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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

8 New York, N.Y.
9 March 21, 2013
9 10:05 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

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1 (Trial resumed)

2 PEDRO SERRANO, resumed.

3 MR. MOORE: Good morning, Judge.

4 DIRECT EXAMINATION (Cont'd)

5 BY MR. MOORE:

6 Q. Officer Serrano, I remind you you are still under oath.

7 A. Yes, sir.

8 Q. If you could keep your voice up so that everybody can hear
9 you.

10 At the end of the day, we were talking about the fact
11 that you believe that there were quotas imposed with regard to
12 your enforcement activity while you have been in the police
13 department, correct?

14 A. Yes.

15 Q. We talked about when you believed it started.

16 What I want to ask you now is, how did you learn about
17 the existence of quotas?

18 A. It was physically imposed on me.

19 Q. Were there conversations or directives or orders that you
20 received from your supervisors with respect to that?

21 A. Yes.

22 Q. What kinds of things would they say to you, your
23 supervisors say to you that would give you the impression that
24 they were requiring a numerical number in terms of your
25 performance activities?

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1 A. One instance that I remember was with Lieutenant Doute, and
2 it was impact overtime, it was forced. Just having that impact
3 overtime was the retaliation for not meeting my quota. That
4 day --

5 Q. Let me stop you there. Why did you believe that was
6 retaliation?

7 A. My numbers were low, and I did not want the overtime, and
8 it was physically -- it was verbally told to me that you're
9 going to get this overtime.

10 Q. When you say your numbers are low, are you referring to
11 your numbers with regard to arrests, summonses and 250s?

12 A. The 1 and 20, arrests, summonses and 250s.

13 Q. In terms of your radio runs or other duties you performed
14 as a police officer, did anybody ever tell you your numbers
15 were low in that regard?

16 A. Never mentioned it.

17 Q. What did Lieutenant Doute tell you?

18 A. Well, during roll call, he says that he wanted five, five
19 and five.

20 Q. Say that again.

21 A. He wanted five, five and five.

22 Q. What did that mean to you?

23 A. What it meant to me is he wanted five C summonses, five
24 verticals and five 250s.

25 Q. This was for one tour?

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Serrano - direct

- 1 A. For one tour.
2 Q. What are C summonses again?
3 A. C summonses are criminal court summonses, returnable to
4 criminal court.
5 Q. What are verticals? Tell us what verticals are.
6 A. Verticals is you enter a building, you go to the top floor,
7 the roof, you check the top floor, you check all staircases,
8 every floor, to make sure there is no one hanging out, there is
9 no crime, and when you reach the bottom -- before you go up,
10 most of the time you tell central you're going up. And when
11 you leave, you tell central you're done.
12 Q. So that's a vertical, correct?
13 A. That's a vertical.
14 Q. Now, you called it an impact roll call. Is that a roll
15 call that's different from the regular tour roll calls?
16 A. Yes, it is.
17 Q. The regular tour roll calls, they happen before you go out
18 on patrol, correct?
19 A. Yes.
20 Q. And you typically would patrol in a --
21 MS. COOKE: Objection. He is leading the witness.
22 MR. MOORE: This is foundation.
23 THE COURT: It is foundation.
24 Q. How would you typically conduct your tour on a regular
25 tour?

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1 A. The roll call -- there are three roll calls. There is the
2 midnight roll call, there is the day tour roll call, and there
3 is a 4 to 12 roll call. I am the 4 to 12 roll call on a normal
4 basis. For this overtime, it overlaps the midnights and 4 to
5 12s, and that has a separate roll call. And that roll call is
6 when Lieutenant Doute, during impact overtime, forced impact
7 overtime, told me that I needed to write five, five and five.
8 In fact, he mentioned it about three times, maybe more, and I
9 tried to clarify what he meant.

10 Q. Well, we actually will play that recording in a minute.

11 Are there any other examples of where you were told or
12 given the impression by your supervisors that they required you
13 to do a certain number of -- achieve a certain number with
14 regard to your enforcement activity?

15 A. Yes. The second time was with Lieutenant Barrett. She is
16 the integrity control officer. During impact overtime, again,
17 which was forced, I was told to go out there and write five
18 summonses, five criminal summonses, in a specific area, within
19 a specific time and a specific place.

20 Q. Were you told to do that focusing on only a certain type of
21 event or a certain type of alleged criminal activity?

22 A. She narrowed it down to, don't write anybody that's a
23 dog -- walking a dog without a leash. Do not write elderly
24 people, I think she said 65, I can't remember. She narrowed it
25 down that I couldn't write certain summonses that she did not

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1 want, or the department did not want. And she told me I have
2 to write it within a specific area.

3 Q. Now --

4 A. I have something else.

5 Q. I'm sorry?

6 A. She said also that, on both occasions, that the supervisors
7 will check up on you to make sure I have that activity.

8 Q. Let me ask you some questions now with regard to some of
9 the audio recordings you have made.

10 Beginning in 2010, and continuing to the present, did
11 you make audio recordings of statements by your supervisors?

12 A. Yes.

13 Q. Why did you do that?

14 A. Well, I'm a police officer, and if there was something
15 going wrong, and I knew it was wrong, and I knew if I would say
16 something to anyone, they wouldn't believe me, because the
17 person who I am accusing has higher rank. You have deputy
18 inspectors, you have lieutenants, captains, sergeants, they are
19 all above police officers. They are asking me to do something
20 that's illegal in my opinion. And I was worried. No one is
21 going to believe me. So I was hoping that with the recordings,
22 with documenting it in my memo book and doing a bunch of
23 things, that someone eventually will believe me.

24 Q. When you say something illegal, what are you referring to?

25 A. Stopping people illegally, arresting people illegally,

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1 quotas, downgrading felonies. There's a lot of things that
2 they do -- I mean they, I mean the hierarchy of NYPD -- that
3 puts a police officer, his job in jeopardy. And if we don't do
4 it, they throw the book at us, the book meaning the patrol
5 guide, and they retaliate.

6 Q. Did anyone tell you to make those recordings?

7 A. No.

8 Q. Did you consult with anybody before you decided to make
9 those recordings?

10 A. No.

11 Q. So that's something you decided to do on your own, correct?

12 A. Yes.

13 Q. What was, generally, the subject matter of those
14 recordings?

15 A. Generally, the subject matter of the recordings are illegal
16 quotas -- illegal quotas, which is arrests, summonses, 250s.

17 Q. With what kind of equipment did you make these recordings?

18 A. The first two were made on my iPhone.

19 Q. Your iPhone?

20 A. My iPhone. The next one was made on my Galaxy III phone,
21 Samsung.

22 Q. Were you personally present when those recordings were
23 made?

24 A. Yes.

25 Q. Did you alter those recordings in any way after you made

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1 those recordings?

2 A. I didn't want anybody to know.

3 Q. I want to play for you what is the first track on Exhibit
4 297, which is a recording made on June 30, 2010.

5 Why don't we just play that first track.

6 (Audiotape played)

7 Q. Do you hear voices on that?

8 A. That's Lieutenant Barrett, and the first number she gave me
9 was the return date.

10 Q. The other voice was your voice, correct?

11 A. Yes.

12 Q. Lieutenant Barret was who?

13 A. At the time, I believe --

14 Q. Would you lean closer to the microphone?

15 A. At the time, I believe she was the integrity control
16 officer of the 40th Precinct.

17 (Audiotape played)

18 MR. MOORE: What time is that?

19 MS. YOUNG: 1:21

20 MR. MOORE: Keep playing.

21 (Audiotape played)

22 Q. Did you hear Lieutenant Barrett say "looking for five"
23 there?

24 A. Yes.

25 Q. What did you understand that to mean?

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1 A. Looking for five C summonses.

2 MR. MOORE: That was at what time?

3 MS. YOUNG: 1:27.

4 MR. MOORE: Continue to play.

5 (Audiotape played)

6 Q. St. Mary's Park was a park within the 40th Precinct?

7 A. Yes.

8 Q. When you heard her say "go crazy there, write everything in
9 there," what did you understand that to mean?

10 A. Well, she gave me -- she said, don't write out of the zone.
11 St. Mary's Park is in the zone. If there is a crime spike
12 concern area, they want the C summonses to reflect the crime
13 spike so they can say, the department, or the deputy inspector,
14 that we addressed the condition.

15 MR. MOORE: What time is that?

16 MS. YOUNG: 2:13.

17 MR. MOORE: Continue.

18 (Audiotape played)

19 MR. MOORE: What time is that?

20 MS. YOUNG: 4:07.

21 Q. You heard her say looking for fives again?

22 A. Looking for five again.

23 Q. What else did you hear of significance on that tape?

24 A. It shouldn't be a problem, and I will be checking up on
25 you.

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1 Q. What did you understand that to mean?

2 A. Well, make sure you get five, because I am going to check
3 up on you. And if you don't, I probably would get another
4 impact overtime, and this time I will be sitting with the boss.

5 Q. During the tour she would be checking up on you?

6 A. During the tour. Somewhere down the line she is going to
7 check up on me.

8 Q. I want to go to the second track on that Plaintiffs'
9 Exhibit 297. This is a recording of a conversation on July 31,
10 2010.

11 We will start the tape. Go ahead.

12 (Audiotape played)

13 Q. Did you hear the term "five, five and five"?

14 A. Yes. He said it twice.

15 Q. Who is that?

16 A. That's Lieutenant Doute. He is retired right now.

17 Q. Who at the time was Lieutenant Doute?

18 A. I am not 100 percent sure, but he might have been a
19 midnight platoon commander. I'm not too sure.

20 Q. This is an impact overtime roll call, correct?

21 A. Yes. This is impact overtime roll call. Again, forced
22 impact overtime roll call with Lieutenant Doute.

23 Q. Again, this recording was made with your iPhone?

24 A. iPhone.

25 Q. Do you recall how you engaged the iPhone at that point to

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1 make the recording?

2 A. Well, there is an app for that.

3 Q. Pardon?

4 A. There is an app for it. You just open it up. It's a
5 recording device. You hit record and it records.

6 Q. How would you do that? Would you do that while you're
7 standing there with the other officers or would you go off to
8 the side?

9 A. You go off to the side somewhere. As soon as you see that
10 the lieutenant comes in, you hit record, put it in your pocket,
11 and whatever happens happens.

12 MR. MOORE: What time was that?

13 MS. YOUNG: 28 seconds.

14 Q. What did you understand the five, five, five to mean?

15 A. Five C summonses, five verticals, and five 250s.

16 Q. For that tour?

17 A. For that tour.

18 MR. MOORE: You can play it again.

19 (Audiotape played)

20 MR. MOORE: What time is that?

21 MS. YOUNG: 1 minute, 3 seconds.

22 Q. Did you hear in that portion of the recording the word
23 "status check"?

24 A. Yes. The lieutenant instructed the sergeant to do a status
25 check somewhere during the night. So he would take the -- he

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1 would ask you how many summonses you wrote to make sure you
2 wrote your five, or your five, five, five.

3 Q. So it was a status check to see if you were getting your
4 numbers, correct?

5 A. Yes.

6 Q. Who was the sergeant that the lieutenant instructed, if you
7 recall?

8 A. At this time, although it was Sergeant Silver, he is
9 actually a decent supervisor and a real good person.

10 MR. MOORE: I would move the admission of Exhibit 297.

11 THE COURT: Is that the recording?

12 MR. MOORE: Yes. The recording of one exhibit with
13 the two tracks on it.

14 MS. COOKE: No objection.

15 THE COURT: 297 is received.

16 (Plaintiffs' Exhibit 297 received in evidence)

17 Q. Now, is it fair to say, Officer Serrano, that you failed to
18 meet the numerical standard that was given to you by some of
19 your supervisors?

20 A. I failed to meet the quota, yes.

21 Q. As a result of that, was there any effect on your status
22 within the police department?

23 A. Yes.

24 Q. What was the effect?

25 A. Well, because I failed to meet the quota, starting from

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1 2007 on, the retaliation got worse and worse. It first started
2 off with the -- when I have a day off, they would mandate, they
3 would give me forced overtime. They would give me low
4 evaluations, yell at me, deny my days off. So far that is what
5 I remember.

6 Q. Speaking about the evaluations, did the overall rating on
7 your evaluations begin to fall at that point?

8 A. Yes.

9 Q. Within the police department, officers are evaluated on a
10 general number from 1 to 5, is that correct?

11 A. Correct.

12 Q. And before you started having the problem with the quotas,
13 what kind of numbers were you getting in your overall
14 evaluation?

15 A. I was getting 3.5 and 4s.

16 Q. Afterwards, did those numbers start to go down?

17 A. Yes. 5 being excellent and 1 being poor.

18 Q. In 2011, what was your overall rating?

19 A. 3.

20 Q. What about 2012?

21 A. 3.

22 Q. Did you appeal that 2011 evaluation?

23 A. Yes, I did.

24 Q. What does that involve?

25 A. When you feel that there is something wrong with your

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- 1 evaluation, you have the right to meet with the rater, and the
2 rater usually is the executive officer or the deputy inspector,
3 because you're being rated by your sergeant and your
4 lieutenant.
5 Q. So you would meet with the supervisor of those folks,
6 correct?
7 A. Correct.
8 Q. That would either be the executive officer of the precinct
9 or the commanding officer, correct?
10 A. Correct.
11 Q. Did you meet with either of those two individuals with
12 regard to your 2011 evaluation?
13 A. Yes, I did.
14 Q. Do you recall having a conversation with one of those
15 individuals in June of 2011?
16 A. Yes.
17 Q. Who was that that you had a conversation with?
18 A. Captain Materasso, the executive officer.
19 Q. Do you remember the date that occurred?
20 A. I don't remember the date.
21 Q. Is there somewhere where the date would be written down
22 somewhere?
23 A. Yes. I submitted some testimonial evidence.
24 Q. Would it be in your memo book?
25 A. Yes.

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1 Q. Do you know where your memo books are right now?

2 A. Right now, IAB has about eight to ten of them.

3 Q. That would cover the period including the period June 2011?

4 A. Actually, it's from 2007 all the way to -- up to, I think,
5 January.

6 Q. Of?

7 A. 2013. That's an approximation.

8 Q. At some point you had, in June, you're not sure of the
9 exact date, you had a conversation with Captain Materasso where
10 you were discussing the appeal of your evaluation?

11 A. Correct.

12 Q. Who was present besides yourself and Captain Materasso?

13 A. It was Captain Materasso, Sergeant Monroe and myself.

14 Q. Sergeant Monroe is who?

15 A. He is my immediate patrol supervisor.

16 Q. Where did it take place?

17 A. It took place inside the executive officer's office.

18 Q. At the 40th Precinct?

19 A. At the 40th Precinct.

20 Q. Why were you appealing your evaluation?

21 A. Well, several reasons. Before that I had a 4.0, and as
22 soon as this new regime came in, which is Captain Materasso,
23 Deputy Inspector McCormack, Lieutenant Albin, and Lieutenant
24 Batelli, my evaluation dropped as a result of me not meeting
25 the quota. So when I saw 3, I knew I had to speak up because

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1 the next thing they do, according to the patrol guide, is that
2 they hit you with a 2.5 and that is not good. Now they can put
3 you on monitoring.

4 Q. Monitoring?

5 A. Monitoring.

6 Q. Performance monitoring?

7 A. Performance monitoring. I was worried, and I wanted to
8 make sure exactly what she wanted me to do so I don't go below
9 that number.

10 Q. So you had a conversation with Captain Materasso about why
11 you got a 3 on that evaluation, correct?

12 A. Yes. Essentially, I appealed my evaluation in her office
13 and that was the conversation.

14 Q. Can you tell us what she said to you about why you received
15 a 3 on your evaluation?

16 A. She said that -- first of all, on my evaluation there is
17 about 20-something points and it describes my duties as a
18 police officer. And I discussed all the points that were
19 written on the actual appeal.

20 MS. COOKE: Objection. This is nonresponsive to the
21 question. Move to strike.

22 THE COURT: He did ask you specifically about what she
23 said about why you received a 3. I guess you were giving
24 background to that, but you didn't get to what she said. Could
25 you tell us what she said about why you received a 3?

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1 A. She gave me a 3, and she said that 50 percent of my grade
2 or mark was arrests, 250s, and the summonses. So it was the
3 arrests, 250s and the summonses, which as soon as she said
4 that, I immediately responded that that was a quota and that it
5 wasn't written anywhere.

6 Q. Did she respond to that when you said that's a quota?

7 A. Yes. When I said that was a quota, she responded that she
8 could do that because of the operation order. I believe it's
9 Operation Order 52.

10 Q. Had you known at that point about Operations Order 52?

11 A. I had no idea it existed.

12 MR. MOORE: One second, Judge.

13 Q. Did you tell her that you believed that that quota was
14 illegal?

15 MS. COOKE: Objection, your Honor. Leading.

16 THE COURT: I will allow it.

17 Did you happen to say that?

18 A. I said specifically that it's a quota and it's illegal.

19 Q. What did she say to you when you said it was a quota and it
20 was illegal?

21 A. She leaned back, smirked, and said that she can do that.
22 Those were her words. "I can do that" she said. And I was
23 perplexed at the time. I had a stupid look on my face. She
24 said it is Operation Order 52. And that's what happened.

25 MR. MOORE: Can you pull up Exhibit 285?

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1 Q. Officer Serrano, you went -- withdraw that.

2 Did you do anything to try to obtain Operations Order
3 52?

4 A. Immediately when she said that there was an operation order
5 that gave her permission to do it, after it was over I wanted
6 to leave the evaluation and look up this operation order before
7 I signed my evaluation. But she said -- she forced me to sign
8 it. She said, you have to sign it now. So she is a captain
9 and I didn't -- I am already on her bad side so I didn't want
10 to go too far. So I signed it, and then I did some research
11 and I found it.

12 MR. MOORE: Judge, up on the screen is Plaintiffs'
13 Exhibit 285, which is Operations Order 52. I would move the
14 admission of that exhibit in evidence.

15 THE COURT: I assume there is no objection to that.

16 MS. COOKE: No objection.

17 THE COURT: Exhibit 285 is received.

18 (Plaintiffs' Exhibit 285 received in evidence)

19 THE COURT: Is there a particular portion you want me
20 to focus on?

21 MR. MOORE: I am going to direct him to it now.

22 Q. I want you to focus on the first paragraph for the moment.

23 You read that paragraph when you looked at Operations
24 Order 52, correct?

25 A. Multiple times.

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- 1 Q. It refers to the term "proactive enforcement activities."
2 Do you see that?
3 A. Yes. It's in bold.
4 Q. What specific proactive enforcement activities are referred
5 to in this paragraph? And if I could direct your attention to
6 the last line of that.
7 A. It says summonses, stopping, questioning of suspicious
8 individuals, and the arrests of criminals.
9 Q. So the three specific things that are mentioned with regard
10 to proactive enforcement activities are summonses, stop and
11 question, and arrests, correct?
12 A. That's correct.
13 Q. If you could focus now on paragraph 3. If you could look
14 at the second line in paragraph 3. Can you read that line?
15 A. Starting with "to provide"?
16 Q. Paragraph 3, the second line.
17 The second sentence. I'm sorry.
18 A. "To provide"?
19 Q. Yes.
20 A. "To provide guidance to police officers concerning their
21 duties. Department managers can and must set performance
22 goals."
23 Q. Now, as a police officer, how did you interpret that?
24 A. It says, quota, quota, quota, quota and quota.
25 Q. Again, following that, there is a mention of arrests,

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1 summonses and stops, right?

2 A. Correct.

3 Q. Now --

4 A. May I add something?

5 Q. Sure.

6 A. It says self-initiated arrests, which Deputy Inspector
7 McCormack said over and over again, meaning that if you make an
8 arrest and he doesn't approve of it, and if it wasn't
9 self-initiated, then it doesn't count.

10 Q. It doesn't count as what?

11 A. As meeting his quota. For instance, if there is a security
12 holding, someone stopped somebody in a Rite Aid and got him for
13 shoplifting, a radio run, I show up and arrest him, he did not
14 consider that a self-initiated arrest.

15 Q. So what does the term "self-initiating arrest" mean, as you
16 understand it?

17 A. As I understand, it is whatever he feels is a
18 self-initiated arrest is a self-initiated arrest. It's
19 something that is not given to you through central. It's
20 something that you go out there and you proactively search for
21 it.

22 Q. So that would exclude all the arrests following a radio
23 run?

24 A. Correct. He doesn't believe that radio runs and other
25 things are --

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1 MS. COOKE: Objection to the extent he is testifying
2 about the belief of another person.

3 A. These were actual words spoken to me.

4 THE COURT: Did anybody tell you that responding to a
5 radio run is not part of the performance goals?

6 THE WITNESS: Specifically told by supervisors that
7 radio runs and domestics and all the paperwork that I do is not
8 what they are looking for.

9 Q. So they are looking at self-initiated arrests, stops and
10 summonses?

11 A. Before it was any arrest. Now it's self-initiated arrests,
12 and stop, question and frisk and summonses. And even certain
13 summonses don't count also. I was told specifically by a
14 supervisor certain summonses don't matter.

15 Q. What summonses matter and what summonses don't based upon
16 what you have been told?

17 A. You heard the lieutenant, she said that she didn't want any
18 summonses referring to dogs, bicycles on the sidewalk. She
19 limit the amount of summonses that I could summons.

20 Q. Meaning the types of activity that she was looking for
21 summonses from?

22 A. Correct.

23 Q. As a patrol officer, do you have a sense of how many, on
24 average, how many radio runs you would make in a month?

25 A. In a month? I have in a year a thousand -- you have to do

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1 the math.

2 Q. You don't have to do the math.

3 THE COURT: He was trying to do that. You
4 interrupted. What were you saying?

5 A. 2 to 300 a month. From 100 to 300 a month. It depends on
6 how many days I am patrolling at.

7 Q. So the fact that you may not be making self-initiated
8 arrests didn't mean you weren't busy?

9 A. No. I was very busy.

10 Q. Now, if you could go to the second page of this document,
11 paragraph 8. You see that paragraph 8, Officer Serrano?

12 A. Yes, I do.

13 Q. What does this relate to?

14 A. Police officer's monthly conditions impact measurement
15 report.

16 Q. Does this relate to the frequency with which officers are
17 supposed to now document their work in these categories?

18 A. Yes. It actually tells you how to fold it and where to put
19 it.

20 Q. When you say how to fold it and where to put it, what do
21 you mean?

22 A. It says right here, "Uniformed members of service will
23 ensure that the police officer's monthly conditions impact
24 measurement report is folded neatly as to minimize any tears.
25 Uniformed members of service will document the two primary

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D3L8FLO1 Serrano - direct

1 identified conditions to be addressed during the tour on the
2 report."

3 Q. This document documenting your activity is something you
4 would now be required to carry around with you on a daily
5 basis?

6 A. Correct. You must have it with you at all times.

7 Q. How did you as a police officer interpret that kind of
8 requirement?

9 A. This is how they check up on you.

10 Q. Is there anything about the frequency of checking up on you
11 that affected your job in any way?

12 A. Yes. It definitely did.

13 Q. How did it do that?

14 A. If this is on me all day and I have to keep a running tally
15 of my daily events, what is going to happen is when the boss
16 will show up, look at -- let's say I have a vacation. So the
17 first week I wasn't present, the second week I was sick. So I
18 had two more weeks to meet that quota. That pressure was
19 tremendous, to get that 1 and 20 and the 250s was tremendous.

20 Q. So this is evidence of a sort of increased pressure on
21 police officers to meet these quotas, correct?

22 A. Correct.

23 Q. Now, if you could turn to the fourth page of this document,
24 and I want to direct your attention to paragraphs 14 and 15.

25 Why don't you read those to yourself and then I want

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1 to ask you a question about it.

2 A. OK.

3 Q. You have looked at paragraph 14 and 15, correct?

4 A. I'm sorry. I just did 14.

5 Q. Look at 15 too.

6 A. OK.

7 Q. Is it fair to say that -- well, let me ask you this. How
8 do you interpret paragraph 14 and 15 in terms of the effect on
9 your work as a police officer?

10 A. It puts a lot of stress on my job.

11 Q. Why is that?

12 A. This is a recipe on how to get me fired. It starts off
13 with there is a quota, and then afterwards it says that they
14 are going to check up on me, and if they don't, how they are
15 allowed to -- it says here the sergeant is allowed to help you
16 to meet the performance goal.

17 Q. So if you look at paragraph 15, the first sentence there,
18 it says, "Uniformed members of the service who remain
19 ineffective, who do not demonstrate activities impacting on
20 identified crime and conditions, or who fail to engage in
21 proactive activities, despite the existence of crime conditions
22 and public safety concerns, will be evaluated accordingly and
23 their assignments reassessed," right?

24 A. Correct.

25 Q. What did that mean to you?

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1 A. If you don't meet the quota, we can do what we want with
2 you. We can change your tour. It says here, if you fail
3 to -- in fact, if you don't do the correct arrests or the
4 correct summons, because it says -- I read this as just crazy.
5 If you continue to fail, then they basically could punish you
6 in many ways.

7 Q. It was basically a threat of punishment, correct?

8 A. Yes.

9 MR. MOORE: One second, Judge.

10 If you could bring up Defendants' Exhibit C10.

11 Q. Before you, Officer Serrano, is a copy of your 2011
12 evaluation, is that correct?

13 A. Yes, it is.

14 MR. MOORE: Judge, this is Defendants' Exhibit C10,
15 which we would move into evidence.

16 THE COURT: Any objection?

17 MS. COOKE: No, your Honor.

18 THE COURT: C10 is received.

19 (Defendants' Exhibit C10 received in evidence)

20 Q. Is this the evaluation that you were referring to when you
21 say you had an evaluation in your discussions with Captain
22 Materasso?

23 A. Yes.

24 Q. Exhibit C10 is, I believe, a two-page document, is that
25 correct?

D3L8FL01 Serrano - direct

1 A. I don't know how many pages it is. It's probably two
2 pages.

3 Q. It's two pages. And this is the normal evaluation that
4 police officers get on a yearly basis, correct?

5 A. Correct.

6 Q. If you go back to page 1 for the moment, you see with
7 respect to 28 different categories there?

8 A. Correct.

9 Q. There is a rating, correct?

10 A. Correct.

11 Q. Is there anything in this exhibit that says, or this
12 evaluation that says how you do in terms of meeting your quota
13 would be 50 percent of your evaluation?

14 A. No, it's not here.

15 Q. Were you ever told by anybody in the police department that
16 your ability to meet a quota would constitute 50 percent of
17 your evaluation?

18 A. No. I'm sorry. Before or after?

19 Q. Before your conversation with Captain Materasso.

20 A. Before then, no. She was the first.

21 Q. In terms of your summons and arrest activity, what
22 performance area would that fall under?

23 A. It would be number 2, apprehension/intervention.

24 Q. There are other categories there, like community
25 interaction, correct?

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1 A. Yes.

2 Q. The first one?

3 Do you understand why you got a rating of 3 in
4 community interaction?

5 A. I believe most of this is wrong, except the physical
6 fitness, I will accept a 3.

7 Q. I wasn't going to mention that.

8 How would you judge your community interaction,
9 Officer Serrano?

10 A. Well, I think I go above and beyond when I deal with the
11 community. My experience as an officer has led me to be more
12 sympathetic, empathetic, towards the problems that I deal with
13 every day, the people.

14 Q. If you turn to the second page, there's some comments there
15 with respect to some of those categories that are mentioned on
16 the first page. Do you see that?

17 A. Yes.

18 Q. Under number 13, what does it say?

19 A. "PO Serrano adheres to the ethics of the department and
20 guidelines."

21 Q. What about number 21, in terms of your judgment, what does
22 it say?

23 A. "PO Serrano always demonstrates an ability to sound
24 decisions."

25 Q. Presuming that would have meant to make sound decisions?

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1 A. Correct.

2 Q. Category number 26, what does it say?

3 A. "PO Serrano handles sensitive situations with a care and
4 empathy."

5 Q. In the section for overall rater's comments, what does that
6 say?

7 A. "PO Serrano is competent police officer that has the
8 ability to be a leader."

9 MR. MOORE: Can you scroll down on that document,
10 please?

11 Q. Who is the reviewer who gave you that evaluation?

12 A. It's John Bucci. He is the lieutenant platoon commander
13 who was sent to the day tours. He was my lieutenant platoon
14 commander.

15 MR. MOORE: Can you scroll down further, please?

16 Q. There should be a section there for the reviewer to sign as
17 well, correct?

18 A. Yes.

19 Q. It doesn't appear to be there.

20 In other words, this was the evaluation that you were
21 appealing with Captain Materasso, right?

22 A. Yes.

23 Q. Now, did anything unusual happen in the course of this
24 conversation with Captain Materasso?

25 A. Yes.

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D3L8FLO1 Serrano - direct

1 Q. What happened?

2 A. Well, I sat there and Sergeant Monroe, who is again another
3 decent person and a good officer, boss, he -- or she received a
4 phone call.

5 Q. She meaning Captain Materasso?

6 A. Captain Materasso received a phone call while I was doing
7 the interview. And she interrupted the interview and she got
8 up and said, I need you to come with me. First she asked me,
9 Do you want to come with me? And I said, No. I have seen
10 certain things that she has done. I don't want to be around
11 her in any way. But she said, It is an order, you're coming
12 with me.

13 (Continued on next page)

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D319flo2 Serrano-direct

1 Q. So did you go with her?

2 A. I went with her.

3 Q. Where did you go?

4 A. I jumped into an unmarked vehicle. That's a police vehicle
5 that does not say NYPD on it. It just looks like a regular
6 car.

7 Q. Who was in the car?

8 A. It was myself and Materasso. Captain Materasso.

9 Q. What happened then?

10 A. As we were driving there she's explaining that she received
11 a phonecall and that someone was being watched and they need
12 some information. And so we went to somewhere on 143rd
13 Street between Morris and Alexander. And there were three
14 black individuals standing there.

15 Q. When you got to that location what did you observe besides
16 three black men or individuals?

17 A. Well --

18 Q. Were they men?

19 A. From my vision --

20 Q. I'm sorry. Were they men or women?

21 A. Male.

22 Q. All right.

23 A. From my point of view, again, it was a while but I believe
24 I was sitting in the passenger's side -- excuse me.

25 I could not see -- I could only see the upper portion

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Serrano-direct

1 of their body, which may be around their chest area because
2 there was a big gray electrical box in front of the housing
3 development. Plus there was parked cars. So I really couldn't
4 see the three clearly from head to toe.

5 Well, she stops the car. We both get out. I see that
6 she addresses the three individuals. So my training is to back
7 her up. I triangulated, which means that the purpose -- the
8 perpetrators are in front of us and the police officers are to
9 the side so we create a triangle. So we kind of box them in.

10 While she proceeds to talk to them, say how are you
11 doing, and then starts going through their pockets.

12 Q. Started searching?

13 A. She went inside their pockets. She put --

14 Q. That's a search, right?

15 A. Yes.

16 She went inside the pockets and pulled everything out
17 of their pockets. Put it on the gray electrical box -- I don't
18 know what that is -- and she did it to all three individuals.

19 While I'm sitting there I am thinking, Why are you
20 involving me in this. This is ridiculous.

21 She proceeds to go through each and every one of them,
22 pulls everything out of their pockets. Doesn't find anything.
23 Asked the questions.

24 While we're there, there's some people from the
25 housing development come down. I think it's an old couple.

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D319flo2 Serrano-direct

1 They start yelling at her: Why are you harassing them?

2 And then she gets very derogatory and starts saying
3 nasty things about them.

4 And I felt that she was putting them down because of
5 their race and that they were poor. That's just how I felt.

6 Q. What's the race of Captain Materasso?

7 A. She's female white.

8 Q. What happened then?

9 THE COURT: These three people? The three people?

10 THE WITNESS: The three males were three male black
11 youths. I would say somewhere between 20, fifteen to twenty,
12 somewhere around there. And they were all different looking.
13 One of them looked like he was coming from a baseball game.
14 The other one looks like he was just hanging out. And the
15 other one looked more of a more decent, you know, nicely
16 dressed.

17 Q. From what you observed, did you at any time in your own
18 mind form any belief that there was any reasonable suspicion to
19 stop, question, or frisk or search those individuals?

20 A. No. I didn't see any suspicious bulges, any suspicious
21 activity. They were three male blacks in front of what we call
22 the projects, housing development, having a conversation and,
23 you know, we ruined their day unfortunately.

24 THE COURT: What time was this roughly?

25 THE WITNESS: I'm going to -- I can't tell

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D319flo2 Serrano-direct

1 specifically but it's between 4:00 and 7:00 because it was
2 right after we did roll call. We do --

3 THE COURT: So late afternoon?

4 THE WITNESS: Yes.

5 Q. And that would have been in June, correct?

6 A. The same day as my evaluation.

7 Q. Yes. That was in June of 2012, correct?

8 A. Yes.

9 Q. So what happened then, Officer Serrano?

10 A. We got back in the car. And, again, I'm shaking my head
11 internally like I don't believe this.

12 We get back and she says they're being watched and
13 they needed some information. You know, she wrote down some
14 information. And we just drove away. Went back to the
15 evaluation where we finished it.

16 That stayed in my head for the rest of the evaluation.
17 Actually it was -- made me a little foggy there. But I didn't
18 want to sign the evaluation. Forced me to sign it. I signed
19 it. And then I looked up that operation order.

20 MR. MOORE: One second, Judge.

21 (Pause)

22 Q. All right. Officer Serrano, did there come a time in
23 February 2013 that you had a conversation with Deputy Inspector
24 McCormack?

25 A. Yes.

D319flo2

Serrano-direct

1 Q. And who is Deputy Inspector McCormack again?

2 A. He is the commanding officer of the 40 precinct.

3 Q. What was the purpose -- where did this conversation take
4 place?

5 A. In his office.

6 Q. And who was present during that conversation?

7 A. Deputy Inspector McCormack, Lieutenant Batelli who is the
8 operations lieutenant. My PBA rep Foster, and myself.

9 Q. And did you record that conversation?

10 A. I recorded that conversation on my Galaxy III phone.

11 Q. And did you do any -- you recorded it yourself? You
12 engaged the phone yourself?

13 A. Yes, I did.

14 Q. And it was in your possession at all times?

15 A. At all times.

16 Q. And did you alter that recording in any way?

17 A. No, I did not.

18 MR. MOORE: If we could play Plaintiffs' Exhibit 332
19 starting at 6:39. Actually just tee it up and I want to ask a
20 couple other questions.

21 Q. Officer Serrano, what was the purpose of your being in
22 Deputy Inspector McCormack's office that day?

23 A. I got another three on any evaluation.

24 Q. For 2012?

25 A. For 2012. And Captain Materasso said specifically to raise
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D319flo2

Serrano-direct

1 your numbers. And I did. If you look at my activity, I raised
2 it. And, again, 28 points. You know, if anything I was a
3 better officer than last year.

4 I got the same number, same three. And I was
5 perplexed. I needed answers why, you know, they're focusing
6 this onslaught on me.

7 Q. Now, just to set it in context. This was a conversation
8 you had with Deputy Inspector McCormack last month, correct?

9 A. Last month, correct.

10 Q. And this was -- had you done anything with respect to
11 complaining about quotas or how you were being treated prior to
12 this evaluation?

13 A. I'm sorry. I wasn't --

14 Q. Had you taken any step in the police department to complain
15 about these things that you talked about here prior to this
16 evaluation, prior to your conversation with Deputy Inspector
17 McCormack?

18 A. Yes. I've taken a lot of steps.

19 Q. What had you done prior to that point?

20 A. Prior to that evaluation, I wrote a complaint to EEOC
21 state. I've contacted IAB several times. And besides
22 complaining to my supervisors and coworkers about what's going
23 on.

24 Q. So you filed a complaint with the internal affairs bureau
25 about your -- about the issue of quotas and the fact that they

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Serrano-direct

1 were illegal?

2 A. Yes.

3 Q. And in your complaint with the EEOC did you mention also
4 the fact that your quotas were being imposed and you believed
5 they were illegal?

6 A. Yes.

7 Q. And so at least with respect to the internal affairs bureau
8 complaint, that was before the evaluation, correct?

9 A. Yes, yes. It was before the evaluations, yes.

10 Q. Let me ask you something. When an officer files an
11 internal affairs bureau complaint, in your experience, does the
12 command within the precinct you're in find out about it?

13 A. It's almost immediate.

14 Q. How is that -- how does that take place in your experience?

15 MS. COOKE: Objection, your Honor. He hasn't
16 established -- he said he's filed an IAB complaint other than
17 the one he's talking about.

18 THE COURT: Well he did say in your experience. I
19 mean I suppose the experience is one case.

20 It's one case?

21 MR. MOORE: Right.

22 THE COURT: So when you file your IAB complaint, what
23 happens within the precinct?

24 MS. COOKE: Thank you, your Honor.

25 THE WITNESS: Well what happened was I filed with IAB
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Serrano-direct

1 because he was retaliating with me. I felt like I was in a
2 shark tank and had multiple stab wounds and I was bleeding and
3 they were circling me.

4 What happened was after I made the complaint I got a
5 notification from the desk officer stating give your memo books
6 to Sergeant Monroe. And I didn't like that. I said even
7 though he's a good man, and a good boss, he's mentioned as, you
8 know, forcing me to do the quota. And so is the captain. And
9 so is the deputy inspector. It's all in my book. Because I
10 wanted to show that I -- I wanted as much proof as possible. I
11 want you to believe me. I put it in my book. I recorded it.
12 I did what I can with what I could.

13 But now you're telling me to give my book to the
14 sergeant that his name is on. So he's going to -- I can't say
15 what he's going to do but he can look through it. He gives it
16 to the ICO lieutenant.

17 Q. To your knowledge is that what would happen -- is that what
18 happened here, that Monroe provided your memo books to the ICO?

19 A. Yes. Because I tried to give it to the ICO directly. He
20 said no, give it to your sergeant. So -- to your immediate
21 sergeant. I said fine. I gave it to Monroe.

22 Before I gave it to him, I also called IAB and
23 explained to IAB that their names are on there. They're the
24 subject.

25 He said they're your boss. Whenever they want your

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1 book, you have to just give it to them.

2 And towards the end of that conversation there was a
3 laughter. Made me feel even worse. This was IAB, I felt,
4 laughing at me because I'm in some sort of trap.

5 So after I give it to them, it's really over because
6 they went up to the lieutenant.

7 From there, you know, I just kept hearing rumors from
8 people that, you know, they know, they know, what happened,
9 what happened? How does it get to police officers so quick?
10 So, you know.

11 Q. So when police officers in a precinct find out that
12 somebody has gone to IAB, what happens?

13 MS. COOKE: Objection, your Honor.

14 THE COURT: Again, I think you can --

15 MR. MOORE: In his experience.

16 THE COURT: I think he can only talk about his one
17 instance of filing with IAB so what happened to him.

18 MR. MOORE: Let me withdraw that question.

19 THE COURT: Okay.

20 Q. Did anything unusual happen with respect to you after you
21 filed that IAB complaint?

22 A. Yes. After I filed it, besides other people walking around
23 and pointing at me and putting their mouths close to their
24 lips, basically saying don't talk about this guy. And I'm not
25 talking about other police officers. I'm talking about my

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1 situation. Not anybody else. It's just what they're doing to
2 me.

3 And anyway -- and also they put rat stickers on my
4 locker. And they shook it so that the contents were -- it was
5 all messed up. But at least the stickers, you know, they were
6 cute.

7 Q. So that's the framework -- that was the lay of the land
8 when you went and had this conversation with Deputy Inspector
9 McCormack in February of 2013, correct?

10 A. Yes.

11 Q. Again, this is a conversation where you're appealing your
12 evaluation, correct?

13 A. Yes the sole purpose for this conversation was to appeal my
14 evaluation.

15 Q. And what was -- and with regard to that, what were you
16 trying to do or to discuss with captain -- with Deputy
17 Inspector McCormack?

18 A. I was just trying to show him how I was a better officer,
19 how I met what Captain Materasso told me. I did exactly what
20 she wanted. And if you look at it, I almost doubled
21 everything. I almost doubled everything except the 250s. I
22 think that month I made the same amount. But last year, the
23 year before that I think I did five. I'm not too sure. And
24 then this month I did five.

25 Q. This year you mean?

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1 A. This year I also did five.

2 So I mean everything went up. And the 250s stayed the
3 same but I was only credited for two on that evaluation.

4 Q. We'll hear the conversation in a minute. But in that
5 conversation was there any discussion of all these performance
6 areas or -- that are listed in the evaluation form?

7 A. No.

8 Q. What was the discussion about?

9 A. It was -- he briefly said you did -- you had -- he said
10 nine arrests. That's great. Or good. I forgot the word he
11 used. Then he said you had the summonses, he went through each
12 one of them and praised them and said okay, good, not bad, or
13 whatever. Didn't like the type of summons that I wrote, the B
14 summonses because they were correctable. He wanted more
15 hazardous. So he didn't like the fact that -- I don't like to
16 hurt the public so I -- I try to give them summonses so that
17 they can fix it and it doesn't hurt them.

18 Q. Officer Serrano, with regard to community interaction,
19 vehicular offenses, handling specific offenses, police
20 interaction, vehicle operations, was there any discussion of
21 those categories?

22 A. No.

23 Q. Why don't we start the tape now at 6:38.

24 MR. MOORE: Hold on one second. Judge, could I get
25 the witness more water.

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1 THE COURT: Sure.

2 THE WITNESS: I'm sorry to interrupt.

3 THE COURT: That's okay.

4 MR. MOORE: Go ahead.

5 (Audiotape played)

6 MS. BORCHETTA: Sorry, your Honor.

7 We've misplaced the proper CD. That was the CD
8 related to another witness, if we could just have one moment.

9 THE COURT: Okay.

10 MR. MOORE: While they look for it, I'll go on.

11 THE COURT: Okay.

12 MR. MOORE: Sorry, Judge.

13 Q. Let's -- we're going to get back to that, Officer. I
14 apologize to the court. While we look for that disk.

15 Let me ask you about a -- communications in any other
16 forms directing you to fulfill quotas.

17 A. Yes.

18 Q. Beside what we've talked about so far.

19 A. Yes.

20 Q. Can you give me an example?

21 A. Sergeant Monroe -- well he said he lost my monthly sheet
22 and to text him my activity. So I text him how many radio runs
23 and summonses. And he texted back, after I texted him -- I
24 wrote my activity for him. He texted me back. He said you
25 need more 250s.

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1 Q. And that was a?

2 A. Text on my iPhone.

3 Q. On your -- was it on your iPhone or on your Galaxy?

4 A. My iPhone.

5 Q. And he texted you and then you responded to him?

6 A. He texted me.

7 Q. And then you responded and he responded?

8 A. Exactly.

9 MR. MOORE: Can you pull up Plaintiffs' Exhibit 296.

10 Q. Before you, Officer Serrano, is Plaintiffs' Exhibit 296.

11 Can you identify this.

12 A. That is -- that's the text message Sergeant Monroe sent me.

13 Q. How did you -- how were you able to get a picture of this
14 text message?

15 A. The iPhone has a nice little thing where you hold the
16 control button and the top button, you squeeze them at the same
17 time, it will take a picture of your screen. It doesn't take a
18 picture of, you know, what came before or after, but whatever
19 you have on that screen, it will take a picture of it.

20 Q. And you did that on November 5, 2012, correct?

21 A. Yes.

22 Q. Or sometime after presumably 9:51 p.m., right?

23 A. Yes.

24 Q. And Sergeant Monroe was your squad supervisor, correct?

25 A. Correct.

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1 Q. And did you -- before you took a picture of it did you
2 alter the screen in any way?

3 A. No.

4 MR. MOORE: Judge, move the admission of Plaintiffs'
5 Exhibit 296.

6 MS. COOKE: No objection, your Honor.

7 THE COURT: 296 received.

8 (Plaintiffs' Exhibit 296 received in evidence)

9 Q. The first text there, can you just read that?

10 A. Upper right-hand corner?

11 Q. Yes.

12 A. Fourteen days on patrol. 109 radio runs.

13 THE COURT: Who wrote that?

14 THE WITNESS: I wrote that.

15 THE COURT: You wrote that?

16 THE WITNESS: Yeah. The colorful one, the greenish,
17 that would be what I put and --

18 THE COURT: Did you send that?

19 THE WITNESS: Yes.

20 THE COURT: You sent it to?

21 THE WITNESS: I sent it to him, to Sergeant Monroe.

22 THE COURT: On that same day and time?

23 THE WITNESS: Yes.

24 THE COURT: And then he responded with "you need to do
25 more 250"?

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1 THE WITNESS: That's correct. In fact above it, you
2 can't see it, but it's more of my activity. And I think I left
3 out the radio runs so I text him -- I texted him again. That
4 that's what I did. And then he put you need more 250s.

5 Q. So is this for October presumably or some month before
6 November, correct?

7 A. No. It's -- it says it right there, November 5.

8 Q. But the 14 days on patrol, 109 radio runs, is that for the
9 month before?

10 A. Previous month. October.

11 Q. And so on that day -- on that month you were 14 days on
12 patrol, correct?

13 A. That's proximate only because I was going through memory --
14 my memory just --

15 Q. But it says 14 days on patrol?

16 A. I wrote 14 days on patrol. 109 radio runs. It was an
17 approximation because he lost my monthly and I was doing this
18 just out of the top of my head.

19 Q. From your memory?

20 A. Right.

21 Q. And his response was you need to do -- to do more 250,
22 right?

23 A. Yes.

24 Q. And a 250 meaning stop and frisk?

25 A. Stop, question, and frisk.

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D319f1o2 Serrano-direct

1 Q. And you responded okay?

2 A. Okay.

3 MR. MOORE: I think we're ready to play that tape,
4 Judge.

5 Beginning at 6:38.

6 (Audio recording played).

7 MR. MOORE: Stop. What time is that?

8 MS. YOUNG: 6:38.

9 Q. Whose voice is that?

10 A. Deputy Inspector Christopher McCormack.

11 Q. He's saying we're here for the appeal?

12 A. Correct.

13 Q. And that's the appeal of your evaluation, right?

14 A. Correct.

15 (Audio recording played)

16 MR. MOORE: Stop there.

17 Q. That's your voice, right?

18 A. That's me speaking.

19 Q. You're referring to the conversation you had had with
20 Captain Materasso in June of 2012, correct?

21 A. Correct.

22 MR. MOORE: What time is that?

23 MS. YOUNG: 7:27.

24 MR. MOORE: Go ahead.

25 (Audio recording played)

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D319flo2

Serrano-direct

1 MR. MOORE: Stop it there. What time.

2 MS. YOUNG: 9:33.

3 Q. You heard a third individual speak. Who is that?

4 A. That is the Lieutenant Batelli operation coordinator.

5 Q. For the 40th precinct?

6 A. For the 40th precinct.

7 MR. MOORE: Go ahead. Continue.

8 (Audio recording played)

9 MR. MOORE: What time?

10 MS. YOUNG: 10:07.

11 Q. Now you heard Deputy Inspector McCormack say the XO talked
12 to you about your conditions, not your activity?

13 A. Yeah, I heard it.

14 Q. Is that correct?

15 A. No. She spoke to me specifically about my activity. She
16 did mention, which at the time I didn't remember, she did
17 mention precinct conditions also.

18 Q. But was -- how much of that was part of that conversation,
19 the conditions?

20 A. Precinct conditions, it was just quick. She just mentioned
21 it. But the bulk of it was my activity.

22 MR. MOORE: Continue again.

23 (Audio recording played)

24 MR. MOORE: Stop. What time is that?

25 MS. YOUNG: 11:38.

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D319flo2

Serrano-direct

1 Q. Now what did you mean when you said that you would talk to
2 them first and not just -- what did you mean by that?

3 A. I meant that everyone should be treated as human beings.
4 And I see that they're blocking the pedestrian traffic. I see
5 people trying to exit the store. And they're in the way. So I
6 go up to them and I ask them: Fellows, I need you to leave.
7 And I tell them why I need to you leave. I give them that
8 choice of leaving or being summonsed. So they leave.

9 And I say further that I leave, I go around the block
10 a couple of times, and I come back to see if they actually did
11 what I asked them to do. As a human being. With respect. And
12 most of the times -- almost all the time they do it. They just
13 move. Or they go somewhere else.

14 Q. And so that's how you approach your activities on the
15 street as a police officer, correct?

16 A. That's correct.

17 Q. In the community you're working in, right?

18 A. That's correct.

19 MR. MOORE: Continue.

20 (Audio recording played)

21 MR. MOORE: Stop there.

22 THE COURT: I think we're going to take our recess
23 now. Can you pick up there or do you want to ask one or two
24 more questions about what you just heard?

25 MR. MOORE: I can pick up there.

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Serrano-direct

1 THE COURT: So let's take a ten-minute recess,
2 reconvene just after 20 of on that clock. Thank you.

3 (Recess)

4 MR. MOORE: Can you just go back like a minute and
5 start there and then I'll resume at that point. Just tell us
6 what time you're starting.

7 MS. YOUNG: I'm starting at 11:36.

8 (Audio recording played)

9 MR. MOORE: Judge if you're having difficulty hearing
10 just let me know.

11 THE COURT: It's not about volume. It's just
12 sometimes difficult to make out what people are saying.

13 (Audio recording played)

14 MR. MOORE: Stop there. What time?

15 MS. YOUNG: 13:33.

16 Q. Did you hear Deputy Inspector McCormack use the term
17 proactive?

18 A. Yes.

19 Q. And what did you understand that to mean, what he was
20 saying?

21 A. What he wants you to go to these high crime locations and
22 look for C summonses, arrests, and 250s, to be proactive at it.
23 Don't let it come to you. Go get it.

24 MR. MOORE: All right. I won't editorialize it
25 further. Why don't you keep playing.

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D319flo2 Serrano-direct

1 (Audio recording played)

2 MR. MOORE: What time?

3 MS. YOUNG: 15:37.

4 Q. Officer Serrano, did you hear Deputy Inspector McCormack
5 say one summons, one 250 at that location does not cut it,
6 right?

7 A. Yes.

8 Q. What did you understand that to mean?

9 A. He wanted more.

10 Q. And in your experience why would he want more at that
11 particular location?

12 A. That particular location is a -- has a spike in crime. And
13 CompStat lists all that information. And in order for them to
14 look good, he needs to show that he did work or summonses,
15 arrests, and 250s in that area. So that when -- he can defend
16 himself at CompStat.

17 Q. Continue.

18 THE COURT: Just before he continues. I really do
19 have a question.

20 Do you have a problem with the notion of proactive
21 policing? Is there something wrong with that?

22 THE WITNESS: No. If -- I actually agree with some of
23 the stuff that he says. It's just that, you know, when you're
24 extremely busy with all these radio runs, you only have but so
25 much time. Because I actually, I get the call, I park the car.

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D319flo2

Serrano-direct

1 I have to get into the building. Got to wait for somebody to
2 buzz me in. Go upstairs. Do the paperwork. Do it properly.
3 Give this person the time that he needs. Come back down do the
4 next one, the next one, the next one. And then back people up
5 because it's high crime. You got someone stopped, you got to
6 help another officer. Running back and forth, running back and
7 forth. Sometimes you don't have the time to do it.

8 So I expressed that when I do have the time I go to
9 these high crime areas and I do look and I do verticals. And I
10 do directives.

11 Directives basically is just I tell central that I'm
12 purposely circling a certain area looking, you know, for crime.
13 And I have no problem with that.

14 I do have activity and I am -- if you look at my
15 activity on paper it's -- and my memo books I'm very active.
16 It's just that I'm not a hero. I'm not a very busy, busy top
17 of the guy cop. And I'm not a zero. I'm somewhere in the
18 middle.

19 THE COURT: Anyway, my question was: You don't have a
20 problem with the idea of proactive policing?

21 THE WITNESS: No, no, not at all.

22 Q. Just to follow up on the judge's question, is your concern
23 that proactive -- when it comes to quotas leads to illegal
24 activity?

25 A. Yes. It's highly interpretive, proactive performance.

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D319flo2

Serrano-direct

1 If you're telling me to go out and look. If you find
2 it, you find it. If you don't, you don't. I agree.

3 If you're telling me to go out there and look for it
4 and you better find it, and that's how I interpret it because
5 of the retaliation, then it's a problem. It's not good to tell
6 cops: Make sure you find it. Because if they don't find it,
7 what's left? If the bad guy is not there, who is left? The
8 good people. And you got to hammer them. And that's just not
9 good.

10 MR. MOORE: Go ahead.

11 Thank you, Judge.

12 (Audio recording played)

13 Q. You heard the deputy inspector mention 20, 100, 200. What
14 did you understand him to be referring to there?

15 A. Activity. He's trying to say that either arrests or
16 summonses. Basically when you go to these high crime
17 locations, the only way that you can prove that you did
18 something, it's not a vertical, it's not a directive. It's
19 summonses, arrests, or 250.

20 So he wants a number. He's not saying what number.
21 But he doesn't know what the number is. It's a very high
22 number to him. He says it's not a hundred. It's not two.
23 It's not three. He doesn't know what it is.

24 And, you know, basically telling us that if you don't
25 get the number he doesn't accept it.

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D319flo2 Serrano-direct

1 Q. And we'll talk more about this later when we play the
2 remaining part of the tape. But do you recall him saying: And
3 it's the right kids, in the right place, at the right time.

4 Did you hear that language?

5 A. Yes, I heard it.

6 Q. We'll talk about that in a minute.

7 MR. MOORE: Go ahead.

8 (Audio recording played)

9 MR. MOORE: What time?

10 MS. YOUNG: 16:21.

11 MR. CHARNEY: Go back to 16:04.

12 (Audio recording played)

13 Q. You hear the deputy inspector referring to the kind of Bs
14 you are writing. What did you understand him to be talking
15 about there?

16 A. He's going to explain it. But it was that I wasn't writing
17 the correct ones. The correct ones are the ones that the city
18 can make money on. If you give someone a correctable, let's
19 say the light is busted or it's not working. And to me it's
20 hazardous at night to -- lights that are not working. I will
21 give you a summons. But you have about a 24-hour grace period
22 to fix it and not pay the summons. You'll be able to correct
23 it without financially coming out your pocket.

24 He wants hazardous. Hazardous has a fine and makes
25 the city money.

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D319flo2

Serrano-direct

1 MR. MOORE: Continue. What time is it?

2 MS. YOUNG: 16:42.

3 (Audio recording played)

4 Q. Did you hear the deputy inspector talk about what a stop
5 is.

6 A. Yes.

7 Q. Basically what did he say?

8 A. He said see a crowd that's blocking pedestrian traffic,
9 that's what I said, and he said if you see them and you say
10 hey, you get their attention, that's a stop, and you have to
11 put it on paper.

12 Q. When you say a stop, that would lead to a 250, correct?

13 A. Correct.

14 Q. At a minimum?

15 A. Minimum, yes.

16 Q. Is that how you were trained in the police department to
17 understand what a stop is?

18 A. I was trained several times and no, that is not a stop.
19 You don't stop for a violation. You only stop and question and
20 frisk for a criminal misdemeanor or a felony. And blocking
21 pedestrian traffic, as I said specifically several times, is a
22 violation.

23 Q. Setting aside whether there's a -- pedestrian traffic. If
24 an officer goes up to somebody and says, "Hey, you over there,"
25 in your understanding of how you were trained in your duties as

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D319flo2

Serrano-direct

1 a police officer and your understanding of the law, is that a
2 stop?
3 A. That is not a stop.
4 MR. MOORE: You can continue.
5 What time?
6 MS. YOUNG: 18:42.
7 (Audio recording played)
8 MR. MOORE: Stop it there.
9 Q. When you say there you made a lot of points, "Can I cover
10 the points," what are you referring to?
11 A. I'm referring to me, my evaluation, and I'm trying to speak
12 about my evaluation. And all they're talking about is stop,
13 question, and frisk.
14 MR. MOORE: Continue. What time?
15 MS. YOUNG: 20:32.
16 (Audio recording played)
17 Q. Now you heard the deputy inspector say, "We go out there
18 and we summons people, and we 250 people, the right people at
19 the right time and the right location."
20 Did you hear that?
21 A. Yes.
22 Q. What did you understand the deputy inspector to be telling
23 you, Officer Serrano?
24 A. Well, he's telling me to stop the right people, in my
25 opinion and, in fact I believe this, he meant Blacks and
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D319flo2

Serrano-direct

1 Hispanics.

2 At the right location, the places where the crimes are
3 spiking.

4 At the right time -- I don't know, maybe they're
5 spiking at a specific time and he wants me to write it at that
6 specific time.

7 And I would like to apologize but I start getting a
8 little loud because I am Hispanic. I grew up in the Bronx.
9 And I've been stopped multiple, multiple times. So I try to
10 respect people so they can give the respect back.

11 Q. Now, when he said, "We summons people and we 250 people,"
12 what did you understand him to be saying there or meaning?

13 A. I'm sorry?

14 Q. When he said, "We go out there, we summons people, we 250
15 people, the right people at the right time, the right
16 location," focusing on the first part of it.

17 A. Summons Blacks and Hispanics. I think it's ages between 14
18 and 21. At crime locations.

19 Q. So, in other words, he's telling you to go out and write
20 summonses, write 250s, correct?

21 A. Correct.

22 MR. MOORE: Continue. What time?

23 MS. YOUNG: 22:01.

24 (Audio recording played)

25 MR. MOORE: It's getting a little heated there,

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D319flo2

Serrano-direct

1 obviously.

2 Q. But what did you understand the inspector to say when he
3 refers to male blacks 14 to 20, 21.

4 A. Summons and arrests in Mott Haven, male blacks 14 to 21.

5 Q. So to be fair --

6 A. I'm sorry and 250.

7 Q. The Mott Haven, that community is made up of mostly black
8 and Hispanic individuals, correct?

9 A. I've worked in that precinct almost nine years,
10 approximately. And yes.

11 Q. Who is he saying are the right people at the right time at
12 the right location?

13 A. He specifically said Blacks, black males between 14 and 21.

14 THE COURT: Which precinct is Mott Haven in?

15 THE WITNESS: The 40.

16 THE COURT: Just want to be sure.

17 MR. MOORE: There's just another minute or so, Judge.

18 Go ahead. What time?

19 MS. YOUNG: 24:16.

20 (Audio recording played)

21 Q. That was the end of that appeal interview, right?

22 A. That was the end.

23 Q. And other than stop and frisk and summons activity, was
24 there any of those other categories on your evaluation that
25 were really discussed?

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D319flo2

Serrano-direct

1 A. From 1 to 28, no. The only one that basically says it's
2 apprehension and that's, you know, when you arrest somebody and
3 paperwork. And I've never been complained about that. I don't
4 have any complaints about that. Not that I know of.

5 Q. And following this meeting, this appeal meeting in -- last
6 month. Were you directed to go somewhere?

7 A. Well, as a result of my appeal he said I didn't know what I
8 was doing. I don't know what a stop, question, frisk is. And
9 he sent me for training, sent me for 250 training.

10 Q. Where was that?

11 A. That was in the Bronx, Robbins Neck. That's where we do
12 our shooting -- the shooting range.

13 So as a result of him telling me that I didn't know
14 what I was doing, he sent me to be retrained because I didn't
15 know what I was doing. And he told Lieutenant Albin. And then
16 a couple weeks later I was sent.

17 Q. To retraining?

18 A. To retraining.

19 There was another one also he sent me for performance
20 enhancement training because, again, I didn't know what I was
21 doing.

22 And if you read article 52, operation order 52, it
23 says, it's actually listed on how they will retaliate against
24 you. And it says there that you will be sent, if you fail to
25 meet, in my opinion if you fail to meet the quota, you're going

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D319flo2

Serrano-direct

1 to be sent to performance enhancement monitoring. I have to go
2 there in about two weeks.

3 Q. When you went for retraining on stop and frisk, was there a
4 discussion of what a stop is?

5 A. Yes.

6 Q. And was that discussion consistent with what -- was that
7 training about what a stop is consistent with what -- with how
8 Deputy Inspector McCormack described what a stop is?

9 A. No. It was contrary. The opposite. Sorry.

10 Q. Have you heard about the results of your appeal of the
11 evaluation?

12 A. I appealed it to the next level, as per patrol guide, it
13 says to make a 49 and go to the bureau. And I was
14 instructed -- Lieutenant Batelli said -- I don't know if you're
15 going to play it -- but he says he's going to help me write the
16 49. When I went for his help, I knocked on his door and he
17 handed me a piece of paper and it had the patrol guide
18 procedure number -- I don't know what the number is -- but he
19 just handed me the piece of paper and just pointed me out the
20 door. And I thought he was going to help me write it but he
21 just gave me the procedure.

22 I went to the procedure. It doesn't have any sample
23 on how to write it. I did the best I can or the best I could.
24 And when I went to the bureau, it was like talking to -- I
25 think it was inspector -- the name will come to me --

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D319flo2

Serrano-direct

1 Harrington. I think it's Inspector Harrington. It's like
2 speaking to Deputy Inspector McCormack all over again.

3 The appeal didn't take place. It was just for me to
4 drop off the paperwork. But I guess he just wanted to get a
5 feel of who I was. And from what I got, it's not going to go
6 well whenever I go there. Because he's also the CO of the
7 bureau.

8 So basically he's -- what I'm asking him to do is to
9 contradict -- I got the word right -- contradict exactly what
10 McCormack said.

11 I don't think it's going to happen.

12 Q. Did -- was it -- did you believe that prior to your
13 interview with Deputy Inspector McCormack that he knew about
14 your involvement in this lawsuit?

15 A. Yes.

16 Q. What do you base that on?

17 A. The minute the deputy inspector -- actually before he, the
18 deputy inspector, came in through the door with other bosses,
19 the rumors started to fly. People just started to tell me be
20 careful. He's coming after you. He knows about the lawsuit.

21 And that's -- I was like -- I was what? Once I heard
22 that, I was like, Oh boy, the cat's out the bag. I'm in
23 trouble.

24 Q. Well did he do anything in specific -- he meaning McCormack
25 or anybody at that meeting -- do anything specific that led you

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D319flo2

Serrano-direct

1 to believe that he was aware of your involvement in this
2 lawsuit?

3 A. At the end of the tape he calls me over after -- after I
4 apologize for raising my voice. He says I know about the
5 lawsuit. Don't think anything about the memo books. They're
6 going to take them from you. So don't think anything about it.
7 Basically he just told me: I know what you did. I know the
8 allegations. And -- he just wanted to let me know that he
9 knows.

10 MR. MOORE: At what point did you end the tape?

11 MS. YOUNG: 24:41.

12 Q. Do you continue to go to work in the 40th precinct,
13 Officer Serrano?

14 A. Yes.

15 Q. And how has your treatment been since -- in the last couple
16 of months?

17 A. Not too good.

18 Q. Can you tell us why.

19 A. Well --

20 Q. How -- can you tell us how.

21 A. Well immediately after the -- remember, I'm a patrol
22 officer. And I do patrol almost every time I'm there. I have
23 seniority. So they put me out on patrol. They put the people
24 that know what they're doing out there first.

25 Immediately I was sent to a fixed post. It's called a

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D319flo2

Serrano-direct

1 strike post. That just means -- they were striking at the time
2 with the bus drivers. So he sent me to that post, me and my
3 partner, to that post just to sit, you know, just stand on the
4 corner, just look at the fence, make sure that -- there's
5 nothing there, but just make sure that nothing goes on.

6 (Continued on next page)

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D3L8FLO3 Serrano - direct

1 Q. Now, that is still important police work, correct?

2 A. Yes. It's part of my job.

3 Q. Based on your seniority, is that the kind of assignment you
4 would typically get had you not started making these
5 complaints?

6 A. Only if you ask. Usually senior cops, they ask them, what
7 do you want to do? And with me, I have a partner, and we go
8 out there, and I need activity. Activity means I have to meet
9 this quota, so I have to go out there, and if I am not out
10 there, because I'm not as aggressive as other cops, it takes me
11 a little bit longer to get that activity, so I want to be out
12 there. But yes, this is a punishment for me, send me to the
13 strike post. And while I was there, I got scratched, that
14 means a supervisor inspected me, I think, five or six times.
15 That's unusual.

16 Q. At that fixed post?

17 A. At any time. If you look at my memo book, I don't think I
18 recall being scratched five times in one day.

19 Q. Tell us what you mean when you say being scratched.

20 A. Inspected by a supervisor. They grab your book, and they
21 write in it that they were there, they visited and there was no
22 violations observed, or there were violations observed.

23 Well, between him knowing and him telling me that he
24 has the book, and then he and Deputy Inspector McCormack and
25 Captain Materasso in the same car, in an unmarked, screech up

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D3L8FLO3

Serrano - direct

1 to me at top speed, pull up next to me and says, Hi, how you
2 doing? I attempted to get out of the car. He said, No, stay
3 there. I handed my book.

4 But as he approached, what he didn't know is at that
5 moment I called IAB and I put it in my book. I was afraid he
6 would see that so I scratched it out. I am not supposed to,
7 but it was either that or have him look directly at it and say,
8 Hey, you called IAB? And I put exactly who I called, what I
9 said, just to make a notation, when he comes and the lieutenant
10 comes and scratches me, then my sergeant scratches me, and then
11 inspection scratches me. So they just constantly keep coming.
12 I wasn't feeling well. Again, I felt claustrophobic, like they
13 were circling me.

14 Q. Just a few more questions, Officer Serrano.

15 In your experience in the 40th Precinct, you have been
16 there almost nine years, right?

17 A. Correct.

18 Q. Have you ever had any discussions with any of your
19 supervisors regarding the underlying facts that relate to a
20 stop and frisk that you did?

21 A. No. All they worry about is the number, give me the 250.
22 They look at the end to make sure your name is on there, and
23 they sign it. They never explained to me whether -- there is
24 no discussion about it, just activity, give it to them.

25 Q. Have you ever written out a 250 based upon a stop for which

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D3L8FLO3 Serrano - direct

1 you did not have reasonable suspicion?

2 A. Yes.

3 Q. Have you seen others in your precinct do that?

4 A. Yes.

5 Q. Why have you done that? You understand that that is
6 not --

7 THE COURT: Lawful.

8 MR. MOORE: Lawful, yes.

9 A. Yes. Well, what I did was --

10 Q. Why have you done that?

11 A. What I did was, when ordered to by a supervisor, you get
12 into that gray area. He can suspend you for not following a
13 lawful order. He is going to articulate it was lawful. I am
14 going to articulate it's not. So what I do is I fill out the
15 paperwork, but I don't sign it. I hand it to him, and I ask
16 him to sign it. Usually, he will yell at me and bad things
17 will happen. The next day I will have a foot post. For a
18 whole week -- there was a whole entire summer where I ended up
19 at 152 and Jackson, around that area, it's a high-crime
20 location, on foot, and I had seniority. There were rookies
21 driving around doing patrol. I don't really mind, but that's
22 just not how it's done.

23 Q. Can you give us an example of when you were asked to stop
24 some people by your supervisor that you objected to and what
25 you did about that?

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D3L8FLO3 Serrano - direct

1 Officer Polanco's testimony about that, correct?

2 A. It's common. If you do not meet the quota, they will put
3 you in a car with a supervisor, the supervisor will say, this
4 is what I see, write it. And then you have that choice right
5 there to sign it or not. And it's difficult. It's high
6 pressure. Mind you -- it's orders coming from the top. So it
7 goes from the top and goes all the way down. There's a lot of
8 pressure on the sergeant to make sure that you get your
9 activity, because on that Operation Order 52, if you read it,
10 it says that the same -- the way they scrutinize police
11 officers, they scrutinize lieutenants and sergeants. They have
12 performance goals also. So they are under high pressure to
13 make us, and you have people like myself, which I will only do
14 what I see. And, you know, people like me will get put into
15 the car and forced to write it.

16 I definitely agree with Officer Polanco with what
17 happened, and he was extremely brave, because to come out back
18 then --

19 MS. COOKE: Objection to the extent he is now
20 editorializing.

21 THE COURT: You are correct.

22 Q. Is it your practice when you do a 250 to also make an entry
23 in your memo book?

24 A. As patrol guide procedure, you are supposed to, and yes,
25 it's what I normally do.

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D3L8FLO3

Serrano - direct

1 Q. When you make an entry in your memo book, is it simply
2 replicating what you have checked off on the 250 or is it
3 something in addition to that?

4 A. Yeah. You copy the entire thing and then you add, if
5 you're myself, which I am doing now more so, you add little
6 things, anything that adds up to a 250. So a stop. So if the
7 person when you speak to him blades himself, he turns away from
8 you, whatever weapon that is, he might be twisting it so you
9 can't see it. Then he might tap it. There is a habit that
10 people with weapons, we tap the gun or we tap our wallet to
11 make sure it's there. Every morning I count five items. I
12 have got my cell phone, my keys. I go one, two, three, four.
13 It's just a habit. It's tapping. So that's another
14 indication. Also, the weather. The weather might be an
15 indication. If it's 80 degrees and he is wearing a goose down
16 coat, it's a little strange. So you put everything together
17 and it's like a big puzzle, and then you articulate in court
18 why you stopped that individual.

19 Q. So you would put those additional details in your memo
20 book, correct?

21 A. You're supposed to.

22 Q. And that's how you're trained?

23 A. That's how I am trained.

24 Q. Has any of your supervisors ever had a discussion with you
25 about the details in your memo book about a 250 you wrote?

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D3L8FLO3 Serrano - direct

1 A. As far as I recall, no supervisor has ever inspected my
2 book and looked for those details.

3 Q. Or had a discussion with you about it, correct?

4 A. Exactly.

5 Q. Finally, Officer Serrano, can you the judge why you have
6 come forward to testify in this case?

7 A. Well, Judge, it's very simple. I have children. I try to
8 be a decent person. You have got to excuse me. Whenever I
9 talk about my kids --

10 Q. It's all right.

11 A. As a Hispanic, walking in the Bronx, I have been stopped
12 many times. It's not a good feeling. I promised as an officer
13 I would respect everyone to my abilities. I just want to do
14 the right thing. That's all.

15 MR. MOORE: Nothing further, Judge.

16 THE COURT: Thank you.

17 Ms. Cooke.

18 MS. COOKE: Yes. Thank you.

19 CROSS-EXAMINATION

20 BY MS. COOKE:

21 Q. Good afternoon, Officer Serrano.

22 A. Good afternoon.

23 Q. You claim that quotas have existed in the 40th Precinct
24 since 2007, is that correct?

25 A. You said quotas existed since 2007? Quotas have existed

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D3L8FLO3

Serrano - cross

1 from the moment I got there. Unfortunately, like I said
2 before, they were soft quotas. There's numbers, one and four.
3 They want numbers. Unfortunately, you know, they are just a
4 quota, and if you don't meet them, they weren't really going to
5 hurt you about it. 2007 is where it started getting really bad
6 for me, and that's when I started to really notice it. So
7 that's why I use that 2007.

8 Q. Just to be clear, do you recall serving an affidavit in
9 this case a couple of weeks ago, a signed affidavit?

10 A. Yes.

11 Q. In the affidavit you included content regarding the subject
12 matter of your testimony, intended testimony here at this
13 trial?

14 A. Yes.

15 Q. In that affidavit, you indicated that since approximately
16 2007, quotas were at the 40th Precinct, is that correct?

17 A. Yes.

18 Q. It's your testimony here today that quotas existed prior to
19 2007?

20 A. I said approximately for a reason. Because it started from
21 day one, but they weren't retaliating against. So it didn't
22 affect me. You could ask whatever you want. If I don't give
23 it to you, and you don't do anything to me, then I can just
24 continue my job. But 2007 is when the quotas started where I
25 felt retaliation. I felt that the department was coming after

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D3L8FLO3 Serrano - cross

- 1 me because I did not meet the quota.
2 Q. Did you receive a negative performance evaluation in 2007?
3 A. I received a 3. I perceive that as a negative.
4 Q. Did you appeal your 2007 performance evaluation?
5 A. 2007?
6 Q. Yes.
7 A. You have got to show me what I got. I don't know what I
8 got in 2007.
9 Q. I am asking if you recall appealing your 2007 performance
10 evaluation?
11 A. I don't recall anything about 2007, in terms of appeals and
12 what I got.
13 Q. Do you recall appealing any performance evaluation prior to
14 2011's performance evaluation?
15 A. To my knowledge, I appealed two of them.
16 Q. Those were what years?
17 A. I think they are 2010, 2011.
18 Q. Didn't you just appeal 2012?
19 A. Then it's 2011 and 2012.
20 Q. Those are the two years' performance evaluations you recall
21 appealing?
22 A. Yes.
23 Q. You appealed them because you were dissatisfied with the
24 performance evaluation you received?
25 A. Yes.

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D3L8FLO3

Serrano - cross

- 1 Q. So in any year between approximately 2007 and 2010, where
2 you state quotas existed, you didn't appeal a performance
3 evaluation, is that correct?
4 A. No, I did not appeal.
5 Q. That's because you were satisfied with your reviews?
6 A. No, I was not. But it wasn't to the point where I could
7 get hurt. I always believed that if I got a 3.5, they gave
8 me -- if I got a 4 and 3.5, it's not really a big deal, because
9 of the patrol guide, the way it was written, you really
10 couldn't hurt me. Since 2007, when I read what they can do to
11 me, I had to make sure that my evaluation really reflected the
12 type of officer that I am and was.
13 Q. Well, I believe you testified on direct that you weren't a
14 hero and you weren't a zero, you were somewhere in the middle,
15 is that right?
16 A. Yes.
17 Q. You received a 3 on your performance evaluation in 2011, is
18 that correct?
19 A. That's correct.
20 Q. That's on a scale of 1 to 5, is that correct?
21 A. Yes.
22 Q. You received a 3 on your performance evaluation in 2012, is
23 that correct?
24 A. That's correct.
25 Q. Again, the same scale of 1 to 5?

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D3L8FLO3

Serrano - cross

- 1 A. Correct.
- 2 Q. And 3 meets expectations, isn't that right?
- 3 A. Not in my opinion.
- 4 Q. According to the performance evaluation, is 3 satisfactory,
5 meets expectations?
- 6 A. That's according to the patrol guide. That's not how I
7 feel.
- 8 Q. That's according to the patrol guide for evaluations for
9 police officers, correct?
- 10 A. That's correct.
- 11 Q. Officer Serrano, it's your claim that you were repeatedly
12 told with respect to these quotas in the 40th Precinct that
13 they involved summonses, am I correct?
- 14 A. Repeat, please.
- 15 Q. The quotas addressed summonses in the 40th Precinct?
- 16 A. The quota, it changes from period to period. It's not
17 specific. Right now, 2007 on, it was arrests, summonses and
18 250s.
- 19 Q. I believe you also testified that you were ordered to do a
20 certain amount of vertical patrols, is that correct?
- 21 A. Certain times, yes.
- 22 Q. And you considered an order to do a certain number of
23 vertical patrols a quota?
- 24 A. Yes.
- 25 Q. So it's your understanding that a supervisor's expectation

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D3L8FLO3

Serrano - cross

1 that you conduct a certain number of vertical patrols would be
2 in violation of the labor law?

3 A. It's possible.

4 Q. So you disagree that it's appropriate for a supervisor to
5 ask you to conduct a certain number of vertical patrols in a
6 tour?

7 A. Well, again, it's not a yes or no answer. Do you want the
8 answer?

9 Q. I just asked --

10 THE COURT: Excuse me. I want the answer.

11 THE WITNESS: Sorry, Judge.

12 A. The way I feel is you can ask me whatever you want. If you
13 ask me to get five verticals, and during that time someone
14 passes away and I have to watch them, that's what we do.
15 Someone passes away, I have to stay at the door. The entire
16 tour I can't do anything. So you can ask me to do five, you
17 can ask me to do ten, but I could only do one, or what I did up
18 to that point. So you can ask me, you can tell me to do it,
19 but I have an explanation why I don't.

20 THE COURT: I understand that. But why do you
21 consider being told to do five vertical patrols a quota? Why
22 is that a quota?

23 THE WITNESS: It's just numbers. I just feel that to
24 give me a specific number --

25 THE COURT: I can understand your point with respect

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D3L8FLO3 Serrano - cross

1 to arrests, summonses and 250s. But to be sent out on a
2 certain number of patrols per day, why is that a quota?

3 THE WITNESS: It's just how I feel. I am not going to
4 object to it. I am going to do the best I can. If I look at
5 it, it's a number. You're not allowed to give me a specific
6 number. It's like going out there and make sure you write five
7 complaint reports.

8 THE COURT: Five what?

9 THE WITNESS: Five complaint reports. They might not
10 be there.

11 THE COURT: That's exactly the difference. Being sent
12 out on five patrols, that just means --

13 THE WITNESS: To go up and down five times, which I
14 will do it, and I won't fight it. I just think that, when I
15 read the labor law, it says a specific task and a specific -- I
16 don't know the wording on it, but I think a specific number, I
17 just thought they couldn't ask. Whether I was right or wrong,
18 I don't know. Again, verticals I don't see as a problem. I
19 just do them.

20 BY MS. COOKE:

21 Q. Again, referring to the affidavit you submitted in advance
22 of your testimony in this case, you indicated that verticals
23 were one of the items you believe were inappropriate quotas at
24 the 40th Precinct, is that correct?

25 A. It's what he asked me to do, and I try to stay as accurate

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D3L8FLO3 Serrano - cross

1 as I can. So I put it down, yes.

2 Q. You understand vertical patrols, as you were just
3 discussing, are entering either a Housing Authority building or
4 a private building, is that correct?

5 A. Yes. Entering a building.

6 Q. Entering a building?

7 A. Going from the top and patrolling it all the way down to
8 make sure there is no crime.

9 Q. And the reason for entering the building to do patrols
10 inside the building is to address crime inside the building?

11 A. That's correct.

12 Q. And this is helpful to the people in the community in the
13 40th Precinct, isn't that correct?

14 A. It's helpful to everyone, yes.

15 Q. You testified on direct examination with respect to raising
16 complaints with respect to the quotas, but you didn't give a
17 lot of dates so I would like to set some dates and the
18 timeline.

19 You filed your EEOC complaint with the New York State
20 Department of Human Rights in August of 2012, is that right?

21 A. I don't know the date, but I did file it.

22 Q. Would you like to look at your affidavit to refresh your
23 recollection as to when --

24 A. You can look at it and tell me.

25 Q. If I told you it was August 12, 2012, you would agree?

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D3L8FLO3

Serrano - cross

1 A. That's fine.

2 Q. That was the first time you made any formal complaint with
3 respect to the quotas existing in the 40th Precinct, is that
4 right?

5 A. I'm going to say yes. Formal, did I write it up and send
6 it somewhere?

7 Q. Correct.

8 A. I think possibly, yes.

9 Q. Where do you think possibly you wrote something up and sent
10 it before August of 2012?

11 A. I say possibly because when things go wrong, I go to the
12 computer and I write.

13 Q. Did you provide any writing regarding your complaint about
14 quotas in the 40th Precinct prior to August of 2012? Did you
15 provide a writing to anyone?

16 A. Prior to 2012? Like I said before, all I know is I
17 contacted IAB. I called them and then I faxed them
18 information. I contacted --

19 Q. Let's stop right there.

20 MR. MOORE: Hold on. Can he finish the answer?

21 Q. My question was if you recall prior to August 2012
22 providing a writing. You just identified IAB.

23 A. I apologize, but when it comes to dates, I can't be 100
24 percent positive. I don't want to give you a date and then
25 you're going to tell me it's wrong. I don't know.

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D3L8FLO3

Serrano - cross

1 Q. You didn't provide any other information regarding
2 providing written complaints about quotas at the 40th Precinct
3 prior to August 2012 when you signed this affidavit, did you?

4 MR. MOORE: I don't understand that. The question is
5 a confusing question.

6 THE COURT: The witness also doesn't understand it. I
7 would ask you to rephrase.

8 He says he doesn't understand either so she is going
9 to rephrase it.

10 Q. In your affidavit that you signed on March 11, 2013, you
11 provided information with respect to your EEOC complaint that
12 was filed in August of 2012 and your complaint made to IAB in
13 February of 2013?

14 A. That's correct.

15 Q. Other than those two formal complaints identifying
16 complaints of quotas in the 40th Precinct, you did not provide
17 any other information in this affidavit about complaints,
18 correct?

19 A. I made -- I tried to contact the union of civil liberties I
20 guess -- I tried to contact the union, I faxed it to them. I
21 probably didn't put it there, but I think I gave it to my
22 lawyer. I attempted several -- I contacted several people in
23 regards to this, some lawyers, some civil liberties union, I
24 faxed them. I made several calls.

25 THE COURT: You considered those to be complaints?

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D3L8FLO3 Serrano - cross

1 THE WITNESS: I made those -- I needed someone to help
2 me.

3 Q. When did you attempt to contact the Civil Liberties Union?

4 A. I don't have the date.

5 Q. What year?

6 A. I don't know.

7 THE COURT: Was it 2012 or before that?

8 THE WITNESS: No. It might be in the paperwork. It
9 was one of the first things I did.

10 THE COURT: What is the earliest it could have been,
11 what year?

12 THE WITNESS: 2007 to 2012.

13 THE COURT: 2007, as far back as that?

14 THE WITNESS: Yes. Again, I don't know the date, but
15 I had been having problems for a long time.

16 THE COURT: So you might have contacted them years
17 ago?

18 THE WITNESS: I was trying to find someone to help me.

19 THE COURT: OK.

20 Q. Between 2007 and 2013, February 2013, when you contacted
21 IAB, did you contact IAB at the NYPD regarding complaints of
22 quotas?

23 A. No. Just once.

24 Q. Did you contact the EEO office of the NYPD, the equal
25 employment office, regarding your workplace concerns and quotas

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D3L8FLO3 Serrano - cross

1 at the 40th Precinct ever?

2 A. No.

3 Q. Did you ever file a labor related grievance with the labor
4 division under the collective bargaining agreement regarding
5 your allegations of improper quotas at the 40th Precinct?

6 A. No.

7 Q. You're aware of the collective bargaining agreement as a
8 police officer, aren't you?

9 A. I am aware of it. I don't know the details.

10 Q. You have PBA delegates -- I think we have had some
11 testimony about them today -- PBA delegates at the 40th
12 Precinct, correct?

13 A. I did contact them with reference to it. I filled out an
14 affidavit, I got it notarized, and I handed it to the trustees.

15 Q. What affidavit are you referring to?

16 A. It's an affidavit. It's not here because I gave it to
17 them.

18 Q. When did you give an affidavit to the PBA?

19 A. It was during an election for PBA delegate. They were
20 present. So I walked up to them. I explained to them what was
21 happening, that I was being subjected to stop, question and
22 frisk, summonses and arrest quotas, and I was being retaliated
23 against. I wasn't the only one. There was other people
24 present, and we gave it to him in his hand. He turned around
25 and said, just give them what they want, and he laughed.

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D3L8FLO3 Serrano - cross

1 Q. What year was that?

2 THE COURT: And he?

3 THE WITNESS: And he laughed. He chuckled.

4 Q. What year?

5 A. Again, the years -- PBA delegate is a couple of years ago.
6 I don't know.

7 Q. Who is your PBA delegate?

8 A. Well, PO Montanez is the person that won the election.

9 Q. The person you handed the affidavit to.

10 A. I don't know his name. It's two of them for the Bronx,
11 Bronx trustees. If you allow me to go on the Web, I will give
12 you the names.

13 Q. You don't recall sitting here today the name of the person
14 you attempted to hand this affidavit to?

15 A. No.

16 Q. You don't recall the year?

17 A. Not specifically, no.

18 Q. You said we. Do you recall other officers handing
19 affidavits to this delegate?

20 A. I believe it's Officer Baez. There were several people,
21 but I don't know. I know that we both handed it to him. It
22 could have been someone else. There were several people.

23 Q. Handed separate affidavits?

24 A. Separate affidavits, different people. We all handed it to
25 him.

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D3L8FLO3

Serrano - cross

1 Q. Is this the year you ran for PBA delegate and lost?

2 A. That is correct.

3 Q. Did anything contained in your affidavit have to do with
4 your running for PBA delegate and losing?

5 A. No. Actually, the two people that I lost to were decent
6 people. Louie Rodriguez was a colorful guy. He was energetic.
7 And Montanez was a little more calm. He was bald, short, like
8 myself.

9 Q. With respect to your EEOC complaint that you filed in
10 August of 2012, did you have a lawyer at the time you filed
11 that?

12 A. Again, the times --

13 THE COURT: She is saying when you filed the EEOC
14 complaint this past August, did you do it yourself or did you
15 have a lawyer help you?

16 A. I did it myself.

17 Q. After you filed your EEOC complaint in August 2012, did you
18 retain a lawyer?

19 A. I believe so, yes.

20 Q. Who was that lawyer?

21 A. It's Jonathan Moore. Well, it's because -- yes, Jonathan
22 Moore.

23 Q. When did you retain Mr. Moore as your lawyer after August
24 2012?

25 A. It's not official. We didn't sign any papers. I just

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D3L8FLO3 Serrano - cross

1 contacted him. So right now there is no official paper that
2 says you're my lawyer, you know, but I believe him to be my
3 lawyer.

4 Q. When did you contact Mr. Moore after August 2012?

5 A. Repeat that, please.

6 Q. When after August 2012 did you contact Mr. Moore?

7 A. I don't know how many times I have to ask you, but I don't
8 know dates.

9 Q. Was it in 2012?

10 A. I think so, yes.

11 Q. You were identified as a witness in this case on December
12 31, 2012, isn't that right?

13 A. Yes.

14 Q. So it was prior to December 31, 2012?

15 A. I believe so.

16 Q. That was before you contacted IAB to make complaints about
17 the quotas, correct?

18 A. I'm sorry. It was before?

19 Q. You identified yourself as a witness in this case prior to
20 contacting IAB to make complaints about quotas at the 40th
21 Precinct?

22 A. I don't know. If you want it chronologically, I can try to
23 tell you what I did.

24 Q. I am asking you if you --

25 A. I don't know.

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D3L8FLO3

Serrano - cross

1 Q. If you were identified as a witness in this case on
2 December 31, 2012?

3 A. You have to tell me. Do you have the paperwork that says
4 it?

5 Q. If you were, would you agree with that?

6 A. Yes.

7 Q. You didn't contact IAB until February of 2013, correct?

8 A. It's a date.

9 THE COURT: If that's what the record shows, he
10 accepts it.

11 We are going to have to stop now for the luncheon
12 recess. We will reconvene at 2:00. Thank you.

13 (Luncheon recess)

14

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D3L8FLO3

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

1

2

3

PEDRO SERRANO, resumed.

4

BY MS. COOKE:

5

Q. Good afternoon, Officer Serrano.

6

A. Good afternoon.

7

Q. You testified on direct examination about Operations Order

8

52. Do you recall?

9

A. Yes.

10

Q. In Operations Order 52, your testimony was that it was

11

focused on self-initiated law enforcement activity, is that

12

correct?

13

A. There was part of that, yes.

14

Q. Self-initiated, when you were looking at Operations Order

15

52, because it was talking about proactive enforcement of

16

arrests, stop and question, and summonses, is that correct?

17

A. Correct.

18

Q. Self-initiated means keeping your eyes open, and when you

19

observe behavior on your own, you take appropriate enforcement

20

action. Would you agree?

21

A. That's not what I believe he meant.

22

Q. I am asking you if you would agree. That was my

23

definition. Self-initiated means keeping your eyes open,

24

observing suspicious behavior on your own, and taking

25

enforcement action?

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D3L8FLO3 Serrano - cross

- 1 A. I don't know how to comment on that.
2 Q. You testified that what you see you write, and you're not
3 going to make it up, is that right?
4 A. That's correct.
5 Q. So regardless of quotas, you wouldn't make up arrests or
6 summonses or 250s, is that right?
7 A. I don't make them up, no.
8 Q. You testified also on direct examination about overtime.
9 Do you recall that testimony?
10 A. About forced overtime?
11 Q. Yes. You described it as forced.
12 A. Yes.
13 Q. You were compensated for that overtime, weren't you?
14 A. Yes.
15 Q. You were paid time and a half for those overtime tours?
16 A. That's correct.
17 Q. These overtime tours, these were impact overtime violence
18 reduction tours, isn't that right?
19 A. That's correct.
20 Q. And the two roll calls that you recorded and we listened to
21 this morning were from June and July of 2010, is that correct?
22 A. If it's all right with you, every time you mention a date,
23 I am just going to assume that you're telling me the truth.
24 Q. June and July of 2010 were the dates of the recordings.
25 A. Is that OK?

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D3L8FLO3 Serrano - cross

- 1 Q. Yes.
2 A. Those were the dates.
3 Q. Those were, in fact, overtime roll calls, correct?
4 A. Yes.
5 Q. Those were violence reduction tours, yes?
6 A. Yes.
7 Q. That's because the 40th Precinct had a high incidence of
8 criminal violence in 2010, isn't that right?
9 A. Yes.
10 Q. Those impact overtime tours have to be staffed by officers,
11 isn't that right?
12 A. Correct.
13 Q. And there is not officers that are regularly, permanently
14 assigned to impact overtime, isn't that right?
15 A. Repeat that.
16 Q. It's not a permanent assignment for an officer to do impact
17 overtime?
18 A. It's just for that one day.
19 Q. Some people volunteer for overtime, isn't that right?
20 A. Yes.
21 Q. So not all police officers would think overtime is forced,
22 isn't that correct?
23 A. No. I'm sorry. It is correct.
24 Q. In fact, officers seek out overtime, isn't that right?
25 A. Correct.

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D3L8FLO3

Serrano - cross

- 1 Q. So some people will volunteer for these impact overtime
2 tours, correct?
- 3 A. Yes.
- 4 Q. But if not enough people volunteer, people have to be
5 assigned to staff it, isn't that right?
- 6 A. Correct.
- 7 Q. Are you aware that there are restrictions or limits on the
8 amount of overtime an officer can receive in a given period
9 such as a month?
- 10 A. Yes, there is a cap.
- 11 Q. Anyone who has already reached the cap for overtime for the
12 month wouldn't be permitted to work another overtime tour that
13 month, right?
- 14 A. Correct.
- 15 Q. Anyone who is already working a regular tour for their
16 regular assignment wouldn't be eligible to work that impact
17 overtime tour, correct?
- 18 A. Incorrect.
- 19 Q. If your impact overtime tour was occurring at the same time
20 as your regular patrol tour you could work both?
- 21 A. Yes, you can. I will explain if you want.
- 22 Q. That's OK. Anyone on vacation would not be available to
23 work the impact overtime tour, correct?
- 24 A. Incorrect.
- 25 Q. If you are out of town on vacation, you would be present

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D3L8FLO3 Serrano - cross

1 for an impact overtime tour?

2 A. You want me to explain?

3 Q. If you were out of town on vacation, would you also be
4 present to work an impact overtime tour?

5 A. The way you're depicting it, if you're out of town, you
6 won't be there, then I agree with you.

7 Q. If you were out sick and not working, you wouldn't be
8 present and available to work an impact overtime tour, would
9 you?

10 A. If you're out sick, you cannot work, no.

11 Q. It's fair to say that by the end of the month, there is a
12 smaller pool of people available to be assigned an impact
13 overtime tour than at the beginning of the month, is that
14 right?

15 A. Yes.

16 Q. You didn't volunteer for either impact overtime tour in
17 June or July of 2010, is that right?

18 A. I cannot tell you if I volunteered or not because there
19 were times when I did volunteer. But the ones I specified were
20 forced.

21 Q. The ones you specified that you recorded the roll calls,
22 those two?

23 A. Yes, to the best of my knowledge.

24 Q. Those occurred, and I am representing for you, the
25 recordings were June 30, 2010 and July 31, 2010?

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D3L8FLO3

Serrano - cross

1 A. Yes.

2 Q. Those were the last day of the month for both June and July
3 2010, right?

4 A. Yes.

5 Q. You claim you have been making recordings of officers and
6 superiors in the 40th Precinct ordering you and other officers
7 to meet these enforcement activity quotas since sometime in
8 mid-2010, is that right?

9 A. You said something there that I don't agree with.

10 Q. What is that?

11 A. You said I was recording officers. My intent was not to
12 record other police officers. My intent was to record the
13 supervisor who was talking to me and giving me --14 Q. Officers are captured on some of your recordings, isn't
15 that right?

16 A. They were, yes.

17 Q. Regardless of who you were capturing in addition to
18 supervisors, your intent was to capture supervisors at the 40th
19 Precinct discussing these quotas beginning in mid-2010, is that
20 right?

21 A. Yes.

22 Q. But you have only provided two audio recordings of these
23 such roll calls, isn't that right?

24 A. Yes.

25 Q. These roll calls that took place in 2010 that we have

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D3L8FLO3 Serrano - cross

1 listened to today, that was more than a year before Deputy
2 Inspector Christopher McCormack became the commanding officer
3 at the 40th Precinct, isn't that right?

4 A. Yes.

5 Q. He didn't arrive at the 40th Precinct until September of
6 2011, isn't that right?

7 A. Correct. Remember, I am trusting you with these dates.

8 Q. My representation is it was late September of 2011.

9 A. I agree.

10 Q. The recordings of June 30, 2010 and July 31, 2010, those
11 aren't complete recordings of the entire roll call each day,
12 are they?

13 A. They are not complete, but I didn't alter them.

14 Q. No. The question was, you didn't capture the entire
15 conversation that occurred at each roll call on the 30th of
16 June and the 31st of July?

17 A. You know, I believe I did. If you want me to explain I
18 will.

19 Q. I am going to ask you some questions about what is not on
20 those recordings.

21 I didn't hear any discussion of color of the day on
22 either of those recordings, is that correct?

23 A. I don't remember.

24 Q. Would you like me to replay the recordings?

25 A. No. I agree with you.

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D3L8FLO3 Serrano - cross

1 Q. You agree the color of the day was not captured on those
2 recordings?

3 A. Yes.

4 Q. That's something that's regularly, routinely discussed at
5 each roll call, isn't that right?

6 A. It's supposed to be, but not always.

7 Q. What I didn't hear on either of those roll calls were the
8 assignments for the officers for those tours, am I correct?

9 A. Yes.

10 Q. So the assignments handed out to the officers for their
11 tour on this impact overtime were not included on the
12 recording?

13 A. Yes.

14 Q. That would have been discussed at roll call, correct?

15 A. Not all the time.

16 Q. How many roll calls have you been to where you haven't been
17 provided an assignment?

18 A. During roll call?

19 Q. Yes.

20 A. Many.

21 Q. How many?

22 A. If you want me to estimate, I can estimate 50, 100.

23 Q. I didn't hear discussion with respect to partners, who was
24 going to be partnered with whom for the tour in those roll call
25 recordings, am I correct?

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D3L8FLO3

Serrano - cross

1 A. Correct.

2 Q. I didn't hear any discussion about crime patterns or
3 criminal activity that had been going on in the precinct in the
4 prior tours or prior days, am I correct?

5 A. Correct.

6 Q. With respect to the first roll call recording, June 30,
7 2010, that was the roll call with Lieutenant Barrett, is that
8 right?

9 A. Yes.

10 Q. Lieutenant Barrett said she was looking for five?

11 THE COURT: Could you speak a little more slowly?

12 It's giving me a headache.

13 Q. She said she was looking for five, is that correct?

14 A. Yes.

15 Q. You understood that to mean five C summonses?

16 A. Yes. I believe somewhere along that recording she actually
17 says the word summonses, not just five. In the beginning she
18 says five, and somewhere down the line she will say summonses.
19 She actually said, I don't believe that you're going to have a
20 problem getting it.

21 Q. Did you get five summonses for that tour?

22 A. I don't recall.

23 Q. Would you have recorded all of those summonses in your memo
24 book?

25 A. Hopefully I did, yes.

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D3L8FLO3 Serrano - cross

1 Q. Do you recall being punished for failing to meet a quota
2 following this impact overtime tour?

3 A. I don't recall.

4 Q. Lieutenant Barrett also said on that roll call recording
5 that anyone -- she asked if anyone was looking for a collar or
6 not looking, is that right?

7 A. Yes.

8 Q. And not looking is anyone who was not looking to have to
9 process an arrest, isn't that right?

10 A. Correct.

11 Q. Because that's a fairly typical circumstance, when an
12 officer might have a personal commitment following their tour,
13 and they don't want to spend the time processing an arrest,
14 correct?

15 A. Yes.

16 Q. So another officer will take that arrest and be assigned as
17 the arresting officer?

18 A. Yes.

19 Q. There is nothing improper about that, is there?

20 A. No.

21 Q. Lieutenant Barrett didn't say anything captured on that
22 roll call audio with respect to punishment for officers who
23 failed to write five C summonses that night?

24 A. I disagree.

25 Q. You heard Lieutenant Barrett say something with respect to

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D3L8FLO3

Serrano - cross

1 a punishment?

2 A. What I heard was that the supervisor will be checking on
3 us, and because of other impact overtimes that I have attended,
4 that meant that the sergeant will ask you several times during
5 the night, how many you got, how many you got. And then when
6 you don't reach that number, you're going to be -- they will
7 find a collar, call you over to the scene, and you will process
8 it. That will be a punishment. That's one of punishments.

9 Q. What you just described, that wasn't discussed on the audio
10 in the roll call, correct?

11 A. No. But you just asked me.

12 Q. I am asking about what is reflected in the roll call, and I
13 am confirming it's not reflected.

14 MR. MOORE: I object. Part of it was, part of it
15 wasn't.

16 MS. COOKE: The conversation --

17 THE COURT: What is your objection, Mr. Moore?

18 MR. MOORE: The objection is that it misstates what he
19 just testified about. He testified why he --

20 THE COURT: OK. I will sustain your objection and ask
21 her to rephrase.

22 I don't know if you remember what your question was
23 that was objected to, but you said, "I am asking about what is
24 reflected in the roll call, and I am confirming it's not
25 reflected." Maybe you can rephrase it.

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D3L8FLO3 Serrano - cross

- 1 Q. The roll call does not reflect a conversation with respect
2 to, if you do not have a certain number of summonses at a
3 certain appointed tour, you would be assigned an arrest,
4 correct?
5 A. Those specific words, no.
6 Q. Any conversation with respect to being assigned an arrest
7 is not present as punishment on that roll call, correct?
8 A. That's not how she states it.
9 Q. There is no threat of receiving a poor evaluation if you
10 don't achieve those five summonses, is that correct?
11 A. At that roll call?
12 Q. Yes.
13 A. No.
14 Q. There is no threat of a denial of a day off if you don't
15 achieve those five summonses, is that correct, in the roll call
16 reflected on the recording?
17 A. On that day, no.
18 Q. There is no threat that you would be made to drive a
19 supervisor if you didn't achieve five summonses in that roll
20 call tour?
21 A. With those words, no.
22 Q. In fact, you didn't receive a poor performance evaluation
23 in 2010, did you?
24 A. I don't know the number.
25 Q. You didn't appeal that 2010 performance evaluation? I

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D3L8FLO3 Serrano - cross

1 think we discussed that.

2 A. No.

3 Q. With respect to supervisors checking on you during the
4 tour, officers often have a supervisor scratch their book,
5 isn't that correct?

6 A. It's usually once a night.

7 Q. It's part of the supervisor's responsibility?

8 A. Yes, ma'am.

9 THE COURT: You said it's usually once a night?

10 THE WITNESS: Usually once a night the supervisor,
11 whoever is out there, the patrol sergeant or patrol boss, to
12 show that they have been checking up on you, they write in your
13 book and inspect you. It's usually once a night.

14 Q. There are circumstances where you see a supervisor more
15 than once a night, aren't there?

16 A. Yes, ma'am.

17 Q. Like if you made an arrest and had to call a supervisor to
18 the scene?

19 A. Yes, ma'am.

20 Q. Or if you needed assistance and your supervisor responded?

21 A. Yes.

22 Q. And in each of those instances, that would be potentially
23 in addition to them arriving to scratch your book at some point
24 during the tour?

25 A. Yes.

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D3L8FLO3 Serrano - cross

1 MR. MOORE: I am sitting close, but sometimes I can't
2 hear the words being said by counsel.

3 THE COURT: She is speaking so quickly. I have asked
4 her to slow down.

5 MS. COOKE: Sorry.

6 Q. The July 31, 2010 roll call has the references to five,
7 five, five. Do you recall that?

8 A. Yes.

9 Q. You identified that meant to you five summonses, five
10 verticals, and five UF-250s, is that right?

11 A. Yes.

12 Q. Did you achieve those numbers during that impact overtime
13 tour?

14 A. I would guess no. They were very high, unusual numbers.

15 Q. But you would have recorded your activity for that tour in
16 your memo book?

17 A. I try to record all of my activity in my memo book to the
18 best of my ability.

19 Q. You identified the speakers on that roll call as Sergeant
20 Silver and Lieutenant Doute, is that correct?

21 A. Yes.

22 Q. And neither Sergeant Silver or Lieutenant Doute are
23 captured on that audio articulating a punishment for officers
24 who failed to meet five, five and five, is that correct?

25 A. The way you word it, you're correct.

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D3L8FLO3

Serrano - cross

- 1 Q. There was no threat of a poor performance evaluation if you
2 didn't come back with five summonses, five verticals, and five
3 UF-250s?
4 A. Again, it's the way it's worded.
5 Q. There was no threat of a denial of a day off?
6 A. Correct.
7 Q. No threat of driving a supervisor, is that correct?
8 A. Correct.
9 Q. If an officer observed reasonable suspicious behavior on
10 five occasions during the course of a tour and made five stops,
11 would that be fine with you?
12 A. Yes. As long as it's not -- it could be five, ten,
13 whatever. It just has to be, you know, lawful.
14 Q. The same would be true for C summonses, as long as they
15 were lawful that would be fine with you regardless of the
16 number?
17 A. All the activity, yes.
18 Q. You testified earlier with respect to a text message that
19 you said was between yourself and your direct supervisor,
20 Sergeant Monroe. Do you recall?
21 A. Yes.
22 Q. In the text message you claim Sergeant Monroe told you that
23 you needed to do more 250s, that was his text you said?
24 A. Yes.
25 Q. I believe you testified that was regarding your activity

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D3L8FLO3 Serrano - cross

1 from the month of October 2012, is that correct?

2 A. Correct.

3 MS. COOKE: If we could put up Defendants' Exhibit
4 B10.

5 Q. Officer Serrano, do you recognize this document?

6 A. It is a police officer's monthly conditions impact
7 measurement report.

8 Q. Whose monthly measurement report is it?

9 A. It says it is mine.

10 Q. For what month?

11 A. October 2012.

12 Q. If you could look at the bottom of the last page.

13 Do you recognize the handwriting on this document?

14 A. I don't think so. I mean, it could be mine.

15 Q. Do you see a signature next to your name?

16 A. That looks like my signature.

17 Q. Do you have any reason to think it isn't your monthly
18 activity report for August 2012?

19 A. May I explain?

20 Q. Yes.

21 A. What happens with this is, this month was supposedly lost.
22 This activity is not supposed to exist. The reason I texted my
23 activity is because it was lost. So now it reappears. I don't
24 know if someone altered it or doctored it or added numbers.
25 It's very easy to put a number somewhere and change my number,

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D3L8FLO3 Serrano - cross

1 put a one to a seven, you add another one it will be 131. They
2 can mess with it so many ways. But the reason I texted him my
3 activity is he did not have this document. So now you're
4 producing it, I am a little suspicious, because if you're the
5 supervisor and you have this in front of you, why do you text
6 me, what is your activity? And I estimated my activity
7 because, again, it came from my mind. It's not that chart. I
8 tried the best I can.
9 Q. In the box it says 20 car stops. Do you see that box above
10 your signature?

11 A. Yes, ma'am.

12 Q. Is that your handwriting?

13 A. It appears to be.

14 MS. COOKE: Scroll up a little.

15 Q. In the column that has the assignments for the day, RDOs,
16 shootings, robberies, is that your handwriting?

17 A. It appears to be.

18 Q. And the numbers that are reflected in the columns next to
19 it, does that appear to be your handwriting?

20 A. Again, I think so.

21 MS. COOKE: I would ask that this exhibit be admitted
22 as Defendants' B10.

23 MR. MOORE: No objection.

24 THE COURT: Exhibit B10 is received.

25 (Defendant's Exhibit B10 received in evidence)

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D3L8FLO3 Serrano - cross

1 Q. Looking at the total number of days on patrol, how many
2 days on patrol does it indicate there?

3 A. 13.

4 Q. And in your text message it said 14, right?

5 A. I estimated.

6 Q. Yes.

7 A. Yes. That's correct.

8 Q. So the 13 days on patrol, those are 8 hour and 35 minute
9 tours?

10 A. Yes.

11 Q. If we look over at the total of stop and frisk reports for
12 the month of October, how many are indicated on this form?

13 A. Zero. Nothing. Blank.

14 Q. And Sergeant Monroe's text message was you need to do more
15 UF-250s, is that right?

16 A. Yes.

17 MS. COOKE: If we could just scroll slowly back to
18 page 1.

19 Q. Shootings and robberies appear as your condition on the
20 days you were on patrol, is that correct?

21 A. Yes.

22 Q. Shootings and robberies, I believe in the performance
23 evaluation conversation that you had recorded, you identified
24 as crimes, high crimes in the 40th Precinct, is that correct?

25 A. They were the condition that I attempted to address.

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D3L8FLO3

Serrano - cross

1 Q. But not once in the entire month of October 2012 did you
2 observe suspicious behavior of a person about to commit,
3 committing, or having committed a penal law, felony or
4 misdemeanor that you had reasonable suspicion to make a stop?
5 A. I can't go back and answer that, but I did not do a 250.

6 (Continued on next page)
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D3L9FLO4

Serrano-cross

- 1 Q. And for the year of 2012 you only completed two UF 250s;
2 isn't that correct?
- 3 A. I'm not clear because I remember I said that one of them
4 was incorrect and I put it in my memo book and they were
5 clearly on the side labeled 250s and I think it was four or
6 five but I don't know for what year.
- 7 Q. You understand that two UF 250s are recorded for you in the
8 official police department system cog notes for the year 2012?
- 9 A. Paperwork gets lost a lot.
- 10 Q. And looking at -- still looking at Exhibit B-10 on
11 October 10, which is on the first page, the 10th day down,
12 correct, each number indicates the day of the month.
- 13 October 10 your assignment was lieutenant operator; is
14 that correct?
- 15 A. Yes, I was.
- 16 Q. And on that day your activity reflected on this form is a
17 total of two radio runs; is that correct?
- 18 A. Yes. That's what it says here.
- 19 Q. There are no summonses reflected on this form, correct?
- 20 A. No.
- 21 Q. No UF 250s?
- 22 A. Nothing. Just --
- 23 Q. And no arrests?
- 24 A. Two radio runs.
- 25 Q. No domestic violence reports?

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D3L9FLO4

Serrano-cross

- 1 A. Nothing. Blank.
- 2 Q. And just to be clear, driving supervisor was a punishment,
- 3 correct?
- 4 A. It's -- sometimes it is. Sometimes it isn't. But, again,
- 5 it's -- if he asked me to drive him for the night because your
- 6 partner is not in, then you do so. And that's not a
- 7 punishment. But if your partner is in or if you got
- 8 specific -- and they split you off on purpose just to make you
- 9 write, which has happened to me, then it is punishment.
- 10 Q. But you didn't, according to the form, you didn't write
- 11 anything on the day you were driving the supervisor, correct?
- 12 A. No.
- 13 Q. After you received your 2011 performance evaluation that
- 14 you appealed your assignment wasn't switched as a result of the
- 15 evaluation, was it?
- 16 A. You got to clarify. Was I still doing patrol?
- 17 Q. Yes.
- 18 A. Yes.
- 19 Q. Were you still doing the same tour, four to twelve?
- 20 A. Yes.
- 21 Q. Were you still working with the same partner?
- 22 A. I think so.
- 23 Q. Had you been separated from your partner?
- 24 A. I had been threatened.
- 25 Q. Had you been separated?

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D3L9FLO4

Serrano-cross

1 A. Back then -- no, I hadn't been separated, no.

2 Q. And, in fact, if we could look at Defendants' C-10 which I
3 believe was admitted into evidence on direct.

4 MS. COOKE: On the top, Morgan, recommendation.

5 Q. Does it indicate over on the far right top box
6 recommendation continue in present assignment; is that correct?

7 A. Yes.

8 Q. And to your knowledge was that also the recommendation on
9 your 2012 performance evaluation?

10 A. I don't know.

11 Q. Do you recall that your recommendation was to not continue
12 in your present assignment?

13 A. I have no idea. In fact, until you told me now I didn't
14 even know that it says -- you know, continue in present
15 assignment. I didn't know that was there.

16 Q. This performance evaluation here Defendants' C-10, does the
17 performance evaluation for 2011 that was the first year that
18 Sergeant Monroe was your direct supervisor; isn't that correct?

19 A. 2011?

20 Q. Mm-hmm.

21 A. Yes. I don't think he was there for the whole year.

22 Q. So he definitely wasn't there either in 2010?

23 A. I wouldn't -- I don't know.

24 Q. You had a different direct supervisor in 2010; isn't that
25 correct?

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D3L9FLO4

Serrano-cross

1 A. I think so, yes.

2 Q. Sergeant Lim?

3 A. Yes, briefly.

4 Q. Looking -- you testified earlier with respect to your
5 performance evaluation in -- meeting in 2013 with Inspector
6 McCormack. Do you recall?

7 A. Yes.

8 Q. And you testified about the items, the performance areas
9 that you wanted to discuss. I think you said there were --
10 there was 20 of them; is that correct?

11 A. Twenty-eight at the time. I estimated.

12 Q. Do you have any reason to believe that they're different on
13 your 2012 performance evaluation than the items that are listed
14 here on this 2011?

15 A. From what I remember, from the two years, the only
16 difference is police ethics and integrity. I believe it's a 4.
17 And then --

18 Q. I'm sorry. I wasn't clear. I meant difference in the
19 categories, in the description of those categories, whether
20 there were substantive changes to these 28 items that --

21 A. I assume it's the same.

22 MR. MOORE: I'm confused. Is she saying whether the
23 categories are different on 2012?

24 MS. COOKE: The category. Not the rating.

25 Q. Generally, do you recall the same categories were --

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D3L9FLO4 Serrano-cross

1 A. To my knowledge, I think they're the same.

2 Q. Roughly these 28 were the items you were referring to in
3 your direct examination when you said you were focused in
4 wanting to discuss these in the meeting with Inspector
5 McCormack; is that correct?

6 A. That's correct.

7 Q. So looking at item number 2, just the category, I'm talking
8 2012. Evaluation in the 2013 meeting about the evaluation.
9 Item 2 says apprehension and intervention; is that correct?

10 A. Correct.

11 Q. So it's your testimony that apprehension and intervention
12 weren't discussed during the 2013 performance evaluation
13 meeting with Inspector McCormack?

14 A. I believe that might be the only one that was discussed.

15 Q. Because apprehension and intervention has to do with taking
16 law enforcement action, arrests, summons, and that thing?

17 A. Yes.

18 Q. Well looking at number 12, report and clerical duties.
19 It's your testimony that report and clerical duties weren't
20 discussed during the meeting with Inspector McCormack in
21 February of 2013?

22 A. I believe not.

23 Q. You didn't discuss the fact you only had two UF 250s for
24 2012?

25 A. Yes.

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D3L9FLO4 Serrano-cross

1 Q. And isn't that a report, a UF 250 form, a report that
2 you're required to fill out as an officer?

3 A. Yes. It's one of them. Yes.

4 Q. And didn't you identify during that recording you listened
5 to that you believed the number 2 was inaccurate?

6 A. Correct.

7 Q. Because you filled out additional reports?

8 A. Correct.

9 Q. So you would agree with me that reports and clerical duties
10 were discussed in your performance evaluation meeting in 2013?

11 A. Specifically 250, yes.

12 Q. Looking at number 14. Comprehension skills. It's your
13 testimony that comprehension skills weren't discussed during
14 the performance evaluation meeting in February of 2013 with
15 Inspector McCormack?

16 A. I can't answer that because he never -- we never went one
17 by one. You know when they tell you police -- we're going to
18 discuss police ethics. And then he'll explain. And I know
19 he's discussing that. We never went down that avenue.

20 Q. Well is it your testimony that you did not discuss
21 comprehension of law enforcement activities during your
22 performance evaluation meeting in 2013?

23 MR. MOORE: Judge, that's not --

24 THE WITNESS: That's not what it says.

25 MR. MOORE: Excuse me. I object.

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D3L9FLO4

Serrano-cross

1 I think that's a mischaracterization of the category.
2 It says comprehension skills. It doesn't say with respect to a
3 particular activity.

4 THE COURT: Objection sustained.

5 MR. MOORE: It's confusing because --

6 THE COURT: That's okay. I've sustained the
7 objection.

8 Q. Officer Serrano, would you agree that comprehension skills
9 when you're being evaluated as a police officer for your
10 comprehension skills with respect to your job duties as police
11 officer?

12 A. Again if you would specify, I would be able to answer it.
13 It's very general.

14 Q. Do you recall discussion on the recording regarding your
15 comprehension of stops, summonses, and 250s?

16 A. There was discussion about that, yes.

17 Q. So that item would have been covered during the discussion
18 of your evaluation appeal, correct?

19 A. I don't want to be difficult, but I don't know.

20 Q. Okay. Number 15. Communication skills. Is it your
21 testimony that communication skills weren't discussed during
22 your evaluation appeal in 2013?

23 A. It's the same answer as the one before. I don't know.

24 Q. Do you not recall discussing during your performance
25 evaluation meeting in 2013 that you liked to approach people

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D3L9FLO4 Serrano-cross

1 and speak to them like human beings and reserve the right to
2 warn and admonish. Do you recall those statements by yourself?

3 A. I said something to that. Yes.

4 Q. Would you not agree that that's you discussing your
5 communication skills as a police officer performing your duties
6 in the 40th precinct?

7 A. That's very vague. I could say yes.

8 Q. What about number 16. Reasoning ability. Is it your
9 testimony that your reasoning ability wasn't discussed during
10 the performance evaluation appeal in 2013?

11 A. I don't think so. I mean I expressed what I was taught.
12 And he disagreed with it.

13 Q. You don't recall discussing your reasoning as to why you
14 would take or not take with your, using discretion, certain law
15 enforcement activity?

16 A. Yes. But discretion is on my part. It's not on his.

17 Q. Number 18. Problem recognition. Is it your testimony that
18 problem recognition was not covered during your 2013
19 performance evaluation appeal?

20 A. Maybe.

21 Q. Maybe?

22 A. Maybe.

23 Q. Problem recognition. Did you not recall Inspector
24 McCormack asking you to identify crime conditions you're aware
25 of in the 40th precinct?

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D3L9FLO4

Serrano-cross

1 MR. MOORE: I'm sorry. I didn't hear the --

2 Q. Did you not recall Inspector McCormack asking you if you
3 could identify crime conditions in the 40th precinct?

4 A. Going to give you a maybe. It's possible.

5 Q. It's possible. Would you like to hear that portion of
6 the --

7 A. No.

8 Q. Do you recall having a conversation --

9 A. I'll say yes this one.

10 Q. I'll ask you a different question.

11 A. I'm sorry to interrupt.

12 MR. MOORE: Officer Serrano, do your best to answer
13 the question. You don't have to necessarily agree.

14 MS. COOKE: Your Honor, Mr. Moore is coaching the
15 witness.

16 THE COURT: I picked up on that also, Mr. Moore. So
17 I'm here listening to it. I'll make my own determinations. I
18 saw that. Seem to be a tired okay, whatever you say, I want to
19 get off the stand.

20 I understand.

21 THE WITNESS: I apologize.

22 THE COURT: That's what happened on that last answer,
23 didn't seem like you were giving it a lot of thought.

24 THE WITNESS: I apologize.

25 THE COURT: Do you want to hear that question again?

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D3L9FLO4

Serrano-cross

1 THE WITNESS: Yes. Repeat it, please.

2 THE COURT: That last one.

3 Q. With respect to problem recognition, do you recall
4 Inspector McCormack asking you if you could identify crime
5 conditions you were aware of in the 40th precinct?

6 A. I would say no. To the best of my ability.

7 Q. If we could -- Plaintiffs' Exhibit 332, the audio.
8 Starting at 9:30. Actually, I'm sorry. 10:25.

9 MR. KUNZ: Okay. I'm going to start it.

10 MS. COOKE: 10:25.

11 (Audio recording played)

12 Q. Officer Serrano, does that refresh your recollection that
13 Inspector McCormack asked you about the crime conditions you
14 were aware of in the 40th precinct during that performance
15 evaluation?

16 A. Yes.

17 Q. And you identified shootings and robberies?

18 A. Yes.

19 Q. And crime in general. So just a lot of crime in general?

20 A. Yes.

21 Q. Do you also recall during that performance evaluation
22 meeting Inspector McCormack asking you what you were doing to
23 address those conditions?

24 A. Yes.

25 Q. So you agree with me that problem recognition, number 18,

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1 was discussed during your performance evaluation meeting?

2 A. I'm sorry. Repeat that.

3 Q. Would you agree with me then that problem recognition,
4 number 18, was discussed during your performance evaluation
5 meeting?

6 A. When he asked me what my condition, what the precinct
7 conditions were.

8 Q. And what you were doing to address it?

9 A. And that was covering which one?

10 Q. Problem recognition.

11 A. Oh, yes.

12 Q. Number 22. Judgment. Is it your testimony that judgment
13 was not covered during your discussion -- your performance
14 evaluation appeal in 2013?

15 A. Yes. I expressed my judgment.

16 Q. So judgment was covered?

17 A. Yes.

18 Q. And with respect to number 25, drive and initiative. Is it
19 your testimony that drive and initiative wasn't discussed
20 during your performance evaluation meeting in 2013?

21 A. Yes.

22 Q. Yes. It's your testimony it was not discussed?

23 A. It was discussed.

24 Q. It was discussed.

25 Specifically when Inspector McCormack stated that two

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- 1 UF 250s for the entire year seemed to -- were purposely not
2 doing your job. That was drive and initiative discussion,
3 correct?
4 A. Yes.
5 Q. You testified in direct examination that in 2012 all of
6 your numbers were up; is that right?
7 A. Yes.
8 Q. And that you were probably a better officer then in 2012;
9 is that right?
10 A. Correct.
11 Q. Did you mean that by doing more enforcement activity you
12 were a better officer than when you did less activity the year
13 before?
14 A. No. That's not what I mean.
15 Q. During your performance evaluation appeal meeting in
16 February of 2013 you -- you knew that you were tape recording
17 that meeting but no one else did; is that correct?
18 A. Yes.
19 Q. You didn't ask anyone's permission to tape record the
20 meeting prior to the meeting?
21 A. No.
22 Q. You didn't inform anyone at the beginning of the meeting
23 that you were tape recording?
24 A. No.
25 Q. So during the performance evaluation appeal you were trying

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- 1 to get Inspector McCormack to say the department only cares
2 about numbers; isn't that right?
- 3 A. I disagree.
- 4 Q. You tried get Inspector McCormack to say he was telling you
5 to stop all Blacks and Hispanics; isn't that right?
- 6 A. I disagree.
- 7 Q. Inspector McCormack never said to you during that
8 performance evaluation meeting that he wanted you to stop all
9 Blacks and Hispanics; isn't that right?
- 10 A. Those specific words, those specific words, no.
- 11 Q. And when Inspector McCormack identified Mott Haven as a
12 location within the 40th precinct with crime problems,
13 specifically robberies and grand larceny, you were the one who
14 responded that Mott Haven was full of Blacks and Hispanics;
15 isn't that right?
- 16 A. Yes. And then I corrected right after and said mostly
17 Black and Hispanic.
- 18 Q. And then you responded to Inspector McCormack that what you
19 were supposed to do then was stop every Black and Hispanic in
20 Mott Haven, right?
- 21 A. I believe I said what do you want me to do, stop every
22 Black and Hispanic, meaning is that what you want me to do.
- 23 Q. And Inspector McCormack did not agree with that, did he?
- 24 A. I believe he did not.
- 25 Q. Because Inspector McCormack responded by describing the

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1 suspects of robberies and grand larceny in Mott Haven as
2 identified by crime victims; isn't that right?

3 MR. MOORE: Object to the form. It's both
4 argumentative and a mischaracterization. And compound.

5 THE COURT: One second.

6 It's not a question. It's really not a question. I
7 have to strike it and ask you to rephrase.

8 Q. During the performance evaluation meeting when you were
9 discussing the crime problem in Mott Haven, Inspector McCormack
10 provided a description of suspects of robberies and grand
11 larcenies; isn't that correct?

12 A. Yes.

13 Q. And that description was male, black, ages 14 to 20 or 21,
14 correct?

15 A. Correct.

16 Q. In your direct testimony you discussed focus by superior
17 officers on the right summonses that's you issue as a police
18 officer. Do you recall that testimony?

19 A. Repeat that, please.

20 Q. Discussed during your direct testimony that there's a focus
21 on the right kind of summonses you issue as a police officer?

22 A. Yes. What they considered the right summonses.

23 Q. The ones that make the city money; is that right?

24 A. Yes.

25 Q. Isn't it true that the summonses that are hazardous that

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1 are the ones that make the city money, those are the ones you
2 identified, the hazardous ones?

3 A. Those are the ones he wants.

4 Q. Those are identified as hazardous because they can cause
5 traffic accidents; isn't that right?

6 A. Yes.

7 Q. Like talking on a cellphone is a hazardous condition and
8 that would receive a hazardous summons, correct?

9 A. Actually at one point it was on the other side.

10 Q. Presently.

11 A. Presently they moved it to hazard, yes.

12 Q. So issuing hazardous summonses corrects potential traffic
13 and accident conditions; isn't that correct?

14 A. Potentially, yes. Theoretically.

15 Q. Turning to your meeting with Captain Materasso in June of
16 2012 regarding your appeal of your performance evaluation from
17 2011. Do you recall your testimony with respect to that
18 meeting?

19 A. Do I recall --

20 Q. Testifying with respect to that meeting?

21 A. Yes.

22 Q. And you testified that Captain Materasso received a
23 telephone call while you were meeting with her about your
24 evaluation?

25 A. That's correct.

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1 Q. And you don't know what was said to Captain Materasso
2 during that telephone call, do you?

3 A. No.

4 Q. You believe you testified that she told you some people
5 were being watched?

6 A. She told me that, yes.

7 Q. And she asked you to come with her to 281 East 143rd; is
8 that correct?

9 A. Well -- you're saying that's the address, yes.

10 Q. You provided that address in written document to IAB; is
11 that correct?

12 A. Yes.

13 Q. And 281 East 143rd is in the Patterson houses in the 40th
14 precinct; is that correct?

15 A. Yes.

16 Q. And that's a NYCHA development?

17 A. Yes.

18 Q. And it's your testimony that you and Captain Materasso went
19 to 281 East 143rd in an unmarked police vehicle; is that
20 correct?

21 A. I'm going to say in a police vehicle. I'm not a hundred
22 percent sure it's unmarked. But it's possible.

23 Q. I believe you testified on direct it was unmarked. It
24 could have been a marked police vehicle?

25 A. Yeah, it could have been, yeah.

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- 1 Q. Who drove?
2 A. I'm not a hundred percent sure but I think she drove.
3 Q. Was Captain Materasso on the phone on the way there?
4 A. I don't remember.
5 Q. When you arrived at 281 East 143rd you both got out of the
6 vehicle, right?
7 A. When I arrived at what?
8 Q. You both got out of the vehicle?
9 A. Yes.
10 Q. And you approached the three men who were standing on the
11 sidewalk?
12 A. Yes.
13 Q. And one of the men was carrying a baseball bat; isn't that
14 right?
15 A. Yes.
16 Q. And actually you removed the baseball bat from the
17 immediate vicinity?
18 A. Yes.
19 Q. You put the baseball bat down next to the curb?
20 A. Yes.
21 Q. And you were in uniform that day, right?
22 A. Correct.
23 Q. And Captain Materasso was wearing an NYPD jacket?
24 A. I don't recall.
25 Q. Do you recall that she was in uniform?

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- 1 A. I don't recall.
2 Q. Do you recall that she had her badge?
3 A. I don't know.
4 Q. Do you recall if she had her weapon?
5 A. I don't recall.
6 Q. Did you have your weapon?
7 A. Yes.
8 Q. You claim that in Captain Materasso was stopping these
9 three men illegally; is that right?
10 A. From my vantage point yes.
11 Q. And that she searched them, as you said, at 281 East
12 143rd?
13 A. I observed her going through their pockets. Yes. She
14 searched them.
15 Q. It's your belief that Captain Materasso didn't have
16 reasonable suspicion to make that stop?
17 A. Not from her desk while we're doing our evaluation, no.
18 And we drove up exactly to a location. We got out. I don't
19 think so. Very difficult.
20 Q. But she received a phonecall, right?
21 A. Yes.
22 Q. And you don't know what that phonecall -- what information
23 that phonecall provided her?
24 A. No, I do not.
25 Q. But you know that in response she drove to a specific

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1 location; is that correct?

2 A. Yes.

3 Q. So it's not your understanding that this stop was related
4 to an undercover narcotics operation?

5 MR. MOORE: Object to the form, Judge.

6 THE COURT: I know it's got a double negative.

7 Q. Is it your understanding that this stop was related to an
8 undercover narcotics operation?

9 MR. MOORE: Objection to the form. No foundation.

10 THE COURT: I'll allow it.

11 Is that your understanding?

12 THE WITNESS: My understanding is that I don't know
13 who was calling her, but someone called her and gave her some
14 information which led her to go to that location.

15 Q. So you don't know if the stop was prompted by an undercover
16 narcotics operation?

17 A. No. I don't know. It's possible.

18 Q. And you don't know whether those three individuals that you
19 and Captain Materasso stopped had just sold crack to an
20 undercover officer, do you?

21 MR. MOORE: Totally speculative and I would note that
22 Captain Materasso is not on their witness list.

23 MS. COOKE: Yes, she is.

24 MR. MOORE: I apologize.

25 THE COURT: Have you ever known that information?

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Serrano-cross

1 THE WITNESS: No.

2 THE COURT: And you don't know right now whether it's
3 true or not?

4 THE WITNESS: No.

5 THE COURT: Okay.

6 Q. Are you aware of a narcotics takedown in the 40th
7 precinct in the Patterson houses in December of 2012?

8 A. No.

9 Q. You aren't aware of warrants that were issued for 45
10 individuals for a crack distribution operation?

11 A. No.

12 Q. You weren't familiar with this as a year-long investigation
13 in the 40th precinct into narcotics?

14 A. No.

15 THE COURT: By the way, those three individuals who
16 were stopped and searched, were they arrested?

17 THE WITNESS: No. They were just searched. That's
18 it.

19 THE COURT: And then that was it?

20 THE WITNESS: That's it. I do remember one of them
21 looked like he was playing baseball.

22 THE COURT: Do you know if a UF 250 was filled out?

23 THE WITNESS: I didn't see anything filled out.

24 Q. You didn't prepare a UF 250?

25 A. I didn't do the stop. No, I did not.

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1 Q. You were present at the stop, correct?

2 A. Yes.

3 Q. And I believe in addition to making the stop and allegedly
4 searching these individuals Captain Materasso you testified on
5 direct she took down their pedigree information; isn't that
6 correct?

7 A. She took down some information, yes.

8 THE COURT: But do you know if she filled out a 250?

9 THE WITNESS: No, I don't.

10 THE COURT: You don't know?

11 THE WITNESS: I don't know.

12 THE COURT: But you know they weren't arrested?

13 THE WITNESS: They were not -- not right then and
14 there while I was present, they were not arrested.

15 Q. Patterson houses and Mott Haven houses are adjacent to each
16 other; is that correct?

17 A. Yes.

18 Q. Both in the 40th precinct?

19 A. Yes.

20 Q. And this stop we just identified at 281 east 143rd is near
21 Patterson, correct?

22 A. Near Mott Haven.

23 Q. I'm sorry. Mott Haven?

24 A. Yes.

25 Q. And Inspector McCormack actually discussed a narcotics

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1 takedown in Mott Haven during your performance evaluation
2 meeting in 2013; isn't that correct?

3 A. Correct. But we were in Patterson.

4 Q. But 281 you just said was Mott Haven?

5 A. Mott Haven. Where this actually happened was Patterson.
6 Mott Haven was a block up and across the street.

7 Q. So they're adjacent?

8 A. They are -- yes. They're adjacent.

9 Q. And Inspector McCormack when he discussed this narcotics
10 takedown in 2012 in the 40th precinct, he said it had an
11 impact on crime in the 40th precinct; isn't that right?

12 A. Yes.

13 THE COURT: By the way, Ms. Cooke, just to jump ahead,
14 do you know if there's a UF 250 for this particular stop?

15 MS. COOKE: I do not know if there is a UF 250 for
16 this particular stop.

17 THE COURT: Thank you.

18 Q. You claim that you've been assigned to unusual posts in
19 retaliation for complaints about quotas in the 40th precinct;
20 is that right?

21 A. Yes.

22 Q. And some of these unusual posts were posts outside of the
23 40th precinct; is that right?

24 A. Yes.

25 Q. Like the Rockaways?

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Serrano-cross

1 A. Yes.

2 Q. Was -- weren't you sent to the Rockaways after Hurricane
3 Sandy?

4 A. Yes.

5 Q. So that was an unusual post to be sent out of 40th
6 precinct?

7 A. It was multiple. And --

8 Q. But being sent to the Rockaways specifically that was an
9 unusual post in retaliation for your complaint about quotas?10 A. The way it's normally done -- yes, it was unusual -- is
11 that the guys with less time, the rookies, would go first and
12 then the people -- the officers that paid their dues and a
13 little seasoned would stay in the precinct and do precinct
14 work.15 Q. So you think based on your, is it, eight-and-a-half years
16 with the police department that you were entitled to stay in
17 the precinct and not go to the Rockaways following Hurricane
18 Sandy?

19 A. Normally they would just ask me.

20 Q. You didn't volunteer to go?

21 A. No. Not that I remember.

22 Q. And you weren't the only officer sent to the Rockaways for
23 Rockaway detail following the hurricane, were you?

24 A. No. I wasn't the only one.

25 Q. Several officers from the 40th precinct were sent?

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Serrano-cross

1 A. Yes.

2 Q. And every precinct practically in the city probably, right?

3 A. I would assume, yes.

4 Q. You claim that another retaliatory action is an unusual
5 post like a footpost; is that correct?

6 A. Yes.

7 Q. So footposts are also punishment?

8 A. Again, footposts are usually for the people with less time.

9 Q. Isn't it true that the NYPD regularly has officers on
10 footpost?

11 A. Almost everyday, yes.

12 Q. So everyday officers are being punished?

13 THE COURT: He said it has to do with seniority.

14 When you say less time, you mean seniority?

15 THE WITNESS: Seniority.

16 THE COURT: So footpost people have the least
17 seniority; is that right?

18 THE WITNESS: That's correct.

19 THE COURT: And the more senior you get, you ride
20 around in your cars?

21 THE WITNESS: That's correct.

22 THE COURT: So what you found unusual was you were
23 assigned there given your seniority?

24 THE WITNESS: Yes.

25 THE COURT: It's not unusual to be on footpost?

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Serrano-cross

1 THE WITNESS: Yes.

2 THE COURT: But it's unusual given your seniority.

3 THE WITNESS: Correct. Unless you want that.

4 THE COURT: I understand.

5 Q. Isn't it true that the commanding officer or even a borough
6 commander may make a determination to employ a footpost when
7 necessary to address a crime condition?

8 A. Yes.

9 Q. For example following a shooting?

10 A. Yes.

11 Q. Officers will be deployed on foot in order to have a
12 presence and prevent a retaliatory shooting?

13 A. That would be one thing that they do, yes.

14 Q. And you identified your post -- strike post. It was the
15 school bus driver union strike, strike post as a retaliatory
16 punishment for speaking about quotas?

17 A. The way it was done, yes.

18 THE COURT: What do you mean by that, the way it was
19 done?

20 THE WITNESS: Usually a strike post, because it's a
21 strike post. It's almost like a face-to-face. They don't
22 want -- they want a cop always there. They don't want any time
23 lapse in between. So what would happen is immediately after
24 your roll call you get over there quickly. In my case it was
25 sent out about an hour later, maybe two. It was after my

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1 evaluation. And then that's when they proceeded to inspect on
2 me, inspect on me, multiple times.

3 Q. The strike post is an important post though; isn't that
4 right?

5 A. Yes.

6 Q. And it has to be covered, as you said, 24 hours a day for
7 the duration of the strike; isn't that right?

8 A. Yes.

9 Q. That's because they're trying to keep peace and prevent
10 vandalism and allow workers who are crossing union lines to go
11 to work; isn't that right?

12 A. Correct.

13 Q. And supervisors are required to visit the strike post;
14 isn't that right?

15 A. Yes.

16 Q. And, in fact, supervisors visited the strike post while you
17 were on that post?

18 A. Yes. They visited it, yes.

19 Q. You identified the Rodman's Neck stop and frisk training
20 that you recently attended as additional training that was in
21 retaliation for your filing complaints about quotas; isn't that
22 right?

23 A. Correct.

24 Q. The Rodman's Neck course is a refresher course on stop,
25 question, frisk; is that right?

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Serrano-cross

- 1 A. Yes.
- 2 Q. And it includes both classroom portions and role playing
- 3 portions, correct?
- 4 A. Yes.
- 5 Q. You're not the only officer from the 40th precinct to
- 6 have attended that course; isn't that right?
- 7 A. As far as that I know, at the time I was the only one.
- 8 Q. You're aware of intact requirements, intact training for
- 9 officers; is that right?
- 10 A. Yes.
- 11 Q. And that's an annual training that each officer is required
- 12 to go to?
- 13 A. I might have to disagree with the annual. I don't go to
- 14 intact every -- once a year.
- 15 Q. When was the last time you attended intact?
- 16 A. I don't remember. I mean if you say intact where we use
- 17 paint ball simulations, it's been a while.
- 18 Q. Annually do you go to Rodman's Neck for a tactical
- 19 training?
- 20 A. To requalify my weapon I go annual. Actually twice a year.
- 21 Q. You claim our memo books have been scrutinized in
- 22 retaliation for your making complaints about quotas; is that
- 23 right?
- 24 A. Yes.
- 25 Q. But you also identified that you have improperly redacted

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1 content from your memo book; isn't that right?

2 A. Yes.

3 Q. And that's, in fact, one of the scrutiny that has occurred
4 of your memo book was the fact you violated patrol guide
5 procedure by redacting lines in the memo book; isn't that
6 right?

7 A. Yes. I'm sorry. I crossed it out. That's a big word. I
8 blanked it out so that nobody could read it.

9 Q. You blacked it out?

10 A. Yes.

11 Q. Completely?

12 A. Yes.

13 Q. And you're aware that the patrol guide procedure provides
14 that to remove a line from your memo book you're to draw a line
15 through it and initial it?

16 A. Yes. I had -- actually a supervisor from IAB gave me some
17 advice.

18 Q. Gave you some advice with respect to how to properly
19 redact?

20 A. Specifically she said don't let them know -- don't put it
21 in your book. Don't let anyone know you called me. And it was
22 too late. I already put it in the book. And at that point
23 within five minutes the captain was coming I panicked and I
24 blocked it out.

25 Q. Who was this person in IAB?

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1 A. I don't know the name. I have it somewhere. I originally
2 called -- in IAB there was I guess a police officer had his
3 name was on the memo book somewhere. Then after that a
4 sergeant called me, a female sergeant called me back to
5 re-clarify because it was a little confusing. That's -- all
6 this happened while I was on strike post.

7 Then she ordered me. She says I am ordering you not
8 to tell nobody and do not -- and do not write this in your
9 book. She didn't say cross it out. She said don't write it.

10 I made a mistake. I put it in there. But that was
11 after she told me. Then I panicked because I thought they're
12 coming, it's in my memo book and it's clear, and they're going
13 to know what happened. And I took the chance. And if they're
14 going to discipline me for that then, you know, I am guilty of
15 blocking it out.

16 Q. So if you received discipline it's not in retaliation for
17 your complaint about quotas it's for your conduct in violation
18 of the patrol guide?

19 MR. MOORE: Object to the form.

20 THE COURT: Seems more like a statement than a
21 question. Do you have a question?

22 Q. In your -- is it your understanding that a command
23 discipline for the redaction you made from your memo book would
24 be because you violated the patrol guide?

25 MR. MOORE: Same objection.

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1 THE COURT: No. I'll allow it.

2 THE WITNESS: I haven't received a command discipline
3 for it. But if they issue it, that's what they do. But I
4 haven't received a command discipline that specifically states
5 that I crossed it out or blocked it out.

6 Q. And that call you made to IAB, that was on or about
7 February 7, 2013; is that correct?

8 A. Yes.

9 Q. You claim that after you made that call to IAB on or about
10 February 7, 2013 that officers at the 40th precinct knew that
11 you had made a complaint?

12 A. Very quickly. I -- I can't tell you the timeframe. But
13 somehow they knew because they were telling me the story.

14 Q. Could it be that police officers knew you had been
15 surreptitiously tape recording conversations at the 40th
16 precinct?

17 MR. MOORE: Object to the form, Judge.

18 THE COURT: Sustained. It calls for speculation.

19 Q. Did you tell anyone you were tape recording conversations?

20 A. I might have. Yes.

21 Q. At -- other officers at the 40th precinct?

22 A. Yes.

23 Q. Following your performance evaluation appeal meeting in
24 2013 Assistant ICO Sergeant Gomez asked for a series of your
25 memo books; is that correct?

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1 A. Yes.

2 Q. And at the time you informed Sergeant Gomez that your memo
3 books were in your house; isn't that right?

4 A. Yes.

5 Q. And when you say in your house, you didn't mean the station
6 house, you meant your home; isn't that right?

7 A. Yes, my home.

8 Q. You received training regarding memo books and memo book
9 entries at the police academy; isn't that right?

10 A. Yes.

11 Q. And there's a parole guide section on how to maintain
12 activity logs?

13 A. Yes.

14 Q. An activity log is a memo book; is that right?

15 A. Yes.

16 Q. It's true that all memo books, both active and completed,
17 must be stored in your locker and available for inspection at
18 all times; isn't that correct?

19 A. Yes.

20 Q. So your memo books were not in your locker and available
21 for inspection on February 14, 2013?

22 A. No, but for a reason.

23 Q. When they were requested by Sergeant Gomez and you informed
24 Sergeant Gomez they were in your home, Sergeant Gomez
25 accompanied you to your locker to check; isn't that correct?

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1 A. Yes.

2 Q. So your locker wasn't searched on February 14, 2013, was
3 it?4 A. No. They told me to open it. I opened it. I stepped
5 back. They looked in. But they didn't rummage.6 Q. And, in fact, this next day, February 15, 2013 you called
7 IAB and asked them if you had to give over your memo books;
8 isn't that right?

9 A. Yes, and I explained why.

10 Can we take a break? I have to use the restroom.

11 THE COURT: Okay. Go ahead.

12 (Witness excused)

13 THE COURT: While we're waiting, what's the status of
14 the transcripts? Have we had a chance --

15 MS. COOKE: Daily, you mean?

16 THE COURT: No, the recordings.

17 I'd like to review them. But I don't want to do it
18 until you've confirmed that you've had the chance.19 MS. COOKE: As we've gone, I've been able to read them
20 here in court. But as your Honor -- I've been busy in here the
21 last couple days with these witnesses. So I know as I've been
22 reading I've been identifying words that I think are audible
23 and intelligible that weren't recorded and then words that are
24 obviously inaccurate. I think portions of the Polanco tapes
25 actually weren't even transcribed portions so the transcript is

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1 not complete for the --

2 THE COURT: Maybe by next Wednesday.

3 MS. COOKE: To the extent --

4 THE COURT: With the two days off, maybe you can
5 confer.

6 MS. COOKE: I don't know that we're going to be able
7 to add to the transcripts.

8 THE COURT: You can confer. You give your proposed
9 version, and they listen to the tape and can hear it, that's
10 fine. I'd like to have one agreed-upon transcript if possible.

11 MS. COOKE: Could you all have the additional pieces
12 transcribed that are missing. I think it's tracks five and
13 something else.

14 MS. BORCHETTA: Your Honor, we can work it out with
15 the defendant.

16 THE COURT: Try because the sooner I can read them
17 because some of them are --

18 MS. BORCHETTA: We'll work with defendants.

19 THE COURT: I'd like to have them by next Wednesday if
20 I can.

21 Okay.

22 (Witness resumed)

23 Q. Officer Serrano, you also claim you've been denied days off
24 in retaliation for your making complaints about quotas; is that
25 right?

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D3L9FLO4

Serrano-cross

- 1 A. Yes.
- 2 Q. In particular, you claim you were denied a day off when you
- 3 were in an accident on a snowstorm; is that right?
- 4 A. Correct.
- 5 Q. What snowstorm was that?
- 6 A. I don't recall. It was big snowstorm.
- 7 Q. Was it recently?
- 8 A. Recently.
- 9 Q. In the last six months?
- 10 A. Yes.
- 11 Q. Who was your supervisor at that time?
- 12 A. Monroe. Sergeant Monroe.
- 13 Q. Did you contact Sergeant Monroe to let him know you had
- 14 been in an accident and needed the day off?
- 15 A. He wasn't there. No.
- 16 Q. Do you speak to a supervisor and request the day?
- 17 A. I spoke to the desk officer and I requested the day.
- 18 Q. Who was the desk officer?
- 19 A. I wrote it down somewhere. I don't know her name.
- 20 Q. You believe he denied you the day off in retaliation for
- 21 you speaking out about quotas?
- 22 A. That's what I believe, yes.
- 23 Q. Are you aware that police officers are frequently needed
- 24 during snowstorms to address emergency services and accidents?
- 25 A. Yes.

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D3L9FLO4

Serrano-cross

1 Q. Isn't that the reason that days off are denied?

2 A. Yes.

3 Q. For snowstorms?

4 A. One of the reasons, yes.

5 Q. Officer Serrano, you claim that other people, in particular
6 white officers, received higher evaluations than you for the
7 same amount of work; is that right?

8 A. For the same or less.

9 Q. The same or less. When you say work are you referring to
10 UF 250s, summonses, and arrests?

11 MR. MOORE: Judge I would just note that I didn't go
12 into this on the direct because I -- although he has made that
13 claim, it does open up a whole area of examination. If they're
14 going to go into it, I'm going to -- I just -- I don't think
15 it's relevant to the issue before this court right now but.

16 THE COURT: Is it relevant to compare disciplines
17 between white officers and nonwhite officers in the precinct?

18 MS. COOKE: Your Honor, in this instance I believe so
19 because Officer Serrano is making allegations --

20 THE COURT: I know but it's pretty collateral to what
21 we're doing here. We're not trying his, I guess, I don't know
22 what, discrimination case or whatever it is he's going to bring
23 or has brought. We're carefully not doing that. I have issues
24 in this case, and they are not the issues of whether officers
25 have been discriminated against based on race. I've got enough

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D3L9FLO4 Serrano-cross

1 problems. So I would like to not try that case here.

2 I really think it's a collateral matter to compare the
3 disciplines between white and nonwhite officers in the 40th
4 precinct. And I'd like not to go into it. So, therefore, I'm
5 going to sustain the objection.

6 That's for another day in another court. I've
7 sustained the objection. No more questions on that.

8 MS. COOKE: I just want --

9 THE COURT: -- on that issue.

10 MS. COOKE: I want to confirm then with respect to
11 Inspector McCormack, who the plaintiffs are calling, they won't
12 be addressing with Inspector McCormack issues of Inspector
13 McCormack's racially motivated treatment of officers in the
14 40th precinct. Because this is my opportunity right now with
15 Officer Serrano on the stand to address that allegation and
16 claim. So that's my understanding, then I have no further
17 issue with that question.

18 THE COURT: Mr. Moore.

19 MR. MOORE: We're not going to ask him about the
20 allegation in Mr. Serrano's EEOC complaint about that, so.

21 THE COURT: So disparity between disciplines?

22 MR. MOORE: Right.

23 THE COURT: Between black and white officers?

24 MR. MOORE: That's not -- I may look into it now that
25 she mentioned it.

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Serrano-cross

1 No. We're not going to go into it, Judge.

2 Q. Officer Serrano, evaluations as a police officer are based
3 on more than just your enforcement activity, correct?

4 A. Enforcement activity specifically. What is that? I need
5 you to be specific.

6 Q. In addition. Your evaluations are not based solely on
7 enforcement activity; isn't that correct?

8 A. If you if you say enforcement, arrests, 250s, summonses?

9 Q. Correct.

10 A. Yes. It's not solely on that.

11 Q. Included in your evaluation is how well you're addressing
12 conditions in your command; isn't that right?

13 A. Yes.

14 Q. And that addressing of conditions might not involve
15 enforcement activity; isn't that right?

16 A. Yes.

17 Q. Or if it does involve enforcement activity it's how well
18 that enforcement activity matches to the conditions you're
19 addressing; isn't that right?

20 A. Repeat that.

21 Q. If it -- if it's assessing your enforcement activity, it
22 matters how well your enforcement activity addresses the
23 conditions; isn't that correct?

24 A. I'm confused.

25 Q. If you have enforcement activity, it should address the

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Serrano-cross

1 condition, correct?

2 A. I'm still confused.

3 Q. That's fine.

4 THE COURT: You mean the crime conditions. Is that
5 what you're saying?

6 MS. COOKE: Yes.

7 THE COURT: Maybe that would have made it clearer.

8 Should the enforcement activity relate to the alleged
9 criminal activity in the area? Should there be a correlation?

10 THE WITNESS: What I'm confused about when she says
11 enforcement, there's many ways of enforcing stuff. I just want
12 to be more specific.

13 If you're telling me that arresting -- if you're
14 talking about arrests and summonses and 250s, if you're talking
15 about that only, then I would say no because it's everything.
16 It's community policing.

17 THE COURT: Well when should the enforcement activity
18 match the alleged criminal activity?

19 THE WITNESS: Well I believe that you just deal with
20 it the way -- every cop is different and they just deal with
21 that situation during a specific situation and if it requires
22 police enforcement -- and, again, what I do with is summons.
23 I'll ask them to leave. So I address the condition. They
24 move. If they don't, I summons them because they didn't. If
25 they do something that needs -- that I must arrest, then I

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Serrano-cross

1 arrest, so.

2 Q. Officer Serrano, you said you didn't -- you said that if
3 you didn't have the numbers that they would find you a collar;
4 is that correct?

5 A. A collar, yes.

6 Q. Is it your view that the collars they would find for you
7 would be an illegal arrest?

8 A. It would be an unwanted arrest, a difficult arrest.

9 Q. Unwanted illegal or just unwanted undesirable by you as the
10 officer?

11 A. Part of it would be illegal if you ask me to lie.

12 I have the actual case point, if you want.

13 Q. I'm asking if --

14 THE COURT: I'd be interested in that example.

15 THE WITNESS: I had impact one day -- one day. I
16 don't remember. And I believe it was Sergeant Mohan. And
17 obviously go out there, get the five summonses. I only had two
18 when he called me. He checked up on the numbers. He called
19 me. I only had two. Maybe three. I don't remember.

20 I know that PO Checco was my -- was working with me
21 that day. Towards the end we didn't have anything. I wasn't
22 feeling well. Actually that week before that I found out that
23 I had diabetes. And one of the things that was affected was my
24 vision. So I was thinking for me to do eight hours of
25 paperwork wouldn't be good because I couldn't read. But they

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Serrano-cross

1 wouldn't believe that. So I didn't use it as an excuse. But I
2 did tell Checco that, that, you know, they're going to try to
3 find a collar for me because, you know, I didn't get the
4 numbers.

5 Well, I get the phonecall. Meet me at somewhere near
6 Grand Course and 138. I believe it's Walton. And there was a
7 DWI. There was a driving while intoxicated.

8 Well the sergeant says 85 into that location. So I
9 went.

10 When we got to that location he says, This is your
11 collar. And I look at him, and I'm like: What is this? He
12 was driving while drunk. And then I said: Who observed it?
13 And he said you. And I said not me. I said you observed it
14 but it wasn't me.

15 But the Sergeant Popovich came out of nowhere and said
16 I observed it. I said okay. So I took his information down.
17 I put the perpetrator in my car. And we were debating on who
18 is going to take it because I didn't feel well, but Checco has
19 more time on. He's more of a senior cop. I think it's maybe
20 six months to a year. But I try to respect that. Even though
21 I wasn't feeling well, I still did the paperwork. It was
22 difficult, but I did it.

23 And I put that the sergeant observed it. But I felt
24 as if they want me to leave the sergeant out of it so that, you
25 know -- and also it was like maybe half an hour before the end

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Serrano-cross

1 of tour. We were going to go home. And you know this is a
2 common punishment. If you don't meet the quota, then you get
3 punished.

4 THE COURT: You called this an unwanted collar. Why
5 is this an unwanted collar?

6 THE WITNESS: Because again at the time I couldn't
7 read. I wasn't feeling well.

8 THE COURT: That's you. This is described as an
9 unwanted collar. Nobody really wanted this one. Why?

10 THE WITNESS: It can take 24 hours to process. You've
11 got to -- first, the person is intoxicated. He might end up in
12 the hospital. It will take forever. You got to voucher his
13 car. The whole time you're responsible for this prisoner. And
14 you can get in trouble if he dies or if something happens to
15 him.

16 Well, so you got that. You got to voucher the car
17 meticulously, go through every single piece, voucher one by
18 one. People have a lot of things in their cars.

19 Besides that you got all the paperwork. You got to go
20 to the 45. In the 45 you got to meet highway. Highway tests
21 them. By breathing -- they videotape it. And they say do you
22 want a breathalyzer. They refuse or not refuse. That process
23 could take eight hours because --

24 THE COURT: So I understand that's why it's an
25 unwanted collar, because it could go a lot of hours.

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Serrano-cross

1 THE WITNESS: Exactly. But the way I was feeling I
2 definitely don't want to do that.

3 Q. That wasn't an illegal arrest though, was it?

4 A. No. But the part where they want me to put my name as the
5 arresting officer that to me is illegal because I didn't
6 observe it.

7 Q. It's not a violation of department policy to process the
8 arrest made by another officer, is it?

9 A. No. That would be that I would be the assigned officer,
10 not the arresting.

11 THE COURT: But what you thought was illegal was
12 saying that you saw something that you didn't see.

13 THE WITNESS: Exactly.

14 THE COURT: I understand.

15 Q. But you didn't say you saw something you --

16 THE COURT: He said he was asked to do that; is that
17 right?

18 THE WITNESS: That's correct. I was asked to do it
19 and, you know, I immediately said no, that's not what I'm going
20 to do.

21 MS. COOKE: No further questions at this time, your
22 Honor.

23 THE COURT: Thank you, Ms. Cooke.

24 Mr. Moore, any redirect?

25 MR. MOORE: Just a few.

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Serrano-cross

1 Leave that up, please. Or maybe we'll just put it up.
2 What is it, D-10?

3 MR. KUNZ: C.

4 MR. MOORE: Can you actually bring up the tape. It
5 was I think 332. Can we play Plaintiffs' Exhibit 332 beginning
6 at 17:41.

7 THE COURT: I don't know if they got what you wanted.

8 MR. MOORE: Pardon?

9 THE COURT: I don't think your team got what you
10 wanted.

11 MR. MOORE: While you're getting that I'll ask
12 something else.

13 REDIRECT EXAMINATION

14 BY MR. MOORE:

15 Q. Officer Serrano, Ms. Cooke asked you some questions about
16 your evaluation being based on enforcement activity. Do you
17 recall that?

18 A. Yes.

19 Q. And when you were discussing your evaluation with Captain
20 Materasso, what did she say about the weight to be given to
21 your ability to produce summonses, 250s, or arrests?

22 A. Well from what I remember she told me that it was half my
23 score.

24 Q. 50 percent?

25 A. 50 percent.

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D3L9FLO4 Serrano - redirect

1 Q. Of your evaluation, right?

2 A. Yes.

3 Q. And when she was saying that, was she speaking about it in
4 the terms of whether this was related to your comprehension
5 skills?

6 A. (No response).

7 Q. Did she speak about it in those terms?

8 A. She didn't mention any of these 128 -- again, she might
9 have, by looking at it, was the arrests. The things she
10 discussed was arrests, summonses and 250s.

11 Q. It wasn't your reasoning ability and your problem
12 recognition and those categories that Ms. Cooke went through,
13 right?

14 A. No. When I explained it, I used it. I said communication
15 interaction, then I explained myself. Then I went to the next
16 one, apprehension, and I explained myself. Prisoner -- victim
17 or prisoner interaction. I explained myself. I clearly said
18 each one and then I gave a reason to why this is incorrect.

19 Q. And with respect to your enforcement activity, would you
20 agree that simply being pressured to comply with quotas is not
21 legitimate enforcement activity?

22 A. That's correct.

23 Q. And that's what you felt the pressure was in the 40th
24 precinct that you're talking about, right?

25 A. Yes. And I made it clear to her. And I said, when she

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D3L9FLO4

Serrano - redirect

1 described the quota, my words were that's a -- I think that
2 sounds like a quota. I'm not -- I'm paraphrasing. I can't
3 remember the exact words. But that's a quota and it's illegal.

4 Q. Ms. Cooke asked you about the day you asked to take off
5 because of the snowstorm. Do you remember that? And it was
6 denied?

7 A. Yes.

8 Q. You were trying to come into work, correct?

9 A. I live up in Westchester County Cortlandt Manor. And I was
10 taking Bear Mountain Expressway. At certain -- the answer to
11 that is yes, I was trying to go to work.

12 Q. Tell us about that. How you tried to get into work.

13 A. I was on Bear Mountain Expressway. I got to the top of the
14 hill that it comes up to a hill. When it got to the bottom, I
15 was doing maybe around 20, 15 miles an hour. The ice was so
16 thick and so strong that it took me down the hill, crossed over
17 two lanes, went up into the grass, down a ditch. And the whole
18 time I'm just using my ELOC skills to the best of my knowledge.
19 And thank God I had anything. I went -- then I crossed over
20 another, because the exit comes around, I crossed over that,
21 barely missing a pole and some lady that was parked -- I mean
22 was waiting for the light. I barely missed hitting her. I
23 ended up in another grassy place that was full of snow. And I
24 finally came to a stop. After about -- after about, I don't
25 know, five minutes of just composing myself and checking my

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D3L9FLO4

Serrano - redirect

1 underwears, I called them up and I begged. And I don't think
2 it was her fault, but she said -- I said can I have the day
3 because I almost got into an accident, etc. And the desk
4 called the TS. The person who picked up the phone told the
5 desk sergeant, the desk sergeant to give me one second. I
6 don't know who she asked or what happened. Came back and said
7 I'm sorry but there is no excusals. And I said okay. I just
8 sucked it up and went to work. I don't know -- I got there --
9 I don't know what time I got there. But when I got there I --
10 I realized that somebody lived in Mahopac and she was --
11 Q. I'm sorry. Say that again?

12 A. Mahopac. Mahopac. That's right next to Cortlandt.

13 THE COURT: Mahopac.

14 THE WITNESS: Mahopac. There you go. I'm sorry.
15 It's the next one right after me.

16 And when I found out that someone was given the day
17 off --

18 MS. COOKE: Your Honor, I'm going to object because
19 this is actually testimony with respect he believes white
20 officers.

21 MR. MOORE: I'm not going into the race of the
22 officer.

23 THE COURT: Nobody brought up race except you.

24 MS. COOKE: I know where this answer is going.

25 THE COURT: I think he was saying he found out

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D3L9FLO4 Serrano - redirect

1 somebody got the day off and he didn't. I don't know that he
2 was going to bring up race.

3 MS. COOKE: I would prefer that we keep the line that
4 I was limited to on cross --

5 THE COURT: I said I don't know that he was going to
6 say a word about race. You're the only one who said it.

7 Anyway so you found out somebody else got the day off.

8 THE WITNESS: I found out that someone got a day off.

9 THE COURT: And you didn't. Okay.

10 THE WITNESS: And they live in Mahopac, and I live
11 Cortlandt Manor.

12 Q. You were trying to come into work but you felt it was too
13 dangerous, correct?

14 A. It was extremely dangerous. I almost hurt myself and many
15 other people.

16 (Continued on next page)

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D3L8FLO5

Serrano - redirect

1 Q. When you were told to come into work, that you wouldn't be
2 excused, you went to work?

3 A. I went to work.

4 THE COURT: You were told there would be no excusals.

5 THE WITNESS: They told me no excusals. It's written
6 on the roll call. And I said, OK. Again, I sucked it up, I
7 went. And every now and then I drive by the same location to
8 see my tire marks on the road, on the grass.

9 Q. You also were asked some questions --

10 THE COURT: Can you identify that day?

11 THE WITNESS: Right now I cannot, but it was during
12 one of the big storms.

13 THE COURT: Could you go back and figure out which day
14 it was?

15 THE WITNESS: Yes. Yes.

16 MR. MOORE: We will do that, Judge, and advise you of
17 the day.

18 Q. You also were asked some questions about your memo books
19 and why you called IAB. Ms. Cooke wasn't really interested in
20 the explanation as to why you called IAB. Why did you call
21 IAB?

22 A. That day when I found out, right after the evaluation, he
23 called me over and whispered in my ear, it's on the tape, and
24 it says, I know about the lawsuit and someone is going to take
25 my memo book. I forgot who he said, but someone is going to

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D3L8FLO5

Serrano - redirect

- 1 take my memo book. That's it. So he made it known that he
2 knows about the lawsuit. So that confirmed the rumors that
3 were flying around and people were telling me this. When he
4 told me, I put two and two together because now my whole
5 evaluation was like I was in court. All he talked about was
6 250s, 250s, 250s. Even when he himself was incorrect, in my
7 opinion, he said it was a stop, I think, with all due respect,
8 maybe he should attend the 250 course.
- 9 Q. When you wrote over that portion in your book, are you now
10 subject to disciplinary proceedings because of that?
- 11 A. If they choose to, yes. I did it at my own free will, but
12 I was definitely under a lot of pressure, and I was in fear
13 that Captain McCormack -- Deputy Inspector McCormack and
14 Captain Materasso, in the same vehicle, in the unmarked, at
15 that moment would find out, and then I would be in trouble.
16 And I hoped that because the sergeant from IAB told me, do not
17 let them know, that somebody would be reasonable and understand
18 why I did it.
- 19 Q. Do you know if there are disciplinary proceedings against
20 you right now for that?
- 21 A. No, I don't.
- 22 Q. Now, you testified as to foot posts and that sometimes it's
23 appropriate for officers to be on foot posts. Can you explain
24 why you believed your assignment to foot posts was retaliation?
- 25 A. There are multiple times when I can describe it.

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Serrano - redirect

1 Q. I'm sorry?

2 A. There are multiple times when that actually happened. One
3 of them was the whole entire summer, I don't remember the date
4 but it's in my memo book, I was assigned literally for the
5 whole summer. I can't say it was every single day, but it was
6 an unusual amount of foot posts, at 152 and Jackson, in the
7 area, high crime, by myself. And it's because I refused
8 to -- because I complained that there was a felony and it was
9 downgraded to a misdemeanor.

10 MS. COOKE: Objection, your Honor. I am going to ask
11 that this testimony be stricken. The issue of downgrading
12 crimes is not a claim in this lawsuit and the testimony is not
13 relevant.

14 MR. MOORE: It's relevant to answering this question
15 about why the foot posts were punishment. It actually has some
16 relevance.

17 THE COURT: We have heard already a fair amount about
18 downgrading felonies to misdemeanors. I am not entirely sure
19 what the relevance of that is, but it's come up many times
20 already in the few days we have been on trial.

21 MS. COOKE: It was the subject of a motion in limine
22 ruling.

23 MS. GROSSMAN: It was the subject of some motion
24 practice from last year, and you made rulings, and we can get
25 them for you.

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Serrano - redirect

1 THE COURT: I don't remember anything about it. What
2 was it about?

3 MS. GROSSMAN: It was a motion for a protective order
4 and you granted our motion for a protective order as being not
5 relevant.

6 THE COURT: What being not relevant, the whole
7 question of downgrading?

8 MS. GROSSMAN: Yes. You also commented through many
9 of our proceedings that you don't want to get into that. This
10 is about quotas in this particular case and the influence that
11 quotas have with respect to enforcement activity.

12 THE COURT: I have no recollection of downgrading from
13 felonies to misdemeanors.

14 MR. MOORE: Let me rephrase the question.

15 THE COURT: I don't remember that whole topic. I have
16 listened to it the last three days and I don't really know what
17 it means and what the relevance is, but I have heard the words
18 over and over again.

19 MR. MOORE: Let me try to rephrase it so we can get
20 back to the central issues here.

21 THE COURT: OK.

22 MR. MOORE: Without necessarily agreeing. And we will
23 look and see.

24 THE COURT: I really don't know what she is referring
25 to.

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Serrano - redirect

1 BY MR. MOORE:

2 Q. Without going into the downgrading issue, why did you
3 consider some of your assignments to foot posts, even though
4 it's legitimate law enforcement activity, why did you consider
5 it, in the context of your experience in the 40th Precinct, to
6 be a retaliation?

7 A. Well, again, if you don't follow the quota, arrests,
8 summonses, 250s, and if you don't do what they want you to do,
9 they meaning the bosses, then they retaliate. How do they
10 retaliate? They give you things that you don't want. Who
11 wants to be standing in the street when it's extremely cold?
12 And they want you to stand there and not go inside and warm up.
13 They want you outside. It's dangerous, and I don't know what
14 human being should be treated that way. But that's what they
15 want you to do. It's retaliation for not following the quota.

16 Q. You also were attempting to explain how officers even on
17 vacation can be called in to work on overtime; not vacation out
18 of the country, but on vacation. Can you explain that?

19 A. Yes. Some people call it "stay-cation." They stay home.
20 They are on vacation, but they don't go anywhere; they stay in
21 the house. While they are there, they don't mind making a
22 couple of bucks so they will offer their services. I might say
23 every now and then, if you have overtime, I wouldn't mind doing
24 it. It's one day, you make some overtime, and catch up with
25 some bills.

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Serrano - redirect

1 Q. Do you believe your relationship with the community was a
2 positive one in terms of your enforcement activities?

3 A. As my career moved on, it became better and better and
4 stronger, to the point where right now it's -- that's the first
5 thing I think about. The first thing is my safety, my family.
6 Then the public.

7 Q. Now, also, you recall Ms. Cooke asked you about your
8 interview with Deputy Inspector McCormack, and she went over
9 all these categories that appear on C10 with respect to report
10 writing and apprehension and comprehension and communication
11 skills. Do you believe that in that conversation you had with
12 McCormack that he was talking about those categories?

13 A. No. And again, the only thing that I observed -- here it
14 is -- talking about the arrest processing. I'm sorry.

15 Q. I am talking about the other ones. He was talking about
16 your apprehension abilities, your report writing, your
17 comprehension, your communication. Do you think that is what
18 he was talking about?

19 A. No. He was just talking about 250s. He kept explaining
20 250s to me, to the point where I got exhausted and I said, OK,
21 fine, I will take care of it. And I was going to do my
22 research again to make sure that I was correct, but it's very
23 difficult to argue with a deputy inspector, a captain. I mean,
24 it's just difficult. Nothing good could happen from that. He
25 could say whatever he wants. He could say you're suspended,

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Serrano - redirect

1 and that's it, I'm done. Who is going to believe me? I'm an
2 officer. He's a deputy inspector.

3 And no, I don't believe he covered most of this. I
4 believe he was just talking about 250s. In fact, he said -- he
5 brushed over it. Your collar is good, move on. You have got
6 summonses. He moved on. When he got to the B summonses, he
7 stopped, and then he said, specific B summonses, you improved
8 it but -- I said, most of them were correctable. He didn't
9 like that because they weren't hazardous.

10 Q. Hazardous conditions?

11 A. But I don't think he covered any of this stuff. I believe
12 it was just to interrogate me on 250s.

13 Q. What he did tell you was that he didn't like your numbers
14 in terms of your 250s and your summonses?

15 A. Correct.

16 Q. He said there is enough crime out there, you should be
17 going out there and getting more 250s and more summonses,
18 right?

19 A. Correct.

20 Q. He actually identified the portion of the population that
21 he wanted you to focus on, right?

22 A. Correct.

23 Q. Who were the right people at the right location and the
24 right time that he identified?

25 A. Male blacks, 14 to 21.

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Serrano - redirect

1 Just to reiterate, I apologize for doing what I did
2 with this, when I was skipping over it.

3 Q. You mean raising your voice?

4 A. No. I was answering, I was getting tired.

5 THE COURT: You went and got the tape. Are you
6 planning to use it?

7 MR. MOORE: I don't think I am going to use it now. I
8 just wanted to see if they can find it.

9 I have nothing further.

10 THE COURT: Ms. Cooke, any recross?

11 MS. COOKE: No, your Honor.

12 THE COURT: You're done. Thank you.

13 It's late, but we still could take a short afternoon
14 recess. Maybe we will just try to do seven minutes till 10 of
15 4.

16 (Recess)

17 THE COURT: Your next witness.

18 MR. CHARNEY: Our next witness is a recording. We are
19 going to play the recordings from the 81st Precinct that the
20 parties have stipulated to with respect to not only which
21 recordings will be played, but also the identity of the
22 speakers on these recordings. We discussed with you that a
23 particular witness would not have to testify. And I believe
24 that the stipulated information is in the joint pretrial order,
25 and I believe it's section 5 under undisputed facts.

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1 So what I was going to do, I actually have a
2 demonstrative here which lists the recordings, and on the
3 left-hand side it has the identity of the speaker, and then it
4 has the name of the track and then the portion of the track
5 that we are going to play. I thought we would just try to go
6 in order.

7 THE COURT: These speakers, are they at a certain
8 precinct?

9 MR. CHARNEY: These are all individuals that worked in
10 the 81st Precinct at the time that the recording was made. I
11 can tell you what their rank was, what their position was in
12 the precinct.

13 THE COURT: Are you going to have any transcripts of
14 these?

15 MR. CHARNEY: We are working on those as well.

16 THE COURT: Is that going to take the remainder of the
17 day?

18 MR. CHARNEY: I think it may, unfortunately.

19 THE COURT: It's so much easier with transcripts.

20 MR. CHARNEY: We want to make sure you have good ones.
21 The sound quality on these is very good.

22 The first recording, the name of the track is 12
23 December 2008, 81, 4x12 roll call. We are going to play 2
24 minutes and 20 seconds to 4 minutes and 30 seconds. The name
25 of the speaker that you will hear is Jean Delafuente who is a
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1 lieutenant and platoon commander in the 81st Precinct between
2 June of 2008 and February of 2009. And he was also present at
3 the roll call on 12 December 2008.

4 THE COURT: What did you say the rank was?

5 MR. CHARNEY: He is a lieutenant and he was a platoon
6 commander.

7 THE COURT: OK.

8 (Audiotape played)

9 MR. CHARNEY: That was the first one.

10 We are going to try to go in order here. The second
11 one, the track is 12 June 2008, 81, 4 by 12 roll call, Sergeant
12 Stukes, Lieutenant Delafuente activity. We are going to play
13 the portion from 7 minutes and 13 seconds to 8 minutes and 10
14 seconds. And, again, the speaker you will hear is Lieutenant
15 Delafuente.

16 (Audiotape played)

17 MR. CHARNEY: The third track, 12 June 2008. It's
18 actually the same track, but we are playing a different
19 portion. 12 minutes and 10 seconds to 13 minutes and 28
20 minutes. And again, this is Lieutenant Delafuente who is
21 speaking.

22 (Audiotape played)

23 MR. CHARNEY: Moving along, the next track is 13
24 January 2009, Sergeant Reid, sign training log, roll call. We
25 are going to play from 3 minutes and 2 seconds to 4 minutes and

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1 26 seconds. Again, the speaker is Lieutenant Delafuente.

2 (Audiotape played)

3 MR. CHARNEY: The next track is 15 July 2008, 81, 4 by
4 12 roll call, Lieutenant Delafuente, Captain Mauriello. We are
5 going to play just a short 35 second to 50 second portion. And
6 again, the speaker is Lieutenant Delafuente.

7 (Audiotape played)

8 MR. CHARNEY: Next one is track 16, December 2008, 81,
9 4 by 12 roll call, Lieutenant Delafuente, activity Cs, 250s, at
10 9:33 to 9:54. Again, this is Lieutenant Delafuente on the
11 recording.

12 (Audiotape played)

13 MR. CHARNEY: The next one is track 1 November 2008,
14 81, 4 by 12 roll call, Lieutenant Delafuente activity. We are
15 going to play 2 minutes and 12 seconds to 3 minutes and 50
16 seconds. And again, Lieutenant Delafuente is the speaker.

17 (Audiotape played)

18 MR. CHARNEY: The next one is 21 January 2009,
19 training sergeant, Sergeant Reid, roll call, Lieutenant
20 Delafuente activity. We are going to play from 4 minutes and
21 27 seconds to 6 minutes and 40 seconds. And again, it is
22 Lieutenant Delafuente on the recording.

23 (Audiotape played)

24 MR. CHARNEY: The next one is 27 February 2009, roll
25 call, Sergeant Weber, Lieutenant Delafuente activity, Mauriello

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1 specials. We are going to play from 2 minutes and 35 seconds
2 to 6 minutes and 21 seconds.

3 MR. MOORE: What date is that?

4 MR. CHARNEY: 27th of February. It's Lieutenant
5 Delafuente again who is speaking on the recording.

6 (Audiotape played)

7 MR. CHARNEY: The next track is 28 January 2009, 81,
8 4x12, roll call, DI Mauriello, Lieutenant Delafuente activity,
9 we don't want to hurt you. And we are going to play it from
10 24:29 to 25:50. And again, it's Lieutenant Delafuente
11 speaking.

12 (Audiotape played)

13 MR. CHARNEY: The next one is 29 January 2009, roll
14 call, Sergeant Plunkett, Sergeant Weiss, 250s, Lieutenant
15 Delafuente. We are going to play 6 minutes and 20 seconds to 6
16 minutes and 48 seconds. And again, the speaker is Lieutenant
17 Delafuente.

18 (Audiotape played)

19 MR. CHARNEY: The next track is 30 October 2008, 81, 4
20 by 12 roll call, Sergeant Stukes, Lieutenant Delafuente,
21 activity. We are going to play from 4 minutes and 20 seconds
22 to 6 minutes and 30 seconds. Again, the speaker is Lieutenant
23 Delafuente.

24 (Audiotape played)

25 MR. CHARNEY: The next track is 8 November 2008, 81, 4
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1 by 12 roll call, at 13 minutes and 9 seconds to 14 minutes and
2 36 seconds. And the speaker again is Lieutenant Delafuente.

3 (Audiotape played)

4 MR. CHARNEY: The next track is 29 January 2009, roll
5 call, Sergeant Plunkett, Sergeant Weiss, 250s, Lieutenant
6 Delafuente. We are going to play it from 6 minutes and 50
7 seconds to 9 minutes and 3 seconds. And the speaker on this
8 one is actually a Lieutenant Weiss, although he may have been a
9 sergeant at the time. He worked in the 81st Precinct and was
10 present for a roll call on January 29, 2009.

11 (Audiotape played)

12 MR. CHARNEY: The next track is 12 October 2009, roll
13 call, Sergeant Huffman, robbery 61s. We are going to play from
14 5 minutes and 12 seconds to 7 minutes. The speaker on this
15 recording is Sergeant Rasheena Huffman, who was a sergeant in
16 the 81st Precinct in October of 2009. And she was present for
17 a roll call on 12 October 2009.

18 (Audiotape played)

19 MR. CHARNEY: The next one is 24 October 2009, roll
20 call, Sergeant Huffman, robbery 250s. We are going to play it
21 from 3 minutes and 40 seconds to 5 minutes and 30 seconds. And
22 again the speaker is Sergeant Huffman.

23 (Audiotape played)

24 MR. CHARNEY: The next track is 12 June 2008, 81, 4 by
25 12 roll call, Sergeant Stukes, Lieutenant Delafuente activity,
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1 at 14 minutes and 58 seconds to 16 minutes and 40 seconds. The
2 speaker on this recording is Sergeant Raymond Stukes, who was a
3 sergeant in the 81st Precinct between the period June of 2008
4 through March 13, 2009, and he was present at a roll call in
5 the 81st Precinct on the 12th of June of 2008.

6 (Audiotape played)

7 MR. CHARNEY: The next recording 13 March 2009, Friday
8 roll call, Sergeant Stukes, keep the hounds off, at 4:32 to
9 5:20. And again, the speaker is Sergeant Stukes.

10 (Audiotape played)

11 MR. CHARNEY: The next is 1 July 2008, 81, 4 by 12
12 roll call, Sergeant Stukes, activity, Lieutenant Delafuente, at
13 6:58 to 8 minutes. And again, the speaker is Sergeant Stukes.

14 (Audiotape played)

15 MR. CHARNEY: Did your Honor want to stop for the day?

16 THE COURT: I think that would be wise. But more than
17 that, I don't think I should hear any more of the tapes until
18 you have the transcripts ready. I am not sure it's the best
19 use of my time. I am hearing some words, not all words. When
20 you have the transcripts ready, then you will put in the tapes
21 so I can look at the transcripts and listen at the same time,
22 which is what is usually done in trials with tapes. So
23 tomorrow let's start with a live witness.

24 Same time tomorrow. Thank you.

25 MR. MOORE: One question about that. Some of the

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1 witnesses tomorrow will be the people on these tapes.

2 THE COURT: I have heard from all of them, except for
3 Mauriello.

4 MR. CHARNEY: That is who will be testifying.

5 THE COURT: Then you will have to play one or two. I
6 am not picking up enough.

7 MR. MOORE: Maybe we should delay --

8 THE COURT: You talk about that.

9 I have got a couple of other matters.

10 (Adjourned to March 22, 2013, at 10:00 a.m.)

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DEFENDANT EXHIBITS

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