to  
8 prove. It doesn't matter if it's true, if they reasonably  
9 believed it.

10 MR. CHARNEY: I guess the issue though is the  
11 reasonableness of that belief.

12 THE COURT: That's a point.

13 MR. CHARNEY: That's where I think Professor Fagan  
14 will be testifying about.

15 THE COURT: That's a point.

16 MR. CHARNEY: His testimony is -- I'm not going to go  
17 into the details, but essentially the gist is --

18 THE COURT: All right. Then I think he has to do it.  
19 There is no need for rebuttal. Because I am taking the RAND  
20 report for that purpose.

21 You better prep him. Since you listed him on the  
22 chart as possibly being here for three days, toward the end of  
23 those three days maybe he should say why the city's acting  
24 accordingly was unreasonable in his view. As a statistical  
25 person, nobody could have believed this because. If that's

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1 what he wants to say, he'll say it, and they'll cross-examine.

2 MR. CHARNEY: Okay. Thank you.

3 THE COURT: We solved both problems for now. For now.

4 When you have transcripts for me for these recordings,  
5 would you happen to have a duplicate set?

6 MR. CHARNEY: I did but I gave a duplicate set to the  
7 city.

8 THE COURT: If you happen to have one, it would be  
9 helpful. If not --

10 MR. CHARNEY: So yes, we have two.

11 THE COURT: Now does the city have one? Good.

12 MR. MOORE: Should we mark those?

13 THE COURT: Absolutely. They should be marked.  
14 Definitely.

15 MR. CHARNEY: I didn't know if they were.

16 THE COURT: The way it works is you have an exhibit  
17 number for the tape?

18 MR. CHARNEY: Yes.

19 THE COURT: Such as?

20 MR. CHARNEY: It's Plaintiffs' --

21 THE COURT: Give me any one of them.

22 MR. CHARNEY: If it was like 226.

23 THE COURT: Then you would call this 226T. We do it  
24 all the time in criminal cases where most of the tapes are in  
25 Spanish, we just mark the transcript T with the same exhibit

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1 number.

2 MR. CHARNEY: We'll put in Exhibit 10.

3 THE COURT: Exactly.

4 Ms. Grossman, the city had an opportunity to review  
5 these transcripts?

6 MS. GROSSMAN: Yes, your Honor.

7 THE COURT: And to the extent there was disagreement,  
8 you worked it out?

9 MR. CHARNEY: We've incorporated most of the city's --

10 THE COURT: All right.

11 MR. CHARNEY: Where there's disagreement, it's noted  
12 in the margin.

13 THE COURT: Yes.

14 MS. GROSSMAN: We will raise that when the tape is  
15 read.

16 THE COURT: I just want to make sure you had the  
17 opportunity.

18 MR. CHARNEY: So this is -- these recordings are from  
19 Plaintiffs' 289 so I guess we can call the transcript 289T.

20 THE COURT: What do you say the transcript is, this  
21 whole package.

22 MR. CHARNEY: So what -- your Honor, there are 31  
23 separate excerpts that we're playing, most of which are pretty  
24 short.

25 THE COURT: This is printed double-sided, right. And  
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1 it's all -- what did you call it?  
2 MR. CHARNEY: 31. All 31.  
3 MR. MOORE: 289.  
4 THE COURT: 289T, this whole package. Okay.  
5 MR. CHARNEY: The transcripts are going to be T.  
6 THE COURT: 289T. Right.  
7 You're going to play these 31 excerpts continually?  
8 MR. CHARNEY: Yes. And we'll stop -- I mean we'll  
9 play them, stop, play the next one, give your Honor a second to  
10 turn to the next transcript and then keep going.  
11 THE COURT: Can you tell me which ones have already  
12 been played?  
13 MR. CHARNEY: I believe we played through --  
14 MS. GROSSMAN: Track one July 2008.  
15 THE COURT: Where do I find that?  
16 MS. GROSSMAN: It's halfway through, but I think --  
17 MR. CHARNEY: Each transcript has the title at the  
18 top.  
19 MS. GROSSMAN: It would be track one July 2008.  
20 MR. MOORE: Where it says Raymond Stukes.  
21 MR. CHARNEY: To help, your Honor, I have a list. If  
22 you want to look at the list, I can show you how far down we  
23 got on the list.  
24 THE COURT: Are they in chronological?  
25 MR. CHARNEY: They're not, unfortunately,  
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D429fl01

1 chronological by title.

2 This is how far we got down the list if you want to --  
3 it's a little more than halfway, I think actually.

4 THE COURT: I see. One second.

5 MR. CHARNEY: Your Honor, yesterday you did say you  
6 wanted --

7 THE COURT: I still do, but I want to just see what  
8 I'm doing.

9 I found Stukes for the first time. October 2008?

10 MR. CHARNEY: One July 2008. We should have numbered  
11 these pages.

12 THE COURT: I can't figure this out at all.

13 MR. CHARNEY: At the top, 1 July of 2008.

14 THE COURT: Did you say July 1, 2008?

15 MR. CHARNEY: Yes.

16 THE COURT: Okay. I guess I found it. July 1, 2008,  
17 right?

18 MR. CHARNEY: Yes.

19 THE COURT: All right.

20 MR. CHARNEY: We were going to start --

21 THE COURT: From the beginning. That's fine.

22 MR. CHARNEY: So the first track is 12 December 2008.

23 THE COURT: Right.

24 MR. CHARNEY: We're going to play it from 2:20 to  
25 4:30. Actually can you go back I wanted to just -- and the

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1 speaker on this portion is Jean Delafuente who was a platoon  
2 commander in the 81st precinct at the time of this recording.

3 (Audio recording played)

4 MR. CHARNEY: The next track is 12 June 2008. And  
5 we're going to play from 12:10 to 13:28.

6 Again, the speaker is Lieutenant Delafuente.

7 (Audio recording played)

8 MR. CHARNEY: Okay. The next recording is also from  
9 12 June 2008. We're going to play 7:13 to 8:10. And again the  
10 speaker is Lieutenant Delafuente.

11 (Audio recording played)

12 MR. CHARNEY: Okay. The next recording is 13  
13 January 2009. We're going to play from 3:02 to 4:26. Again,  
14 the speaker is Lieutenant Delafuente.

15 (Audio recording played)

16 MR. CHARNEY: Okay. The next one is 15 July 2008 and  
17 we're going to play from 35 seconds to 50 seconds. And again  
18 the speaker is Lieutenant Delafuente.

19 (Audio recording played)

20 MR. CHARNEY: The next recording is 16 December 2008.  
21 And we're going to play from 9:33 to 9:54. And, again, it's  
22 Lieutenant Delafuente speaking.

23 (Audio recording played)

24 MR. CHARNEY: Next recording is 1 November 2008.  
25 We're going to play from 2:12 to 3:50. And it's Lieutenant

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1 Delafuente speaking.

2 (Audio recording played)

3 MR. CHARNEY: Next recording is 21 January 2009.

4 We're going to play from 4:27 to 6:40. And the speaker again

5 is Lieutenant Delafuente.

6 (Audio recording played)

7 MR. CHARNEY: The next track is 27 February 2009.

8 We're going to play from 2:35 to 6:21. Again, the speaker is

9 Lieutenant Delafuente.

10 (Audio recording played)

11 MR. CHARNEY: Okay. The next recording is 28

12 January 2009. We're going to play from 24:29 to 25:50. This

13 is also Lieutenant Delafuente.

14 (Audio recording played)

15 MR. CHARNEY: The next recording is 29 January 2009.

16 We're going to play from 6:20 to 6:48. Again, the speaker is

17 Lieutenant Delafuente.

18 (Audio recording played)

19 MR. CHARNEY: The next one is 30 October 2008. And

20 we're going to play from 4:20 to 6:30. This is also Lieutenant

21 Delafuente.

22 (Audio recording played)

23 MR. CHARNEY: Okay. The next recording is 8

24 November 2008. This is from 13:09 to 14:36. It's Lieutenant

25 Delafuente.

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1 (Audio recording played)

2 MR. CHARNEY: Okay. Next recording is 29

3 January 2009. Going to play from 6:56 to 9:03. And this is  
4 Sergeant Weiss, who is a -- I believe a patrol supervisor in  
5 the 81st precinct on the date of this recording.

6 (Audio recording played)

7 MR. CHARNEY: I think we now have reached the point  
8 where we have our first disagreement between the parties in  
9 terms of the next recording. Plaintiffs would like to play  
10 from 5:12 to 7:00. This is on 12 October 2009. Defendants  
11 want to start the recording from 5:57.

12 I can give you our position. The reason we wanted to  
13 start from 5:12 was just to provide context to what's being  
14 said. And you know because this is a bench trial and not a  
15 jury trial I think the -- your Honor I think is fully capable  
16 of deciding what's relevant and isn't relevant. So I don't  
17 think there's going to be a danger that the portion that the  
18 defendants object to is going to be used in some way to  
19 influence your Honor's decision in the case. But I think our  
20 view is that in order to understand what's said starting at  
21 5:57 it's just important to have the context. I know the city  
22 disagrees, so.

23 MS. GROSSMAN: Your Honor, just if you just give me  
24 one minute because unfortunately the only copy of the  
25 plaintiffs' transcripts was given to you. And I'm walking --

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D429fl01

1 I'm with a handicap going back and forth. It's not in the  
2 right order so I just need a little chance to read the segment.

3 MR. CHARNEY: This is the 12 October 2009.

4 MS. GROSSMAN: Well, your Honor this segment was what  
5 you've already ruled in limine is not the scope of this trial.  
6 And you have moved in -- you have ruled in limine that this  
7 does not have to come into evidence.

8 Now Your Honor I realize that you are -- it's a bench  
9 trial. But you are very careful about what you want to read  
10 and not read. Even when we talked about the RAND and Fagan  
11 issues on the tables, you didn't want to read that because you  
12 didn't want it to color your view as the fact finder. It's not  
13 like we're bringing up this issue the first time. This was  
14 ruled on in limine. So I would just submit that this is  
15 inappropriate for you to review.

16 THE COURT: What's the subject matter of the excerpt?

17 MS. GROSSMAN: It's on the downgrading of crime issue.  
18 Which is something we've discussed and moved in limine on.

19 THE COURT: What does that mean downgrading crime?

20 MR. CHARNEY: It's my understanding that this portion  
21 refers to when somebody reports a stolen cellphone and if the  
22 person is not willing to be interviewed by a police officer  
23 that the police department should not record it as a crime, you  
24 record it as a lost cellphone. That's what this portion refers  
25 to. And I realize that's not relevant to the issues before

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D429fl01

1 you. But our only reason for playing it is not to --

2 THE COURT: I think we'll skip it.

3 MR. CHARNEY: Then can we start at 5:57. So it would  
4 be at 45 seconds.

5 This is October 12, 2009. We're going to start at  
6 5:57 and play to 7:00.

7 (Audio recording played)

8 MR. CHARNEY: The next one is 24 October 2009.

9 I think we have the same issue. With the portion that  
10 we want to start from 3:40 and play to 5:30 but I know the  
11 defendants don't want to start until 4:41. I think it's the  
12 same issue. So, again, the purpose is to provide context so  
13 your Honor understands what's being referred to in the relevant  
14 portion.

15 THE COURT: I ruled that it's out. If it's the same  
16 issue, then it's out.

17 MR. CHARNEY: So start -- before we start playing  
18 we're going to start at 4:41 and play to 5:30.

19 Again, this is 24 October 2009. And I should note  
20 that both this recording and the preceding one, the speaker was  
21 sergeant Rasheena Huffman, who was also a patrol supervisor in  
22 the 81st precinct at the time of these recordings.

23 (Audio recording played)

24 MR. CHARNEY: The next recording is 12 June 2008.  
25 We're going to play from 14:58 to 16:40. The speaker is

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D429fl01

1 Sergeant Raymond Stukes who was a patrol supervisor in the 81st  
2 precinct at the time of this report.  
3 (Audio recording played)  
4 (Continued on next page)  
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D428FLO2

1 MR. CHARNEY: The next recording is 13 March 2009. We  
2 are going to play from 4 minutes and 32 minutes to 5 minutes  
3 and 20 seconds. And again, the speaker is Sergeant Stukes.

4 (Audiotape played)

5 MR. CHARNEY: Next recording is 1 July 2008. We are  
6 going to play from 6 minutes and 58 seconds to 8 minutes, and  
7 this is also Sergeant Stukes.

8 (Audiotape played)

9 MR. CHARNEY: Next recording is 23 November 2008. We  
10 are going to play from 5 minutes, 46 seconds, to 6 minutes, 28  
11 seconds, and this is also Sergeant Stukes.

12 (Audiotape played)

13 MR. CHARNEY: Next recording is 28 January 2009. We  
14 are going to play from 23 minutes and 24 seconds to 24 minutes  
15 10 seconds, and it's Sergeant Stukes.

16 (Audiotape played)

17 MR. CHARNEY: Next recording is from 4 February 2009.  
18 We are going to play from 2 minutes and 33 seconds to 3 minutes  
19 and 2 seconds. Again, this is Sergeant Stukes.

20 (Audiotape played)

21 MR. CHARNEY: Next recording is 8 December 2008. We  
22 are going to play from 12 minutes and 20 seconds to 15 minutes,  
23 and this is also Sergeant Stukes.

24 (Audiotape played)

25 MR. CHARNEY: Next recording is also 8 December 2008.

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1 We are going to play from 1 minute and 20 seconds to 1 minute  
2 and 38 seconds. And again, this is Sergeant Stukes.

3 (Audiotape played)

4 MR. CHARNEY: Next recording is from 28 October 2008.  
5 We are going to play from 4 minutes and 7 seconds to 5 minutes  
6 and 5 seconds. The speaker on this recording is Deputy  
7 Inspector Steven Mauriello, who was the commanding officer of  
8 the 81st Precinct at the time of this recording.

9 MS. GROSSMAN: What date are we on?

10 MR. CHARNEY: 28 October 2008.

11 MS. GROSSMAN: The previous one we did was March 13?

12 MR. CHARNEY: We just did 8 December 2008 at 1 minute  
13 and 20 seconds.

14 (Audiotape played)

15 MR. CHARNEY: Next recording is 28 January 2009. We  
16 are going to play from 20 minutes and 25 seconds to 22 minutes  
17 and 7 seconds. This is also Deputy Inspector Mauriello.

18 (Audiotape played)

19 MR. CHARNEY: Next recording is 31 October 2008. We  
20 are going to play from 6 minutes and 15 seconds to 8 minutes  
21 and 18 seconds. Again, the speaker is Deputy Inspector  
22 Mauriello.

23 (Audiotape played)

24 MR. CHARNEY: Next recording is also from 31 October  
25 2008. We are going to play from 9 minutes and 5 seconds to 9

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1 minutes and 50 seconds. And this is also Deputy Inspector  
2 Mauriello.

3 (Audiotape played)

4 MR. CHARNEY: Next one is 8 December 2008. We are  
5 going to play from 5 minutes and 27 seconds to 6 minutes and 39  
6 seconds. And this is also Deputy Inspector Mauriello.

7 (Audiotape played)

8 MS. GROSSMAN: I just want to note, I think that  
9 excerpt was 5:27 to 6:39.

10 THE COURT: Yes. That's what my transcript says.

11 MR. CHARNEY: We have got two more here. The next one  
12 is 8 December 2008. We are going to play from 7 minutes and 7  
13 seconds to 7 minutes and 42 seconds. This is also Inspector  
14 Mauriello.

15 (Audiotape played)

16 MR. CHARNEY: Last one is 8 November 2008. We are  
17 going to play from 14 minutes and 36 seconds to 16 minutes and  
18 11 seconds. This is also Inspector Mauriello.

19 (Audiotape played)

20 MS. GROSSMAN: I might have missed the excerpts, but I  
21 think that was 14:36 to 16:11. I am not sure if that's what  
22 Mr. Charney mentioned.

23 MR. CHARNEY: I think that's what I said.

24 THE COURT: It doesn't matter. That's what it is.

25 MR. CHARNEY: We are done with the recordings. We

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1 have a witness, although I don't know if your Honor wants to  
2 start the witness now.

3 THE COURT: Let's take the witness.

4 MR. MOORE: The plaintiffs would call Steve Mauriello.

5 STEVEN MAURIELLO,

6 called as a witness by the plaintiffs,  
7 having been duly sworn, testified as follows:

8 THE COURT: State your first name and last name,  
9 spelling both of the names for the record.

10 THE WITNESS: My name is Steven Mauriello,  
11 S-T-E-V-E-N, M-A-U-R-I-E-L-L-O.

12 DIRECT EXAMINATION

13 BY MR. MOORE:

14 Q. Good morning, Mr. Mauriello. You're employed by the New  
15 York City Police Department?

16 A. Yes, I am.

17 Q. How long have you been in the NYPD?

18 A. 24 years.

19 Q. You rose from the rank of a patrol officer to now a deputy  
20 inspector, is that correct?

21 A. Yes.

22 Q. What is your current position?

23 A. Deputy inspector. I am executive officer of Transit  
24 Borough Bronx and Queens.

25 Q. What position did you hold right before you became the

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D428FLO2

Mauriello - direct

1 executive officer of the transit borough of Bronx and Queens?

2 A. I was the commanding officer of the 81st Precinct.

3 Q. Is it accurate that you became the commanding officer of  
4 the 81st Precinct in December 2007?

5 A. Yes, it is.

6 Q. Before that you spent a year as the executive officer of  
7 the 81st Precinct, correct?

8 A. Yes.

9 Q. Who was the CO when you were the executive officer?

10 A. Deputy Inspector Robert Brower.

11 Q. The 81st Precinct is in the patrol borough Brooklyn North,  
12 correct?

13 A. Yes.

14 Q. As the commanding officer of the 81st Precinct, you  
15 reported directly to Deputy Chief Marino, correct?

16 A. I reported directly to Chief Gerald Nelson, who is the  
17 commanding officer, and also Chief Marino, who is the executive  
18 officer.

19 Q. Deputy Chief Marino was the executive officer of patrol  
20 borough Brooklyn North?

21 A. Yes.

22 Q. And Chief Nelson is a two star chief, he was the borough  
23 commander for Brooklyn North?

24 A. Yes.

25 Q. You're aware, are you not, that an allegation was made

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D428FLO2

Mauriello - direct

1 against you during your tenure at the 81st Precinct that quotas  
2 were maintained in the 81st Precinct? You're aware of that  
3 allegation, correct?

4 A. The allegation, yes.

5 Q. You deny that allegation, is that correct?

6 A. Of course.

7 Q. But you know that that allegation was made against you,  
8 correct?

9 A. Yes.

10 Q. At some point, you were investigated by the NYPD about  
11 these allegations, were you not?

12 A. Yes.

13 Q. Subsequent to that -- well, let me ask you.

14 At some point you transferred from the 81st Precinct  
15 to your new position as the executive officer of transit  
16 borough Brooklyn and Queens, correct?

17 A. Bronx and Queens.

18 Q. Bronx and Queens. I'm sorry.

19 That was on July 3, 2010 when that was communicated to  
20 you?

21 A. Yes.

22 Q. That was told to you by Chief Hall, correct?

23 A. Yes. He called me up.

24 Q. Chief Hall is the chief of patrol for the entire New York  
25 City Police Department, correct?

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D428FLO2

Mauriello - direct

1 A. Yes.

2 Q. When he talked to you on July 3, 2010, this was after  
3 allegations had been made against you, correct?

4 A. Yes.

5 Q. When he talked to you, he said you were doing a really good  
6 job at the 81st Precinct, right?

7 A. Yes, he did.

8 Q. In fact, he wanted to reward you by giving you the position  
9 of executive officer of transit borough Bronx and Queens,  
10 correct?

11 A. Yes.

12 Q. And you considered that a promotion, right?

13 A. I considered it a transfer.

14 Q. You considered it a promotion as well, right, in the sense  
15 you're going to a more important position than what you were  
16 in, correct?17 A. No. I mean, I am going to be second commander to more  
18 officers.

19 Q. So that's a step up for you, correct?

20 THE COURT: Did you view it that way?

21 THE WITNESS: No.

22 THE COURT: You thought it was lateral?

23 THE WITNESS: Yes.

24 Q. Did you view it as a demotion?

25 A. No.

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D428FLO2

Mauriello - direct

1 Q. Now, you're familiar with the Office of the Chief of  
2 Department, correct?

3 A. Yes, sir.

4 Q. You're aware, are you not, that the Office of the Chief of  
5 Department investigates some civilian complaints that are  
6 referred to them either by CCRB or other agencies within the  
7 police department, correct?

8 A. Yes, sir.

9 Q. Some of those allegations -- withdraw that.

10 Allegations of an improper stop and frisk are  
11 investigated occasionally by the Office of the Chief of  
12 Department, correct?

13 A. Usually it's if someone got a summons. It doesn't have to  
14 do with force or abuse or discourtesy or offensive language.  
15 Then it goes to the chief of department.

16 Q. What about stop and frisk, is it your testimony that you  
17 don't recall the Office of the Chief of Department  
18 investigating allegations of improper stop and frisk?

19 A. I don't recall reviewing any.

20 Q. But you do know that when the Office of the Chief of  
21 Department is investigating a case, that they refer the case to  
22 the precinct where the allegation took place, correct?

23 A. They refer it to the borough, and then the borough sends it  
24 to the precinct.

25 Q. So when you were the commanding officer of the 81st

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D428FLO2

Mauriello - direct

1 Precinct, investigations of officers by the Office of the Chief  
2 of Department at some point came across your desk, correct?

3 A. Yes.

4 Q. And you would refer those out within the precinct for  
5 investigation, correct?

6 A. They would get referred to my administrative lieutenant,  
7 and then he would give it to the ICO, or if it's an allegation  
8 against a lieutenant, my XO would do the investigation.

9 MR. MOORE: One second, your Honor.

10 Q. When you say ICO, you're referring to a position known as  
11 the integrity control officer, correct?

12 A. Yes.

13 Q. What does the integrity control officer of a precinct do?

14 A. He is making sure all the officers are following the rules  
15 and regulations.

16 Q. Of the New York City Police Department, correct?

17 A. Of the New York City Police Department.

18 Q. As well as being ethical in how they are police officers,  
19 correct?

20 A. Of course.

21 Q. Occasionally, the ICO would farm those investigations out  
22 to sergeants as well?

23 A. Yes.

24 Q. So it wouldn't be uncommon for a sergeant who supervised an  
25 officer to be asked to investigate an allegation against that

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D428FLO2 Mauriello - direct

1 officer that he supervised, correct?

2 A. As long as the sergeant wasn't personally on the scene when  
3 the allegation was made.

4 Q. But assuming he wasn't on the scene, he could still be  
5 called to investigate an officer that he supervises, correct?

6 A. Yes.

7 Q. What you're saying is the only limitation would be, if in  
8 fact he was on the scene, then you would find somebody else to  
9 do the investigation, correct?

10 A. Yes.

11 Q. After that investigation was completed, they would come  
12 back to your desk, right?

13 A. When it was all done, it would come back to my desk.

14 Q. And you would review it and send it back on to the borough?

15 A. Yes. Well, I review it, send it to my lieutenant, make  
16 sure we have to file it, send it to the borough.

17 Q. During the time you were the commanding officer of the 81st  
18 Precinct, you don't ever recall receiving a recommendation from  
19 the Office of the Chief of Department to discipline any officer  
20 that had conducted an illegal stop and frisk, right?

21 A. To the best of my knowledge, no.

22 Q. You know what CompStat is, do you not?

23 A. Yes, I do.

24 Q. Tell us what CompStat is.

25 A. CompStat is --

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D428FLO2

Mauriello - direct

1 Q. Just briefly. I know it's a long process.

2 A. CompStat brings down a borough. If it's Brooklyn North, it  
3 will bring down ten precincts, housing and transit, that work  
4 in that area, and they would go over crime trends and crime  
5 spikes and violence.

6 Q. On occasion you would attend CompStat meetings in your role  
7 as the commanding officer of the 81st Precinct, correct?

8 A. Yes. And I still go to CompStat.

9 Q. I'm sorry?

10 A. I still go there as an XO.

11 Q. You still go there as the executive officer of the transit  
12 borough, correct?

13 A. Of course.

14 Q. Is it your testimony that from time to time UF-250s would  
15 be discussed at CompStat meetings?

16 A. My testimony was that when we go to CompStat, we talk about  
17 a crime trend, and they want to know what my plan is and my  
18 deployment, and they will put it up on the map. And then they  
19 will see what time the crime was happening and what my  
20 enforcement is and the violence around it. And I did testify  
21 saying the only time they talk about a 250 was if they did  
22 their own -- I guess before we went to CompStat -- they ran a  
23 sampling, and if somebody might have been wanted that we  
24 stopped on a 250, then my officers might not have known it,  
25 they might bring up, this guy you stopped was in the area, he

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D428FLO2

Mauriello - direct

1 is a bad guy, he has got an active warrant, and put the picture  
2 up. That's the only time they ever talk about 250s.

3 Q. In your experience, they don't actually pull out an  
4 individual 250, generally, and discuss the circumstances of  
5 what is in that document, correct?

6 A. No, they don't do that.

7 Q. And you said the purpose is to analyze crime trends and you  
8 look at the location and then you match it with the  
9 enforcement, correct?

10 A. We do a plan. They put it up on a map. We have a robbery  
11 spike in, say, a certain area, let's say Sector Allen, and I  
12 might put a plan out, a foot post or anticrime. They will look  
13 at it. If the robbery is happening between 3 in the afternoon  
14 and 11 at night, they will look to see what kind of enforcement  
15 I have between 3 in the afternoon and 11 at night.

16 THE COURT: I would like to interrupt now just to stop  
17 for the morning recess and reconvene at quarter of on that  
18 clock.

19 (Recess)

20 BY MR. MOORE:

21 Q. Inspector Mauriello, when Chief Hall told you were going to  
22 the transit borough, he described it as a reward, correct?

23 A. Yes.

24 Q. So I suppose that's technically not a promotion, but it's a  
25 reward for the job you did at the 81st Precinct, correct?

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D428FLO2

Mauriello - direct

1 A. Yes.

2 Q. Now, before the break you were talking about CompStat, and  
3 if I understand what you were saying, CompStat involves the  
4 process of locating crime trends and then pairing that up with  
5 enforcement activity that is taken to deal with those crime  
6 trends or spikes, correct?

7 A. Yes.

8 Q. And that activity that is being used that is identified as  
9 relating to the crime trends, that's arrest activity, that's  
10 summons activity, that's 250s, correct?

11 A. Doing an overall plan, yes.

12 Q. That's certainly part of the analysis, correct?

13 A. Yes.

14 Q. When you go to CompStat meetings, a precinct command  
15 profile is prepared, right?

16 A. Yes.

17 Q. And you did that several times when you were the CO of the  
18 81st Precinct, correct?

19 A. Yes.

20 Q. That summarizes the enforcement activity in the precinct,  
21 correct?

22 A. It summarizes the enforcement activity in the precinct  
23 profile? It's different stuff on the precinct profile compared  
24 to a CompStat sheet.

25 Q. Does the precinct command profile that's passed out of

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D428FLO2

Mauriello - direct

- 1 CompStat, does that indicate for a certain period of time the  
2 number of arrests, the number of summonses, the number of 250s?  
3 A. I have got to reflect. I know there's 250s on there, I  
4 know there's overtime and CCRBs.  
5 Q. What about arrests and summonses, you think that's there?  
6 A. It's on the CompStat sheet, our CompStat sheet.  
7 Q. Whether it's a precinct command profile or a CompStat  
8 sheet, when you go to the CompStat meetings, you or somebody in  
9 your position would be presenting CompStat with a summary of  
10 your enforcement activity for the period that's being looked  
11 at, correct?  
12 A. Yes.  
13 Q. And with respect to 250s, that would compare the number of  
14 250s done at a certain point in the past to what is being done  
15 at present, correct?  
16 A. I believe on the command profile.  
17 Q. You don't recall, do you, at those CompStat meetings that  
18 there was ever a discussion about whether the stops and frisks  
19 that would be recorded in those 250s are ever legal or  
20 constitutional, you don't recall such a discussion at CompStat,  
21 do you?  
22 A. No.  
23 Q. I didn't hear you.  
24 A. No.  
25 Q. And you don't recall discussing that in any other meetings

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D428FLO2 Mauriello - direct

1 that you had in the NYPD, correct?

2 A. I had a borough -- I had my own every payday meeting with  
3 my officers.

4 Q. You didn't discuss the legality or the constitutionality of  
5 stops and frisks at the borough commanders' meeting, did you?

6 A. I had my own payday meeting with my supervisors.

7 THE COURT: At that meeting, did you discuss the  
8 constitutionality of the stops?

9 THE WITNESS: No, we didn't talk about  
10 constitutionality. We went over 250s, if there was mistakes on  
11 it.

12 THE COURT: You didn't discuss the legality --

13 THE WITNESS: No.

14 THE COURT: -- of individual stops?

15 Q. You have never had that kind of a discussion with the chief  
16 of patrol, correct?

17 A. No.

18 Q. You have in the past, in your position as commanding  
19 officer of the 81st Precinct, had occasions when you observed  
20 that 250s had not been prepared properly, correct?

21 A. Yes.

22 Q. That typically in your experience involves the form not  
23 being filled out properly, right?

24 A. The form not being filled out properly.

25 Q. Other than that, other than whether the form was filled out

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D428FLO2

Mauriello - direct

- 1 properly, you don't recall any other issues at those precinct  
2 meetings with your supervisors with respect to any discussion  
3 about stop, question and frisk?  
4 A. No. My supervisors know the law.  
5 Q. The question is you don't recall any discussions with your  
6 supervisors about the legality or the constitutionality of a  
7 particular stop and frisk at any of those meetings with your  
8 supervisors, correct?  
9 A. No.  
10 Q. Now, you obviously know Deputy Chief Marino, correct?  
11 A. Yes.  
12 Q. He was your supervisor, at least one of your supervisors  
13 for some period of time, correct?  
14 A. Yes.  
15 Q. Was he the executive officer the entire time you were in  
16 the 81st Precinct?  
17 A. He might have been the commanding officer of the 75 before  
18 I became the CO. I'm not sure.  
19 Q. While you were in the 81st Precinct, was he the commanding  
20 officer of the 75th Precinct for a period of time?  
21 A. He might have been -- when I was the XO, he might have been  
22 the commanding officer.  
23 Q. You were aware that allegations had been made against him  
24 in the 75th Precinct that he maintained quotas, correct, you  
25 were aware of that?

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D428FLO2

Mauriello - direct

1 A. Yes.

2 Q. And you knew that an arbitrator had found, in fact, that he  
3 had set quotas for enforcement activity in the 75th Precinct,  
4 correct?

5 A. Yes.

6 Q. I'm sorry?

7 A. Yes. It was in the paper.

8 Q. This is the same Chief Marino who you met with on a regular  
9 basis while he was the executive officer of patrol borough  
10 Brooklyn North?

11 A. I didn't meet on a regular basis.

12 Q. You met at least twice a month?

13 A. Yes. He is one of many in the room, yes.

14 Q. Do you recall whether Chief Marino was ever disciplined for  
15 having been found to have maintained quotas at the 75th  
16 Precinct, do you know if he was ever disciplined?

17 A. I don't know.

18 Q. Not to your knowledge, right?

19 A. Not to my knowledge.

20 Q. When you met with Chief Marino -- withdraw that.

21 In those twice a month meetings when you met with the  
22 executive officer of the patrol borough Brooklyn North, you  
23 don't recall any issues of stop and frisk or racial profiling  
24 being discussed, do you?

25 A. No.

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D428FLO2

Mauriello - direct

1 Q. That's true even after that publicity about what was going  
2 on in the 81st Precinct, even after all that publicity, there  
3 was no discussion with Chief Marino about whether there was  
4 racial profiling going on in the 81st Precinct?

5 MS. GROSSMAN: Objection. Foundation. Publicity. I  
6 don't know what time period.

7 MR. MOORE: I will lay a foundation.

8 Q. Do you recall a series of articles in the Village Voice?

9 A. I believe the first one was in May of 2010.

10 Q. In May 2010, were you still the commanding officer of the  
11 81st Precinct?

12 A. Yes, I was.

13 Q. Chief Marino was the executive officer of patrol borough  
14 Brooklyn North, right?

15 A. Yes.

16 Q. The series of articles in the Village Voice, do you recall  
17 that?

18 A. Yes.

19 Q. Those articles referred to or contained allegations that  
20 quotas were being maintained in the 81st Precinct?

21 A. The article, yes.

22 Q. But you never discussed that with Chief Marino, right?

23 A. No.

24 Q. You were never present in a meeting with Chief Marino or  
25 any of his supervisors where the allegations in that article

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D428FLO2 Mauriello - direct

1 were discussed with him, correct?

2 A. No one ever discussed the article with me.

3 Q. Now, are you familiar with the concept of team led  
4 enforcement?

5 A. Yes.

6 Q. Am I accurate in stating that team led enforcement is when  
7 a sergeant or a lieutenant takes a group of police officers out  
8 into the field and targets a specific area in the precinct,  
9 correct?

10 A. Yes.

11 Q. The purpose of that is to try to get enforcement activity  
12 at that location, correct?

13 A. The purpose is he is going to the area where we are having  
14 either shootings or a high rise in crime. So omnipresence is  
15 part of it.

16 Q. One of the goals is to get activity in those locations,  
17 right?

18 A. If there is activity to be had, yes. If there is no  
19 activity, there is no activity.

20 Q. One of the occasions when you do team led enforcement is  
21 when the squad activity is too low, correct?

22 A. We might do it if you have extra personnel, and we might do  
23 team led enforcement if shootings are up, yes, we'd do it that  
24 way. Not lack of activity. Not always.

25 Q. I appreciate that answer, but my question is, is one of the

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D428FLO2

Mauriello - direct

- 1 times when you do team led enforcement when the squad activity  
2 is, in your judgment, too low?
- 3 A. Again, a lot of times team led enforcement, I leave it up  
4 to my platoon commander when he wants team led enforcement.  
5 But if I have violence, I will tell them to do team led  
6 enforcement.
- 7 Q. I appreciate that, but if you can answer that question yes  
8 or no, I would appreciate it. Is one of the times when you do  
9 team led enforcement when you believe that the squad activity  
10 is too low?
- 11 A. Yes.
- 12 Q. So one of the purposes is to direct officers into a  
13 location where their activity can increase, correct?
- 14 A. We send them to the location where there is crime trends  
15 and quality of life conditions.
- 16 Q. So the purpose is to try to get the activity up, right?
- 17 A. The purpose is to try to stop the crime.
- 18 Q. One of the ways you do that is by increasing the  
19 enforcement activity, correct?
- 20 A. It's quality. We want quality, not quantity, sir.
- 21 Q. I understand that. That also means you're trying to  
22 increase the activity, whether it's quality or quantity, you're  
23 trying to increase the activity there, correct?
- 24 A. Yes.
- 25 Q. Thank you.

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D428FLO2

Mauriello - direct

1 Do you recall, Inspector Mauriello, giving a statement  
2 to individuals within the police department on August 11, 2010  
3 involving allegations of quotas at the 81st Precinct?

4 A. Yes.

5 MR. MOORE: That's Exhibit 298. We move the admission  
6 of Exhibit 298.

7 MS. GROSSMAN: We object on the same basis we objected  
8 when the same type of transcript was offered with respect to  
9 Chief Marino. But given that we understand what the Court's  
10 ruling is going to be, we accept it and admit it subject to our  
11 objection.

12 THE COURT: It's reserving your objection, but I am  
13 admitting the document.

14 (Plaintiff's Exhibit 298 received in evidence)

15 MR. MOORE: Can you pull up Exhibit 298, Plaintiffs'  
16 Exhibit 298?

17 MS. GROSSMAN: I just wanted to remind the Court that  
18 the exhibit was only admitted for purposes of notice. It had a  
19 very narrow purpose.

20 THE COURT: OK.

21 MR. MOORE: You can leave it right there for the time  
22 being.

23 BY MR. MOORE:

24 Q. At this interview of you on August 11, 2010, you were  
25 present and you were represented by an attorney, correct?

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D428FLO2

Mauriello - direct

1 A. Yes.

2 Q. You were read certain rights that are given to all officers  
3 who are under investigation, correct?

4 A. Yes.

5 Q. So you understood at that time that this was an  
6 investigation, at least in part, of your conduct in the 81st  
7 Precinct, correct?

8 A. Allegations, yeah.

9 Q. It was an investigation of allegations made against you,  
10 correct?

11 A. Yes.

12 Q. You were asked questions and you gave answers to those  
13 questions, right?

14 A. Yes.

15 MS. GROSSMAN: This appears to be set up for improper  
16 impeachment.17 THE COURT: I thought so far he is just laying a  
18 foundation that it is a sworn statement, a statement under  
19 oath.

20 MR. MOORE: Right.

21 Q. You were under oath when you gave testimony on that  
22 occasion, correct?

23 A. Yes, sir.

24 Q. One of the things you talked about in that statement was an  
25 officer in the precinct who you believed was not a productive

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D428FLO2 Mauriello - direct

1 member of the command, correct?

2 A. They asked me about him, yes.

3 Q. We don't have to get his name for the record, but they  
4 asked you about that person's activity with respect to arrests,  
5 summonses and 250s, correct?

6 A. Yes.

7 Q. And you told the NYPD at that point that that person was  
8 not a productive member of the command, correct?

9 A. Yes.

10 Q. That was based, in your judgment, on his overall activity  
11 in terms of summonses, arrests, and 250s, correct?

12 A. I also said, if you read it, about his personality, he  
13 wasn't taking direction well from his supervisors.

14 Q. But with regard to his activity, the activity involved is  
15 arrests, summonses, and 250 activity, correct?

16 A. Yes.

17 Q. On that occasion, in that meeting, you denied there were  
18 quotas in the 81st Precinct, do you recall that?

19 A. There are no quotas.

20 Q. So the answer is, at that hearing, or at that meeting, or  
21 however you want to describe it, you denied that there were  
22 quotas, correct?

23 A. Right.

24 Q. But you did say that there were productivity standards that  
25 officers were expected to meet, correct?

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D428FLO2

Mauriello - direct

1 A. Correct.

2 Q. You also indicated that if they don't meet those  
3 productivity standards, they can be disciplined in some  
4 fashion, correct?

5 A. Correct.

6 Q. When you are referring to productivity standards, you're  
7 referring to enforcement activity, correct?

8 A. It's overall. When we do evaluations, productivity, yes.

9 Q. We are talking about productivity. So I want you to focus  
10 on the word productivity. Is that referring to an officer's  
11 enforcement activities?

12 A. Yes.

13 Q. That enforcement activity involves arrests, summonses, and  
14 250s, correct?

15 A. Yes.

16 Q. So it's your opinion that if an officer doesn't meet  
17 certain productivity standards with regard to arrests,  
18 summonses and 250s, that that officer can be disciplined in  
19 some fashion, correct?

20 A. He gets counseled all year. So he has an immediate  
21 supervisor. So by the time it comes to me at the end of the  
22 year, the evaluation is already written. So yes.

23 Q. He can be disciplined, correct?

24 A. Yes.

25 Q. Now, Inspector Mauriello, you were in court just before you

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D428FLO2

Mauriello - direct

- 1 got on the stand where a series of tape recordings were played,  
2 correct?
- 3 A. Yes, sir.
- 4 Q. You listened to those tape recordings, correct?
- 5 A. Yes, sir.
- 6 Q. It's not the first time you listened to them?
- 7 A. Not the first time.
- 8 Q. How many times have you listened to them?
- 9 A. Probably too many.
- 10 Q. We are going to go over in a minute what you said in some  
11 of those meetings, but there was a lot of discussion in those  
12 meetings about numbers, correct, on those tapes about numbers,  
13 right?
- 14 A. We want activity. So it's not about numbers. It's about  
15 the officer working. If there is a crime happening, I expect  
16 him to make an arrest.
- 17 Q. You heard the term numbers being said though, correct?
- 18 A. On the tapes, yes.
- 19 Q. Those tapes were actually made public sometime ago,  
20 correct?
- 21 A. I believe back in 2010.
- 22 Q. You had never been actually questioned by the police  
23 department with respect to any of the matters covered in any of  
24 those tapes, correct?
- 25 A. No.

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D428FLO2 Mauriello - direct

1 Q. I'm sorry. I didn't hear the answer.

2 A. No.

3 Q. You never discussed with anybody in the police department  
4 any allegations about whether there was racial stereotyping or  
5 racial profiling going on in any of those tapes, right? You  
6 never had a discussion with anybody in the police department  
7 about that, right?

8 A. Right.

9 Q. You have never received any -- you were never disciplined  
10 for any of those comments that we heard by any of the officers  
11 on those tapes, right?

12 A. Correct.

13 Q. As far as you know, none of the other officers who spoke on  
14 those tapes were disciplined for anything that occurred with  
15 respect to what was on those tapes, right?

16 A. Correct.

17 Q. In fact, none of those officers were even interviewed about  
18 any of the circumstances of what was on the tapes, right?

19 A. I can't tell you that. I don't know if they were.

20 Q. To your knowledge.

21 A. To my knowledge.

22 Q. You certainly weren't asked that, right?

23 A. Right.

24 Q. Did you ever discuss what was on those tapes with  
25 Lieutenant Delafuente?

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D428FLO2

Mauriello - direct

- 1 A. No.
- 2 Q. Did you ever discuss anything on any of those tapes with
- 3 Sergeant, now Lieutenant Weiss?
- 4 A. No.
- 5 Q. Did you ever discuss anything that was on those tapes with
- 6 a Sergeant Rasheena Huffman?
- 7 A. No.
- 8 Q. Did you ever discuss anything that was on those tapes with
- 9 a Sergeant Raymond Stukes?
- 10 A. No.
- 11 Q. When those tapes first came out, you were still the
- 12 commanding officer of the 81st Precinct, correct?
- 13 A. Correct.
- 14 Q. Lieutenant Delafuente still worked for you at that time,
- 15 right?
- 16 A. I'm not sure. He went to harbor so I don't know if he was
- 17 already gone by then.
- 18 Q. He what?
- 19 A. He went to harbor. I think he was already transferred.
- 20 Q. I thought you said Harvard.
- 21 A. Harbor.
- 22 Q. Do you know what his rank is now?
- 23 A. I think he is still a lieutenant.
- 24 Q. We know Sergeant Weiss was promoted to lieutenant, and that
- 25 was after these tapes came out, correct?

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D428FLO2

Mauriello - direct

1 A. Correct.

2 Q. Rasheena Huffman, is she still a sergeant?

3 A. I believe so.

4 Q. What about Raymond Stukes, has he been promoted from  
5 sergeant?

6 A. I believe he is still sergeant.

7 Q. Did anyone ever tell you in the police department that some  
8 of the statements made by you -- withdraw that.9 You were the supervisor of Lieutenant Delafuente while  
10 you were in the 81st Precinct, right?

11 A. I was the commanding officer, yes.

12 Q. He reported to you, correct?

13 A. Yes.

14 Q. You supervised all of those individuals, Raymond Stukes,  
15 Rasheena Huffman, Sergeant Weiss and Lieutenant Delafuente, you  
16 were the commanding officer for all of those individuals,  
17 correct?

18 A. Yes.

19 Q. Did anybody ever say to you that some of the statements  
20 contained in those tapes could be construed as quotas?

21 A. No.

22 Q. Before we hear some of the tapes, I want to ask you a  
23 couple of questions. I want to be clear about what your  
24 position is with respect to some of the issues that we may hear  
25 raised in those tapes.

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D428FLO2

Mauriello - direct

1           It's your position, is it not, that you don't use stop  
2 and frisk to deter or to instill fear in a certain part of the  
3 population, correct? Is that your position?

4           A. We use 250s when you have a reasonable suspicion that the  
5 person is about to commit, did commit, or will commit a penal  
6 law, a misdemeanor or a felony.

7           THE COURT: You agree with Mr. Moore that you don't  
8 use it to instill fear in certain parts of the population?

9           THE WITNESS: Of course not.

10          Q. It's your position that as a CO of the 81st Precinct,  
11 neither you nor any member of your command team set numerical  
12 goals for officers to meet, correct?

13          A. There was no --

14          Q. Is that your position?

15          A. Yes. There were no numbers.

16          Q. It's your position, as you sit here today, that as a  
17 commanding officer, neither you nor any member of your team  
18 used quotas in the 81st Precinct, correct?

19          A. Yes. No quotas.

20          Q. It's your position that as a commanding officer of the 81st  
21 Precinct, neither you nor any member of your team put pressure  
22 on officers to get numbers up under threat of adverse job  
23 consequences, that's your position as you sit here today,  
24 correct?

25          A. No pressure, just do your job.

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D428FLO2

Mauriello - direct

1 Q. It's your position that neither you nor anybody else in the  
2 81st Precinct -- withdraw that.

3 It's your position that as a member of the 81st  
4 Precinct, you didn't feel pressure from your higher-ups in the  
5 borough to increase your enforcement activity, correct?

6 A. Correct.

7 Q. It's your position, as you sit here today, that neither you  
8 nor your subordinates engaged in any racial stereotyping or  
9 racial profiling in any of the comments that we heard in those  
10 tapes, correct?

11 A. Correct.

12 Q. Before we go to these tapes, I just want to go back to the  
13 statement you made, which is Plaintiffs' Exhibit 298, for a  
14 moment.

15 Do you recall telling the interviewer there --

16 MS. GROSSMAN: Your Honor, if I could just have a page  
17 and line? He is obviously reading.

18 MR. MOORE: If I need to impeach him with it, I will  
19 give her the page and line, but I don't know what his answer is  
20 going to be.

21 THE COURT: It doesn't matter. If you're reading from  
22 it, tell her.

23 MR. MOORE: I am not reading word for word. I may be  
24 using it as a guide. If I use it to impeach, I will definitely  
25 tell her.

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D428FLO2

Mauriello - direct

1 THE COURT: If you read from it, tell her the page  
2 number.

3 MR. MOORE: Page 46, just to be safe.

4 Q. Do you recall telling the interviewer there that  
5 productivity standards were set with respect to arrests,  
6 summonses and 250s in the 81st Precinct?

7 A. Yes.

8 Q. Is it your position that there were never any consequences  
9 if members of the service weren't productive with regard to  
10 those activities, is that your position?

11 A. There would be a consequence if you didn't work all year  
12 and you were counseled, mentored, team led, trained by a  
13 supervisor, documented all year, and then you got a 2.5. So  
14 that's discipline.

15 Q. If an officer fails to meet the productivity standards,  
16 they can be disciplined, correct?

17 A. That's part of your evaluation, productivity. But there  
18 are also other parts of the evaluation.

19 Q. When I say discipline, I mean adverse employment actions  
20 could be taken against them, right?

21 A. Yes.

22 Q. That includes being denied overtime, right?

23 A. No. No one ever got denied overtime.

24 Q. Well, what about a change of tour or a change of  
25 assignment?

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D428FLO2

Mauriello - direct

1 A. That could be possible. There is a list. You could get  
2 performance monitoring. It could be a change of tour, a change  
3 of -- a transfer out. That's all part of the personnel review  
4 board.

5 Q. Those would be adverse employment consequences as a result  
6 of not fulfilling the productivity standard, correct?

7 A. We are just asking the guys and -- the fellows and the  
8 women to work hard. That's all.

9 Q. I understand. And I appreciate that, and I am sure you are  
10 asking them to work hard, and I think that's in part why we are  
11 here today.

12 What my question is, if they fail to meet the  
13 productivity standards, adverse employment consequences could  
14 follow, correct? Maybe not right away, but at some point,  
15 right?

16 A. Correct.

17 Q. Inspector Mauriello, I am going to now play some of the  
18 tapes that we heard, that you just heard, and I am going to ask  
19 you some questions about some of the things we heard on the  
20 tapes. OK?

21 A. Yes, sir.

22 Q. Everybody on the tape was somebody that you are familiar  
23 with, correct?

24 A. Correct.

25 Q. Either a lieutenant under your supervision or a sergeant

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D428FLO2 Mauriello - direct

1 under your supervision, correct?

2 A. Correct.

3 Q. In some cases on the tape we can hear your voice, correct?

4 A. Correct.

5 MR. MOORE: So if you can play the first track, the 12  
6 December 2008 track.

7 MS. GROSSMAN: What time?

8 MR. MOORE: Start it at the beginning. It goes from  
9 2:20 to 4:30, I believe.

10 (Audiotape played)

11 THE COURT: Stop that.

12 MS. GROSSMAN: Can we give the witness a copy of the  
13 transcript of that?

14 THE COURT: That's a good idea. I didn't find mine.  
15 What is the date? What date is it?

16 Mr. Moore, which date is it?

17 MR. MOORE: The first one, 12 December 2008.

18 THE COURT: The very first one. OK.

19 (Continued on next page)

20

21

22

23

24

25

D429flo3

Mauriello - direct

1 MR. MOORE: I'm going to hand you, Inspector  
2 Mauriello, the actual written transcripts. What I'd ask you to  
3 do is listen to the recording and then if you need to -- if  
4 you're confused about something you can refer to the  
5 transcript. Okay.

6 THE COURT: You don't listen to him. It's really easy  
7 to listen when you can read along. So if I were you, I would  
8 read along.

9 MR. MOORE: Do both. Don't listen to me. Listen to  
10 the judge.

11 THE COURT: There you go.

12 MR. MOORE: So if you could play the first recording  
13 and I'll indicate when I want it stopped.

14 (Audio recording played)

15 MR. MOORE: That's Lieutenant Delafuente speaking,  
16 correct?

17 THE WITNESS: Correct.

18 Q. And he makes mention of specific numbers from each of the  
19 people in the car, correct?

20 A. Correct. But they weren't talked about specific numbers.

21 Q. But they're talking about he expects at least two from each  
22 of them -- each of the occupants of this quality of life car,  
23 correct?

24 A. That's what he said.

25 Q. That's two enforcement activities, correct?

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D429flo3 Mauriello - direct

1 A. Yes. That's what he said.

2 Q. Okay. So that's a specific number that's being told to the  
3 officers at the role call, correct?

4 A. Correct.

5 MR. MOORE: Keep going.

6 (Audio recording played)

7 Q. You heard that and followed that along, correct?

8 A. Yes.

9 Q. Now that's referring to enforcement activity with respect  
10 to summonses and 250s, right? That's what Delafuente mentions  
11 there, correct?

12 A. I believe community visits he said too.

13 Q. I'm sorry?

14 A. I believe community visits too.

15 Q. I didn't hear?

16 A. I've said I believe community visits.

17 THE COURT: Community visits, he mentions. But I  
18 don't see that.

19 THE WITNESS: 250s and Cs, yeah.

20 Can I explain what a quality of life order is?

21 THE COURT: Sure. He wants to explain what a quality  
22 of life order is.

23 THE WITNESS: Thank you. The judge said I could.

24 THE COURT: If you can.

25 THE WITNESS: So I'm going to explain.

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D429flo3

Mauriello - direct

1 MR. MOORE: She's the judge. So if she wants to hear  
2 it, go ahead.

3 THE WITNESS: Yes. We used to have impact outside  
4 personnel which was the borough officers, 50 officers. And  
5 then they get moved at a certain time to another part of  
6 Brooklyn that's having crime problems.

7 So I have to come up with a plan how to, when you move  
8 these officers out, they're in a very violent area where we had  
9 a lot of problems between three buildings, three different  
10 areas with violence and robbery trends, how am I going to put  
11 cops in there when I don't have 50 cops to put in like we used  
12 to have.

13 So I come up with a plan. And I have footposts put  
14 out there. Now I don't have that many footposts. So I put in  
15 a certain area, I come up with a quality of life order, which  
16 is a mobile moving footpost. I want that car to cover a  
17 certain area. At the time we're talking about, we're talking  
18 about Marcus Garvey to Saratoga; Atlantic to Decatur. We had  
19 three very violent buildings that were at war with each other:  
20 120 Chauncey complex, that's 110 Chauncey 94, and 1711 Fulton.  
21 Then we had Breevort houses, which is a half a block away,  
22 which is a public housing development. And then we had another  
23 building that's independent on -- between Atlantic and Fulton.  
24 They call it the Smurf complex. And then we had Chauncey  
25 house, which is a block away. And all four locations didn't

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D429flo3

Mauriello - direct

1 like each other. And this goes back for years and years like  
2 the Hatfields and McCoys. There was violence. If it was  
3 gang-related, if it was drug-related, or if it was just they  
4 didn't like each other because you came from this block.

5 Q. Are you still talking about what a quality of life order --

6 A. Yes, I am, sir.

7 So I put out a quality of life order. And it's a  
8 mobile, moveable footpost. But they're in a car. And I expect  
9 them to help out the footpost to cover a lot of area, to be  
10 omnipresent. All right.

11 Of course, if they observe a crime I expect, you know,  
12 if you have probable cause, arrest somebody. If they observe a  
13 quality of life infraction, I want the condition corrected. If  
14 they are reasonable suspicion to stop somebody, I expect  
15 someone to be stopped. That's their job.

16 They're not on the radio. They're not being assigned  
17 911 jobs. They're out there only on a major crime where they  
18 backup on a 911 job. They're off the radio. So it's a mobile  
19 footpost.

20 At times, if nothing is going on, I would want them in  
21 the car with their lights on, directing patrol on the corner,  
22 where people walking home from the subway to go home.

23 They were out there for omnipresence.

24 The people in the community loved it. They  
25 complimented my officers out there. And also it kept the

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D429flo3

Mauriello - direct

1 criminals, by moving the car back and forth with the lights on  
2 and going and getting out of the car, the criminals thought we  
3 had more personnel out there. And they thought better not to  
4 commit crimes. That's what a quality of life order was.

5 Q. You expected productivity from the officers in those  
6 quality of life orders, correct? Can you just answer it yes or  
7 no?

8 A. If it was out there, yes.

9 Q. And when Delafuente said we expected at least two from each  
10 of you in the car he's not saying two from each of you in the  
11 car if there's reasonable suspicion or if there's probable  
12 cause, is he?

13 That's not in that transcript, correct? Yes or no?

14 A. He's not saying that but --

15 Q. He's not saying that?

16 A. My officers know that. They're trained.

17 Q. But it doesn't appear in the transcript?

18 A. It doesn't appear in the transcript.

19 Q. Thank you.

20 You say -- actually rather than play the tape and go  
21 through a lot. Read, if you will, from page -- from on the  
22 same page, the transcript, from line 16. Look at line 16. All  
23 right?

24 A. Yes.

25 Q. You got that?

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(212) 805-0300

D429flo3

Mauriello - direct

1 A. Yes, sir.

2 Q. It says: You know, your evaluations are based on your  
3 activity. So, you know, I can't give you a four -- a  
4 four-and-a-half, a three-and-a-half if you have no activity.

5 That's what Delafuente said at that -- on that  
6 occasion on December 12, 2008 in the 81st precinct, right?

7 A. That's what he said. But that's not all the activity is  
8 based on -- evaluations are based on.

9 Q. Evaluations are based, at least in part, on your activity,  
10 correct? And if you don't have activity, you're not going to  
11 get a good evaluation?

12 A. Part of it is based on activity. You got crime. You got  
13 sick record. Disciplinary record. How well -- you take well  
14 to supervision.

15 Q. Go to the next tape, the 12 June 2008. And play that one.

16 MS. GROSSMAN: What's the timing, the excerpt?

17 MR. MARUTOLLO: It's 12:10 as to 13:28. And we'll  
18 start at the beginning.

19 (Audio recording played)

20 Q. That's Sergeant Stukes or Lieutenant Delafuente?

21 A. I believe Lieutenant Delafuente.

22 Q. And he's saying that the XO -- is that the XO of the  
23 borough or the XO of the precinct?

24 A. I believe the XO of the precinct.

25 Q. Came in and said he laid down a number. Do you see that?

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D429flo3

Mauriello - direct

1 He said laid down a number. Right? That's what it says?

2 A. That's what it says but I don't know anything about the  
3 so-called number.

4 Q. But that's what it says in the tape, correct?

5 A. Correct.

6 Q. And that's a tape of a roll call?

7 THE COURT: You know what, would you do me a favor.  
8 Stop moving the mic. Just leave it forward. Leave it forward  
9 the whole time.

10 THE WITNESS: I talk too loud.

11 THE COURT: That's okay. Go ahead.

12 Q. And that's -- that tape is a tape of a roll call done on  
13 the 12th of June 2008 by Lieutenant Delafuente in the 81st  
14 precinct, right?

15 A. Yes.

16 Q. And so he says: The XO has a number but I'm not actually  
17 going to tell you what it is.

18 But then he does give some numbers. He said he wants  
19 three seat belts, one cellphone, and eleven others.

20 Do you see that?

21 A. I see that.

22 Q. Pretty specific numbers, right?

23 A. Yes.

24 Q. And the others, what's that refer to? Summonses? 250s?  
25 Do you know?

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Mauriello - direct

1 A. This is news to me. There is no such thing as set numbers  
2 in the precinct.

3 Q. And then he says, going forward, he says: So if I was on  
4 patrol, I'd be sure to get three seatbelts, one cellphone, and  
5 then the eleven others. That's what he says, right?

6 A. Yes.

7 Q. And then -- but it's your testimony that this is all news  
8 to you. You never heard that discussion in the 81st precinct?

9 A. There was never a set number in the 81st precinct.

10 Q. Well apparently on December -- on June 12, 2008 there was a  
11 set number set by Lieutenant Delafuente in the roll call,  
12 correct?

13 A. That's what it says.

14 THE COURT: That's what he says.

15 THE WITNESS: That's what he says.

16 But that's not what I say.

17 THE COURT: All right.

18 Q. Lieutenant Delafuente held what position in June of 2008?

19 A. He was platoon commander.

20 Q. So he was a platoon commander of what platoon?

21 A. I believe the third platoon.

22 Q. What shift?

23 A. Three to eleven, three in the afternoon to eleven at night.

24 Q. And so he was one of your senior supervisors in the 81st  
25 precinct, correct?

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Mauriello - direct

1 A. I guess, yes.

2 Q. Why don't we go to the next recording which is 13th of  
3 January, 2009 which is a roll call from the 3:02 to 4:26.

4 (Audio recording played)

5 Q. Who is -- is that Sergeant Reade talking?

6 A. That's Lieutenant Delafuente.

7 Q. So Lieutenant Delafuente. Okay. So this -- this is on  
8 13th of January 2009. This is a roll call in the 81st  
9 precinct, correct?

10 A. Yes.

11 Q. So continue playing if you would.

12 (Audio recording played)

13 Q. GLA is what? Grand larceny auto, right?

14 A. Yes, sir.

15 Q. And is it true that at some point while you were the  
16 commander of the 81st precinct the borough began to supervise  
17 the activity of the precinct in a more complete way?

18 Let me withdraw that question.

19 Is it true that at some point when you were the  
20 commander of the 81st precinct that the borough began to get  
21 more involved in finding out what was going on within the  
22 precincts?

23 A. Yes. They had platoon command staff.

24 Q. So what would happen was the platoon commanders of each  
25 precinct would all go to a meeting at the borough office,

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- 1 correct?  
2 A. Yes.  
3 Q. And they would talk about everything, the activity,  
4 everything? It's all listed there, right?  
5 A. They broke down the person's platoon as a mini precinct.  
6 And the lieutenant was almost like the commanding officer. He  
7 would talk about his personnel and the crime trends.  
8 Q. And you interpreted that as the borough getting tighter and  
9 tighter in regards to the accountability of the precinct,  
10 right?  
11 A. I don't believe I said that on tape but the borough was --  
12 Q. Do you agree with that?  
13 A. Holding them more accountable, yes.  
14 Q. But you agree they were getting tighter and tighter,  
15 correct?  
16 A. Holding platoon commanders more accountable.  
17 Q. And being accountable in part meant being accountable for  
18 their enforcement activity, correct?  
19 A. They were looking to see how they were working the platoon,  
20 the whole platoon, how they were working.  
21 Q. And part of that was their enforcement activity?  
22 A. Enforcement to crime trends, yes.  
23 Q. And when we say enforcement activity, we're talking about  
24 250s, C summonses, or summons and arrests, correct?  
25 A. Also looking at verticals, if you have problems with

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Mauriello - direct

1 building verticals. Radio runs. Domestic violence, very big.  
2 Domestic incident reports. Are we making arrests on domestic.  
3 It's a very big topic.

4 Q. It included, did it not, looking at the numbers for 250s  
5 and for summonses, correct?

6 A. Looked at --

7 Q. That's one of the things?

8 A. Some of the things. That's some of the things.

9 Q. If you could go to the next tape. Which is 15 July 2008.  
10 Which I believe is a short tape of 35 seconds to 50 seconds.

11 (Audio recording played)

12 Q. So this is the Lieutenant Delafuente again, correct?

13 A. Correct.

14 Q. At a roll call in the 81st precinct, correct?

15 A. Correct.

16 Q. Do you know -- do you recall if you were present for that  
17 role call?

18 A. Yes, I was.

19 Q. So you recall being present for this particular role call?

20 A. I was present. I talked on this roll call for like seven  
21 minutes. But, again, I might have walked in right after this.  
22 So I don't know.

23 Q. So in this -- this excerpt he says: I want a couple of  
24 250s out there.

25 Right? That's what he says, right?

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Mauriello - direct

1 A. Yes. I could explain about the location, your Honor.

2 THE COURT: Go ahead.

3 THE WITNESS: Yeah, thank you.

4 THE COURT: Go ahead.

5 THE WITNESS: This is a week after we had five people  
6 shot in the back of 969 Gates. It was a barbecue that went on  
7 until 3:00 in the morning. There was DJs, double-parked cars.  
8 We had five people shot. An innocent young lady, 17-years-old,  
9 lost her life. You hear me talking on the tape at the same  
10 time about other places in the city with the barbecues. But we  
11 had a lot of violence there.

12 And the crime went unsolved. There was 35 witnesses.  
13 No one stepped forward. So, again, the building was very  
14 nervous. The community was very nervous. I put officers out  
15 there to make sure they felt very good. And my officers, there  
16 was a building across the street, all the same complex. They  
17 actually went across the street, in the same complex -- we had  
18 two officers out there -- and they actually recovered a firearm  
19 that's on this thing in the hallway.

20 So we get tips from the tenant board association.  
21 They were very afraid what happened because the guy who they  
22 believed who did the shooting, no one stepped forward, still  
23 lived there. He was shot. He was in a wheelchair. They were  
24 afraid.

25 So my officers were put out there for a reason.

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Mauriello - direct

1 So, again, the 250, if they have reasonable suspicion  
2 to stop someone, then they got to stop someone. But their  
3 orders are not out there just to do 250s. They're out there to  
4 be omnipresent and make sure the block is safe.

5 THE COURT: The person does say I want a couple of  
6 250s out there.

7 THE WITNESS: He's says it. Again, if it's out there,  
8 it's out there. If it's not out there, there is no punishment  
9 coming back if there is no 250s.

10 THE COURT: I thought you were going to stop doing  
11 that.

12 THE WITNESS: I'm so sorry.

13 THE COURT: You're going to break it. Leave it  
14 forward.

15 THE WITNESS: Okay.

16 THE COURT: There you go.

17 Q. You have a loud voice.

18 A. I know I do. It's a curse unfortunately, so.

19 Q. Just sit up straight. You don't have to keep going back  
20 and forth.

21 A. Sometimes I talk loud.

22 Q. Whatever comfortable position you want to be in.

23 All right. So, he says there: I want a couple of  
24 250s. He doesn't say anything else about it. He just says I  
25 want a couple of 250s, right?

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Mauriello - direct

- 1 A. But you hear me talk for eight minutes afterwards. I  
2 explain everything that's going on. That's what I'm saying.  
3 Q. So that's, once again, at a roll call, the platoon  
4 commander telling the troops that he wants a particular -- a  
5 specific number, correct?  
6 A. He wants his officers engaged out there, yes.  
7 Q. But he said I want a couple of 250s. So that's two 250s,  
8 right?  
9 A. Yeah, he said that. But, again, there was no punishment if  
10 he didn't come back --  
11 Q. All I'm asking is whether he said that.  
12 THE COURT: You don't need to ask him. I've heard it.  
13 It's on the tape. That's it.  
14 Q. But he didn't qualify it in any way, right?  
15 THE COURT: The tape says what it says, Mr. Moore.  
16 MR. MOORE: All right, Judge.  
17 Why don't you go now to the 1st November 2008 tape.  
18 And the passage is from 2:12 to 3:50.  
19 (Audio recording played)  
20 Q. So that's Lieutenant Delafuente, correct?  
21 A. Correct.  
22 Q. And that's at a roll call in the 81st precinct on  
23 November 1, 2008, correct?  
24 A. Correct.  
25 Q. Did you ever hear him make reference to the -- the

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Mauriello - direct

1 community, the people in the community of Bed-Stuy as "everyone  
2 probably got a warrant," ever hear him use that before?

3 A. Never heard him. And if you listen to all my tapes, I say  
4 98 percent of the people in the community are hard-working  
5 people. It's the two percent, the criminals my officers deal  
6 with. I say it on every tape.

7 Q. I'm not asking about what you say. I'm asking you about  
8 what Lieutenant Delafuente --

9 A. He never said that in front of me.

10 Q. But he says it on the tape, correct?

11 THE COURT: You don't need to --

12 THE WITNESS: He says it on the tape.

13 MR. MOORE: Judge --

14 THE COURT: I just got to watch the time here. I  
15 don't want this to last two months if it doesn't have to. I  
16 see it on the tape. He said it on the tape. That's the end of  
17 that question.

18 MR. MOORE: I understand, Judge.

19 THE COURT: I'm not going to allow you to ask him  
20 anymore whether it's on the tape. It's on the tape.

21 MR. MOORE: I'm not --

22 THE COURT: Mr. Moore, move on. Don't fight with me.  
23 You cannot ask him if it's on the tape. That's the end of  
24 that.

25 Q. Did you ever hear any other officer in the precinct --

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Mauriello - direct

1 withdraw that.

2 Do you think making a reference to somebody as  
3 everybody -- you're working in Bed-Stuy where everyone's  
4 probably got a warrant, that that's racial stereotyping. Do  
5 you think that?

6 A. I don't agree with that statement.

7 Q. Okay.

8 A. We had a very good relationship with the community. The  
9 community --

10 THE COURT: That wasn't his question. Do you think  
11 that statement is racial stereotyping?

12 THE WITNESS: No. I don't think he meant it as racial  
13 stereotyping.

14 THE COURT: No. He doesn't think so. Next question.

15 Q. Go to 27 February 2009 roll call. The time is 2:35 to  
16 6:21.

17 THE COURT: Would the defense mind if we work from the  
18 transcript only at this point, didn't hear the tape anymore?

19 MS. GROSSMAN: That's fine.

20 THE COURT: So 27 February 2009.

21 MS. GROSSMAN: 2:35 to?

22 THE COURT: 2:35 to 6:21.

23 Now what part do you want to focus on first? You can  
24 read it.

25 Q. This is Lieutenant Delafuente, correct, at this roll call?

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Mauriello - direct

1 A. Yes.

2 Q. And it's on 27 February 2009.

3 And he says, um to reiterate what the sergeant touched  
4 on --

5 MS. GROSSMAN: Line number?

6 MR. MOORE: The beginning.

7 Q. If you out on the footpost, you need activity. You got to  
8 get 250s. You got to get Cs. But you got to get community  
9 business, okay.10 And then he says a couple lines down, Please get out,  
11 get some activity.

12 Do you see that?

13 A. Yes.

14 Q. So Delafuente is telling the troops that he wants activity;  
15 specifically, he wants 250s and Cs, correct?16 A. Yes. He also said he doesn't want them sitting in the car  
17 reading the newspaper.18 Q. And one of the reasons that they -- that he and you want  
19 that activity is to be able to demonstrate to the command  
20 structure that you're attempting to deal with crime patterns,  
21 correct?

22 A. We wanted to keep crime down.

23 Q. Would you answer that yes or no?

24 A. Crime down and quality of life conditions. That's what  
25 we're out there for.

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Mauriello - direct

- 1 Q. So one of the reasons you and Delafuente would say go get  
2 250s or go get Cs is so you can demonstrate to your superiors  
3 that you're addressing crime conditions?  
4 A. No.  
5 Q. In your precinct. Would you agree with that?  
6 A. No. He's telling them he wants them to work. If it's out  
7 there, and he observes it, he wants them to work. That's what  
8 he's telling these officers.  
9 Q. Well he's also saying, if you look at line 24: If you have  
10 250s or if you have community visits, it shows that you are  
11 making an attempt to deter crime, right?  
12 A. Where does it say that?  
13 Q. Do you see that?  
14 THE COURT: Beginning on line 24.  
15 THE WITNESS: Delafuente 701 all right. That's  
16 directly. That's what it says on 24.  
17 Q. Did I read that correctly?  
18 A. No. That's the wrong line. I didn't know --  
19 THE COURT: I don't know where you are either.  
20 MR. MOORE: Line 24. Going down the page.  
21 THE COURT: Line 24 says 701, all right.  
22 Are you on a different --  
23 MR. MOORE: No, no. That first part of line 24, the  
24 first 24.  
25 THE COURT: The -- I see. You have 250s or if you  
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Mauriello - direct

1 have community visits it shows that you are making an attempt  
2 to deter crime. The first 24.

3 THE WITNESS: Yes. Community visits, yes.

4 Q. And 250s, right?

5 A. That's what he said.

6 Q. And you're making an attempt to deter crime and you're  
7 making a -- and that would be conveying to your superiors at  
8 the borough that you're making an attempt to deter crime,  
9 right?

10 A. He's telling the officers to do 250s. Again, you have to  
11 have reasonable suspicion to do 250s. The officers know that.  
12 He's saying if it's out there, do it. But do community visits.

13 Q. That's not what he said. He doesn't say if it's out there  
14 do a 250. He says --

15 A. That's how I'm taking this. That's how I'm taking it.  
16 He's talking to his officers.

17 Q. If you have 250s, and we'll look good because it's making  
18 an attempt to deter crime, right?

19 A. You see before that it's about shootings. They're out  
20 there for shootings. There was a shooting there the other day.  
21 So he wants to make sure there is no more shootings.

22 Q. Let me ask you if you agree with this.

23 When your superiors in the borough will discuss what's  
24 going on in the precinct with you, they would want to see you  
25 make what efforts are being made in the precinct to address

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D429flo3 Mauriello - direct

1 crime patterns, to deter crime, correct?

2 A. Yes.

3 Q. And one of the ways -- one of the things they'd look at is  
4 whether there's 250s, arrests, and summonses, correct? That's  
5 one of the things that they look at?

6 A. They also look at in the area radio runs.

7 THE COURT: But that's not fair to not answer --  
8 that's one of the things.

9 THE WITNESS: One of the areas, sorry, your Honor.  
10 That's one of the things they look at.

11 THE COURT: Okay.

12 THE WITNESS: Or one, two, three.

13 Q. Move down to -- on this document to the sentence that  
14 begins on line eleven, it's the second line eleven that appears  
15 on the document. And it says: If you want to venture down and  
16 talk to them, get a name, that's fine. If you want to just  
17 grab someone going in, one of the tenants going in, you know,  
18 if they want to stop and talk to you, then get a name and a  
19 number.

20 Do you see that?

21 A. Yes. I believe he's talking about community visits.

22 Q. He's saying grab someone, one of the tenants going into the  
23 building, right? In other words, stop them, right?

24 A. He's talking about community visits. If they want to talk  
25 to them, community visit -- put down a name on a piece of

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Mauriello - direct

1 paper. You did a community visit.

2 THE COURT: I don't think this whole line of question  
3 is productive. He's telling us what he thinks the man is  
4 saying. And generally I wouldn't allow that for a minute. The  
5 man said what he said. He doesn't know what he meant. You  
6 don't know what he meant. You're just arguing with each other.  
7 This is what he said. For him to interpret to say what he  
8 really meant was, that's not useful.

9 MR. MOORE: I agree, Judge. But I think, given that  
10 these are people under his supervision.

11 THE COURT: You want an interpretation of a simple  
12 English sentence, you're getting his gloss on what somebody  
13 else said. That's not right.

14 It's an objectionable question. So I'm sustaining my  
15 own objection.

16 MR. MOORE: I'll move on then.

17 THE COURT: That's good.

18 Q. Let's go to January 28, 2009. Which is the four to twelve  
19 roll call. The time is 24:29 to 25:50.

20 THE COURT: You found it? You know where he is?

21 THE WITNESS: What line?

22 THE COURT: Sorry?

23 THE WITNESS: This one. I just want to see what line.

24 THE COURT: As long as you know where we are.

25 THE WITNESS: Thank you.

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Mauriello - direct

1 Q. Looking at line 19. This is again -- who is speaking here.  
2 This is Delafuente?

3 A. Yes.

4 Q. He says, beginning on line 19: So, you know, you're going  
5 to get some orders that you may not like. You're going to get  
6 instructions. You're going to get disciplinary action,  
7 whatever, you know, you got to just pick up your work because,  
8 like he said, I don't want to hurt you. All right.

9 Is he referring there to orders meaning -- I'm just  
10 going to ask him. And if he says --

11 THE COURT: He doesn't know what he's referring --

12 MR. MOORE: I don't know that he doesn't know.

13 THE COURT: I know. You can't be in somebody else's  
14 mind. He can start giving you his own theories and  
15 interpretations. I don't know how that helps, frankly, you or  
16 anybody else. But he doesn't know. And we don't usually let  
17 another person say what another person meant.

18 MR. MOORE: All right. So you can't -- you don't  
19 know.

20 THE COURT: I won't let him say what he thinks the  
21 other fellow meant. I'll figure out what I think he meant.  
22 That's it.

23 MR. MOORE: All right, Judge.

24 THE COURT: He said what he said.

25 MR. MOORE: Maybe what Delafuente comes if he

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Mauriello - direct

1 testifies we can ask him.

2 THE COURT: That's right. You can ask him what was in  
3 his mind.

4 MR. MOORE: Although he's the commander of the  
5 precinct. So I think it's relevant.

6 But I'll move on.

7 THE COURT: It's never relevant to ask him what he  
8 thinks somebody else meant. We don't allow those questions and  
9 you'd be the first to object if the other side did it.

10 MR. MOORE: My question wasn't what he thinks. My  
11 question is what he understands that language to mean.

12 THE COURT: That's a rephrasing. That's the first  
13 time you phrased it that way.

14 MR. MOORE: Well --

15 THE COURT: Yeah, it is.

16 All of the other times it was: What do you think he  
17 meant when he said. And that's just the wrong question.

18 MR. MOORE: I'll move on, Judge.

19 Q. January 29, 2009 roll call. Do you see that?

20 THE COURT: That's the next one.

21 MR. MOORE: The time is 6:20 to 6:48. It is the next  
22 one on the list.

23 THE COURT: Short one. Do you see it?

24 MR. MOORE: It's the short one.

25 Q. Do you have that in front of you?

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Mauriello - direct

1 THE COURT: January 29.  
2 THE WITNESS: I don't have it.  
3 THE COURT: Mixed them up.  
4 MR. CHARNEY: I can try to help you.  
5 THE WITNESS: This is where I left off. This one. So  
6 I think might have put it all the way in the back.  
7 MR. MOORE: May I show him my copy, Judge, to speed it  
8 along, if that's okay.  
9 THE COURT: Yes. It's the one that says we need 250s.  
10 We need arrests.  
11 MR. MOORE: Do you see that?  
12 Just read that portion there that begins: We need  
13 250s.  
14 THE WITNESS: This is Lieutenant Delafuente, right?  
15 MR. MOORE: Yes.  
16 THE WITNESS: We need 250s. We need arrests. Quality  
17 of life enforcement. Community visits. We need -- if you're  
18 in a car, please get to them. If you're on a foot, get three  
19 please. That's community visits. That's about it. What else  
20 do we have?  
21 Q. So that's a mention of specific numbers at that roll call,  
22 correct?  
23 THE COURT: Those are numbers. Two and three are  
24 numbers.  
25 THE WITNESS: Yes. Two and three are numbers.

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Mauriello - direct

1 THE COURT: What does it mean to you that he said we  
2 need 250s, we need arrests?

3 THE WITNESS: But when he said two and three --

4 THE COURT: Forget that. I didn't ask that. You got  
5 to listen to my question.

6 What does it mean to you when he said: We need 250s,  
7 we need arrests.

8 What does that mean to you?

9 THE WITNESS: He wants the officers to be out there  
10 engaged.

11 Q. In enforcement activity?

12 A. Enforcement activity.

13 Q. And when he says in the car, the two or the three, is  
14 that -- do you -- do you understand that to mean community  
15 visits or other enforcement activity?

16 A. I think it meant community visits.

17 THE COURT: No, not, again, what you think it meant.

18 THE WITNESS: It meant community visits.

19 THE COURT: What it means to you.

20 THE WITNESS: To me it means community visits.

21 THE COURT: All right.

22 THE WITNESS: I got to start remembering to answer  
23 that way.

24 Q. Why don't you turn to the transcript of the tape on 30  
25 October 2008 and it's a -- again, it's Lieutenant Delafuente

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1 and it's from 4:20 to 6:30.

2 Do you have that before you? 30 October 2008.

3 A. Yes.

4 Q. And he says here at the bottom --

5 THE COURT: What line?

6 MR. MOORE: Six lines up from the bottom beginning on  
7 line 13.

8 THE COURT: Okay.

9 Q. If you see something, just do some 250s get all the fucking  
10 riffraff off the corner.

11 Do you see that?

12 A. Yes, I do.

13 Q. What does that mean to you?

14 A. Again, if you see -- he's talking about when you do 250s,  
15 he's talking to these guys, it's reasonable suspicion. I don't  
16 know what he meant about riffraff. He's talking if the corners  
17 are too populated, ask the people to move off the corner.

18 Q. Ever hear him use that term?

19 A. Riffraff, no. I don't think I ever heard anybody use  
20 riffraff before.

21 Q. Did you ever use that term when you addressed the roll  
22 calls in the 81st precinct?

23 A. Riffraff, no.

24 Q. But apparently Lieutenant Delafuente used it, correct?

25 THE COURT: Well, that's established. I heard it.

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Mauriello - direct

1 THE WITNESS: That's the way it's transcribed.

2 THE COURT: No. No. I heard it. We're not  
3 questioning the transcription anymore. All the counsel have  
4 listened. They stipulated that's what it said. Okay.

5 Q. Now, the next entry on the 8th of November, 2008. The --  
6 it's a roll call with Delafuente and the time is 13:09 to  
7 14:36?

8 MS. GROSSMAN: What's the time?

9 MR. MOORE: 13:09 to 14:36 I believe.

10 Q. Do you have that in front of you?

11 A. Yes, I do.

12 Q. If you go down to the -- begins on line 4 and about the  
13 middle of the passage. A sentence that begins: You've got to  
14 get.

15 Do you see that?

16 A. Yeah, you got -- yeah.

17 THE COURT: I'm sorry. What line was that?

18 MR. MOORE: Line 4.

19 THE WITNESS: Yes, I see it.

20 Q. Do you got that?

21 He says: You've got to get them moving right from the  
22 start because if you get too big of a crowd there, you know,  
23 they're going to get out of control. And they're going to  
24 think that they own the block. We own the block. They don't  
25 own the block. All right. They might live there but we own

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1 the block. All right. We own the streets here.

2 Do you agree with that?

3 A. No, I don't. Could I answer -- how you feel, are you  
4 asking me?

5 Q. I'm asking whether you agreed with that.

6 A. I don't agree with that, no.

7 Q. And that would be inappropriate comments for a supervisor  
8 to make.

9 You think it's funny?

10 A. No. I don't think it's funny.

11 Q. You were laughing.

12 That would be an inappropriate comment to make for a  
13 supervisor in the 81st precinct, correct?

14 A. He didn't mean we own the block.

15 Q. You don't know what he meant.

16 A. You're asking me -- I'm telling you --

17 THE COURT: What it meant to you is what you may  
18 answer. That's all you can answer.

19 THE WITNESS: What it meant to me was the criminals  
20 don't own the block.

21 If you read the whole testimony and the tape, Chauncey  
22 and Howard the day before a cop got assaulted by three people.  
23 They made arrests. He's talking about that.

24 So he's talking the officers -- the criminals don't  
25 own the block.

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D429flo3

Mauriello - direct

1           The good people. We work for the people of the  
2 community. They go to work everyday. That's who we're there  
3 for. He's not -- we don't own the block. The criminals don't  
4 own the block. That's what he's trying to tell them.

5 Q. You're always certain when you see people in the community  
6 who the good people are and who the criminals are? You're  
7 always certain of that, right?

8 A. No.

9           THE COURT: Okay. So -- one more.

10          MR. MOORE: You wanted to break for --

11          THE COURT: Go ahead.

12          MR. MOORE: Let me just ask one question.

13 Q. When you see a group of kids on a street corner, three,  
14 four, five kids, is your assumption that they are criminals or  
15 they're just good people?

16 A. I think you have to do an observation.

17 Q. Right.

18          So you can't make an assumption one way or the other,  
19 whether they're riffraff or whether they are good or bad  
20 people?

21 A. You're asking me if I see three or four kids on the corner,  
22 are they good people or bad people.

23          I'm telling you, you have to make an observation for a  
24 while before you know what's going on. You just don't move  
25 into it.

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Mauriello - direct

1 THE COURT: Okay. With that we'll pick up at about  
2 five after two.

3 THE WITNESS: I'm sorry, your Honor.

4 THE COURT: No problem. No problem.

5 (Luncheon recess)  
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D429flo3

Mauriello - direct

1

AFTERNOON SESSION

2

2:10 p.m.

3

THE COURT: Please be seated.

4

Mr. Moore.

5

MR. MOORE: Thank you, Judge.

6

DIRECT EXAMINATION CONTINUED

7

BY MR. MOORE:

8

Q. Inspector Mauriello, can you turn to the transcript for the call -- the role call on January 29, 2009. The time is 6:56 to 9:03?

10

11

THE COURT: January 29, 2009?

12

MR. MOORE: 29 January 2009.

13

THE WITNESS: I got it.

14

Q. Sergeant Weiss was squad supervisor at the 81st precinct when you were there?

15

16

A. He was a squad supervisor and then he was an assistant ICO.

17

Q. Do you see on the middle of the page there, beginning at

18

line 11 it says: Any radio runs you go to, robbery or

19

burglary, you do a stop, or a show-up, or you stop somebody, do

20

the 250. It takes two seconds to do the damn form. They made

21

it damn near idiot proof from when I got on the job.

22

Do you see that?

23

A. Yes, I do.

24

Q. Did you understand those comments to mean -- do you

25

understand those comments to mean that if you're responding to

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Mauriello - direct

1 a radio run about a robbery or a burglary it would be useful to  
2 have the 250 to show some record of having responded to it?

3 A. No.

4 THE COURT: What does it mean to you?

5 THE WITNESS: To me it means if you have a -- how can  
6 I say -- you have a description of somebody, all right. And  
7 that person matches the description by height, the clothing,  
8 then he expects somebody to be stopped if he matches the  
9 description. If you have a complainant in the back of the car  
10 for the robbery, and they point out someone, then you go over  
11 to talk to that person. And if they say that's not the one, do  
12 a 250.

13 THE COURT: I'm sorry. I didn't hear the end of what  
14 you said. If they say it's not --

15 THE WITNESS: If they complainant says to the officers  
16 I think that's the one who robbed me and then you get out of  
17 the car and they say, Oh, no, it's not him, then you got to do  
18 a stop, question and frisk anyway.

19 THE COURT: Then you do a 250?

20 THE WITNESS: You do a 250, yes.

21 Q. It says you do a stop or a show-up or you stop somebody so  
22 he's referring to a show-up and a stop of somebody. Is that  
23 how you understand that?

24 A. The way I understand it is if you go to a radio run or you  
25 go into a robbery in progress or a burglary in progress and

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Mauriello - direct

1 there's someone there that matches a description of the 911  
2 call, that's the one you're going to stop.

3 Q. Do you agree --

4 THE COURT: And you do a 250?

5 THE WITNESS: And you do a 250, yes.

6 Q. Do you agree that -- with his comments there that the 250  
7 form is damn near idiot proof?

8 A. I don't know.

9 Q. It's a check-off form?

10 A. It's a check-off form now. It's mostly fill in boxes now.

11 Q. If you could turn to the recording on 12 October 2009.

12 With sergeant Huffman. And the time is 5:57 to seven?

13 MS. GROSSMAN: Seven what?

14 MR. MOORE: 700 I think. Let me see. Yes. 7:00.

15 5:12 to seven minutes.

16 Do you have that?

17 THE WITNESS: Yes, I do.

18 Q. And at the beginning in the middle of the page it says,  
19 Sergeant Huffman. Sergeant Huffman was another supervisor in  
20 the 81st?

21 A. Yes.

22 MS. GROSSMAN: Line, please.

23 MR. MOORE: Line three.

24 Q. You know, and if you all try to do a canvass or something,  
25 try to get at least a couple of 250s and put robbery down just

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1 to say that we was out there. If stopping somebody get a 250.

2 Do you understand him to mean there that if you're  
3 responding to a robbery that it's important --

4 THE COURT: Object to the form. I've told you, you  
5 can't do it that way.

6 MR. MOORE: I'm sorry.

7 Q. Do you understand him to mean --

8 THE COURT: No. What is your understanding?

9 Q. What does it mean to you?

10 THE COURT: Right.

11 Q. When he says --

12 A. She.

13 Q. When she says, I'm sorry. Thank you.

14 Withdraw that.

15 Does it mean to you that if you respond to a robbery  
16 on a radio call or something like that, that it's important to  
17 at least get some 250s to show that there was some police  
18 response?

19 A. Of course not.

20 THE COURT: Of course not?

21 THE WITNESS: No.

22 Q. What does it mean to you?

23 A. It means if you're going to a radio -- 911 call of someone  
24 doing a robbery, and someone matches the description, then I  
25 expect a 250 if the person matches the description, you

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Mauriello - direct

1 reasonably suspect that might have been the person that did it.  
2 Just not get a 250 for the sake of getting a 250.

3 THE COURT: No. But it says just to say that we was  
4 out there.

5 THE WITNESS: Yeah. I don't agree.

6 THE COURT: You what?

7 THE WITNESS: I don't agree with that.

8 THE COURT: Nobody asked you whether you agree.

9 What does the statement mean to you?

10 She did seem to say, show the 250 to show we were out  
11 there.

12 THE WITNESS: Yeah. And he said what do you think,  
13 take out of that statement.

14 THE COURT: No. No.

15 THE WITNESS: Okay.

16 THE COURT: What did that statement mean to you? It  
17 seems pretty obvious.

18 THE WITNESS: Yeah, it means if somebody matches the  
19 description of the robbery, that's who you stop and do a 250.

20 Q. Or it could mean there is police activity shown in response

21 to the robbery, even if there isn't a justification for a 250?

22 It could mean that as well, right?

23 A. I don't agree with that, no.

24 Q. No, you don't agree with it. But it could mean that as  
25 well?

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Mauriello - direct

1 THE COURT: You're just in the wrong forum. I'm not  
2 going to let you ask that question. All you can ask is what it  
3 means to him. What does he understand it to mean. That's all  
4 I'm going to take.

5 I don't know why you want to ask him, because it's  
6 clear to me what that person said. Confusing was getting his  
7 interpretation. I see what it means.

8 Q. Why don't you turn to the 24 October 2009 roll call. And,  
9 again, this is Sergeant Huffman. And the time is 4:41 to 5:30.

10 A. I have it.

11 Q. You have it?

12 A. Yes.

13 Q. And looking at the beginning at line 1 it says: But  
14 regardless of what the sectors that's backing them or whatever,  
15 we got to stop a couple of people whenever the description  
16 comes over and do some 250s. Make it look good for him.  
17 Because like you all know he's at home sleeping in his bed  
18 listening to the radio.

19 Is that referring to you?

20 A. I guess so, but that's not true.

21 Q. Did you used to listen to the radio when you were at home?

22 A. In bed sleeping, no.

23 Q. Not necessarily sleeping but when you were at home.

24 A. If I was going to work. If I'm driving into work, I listen  
25 to the radio.

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Mauriello - direct

1 Q. Does that -- does that statement mean to you that it's  
2 important to simply, if you're responding -- if you have a  
3 description, it's important to get some 250s to show that you  
4 responded?

5 A. Again, if you got a description, the person matches the  
6 description, you should get a 250. That's what she's saying.  
7 I believe.

8 Q. Let's go to --

9 THE COURT: What's a 30 when it says: Okay, so if you  
10 hear a 30 come over, what's a 30?

11 THE WITNESS: That's a robbery in progress. Sometimes  
12 with force or a weapon.

13 THE COURT: Okay.

14 Q. Now, turn to the 13th of March, 2009.

15 THE COURT: Wait a minute. This a good one. It says  
16 so --

17 MR. MOORE: I'm sorry, Judge?

18 THE COURT: This is a good one. I don't know why  
19 you're skipping this one.

20 You hear a 30 come over, you don't hear nobody being  
21 stopped, nothing or whatever, and then he's going to feel like  
22 nobody is giving a damn about 30s coming over. Drop a couple  
23 people. Get 250s. That's the activity in your activity  
24 report.

25 Do you want to ask him about that one?

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Mauriello - direct

1 THE WITNESS: I don't know what she's talking about.

2 THE COURT: Okay.

3 MR. MOORE: Thank you, Judge.

4 THE COURT: You're welcome.

5 Q. Why don't you turn to 13 March 2009. Roll call of Sergeant  
6 Stukes. And it goes from 4:32 to 5:20.

7 MS. GROSSMAN: March 13.

8 MR. MOORE: 13 March 2009.

9 MS. GROSSMAN: The excerpt again?

10 MR. MOORE: 4:32 to 5:20.

11 Q. Do you have that?

12 A. Yes, sir.

13 Q. And it says: If you see -- this is Sergeant Stukes  
14 speaking, and he says at the roll call: If you see guys  
15 walking down the street, move them along. Two or three guys  
16 you can move. You can't move fifteen, all right. If you want  
17 to be an asshole, whatever you want to call it, make a move.  
18 If they won't move, call me over and lock them up dis con. No  
19 big deal. We could leave them there all night. Come get them.  
20 Come get them.

21 Does that mean to you, reading that, when you see a  
22 small group of people on the street, if you don't move them  
23 you're going to get a larger group that's going to congregate?

24 A. I think what -- what I'm interpreting this --

25 Q. No. What it means to you.

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Mauriello - direct

1 A. Two or three guys you can move. You can't move fifteen. I  
2 think it says if you have fifteen people, you can't move them  
3 by itself. You gotta call for backup. That's what it looks  
4 like it means, reading this. If you two or three people, he  
5 wants to move it. He doesn't want them congregating on the  
6 corner. But, again, it's observation.

7 Q. Nothing illegal about congregating on the corner?

8 A. No.

9 THE COURT: What's a dis con?

10 THE WITNESS: Disorderly conduct.

11 THE COURT: So he's saying, does that mean to you,  
12 lock them up and charge them with disorderly conduct?

13 THE WITNESS: I guess what he means, disorderly  
14 conduct, I guess blocking pedestrian is a subsection in  
15 disorderly conduct. But that's with a large group, a large  
16 group. I guess fifteen people he's talking about.

17 Q. When he says you can leave them there all night, you don't  
18 usually leave people in the precinct all night for disorderly  
19 conduct, right?

20 A. Of course not.

21 Q. So you -- that's not something you would agree with in  
22 terms of what to do, right?

23 A. No. But, again, it's a hypothetical. And we don't know if  
24 that person has a warrant, he's an arrest. He might be in the  
25 precinct all night, he goes down to central booking. So I

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Mauriello - direct

1 mean, you know, it's an open-end question.

2 Q. Well, you don't usually lock people up for dis con?

3 A. No, no. I'm saying but you said would you leave him in all  
4 night. You don't know whether the guy is wanted.

5 THE COURT: What about a couple lines down it says:  
6 It's still a number. It keeps the hounds off.

7 THE WITNESS: He says hounds a lot. One part hounds  
8 means investigations. They're in, coming in here.

9 Then he says hounds, I guess he means from barking,  
10 from nagging. You don't want to nag them to work. So he says  
11 it keeps the hounds off. Hounds to him is nagging. He says it  
12 a lot.

13 THE COURT: It's still a number. It keeps the hounds  
14 off.

15 What's he talking about? What number? What's does  
16 that mean to you?

17 THE WITNESS: Read the whole thing here.

18 THE COURT: Somebody is stopped, they refuse, put down  
19 refuse, put the description down, or whatever the case may be.  
20 It's still a number. It keeps the hounds off.

21 THE WITNESS: We want -- again, what I expect or we  
22 want the person stopped that we reasonably suspect committed a  
23 crime had committed a crime. That's what I take out of it.  
24 That's what they know, so.

25 Q. Does "keep the hounds off" also mean keep the borough off

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Mauriello - direct

1 you, keep the chief of -- the XO, Chief Marino and the other  
2 people in the borough off your back?

3 A. The one statement when he says, the borough, the hounds, he  
4 meant inspections. If you listen, the inspections are coming  
5 in here. I told you they're coming in here.

6 Q. Does it mean something other than inspections to you?

7 A. I don't even know what hounds are. The bottomline is he  
8 says it over and over, hounds is like hounding, hounding, he  
9 didn't want to hound, he didn't want to nag, he doesn't want to  
10 keep nagging guys. He wants them to work, be engaged, be out  
11 there working. So I guess he means you're hounding, keep  
12 repeating.

13 Q. Why don't you turn to the 1 July 2008. I don't know if you  
14 have that one actually.

15 A. January 2008?

16 Q. 1 July 2008. 6:58 to 8:00.

17 Do you have that?

18 A. Who is supposed to be talking on that?

19 I got November and I got January.

20 Q. Let me just show it to you. All right. Because I don't  
21 think you have that in your pile there.

22 A. Okay.

23 Q. I'm going to call your attention to line seven where it  
24 begins: I don't care how many guys are out there. They got to  
25 move. They won't move, I'll put them in handcuffs. They want

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Mauriello - direct

1 to roll, I'll roll with them. No biggie. They're going to  
2 move all right. Let them know you're out there. Be an  
3 asshole. They going to do something. Shine a light in their  
4 face. Whatever the occasion. Inconvenience them. It saves  
5 the trouble later on.

6 And that's --

7 A. What line?

8 Q. Beginning on line -- right there. I don't care.

9 And that's Sergeant Stukes again, right?

10 A. I guess he's talking about, before that, Bainbridge 120  
11 Chauncey. A large group there. So if he's talking about a  
12 large group of eight, ten, twelve people. And you're asking  
13 nicely, we want you guys to move off the corner, please.

14 Q. There's nothing illegal about being on the corner, even a  
15 group of eight people, right?

16 A. No. No.

17 It gets to a point where it's blocking pedestrian  
18 traffic.

19 Q. He's not saying move them if they're blocking pedestrian  
20 traffic, right?

21 A. I understand.

22 This is all talk -- in roll call he's talking, he's  
23 not explaining everything.

24 Q. You would do a better job of explaining it, right?

25 A. No. I mean there's a lot, when you come to me, I could

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D429flo3 Mauriello - direct

1 explain a little better what I meant.

2 Q. All right.

3 The phrase that concerns me that I want you to tell me  
4 what it means is where he says: Be an asshole. Shine a light  
5 in their face. Inconvenience them.

6 A. I don't know what he meant.

7 Q. What does he mean by that?

8 A. I don't know what he meant by that.

9 Q. What does that mean to you?

10 A. What does that mean to me?

11 Q. Mm-hmm.

12 A. It means be a police officer. You have a footpost. You  
13 walk your footpost. And be omnipresent. That's what it means  
14 to me.

15 Nothing about shining something in someone's eyes. We  
16 don't know whether it's nighttime, daytime. I don't know what  
17 its means.

18 Q. Does it mean to you to be rude and racist to people on the  
19 street?

20 A. No.

21 My civic complaints were down. My officers --

22 Q. I didn't hear what you said.

23 A. All my roll calls, I talk to my officers, 98 percent of the  
24 people in the community are hard-working people. It's the two  
25 percent we deal with, criminals that my officers deal with all

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Mauriello - direct

1 the time.

2 And, again, just because they're two percent, they  
3 still have to do something wrong. My officers will stop them.  
4 Reasonable suspicion.

5 Q. And sometimes that 98 percent complain about stops and  
6 frisks, right?

7 A. Can I tell you honestly with this? I was in there --

8 Q. Do you recall --

9 A. I can tell you right now. I was in there over  
10 two-and-a-half years. All right. Not one time did I have  
11 anybody from politicians, community board, I could say  
12 community council meetings when I went there, not one person  
13 ever had a problem until an article came out. And, again, they  
14 didn't have a problem. My officers are very respectful. They  
15 work hard out there.

16 Q. And then when the article came out, then you started to get  
17 complaints?

18 A. No, you know when the article -- the tapes. They had tape  
19 recordings on there.

20 Q. When the article came out, did the people in the community  
21 start complaining about -- let me finish the question -- start  
22 complaining about stop and frisk?

23 A. You know what --

24 Q. Can you answer that yes or no.

25 A. To tell you the truth, I really don't know. But I can tell

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Mauriello - direct

1 you honestly --

2 THE COURT: That's the answer.

3 MR. MOORE: If you don't know, you don't know. So  
4 move on.

5 Q. And, again, looking at 23 November 2008, the roll call,  
6 5:46 to 6:28.

7 MS. GROSSMAN: I'm sorry. What's the tape?

8 MR. MOORE: 23 November 2008.

9 MS. GROSSMAN: And the excerpt.

10 MR. MOORE: 5:46 to 6:28.

11 Q. That's apparently Sergeant Stukes, although it doesn't  
12 reflect it on this particular page.

13 Look at line 16 where it says: If they are on a  
14 corner, make them move. They don't want to move, you lock them  
15 up. Done deal. You can always articulate later.

16 A. If they're on the corner --

17 MS. GROSSMAN: I'm sorry. November 23, 2008?

18 MR. MOORE: Yes. 5:46 to 6:28.

19 Q. Do you have it in front of you, Officer?

20 A. Yes, sir.

21 Q. Does that mean to you that you -- the police can just go  
22 and move people off the corner. And if they don't want to  
23 move, you can lock them up for no reason?

24 A. No.

25 Q. When it says you can always articulate later, does that

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Mauriello - direct

1 mean you can arrest them and then you can come up with a reason  
2 to justify the arrest later on?

3 A. I'd say no.

4 Q. Is that what it means to you, that -- these words, though?

5 A. Again, I don't know what he means with these words. You  
6 have to ask him.

7 THE COURT: Right. But what does it mean to you? His  
8 words. What do his words mean to you?

9 THE WITNESS: It looks to me -- again, you do it --  
10 they don't want to move, you lock them up. Again, CPR.  
11 Courtesy, Professional, Respect. You always treat them with  
12 respect.

13 If the officer tells the guy to move and the guy gets  
14 disrespectful, I guess this is what I'm reading into it, if  
15 he's going to arrest him, he's going to arrest him. That's  
16 what you're asking me here.

17 Does it happen? No, it doesn't happen.

18 Q. I was referring to the statement that says: You can always  
19 articulate later.

20 Doesn't that mean to you that you can come up with a  
21 justification for locking them up later?

22 A. I guess he means do your paperwork later. Articulate.  
23 Online booking sheet.

24 Q. It doesn't say you can fill out the paperwork. It says  
25 articulate, which means as I understand it to -- does it mean

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Mauriello - direct

1 to you to give a reason for why they were arrested later?

2 A. (No response).

3 Q. Is that what it means to you?

4 A. Yes. That's what it looks like.

5 Q. I'm sorry. You guess?

6 A. Yes. That's what it looks like.

7 Q. I know we're -- want to just try to speed a little bit  
8 through this.

9 Look at the -- at the entry for -- the transcript of 8  
10 December of 2008. Roll call at 12:20 to -- 12:20 to 15:00  
11 Sergeant Stukes again.

12 Do you have that before you?

13 A. Yes, I do.

14 Q. And why don't you read to -- well let me read it into the  
15 record here. On line -- the second line ten, about the middle  
16 of the page.

17 Do you see that?

18 A. Second line ten?

19 Q. Line ten up on the top and there's a line ten --

20 A. Yes, I see.

21 Q. It says: You may leave here and think it's all well and  
22 good, you don't like the 81, but you know that someone will  
23 make a phonecall and it will put a jam in your whole wrench.  
24 And now we're, Oh, yeah, this guy's trouble I gotta watch out  
25 for this person.

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D429flo3 Mauriello - direct

1 Do you see that?

2 A. Yes.

3 (Continued on next page)

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D428FLO4

Mauriello - direct

1 Q. Then going over again to the next page, again on line 10,  
2 it says --

3 THE COURT: Line 10 on the next page?

4 MR. MOORE: On the back of the page.

5 THE WITNESS: I have got it on the front. It's on the  
6 bottom I think.

7 Q. Anyway, where it begins, "They could ship you somewhere and  
8 then when you get there they make a phone call. Yeah, yeah,  
9 screw this guy over here, keep him on this boat, put him in the  
10 cemetery. You don't need that. Give him a weird tour. This  
11 job is so easy, just keep the hounds off."

12 Does that mean to you that if you don't meet these  
13 performance standards, the failure to do that is going to  
14 follow you throughout your career in the police department?

15 A. If you read before that, it says about, you want to be  
16 labeled competent, not incompetent. It says, If you're working  
17 out there, you want to be labeled competent. In any walk of  
18 life, someone wants to be labeled competent, not incompetent,  
19 because your reputation precedes you.

20 Q. Actually, to be fair, he's referring to the activity that  
21 you do. He says up there, on line 1 he says, "The activity  
22 works for you. OK?" You see that, you see where he says that?

23 A. Yes.

24 Q. What he is saying is, if you don't do the activity, that  
25 reputation is going to follow you throughout your career, and

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D428FLO4

Mauriello - direct

1 officers are going to make it difficult for you later on. Is  
2 that what that means to you?

3 A. No. Where does it say officers are going to make it  
4 difficult for you? I don't take that out of that.

5 Q. Look at 8 December 2008, the roll call with Sergeant Stukes  
6 form 1:20 to 1:38. Do you have that before you?

7 A. Yes, I do.

8 Q. Sergeant Stukes saying, "You're going to be 120 Chauncey.  
9 You're going to be a vehicle out there. Shake everybody up.  
10 Anybody moving, anybody coming out of that building, 250,  
11 verticals, and give me a couple of community visits. C summons  
12 as well."

13 So does that mean to you that Sergeant Stukes is  
14 saying anybody coming out of that building 120 Chauncey should  
15 get stopped?

16 A. No. The officers are trained, if you have articulable  
17 reason to approach, you approach; reasonable suspicion to stop  
18 someone, you stop someone. If you have probable cause to make  
19 an arrest, I expect an arrest to be made. If you have got a  
20 summonable offense, I expect the condition to be corrected. He  
21 goes on and says, do 250s, do verticals. He's telling them,  
22 long story short, I want you out there, be engaged, be  
23 respectful of the work.

24 Q. He is saying, anybody coming out of that building,  
25 basically take enforcement action, isn't that what that means

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- 1 to you?
- 2 A. It doesn't mean that to me.
- 3 Q. 120 Chauncey is a building that you said earlier you were
- 4 concerned about, right?
- 5 A. Of course. We had numerous people shot there. We had cops
- 6 shot at in front of there, people stabbed.
- 7 Q. Is that a public housing project?
- 8 A. It's an independent building, four buildings together.
- 9 Q. Is 98 percent of the population there good, decent people?
- 10 A. Yes, it is. There's over 1,000 people in there.
- 11 Q. You don't want to stop everybody coming out of 120
- 12 Chauncey, right?
- 13 A. Of course not.
- 14 Q. So would you agree with me that's a poor choice of words by
- 15 Sergeant Stukes, anybody coming out of that building?
- 16 A. It's a poor choice of words, but I know Sergeant Stukes,
- 17 from my experience and my officers, I know they didn't stop
- 18 everybody coming out of that building.
- 19 Q. Let's go to 28 October 2008. This is a roll call from 4:07
- 20 to 5:05, and it's you speaking, right?
- 21 A. Yes.
- 22 Q. DI Mauriello, that's you?
- 23 A. Yes, sir.
- 24 Q. You say at the roll call, line 15, "If you don't work and I
- 25 get the same names back again here, I'm moving you. All right?

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D428FLO4

Mauriello - direct

1 You're going to go to another platoon. That's how it's going  
2 to be."

3 A. Yes.

4 Q. Those are your words at the roll call, correct?

5 A. Yes.

6 THE WITNESS: Could I explain, your Honor.

7 THE COURT: Wait for the lawyer to ask a question.

8 A. Those are my words, yes.

9 Q. All right. Explain what you mean by that.

10 A. All right. Again, we had an incident two days before that.  
11 All right? It's on another tape. We had an incident two days  
12 before that and four of my officers were caught off post by  
13 inspections on midnight, and I had to move them to another tour  
14 to be closely more supervised. And I tell them, in the roll  
15 call we play later, I want them to work harder, be more  
16 engaged, if you want to get back to your platoon and work to  
17 all of your capabilities.

18 Now, what I am saying, again, if you read the whole  
19 context here, the sergeant is complaining that the cops on  
20 overtime didn't want to get out of the car. So an  
21 investigation is working. So I said, if I get those names  
22 because they didn't get out of the car and weren't working, I  
23 am going to transfer them like the other guys who are  
24 transferred because of poor supervision on a platoon.

25 Now, was anybody transferred for this? Nobody was

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D428FLO4 Mauriello - direct

1 ever transferred to another platoon.

2 Q. Turn to the roll call on January 28, 2009, and once again,  
3 this is you speaking. The time is 20:25 to 22:07.

4 You're speaking here about how many summonses the  
5 squad writes, correct?

6 A. It had to do with traffic stops.

7 Q. You say there, going down to toward the bottom of the page,  
8 line 8, you say, "Just do the old -- go through the motion and  
9 get your numbers anyway, but don't be the one to be caught out  
10 there. Marino is taking it serious, looking at everybody's  
11 evaluation. He's yelling at me about the points and he's  
12 yelling at every CO about who gave these points to this guy,  
13 this guy, or this girl's no good."

14 Those are your words, correct?

15 A. Yes.

16 Q. So, basically, what you're saying, if I understand it  
17 correctly, to your officers is, just do the numbers and that  
18 will keep the hounds off, right?

19 A. No. That's not what I meant.

20 Q. Go to the entry on 31 October 2008. It's an excerpt from  
21 9:05 to 9:50. I'm sorry, 6:15 to 8:18. Do you got that?

22 A. OK.

23 Q. You say here, beginning on line 14, "Just circle around.  
24 Again, any groups, I expect you guys to bring in any groups. I  
25 want them cuffed, brought in here. I got five sectors. I got

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D428FLO4

Mauriello - direct

1 guys on foot. I got overtime. I want them herded in here like  
2 New Year's Eve." Those are your words, correct?

3 A. Yes.

4 Q. So you are referring to bringing people in as herding them,  
5 correct?

6 A. No. I can explain what I meant by herding. The whole  
7 thing, you want me to start from the first?

8 THE COURT: I don't know that he has asked you a  
9 question just yet.

10 Q. Later on down in this passage, on line 6 you say, "You're  
11 on a foot post, fuck it. Take the first guy you got and lock  
12 them all up. 120 Chauncey. Boom. Bring them in, lodge them.  
13 You're going to go back out. You can process them later on."

14 Those are your words, correct?

15 A. Yes, it is.

16 Q. Part of what you're trying to do there is instill fear in  
17 the community that, if they come out and they congregate, they  
18 are going to be run into the precinct, right?

19 A. Absolutely not. If you hear me from the beginning, again,  
20 we are talking from 6:15, there were shots fired three days in  
21 a row on the same block, and this happened again. So I am  
22 asking my cops, where do think is the best place to put them?

23 Now, I say, I want you to circle, I want the cars to  
24 circle around. The problem with that is Marcus Garvey, the  
25 location, one half is 79 side, Bedford Stuyvesant; the other

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Mauriello - direct

1 half is 81, Bedford Stuyvesant side. 79 gang was, again, along  
2 with the 81 side gang members, and we had shots fired for three  
3 days straight. So I had an officer out there and I wanted the  
4 officer to circle around.

5 Q. I am talking about, bring them in, lodge them --

6 A. You asked me three different things before that. So I want  
7 to go down everything you asked me.

8 THE COURT: There is really no question pending. You  
9 have to wait for question and answer.

10 A. Repeat your question.

11 Q. I am going to move on.

12 Go to 31 October 2008, the roll call where you're  
13 speaking, from 9:05 to 9:50.

14 You say in here a couple of times, do you not,  
15 "Everybody goes, everybody goes tonight," right?

16 A. It's zero tolerance.

17 Q. Everybody gets a summons, a 250, or arrested, correct?

18 A. If they break the law, everybody goes tonight.

19 Q. You don't say that, to be fair, you don't say that -- when  
20 you're talking to the troops, you don't say, if they break the  
21 law, bring them in; you just say, everybody goes, everybody  
22 goes tonight, right?

23 A. I say about throwing dice, if they are drinking. I am  
24 pointing out quality of life infractions. I am not saying just  
25 take everybody for the sake of taking everybody. If they are

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D428FLO4 Mauriello - direct

1 breaking the law, a summonable offense, you either summons them  
2 in the precinct or bring them in the house. The computers are  
3 down because they have a Halloween parade. So you're going  
4 bring people into the precinct and make sure they have no  
5 warrants and summons them there.

6 Q. Why don't you take a look at 8 December 2008. Again, this  
7 is you at the roll call.

8 You say here --

9 MS. GROSSMAN: Excerpt.

10 MR. MOORE: 5:27 to 6:39.

11 Q. You say in here at the top, "You gotta get your activity  
12 up." You see that?

13 A. Yes, sir.

14 Q. Down on line 14 you say, "How the hell do you want me to do  
15 the right thing by you if you come in here five parkers, 3 As,  
16 no Cs, and only 250 you do is when I force you to do overtime."  
17 Do you see that?

18 A. Yes.

19 Q. You're referring to specific numbers of enforcement  
20 activities, correct?

21 A. No.

22 Q. You said 3 As, five parkers, and no Cs, right?

23 A. Again, this had to do with --

24 Q. Is that what you said?

25 A. There is a reason behind this. You heard the whole tape.

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D428FLO4

Mauriello - direct

1 Q. I am asking you if you used specific numbers in relation to  
2 the different enforcement activities there?

3 A. It was a hypothetical of numbers.

4 Q. Then there is a transcript on 8 December 2008, from 7:07 to  
5 7:42.

6 These are your words again, right?

7 A. Yes.

8 Q. You say, "I'm what separates the wolves from coming in here  
9 and chewing on your bones." Do you see that?

10 A. Yes.

11 Q. You're referring to Chief Marino again, right?

12 A. No. Brooklyn North inspections I was talking about. This  
13 is right after an incident where I had four cops off post at  
14 midnight.

15 Q. When you say Brooklyn inspection, if you go down further,  
16 it says, "All right. I'm keeping Chief Marino at bay when he  
17 pulls activity reports, he looks back the whole year, he says,  
18 this guy or this girl is no good."

19 In fact, you were referring to Chief Marino, correct?

20 A. I wasn't referring to Chief Marino. It's two different  
21 lines.

22 Q. His name is there, right?

23 A. The reason I said that is because evaluations are in now.  
24 He is reviewing all the evaluations to see if the cops are  
25 working. He wants to see my sergeants reviewed properly, gave

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D428FLO4

Mauriello - direct

1 them the correct score, and wanted to see if I reviewed them  
2 properly. That's why I brought that up. They have nothing to  
3 do with each other.

4 Q. The last one is 8 November 2008, an excerpt from a roll  
5 call with -- you're speaking and Delafuente is speaking, and  
6 the time is 14:36 to 16:11 or thereabouts.

7 In the middle of the page, you say, speaking about  
8 bandannas, "I'm tired of bandannas on their waist and I'm tired  
9 of these beads. Red and black beads means Bloods. Their  
10 bandannas -- if they're walking down the street and they've got  
11 a bandanna sticking out of their ass, coming out there, they've  
12 got to be stopped. A 250 at least, at least."

13 Do you see that?

14 A. Yes.

15 Q. Is it your understanding that if you see somebody walking  
16 down the street with a bandanna in their back pocket, that that  
17 would give you cause to stop and frisk them?

18 A. No.

19 Q. Is that what you're saying there?

20 A. No. I want my officers to be engaged. I want them to get  
21 out of the car and walk around. If they come across people, I  
22 expect them to say hello. If they have articulable reason to  
23 approach them, I want them approached. If you have a  
24 reasonable suspicion to stop this person, I want them stopped.

25 Q. Would you agree with me that somebody hearing that might

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1 think that if they see somebody with a bandanna coming down the  
2 street, they should be stopped or given a 250 at least?

3 A. My officers know the laws. They are trained and  
4 experienced. They know what I meant.

5 Q. Just a couple of more questions, Deputy Inspector  
6 Mauriello.

7 Let me hand you what previously has been marked as  
8 Plaintiffs' Exhibit 290.

9 Have you ever seen this document, Plaintiffs' Exhibit  
10 290?

11 A. Yes.

12 Q. This is a document sent from Chief Hall, chief of patrol,  
13 right?

14 A. 2010, yeah.

15 Q. Yes?

16 A. Yes.

17 Q. At the time?

18 A. Yeah.

19 Q. October 22, 2010?

20 A. Yes. I was in transit.

21 Q. You received a copy of it, right?

22 A. Yes.

23 MR. MOORE: Judge, I move the admission of Exhibit  
24 290.

25 MS. GROSSMAN: No objection.

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Mauriello - direct

1 THE COURT: I don't think I have a copy of 290. Are  
2 you going to put it up?

3 (Plaintiffs' Exhibit 290 received in evidence)

4 Q. This is a memorandum from James Hall, the same James Hall  
5 who rewarded you for your work in the 81st Precinct, right?

6 A. Yes, sir.

7 Q. It's a memorandum regarding a quota bill, right?

8 A. Yes, sir.

9 Q. And if you turn to the next page of this document, you see  
10 under the heading quotas there is a subheading called  
11 "department policy"?

12 A. First paragraph?

13 Q. Yes. I want to direct your attention to a line that says,  
14 "In an effort to address crime and public safety conditions in  
15 precincts, supervisors have made statements that could be  
16 interpreted as the setting of quotas for enforcement activity."  
17 Do you see that?

18 A. Yes.

19 Q. That's a statement from the chief of patrol of the New York  
20 City Police Department, Chief Hall, correct?

21 A. Yes.

22 Q. So he is acknowledging that in some situations, at least it  
23 has come to his attention, that some supervisors are making  
24 statements that could be interpreted as setting of quotas?

25 A. Yes.

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D428FLO4

Mauriello - direct

1 Q. Do you believe that you have ever made such statements that  
2 can be interpreted as the setting of quotas?

3 A. No.

4 MS. GROSSMAN: Just for point of clarification, the  
5 memo that was prepared by Chief Hall is October 22, 2010, and  
6 the second page is the document that he attaches as a reference  
7 that was prepared by the legal bureau. I just wanted to make  
8 that noted.

9 MR. MOORE: It was attached to the document, right?

10 MS. GROSSMAN: Yes.

11 A. Yes.

12 Q. Later on in this memo at the bottom, there is a subsection  
13 that says "supervision and performance," right?

14 A. Yes, sir.

15 Q. It says, "The law does not prohibit the use of appropriate  
16 managerial measures to maximize employee performance. The  
17 department and department managers can set performance goals  
18 for the officers under their supervision and can insist that  
19 officers take appropriate enforcement action to address crime  
20 problems, quality of life conditions, and public safety issues  
21 in the commands they are responsible for policing," right?

22 A. Yes, sir.

23 Q. So performance goals, that would include setting a goal for  
24 the number of 250s that an officer is supposed to get in a  
25 certain period of time, correct? That could be a performance

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D428FLO4

Mauriello - direct

1 goal, right?

2 A. No.

3 Q. Could a performance goal include the number of arrests that  
4 an officer is supposed to make?

5 A. No.

6 Q. What about the number of summonses that the officer is  
7 supposed to make?

8 A. No.

9 Q. If you turn to the next page, that first paragraph, it  
10 says, "Officers can, depending upon their specific assignments,  
11 and the conditions in the command in which they work, be  
12 expected to make arrests, issue traffic and criminal court  
13 summonses, conduct stops of individuals who are suspected of  
14 criminal activity, and engage in other enforcement activities."  
15 Do you see that?

16 A. Yes.

17 Q. So he is referring specifically to summonses, to arrests,  
18 and to 250s, right?

19 A. Yes.

20 Q. When he says "stops of individuals," that means stops and  
21 frisks, right?

22 A. Yes, sir.

23 Q. Then there is a reminder that such enforcement activity  
24 must be based on the meaning of the appropriate legal standard,  
25 correct?

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D428FLO4

Mauriello - direct

1 A. Yes, sir.

2 Q. Referring to enforcement activity, this memo refers to  
3 summonses, arrests and 250s, right?

4 A. Yes.

5 Q. How do you set a performance goal for 250s without giving  
6 the officer a number?

7 A. There is no such thing as giving an officer a number. I  
8 expect the officers, when they are working, if they see an  
9 arrest situation, they are going to make the arrest. If they  
10 come across -- if they come across a summonable offense, I want  
11 the condition corrected.

12 Q. How do you set a performance goal for a 250 without giving  
13 a number? How do you set a goal without giving a number? Can  
14 you explain that to me?

15 A. If the crime trends are out there and quality of life  
16 conditions out there, on all tours, and other officers are  
17 working out there and they observe it, I expect everybody to  
18 observe it.

19 Q. So the goal is just to go and enforce the law?

20 A. The goal is to keep the community safe.

21 Q. This is speaking about setting performance goals for  
22 officers based upon their activity. So tell me how you set a  
23 performance goal for the activity of a 250 without suggesting  
24 or indicating a number?

25 A. A 250 -- if you have a complainant and they point out

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D428FLO4

Mauriello - direct

1 someone, a 250 is going to be done. So a lot of times there  
2 are 911 radio runs, an officer is going to respond to a radio  
3 run and have a complainant, and they are going to do a 250,  
4 because the complainant is going to say that so and so was in  
5 my house.

6 MR. MOORE: I am going to ask that that answer be  
7 stricken. It's not responsive to my question.

8 Q. My question simply is, how do you set a performance goal  
9 for the enforcement activity of issuing 250s? How do you set a  
10 performance goal for that?

11 A. I want the officers to work. That's it. There is no set  
12 goal or no set number for a 250. You have to have reasonable  
13 suspicion.

14 Q. If an officer doesn't have adequate numbers, upon looking  
15 back, they can be disciplined for not having sufficient  
16 numbers, correct?

17 A. You look at everything. Activity or performance report is  
18 everything. How many radio runs are returned, how many  
19 verticals you're doing, how many arrests you're doing. You  
20 keep saying 250. It's not 250s.

21 Q. Let me rephrase the question. Looking back, an officer can  
22 be disciplined in part for his failure to meet performance  
23 goals with respect to arrests, summonses and 250s, correct?

24 A. If they are out there and they are not doing their job,  
25 yes.

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D428FLO4 Mauriello - direct

1 Q. If you can answer that question.

2 A. Correct. Yes.

3 Q. That would in common sense terms mean that they haven't met  
4 the number that the supervisor thinks they should get, right?

5 A. If you have a platoon and similar area they're working,  
6 similar officers are working the same time, and similar  
7 officers responding to crime conditions are seeing quality of  
8 life infractions, or have reasonable suspicion to stop someone,  
9 how could 99 percent of the cops do it, and now you tell me one  
10 cop also can't do it?

11 Q. So the performance goals are based upon the actual numbers  
12 in terms of their activity, correct, at least in comparing  
13 officers to officers, correct?

14 A. Part of it, performance goals is part of it. If there is  
15 crime trends out there, I want the officers working.

16 MR. MOORE: One second, Judge.

17 Nothing further.

18 CROSS-EXAMINATION

19 BY MS. GROSSMAN:

20 Q. Good afternoon, Inspector.

21 A. Good afternoon.

22 Q. Just so that we are clear on some dates, I know we are  
23 going a little bit backwards, to the beginning of when you  
24 started working at the transit borough, that was July 3, 2010,  
25 correct?

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D428FLO4

Mauriello - cross

1 A. Yes.

2 Q. Can you just briefly describe some of the positions you  
3 held with the police department up until you started working at  
4 the 81st Precinct?5 A. I was a police officer in 1989. I got out of the academy,  
6 went to NSU 5, 25, 28, 32, in Manhattan. From there I went to  
7 the 34th Precinct. From there I went to Manhattan North  
8 Narcotics for three months. Then I got promoted to sergeant,  
9 and I ended up in the 79th Precinct in Bedford-Stuyvesant. And  
10 I was there until I went to Brooklyn North warrants as a  
11 sergeant. I made lieutenant. I went to the 83rd Precinct in  
12 Brooklyn for a month. Then I went to the 88th Precinct in Fort  
13 Greene as a lieutenant and then Williamsburg as a lieutenant in  
14 the 90. From there I made captain. I went to the 77th  
15 Precinct in Crown Heights. I went to the 94th Precinct in  
16 Greenpoint. I was in Brooklyn North Borough Crime. Then I  
17 became the executive officer of the 81st Precinct and then the  
18 commanding officer of the 81st Precinct.

19 Q. You became the XO from October '06 to December '07?

20 A. Yes.

21 Q. Then you were the CO of the 81st Precinct from December '07  
22 to July 2010?

23 A. Yes.

24 Q. What were your duties and responsibilities as the  
25 commanding officer at the 81st Precinct?

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D428FLO4 Mauriello - cross

1 A. I was there to make sure the day-to-day operations were  
2 fulfilled, community directions with crime trends, and with the  
3 rank and file.

4 Q. What were the boundaries of the 81 Precinct? What are the  
5 boundaries?

6 A. 81st Precinct goes from Atlantic Avenue to Broadway, from  
7 Marcus Garvey to Saratoga.

8 Q. Now, Mr. Moore asked you a lot of questions about some  
9 audiotapes from October 31, correct?

10 A. Yes.

11 Q. Can you explain what was going on? That was Halloween,  
12 correct?

13 A. Yes.

14 Q. Can you explain some of the intelligence you received on  
15 October 31?

16 A. Yes. Prior to October 31 and up to October 31, I had  
17 numerous phone calls from the community council, from the  
18 community board, from principals of schools, from elected  
19 officials, from the school safety agents and gang intelligence  
20 that we are going to have initiations.

21 MR. MOORE: Object. I think that's hearsay.

22 THE COURT: I don't think it's offered, again, for the  
23 truth. I think it's a state of mind thing. This is what he  
24 was told that he was responding to. It frankly doesn't matter  
25 whether it's true. You can go ahead.

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D428FLO4 Mauriello - cross

1 A. There are going to be gang initiations that day. Gang  
2 members were going to wear masks, run down the street, slice  
3 people to become a gang member. They were also going to rob  
4 people, numerous robberies one after the other, and also a  
5 group jump up and beat up people, one group beat up one person  
6 and move on.

7 In the past, we also got intelligence, and it  
8 happened, a lot of vandalism to community's property, their  
9 cars, their houses. Also, a lot of times we had vandalism to  
10 department property, police cars' windows are broken, cops had  
11 rocks thrown at them and bleach thrown at them.

12 Q. During the October 31, 2008 roll call, at 9:05 to 9:50,  
13 there is a reference to zero tolerance?

14 A. Yes.

15 Q. Can you explain what you meant by that?

16 A. Yes. Halloween, zero tolerance means I wanted my officers  
17 to be out there, get out of the car, get engaged. If they saw  
18 a crime, I expect the person to be arrested that night.

19 Q. Now, are there times when perhaps it's not Halloween where  
20 there is discretion left to the officer to decide whether to  
21 enforce a summonable offense?

22 A. Yes. Always.

23 Q. So were you trying to communicate that that night on  
24 Halloween that you didn't want officers to necessarily use  
25 their discretion, you wanted them to actually take enforcement

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D428FLO4 Mauriello - cross

1 action if they observed the behavior?

2 A. Yes.

3 MR. MOORE: Object to the form, Judge. I think that's  
4 a leading question.

5 THE COURT: It was.

6 Q. So you also mentioned popping champagne in that same  
7 audiotape, right?

8 A. Yes.

9 Q. What were you referring to, what were you trying to explain  
10 to the officers?

11 A. Previously, on New Year's Eve, we had an incident in the  
12 courtyard of 120 Chauncey, we had numerous radio runs of shots  
13 fired inside the courtyard. I responded with the officers.  
14 When we got there, there was 20 people in the courtyard,  
15 marijuana smoke, bottles all over, everybody was drinking. Two  
16 guys had run from us. They had a firearm. And I was talking  
17 about that. There is going to be jumping up. We are going to  
18 have problems over there.

19 Q. Now, on one of the tapes you also made reference to the  
20 term beads, and you used that in connection with the term  
21 Bloods. What did that mean? What significance does that have  
22 for you?

23 A. We got information from gangs. Gangs used to come down and  
24 talk to my officers at roll call. And the gang members were  
25 getting smarter. They weren't going to wear the bandannas to

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D428FLO4 Mauriello - cross

1 show their colors. They were going to start wearing different  
2 color beads. And the red and black were the Bloods, blue beads  
3 were Crips, the Latin Kings had green and yellow.

4 Q. Referring to the November 8, 2008 roll call at 14:36 to  
5 15:34, there are references to --

6 MR. MOORE: Hold on. What date was it?

7 MS. GROSSMAN: November 8, 2008, 14:36 to 15:34.

8 MR. MOORE: Thank you.

9 Q. Can you explain what you were referring to in that first  
10 paragraph?

11 A. Yes. I was educating the officers. We have a crime  
12 information center in the roll call room when the officers are  
13 getting ready, and we update it constantly every day. On it we  
14 had guys that were wanted for warrants, for robberies or  
15 shootings, and Blood members that were wanted. And I was  
16 showing the officers the handouts and they had fliers that if  
17 you see these people that are wanted out on the street, I  
18 expect them to be arrested.

19 MR. MOORE: Can you tell me the time?

20 MS. GROSSMAN: 14:36 to 15:34.

21 A. I'm talking about one incident with Dequan Vance, which was  
22 my officers on patrol at the time, they were at the roll call  
23 too, they had a foot pursuit with him five months before that.  
24 They made a gun arrest. I was saying this young man did not go  
25 back to court so there was an active warrant out for him. So

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1 if you see this young man, that he is wanted still for a  
2 warrant for a gun arrest.

3 Q. Mr. Moore on direct testimony referred to 120 Chauncey, and  
4 this reference to stop everybody coming out of 120 Chauncey.  
5 Can you explain?

6 A. Yes. 120 Chauncey historically is a building that we had  
7 problems before I got there and problems we had after. We had  
8 numerous shootings in there, numerous stabbings. We had a cop  
9 shot at over there. Again, my officers, I wanted them to be  
10 proactive. It was a very busy building. We had to put a  
11 two-man foot post there. This way when someone took a meal, we  
12 had a cop out there at all times, because we had problems, when  
13 we didn't cover that building or that corner, someone would get  
14 shot away.

15 The 120 Chauncey we are talking about is a half block  
16 from Brevoort Houses, public housing, and the Bloods were in  
17 120 Chauncey, the Crips were in Brevoort Houses, and there was  
18 a big problem with them too. It was only half a block away so  
19 we had to keep officers over there at all times.

20 Q. Now, at the roll call on January 28, 2009, you referred to  
21 Chief Scagnelli and TrafficStat?

22 A. Yes.

23 Q. What is the purpose of TrafficStat?

24 A. TrafficStat is to look at accidents and where they are  
25 happening and what is the causating factors, what leads to

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D428FLO4 Mauriello - cross

1 accidents. How can we prevent the accidents and how can we  
2 prevent the injuries from the accidents?

3 MR. MOORE: Can you just give the time you're  
4 referring to?

5 MS. GROSSMAN: I wasn't referring to a time. January  
6 28, 2009.

7 Q. Now, at the January 28, 2009 roll call, you made reference  
8 to Chief Marino looking at everyone's evaluation, correct?

9 A. Yes.

10 MR. MOORE: The time is 20:25 to 22:07?

11 MS. GROSSMAN: Let me just check.

12 Mr. Moore, actually, I think this was on January 28,  
13 2009, 20:25 to 22:07. If you move all the way down to the very  
14 bottom, there is a second line 11.

15 Q. There was a reference to Chief Marino yelling, right?

16 A. Yes.

17 Q. Did Chief Marino yell?

18 A. Chief Marino never yelled at me.

19 Q. What were you trying to communicate --

20 A. I was trying to tell my officers how important it is to  
21 work all year because now it's January and Chief Marino -- the  
22 evaluation is already done, he is looking over them. Not only  
23 do you got to do right for the community, you have got to work  
24 every day, and everybody is looking at it, your activity, if  
25 you're working.

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D428FLO4 Mauriello - cross

1 Q. Now, on the January 28, 2009 tape, at 23:24 to 24:10, at  
2 line 17. That's January 28, 2009, 23:24 to 24:10, line 17.

3 MR. MOORE: Let me just --

4 MS. GROSSMAN: I will read it, Mr. Moore.

5 MR. MOORE: I want to find the document you're  
6 referring to. What is the date and time?

7 MS. GROSSMAN: January 28, 2009, 23:24 to 24:10.

8 Q. Let's start at line 14. "You should be done by the first  
9 of the month. I always was, you know, rest of the month, you  
10 can skate."

11 Now, what was being referred to in that statement, to  
12 the best of your understanding?

13 A. I believe the sergeant is saying that you should have --  
14 you should be done with all of your activity the first of the  
15 month, you should be done working.

16 Q. What is your view about that idea of setting a number so  
17 that you could be done at the very beginning of the month?

18 A. I'm absolutely against it. The officer should be out there  
19 every day working. The crime trends are daily and the officer  
20 should be working daily every day. If there is a crime, I  
21 expect them to make an arrest. If there is a summons, I expect  
22 them to correct the condition.

23 Q. What happens if a quota is actually set and it's something  
24 that can be achieved very quickly, what happens to the rest of  
25 the month?

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D428FLO4 Mauriello - cross

1 A. The community crime will go up, violence will go up, and  
2 the officers won't be out there enforcing the law.

3 Q. Now, on one of the tapes, the tape referring to zero  
4 tolerance, that I believe was the October 31 tape.

5 MR. MOORE: I need for you to identify it.

6 MS. GROSSMAN: I know.

7 October 31, 2008, at 6:35 to 7:26, line 18.

8 Q. Can you explain what you meant by the term "herded"?

9 A. Yes. Again, that night, along with New Year's Eve and July  
10 4th, it's hard to do radio warrant checks, go up to the radio,  
11 because it's a citywide frequency and on the citywide, on  
12 Halloween is the parade, New Year's Eve is Times Square, 4th of  
13 July is the fireworks. It's hard to go up. You can't do  
14 warrant checks over the radio. So when I said that, I wanted  
15 my officers to understand that if it is a summonable offense, I  
16 expect them to be brought into the precinct with their ID and  
17 run right there and then released. If they had a warrant, they  
18 are going to stay and be arrested.

19 Q. Now, Mr. Moore asked you some questions about is it an  
20 offense to actually stand on the street corner. When would it  
21 be a summonable offense if someone was standing or a group of  
22 people were standing on the street corner?

23 A. If a large group was standing on a corner and the officer  
24 is observing them for a while and the officer asked the large  
25 group, could you do me a favor and please get off the corner,

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D428FLO4 Mauriello - cross

1 there are problems over here, and the group refuses, then that  
2 officer is going to tell them, if you don't move off the  
3 corner, I could give you a summons for blocking pedestrian  
4 traffic. Then he gives them a second chance and usually  
5 everybody moves.

6 Q. So the key point here is blocking pedestrian traffic?

7 A. Blocking pedestrian traffic. Usually it's in front of a  
8 store, they can't get in front of a store, usually a bodega.

9 Q. Earlier you made reference to civilian complaints. Did you  
10 make any observations about the number of civilian complaints  
11 against officers in the 81st Precinct from 2007 to 2008 when  
12 you were the CO of the 81st Precinct?

13 MR. MOORE: Objection, Judge. That's beyond the scope  
14 of the direct.

15 THE COURT: Let me read that again.

16 Is that before or after that article? Because you  
17 brought out, Mr. Moore, he said there weren't any complaints  
18 until the article in the paper.

19 MS. GROSSMAN: It's prior to. It's between 2007 and  
20 2008.

21 THE COURT: It's prior to. He said there were no  
22 complaints. That's my recollection of the testimony. There  
23 weren't any complaints before the article.

24 MS. GROSSMAN: Complaints from the community.

25 THE COURT: About the police.

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D428FLO4 Mauriello - cross

1 MS. GROSSMAN: Right. From community council  
2 meetings.

3 THE COURT: Go ahead and answer it.

4 THE WITNESS: When he asked me were there any  
5 complaints about illegal stop and frisking and racial  
6 profiling, I said not till the article, which was May 2010.  
7 That's the first time we ever heard, nobody in the community  
8 ever complained.

9 Q. My question is, there are times as commanding officer of  
10 the 81st Precinct that there may be civilian complaints filed  
11 to the Civilian Complaint Review Board, correct?

12 A. Yes.

13 Q. And you would get notice of that as a commanding officer,  
14 correct?

15 A. Yes.

16 Q. Did you make any observations in terms of the number of  
17 civilian complaints that were filed with the Civilian Complaint  
18 Review Board between 2007 and 2008?

19 MR. MOORE: I am going to object. First of all, it's  
20 the period of time I believe before he was the CO.

21 THE COURT: I don't see the relevance of this question  
22 anyway. I really don't.

23 MS. GROSSMAN: He was the XO.

24 THE COURT: I think it's an irrelevant issue, a  
25 nonissue in this case, whether there were complaints or not

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D428FLO4 Mauriello - cross

1 complaints. We are talking here about stop and frisk, not  
2 about the police department, not generally about what the  
3 community thinks of the police. We are not doing that. This  
4 is not a trial about the police department. It's a trial about  
5 the stop and frisk policy only. He said there weren't any stop  
6 and frisk complaints until the article.

7 Please ask your next question.

8 MS. GROSSMAN: Your Honor, I would just like to --

9 THE COURT: Please ask your next question, Ms.

10 Grossman. I don't need any further comment. I made a ruling.  
11 Lawyers, all sides, live with the rulings. That's what  
12 experienced trial counsel do. They move on. Next question,  
13 please.

14 Q. Now, Mr. Moore showed you what has been entered into  
15 evidence as --

16 MS. GROSSMAN: Mr. Moore, what was the number of the  
17 plaintiffs' exhibit, department advocate?

18 THE WITNESS: I think it was 298.

19 MR. MOORE: 298.

20 Q. Exhibit 298, August 11, 2010 transcript. Did you have a  
21 chance to review that transcript?

22 A. Yes.

23 Q. Did you actually have a chance to review it in order to  
24 make corrections to it?

25 MR. MOORE: Objection to the form.

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D428FLO4

Mauriello - cross

1 A. Yes.

2 MR. MOORE: I withdraw my objection.

3 THE COURT: Overruled.

4 MS. GROSSMAN: Can I have a minute?

5 I have no further questions, your Honor.

6 THE COURT: Mr. Moore, anything further?

7 MR. MOORE: Nothing, Judge.

8 THE COURT: Thank you.

9 MR. MOORE: Judge, our next witness is another police  
10 officer. I just want to advise the Court that I am doing the  
11 examination, and I need to go to the hospital tomorrow morning  
12 with my wife, as I explained to you earlier. We can start now.  
13 I think we can finish, but if for some reason --

14 THE COURT: I have a doctor's appointment so I have to  
15 leave earlier than 4:15, and I thought we might not take a  
16 break.

17 MR. MOORE: I think we can finish in an hour.

18 THE COURT: If we start, we can finish. So where is  
19 the witness?

20 MR. MOORE: The next witness is Sergeant Hegney,  
21 Richard Hegney.

22 RICHARD HEGNEY,

23 called as a witness by the plaintiffs,  
24 having been duly sworn, testified as follows:

25 THE COURT: State your full name, first and last,  
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D428FLO4 Mauriello - cross

1 spelling both names for the record.

2 THE WITNESS: My first name is Richard, R-I-C-H-A-R-D,  
3 last name Hegney, H-E-G-N-E-Y.

4 DIRECT EXAMINATION

5 BY MR. MOORE:

6 Q. Good afternoon, Sergeant Hegney. You're a member of the  
7 New York City Police Department?

8 A. I am not a member of the New York City Police Department  
9 anymore.

10 Q. Did you retire?

11 A. I retired.

12 Q. When did you retire?

13 A. April 30, 2011.

14 Q. How long were you a police officer in the NYPD?

15 A. A police officer?

16 Q. Yes.

17 A. I was a police officer --

18 Q. How long were you employed?

19 A. I was employed by the NYPD for 20 years.

20 Q. Did you retire at the rank of sergeant?

21 A. I did.

22 Q. You joined in 1991?

23 A. Yes.

24 Q. You spent nine years as a patrol officer in the 112th  
25 Precinct, correct?

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D428FLO4 Hegney - direct

1 A. Approximately, yeah.

2 Q. Then at that point, in December of 2000, you were promoted  
3 to a sergeant, correct?

4 A. Yes.

5 Q. When you were promoted, you took a leadership course on  
6 being a sergeant, correct?

7 A. Yes.

8 Q. At that course you don't recall receiving any training on  
9 stop and frisk, right?

10 A. I don't specifically recall.

11 Q. That was the question.

12 A. I don't specifically recall any specific training on it.

13 Q. In fact, you were shown a document -- you gave a deposition  
14 in this case, right?

15 A. Correct.

16 Q. It identifies you as Sergeant Patrick Hegney. Did you  
17 review the document?

18 A. Which document?

19 Q. The deposition, to make changes in it?

20 A. I only had received the document a month and a half ago,  
21 maybe two months ago.

22 Q. Your name is Richard, not Patrick?

23 A. Correct.

24 Q. At the deposition you were shown a document to try to  
25 refresh your memory as to whether you had received any training

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D428FLO4 Hegney - direct

1 on stop and frisk and it still didn't refresh your memory,  
2 correct?

3 A. If you have something that can help me, I think that was  
4 2009.

5 Q. Let me show you a copy of your deposition.

6 Turning to page 123 of that deposition.

7 MR. MOORE: Do you have it, counsel?

8 A. 123?

9 Q. 123. There should be four pages.

10 MR. MARUTOLLO: Objection, your Honor, to this line of  
11 questioning. The document that's at issue that was shown to  
12 Sergeant Hegney during his deposition was from 2004. Sergeant  
13 Hegney became a sergeant in 2000. So that leadership course  
14 training was not the same training in 2000. Therefore, I think  
15 this line of questioning is irrelevant.

16 THE COURT: He had training. I suppose he can clarify  
17 the relationship with the time, how it might have differed, but  
18 I am not going to cut it off.

19 MR. MOORE: It was shown to refresh his recollection.

20 Q. You were shown a copy of a leadership course, training  
21 materials, at the deposition, correct? Do you recall that?

22 A. Yes.

23 Q. If you look on line 18 to line 22, you were asked, "Does  
24 this refresh your recollection as to whether you received any  
25 training in the leadership course on stop, question and

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D428FLO4 Hegney - direct

1 frisk?," and your answer was, "No"?

2 A. Correct.

3 Q. Does that refresh your recollection that you don't recall  
4 receiving any training --

5 A. I don't recall.

6 Q. Let me finish the question.

7 You don't recall receiving any training on stop and  
8 frisk when you took the leadership course to be a sergeant?

9 A. Not specifically, no.

10 Q. In January of 2001, you were assigned to the 107th  
11 Precinct, correct?

12 A. Yes.

13 Q. And you became a squad supervisor, right?

14 A. Correct.

15 Q. You did that for eight or nine months?

16 A. About that, yeah.

17 Q. Then you became a school safety sergeant, right?

18 A. Yes.

19 Q. It's similar to the patrol function, but it focuses on  
20 schools, correct?

21 A. Schools and the specific areas around schools and school  
22 related functions.

23 Q. So your tour would coincide with when school is in session?

24 A. Mostly, yeah.

25 Q. You were a school safety sergeant until the fall of 2008,

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D428FLO4 Hegney - direct  
1 right?

2 A. Yes.

3 Q. Then you went to Transit District 33?

4 A. Yes.

5 Q. You retired from there, right?

6 A. Yes.

7 MR. MOORE: Now, Judge, I should just advise the Court  
8 that we are taking Sergeant Hegney out of order because of some  
9 issues. This relates to the stop of David Ourlicht, who has  
10 not yet testified. So it's going to be a little out of order.

11 THE COURT: OK. Thanks for that.

12 Q. In January of 2008, you were the school safety sergeant in  
13 the 107th Precinct, correct?

14 A. Yes.

15 Q. One of your reports was an Officer Christopher Moran,  
16 correct?

17 A. One of my officers, yes.

18 Q. You don't recall ever observing Officer Moran conduct a  
19 stop and frisk, do you?

20 A. No.

21 Q. You don't recall ever discussing with Officer Moran the  
22 concept of reasonable suspicion, do you?

23 A. I don't recall ever, no, having a specific conversation  
24 about that.

25 Q. You don't recall having any formal training on stop and

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D428FLO4 Hegney - direct

- 1 frisk at any point in the police department, correct?  
2 A. Myself having training?  
3 Q. Yes.  
4 A. I have had informal training.  
5 Q. I am talking about formal training where you go to a  
6 classroom.  
7 A. There is formal training. I couldn't tell you  
8 specifically. You go to the range, there's stop and frisk  
9 lessons. There are lessons. I don't remember the exact dates  
10 or times I have taken those. So specifically no.  
11 Q. But you do recall receiving what you say is informal  
12 training, right?  
13 A. Right.  
14 Q. A lot of the informal training would take place at the roll  
15 call before your tour, correct?  
16 A. There would be training before, yes.  
17 Q. You don't recall ever discussing the issue of stop and  
18 frisk in those morning sessions of the roll call, do you?  
19 A. Not formally, no.  
20 Q. You don't even recall ever discussing it informally, right?  
21 A. No.  
22 Q. You don't recall ever discussing reasonable suspicion to  
23 stop or frisk at those sessions, do you?  
24 A. No.  
25 Q. You would agree with me, would you not, Sergeant Hegney,

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D428FLO4 Hegney - direct

- 1 that it's the responsibility of a sergeant such as yourself  
2 when you were in the 107th to ensure that your officers  
3 complied with the law?  
4 A. Correct.  
5 Q. And with department regulations as well?  
6 A. Yes.  
7 Q. That includes the law with respect to stop and frisk,  
8 right?  
9 A. OK.  
10 Q. You agree with that?  
11 A. Yes.  
12 Q. To the extent that you supervise your officers conducting  
13 stops and frisks, it's only when you're actually present,  
14 correct?  
15 A. For immediate supervision, yes.  
16 Q. You never reviewed the paperwork for the substance of the  
17 stop and frisk if you weren't the sergeant who was present,  
18 correct?  
19 A. Are you asking me would I review a 250 if I wasn't present?  
20 Q. Yes.  
21 A. Yes.  
22 Q. You wouldn't review the substance of it, you wouldn't have  
23 a discussion with the officer about it?  
24 A. If somebody brought me a UF-250 that I was not present at  
25 the scene for, I would conduct a brief investigation into the

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D428FLO4 Hegney - direct

1 accuracy and completeness of the form before I would sign it.

2 Q. You're just reviewing it to see if the form is filled out  
3 accurately, correct?

4 A. If the boxes were checked off right, and I would ask them  
5 the circumstances about the stop.

6 MR. MOORE: Now, can you bring up Plaintiffs' Exhibit  
7 98?

8 Q. Sergeant Hegney, do you recognize this document?

9 A. Yes.

10 Q. It's a patrol guide provision with respect to stop and  
11 frisk, right?

12 A. It is.

13 Q. Now, it mentions the duties of the uniformed member of the  
14 service, correct, with respect to stop and frisk?

15 A. Right.

16 Q. Then if you go to the second page of the document, it also  
17 sets forth the duties of a desk officer and a commanding  
18 officer, correct?

19 A. Yes.

20 Q. The document doesn't set forth any duties for the  
21 supervisor, supervising sergeant of the officer, correct?

22 A. Specifically, it does not have it worded as that. Now,  
23 there are days where --

24 Q. All I am asking you is whether the document sets forth the  
25 duties of the supervisor of the officer, and it doesn't?

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D428FLO4 Hegney - direct

- 1 A. No, it doesn't. But that officer's direct supervisor could  
2 be the desk officer.
- 3 Q. That's correct. You see there are different subheadings:  
4 member of the service, desk officer, commanding officer. There  
5 is nothing that sets forth the duties and responsibilities of  
6 the supervising officer, correct?
- 7 A. The supervising officer -- a desk officer is a supervising  
8 officer.
- 9 Q. Of the officer who conducted the stop and frisk.
- 10 A. You're just talking about if one of my men made a stop on  
11 the street, specifically me, not necessarily the patrol  
12 supervisor.
- 13 Q. I am asking you whether looking at this form you can see  
14 any section of it that deals with the supervising officer, the  
15 squad supervisor and officer who conducts a stop and frisk,  
16 there is nothing in that document that sets forth the duties of  
17 the supervising officer, correct?
- 18 A. Correct.
- 19 Q. The scheme that's set forth in this patrol guide is that  
20 once the UF-250 is done, it's given to the desk officer,  
21 correct?
- 22 A. OK.
- 23 Q. Do you agree with that?
- 24 A. That's how the procedure is worded, yes.
- 25 Q. Following the desk officer's review, it then goes to the

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D428FLO4 Hegney - direct  
1 commanding officer, correct?

2 A. Yes.

3 MR. MOORE: Plaintiffs' 98 is in evidence, correct? I  
4 am sure it is by now.

5 If you could pull up Plaintiffs' Exhibit 74?

6 MR. MARUTOLLO: Just for clarity sake, this was  
7 revised in the summer of 2011 when Sergeant Hegney was not  
8 active, the one that is about to be shown.

9 THE COURT: I don't know that it matters. I don't  
10 know what you want to ask him.

11 MR. MOORE: I don't think it matters either. I just  
12 want to get his general understanding of the document.

13 It's not in evidence yet.

14 THE COURT: It's a blank 250 from 2011. There is no  
15 real objection to that being in evidence. 74 is in evidence.  
16 I just want the witness to understand that the 250 you're going  
17 to see is not the one that was in effect when you were there.  
18 It's a revised form from 2011.

19 MR. MOORE: Plaintiffs' Exhibit 85 is the 250 that's  
20 already in evidence. So why don't we just show that.

21 THE COURT: You want to switch to 85? And that was in  
22 effect when he was there?

23 MR. CHARNEY: I believe so, yes.

24 THE COURT: Fine.

25 Q. You recognize this as a stop, question and frisk report

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D428FLO4 Hegney - direct

1 work sheet?

2 A. Yes.

3 Q. You're familiar with this document from your time in the  
4 police department?

5 A. Yes.

6 Q. The 250 form documents who is being stopped and for what  
7 crimes they are being stopped, correct?

8 A. Yes.

9 Q. Outside of being able to track crimes and to find out who  
10 you are stopping, there is no other purpose that you know of  
11 for the 250, right?

12 A. Well, it's to track crimes, get who you're stopping.  
13 Another purpose of the form is to protect constitutional rights  
14 and civil rights of the public.

15 (Continued on next page)

16

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D4229flo5

Hegney - direct

1 Q. Why don't you turn to your deposition on page 142, line 25?

2 A. 142?

3 Q. Yes. 142.

4 Actually line 18.

5 A. Hold on one second.

6 Okay.

7 Q. Beginning on line 18 you recall being asked this question  
8 and giving these answers.

9 Actually beginning on line 14.

10 "Q. I want to talk for a second about the UF 250? Before I  
11 get to that, what is your understanding of the purpose of the  
12 UF 250 form?

13 "A. Just the purpose of the form itself?

14 "Q. Yes.

15 "A. Like why do we fill it out?

16 "Q. Yes.

17 "A. Just a document who is being stopped and for what crimes.

18 "Q. Any other purpose that you can note -- that you know of  
19 that you understand to be the purpose of the UF 250?

20 "A. Outside of being able to maybe track crimes and find out  
21 who we're stopping?

22 "Q. Yes.

23 "A. No."

24 Do you recall being asked those questions and giving  
25 those answers at your deposition?

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D4229flo5 Hegney - direct

1 A. I'm going to say yes. I mean I don't specifically remember  
2 going through this. But my answers are there. Yes, I said  
3 that.

4 Q. You accept that --

5 A. I'm accepting that I said that, yes.

6 Q. And you don't recall if you were ever trained or instructed  
7 that the 250 form is to be used to determine whether police are  
8 making legal stops and frisks, do you?

9 A. I'm sorry?

10 Q. You don't recall ever being instructed or trained by the  
11 police department that the UF 250 form is used to determine  
12 whether police are making legal stops and frisks? You don't  
13 recall being trained in that respect, do you?

14 A. No, I don't recall.

15 Q. And you don't recall being specifically told that, that the  
16 UF 250 form can be used to determine whether police are making  
17 legal stops and frisks, right?

18 A. Correct.

19 Q. When you get a 250 form from an officer, you check the  
20 document for completeness and for accuracy, correct?

21 A. Okay, yes.

22 Q. And there is no other reason that you review the 250,  
23 right?

24 A. I -- if I'm going to put my name on the bottom I'm going to  
25 make sure that the 250 was prepared properly, yes.

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D4229flo5 Hegney - direct

1 Q. Once again at your deposition, page 145, line 15.

2 Actually line 6

3 "Q. What reason do you personally have for looking at UF 250s,  
4 officers --

5 "A. If an officer hands me a UF 250 and I'm going to sign it,  
6 I check the document which is no different than any other  
7 document for completeness and accuracy.

8 "Q. Other than for fulfilling your responsibility as a  
9 supervising officer on a UF 250 form, is there any other reason  
10 that you would review a UF 250 form?

11 "A. No."

12 Do you recall being asked those questions, giving  
13 those answers at your deposition?

14 A. Yes.

15 Q. And there would be no reason that you would ever review a  
16 250 that was filled out by one of your officers that was signed  
17 by a different supervisor, right?

18 A. No. There would be no general reason to do that.

19 Q. If the UF 250 form was not actually handed to you, you  
20 would not check it, right? Even if it was from one of your  
21 officers, right?

22 A. If I was a desk officer I would end up having to do that.  
23 But generally I was not the desk officer. And if they handed  
24 it in to the desk, I would not see the 250.

25 Q. And so other than checking the 250s that are handed to you

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D4229flo5 Hegney - direct

1 directly, you didn't do anything else to assure yourself that  
2 the officers under your supervision were completing the 250s  
3 accurately, correct?

4 A. I would review the 250s for accuracy, completeness and that  
5 they were warranted to be filled out, that the stop -- that the  
6 stops were made lawfully, that they weren't stopped for  
7 something that you can't stop a person for.

8 Q. All right. Turning to your deposition at page 191, line  
9 10.

10 A. Hold on. 191.

11 Q. 191, line 10.

12 Do you recall being asked this question and giving  
13 this answer.

14 "Q. Other than reviewing the UF 250 that you personally were  
15 given to review when you were in the 107th precinct, did you do  
16 anything else to assure yourself that the officers under your  
17 supervision were completing the UF 250s accurately?

18 "A. No."

19 Do you recall being asked that question and giving  
20 that answer at the deposition, Sergeant Hegney?

21 A. Again specifically I don't recall that. I'm going to  
22 accept that's my answer and that was the question.

23 MR. MOORE: Is 348 in evidence?

24 Q. Let me hand you what's been marked Plaintiffs' Exhibit 348  
25 Sergeant Hegney.

D4229flo5 Hegney - direct

1 Can you identify this document?

2 A. I'm familiar with the contents of the document. I don't  
3 know that I've ever seen this specific document.

4 Q. This is a lesson plan for --

5 A. Newly promoted sergeants.

6 Q. Newly promoted sergeants in two thousand --

7 A. Nine.

8 Q. -- nine. Right.

9 Do you recall receiving a similar document to this  
10 when you became a newly appointed sergeant?

11 A. No.

12 Q. Oh, all right. But this would -- this would -- you can  
13 recognize this as a New York City Police Department lesson plan  
14 with regard -- for the sergeants leadership course, correct?

15 A. Yes.

16 MR. MOORE: Judge I move the admission of 348.

17 MR. MARUTOLLO: No objection.

18 THE COURT: 348 is received.

19 (Plaintiffs' Exhibit 348 received in evidence)

20 Q. Now if you turn to page two of this document it sets forth  
21 the duties of the desk officer.

22 Do you see that?

23 A. Right. Yes.

24 Q. It says that as a new desk officer you will be required to  
25 review all reports coming before the desk. The reports include

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(212) 805-0300

D4229flo5 Hegney - direct

1 the UF 250 form that will require a supervisor's review.

2 Do you see that?

3 A. Yes.

4 Q. And when you became a sergeant that's what you understood  
5 you had to do if you became a desk officer, right?

6 A. If -- when I -- in 2000, which was a long time ago, I went  
7 through the basic leadership course, if that was the desk  
8 officer's -- we got trained on being supervisors, desk  
9 officers, patrol supervisors and supervisors.

10 Q. Do you recall being trained in one of the responsibilities  
11 of a desk officer --

12 A. Yes.

13 Q. -- was to ensure that officers make complete activity log  
14 entries in relation to the stop and frisk that they did?

15 A. I recall being trained on desk officer's duties and  
16 responsibilities. At this point from 14 years ago, I don't  
17 remember what they all were or weren't.

18 Q. Looking at this document, that was an entry there that  
19 says: Ensure officers make complete activity log entries.  
20 Pertinent details must be recorded for every stop situation.

21 Do you accept that that's a responsibility of the desk  
22 officer?

23 A. As of the time this -- as of the time this form came out,  
24 yes.

25 Q. When you were a desk officer?

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D4229flo5 Hegney - direct

1 A. I don't know when they mandated putting stops in a memo  
2 book. I --

3 THE COURT: Well it says activity log entries.

4 MR. MOORE: That's the same thing as a memo book.

5 THE WITNESS: Memo book, activity log,  
6 interchangeable.

7 THE COURT: Same thing.

8 THE WITNESS: Right.

9 THE COURT: Okay.

10 Q. So you don't know when they might have -- what you're  
11 saying is that when you became a sergeant you might not have  
12 been instructed that officers had to make complete -- had to  
13 make complete activity log entries with respect to stops,  
14 right?

15 MR. MARUTOLLO: Objection. Misstates what he just  
16 said.

17 MR. MOORE: I'll rephrase it, Judge, if you want.

18 Q. Is it your testimony that you don't recall when you became  
19 a sergeant whether the responsibility that we just talked  
20 about, ensuring complete activity log entries, was something  
21 that you were trained on when you became a sergeant? You don't  
22 recall --

23 A. I don't recall that. Right.

24 Q. Now, going back to Plaintiffs' Exhibit -- what is it, 85?  
25 The UF 250 form. That's the one that's in evidence, right, 85?

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1 Going back to Exhibit 85, when you reviewed the 250,  
2 you were looking basically to see that all the boxes are  
3 checked off correctly, right?

4 A. Yes.

5 Q. Other than that you didn't look for anything else, other  
6 than to see if the boxes were checked correctly?

7 A. No. I made sure the officer's name is on it, their tax  
8 number, that the form was complete.

9 Q. Turning your attention to page 158 of your deposition.  
10 Line 2. Do you recall being asked this question and giving  
11 this answer:

12 "Other than making sure that one of the boxes is  
13 checked, did you ever look for anything else?

14 "A. In that section?

15 "Q. Yes. In that section.

16 "A. No."

17 Do you recall being asked that question and giving  
18 that answer at your deposition?

19 MR. MARUTOLLO: Objection, your Honor. That's  
20 improper impeachment. That was only related to one particular  
21 section of the UF 250, not necessarily the entire UF 250.

22 MR. MOORE: That's fair enough, Judge. I'll inquire  
23 further.

24 BY MR. MOORE:

25 Q. You heard what I just read to you, correct? In your

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(212) 805-0300

D4229flo5 Hegney - direct

1 deposition?

2 A. From page 158?

3 Q. Yeah.

4 A. Okay.

5 Q. And that's referring to the section where it says: What  
6 were circumstances which led to the stop, right?

7 A. I'd have to look up above that to see if that's the  
8 section. You started page 158, line 2. I don't know what  
9 section it was talking about.

10 Q. Set aside the deposition.

11 When you were -- with respect to the section that says  
12 what were circumstances which led to the stop, when you  
13 reviewed it you were just looking to see if the boxes were  
14 checked, right?

15 A. Unless something else was required. But most of those  
16 boxes are not required to have additional factors. There's a  
17 couple of them.

18 Q. By way of example if an officer checked off furtive  
19 movement in the section that says, what were circumstances  
20 which led to the stop, you wouldn't require anything else?  
21 That would be sufficient to complete the circumstances section  
22 of the form, just checking off furtive movement, right?

23 A. If they checked off furtive movement, I would inquire as to  
24 what the movement was, what else happened just, you know,  
25 different people can take furtive movements to mean different

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D4229flo5 Hegney - direct

1 things.

2 Q. Let me direct your attention to page 159 of your deposition  
3 then. Question on line 23: "So if you were given a UF 250  
4 that an officer filled out and they had checked off furtive  
5 movement and all they checked off was a furtive movement, would  
6 that in your view be sufficient to complete the circumstances  
7 section of the form?"

8 "A. Is that all they would have to do?"

9 "Q. Yes."

10 "A. To complete the section on the form?"

11 "Q. Yes."

12 "A. Yes."

13 Do you recall being asked those questions and giving  
14 those answers at your deposition?

15 A. I'll accept it.

16 Q. All right. Now you didn't review the memo book entries for  
17 every officer for every 250 that an officer handed in, did you?

18 A. No.

19 Q. But you understand that it's NYPD policy and procedure that  
20 all officers who conduct stops and frisks should record  
21 information in both their 250 form and in their memo book.  
22 That's what you understood the procedure to be when you were  
23 sergeant, correct?

24 A. Yes.

25 Q. But you don't know if your officers always did that, right?

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(212) 805-0300

D4229flo5 Hegney - direct

1 A. If they always did what?

2 THE COURT: Put it in their memo book as well as on  
3 the 250?

4 THE WITNESS: No. I don't know that they did it every  
5 time.

6 Q. In fact, you don't even know why the NYPD policy and  
7 procedure requires officers to record the facts in both  
8 locations, the 250 and the memo book, right?

9 A. Everything in the memo book is so you can account for  
10 yourself, it's your accountability, you can refer to this at a  
11 later point if you need it. Not just 250s. Any entry.

12 Q. Directing your attention to your deposition at page 193,  
13 line 21.

14 "Q. What is your understanding of why officers are required to  
15 record all of their stops in their activity logs?

16 "A. Why are they required to put them?

17 "Q. Yes.

18 "A. I don't know why."

19 Do you recall being asked those questions and giving  
20 those answers at your deposition?

21 A. Yes.

22 Q. You were never told to do a random check of your police  
23 officers to make sure they were putting the details of their  
24 stops in their memo books, right?

25 A. No.

D4229flo5 Hegney - direct

1 Q. And you never disciplined an officer or sought discipline  
2 for an officer who failed to put in the details of the stop in  
3 their memo book, correct?

4 A. I'm sorry?

5 Q. You never disciplined an officer for failing to put in  
6 their memo book the details of a stop?

7 A. I don't believe so.

8 Q. All right. As far as you're concerned as long as they have  
9 the reason for the stop checked off and it was a misdemeanor, a  
10 felony, that was good enough for you, right?

11 A. If -- like I said, if -- are you talking about where the  
12 circumstances which led to the stop section?

13 Q. Yeah.

14 A. The bottom of the left column it says other reasonable  
15 suspicion of criminal activity, specify. If that box was  
16 checked, there would have to be something else, a contributing  
17 factor written in there. Just having that box checked wouldn't  
18 do it, no.

19 Q. Again, to your deposition on page 201, line 3.

20 "Q. Would you have to be more specific or less specific than  
21 the same --

22 "A. I'll be honest. As long as they have a reason that it was  
23 stopped, and it was a misdemeanor or felony, suspected of  
24 burglary, suspected of CPW, that was good enough for me."

25 Do you recall being asked that question and giving

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(212) 805-0300

D4229flo5 Hegney - direct

1 that answer?

2 A. I'm going to look at it right now.

3 Q. Page 201, beginning on line 3.

4 MR. MARUTOLLO: I'm going to again object to that  
5 question as improper impeachment because the question  
6 immediately before that was regarding comparing it to the  
7 activity log, comparing the UF 250 to the activity log; whereas  
8 I believe this question was just about UF 250s in general.

9 MR. MOORE: Read the question and the answer if he  
10 wants to.

11 THE COURT: His only question was do you recall being  
12 asked that question and giving that answer.

13 I would allow that.

14 Q. Do you recall being asked that question and giving that  
15 answer?

16 A. Yes.

17 Q. And at least when you were a sergeant you didn't know if  
18 officers had to have the details concerning the circumstances  
19 which led to a stop in their memo book, right?

20 A. I don't know when that became a procedure, no.

21 Q. And that's -- you don't know when -- at least while you  
22 were in the 107th precinct you weren't aware of a requirement  
23 to do that, right?

24 A. I don't recall.

25 Q. Did anybody at any time when you were in the police

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(212) 805-0300

D4229flo5 Hegney - direct

1 department ever instruct you that an activity log entry with  
2 regard to a stop had to be more detailed than the information  
3 found in the UF 250?

4 A. Again, I don't recall any specific training. I know there  
5 were operations orders handed out that required pertinent  
6 information.

7 Q. But you don't recall ever being instructed that an activity  
8 log means you had to give more detail, right?

9 A. Not that it needed to be more detail, no.

10 Q. All right. And likewise you didn't tell your officers who  
11 you supervised that they needed to be more detailed in their  
12 memo books than in their 250, right?

13 A. I don't recall doing that, no.

14 MR. MOORE: One second, Judge. I'm just trying to  
15 speed it up a little bit.

16 (Pause)

17 Q. I want to show you what's previously been marked and  
18 admitted into evidence is Plaintiffs' Exhibit 184 which is the  
19 racial profiling policy. I want to use the ELMO.

20 Sergeant Hegney, you don't recall ever seeing this  
21 document when you were in the police department, correct?

22 A. I don't specifically recall seeing this document but I'm  
23 sure, being an operations order, it was handed out.

24 Q. You don't recall receiving any training on racial  
25 profiling, right?

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(212) 805-0300

D4229flo5 Hegney - direct

1 A. Specifically, no.

2 Q. You don't recall the racial profiling policy ever being  
3 discussed at the 107th precinct when you were there, right?

4 A. Not specifically, no.

5 Q. And if you notice, this document, in paragraph four, says  
6 commanding officers will establish a self-inspection protocol  
7 within their command to ensure that the contents of this order  
8 are complied with.

9 Do you see that sentence?

10 A. I see it.

11 Q. You're not aware of that ever happening in the 107th, are  
12 you?

13 A. That would not have been my self-inspection to do.

14 Q. You're not aware of there ever having been that -- you're  
15 not aware of that ever happening in the 107th that there was a  
16 self-inspection protocol with regard to racial profiling,  
17 correct?

18 A. I wouldn't know all the self-inspections, no.

19 Q. So if they had it, you wouldn't have known about it, right?

20 A. I would know about my self-inspections.

21 Q. You did self-inspections of school crossing guards and what  
22 was the other thing?

23 A. Juvenile reports.

24 Q. Juvenile reports, right? So you're familiar with the  
25 process of self-inspection, right?

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D4229flo5 Hegney - direct

1 A. I am familiar with the process of my self-inspections.

2 Q. You don't recall there ever being a self-inspection process  
3 for racial profiling in the 107th, right?

4 A. Not for me, no.

5 Q. All right. Let me hand you what has been marked as  
6 Plaintiffs' Exhibit 248. Can you identify this document?

7 MR. MOORE: You can take that off the screen.

8 THE WITNESS: As far as identifying it, what do you  
9 want me -- it's a summons.

10 Q. It's a summons for David Ourlicht, correct?

11 A. Yes.

12 Q. And it's given by police officer Christopher Moran in the  
13 107th precinct, right?

14 A. Right.

15 Q. And that's an officer you supervised in January of 2008,  
16 right?

17 A. Yes.

18 MR. MOORE: Judge move the admission of Plaintiffs'  
19 Exhibit 248.

20 MR. MARUTOLLO: No objection. But we do note that it  
21 has Mr. Ourlicht's date of the birth.

22 THE COURT: So it should be redacted before it's  
23 entered in the record but otherwise it's received in evidence.

24 (Plaintiffs' Exhibit 248 received in evidence)

25 MR. MOORE: Bring it up on the -- 248.

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- 1 Q. On January 30, 2008 when the summons was issued, as you've  
2 testified, Officer Moran was one of your direct reports,  
3 correct?  
4 A. Yes.  
5 Q. You didn't discuss this with Officer Moran before he issued  
6 it, did you?  
7 A. I'm sorry?  
8 Q. You didn't discuss it with Officer Moran before he issued  
9 this?  
10 A. Before he issued the summons.  
11 Q. Yeah.  
12 A. No.  
13 Q. He could have called you if he wanted to issue the summons,  
14 couldn't he have?  
15 A. He could have called anybody.  
16 Q. Well, you were his supervisor that day, correct?  
17 A. I was -- I don't know what my assignment was that day.  
18 Q. You're not sure -- you were his supervisor but you're not  
19 sure you were on duty that day?  
20 A. I'm not sure I was on duty. I'm not sure I was  
21 preoccupied, no.  
22 Q. And because -- if the stop -- if having -- withdraw that.  
23 This is a summons for disorderly conduct, correct?  
24 A. Yes.  
25 Q. And if Officer Moran decided -- withdraw that.

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(212) 805-0300

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1 If the -- if Officer Moran's attention was drawn to  
2 David Ourlicht on January 30, 2008 because he had a reasonable  
3 suspicion that he was committing some kind of offense,  
4 notwithstanding the fact that he did a summons he would still  
5 have to do a 250, right?

6 MR. MARUTOLLO: Objection to form and also I think it  
7 calls for speculation.

8 THE COURT: Two different objections. What's wrong  
9 with the form?

10 MR. MARUTOLLO: Just a confusing question.

11 MR. MOORE: I can try to repeat it, Judge, if you  
12 want. I thought it was pretty clear.

13 THE COURT: I just really want to know if there's a  
14 summons, does he also have to do a 250?

15 THE WITNESS: Does he have to do a 250?

16 THE COURT: Yes. If he gave a summons.

17 THE WITNESS: No. You don't have to do a 250.

18 THE COURT: Okay. That's all I really wanted to know.

19 Q. If the officer's attention is drawn to the person who  
20 eventually gets a summons because of reasonable suspicion, not  
21 because of some concern about the summons --

22 A. If -- if --

23 Q. Let me finish.

24 A. Go ahead.

25 Q. He would have to do a 250 in that circumstance, correct?

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1 A. If he stopped somebody based on reasonable suspicion that,  
2 I'll go through it, a misdemeanor, felony, you know, committed,  
3 has been committed, will be committed, so on and so forth, then  
4 he's getting a 250 regardless.

5 Now if something else beyond that happens, that  
6 warrants the summons, then he'll get the summons as well. But  
7 if the only thing that made him stop him was disorderly  
8 conduct --

9 Q. No, no, no, no. I'm -- first -- the first example you gave  
10 is what I'm concerned about.

11 In the first situation where his attention is drawn  
12 because of reasonable suspicion, if he -- even though he later  
13 issues a summons for something else, if the initial interest is  
14 because of reasonable suspicion, he would have to have done  
15 both a UF 250 and a summons, correct?

16 A. If he chose to, yes.

17 THE COURT: What do you mean, if he chose to?

18 THE WITNESS: You could warn and admonish for a  
19 summons. Even if someone acted disorderly, you could warn and  
20 admonish. He chose to write the summons. Then you would have  
21 them both in that instance.

22 THE COURT: My question remains the same. Does he  
23 have to do the UF 250 if he gives the summons, even if there is  
24 no basis for the stop --

25 THE WITNESS: Was something different?

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(212) 805-0300

D4229flo5

Hegney - direct

1 THE COURT: No. Was reasonable suspicion.

2 The reason he approached the person to stop him was  
3 because he had reasonable suspicion that a crime was --

4 THE WITNESS: Right. He's going to do the 250.

5 THE COURT: No matter what? Even if he gives the  
6 summons?

7 THE WITNESS: Right.

8 THE COURT: Okay. That's what I wanted to know.

9 Q. Let me hand you what's been previously marked as  
10 Plaintiffs' Exhibit 250. It is a 250 form but it's Plaintiffs'  
11 Exhibit 250.

12 Do you recognize that document?

13 A. Yes. Whole bunch of same copies?

14 Q. Just the first --

15 A. Bunch of these are all the same.

16 Q. Just the first page.

17 A. Yes.

18 Q. What is that document?

19 A. This is the stop, question and frisk.

20 Q. For David Ourlicht, correct?

21 A. Yes.

22 Q. For a stop that occurred on January 30, 2008, correct?

23 A. Yes.

24 Q. And you're indicated as the reviewing sergeant on that 250,  
25 correct?

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1 A. Correct.

2 MR. MOORE: Judge, move the admission of 250.

3 MR. MARUTOLLO: No objection.

4 THE COURT: Received.

5 (Plaintiffs' Exhibit 250 received in evidence)

6 Q. Now, this is the computer generated 250 form, correct?

7 A. Right. Yes.

8 Q. And there would have been a handwritten stop, question and  
9 frisk worksheet, correct?

10 A. Correct.

11 Q. Have you ever seen that?

12 THE COURT: You mean the actual one in the Ourlicht  
13 stop?

14 MR. MOORE: Yeah.

15 THE COURT: Have you seen the handwritten --

16 THE WITNESS: Yes, I have.

17 Q. When did you last see it?

18 A. The official one or a copy of it?

19 Q. No. The handwritten one.

20 A. The one that he --

21 Q. A copy of the handwritten one.

22 A. A couple days ago.

23 MR. MOORE: That's interesting, Judge, because we've  
24 never been -- I don't think it's been produced.

25 MR. MARUTOLLO: Your Honor, I could state that the  
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1 city has not produced a handwritten --

2 THE WITNESS: I may not have. I may not have. I

3 would have to --

4 THE COURT: He may be confused.

5 MR. MOORE: So he may be mistaken.

6 THE COURT: The city's attorney represents they don't  
7 have a handwritten one.

8 MR. MOORE: That's why I was --

9 THE COURT: So maybe he's mistaken.

10 MR. MOORE: That's fine, Judge. I just wanted to  
11 inquire. If there was one, I would like to see it.

12 Q. And on the -- looking at Plaintiffs' Exhibit 250, that --  
13 this was for a stop that occurred at the intersection of 85th  
14 Avenue with 164th Street, correct, in Queens?

15 A. Right.

16 Q. Is that correct?

17 A. Yes.

18 Q. And it's at 2:15 in the afternoon, correct?

19 A. Yes.

20 Q. And apparently Officer Moran had observed the individual  
21 for a period of two minutes before he stopped him, right?

22 A. According to this, yes.

23 Q. And do you see on the section that says crime suspected  
24 what the crime suspected is?

25 A. Give me a minute.

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- 1 Q. Up at the top.  
2 A. Okay.  
3 Q. Criminal possession of a weapon, correct?  
4 A. Okay. Yes.  
5 Q. And the -- in the section that says circumstances leading  
6 to the stop, do you see that?  
7 A. Yes. Go ahead.  
8 Q. And there's two circumstances checked off on this form,  
9 correct?  
10 A. Okay. Yes.  
11 Q. One is furtive movement?  
12 A. Right.  
13 Q. Right? And one is suspicious bulge with a further  
14 description, bulge in right waste hip.  
15 Do you see that?  
16 A. Yes.  
17 Q. And then there are also reasons for the frisk that  
18 occurred, right?  
19 A. I'm looking.  
20 Q. Going down?  
21 A. Just moved it on me. I got it. Go ahead. The frisk  
22 basis?  
23 Q. Yeah.  
24 A. Okay.  
25 Q. And there's four things listed there, right?

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(212) 805-0300

D4229flo5

Hegney - direct

- 1 A. Yes.
- 2 Q. And then apparently Mr. Ourlicht was searched, right?
- 3 A. I believe -- yes.
- 4 Q. And there is two reasons for the search there?
- 5 A. Okay.
- 6 Q. All right. And this was a form that you reviewed in your
- 7 capacity as the sergeant in the 107th precinct, right?
- 8 A. Yep.
- 9 Q. Now, at some point you're aware that David Ourlicht
- 10 complained to the -- or somebody on his behalf complained to
- 11 the police department, complained to the CCRB about this stop,
- 12 right?
- 13 A. Right.
- 14 Q. And he -- is it your understanding that that complaint was
- 15 referred to the office of the chief of department?
- 16 A. Yes.
- 17 Q. And that the office of the chief of department then
- 18 referred it to the 107th precinct, right?
- 19 A. Ultimately through channels that's where it ended up.
- 20 Q. Right. And ultimately through channels it ended up on your
- 21 disk?
- 22 A. Sure enough.
- 23 Q. To investigate, correct?
- 24 A. Yep.
- 25 Q. And at that point you were being asked to investigate a

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D4229flo5 Hegney - direct

1 complaint of -- made by a civilian concerning an officer under  
2 your supervision, right?

3 A. Yes.

4 Q. In fact, you were being asked to review a complaint made by  
5 a civilian of an officer for which you signed off on the form  
6 that documents the action taken by the officer, right?

7 A. On the 250, yes.

8 Q. Let me show you what's been marked Plaintiffs' Exhibit 251.  
9 Two-page document.

10 Can you identify that document?

11 A. I can but I believe there's a better copy of it somewhere.

12 Q. I'll get a better copy.

13 Do you recognize that as the referral from the office  
14 of the chief of department to the 107th precinct of  
15 Mr. Ourlicht's complaint?

16 A. Yeah. I mean it's the coversheet. The actual complaint is  
17 back here. I don't know if it's still 250 or not, you know, or  
18 whatever your document number is, 251.

19 Q. But the first two pages are the --

20 A. The coversheet.

21 Q. The coversheet from the office of the chief of department,  
22 right?

23 A. Yeah.

24 MR. MOORE: Move the admission of 251, Judge.

25 MR. MARUTOLLO: The only thing we note is we indicated  
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1 to plaintiffs' counsel, the cleaner copy of 251.

2 THE WITNESS: You're missing some off the bottom off  
3 of that.

4 MR. MOORE: I have a cleaner copy.

5 MR. MARUTOLLO: If the witness is being questioned, if  
6 he gets the cleaner copy, obviously.

7 MR. MOORE: I will give him the cleaner copy.

8 MR. MARUTOLLO: I don't have an objection.

9 MR. MOORE: That's Exhibit 251.

10 MR. MARUTOLLO: We have a clean copy.

11 THE COURT: If you have a clean copy. Now do you  
12 object if the clean copy is used?

13 MR. MARUTOLLO: No.

14 THE COURT: All right. 251 is received.

15 (Plaintiffs' Exhibit 251 received in evidence)

16 THE COURT: Do you want to give him the clean copy.

17 MR. MOORE: I have it, Judge.

18 THE COURT: Well one way or the other.

19 Mr. Marutollo you do intend to question this witness,  
20 right?

21 MR. MARUTOLLO: I'm sorry?

22 THE COURT: You do intend to question this witness?

23 MR. MARUTOLLO: Yes, your Honor.

24 THE COURT: How long do you think you might be,  
25 because I don't think we're going to make it today. Roughly?

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1 MR. MARUTOLLO: I'd say maybe about 20 minutes.

2 THE COURT: We're not going to make it today so there  
3 is no point in rushing because you're not going to finish  
4 anyway.

5 What are you going to do? Are you going to interrupt  
6 him because you can't be here in the morning?

7 MR. MOORE: I could be here in the afternoon.

8 THE COURT: I'm sure the defense will accommodate you.

9 MS. BORCHETTA: Your Honor, our understanding,  
10 actually that this witness might have some unavailability in  
11 the next few days.

12 MR. MARUTOLLO: I believe he -- correct me if I'm  
13 wrong, Sergeant Hegney -- I believe he could be available  
14 tomorrow. But outside of that I think --

15 THE COURT: Can you finish up tomorrow afternoon?

16 THE WITNESS: Yes.

17 THE COURT: So what time do you think you'll be in  
18 court, Mr. Moore?

19 MR. MOORE: After the lunch break.

20 THE COURT: After the lunch break. So we'll pick up  
21 with this witness at 2:00.

22 So who are we starting with at 10:00?

23 MR. CHARNEY: Professor Fagan.

24 THE COURT: We'll start at 10:00 with him.

25 MR. MOORE: Do you want me to continue, or do you want

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1 to --

2 THE COURT: I think it would probably be wise to stop  
3 because I've got to get where I got to get in time.

4 So we'll see you at 2:00 tomorrow. I'm sure we'll  
5 finish between 2:00 and the end of the -- yes, we'll finish.  
6 But we wouldn't finish today anyway. Just no way.

7 Go ahead. You're excused.

8 (Witness excused)

9 You can just leave it there.

10 Well I have you for a minute. Do the plaintiffs have  
11 a sense of the totality of this thing? Are we on schedule,  
12 behind schedule, ahead of schedule, off schedule? Where are we  
13 sort of?

14 MS. BORCHETTA: Your Honor, with your permission we'd  
15 like to give you more information about that tomorrow because  
16 we're working to predict the remaining schedule of our  
17 witnesses and we were hoping to do that by today but we weren't  
18 able to and we're hoping now to do that by tomorrow morning.

19 But we believe that we are on -- we are on schedule  
20 for the amount of weeks that we initially anticipated.

21 THE COURT: Which was what?

22 MS. BORCHETTA: Six.

23 THE COURT: Just for the plaintiffs' case? Not for  
24 the total trial?

25 MS. BORCHETTA: Correct, your Honor.

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1 MR. MOORE: Well, a lot of the examination --

2 THE COURT: Yes, I realize. Still I probably  
3 misunderstood. I thought the total trial was six weeks.

4 Assuming that plaintiffs are on schedule for a total  
5 of six weeks, how much after that does the defense think it  
6 might go?

7 MS. GROSSMAN: I think we'll be in a better position  
8 once we see what the plaintiffs have left to do.

9 THE COURT: Of course.

10 MS. GROSSMAN: But even with just the witnesses -- I'm  
11 sorry -- we could have two weeks, anywhere between one and two  
12 weeks, but it depends.

13 THE COURT: Yes, of course.

14 MS. GROSSMAN: I'm thinking to be safe, about two  
15 weeks.

16 MR. MOORE: The estimate in the pretrial order was  
17 three to five days.

18 THE COURT: We agreed to the 29th and the week of  
19 the 6th of May you're thinking. So maybe the earliest we can  
20 wrap up is the 10th of May, if you need two full weeks after  
21 they finish three more weeks.

22 MS. GROSSMAN: That may be a possibility.

23 THE COURT: Because you all know I was supposed to  
24 start a major trial on May 6. So I have to alert those people  
25 to the realities. Sounds more like May 13.

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Hegney - direct

1           Okay. Thank you. See you tomorrow at 10:00.  
2           (Adjourned to April 3, 2013 at 10:00 a.m.)  
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INDEX OF EXAMINATION

Examination of:	Page
STEVEN MAURIELLO	
Direct By Mr. Moore . . . . .	.1828
Cross By Ms. Grossman . . . . .	.1922
RICHARD HEGNEY	
Direct By Mr. Moore . . . . .	.1936

PLAINTIFF EXHIBITS

Exhibit No.	Received
298 . . . . .	.1845
290 . . . . .	.1917
348 . . . . .	.1951
248 . . . . .	.1962
250 . . . . .	.1967
251 . . . . .	.1972

