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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

New York, N.Y.
March 22, 2013
10:00 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

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1 (In open court)
2 THE COURT: Good morning. Please be seated.
3 MR. MOORE: Judge, one housekeeping matter.
4 THE COURT: I heard you want to admit an exhibit.
5 MR. MOORE: 332 which was the tape that -- the
6 conversation between Serrano.
7 THE COURT: And was played.
8 MR. MOORE: Yes.
9 THE COURT: No objection, I assume.
10 MS. COOKE: No objection, your Honor.
11 THE COURT: 332 is received.
12 (Plaintiffs' Exhibit 332 received in evidence)
13 MS. VARNER: Plaintiffs call Angelica Salmeron as our
14 first witness.
15 ANGELICA SALMERON,
16 called as a witness by the Plaintiffs,
17 having been duly sworn, testified as follows:
18 DIRECT EXAMINATION
19 BY MS. VARNER:
20 Q. Good morning, Officer Salmeron.
21 A. Good morning.
22 Q. Officer Salmeron, you joined the New York police department
23 in 2005, right?
24 A. Yes.
25 Q. And in May 2007 you became a part of the street narcotics

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D3M9FLO1 Salmeron - direct

1 enforcement unit; is that right?

2 A. Yes.

3 Q. And during that time you were at the 28th precinct,
4 correct?

5 A. Yes.

6 Q. Have you been at the 28th precinct ever since you left
7 the police academy?

8 A. I actually left the 28th precinct in 2011.

9 Q. And what is your current assignment?

10 A. I'm part -- narcotics bureau Brooklyn South.

11 Q. Narcotics bureau?

12 A. Brooklyn South.

13 Q. Brooklyn South.

14 If you think back to 2009 when you were at the street
15 narcotics enforcement unit, did you call that unit SNEU?

16 A. SNEU.

17 Q. SNEU, okay. And as of 2009, your supervisor in SNEU was
18 Sergeant Rodriguez, wasn't it?

19 A. Correct.

20 Q. And what was Sergeant Rodriguez's first name?

21 A. That's his last name.

22 Q. What was his first name?

23 A. I don't remember.

24 Q. Was it Flavio Rodriguez?

25 A. I think so.

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D3M9FL01 Salmeron - direct

1 Q. Officer Salmeron, you remember giving a deposition in this
2 case, right?

3 A. Yes.

4 Q. And in that deposition you were under oath to tell the
5 truth, weren't you?

6 A. Yes.

7 Q. Prior to your deposition you didn't talk to anybody about
8 this lawsuit, did you?

9 A. With my lawyer.

10 Q. Other than your lawyer, you didn't talk to anybody else?

11 A. No.

12 Q. So you didn't speak to your supervisor, Sergeant Rodriguez,
13 did you?

14 A. No.

15 THE COURT: Could you keep your voice up.

16 THE WITNESS: Sure. Sorry.

17 Q. And you didn't speak to Officer Pichardo, did you?

18 A. No.

19 Q. And by Officer Pichardo I'm receiving to Officer Luis
20 Pichardo. Do you know who that is?

21 A. Yes.

22 Q. You had an encounter with Deon Dennis on the night of
23 January 12, 2008; isn't that right?

24 A. Yes.

25 Q. And do you recall that it took place on 7th Avenue?

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1 A. I believe 2034 7th Avenue.

2 Q. And that was inside the 28th precinct?

3 A. The confines of the 28, yes.

4 Q. You were in a marked police van with Officer Pichardo when
5 you saw Mr. Dennis, correct?

6 A. Yes.

7 Q. And Mr. Dennis was standing on the sidewalk in front of the
8 building?

9 A. Yes.

10 Q. And that building was 2034 7th Avenue?

11 A. I believe so, yes.

12 Q. Officer Salmeron, you know what a UF 250 is, right?

13 A. Yes, I do.

14 Q. When you stop someone and you have reasonable suspicion for
15 the stop, you're supposed to fill out a form called a UF 250,
16 correct?

17 A. Yes.

18 Q. And that's how you've been trained at the NYPD, correct?

19 A. We receive various training regarding the UF.

20 THE COURT: I'm sorry. I cannot hear.

21 THE WITNESS: We receive different type of training
22 regarding the UF 250.

23 Q. But with the UF 250 you would agree that when you were
24 trained that when you stop someone with reasonable suspicion
25 that you fill out the UF 250, correct?

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Salmeron - direct

1 A. Yes.

2 Q. But you didn't generally carry blank UF 250 forms with you
3 on patrol, did you?4 A. We supposed to but the team that I was assigned to, I
5 didn't.

6 Q. The team that you were assigned to when?

7 A. In SNEU back in 2009.

8 Q. So in 2009 when you were assigned to SNEU you didn't carry
9 blank UF 250 forms on patrol with you?

10 A. I didn't, no.

11 Q. And you testified that you didn't carry blank UF 250 forms
12 because you only stopped people based on probable cause when
13 you were in SNEU; isn't that right?14 A. In SNEU, yes. We do sets. Basically where we stop them
15 it's based on observation and probable cause.16 Q. So you only -- when you're working a SNEU tour you only
17 stop people based on probable cause?18 A. Not only. Depends on the situation. It could be any
19 situation that is not involving SNEU. It could be an
20 observation or a robbery or anything else, then we will take
21 action.

22 Q. And what kind of actions would you take?

23 A. If it's a robbery, got to apprehend the person who is
24 committing the robbery or burglary, whoever is committing the
25 burglary, we would apprehend them.

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1 Q. But you testified that in your years in SNEU you don't
2 recall ever being in SNEU where you saw a person and had
3 reasonable suspicion that they were committing a crime; isn't
4 that correct?

5 A. Correct. But I just told you if the occasion arises in
6 order for us to take police action we will. But in SNEU we
7 were stopping people based on observation on probable cause.

8 Q. So -- when you're working a SNEU tour you don't carry
9 UF 250s?

10 A. I didn't, no.

11 Q. And just to go back, isn't it true that you don't recall
12 ever being in SNEU on a SNEU tour -- let me clarify first.
13 Your SNEU tours of duty were always 9:05 to 1740; isn't that
14 correct?

15 A. Not always. Most of the time.

16 Q. As of 2009 your SNEU shift had always been 9:05 to 1740;
17 isn't that right?

18 A. Most of the time it was.

19 Q. And you began working in SNEU in 2007?

20 A. I believe so, yes.

21 Q. And isn't it true that you don't recall ever being in SNEU
22 where you saw a person and had reasonable suspicion to believe
23 that they were committing a crime?

24 A. Did I ever stop anyone you said?

25 Q. Did you ever see a person and have reasonable suspicion

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D3M9FLO1 Salmeron - direct

1 that they were committing a crime?

2 A. Not that I remember. Like I told you where we stop it, it
3 was based on probable cause.

4 Q. So now you remember. So you don't remember ever being in
5 SNEU during all of those shifts from 9:05 to 1740 starting in
6 2007 where you saw someone in a high crime area with a
7 suspicious bulge in his pocket?

8 A. Not that I remember. And it's been a couple of years
9 since.

10 Q. And you don't remember ever being in SNEU where you saw
11 someone who fits the description of a crime suspect but changes
12 direction at the sight of an officer?

13 A. Not that I remember right now.

14 Q. And you don't remember ever being in SNEU and seeing
15 somebody casing a building?

16 A. Right now that I remember, no.

17 Q. So while you've been in SNEU you've never seen someone who
18 you reasonably suspected had just committed, is committing, or
19 is about to commit a crime or misdemeanor?

20 A. We actually did stop someone that committed a robbery right
21 in front of us.

22 Q. And did you have probable cause or reasonable suspicion for
23 that stop?

24 A. We had probable cause. We actually saw him take the money
25 from a delivery guy.

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D3M9FLO1 Salmeron - direct

1 Q. So your testimony is that while you've been in SNEU you've
2 never seen someone who you reasonably suspected as opposed to
3 had probable cause, had just committed, is committing, or is
4 about to commit a crime or misdemeanor?

5 MR. MARUTOLLO: Objection, your Honor. I think that
6 mischaracterizes the testimony. And she also stated that she
7 doesn't remember what's happened during her tour from 2009.

8 THE COURT: I think -- I'll sustain it for a different
9 reason. I'll just stain it on form. You seem to summarize her
10 testimony. That's not really a question. That's not an
11 appropriate form, "So your testimony is." That's not a good
12 idea.

13 Ask her what you want to ask her and the record will
14 be her testimony.

15 BY MS. VARNER:

16 Q. On the night of January 12, 2008 you weren't working on a
17 SNEU tour of duty, were you?

18 A. I was part of the impact overtime.

19 Q. So you were on an impact overtime tour?

20 A. Yes.

21 Q. Do you remember who your supervisor was for that impact
22 overtime tour?

23 A. No.

24 Q. Officer Salmeron you're supposed to record stops in your
25 memo book, correct?

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1 A. Yes.

2 Q. And that information is supposed to include the name of the
3 person stopped?

4 A. Yes.

5 Q. And the date of birth?

6 A. Yes.

7 Q. And the place of the stop?

8 A. Yes.

9 Q. I'm going to show you what's been marked as Plaintiffs'
10 Exhibit 97 which is the New York City police academy training
11 memo number 07-08 dated February of 2008.

12 You recognize this document, don't you?

13 A. Yes.

14 Q. And it is, as I said, the training memo on activity log
15 entries?

16 A. Correct.

17 MS. VARNER: Your Honor, I would move Plaintiffs'
18 Exhibit 97 into evidence.

19 THE COURT: I assume no objection.

20 MR. MARUTOLLO: No, your Honor.

21 THE COURT: 97 received.

22 (Plaintiff's Exhibit 97 received in evidence)

23 Q. This document provides guidance for how to fill out an
24 activity log, correct?

25 A. Yes.

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1 Q. An activity log is the same thing as a memo book; isn't
2 that right?

3 A. Yeah. That's what the book is called, a memo book.

4 Q. So the memo book has your activity log in it?

5 A. Yes.

6 Q. This document states that you must chronologically record
7 all information pertaining to assignments and information --
8 information pertaining to assignments and actions taken; isn't
9 that right?

10 A. Correct.

11 Q. And it also says, if you look at the bottom of the second
12 paragraph, "The concept that an activity log entry is
13 repetitive of an actual report is not acceptable."

14 Is that right?

15 A. Correct.

16 Q. It also says at the bottom of the third paragraph that "the
17 activity log is a guide by which members of the service may
18 retain pertinent information for future reference."

19 Isn't that correct?

20 A. Yes.

21 Q. This document is consistent with the training that you've
22 received at the New York police department, isn't it?

23 A. Yes.

24 Q. I'm going to show you your memo book from the night of
25 January 12, 2008 which has been marked as Plaintiffs' Exhibit

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1 122.

2 You recognize this document, don't you?

3 A. Yes.

4 Q. This is your memo book that was opened on October 11, 2007,
5 correct?

6 A. Yes.

7 Q. I'm going to turn your attention to the second page of the
8 memo book. Can you see that?

9 A. Yes.

10 Q. And do you see where in the memo book references to --

11 THE COURT: Is this marked as an exhibit?

12 MS. VARNER: Your Honor, this is marked as Plaintiffs'
13 Exhibit 122.

14 THE COURT: Before you show it, it should be in
15 evidence.

16 From the memo book, any objection?

17 MR. MARUTOLLO: No, your Honor.

18 THE COURT: 122 is received. Now go ahead.

19 (Plaintiffs' Exhibit 122 received in evidence)

20 Q. I'm also going to show you --

21 THE COURT: That's the same exhibit?

22 MS. VARNER: It's all the same exhibit, just page
23 three.

24 THE COURT: Right.

25 Q. Officer Salmeron, there's nothing -- this is the portion of
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1 your memo book that includes your entries from the night of
2 January 12, 2008; isn't that right?

3 A. Correct.

4 Q. And there's nothing in your memo book related to the
5 encounter you had with Mr. Dennis, is there?

6 A. Correct. It's not in my memo book but there was paperwork
7 filled out that night.

8 THE COURT: But what?

9 THE WITNESS: There was arrest paperwork filled out
10 that night regarding the incident.

11 MS. VARNER: Your Honor --

12 THE COURT: No. I'll allow that.

13 MS. VARNER: I would just raise an objection on the
14 grounds that the arrest is not part of the case and has been
15 excluded via the motion in limine ruling.

16 MR. MARUTOLLO: Your Honor, she's answered the
17 question.

18 MS. VARNER: Your Honor, it was not responsive. It
19 was a yes-or-no answer.

20 THE COURT: I understand.

21 Q. Did a supervisor sign off on your memo book that night?

22 A. It doesn't look like it.

23 Q. Officer Salmeron, you and another officer stopped a man in
24 October 2006 and during that stop the man's right arm was
25 broken; isn't that right?

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1 A. It wasn't. He claimed it was but it wasn't broken.

2 Q. So in your view the man claimed that the arm was broken and
3 it wasn't?

4 MR. MARUTOLLO: Objection, your Honor. This is
5 irrelevant to the proceedings because it's not related to
6 anything related to a discipline related to the stop.

7 MS. VARNER: Your Honor, it's directly relevant to our
8 Monell claim because it goes to failure to discipline for
9 substantiated CCRB complaints.

10 THE COURT: Right. I'm going to allow it.

11 MS. VARNER: Thank you.

12 Q. You testified that in your view the man's arm wasn't
13 broken?

14 MR. MARUTOLLO: Objection, your Honor.

15 I just want to emphasize the fact that the
16 investigation involved not just investigation into the stop
17 itself but ancillary issues that are not relevant to this case
18 including this allegation of a broken arm. So I'd object on
19 the basis of any questions relating to a broken arm or force or
20 anything along those lines.

21 THE COURT: I've already overruled the objection.

22 MS. VARNER: Thank you.

23 Q. So you think that the person with the broken arm was lying,
24 right?

25 A. I don't think. The arm wasn't broken so in my opinion he

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1 was lying because the arm wasn't broken.

2 Q. But you don't know for sure that the arm wasn't broken?

3 A. Well the complaint went to IAB and they did investigation
4 and they said that his arm wasn't broken.

5 Q. There was also a CCRB complaint filed about that stop,
6 wasn't there?

7 A. Correct.

8 Q. And you were interviewed by the CCRB about that stop; is
9 that right?

10 A. Yes.

11 Q. And the CCRB complaint was substantiated, wasn't it?

12 A. Yes.

13 Q. That included a complaint for abuse of authority with
14 respect to question and/or stops; isn't that correct?

15 A. I don't remember the facts.

16 Q. I'm going to show you what's been marked as Plaintiffs'
17 Exhibit 104.

18 THE COURT: It shouldn't be on the screen if it's not
19 in evidence. If you want to show it to her to refresh her
20 recollection, that's fine. Then it shouldn't be shown -- is
21 that what you're using it for, to refresh her recollection?

22 MS. VARNER: Your Honor, I think we can move this into
23 evidence.

24 MR. MARUTOLLO: Well, your Honor, just to be clear as
25 long as -- original exhibit 104 was longer so just as long as

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1 it's documents bearing Bates stamps numbers NYC-3968 and
2 NYC-3970 then we have no objection.

3 MS. VARNER: It's only those two page, your Honor.

4 THE COURT: You have no objection, then it's received
5 in evidence. Then you can show it.

6 (Plaintiffs' Exhibit 104 received in evidence)

7 Q. This is the CCRB complaint document; isn't that right?

8 A. Yes.

9 Q. And that's your name on it at the top where it says officer
10 name Salmeron, Angelica?

11 A. Correct.

12 Q. And it lists the 28th precinct; isn't that correct?

13 A. Yes.

14 Q. And if you look at the second half of the page it indicates
15 that there is an allegation in 2006 for abuse-question and/or
16 stopped; isn't that right?

17 A. Correct.

18 Q. And under disposition it reads substantiated; isn't that
19 correct?

20 A. Yes.

21 Q. And similarly on the third line it reads under 2006 there
22 was an allegation for abuse-frisk. That's correct, isn't it?

23 A. Correct.

24 Q. And under disposition it reads substantiated; isn't that
25 correct?

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Salmeron - direct

1 A. Yes.

2 Q. So you would agree that there was a CCRB complaint that was
3 substantiated related to the incident where the man's arm was
4 broken?5 THE COURT: No. She doesn't agree the man's arm was
6 broken so you can't put that in the question.7 Q. You would agree that the CCRB complaint was substantiated
8 for the incident where the man's arm was allegedly broken?

9 A. It was substantiated but his arm wasn't broken.

10 Q. And you've never been disciplined in connection with this
11 stop, have you?

12 A. No.

13 Q. In fact, you've never been disciplined in connection with
14 the CCRB complaint, have you?

15 A. No.

16 Q. And until your deposition in 2009, three years after the
17 incident with the allegedly broken arm, you didn't even know
18 that the CCRB complaint had been substantiated --

19 A. Correct.

20 Q. -- did you?

21 And, in fact, you don't know of any police officer who
22 has ever been disciplined by the NYPD for any reason; isn't
23 that correct?

24 A. Can you repeat your question.

25 MR. MARUTOLLO: Objection, your Honor.
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1 THE COURT: No. I'll allow that. I would think just
2 a yes or no, of course.

3 Do you know if any police officer has ever been
4 disciplined after a CCRB has been substantiated?

5 THE WITNESS: Yes.

6 THE COURT: That's all I'm going to take.

7 Q. When did you become aware of that?

8 MR. MARUTOLLO: Objection, your Honor.

9 THE COURT: When is okay. I just don't want the
10 substance of.

11 When did you first hear such a thing?

12 THE WITNESS: I heard of someone last year actually.

13 Q. So isn't it true that as of 2009 after four years of
14 working for the NYPD you didn't know of any police officer who
15 had ever been disciplined by the NYPD for any reason?

16 A. Not that I remember, no.

17 THE COURT: Sorry?

18 THE WITNESS: Not that I remember.

19 Q. Would it refresh your recollection to look at your
20 deposition?

21 THE COURT: She said -- I think she said no, not that
22 I remember. Isn't that consistent?

23 MS. VARNER: I heard a not that I remember as opposed
24 to a no.

25 THE WITNESS: No, that I remember I said.

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1 THE COURT: She's saying no.

2 MS. VARNER: Okay. Then Mr. Marutollo, your witness.

3 THE COURT: Okay. Thank you.

4 Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. MARUTOLLO:

7 Q. Good morning, Detective Salmeron.

8 A. Good morning.

9 Q. You testified that you're currently employed by the NYPD,
10 correct?

11 A. Yes.

12 Q. Where were you born?

13 A. El Salvador.

14 Q. Is that where you grew up?

15 A. Yes.

16 Q. How long have you been employed with the NYPD?

17 A. Since 2005. Approximately eight years.

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

19 A. Yes, I did.

20 Q. And when was that?

21 A. In July 2005 and I graduated in December of 2005.

22 Q. And what is your present rank with the NYPD?

23 A. Detective.

24 Q. And I believe you testified that your current command is
25 Brooklyn South Narcotics?

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D3M9FLO1 Salmeron - cross

1 A. Yes.

2 Q. In your current position have you ever been assigned to a
3 detail in the Rockaways?

4 A. Yes.

5 Q. And when was that?

6 A. Right after Hurricane Sandy.

7 Q. And do you know why you were sent to that detail?

8 MS. VARNER: Objection, your Honor, completely
9 irrelevant.

10 MR. MARUTOLLO: It's not relevant, your Honor.

11 THE COURT: Wait a minute.

12 It's offered to rebut the testimony from yesterday
13 that somebody thought they were being punished by being sent to
14 the Rockaways so I'll allow it.

15 Do you know why you were sent to the Rockaways?

16 THE WITNESS: We were actually sent to Rockaways,
17 Staten Island, Coney Island to anyone that was damaged through
18 the storm. We were out there providing -- helping them out to
19 give out food. We were patrolling the area, making sure that
20 nobody was breaking into anybody's home.

21 Q. Did you consider that assignment a punishment?

22 A. No. I was actually -- I volunteered myself to go out there
23 and help people out.

24 Q. What are your duties and responsibilities as a detective
25 with Brooklyn South narcotics?

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D3M9FLO1 Salmeron - cross

1 A. Most of -- I do narcotics-related cases. We do search
2 warrants. We do buy-and-bust operations.

3 Q. And before you joined Brooklyn South narcotics, what
4 command were you assigned?

5 A. The 28.

6 Q. And what was your position in the 28th precinct?

7 A. I was part of the street narcotics enforcement unit.

8 Q. What were your duties and responsibilities as a member of
9 the street narcotics enforcement unit?

10 A. We were mostly dealing with narcotics-related activity at
11 the street level.

12 Q. For how many years were you part of the street narcotics
13 enforcement unit?

14 A. A little over four years, from 2007 to 2011.

15 Q. Were you assigned any other positions while you were at the
16 28th precinct?

17 A. Yes. I did conditions, patrol, and impact.

18 Q. You mentioned conditions. How long were you assigned to
19 conditions?

20 A. Approximately seven months.

21 Q. And what were your duties and responsibilities as a police
22 officer in the conditions unit?

23 A. We enforce quality of life offenses.

24 Q. I believe you also mentioned patrol. How long were you
25 assigned to patrol in the 28th precinct?

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D3M9FLO1 Salmeron - cross

1 A. About three months.

2 Q. And what were your duties and responsibilities as a patrol
3 officer in the 28th precinct?

4 A. Mostly we answer like radio runs and we also enforce
5 quality of life offenses.

6 Q. And I believe you also mentioned that you were assigned to
7 impact for the 28th precinct?

8 A. Correct.

9 Q. What -- how long were you assigned there?

10 A. Approximately six months.

11 Q. And what were your duties and responsibilities as a police
12 officer in impact?

13 A. We are placed in high crime areas and we also enforce
14 quality of life offenses.

15 Q. During your time in impact, conditions, and patrol, did you
16 ever make any stops based on reasonable suspicion?

17 A. Yes.

18 Q. Turning your attention to January 12, 2008. Were you
19 working that night?

20 A. Yes.

21 Q. And what was your assignment that night?

22 A. I was part of the impact overtime.

23 Q. And who, if anyone, were you working with on January 12,
24 2008?

25 A. It was Officer Pichardo.

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D3M9FLO1 Salmeron - cross

- 1 Q. Was he your regular partner?
2 A. No.
3 Q. Why were you working impact overtime that night?
4 A. I volunteered to work it.
5 Q. Were you in uniform that night?
6 A. Yes.
7 Q. On January 12, 2008 where were you when you first observed
8 Mr. Deon Dennis?
9 A. I was driving southbound on 7th Avenue.
10 Q. You mentioned you were driving. Can you describe the
11 vehicle?
12 A. It was a marked police van, which is a twelve-passenger
13 van. It's white. And it has big NYPD letters in blue.
14 Q. Who was in the vehicle with you?
15 A. Officer Pichardo.
16 Q. Who was driving?
17 A. I was.
18 Q. How fast were you driving?
19 A. Less than 20 miles an hour.
20 Q. Why were you patrolling 7th Avenue that evening?
21 A. We were assigned to enforce quality of life offenses in the
22 28 precinct and go to high crime areas.
23 Q. On January 12, 2008 where did you first observe Mr. Dennis?
24 A. He was in front of 2034 7th Avenue.
25 Q. What, if anything, did you observe?

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D3M9FLO1 Salmeron - cross

1 A. He was holding with his hand a plastic cup and drinking
2 from it.

3 Q. Did you observe anything else?

4 A. It was a bottle next to him of Hennessy.

5 Q. After you first saw Mr. Dennis, what happened next?

6 A. I pulled up in front of the location and at that point
7 myself and Officer Pichardo got out of the car. We approached
8 him. I don't remember if it was me or Officer Pichardo that
9 asked him what he was doing. He replied that he was drinking
10 some Hennessy, that it was Saturday night and that it was his
11 girlfriend's birthday and they were going out later on that
12 night.

13 Q. Did Mr. Dennis do anything with the cup while you were
14 having this encounter with him?

15 A. He was drinking from it.

16 Q. And did that bottle you mentioned earlier did it have any
17 label on it?

18 A. Yes, it did. It said Hennessy on it.

19 Q. Why ultimately did you stop Mr. Dennis?

20 A. Because he was drinking in public.

21 Q. And what level of suspicion did you have to stop
22 Mr. Dennis?

23 A. Probable cause.

24 MS. VARNER: Objection, your Honor.

25 THE COURT: She answered.

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D3M9FLO1 Salmeron - cross

1 Probable cause?

2 THE WITNESS: Yes.

3 THE COURT: What's the objection?

4 MS. VARNER: Calls for a legal conclusion.

5 THE COURT: I'll allow it. I think it's actually
6 important to know what she thought. Okay.

7 You thought it was probable cause?

8 THE WITNESS: Yes.

9 Q. Did you originally intend to give Mr. Dennis a summons?

10 A. Yes.

11 Q. And why is that?

12 A. He was committing a violation, drinking in public, which is
13 a quality of life offense.

14 Q. And during this encounter did -- was Mr. Dennis asked for
15 his identification?

16 A. Yes.

17 Q. And did Mr. Dennis provide you with that identification?

18 A. Yes, he did.

19 Q. Why ultimately didn't you issue Mr. Dennis a summons?

20 A. I took his ID and I checked to make sure that he didn't
21 have any warrants. And he did have a warrant. That's the
22 reason why I didn't issue him a summons.

23 MS. VARNER: Objection, your Honor.

24 All of the warrants and the arrests have been excluded
25 from this case on numerous occasions. And it's not relevant.

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D3M9FLO1 Salmeron - cross

1 THE COURT: It is relevant to why she didn't issue the
2 summons. I just take it for that and nothing more.

3 Q. During this encounter did any other individuals appear on
4 the scene besides Officer Pichardo and Mr. Dennis?

5 A. Yes. His girlfriend came downstairs.

6 Q. When you say she came downstairs, what do you mean?

7 A. She came out from the building.

8 Q. Was that the building Mr. Dennis was standing in front of?

9 A. Yes.

10 Q. Was she present when you initially encountered Mr. Dennis?

11 A. No.

12 MS. VARNER: Objection. The word "initially" I think
13 is confusing in this question and --

14 THE COURT: Right. I'm not sure that she would know
15 exactly where the girlfriend was standing what she could see.
16 So I have two problems with the question and the answer. And
17 I'll sustain the objection and strike the answer.

18 You didn't see her when you first approached

19 Mr. Dennis?

20 THE WITNESS: No.

21 THE COURT: That I'll take. You didn't see her?

22 THE WITNESS: No.

23 THE COURT: Okay.

24 Q. Did you fill out a stop, question and frisk UF 250
25 worksheet in connection with this arrest?

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D3M9FL01

Salmeron - cross

1 A. No.

2 Q. Why not?

3 A. We had probable cause to stop him.

4 Q. And did you put any information about this stop in your
5 memo book?

6 A. I didn't.

7 Q. In retrospect do you believe that you should have?

8 A. Yes.

9 MR. MARUTOLLO: May I have one moment, your Honor.
10 (Pause)

11 Q. Just going back for a moment, Detective.

12 Where did you see Mr. Dennis' girlfriend exit from?

13 A. The front door of the building.

14 Q. At what point in the encounter did Mr. Dennis' girlfriend
15 appear in front of the building?

16 MS. VARNER: Objection.

17 THE COURT: At what point did you notice her is what
18 I'll take. When did you first observe her?19 THE WITNESS: He was already placed in cuffs. I
20 believing we were bringing him into the van.

21 THE COURT: That's when you first saw her?

22 THE WITNESS: Yes.

23 BY MR. MARUTOLLO:

24 Q. Okay, Detective, what training if any did you receive at
25 the NYPD police academy regarding stop, question, and possibly

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D3M9FLO1

Salmeron - cross

1 frisk.

2 A. We did classroom training. We did scenarios, which is role
3 playing. We saw videos. They gave us handouts.

4 Q. And were you quizzed on your knowledge?

5 A. Yes.

6 Q. Have you been trained on the law of stop, question, and
7 possibly frisk since you left the police academy?

8 A. Yes.

9 THE COURT: I'm curious. Did you ever hear it stop,
10 question, and possibly frisk or was it always called stop,
11 question, and frisk?12 THE WITNESS: I believe it was stop, question, and
13 frisk.

14 THE COURT: I think so. All I've ever heard.

15 MR. MARUTOLLO: It's not always a --

16 THE COURT: I perfectly well understand that. But my
17 point is in every document I've ever seen, and every reference
18 I've ever heard to the training, it is always called stop,
19 question, and frisk. That's why I'm asking the question. I've
20 never heard it described as you just did. That might be an
21 improvement, but I've never heard it.22 Q. What training, if any, have you received on the law of
23 stop, question, and frisk since the police academy?24 A. At Rodman's Neck which is the range in the Bronx, at BAT
25 which is the Brooklyn Army Terminal, at the police precincts

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D3M9FLO1 Salmeron - cross

1 and also at the office where I'm at now.

2 Q. I think you mentioned the BAT. What is that?

3 A. That's the Brooklyn Army Terminal.

4 Q. How did you receive training there?

5 A. Why?

6 Q. No. How?

7 A. Like classroom training. Handouts, videos. We do
8 scenarios also.

9 Q. You mentioned you received training of meetings now, I
10 think?

11 A. Yeah. Like at the unit that I'm in we actually have our
12 tac meeting everyday before we go out, which is a supervisor,
13 we usually receive training or they address any conditions that
14 are going on in the area that we go on patrol.

15 Q. Did you receive any other training while on the job?

16 A. You know, other senior officers, they kind of guide us and
17 tell us what to do.

18 Q. Is there any paperwork that you're required to fill out
19 when you forcibly stop a person?

20 A. UF 250.

21 Q. And have you received any training on completing the
22 UF 250s?

23 A. Yes.

24 Q. And what kind of training have you received about filling
25 out -- I'm sorry, completing UF 250s?

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D3M9FLO1 Salmeron - cross

1 A. At the academy, at the range, at the BAT, at the precincts.

2 MS. VARNER: Objection, nonresponsive. She just
3 explained where she got the training but didn't explain
4 anything about --

5 THE COURT: He asked what kind of training have you
6 received about filling out the UF 250s. Could you tell us what
7 kind. Not where, but what was the training.

8 THE WITNESS: They show how to fill out the 250 and
9 when we should conduct the 250s.

10 Q. Detective Salmeron, have you been disciplined for anything
11 related to stop, question, or frisk since the 2006
12 substantiated allegation against you?

13 MS. VARNER: Objection, your Honor. She testified
14 that she had never been disciplined for that CCRB complaint.

15 THE COURT: I just want to reread the question.

16 MR. MARUTOLLO: I can withdraw that question.

17 THE COURT: Okay. That's fine.

18 Q. Have you received any substantiated allegations related to
19 stop, question, or frisk since the 2006 CCRB substantiated
20 allegation against you?

21 A. No.

22 Q. Have you ever been subject to a quota?

23 A. No.

24 Q. While were you a police officer did you ever feel that if
25 you did not conduct a certain number of stops you would be

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D3M9FLO1 Salmeron - cross

1 punished?

2 A. No.

3 Q. While you were a police officer did you ever feel that if
4 you did not issue a certain number of summonses or arrests you
5 would be punished?

6 A. No.

7 Q. Have you ever been transferred to a different precinct or
8 assignment because of low activity?

9 A. No.

10 THE COURT: Were there activity goals that your
11 precinct commander talked about? You were told you have 20 or
12 1 and 20 or anything like that? Were you ever told number of
13 goals?

14 THE WITNESS: No.

15 THE COURT: You never heard any number goals?

16 THE WITNESS: No.

17 THE COURT: Okay.

18 Q. Have you ever been denied overtime because your activity
19 was too low?

20 A. No.

21 Q. Have you ever been put on performance monitoring because of
22 low activity?

23 A. No.

24 Q. Did you ever feel pressured to make an unconstitutional
25 stop?

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D3M9FLO1 Salmeron - cross

1 A. No.

2 Q. Did you know if the NYPD has a policy regarding racial
3 profiling?

4 A. It's prohibited.

5 Q. What was provided?

6 A. Racial profiling.

7 Q. And when did you first learn about the NYPD's policy
8 prohibiting racial profiling?

9 A. At the police academy.

10 Q. Have you learned about it any time since?

11 A. At the precinct, from other officers, the supervisors.

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

13 (Pause)

14 No further question, your Honor.

15 THE COURT: All right. Redirect.

16 MS. VARNER: One moment, your Honor.

17 (Pause)

18 REDIRECT EXAMINATION

19 BY MS. VARNER:

20 Q. Detective Salmeron, you testified that you didn't put
21 anything about your encounter with Deon Dennis into your memo
22 book, correct?

23 A. Yes.

24 Q. And you testified that looking back you probably should
25 have, correct?

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D3M9FLO1

Salmeron - redirect

1 A. Correct.

2 Q. Isn't it true that you were never told by a supervisor that
3 your failure to include the encounter with Deon Dennis in your
4 memo book was violation of NYPD policy?

5 A. Can you repeat your question. I don't understand it.

6 Q. Sure. You were never told by a supervisor that your
7 failure to include the encounter with Mr. Dennis in your memo
8 book was a violation of policy, were you?

9 A. Well if you show me my activity log for that day a
10 supervisor didn't check my memo book so there was no way for a
11 supervisor to know that I didn't put an entry on my memo book
12 for that stop.

13 Q. And no one ever told you that you should have put the entry
14 for Mr. Dennis into your memo book, did they?

15 A. They always tell us to do -- make entries in our memo book
16 for anyone that we stop or any activity that we do for the day
17 but obviously I forgot. For whatever reason I didn't make an
18 entry so that was my mistake.

19 Q. And no supervisor ever told you that you had made a
20 mistake?

21 MR. MARUTOLLO: Objection, your Honor. It's been
22 asked and answered.

23 THE COURT: Well it wasn't really answered.

24 Now that it's known, obviously, that you didn't put
25 that particular activity into your memo book, has any

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D3M9FLO1 Salmeron - redirect

1 supervisor ever brought -- criticized you for that or
2 disciplined you for that?

3 THE WITNESS: No.

4 THE COURT: No. Okay.

5 Q. You testified that while you were at the 28, the 28th
6 precinct, you did patrol, conditions and impact, correct?

7 A. Correct.

8 Q. In addition to SNEU?

9 A. SNEU, yes.

10 Q. And you also testified that while you were on SNEU you
11 generally didn't carry blank UF 250 forms with you; isn't that
12 correct?

13 A. Correct.

14 Q. But you made -- did you make reasonable -- did you make
15 stops based on reasonable articulable suspicion when you were
16 in SNEU?

17 MR. MARUTOLLO: Objection, your Honor. This has
18 already been covered during direct examination.

19 THE COURT: I'll allow it.

20 THE WITNESS: Like I told you before, in SNEU we do
21 our stops based on probable cause.

22 Q. So you didn't carry blank UF 250s generally all time?

23 A. Correct.

24 Q. And when you stopped Mr. Dennis you were on an impact
25 overtime tour, weren't you?

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D3M9FLO1 Salmeron - redirect

- 1 A. Yes, I was.
2 Q. During that stop on January 12, 2008 you were working with
3 Officer Pichardo, correct?
4 A. Yes.
5 Q. You were working an impact overtime tour as we've just
6 said; isn't that right?
7 A. Yes.
8 Q. And you recall that -- the encounter took place on 7th
9 Avenue, correct?
10 A. Yes.
11 Q. You were in a marked police van with Officer Pichardo,
12 correct?
13 A. Yes.
14 Q. And you were in uniform that night?
15 A. Yes.
16 Q. And your uniform includes your weapon, doesn't it?
17 A. Correct.
18 Q. You were driving southbound on 7th Avenue?
19 A. Yes.
20 Q. And Mr. Dennis was on the sidewalk in front a of a building
21 wasn't he?
22 A. Yes.
23 Q. And his feet were on the sidewalk; isn't that right?
24 A. Yes.
25 Q. You pulled over right in front of Mr. Dennis, correct?

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D3M9FLO1 Salmeron - redirect

1 A. In front of the building, yes.

2 Q. And there were no cars parked that prevented you from
3 parking right in front of the building?

4 A. It's a bus stop so there were no cars.

5 Q. Mr. Dennis had a plastic cup in his hand and a bottle next
6 to him, correct?

7 A. Yes.

8 Q. So he was -- you testified that he was holding the cup in
9 his hand?

10 A. And drinking from it, yes.

11 Q. And you saw a bottle next to him saying Hennessy?

12 THE COURT: Is that right?

13 THE WITNESS: Correct, yes.

14 Q. And either you or Officer Pichardo asked him what he was
15 drinking and he said Hennessy; isn't that right?

16 A. Can you repeat the question.

17 Q. Either you or Officer Pichardo asked him what he was
18 drinking?

19 A. Yes.

20 Q. And he said Hennessy, correct?

21 A. Yes.

22 Q. And that's all you remember about the January 12, 2008 stop
23 isn't it?

24 A. I remember --

25 MR. MARUTOLLO: Objection, your Honor.
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D3M9FLO1 Salmeron - redirect

1 THE COURT: Sustained. I don't know that she said
2 that's all she remembered.

3 Q. I'd like to show you page 159.

4 You remember being deposed in this case, correct?

5 A. Yes.

6 Q. And you were under an oath to tell the truth, correct?

7 A. Yes.

8 Q. And that was in 2009, approximately one year after this
9 incident, wasn't it?

10 A. Correct.

11 Q. And you even had an opportunity to review your deposition,
12 the transcript after the deposition, correct?

13 A. Yes.

14 Q. And you had an opportunity to make corrections, correct?

15 A. Yes.

16 Q. And you did make corrections; isn't that right?

17 A. I don't remember.

18 Q. Isn't it true that you made three corrections to your
19 deposition?

20 A. I don't remember.

21 Q. I'd like to show you a copy of your deposition.

22 MS. VARNER: Permission to approach.

23 Q. Turn your attention to page 159 of your deposition.
24 Starting at line 12.

25 A. Line 12 you said?

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D3M9FLO1 Salmeron - redirect

1 Q. Starting at line twelve that reads, "So, can you tell me
2 what you remember from that encounter.

3 "Mr. Hazan: Objection to form.

4 "A. He had a plastic cup in his hand and a bottle next to him.

5 "Q. Mm-hmm.

6 "Hazan: Objection to the form. That is not a
7 question.

8 "Q. Do you remember anything else?

9 "A. At that point we got out of the car and we approached him
10 and I don't remember who asked him what he was drinking. He
11 said Hennessy. And the bottle was right there next to him. It
12 said Hennessy on it. That is it."

13 Did I read that correctly.

14 MR. MARUTOLLO: Objection, your Honor. I think this
15 is improper impeachment because in the context of which these
16 questions are it's kind of going in chronological order as to
17 what's happening during this encounter and as a result
18 Detective Salmeron testified for about 20 more pages in her
19 deposition about what happened and she testified this morning
20 about other activity that happened.

21 MS. VARNER: Your Honor, I would represent to you that
22 nothing in the subsequent 20 pages changes the fact that she
23 doesn't recollect anything about the cup or the bottle or what
24 Mr. Dennis says other than what I just read.

25 THE COURT: I think it's fair because you can't have
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D3M9FLO1 Salmeron - redirect

1 it both ways. You objected before when the question was is
2 that all you remember. Now you're objecting when that's
3 exactly what she said before. So that's her testimony on that
4 occasion and I'll allow it.

5 That's what you said at the deposition, right?

6 THE WITNESS: Yes.

7 THE COURT: Obviously things occurred later in that
8 stop, right?

9 THE WITNESS: Correct.

10 THE COURT: But at that point that's all you remember
11 about the cup and the bottle?

12 THE WITNESS: Yes.

13 THE COURT: And who asked the question and that's all
14 you remember about that?

15 THE WITNESS: Correct.

16 THE COURT: Okay.

17 Q. And Ms. Salmeron -- I'm sorry. Detective Salmeron.

18 A. That's okay.

19 MS. VARNER: Permission to approach one more time.

20 THE COURT: You don't need to ask permission.

21 MS. VARNER: I'd like to show you the errata sheet
22 from your deposition.

23 THE WITNESS: What is this you said?

24 THE COURT: It's called like an error sheet. We call
25 it errata sheet but it's the same thing.

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D3M9FLO1 Salmeron - redirect

1 Anyway she's showing you. So you see you made three
2 corrections.

3 THE WITNESS: Yes.

4 MS. VARNER: Thank you, your Honor.

5 Q. So, Detective Salmeron, you don't remember the exact time
6 that you stopped Mr. Dennis, do you?

7 A. No.

8 Q. And you don't -- you don't recall where on 7th Avenue you
9 stopped him, do you?

10 A. I do. It was in front of 2034 7th Avenue.

11 Q. I'd like to turn your attention to page 150 of your
12 deposition transcript.

13 This is the same deposition that we just talked about
14 that you gave about year after the incident.

15 I'd like to look at -- the reference is 150, 10
16 through 15.

17 A. Fifteen you said?

18 Q. Page 150, lines 10 through 15.

19 I'm sorry. Lines 8 through 15.

20 "Q. Do you remember where it occurred?

21 "A. On 7th Avenue, I think.

22 "Q. Where?

23 "A. I don't remember.

24 "Q. Approximately where on 7th Avenue?

25 "A. I know it was on..." and then the word is supervisor "...I

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D3M9FLO1 Salmeron - redirect

1 don't remember exactly where."

2 Did I read that correctly?

3 A. Yes. I didn't remember the building number exactly.

4 That's probably what I meant to say.

5 Q. And you're not sure how far away you were from Mr. Dennis
6 when you saw him, are you?

7 A. When I first saw him it was by the light. I don't know
8 exactly how many feet from where I was at.

9 Q. You don't remember what the cup looked like, do you?

10 A. It was a plastic cup.

11 MR. MARUTOLLO: Objection.

12 THE COURT: Objection?

13 MR. MARUTOLLO: She's already testified that she does
14 remember what the cup looked like.

15 THE COURT: She's doing it again. Go ahead.

16 It was a plastic cup you said?

17 THE WITNESS: Yes.

18 Q. You don't remember how big the cup was, do you?

19 A. It was about this size. I don't know how many ounces that
20 is.

21 THE COURT: Could you see through it?

22 THE WITNESS: It's one like transparent I guess.

23 THE COURT: Yes. Transparent.

24 Q. You don't remember exactly where you and Officer Pichardo
25 were standing during your encounter with Mr. Dennis, do you?

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D3M9FLO1 Salmeron - redirect

1 MR. MARUTOLLO: Objection, your Honor. It's a vague
2 question.

3 At what point during the encounter?

4 THE COURT: Initially where was everyone standing when
5 you first approached?

6 THE WITNESS: He was kind leaning against -- because
7 there was a ramp for handicaps. He was standing there. And
8 usually one of us on each side of them. So I don't remember
9 exactly who was standing where.

10 Q. You said you and Officer Pichardo were on either side of
11 him?

12 A. Right.

13 Q. And you don't recall who spoke to Mr. Dennis first, do you?

14 A. I don't remember who asked the questions, no.

15 Q. You don't recall who asked Mr. Dennis if he was drinking?

16 A. I don't remember who asked him that.

17 Q. You testified that Mr. Dennis was holding the cup; isn't
18 that right?

19 A. He was holding and drinking from it, yes.

20 Q. And the cup was in his hands, correct?

21 A. Yes.

22 Q. You didn't pick up the cup, did you?

23 A. No.

24 Q. You didn't take the cup with you at the end of your
25 encounter with Mr. Dennis, did you?

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D3M9FLO1 Salmeron - redirect

1 A. No.

2 Q. You didn't take the bottle with you at the end of your
3 encounter?

4 A. I gave it to his girlfriend.

5 Q. You testified that you arrested Mr. Dennis that night,
6 didn't you?

7 A. He was taken back to the 28, yes.

8 Q. And you testified that there was an arrest, correct?

9 A. Yes.

10 Q. But you didn't put the cup or the bottle into an evidence
11 bag, did you?

12 A. No.

13 Q. You didn't vouch for the cup or the bottle, did you?

14 A. No.

15 Q. And you didn't give Mr. Dennis a summons, did you?

16 A. We couldn't because he had a warrant. In order for me to
17 give someone a summons, they cannot have a warrant. That means
18 he didn't show up to court on a prior summons or court case
19 therefore I couldn't issue him a summons.

20 Q. You couldn't issue -- you could not issue him a summons --
21 is your testimony that that is the policy at the New York
22 police department?

23 A. If someone has a warrant we could not issue him a summons.

24 Q. And your testimony is that that is the policy of the New
25 York police department?

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D3M9FLO1 Salmeron - redirect

1 A. Is it a policy that they have? I know we can't do it. So
2 it is a policy.

3 Q. And you didn't give him a summons, did you?

4 A. We couldn't, no.

5 Q. I understand.

6 You do remember that Mr. Dennis was holding the cup,
7 correct?

8 A. Yes.

9 Q. And you remember asking Mr. Dennis for ID, don't you?

10 A. I don't remember if it was myself or Officer Pichardo but
11 he did provide me with ID.

12 Q. So, you didn't reach into Mr. Dennis' pocket to get his ID,
13 did you?

14 A. No. He handed it to me.

15 Q. So he was the one who gave it to you, correct?

16 A. Yes.

17 Q. And he gave it to you with his hands, correct?

18 A. Yes.

19 Q. The same hands that were holding the cup?

20 A. Yes.

21 MS. VARNER: No further questions.

22 THE COURT: Anything further for this witness,

23 Mr. Marutollo?

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

25 No further questions, your Honor.

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D3M9FLO1 Salmeron - redirect

1 THE COURT: Thank you.

2 (Witness excused)

3 THE COURT: Your next witness.

4 MR. MOORE: The plaintiffs would call Deputy Chief

5 Michael Marino.

6 MICHAEL MARINO,

7 called as a witness by the Plaintiffs,

8 having been duly sworn, testified as follows:

9 THE COURT: Thank you.

10 DIRECT EXAMINATION

11 BY MR. MOORE:

12 Q. Good morning Chief Marino?

13 A. Good morning, sir.

14 Q. When did you join the NYPD?

15 A. November 1979.

16 Q. So you've been a police officer for almost 34 years?

17 A. I'm in my 34th now, sir, correct.

18 Q. And what's your current rank?

19 A. Deputy chief.

20 Q. When were you promoted to deputy chief?

21 A. December of 2004.

22 Q. Is it -- you agree -- withdraw that.

23 In 2007 you and two dozen police officers were accused
24 of buying steroids?

25 MS. PUBLICKER: Objection, your Honor.

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D3M9FL01 Marino - direct

1 THE COURT: Whoa, whoa.

2 MS. PUBLICKER: Objection. He's getting into a
3 disciplinary matter which has nothing to do with this matter.
4 It has nothing to do with stop, question, frisk or false
5 statement. It involves a medical issue. And if we're going to
6 discuss it, I would ask that we clear the courtroom because it
7 involves HIPAA issues.

8 MR. MOORE: It's a matter of public record.

9 THE COURT: That may be. But I don't see why it's
10 relevant.

11 MR. MOORE: I think it's relevant to show he was --

12 MS. GROSSMAN: Your Honor, could we have a sidebar
13 since there are HIPAA issues.

14 THE COURT: I think he can explain the relevance
15 without violating the HIPAA issues.

16 MR. MOORE: The relevance is to show he was accused of
17 a serious infraction, disciplined.

18 THE COURT: So what?

19 MR. MOORE: And it didn't have any effect on his
20 career.

21 THE COURT: No. Not going to allow that.

22 MR. MOORE: All right.

23 Q. Are you familiar with the 75th precinct?

24 A. Yes, sir, I am.

25 Q. Where is that located?

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D3M9FLO1 Marino - direct

1 A. East New York in Brooklyn.

2 Q. What's the address of the 75 precinct?

3 A. 1000 Sutter Avenue.

4 Q. Can you say it a little slower.

5 A. 1000 Sutter Avenue.

6 Q. Sutter?

7 A. Yes, sir. S-U-T-T-E-R.

8 Q. And you became the commander of the 75th precinct, did you
9 not, on or about September of 2002, correct?

10 A. That would be correct.

11 Q. And at that time you were a -- an inspector; is that
12 correct?

13 A. That's correct.

14 Q. And is it true -- is it accurate that within months of
15 becoming the commanding officer of the 75th precinct you
16 instituted a quota policy that required each officer assigned
17 to the 75th precinct to issue ten tickets and make one arrest
18 each month or face a low performance evaluation. Is that
19 accurate?

20 A. The low performance evaluations were not based upon failure
21 to meet a quota, no.

22 THE COURT: That did not quite answer his question.

23 Was there a performance goal of -- what did you say?

24 MR. MOORE: Quota.

25 THE COURT: Ten what?

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D3M9FLO1 Marino - direct

1 MR. MOORE: Ten tickets -- ten summonses and one
2 arrest.

3 THE COURT: So was there a performance goal of ten
4 summonses and one arrest?

5 THE WITNESS: As per an administrative guide that was
6 present at the time, I set the standards as was mandated to me
7 by the police department, yes.

8 THE COURT: Were those standards ten summonses and one
9 arrest?

10 THE WITNESS: Yes.

11 THE COURT: Is that per month?

12 THE WITNESS: Yes.

13 THE COURT: Per month. Okay thank you.

14 BY MR. MOORE:

15 Q. And that was a quota, right?

16 A. No.

17 THE COURT: You call it a performance goal?

18 THE WITNESS: Yes.

19 (Continued on next page)

20

21

22

23

24

25

D3M8FLO2

Marino - direct

1 THE COURT: Was there any consequence if the goal
2 wasn't met?

3 THE WITNESS: Yes, there could be.

4 THE COURT: What might that consequence be?

5 THE WITNESS: They could suffer a low performance
6 evaluation for failure to perform their job.

7 Q. As a result of that, their assignment could be changed,
8 correct?

9 A. Yes. As per the administrative guide procedure, that's
10 correct.

11 Q. They could, in fact, be transferred out of the command,
12 correct?

13 A. As per the administrative guide procedure, that's correct.

14 Q. You don't have to add "as per the administrative guide."
15 If you agree with it, just say yes or no.

16 THE COURT: If he wants to, that's OK with me. What
17 section of the administrative guide deals with setting
18 performance goals?

19 A. I don't remember the particular section and it's not in the
20 administrative guide anymore; it's now a patrol guide
21 procedure.

22 Q. You testified, I thought, that as per the administrative
23 guide, you set performance goals in the 75th Precinct. Isn't
24 that what you just testified to?

25 A. Yes, sir. At that time it was administrative.

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D3M8FLO2

Marino - direct

1 Q. What section of the administrative guide allows you, in
2 your judgment, to set performance goals in the 75th Precinct,
3 if you can recall?

4 A. I don't know the numerical section, sir.

5 Q. Is there now a section of the patrol guide that permits you
6 to do that?

7 A. Yes, sir.

8 Q. What is that?

9 A. I don't know the numerical section, sir.

10 THE COURT: You could find that, couldn't you?

11 THE WITNESS: Yes, I could.

12 MR. MOORE: One second, Judge.

13 Can you bring up 285?

14 THE COURT: Is this in evidence?

15 MR. MOORE: It is, Judge.

16 THE WITNESS: Does it come here?

17 THE COURT: It will. Let me know if it doesn't, but
18 it will I think.

19 Did it?

20 THE WITNESS: Yes, it did.

21 Q. Are you familiar with Operations Order 52 of the New York
22 City Police Department?

23 A. Yes, sir, I am.

24 Q. In your judgment, does this order permit you as a
25 commanding officer of a precinct or command to set numerical

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D3M8FLO2 Marino - direct

1 goals for police officers?

2 A. No, nothing in the police department authorizes us to set
3 numerical goals.

4 Q. Do you believe that Operations Order 52 allows you to set a
5 quota?

6 A. Nothing in the police department authorizes us to set a
7 quota.

8 Q. Do you believe that Operations Order 52 allows you to set
9 performance standards?

10 A. May I?

11 Q. Yes or no?

12 A. Yes.

13 THE COURT: Wait. If he wants to read the document.

14 I think he started to say, may I look at the document?

15 A. I know that it does. I just couldn't remember the direct
16 wording, but I see it now.

17 Q. Can you direct us to that language?

18 A. "To provide guidance --

19 THE COURT: Which paragraph are you in?

20 THE WITNESS: Paragraph 3, ma'am.

21 A. "To provide guidance to police officers concerning their
22 duties department managers can and must set performance goals."

23 Q. You're also aware, are you not, that Operations Order 52
24 sets forth that officers who don't meet those performance goals
25 can have adverse employment consequences, correct?

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D3M8FLO2 Marino - direct

1 A. I would have to read through it, sir.

2 THE COURT: Where is that?

3 Q. Go to the third page.

4 THE COURT: Paragraph?

5 MR. MOORE: Keep scrolling down.

6 Try the fourth page.

7 Q. Look at number 14 and number 15. Why don't you read those?

8 A. Yes, sir. Out loud?

9 THE COURT: No.

10 Q. Just to yourself.

11 A. Yes, sir.

12 Q. Let me put the question to you again. Based on Operations
13 Order 52, is it your understanding that precinct commanders or
14 commanders of different commands can adversely affect the
15 employment of officers under the command if they fail to meet
16 the productivity standards that may be set?

17 A. If they fail to take proper steps to correct conditions is
18 what it says, yes, sir.

19 Q. So that if they are not meeting the goals that are set,
20 they can be subject to adverse employment consequences,
21 correct?

22 A. If they fail to do their jobs in addressing conditions and
23 correcting them, yes.

24 THE COURT: I think actually in 15 it says, "Or fails
25 to engage in proactive activity." What is that?

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D3M8FLO2 Marino - direct

1 THE WITNESS: Any condition -- a different condition
2 may take different steps. Every condition is different. So
3 whatever the goals are, whatever steps need to be taken to
4 correct a problem in the community, the officers have to take
5 it. It could be different depending on the condition.

6 Q. I am interested in whether, if a supervisor sets a
7 performance goal -- are you following me so far?

8 A. I am, sir.

9 Q. If a supervisor sets a performance goal and the officer
10 fails to meet that performance goal, adverse employment
11 consequences can be brought against that officer.

12 I am only speaking about performance goals. OK? If
13 they fail to do that, that might subject them to adverse
14 employment consequences, is that correct?

15 A. It's too broad of -- the statement you're making is too
16 broad to accurately answer.

17 Q. You can't answer that yes or no?

18 A. No, sir.

19 THE COURT: I thought he had about ten minutes ago.
20 You remember a series of questions you asked about the numbers,
21 and if not, can you do this, can you do that? He said yes to
22 all of them. Could be reassigned. Could have a different
23 command. Could be assigned to a different precinct. Do you
24 remember that?

25 MR. MOORE: I do. I am asking him about 52. He

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D3M8FLO2 Marino - direct
1 started talking about conditions.

2 THE COURT: I just want to make sure I remember the
3 same thing.

4 Q. It's your testimony that you did not institute a quota
5 policy within the 75th Precinct when you were the CO there,
6 correct?

7 A. That's correct.

8 Q. But you were accused of having done that, correct?

9 A. Yes, I was.

10 Q. In fact, a grievance was filed by several officers in the
11 75th Precinct, correct?

12 A. Yes, sir.

13 Q. And those officers accused you of instituting a quota
14 policy that required each officer assigned to the 75th Precinct
15 to issue ten tickets, ten summonses, and make one arrest each
16 month or face a low performance evaluation score, correct?

17 A. That is correct.

18 THE COURT: Did you not tell us a few minutes ago that
19 you did, in fact, say that that was a performance goal for the
20 officers?

21 THE WITNESS: It was, ma'am. We are talking about two
22 different times and the laws have changed since. At that time,
23 yes, I asked them for ten summonses a month and a collar a
24 month.

25 THE COURT: There was a time that you did that?

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D3M8FLO2 Marino - direct

1 THE WITNESS: Yes, ma'am.

2 THE COURT: But no longer?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: When did it change?

5 THE WITNESS: When the law changed.

6 THE COURT: When was that?

7 THE WITNESS: I believe it was 2011, if I am not
8 mistaken.

9 THE COURT: What law changed in 2011?

10 THE WITNESS: The quota law at the time that I had the
11 75 stated, in sum and substance, that it would be unlawful to
12 transfer an officer, discipline an officer, make him lose
13 overtime or suffer any loss for failure to meet solely a set
14 number of parking and moving violations. Later it was changed
15 just to include movers.

16 The things that I asked the officers for were not
17 solely parkers and movers. It was their aggregate efforts in
18 correcting the conditions in that community.

19 Q. You say the power for a commanding officer to do that
20 changed in 2011?

21 A. I believe that's when the quota law was changed to include
22 parkers, movers, quality of life summonses, arrests, and
23 UF-250s, yes. I believe it was 2011.

24 Q. Up until 2011, precinct commanders had the power to
25 adversely affect an officer's employment if they didn't meet

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D3M8FLO2 Marino - direct

1 those standards or goals, correct?

2 A. Yes, as long as it wasn't based solely upon their failure
3 to write a specified number of parkers and movers within a time
4 frame, yes.

5 Q. I thought you said that was what changed in 2011?

6 A. You're not asking me about 2011. You said prior to that.

7 THE COURT: He is saying up till then, if the person
8 didn't meet those goals, they could be adversely affected.

9 THE WITNESS: Yes.

10 Q. One of the allegations that was made by the 75th Precinct
11 officers was that officers who had previously received
12 competent or highly competent ratings began to receive below
13 competent ratings because they did not achieve the quota that
14 you set out for them. That was one of their allegations in the
15 arbitration, correct?

16 A. That's correct.

17 Q. You recall an individual at the 75th Precinct named
18 Christopher Whitehead?

19 A. Yes.

20 Q. He worked at the 75th Precinct while you had these goals
21 in -- withdraw that.

22 He worked at the 75th Precinct during the time the
23 officers allege you were imposing a quota on them, correct?

24 A. Yes, he did.

25 Q. He was one of the officers who received a below competent

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D3M8FLO2 Marino - direct

1 rating because he did not meet what he believed was a quota,
2 correct?

3 A. I don't specifically recall that, but if you say so, I will
4 take your word for it.

5 Q. You recall that before he received a below competent
6 rating, he had a competent or a highly competent rating?

7 A. No, I don't.

8 Q. If I say so, you will agree with me?

9 A. I assume you know, sir. Yes, sir.

10 Q. Thank you.

11 Do you recall specifically having a meeting with
12 Christopher Whitehead where he told you he couldn't meet the
13 quota policy because he was rarely assigned to patrol duty? Do
14 you recall a meeting like that?

15 A. I met with every officer who was below, but I don't
16 specifically remember any one officer, no.

17 Q. You don't remember that particular meeting with Officer
18 Whitehead, correct?

19 A. No, I do not.

20 Q. Do you recall telling him that he would be placed on
21 performance monitoring or he would be terminated if he did not
22 comply with the quota policy? Do you recall telling him that?

23 A. No, I don't.

24 Q. Do you recall at some point Officer Whitehead shortly
25 thereafter was placed on level 2 performance monitoring?

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D3M8FLO2

Marino - direct

- 1 A. I don't remember exactly who was placed on performance
2 monitoring.
- 3 Q. Do you remember if he was ever placed on performance
4 monitoring?
- 5 A. I really don't know.
- 6 Q. In addition to Officer Whitehead, there were other
7 officers, five other Brooklyn officers in the 75th Precinct,
8 who accused you of having transferred them out of the precinct
9 because they failed to meet what they alleged was a quota that
10 you set in the 75th Precinct. Do you recall that?
- 11 A. I remember that there were officers who said that.
- 12 Q. I'm sorry?
- 13 A. I remember that there were officers who said that, yes.
- 14 Q. A grievance was filed in this matter by the Patrolmen's
15 Benevolent Association?
- 16 A. That's correct.
- 17 Q. That was filed in 2005. Do you recall that?
- 18 A. Yes, sir.
- 19 Q. In 2005, were you still the commanding officer of the 75th?
- 20 A. Until September of 2005 I was, yes, sir.
- 21 Q. Well, when the grievance was filed by the officers, you
22 were still the commander, right?
- 23 A. When it was filed, I believe I was, yes, sir.
- 24 Q. When it was decided, you had moved on, correct?
- 25 A. Yes, sir.

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D3M8FLO2

Marino - direct

1 Q. Because you had been promoted to deputy chief at that
2 point?

3 A. I was promoted to deputy chief in December of 2004.

4 THE COURT: Deputy chief of the whole department?

5 THE WITNESS: No, ma'am.

6 THE COURT: Deputy chief of?

7 THE WITNESS: Deputy chief is a one star chief.

8 THE COURT: Deputy chief of what?

9 THE WITNESS: Typically, the one star chiefs are what
10 is called the executive officer of a borough. The commanding
11 officer is a two star and his number two is a one star.

12 THE COURT: Your borough was?

13 THE WITNESS: I was Brooklyn North at that time.

14 THE COURT: Now you are?

15 THE WITNESS: Staten Island.

16 THE COURT: But also deputy chief of that borough?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Thank you.

19 Q. In 2005, after you were promoted to deputy chief, you were
20 still for a time the commanding officer of the 75th Precinct?

21 A. Yes, sir.

22 Q. They were waiting for an opening for you or something?

23 A. Yes, sir.

24 Q. At some point an arbitration hearing was held, correct?

25 A. Yes, sir.

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D3M8FLO2 Marino - direct

1 Q. You testified, right?

2 A. Yes, sir.

3 Q. You were represented by counsel at that hearing?

4 A. Yes, sir.

5 Q. In January of 2006, the arbitrator ruled that, in fact, you
6 had imposed a quota policy during the time you were commanding
7 officer of the 75th Precinct and that it violated Labor Law
8 Section 215-A, correct?

9 A. That was part of her ruling, yes, sir.

10 Q. The arbitration decision permitted officers, who felt they
11 were unfairly penalized under the policy that had been ruled in
12 violation of the labor law, that they could be reevaluated
13 without reference to the quota policy, correct?

14 A. That's correct.

15 Q. But by the time that ruling was made, you had moved on and
16 had become the executive officer --

17 A. Executive officer.

18 Q. Executive officer of the entire patrol borough Brooklyn
19 North, correct?

20 A. Yes.

21 Q. Sometimes I talk over you and sometimes you talk over me.
22 So it's better for the court reporter if we can both slow down
23 a little bit. It will help her out.

24 Chief Marino, I know it's a different borough. Where
25 is the 42nd Precinct?

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D3M8FLO2 Marino - direct

1 A. It's in the Bronx.

2 Q. Are you aware that since 2008, supervisors in the 42nd
3 Precinct have developed and implemented a system of quotas
4 mandating numbers for arrests, summonses, and stop and frisks?

5 A. I only know what I read in the newspapers.

6 Q. But you read about that in the newspaper, correct?

7 A. Yes, sir.

8 THE COURT: Is that your borough? Where is the 42nd?

9 MR. MOORE: It's in the Bronx, Judge.

10 THE COURT: Go ahead.

11 The point is you had no chain of command at the Bronx?

12 THE WITNESS: No.

13 Q. You became aware of it through the newspapers, right?

14 A. Yes, sir.

15 Q. In 2008, do you know who the commanding officer of the 42nd
16 Precinct was?

17 A. I do not.

18 Q. The 42nd Precinct is in what borough?

19 A. The Bronx.

20 Q. It's just patrol borough Bronx, it's not divided up?

21 A. No, sir.

22 Q. Who was the executive officer of the patrol borough Bronx
23 in 2008?

24 A. I believe, if I am not mistaken, it was Deputy Chief Kevin
25 Unick and Deputy Chief Terry Monahan.

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D3M8FLO2 Marino - direct

1 Q. What is the first one? I didn't get the last name.

2 A. Kevin Unick, U-N-I-C-K.

3 Q. Executive officers of the boroughs sometimes get together
4 and meet, correct, or do they?

5 A. I'm sorry?

6 THE COURT: Do you know these guys because sometimes
7 you have meetings of all the executive officers?

8 THE WITNESS: No. I came on the job with Kevin Unick.

9 THE COURT: And the other fellow?

10 THE WITNESS: I just know him from the job.

11 THE COURT: You don't have meetings of executive
12 officers?

13 THE WITNESS: No, ma'am, I don't.

14 Q. Are there no command meetings where all the executive
15 officers might be meeting in one room together, maybe with
16 their borough chiefs? Are there no such meetings, Deputy Chief
17 Marino that you can recall?

18 A. Are you talking about from different boroughs?

19 Q. Yes.

20 A. No. Other than social events, no.

21 Q. Well, do you ever have occasion to go to CompStat?

22 A. Yes, sir.

23 Q. Do you recall that the alleged quota that was being imposed
24 in the 42nd Precinct was ever discussed at CompStat meetings?

25 A. Not in my presence, no.

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D3M8FLO2 Marino - direct

1 Q. You don't recall any mention of it while you were there?

2 A. No, sir, I don't.

3 Q. Do you recall that one of the -- maybe you read it in the
4 newspaper, that in order to enforce these quotas, supervisors
5 in the 42nd Precinct had developed a detailed monitoring system
6 that included computer reports that used color coding to
7 categorize officers in terms of their compliance with the
8 quotas?

9 A. No, sir, I don't.

10 Q. Did you ever have such a system when you were at the 75th
11 Precinct?

12 A. No, sir.

13 Q. To keep track of whether officers were meeting their
14 performance goals or numerical goals?

15 A. Not a color code, no, sir.

16 Q. Did you have some kind of system to track that?

17 A. Yes, sir.

18 Q. What was that system?

19 A. At the end of each month, the commanding officer is
20 required to personally review every police officer's activity
21 sheet, monthly activity sheet. And on the quarterlies, which
22 would be at the end of March, June, September and December,
23 you're required to look at the quarterly evaluations for the
24 previous quarter and sign off on them that you agree.

25 Q. That's how you kept track of how officers did in terms of

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D3M8FLO2 Marino - direct

1 meeting their performance goals, correct?

2 A. That based with the crime conditions and community
3 complaints gave me a good indication if the job was getting
4 done.

5 Q. I am speaking specifically about the goals that were set,
6 whether they were meeting them. I know that there are other
7 issues that you deal with, but with respect to whether officers
8 were meeting these performance goals that you set, that's how
9 you kept track of them, by looking at these monthly and
10 quarterly and annual reports, correct?

11 A. Yes, sir.

12 Q. If officers you believed fell below what you thought was
13 the goal that you had set for them, they would be spoken to,
14 correct?

15 A. Yes, sir.

16 Q. They would be told to get their numbers up?

17 A. Told to do their job properly.

18 Q. Told to get their numbers up?

19 A. To do their job properly.

20 THE COURT: Did that include getting the numbers where
21 you wanted them?

22 THE WITNESS: If it was called for, yeah.

23 Q. Now, in December of 2010, Deputy Chief Marino, once again,
24 at this point you're still the -- let me ask you, in December
25 2010, were you still the executive officer of patrol borough

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D3M8FLO2 Marino - direct

1 Brooklyn North?

2 A. I was, sir.

3 Q. In December 2010, did you become aware that officers
4 assigned to the 79th precinct became so upset over alleged
5 summons quotas, that they talked about not writing summonses
6 for a 24-hour period in protest?

7 MS. PUBLICKER: Objection. He is asking about other
8 precincts.

9 THE COURT: Where is the 79th Precinct, what borough
10 is that?

11 MR. MOORE: It is a borough in Brooklyn that he has
12 supervisory authority over.

13 THE COURT: If it's Brooklyn, I am going to allow it.

14 MS. PUBLICKER: At this time, he does not have
15 supervisory --

16 THE COURT: I know not at this time. He did up to a
17 point in time.

18 Q. In December 2010, the 79th Precinct was one of the
19 precincts that you supervised as the executive officer of
20 patrol borough Brooklyn North, correct?

21 A. Yes, sir, it is.

22 THE COURT: That's why I am allowing it.

23 Q. Where is the 79th Precinct?

24 A. That's Bedford-Stuyvesant.

25 Q. In Brooklyn?

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D3M8FLO2 Marino - direct

1 A. Brooklyn North.

2 Q. You heard about this protest, did you not?

3 A. I read something in the paper, yes.

4 Q. You heard about it and you went to the 79th Precinct,
5 correct?

6 A. Yes, I did.

7 Q. And you went to the 79th Precinct and you told the officers
8 there that if they did what they said they were going to do,
9 which was to go on a 24-hour protest, you could come down there
10 and make sure they wrote summonses?

11 A. That's not accurate.

12 Q. What is not accurate about that?

13 A. That's not what I told them.

14 Q. Is any of that accurate?

15 A. No.

16 Q. Do you recall what you said to them when you went down
17 there to talk to these officers?

18 A. In sum and substance, yes, I do.

19 Q. What did you say to them?

20 A. I stood in front of roll call and I explained to them that
21 nothing was about numbers. That these little dots on the wall
22 weren't numbers; they were people that had bad things happen to
23 them, and that it's a cop's job to stop it. And I don't think
24 that any of us, morally or professionally, should reconcile
25 himself, because maybe we don't get enough money or we don't

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D3M8FLO2 Marino - direct

1 like our boss, that we let a little kid get shot or a woman get
2 robbed to further some kind of agenda.

3 Q. You didn't speak to them about numbers?

4 A. No, I did not.

5 Q. The protest was about them saying they were being forced to
6 write a certain number of summonses, right, that was what the
7 protest was about that drew you to go to the 79th Precinct,
8 correct?

9 A. What drew me to go there is the officers saying they were
10 not going to do their jobs, which would put the community at
11 risk.

12 THE COURT: What were they protesting?

13 THE WITNESS: I don't remember what they were angry
14 about. I don't think they liked their commanding officer, and
15 I think that's what it was about.

16 THE COURT: You don't think they were protesting about
17 the numbers?

18 THE WITNESS: No.

19 Q. Let me show you if I can maybe refresh your recollection --

20 MS. PUBLICKER: Can I see that exhibit?

21 MR. MOORE: It's not an exhibit. I am going to try to
22 refresh his recollection.

23 MS. PUBLICKER: Even if he wants to refresh his
24 recollection.

25 THE COURT: You are right. Show her.

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D3M8FLO2

Marino - direct

1 What are you going to show him to refresh his
2 recollection?

3 MR. MOORE: I am going to show him a newspaper article
4 to see if it refreshes his recollection.

5 THE COURT: You can show anything to see if it
6 refreshes his recollection.

7 Q. Chief Marino, take a look at that and read it, and when you
8 finish reading it --

9 THE COURT: He is going to ask you whether it
10 refreshes your recollection. The answer is either yes or no.

11 A. Yes, sir, I read it.

12 THE COURT: Does it refresh your recollection?

13 THE WITNESS: It refreshes my recollection as to what
14 was written after it happened.

15 THE COURT: Does it refresh your recollection of the
16 actual events?

17 THE WITNESS: Yes.

18 THE COURT: So now that his recollection is refreshed,
19 what is your question?

20 Q. So you now recall that when you went to the 79th Precinct,
21 you told these officers, in sum and substance, just try it --
22 referring to this not writing summonses for 24 hours -- I will
23 come down here and make sure you write them. Do you now recall
24 saying that to them?

25 A. That's inaccurate. I never said that.

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D3M8FLO2

Marino - direct

1 THE COURT: It what does it refresh your recollection
2 then?

3 THE WITNESS: It refreshes my recollection that that
4 was somebody's account of what happened the day after.

5 THE COURT: I asked you if it refreshed your
6 recollection as to what actually happened.

7 THE WITNESS: I think I told you what happened, when I
8 said what I told them when I went down there.

9 THE COURT: The article does not refresh your
10 recollection as to what actually happened?

11 THE WITNESS: No, it does not.

12 THE COURT: Thank you.

13 Q. So having read that, you don't recall having said that to
14 the officers in the 79th Precinct, what is quoted in the
15 newspaper there, correct?

16 A. That's correct.

17 Q. Now, during the time you were the executive officer of
18 patrol borough Brooklyn North, you also supervised the 81st
19 Precinct, correct?

20 A. Yes, sir.

21 Q. How many precincts were under your supervision?

22 A. Ten.

23 Q. During the time you were the executive officer, who was the
24 commanding officer of Brooklyn North patrol borough?

25 A. Assistant Chief Joseph F.X. Cunneen.

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D3M8FLO2

Marino - direct

1 Q. I'm sorry?

2 A. Assistant Chief Joseph F.X. Cunneen. And then he was
3 followed by Assistant Chief Gerald Nelson.

4 Q. When did Nelson become the CO of patrol borough Brooklyn?

5 A. I believe in November or December of 2005, I believe.

6 Q. When did you leave to go to Staten Island?

7 A. December of 2010.

8 Q. So for over a little bit over five years, you were the
9 executive officer for patrol borough Brooklyn North, correct?

10 A. That would be correct.

11 Q. When you were the executive officer, were you aware of a
12 procedure that could be followed whereby officers could be
13 brought up to a personnel review board for potential transfer
14 due to being a substandard performer? Were you aware of such a
15 procedure?

16 A. Yes, sir.

17 Q. Part of being substandard would include not being
18 productive in terms of the number of arrests, summonses, or
19 250s that are generated, that's part of it, right?

20 A. That could contribute, yes.

21 Q. Now, with regard to the 81st Precinct, while you were the
22 executive officer of patrol borough Brooklyn North, did you
23 become aware that there were quotas or productivity goals in
24 existence, with regard to summonses, arrests and 250s, at the
25 81st Precinct, did you become aware of that?

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D3M8FLO2 Marino - direct

1 A. I assume there were productivity goals, yes, sir.

2 Q. I am asking if you can answer the question whether there
3 are quotas or productivity goals with regard to summonses,
4 arrests and 250s. Did you become aware of that?

5 A. No.

6 THE COURT: What precinct did you say?

7 THE WITNESS: 81.

8 THE COURT: Is that in your borough?

9 THE WITNESS: It was at the time.

10 THE COURT: You never became aware of that at any
11 time?

12 THE WITNESS: No.

13 Q. Do you recall giving a statement to the police department
14 on August 30, 2010 concerning matters arising out of the 81st
15 Precinct?

16 A. No, sir.

17 THE COURT: We will pick up there after. We will have
18 a ten minute recess and reconvene at 20 of.

19 (Recess)

20 BY MR. MOORE:

21 Q. Deputy Chief Marino, with regard to the 81st Precinct, did
22 you become aware that there are quotas, productivity goals with
23 regard to summonses, arrests and 250s, did you become aware of
24 that public?

25 MS. GROSSMAN: Objection. Compound question. Is it
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1 quotas, productivity goals?

2 MR. MOORE: It will be clear why the question is
3 phrased that way, depending on his answer.

4 THE COURT: I agree with Ms. Grossman. Don't use
5 both. Use one or the other or do them separately.

6 Q. With regard to the 81st Precinct, did you become aware that
7 there were quotas with regard to summonses, arrests and 250s?

8 A. No.

9 Q. Did you become aware that there were productivity goals
10 with regard to summonses, arrests and 250s?

11 A. No.

12 THE COURT: In the 81st Precinct, there were not
13 number goals?

14 THE WITNESS: I tried to answer before that I assume
15 there were. I was not aware of any specific, no.

16 MR. MOORE: Judge, let me just pose it this way then.

17 Q. Did you become aware that certain numbers were expected
18 from the officers on a monthly basis?

19 A. No.

20 Q. Do you recall on August 30, 2010 giving a sworn statement
21 to a representative of the New York City Police Department
22 concerning matters having to do with the 81st Precinct?

23 MS. GROSSMAN: Your Honor, plaintiffs and defendants
24 worked out an arrangement in terms of what the exhibit is that
25 Mr. Moore is going to show the witness, and it will probably

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1 facilitate if he can show the witness the exhibit to refresh
2 his memory.

3 MR. MOORE: I am waiting for the answer.

4 A. I don't know what you're talking about.

5 MS. GROSSMAN: Plaintiffs' counsel and defendants'
6 counsel worked out something regarding this particular
7 document.

8 THE COURT: I think Mr. Moore is planning to show it
9 to him.

10 MS. GROSSMAN: He should show him.

11 Q. Let me hand you what has been marked as Plaintiffs' Exhibit
12 299, Chief Marino.

13 A. Thank you, sir.

14 Q. And see if you can recognize that.

15 A. I know what it's about now, sir.

16 MR. MOORE: Do you want a hard copy, Judge?

17 THE COURT: Sure. Thank you.

18 MS. GROSSMAN: I would just note this is not your
19 typical transcription of a deposition transcript, and there is
20 a lot of inaudibles and not everything is captured, and there
21 is a lot of misuse of words. So I just wanted that to be clear
22 for the record.

23 Q. This is a statement you gave back in August of 2010,
24 correct?

25 A. Yes, sir.

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D3M8FLO2

Marino - direct

1 Q. At the time, you had taken an oath to tell the truth,
2 correct?

3 A. Yes, sir.

4 Q. The same oath that you took when you got up here today to
5 testify, correct?

6 A. Yes, sir.

7 Q. Directing your attention to page 65 of the transcript,
8 which you can either look at it in terms of 65 of the
9 transcript or 24435, the Bates stamp number.

10 A. Yes, sir, I have it.

11 MS. PUBLICKER: I would object to this as this is
12 improper impeachment. It's not in opposition to what Chief
13 Marino has just testified to, the portion that Mr. Moore would
14 like to read.

15 THE COURT: I don't know that unless I read 24435.

16 Q. Do you recall being asked this question --

17 THE COURT: I am reading it to myself.

18 MR. MOORE: Line 12 to line 19.

19 THE COURT: That's where I am reading.

20 THE COURT: It seems to be consistent. He says he is
21 aware that there were goals, but he doesn't know the numbers.
22 That's what I think he just said here. The last thing he said
23 was he knows that number goals were set, but he doesn't know
24 the numbers.

25 MR. MOORE: He said he wasn't aware of quotas. He

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D3M8FLO2 Marino - direct

1 wasn't aware of productivity goals.

2 THE COURT: Here today?

3 MR. MOORE: He just said that.

4 THE COURT: He also said, I was aware that there were
5 number goals set, but I don't know the numbers.

6 MR. MOORE: For what it's worth, I would like to ask
7 him whether he was asked that question and gave that answer.

8 THE COURT: I won't allow it. He said the same thing
9 here. That's my recollection. That's improper. I believe he
10 said the same thing here. But we can find out.

11 Did you just testify that you were aware that numbers
12 were set but you don't know the numbers?

13 THE WITNESS: Yes, ma'am, I did.

14 THE COURT: OK.

15 Q. When you were asked that question, were you aware that
16 there were quotas, was your answer, I am aware that there were
17 quotas?

18 THE COURT: You didn't say you were aware of the word
19 quotas. You said you knew that number goals were set, but you
20 didn't know the number, is that true?

21 THE WITNESS: Yes.

22 THE COURT: Here did you use the word quotas?

23 MR. MOORE: I am trying to explain why I think it's a
24 relevant question.

25 THE COURT: I am asking you, did he use the word

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Marino - direct

1 quotas?

2 MR. MOORE: Yes.

3 THE COURT: What page is it?

4 MR. MOORE: Page 65, line 12, going to the end of line

5 19. It's a compound question.

6 THE COURT: I see that.

7 All right. I will let you read through the first

8 sentence of 17. Go ahead. Read from line 12 through the first

9 sentence of 17.

10 Q. Do you recall being asked this question and giving, at

11 least in part, this answer on August 30, 2010, Chief Marino?

12 "Q. I am going to direct your attention back to the 81st

13 Precinct. With regard to the 81 itself, and we are going to go

14 with this time frame, did you become aware that there are

15 quotas, productivity goals with regard to summonses, arrests

16 and 250s, in other words, certain numbers they expect to on a

17 monthly basis?

18 "A. I am aware of that."

19 Do you recall being asked that question and giving

20 that answer on August --

21 MS. PUBLICKER: I just ask that he complete the

22 sentence in response. He did not complete his response.

23 THE COURT: Because I said he could only read through

24 the first sentence. That was not Mr. Moore's fault. If you

25 would like the whole answer read, that's fine with me, but he

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1 was only obeying my order.

2 Go ahead. Read the whole answer.

3 "A. I am aware of that. Commanders have the right,
4 administrative guy, now it is the patrol guy, to set the
5 performance parameters in their own command units."

6 A. It's guide. I am just correcting it.

7 Q. Do you recall being asked that question and giving that
8 answer in August of 2010?

9 A. Yes, sir.

10 Q. You were being examined at that point by a member of the
11 New York City Police Department, correct?

12 A. Yes, sir.

13 Q. Were you aware what the parameters were for the numbers in
14 the 81st Precinct? Were you aware of that?

15 A. As it says on the next page, no, I was not.

16 Q. Without regard to the document at this point, just
17 independent of the document if you would, were you aware of
18 what the parameters were in the 81st Precinct?

19 A. I was not.

20 Q. During the period of time -- withdraw.

21 This is discussing the 81st Precinct while you were
22 the executive officer who supervised the 81st Precinct,
23 correct?

24 A. Yes, sir.

25 Q. And it's your testimony you weren't aware of what the

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1 numbers were?

2 A. That's correct.

3 Q. In your experience in the New York City Police Department,
4 would it be normal for a precinct commander to have certain
5 productivity expectations of his officers?

6 A. It's actually mandated that he does, yes.

7 Q. It's in the patrol guide now?

8 A. It's in the order you just showed before, sir.

9 Q. Operations Order 52?

10 A. That would be correct.

11 Q. That would be a normal thing for precinct commanders to
12 follow, right?

13 A. Yes, sir.

14 Q. When I say normal, what I am referring to is it would be
15 normal to have numerical numbers placed on those productivity
16 standards, correct?

17 A. No, sir.

18 Q. Directing your attention to page 66 of this document, on
19 line 7, do you recall being asked this question and giving this
20 answer to a representative of the New York City Police
21 Department on August 30, 2010:

22 "Q. Would it be normal to have numerical numbers placed on
23 those productivity standards?

24 "A. Yes, that is right."

25 Do you recall being asked that question and giving

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D3M8FLO2 Marino - direct

1 that answer in August of 2010?

2 A. Yes, sir.

3 Q. You're not aware, are you, of any precinct that doesn't do
4 the same thing?

5 A. At this time or at that time?

6 Q. When you were answering in August of 2010.

7 A. I couldn't answer. I was not aware of any precinct, but I
8 didn't have knowledge of every precinct in the city.

9 Q. Let me direct your attention once again to page 66, line
10 10.

11 "Q. Are you aware of a precinct commanding officer that
12 doesn't do that?

13 "A. No, I'm really not."

14 Do you recall being asked that question and giving
15 that answer?

16 A. Yes.

17 Q. In your judgment, it's not only the prerogative, but it's
18 the policy of the police department for precinct commanders to
19 set numerical goals?

20 A. No, sir.

21 Q. Or numerical numbers?

22 A. No, sir.

23 Q. That's not the policy?

24 A. No, sir.

25 Q. That's not what Operations Order 52 says?

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1 A. It does not say numerical numbers, no, sir.

2 Q. Well, do you recall just answering the question, Would it
3 be normal to have numerical numbers placed on productivity
4 standards?, and the answer you gave at the time was, Yes, that
5 is right, do you recall that?

6 A. At that time, yes, sir.

7 Q. And you say it's now changed?

8 A. Yes, sir.

9 Q. When did it change?

10 A. When the law changed.

11 Q. When what law changed?

12 A. The law regarding quotas.

13 Q. When was that, in 2011?

14 A. I believe it was 2011.

15 Q. At least up until 2011, whenever that law changed, that was
16 the practice, that precinct commanders in all precincts could
17 set numerical goals for productivity standards, right?

18 MS. GROSSMAN: The law changed in 2010. So in terms
19 of the witness's testimony tethered to the law change, I just
20 want the record to be clear it's 2010.

21 Q. Can you answer the question?

22 A. I'm sorry, sir?

23 Q. Whenever the law changed, 2010, 2011, up until that point,
24 it's your understanding that precinct commanders throughout the
25 New York City Police Department had the right to set numerical

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D3M8FLO2 Marino - direct

1 numbers for productivity standards, correct?

2 A. Yes, sir.

3 Q. But it's your testimony that that changed after that law
4 changed?

5 A. Yes, sir.

6 Q. Looking at Operations Order 52, do you believe that that
7 also gives the discretion to precinct commanders to set
8 numerical numbers for productivity standards, Operations Order
9 52?

10 A. I don't have it in front of me, but as I recall, no, it
11 does not.

12 Q. In fact, at the time you gave your testimony in August of
13 2010, you were not aware of a precinct that does not do this,
14 in other words, that does not set numerical goals for
15 productivity standards, correct?

16 A. I wasn't aware or unaware. I didn't know what other
17 precincts were doing. I said, no, I'm really not. I didn't
18 know either way.

19 Q. Directing your attention again to --

20 A. I couldn't be knowledgeable what a precinct in the Bronx
21 was doing or Staten Island or Brooklyn South or Queens or
22 Manhattan because that wasn't under my jurisdiction and it
23 didn't concern me.

24 Q. Directing your attention to page 66, line 10 --

25 MS. PUBLICKER: This is improper impeachment. It's
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D3M8FLO2

Marino - direct

1 not inconsistent with his testimony here today.

2 THE COURT: Which sentence do you want to read now?

3 MR. MOORE: I want to read a passage.

4 THE COURT: Just tell me the page and line.

5 MR. MOORE: Page 66, line 10.

6 "Q. Are you aware of a precinct CO that doesn't do that,
7 referring to numerical numbers placed on productivity
8 standards?

9 "A. No, I'm really not."

10 THE COURT: I will allow it.

11 You gave that testimony, right?

12 THE WITNESS: Yes.

13 A. Nobody ever came up to me and told me the precinct
14 commander wasn't doing it so I assumed they were.

15 Q. So nobody in the police department ever told you don't set
16 numerical goals for productivity standards; is that what your
17 testimony is?

18 A. No, it's not.

19 Q. Isn't that what you just said?

20 THE COURT: What did you just say?

21 A. What I said was no one ever came up to me and made me aware
22 of any precinct commander that was not setting goals.

23 Q. Were you ever disciplined as a result of the arbitration
24 decision that found that while you were in the 75th Precinct
25 you had set quotas for the number of summonses officers were

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1 expected to get?

2 A. No, I was not.

3 Q. Did anybody in the police department ever discuss that with
4 you, that arbitration decision?

5 A. Yes.

6 Q. Who?

7 A. Somebody from legal, I believe. It may be deputy
8 commissioner of legal matters or somebody sat me down and
9 discussed it with me.

10 Q. I won't go into that because there may be attorney/client
11 issues there, but did anybody in the command structure of the
12 police department, Chief Esposito, any assistant chiefs, ever
13 discuss with you that arbitration decision?

14 A. I can't recall, no.

15 Q. In the patrol borough structure, patrol borough COs report
16 to the chief of patrol, correct?

17 A. Correct, sir.

18 Q. At the time you were in patrol borough Brooklyn North, who
19 was the chief of patrol? Was that Giannelli?

20 A. I don't know if it was Chief Giannelli or Chief Estavillo.
21 I can't remember who it was at the time.

22 Q. Well, Chief Esposito is the chief of department.

23 A. No, Estavillo. Nicholas Estavillo was the chief of patrol
24 preceding Chief Robert Giannelli.

25 Q. Did either Chief Estavillo or Chief Giannelli ever discuss

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D3M8FLO2 Marino - direct

1 that arbitration decision with you?

2 A. Not as I recall, no.

3 Q. Your commanding officer in Brooklyn North, did they ever
4 discuss it with you?

5 A. Not as I recall, no.

6 Q. Your commanding officer at the time was who?

7 A. That would have been Chief Gerald Nelson.

8 Q. Did Nelson ever discuss that arbitration decision with you?

9 A. Not as I recall.

10 Q. Would you agree with me, Chief, that the NYPD is a
11 paramilitary organization?

12 A. Yes, sir.

13 Q. Discipline and adherence to orders from commanders is very
14 important in the functioning of the New York City Police
15 Department, correct?

16 A. Yes, sir.

17 Q. One of the duties of a police officer is to obey lawful
18 orders and instructions by supervising officers, right?

19 A. Yes, sir.

20 Q. And that is set forth right in the patrol guide, right?

21 A. Yes, sir.

22 MR. MOORE: Judge, before I forget, I move the
23 admission of Plaintiffs' Exhibit 299.

24 MS. PUBLICKER: Objection, your Honor.

25 THE COURT: Sustained. I am not going to accept this
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D3M8FLO2 Marino - direct

- 1 in evidence. You used it for impeachment. Where you have used
2 it, it's been read into the record. That's fine.
- 3 Q. One of the ways officers are given guidance and
4 supervision, one of the principal ways is through the roll call
5 system, correct?
- 6 A. Yes, sir.
- 7 Q. That happens on a daily basis for every tour, correct?
- 8 A. Yes, sir.
- 9 Q. At roll calls officers are told what the conditions are for
10 the day, correct?
- 11 A. Yes, sir.
- 12 Q. They are sometimes given briefings on changes in the law,
13 correct?
- 14 A. Yes, sir.
- 15 Q. And new interim orders or policies that are adopted by the
16 police department, correct?
- 17 A. At times, yes, sir.
- 18 Q. And from time to time, precinct commanders appear at the
19 roll call and speak to the simple troops?
- 20 A. Yes, sir.
- 21 Q. Would you be concerned as a commanding officer if a
22 supervisor got up at a roll call and said, at a particular
23 location, no one is walking out of that location without being
24 stopped? Would you be concerned about that?
- 25 A. I might.

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D3M8FLO2 Marino - direct

1 Q. That's because you can't just stop anybody walking out of a
2 house, right?

3 A. No, sir. That's correct, you can't.

4 Q. I'm sorry?

5 A. No, you can't.

6 Q. In order to stop them, you have to have reasonable
7 suspicion, correct?

8 A. Yes, sir.

9 Q. Of course, if you see them committing a crime, you can stop
10 them, and if you have probable cause, you can arrest them,
11 correct?

12 A. Yes, sir.

13 Q. But just walking out of a house without anything more,
14 that's not a reason to stop anybody, correct?

15 A. No, sir, it's not.

16 Q. No, sir, you agree with that?

17 A. I agree with what you just said.

18 Q. So would you be concerned as a commanding officer if a
19 supervisor got up and said, I want everybody coming out of a
20 certain location, I want everybody stopped on this tour? Would
21 you be concerned that that might lead to suspicionless stops
22 and frisks if the supervisor officer didn't say more than that,
23 would you be concerned about that?

24 A. I might, yes.

25 MR. MOORE: Nothing further, Judge.

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D3M8FLO2 Marino - direct

1 THE COURT: Ms. Publicker.

2 MR. MOORE: Thank you, Chief.

3 THE WITNESS: My pleasure.

4 CROSS-EXAMINATION

5 BY MS. PUBLICKER:

6 Q. Good afternoon, Chief.

7 A. Good afternoon, ma'am.

8 Q. Could you briefly describe your educational background?

9 A. I have a bachelor's in business administration from the
10 State University of New York.

11 Q. When did you join the New York City Police Department?

12 A. November 7, 1979.

13 Q. Just a little while ago Mr. Moore read to you from a
14 transcript, is that correct?

15 A. Yes, ma'am.

16 Q. Did you ever have a chance to review that transcript?

17 A. No, ma'am.

18 Q. I believe you were trying to say something about the
19 statement, "Commanders have the right, administrative guy, now
20 it's the patrol guy, to set performance parameters in their own
21 command units"?

22 A. Yes, ma'am.

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

24 THE COURT: I don't know what you just said.

25 Q. You attempted to clarify something about that statement to

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D3M8FLO2 Marino - cross

1 Mr. Moore on your direct?

2 A. Yes, ma'am.

3 Q. What were you trying to clarify?

4 A. The administrative guide was the original procedure, now
5 it's the patrol guide, not guy.

6 Q. Do you have any personal knowledge of anything that you
7 heard or read about the 42nd Precinct issues that Mr. Moore
8 asked you about?

9 A. None.

10 Q. How long ago did you leave the 75th Precinct?

11 A. Seven and a half years ago, September of 2005.

12 Q. Are you familiar with officers' annual performance
13 evaluations?

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

15 Q. There are 28 different subcategories for that evaluation,
16 are there not?

17 A. Yes, ma'am.

18 Q. Those are separated?

19 A. Yes. There are performance parameters and behavioral
20 parameters, dimensions they call them.

21 Q. So when you were the commanding officer of the 75th
22 Precinct, did you assign mandatory numerical ratings triggered
23 by certain levels of activity?

24 A. It was suggested, yes.

25 Q. Was that for the overall evaluation score or for the

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D3M8FLO2

Marino - cross

1 subcategories?

2 A. For the subcategories where I felt were affected by that
3 particular parameter.

4 Q. Could you give an example?

5 A. Yes, I can. One of the ones I set was, there is something
6 in there with accidents and traffic, if an officer failed to
7 properly issue enough moving summonses in the right places to
8 stop people that were having accidents and injuries, he might
9 get low in that area. If an officer failed to do much in the
10 way of arrests, proactive policing, hawkers, movers, he might
11 got low in initiative, or problem recognition if he or she
12 didn't have the ability to see these things that were happening
13 right in front of their face.

14 Q. Why did you set these performance goals?

15 A. The level of activity and the level of performance that the
16 officers in the 75 were producing when I first got there was so
17 low that it was actually a detriment to the community. It was
18 doing nothing to improve the conditions in one of the precincts
19 that was probably one of the most crime ridden violent
20 precincts in the city.

21 Q. What was the level of activity that you saw in the 75th
22 Precinct when you first arrived?

23 A. Surprisingly enough, the 400 or so officers assigned to
24 patrol all saw exactly five summonses every month, no more, no
25 less, and that was movers, parkers, and quality of life

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D3M8FLO2 Marino - cross

1 summonses combined. 400 people all managed to seek exactly
2 five every month.

3 Q. What did that signal to you?

4 A. It told me that they had set their own quota.

5 Q. Did you believe that was a problem?

6 A. Yes, it was.

7 Q. Why did you believe it was problematic?

8 A. Working in Brooklyn North for 22 years, I knew in some
9 areas the level of violence and drugs and crime, and these
10 officers doing five combined, movers, parkers and quality of
11 life summonses a month was just not enough to fix the problems
12 there. And, also, if an officer did that by the third or
13 fourth day of the month and no more, it kind of indicated that
14 they were driving by things, just not addressing it. It was
15 almost a malfeasance to me.

16 Q. What did you do in response, if anything?

17 A. I analyzed all the crime in the 75th Precinct. I drove
18 around for weeks, myself, in the street to see what I could
19 find and what I could see, arrests that I could make, summonses
20 that I could write, stops that I could perform, proper stops.
21 And I did some analysis about the quota law. I did look into
22 the administrative guide and see exactly what was proper to do
23 and not to do. And I did set numbers for them that I thought
24 would serve the community in a better manner.

25 Q. What were the numbers that you set?

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D3M8FLO2

Marino - cross

1 A. I asked them to increase their summons production from five
2 to ten. I asked them to try to make two good stops a month and
3 to attempt to make one arrest a month.

4 Q. Did you ever assign a mandatory numerical rating to be
5 triggered by low activity for UF-250s?

6 A. No.

7 Q. Why did you set the numbers that you did?

8 A. When you ask people to do things, number one, the officers
9 ask for a number, they want one. Most people come to work and
10 they want to know what do I have to do to be OK, what can I do
11 to meet standards, so they ask for a number. And if you set a
12 number, you have to make one that is attainable, that will not
13 put an undue burden upon the officers or the community, and yet
14 meet the needs of that community at the same time.

15 Q. What were the crime conditions in the 75th Precinct at that
16 time?

17 A. The 75th Precinct historically and at that time still
18 almost every year led the city in shootings, robberies, up
19 there in murders. It was heavy drugs.

20 THE COURT: Where is this?

21 THE WITNESS: That's East New York in Brooklyn. It's
22 a five and a half square mile area that's heavily populated and
23 heavy crime.

24 Q. I believe you stated that you were aware of a New York
25 State labor law that was in effect at the time?

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D3M8FLO2

Marino - cross

1 A. Yes, ma'am, I was.

2 Q. Did you believe that your mandatory ratings in certain
3 dimensions violated the New York State labor law at that time?

4 A. No, I did not, and I still don't.

5 Q. Was anyone transferred out of the 75th Precinct as a result
6 of the performance standards that you set?

7 A. Yes, ma'am.

8 Q. Was anyone denied overtime as a result of the performance
9 standards that you set?

10 A. No.

11 Q. Was anyone denied days off as a result of the performance
12 standards that you set?

13 A. No.

14 Q. You're aware that a grievance was filed against NYPD for
15 that practice?

16 A. Yes, ma'am.

17 Q. Do you recall when that grievance was filed?

18 A. I believe it was in October of '10, according to the
19 document that the lawyer gave me, that counsel gave me.

20 Q. When the grievance by the PBA was filed with regards to the
21 75th Precinct?

22 A. I don't know when it was filed. I know that I gave my
23 statement on August -- is that August 2010? No, I'm sorry. I
24 just confused it. I don't remember when it was done.

25 Q. What did you understand the grievance to include?

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D3M8FLO2

Marino - cross

- 1 A. The officers grieved the fact that they were transferred or
2 taken off their tours and made to suffer a loss, or get
3 substandard evaluations, based solely on their refusal to write
4 a certain amount of moving or parking summonses within a
5 specified time frame.
- 6 Q. Are you aware of the findings of the arbitrator?
7 A. Yes, ma'am, I am.
- 8 Q. How are you aware of those findings?
9 A. Well, I read them, and then it was given to me also by the
10 department at some point in time.
- 11 Q. When did the arbitrator release the findings, if you can
12 recall?
13 A. I can't recall.
- 14 Q. If I said it was 2006, would that refresh your
15 recollection?
16 A. Yes, ma'am.
- 17 Q. Did the arbitrator determine whether anyone had received a
18 low evaluation as a result of the alleged quota?
19 A. I don't think she determined that anybody received a below
20 standard evaluation as a result of that, no.
- 21 Q. Do you recall an Officer Velez?
22 A. Yes, I do, David Velez.
- 23 Q. Do you recall that he made a grievance against you?
24 A. Yes, ma'am, I do.
- 25 Q. As part of that same labor law grievance we were speaking

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D3M8FLO2

Marino - cross

1 of?

2 A. Yes, ma'am.

3 Q. Do you recall that he claimed that he received a low
4 evaluation?

5 A. Yes, ma'am.

6 Q. What was the low evaluation that he was alleged to have
7 received?

8 A. He received a 3.5, which is above standards.

9 Q. After you received the arbitration decision in 2006, did
10 you continue to impose those mandatory ratings for officers?

11 A. No, ma'am.

12 Q. You are aware that the labor law was amended again in 2010?

13 A. Yes, ma'am.

14 Q. What is your current understanding of the kinds of quotas
15 that are not permitted under New York State Labor Law?16 A. You cannot suffer any police officer, you cannot cause any
17 police officer to suffer any kind of monetary loss, change of
18 tour, change of assignment, for failure to produce a specified
19 number of moving summonses, parking summonses, quality of life
20 violations, UF-250s, or stop and frisks, or arrests within a
21 specified time frame.22 Q. Do you currently comply with the existing New York State
23 Labor Law?

24 A. Yes, ma'am.

25 Q. Are you aware if the arbitrator found that Officer

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D3M8FLO2

Marino - cross

1 Whitehead, which was mentioned by Mr. Moore, was retaliated
2 against in any way?

3 A. No, she did not.

4 Q. How many times have you attended CompStat?

5 A. I would say over 100.

6 Q. Has anyone at CompStat ever told you to increase the number
7 of stops officers under your command conduct?

8 MR. MOORE: Object to the form, Judge. He is on
9 direct.

10 THE COURT: He is on cross.

11 MR. MOORE: I called him as an adverse witness.

12 THE COURT: It calls for a yes or no. I will allow
13 it.

14 Did anyone from CompStat ever tell you that?

15 A. No. Not just to increase the number of stops, no.

16 MR. MOORE: Can I just have the question read back?

17 THE COURT: Sure.

18 (Record read)

19 A. No.

20 Q. Has anyone at CompStat ever told you to increase the number
21 of arrests officers under your command conduct?

22 A. No, not just arbitrarily like that, no.

23 Q. Has anyone at CompStat ever told you to increase the number
24 of summonses officers under your command conduct?

25 A. No.

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D3M8FLO2

Marino - cross

1 Q. What have they told you at CompStat about officer activity?

2 A. The main thing that you hear a lot at CompStat is they talk
3 about quality over quantity. Nobody from the top on down has
4 ever said they want more numbers for numbers' sake. They can
5 do things like they can put up the computer maps and show
6 robberies up in this area. And then they will show a lot of
7 activity in this area. No, it should be here. You're not
8 taking proper steps to stop the conditions. Nobody would ever
9 just arbitrarily say they need to make more arrests, they need
10 to write more summonses. They might say you're not doing
11 enough in this area to address this condition, and how come
12 you're not? You're not deploying your men and women properly.
13 You're not taking the proper steps. You're not doing your job
14 as a commanding officer of that precinct to fix the conditions
15 for the people that live there.

16 (Continued on next page)

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D3m9flo3

Marino - cross

1 Q. Just to step back for a minute, for the time when you were
2 the commanding officer of the 75th precinct. I believe you
3 stated that you drove around the precinct?

4 A. Yes, I did, for quite a few weeks.

5 Q. Did you find it difficult to identify crime conditions or
6 summonable offenses when you did that?

7 MR. MOORE: Object to the form, judge.

8 THE COURT: Are you objecting to the leading?

9 MR. MOORE: Not only that. She's asking him this
10 broad question about whether he saw illegal behavior. I mean
11 did he stop and summons?

12 THE COURT: She's not asking that. She's just saying:
13 Did you notice it? Did you see it? Was it hard to see it? I
14 guess that's the question.

15 MS. PUBLICKER: Yes, your Honor.

16 THE WITNESS: Actually honestly I found it hard to go
17 a couple of hours without seeing something.

18 Q. Have you ever told supervisors under your command that they
19 could not set quotas?

20 A. Yes, I have.

21 Q. What did you tell them?

22 A. I tell them whatever the law is at the time. The things
23 that they can't do.

24 Q. Have you ever told supervisors under your command that they
25 should not ask for numbers, for numbers' sake?

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Marino - cross

1 A. I've been saying that since day one irregardless of what
2 the law stated.

3 Q. And why do you say that to commanding officers under your
4 command?

5 A. Because the perception sometimes is amongst the rank and
6 file that they think they have to get numbers for numbers' sake
7 and it doesn't help anything.

8 If I say I want you guys to write parkers, I don't
9 mean expired registration stickers or expired inspection
10 stickers that don't really do much. But I would like you to
11 write some double parkers where they're selling drugs and the
12 people are double parking their cars. Maybe it will kind of
13 induce them not to come back. Or if you're coming to work and
14 you can't get down the block because there's a condition,
15 address that.

16 Quality of life summonses. Address the things that
17 you wouldn't like in your neighborhood or for your family to
18 have to live with.

19 If you're going to give moving summonses, don't do a
20 thing like they stop a car with tinted windows and give them
21 four summonses, one for each window, and I'm done for the
22 month. Make four good stops. Go to where the accidents are
23 happening, people are getting hurt. I'd rather see them write
24 summons fro no seat belt, or on the cellphone, or speeding, or
25 improper turn, or failure to yield to a pedestrian. Because

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D3m9flo3

Marino - cross

1 where I work now there's a lot of pedestrians that get rundown.
2 It's a problem. It's our job to fix this.

3 The simple truth of the matter is that the average
4 patrol cop, if you talk about productivity or numbers, as we
5 keep saying, the numbers that they give are so low that it's
6 incumbent upon them to make sure that everything they did
7 actually go out and perform has a positive effect.

8 Q. When you were the commanding officer of the 75th precinct
9 did you -- I'm sorry. Were you involved with the community?

10 A. Yes, ma'am.

11 Q. How were you involved with the community?

12 A. When you first go to a precinct you meet with all the
13 elected officials. You meet with block association presidents.
14 You meet with elite clergy people. And you have weekly -- I'm
15 sorry -- monthly precinct community council meetings where
16 everybody is invited to attend.

17 I also invited in elected officials and clergy people
18 early on in my tenure and asked them what they thought the
19 priorities in the community were, the problems that they
20 thought were the most important. We discussed between us how
21 we could remedy them. Because you can't go into a community
22 and just say well I'm going to tell you how to live and I'm
23 going to do this.

24 When I was in the 77, there was a bad area. We
25 decided to go zero tolerance to fix it. I invited all the

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D3m9flo3

Marino - cross

1 elected officials, all the community people in first because
2 I'm not going to subject them to that kind of thing unless they
3 all are on board and agree with it, and they were. And they
4 agreed that that was what was necessary. They have to be part
5 of the decision process.

6 Q. Now moving on to the Operations Order 52 that you were
7 shown earlier, you testified I believe that officers pursuant
8 to Operations Order 52 are evaluated on effectiveness of
9 addressing conditions; is that correct?

10 A. Yes, ma'am.

11 Q. And I believe under Operations Order 52 you read some
12 portions of paragraph fifteen where it states that if officers
13 fail to address sector or post conditions and public safety
14 concerns after training, mentoring and hands-on instruction,
15 the officers could be placed in performance monitoring; is that
16 correct?

17 A. Yes, ma'am.

18 Q. Is that your understanding of the operations order?

19 A. Yes.

20 Q. Can you explain what your understanding is of how an
21 officer could fail to be effective at addressing conditions?

22 A. Yes, ma'am.

23 If you have a drug condition in your precinct, say an
24 area it's a known drug location, and they don't do anything
25 with it. And people are complaining that they're out there

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D3m9flo3 Marino - cross

1 selling drugs, they're drinking beer, they're urinating in the
2 street, they're playing loud radios and just generally causing
3 a problem and it's in the officer's sector and he does nothing
4 about it all month, he failed. He failed in that respect.

5 MS. PUBLICKER: Your Honor, if I could have one
6 minute.

7 (Pause)

8 Thank you, your Honor. No further questions at this
9 time.

10 THE COURT: Redirect or cross, whatever you want to
11 call it?

12 MR. MOORE: Re-something. Just can I do it from here?

13 THE COURT: If it's that short.

14 MR. MOORE: It's going to be short.

15 REDIRECT EXAMINATION

16 BY MR. MOORE:

17 Q. Chief Marino, you said that when you became the CO of the
18 75th precinct you reached out to the community, correct?

19 A. Yes.

20 Q. As any good precinct commander would do, correct?

21 A. Yes, sir.

22 Q. And for the five -- the precinct commander of the 75th for
23 five years, correct?

24 A. Yes, sir -- I'm sorry, no, sir. Three years, ten days, and
25 18 hours.

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D3m9flo3

Marino - redirect

1 THE COURT: Where is that?
2 THE WITNESS: East New York. 75. Three years, ten
3 days, and 18 hours.
4 MR. MOORE: You don't have it down to the minute?
5 THE COURT: Excuse me. 75?
6 THE WITNESS: Yes, ma'am.
7 THE COURT: Did you mention earlier 77?
8 THE WITNESS: 77.
9 THE COURT: Where is that?
10 THE WITNESS: That's in Crown Heights also in Brooklyn
11 North.
12 BY MR. MOORE:
13 Q. Is it your testimony that during that time no one in the
14 community came to you to complain about stop and frisk? Is
15 that your testimony?
16 A. They may have, sir.
17 That is always a concern and a complaint in any
18 precinct I've worked in.
19 Q. So from time to time community leaders, community members
20 would complain about what they believe to be suspicionless
21 stops and frisks taking place in the 75th precinct, correct
22 from time to time?
23 A. Yes, sir.
24 Q. And what would you do about that?
25 A. We would discuss it. We have a dialogue about it and see

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D3m9flo3

Marino - redirect

- 1 if they were right or wrong, you know -- sometimes people make
2 mistakes and sometimes the community is mistaken. Sometimes
3 they come in and complain about it. When I explain to them
4 what happened, they actually go: Oh, you guys actually did a
5 good job.
- 6 Q. Would you agree with me that communities like East New York
7 and Bed-Stuy and Crown Heights where there may be high
8 incidents of crime, that people in those communities want
9 officers deployed there to deal with those crime conditions?
- 10 A. Of course they do.
- 11 Q. And from time to time the police department sends extra
12 officers into those areas to deal with those crime conditions,
13 correct?
- 14 A. I don't know what you --
- 15 THE COURT: Sometimes police presence is increased.
- 16 THE WITNESS: They assign more police officers to the
17 precinct?
- 18 THE COURT: That's what he's asking.
- 19 THE WITNESS: Yes.
- 20 Q. Or to deal with a spike in conditions, say, to impact over
21 time.
- 22 A. Oh, yes, sir.
- 23 Q. And that -- and so members of the community want that to
24 happen, correct?
- 25 A. Yes, sir, I believe they do.

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D3m9flo3 Marino - redirect

1 Q. From your experience?

2 A. I believe they do, yes, sir.

3 Q. They don't want those officers to go into the community and
4 do suspicionless stops and frisks though, do they?

5 A. I'm sorry?

6 Q. They don't want those officers who they want deployed to
7 the community to come there and disregard the rights of the
8 people in that community with regard to stop and frisk, right?
9 They don't want that?

10 A. Nobody wants illegality, sir.

11 Q. So even though they may not -- they may want more officers,
12 they don't want the officers coming in and stopping and
13 frisking every young black or Hispanic male, correct?

14 A. No. That's correct.

15 MS. GROSSMAN: Your Honor, it looks like there are a
16 few more questions. Maybe Mr. Moore wants to take the podium.

17 THE COURT: I have no trouble hearing him.

18 MR. MOORE: Do you want me to stand --

19 THE COURT: No, you're doing fine.

20 Actually finishing would be good.

21 Q. You also testified just now that you thought when you got
22 to the 75th precinct that the numbers were very low, correct?

23 A. Yes, sir.

24 Q. From time to time you see in precincts low numbers,
25 correct?

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D3m9flo3 Marino - redirect

1 A. I don't know about other precincts, sir.

2 Q. We'll speak about the 75th.

3 So, if you see low numbers is there not then pressure
4 placed within the precinct to increase those numbers?

5 A. I wouldn't call it pressure, sir, no.

6 Q. What would you call it?

7 A. Those numbers were so low they were almost stopped. They
8 weren't doing their jobs.

9 Q. So what would you call it?

10 A. I suggested to them that their efforts were not enough to
11 serve that community like they were being paid to and that they
12 needed to do more proactive policing to stop the crime.

13 Q. You didn't just suggest that. You said essentially get
14 these numbers up or you're going to go to a different precinct
15 or there's going to be changes, right?

16 A. I set a standard that said do your jobs or suffer the
17 consequences. That's right.

18 Q. Or suffer the consequences, right?

19 A. That's right.

20 Q. So pressure was put on officers to get their numbers up,
21 right?

22 A. I don't know if you could call that pressure.

23 Q. Well if you're a police officer and a deputy chief is
24 saying or an inspector is saying --

25 A. The number.

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D3m9flo3 Marino - redirect

1 Q. -- or deputy inspector is saying --

2 A. The number I set was so low that I could do it in one day.

3 Q. Okay.

4 A. And reasonably do it without hurting anybody or picking on
5 anybody.

6 Q. And did you do that when you went around for these months,
7 did you make stops?

8 A. Yes, I did.

9 Q. Did you make arrests?

10 A. Yes, I did.

11 Q. So if you saw the numbers were so low, you then made it
12 very clear to the members of that precinct that they had to get
13 their numbers up, correct?

14 A. They had to do their jobs, yes.

15 Q. And that's when you began to set higher numerical goals,
16 correct?

17 A. Yes.

18 Q. Now, you talked about CompStat. Have there ever been a
19 time when in your experience of CompStat that assembled members
20 of the police department have discussed whether in a particular
21 instance an officer had reasonable suspicion to stop somebody
22 or not? Had that ever been discussed in your experience?

23 A. CompStat, yeah, they do discuss stopping -- not making
24 unreasonable or unnecessary or, you know, doing things just for
25 numbers. And that has been discussed, yes.

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D3m9flo3

Marino - redirect

- 1 Q. But you've never done it with an actual 250 there, correct?
2 A. Not that I recall, no.
3 Q. And the focus -- would you agree with me that at CompStat
4 one of the things that's discussed when the focus is on a
5 precinct is the number of arrests that are being done, correct,
6 in a period of time?
7 A. No. Not just in the context for the number of arrests, no.
8 Q. I'm not putting it in context. I'm saying is there a
9 discussion at CompStat about the number of arrests in a
10 precinct?
11 A. In certain instances, yes.
12 Q. And there's a discussion about the number of summonses as
13 well, correct? In certain instances?
14 A. In certain instances, yes.
15 Q. Have you ever been present when they talked about 250s,
16 saying -- comparing last year's numbers to this year's numbers
17 to see if there's an increase or a decrease?
18 A. No.
19 Q. That's never happened?
20 A. No.
21 Q. Now you talked about -- you answered some questions about
22 this arbitration, this grievance. You testified at that
23 arbitration, correct?
24 A. Yeah, I did.
25 Q. And you testified as a representative of the New York City

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D3m9flo3 Marino - redirect

1 Police Department, correct?

2 A. Yes.

3 Q. And the arbitrator ruled against the New York City Police
4 Department, correct?

5 A. Yes and no.

6 Q. Well the arbitrator found that there was a quota system in
7 the 75th precinct?

8 A. Yes and no.

9 Q. What do you mean yes or no?

10 A. What makes a quota illegal is somebody being --

11 Q. I'm not asking about illegal. I'm saying was there --

12 A. What makes --

13 Q. Arbitrator found that a quota system in the 75th precinct,
14 correct?

15 A. No. Yes and no.

16 Q. I'll accept a yes and no.

17 Did the city appeal that arbitration decision?

18 A. Didn't have to.

19 Q. Did the city appeal that arbitration --

20 THE COURT: I guess the -- does that mean the answer
21 is no?

22 THE WITNESS: No.

23 Q. Now you said when you got to the 75th precinct the officers
24 were setting their own quotas, it appeared to you, correct?

25 A. Yes.

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D3m9flo3 Marino - redirect

- 1 Q. Five a month?
2 A. Yes.
3 Q. And that included what?
4 A. Movers, parkers, quality of life summonses.
5 Q. How long had that quota system been in place in the 75th
6 precinct?
7 A. I have no idea.
8 Q. For a long time though, correct?
9 A. I have no idea.
10 Q. Did you know whether the supervisors in the 75th precinct
11 were aware of that quota system?
12 A. I have no idea.
13 Q. Did you ask the departing CO whether -- anything about that
14 officer-imposed quota?
15 A. Nope.
16 Q. Did you ask -- did you discuss it with anybody in the 75th
17 precinct?
18 A. They weren't open to discussion.
19 Q. Well, it's not likely that the officers could have a
20 self-imposed five-a-month quota without their supervisors
21 knowing about it, correct?
22 A. One would assume.
23 Q. All you have to do is look at the reports, right?
24 A. One would assume.
25 Q. If a commanding officer said that in an evaluation of a

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D3m9flo3 Marino - redirect

1 employee -- of an officer, that 50 percent of your evaluation
2 is based on your numbers of arrests, summonses and 250s, that
3 would not be proper, would it?
4 A. It's part of the evaluation process. I don't know if you
5 put a percentage on it.
6 Q. 50 percent. That wouldn't be proper, right?
7 A. What's the officer doing? What's his assignment? I don't
8 know.
9 Q. He's a patrol officer.
10 A. It's a large part.
11 What an officer does everyday is a large part of his
12 evaluation.
13 Q. Is it 50 percent?
14 A. I don't know.
15 Q. Have you ever imposed a 50 percent rule when evaluating
16 officers?
17 A. No. No.
18 MR. MOORE: Judge, I think that's all I have.
19 I just want to go back to Exhibit 299. There was a
20 stipulation made with the city, and this goes to the question
21 of notice to the City of New York, that the city had notice of
22 the entirety of the contents of Exhibit 299. And because I
23 think it goes to the issue of notice of the city as to the
24 plaintiffs' Monell claim, I think it should be admitted into
25 evidence.

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Marino - redirect

1 MS. GROSSMAN: That's not what our agreement was but
2 the witness has testified that the NYPD asked him these
3 questions so that's.

4 THE COURT: Right. But he's saying the whole
5 transcript is what constitutes notice, and I should read it for
6 that purpose, to look at what the city knew at that time.
7 Because notice is an issue.

8 MS. GROSSMAN: That's not relevant, the whole
9 transcript -- whatever it is that the witness has testified
10 to --

11 THE COURT: It was only used here for impeachment. Do
12 you remember being asked this question and giving this answer?
13 That's when I said it can't be admitted because we don't do
14 that. We just have the question and answer read into the
15 record.

16 Now there's an different argument entirely, that the
17 city is receiving this transcript at a certain time which shows
18 notice.

19 MS. GROSSMAN: It's not that we received it. The
20 police department asked the questions.

21 THE COURT: Same idea. Whatever it is, he's saying
22 everything in that transcript is proof of notice of what the
23 city knew at a certain point in time. And that's important to
24 the Monell issues, when the city knew certain things.

25 MR. MOORE: And they stipulated to it. That's why we
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D3m9flo3

Marino - redirect

1 redacted the whole thing and agreed to this whole procedure of
2 taking something out. I'm quite shocked to hear that they
3 don't say they stipulated to it because I thought that's what
4 they stipulated to.
5 MS. GROSSMAN: That's definitely not what --
6 THE COURT: What do you think they stipulated to
7 again?
8 MR. MOORE: That the entirety of the transcript would
9 be admitted --
10 MS. GROSSMAN: It was all for impeachment.
11 MR. MOORE: With respect to the city having notice of
12 the entirety of the transcript.
13 MS. BORCHETTA: Your Honor, it's the redacted version
14 of the transcript that's Exhibit 299.
15 THE COURT: I've looked at it. It's very heavily
16 redacted.
17 MS. BORCHETTA: It's the entirety of that.
18 THE COURT: Where is this stipulation? Is it in
19 e-mails or letters?
20 MS. BORCHETTA: Your Honor, during the pre-- the
21 conference that we had right before the trial began about
22 various objections that the city had to our documents. As the
23 court will remember, we had a break where we were able to talk.
24 THE COURT: That's right. You said we have nothing
25 further.

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D3m9flo3

Marino - redirect

1 MS. BORCHETTA: Yes. We spoke with the city and
2 agreed to make additional redactions to Exhibit 299 based on
3 the city's representation that they would agree to stipulate
4 that the city had notice on the date of the interview of the
5 entirety of the unredacted contents of that interview.

6 MS. GROSSMAN: That is not what was agreed to.

7 THE COURT: Well I wasn't there. This is a real
8 problem. What am I supposed to do, figure out who said what
9 and who I believe? I don't want to do that.

10 Who were you negotiating with?

11 MS. BORCHETTA: Your Honor, I spoke with Ms. Grossman
12 about this.

13 THE COURT: That's a very awkward thing.

14 The city, obviously, had notice of anything in the
15 transcript because as you said the city was -- it's a city
16 transcript. The city was there. So I'll take it for the
17 limited purpose then of notice, what the city knew at that
18 moment in time. It's a different purpose than a moment ago
19 when I said I wouldn't take it because I usually don't take it
20 for impeachment.

21 MS. GROSSMAN: Just so that the court notes, that this
22 is an ongoing matter, and it's related to another proceeding.

23 THE COURT: Be it as it may, I'm only taking it for
24 the limited purpose of notice; just what they're saying, as of
25 a certain date, the date of the transcript which is August 30,

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D3m9flo3 Marino - redirect

1 2010, the city knew whatever it is in there that it says, in
2 the redacted transcript.

3 MS. GROSSMAN: We would stipulate to that. So there
4 is no need to actually offer the transcript.

5 THE COURT: I have to know what it is they had notice
6 of. It's in the transcript.

7 MS. GROSSMAN: What was just discussed.

8 THE COURT: No. It's not just those questions and
9 answers. It's everything in the unredacted transcript that
10 they say makes up the notice. I have to take it for that
11 purpose. It's completely different than the earlier argument
12 about impeachment. I wouldn't have taken that. But anyway. I
13 guess so. Okay. All right. So it's received as redacted for
14 that limited purpose.

15 Are we done with the witness?

16 (Plaintiffs' Exhibit 299 received in evidence)

17 THE COURT: Recross.

18 MS. PUBLICKER: Actually just briefly.

19 THE COURT: Whatever it is.

20 RECROSS EXAMINATION

21 BY MS. PUBLICKER:

22 Q. Chief Marino, what did you mean by yes and no to

23 Mr. Moore's statements about the arbitrator's decision?

24 A. Reading the quota law what made a quota a quota, an illegal
25 quota, was suffering a police officer to -- causing a police

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Marino - recross

1 officer to suffer a loss for failure to meet suddenly required
2 amount of moving or parking summonses within a specified
3 timeframe. That's what makes a quota a quota. That's what
4 makes it illegal.

5 None of the transfers were rescinded. None of the
6 evaluations were changed. Nothing happened as a result.

7 So because the arbitrator felt that while I set
8 numbers -- I did set specific numbers, and I did, and I
9 admitted that -- that nobody was punished or suffered any loss
10 as a result failure to meet those numbers or stating a quota
11 law. But rather it was on a conglomeration of their entire
12 effort.

13 So the transfers were upheld. No evaluation was
14 changed. Nothing happened as a result other than the fact that
15 the judge said don't set numbers anymore.

16 And the legal bureau put something out right
17 afterwards, or deputy commissioner --

18 MR. MOORE: I'm going to object to what the legal
19 bureau did, Judge.

20 THE WITNESS: Maybe the deputy commissioner of public
21 information. I'm sorry, counselor.

22 MR. MOORE: All right. Fine.

23 THE WITNESS: That they felt that the fact that
24 nothing was taken back, it kind of flew in the face of illegal
25 quotas. If it was illegal, something would have been remedied.

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Marino - recross

1 It wasn't. And that commanders are expected to set a
2 performance standard or they wouldn't be doing their job.

3 MS. PUBLICKER: Thank you, Chief Marino.

4 REDIRECT EXAMINATION

5 BY MR. MOORE:

6 Q. Not to beat a dead horse. But the arbitrator heard the
7 testimony from you and several police officers, correct?

8 A. Yes, sir.

9 Q. And the arbitrator found that there was a quota in the 75th
10 precinct, yes or no?

11 A. But nobody was punished --

12 Q. The arbitrator found --

13 THE COURT: Yes or no.

14 THE WITNESS: Yes.

15 THE COURT: We're done. Thank you.

16 I know we won't do much of the next witness but I
17 don't want to lose the time.

18 MR. CHARNEY: I believe it's Captain Mascol.

19 THE COURT: We aren't going to get more than five
20 minutes, but we'll do it.

21 RAFAEL MASCOL,

22 called as a witness by the Plaintiffs,
23 having been duly sworn, testified as follows:

24 (Continued on next page)

25

D3m9flo3 Marino - redirect

1 DIRECT EXAMINATION

2 BY MR. CHARNEY:

3 Q. Good afternoon, Captain Mascol.

4 A. Good afternoon.

5 Q. Captain Mascol, how long have you been a captain for?

6 A. I've been a captain for approximately six months.

7 Q. Prior to that you were a lieutenant?

8 A. That is correct.

9 Q. Where were you a lieutenant?

10 A. I was a lieutenant in the 81st precinct.

11 Q. How long were you a lieutenant in the 81st precinct?

12 A. From 2007 to August of 2012.

13 Q. And what responsibilities did you have as lieutenant in the
14 81st precinct?

15 A. I had various responsibilities. When I initially arrived
16 at the 81st precinct I was made the special operations
17 lieutenant and then from there I became the operations
18 coordinator. And then I became the special operations
19 lieutenant. And then I became a platoon commander.

20 THE COURT: I always forget where these are. Where is
21 the 81st?

22 THE WITNESS: It's in Bed-Stuyvesant.

23 Q. Were you the operations coordinator in January of 2009?

24 A. Yes.

25 Q. And was one of your responsibilities as an operations

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D3m9flo3 Mascol - direct

1 coordinator to review officers' monthly and annual enforcement
2 activity?

3 A. Yes.

4 Q. And were you supposed to check this activity to make sure
5 that it was up to the standards, the productivity standards for
6 officers in the 81st precinct?

7 A. There were several things that I did with the activity
8 report. One of them was to inspect them for accuracy. The
9 other one was to make sure that one was received for each and
10 every single officer for the month. The other one was to make
11 sure that they get filed away in their personal folder. And
12 also to check them to see what each officer's doing in
13 comparison to their squad and their platoon.

14 Q. So on that last one you were checking, in fact, to see if
15 each individual officer's activity level was up to what the
16 precinct thought was an appropriate level of activity for
17 officers?

18 A. Not as the whole precinct, no. I didn't do it in that
19 aspect. I did it in respect to their squad or their platoon.

20 Q. So you compared the various officers in a particular squad,
21 their activity levels with each other's?

22 A. That is correct.

23 Q. You would do this for every officer in the precinct?

24 A. Pretty much for every officer, yes.

25 Q. And you did it both on a monthly basis and an annual basis?

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1 A. Monthly basis.

2 Q. Did you also review officers' annual activity overall for a
3 year?

4 A. I had it prepared, yes. I did not review them solely for
5 the year. But I had it prepared. I had one of our police
6 administrative aids enter each activity report into a form that
7 had the summary of the activity.

8 Q. And would you meet with officers from time to time when you
9 made a determination that their activity was not up to the
10 level of other officers in their squad?

11 A. If their platoon commander or their squad supervisor made
12 me aware specifically that they were dissatisfied that the
13 officer was -- is being ineffective in addressing conditions, I
14 would discuss it with them sometimes informally, but -- most of
15 the time it was informally.

16 Q. So you would meet with officers whose command -- or whose
17 supervisors determined that their activity levels were not high
18 enough?

19 A. I believe I answered that question.

20 Q. Well, I don't know.

21 MR. CHARNEY: Your Honor --

22 A. I said I would meet with them informally. Sometimes
23 formally.

24 Q. And I'm asking -- and you were meeting with them to discuss
25 the fact that their supervisors had determined that their

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1 activity levels were not high enough?

2 A. That their -- that they were ineffective in addressing
3 crime conditions.

4 Q. Okay. And so when you would meet with them, you discussed
5 with them the fact that their supervisors had determined that
6 their performance was not up to par?

7 A. That they were ineffective in addressing crime conditions.

8 Q. What do you mean by that?

9 A. It means that if we had -- if you were assigned to a
10 specific sector like sector Adam and in that sector there was a
11 crime condition or there was a quality of life condition or
12 there was a park condition or if there was a traffic condition
13 that involved accidents that they on that -- in that sector did
14 not go out there and take any effective action regards -- in
15 regards to that, in other words, as a resulting in some type of
16 enforcement activity or just being present at that location as
17 being a directive or a vertical.

18 Q. So one of the things you said, right, is that they weren't
19 taking any enforcement action, correct?

20 A. Absolutely.

21 Q. So in other words if they didn't have many summonses on
22 their monthly activity report or many arrests or many 250s?

23 A. Well summonses are enforcement actions. Arrests is an
24 enforcement action. 250s are not enforcement action.

25 Q. You don't consider that to be an enforcement action?

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1 A. It is not an enforcement action.

2 Q. Well what do you consider a 250?

3 A. A 250 is a preventive measure and it's also a way in which
4 an individual is apprehended if they have committed a crime or
5 it's a deterrence for anybody who is suspected of or is
6 believed is about to commit a crime.

7 Q. So you said it was a preventive measure?

8 A. It is a preventive measure, yes.

9 Q. What do you mean by that?

10 A. In other words, as a patrol officer you are to patrol
11 you're assigned sector for that day. In that course of
12 patrolling that sector, you observe individuals that may be
13 engaged in criminal activity, you know, doing suspicious
14 actions, casing a location. Specifically I could talk about
15 the 81st precinct, Fulton in Schenectady, where we had a very
16 prevalent robbery condition. If you're assigned to that
17 sector, you're expected to patrol that sector. And we review
18 robbery reports. We get descriptions of individuals. We give
19 that description during the roll call. And you're to patrol
20 that area. And if you observe individuals matching this
21 description and in the area looking like they're watching
22 individuals coming from the train station, you know, or looking
23 like they're following individuals that are coming from the
24 train station, or look like they're about to rob individuals,
25 to stop them. That is a preventive measure. We stop

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1 individuals that we believe are about to commit a crime.

2 THE COURT: Okay. We're going to stop here though. I
3 knew we wouldn't get more than five minutes.

4 THE WITNESS: I'm sorry.

5 THE COURT: No, it's not you, it's not your fault.
6 I'm sorry. But anyway we're reconvening at 2:00.

7 (Luncheon recess)

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D3m9flo3

Mascol - direct
AFTERNOON SESSION

2:02 p.m.

3 THE COURT: Please be seated.

4 BY MR. CHARNEY:

5 Q. Welcome back Captain Mascol.

6 A. Thank you, sir.

7 Q. Before the lunch break you were talking about different
8 kinds of enforcement activity. Do you remember that?

9 A. That is correct.

10 Q. And I believe you testified that you did not consider a
11 stop and frisk to be an enforcement activity?

12 A. Correct.

13 MR. CHARNEY: Can we pull up what's previously been
14 admitted I think as Exhibit 285.15 Q. Captain Mascol, do you recognize this document that's on
16 the screen as Exhibit 285?

17 A. Yes.

18 Q. What is this document?

19 A. Police officer performance objectives.

20 Q. So you've seen this document before today?

21 A. Yes.

22 Q. Do you see in the first paragraph I guess the last sentence
23 there it starts with proactive enforcement activities, do you
24 see that?

25 A. Yes.

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Mascol - direct

1 Q. Can you read that sentence to us out loud.

2 A. "Proactive enforcement activities are those areas of
3 enforcement which are delegated to police officers by virtue of
4 their powers -- their police powers, including but not limited
5 to issuance of summonses, the stopping and questioning of
6 suspects, individuals and the arrest of criminals."

7 Q. So according to this document isn't a stop and frisk
8 included as a proactive enforcement activity?

9 A. A proactive enforcement activity according to the document.

10 Q. So do you not agree with that definition?

11 A. But I consider an enforcement activity is compelling
12 someone to obey a law that's in existence such as if someone is
13 double parked you issue them a summons. Then you are
14 compelling them to obey that by giving them a summons.

15 A stop is a power given to a police officer in order
16 to prevent or to apprehend an individual who has committed a
17 crime.

18 Q. So do you not agree with the definition of proactive
19 enforcement activity that is in this document?

20 A. Not completely, no. That's just my opinion.

21 Q. Fair enough.

22 Now, you were also talking about how you -- when you
23 were the operations coordinator of the 81st precinct, how you
24 would meet from time to time with officers whose activity
25 levels, their supervisors had determined were not up to par; is

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1 that correct?

2 A. Yes.

3 Q. And when you would meet with them, you would discuss with
4 them what the consequences were for not raising their activity?

5 A. Yes.

6 Q. And those consequences included being reassigned to a
7 different tour?

8 A. That could possibly be a consequence.

9 Q. And that could -- could that also include being put on
10 performance monitoring?

11 A. That also be a consequence.

12 Q. And another consequence could be they -- that they could
13 receive a low quarterly evaluation?

14 A. That could also be a consequence.

15 Q. And did you, in fact, advise officers of these potential
16 consequences when you met with them to discuss their low
17 activity?

18 A. Yes.

19 MR. CHARNEY: One minute, your Honor.

20 (Pause)

21 No more questions.

22 THE COURT: Cross-examination, Ms. Publicker.

23 MS. PUBLICKER: If I could have just one minute, your

24 Honor.

25 (Pause)

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D3m9flo3 Mascol - direct

1 CROSS-EXAMINATION

2 BY MS. PUBLICKER:

3 Q. Good afternoon, Captain Mascol.

4 A. Good afternoon.

5 Q. Where are you from originally?

6 A. I was born in Panama.

7 Q. When did you come to the United States?

8 A. 1971.

9 Q. How old were you then?

10 A. I was seven years old turning -- about to be eight.

11 Q. Is English your first language?

12 A. No, it is not.

13 Q. Are you married?

14 A. Yes, I am.

15 Q. And do you have children?

16 A. I have four children.

17 Q. And grandchildren?

18 A. I have four grandchildren.

19 Q. Are you currently employed?

20 A. I am employed by the New York City Police Department.

21 Q. Could you briefly describe your career with New York City
22 Police Department?

23 A. Yes. I came on as an employee of the police department in
24 1992. And I was six months in academy. Graduated January of
25 1993, where my initial assignment was the 75 precinct. And

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Mascol - cross

1 from there I took a civil service exam and was promoted to the
2 position of sergeant. That was in 1997.

3 And at that time I was transferred into the -- excuse
4 me -- transferred to the 77 precinct where I was a sergeant
5 there for approximately seven years. I, once again, took a
6 civil service exam and was promoted to the position of
7 lieutenant and assigned to the 62 precinct and the 70 precinct.

8 And subsequent to that I took a transfer to the 81
9 precinct in Brooklyn North. I once again took a civil service
10 exam and was promoted to the position of captain, which I
11 presently am.

12 Q. Where are you currently assigned?

13 A. I'm assigned to police service area 1 which covers the Red
14 Hook area and covers Coney Island area and pretty much all of
15 the patrol borough Brooklyn South.

16 Q. What command were you assigned to before police service
17 area one?

18 A. I was assigned to the 81 precinct.

19 Q. How long were you assigned there?

20 A. Approximately four years.

21 Q. I believe you stated that you were a special operations
22 lieutenant when you were in the 81st precinct?

23 A. That was one of my assignments yes.

24 Q. And you were also an operations coordinator?

25 A. That is correct.

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Mascol - cross

1 Q. And the third platoon commander; is that correct?

2 A. That is correct.

3 Q. What were your duties and responsibilities as the special
4 operations lieutenant?

5 A. As a special operations lieutenant I was responsible for
6 the specialized units such as SNEU, which is the street
7 narcotics enforcement unit. I was also responsible for the
8 domestic violence unit. I was also responsible for the
9 conditions unit and beat officers that we had.

10 Q. Would you say that the 81st precinct was a high crime
11 precinct?

12 A. Yes, it is.

13 Q. How do you know that?

14 A. By examining complaint reports and by seeing statistical
15 data that's generated on a week-to-week basis.

16 Q. What kind of crimes occurred in the 81st precinct in
17 2008?

18 A. We had robberies. We had assaults. Felonious assaults.
19 We had shootings. We had burglaries. I believe in 2008 there
20 were over 370 robberies alone in that one year. That's almost
21 one robbery each day. And there were 52 shootings in 2008.
22 That's one shooting every single week, an average of one
23 shooting every week.

24 Q. Is 52 shootings per week in a precinct --

25 THE COURT: You didn't say per week?

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Mascol - cross

1 THE WITNESS: It's average --

2 MS. PUBLICKER: I'm sorry, your Honor. 52 shootings
3 per year, one per week. My apologies.

4 THE WITNESS: One shooting is high, in my opinion.

5 Q. Were you involved with the community in the 81st
6 precinct?

7 A. Yes. In different roles that I was involved with the
8 community. When I was the special operations lieutenant I
9 attended the community council meetings.

10 Q. And have you been involved with the community throughout
11 your career with the police department?

12 A. Yes, I have. Even as police officer I was a community
13 policing officer, where I got involved with meeting with the
14 community on a weekly basis, doing block association. I
15 created a block watch program, which included bike patrol. As
16 a sergeant, you know, I was part of the impact program and
17 consulted with the community that we were policing to see what
18 the special needs were. And as the operations coordinator, I
19 attended meetings each and every month with the commanding
20 officer.

21 Q. And do you believe it's important for police officers to
22 engage with the community?

23 A. I absolutely do.

24 Q. As a supervisor do you ever instruct officers to engage
25 with the community?

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Mascol - cross

- 1 A. Yes. I instruct them to meet with the community each
2 month.
- 3 Q. How do you do that?
- 4 A. Through a community visit. That's stopping by, speaking
5 with a business owner or a citizen and just talk to them about
6 the concerns that they have in the community, or like a
7 business owner, or any problems that they may be facing inside
8 their stores, and then that's documented on a community visit
9 form.
- 10 Q. Now that you're at police service area one, do you interact
11 with the community?
- 12 A. Yes, I do.
- 13 Q. How do you do that?
- 14 A. We have a tenant association meetings. We also have
15 committee council meetings and then council presidents.
- 16 Q. In your career how many community council visits have you
17 attended?
- 18 A. Community council meetings?
- 19 Q. Yes.
- 20 A. More than 20.
- 21 Q. What do you do when an officer is not performing up to your
22 expectations?
- 23 A. Well the first course of action is to talk to the officer
24 to find out if there's a special problem with him personally
25 that he's not able to perform his task as a police officer.

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D3m9flo3 Mascol - cross

1 That's the initial thing that we do.

2 Then we try to see if a supervisor can intervene by
3 assigning him with a police officer who has better skills in
4 the area of patrol.

5 And if that seems to be unsuccessful, then we usually
6 try to get hands-on training by the squad sergeant, have him go
7 out with the squad sergeant to see if the squad sergeant can do
8 personalized training, pointing out crime conditions or
9 suspicious individuals or notice violations of quality of life
10 infractions.

11 Q. To see if I understood you, you said the first step was to
12 speak with the officer?

13 A. The first step is usually to speak with the officer, to
14 find out if there's something personal that's going on in their
15 lives that might be affecting their performance as a police
16 officer.

17 Q. And then I believe you said you meet with the -- or you
18 have that officer go out with a different partner, somebody
19 more experienced?

20 A. Yeah. I try to pair that person with an individual that
21 might be more proactive, that has better skills as policing,
22 that has shown the ability to impact crime in the command and
23 hopefully help that person you know see crime, if that's what
24 the issue is.

25 I also have to say there's different types of police

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Mascol - cross

1 officers. There's police officers who are unwilling to do
2 their role as a police officer and there's police officers who
3 are unable to do their role as a police officer. And I try to
4 distinguish between the two.

5 Q. And after the officer has been asked to go out with a more
6 experienced officer with better skills, I believe you said they
7 then would go out with a squad sergeant, is that correct, or
8 supervisor?

9 A. Usually I recommend that a squad supervisor specifically
10 take out that officer, out into the field, for further training
11 to see if they're able to, you know, spot the crimes that are
12 occurring, spot the quality of life infractions that might be
13 occurring, also to point out any suspicious activity that they
14 might not be able to see. That's the next step as a training
15 tool. And then also it allows the sergeant to assess that
16 police officer to see if he's just unwilling to do the job as a
17 police officer or he's just unable to and if he is, then we
18 will recommend training.

19 Q. Could you give me an example of how an officer might be
20 unable to perform their duties?

21 A. If a police officer is not able to spot like someone who --
22 running a red light. Where you have a location where it is an
23 accident-prone location within the command. In the 81st
24 precinct Atlantic Avenue and Ralph Avenue is a very
25 accident-prone location. So we'll have him sit there with the

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Mascol - cross

1 sergeant or a proactive cop and observe anybody that might be
2 running a red light or turning illegally. Because those are
3 the things that contribute to accidents.

4 So if the officer sits there for a period of time and
5 is unable to see someone running a red light or see any type of
6 infraction and the sergeant is showing him: Hey, this guy just
7 blew a light. And the officer is like: Oh, I didn't see that,
8 then we have a situation here that we need to correct.

9 Q. Do you consider being what's called a sergeant's operator,
10 the individual driving a sergeant, do you consider that to be a
11 punishment?

12 A. No, not at all.

13 Q. And why not?

14 A. Because when you become -- some people are steady sergeants
15 operators. Some people we put in the sergeant's operator just
16 to assist them in honing their skills or giving additional
17 training if they needed it.

18 Q. As the operations coordinator, did you review officers'
19 monthly activity reports?

20 A. Yes, I did.

21 Q. When would you review those?

22 A. At the end of each month, the squad sergeants give them to
23 the platoon commanders, then the platoon commanders turn them
24 in to me. And at that point I review them for accuracy. I
25 review them to compare them, you know, the officers -- because

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Mascol - cross

1 I see the recap of each squad. And I take a look as to what
2 the squad's activity look like. I compare that to the entire
3 precinct. And then I usually file the activity report
4 coversheet and the specific activity report in the officer's
5 personal folder.

6 Q. I believe you said earlier that you compare officers to the
7 squad or to the platoon. Can you explain why you do that.

8 A. Just to keep an eye on, see how effective the officers are
9 in addressing the conditions for that specific platoon. Each
10 platoon -- the first platoon which is from 11:15 to 7:50 in the
11 morning; the second platoon which is 7:05 to 15:40; and the
12 third platoon which is 15:00 by 23:35. Each platoon have
13 specific conditions relative to that platoon. So what's
14 enforcement action or what's conditions for that platoon, they
15 need to be addressed specifically.

16 Q. Earlier this week Officer Polanco testified that he did not
17 believe supervisors cared about certain categories in the
18 monthly activity reports such as complaints and domestic
19 incident reports.

20 Do you agree with that statement?

21 A. I can't speak to -- as to what the opinions of other
22 supervisors are in regards to the entire report.

23 I know for myself when I was a platoon commander I
24 looked at the entire activity report to see what my cop is
25 doing on a day-in day-out basis. They're paid to do a job,

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D3m9flo3

Mascol - cross

1 patrol their sector for that day, take enforcement action if
2 it's observed, conduct verticals as preventive measures, do
3 directives at locations that have conditions like a crime
4 condition or enforce -- take enforcement action in regards to
5 traffic infractions and also if they spot any individuals that
6 might be committing crimes, to take action in regards to that.

7 So I look and see if they're writing complaint
8 reports, if they're writing domestic incident reports, if
9 they're writing aid cards, if they're taking accident reports,
10 if they're doing their job on a day-in, day-out basis as a
11 police officer. And I get a chance to do that because on the
12 activity report it has a listing of all the things that a
13 police officer does on a daily basis.

14 Q. What do you look at when you review the column marked
15 domestic incident reports on a monthly activity report?

16 A. To see if they're taking domestic incidence reports. To
17 see if they are actually -- that a lot of the calls on --
18 especially like in the 81 precinct now where I am in housing
19 have to do with domestic violence, to see if they are actually
20 taking reports when they're responding to it, and if they're
21 making arrests, sometimes, you know, because a lot of domestic
22 incidents involve, unfortunately, that someone is a victim of
23 some type of crime, you know, if they're injured in some way or
24 some type of incident happened. And if they're taking summary
25 arrests in regard to that. Because the majority of time if an

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Mascol - cross

1 offense happens with domestic violence it's a must arrest
2 situation.

3 Q. So when you say it's a must arrest situation, what do you
4 mean?

5 A. In other words, if a person commits like an assault and the
6 person is present on the scene, the officer must arrest that
7 person. If a violation of an order of protection has occurred
8 and the offender is on the scene, it is a must arrest
9 situation.

10 Q. So you compare the number of arrests that an officer made
11 for a month to the domestic incident reports?

12 A. I take a look at that to see if there's any correlation.
13 If an officer made 25 DIRs and made no arrests in regards to
14 that, it's a little unusual, so I have to find out what's going
15 on with that.

16 Q. Was it part of your duties to evaluate officers?

17 A. At times, yes. Which portion of my career?

18 Q. When you were in the 81st precinct would you evaluate
19 officers?

20 A. At times I have, yes.

21 Q. How would you form your assessment?

22 A. Based on observation of their performance and if they're
23 meeting tasks and standards.

24 Q. I believe you testified earlier that on occasion sergeants
25 would bring specific officers to your attention; is that

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D3m9flo3

Mascol - cross

1 correct?

2 A. That is correct.

3 Q. What would you do when an officer was brought to your
4 attention by one of the sergeants?5 A. My initial action is to talk with that officer. Usually
6 informally. Most police officers out there want to do the job
7 of police officer. Sometimes they're not even aware that
8 they're not performing as the rest of their platoon is and
9 sometimes just letting them know: Listen, you need to be a
10 little more proactive out there, be a little bit busier about
11 doing your assignments out there, handling the conditions that
12 you have out there, you know, you seem to have fallen off for a
13 few months there, is there something going on? Something
14 informal like that. And usually that corrects the condition.15 Q. Was there an average number of radio runs that officers in
16 the 81st precinct would respond to during a tour?

17 A. Per day, somewhere around fifteen I think is the average.

18 Q. When you were a police officer were you ever subject to a
19 quota?

20 A. No, I was not.

21 Q. When you were a police officer, did you ever feel that if
22 you did not conduct a certain number of stops you would be
23 punished?

24 A. No, I did not.

25 Q. While you were a police officer, did you ever feel that if

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D3m9flo3

Mascol - cross

1 you did not issue a certain number of summonses you would be
2 punished?

3 A. No, I did not.

4 Q. While you were a police officer, did you ever feel that if
5 you did not make a certain number of arrests you would be
6 punished?

7 A. No, I did not.

8 Q. As a supervisor have you ever subjected officers under your
9 command to a quota?

10 A. No.

11 Q. Have you ever denied an officer a day off because of low
12 activity?

13 A. No, I have not.

14 Q. When I say day off, could you describe for the court the
15 difference between a discretionary day and a vacation day?

16 A. Police officers are granted vacation days yearly. I
17 believe the new police officers have ten total vacation days
18 per year and the older officers have 20. And those with more
19 than five years I believe get 27, five weeks and plus two IVDs.
20 And the other days accrued either by time or by chart days
21 accrued, like a specialized unit individual because they worked
22 five days and they're off two days, they accrued chart days.
23 Those days are the ones that are discretionary. Vacation days
24 given to each officer yearly are not discretionary. They must
25 be granted.

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D3m9flo3

Mascol - cross

1 Q. So as a supervisor there is no way for you to take away a
2 vacation day that's been picked at the beginning of the year
3 from an officer?

4 A. No, there is not.

5 Q. As a supervisor have you ever transferred an officer
6 because of low activity?

7 A. No, I have not.

8 Q. Have you ever given a low evaluation solely because of an
9 officer's low activity?

10 A. No, I have not.

11 MS. PUBLICKER: Your Honor, if I could have just one
12 more minute.

13 (Pause).

14 Q. What considerations do you have when granting a
15 discretionary day off to a police officer?

16 A. Well -- in what role?

17 Q. As supervisor.

18 A. Well, as I said, in what role? As a platoon commander, as
19 the operations coordinator, as a special operations lieutenant?

20 Q. Sorry for the confusion. Today as the -- is it executive
21 officer? I'm sorry, Captain.

22 A. I don't decide whether or not a person gets it at this
23 level. That's up to the platoon commander and the squad
24 sergeant. Those are discretionary days off. And also the
25 operation coordinator based on the manpower of the command for

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D3m9flo3

Mascol - cross

1 that day or that weekend. Before granting any day off other
2 than vacation pay, the operations coordinator has the final say
3 on who gets off because they have to look at the manpower for
4 that specific day or for that weekend, you know, and decide if
5 they are able to get that day off or if anyone is able to get
6 that day off and if they are, how many people can get that day
7 off.

8 So if you're asking that question in regards to my
9 position as the operations coordinator, that would be my
10 answer, I would look at the day to see how many sectors I have,
11 how many people want the day off, and then grant it based on
12 that. I hope that answered the question.

13 Q. Thank you.

14 How do you decide about giving discretionary days off
15 during snowstorms?

16 A. During snowstorms?

17 Q. During snowstorms?

18 A. Well if a person absolutely, absolutely cannot make it
19 in -- I mean their area -- their -- where they live is totally
20 snowed in, I have to grant that person an emergency day; if
21 not, you're expected to make it in.

22 MS. PUBLICKER: Thank you, Officer.

23 THE WITNESS: Especially if I made it in.

24 THE COURT: Anything further, Mr. Charney?

25 MR. CHARNEY: Couple questions. Try to make it quick.

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D3m9flo3

Mascol - cross

1 REDIRECT EXAMINATION

2 BY MR. CHARNEY:

3 Q. Captain Mascol you mentioned earlier that you've never
4 punished anyone for not making a certain number of arrests,
5 right?

6 A. That is correct.

7 Q. You said you've never punished anyone for not making a
8 certain number of summonses?

9 A. That is correct.

10 Q. And you said that you've never punished anyone for not
11 conducting a certain number of stops, right?

12 A. That is correct.

13 Q. But you did testify on direct, right, that you have advised
14 officers that their activity levels need to be improved and if
15 they don't improve them they could be subject to certain forms
16 of discipline, right?

17 A. They could be subject to be placed on monitoring. That is
18 correct.

19 And when I say something about a tour change, I
20 usually advise a person that it may be that tour is not
21 conducive to their skills as a police officer. Sometimes, you
22 know, like a person might be functioning better during the day
23 tour. I, myself, I function better in the four to twelve. So
24 if I see that that person is struggling and maybe seeing crime
25 conditions then, yes, another tour might be more conducive to

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D3m9flo3 Mascol - redirect

1 that officer's performance.

2 Q. And you would agree that the NYPD is a paramilitary
3 organization, correct?

4 A. Yes, it is.

5 Q. And based on your experience if a supervisor of yours in
6 other words someone in the higher rank gives you an order, it
7 was your experience that you should follow it, correct?

8 A. No.

9 Q. That's not your experience?

10 A. It has to be a lawful order.

11 Q. Lawful order.

12 A. That is correct.

13 Q. And if a supervisor of yours told you that if your activity
14 did not improve you could be subject to monitoring or a tour
15 change that would be something that you would take seriously,
16 correct?

17 A. It would not happen to me. I'm a worker I will go out
18 there and do my job as a police officer.

19 Q. I understand. But if you were told that by a supervisor --

20 A. I was never told that.

21 THE COURT: He's saying if you were though
22 hypothetically.

23 THE WITNESS: Hypothetically speaking, I will go out
24 there and do my job as a police officer, yes.

25 Q. I understand. I was just asking if you would take that

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D3m9flo3 Mascol - redirect

1 statement seriously if a supervisor made it to you?

2 A. I would take that seriously, yes. Because the type of
3 person -- I can only speak for myself. The type of person I
4 am, if I -- if a supervisor feels that I'm not performing to
5 the level that he expects I will make every single effort to
6 live up to that expectation.

7 Q. And you I think when Ms. Publicker was asking you questions
8 you said that you oftentimes would have proactive officers
9 patrol with officers who might be having some performance
10 problems?

11 A. That is correct.

12 Q. By I proactive officer you mean officers who had more
13 activity?

14 A. I mean officers who have better skills in the field,
15 they're more active, I see that they're active. I hear them on
16 the radio. They're answering jobs. They're going from job to
17 job. I hear them putting over directives. I hear them
18 stopping people in the field. Unfortunately, a police
19 officer's performance translates into activity of summonses,
20 arrests -- I won't say unfortunately -- but it does translate
21 into summons and arrests. So if I see an officer who is being
22 effective out there, he issuing summonses at locations that are
23 problematic, he's issuing -- he's making arrests of violators
24 of the law, then I will consider that person to be a proactive
25 person who has good policing skills and I will pair that

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D3m9flo3

Mascol - redirect

1 officer who is maybe deficient in that with that officer to
2 help him along to give him some additional training, one-on-one
3 training, yes.

4 Q. So is it fair to say that the way you measure whether an
5 officer is proactive or not is you look at their monthly
6 activity reports?

7 A. That is one of the ways, yes.

8 (Continued on next page)

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D3M8FLO4 Mascol - redirect

1 Q. But the monthly activity report only has numbers on it?

2 A. It only has numbers on it, that is correct.

3 Q. So it doesn't, for example, indicate whether or not the
4 stops that an officer made were based on reasonable suspicion,
5 correct?

6 A. It does not. But each summons -- each stop is recorded on
7 a stop and frisk report that is reviewed by a desk officer for
8 accuracy, completeness and, of course, if it is a legal stop.

9 Q. When you are reviewing officer monthly activity reports to
10 assess whether or not their performance was up to standard,
11 you're not actually reviewing the individual 250s, are you?

12 A. No.

13 Q. You don't review the individual arrest reports, right?

14 A. I do not.

15 Q. Nor the individual summonses they write, correct?

16 A. I do not.

17 Q. So if an officer had, let's say --

18 A. You have to quantify that. As what role? My role as an
19 operations coordinator or platoon commander? In the role of
20 operations coordinator, the answer would be no. But when I was
21 a platoon commander, yes, I took a look at every single thing
22 that the officer did. There is a program in the NYPD called
23 Cognos, and when I run Cognos, I can see what type of activity
24 they are doing, what locations they are doing these activities,
25 and I wanted to make sure that whatever they are doing is

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1 addressing the conditions that are at hand.

2 Q. But when you were an operations coordinator and you were
3 tasked with addressing officers whose performance was
4 determined to be below standard, you did not actually review
5 individual 250s that they recorded?

6 A. I did not. Usually a squad supervisor or a platoon
7 commander will bring that officer to my attention.

8 Q. When you were assessing that officer's performance at that
9 point, you were not looking at their actual individual stops or
10 arrests or summonses, right?

11 A. That was one of the things I looked at because I compared
12 it to what the other officers in their platoon and squads were
13 doing.

14 Q. Just to be clear, you were comparing the numbers, right?

15 A. The numbers, absolutely.

16 MR. CHARNEY: No further questions.

17 THE COURT: Anything further for this witness?

18 MS. PUBLICKER: No further questions, your Honor.

19 THE COURT: You're done. Thank you.

20 Your next witness.

21 MS. HOFF VARNER: Plaintiffs call Sergeant Julio

22 Agron.

23 (Continued on next page)

24

25

D3M8FLO4 Mascol - redirect

1 JULIO AGRON,

2 called as a witness by the plaintiffs,

3 having been duly sworn, testified as follows:

4 THE COURT: State your full name, first and last,

5 spelling both names for the record.

6 THE WITNESS: Sure. Julio Agron, J-U-L-I-O, last name

7 A-G-R-O-N.

8 DIRECT EXAMINATION

9 BY MS. HOFF VARNER:

10 Q. Good afternoon, Sergeant Agron.

11 A. Good afternoon.

12 Q. The first question I want to ask you is, have you had an
13 opportunity to be in the courtroom today prior to your
14 testimony?

15 A. Yes.

16 Q. Were you in the courtroom during the testimony of Officer
17 Salmeron?

18 A. Yes.

19 MR. MOORE: Judge, there is a sequestration order.

20 THE COURT: I think the sequestration order only
21 applied to stops, and we said any witness to the stop or any
22 police officer involving that stop shouldn't be present during
23 the testimony of a stop. That's all I remember discussing for
24 the sequestration order.

25 MS. HOFF VARNER: Your Honor, we characterized the

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D3M8FLO4 Agron - direct

1 sequestration order as designed to ensure that witnesses that
2 have any relevant testimony to the stop not be present.

3 THE COURT: To the stop. What stop is this going to
4 be about?

5 MS. HOFF VARNER: It's relevant to the stop of Deon
6 Dennis.

7 MR. MOORE: Which the officer testified to earlier
8 this morning, while he was present.

9 THE COURT: The harm is done. It is what it is.

10 MR. MOORE: Harmless error, right?

11 THE COURT: Maybe not. You can talk about it in
12 argument as to credibility.

13 MR. CHARNEY: We ask that this order be taken
14 seriously by defendants.

15 THE COURT: Fair enough.

16 BY MS. HOFF VARNER:

17 Q. So now that we are done with that, Sergeant Agron, you
18 graduated from the New York police academy in 1991, correct?

19 A. Yes.

20 Q. And you have worked for the police department since that
21 time, is that right?

22 A. That's correct.

23 Q. You continue to work for the NYPD today?

24 A. Yes.

25 Q. You were promoted to sergeant in the fall of 2002, is that

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D3M8FLO4 Agron - direct

1 correct?

2 A. Yes.

3 Q. And after your promotion in 2002, you were assigned to the
4 28th Precinct, correct?

5 A. That's correct.

6 Q. Had you served in the 28th Precinct ever since that time?

7 A. Yes.

8 Q. What is your current assignment?

9 A. I work the 4 to 12 shift patrol.

10 Q. In the 28th Precinct?

11 A. Yes.

12 Q. Are you still a sergeant?

13 A. Yes.

14 Q. The 28th Precinct is under a commanding officer, correct?

15 A. Yes.

16 Q. In 2008, do you remember the name of the commanding officer
17 for the 28th Precinct?

18 A. Not particularly, no.

19 Q. Do you remember if it was Inspector Montgomery?

20 A. It could have been.

21 Q. Was he a commanding officer at the 28th Precinct, to your
22 recollection?

23 A. Yeah. Since I have been there, yes, he was for a period.

24 Q. And you just don't remember the exact time when he was the
25 commanding officer?

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D3M8FLO4

Agron - direct

- 1 A. No.
- 2 Q. As a sergeant, you're a supervisor in the 28th Precinct,
3 aren't you?
- 4 A. Yes.
- 5 Q. As a supervisor, have you participated in roll calls?
- 6 A. Yes.
- 7 Q. Normally, at the roll call, you or whoever the supervisor
8 is stands in front of the officers and calls out names and
9 gives out assignments, correct?
- 10 A. Yes.
- 11 Q. You were the supervisor for impact overtime on the night of
12 January 12 and the morning of January 13, 2008, correct?
- 13 A. Yes.
- 14 Q. And you have supervisory responsibilities at the precinct,
15 correct?
- 16 A. Yes.
- 17 Q. You directly supervise officers?
- 18 A. Yes.
- 19 Q. And you do performance evaluations?
- 20 A. Yes.
- 21 Q. And you supervise impact overtime?
- 22 A. I have done it before, yes.
- 23 Q. When I say you supervise impact overtime, I mean that you
24 will serve as a supervisor for a tour of impact overtime, is
25 that correct?

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D3M8FLO4 Agron - direct

1 A. That's accurate.

2 Q. And you have served as a desk officer, correct?

3 A. The last two years, often, yes.

4 Q. And even before the last two years, you still served as a
5 desk officer, correct?

6 A. Rarely.

7 Q. As of July 2009, so thinking back to July 2009, you
8 directly supervised four individuals, correct?

9 A. I am taking your word at face value. I supervised more
10 than four, but if you're saying specifically four, I am not
11 sure what you're relating to.

12 Q. How many officers do you usually directly supervise?

13 A. Now I have ten.

14 Q. Now you have ten?

15 A. Yes.

16 Q. Has it always been ten?

17 A. No.

18 Q. Has it ever been as few as one?

19 A. No.

20 Q. So you supervise somewhere between one and ten officers
21 directly?

22 A. The less I supervise have been four, and up to ten,
23 sometimes to about 12.

24 Q. Got it.

25 You also supervise other officers other than those

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D3M8FLO4 Agron - direct

1 officers that are your direct reports, correct?

2 A. Yes.

3 Q. As a supervisor, you said that you conducted performance
4 evaluations, correct?

5 A. Yes.

6 Q. Those would include quarterly performance evaluations,
7 right?

8 A. Yes.

9 Q. Those evaluations were based on a quarterly point system,
10 correct?

11 A. My understanding, yes.

12 Q. And you filled out those evaluations on a form, correct?

13 A. I signed for them, yes.

14 Q. I am going to show you Plaintiffs' Exhibit 286, which is
15 called the police officer's monthly performance report.

16 MS. HOFF VARNER: Any objections.

17 MS. MARTINI: I don't believe this is listed on
18 Sergeant Agron's list, but I would like to see it first. It's
19 not on the list for this particular witness I mean.

20 MS. HOFF VARNER: We are just getting a second copy.

21 Q. I will go on as we are looking for that.

22 These quarterly --

23 THE COURT: Actually, it's here. Maybe we should
24 pause for a minute.

25 MR. CHARNEY: We made further redactions of this based
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D3M8FLO4 Agron - direct

1 on the conference we had with you last Friday.

2 THE COURT: I am sure if it was pursuant to the
3 conference, the redactions are appropriate.

4 As redacted, do you have any objection to it, Mr.
5 Marutollo?

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

7 THE COURT: Sure.

8 MR. MARUTOLLO: No objection.

9 THE COURT: What is the number?

10 MS. HOFF VARNER: Plaintiffs' Exhibit 286.

11 THE COURT: 286 as redacted is received.

12 (Plaintiffs' Exhibit 286 received in evidence)

13 Q. Do you see the document that's on the screen in front of
14 you?

15 This is the police officer's monthly performance
16 report, isn't it?

17 A. Yes.

18 Q. Go ahead and look at the second page, which I am giving you
19 now. Do you see the column on the right-hand side of the page?

20 A. Yes.

21 Q. That's titled, "Supervisor's quarterly rating," isn't it?

22 A. Yes.

23 Q. And this is the same form that you used when you were
24 filling out those quarterly evaluations of police officers,
25 isn't it?

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D3M8FLO4

Agron - direct

1 A. Yes.

2 Q. And I would just note for the record that the handwriting
3 on this document is not your handwriting, and you have never
4 seen this handwriting before, isn't that right?

5 A. I don't remember such.

6 Q. But the form is the same as the form that you used?

7 A. Yes.

8 Q. Sergeant Agron, these quarterly performance reviews were
9 based on a quarterly point system, correct?10 MS. GROSSMAN: Your Honor, he can talk about general,
11 but this is not anything he has personal knowledge of.12 THE COURT: That was brought out. It's just to give
13 me the view of the form and him. I realize he didn't prepare
14 this form. It just shows what the form is. OK.15 Q. So I think my question was, these performance reviews and
16 the supervisor's quarterly rating is based on a quarterly point
17 system, isn't that right?

18 A. Yes.

19 Q. The quarterly points relate to the enforcement functions
20 that are achieved by the police officer each month, isn't that
21 correct?

22 A. Not solely that, not just that.

23 Q. One of the criteria that you used to evaluate police
24 officers is general enforcement against crime, quality of life
25 and traffic violations, isn't that right?

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D3M8FLO4

Agron - direct

1 A. Yes.

2 Q. That's actually what it says in the box that's labeled
3 number 1 at the top of the form, isn't that right?

4 A. Yes.

5 Q. But when evaluating an officer, in terms of general
6 enforcement against crime, you never evaluate whether or not
7 the officer is performing legal stops, do you?

8 A. No, that's not true.

9 Q. Do you remember giving a deposition in this case?

10 A. Yes.

11 Q. That deposition was on July 27, 2009?

12 A. It could have been. I don't remember exactly.

13 Q. You were under oath during that deposition, weren't you?

14 A. Yes.

15 Q. You told the truth during that deposition, didn't you?

16 A. Yes.

17 Q. I am going to hand you a copy of your deposition and give
18 you a page number in just a second.19 I would like you to look at page 82 of your
20 deposition, lines 20 to 24.

21 The question is:

22 "Q. When evaluating an officer, in terms of general
23 enforcement against crime, do you ever evaluate whether or not
24 the officer is performing legal stops?

25 "A. In relation to this? No."

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D3M8FLO4 Agron - direct

1 Did I read that correctly?

2 A. Yes.

3 Q. Sergeant Agron, you served as a sergeant on impact
4 overtime, correct?

5 A. That's correct.

6 Q. In fact, you were the sergeant on impact overtime on the
7 night of January 12, 2008, correct?

8 A. Yes.

9 Q. And impact overtime is an overtime tour designed to target
10 crime spikes, is that basically correct?

11 A. I'm sorry. Repeat that.

12 MS. HOFF VARNER: Let me withdraw that.

13 Q. Impact overtime is an overtime tour, correct?

14 A. Yes.

15 Q. And one of your responsibilities as an impact overtime
16 sergeant is to tabulate the number of stops that the officers
17 in your tour complete, isn't that correct?

18 A. Yes and no. I have to tabulate everything they did on that
19 tour.

20 Q. Including stops?

21 A. Yes.

22 Q. And one of your responsibilities as an impact overtime
23 sergeant is to ask officers what they did on a tour, isn't that
24 right?

25 A. Yes.

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D3M8FLO4 Agron - direct

1 Q. They would tell you verbally what they did, and then you
2 would fill in captions for what they did, isn't that right?

3 A. That's part of it. Also, they would show me whatever
4 paperwork they generated during that tour.

5 Q. Would they show you the UF-250s that they completed for
6 stops?

7 A. That could be part of it, yes.

8 Q. But, in fact, when officers were talking to you about the
9 stops that they completed during the tour, you don't review the
10 UF-250 forms associated with those stops, do you?

11 A. Who are you referring to, please?

12 Q. I am referring to you, when you served as an impact
13 overtime sergeant, and you have officers who tell you how many
14 stops they have completed during the tour, you don't personally
15 review the UF-250 forms associated with those stops, do you?

16 A. No, I review them.

17 Q. I would like to turn your attention to your deposition,
18 page 136, lines 13 through 24.

19 Let me know when you get there.

20 A. 136?

21 Q. 136.

22 A. OK. I'm here.

23 "Q. At that time, when they would tell you verbally how many
24 stops they completed during that tour, would you at that point
25 review the UF-250 forms associated with those stops?

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D3M8FLO4 Agron - direct

1 "A. Not necessarily.

2 "Q. Would you review UF-250 forms always at the end of an
3 operation impact tour?

4 "MR. HAZAN: Objection.

5 "A. That is a function that I don't have to perform."

6 Did I read that correctly?

7 A. Yes.

8 Q. In fact, you have never been told that one of your
9 responsibilities as an operation impact sergeant is to ensure
10 that the subordinate officers for which you were responsible
11 complete quality UF-250s, isn't that right?

12 MR. MARUTOLLO: Objection, your Honor, in terms of the
13 definition of quality. It's a vague question.

14 MS. HOFF VARNER: The witness has used that term in
15 his deposition and clearly has an understanding of that term.

16 MR. MARUTOLLO: I believe the questioner at his
17 deposition used the term quality, to which the city objected at
18 that point.

19 THE COURT: I think it is objectionable, unless he
20 defines what he means. So you can ask him what he means by
21 that.

22 Q. Do you have an understanding of what a quality UF-250 is?

23 A. Not necessarily.

24 Q. Isn't it true that the desk officer is the person who is
25 responsible for reviewing UF-250 forms?

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D3M8FLO4 Agron - direct

1 A. He could be one of them, yes.

2 Q. Isn't it true that, in general, in the department, the desk
3 officer is the person to whom the UF-250 forms are submitted at
4 the end of a tour?

5 A. Generally, yes.

6 Q. Isn't it true that you don't regularly review the UF-250
7 forms that are submitted by officers that you supervise?

8 A. I wouldn't say so, no, that's not true.

9 Q. You're saying that you do regularly review the UF-250 forms
10 that are submitted by your direct subordinates?

11 A. If they give them to me, that's correct, I review them.

12 Q. But you don't regularly -- do you regularly review them?

13 A. Whenever I am given one or I am aware of one that
14 transpired, I review them, yes.

15 Q. I would like to turn your attention to page 145 of your
16 deposition, line 24, through 146, 7.

17 "Q. Do you regularly review the --

18 A. I'm sorry. What line?

19 Q. Page 145, line 24.

20 MR. MARUTOLLO: Objection, your Honor. I just want to
21 be clear. Is Ms. Hoff Varner referring to right now or at the
22 time of his deposition when he was a school sergeant.

23 THE COURT: I don't know.

24 Q. Let's go back to 2009.

25 THE COURT: OK.

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D3M8FLO4 Agron - direct

1 MS. HOFF VARNER: I would also like to just note that
2 that was an improper speaking objection and coaching the
3 witness.

4 Q. But, nevertheless, in 2009, did you regularly review the
5 stop, question and frisk work sheets that were submitted by
6 officers under your supervision?

7 A. No. Because in 2009, my duties were -- I was a school
8 sergeant back then, and my primary function was to patrol the
9 schools.

10 Q. What about in 2008, when you were supervising impact
11 overtime tours, did you regularly review the stop, question and
12 frisk work sheets that were submitted by officers?

13 A. I don't remember if they gave me any on that night.

14 Q. On which night?

15 A. The impact overtime.

16 Q. On the one impact overtime tour from January 12, 2008?

17 A. I don't remember if any were given to me that night.

18 Q. But in general, we just read back your deposition testimony
19 saying that reviewing UF-250 forms at the end of an operation
20 impact tour is a function that you don't have to perform, isn't
21 that correct?

22 A. I don't have to perform it specifically, no.

23 Q. Isn't it true that the desk officer is responsible for
24 reviewing UF-250 forms?

25 MR. MARUTOLLO: Objection. This was asked and
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D3M8FLO4 Agron - direct

1 answered.

2 THE COURT: I will allow it.

3 Go ahead.

4 A. Well, as per the patrol guide, that's what it states, yes.

5 Q. And one of your responsibilities you testified earlier is
6 to perform the role of desk sergeant, isn't that correct?

7 A. Yes. Throughout my career, that's correct.

8 Q. In fact, you performed that role many times, isn't that
9 true?

10 A. Yes.

11 Q. And you said you performed it many times in the past few
12 years, correct?

13 A. Past two years or so, yes.

14 Q. Even as of 2009, you performed that role many times, isn't
15 that correct?

16 A. That's not accurate.

17 Q. I would like to refer you to page 31 of your deposition,
18 lines 22 through 24.

19 A. OK. 31. What line, please?

20 Q. 22.

21 A. Yes. I'm here.

22 "Q. Do you ever perform the role of desk sergeant?

23 "A. Yes, many times."

24 Did I read that correctly?

25 A. Yeah, that's correct.

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D3M8FLO4 Agron - direct

1 Q. That deposition was taken in 2009, correct?

2 A. Yes. But the question was asked in general since I have
3 been a sergeant. It wasn't in relation to a specific time.

4 Q. OK. That's fine.

5 As the desk sergeant, you're responsible for the
6 accuracy of the UF-250 forms of officers, including officers
7 subordinate to you, isn't that correct?

8 A. As a desk officer or in general as a supervisor, yes.

9 Q. When you have served as a desk sergeant, you look over the
10 UF-250s, isn't that correct?

11 A. If I'm handed one over to me, yes.

12 Q. And you ensure that the captions are filled out properly,
13 isn't that correct?

14 A. That would be one of the functions, yes.

15 Q. And you might question individual officers about their
16 stops that they have performed during the tour while reviewing
17 their UF-250, isn't that correct?

18 A. That would be one of the functions, yes.

19 Q. But your questioning is limited to whether or not you see a
20 caption that's unreadable, isn't it?

21 A. I'm sorry? Repeat that.

22 Q. You ask officers questions when you see that there is a
23 part of the form that's unreadable, isn't that right?

24 A. That would be one of the questions.

25 Q. And when you're not serving as a desk sergeant, you have

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D3M8FLO4 Agron - direct

1 never reviewed the UF-250 forms of the police officers
2 subordinate to you, have you?

3 A. I have reviewed 250s before, yes.

4 Q. So your testimony is that when you were not serving as a
5 desk sergeant, you have reviewed the UF-250 forms for other
6 officers?

7 A. Yes, I have done that before.

8 Q. Did you do that at any time before you gave your deposition
9 in 2009?

10 A. I don't remember offhand.

11 Q. Why don't you turn to page 147 -- actually, strike that.

12 As of 2009, isn't it true --

13 A. What line, please?

14 Q. We struck that so we can move on to something else.

15 A. OK.

16 Q. Isn't it true that you don't regularly review the stop,
17 question and frisk report work sheets that are submitted by
18 officers under your supervision?

19 A. No, that's not necessarily the truth.

20 Q. Now, go ahead and look at page 145 of your deposition.

21 A. 145?

22 Q. Yes.

23 A. OK. What line, please?

24 Q. Line 24 through 146, line 4.

25 "Q. Do you regularly review the stop, question and frisk

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D3M8FLO4

Agron - direct

1 report work sheets submitted by officers under your
2 supervision?

3 "A. No."

4 MR. MARUTOLLO: Your Honor, I just wanted to note the
5 next two lines are also related to that same question. So I
6 would just ask that that question and answer be read.

7 THE COURT: All right.

8 MR. MARUTOLLO: 146, lines 5 through 7. I could ask
9 it.

10 MS. HOFF VARNER: I can go ahead.

11 "Q. Why not?"

12 "A. That is normally the desk officer reviews it."

13 A. That's correct. During the time that I took the
14 deposition, as I mentioned earlier, I was the school sergeant,
15 and whenever I was needed for patrol for any particular reason,
16 I wouldn't normally be assigned to the desk. I would be
17 assigned to outside the precinct, patrol.

18 Q. Sergeant Agron, isn't it true that you have never performed
19 any activity to ensure that your subordinate officers don't
20 stop individuals based on their race?

21 A. What you mean by activity?

22 Q. Any activity that you might have performed, ever addressing
23 anything about stopping people based on their race to your
24 subordinate officers.

25 A. I think you probably have to be a little more specific with

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D3M8FLO4 Agron - direct

1 activity.

2 Q. Well, have you ever spoken to your subordinate officers to
3 ensure that they don't stop individuals based on their race?

4 A. That's correct. I have spoken to them.

5 Q. I'm sorry?

6 A. I have spoken to officers.

7 Q. You have spoken to officers?

8 A. Sure.

9 Q. I would like you to look at page 148 of your deposition,
10 line 12.

11 A. OK.

12 Q. Through 149, line 3.

13 "Q. Can you identify any activity that you performed to ensure
14 that subordinate officers do not base their stops on personal
15 prejudice, bias, such as the subject's race?

16 "A. Can you be more specific?

17 "Q. Yes. Have you performed any activity to ensure that your
18 subordinate officers do not stop individuals based on their
19 race?

20 "MR. HAZAN: Objection.

21 "A. I don't remember ever addressing that to them because,
22 like I said earlier, we went to the same academy and it is an
23 understanding that they know how to conduct UF-250s."

24 Did I read that correctly?

25 A. Yes, you did, you read it correctly.

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D3M8FLO4 Agron - direct

1 Q. In fact, since you have been a supervisor --

2 A. Can I elaborate on the answer?

3 Q. I think you can with your own counsel.

4 A. OK.

5 Q. But since you have been a supervisor, which happened in
6 2002, you have never corrected an officer with respect to his
7 or her stop and frisk practices, isn't that true?

8 A. I don't know what you mean by correct.

9 Q. Have you ever addressed appropriate stop and frisk
10 practices with any of your subordinate officers? You haven't,
11 have you?

12 A. No, I have discussed that with officers.

13 Q. I would like to turn your attention to page 151 of your
14 deposition, lines 9 through 15.

15 A. 9?

16 Q. Yes.

17 A. OK. I'm here.

18 "Q. Since you have been a supervisor, have you ever corrected
19 an officer with respect to his or her stop and frisk practices?

20 "MR. HAZAN: Objection.

21 "A. And I don't remember ever, I don't remember ever
22 addressing that."

23 Did I read that correctly?

24 A. Yes.

25 Q. You also don't remember --

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D3M8FLO4

Agron - direct

1 MR. MARUTOLLO: He was continuing to speak.

2 THE COURT: Were you done? You weren't done. Go
3 ahead.

4 A. I answered that because at that time I was a school
5 sergeant and my primary duty was to enforce school related
6 issues. I wasn't really on the streets much.

7 Q. This deposition was taken in 2009, correct?

8 A. Yes.

9 Q. And you became a sergeant in 2002, correct?

10 A. Yes.

11 Q. When did you become a school sergeant?

12 A. 2004 or so.

13 Q. And you continued to be a school sergeant in 2009?

14 A. More or less, yes.

15 Q. But you also had other supervisory responsibilities,
16 correct?

17 A. Before school sergeant, yes.

18 Q. And while you were a school sergeant, you also served as a
19 supervisor for impact overtime tours, correct?

20 A. Yes.

21 Q. You don't remember ever questioning a subordinate officer's
22 determination that he or she have reasonable suspicion to stop
23 a citizen, do you?

24 A. I wouldn't say so, that's not correct. I have spoken to
25 them.

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D3M8FLO4 Agron - direct

1 Q. So if you look at page 96 of your deposition, line 7
2 through 13.

3 A. OK. I'm here.

4 "Q. Have you ever questioned a subordinate officer's
5 determination that he or she has reasonable suspicion to stop a
6 citizen?"

7 "MR. HAZAN: Objection to the form.

8 "A. I don't remember."

9 Did I read that correctly?

10 A. Yes. Again, I was answering in relation to my particular
11 duties during the time of the deposition.

12 Q. But the question doesn't say anything specific about your
13 duties in 2009 at the time of the deposition, does it?

14 A. That's why I based it on what I was doing during this time.

15 Q. But the question is, specifically, you don't remember ever
16 questioning a subordinate, isn't that correct?

17 A. Go back to the question.

18 Q. If you look at line 7. Isn't it true that the question
19 says, "Have you ever questioned a subordinate officer's
20 determination?" That's correct, isn't it?

21 A. The question is longer on my side.

22 MR. MARUTOLLO: Objection, your Honor. Indeed, the
23 page before as well, the same question is asked with a
24 different answer. I think it's appropriate --

25 MS. HOFF VARNER: Your Honor --

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D3M8FLO4 Agron - direct

1 THE COURT: Excuse me. Mr. Marutollo is speaking. If
2 I want to cut him off, that's my job, not yours, Mr. Moore, not
3 yours, Ms. Hoff Varner.

4 What were you saying?

5 MR. MARUTOLLO: On page 95 of the deposition, a
6 question and answer was read, and I think it might be helpful
7 just for the record. It's line 16 through 21.

8 THE COURT: I will allow that.

9 BY MR. MARUTOLLO:

10 "Q. Have you ever provided an officer subordinate to you with
11 a suggestion for improvement in terms of the manner in which
12 such officer has conducted a stop?

13 "A. Yes."

14 THE COURT: OK.

15 BY MS. HOFF VARNER:

16 Q. Do you see where your attorney was just reading through on
17 page 95? Did you catch where that reference was?

18 A. What line, please?

19 Q. He read 95, line 16 through 21.

20 A. OK.

21 MS. HOFF VARNER: For the sake of completeness, I
22 would like to read line 22, through page 96, line 13, into the
23 record.

24 THE COURT: Go ahead.

25 MS. HOFF VARNER: I apologize, your Honor, but I think
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D3M8FLO4

Agron - direct

1 it's important.

2 Q. Line 22:

3 "Q. Can you give me an example of a particular suggestion that
4 you provided to an officer related to the manner in which such
5 officer conducted a stop?

6 "A. Sure. If I, at any given moment, I feel that the officer
7 used tactics that perhaps may have endangered he or she, I
8 would address it.

9 "Q. Have you ever questioned a subordinate officer's
10 determination that he or she have reasonable suspicion to stop
11 a citizen?

12 "MR. HAZAN: Objection to the form.

13 "A. I don't remember."

14 Q. Isn't it true that you have never discussed the NYPD's
15 policy concerning racial profiling with any of your subordinate
16 officers?

17 A. That's not the truth.

18 THE COURT: What? I'm sorry.

19 THE WITNESS: That's not the truth. I have discussed
20 it before.

21 Q. Did you ever discuss the policy regarding racial profiling
22 with any of your subordinate officers prior to your deposition
23 in 2009?

24 A. I don't particularly remember before that period. I do
25 remember after that period.

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D3M8FLO4 Agron - direct

1 Q. In fact, you don't remember ever discussing it prior to
2 2009, do you?

3 A. To give you a date, probably no, I don't remember.

4 Q. You also don't remember discussing the policy regarding
5 racial profiling with officers above you in the chain of
6 command, isn't that correct?

7 A. Can you be more specific, as far as perhaps time frames?

8 Q. At any point, have you had a conversation with an officer
9 who is above you in the chain of command about the New York
10 Police Department's racial profiling policy?

11 A. Yes, I have had conversations.

12 Q. Were those conversations prior to 2009?

13 A. I don't remember 2009, but recently, the last couple of
14 years, I remember on many occasions discussing such.

15 Q. But prior to 2009, you had never discussed the policy with
16 officers above you in the chain of command, had you?

17 A. I could have. I just don't remember if I did.

18 Q. Isn't it true that you have never provided training to a
19 subordinate officer -- that you don't recall ever providing
20 training to a subordinate officer in the manner in which they
21 conduct stop and frisks?

22 A. That's not the truth. I addressed such on numerous
23 occasions.

24 Q. Were those occasions before or after 2009?

25 A. I don't particularly remember before this deposition took

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D3M8FLO4 Agron - direct

1 place. I have done it plenty of times the last couple of
2 years.

3 Q. I turn your attention to page 151 of your deposition, line
4 16 through 21.

5 MR. MARUTOLLO: What page?

6 MS. HOFF VARNER: Page 151.

7 A. What is the line?

8 Q. 16.

9 MR. MARUTOLLO: Your Honor, I believe this is improper
10 impeachment as it doesn't go to -- this is exactly how he
11 testified.

12 MS. HOFF VARNER: He testified that he doesn't recall.
13 In his deposition, he testified that he never provided any
14 training to officers.

15 THE COURT: All right. That would be different.

16 "Q. Do you recall ever providing any training to a subordinate
17 officer in the manner in which they can conduct stop and
18 frisks?

19 "MR. HAZAN: Objection.

20 "A. No."

21 A. I answered no because the question didn't specify whether
22 it's like a formal discussion or informal.

23 Q. But your answer was no, correct?

24 A. Yes. The question was based generally.

25 THE COURT: The question was what?

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1 THE WITNESS: The question was addressed to me in
2 general terms, not in specific terms.

3 Q. In general, your answer was no, wasn't it?

4 A. That's correct.

5 Q. You have conducted investigations of civilian complaints
6 from time to time, haven't you?

7 MR. MARUTOLLO: Objection, your Honor. I don't
8 believe this witness is being called for that purpose.

9 THE COURT: What does that mean? One of the arguments
10 is failure to discipline, right?

11 MR. MARUTOLLO: There is a different supervisor that
12 they are calling from the same precinct who will be talking
13 about that issue.

14 MS. HOFF VARNER: This is directly relevant to the
15 quality of the investigation conducted.

16 THE COURT: You don't want to do the same thing twice.
17 That's what Mr. Marutollo is saying. We don't want cumulative
18 testimony. If you have somebody covering the same ground, you
19 risk that person being precluded. I don't want to hear the
20 same thing twice. It's up to you.

21 MS. HOFF VARNER: These are two questions about the
22 general standards, not about the specific investigation.

23 THE COURT: Then don't ask the same two questions of
24 that person. Because I will invite Mr. Marutollo to say, I
25 object, you already asked that of this witness. This is a

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D3M8FLO4 Agron - direct

- 1 nonjury trial. I don't need to hear the same thing twice. So
2 you choose. If you want him to answer, fine. Then the next
3 guy, no.
4 Q. Sergeant Agron, you attended the police academy, didn't
5 you?
6 A. Yes.
7 Q. And you don't remember if you were trained at the police
8 academy on racial profiling, do you?
9 A. I remember. I just don't know the specific date.
10 Q. So if you look at your deposition, page 169?
11 A. 169?
12 Q. 169, lines 19 through 21.
13 A. I'm here.
14 "Q. Did you receive training at the academy on racial
15 profiling?
16 "A. I don't remember."
17 Did I read that correctly?
18 A. Yes. I answered I don't remember because I --
19 Q. I'm sorry?
20 A. I felt the person asking me the question wanted a specific
21 date.
22 Q. Is there anything in that question that refers to a
23 specific date?
24 A. I don't see that, no.
25 Q. You received training at the sergeant's academy before you

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1 were promoted to sergeant, isn't that correct?

2 A. That's correct.

3 Q. And you don't remember whether you received training upon
4 promotion to sergeant regarding racial profiling, do you?

5 A. I probably don't remember specific times, but I do recall
6 discussing it while I was at the leadership training.

7 Q. So if you look at your deposition, page 169, lines 19
8 through 25. Are you there?

9 A. Yes. We discussed 19 already. You want to go to 20 now?

10 Q. Let me just double-check.

11 Let's start at line 22. Page 169, lines 22 through
12 25.

13 "Q. Did you receive training upon promotion to sergeant
14 regarding racial profiling?

15 "A. I don't remember."

16 Did I read that correctly?

17 A. Yes, that's correct. I was, again, pointing out that, as
18 far as my answer, whether the person asking me the question was
19 referring to a specific date.

20 Q. But that question also doesn't refer to a specific date,
21 does it?

22 A. That's correct.

23 Q. In fact, until your deposition in 2009, you didn't remember
24 even seeing the NYPD's policy prohibiting racial profiling,
25 isn't that true?

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D3M8FLO4 Agron - direct

1 A. You mentioned the year 2009?

2 Q. Yes.

3 A. I don't remember specific date.

4 Q. Let me try my question again.

5 Until your deposition in 2009, you don't remember ever
6 seeing the NYPD's policy concerning racial profiling, isn't
7 that right?

8 A. At that time, I don't remember. But since --

9 THE COURT: Her question is, until you were deposed
10 that day, you didn't remember ever seeing a policy, right?

11 THE WITNESS: I was aware of it. Seeing it, I don't
12 remember whether I saw it on paper. I remember by having
13 someone address it to me. I don't know if I remember seeing
14 the paper itself.

15 Q. So the first time you saw the paper itself was at your
16 deposition, isn't that right?

17 A. If it was produced to me back then. I don't know if that
18 was produced to me, that paper.

19 Q. If it was produced to you at your deposition?

20 A. You're saying if I remember seeing the paper at the
21 deposition?

22 THE COURT: That's not what she said at all. She
23 said, prior to that deposition, isn't it true that you had not
24 seen it? It's really very simple. You're making it very
25 complicated. Was that the first time you saw it at the

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1 deposition? Is that the first time you saw it physically at
2 the deposition?

3 THE WITNESS: I don't remember if they shown me that
4 on that date, the paper.

5 Q. I just turn your attention to page 171 of your deposition,
6 line 7 through 17.

7 A. I'm here.

8 Q. Page 171, line 7 through 17.

9 "Q. For the record, the document appears to be an operations
10 order with the subject, department policy regarding racial
11 profiling, and it has a date issued of March 13, 2002.
12 Sergeant, do you recognize this document?

13 "A. No.

14 "Q. Do you remember ever seeing this document before?

15 "A. No. I don't remember it."

16 Did I read that correctly?

17 A. Yes.

18 THE COURT: So that's what you testified to then,
19 right?

20 THE WITNESS: Yes. They were producing me the
21 document in front of me.

22 THE COURT: They said, you never saw this before,
23 right?

24 THE WITNESS: That's correct. Now I remember I guess
25 I am taking this as if they showed it to me. They showed me a

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D3M8FLO4 Agron - direct

1 lot of documents that day.

2 Q. OK.

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

4 Nothing else, your Honor.

5 THE COURT: Mr. Marutollo.

6 CROSS-EXAMINATION

7 BY MR. MARUTOLLO:

8 Q. Good afternoon, Sergeant Agron.

9 A. Good afternoon.

10 Q. Where were you born?

11 A. I was born in the Bronx, but I was raised in Puerto Rico.

12 Q. How long did you live in Puerto Rico, till what age?

13 A. From 4 to about 17.

14 Q. Is English your first language?

15 A. No.

16 Q. Did you go to college?

17 A. Yes.

18 Q. What college?

19 A. I graduated from John Jay with a legal studies bachelor's
20 degree.

21 Q. Are you pursuing any other degrees right now?

22 A. Yes. A master's in history.

23 THE COURT: Where is that from?

24 THE WITNESS: A master's in history.

25 THE COURT: From what school?

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D3M8FLO4

Agron - cross

1 THE WITNESS: Lehman College in the Bronx.

2 Q. When did you join the New York City Police Department?

3 A. 1991.

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

5 Did you attend and graduate the police academy?

6 A. That's correct. I graduated in October '91.

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

9 A. I was assigned to Transit District 12 in the Bronx.

10 Q. You were a police officer at that time?

11 A. That's correct.

12 Q. What area did District 12 cover?

13 A. They cover the subway stations on the east side of the
14 Bronx.

15 Q. What were your duties and responsibilities as a police
16 officer at District 12?

17 A. To address conditions with veteran officers because it was
18 part of my field training.

19 Q. After District 12, where were you assigned next?

20 A. I was assigned to the Manhattan Task Force.

21 Q. What is the Manhattan Task Force?

22 A. It's a unit where your primary function is to patrol just
23 the subway cars as opposed to stations during late at night.

24 Q. How long were you assigned to the task force unit?

25 A. For about a year and a half.

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D3M8FLO4

Agron - cross

- 1 Q. After the task force unit, where were you assigned next?
2 A. District 4.
3 Q. What area does District 4 cover?
4 A. The east side of Manhattan.
5 Q. What were your duties in District 4?
6 A. Address conditions, subways and subway stations.
7 Q. What was your next assignment after District 4?
8 A. District 11.
9 Q. What area does that cover?
10 A. The west side of the Bronx.
11 Q. How long were you assigned to District 11?
12 A. For about a year and a half.
13 Q. Why did you leave District 11?
14 A. I got promoted to sergeant.
15 Q. How did you receive that promotion?
16 A. I took a promotional test.
17 Q. Where were you assigned after being promoted to sergeant?
18 A. 28th Precinct.
19 Q. Prior to going to the 28th Precinct, did you receive any
20 training upon being promoted?
21 A. Yes.
22 Q. What was that training?
23 A. Where you ask?
24 Q. What was that training?
25 A. It's training specifically targeting supervisors.

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D3M8FLO4 Agron - cross

1 Q. Where are you currently assigned?

2 A. 28th Precinct.

3 Q. Have you been assigned to the 28th precinct continuously
4 since being promoted to sergeant?

5 A. Yes.

6 Q. What area does the 28th Precinct cover?

7 A. Central Harlem, from 127th Street on the north side to
8 110th on the south, Morningside Park on the west side to Fifth
9 Avenue on the east side.

10 Q. While you were at the 28th Precinct, I believe you
11 testified during the direct examination that you were a
12 supervisor in the school unit, or a sergeant in the school
13 unit?

14 A. During four, five years in between, yes.

15 Q. What were your duties and responsibilities as a sergeant in
16 the school unit?

17 A. All our efforts were to patrol the schools within the
18 precinct.

19 Q. And you were a sergeant in the school unit at the time of
20 your deposition?

21 A. Yes.

22 Q. Are you still supervising the school unit?

23 A. No.

24 Q. What units are you currently supervising?

25 A. I supervise the 4 to 12 shift patrol.

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D3M8FLO4 Agron - cross

1 Q. What are your current duties and responsibilities?

2 A. I supervise officers, respond to jobs, sometimes work as
3 the desk officer, sometimes as a patrol supervisor.

4 Q. At the time of your deposition, how often would you be
5 assigned to impact overtime?

6 A. I don't remember how many times specifically.

7 Q. While out on patrol, in your current assignment as a
8 sergeant, do you have officers under your supervision drive you
9 around?

10 A. Yes.

11 Q. Why is that?

12 A. Well, you drive around with another officer, it's a safety
13 issue. Also, you get to talk to officers, you get to bond with
14 them.

15 Q. Do you ever discuss any crime conditions with those
16 officers?

17 A. Yes.

18 Q. When you assign an officer to be your driver, do you
19 consider that to be a punishment?

20 A. No.

21 Q. While you were a police officer, were you ever subject to a
22 quota?

23 A. No.

24 Q. While you were a police officer, did you ever feel that if
25 you did not conduct a certain number of stops, you would be

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D3M8FLO4

Agron - cross

1 punished?

2 A. No.

3 Q. While you were a police officer, did you ever feel that if
4 you did not issue a certain number of summonses or arrests, you
5 would be punished?

6 A. No.

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

9 A. No.

10 Q. Have you ever told an officer that you supervised that he
11 should increase the number of stops that he performs?

12 A. No.

13 Q. As a supervisor, have you ever punished an officer under
14 your command for failing to conduct a certain number of stops?

15 A. No.

16 Q. As a supervisor, have you ever punished an officer under
17 your command for failing to conduct a certain number of arrests
18 or summonses?

19 A. No.

20 Q. Have you ever been transferred to a different precinct or
21 assignment because of low activity?

22 A. No.

23 Q. Have you ever been denied overtime because your activity
24 was too low?

25 A. No.

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D3M8FLO4 Agron - cross

1 Q. Have you ever denied officers under your supervision
2 overtime because their activity was too low?

3 A. No.

4 Q. Have you ever been put on performance monitoring because of
5 low activity?

6 A. No.

7 Q. Have you ever felt pressure to make an unconstitutional
8 stop?

9 A. No.

10 Q. Do you ever pressure officers under your supervision to
11 make unconstitutional stops?

12 A. No.

13 Q. Sergeant Agron, do you receive command crime condition
14 reports at your precinct?

15 A. Yes, from my supervisors.

16 Q. Do you review those command condition reports?

17 A. Yes, I do.

18 Q. Do you ever speak with your officers about the crime
19 conditions that they are trying to address?

20 A. Yes, all the time.

21 Q. When do you do that?

22 A. Whenever I happen to be doing a roll call, I ensure that
23 they are advised of what is happening in the precinct. I also
24 talk to them to ensure that they are looking at it. We have a
25 board at the precinct that also states the conditions.

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D3M8FLO4

Agron - cross

1 Whenever I'm driving around with them in a police car, I also
2 talk about it.

3 Q. Why do you speak to officers about their crime conditions?

4 A. I speak to ensure that they are aware of what particular
5 issues are affecting the community.

6 Q. Sergeant Agron, how do you ensure that officers under your
7 supervision are properly conducting stop, question and frisks?

8 A. Often I pay attention to the radio. If I hear an officer
9 that made a stop, I will drive over. On other occasions, I
10 look at their memo books and compare them to the stop, question
11 and frisk to ensure that they are properly being recorded.

12 Q. Is there anything else?

13 A. Also, I make sure there is no omissions. I make sure all
14 the captions from the 250 correlate with the entries, and also,
15 perhaps more importantly, to ensure that it is a legal stop.

16 Q. Do you ever speak with your officers about the stops that
17 they have made?

18 A. Yes, I speak with them.

19 Q. What do you speak to them about?

20 A. I speak to them about, I would just try and ascertain
21 whether they used proper tactics, whether they conducted a
22 legal stop, or why the stop came about.

23 Q. And have you discussed these issues, whether it's a legal
24 stop, since your 2009 deposition?

25 A. Yes.

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D3M8FLO4

Agron - cross

1 Q. Just going back to your personal training, what training
2 did you receive at the police academy regarding stop, question
3 and frisk?

4 A. I received training at the precinct level through roll
5 calls, the training supervisor, some of my supervisors outside
6 the precinct. I have gotten training at Rodman's Neck and in
7 other classroom instructions, and on many informal situations
8 also.

9 Q. Have you received training on completing UF-250s?

10 A. Yes.

11 MR. MARUTOLLO: One moment, your Honor.

12 Q. Since your deposition in 2009, have you ever questioned an
13 officer under your supervision regarding that officer's basis
14 for a stop?

15 A. Yes, numerous times.

16 Q. With respect to the racial profiling policy discussed
17 during your direct examination, do you know if the NYPD has a
18 policy regarding racial profiling?

19 A. Yes. It's prohibited.

20 Q. What is prohibited?

21 A. Stopping someone based on race.

22 Q. When did you first learn about the NYPD's racial profiling
23 policy?

24 A. Before this, the deposition, I heard about it. I never saw
25 the actual document. But after the deposition, I both heard

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D3M8FLO4 Agron - cross

1 about it and I have seen the document itself. It's a recent
2 one that came out, I believe, in 2011.

3 Q. Have you ever been trained on the NYPD's policy prohibiting
4 racial profiling?

5 A. Yes.

6 Q. Since your deposition, have you ever spoken to officers
7 under your supervision regarding the policy prohibiting racial
8 profiling?

9 A. Yes, on numerous occasions.

10 Q. Since your deposition in 2009, have you ever spoken to
11 superiors regarding the NYPD's policy prohibiting racial
12 profiling?

13 A. Yes.

14 Q. Now, turning your attention to January 12, 2008, what was
15 your assignment that night?

16 A. I was assigned as an impact supervisor.

17 Q. Was it impact or impact overtime?

18 A. Impact overtime. I'm sorry.

19 Q. Why were you serving as the impact overtime supervisor?

20 A. I volunteered for it.

21 Q. Now, were you physically present for the stop and/or arrest
22 of Mr. Deon Dennis?

23 A. No.

24 Q. Are officers permitted to process arrests made by other
25 officers?

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D3M8FLO4

Agron - cross

1 MS. HOFF VARNER: Objection, your Honor.

2 THE COURT: Why is that objectionable?

3 MS. HOFF VARNER: It goes further into the scope of
4 the arrest, and we have opened the door so far. The arrest,
5 even though we have mentioned it, it is still excluded from
6 this case as per your rulings.

7 THE COURT: Let me look at that again. Objection is
8 sustained.

9 Q. If an officer in the field decides to issue a criminal
10 court summons, is he supposed to do a check for warrants?

11 A. Yes.

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

13 THE COURT: Anything further for this witness?

14 MS. HOFF VARNER: Just one moment, your Honor.

15 REDIRECT EXAMINATION

16 BY MS. HOFF VARNER:

17 Q. Sergeant Agron, you graduated from John Jay College with a
18 bachelor's degree, is that right?

19 A. Yes.

20 Q. I didn't quite catch the degree that you graduated with.
21 It was in what?

22 A. Legal studies.

23 Q. And you're currently pursuing a master's degree, correct?

24 A. Yes.

25 Q. In history?

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D3M8FLO4 Agron - redirect

1 A. That's correct.

2 Q. And you write papers as part of your work on that master's
3 degree?

4 MR. MARUTOLLO: Objection.

5 THE COURT: I will allow it. You raised it. I didn't
6 know why you went into it.

7 Q. You write papers as part of that degree?

8 A. Yes. That's parts of what I have to do, yes.

9 Q. Those papers are in English, aren't they?

10 A. Yes.

11 Q. You were trained by the NYPD police academy, isn't that
12 right?

13 A. Yes.

14 Q. That training was in English, wasn't it?

15 A. Yes.

16 Q. You testified that you were not physically present during
17 the stop of Deon Dennis on the night of January 12, isn't that
18 right?

19 A. When? Today or in the deposition?

20 THE COURT: It doesn't matter. Were you present?

21 Were you present during the stop?

22 THE WITNESS: No, I wasn't.

23 Q. Do you remember telling Mr. Marutollo that you sometimes
24 would drive over to see if a stop was being performed correctly
25 after you heard it on the radio? Do you remember just saying

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D3M8FLO4

Agron - redirect

1 that to him?

2 A. Can you be specific what the question that was asked by Mr.
3 Marutollo?4 Q. Mr. Marutollo asked you how you made sure that officers
5 were conducting legal stops. And I believe you said that you
6 paid attention to the radio and you would drive over to see
7 what was going on, isn't that right?

8 A. That's one of the ways, yes.

9 Q. And you would sometimes look at the memo books to see what
10 was going on, isn't that right?

11 A. That's another one, yes.

12 Q. But you didn't drive over to see what was going on with
13 Mr. Dennis on the night of January 12, 2008, did you?14 A. I don't remember going over because I'm not sure what I was
15 doing. Perhaps I was supervising all the officers. I was at
16 another job. I don't remember specifically why I didn't go
17 over.

18 Q. But you didn't go over, did you?

19 A. No.

20 Q. And you didn't look at Officer Salmeron's memo book, did
21 you?22 A. If you're saying I didn't, then I will take it at face
23 value.

24 Q. Since your deposition in 2009 -- let me withdraw that.

25 You said that you had never been subject to a quota at

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D3M8FLO4 Agron - redirect
1 the New York Police Department, is that right?

2 A. Yes.

3 Q. Has an officer ever told you that there is a certain
4 performance goal that you should meet?

5 A. That I should meet?

6 Q. Yes.

7 A. You're referring to one of my supervisors?

8 Q. Exactly. Has one of your supervisors ever told you there
9 is a performance goal that you should meet?

10 A. Sure, yes.

11 (Continued on next page)

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D3M9FLO5 Agron - redirect

1 BY MS. VARNER:

2 Q. Have you as the supervisor ever told your officers that
3 there's a performance goal that they should meet?

4 A. Yes.

5 Q. Have you ever ordered the officers who are your direct
6 subordinates to do five summonses on a tour?

7 A. I never mentioned any type of numbers.

8 Q. Have you ever suggested that it would be a good idea for
9 them to conduct more activity on their tour?

10 A. I never suggested in general more activity, no.

11 Q. You testified that you don't pressure officers to make
12 unconstitutional stops; isn't that right?

13 A. Yes.

14 Q. Isn't it also true that you've never told them that they --
15 that they have to make constitutional stops?

16 A. That's not true. I told them they have to make
17 constitutional stops.

18 Q. But you never did that until your deposition in 2009; isn't
19 that correct?

20 A. I -- in 2009 I don't know if I -- if I had done so, you're
21 right.

22 Getting back 2008 I was, 2009, I was doing the school
23 unit, in those two years.

24 Q. And you became a supervisor in 2002, correct?

25 A. Yes.

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D3M9FLO5 Agron - redirect

1 Q. And so as of your deposition in 2009 you had been a
2 supervisor for approximately seven years; isn't that right?

3 A. Yes. More or less, yes.

4 Q. Just one second.

5 MS. VARNER: That's all. Thank you, Sergeant.

6 THE COURT: Mr. Marutollo.

7 MR. MARUTOLLO: Nothing further, Your Honor.

8 THE COURT: So we'll have a short recess until quarter
9 of on that clock.

10 (Witness excused)

11 (Recess)

12 MS. MARTINI: Plaintiffs next witness is Raymond Diaz
13 who we agreed to call through deposition designation because he
14 is retired from the department.

15 MS. MARTINI: Your Honor, Raymond Diaz was the
16 commanding officer of patrol borough Manhattan North 2008
17 during the time that Deon Dennis was stopped in the 28th
18 precinct. And the 28th precinct is in patrol borough
19 Manhattan North.

20 THE COURT: I've got two volumes here. What is this,
21 two different days?

22 MS. MARTINI: Staple just couldn't fit through. It's
23 one succinct deposition transcript.

24 MR. CHARNEY: He's an important witness, your Honor.

25 THE COURT: Is he?

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D3M9FLO5

"Diaz"

- 1 "Q. Please state your name for the record.
2 "A. Assistant chief Raymond Diaz.
3 "Q. And your present rank is assistant chief?
4 "A. Yes.
5 "Q. How long have you been assistant chief?
6 "A. Assistant chief about seven -- let me see, seven, eight,
7 about nine years, about nine years.
8 "Q. So sometime in the year 2000?
9 "A. Yes.
10 "Q. And what is your current assignment?
11 "A. I'm the commanding officer of patrol borough Manhattan
12 South.
13 "Q. When did you get that assignment?
14 "A. That assignment was in February of 2002.
15 "Q. You were assigned patrol borough Manhattan South in
16 February of 2002?
17 "A. Yes.
18 "Q. I was going to try to clarify.
19 "A. Patrol borough Manhattan South at the end of June 2009.
20 "Q. So that is a recent assignment?
21 "A. Yes.
22 "Q. A new assignment?
23 "A. Yes.
24 "Q. Before that you were chief of patrol borough Manhattan
25 North, right?

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D3M9FLO5

"Diaz"

- 1 "A. Yes.
- 2 "Q. Who did you replace in patrol borough Manhattan South as
- 3 the chief?
- 4 "A. Chief Tuller.
- 5 "Q. How long were you the chief of patrol borough Manhattan
- 6 North?
- 7 "A. Approximately seven years.
- 8 "Q. You didn't get any additional star as a result of going
- 9 from Manhattan North to Manhattan South; is that correct?
- 10 "A. No.
- 11 "Q. You still retain the same title at assistant chief?
- 12 "A. Yes.
- 13 "Q. What is the date of your appointment to the police
- 14 academy?
- 15 "A. January 2, 1970.
- 16 "Q. In preparation for today's deposition did you speak with
- 17 anybody?
- 18 "A. Yes, I did.
- 19 "Q. About the deposition?
- 20 "A. Yes.
- 21 "Q. Who did you speak with?
- 22 "A. I spoke with the people present here in this room.
- 23 "Q. The lawyers who represent you in this room?
- 24 "A. That's correct.
- 25 "Q. Aside from the lawyers, did you speak to anybody else?

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D3M9FLO5

"Diaz"

1 "A. Yes, I did.
2 "Q. Who did you speak with?
3 "A. I spoke to one of the supervisors in the patrol borough of
4 Manhattan South.
5 "Q. Who is that?
6 "A. I spoke to Chief Anger and Inspector Reilly.
7 "Q. This is in Manhattan South, right?
8 "A. That's right.
9 "Q. Chief Anger and who?
10 "A. Inspector Reilly.
11 "Q. And when you spoke to them, were your lawyers present?
12 "A. No, they weren't.
13 "Q. And when did you speak with them?
14 "A. This morning.
15 "Q. Can you tell me what you said to them and what they said
16 to you?
17 "A. I was trying to rec -- trying to recollect an issue
18 regarding stop and frisk.
19 "Q. And what issue was that?
20 "A. Whether anyone was ever disciplined or received discipline
21 for failure to prepare a stop and frisk report.
22 "Q. And what did you determine from that?
23 "A. My recollection was that I had seen discipline for that
24 violation and -- and in speaking to them, they confirmed that
25 they had seen the same type of discipline.

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D3M9FLO5

"Diaz"

1 "Q. And discipline for failing to adequately fill out the
2 UF 250 forms or for conducting a suspicion of stop and frisk?

3 "A. Failure to fill out the form.

4 "Q. On how many occasions do you recall that you've seen that
5 happen?

6 "A. I would say a few. At least a few.

7 "Q. What is a few?

8 "A. Three. Maybe three, four.

9 "Q. And that is all you can recollect in your time in the
10 police department?

11 "A. That's correct.

12 "Q. And how would those violations have come to your
13 attention?

14 "A. To the best of my recollection, they came from referrals.
15 I think through the department advocate from the civilian
16 complaint review board.

17 "Q. So the complaints originally started with CCRB?

18 "A. That's correct.

19 "Q. And then they were referred to the department advocate's
20 office?

21 "A. Yes.

22 "Q. Now, paragraph four, I'm going about this totally
23 backwards because this was going to come at the end of my
24 thing. But since we're on it, I'm going to ask it anyway.

25 "Paragraph four, the sentence in there says, 'The
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D3M9FLO5

"Diaz"

1 quality assurance division will include compliance with this
2 directive and all of its command inspections.' What does that
3 mean?
4 "A. The quality assurance unit regularly comes into precincts
5 on a random basis and inspects the self-inspection system and
6 conducts their on self-inspection.
7 "Q. So when it says inspects the self-inspection, would you
8 call it units, system, the self-inspection system? How do they
9 inspect the self-inspection system?
10 "A. There is a file that would be kept in the command on all
11 of the self-inspection reports or worksheets that were
12 prepared.
13 "Q. And they review those?
14 "A. Correct.
15 "Q. For what purpose?
16 "A. To ensure that they're being done.
17 "Q. And what does the review process entail?
18 "A. I don't know.
19 "Q. When you say to ensure they're being done, you're talking
20 about to ensure that the self-inspection protocols are being
21 filled out, correct?
22 "A. Yes.
23 "Q. When you say they also conduct their own
24 self-inspections --
25 "A. Correct.

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D3M9FLO5

"Diaz"

1 "Q. -- QAD?
2 "A. Yes.
3 "Q. What do those involve?
4 "A. They have their own worksheets and they inspect various
5 areas of the precinct.
6 "Q. With respect to stop, question and frisk what does that
7 involve, if you know?
8 "A. I don't know.
9 "Q. Does it involve looking at UF 250s, a sampling of U250s to
10 determine whether officers are properly filling out the
11 UF 250s?
12 "A. Yes, it does.
13 "Q. And does it include a review of anything other than the
14 UF 250 forms, if you know?
15 "A. Yes, it does.
16 "Q. What does it include?
17 "A. I believe it also includes inspecting the activity logs of
18 officers.
19 "Q. The activity logs of officers who for -- withdraw that.
20 When you say it includes the activity logs --
21 "A. I think I have to correct my testimony.
22 "Q. Sure.
23 "A. I'm not really -- I'm not sure really what their
24 worksheet -- I'm thinking actually the precinct command
25 worksheets. I'm not sure if that is the same as the quality

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D3M9FLO5

"Diaz"

1 assurance worksheet.

2 "Q. When you say the precinct command worksheet, the
3 self-inspection worksheets?

4 "A. Yes. Yes, sir.

5 "Q. Does the quality assurance division do anything other than
6 seek to determine whether the form is being filled out
7 correctly to your knowledge?

8 "A. I don't know.

9 "Q. To your knowledge it doesn't do anything other than that?

10 "A. They do a report based on their inspection.

11 "Q. But what they inspect are the forms to see if the forms
12 are being filled out correctly, correct?

13 "A. That's correct.

14 "Q. They don't ever go behind the form to seek to determine
15 whether in a particular UF 250, whether the stop that resulted
16 in the UF 250 was a good stop or not? Correct?

17 "A. I don't know.

18 "Q. As far as you know, they don't do that, right?

19 "A. As far as I know.

20 "Q. Well does the CompStat process include whether the
21 self-inspections are being properly done or does the CompStat
22 process simply refer to the number of UF 250s that are being
23 done at a particular time in a particular precinct or command?

24 "A. It includes that and it also includes quality of the stop,
25 question and frisk.

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D3M9FLO5

"Diaz"

1 "Q. And so how does the CompStat review deal with the question
2 of the self-inspection protocols? What happens at the CompStat
3 review with respect to the self-inspection protocols that are
4 laid out in paragraph four of this order?

5 "A. I don't recall the self-inspection system ever becoming a
6 topic of CompStat.

7 "Q. What is reviewed in CompStat with respect to stop,
8 question and frisk?

9 "A. Volume of the stop, question and frisks, the quality of
10 the stop, question and frisks. The location of issuance of the
11 stop, question and frisks. The criminal history of the persons
12 that are being stopped. And the reasons for the stop.

13 "Q. When you say volume, what does that include? Are you
14 talking about the numbers, the total numbers of stop, questions
15 and frisks that are done in any particular unit or precinct?

16 "A. That's correct.

17 "Q. Or patrol borough for that matter?

18 "A. Correct.

19 "Q. Because CompStat reviews not just precincts but also
20 patrol boroughs, correct?

21 "A. That's correct.

22 "Q. And what is looked at in terms of determining whether the
23 volume -- in looking at the volume of stop, question and frisk,
24 what are you looking at, just -- go ahead. Go ahead.

25 "A. You look at a comparison -- we basically break down a

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D3M9FLO5

"Diaz"

1 CompStat period week to day, 28-day, year-to-date period. So
2 you look at a comparison. This year-to-date, 28-day,
3 week-to-date period versus last year for those periods. And
4 you --
5 "Q. Go ahead.
6 "A. -- and you would also look at the volume of reports or
7 250s prepared properly in precincts of comparable size and
8 crime.
9 "Q. So there is both a review of the actual performance of a
10 precinct or a unit being reviewed, in terms of their production
11 over certain periods of time on a weekly basis, a monthly
12 basis, or a yearly basis, correct?
13 "A. Yes.
14 "Q. And then there is a comparison of how that precinct is
15 doing or unit is doing compared to another unit or precinct
16 that is operating under similar crime conditions, is that fair
17 to say?
18 "A. I don't -- I don't think that happens at the -- actually
19 the CompStat process downtown.
20 "Q. Where does that happen?
21 "A. That is something that I would often look at. If I saw a
22 precinct that I thought was significantly down in stop,
23 question and frisk, then I would look at another precinct of
24 comparable size and crime to see what their numbers look like.
25 "Q. You're talking about when you were chief of patrol for

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D3M9FLO5

"Diaz"

1 Manhattan North, correct?
2 "A. Right.
3 "Q. You do that now in Manhattan South as well, right?
4 "A. Yes.
5 "Q. If you have a situation where you have crime going down
6 but stop, questions and frisks going up, you say this might
7 bring a commander in to ask them about it, correct?
8 "A. If I saw a substantial increase. Or I wouldn't say bring
9 him in. Either talk to him or --
10 "Q. And you said that has happened in the past, correct?
11 "A. Yes.
12 "Q. So in those instances where that's happened in the past
13 have you ever -- how many times has that happened if you can
14 recall?
15 "A. I can clearly recall one instance.
16 "Q. On that one that you clearly recall, what was the outcome
17 of your talking to the commander?
18 "A. He gave me an explanation as to why there was a
19 substantial increase.
20 "Q. What was the explanation?
21 "A. He had an internal procedure built into his precinct to
22 monitor the stop, question and frisks prepared versus the
23 arrests -- arrests that were affected.
24 "Q. Explain what that --
25 "A. Basically he would have his people at his precinct, his

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D3M9FLO5

"Diaz"

1 clerical people, review all of the arrests, and in those cases
2 where a stop, question and frisk on a basis of the arrest
3 should have been prepared and it was not prepared, he had his
4 own quality control where he then would instruct that a stop,
5 question and frisk be prepared.
6 "Q. And it's that process that you said explained the increase
7 in the number of stop, questions and frisks?
8 "A. Yes.
9 "Q. So as a result of the questioning of that commander what,
10 if anything, did he do or did you do with that information?
11 "A. I actually thought that was an excellent procedure.
12 Because he reviewed arrests where stop, question and frisks
13 should have been prepared and were not prepared. And that is a
14 procedure that I encouraged other commanding officers to also
15 do.
16 "Q. Other commanding officers, when you left the patrol
17 borough in Manhattan North, were other commanding officers
18 doing that as a regular part of their supervision or monitoring
19 of stop, question and frisk activity?
20 "A. I don't know.
21 "Q. Did you implement that with a written order to your
22 commander that they should do it?
23 "A. No.
24 "Q. It was just a verbal advice to them?
25 "A. That's correct.

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D3M9FLO5

"Diaz"

1 "Q. Do you know if they told it or not?

2 "A. I don't know.

3 "Q. Was it mandatory that they follow it --

4 "A. No.

5 "Q. -- or did you just make a suggestion?

6 "A. I made a suggestion.

7 "Q. So in the one instance that you recall the spike in the
8 number of stop, question and frisks was because of officers not
9 filling out the UF 250 form when an arrest was made, correct?

10 "A. That's correct.

11 "Q. And in what circumstances is an officer supposed to fill
12 out a UF 250 form when an arrest is made?

13 "A. When the arrest is based on a stop, question and frisk
14 circumstance.

15 "Q. If it's based initially on a reason of suspicion, even if
16 an arrest follows, you're supposed to fill out the UF 250,
17 correct?

18 "A. That's correct.

19 "Q. If the arrest is based initially on probable cause, you
20 don't have to fill out the UF 250?

21 "A. That's correct.

22 "Q. Whether you said yes, you did, what were you going to
23 refer to?

24 "A. I was referring to the fact that I was aware of any
25 instance where an officer might have conducted a stop with less

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"Diaz"

1 than a reasonable suspicion.

2 "Q. And your answer was yes?

3 "A. Yes.

4 "Q. Tell me about that.

5 "A. Because I've often reviewed disciplinary actions where
6 officers were disciplined for stopping and conducting a stop
7 with less than a reasonable suspicion.

8 "Q. And when you say you reviewed disciplinary proceedings, in
9 what capacity?

10 "A. Capacity as -- as a commanding officer of the borrow. I
11 might review civilian complaints, and in reviewing an officer's
12 civilian complaint observe that he received discipline for an
13 improper stop.

14 "Q. So reviewing civilian complaints of an officer in your
15 audit -- in your unit, correct?

16 "A. Or within my command.

17 "Q. Within your command.

18 "And under what circumstances would you be doing that,
19 reviewing officers' civilian complaint history?

20 "A. Well, we often get officers that are into civilian
21 complaint monitoring programs, and I might review the
22 complaints that the officers received as a result of him being
23 placed into that program.

24 "Q. And in the course of reviewing officers in those
25 monitoring programs, is it your testimony that from time to

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"Diaz"

1 time that you observed that the complaints for which the
2 officer has been disciplined have involved violating a
3 department's stop, question and frisk policy?

4 "A. Yes.

5 "Q. And what would you do with that information? If this
6 information comes before you, what would you do with that if
7 you determined that officers were violating the stop, question
8 and frisk policy?

9 "A. I would use that information to discuss with commanding
10 officers and giving instructions to their officers.

11 "Q. In what way? How would you use that information? What
12 kind of instructions?

13 "A. To instruct them of the importance of officers, number
14 one, properly preparing the form and properly conducting stop,
15 question and frisk, because we didn't want to see officers
16 getting disciplined for -- for not doing it properly.

17 "Q. In all of the time that you've been borough commander
18 either of Manhattan North or Manhattan South, and reviewing
19 disciplinary proceedings against officers, have you ever
20 reviewed a disciplinary proceeding where the officer has been
21 found guilty of racial profiling in the context of stop,
22 question and frisk?

23 "A. No.

24 "Q. What kind of violations have there been of the stop,
25 question and frisk policy that you have reviewed?

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"Diaz"

1 "A. Failure to prepare the report and to conduct a -- an
2 improper or a stop that wasn't based on reasonable suspicion.
3 "Q. But not necessarily one that was reflective of racial
4 profiling, correct?
5 "A. That's correct.
6 "Q. Show when you say it lacked reasonable suspicion, that
7 would be reasonable suspicion generally under the Fourth
8 Amendment, correct?
9 "A. Yes.
10 "Q. If a civilian has made a complaint about an officer that
11 they were subjected to an unlawful stop, question and frisk,
12 how would the police department determine whether that, in
13 fact, was the case?
14 "A. An investigation would be conducted.
15 "Q. What kind of investigation would you do?
16 "A. Investigation would initially go to probably either CCRB,
17 and possibly kept by CCRB, or referred to the department for
18 investigation.
19 Q. What I'm really wondering is -- my question was properly
20 imprecise, but my question is: What kind of investigation
21 would you do substantively to determine whether an officer had
22 violated the stop, question and frisk policy?
23 "A. I don't know if I understand the question. If I was
24 investigating a complaint?
25 "Q. Yes.

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"Diaz"

1 "A. I would interview the officer and interview the
2 complainant.
3 "Q. So you would want to look at the UF 250 forms, correct?
4 "A. Yes, sir.
5 "Q. And you would want to interview the officer?
6 "A. That's correct.
7 "Q. To get their view of what happened, correct?
8 "A. That's correct.
9 "Q. You would want to interview the complaining person who was
10 complaining that they were subjected to an illegal stop,
11 question and frisk, correct?
12 "A. Correct.
13 "Q. Would you also seek to interview any witnesses to that?
14 "A. Absolutely.
15 "Q. And that includes not just civilian witnesses but police
16 officer witnesses as well, correct?
17 "A. Correct.
18 "Q. Would you seek to interview the officer's supervisor?
19 "A. If he was present on the scene.
20 "Q. And any other documents that you -- and any other
21 documents that you would want to look at besides the stop,
22 question and frisk?
23 "A. If -- if one of the bases is -- if the basis was made on
24 the basis of a radio run, I might review the sprint reports.
25 If there is video surveillance available, the video.

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"Diaz"

1 "Q. Would there be an occasion where you would want to look at
2 that officer's prior stop, question and frisk activity?

3 "A. No.

4 "Q. Why not?

5 "A. Because I would base my investigation just on the facts of
6 that particular case.

7 "Q. Well, are you ever concerned that when you get a complaint
8 about stop, question and frisk activity that it is essentially
9 a tip of an iceberg in a precinct, that it reflects not just an
10 individual violation of the department policy but that it may
11 be reflective of a unit or a precinct-wide violation of the
12 department's stop and frisk policy?

13 "A. I'm not sure if I understand your question. Did I have a
14 concern?

15 "Q. Yes.

16 "When you get a complaint, do you try to look to see
17 if it is just a problem with one officer, it may be a problem
18 of a unit or the entire precinct?

19 "A. No.

20 "Q. That has never been something that you looked at in all
21 your time as a head of patrol borough of Manhattan North or
22 Manhattan South, correct?

23 "A. Not -- not just by looking at one report, no.

24 "Q. But using that report as a springboard to say, well, let
25 me look at this officer's history, let me look at his unit

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"Diaz"

1 history, let me look at the command's history in terms of
2 stops, questions and frisks to determine whether there is more
3 than just an individual problem?
4 "A. Not -- not just by looking at one complaint.
5 "Q. You mentioned monitoring programs. What monitoring
6 programs are there currently in place in the police department
7 with regard to officers?
8 "A. Civilian complaint monitoring.
9 "Q. What is that?
10 "A. Officers that receive a certain amount of civilian
11 complaints within a certain period fall into a program.
12 "Q. How many within what period?
13 "A. There is -- it is various. I think it's five or more
14 career, without getting one within, I think, a three-year
15 period is a -- there's a whole written procedure on -- on the
16 different numbers for the different specified time periods.
17 "Q. But you're not familiar with what they are as you sit here
18 today?
19 "A. Off the top of my head, no.
20 "Q. Are there different levels of monitoring depending on the
21 number of complaints?
22 "A. I -- I don't believe so with the CCRB program.
23 "Q. So without being able to tell me what the exact number is
24 or the time period, it's your understanding that there is a
25 monitoring program within the police department that monitors

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"Diaz"

1 officers who get a certain number of civilian complaints within
2 a certain period of time?
3 "A. That's correct.
4 "Q. What does the monitoring consist of?
5 "A. The commanding officer has to review, actually do a report
6 as to that officer's history and what steps are being taken to
7 avoid that officer getting civilian complaints.
8 "Q. When you say a commanding officer has to do a report on
9 the officer's history, what does that mean? Once they're put
10 on the monitoring program?
11 "A. That's correct.
12 "Q. Is the monitoring program automatic if you get a certain
13 number?
14 "A. Yes.
15 "Q. So once you get on the monitoring program what happens
16 then?
17 "A. A report is usually sent down. A request is usually sent
18 from downtown requesting that the -- that a report be prepared
19 by the commanding officer as to what steps are going to be
20 taken by the commanding officer to reduce that officer from
21 getting civilian complaints and to monitor his performance.
22 "Q. Does it matter what the outcome of the civilian complaint
23 is, or is it only certain outcomes that trigger monitoring?
24 "A. It doesn't matter what the outcome of the complaint is.
25 "Q. Even if it's a complaint that leads to -- the complaint

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"Diaz"

1 being unfounded and/or exonerated, that would still trigger
2 monitoring?

3 "A. That's correct.

4 "Q. Is there any separate monitoring program if somebody gets
5 a number of substantiated complaints?

6 "A. Not that I'm aware of.

7 "Q. But this is monitoring that goes on over a certain period
8 of time, right?

9 "A. No. I think I stand corrected. For the CCRB program I
10 don't know that there is -- I don't know that there is
11 automatically a report. I think there is initially a report.
12 I don't know if there are reports that are required after. I
13 think there are other monitoring programs that there might be
14 reports done on a periodic basis.

15 "Q. Who did the monitoring reports go to?

16 "A. They go usually from the commanding officer to the
17 borough, the borough to the chief of patrol, and I think they
18 ultimately end at the first deputy commissioner's office.

19 "Q. Is there a unit within the police department that is
20 responsible for monitoring officers who have disciplinary
21 problems?

22 "A. Yes, there is.

23 "Q. What is that?

24 "A. It's called the -- I think the monitoring unit or
25 something like that. I think it comes out of the first deputy

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"Diaz"

1 commissioner's office.

2 "Q. Other than civilian complaint monitoring, are there other
3 monitoring programs?

4 "A. Force monitoring.

5 "Q. Anything else? Any other programs?

6 "A. I think there is a performance monitoring unit.

7 "Q. What does that monitor?

8 "A. I don't clearly recall. It might be performance issues.
9 I don't recall.

10 "Q. You mean job performance issues, right?

11 "A. Yes.

12 "Q. Would that be chronic absenteeism, that kind of stuff.

13 "A. I think that might be included, yes.

14 "Q. The force monitoring is monitoring officers who get a high
15 number of excessive force complaints?

16 "A. Yes.

17 "Q. What is the number that triggers force monitoring?

18 "A. I don't know.

19 "Q. What unit is responsible for doing the force monitoring?

20 "A. I believe that comes out of the first deputy
21 commissioner's office.

22 THE COURT: I would like to.

23 "A. I would like to just correct my testimony regarding -- you
24 had asked about training regarding racial profiling. And I
25 would just like to note that in our training for stop, question

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"Diaz"

1 and frisk, where we stress that you need reasonable suspicion
2 to conduct a stop, and in arrest situations you need probable
3 cause. We talk about that. That is exactly what criteria is
4 needed. That you can't base the arrest or stop based on issues
5 of race, religion, or ethnic background.
6 "Q. When you say 'in the training,' in the training in the
7 academy?
8 "A. In the training in the academy and ongoing training that
9 goes on daily in precinct commands.
10 "Q. What kind of ongoing training daily are you referring to?
11 "A. Everyday there is a training officer or supervisor that is
12 required to conduct training prior or after roll call or after
13 the end of their tour. And daily there is training.
14 "Q. It doesn't always involve racial profiling, right?
15 "A. It doesn't always involve racial profiling. But it often
16 involves arrests, stop, question and frisks.
17 "Q. But what is done in the police department other than the
18 self-inspections and perhaps an individual investigation to
19 ensure that officers are not engaging in racial profiling?
20 "A. Well, we ensure our officers are making arrests based on
21 probable cause and their stops based on reasonable suspicion.
22 "Q. And that is done how? Forget about probable cause. Let's
23 talk about stops based on reasonable suspicion. What is being
24 done in the police department to determine whether that, in
25 fact, is taking place?

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"Diaz"

1 "A. We have supervisors on patrol. And typically when
2 officers conduct stops, and many times there is a supervisor
3 present who responds to that scene, and I'm sure that
4 supervisor, if he had heard which I've never heard that that
5 officer stopped a person because he was a particular ethnicity
6 or gender, or what have you, I'm sure that the supervisor would
7 be instructing that officer.

8 "Q. What does the department do to make sure that the stops
9 that are being made are being made on a reasonable suspicion
10 and not something less?

11 "A. Well, we have levels of supervision. I mean a supervisor
12 is out there. And they're very active, you know, that respond
13 to many assignments that our officers respond to, to make sure
14 that the officers are conducting themselves properly.

15 "Q. So is it fair to say that you rely primarily on the
16 initial supervisors and the unit supervisors to make sure that
17 the officers are not making stops unless there is reasonable
18 suspicion?

19 "A. That is one of the emphases, yes.

20 "Q. Isn't that the primary emphasis that the department relies
21 on to ensure that reasonable suspicion is present in stops and
22 frisks?

23 "A. Besides training.

24 "Q. I understand. People get training in the academy and they
25 get reminded from time to time in roll call?

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"Diaz"

1 "A. Yes.

2 "Q. I'm talking about what happens in terms of on the street.
3 Is it fair to say that the department relies on its supervisors
4 to make sure that stops are being done only on reasonable
5 suspicion?

6 "A. Yes.

7 "Q. Are you aware of the overall general number of statistics
8 of stop, question and frisks in the City of New York at any
9 given -- at any one given period?

10 "A. No.

11 "Q. From time to time at CompStat meetings you get reports of
12 the numbers in each unit or in the borough or even citywide,
13 correct?

14 "A. That's correct.

15 "Q. Is it fair to say that in the last several years the
16 number of stop, question and frisks are over 500,000?

17 "A. I don't know.

18 "Q. You have no idea what the number is?

19 "A. The exact number, no.

20 "Q. But generally? Is it fair to say that the number is
21 somewhere around 500,000?

22 "A. I don't know. I might have heard that number. But I
23 don't know.

24 "Q. Did you know what percentage of the actual number lead to
25 any arrests?

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"Diaz"

1 "A. I believe I recently heard a number like ten percent.

2 "Q. So that means that of all the stops and frisks, 90 percent
3 does not lead to any kind of arrest activity, correct?

4 "A. Yes.

5 "Q. As a senior police officer in the police department, does
6 that give you any cause for concern?

7 "A. No.

8 "Q. Why not?

9 "A. Because stops and -- stop, question, frisks are a very
10 valuable tool, and they save countless of lives and result in
11 the apprehension of many people. And oftentimes there are
12 numerous people that fit the description of a suspect that's
13 broadcast, and unfortunately sometimes innocent people are
14 stopped or often -- or at least ten percent of the time the
15 right person is stopped and put in custody. And in the long
16 run, lives have been saved and criminals have been put away.

17 "Q. So the fact that 90 percent of the time there is no
18 further activity, that doesn't concern you as a senior police
19 officer in the police department that maybe stops are being
20 made on less than reasonable suspicion?

21 "A. No.

22 "Q. How do you know that in those 90 percent of the stops that
23 don't lead to any further enforcement activity, that cops
24 aren't relying on less than reasonable suspicion? How do you
25 know that?

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"Diaz"

- 1 "A. I don't.
- 2 "Q. How would you seek to determine that?
- 3 "A. Based on complaints.
- 4 "Q. Why don't you mark this as Diaz Number 2.
- 5 "I've handed what's been marked as Diaz Deposition
- 6 Exhibit Number 2 for identification. Can you identify this
- 7 document?
- 8 "A. This is a stop, question and frisk report worksheet.
- 9 "Q. It's known as worksheet number 802, correct?
- 10 "A. That's correct.
- 11 "Q. And this is a worksheet that is used as part of the
- 12 self-inspection system in the police department?
- 13 "A. Yes, it is.
- 14 "Q. Why don't you mark this as 3.
- 15 "I've handed you what has been marked as Diaz
- 16 Deposition Exhibits 2, 3, and 4, correct?
- 17 "A. Correct.
- 18 "Q. And these are all copies of the same document, right? I
- 19 mean they're all similar forms.
- 20 "A. Yes.
- 21 "Q. Diaz Exhibit Number 2 is a worksheet for the period of
- 22 October 2009 to November 2009, right?
- 23 "A. It's a worksheet number -- 2 looks like a period for
- 24 October of '09.
- 25 "Q. And Diaz 3 is for the period September of '09, correct?

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"Diaz"

- 1 "A. That's correct.
2 "Q. And Diaz 4 is for the period of August of '09, right?
3 "A. That's correct.
4 "Q. So that is in these immediate last few months, right?
5 "A. Correct.
6 "Q. What are these documents? Who fills out these forms?
7 "A. The supervisor in the unit.
8 "Q. In the unit --
9 "A. That's being --
10 "Q. The supervisor. When you say the supervisor, the
11 supervisor in the command that is listed at the top of the page
12 there, command 182, correct?
13 "A. That's correct.
14 "Q. Command 182 is Manhattan North anticrime, correct?
15 "A. Correct.
16 "Q. Ands these are filled out on a monthly basis?
17 "A. Yes.
18 "Q. What is the purpose of these forms?
19 "A. To review, conduct a review of the stop, question and
20 frisk reports.
21 "Q. What is the extent of the review of the stop, question and
22 frisk reports?
23 "A. I believe 25 stop, question and frisk reports are
24 inspected basically for completeness -- completeness.
25 "Q. And is the inspection done to see if the form is being

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D3M9FLO5 "Diaz"

1 filled out correctly? Is that the point of the inspection?

2 "A. Yes.

3 "Q. In other words, of the 25 stops, the person doing this
4 review doesn't go back at a particular stop and seek to
5 question the person stopped or the officer who did the stop or
6 the officer -- or the officer's supervisor, correct?

7 "A. Not always. No.

8 "Q. There are occasions when that happens?

9 "A. Yes.

10 "Q. Based upon these self-inspections?

11 "A. Yes.

12 "Q. Typically is this review simply just a review of the
13 completeness of filling out the UF 250 form? Is that typically
14 what this is meant to capture?

15 "A. Yes.

16 "Q. On what occasion would this review lead to something more
17 than that?

18 "A. If -- if the reviewing officer observed that the stop or
19 the -- if the stop, question and frisk report was not properly
20 prepared.

21 "Q. Is that your full answer?

22 "A. Yes.

23 "Q. My question went beyond whether the form was prepared
24 properly. My question went to whether an officer -- whether
25 this review process would ever lead to a supervisor going back

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"Diaz"

1 and trying to determine whether any one of these 25 instances,
2 there was reason for suspicion to stop the person or whatever?

3 "A. No.

4 "Q. Strike the whatever.

5 "The answer is still no, right?

6 "The last column on the third page that you're looking
7 at where it says check member's activity log entries?

8 "A. Yes.

9 "Q. That column was left blank. Do you know why?

10 "A. I don't.

11 "Q. Is this supposed to be filled out?

12 "A. According to the form and the instructions it should have
13 been filled out for the 21st to the 25th stop, question and
14 frisk.

15 "Q. To determine if, in fact, the officer has made notations
16 in his memo book that correspond to the UF 250 that he or she
17 wrote out, correct?

18 "A. That's correct.

19 "Q. What is the purpose of that review?

20 "A. To ensure that activity logs are being prepared.

21 "Q. And any stop, question and frisk the officer has an
22 obligation to fill out not just one form but to document -- any
23 stop, question and frisk the officer has an obligation to
24 document that activity, not only in a UF 250, but in their
25 activity log as well, correct?

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"Diaz"

1 "A. That's correct.

2 "Q. And this is mandatory departmental policy, correct?

3 "A. That's correct.

4 "Q. Does this form in any way in your judgment seek to capture
5 information as to whether race has been a factor in this stop,
6 question and frisk activity being reviewed?

7 "A. Yes.

8 "Q. Where? In the column that says, 'Is the race of the
9 suspect indicated?'

10 "A. No."

11 MS. GROSSMAN: Your Honor, I realize that there is a
12 reference to exhibits. I don't know if it would be helpful for
13 you to have the exhibits.14 THE COURT: It's a little late to have thought of
15 that. It would have been helpful all along. I thought you
16 folks would have organized it that way. That's what people
17 usually do in trials when they mention exhibits. Somebody puts
18 it on the screen. But it's kind of late. Let's just use our
19 nine minutes. And if you get organized and you want to correct
20 it Wednesday, you can. Reminder, of course, we're not going to
21 be on trial until Wednesday.

22 MS. MARTINI: I'll start at line 17.

23 "Q. Where? In the column that says, 'Is the race of the
24 suspect indicated?'

25 "A. No.

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"Diaz"

1 "Q. Where?
2 "A. I would say, 'What were the circumstances which led to the
3 stop?'
4 "Q. And how would that capture whether race was a factor?
5 "A. Because that would indicate the basis of the stop.
6 "Q. So by process of elimination it is probably not likely
7 that an officer would put that they stopped somebody because of
8 race, right? Have you ever seen an officer indicate that in a
9 UF 250 that you've ever reviewed?
10 "A. No.
11 "Q. So you're assuming that because it's not listed under that
12 column, 'What were the circumstances which led to the stop,'
13 that race -- that had race been a factor it would have been
14 mentioned there?
15 "A. Yes.
16 "Q. Would you agree with me that for the most part, that if an
17 officer is engaging in racial profiling that they're not going
18 to make a notation of that in whatever report they're filling
19 out?
20 "A. I can agree.
21 "Q. So if, in fact, racial profiling is taking place in any
22 police department you're not likely to find that -- to find
23 that out by looking at the documents that an officer reports
24 their activities on, correct?
25 "A. No.

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"Diaz"

1 "Q. I'm sorry?

2 "A. Correct.

3 "Q. So how would you seek to determine whether racial
4 profiling exists in a police department like the City of
5 New York?

6 "A. On the basis of this report or just generally?

7 "Q. Just generally. I mean it's not likely that an officer is
8 going to put down on the form, 'I stopped this person because
9 they're black.' That would send out alarm bells obviously?

10 "A. Yes.

11 "Q. So that is not likely that that that is going to happen?

12 "A. Right.

13 "Q. So in the absence of that kind of direct information, what
14 would a police department like the City of New York do to
15 determine whether, in fact, even though they don't note it,
16 that racial profiling is, in fact, taking place in many
17 particular stops that are occurring in the City of New York?18 "A. Well, we regularly attend meetings. And if that was an
19 issue, that issue, I'm sure, is going to be presented to us.20 "Q. When you say you regularly attend meeting, what do you
21 mean?22 "A. Community meetings, community board meetings, meetings of
23 elected officials, community groups, clergy groups.24 "Q. Are you saying that community groups, clergy groups,
25 various other community meetings since 2002, that nobody has

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"Diaz"

1 ever complained about racial profiling and the way people are
2 being stopped and frisked on the street?

3 "A. No. I'm sure I've been at meetings where that has been
4 discussed.

5 "Q. So if that is reported, what do you do with that? If
6 those complaints are being made, how would you then proceed to
7 try to determine whether, in fact, it's true or not?

8 "A. The meetings that I've attended where I've heard those
9 types of sentiments have just been general meetings, not
10 specific complaints.

11 "Q. I understand. But given those general complaints, what
12 should the police department do to seek to determine whether,
13 in fact, there is some substance to those general complaints?

14 "A. We would encourage people that have those types of
15 complaints to report them so that they can be investigated.

16 "Q. To report them. Their individual complaints to whatever
17 reviewing agency they may want to go to?

18 "A. Yes.

19 "Q. And do you recall in the last -- since 2002, whether there
20 has been any complaints made by civilians where the allegation
21 has been that a -- where the allegation has been made that a
22 stop and frisk was done based upon the race of the suspect and
23 having nothing to do with any reasonable suspicion to stop
24 them? Do you recall any such complaints being made that you
25 were made aware of?

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D3M9FLO5

"Diaz"

1 "A. I'm not sure.

2 "Q. Do you recall hearing that the topic of racial profiling
3 in the -- do you recall that the issue of racial profiling and
4 how the police does its job has been raised at various city
5 council meetings over the last few years?

6 "A. Yes.

7 "Q. Has the department ever sought to determine whether, in
8 fact, based on those complaints, whether racial profiling is
9 taking place in the City of New York by its police department?

10 "A. I don't know.

11 "Q. Isn't it your testimony that the inspection pursuant to
12 worksheet 802 is primarily to determine whether the forms are
13 being filled out correctly?

14 "A. I'd have to correct that because there are captions in
15 there that also indicate what the reasons for the stop were.

16 "Q. You mean what the circumstances that lead to the stop?

17 "A. Right.

18 "Q. And those sections would simply look at the section of the
19 UF 250 that has been checked, right?

20 "A. Yes.

21 "Q. So that there is never a time when you go beyond that and
22 seek to determine whether, for instance, the officers checked
23 furtive movement, what the actual furtive movement was?

24 "A. There is no check for that.

25 "Q. Are you saying that these self-inspections, the 802-A

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"Diaz"

1 forms do seek to determine whether reasonable suspicion was
2 present?

3 "A. Yes.

4 "Q. Where would that be noted on the form, if reasonable
5 suspicion was not present?

6 "A. There is a caption in this, in the lower part of the form,
7 deficiency noted, yes or no.

8 "Q. Is the deficiency noted a documentary deficiency or
9 substantive deficiency?

10 "Do you understand the distinction? In other words,
11 is the deficiency being noted one that they didn't fill out the
12 form correctly or, in fact, there was a reasonable suspicion?

13 "A. I think that's fairly open. I think it could be either.

14 "Q. And as a commander in Manhattan North would this 802-A
15 form go across your desk?

16 "A. No.

17 "Q. Who gets this form?

18 "A. This would be sent by the evaluating supervisor to -- to
19 another supervisor for review.

20 "Q. What supervisor is where?

21 "A. This was -- this -- this was prepared by a sergeant in the
22 borough anticrime unit and was reviewed by a lieutenant in the
23 borough anticrime unit.

24 "Q. And that lieutenant is who?

25 "A. Lieutenant Materosso.

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"Diaz"

- 1 "Q. And does that lieutenant have a particular responsibility
2 with respect to the self-inspection reports being generated?
3 "A. Yes.
4 "Q. What position does Lieutenant Materasso --
5 "A. Lieutenant Materasso is the borough auto larceny
6 supervisor, and also is the borough anticrime integrity control
7 officer and administrator.
8 "Q. So this is the supervisor of the Manhattan North anticrime
9 unit, right?
10 "A. Yes.
11 "Q. So there is a self-inspection, right? This is not an
12 inspection by QAD, right?
13 "A. That is correct.
14 "Q. And then presumably at some point QAD reviews this because
15 the next page talks about QAD personnel?
16 "A. Yes.
17 "Q. Once QAD reviews it, where would this document go?
18 "A. It would be filed.
19 "Q. Where?
20 "A. Filed in the anticrime office.
21 "Q. Once it's reviewed by QAD, would it come across your desk as
22 a patrol borough commander.
23 "A. No.
24 "Q. Once it's reviewed by QAD, does anybody else in anticrime
25 review it?

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"Diaz"

1 "A. I don't know.

2 "Q. How would you determine by simply reviewing the online
3 booking sheet and the UF 250, how old you determine whether
4 reasonable suspicion was or was not present?

5 "A. In reviewing the UF 250, you would have to determine that
6 there was reasonable suspicion for the stop.

7 "Q. By looking at whether the box, the particular box was
8 checked, right?

9 "A. Yes.

10 "Q. So if the box was checked furtive movement, that would be
11 sufficient for that reviewing officer to determine that
12 reasonable suspicion was present, right?

13 "A. Not solely.

14 "Q. What else would they look at?

15 "A. Furtive movement for what purpose? He would have to be
16 also suspected as committing a crime.

17 "Q. Well, when the box on the UF 250 form is checked furtive
18 movement, there is no further description of what the furtive
19 movement is, is there?

20 "A. No.

21 "Q. So how would reviewing -- so how would the reviewing
22 officer -- how would the integrity control officer know whether
23 or not the furtive movement was actually a furtive movement?

24 "A. He wouldn't.

25 "Q. Aren't officers trained to be more detailed in their memo

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"Diaz"

1 book entries than they are in the UF 250 form?

2 "A. Not necessarily.

3 "Q. Once this form is prepared and it's all filled out, it
4 goes to Captain Flood. What happens with this document? It's
5 put in a file?

6 "A. That's right.

7 "Q. Is there any use that is made of it after that point?

8 "A. It might -- it might be.

9 "Q. What is that?

10 "A. Well, I would think that if a precinct or unit commander
11 or supervisor sees that there is continual deficiencies in an
12 area month after month, they should take some proactive action
13 to correct that."

14 THE COURT: All right. I think we'll just stop and
15 note that we got up to page 109. And we'll pick up with page
16 109 on Wednesday.

17 MS. MARTINI: Your Honor, with the Court's permission,
18 would we be permitted to continue the remainder of the
19 deposition designation on the holiday, next Friday, to
20 accommodate --

21 THE COURT: That's a thought. How much time could
22 that take?

23 MS. MARTINI: We have additional designations. And
24 we've conferred --

25 THE COURT: That's really a good idea. Then we could
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"Diaz"

1 use the half day. Okay. Pile them up and keep going.

2 MR. CHARNEY: We'll start with a live witness on
3 Wednesday morning.

4 THE COURT: We won't pick up on page 109. So for
5 those of you who do have a holiday next week, have a good
6 holiday. Some people are working on Monday anyway, doing a
7 deposition. I do realize that. But I'll see you all on
8 Wednesday.

9 (Adjourned to March 27, 2013 at 10:00 a.m.)

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