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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

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2  
3 DAVID FLOYD, et al.,

3  
4 Plaintiffs,

4  
5 v.

08 CV 1034(SAS)

5  
6 CITY OF NEW YORK, et al.,

6  
7 Defendants.

7  
8 -----x

8 New York, N.Y.  
9 May 7, 2013  
9 10:10 a.m.

10  
10 Before:

11  
11 HON. SHIRA A. SCHEINDLIN,

12  
12 District Judge

13  
13 APPEARANCES

14  
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1 (In open court; trial resumed)

2 THE COURT: Good morning everyone.

3 Please be seated.

4 MS. GROSSMAN: Your Honor, may I just be heard on a  
5 scheduling matter just for the rest of the week?

6 THE COURT: Sure.

7 MS. GROSSMAN: The good news is that we are on  
8 schedule and we have I think -- we plan to finish liability and  
9 I think we expect to finish by early next week. We have three  
10 liability witnesses that have to go next Monday and Tuesday and  
11 then the rest of our witnesses we believe we'll be able to  
12 finish up this week.

13 The only caveat is that we may, depending on the cross  
14 and how long direct and cross goes, there may be an hour or two  
15 on Friday where we may not have a witness to call and I just  
16 wanted to put that out there before your Honor because the  
17 three witnesses we have, have scheduling conflicts for this  
18 week. So but we're very optimistic that we can finish early  
19 next week. And it shouldn't at all affect our closing date.  
20 So I wanted to let the Court know.

21 THE COURT: Are you calculating Mr. Walker?

22 MS. GROSSMAN: Well, Walker I think that would be  
23 Wednesday.

24 THE COURT: So we are going to be using next  
25 Wednesday?

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1 MS. GROSSMAN: Yes.

2 THE COURT: That's what I wanted to know. We will use  
3 Monday, Tuesday and Wednesday as planned?

4 MS. GROSSMAN: Yes. And I don't anticipate that  
5 whatever witnesses we have to call next week will bleed into  
6 Thursday or Friday.

7 THE COURT: Right. But we're not going to push up  
8 summations either.

9 MS. GROSSMAN: Right.

10 THE COURT: We said if we finish as early as Monday or  
11 Tuesday then I said we'll have to have submissions Wednesday,  
12 Thursday or Friday. But if we use all of Monday, Tuesday and  
13 Wednesday the idea was to have the two days off.

14 MS. GROSSMAN: Yes. Your Honor, so that just means we  
15 just don't know how the testimony is going to play out between  
16 now and Friday but it just may be that there may be an hour or  
17 two on Friday that we may need to break early.

18 MR. MOORE: Can I clarify for the record who the three  
19 witnesses are? Is that McCormack, Farell, and Hall?

20 MS. GROSSMAN: Yes, your Honor, the last three  
21 witnesses.

22 MR. HELLERMAN: We're going to be calling Professor  
23 Fagan back either Monday or Friday -- either Friday or Monday;  
24 we're not sure yet. So perhaps the gap that Ms. Grossman is  
25 referring to on Friday we may be able to fill, but we don't

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1 know which day it will be.

2 MS. COOKE: To the extent you can identify the topics  
3 on which you're identifying Professor Fagan back on.

4 MR. HELLERMAN: Of course.

5 MS. COOKE: If it's anything relating to that chart,  
6 that be produced immediately. It hasn't been produced to me.

7 MR. HELLERMAN: I don't know if we're going to use  
8 that chart. But whatever we do use, you will have it in  
9 advance.

10 MS. COOKE: Thank you.

11 THE COURT: I received two letters, one from  
12 Mr. Charney and one from Ms. Cooke regarding Dr. Smith's  
13 testimony as to whether something or other is in the report.

14 MS. COOKE: We got the transcript this morning and I  
15 forwarded it to Professor Smith so he can see exactly what he  
16 referred to as his opinion in court and he's cross-referencing  
17 his reports to identify where in there he can identify the  
18 opinion lies. Mr. Charney has represented it's not present.

19 THE COURT: So that sort of remains a loose end.

20 Then at the end of the session yesterday we talked a  
21 little bit about Mr. Stewart. Where are we up to with that?

22 MS. GROSSMAN: Well we're -- we have been reviewing  
23 the decision and contemplating our next steps and we haven't  
24 decided yet but we should have a decision by the end of the  
25 day, the end of business today.

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1 THE COURT: If you're going to do the appeal somebody  
2 has to hear it and decide it all in time to call him next week.  
3 We don't want to be delayed by that.

4 MS. GROSSMAN: That's true. We have someone back in  
5 our office working on that.

6 THE COURT: I just want to point that out it takes  
7 time for some judge, whomever, to hear it, decide it, and that  
8 affects Stewart's testimony.

9 MS. GROSSMAN: Yes, your Honor. We're trying to  
10 work -- we have someone back at the office, as I said.

11 THE COURT: I know. I'm just saying since you were  
12 optimistic about when we're going to finish, that's yet another  
13 person depending on what he's going to testify to.

14 MS. GROSSMAN: Yes. I understand, your Honor.

15 THE COURT: All right. I guess that means we're ready  
16 to start.

17 MS. PUBLICKER: Defendants call Detective Benjamin  
18 White.

19 BENJAMIN WHITE,

20 called as a witness by the Defendants,  
21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. PUBLICKER:

24 Q. Good morning, Detective White.

25 A. Good morning.

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D579fl01 White - direct

1 Q. Are you currently employed?

2 A. Yes, I am.

3 Q. Where are you currently employed?

4 A. New York City Police Department.

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

7 A. About eight years.

8 THE COURT: I'm sorry. How many?

9 THE WITNESS: Eight years.

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

11 A. January of 2005.

12 Q. Did you attend the police academy?

13 A. Yes, I did.

14 Q. How long were you in the police academy?

15 A. Approximately six months.

16 Q. And what was your rank upon graduation?

17 A. Police officer.

18 Q. Did there come a time when you were promoted from the  
19 position of police officer?

20 A. Yes.

21 Q. To what position were you promoted?

22 A. I was promoted to the rank of detective.

23 Q. When did you receive that promotion?

24 A. I believe it was somewhere around January 2010.

25 Q. How did you receive that promotion?

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D579fl01 White - direct

- 1 A. I completed 18 months of investigative work in the  
2 organized crime patrol bureau.  
3 Q. Did you attend college?  
4 A. Yes, I did.  
5 Q. Where did you attend college?  
6 A. Kutztown University of Pennsylvania.  
7 Q. Did you receive a degree?  
8 A. Yes, I did.  
9 Q. And what was your degree in?  
10 A. Bachelor's degree in history.  
11 Q. Have you ever served in the military?  
12 A. Yes, I did.  
13 Q. And which branch?  
14 A. United States Marine Corps.  
15 Q. And what was your rank upon discharge?  
16 A. Private first class.  
17 Q. Why did you leave the marines?  
18 A. I had a preexisting shoulder surgery.  
19 Q. What kind of discharge did you receive from the marines?  
20 A. Honorable medical.  
21 Q. Why did you become a police officer?  
22 A. I wanted to serve my community.  
23 Q. Where are you currently assigned within the NYPD?  
24 A. I'm currently assigned as a detective investigator in  
25 narcotics bureau Manhattan North.

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D579fl01 White - direct

- 1 Q. How long have you been assigned to Manhattan North  
2 narcotics?  
3 A. Since October of 2010.  
4 Q. Where were you assigned before Manhattan North narcotics?  
5 A. Brooklyn South narcotics.  
6 Q. How long were you assigned to Brooklyn South narcotics?  
7 A. About two years.  
8 Q. Where were you assigned before Brooklyn South narcotics?  
9 A. I was assigned to the 24th precinct.  
10 Q. How long were you assigned to the 24th precinct?  
11 A. Approximately three years.  
12 Q. And were you assigned to the 24th precinct on August 5,  
13 2006?  
14 A. Yes, I was.  
15 Q. What area does the 24th precinct cover?  
16 A. It covers the west side of Manhattan from 86th to 110th  
17 Street; from Central Park West to the Hudson River.  
18 Q. Were you assigned to a particular unit within the 24th  
19 precinct?  
20 A. I was assigned to midnight patrol.  
21 Q. Why were you assigned to the midnight patrol?  
22 A. I chose that.  
23 Q. Why did you choose to work the midnight patrol?  
24 A. When I got out of the academy I wanted to work with the  
25 most senior cops so that I could learn the most. And most of

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1 the senior cops worked on the midnights.

2 Q. Is there any other reason you chose midnights?

3 A. There's also a ten percent night differential pay bump so  
4 you actually get paid more to work that shift.

5 Q. What were your duties and responsibilities as a police  
6 officer on the midnight patrol in the 24 precinct?

7 A. I was assigned patrol duties. Answering the radio. And,  
8 you know, making summary arrests.

9 Q. So turning your attention to August 5, 2006. Were you  
10 working that day?

11 A. Yes, I was.

12 Q. Do you recall what hours you were working?

13 A. I believe the midnight hours are 2315 hours by 0750 hours.

14 Q. Was there a particular sector or post in the 24th  
15 precinct that you were working that day?

16 A. Yes.

17 Q. And what sector was that?

18 A. I believe I was assigned to 24 Adam.

19 Q. Did you have a partner that day?

20 A. Yes, I did.

21 Q. Who was your partner?

22 A. Officer Fontanez.

23 Q. Do you know that she is now retired?

24 A. Yes, I do.

25 Q. Were you in a department vehicle that day?

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D579fl01 White - direct

- 1 A. Yes, we were.  
2 Q. Were you in uniform?  
3 A. Yes, we were.  
4 Q. And the department vehicle you were in, was it a marked  
5 vehicle?  
6 A. Yes, it was.  
7 Q. Was responding to radio runs part of your primary duties in  
8 the 24th precinct?  
9 A. Yes, it was.  
10 Q. How are radio runs assigned?  
11 A. Through a central dispatch.  
12 Q. Does the central dispatch choose which unit is supposed to  
13 respond to a radio run?  
14 A. Yes.  
15 Q. Do you know how they assign that?  
16 A. By the sector that covers that area.  
17 Q. In what circumstances would an unassigned sector respond to  
18 a job in a different sector?  
19 A. If they were backing up on a job, if it was a heavy job.  
20 Q. When you say a heavy job, what are you referring to?  
21 A. Something involving high potential for violence.  
22 Q. Do you recall listening to your radio on August 5, 2006?  
23 A. Yes.  
24 Q. Do you recall responding to a radio run that evening?  
25 A. Yes.

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D579flol White - direct

- 1 Q. Which radio run do you specifically recall responding to?  
2 A. I remember responding to I believe it was a call for man  
3 with a gun in the vicinity of 96th and Broadway.  
4 Q. Do you recall what the radio code for that radio run was?  
5 A. I believe it was 10-10 firearm.  
6 Q. What does 10-10 mean?  
7 A. Other crime in progress.  
8 Q. So would a call of 10-10 be followed up with a more  
9 detailed description?  
10 A. Yes.  
11 Q. What time was it when you first heard those radio runs?  
12 A. I don't recall.  
13 Q. Do you recall when in your shift you heard that?  
14 A. It was later in my shift.  
15 Q. Do you recall where you were when you first heard the radio  
16 runs?  
17 A. I don't recall.  
18 Q. Do you know which sector was assigned the radio run for the  
19 10-10 of males with a firearm?  
20 A. I don't recall.  
21 Q. Do you know if it was your sector?  
22 A. I don't believe it was.  
23 Q. Why did you respond to that call if it was not your sector  
24 assigned to it?  
25 A. We were just backing up on the job because it came over as

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1 a job of a man with a gun.

2 MS. PUBLICKER: Your Honor, at this time I'd like to  
3 play recordings from Defendants' Exhibit Z8 which are the radio  
4 transmissions for that evening just described in part by  
5 Detective White.

6 So I would move for the admission of the track titled  
7 radio message one from Defendants' Exhibit Z8 and the  
8 transcript of the relevant portions.

9 MR. AZMY: No objection, your Honor.

10 THE COURT: Do you have the transcript?

11 MS. PUBLICKER: Oh, yes. I'm sorry, your Honor.

12 If you could please play the recording from five  
13 minutes to 5:29.

14 (Audio recording played).

15 Q. Detective White, were you able to hear that recording from  
16 where you're sitting?

17 A. Yes.

18 Q. Could you describe what we just heard on that radio  
19 transmission?

20 A. That was central dispatch assigning a job to -- assigning  
21 the 10-10 man with a firearm to sector John and then you heard  
22 a variety of sectors answering up on the back.

23 Q. So I believe we heard two female voices; is that correct?

24 A. Including central, yes.

25 Q. Besides central, who was the other female voice we heard?

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1 A. Officer Fontanez.

2 Q. She was your partner that evening?

3 A. That's correct.

4 Q. And she responded Adam's on the back. What did you  
5 understand Adam's on the back to mean?

6 A. That we were backing up that sector on the job.

7 THE COURT: Why is it identified as Diana Lumbrazo.

8 MS. PUBLICKER: At the time of the incident her name  
9 was Fontanez. She's since married and her new name is  
10 Lumbrazo. Sorry for the confusion.

11 THE COURT: Same person.

12 Q. Does this refresh your recollection about what your sector  
13 that evening was?

14 A. Yes.

15 Q. So what was your sector that evening?

16 A. Sector Adam.

17 Q. And it also stated that sector George had responded; is  
18 that correct? Or sector George said that they were on the back  
19 as well?

20 A. That's correct.

21 Q. Do you know who was in sector George that evening?

22 A. I don't recall.

23 MS. PUBLICKER: Now Ms. Cooke if you could play from  
24 5:55 to 6:05.

25 THE COURT: I'm sorry. Is that the next segment?

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1 MS. PUBLICKER: I'll represent to the Court that there  
2 is a pause with some dead air time.

3 THE COURT: So the next segment of the transcript?

4 MS. PUBLICKER: Yes.

5 (Audio recording played)

6 Q. So what does it mean for sector John and your sector to say  
7 that they were 84?

8 A. That means we had arrived in the vicinity of the location.

9 Q. Had you stopped anyone at that point?

10 A. No, we had not.

11 Q. What does it mean when the dispatcher says your time is  
12 4:53?

13 A. Dispatch gives an arrival time.

14 Q. And that arrival time was approximately a minute after the  
15 first radio transmission?

16 A. Yes.

17 MS. PUBLICKER: If you could continue the recording to  
18 7:25.

19 (Audio recording played)

20 Q. What is an Annie Alley?

21 A. Location of a call.

22 Q. Sector John asked for the call back and the Annie Alley.

23 Why would officers do that?

24 A. They want to find out the -- you know where the call comes  
25 back to and the location of the call. Because if it's somebody

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1 calling from Long Island, clearly there's less emergency  
2 because it would be less likely that they're observing someone  
3 in person from that far away.

4 Q. Did you understand at this time that there was an anonymous  
5 caller?

6 A. No, I did not.

7 Q. Why not?

8 A. That information is not relayed.

9 Q. The dispatcher also provided information on the direction  
10 of the individuals, right?

11 A. Later on, yes.

12 Q. And what do you understand downtown side to mean?

13 A. The west side of the street.

14 Q. And do you -- why do you believe downtown means the west  
15 side of the street?

16 A. Because the traffic flows downtown on the west side of  
17 Broadway as well as the subway.

18 MS. PUBLICKER: If you could now play from 7:30 to  
19 7:40.

20 (Audio recording played)

21 Q. What do you understand that transmission to mean?

22 A. It's four John going over the air stating that we have  
23 three people stopped and to slow it down meaning that, you  
24 know, there is no immediate danger and we don't want people  
25 rushing to the scene.

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1 Q. Is it fair to say that you stopped the three individuals  
2 approximately two-and-a-half minutes after the first call from  
3 dispatch?

4 A. Without doing the math on the times, it seems accurate.

5 MS. PUBLICKER: We're now going to jump forward to  
6 nine minutes on the recording. And play from nine minutes to  
7 9:12.

8 (Audio recording played)

9 Q. What did you understand that to mean?

10 A. That's central giving back the location of the call saying  
11 that in regard to the call with the firearm the callback comes  
12 to a pay phone at the location at 96th and Broadway and that  
13 was John acknowledging her transmission.

14 MS. PUBLICKER: If you play the recording from 9:30 to  
15 10:10.

16 MS. COOKE: 9:35.

17 MS. PUBLICKER: 9:35. I'm sorry.

18 (Audio recording played)

19 Q. What does the NYPD radio code 10-5 mean?

20 A. It means repeat the transmission.

21 Q. Do you understand script to mean description?

22 A. Yes.

23 Q. So do you know why sector George was asking central to  
24 repeat the description?

25 A. Yes.

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1 Q. And why is that?

2 A. At that point we were trying to relay to the three  
3 individuals that we stopped that the reason we had stopped them  
4 was because they did match a description at the location that  
5 the call originated from.

6 Q. At the point that this 10-5 occurred were the individuals  
7 who were stopped free to leave?

8 A. Yes.

9 Q. So is it fair to say that the entire stop took less than  
10 three minutes?

11 A. Yes.

12 MS. PUBLICKER: If you could continue the recording  
13 from 10:10 to 10:27.

14 (Audio recording played)

15 Q. Why did sector George 10-5 the description a second time?

16 A. Again, the three individuals whom we had stopped were  
17 having a difficult time believing that the only reason that we  
18 had stopped them was due to the radio run. So we had replayed  
19 again the description so that we could say clearly you're  
20 wearing exactly the clothes that radio had described and that's  
21 the only reason why we had stopped you.

22 MS. PUBLICKER: Your Honor, there is another set of  
23 text happening here but it's unrelated to the stop so I'm going  
24 to move past that and start the recording at 14:10 to 14:30.

25 (Audio recording played)

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1 Q. And so is this a third time 10-5ing central for the  
2 description?

3 A. Yes, it is.

4 Q. Why did you 10-5 the description a third time?

5 A. Again, they were having a difficult time with why they were  
6 being stopped and we wanted to replay the radio transmission  
7 again so that they could clearly understand that this is why we  
8 had stopped them. They weren't picked at random. And that it  
9 wasn't based on any other factor other than the radio run  
10 directing us at that location to males matching their exact  
11 description.

12 MS. PUBLICKER: Again, your Honor, there's some  
13 unrelated radio transmissions so I'm going to jump forward to  
14 16:22 seconds to 16:30 seconds.

15 (Audio recording played)

16 Q. Did you recognize your voice, Detective White?

17 A. Yes.

18 Q. But you were not sector John that evening, correct?

19 A. That is correct.

20 Q. So do you know why you went over as sector John in this  
21 transmission?

22 A. At that time I had been assigned to several different  
23 sectors throughout different tours, you know, during the week  
24 and, you know, I just made a mistake.

25 Q. And in this recording you told the dispatcher that you had

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1 prepared three UF 250s for the stop; is that correct?

2 A. That is correct.

3 Q. Now Detective White, we have just listened to the  
4 recordings from the transmission. But without having listened  
5 to those recordings would you recall today specifically the  
6 description that you were given by the dispatcher?

7 A. No.

8 Q. But do you recall what the description was of?

9 A. Yes.

10 Q. And do you recall today exactly what those three  
11 individuals that you stopped were wearing?

12 A. No.

13 Q. Sitting here today do you recall if those three individuals  
14 fit the description provided by central?

15 A. Yes.

16 Q. And how closely did they fit the description?

17 A. They matched exactly. They were wearing exactly what  
18 central had put over which it was very unique, which is why we  
19 had stopped them.

20 Q. So where did you first see these three individuals that you  
21 stopped?

22 A. Crossing westbound from -- I'm sorry. Crossing eastbound  
23 from 96th and Broadway from the west side to the east side of  
24 the street.

25 Q. And were they on the south or the north side?

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D579fl01 White - direct

1 A. On the southwest corner crossing towards Broadway mall.

2 Q. What caused you to first notice these three individuals?

3 A. Initially it was that they matched the description that  
4 central had played over the radio exactly.

5 Q. Besides the description, did you notice anything else about  
6 these three individuals?

7 A. Yes, I did.

8 Q. And what was that?

9 A. That they -- all three had bulges in their waistband area.

10 Q. Why was that important to you?

11 A. Because we had a call of a radio run with man with -- armed  
12 with a firearm with an exact description and then we see the  
13 people matching that description exactly and, you know, coupled  
14 with the bulges in their pockets and waistband, I did have  
15 reasonable suspicion to conduct a stop.

16 Q. If you hadn't received those radio transmissions that we  
17 just heard, would you have stopped these three individuals  
18 solely for the bulges you saw?

19 A. No. Absolutely not.

20 Q. What happened when you first saw these three individuals?

21 A. We observed them walking across the street and then we  
22 stopped them.

23 Q. Do you recall what direction you were coming from when you  
24 first saw these individuals?

25 A. I don't recall exactly but I was somewhere -- either north

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1 or west of Broadway.

2 Q. So do you believe you were coming southbound?

3 A. Either southbound or eastbound, in the vicinity of 96th and  
4 Broadway.

5 Q. You parked your car when you arrived at the scene, correct?

6 A. That is correct.

7 Q. Once you parked your car, what happened next?

8 A. Exited the vehicle with my partner and had my firearm  
9 drawn. And ordered the three individuals to stop and put their  
10 hands up.

11 Q. Why did you have your gun drawn?

12 A. Because of the nature of the radio run saying that there  
13 are three males armed with a firearm and that I could observe  
14 bulges in their pockets. I was in fear for my safety.

15 Q. Did you ever hear the original 911 call that dispatch was  
16 based on?

17 A. No.

18 Q. So when you arrived at the location of the stop, did you  
19 say anything?

20 A. Yes.

21 Q. What did you say?

22 A. Police. Don't move. Let me see your hands.

23 Q. Why did you ask to see their hands?

24 A. The hands are a threat area. I wanted to see their hands.  
25 I wanted to see them empty so that I knew that we were safe.

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1 Q. Did the individuals show you their hands?

2 A. Initially, no.

3 Q. What did you do in response?

4 A. I ordered them to get on the ground.

5 Q. Why did you order them to get on the ground?

6 A. Because they weren't complying with the initial order to  
7 show me their hands. At that point I still believed there to  
8 be a firearm on one of the individuals. And for our safety I  
9 wanted them to get on to the ground.

10 Q. How many times did you ask them to get on the ground?

11 A. Several.

12 Q. Did they eventually get on the ground?

13 A. Yes, they did.

14 Q. Did they say anything to you during that time?

15 A. Yes, they did.

16 Q. What did they say to you?

17 A. I don't recall exactly who or the exact words they were  
18 saying but in sum and substance it was: Why? For what? What  
19 did I do? I didn't do nothing. What? You know, what is this  
20 for?

21 Q. Did you reasonably believe that these three individuals had  
22 committed a penal law misdemeanor or a felony at that point?

23 A. Yes, I did.

24 Q. And what penal law, misdemeanor or felony did you believe  
25 that they had committed?

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D579fl01 White - direct

- 1 A. Criminal possession of a firearm.  
2 Q. What happened after the three individuals eventually got on  
3 the ground?  
4 A. At that point I holstered my weapon. I went around and I  
5 frisked each man individually.  
6 Q. When you frisked the men, did you touch their genitals?  
7 A. No, I did not.  
8 Q. Did you feel any hard objects on the three individuals when  
9 you frisked them?  
10 A. Yes, I did.  
11 Q. What did you do in response?  
12 A. I felt what appeared to be the cellphones, or wallets,  
13 keys, various other items in their waistband and pocket areas.  
14 And I asked them, I said: Is this a cellphone? Is this your  
15 wallet? And they said yes.  
16 Q. Did you remove any objects from their pockets?  
17 A. No, I did not.  
18 Q. Did you put your hands in their pockets?  
19 A. No, I did not.  
20 Q. What happened after the three individuals were frisked?  
21 A. I had each one sit up, stand up. And I explained the  
22 reason for the stop.  
23 Q. Did you see any other police officers frisk these three  
24 individuals?  
25 A. No, I did not.

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D579fl01 White - direct

1 Q. What happened after the three individuals stood up?

2 A. Asked them for ID. And I explained to them again the  
3 reason why they had been stopped.

4 Q. Were the individuals free to leave at that point?

5 A. Yes, they were.

6 Q. Did they leave?

7 A. No, they did not.

8 Q. Why not?

9 A. They were still upset about being stopped and were asking  
10 why they had been stopped. Making accusations saying that the  
11 only reason they were stopped is because they were black. And  
12 at that point we had asked them to replay the radio  
13 transmission while I held the radio up so that they could hear.

14 Q. How many times did that happen?

15 A. About three times.

16 Q. After you replayed these radio transmissions did the  
17 individuals seem to understand why they were stopped?

18 A. I think that a reasonable person would believe that.

19 MR. AZMY: Objection, your Honor.

20 BY MS. PUBLICKER:

21 Q. Did these three individuals -- did they seem to you to have  
22 understood why they were stopped at that time?

23 A. I believe that they did understand, you know, however they  
24 were still upset.

25 Q. At the time of the stop did you believe that there was an

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D579fl01 White - direct

1 exactly did you stop these three individuals?

2 A. In the Broadway mall in between the north and southbound  
3 lanes of traffic.

4 Q. So that's a small pedestrian plaza between two different  
5 lanes of traffic?

6 A. Yes.

7 Q. Have you been to that area since 2006?

8 A. Yes.

9 Q. Does the area look the same at this time?

10 A. No, not even remotely.

11 Q. Why is that?

12 A. They moved the subway entrances from the east and west  
13 sides of Broadway to the center island. So they expanded that  
14 area and made it a much larger pedestrian area to allow access  
15 in and out of the subway.

16 Q. So does the area now appear as it did at the time that you  
17 stopped the three individuals?

18 A. Not even remotely.

19 Q. Did you -- I believe on the recording you stated that you  
20 filled out three UF 250s; is that correct?

21 A. That is correct.

22 Q. Why did you fill out those 250s?

23 A. Because I had stopped the individuals, you know, for a  
24 period of time and I felt it was necessary to conduct the  
25 UF 250 report.

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D579fl01 White - direct

1 Q. Detective White what I've just handed you is Defendants'  
2 Exhibit Z9. Do you recognize this exhibit?

3 A. Yes, I do.

4 Q. What do you recognize it to be?

5 A. The written copies of the UF 250 reports that I prepared in  
6 regard to this incident.

7 MS. PUBLICKER: Defendants move the admission of  
8 Exhibit Z9.

9 MR. AZMY: No objection.

10 THE COURT: Z9 is received.

11 (Defendants' Exhibit Z9 received in evidence)

12 Q. Starting with --

13 MS. PUBLICKER: I should mention for the Court that we  
14 have redacted the dates of birth from this version of the 250.

15 Q. So under the area titled, What were the circumstances which  
16 led to the stop, and starting with the 250 prepared for Talib  
17 Johnson what did you check off in that box?

18 A. Fits the description and suspicious bulge.

19 Q. On this form did you indicate whether you used force with  
20 these individuals?

21 A. Yes, I did.

22 Q. How did you do that?

23 A. I checked off the box that says: Suspect on the ground and  
24 pointing firearm at suspect.

25 Q. And you indicate on this form that you also explained the

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D579fl01 White - direct

1 A. Just officer oversight.

2 Q. And in the suspicious bulge object section, you've written  
3 in comments underneath that, correct?

4 A. Yes.

5 Q. Starting with Talib Johnson, what did you write?

6 A. Bulge in waistband, in parentheses, cellphone.

7 Q. Why did you write that?

8 A. Just to articulate the bulge that I had seen and then what  
9 it was, in fact.

10 Q. Now, moving to the UF 250 for Lamont Freeman. What did you  
11 write with regard to the suspicious bulge -- for the suspicious  
12 bulge for Lamont Freeman?

13 A. Bulge in pocket. And then parenthesis again, cellphone.

14 Q. Now finally turning to the 250 for Nicholas Peart, what did  
15 you write for the suspicious bulge or object for him?

16 A. Bulge in pocket. In parentheses, cellphone.

17 Q. Additionally on the front of these 250s you indicated that  
18 there were additional circumstances and factors present; is  
19 that correct, on the back of the 250s?

20 A. Yes.

21 Q. And what areas did you mark off for that?

22 A. Report from victim witness and proximity to crime location.

23 Q. Now again turning to the front of the 250s.

24 You stated earlier that you asked the individuals for  
25 their identification; is that correct?

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D579fl01 White - direct

- 1 A. Yes.  
2 Q. And did they provide identification to you?  
3 A. Yes, they did.  
4 Q. Did you mark that on these 250s?  
5 A. Yes, I did.  
6 Q. So, looking first at Talib Johnson's there's a notation  
7 that says PADL. Do you see that?  
8 A. Yes.  
9 Q. What does PADL mean to you?  
10 A. Pennsylvania driver's license.  
11 Q. Do you recall what the other individuals' identifications  
12 were?  
13 A. I believe they were school IDs and another form of  
14 nongovernment photo ID.  
15 Q. But you did not mark that on these 250s?  
16 A. No, I did not.  
17 Q. That's based on your memory?  
18 A. Yes.  
19 Q. Thank you. Could you have stopped these three individuals  
20 solely for fitting the description of three male blacks with a  
21 gun?  
22 A. No.  
23 Q. Why not?  
24 A. Just wasn't enough there.  
25 Q. Could you stop someone based solely on an anonymous call of

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D579fl01 White - direct

1 criminal conduct?

2 A. No.

3 Q. What else would you need to stop someone based on an  
4 anonymous call?

5 A. I would need a contributing factor. In this case it was  
6 the bulges in the waistband and the proximity to the crime  
7 location.

8 Q. Could you have stopped these three individuals solely  
9 because they had bulges in their pockets?

10 A. No.

11 Q. So why did you stop these three individuals?

12 A. It was just -- it was all the facts that presented  
13 themselves to me at the time that contributed to the factor  
14 that led me to stop these individuals.

15 Q. And could you just restate what those factors were.

16 A. It was the radio run of the penal law felony that came over  
17 the air, the proximity to the crime location that it was  
18 reported at, the fact that this three individuals that we  
19 stopped matched the description perfectly to what the radio  
20 transmission had said as well as the bulges that we had  
21 observed in their pockets.

22 MS. PUBLICKER: One moment, your Honor.

23 (Pause)

24 Q. Did the time that it took for you to see these individuals  
25 following the call contribute to your reasonable suspicion?

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D579flol White - direct

1 A. Yes.

2 Q. How so?

3 A. Because the radio transmission had stated that they were at  
4 a specific location at that time and because we happened to be  
5 nearby in the area and saw them within a reasonable amount of  
6 time in that specific location matching that description. That  
7 also contributed as well.

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

9 A. No.

10 Q. Have you ever been pressured to conduct a certain number of  
11 stops, summonses or arrests?

12 A. No.

13 Q. Have you ever felt that if you did not conduct a certain  
14 number of stops, summonses or arrests that you would be  
15 punished?

16 A. No.

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

19 A. No.

20 Q. Have you ever been denied overtime because your activity  
21 was too low?

22 A. No.

23 Q. Have you ever received a low annual evaluation because of  
24 low activity?

25 A. No.

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D579fl01 White - direct

- 1 Q. Have you ever been put on performance monitoring because of  
2 low activity?  
3 A. No.  
4 Q. Have you ever felt pressured to make unconstitutional  
5 stops, summons or arrests?  
6 A. No.  
7 Q. However, a supervisor has asked you to increase your  
8 summonses, right?  
9 A. That is correct.  
10 Q. What was the context?  
11 A. I hadn't really been writing that many moving violations --  
12 God bless you -- and my sergeant had asked if I could write  
13 more moving violations.  
14 Q. How many moving violations had you been writing before this  
15 conversation?  
16 A. Anywhere from approximately zero to two a month.  
17 Q. Did you have an understanding of whether that was less than  
18 other officers in your command?  
19 A. At the time, no. But my sergeant informed me that it was  
20 less than what everybody else had been writing.  
21 Q. So what did the supervisor say to you?  
22 A. He asked if I could write more summonses just to be on par  
23 with the rest of my squad.  
24 Q. And how did you respond?  
25 A. I told him that I spent most of my time in the arrest

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(212) 805-0300

D579fl01 White - direct

1 processing room so unless someone physically drove through the  
2 command it would be difficult to write a moving violation.

3 Q. And did you have an understanding of your arrest activity  
4 compared to other officers' arrest activity?

5 A. Yes.

6 Q. And what was that?

7 A. It was higher.

8 Q. That your activity was higher than other officers in your  
9 command?

10 A. My arrest activity was, yes.

11 Q. After this conversation with your supervisor did you  
12 increase your summons activity?

13 A. No, I did not.

14 Q. Were you punished for that?

15 A. No, I was not.

16 MS. PUBLICKER: One more minute, your Honor.

17 (Pause)

18 No further questions, your Honor.

19 THE COURT: All right. Mr. Azmy.

20 MR. AZMY: Thank you.

21 CROSS-EXAMINATION

22 BY MR. AZMY:

23 Q. Good morning, Detective White.

24 A. Good morning, Mr. Azmy.

25 Q. So you testified that you entered the police academy in

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D579fl01 White - cross

1 January of 2005?

2 A. That is correct.

3 Q. And when did you graduate from the police academy?

4 A. I believe it was either June or July of 2005.

5 Q. And so on the day of the incident, August 5, 2006, you had  
6 been a police officer for about one year?

7 A. You're a police officer from the time you enter into the  
8 command. So -- into the academy. So about a year-and-a-half.

9 Q. But you didn't -- did you -- you started patrolling before  
10 you graduated from the police academy?

11 A. No.

12 Q. You testified that you responded to a radio run on the  
13 early morning of August 5, 2006, right?

14 A. That is correct.

15 Q. And that radio run stated, among other things, that there  
16 were three black men in the vicinity of 96th and Broadway with  
17 a gun, correct?

18 A. Yes.

19 Q. The first part of the radio run that you responded to was  
20 that there were three black men in the vicinity of the 96th and  
21 Broadway with a gun, correct?

22 A. Well I would have to look at the radio transmission. I  
23 don't recall exactly what the description was.

24 Q. And that radio run in turn was based on an anonymous call,  
25 correct?

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D579fl01 White - cross

1 A. That I don't know.

2 Q. You testified in your deposition that it was anonymous,  
3 correct?

4 A. That I don't know.

5 MS. PUBLICKER: If you could give us the page and  
6 line.

7 BY MR. AZMY:

8 Q. Do you remember being deposed and having your deposition  
9 taken in this case on January 11, 2013?

10 A. I do remember being deposed. I don't know the exact date  
11 and time.

12 Q. Showing you a transcript of the deposition. Is that your  
13 deposition -- that your name on the deposition transcript?

14 A. That is my name on the deposition transcript, yes.

15 Q. You took an oath to tell the truth at this deposition?

16 A. Yes, I did.

17 Q. And you did tell the truth at the deposition?

18 A. Yes, I did.

19 Q. Can you turn to page 33, starting at line 22. Let me know  
20 when you've arrived.

21 MS. PUBLICKER: Your Honor, I would just state that  
22 this is not impeachment testimony. This is exactly how he's  
23 testified today and knowing your Honor has not seen it yet.

24 THE COURT: Exactly.

25 MR. AZMY: I think it impeaches his testimony that it  
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D579fl01 White - cross

1 was anonymous.

2 THE COURT: I don't know what it says. You'll have to  
3 read it. I have no idea.

4 Q. Are you there, detective? It was line -- page 33, line 22.

5 So I'm going to read you the transcript.

6 "Q. Even prior to, before you responded you didn't know the  
7 name or any information of the caller, did you?

8 "Ms. Publicker: Objection. You can answer.

9 "A. Answer as far as that material is not disclosed at that  
10 time.

11 "Q. So your testimony is that you didn't know that  
12 information?

13 "A. That's correct."

14 THE COURT: How does that differ from what he said  
15 here?

16 MR. AZMY: I just asked him if the call was anonymous.

17 THE COURT: Right.

18 MR. AZMY: And he -- and this suggests that he said it  
19 wasn't and this suggests that it was.

20 THE COURT: Where does it suggest that it was?

21 MR. AZMY: He doesn't know the identity of the caller.

22 THE COURT: Maybe I didn't hear -- read it again,  
23 please.

24 MR. AZMY: "Before you responded, you didn't know the  
25 name or any information of the caller, did you?"

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D579fl01 White - cross

1 "A. As far as that material is not disclosed at that time.

2 "Q. So your testimony is you didn't know that information,"  
3 being the name or any information of the caller.

4 "That's correct."

5 That suggests that he didn't know.

6 THE COURT: Does to you. But not to me. He says that  
7 information is not disclosed. So I guess that means he doesn't  
8 know one way or another whether the dispatcher was aware of the  
9 identity of the caller or whether it was anonymous, but he  
10 doesn't know because that's not disclosed by the person at  
11 central.

12 MS. PUBLICKER: I would also just note, your Honor,  
13 that's exactly how Detective White testified today.

14 THE COURT: It does seem to me to be consistent.

15 Q. After receiving the dispatch call it took you about 30  
16 seconds to arrive at the scene, correct?

17 A. I don't recall the exact time.

18 Q. Do you recall giving testimony to the Civilian Complaint  
19 Review Board soon after this event?

20 A. Yes, I do.

21 Q. Show you -- you testified about the events that took place  
22 on August 5, 2006 in this proceeding, the CCRB proceeding,  
23 correct?

24 A. If that's the CCRB that you're referring to, then yes.

25 Q. Would showing you a transcript of your testimony at the

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D579fl01 White - cross

1 CCRB refresh your recollection as to how long it took you to  
2 arrive at the scene?

3 A. Again, that's going to be testimony that I gave months  
4 after the event.

5 The only thing that would really refresh my memory as  
6 to how long it took me to arrive at the scene would be the  
7 radio transmissions and an exact timeline of the time of day  
8 that I received the call and the time of day that I --  
9 Q. So your testimony at the CCRB would not refresh your  
10 recollection about how long it took you to arrive at the event  
11 even though it occurred a month after you arrived -- the event  
12 in question?

13 A. Again, you're asking me to testify to an exact arrival time  
14 based on testimony that I gave a month after.

15 THE COURT: Right. He's saying if you read it now  
16 would it refresh your recollection. That happens all the time.  
17 People's recollection is refreshed if they read something they  
18 said at the time. It might or it might not. But he's asking  
19 you whether it might.

20 THE WITNESS: I don't think that's the correct  
21 document that would refresh that. I think that the Sprint  
22 report and the 911 document would be the more correct document  
23 that would refresh my recollection as to the exact arrival  
24 time. Not testimony that I gave a month after the fact.

25 Q. Do you remember your location when you received the call?

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(212) 805-0300

D579fl01 White - cross

- 1 A. I don't remember the exact location, no.  
2 Q. But you must have been close to the vicinity to respond  
3 fairly quickly, correct?  
4 A. I do remember that I was somewhere near the vicinity, yes.  
5 Q. You were in a patrol car when you received the call?  
6 A. Yes, I was.  
7 Q. With your partner Officer Fontanez?  
8 A. Yes.  
9 Q. And it was light out by the time you responded to the call,  
10 correct?  
11 A. Yes.  
12 Q. And you parked your -- when you arrived to the scene you  
13 parked your vehicle on the north side of the median at 96th and  
14 Broadway, correct?  
15 A. I was north of the southbound side of -- north of the  
16 southern median in the middle of Broadway and 96th.  
17 Q. And when you arrived at the scene you saw a lot of other  
18 people in the immediate vicinity, correct?  
19 A. There were a decent amount of people there, yes.  
20 Q. And after parking you saw three black males in the median  
21 around 96th and Broadway?  
22 A. That's not correct, no.  
23 Q. What's not correct about that statement?  
24 A. We had observed the individuals beforehand, before we had  
25 stopped. We had continued to observe them at the point of

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(212) 805-0300

D579fl01 White - cross

1 exiting the vehicle when we parked the car in the median --

2 Q. Okay. So when you parked the car, they were in the median,  
3 correct?

4 A. They were walking towards the median, yes.

5 Q. And you stopped them because you believed they fit a  
6 description you heard over the radio run?

7 A. That is correct.

8 Q. And you testified that they fit the description exactly,  
9 correct?

10 A. That is correct.

11 Q. The description you believe they fit, was there a  
12 description of their height?

13 A. I don't believe that was replayed over the radio.

14 (Continued on next page)

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D578FLO2

White - cross

- 1 Q. Was there a description of their weight?  
2 A. I also don't believe that was replayed over the radio.  
3 Q. Was there a description of their build or their complexion?  
4 A. No.  
5 Q. Was there a description of their age?  
6 A. No.  
7 Q. And you didn't actually observe them with a gun, did you?  
8 A. No, I did not.  
9 Q. You didn't observe them holding anything in their hands,  
10 correct?  
11 A. From what I could see their hands, no.  
12 Q. And you didn't observe any other suspicious behavior about  
13 them, right?  
14 A. Other than the fact that we had the radio run giving their  
15 description, the radio run stating there was a person with a  
16 gun, and the fact that they did have bulges in their pockets,  
17 that was it.  
18 Q. You never mentioned the possibility that they had a  
19 suspicious bulge in the CCRB investigation, did you?  
20 A. Again, I would have to read through the entire CCRB  
21 transcript. I don't recall exactly what I testified to.  
22 Q. The CCRB interview on September 11, 2006, does that sound  
23 about right?  
24 A. That does sound about right.  
25 Q. That was approximately a month after the events in

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(212) 805-0300

D578FLO2 White - cross

1 question, August 5, 2006?

2 A. Yeah, approximately a month after, yes.

3 Q. And the purpose of the CCRB investigation was to determine  
4 whether or not the complaint should be substantiated?

5 MS. PUBLICKER: Objection, to the extent Detective  
6 White knows what the purpose is.

7 THE COURT: He knows what the purpose of CCRB  
8 investigations are. It's to find out whether it's  
9 substantiated or not substantiated. That's what they do.

10 What is the answer?

11 THE WITNESS: That's the final determination.  
12 However, there are several factors that they could be  
13 evaluating that statement on.

14 THE COURT: Sure. But at the end of the day, they are  
15 going to say substantiated or not substantiated?

16 THE WITNESS: To a variety of accusations, yes.

17 THE COURT: OK.

18 Q. You took the investigation seriously, correct?

19 A. Yes.

20 Q. You would want to tell the truth to the investigator?

21 A. Yes, I would.

22 Q. And you would want to include all relevant facts that would  
23 help the investigator make a determination, correct?

24 A. Yes, I would.

25 Q. I would like to show you a transcript of your CCRB

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(212) 805-0300

D578FLO2 White - cross

1 interview.

2 Turning to page 6 of the CCRB interview, three lines  
3 down from page 6, Investigator Grodzicki --

4 MS. PUBLICKER: Are you asking him to refresh his  
5 recollection or are you impeaching him with this material?

6 Q. Can you review those three sentences?

7 THE COURT: Which three now?

8 MR. AZMY: Starting with, "Did they look suspicious in  
9 any way?"

10 THE COURT: Where are you?

11 MR. AZMY: Page 6.

12 THE COURT: Thank you.

13 Q. Does that refresh your recollection of whether or not you  
14 told the CCRB whether or not they had a suspicious bulge that  
15 evening?

16 MS. PUBLICKER: Number one, he is asking about a  
17 specific line, not the entire CCRB interview.

18 THE COURT: We can take a break and he can read the  
19 entire CCRB. It's fine with me. But I think you would  
20 stipulate. Is there any mention of a suspicious bulge in this  
21 transcript?

22 MS. PUBLICKER: Yes. Starting on page 3, but it  
23 carries over and the language is on page 4.

24 THE COURT: It starts on 3?

25 MS. PUBLICKER: His response starts on page 3 and it

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(212) 805-0300

D578FLO2

White - cross

1 carries over.

2 THE COURT: So starting where he says, "We got a  
3 backing sector for a gun run at the location, came over as  
4 three male blacks and description matching the three people we  
5 stopped. We happened to be right around the corner, we're  
6 first sector on the scene. We saw three people matching the  
7 description. We stopped them at gunpoint. Ordered them on the  
8 ground for our safety at which point they gave us a lot of lip  
9 service, refused to go down. We -- you know, we're able to get  
10 them down after several attempts of trying to get them to  
11 comply with our orders. They went down. We went over to them.  
12 We frisked them. Found nothing -- didn't find a firearm.  
13 Found cell phones, things, you know, bulges that turned out to  
14 be a legitimate object."

15 That's the part you wanted me to look at?

16 MS. PUBLICKER: Yes, your Honor. That the bulges  
17 turned out to be legitimate objects.

18 MR. AZMY: The question related to whether or not  
19 there was a suspicious bulge prior to stopping them, which is  
20 the testimony, and that certainly doesn't suggest that there  
21 was. Nor does the question that I pointed to --

22 MS. PUBLICKER: Is Mr. Azmy arguing at this point?

23 THE COURT: I think it's an argument.

24 MS. PUBLICKER: I would just state I don't see the  
25 point of argument at this time. If he has a question for the

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(212) 805-0300

D578FLO2

White - cross

1 witness.

2 THE COURT: The argument was that he was using this  
3 transcript to impeach that when he was asked about the purpose  
4 of the stop, did they look suspicious in any way, he didn't  
5 mention the bulge to the CCRB. That seems accurate. The bulge  
6 is what they found during the frisk on the ground.

7 MS. PUBLICKER: Your Honor, to be fair, Mr. Peart  
8 testified that he was on his stomach on the ground so the  
9 bulges could not be observed when they were on the ground.

10 THE COURT: That's not my point at all. He first  
11 mentioned finding the bulge during the frisk. There is no  
12 bulge mentioned earlier.

13 MS. PUBLICKER: If we could ask Detective White what  
14 he meant.

15 THE COURT: There is nothing to ask. We are looking  
16 at a transcript of what he said a month later. The transcript  
17 is what it is. I have read it.

18 THE WITNESS: If I could just state that they had a  
19 copy of the UF-250.

20 THE COURT: I understand.

21 THE WITNESS: If I had omitted any of that, it was  
22 only because I assumed it was common knowledge based on the  
23 evidence that I had brought with me to the CCRB testimony.

24 THE COURT: I understand.

25 MR. AZMY: I would like to move the transcript into  
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(212) 805-0300

D578FLO2 White - cross

1 evidence.

2 THE COURT: That's fine. It should have been marked  
3 anyway. What do you want to mark it as?

4 MS. PUBLICKER: I would object to the admission.

5 THE COURT: Overruled. This is a drop in the bucket.  
6 We have been doing this nine weeks. It's not going to make or  
7 break the case. I am taking the transcript.

8 MR. AZMY: 569.

9 THE COURT: 569 is received. The prior statement  
10 under oath of the witness.

11 (Plaintiffs' Exhibit 569 received in evidence)

12 BY MR. AZMY:

13 Q. At your deposition, you never mentioned that you observed a  
14 suspicious bulge before stopping them, correct?

15 A. Again, I would have to review my deposition.

16 Q. Can you turn to page 38, lines 2 through 9?

17 I ask you if that refreshes your recollection if you  
18 responded about a suspicious bulge?

19 MS. PUBLICKER: Your Honor, this is the same issue,  
20 that later in the deposition he does testify to bulges in their  
21 pocket and waistband area, just not at this specific question.

22 THE COURT: You want to read that portion in?

23 MS. PUBLICKER: Yes, your Honor.

24 MR. AZMY: Should we read this portion first?

25 THE COURT: Either way. Go ahead.

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(212) 805-0300

D578FLO2

White - cross

1 BY MR. AZMY:

2 Q. This is 38, starting at line 2.

3 "Q. You testified at CCRB you stopped individuals because they  
4 matched the description, is that correct?

5 "A. That is correct.

6 "Q. Is that still your recollection that that's the reason you  
7 stopped the three boys?

8 "A. Yes."

9 MR. AZMY: There is one more portion. Page 59, line  
10 24.11 "Q. And it's your testimony that that was the only basis that  
12 you stopped them?

13 "A. That's correct."

14 MS. PUBLICKER: Your Honor, I would read page 77,  
15 starting at line 23, through 78, line 4.

16 BY MS. PUBLICKER:

17 "Q. So you testified that you didn't find anything other than  
18 the cell phones, is that correct?"19 MR. AZMY: Your Honor, I don't think that this  
20 responsive.21 THE COURT: Can you let her finish, please? I can't  
22 have her interrupted and follow what she is saying.

23 Start again, Ms. Publicker.

24 BY MS. PUBLICKER:

25 "Q. So you testified that you didn't find anything other than

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D578FLO2

White - cross

1 the cell phones, is that correct, that was your testimony?

2 "A. Cell phones, wallets, and other things that would cause  
3 bulges in their pocket and waistband area."

4 THE COURT: Fine. It's read into the record.

5 BY MR. AZMY:

6 Q. Immediately after you parked your vehicle, you and Officer  
7 Fontanez exited the vehicle with your guns drawn, correct?

8 A. That is correct.

9 Q. Yet you testified that the individuals were free to leave  
10 at that point?

11 A. Not at that point, no.

12 Q. Were they free to leave before you approached them?

13 A. No. They were free to leave after we had frisked them.

14 Q. But they were not free to leave when you approached them  
15 with guns drawn, correct?

16 A. That is correct.

17 Q. And you approached the three individuals and yelled  
18 "police," correct?

19 A. I told them, "Police, don't move."

20 Q. By that time, additional police patrol cars had arrived,  
21 correct?

22 A. Yes.

23 Q. And there was a total of six officers, to your  
24 recollection, who were on the scene at that time?

25 A. It sounds about right.

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(212) 805-0300

D578FLO2 White - cross

1 Q. And is it fair to say that the six officers were all  
2 pointing their guns at the individuals?

3 A. I don't recall what the other officers were doing.

4 Q. The individuals didn't run away, did they?

5 A. No, they did not.

6 Q. They didn't walk away, correct?

7 A. No, they did not.

8 Q. At that point, they didn't make any suspicious movements,  
9 correct?

10 A. They did make suspicious movements in the fact they refused  
11 to comply with my orders to see their hands. And it wasn't  
12 until after much protest that we were able to get them on to  
13 the ground that they actually did comply with our orders.

14 Q. Is it your testimony that refusing to show you their hands  
15 is suspicious movement?

16 A. It is coupled with the mitigating factors.

17 Q. Part of the reason you say they didn't comply with your  
18 orders is that they were arguing with you?

19 A. That is correct.

20 Q. So it's your testimony that you and your partner were  
21 pointing guns at these three teenage boys, yet they refused to  
22 comply with the orders because they were arguing with you?

23 A. That is correct.

24 Q. And did you consider that inappropriate for them to be  
25 asking you why they were being stopped?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D578FLO2

White - cross

- 1 A. They weren't asking specifically why are we being stopped.  
2 It was their general refusal to comply with the orders to show  
3 us your hands.  
4 Q. But they were addressing you verbally, correct?  
5 MS. PUBLICKER: I don't believe the witness was  
6 finished answering when Mr. Azmy interrupted.  
7 THE COURT: Were you in the middle of an answer?  
8 THE WITNESS: Yes, I was.  
9 THE COURT: Please finish.  
10 A. It was the refusal to comply with the orders to see their  
11 hands coupled with the fact that were investigating a crime of  
12 a man armed with a firearm matching a description at that  
13 location that was a suspicious movement.  
14 Q. Were their hands not visible to you at that point?  
15 A. Not entirely.  
16 Q. How far were you from them at that point?  
17 A. Again, I would have to speculate, 10 to 12 feet.  
18 Q. It was light out?  
19 A. Yes.  
20 Q. Were their hands in their pockets?  
21 A. I don't recall at this time exactly where they were. I  
22 just remember that they were obscured from my vision.  
23 Q. How were they obscured?  
24 A. Body angle, people in front of -- you know, one in front of  
25 the other, hands in the pockets, any number of ways that

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(212) 805-0300

D578FLO2 White - cross

1 somebody -- you can't see my hands, but they are not in my  
2 pockets. Just general obstruction.

3 Q. And you eventually -- you asked them to get down on the  
4 ground at some point, correct?

5 A. Yes, I did.

6 Q. And they eventually complied with the order?

7 A. Eventually, yes.

8 Q. You testified already that they fit the description exactly  
9 that came over the radio, correct?

10 A. Yes.

11 Q. But at the time you stopped them, there wasn't a  
12 description of their age or their weight or build, correct?

13 A. No. It's just a brief description.

14 Q. Primarily based on what they were wearing, correct?

15 A. Yes.

16 Q. Do you remember what you told the CCRB they were wearing  
17 during the CCRB testimony?

18 A. A month after the fact, I don't recall exactly what I told  
19 them, but I just remember it being -- at the time it was such a  
20 descriptive description, they matched so perfectly, that that  
21 was the contributing factor why they were being stopped.

22 Q. If you were to look at the CCRB testimony on page  
23 4 -- sorry, page 6, does that refresh your recollection about  
24 what you told the CCRB investigator that they were wearing?

25 A. Where are you looking on page 6?

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(212) 805-0300

D578FLO2

White - cross

1 Q. Starting the third line, fourth line, "They matched the  
2 description." Then two lines after, "Male had a white,"  
3 starting there.

4 A. OK. I said that the male had a white -- white wife beater  
5 with blue trim. The other one matched the description  
6 perfectly."

7 Again, this is testimony that I gave a month after the  
8 fact. At the time of the stop, these were the males that  
9 matched the description, the clothing description that was  
10 perfect to what the radio had transmitted.

11 Q. At your deposition, did you testify about what you  
12 recollected they were wearing?

13 A. I don't recall exactly.

14 Q. Look at page 42.

15 A. Page 42 in the deposition?

16 Q. Excuse me. Page 41, starting at line 20.

17 MS. PUBLICKER: I would just say this is not actually  
18 Detective White's testimony. Ms. Patel had showed Detective  
19 White an exhibit and asked whether the exhibit was accurate.  
20 What this is referring to is actually a summary of the CCRB  
21 testimony.

22 I know I am being a little convoluted here, but  
23 Detective White gave CCRB testimony. The exhibit is  
24 Plaintiffs' Exhibit 569 that was received, that transcript.  
25 CCRB wrote up a summary of that exhibit with their personal

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(212) 805-0300

D578FLO2 White - cross

1 opinion of the testimony, and at this point Ms. Patel had asked  
2 Detective White whether her reading of one of the CCRB  
3 investigator's summaries was accurate to the CCRB summary, not  
4 accurate to the event.

5 THE COURT: I understand that.

6 BY MR. AZMY:

7 Q. Does that refresh your recollection about what you recall  
8 they were wearing that evening?

9 Are you looking at counsel?

10 A. I am looking at counsel because I believe that we had just  
11 covered that.

12 THE COURT: No. Anything can be shown to a witness to  
13 see if it refreshes recollection. All you have do is say, no,  
14 that doesn't refresh my recollection. But they are allowed to  
15 show you anything, a summary, a newspaper, anything at all.

16 So it doesn't refresh your recollection as to what  
17 they were wearing?

18 THE WITNESS: No, it does not.

19 Q. Can you take a look at Defendants' Exhibit Z8, which was  
20 the transcript of the radio run.

21 On page 2, at the bottom, starting at the bottom, do  
22 you see a description of what the individuals were wearing?

23 THE COURT: I'm sorry. Which exhibit?

24 MR. AZMY: This is Z8, the transcript of the radio  
25 message. It's a four-page document.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D578FLO2

White - cross

- 1 THE COURT: I have got to just find it again.  
2 I found it. So are you in this transcript?  
3 MR. AZMY: Starting at the bottom of page 2, line 22.  
4 THE COURT: Right.  
5 So this is the actual description from the dispatcher,  
6 right?  
7 THE WITNESS: Yes. That's the most accurate  
8 description there.  
9 THE COURT: Sure.
- 10 Q. This description says they were wearing -- one had a red  
11 hat, correct?  
12 A. Yes.  
13 Q. But you don't recall seeing anyone that night wearing a red  
14 hat, correct?  
15 A. Again, I don't recall seven years later exactly what  
16 anybody was wearing on that specific day, but I do remember  
17 that at the time that we stopped them, they did match the  
18 description perfectly. So if central had put over that  
19 somebody was wearing a red hat, then we did in fact stop  
20 someone with a red hat. My recollection seven years later is  
21 not what it was my recollection at the time. And I just  
22 remember specifically they matched the clothing description so  
23 perfectly, that that's what led to the stop. I don't recall  
24 seven years later what that perfect description was.  
25 Q. You would have had a better recollection at your CCRB

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D578FLO2

White - cross

1 investigation one month after the incident, right?

2 THE COURT: Than today.

3 Q. Than today.

4 THE COURT: It's certainly closer to the event, right?

5 THE WITNESS: Closer to the event. However, my  
6 recollection one month after the event wouldn't have been as  
7 good as it was at the actual time of the event, because a month  
8 later, and it was such a short period of time for the stop, a  
9 month later I still didn't recall an exact description.

10 Q. So you testified that you eventually frisked the  
11 individuals whether when they were on the ground?

12 A. Yes.

13 Q. And you found a cell phone on Mr. Peart?

14 A. Again, I would have to look at the UF-250s, but I believe  
15 that on all three individuals, we stopped them and found cell  
16 phones.

17 MR. AZMY: Z9 it was.

18 THE COURT: I think you wrote cell phone on all three.

19 THE WITNESS: I did find a cell phone on Mr. Peart,  
20 that is correct.

21 Q. The suspicious bulge on each of the three was a cell phone?

22 A. It would appear that way, yes.

23 Q. That's what you saw prior to frisking them?

24 A. That is correct.

25 Q. And you saw them in their waistbands?

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(212) 805-0300

D578FLO2 White - cross

1 A. Waistband pocket area.

2 Q. Detective White, you have had a complaint with the CCRB  
3 substantiated against you arising out of an incident in 2010,  
4 correct?

5 MS. PUBLICKER: Your Honor, I would object, only to  
6 the extent this is an incident that occurs after the date of  
7 the stop, and they did not put this on their case in chief. It  
8 doesn't really go to their claims regarding insufficient  
9 investigations.

10 MR. AZMY: It does go to notice.

11 THE COURT: To who?

12 MR. AZMY: To the city regarding abuse of authority  
13 and excessive force.

14 MS. PUBLICKER: It postdates the stop by four years,  
15 your Honor.

16 THE COURT: I don't really understand the argument  
17 that it goes to notice of anything.

18 MR. AZMY: I think it goes to deliberate indifference,  
19 which is still an aspect of the case.

20 THE COURT: It is still an aspect of the case, but I  
21 don't still understand the connection. Mind you, I don't know  
22 what substantiated CCRB was found.

23 MR. AZMY: It relates to excessive force and abuse of  
24 authority.

25 THE COURT: It is as relevant as coming up with a  
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(212) 805-0300

D578FLO2 White - cross

1 statistic of all excessive force substantiated CCRBs in the  
2 last five years or ten years. You can put in a big statistic.

3 Would you stop looking at me in shock, Ms. Grossman?  
4 I can't take it. You're staring at me in shock. What have I  
5 done?

6 MS. GROSSMAN: You have not done anything.

7 THE COURT: Then don't do that, please, please.

8 You're in shock. You want to know how you look at me? Your  
9 mouth was open. Oh, my god is how you looked at me. I can't  
10 deal with that. Please don't do that.

11 MS. GROSSMAN: I won't and I meant no disrespect.

12 THE COURT: What I was saying is it is as relevant as  
13 would be to say there have been 2,000 excessive force  
14 substantiated CCRBs in five years, or 1,000 abuse of authority  
15 CCRBs in five years. It would be equally relevant. But it's  
16 not more relevant. So I am not going to allow this particular  
17 one. But to say they substantiated abuse of force, they  
18 substantiated excessive force, did we have that kind of  
19 testimony when the CCRB person was here in general terms?

20 MS. PUBLICKER: It's included in their reports that  
21 were admitted.

22 THE COURT: That's what I thought. In the reports  
23 themselves, that are in evidence, it will show the total number  
24 of substantiated abuse of authority or excessive force. The  
25 fact that this officer had one in 2010 just doesn't make sense

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(212) 805-0300

D578FLO2 White - cross

1 to me as being particularly relevant. The CCRB report speaks  
2 for itself.

3 MR. AZMY: That's it.

4 THE COURT: Ms. Publicker, any redirect?

5 MS. PUBLICKER: Very briefly.

6 REDIRECT EXAMINATION

7 BY MS. PUBLICKER:

8 Q. Directive White, you filled out a UF-250 on the day of the  
9 incident, correct?

10 A. That is correct.

11 Q. You actually filled out three, right?

12 A. That is correct.

13 Q. And you filled those out just a couple of minutes after the  
14 stop?

15 A. Yes.

16 Q. And you had included on those three UF-250s that you  
17 observed bulges on the individuals, right?

18 A. Yes. That is correct.

19 MS. PUBLICKER: Thank you, your Honor.

20 No further questions.

21 THE COURT: Anything further of this witness?

22 MR. AZMY: No, your Honor.

23 THE COURT: Good. We are done. We will take our  
24 morning recess now and reconvene at 20 of 12 on that clock. So  
25 it's about 12 minutes.

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(212) 805-0300

D578FLO2 White - redirect

1 (Recess)

2 STACY BARRETT,

3 called as a witness by the defendants,

4 having been duly sworn, testified as follows:

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

7 THE WITNESS: Lieutenant Stacy Barrett, S-T-A-C-Y.  
8 B-A-R-R-E-T-T.

9 DIRECT EXAMINATION

10 BY MR. MARUTOLLO:

11 Q. Good morning, Lieutenant Barrett.

12 A. Good morning.

13 Q. Are you currently employed by the NYPD?

14 A. Yes.

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

16 A. Almost 20 years.

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

18 A. Yes.

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

20 A. In February 1994.

21 Q. After graduating from the police academy, where were you  
22 assigned?

23 A. 40th Precinct.

24 Q. How long were you assigned to the 40th Precinct?

25 A. Until October of 2000.

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D578FLO2 Barrett - direct

1 Q. What were your duties and responsibilities in the 40th  
2 Precinct at that time?

3 A. At that time, I was assigned as the domestic violence  
4 prevention officer and the community policing coordinator.

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

6 A. Yes.

7 Q. Where were you first assigned as a sergeant?

8 A. The 41st Precinct.

9 Q. What were your duties and responsibilities as a sergeant in  
10 the 41st Precinct?

11 A. I was assigned as the field training supervisor, the  
12 administrative sergeant, conditions sergeant, and also the  
13 training sergeant.

14 Q. How long were you a sergeant in the 41st Precinct?

15 A. Until July of 2006.

16 Q. Where were you assigned next?

17 A. Police academy.

18 Q. What were your duties and responsibilities as a sergeant in  
19 the police academy?

20 A. I was assigned to the recruit integrity discipline unit,  
21 which is essentially the assistant ICOs for recruit officers.

22 THE COURT: Could you speak just a little slower?

23 THE WITNESS: I'm sorry.

24 Q. How long were you a sergeant in the police academy?

25 A. Till November of 2009.

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D578FLO2 Barrett - direct

1 Q. Was that when you were promoted to lieutenant?

2 A. Yes.

3 Q. Where were you assigned once you were named a lieutenant?

4 A. The 40th Precinct.

5 Q. How long were you assigned to the 40th Precinct as a  
6 lieutenant?

7 A. Until August of 2011.

8 Q. Where were you assigned next?

9 A. The police academy.

10 Q. Is that where you're currently assigned?

11 A. Yes.

12 Q. What are your current duties?

13 A. I am assigned as the integrity control officer.

14 Q. Of the police academy?

15 A. Yes.

16 Q. Are you familiar with a police officer named Pedro Serrano?

17 A. Yes.

18 Q. Are you aware that Officer Serrano was working in the  
19 violence reduction overtime tour on June 30, 2010?

20 A. Yes.

21 Q. What was your assignment on June 30, 2010?

22 A. My first assignment of the day was 2145 by 0630 in the  
23 morning as the integrity control officer. Then later on that  
24 day I returned back for a tour of violence reduction overtime,  
25 which was performed at 1800 till 0245 in the morning.

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D578FLO2

Barrett - direct

- 1 Q. Focusing just for a second on your role as the integrity  
2 control officer, what were your duties and responsibilities as  
3 the integrity control officer of the 40th Precinct?  
4 A. There's many responsibilities as an integrity control  
5 officer, some of which include maintaining the integrity  
6 monitoring file, maintaining the overtime control plan,  
7 debriefing prisoners, making visits to hospitals and prisoner  
8 locations, answering communications and reports, and conducting  
9 investigations as necessary.
- 10 Q. Did you ever monitor officers in the field as the integrity  
11 control officer?  
12 A. Yes.
- 13 Q. As the integrity control officer of the 40th Precinct, did  
14 you ever review officer memo books?  
15 A. Yes.
- 16 Q. How would you conduct your review of these memo books?  
17 A. I would go out into the field, and I would inspect  
18 sergeants' activity logs and police officer activity logs, read  
19 them. If they needed to have any instruction, instruct them,  
20 verbally and in writing. And if there was a problem with them,  
21 they might even be written up with a command discipline for a  
22 disciplinary action.
- 23 Q. Would you do spot checks from time to time?  
24 A. Yes.
- 25 Q. Then you mentioned that you were also the supervisor of the

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D578FLO2 Barrett - direct

1 violence reduction tour. Can you describe what is a violence  
2 reduction tour?

3 A. It's a tour of overtime that is granted through the patrol  
4 borough to commands that have a high rate of violence and  
5 crime.

6 Q. How frequently would the 40th Precinct receive violence  
7 reduction overtime in 2010?

8 A. Approximately three to five times a week.

9 Q. What kind of crime conditions were prevalent in the 40th  
10 Precinct in 2010?

11 A. We had a high rate of shootings, robberies, rapes and  
12 assaults.

13 Q. Now, I am not sure if you mentioned this, but Lieutenant  
14 Barrett, what is a radio run?

15 A. It's an assignment that comes from the communications  
16 division and it's given to either a specific sector or a post,  
17 and it usually originates from a 911 call.

18 Q. Were radio runs a priority for officers during violence  
19 reduction tours?

20 A. No.

21 MR. MOORE: I just want to note my objection to this  
22 line of questioning because it wasn't included in the  
23 declaration that was provided to us from the city with respect  
24 to what she was going to testify to.

25 THE COURT: I don't know what declaration. What  
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D578FLO2 Barrett - direct

1 declaration?

2 MR. MOORE: We received a declaration from Lieutenant  
3 Stacy Barrett with respect to what her testimony was going to  
4 be because we didn't have the opportunity to depose her.

5 THE COURT: Because there was no deposition.

6 MR. MARUTOLLO: I am merely asking a question about  
7 the violence reduction tour that she was working that is  
8 explained in the affidavit, which is something that she is  
9 testifying here about today. I just wanted a quick background  
10 of what a radio run is first, and now my next questions are  
11 about radios runs, if any, during that tour.

12 THE COURT: I don't have any problem with it. I know  
13 what a radio run is anyway. If I once knew, I forgot that she  
14 gave a declaration.

15 You used the word affidavit. Are you referring to the  
16 same thing?

17 MR. MARUTOLLO: It's an affidavit.

18 MR. MOORE: It's an affidavit, not a declaration.

19 BY MR. MARUTOLLO:

20 Q. Lieutenant Barrett, were radio runs a priority for officers  
21 during violence reduction tours?

22 A. No.

23 Q. Why not?

24 A. Well, when you're doing a violence reduction tour, you're  
25 there to address specific crime conditions or patterns, and

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D578FLO2 Barrett - direct

1 radio runs would be addressed by the sector or post that are  
2 normally on patrol.

3 Q. Now, how are officers selected to work a violence reduction  
4 tour?

5 A. There were several things that played a part in whether or  
6 not an officer was assigned the overtime tour. First would be  
7 if they volunteered. The next criteria that would be looked at  
8 would be if they were on a regular day off. Then we would also  
9 take a look at the overtime control plan and see which officers  
10 were high on overtime and which officers were low on overtime,  
11 which played a large role in the assignment of overtime at the  
12 end of the month and at the end of the quarter.

13 MR. MOORE: Judge, this is coming very fast. So if we  
14 could just -- I know it's part of the way she talks, but if she  
15 could slow down a little bit.

16 THE COURT: I did ask her.

17 THE WITNESS: I'm sorry.

18 MR. MOORE: Thank you.

19 Q. Lieutenant Barrett, are officers typically ordered to work  
20 violence reduction overtime as the month progressed?

21 A. Towards the end of the month, or at the end of the quarter,  
22 officers that were on the lowest end of the overtime plan would  
23 be ordered in to work.

24 Q. Why is that?

25 A. To fairly equalize overtime distribution, the officers at

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D578FLO2 Barrett - direct

1 the lower end of the overtime plan would be ordered in to work  
2 that overtime so that they would be equalized with the officers  
3 with a higher amount of overtime.

4 Q. You mentioned at the end of the month, and I believe you  
5 also said at the end of the quarter?

6 A. Yes.

7 Q. Was June 30, 2010 the end of the quarter?

8 A. Yes. It was the last day of the quarter.

9 Q. I believe you testified that Officer Serrano was working  
10 this June 30, 2010 violence reduction overtime, right?

11 A. Yes.

12 Q. Now, on June 30, 2010, what were your duties and  
13 responsibilities as the violence reduction tour supervisor?

14 A. I would respond to incidents as required, verify arrests,  
15 prepare reports, and report any enforcement activity to the  
16 commanding officer in the patrol borough.

17 Q. Are you aware that Officer Serrano secretly recorded the  
18 June 30, 2010 roll call for the violence reduction tour?

19 A. I am aware of it and it is not a complete audio of my own  
20 entire roll call instruction.

21 Q. Why do you believe that this -- first, did you listen to  
22 the audio?

23 A. Yes.

24 Q. Why do you believe that this audio is not a complete  
25 recording?

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D578FLO2 Barrett - direct

1 A. There's approximately ten minutes of the first portion of  
2 the roll call that is not indicated on that audio.

3 Q. What do you think is missing from the recording that  
4 Officer Serrano taped?

5 A. At the beginning of my roll call, I would have taken  
6 attendance of the roll call. I would have assigned the  
7 officers their posts, given them a vehicle assignment, given  
8 them meal times. I would have gone over any safety alerts, any  
9 emerging crime patterns or conditions that had happened over  
10 the past 24 hours or so. I would have gone over the zone  
11 parameters and the expectations and performance goals of the  
12 day.

13 Q. You just mentioned zone parameters. What do you mean by  
14 zone?

15 A. It was an area of high crime that had been designated to  
16 get the specific enforcement that we were doing that night.

17 Q. Now, all those things you mentioned, you indicated they  
18 were not on the audio from Officer Serrano?

19 A. Correct.

20 Q. Lieutenant Barrett, what did you intend to communicate to  
21 your officers during the June 30, 2010 violence reduction  
22 overtime roll call?

23 MR. MOORE: Object to the form, what she intended to  
24 communicate. She indicated what she communicated. I don't  
25 know that we need to go beyond what she communicated.

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D578FLO2 Barrett - direct

1 Q. What did you communicate during the June 30, 2010 violence  
2 reduction overtime roll call?

3 A. I communicated the reason that we were there that evening  
4 was to perform violence reduction overtime. And when I  
5 mentioned we were looking for fives, that was any combination  
6 of summonses or UF-250s, in addressing specific crime  
7 conditions or suspicious behavior.

8 MR. MOORE: Judge, can I have that question and answer  
9 read back, please?

10 THE COURT: Yes.

11 (Record read)

12 Q. Lieutenant Barrett, were officers under your supervision  
13 required to obtain five stops and/or summonses during the tour?

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

15 THE COURT: I don't think the question was done.

16 Would you say it again?

17 MR. MARUTOLLO: I can repeat it.

18 Q. Were officers under your supervision required to obtain  
19 five stops and/or summonses during the tour?

20 THE COURT: What is the objection to that?

21 MR. MOORE: Leading.

22 THE COURT: Leading?

23 Overruled. Go ahead.

24 MR. MOORE: I was going to withdraw it.

25 A. No, they were not required.

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D578FLO2

Barrett - direct

1 Q. Did you tell officers at roll call that they would be  
2 punished if they failed to make a total of five stops and/or  
3 summonses during the tour?

4 A. No. That number was used as a performance goal.

5 Q. During the roll call, you stated that officers shouldn't  
6 write anybody over 65, nothing having to do with dog tags,  
7 bikes on the sidewalk, or public exposure, right?

8 A. Yes.

9 Q. Why did you talk about those specific areas?

10 A. Contained within the folder for the evening was a  
11 communication from the patrol borough command regarding those  
12 three specific violations. And those three specific violations  
13 were thought not to prevent any violent crime and that the  
14 officers should use their discretion when addressing those  
15 conditions.

16 Q. During this June 30, 2010 roll call, did you mention St.  
17 Mary's Park at any point?

18 A. Yes, I did.

19 Q. How were you familiar with St. Mary's Park?

20 A. St. Mary's Park is a very large park that's within the  
21 parameter of the 40th Precinct and inside the zone for the  
22 evening. It is a very large park, contains very dark areas at  
23 night where crimes take place, and I was addressing the  
24 officers and letting them know that they could -- if they  
25 wanted to use all of their time to enforce activity in that

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D578FLO2

Barrett - direct

1 area, they could, since it was a high crime area where  
2 robberies, rapes and assaults had occurred.

3 Q. Now, during this roll call, did you indicate that you were  
4 going to be checking up on officers under your supervision?

5 A. Yes.

6 Q. Why did you say that you wanted to check up on your  
7 officers during the roll call?

8 A. Well, obviously, as a supervisor, I wanted to ensure that  
9 my officers are conducting their patrol and generally being in  
10 the area to which they are assigned. There is also a safety  
11 aspect of it. I want to make sure they are being safe. And  
12 also making sure that they are interacting with the community  
13 in the way that they should on a violence reduction tour.

14 Q. Is checking in with your officers something you would do  
15 during a nonviolence reduction overtime tour?

16 A. Yes.

17 Q. Did you ever supervise a violence reduction tour where  
18 officers did not complete five UF-250s and/or five summonses?

19 A. Yes.

20 Q. Were officers punished if they did not reach that goal?

21 A. No.

22 Q. Did you ever indicate that officers were required to  
23 conduct a certain number of stops during a tour even if such  
24 stops lacked reasonable suspicion?

25 A. Absolutely not.

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D578FLO2 Barrett - direct

1 MR. MOORE: Objection. Leading.

2 THE COURT: One moment.

3 It is, but he is trying to elicit a stream of denials.

4 I understand that. There is really no other way to phrase it.

5 So objection overruled.

6 Q. Did you ever indicate, Lieutenant Barrett, that officers  
7 were required to write a certain number of summonses during a  
8 tour even if such summonses lacked probable cause?

9 A. Absolutely not.

10 MR. MOORE: I thought you said indicate to Lieutenant  
11 Barrett.

12 MR. MARUTOLLO: Just to be clear, the question that I  
13 asked that Mr. Moore objected to, I am not sure if the witness  
14 actually answered it.

15 THE COURT: She did.

16 Q. Lieutenant Barrett, have you ever threatened, punished or  
17 retaliated against in any way any officers who worked under  
18 your supervision for failing to reach a certain amount of  
19 activity?

20 A. No.

21 MR. MARUTOLLO: No further questions.

22 CROSS-EXAMINATION

23 BY MR. MOORE:

24 Q. Lieutenant Barrett, good afternoon.

25 A. Good afternoon.

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D578FLO2

Barrett - cross

1 Q. I believe you testified on direct that part of your duties  
2 was to set out expectations and performance goals for the  
3 officers under your supervision, correct?

4 A. Performance goals, yes.

5 Q. You said expectations and performance goals. I believe  
6 that's what you said in the answer to your question. Do you  
7 recall that?

8 A. I believe I said the expectations of the night and the  
9 performance goals.

10 Q. Part of the performance goals related to their enforcement  
11 activity that they were supposed to -- that you expected them  
12 to engage in on that tour that you were supervising, correct?

13 A. Well, I expected them to --

14 Q. If you could just answer the question yes or no, I would  
15 appreciate it.

16 A. Could you repeat the question?

17 THE COURT: Let's just have a do-over.

18 MR. MOORE: Can we have it read back?

19 THE COURT: OK.

20 (Record read)

21 A. Part of it, yes.

22 THE COURT: It was a long question. I couldn't even  
23 follow it. She answered it.

24 Q. That's part of what you talked about when you were  
25 conducting your roll call, correct?

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D578FLO2 Barrett - cross

1 A. Part of it.

2 Q. You say that there were several things left off the tape  
3 that Mr. Serrano made. Do you recall that?

4 A. Yes.

5 Q. Those had to do with mostly administrative stuff, right?

6 A. No.

7 Q. It had to do with officer assignments, vehicle assignments,  
8 correct?

9 A. Safety issues, crime patterns, crime conditions.

10 Q. Just answer my question. Did it have to do with officer  
11 assignments and vehicle assignments?

12 MR. MARUTOLLO: Objection.

13 THE COURT: He is allowed to call for a yes or no.

14 A. Yes.

15 Q. It had to do with the color of the day?

16 A. Yes.

17 Q. And meal times?

18 A. Yes.

19 Q. There was also, as you said, there was also a discussion of  
20 crime conditions, crime patterns that you expected your  
21 officers to be looking out for, correct?

22 A. Yes.

23 Q. But there is a portion of this recording that deals with  
24 this question of performance goals, correct?

25 You have heard the recording, right?

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D578FLO2

Barrett - cross

1 A. Yes.

2 Q. A portion of that recording deals with your expectation  
3 with respect to what you expected your officers to do on the  
4 tour that you were supervising, correct?

5 A. I was asked what the expectation was and I answered five.

6 Q. I am going to show you -- the copy I wanted to show you,  
7 which is not marked up, is missing a page. So I want to show  
8 you and please excuse the writing on the page.

9 MR. MARUTOLLO: I have another copy.

10 MR. MOORE: Why don't we do that.

11 MR. MARUTOLLO: You're talking about the June 30  
12 transcript?

13 MR. MOORE: Yes.

14 It's in evidence as 297T1, Judge.

15 Q. Lieutenant Barrett, you have listened to the actual  
16 recording, correct?

17 A. Yes.

18 Q. You have seen the transcript as well?

19 A. Yes.

20 Q. There is a portion in the middle that refers to Lieutenant  
21 Barrett, that's you, correct?

22 A. Is that line 11?

23 Q. Yes.

24 A. Yes.

25 Q. You indicate here, at the end there you say, "If you come

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D578FLO2 Barrett - cross

1 across --" of that first paragraph, if you look at line 17 you  
2 say, "If you come across something you don't want, there's  
3 plenty of people who want it."

4 Is that referring to the fact that, if you come across  
5 a lot of activity that you could do summonses or 250s, and you  
6 don't want to do it all, you can get another officer to do it?

7 A. No. I was referring to arrest situations.

8 Q. You say, "If you come across something you don't want."

9 Are you saying that just refers to arrest situations or does it  
10 refer to all of the enforcement activity that the officers were  
11 to be engaged in on that tour?

12 MR. MARUTOLLO: Objection. Asked and answered, your  
13 Honor.

14 THE COURT: I will allow it.

15 A. The question again?

16 Q. Doesn't it refer to all of the enforcement activity the  
17 officers were engaged in, not just arrests, but summonses and  
18 250 activity?

19 A. Just arrest activity.

20 Q. You don't say just arrest activity there, to be fair,  
21 correct?

22 A. In the previous two lines I do. Starting on line 14 -- 13.

23 Q. Fair enough.

24 Then you say here, "Take whatever you want. All  
25 right. Last night, they had really good turnout."

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D578FLO2

Barrett - cross

- 1           What does that mean, they made a lot of arrests?  
2    A.   There was a lot of activity going on in the streets.  
3    Q.   And that they had no problem getting summonses and doing  
4    250s, right?  
5    A.   There was a lot of criminal activity on the street that  
6    night.  
7    Q.   Because there was a lot of activity. So that there was no  
8    problem meeting the performance goal, correct?  
9    A.   I don't know what the performance goal was for the night  
10   before.  
11   Q.   Were you the supervisor the night before?  
12   A.   No.  
13   Q.   You had some knowledge about what happened on the tour the  
14   night before though, right?  
15   A.   I had knowledge of --  
16   Q.   Yes or no, Officer, did you have knowledge about that?  
17   A.   Some knowledge.  
18   Q.   You had knowledge that there was no problem getting  
19   summonses the night before, correct?  
20   A.   Yes.  
21   Q.   So you said, looking for five, meaning you wanted at least  
22   five summonses and/or 250s, correct?  
23   A.   No.  
24   Q.   Looking for five refers to what?  
25   A.   Any combination of summonses or 250s, but I never said at

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D578FLO2

Barrett - cross

1 least.

2 Q. You're saying five, any combination of five summonses or  
3 250s, correct?

4 A. Was the performance goal, yes.

5 Q. I understand you're saying it's a performance goal.

6 Then you also indicate, going further, to the  
7 officers, "Don't write outside the zone." Do you see that?

8 A. Which line?

9 Q. On the next page, page 3, line 3 and 4. You say, "Don't  
10 write activity outside the zone," right?

11 A. Yes.

12 Q. That's what you said?

13 A. Yes.

14 Q. Outside the zone, meaning outside the impact zone areas  
15 that are designated within the precinct; is that what that  
16 refers to?17 A. That refers to the zones of the violence reduction tour  
18 that night.19 Q. Are those different than the impact zones that -- you're  
20 familiar with impact zones, correct?

21 A. Yes.

22 Q. Are the violence reduction zones different than the impact  
23 zones?

24 A. Yes.

25 Q. But in any event, you say, "Don't write activity outside

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D578FLO2 Barrett - cross

1 the zone," right?

2 A. Yes.

3 Q. Is that because this -- withdraw that.

4 This is an overtime tour, correct?

5 A. Yes.

6 Q. This means that the police department is paying a premium  
7 for the officers to be working on the overtime, correct?

8 A. Yes.

9 Q. So is it your understanding that your supervisors want to  
10 see officers engaged in activity in the zones that are set  
11 forth as the basis for the violence reduction tour; they want  
12 to see activity directed at those zones, correct?

13 A. They want to see activity that reduces violent crime.

14 Q. They want to see activity addressed to those zones. Can  
15 you agree with me on that?

16 A. Inside the zone.

17 Q. You're also indicating some of the things that you don't  
18 think they should be engaged in enforcement activity on,  
19 correct? Yes or no?

20 A. No.

21 Q. You say, don't write anybody over 65, right?

22 A. You said that's what I think. That came from the patrol  
23 borough.

24 Q. OK. Fair enough.

25 You're just communicating to your officers what patrol

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D578FLO2 Barrett - cross

1 borough communicated to you, correct?

2 A. The instructions I received, yes.

3 Q. How do you receive those instructions? Are they in  
4 writing?

5 A. Yes.

6 Q. At the beginning of every violence reduction overtime tour,  
7 is there a written directive that comes from the patrol borough  
8 saying what the focus should be that night?

9 A. Yes.

10 Q. So on that directive from the patrol borough -- you're  
11 talking about Patrol Borough Bronx, correct?

12 A. Yes.

13 Q. On the directive from that patrol borough, which is a  
14 written directive, there were certain things that they said  
15 don't pay any attention to, correct?

16 A. No.

17 Q. You said, don't write anybody over 65. That's one area of  
18 activity your officers were not going to focus on that night,  
19 correct?

20 A. They would use their discretion.

21 (Continued on next page)

22

23

24

25

D579flo3 Barrett - cross

- 1 Q. You don't say "use your discretion," to be fair, in this  
2 passage? You don't say "use your discretion"?  
3 A. Well I did on the previous part.  
4 Q. The term "discretion" is not indicated in that paragraph,  
5 correct?  
6 A. It was in the first portion of my instruction.  
7 Q. The portion that's not part of this recording?  
8 A. Yes.  
9 Q. But to be fair when you're talking about who not to write  
10 and communicating the patrol borough's desires about what kind  
11 of enforcement activity they don't want, you don't use the term  
12 discretion, correct?  
13 A. Not at this portion.  
14 Q. So, the reason -- what is the reason why, to your  
15 knowledge, why the borough didn't want enforcement activity in  
16 these areas? If you know?  
17 A. Well they wanted the officers to use their discretion  
18 because these three items, the over-65, the dogs with no tags,  
19 or the bicycles on the sidewalk don't reduce violent crime.  
20 Q. And no exposure, correct?  
21 A. And no exposure.  
22 Q. So there's four, not three?  
23 A. Yes. Sorry.  
24 Q. And so that's your understanding that the sort of -- these  
25 kind of quality of life offenses should not be targeted because

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D579flo3 Barrett - cross

1 they don't reduce violent crime?

2 A. That's what the patrol borough wanted.

3 Q. Okay. And then you say -- then you mention St. Mary's Park  
4 and you say "go crazy in there," you repeat it, "go crazy in  
5 there."

6 Do you see that?

7 A. Yes.

8 Q. Would you agree with me that that's kind of an odd  
9 directive to give your reports. In terms of how they should  
10 engage in their enforcement activity, "go crazy in there"?

11 A. Well I didn't do a report.

12 Q. Do you use that term all the time?

13 THE COURT: He meant the people who report to you,  
14 "your reports" meaning the people you were speaking to.

15 Q. Do you use that term all the time with your officers?

16 A. Yes.

17 Q. "Go crazy in there."

18 And that means go and do a lot of enforcement  
19 activity, right?

20 A. It means that that's an area of focus.

21 Q. Well what are the limits of going crazy in there? Are  
22 there any limits to that?

23 A. Of course.

24 Q. Did you tell them -- in this passage did you tell them what  
25 the limits were?

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D579flo3 Barrett - cross

1 A. In that passage, no.

2 Q. And you mention again, "Go crazy. I don't care."

3 Do you see that language?

4 A. Well I believe it says, "I don't care if everybody writes  
5 everything in there."

6 THE COURT: I'm sorry. Say that again, please.

7 THE WITNESS: I said in line 13 and 14 it says, "I  
8 don't care if everybody writes everything in there."

9 THE COURT: Later, "But go crazy. I don't care."  
10 What does that mean?

11 THE WITNESS: Well the "I don't care" is just part of  
12 the sentence, your Honor. It says, "I don't care if everybody  
13 writes everything in there."

14 THE COURT: I don't mean there.

15 THE WITNESS: I'm sorry. Where?

16 THE COURT: Next line. "So there will be people in  
17 there. But go crazy. I don't care."

18 THE WITNESS: Meaning that I didn't care if they  
19 focused all their attention on St. Mary's Park that evening.

20 Q. But the idea is to try to meet this performance goal,  
21 right, get summonses, get stops, correct?

22 A. It's a performance goal, yes.

23 Q. Right.

24 And then you say, "And if you have a situation where  
25 you can issue a lot of summonses, call for help," right?

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D579flo3 Barrett - cross

1 Everybody can come and write the summons, correct?

2 A. No. It's a safety issue.

3 Q. Oh, it's a safety issue?

4 A. Yes.

5 Q. So what about that language indicates to you that it's a  
6 safety issue?

7 MR. MARUTOLLO: Objection, your Honor. I'm not sure  
8 what language.

9 MR. MOORE: The bottom paragraph beginning on page 20.

10 THE COURT: Where it says, "So if anybody comes across  
11 any situation where there's a lot of Cs to be handed out, raise  
12 up. Come on over there and let's help each other out."

13 THE WITNESS: What that means is if there's going to  
14 be a lot of C summonses, there's going to be a lot of people  
15 present, and I wouldn't want one or two officers handling a  
16 large group of people so come on over and back each other up.

17 Q. And the quicker you can do that, the quicker you can get  
18 back to the precinct to have your meal, correct?

19 A. Yes.

20 Q. And you mentioned -- going to the page 4 of your -- you  
21 provide your cellphone number, correct?

22 A. Yes.

23 Q. And you tell officers that they can call you or they can  
24 text you or leave a message, correct?

25 A. Yes.

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D579flo3 Barrett - cross

1 MR. MARUTOLLO: Your Honor, may I just note actually  
2 for the record if we could put the exhibit that's going to be  
3 entered into evidence.

4 MR. MOORE: You can redact the number.

5 MR. MARUTOLLO: Redact the telephone number.

6 MR. MOORE: Not a problem, Judge.

7 THE COURT: Please be sure to do that.

8 MR. MOORE: We'll redact your cellphone number.

9 THE WITNESS: Thank you.

10 Q. And you indicate that they can text you or they can send  
11 you a message on -- to your cellphone, correct?

12 A. Yes.

13 Q. And officers -- supervisors in the precinct often  
14 communicate with their officers through their cellphones,  
15 through text messages, correct?

16 A. We do now.

17 Q. And would it be uncommon to see in a text message you need  
18 to do more 250s? Would that be uncommon?

19 A. That would not be something I would text.

20 Q. Have you ever seen -- have you ever -- are you familiar  
21 with officers sending those kind of messages out on their  
22 cellphones?

23 A. I've never heard of that.

24 Q. Do you know who Sergeant Monroe is, correct?

25 A. Yes.

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D579flo3 Barrett - cross

1 Q. And he is a supervisor -- he is a supervisor in the 40 at  
2 the time you were there, right?

3 A. He was newly promoted, yes.

4 Q. Well let me ask you this. Are officers told that they  
5 should not communicate by their cellphone -- are supervisors  
6 told they should not communicate by their cellphone?

7 A. I don't think so, no.

8 Q. So it's possible that an officer could -- a supervisor, a  
9 sergeant, looking at an officer's activity for the night of the  
10 week or the month could indicate with a text message you need  
11 to do more 250s?

12 MR. MARUTOLLO: Objection, your Honor.

13 THE COURT: Usually --

14 MR. MOORE: It's possible. I'm sorry. I'll withdraw  
15 that, Judge.

16 Q. Are you personally familiar with officers doing that, of  
17 supervisors doing that in the 40 precinct?

18 A. No.

19 Q. And if supervisors did that would that be an issue for you  
20 as the integrity control officer of the precinct?

21 A. If they were doing what specifically?

22 Q. Texting messages to their officers on the street saying you  
23 need to do more 250s? Would that be an integrity issue for you  
24 as a supervisor -- as a lieutenant in a precinct?

25 MR. MARUTOLLO: Objection, your Honor. I think this

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D579flo3 Barrett - cross

1 goes outside the scope of the direct examination.

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

3 THE WITNESS: I don't think that it would be an  
4 integrity issue.

5 Q. Why not?

6 A. If they're requesting that officers' performance goals  
7 changed, I don't see how that would be an integrity issue.

8 Q. Well when supervisors communicate to their officers what  
9 you call performance goals, are you concerned that officers may  
10 get the wrong impression, that they might interpret a  
11 performance goal as a quota?

12 A. I'm not really concerned what their interpretation is as a  
13 supervisor. They're given, you know, a performance goal or a  
14 direction and if they're not clear on it they can ask for  
15 clarity on it.

16 Q. All right. Thank you.

17 Now, you indicated that the violent -- violence  
18 reduction overtime tour that you were supervising on June 30 of  
19 that year, 2010, was directed at what you -- certain types of  
20 crime, violent crimes, correct?

21 A. Yes.

22 Q. Now were you aware when you were in the 40 precinct that it  
23 was, among all precincts, had more C summonses issued than any  
24 precinct in the year 2011?

25 A. No.

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D579flo3 Barrett - cross

1 Q. Were you aware that in 2011 that the officers in the 40th  
2 precinct issued 13,000 summonses for quality of life offenses?

3 A. No.

4 Q. Were you aware in 2011 that of those 13,000 summonses,  
5 4,000 of them were for public drinking?

6 A. No.

7 Q. Were you aware that in 2011 in the 40th precinct that  
8 1432 of those 13,000 summonses were for unreasonable noise?

9 MR. MARUTOLLO: Objection, your Honor.

10 THE COURT: And the objection is?

11 MR. MARUTOLLO: First, your Honor, I'm not sure of the  
12 documentation where these numbers are coming from.

13 Second, I think is not relevant or, again, goes  
14 outside the scope of the direct examination.

15 THE COURT: No. I will allow it.

16 The first question was were you aware in 2011 that of  
17 those 13,000 summonses 4,000 were for public drinking. She  
18 said no.

19 Then he asked about unreasonable noise and then you  
20 objected.

21 So having allowed the public drinking, I'll allow the  
22 noise.

23 But I assume he has a good faith basis for the numbers  
24 in the question.

25 MR. MOORE: I do.

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D579flo3

Barrett - cross

1 THE COURT: I don't doubt that. He can tell you later  
2 if you wish where they come from. But if her answer is no,  
3 it's no. The question isn't evidence, as you know. So I don't  
4 take it to be fact. Either she has an awareness of the numbers  
5 he talked about or she doesn't. If she says she doesn't,  
6 that's the end of it.

7 MR. MARUTOLLO: One point I guess to make, your Honor,  
8 is what year exactly are these questions being posed for?

9 THE COURT: He said 2011. The 40th precinct. He  
10 did say that.

11 MR. MARUTOLLO: I believe, first, she's here to  
12 testify about the June 30, 2010 incident.

13 THE COURT: Are you still in this precinct in 2011?

14 THE WITNESS: I was transferred in August of 2011.

15 THE COURT: I'm going to allow it. Either she's heard  
16 of these numbers or she doesn't.

17 MR. MOORE: Her answer was she wasn't aware of the  
18 numbers anyway.

19 THE COURT: She said that for the drinking.

20 Did you say that for the noise also?

21 THE WITNESS: No.

22 THE COURT: No, you weren't aware of that?

23 THE WITNESS: No, I wasn't.

24 Q. In the normal course of your duties as an integrity control  
25 officer in the 40th precinct, were you ever provided yearly

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D579flo3 Barrett - cross

1 numbers with respect to what summonses where is written, in  
2 what categories -- the number of summonses and in what  
3 categories?

4 A. No.

5 Q. You were not given that information?

6 A. No.

7 Q. Do you know if anybody in the precinct was made aware of  
8 that?

9 A. No.

10 Q. Now you talked about performance goals. Your testimony on  
11 direct was that your mention of getting five -- five stops or  
12 summonses, that was what you call -- when you say looking for  
13 five that was -- in your mind that was a performance goal,  
14 correct?

15 A. Yes.

16 Q. And it's your opinion that it's appropriate for a  
17 supervisor to set performance goals for their officers in the  
18 unit?

19 A. It's not only my opinion, it's department procedures.

20 Q. You're familiar with Operations Order 52, right?

21 A. Yes.

22 MR. MARUTOLLO: Objection, your Honor. To this line  
23 of questioning. First Lieutenant Barrett was not even at the  
24 40th precinct when Operations Order 52 came out. It's  
25 outside the scope of her direct examination. So we would

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D579flo3 Barrett - cross

1 object to any more questions on Operations Order 52.

2 THE COURT: Yes. I'll sustain objection to that.

3 Q. Well even before Operations Order 52 you were aware that  
4 supervisors were mandated to set performance goals for their  
5 officers, correct?

6 A. Yes.

7 Q. So, that practice was in place in the police department  
8 long before Operations Order 52 was enacted, correct?

9 A. Yes.

10 Q. And not only should they but they were told they must set  
11 performance goals with respect to certain enforcement activity,  
12 correct? Supervisors? Right?

13 A. I don't believe I saw it in department procedures prior to  
14 that interim order.

15 Q. But it was your understanding not that you should but that  
16 it was part of your job, that it was a requirement for  
17 supervisors to set performance goals with respect to  
18 enforcement activity for their officers, correct?

19 A. Not just enforcement activity.

20 Q. Well, okay. Not just enforcement activity but speaking  
21 about enforcement activity, you would agree with that, correct?

22 A. You mean just separating it from everything else? Just  
23 enforcement activity?

24 Q. Just looking at enforcement activity, that it was  
25 understanding that officers -- that supervisors not only should

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D579flo3

Barrett - cross

1 but they were required, they were mandated to set performance  
2 goals for their officers with respect to enforcement activity,  
3 correct?

4 A. I don't think I would say required. Then it wouldn't be a  
5 goal. It would be a requirement.

6 Q. Right. But it was a requirement that they set the goal,  
7 correct?

8 A. (No response).

9 Q. I understand you're saying it's a goal and it's not a  
10 quota. But there was certainly a requirement that they set the  
11 goals, correct, so that the officers could have some way --

12 THE COURT: You don't need to keep talking. I think  
13 you got it.

14 Were supervisors required to set performance goals?

15 THE WITNESS: I would say yes.

16 THE COURT: Okay.

17 Q. Part of that -- of the setting performance goals addressed  
18 specific types of enforcement activity, correct?

19 A. Well not just activity but, yes -- enforcement activity,  
20 but yes.

21 Q. And that included arrests, summonses, and stops, correct?

22 A. Among other things.

23 Q. Right.

24 Now, you also indicated in your direct that as part of  
25 your duties as an ICO you would go onto the field and review

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D579flo3

Barrett - cross

1 the activity of the officers -- sergeants and officers,  
2 correct?  
3 A. That's not what I said.  
4 Q. Tell me -- when you said you would go out to the field,  
5 what would you do?  
6 A. I would go out and inspect their activity logs.  
7 Q. Right. And both sergeants and police officers, correct?  
8 A. Yes.  
9 Q. You said you would instruct them verbally or in writing if  
10 there were incorrect entries, correct?  
11 A. Yes.  
12 Q. Did you ever -- have you ever in your time in the 40th  
13 precinct issued any kind of discipline for -- to an officer for  
14 failing to put the details of a stop that led to a 250 in their  
15 memo book on that narrow type of entry? Have you ever  
16 disciplined an officer for that?  
17 A. Yes.  
18 Q. And how often was that?  
19 A. Several times. I couldn't come up a specific number.  
20 Q. Several times in how many years as the ICO?  
21 A. A year-and-a-half.  
22 Q. And part of your duties as the integrity control officer  
23 was also during the time you were in the 40th precinct was to  
24 be responsible for the self-inspection audits with regard to  
25 stop and frisk, correct?

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D579flo3

Barrett - cross

- 1 A. No.
- 2 Q. That was not one of your responsibilities?
- 3 A. No. There's four areas of responsibilities for an ICO and
- 4 that's not one of them.
- 5 Q. Are you saying that's four areas of responsibility just for
- 6 the ICO in the 40th precinct or are you talking about all
- 7 ICOs?
- 8 A. I believe citywide -- I should say patrol services bureau.
- 9 Q. Okay. So it's your testimony that while you were the ICO
- 10 in the 40th precinct you were not responsible for doing the
- 11 self-inspection reports with respect to stop and frisk? Is
- 12 that your testimony?
- 13 A. Yes.
- 14 Q. Who was responsible for that in the 40th precinct?
- 15 A. I believe that would have been the crime analysis sergeant.
- 16 Q. And did you ever see the results of those audits?
- 17 A. No.
- 18 Q. Were you aware that the quality assurance division would
- 19 come once a year to review those audits?
- 20 A. Quality assurance came several times a year.
- 21 Q. I'm talking about the audits with respect to 250 activity.
- 22 Were you aware that the precinct was being audited
- 23 with respect to their memo book entries with regard to 250
- 24 activity?
- 25 A. Yes.

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D579flo3 Barrett - cross

1 Q. And did anybody in the precinct, any of your supervisors,  
2 either the sergeants you mentioned or the XO or the commanding  
3 officer, did they tell you how the precinct was doing on those  
4 audits while you were there in the 40th precinct?

5 A. Not that I recall.

6 Q. So you have no knowledge as you sit here today of how -- of  
7 whether the 40th precinct passed the audit with respect to  
8 entries in the memo book of 250 activity during the time you  
9 were there?

10 A. No.

11 Q. Did you ever hear the commanding officers say to you or the  
12 XO say to you: We have a problem with officers filling out  
13 their memo books. Can you make sure that they do that?

14 A. Yes. We had several conversations about that.

15 Q. And that was because the precinct was failing the audit  
16 year after year?

17 MR. MARUTOLLO: Objection, your Honor.

18 MR. MOORE: If you know.

19 MR. MARUTOLLO: She's already testified that she does  
20 not know.

21 MR. MOORE: Well it's cross-examination, Judge.

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

24 THE COURT: One second.

25 The previous question was: Did you ever hear the  
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D579flo3 Barrett - cross

1 commanding officer say to you or the XO say to you: We have a  
2 problem with officers filling out memo books?

3 MR. MARUTOLLO: I think the question before that.

4 THE COURT: She said yes. We had several  
5 conversations about that.

6 And then he says: And that was because the precinct  
7 was failing the audit year after year.

8 I think that's a fair follow-up.

9 MR. MARUTOLLO: I think just the question before, that  
10 first question that you read.

11 THE COURT: Right.

12 MR. MARUTOLLO: I think that's when she answered she  
13 didn't know.

14 THE COURT: Well he said with respect to entries in  
15 the memo book, for 250 activity.

16 I'll allow the repetition anyway.

17 Were you aware of the audits?

18 THE WITNESS: Your Honor, there's several different  
19 types of audits and one was a Sprint report audit and that's  
20 how we discussed activity log entries; not about stop, question  
21 and frisk.

22 THE COURT: Okay.

23 Q. So the -- so you didn't talk about stop, question and frisk  
24 with your supervisor? Is that what you're saying?

25 A. In regards to failing an audit and activity log entries?

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D579flo3 Barrett - cross

1 Q. Yes. Right.

2 A. Not that I recall.

3 MR. MOORE: I have nothing further, Judge.

4 MR. MARUTOLLO: A few questions, your Honor.

5 REDIRECT EXAMINATION

6 BY MR. MARUTOLLO:

7 Q. Lieutenant Barrett, you mentioned performance goals during  
8 the cross-examination, correct?

9 A. Yes.

10 Q. And plaintiffs' counsel asked you about enforcement  
11 activity. And I believe you indicated that enforcement  
12 activity was, among other things, part of your performance  
13 goals; is that right?

14 A. Yes.

15 Q. What were those other things that you asked your officers  
16 to address in terms of performance goals?

17 A. Well they would prepare complaint reports, accident  
18 reports, domestic incident reports.

19 They would conduct verticals. All of that gives it an  
20 all-around picture of an officer's activity. Not just  
21 enforcement activity.

22 Q. And besides activity would you ever set performance goals  
23 for officers?

24 A. Yes.

25 Q. And how so?

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D579flo3

Barrett - redirect

1 A. Well if they weren't answering enough radio runs, you know,  
2 you would question them as to were they taking too long on  
3 their radio runs. Their complaint reports would be reviewed  
4 for completeness and legibility, you know, comprehension,  
5 things like that.

6 So it wasn't just focused. It's a very broad area  
7 with numerous things contained to evaluate them with.

8 Q. Now Lieutenant Barrett is the violence reduction tour that  
9 we've been discussing, is that the same thing in sum and  
10 substance as impact overtime?

11 A. Yes.

12 Q. Now, how long is the violence reduction tour during a given  
13 night?

14 A. Of police officers it's 8 hours, 35 minutes. Sergeants  
15 it's 8 hours, 57 minutes. And a lieutenant is 8 hours, 45.

16 Q. How many officers are in a squad on the violence reduction  
17 tour?

18 A. It can vary but it's usually eight officers on a  
19 supervisor.

20 Q. Are they usually on foot, or in cars, or in patrol  
21 vehicles?

22 A. Usually in patrol vehicles.

23 Q. Would they ever be -- are they usually solo or in pairs,  
24 these officers?

25 A. I always try to keep my officers partnered together.

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D579flo3

Barrett - redirect

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

2 RECROSS EXAMINATION

3 BY MR. MOORE:

4 Q. Lieutenant Barrett, were you ever concerned that by telling  
5 officers to get five and to go crazy in there, go crazy in  
6 there, that you were giving the wrong message to your officers?  
7 Were you ever concerned about that?

8 MR. MARUTOLLO: Objection. I think it was asked and  
9 answered.

10 THE COURT: I'll allow it.

11 THE WITNESS: No.

12 MR. MOORE: Thank you. Nothing further, Judge.

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

14 MR. MARUTOLLO: Nothing further, your Honor.

15 THE COURT: All set.

16 THE WITNESS: Thank you.

17 (Witness excused)

18 THE COURT: All right. Your next witness.

19 MS. RICHARDSON: Your Honor defendants call Lieutenant  
20 Charlton Telford.

21 THE COURT: What's the name?

22 MS. MARTINI: I think the defendants just called out  
23 of order. So can I have a minute to go back to the jury room?

24 THE COURT: Sure.

25 MS. RICHARDSON: Officer Dang had another commitment  
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D579flo3 Barrett - recross

1 with his detective squad this morning. So he's planning to be  
2 here after lunch.

3 MR. MOORE: Thanks for letting us know.

4 THE COURT: You can come up.

5 CHARLTON TELFORD,

6 called as a witness by the Defendants,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. RICHARDSON:

10 Q. Good afternoon, Lieutenant Telford.

11 A. Good afternoon.

12 Q. Are you currently employed?

13 A. Yes.

14 Q. And by whom are you currently employed?

15 A. The New York City Police Department.

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

17 A. Almost fifteen years.

18 Q. And when did you join the NYPD?

19 A. August of 1998.

20 Q. And did you attend and graduate from the New York City  
21 police academy?

22 A. Yes.

23 Q. How long were you in the police academy?

24 A. Approximately eight months.

25 Q. Now can you please briefly walk the court through your

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D579flo3 Telford - direct

1 various assignments with the New York City Police Department  
2 from after the academy to the present.

3 A. After the police academy I was assigned to the 70 precinct  
4 which covered East Flatbush.

5 In 2000 -- I believe 2003 I was assigned to One Police  
6 Plaza, the employee management division.

7 July of 2004 I was promoted to sergeant and assigned  
8 to the 88 precinct.

9 And April, 2011 I was promoted to lieutenant assigned  
10 to housing Police Service Area One in Coney Island.

11 Q. Now, you mentioned that you were assigned to the employee  
12 management division. What were your duties and  
13 responsibilities there?

14 A. At that time we were implementing new identification cards  
15 for the New York City Police Department.

16 Q. And you're currently assigned to Police Service Area One;  
17 is that correct?

18 A. Yes.

19 Q. What area does that cover?

20 A. In charge of the second platoon which is the day tour. And  
21 my responsibility, I have Red Hook which is downtown Brooklyn  
22 which is the 76 precinct.

23 I have another area, the Wyckoff Houses which is in  
24 the 78 precinct; Coney Island, 60; Sheepshead Nostrand Houses  
25 which is in the 61; Glenwood Houses, which is in the 63; and

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D579f1o3

Telford - direct

1 two other housing developments in the 69 Kanarese area, which  
2 is the Brookline Houses and the Bayview Houses.

3 Q. Now aside from the time when you were assigned to the  
4 employee management division at One Police Plaza, have you  
5 always been assigned to the borough of Brooklyn?

6 A. Yes.

7 Q. What training did you receive in the police academy  
8 regarding stop, question and frisk?

9 A. I believe it was a one-day course workshop on stop,  
10 question and frisk.

11 Q. When you say workshop, what do you mean by that?

12 A. They basically showed you what the stop, question frisk  
13 forms look like. The degrees -- what you need to stop someone  
14 which is reasonable suspicion, and the different levels that  
15 you're allowed to approach someone.

16 Q. And is there any paperwork that you are required to fill  
17 out when you conduct a reasonable suspicion stop of a person?

18 A. Yes. It's called a UF 250.

19 Q. Now what training, if any, have you received about when an  
20 individual may walk away from a police officer?

21 A. That's in the academy. It's basically request for  
22 information and common law right of inquiry which is basically  
23 you just approach someone. You have no reason -- no reasonable  
24 suspicion to forcibly stop them. So that was basically it.

25 Q. And have you ever spoken to an individual on the street

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D579flo3 Telford - direct

1 when you did not have reasonable suspicion?

2 A. Many times.

3 Q. And on those occasions would people ever walk away rather  
4 than speaking with you?

5 A. Absolutely, yes.

6 Q. And what, if anything, did you say or do differently on  
7 those occasions than when you would make a reasonable suspicion  
8 stop?

9 A. It's more of a noncombative or friendly approach as  
10 basically: How are you doing? Are you lost? Are you looking  
11 for an address? Do you need police assistance? Or hi, I  
12 haven't seen you in the neighborhood. Those type of questions.

13 Q. Now, based on your training and experience when can you  
14 frisk a person?

15 A. When you have reasonable suspicion and you fear for your  
16 safety that the person may have a weapon.

17 Q. And is there any paperwork that you are required to fill  
18 out when you conduct a frisk?

19 A. Yes. There's also the UF 250.

20 Q. And have you ever conducted a -- I'm sorry. Have you ever  
21 conducted a search after frisking someone and feeling what you  
22 thought could be a weapon and later discovered that it was not,  
23 in fact, a weapon?

24 A. Yes. It happens.

25 Q. Do you know if the NYPD has a policy regarding racial

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D579flo3 Telford - direct

1 profiling?

2 A. Yes, it does.

3 Q. And what is your understanding of the NYPD's policy on  
4 racial profiling?

5 A. Basically not to target someone based on their race,  
6 religion, ethnicity, sexual orientation, religious beliefs, and  
7 so forth.

8 Q. And when did you first learn about that policy prohibiting  
9 racial profiling?

10 A. In the police academy.

11 Q. Now, in the summer of 2009 where were you assigned?

12 A. I was assigned to the 88 precinct as an anti crimes  
13 supervisor.

14 Q. And how many officers did you supervise in that role?

15 A. Five.

16 Q. And in that role did you ever supervise police officer  
17 Edgar Gonzalez and police officer Michael Noboa?

18 A. Yes.

19 Q. When did you first begin?

20 A. Officer Noboa in October of 2007 and Officer Gonzalez I  
21 believe was December of '07.

22 Q. Can you please describe the area that is covered by the 88  
23 precinct.

24 A. It's basically the Fort Greene area.

25 THE COURT: I'm sorry. I can't hear you.

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D579flo3 Telford - direct

1 THE WITNESS: Fort Greene, Clinton Hill area. Starts  
2 on Classon Avenue, runs down towards Flushing, towards Navy.  
3 And from Navy up to Tillary. Down Flatbush all the way to  
4 Atlantic, at that time all straight down to Classon Avenue and  
5 back -- back to Classon.

6 Q. And generally speaking what were the crime conditions like  
7 when you were assigned to the 88 precinct?

8 A. Most -- the major crimes basically had was robberies,  
9 burglaries, shootings, car break-ins, graffiti. Those are the  
10 major crimes that we encountered during that time.

11 Q. And how was that crime distributed throughout the precinct?

12 A. The shootings, basically that was along Myrtle Avenue by  
13 the Ingersoll-Whitman developments. That was the majority of  
14 the shootings. They encompass Myrtle Avenue, down Carlton back  
15 to Park, back to Gold Street, back to Myrtle.

16 We also had shootings, 47 Carlton, which is Atlantic  
17 terminals, located on the corner of Carlton Avenue and Atlantic  
18 Avenue.

19 The Putnam Grant area, shootings over there, which is  
20 mostly drug-related.

21 And those are the three areas that we experienced a  
22 lot of shootings.

23 In the middle of the precinct, it was mostly  
24 residential, commercial burglaries, which is along Lafayette.  
25 Near Fort Greene Park. Clinton Avenue.

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D579flo3 Telford - direct

1 The robberies would be along near Washington Park --  
2 sorry, Fort Greene Park. In the middle of the precinct, which  
3 would be Lafayette, all the way down from Washington -- I would  
4 say all the way from Washington Park all the way towards  
5 Washington Avenue. In the middle of the precinct we  
6 experienced a lot of robberies. St. James Place. Towards  
7 Gates. Greene Avenue we also experienced robberies.

8 And it depends on the type of robberies. In the  
9 daytime is mostly school kids. And that usually happened near  
10 Brooklyn Tech High School. As the kids got out, heading  
11 towards the trains. So we do school dismissals to address  
12 those robberies.

13 Along Flushing Avenue and North Portland is also  
14 another area where a lot of the school kids that were victims  
15 of crimes.

16 And along Atlantic terminal by the subway a lot of the  
17 kids also use that to head home. So we would also patrol over  
18 there as well.

19 And around Washington Avenue and Fulton, also was  
20 another crime area in the daytime for robberies.

21 At night it was mostly, again, near Fort Greene Park  
22 because at nights you have a lot of trees so it's very dark in  
23 most of those blocks.

24 And St. James Place. A lot of quiet residential  
25 blocks would find areas for the robberies that we experienced

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D579flo3 Telford - direct

1 at that time.

2 Q. And did you also mention graffiti?

3 A. Graffiti was near Pratt Institute, mostly the art students,  
4 we believed at the time it was mostly the art students there.

5 We had high incidents of graffiti while school was in session.

6 And that was mostly along, I believe, Waverly down by Flushing,  
7 by the -- because Flushing and Park, we had a lot of commercial  
8 areas, buildings that they would tag up.

9 THE COURT: Okay. I'm going to have to pause now for  
10 the luncheon recess. It will be a little bit longer today so  
11 five after two.

12 (Luncheon recess)

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D579f1o3

Telford - direct

AFTERNOON SESSION

2:10 p.m.

THE COURT: Please be seated.

Ms. Richardson.

MS. RICHARDSON: Thank you, your Honor.

CHARLTON TELFORD, RESUMED

DIRECT EXAMINATION CONTINUED

BY MS. RICHARDSON:

Q. Lieutenant Telford, before we broke for lunch we were talking a little bit about the crime conditions in the 88 precinct when you were an anticrime sergeant there.

Do you remember that?

A. Yes.

Q. How did you learn about the crime conditions in your precinct?

A. I get that information from the complaint reports that was done. During that day or previous date. From our crime analysis unit, from our detective squad, speaking with the previous tour. Patrol personnel. And commanding officers as well as special operations lieutenant at that time.

Q. What about speaking with civilians? Would that ever help you learn about crime conditions?

MS. MARTINI: Objection. Leading, your Honor.

THE COURT: One second.

I'll allow it. Go ahead. Would that help you learn

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D579flo3 Telford - direct

1 about crime conditions?

2 THE WITNESS: Yes. From time to time speaking to  
3 local citizens that would tell us certain things: There's kids  
4 hanging out in the park late at night, or there's kids  
5 congregating on the corner at certain times, especially when  
6 they're coming home. Or, you know, they see someone walking  
7 around looking at cars.

8 Those are some of the things we get from speaking to  
9 the general public.

10 Q. Now, what role, if any, would you play in training new  
11 anticrime officers when they were first assigned to your  
12 anticrime team?

13 A. Any newly assigned anticrime officers, personally work with  
14 them. It could be anywhere from six months to even a year.  
15 And basically it's a transition because when you're assigned to  
16 anticrime you're coming from a uniform patrol function. And  
17 uniform patrol function you're basically getting your  
18 assignments from the radio. They're going from one assignment  
19 to the next and marking it.

20 Transition to anticrime you have to learn how to  
21 heighten your observation skills. You have to learn how to  
22 speak to someone. You have to learn how to engage someone  
23 using proper tactics. And in doing so they would ride  
24 exclusively with me. And basically I would train them on how  
25 to enhance their observation skills. I would question them as

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D579flo3 Telford - direct

1 to someone walking, what do you see? What street are you on?  
2 Is there any reasonable suspicion to stop this person?

3 Or ask them anything that they see, to describe it.  
4 We'll go down the block. I'll ask them: Did you see anyone on  
5 that block? What were they wearing? And those are the things  
6 that I evaluate during that period.

7 Also, the effectiveness. See if they're actually  
8 learning how to do the anticrime function effectively and  
9 safely.

10 So those are some of the things that I would do with  
11 them.

12 I would also do stops with them. Ask if they saw  
13 something that they had reasonable suspicion to stop. I would  
14 ask them why. Or, you know, what made them have reasonable  
15 suspicion.

16 Or sometimes we just do -- request for information or  
17 common law right of inquiry. You know sometimes it would be  
18 someone that was lost or someone that was new in the  
19 neighborhood and we'll get back in the car and we'll proceed  
20 through the night.

21 Q. Now, when officer Gonzalez and Officer Noboa were first  
22 assigned to your anticrime team, did you do those things with  
23 them?

24 A. Yes.

25 Q. And so did you have occasion to observe Officer Gonzalez

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D579flo3 Telford - direct  
1 and Officer Noboa conducting stops of citizens?

2 A. Yes.

3 Q. Have you ever witnessed police officer Gonzalez or police  
4 officer Noboa conduct a stop that you believed was not based on  
5 reasonable suspicion?

6 A. Yes. It was basically I guess request for information and  
7 common law right of inquiry. And there would be no UF 250  
8 generated from there, basically just speaking to the person and  
9 nothing else led up to reasonable suspicion.

10 Q. And would you be responsible for reviewing the UF 250s  
11 prepared by Officer Gonzalez and Officer Noboa?

12 A. Yes. For my entire crime team.

13 Q. Are you aware that during the third quarter of 2009 police  
14 officers Gonzalez and Noboa were two of the four officers in  
15 the NYPD who conducted the most UF 250s during that time  
16 period?

17 A. Yes. I became aware of that in February of 2010. I was  
18 called for a deposition and I was informed that they are one of  
19 the two officers -- two of the four officers that had the most  
20 UF 250s.

21 THE COURT: In the entire police department?

22 THE WITNESS: Yes.

23 THE COURT: Okay.

24 Q. Now thinking back to the summer of 2009. At the time did  
25 you have any idea that those two officers were conducting more

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D579flo3 Telford - direct

1 stops than their peers?

2 A. No.

3 Q. Thinking about an average week as an anticrime sergeant,  
4 what would you be doing when you were out on patrol?

5 A. At the start of the shift is basically would meet for  
6 anywhere from 30 to 40 minutes, maybe an hour, and go over  
7 deployment in terms of the crime patterns that we had that  
8 week, where we wanted to be deployed, who we were looking for,  
9 how we should handle it.

10 If, for instance, we're working a late tour there's a  
11 robbery near Fort Greene Park. From knowing the trends, that  
12 if the robbery occurs in Fort Greene Park the most likely place  
13 that the perpetrators are going to run is through Fort Greene  
14 Park and try to get to Ingersoll-Whitman. So one of the goals  
15 is if I had one car going into the park, the other car would go  
16 on Myrtle and canvass the developments and hopefully would cut  
17 them off.

18 If there was a robbery that happened down, let's say  
19 on Willoughby by Washington Park, from those perspective we  
20 knew a lot of the perpetrators that would rundown Willoughby  
21 towards the 79 precinct across Classon Avenue.

22 If there was a robbery on Fulton by Clinton, it was  
23 the younger kids. They would run towards a couple of buildings  
24 on Clinton and I believe Greene Avenue.

25 So those are the things you speak about, tactics, you

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1 know, who is going to go there. Also essential part of the  
2 training is that if there is a robbery and uniformed personnel  
3 is there, there's absolutely no need for us to go to the scene  
4 because now we should be into apprehension/observation mode.  
5 Because by that time the information is five minutes old. You  
6 have to expand your canvass area. And those are the things  
7 that we go over and who is going to go where.

8 Also meet up halfway through the tour and discuss what  
9 we saw; anyone who may have tried to stop and ran from us; and  
10 how the night was going, if there's any particular place of  
11 interest that we should stay, etc.

12 Q. Now, in the summer of 2009 what were the crime conditions  
13 specifically like in the 88 precinct?

14 A. During that time we had, by Ingersoll-Whitman we  
15 experienced three shootings. And Ingersoll-Whitman at that  
16 time was mostly drug-related. They had three different crews  
17 that controlled that area. You had on the Ingersoll side by  
18 Hudson and Navy Walk, you had one group. The Monuments was in  
19 the middle of the development. It was the Monument group and  
20 you had another group on Auburn and North Portland that  
21 controlled that area. And there was a void on Carlton Avenue  
22 which the North Portland side was taking over.

23 So, in that sense we feared there was going to be  
24 retaliation, retaliatory shootings during that period. Since  
25 they happened a few days apart, so close together. So we

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1 basically conducted more of enforcement in that area to prevent  
2 anymore shootings or for any innocent bystanders to get hit.

3 We also had, at Fort Greene Park, we had I believe  
4 four to five males. We called it at that time the cane robbery  
5 because they were walking around with a stick late at night and  
6 they would accost individuals walking along Washington Park in  
7 the dark. And they would hit them with the cane and rob them.

8 We also had a burglary pattern in the middle of the  
9 precinct which is basically be on Lafayette, Clinton, in that  
10 general area, where the perpetrator was basically kicking open  
11 the doors and entering residential areas. And we basically got  
12 lucky because the two times that he did commit the burglaries,  
13 that a female was home ironing on the second floor and I guess  
14 he didn't realize she was there. He walked up the stairs and  
15 she saw him and he fled the building. And the second one was  
16 the female actually caught him halfway entering from the rear  
17 of the building through bedroom door. She like screamed and he  
18 got a way. So kind of zeroed in on who we were looking for.

19 So those were the three major crime patterns that we  
20 had going on in that third quarter.

21 Q. Lieutenant Telford I am showing you what has been marked  
22 for identification as Plaintiffs' Exhibit 557. Do you  
23 recognize these?

24 A. Yes.

25 Q. What do you recognize these to be?

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1 A. Stop, question and frisk commonly referred to as UF 250  
2 reports.

3 MS. RICHARDSON: Your Honor, I move the admission of  
4 Plaintiffs' Exhibit 557.

5 MS. MARTINI: No objection, your Honor.

6 THE COURT: 557 received.

7 (Plaintiffs' Exhibit 557 received in evidence)

8 MS. MARTINI: But with the limitation they're not  
9 offered for the truth of the statements in the 250.

10 MS. RICHARDSON: I'm actually not going to question  
11 him about these UF 250s. I'm just admitting them for the  
12 purpose of admitting a demonstrative that you had actually  
13 produced.

14 Q. Now Lieutenant Telford are those UF 250s from a specific  
15 officer?

16 A. Yes. These are all from Officer Gonzalez.

17 MS. RICHARDSON: Your Honor, I am showing a  
18 demonstrative that plaintiffs' counsel actually provided to us.  
19 This is marked as Plaintiffs' Exhibit 557D.

20 THE COURT: Whose stops are these?

21 MS. RICHARDSON: This is police officer Gonzalez.

22 Q. And Lieutenant Telford did you supervise police officer  
23 Gonzalez during the summer of 2009?

24 A. Yes.

25 Q. Do you see here where it says stop outcome, weapon found?

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1 A. Mm-hmm.

2 Q. And it shows that zero weapons were recovered for, of  
3 course, zero percent out of those UF 250s?

4 A. Yes.

5 Q. Does that concern you at all?

6 A. No. Not every stop and question is going to lead up  
7 necessarily to a frisk. A frisk is basically there's fear for  
8 your safety or the person might be concealing a weapon. So not  
9 every stop and question is going to lead to an automatic frisk.

10 THE COURT: Do you know what percent of stops result  
11 in frisks?

12 THE WITNESS: I don't have that number.

13 THE COURT: Have you ever known that percentage?

14 THE WITNESS: I've never broken down the percentage.

15 THE COURT: Then you don't have any idea whether it's  
16 a half, or a third, or a quarter? You just don't know?

17 THE WITNESS: I don't know.

18 MS. RICHARDSON: Your Honor, before I forget, I move  
19 to admit 557D.

20 THE COURT: 557D is received.

21 (Plaintiffs' Exhibit 557D received in evidence)

22 Q. Lieutenant Telford, if I represented to you that I have  
23 reviewed all of the UF 250s that are in Plaintiffs' Exhibit 557  
24 for Officer Gonzalez and out of 134 UF 250s for that time  
25 period only three of those UF 250s involved a frisk, would that

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1 concern you at all?

2 A. No.

3 Q. Why is that?

4 A. Based on his observations and his training, again, not  
5 every frisk, stop and question is going to result in a frisk.  
6 It's, you know, it's not basically stop, question and frisk.  
7 It's should be stop, question and perhaps frisk.

8 Q. And so the fact that Officer Gonzalez did not recover any  
9 weapons or contraband during the summer of 2009, does that  
10 cause you to question whether there was reasonable suspicion  
11 for those stops?

12 A. No.

13 THE COURT: Wait, wait. I have a question.

14 Out of the 132 on that chart, there were no summonses  
15 and three percent result in an arrest or 4 out of 132. Does  
16 that cause you any concern as to whether there was reasonable  
17 suspicion for the stop?

18 THE WITNESS: No.

19 THE COURT: So basically of the 132, 128 essentially  
20 had no result, no summonses, no arrests, no gun, no contraband?

21 THE WITNESS: Based on this chart, no.

22 THE COURT: No what?

23 THE WITNESS: No weapons or contraband, summonses.

24 THE COURT: Or arrests or summonses except four  
25 arrests?

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1 THE WITNESS: Four arrests, yes.

2 THE COURT: Out of the 132 stops. And that doesn't  
3 concern you?

4 THE WITNESS: No. Because a lot of the times, based  
5 on reasonable suspicion, you're suspecting that a crime is  
6 going to take place. And a lot of the times, based on knowing  
7 who you're stopping because a lot of these people -- a lot of  
8 personnel that we stop, we interact with them more than once.  
9 It doesn't necessarily mean we're going to stop them everyday.

10 You know their movements, where they stay. You know,  
11 we've had like conversations with them. And it's when, you  
12 know, they become -- their actions out of the ordinary that you  
13 start to build up reasonable suspicion by observing their  
14 behavior, you know.

15 THE COURT: These were reasonable suspicion stops?

16 THE WITNESS: Right.

17 THE COURT: These weren't common law, right of inquiry  
18 that you talked about: Hello, are you having a good day? Do  
19 you need help? These aren't those kinds of stops? These are  
20 all reasonable suspicion?

21 THE WITNESS: Right.

22 THE COURT: But there's still no concern about 132,  
23 128 essentially -- I called them yesterday dry stops, nothing  
24 happened at all?

25 THE WITNESS: But that's over a three-month period.

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1 THE COURT: Yes.

2 THE WITNESS: Despite that we had basically, it was in  
3 July, and that's when -- I don't know if you have the exact  
4 numbers that we did in July. But that's where we had most of  
5 the shootings over at Ingersoll-Whitman. And after that  
6 subsided, you know, suppressed anymore shootings, the condition  
7 didn't warrant us to be in that area as much.

8 THE COURT: I don't know what your answer had to do  
9 with my question.

10 Is this for a particular time period, this chart?

11 MS. RICHARDSON: Yes. This is for third quarter of  
12 2009. This is July, August and September. Just, your Honor  
13 said -- was referring to the number, it's actually --

14 THE COURT: You said 134. And the chart said 132.

15 MS. RICHARDSON: It's actually 134 total for that time  
16 period. This number is for just this category area.

17 THE COURT: I see. Thank you. Right. Okay.

18 Q. Now Lieutenant Telford, as a supervisor how do you evaluate  
19 your police officers?

20 A. I evaluate them on their knowledge of the conditions that's  
21 going on in the precinct. Based on how they conduct themselves  
22 out on patrol. And other factors, appearance, how they speak  
23 to the public. Never based on how many 250s or summonses or  
24 arrests they brought in.

25 Because our motto for my team is as you start is

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1 basically go out there and look for nothing and then you'll end  
2 up seeing everything. Basically when you go out there looking  
3 like for an arrest or anything like that, you get tunnel  
4 vision. So you might miss other stuff that might be going on  
5 because you're so zeroed in on a specific instance.

6 But if you just go out there and conduct observations  
7 and see what's going on, you're able to start seeing like, for  
8 instance, who doesn't belong, certainly who's nervous, etc.  
9 like that. So that's how I evaluate my officers.

10 Q. And so as a supervisor have you ever instructed your  
11 officers that they needed to perform a certain number of stops,  
12 arrests, or summonses?

13 A. No.

14 MS. RICHARDSON: One minute, your Honor.

15 (Pause)

16 Q. Lieutenant Telford, just so we're clear, you mentioned a  
17 spike in shootings, correct?

18 A. Mm-hmm.

19 Q. And when did that spike occur?

20 A. In July.

21 Q. Of what year?

22 A. 2009.

23 Q. And July of 2009 is part of the third quarter of 2009?

24 A. Yes.

25 MS. RICHARDSON: No further questions, your Honor.

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D578FLO4 Telford - cross

1 MS. MARTINI: Your Honor, just at the outset, I  
2 believe Ms. Richardson already noted this, but just to remind  
3 the Court that the parties stipulated in the joint pretrial  
4 order that Officer Noboa and Officer Gonzalez were two of the  
5 four NYPD officers who had the highest number of stops.

6 I also just wanted to remind the Court that both  
7 parties designated deposition testimony for Edgar Gonzalez,  
8 which the Court already is in possession of, and any relevant  
9 exhibits. And just to speed things along during Lieutenant  
10 Telford's examination, I just wanted to formally admit those  
11 exhibits for Gonzalez that you already have now.

12 THE COURT: OK.

13 MS. MARTINI: Those are Plaintiffs' Trial Exhibits 63  
14 and 144 through 147.

15 THE COURT: OK. Those exhibits are received.

16 MS. RICHARDSON: We already discussed this. So we  
17 have no objection.

18 (Plaintiffs' Exhibits 63, 144 through 147 received in  
19 evidence)

20 CROSS-EXAMINATION

21 BY MS. MARTINI:

22 Q. Good afternoon, Lieutenant Telford.

23 A. Good afternoon.

24 Q. You mentioned that you were the anticrime unit supervisor  
25 in the 88th Precinct, correct?

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D578FLO4

Telford - cross

- 1 A. Yes.
- 2 Q. And the anticrime unit is most of the time an observation  
3 based unit, is that right?
- 4 A. Yes.
- 5 Q. And the anticrime unit is a plain clothes unit, correct?
- 6 A. That's correct.
- 7 Q. Before becoming an anticrime unit supervisor, you attended  
8 a plain clothes training, correct?
- 9 A. Yes.
- 10 Q. But you don't recall any training based on conducting stop,  
11 question and frisk in that plain clothes training, do you?
- 12 A. I don't recall that.
- 13 Q. And you don't recall any training specifically on UF-250s  
14 that was given during that plain clothes training, correct?
- 15 A. That's correct.
- 16 Q. And I think you mentioned on direct that beginning in late  
17 2007, you became the direct supervisor of Officers Edgar  
18 Gonzalez and Michael Noboa, correct?
- 19 A. That's correct.
- 20 Q. Are you still Officer Gonzalez's supervisor?
- 21 A. No, I am not.
- 22 Q. Do you recall when he stopped reporting to you?
- 23 A. When I got promoted in April of 2011.
- 24 Q. Now, during the third quarter of 2009, Officer Gonzalez was  
25 a part of your anticrime unit, one of the five officers that

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D578FLO4 Telford - cross

1 you directly supervised, right?

2 A. That's correct.

3 Q. And as his direct supervisor, you reviewed and signed off  
4 on his UF-250 forms he completed, correct?

5 A. The majority of them, yes.

6 Q. Do you still have Plaintiffs' Trial Exhibit 557 in front of  
7 you, which are the Gonzalez UF-250 forms?

8 A. Yes.

9 Q. In fact, you're the supervisor who reviewed and signed off  
10 on the majority of these UF-250s, correct?

11 A. That's correct.

12 Q. Would you accept my representation that your name is listed  
13 as the reviewing supervisor on 118 out of these 134 UF-250s?

14 A. That's correct.

15 MS. MARTINI: I would like to show the Court again  
16 what has already been admitted as Plaintiffs' Trial Exhibit  
17 557-D, which is a summary exhibit of the UF-250s in Plaintiffs'  
18 Trial Exhibit 557.

19 Q. You explained earlier that the anticrime unit does mainly  
20 observation, correct?

21 A. That's correct.

22 Q. According to this chart, Officer Gonzalez checked off the  
23 same four boxes on the UF-250 form in 132 out of 134 total  
24 UF-250s for the third quarter of 2009. And those four boxes  
25 are fits description, actions indicative of casing, and then

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D578FLO4 Telford - cross

1 from the back of the form, high crime area, and time of day,  
2 day of week, season corresponding to crimes.

3 Does that concern you at all?

4 A. No. Because those are the factors that, based on his  
5 observation, led him to have reasonable suspicion to conduct  
6 the stop.

7 THE COURT: What does fits description mean then?  
8 What description could he possibly be referring to? I thought  
9 that is usually a radio run with a description.

10 THE WITNESS: Again, we would get information. For  
11 example, we would get the robbery condition. And based on  
12 that, you would have the description of the perpetrators, the  
13 race, the height, the age at that time.

14 THE COURT: 98 percent of those people fit the same  
15 description?

16 THE WITNESS: I don't have a breakdown of exactly  
17 every single one that did a robbery. A lot of times it's a  
18 retaliatory shooting, a guy is walking around looking to see if  
19 they can possibly commit the shooting or not.

20 THE COURT: But you have no concern that 98 and a half  
21 percent of the people stopped fit a description?

22 THE WITNESS: No, I don't.

23 THE COURT: OK.

24 Q. Does it concern you that although Officer Gonzalez checked  
25 fits description, along with those three other checked boxes,

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D578FLO4 Telford - cross

1 98.51 percent of the time, he did not check the box on the  
2 UF-250 indicating there was an ongoing investigation?

3 I can show you the UF-250 form if that would be  
4 helpful.

5 Do you see on the back of the form under additional  
6 circumstances or factors, check all that apply, ongoing  
7 investigation, e.g., robbery pattern?

8 A. Yes.

9 Q. Would it concern you that Officer Gonzalez checked fits  
10 description in all of these UF-250s except for two, but not a  
11 single UF-250 had ongoing investigation checked?

12 A. It's not a concern.

13 Q. Not a single UF-250 included a radio run or a Sprint  
14 number?

15 A. Anticrime is not tied to the radio, you know, most of the  
16 stops is just self-observation.

17 Q. Observation?

18 A. A majority of the stops are self-motivated stops.

19 Q. And not a single UF-250 had checked report from victim.  
20 Would that concern you given that he checked fits description  
21 on 132 out of 134 of them?

22 A. Fits description would come from, again, looking at the  
23 complaint reports for a given time period, from speaking to the  
24 detectives, who they are possibly looking for for a shooting,  
25 and the burglary pattern, who they are looking for again.

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D578FLO4 Telford - cross

1 Q. You would agree that those would properly be characterized  
2 as ongoing investigations that the precinct is conducting with  
3 respect to certain crime conditions?

4 A. Yes.

5 Q. Looking at that statistic on Plaintiffs' Trial Exhibit  
6 557-D, did you ever think that Officer Gonzalez might have been  
7 checking off these four boxes when it was not appropriate to do  
8 so?

9 A. No.

10 Q. Sitting here today, are you still not concerned that he may  
11 have been checking off those boxes when it was not appropriate  
12 to do so?

13 A. Based on my conversation in speaking with him and asking  
14 him about the stops that he observed and training him, I was  
15 confident that he made those stops based on the information  
16 that he checked off on the box.

17 Q. So that represents --

18 THE COURT: But you don't know what description he is  
19 referring to. When you went over the UF-250s with him and you  
20 signed off, did you ever ask him what description are you  
21 talking about, where did you get that description from?

22 THE WITNESS: I did. If it was in a certain area, OK,  
23 was this part of the -- even though he didn't check it off,  
24 were they close to Washington Park? Did they look like the  
25 group that is going around doing the robberies late at night?

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D578FLO4 Telford - cross

1 And that's how I would get information from him.

2 If I had questions from reviewing the UF-250, I would  
3 elicit more information from him, and see what happened, where  
4 were these guys. Maybe we missed them, maybe we missed an  
5 opportunity to observe them at a longer period of time to see  
6 if they would commit the crime, or maybe they knew we were in  
7 the area and they left the area so the crime didn't take place.  
8 Q. So in two out of the 134 UF-250s, he checked off a box  
9 other than those four, and I would like to just take a look at  
10 one of those.

11 Turning back to Plaintiffs' Trial Exhibit 557,  
12 specifically at page 15985.

13 THE COURT: You see those numbers? Do you know how to  
14 find 15985?

15 THE WITNESS: Yes.

16 Q. The only box checked under what were the circumstances  
17 which led to the stop is furtive movements, correct?

18 A. Correct.

19 Q. Turning to the back of the sheet, the back of the UF-250  
20 form, there are no other additional circumstances or factors  
21 checked as the basis for the stop, correct?

22 A. That's correct.

23 Q. And nothing on this form indicates what the furtive  
24 movements were, correct?

25 A. That's correct.

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D578FLO4 Telford - cross

- 1 Q. Now, looking at the back of this form, you didn't sign this  
2 particular UF-250, correct?  
3 A. That's correct.  
4 Q. Lieutenant Berger signed this one?  
5 A. Yes. In the month of July, Lieutenant Berger was mostly  
6 responsible for the crime team for most of that month.  
7 Unfortunately, I lost my father during that month so I wasn't  
8 there. But when I came back in, I reviewed most of the 250s  
9 and spoke with my officers on the ones I did review.  
10 Q. During this time, Lieutenant Berger was your direct  
11 supervisor, right?  
12 A. That's correct.  
13 Q. Did Lieutenant Berger ever raise any concerns with you  
14 about this stop of Officer Gonzalez's?  
15 A. No.  
16 Q. And you believed that if at least one box is checked on the  
17 UF-250 form, that the officer properly filled out the form,  
18 correct?  
19 A. That's correct.  
20 Q. And looking a few pages further at what is Bates stamped  
21 15999, this is a stop that occurred on July 8, 2009, correct?  
22 A. That's correct.  
23 Q. And turning to the back of the form, do you see where it  
24 says "remarks made by person stopped"?  
25 A. Yes.

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D578FLO4 Telford - cross

1 Q. Can you just read what that handwritten remark says?

2 A. "Why can't you stop other people?"

3 Q. Does it say "why can't you" or "why don't you"?

4 A. It's hard to tell. I can't make out if that's a D or a C.

5 Q. It either says, "Why can't you stop other people," or, "Why  
6 don't you stop other people," correct?

7 A. Correct.

8 Q. And that's your signature and name at the bottom of the  
9 form, correct?

10 A. Correct.

11 Q. And the race of the individual stopped was black, correct,  
12 if we look at the front of the form?

13 A. Yes.

14 Q. Did this raise any flags with you that these remarks might  
15 constitute an allegation of racial profiling?

16 A. No. Because it stated the demeanor of the person being  
17 stopped is angry. I don't know why he was angry.

18 Q. Do you think an individual that's angry isn't making an  
19 allegation of racial profiling?

20 A. No. When you stop someone for reasonable suspicion, no one  
21 likes to be stopped to begin with. Basically, you're the  
22 police, you're stopping someone, and you're basically accusing  
23 them of possibly committing a crime. And based on all the  
24 interactions that they may have had with previous police  
25 officers and how they were treated when they were stopped, or,

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D578FLO4 Telford - cross

1 you know, I can't speak for everyone, they may have a certain  
2 resentment for you stopping them, or they might be angry that  
3 you're stopping them, and perhaps they see other crimes going  
4 on and they feel you're not addressing that but you're  
5 targeting them. So there's a lot of factors of why somebody  
6 would be angry as to why you are stopping them. They could be  
7 angry because they don't want to interact with you much longer  
8 so they can get on to what they have to do. There are  
9 different factors. It doesn't necessarily mean that they are  
10 saying that you're racially profiling them.

11 Q. I was just asking whether the remarks stated here, when the  
12 person stopped remarked, why don't you or can't you stop other  
13 people, did that remark or would that remark raise any flags to  
14 you that they might be alleging or complaining about  
15 potentially racially profiling by the stop?

16 A. No. Just because -- like I said, the person's demeanor at  
17 that time was angry. So maybe they had a bad day at work. I  
18 don't know.

19 Q. I think we already said this stop occurred on July 8, 2009,  
20 correct?

21 A. Correct.

22 Q. I am going to hand you what is already in evidence as  
23 Plaintiffs' Trial Exhibit 144.

24 These are selected portions of Officer Gonzalez's memo  
25 book. Turning to page 14700.

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D578FLO4 Telford - cross

1 THE COURT: This is in evidence, right?

2 MS. MARTINI: Yes.

3 Q. If we look at the entries for July 8, 2009, which was the  
4 date of the stop that we just looked at. There is nothing  
5 indicated in Officer Gonzalez's memo book regarding the stop in  
6 the UF-250 that we just looked at, correct?

7 A. That's correct.

8 Q. And looking back at Plaintiffs' Trial Exhibit 557, without  
9 flipping through them all, there are at least three UF-250s  
10 completed for July 8, 2009. And there are no entries in  
11 Officer Gonzalez's memo book regarding any stops for July 8,  
12 2009, correct?

13 A. That's correct.

14 Q. And as Officer Gonzalez's supervisor, you regularly  
15 reviewed his memo book, correct?

16 A. Yes.

17 Q. And if we turn just a few pages to 14703 of Plaintiffs'  
18 Trial Exhibit 144, that's your signature about two-thirds of  
19 the way down the page indicating that you inspected his memo  
20 book, correct?

21 A. Yes.

22 THE COURT: So was it appropriate for him to not  
23 record these in his memo book, these three stops?

24 THE WITNESS: It's not appropriate at all.

25 Q. There are various forms of discipline an officer can

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D578FLO4 Telford - cross

1 receive for violating NYPD policy or procedure, correct?

2 A. That's correct.

3 Q. And you would agree that the NYPD has a system of  
4 progressive discipline?

5 A. Yes.

6 Q. For example, for the first offense, you might start out  
7 with a lower level of discipline, such as just a warning?

8 A. Yes.

9 Q. And then if the offense or violation continued, the warning  
10 might not be sufficient and the member of service might incur a  
11 higher level of discipline, correct?

12 A. That's correct.

13 Q. And you have given verbal warnings to officers under your  
14 supervision for failing to include information in their  
15 activity logs, correct?

16 A. That's correct.

17 Q. In fact, you have given Officer Noboa a verbal warning for  
18 failing to include information in his activity log, correct?

19 A. That's correct.

20 Q. Do you currently supervise Officer Noboa?

21 A. No, I do not.

22 Q. As of March 2010, at the time of your deposition, you had  
23 given Officer Noboa a verbal warning for failing to include  
24 information in his activity log more than five times, correct?

25 A. Correct.

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D578FLO4 Telford - cross

1 Q. Are you aware that in 2006, prior to becoming under your  
2 supervision, Officer Noboa received a command discipline for  
3 failing to document stop, question and frisks in his memo book?

4 A. I wasn't aware of that.

5 Q. You have also given Officer Gonzalez warnings for failing  
6 to document stop, question and frisk encounters in his memo  
7 book, correct?

8 A. Yes.

9 Q. In fact, as of March 2010, you believed you had probably  
10 given him verbal warnings on several occasions, is that  
11 correct?

12 A. That's correct.

13 Q. And you testified that you reviewed the officers' memo  
14 books and you review their UF-250 forms, right?

15 A. In July, on that specific date, unfortunately, my father  
16 passed away so I wasn't working that day.

17 Q. I mean as a general matter, as a supervisor.

18 A. You're going back to that date so I am just explaining.  
19 The time I got back, a few weeks later, that's when I started  
20 reviewing. Did I check against their memo book at that time?  
21 I don't believe I did.

22 Q. In fact, you don't ever compare a completed UF-250 to an  
23 officer's activity log, correct?

24 A. I wouldn't say never.

25 Q. As of March 2010, you had never done so?

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D578FLO4 Telford - cross

1 A. 2010?

2 Q. 2010. At the time of your deposition, up until that point,  
3 you had never compared a UF-250 form to the corresponding  
4 activity log, correct?

5 A. I have done it on occasions.

6 Q. Since March 2010?

7 A. Prior to that as well.

8 Q. I would like to hand you a copy of your deposition in this  
9 case.

10 Do you recall being deposed in this case?

11 A. Yes.

12 Q. And your deposition took place on March 9, 2010, correct?

13 A. Yes.

14 Q. And you were under oath at that deposition, correct?

15 A. Yes.

16 Q. And you swore to tell the truth?

17 A. Yes.

18 Q. And you did tell the truth, correct?

19 A. Yes, I did.

20 Q. If you could just turn to page 100, lines 2 through 7.

21 "Q. Have you ever compared a UF-250 form to an activity log?

22 "MR. HAZAN: Objection to the form of the question.

23 "A. Pulling back one, I don't believe so."

24 Did you provide that answer to that question?

25 A. Yes.

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D578FLO4 Telford - cross

1 Q. Now, as Officer Noboa's supervisor, one of your duties was  
2 to review and sign off on his monthly performance report also,  
3 correct?

4 A. That's correct.

5 Q. I would like to show you what has been premarked as  
6 Plaintiffs' Trial Exhibit 556.

7 These are all of Officer Noboa's monthly performance  
8 reports for 2009, correct?

9 A. Correct.

10 MS. MARTINI: Your Honor, I move Plaintiffs' Trial  
11 Exhibit 556 into evidence.

12 MS. RICHARDSON: No objection.

13 THE COURT: 556 is received.

14 (Plaintiffs' Exhibit 556 received in evidence)

15 Q. At the bottom of each form, it indicates how many stop,  
16 question and frisks Officer Noboa completed for each month,  
17 correct?

18 A. That's correct.

19 Q. So we have 24 in January.

20 MS. MARTINI: And these are in evidence so I am not  
21 going to go through them all, your Honor.

22 Q. But looking at these reports in total, we know that Officer  
23 Noboa conducted at least 395 stop, question and frisks in all  
24 of 2009. Does that concern you, Lieutenant Telford?

25 A. No.

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D578FLO4 Telford - cross

1 Q. I would also like to show you what has been premarked as  
2 Plaintiffs' Trial Exhibit 555, which is Officer Gonzalez's  
3 monthly performance report.

4 MS. MARTINI: I would like to move in Plaintiffs'  
5 Trial Exhibit 555.

6 MS. RICHARDSON: No objection.

7 THE COURT: 555 received.

8 (Plaintiffs' Exhibit 555 received in evidence)

9 Q. These are Officer Gonzalez's monthly performance reports  
10 for the entire calendar year of 2009.

11 Looking at each of these pages, we know that Officer  
12 Gonzalez conducted at least 411 stop, question and frisks in  
13 2009. This didn't concern you either, right?

14 A. No.

15 Q. And both officers were under your supervision throughout  
16 the year 2009, I think you testified to that?

17 A. Yes.

18 Q. At the time of your deposition, your direct supervisor was  
19 Lieutenant Berger, correct?

20 A. That's correct.

21 Q. And he was your supervisor throughout 2009?

22 A. Yes.

23 Q. And you met with him a few times a week?

24 A. That's correct.

25 Q. But during those meetings, you never discussed criticisms

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D578FLO4 Telford - cross

1 of a particular officer's stop and frisks, correct?

2 A. That's correct.

3 Q. And during those meetings, you never discussed racial  
4 profiling, correct?

5 A. It was implied, everyone knew about racial profiling. We  
6 never discussed it directly.

7 MS. MARTINI: No further questions, your Honor.

8 THE COURT: Ms. Richardson.

9 MS. RICHARDSON: Can I have just one minute?

10 THE COURT: Sure.

11 MS. RICHARDSON: Just briefly, your Honor.

12 REDIRECT EXAMINATION

13 BY MS. RICHARDSON:

14 Q. During the third quarter of 2009, were you addressing  
15 multiple crime conditions?

16 A. Yes.

17 Q. And so based on the information available to you at the  
18 time, did you have any descriptions of the suspected  
19 perpetrators of those crime conditions?

20 A. Yes.

21 Q. What were those?

22 THE COURT: What were the descriptions?

23 Q. What were the descriptions of the suspected perpetrators?

24 THE COURT: I don't understand. What crimes? The  
25 various conditions?

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D578FLO4 Telford - redirect

1 MS. RICHARDSON: I can clarify.

2 Q. What were the crime conditions that you were addressing at  
3 the time?

4 THE COURT: OK.

5 A. Shootings.

6 MS. MARTINI: Objection. I would just ask that he not  
7 go through -- he specifically testified to the three exact  
8 crime conditions that were going on in the third quarter.

9 THE COURT: I think he was going to do that again.  
10 One was shooting.

11 THE WITNESS: Robberies and burglaries.

12 THE COURT: Shootings, robberies and burglaries?

13 THE WITNESS: Yes.

14 Q. Did you have descriptions of the suspected perpetrators for  
15 each of those conditions that you were addressing?

16 A. The burglaries, the description we had was a male Hispanic,  
17 between 5'8", 5'9", in his 30s. The robberies were male  
18 blacks, anywhere from four to five, between the ages of 14 to  
19 19. And the shooting was a male black in his 20s.

20 Q. When you were Officer Gonzalez and Officer Noboa's  
21 supervisor, would you ever observe them stopping multiple  
22 people at a time?

23 A. Yes.

24 Q. How often would that occur?

25 A. On a given night, I could say a handful in that quarter,

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D578FLO4 Telford - redirect

1 maybe -- I don't have an exact number, but yes, I have seen  
2 them stop multiple people at a time.

3 MS. RICHARDSON: No further questions, your Honor.

4 THE COURT: Anything, Ms. Martini?

5 MS. MARTINI: Just briefly.

6 RECROSS-EXAMINATION

7 BY MS. MARTINI:

8 Q. You just explained one of the crime conditions was  
9 burglaries and that the description of the man wanted for the  
10 burglary was a male Hispanic, correct?

11 A. Correct.

12 Q. Just looking at the breakdown of the race of the  
13 individuals that Officer Gonzalez stopped in the third quarter,  
14 he only stopped 11 people who were Hispanic, correct?

15 A. That's correct.

16 MS. MARTINI: Nothing further, your Honor.

17 THE COURT: Anything further of this witness?

18 MS. RICHARDSON: Nothing further.

19 THE COURT: We are all set. Thank you.

20 MS. RICHARDSON: Defendants call Police Officer  
21 Anthony Navaretta. We are going slightly out of order and we  
22 discussed this during lunch.

23 THE COURT: So the plaintiffs know. OK.

24 (Continued on next page)

25

D578FLO4 Telford - recross

1 ANTHONY NAVARETTA,

2 called as a witness by the defendants,

3 having been duly sworn, testified as follows:

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

6 THE WITNESS: Anthony Navaretta, A-N-T-H-O-N-Y,  
7 N-A-V-A-R-E-T-T-A.

8 DIRECT EXAMINATION

9 BY MS. RICHARDSON:

10 Q. Good afternoon, Officer Navaretta.

11 A. Good afternoon.

12 Q. Are you currently employed?

13 A. Yes, I am.

14 Q. By whom are you currently employed?

15 A. The NYPD.

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

18 A. This July would be eight years.

19 Q. When did you first join the New York City Police  
20 Department?

21 A. 2005 in July.

22 Q. Did you attend and graduate from the New York City police  
23 academy?

24 A. Yes, I did.

25 Q. When did you graduate from the academy?

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D578FLO4

Navaretta - direct

1 A. January '06.

2 Q. Now, can you please briefly walk us through your various  
3 assignments in the NYPD starting from when you graduated from  
4 the academy to the present?

5 A. Sure. I came out of the academy assigned to the 28  
6 Precinct located up in Harlem. I was assigned to an impact  
7 post, which was my first post. I went from impact to  
8 conditions unit. From conditions unit went to patrol for a  
9 short time. Then went to an anticrime unit. And then after  
10 anticrime I finished out in patrol.

11 Q. What is your current assignment?

12 A. I work for the building maintenance section.

13 Q. What exactly is that?

14 A. We do any type of construction work within the police  
15 department in high security areas.

16 Q. So why did you transfer from being a patrol officer to  
17 working in building maintenance?

18 A. Well, I transferred because, number one, this job has got a  
19 lot of opportunities. There's places to go. I wanted to  
20 expand my talent. I went down there one day, saw that they  
21 needed applicants, they were short-handed. It's very minimum  
22 of guys in that unit anyway. I told them I have construction  
23 background knowledge prior to this job. And I went down there,  
24 picked up an application, took about a year or two to get in,  
25 if I remember right, and went to two interviews and got

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Navaretta - direct

1 accepted.

2 Q. And so thinking back to when you first graduated from the  
3 police academy, you were assigned to impact, correct?

4 A. Correct.

5 Q. Can you describe what your duties and responsibilities were  
6 as an impact officer?7 A. As an impact post police officer, you were out there every  
8 day walking on foot, interacting with the community, on 125th  
9 Street, which is a big business district, heavy populated with  
10 people, just like Times Square.

11 Q. When you say 125th Street, that's in Harlem?

12 A. Correct.

13 Q. What precinct is that in?

14 A. In the 28 Precinct, in the confines of the 28.

15 Q. Can you describe the area that the 28th Precinct covers?

16 A. Sure. East we go from Fifth Avenue all the way west to  
17 Morningside Drive. From the south, it's 110th Street, which is  
18 Central Park North, and we head all the way up to 128th Street,  
19 that's as far north as we go. Right in the middle of Harlem.

20 Q. I'm sorry?

21 A. It's the center of Harlem.

22 Q. Now, when you were first assigned to impact, was there a  
23 specific post that you were responsible for?24 A. We were mainly stationed up on 125th Street, posted up on  
25 125. Normally, the same post once or twice a week, but never

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D578FLO4

Navaretta - direct

1 permanent.

2 Q. How many other officers were assigned to impact at your  
3 precinct at the time?

4 A. We came over, about 40.

5 Q. Would all 40 of you patrol at the same time?

6 A. No. Daily, it would probably be about a dozen or a little  
7 more during the shift.

8 Q. Did you have a partner?

9 A. I didn't have a partner. I had another cop on the same  
10 street with me, because the blocks were so long, the city  
11 blocks was long, so they wanted to post two cops up on one side  
12 and two cops up on the other street.

13 Q. Was this a uniformed position?

14 A. Yes.

15 Q. Now, what training, if any, did you receive in the police  
16 academy regarding stop, question and frisk?17 A. We had classroom. We had a PowerPoint up there, we had an  
18 instructor, a full class.19 Q. So based on your training and experience, when can you stop  
20 a citizen?21 A. Whenever I have reasonable suspicion, whenever I have  
22 reasonable suspicion of somebody about to or ready to commit a  
23 crime.24 Q. Is there any paperwork that you're required to fill out  
25 when you conduct a reasonable suspicion stop?

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D578FLO4

Navaretta - direct

1 A. Yes. It's a UF-250.

2 Q. What training, if any, have you received about when an  
3 individual may walk away from a police officer?

4 A. I don't remember when I had the training. I can't recall  
5 right now. But I know anybody could walk away from a police  
6 officer.

7 Q. Have you ever asked a person a question and allowed that  
8 person to walk away rather than answer your question?

9 A. Sure.

10 Q. How often has that happened?

11 A. I can't say how many times, but it's happened more than  
12 once or twice.

13 Q. Now, based on your training and experience, when can you  
14 frisk a citizen?

15 A. Whenever -- when I'm on a situation, if I feel like I am  
16 being threatened, I don't like the manner whoever I'm stopping,  
17 for my safety I have to frisk. At that time and place, I will  
18 just stop. If that person, I don't feel safe, I am just going  
19 to give him a quick frisk.

20 Q. Do you frisk every person that you stop?

21 A. No.

22 Q. Is there any paperwork that you fill out when you frisk  
23 someone?

24 A. I fill out the UF-250, even if I don't frisk.

25 Q. So any time you conduct a stop --

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D578FLO4

Navaretta - direct

1 A. Correct.

2 Q. -- you fill out a UF-250?

3 Do you know if the NYPD has a policy regarding racial  
4 profiling?

5 A. Yes.

6 Q. What do you understand that policy to be?

7 A. Absolutely no racial profiling.

8 Q. Officer Navaretta, I am handing you what has been marked  
9 for identification as Defendants' Trial Exhibit O12. Do you  
10 recognize this document?

11 A. Yes.

12 Q. What do you recognize this to be?

13 A. A UF-250.

14 MS. RICHARDSON: I move for the admission of  
15 Defendants' Exhibit O12.16 THE COURT: I don't understand what it is. Say it  
17 again. It's what?

18 THE WITNESS: It's a UF-250.

19 THE COURT: What is it?

20 MS. RICHARDSON: These are Police Officer Navaretta's  
21 UF-250s.

22 THE COURT: For what period of time?

23 MS. RICHARDSON: For 2006.

24 THE COURT: All of 2006? You represent, Ms.  
25 Richardson, this is all?

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D578FLO4

Navaretta - direct

1 MS. RICHARDSON: These are for January through, I  
2 believe, March.

3 THE COURT: First quarter of 2006?

4 MS. RICHARDSON: First quarter.

5 THE COURT: These are all the UF-250s for the first  
6 quarter of 2006?

7 MS. RICHARDSON: That is my understanding, yes.

8 THE COURT: Anybody know?

9 MS. RICHARDSON: It's my understanding that that's how  
10 they were produced.

11 MS. GROSSMAN: I understand that for this particular  
12 officer, for this particular time, these represent his 250s.

13 THE COURT: All of them?

14 MS. GROSSMAN: For that period of time, yes.

15 THE COURT: This represents all of the UF-250s, the  
16 first quarter of 2006, for you. OK.

17 Then O12 is received.

18 (Defendants' Exhibit O12 received in evidence)

19 THE COURT: Do we know how many are in this packet  
20 O12?

21 MS. GROSSMAN: Your Honor, I believe that that is the  
22 case, but I personally did not look at these particular  
23 documents that were submitted so I reserve to just update the  
24 Court after today's proceedings.

25 THE COURT: Does anybody know how many are in here?

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D578FLO4

Navaretta - direct

1 MS. RICHARDSON: I did not count them. It is my  
2 understanding that these are all of them.

3 THE COURT: I understood that, that you think it's  
4 all. I just wanted to know if you knew how many.

5 It looks like 20.

6 MS. RICHARDSON: They are double-sided, your Honor.

7 THE COURT: It's one per page. I see, but you're  
8 saying the Bates numbers are double. OK.

9 There should be 30 of these. I now think there's 30.  
10 Anybody know? I think it's 30.

11 MS. RICHARDSON: I can count them on the break.

12 THE COURT: You can.

13 MR. MOORE: It shouldn't have to be your job to count  
14 them.

15 THE COURT: I did the math. I think it's 30.

16 MS. RICHARDSON: Again, I can count them on the break  
17 and I can inform your Honor of the exact amount.

18 THE COURT: It's 60 pages. If it's double-sided, it's  
19 30. So it's 30 UF-250s for the first quarter of 2006 for this  
20 officer.

21 Now can we go ahead?

22 BY MS. RICHARDSON:

23 Q. Thinking back to 2006 when you were assigned to impact in  
24 the 28th Precinct, what were the crime conditions like that you  
25 were addressing?

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D578FLO4

Navaretta - direct

1 A. On that post, 125th Street, a lot of petit larcenies were  
2 occurring. For example, purse snatching, cell phone robberies.  
3 You have kids up on bicycles come from behind, snatch a phone  
4 while someone is walking up trying to shop. You had people --  
5 groups go in and ransack a store. It was a very busy, very  
6 crowded sidewalk, so they would go in real quick, doors would  
7 be open, music would be playing loudly, and ransack a store,  
8 knock over everything and then leave. Those were the types of  
9 crimes that were occurring on those posts on 125th Street.

10 And as the stores were there, they were selling a lot  
11 of also -- I am trying to remember -- unlicensed general  
12 vending, clothing, cigarettes. That's all I can remember right  
13 now.

14 Q. So directing your attention to the UF-250, this one ends in  
15 Bates stamp 19470 through 71.

16 MS. RICHARDSON: Your Honor, my colleague just counted  
17 the UF-250s. There are 31.

18 THE COURT: OK. Close enough for government work.

19 Q. Now, Officer Navaretta, this is a stop that you conducted  
20 on February 15, 2006 for petit larceny, correct?

21 A. Correct.

22 Q. So looking at this document, can you tell how long you  
23 observed this individual prior to conducting a stop?

24 A. About 45 minutes, 40 minutes.

25 THE COURT: Is that unusual?

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D578FLO4

Navaretta - direct

1 THE WITNESS: No.  
2 THE COURT: To observe?  
3 THE WITNESS: You're out there on the street. You can  
4 stand on the corner all day and watch people.  
5 THE COURT: To watch one person?  
6 THE WITNESS: Sure. They don't even know you're  
7 there.  
8 THE COURT: I think I have seen charts of the average  
9 amount of time observed. Haven't I seen evidence of that in  
10 this case?  
11 MS. COOKE: I think there has been oral testimony by  
12 the experts with respect to the averages in the 4.4 million.  
13 THE COURT: In the 4.4 million?  
14 MS. COOKE: Yes.  
15 MR. HELLERMAN: I concur.  
16 THE COURT: And it's a low number, isn't it?  
17 MS. COOKE: It's an average of two minutes.  
18 THE COURT: That's why I asked you was it long?  
19 THE WITNESS: I agree with you.  
20 THE COURT: That's what I was asking.  
21 THE WITNESS: OK.  
22 Q. By looking at this 250, can you tell whether or not you  
23 conducted a frisk of this individual?  
24 A. No.  
25 THE COURT: No, you can't?

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D578FLO4

Navaretta - direct

1 THE WITNESS: No. The person was not frisked at that  
2 time.

3 Q. Looking at the back of the UF-250 form, you can tell that  
4 you also marked off "area has high incidence of reported  
5 offense of type under investigation"?

6 A. Correct.

7 Q. When would you check off that box on a UF-250?

8 A. When we get information from either the squad, which are  
9 the detectives upstairs, or prior to going out, some  
10 information that this area, they are doing this on this corner.

11 Q. Do you have any independent memory of this stop?

12 A. No, I do not. I'm sorry.

13 THE COURT: This is your handwriting though, right?

14 THE WITNESS: Yes.

15 THE COURT: So this person, just out of curiosity,  
16 this person was 47 years old did you write?

17 THE WITNESS: If I wrote that there, yes. They just  
18 took it off the screen.

19 THE COURT: You don't have the hard copy?

20 Just take a quick look. Tell me the age that you  
21 wrote.

22 THE WITNESS: 47.

23 THE COURT: You did write that. OK. Thanks.

24 THE WITNESS: 47 years old.

25 Q. Did I not leave a copy for you?

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D578FLO4 Navaretta - direct

1 A. I just closed it real quick.

2 THE COURT: I just wanted to be sure.

3 Q. Now, turning your attention to the UF-250 in this group  
4 bearing Bates stamp number 19480 to 19481.

5 This is a stop that you conducted on February 16th of  
6 2006, correct?

7 A. Correct.

8 Q. How long had you observed --

9 THE COURT: One second. I am having a little trouble.  
10 You said?

11 MS. RICHARDSON: 480 to 481.

12 THE COURT: Got it.

13 Then you said?

14 Q. This is a stop that you conducted on February 16th of 2006,  
15 correct?

16 A. Correct.

17 Q. Looking at this UF-250, can you tell how long you observed  
18 this person prior to conducting the stop?

19 A. Five minutes.

20 THE COURT: That says duration of stop, right?

21 THE WITNESS: Period of observation is 1525.

22 THE COURT: Oh, I got it. Thank you.

23 I still don't understand though. The time of stop is  
24 1530. The period of observation is 1525. So that tells you it  
25 was five minutes?

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D578FLO4

Navaretta - direct

1 THE WITNESS: Correct.

2 THE COURT: Very helpful. Thank you.

3 Q. Now, Officer Navaretta, which crime did you write down of  
4 having suspected for this UF-250?

5 A. Trademark counterfeiting.

6 Q. Can you tell from this UF-250 what were the circumstances  
7 which led to the stop?

8 A. I can't tell exactly, but we stopped him for trademark  
9 counterfeiting. I don't remember if it was clothing,  
10 cigarettes. But there was a radio run up on the top right near  
11 my observation time 8326. So that could have been possibly  
12 what drew me to that attention of this UF-250, this person.

13 Q. If you look in this middle box here, you can see that you  
14 checked off other reasonable suspicion of criminal activity?

15 A. Yes.

16 Q. And then you wrote something?

17 A. Yes. It's a known area, location, of where they do the  
18 trademark counterfeiting.

19 Q. When would you write something in this area of the UF-250?

20 A. When I check this box off, give me any memorization,  
21 helpful information.

22 Q. Now, looking at the back of this UF-250, and I will  
23 represent that the other one we showed, which ends in 70 and  
24 71, is also signed by the same individual, can you tell who  
25 signed this?

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D578FLO4

Navaretta - direct

1 A. It shows, I think it's a Sergeant LaRoche.

2 Q. Who is Sergeant LaRoche?

3 A. At that time he was my training sergeant.

4 Q. What exactly is a training sergeant?

5 A. The training sergeant, he is my immediate sergeant for the  
6 foot post. He trains -- he comes out there with us as much as  
7 he can to help us, whatever we need at that time.

8 Q. You said "us." What do you mean?

9 A. The impact post, the cops that came out with me, that are  
10 just specifically assigned to that impact post.

11 Q. Now, thinking back to when you were a regular patrol  
12 officer, were you ever told that you had to conduct a certain  
13 number of stops, summonses or arrests?

14 A. No.

15 Q. Did you ever feel that if you did not conduct a certain  
16 number of stops, summonses or arrests that you would be  
17 punished?

18 A. No. Absolutely not.

19 MS. RICHARDSON: One minute, your Honor.

20 No further questions.

21 THE COURT: Ms. Martini.

22 MS. MARTINI: I have another note for the Court.

23 Plaintiffs already designated Officer Navaretta's  
24 deposition and defendants chose to call him live. So my cross  
25 will be very brief and your Honor is already in possession of

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D578FLO4 Navaretta - direct  
1 plaintiffs' designated testimony for this officer.

2 THE COURT: OK.

3 CROSS-EXAMINATION

4 BY MS. MARTINI:

5 Q. Good afternoon, Officer Navaretta.

6 A. Good afternoon.

7 Q. You had a training officer in the 28th Precinct, correct?

8 A. Correct.

9 Q. This was Officer Eckert?

10 A. I believe so.

11 Q. You never discussed stop, question and frisk with Officer  
12 Eckert, correct?

13 A. I can't remember. We talked a lot before going out on the  
14 street.

15 Q. I would like to show you a copy of your deposition in this  
16 case to see if it would refresh your recollection.

17 A. OK.

18 Q. If you could turn to page 15 and read silently to yourself  
19 lines 20 through 22.

20 Does that refresh your recollection that you never  
21 discussed stop, question and frisk with Officer Eckert?

22 A. Yes. I guess it says no. I can't remember now, but at  
23 this time it was closer to the date, so yes, I would say no.

24 Q. You never discussed memo books with training Officer Eckert  
25 either, correct?

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D578FLO4 Navaretta - cross

1 A. I'm not sure. I can't remember.

2 Q. If you want to look at page 16 of your deposition, lines 5  
3 through 7, and please read them quietly to yourself.

4 A. OK.

5 Q. Does that refresh your recollection that you never  
6 discussed your memo books with training Officer Eckert?

7 A. Correct.

8 Q. Throughout your career, at some point you also worked the  
9 midnight conditions unit, right?

10 A. Yes.

11 Q. And while in that unit, your direct supervisor was Sergeant  
12 Miller, right?

13 A. Yes.

14 Q. You never discussed stop and frisks with Sergeant Miller  
15 either, correct?

16 A. I can't remember that.

17 Q. If you would like to turn to your deposition at page 23,  
18 lines 10 through 12. Please read silently to yourself.

19 Does that refresh your recollection that you never  
20 discussed stop and frisks with --

21 A. It says I don't remember that. I don't really know. It  
22 shows I don't remember that.

23 Q. That's not the only words that are provided in the answer  
24 though, correct?

25 A. It says, "No, I don't remember that."

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D578FLO4 Navaretta - cross

1 Q. No. That's the entire line, "No, I don't remember that,  
2 no," correct?

3 A. Correct.

4 Q. And you never discussed your memo books with Sergeant  
5 Miller either, correct?

6 A. No.

7 Q. And you received training regarding when it is appropriate  
8 to stop someone while at the police academy, correct?

9 A. Correct.

10 Q. But at least at the time of your deposition in July 2010,  
11 you don't even recall generally what you were taught, right?

12 A. In that specific -- I remember some and I don't  
13 remember -- I don't remember much, but I remember some.

14 Q. So you don't even remember generally what you were taught  
15 regarding when it is appropriate to stop someone?

16 A. No. I remember the classes on stop, question and frisk.

17 Q. So you don't remember what you were taught, the substance  
18 of it?

19 A. Right. I remember the class.

20 Q. I would like to show you what has been marked as  
21 Defendants' Trial Exhibit N12. Do you recognize this document?

22 A. Yes.

23 Q. This is a portion of your memo book, correct?

24 A. Correct.

25 MS. MARTINI: I would like to move Defendants' Trial

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D578FLO4 Navaretta - cross

1 Exhibit N12 into evidence.

2 MS. RICHARDSON: No objection.

3 THE COURT: N12 received.

4 (Defendants' Exhibit N12 received in evidence)

5 Q. Turning to the page Bates numbered 19906, do you see an  
6 entry beginning 1453, the words "UF-250" appear?

7 A. Yes.

8 Q. That means that you stopped someone and filled out a  
9 UF-250, correct?

10 A. Correct.

11 Q. But no other details of the stop are included in your memo  
12 book, correct?

13 A. Correct.

14 Q. And the same is true at entry 1420 above?

15 A. OK.

16 MS. RICHARDSON: I am going to object because clearly  
17 there is something else written on that line.

18 MS. MARTINI: I was going to get there.

19 A. It says, "1420 filled out UF-250."

20 Q. And then it says "on," and then it's redacted, correct?

21 A. Correct.

22 Q. And then "on," redacted, "Ave between" redaction and  
23 redaction, correct?

24 THE COURT: It's a location?

25 THE WITNESS: Correct.

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D578FLO4 Navaretta - cross

1 Q. And looking at page Bates numbered 19917, at entry 1530,  
2 can you please read what that line says?

3 A. "Served UF-250."

4 Q. At 1515 -- sorry. At page 19920, at 1515.

5 A. What was the page?

6 Q. 19920, at entry 1515.

7 A. "Served UF-250."

8 Q. And none of these entries include any details about the  
9 stop, correct?

10 Other than the one that listed the location, none of  
11 these entries include any details about the stop?

12 A. Not on that one. Sometimes on the back here, near page  
13 19908, there's a person's name, street address. Sometimes what  
14 I do is when I stop somebody, if things are pretty hectic or I  
15 have no room, I will write it on the opposite page. And there  
16 I will just write UF-250 served.

17 Q. You're talking about this page?

18 A. Yes.

19 Q. But you don't know whether or not this refers to --

20 A. I'm not 100 percent, but most likely, with someone's name  
21 on there, it's a good possibility that had to be something  
22 involving the UF-250.

23 Q. You have never been told that there are consequences for  
24 not completing memo books accurately or correctly, right?

25 A. I have been told memo books, they want you to try to keep

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D578FLO4

Navaretta - cross

1 them up-to-date.

2 Q. Before your deposition though, you were not told that there  
3 are consequences for not completing memo books accurately or  
4 correctly, correct?

5 A. Correct.

6 (Continued on next page)

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D579flo5 Navaretta - cross

1 Q. And your deposition was taken in 2010 and at that point you  
2 had been in the NYPD for roughly five years, correct?

3 A. Correct.

4 MS. MARTINI: No further questions, your Honor -- I'm  
5 sorry. One moment. I'm sorry.

6 THE COURT: No problem.

7 (Pause)

8 BY MS. MARTINI:

9 Q. Just one other brief question, Officer Navaretta.

10 Looking back at 012 which are the 31 UF 250s for the  
11 first quarter of 2006, would it surprise you to learn that in  
12 these stops you only made one arrest.

13 A. Would it be my concern that I only made one arrest? What  
14 are you asking me?

15 Q. Do you not understand the question?

16 A. No.

17 THE COURT: She's saying out of the 31 stops only one  
18 resulted in an arrest. Does that surprise you?

19 THE WITNESS: No. Not at all.

20 Q. Would it surprise you to learn that out of these 31 stops  
21 from the first quarter of 2006 you seized zero weapons  
22 resulting from these stops?

23 A. No. It doesn't surprise me. Not every time you stop  
24 somebody is an arrest.

25 THE COURT: She's not saying every time. She said

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D579flo5 Navaretta - cross

1 only one time out of 31.

2 THE WITNESS: Right.

3 THE COURT: Does that surprise you?

4 THE WITNESS: No.

5 THE COURT: And zero times seizure of guns.

6 Does that surprise you?

7 THE WITNESS: No.

8 THE COURT: How about summonses? Did you count?

9 Doesn't matter.

10 Anything further, Ms. Richardson?

11 MS. RICHARDSON: Very briefly.

12 REDIRECT EXAMINATION

13 BY MS. RICHARDSON:

14 Q. Speaking to Defendants' Exhibit 012, which are the UF 250s.

15 A. Okay.

16 Q. If I represented to you that out of those 31 stops that you  
17 conducted, only five of individuals were frisked, would that  
18 surprise you at all?

19 A. No.

20 Q. Why not?

21 A. Because not -- you don't need to frisk every person you  
22 stop. Depends on how the officer feels at the time, the place  
23 of the occurrence. Not every person you stop you have to  
24 frisk. It's the officer's discretion.

25 MS. RICHARDSON: Just one minute, your Honor.

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D579flo5

Navaretta - redirect

1 (Pause)

2 MS. RICHARDSON: No further questions.

3 MS. MARTINI: Just really briefly to follow up.

4 REDIRECT EXAMINATION

5 BY MS. MARTINI:

6 Q. Would it surprise you to learn that out of those UF 250s  
7 you issued zero summonses?

8 A. No. No surprise.

9 MS. MARTINI: Nothing further.

10 THE COURT: Okay. All done.

11 THE WITNESS: Thank you, Judge.

12 (Witness excused)

13 THE COURT: I have a question just for the lawyers.

14 Have we had any evidence from either side as to the percent of  
15 stops that do result in frisks?16 MS. COOKE: Yes, your Honor. I believe that both  
17 experts testified about the 4.43 million. And I believe it was  
18 somewhat right around 50 percent of the 4.43 million resulted  
19 in a frisk.

20 MR. HELLERMAN: I don't recall that.

21 THE COURT: Whose testimony would that be?

22 MS. COOKE: I believe I cross-examined Professor Fagan  
23 on that when we were talking about the hit rates and the  
24 outcomes. And there's a smaller percentage of that who are  
25 searched, of the person who are frisked there's even a smaller

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D579flo5 Navaretta - redirect

1 number searched.

2 THE COURT: You think it's in the record somewhere?

3 You think it's in the cross-examination of Professor Fagan?

4 You don't remember that, Mr. Hellerman?

5 MR. HELLERMAN: I don't recall it. I'm not contesting  
6 it.

7 THE COURT: But with the big teams you have could  
8 somebody check that and let me know Thursday.

9 MR. HELLERMAN: We will.

10 THE COURT: Okay. Anyway, the next witness.

11 MS. RICHARDSON: Defendants call Officer Kha Dang. I  
12 believe he may be outside.

13 KHA DANG,

14 called as a witness by the Defendants,  
15 having been duly sworn, testified as follows:

16 THE COURT: Thank you.

17 DIRECT EXAMINATION

18 BY MS. RICHARDSON:

19 Q. Good afternoon, Officer Dang.

20 A. How are you doing?

21 Q. Are you currently employed?

22 A. Yes.

23 Q. And by whom are you currently employed?

24 A. The New York City Police Department.

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

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D579flo5 Dang - direct

1 A. Almost eight years now.

2 Q. And what is your educational background?

3 A. I have a bachelor's degree from University of Texas.

4 Q. And when did you join the NYPD?

5 A. July of 2005.

6 Q. And did you attend and graduate from the police academy?

7 A. Yes, I did.

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

9 A. January of 2006.

10 Q. Why did you become a police officer?

11 A. Well, it's something I've always wanted to do when I was a  
12 little kid. My grandfather was police officer, and I guess I  
13 had a little bit of it in my blood. I enjoy it. It keeps me  
14 going everyday. It gets me out of bed. I enjoy coming to  
15 work. So I feel very lucky that I get to do what I do for a  
16 living.

17 Q. Can you briefly walk the Court through your assignments  
18 from the police department, from after the academy to the  
19 present.

20 A. Sure. After the academy I was assigned to the 75th  
21 precinct in East New York for approximately six months.

22 After that, I was transferred to 88 precinct where I  
23 did another six months of what we call FTU field training unit,  
24 basically foot patrol.

25 After six months of that I went into a unit called  
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D579flo5 Dang - direct

1 conditions.

2 And then I believe in the spring of 2008 I went onto a  
3 unit called anticrime.

4 And now since this past August I've been working in  
5 the 88 precinct detective squad.

6 Q. Why are you assigned to the detective squad as a police  
7 officer?

8 A. Well, hopefully it's kind of a probationary period as a  
9 police officer before you become a detective. It's usually 18  
10 months. And hopefully by the end of my 18-month probationary  
11 period that I will be promoted to the rank of detective.

12 Q. What are your duties and responsibilities as a member of  
13 the 88 precinct detective squad?

14 A. Well, it's investigative work, interviewing witnesses,  
15 victims, perps, gathering information to distribute to  
16 anticrime personnel, patrol personnel. A lot of information  
17 gathering and putting it out there.

18 Q. And as a member of the detective squad are you familiar  
19 with patterns at all?

20 A. Yes, I am.

21 Q. Can you explain what a pattern is.

22 A. Well a pattern is basically a group of crimes that you can  
23 tell that they're similar in nature, be it by the time of day,  
24 the dates, the type of victims, the locations, how these crimes  
25 were committed, you know, was force used, was a weapon used,

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D579flo5 Dang - direct

1 was just verbal threat used. In the case of burglaries, how  
2 was the entry points? Were they down the fire escape in the  
3 back? Were they pushing the air conditioner in the front of a  
4 window of the apartment in? Were they just plain old crowbars?

5 Things like that. They are varying different aspects  
6 of crimes that when they start matching up we consider them a  
7 pattern.

8 Q. And in your current assignment what involvement, if any, do  
9 you have in developing patterns?

10 A. Well, obviously, everyday we go over the police reports.  
11 We keep up on our crime trends.

12 So when we start seeing that, for instance, past  
13 couple of weeks in around Fort Greene Park in our precinct  
14 we've had a number of juveniles who have been going around  
15 mugging people.

16 So once we started -- after seeing two, three of the  
17 same crimes, which now have developed into about seven  
18 instances in this pattern, we obviously we interviewed the  
19 victims. They're telling us that a group of three to four  
20 teenagers are approaching them, surrounding them, punching them  
21 in the face, stealing their phones and they run in certain  
22 directions.

23 So we gather that. Obviously, they're very similar so  
24 we make that a pattern.

25 Q. Now this example that you just gave, you said that this was

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D579f1o5 Dang - direct

1 taking place in and around Fort Greene Park?

2 A. Yes, it is.

3 Q. So how does location play into the development of a  
4 pattern, if at all?

5 A. Well sometimes it's key. If you get the certain type of  
6 crimes, the same crimes in a certain area like Fort Greene  
7 Park, it's known for having robberies, especially -- it comes  
8 and goes, but right now it's spiking a little bit.

9 Or in or around train stations, you'll get robberies.  
10 They don't necessarily have to be the same time of  
11 day. But they -- you know, they could happen morning time,  
12 daytime, or nighttime.

13 It's just that the way they happen and the location  
14 they happen we make them the same pattern.

15 Q. Now, prior to your assignment with the detective squad you  
16 were assigned to one of the 88 precinct's anticrime teams,  
17 correct?

18 A. Yes.

19 Q. Can you describe the area covered by the 88 precinct?

20 A. It's Brooklyn, covers Fort Greene, and Clinton Hill. It's  
21 basically -- it's a lot of residential. We have two housing  
22 developments, Ingersoll-Whitman and Atlantic Terminal.

23 We have a large business area around the Atlantic  
24 Terminal Mall, which also contains a lot of transit hubs.

25 Obviously, Fort Greene Park.

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D579flo5 Dang - direct

1 We're close to the Navy Yard. It's in our  
2 jurisdiction.

3 It's a big -- even though it's residential it's a  
4 neighborhood that has a lot of -- that can have a lot of  
5 transient traffic through it.

6 Q. By transient traffic what do you mean by that?

7 A. We're located close to Manhattan Bridge, Brooklyn Bridge,  
8 obviously downtown Brooklyn. People tend to commute through  
9 our neighborhood to get there. They also have to commute to  
10 criminal court, which can cause a thing for us sometimes.

11 Obviously the new stadium they built there, the  
12 Atlantic Terminal Mall, just always people in and out.

13 Q. Now as a member of the anticrime team can you describe what  
14 you do when you arrived at work on an average day.

15 A. Well I would usually start my day by going over the  
16 previous incident reports, claim reports from either the day or  
17 if I was off a couple days, see what type of crimes had  
18 happened. You know, I would talk to the crime team that worked  
19 previous before us, ask them were there any significant things  
20 that happened during the day.

21 I might go over to the -- across the hall to the  
22 detective squad and ask them are there any new developments  
23 regarding this case or this pattern. Or might have a meeting  
24 with my supervisors. They might point out something that we  
25 didn't notice yet. They might ask us to specifically patrol in

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D579flo5 Dang - direct

1 a certain area that given day.

2 You know, just -- we do a lot of information gathering  
3 and we just go out and we apply what we've learned or what we  
4 know and look for those certain things.

5 Q. And when you go out, do you patrol with a partner, a team?

6 A. It's usually -- well the way we work, we usually had two  
7 cars, two unmarked cars. And it would either be at least two  
8 people in each car. It could be three people in each car.

9 Q. And --

10 A. But sometimes we mix it up. We walk around on foot every  
11 once in a while too.

12 Q. Who was your anticrime team supervisor when you were  
13 assigned to that team?

14 A. Sergeant Marino.

15 Q. And in your experience, how often would Sergeant Marino  
16 patrol in the same vehicle as you?

17 A. We would be together on a regular basis.

18 Q. Now, what training did you receive in the police academy  
19 regarding stop, question and frisk?

20 A. Well it's a long time ago.

21 We covered, you know, we definitely covered the legal  
22 aspects of the steps leading up to stop, question and frisk and  
23 obviously probable cause. And then we studied the tactical  
24 aspects of how to actually do a stop, question or possibly  
25 frisk situation.

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D579flo5 Dang - direct

1 Q. And so based on your training and experience, when can you  
2 conduct a stop of a citizen?

3 A. Well when we suspect that they have committed, are about to  
4 commit, or are in the process of committing a crime.

5 Q. And is there any paperwork that you are required to fill  
6 out when you conduct a reasonable suspicion stop?

7 A. Yes, there is.

8 Q. And what is that?

9 A. It's what we call the UF 250 form.

10 Q. What training, if any, have you received about when an  
11 individual may walk away from a police officer?

12 A. Well that's usually the stops where the level of stops, you  
13 know, common law right of inquiry, mere suspicion, and then  
14 reasonable suspicion.

15 Under reasonable suspicion, they pretty much can walk  
16 away.

17 THE COURT: They what?

18 THE WITNESS: They can walk away. They're free to go.

19 THE COURT: Under reasonable suspicion you said? Is  
20 that what you said?

21 THE WITNESS: Not at reasonable suspicion, the other,  
22 the lower levels.

23 THE COURT: Oh, the other two.

24 Q. So, have you ever asked a person a question at one of those  
25 lower levels and allowed that person to walk away instead of

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D579flo5 Dang - direct

1 answering?

2 A. Yes.

3 Q. How often does that happen?

4 A. That actually happens on almost a regular basis. Because  
5 we get a lot of 911 calls for drug use or kids hang out in  
6 front of a building, loud fighting going on in front of  
7 buildings.

8 We show up. People just start -- they match the  
9 description, they seem like they're the ones involved with this  
10 911 call but if they start walking away we're not going to --  
11 we can't just stop them.

12 THE COURT: So in those situations you haven't started  
13 questioning. They see you and they walk away. Is that what  
14 you mean?

15 THE WITNESS: I mean if it's -- in my experience say  
16 we get a 911 call that, you know, there's a group of kids  
17 smoking weed in front of such and such a building.

18 We show up and obviously the kids -- we see them and  
19 you'll see one kid walk away and it's most likely that he  
20 probably had the drugs on him. But we'll go talk to the kids.  
21 Be like: Hey, we're getting 911 calls that maybe one of you or  
22 all of you are smoking drugs. Cut it out. Leave. Do  
23 whatever. But stop it.

24 And it's not like we hold them there and start, you  
25 know, searching them or anything like that.

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D579flo5 Dang - direct

1 Q. So, based on your training and experience when can you  
2 frisk a person?

3 A. Well usually if I suspect that person has a -- some type of  
4 weapon that could hurt me or a radio run that states that,  
5 specifically states that a weapon was used.

6 Q. And what level of suspicion is required in order to conduct  
7 a frisk?

8 A. Reasonable suspicion.

9 THE COURT: Reasonable suspicion of what?

10 THE WITNESS: That a crime -- that the individual  
11 either committed a crime or --

12 THE COURT: That was the standard for the stop. I  
13 think she asked you what standard do you need to do a frisk.

14 THE WITNESS: If I reasonably believe that the person  
15 has a weapon.

16 Q. And do you frisk every person that you stop?

17 A. No.

18 Q. When you frisk a person, what are you feeling for?

19 A. Well there's -- obviously you're trying to find an object  
20 that could possibly be a weapon. So that can mean almost  
21 anything, especially in my experience things that people have  
22 used to hurt people with. It's beyond just the gun, the  
23 knives.

24 It's people have razor blades. People have  
25 screwdrivers. People have broken crack pipes. People have

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D579f1o5 Dang - direct

1 needles. People have all kinds of different objects in their  
2 pockets that -- just frisking you might think that it could be  
3 a weapon.

4 Q. And so can you explain what you do when you feel an object  
5 that you believe might be a weapon.

6 A. Well reach into the pocket, pull it out.

7 Q. And have you ever reached into a pocket and pulled out an  
8 object that turned out not to be a weapon?

9 A. Of course, yes.

10 Q. And can you explain why.

11 A. Well, like I said, weapons, you know, these things that can  
12 be used as weapons, they're all kinds of different shapes and  
13 sizes. Even guns aren't what normal people think. They're  
14 small. They fit in your hand. Some are as small as the palm  
15 of your hand. Knives are all kinds of different shapes.

16 But beyond that other things in people's pockets, you  
17 know, brass knuckles are something that we might kind of feel.  
18 It might be like some of these cellphone cases have these weird  
19 grips on them that a lot of kids, you could feel like a brass  
20 knuckle type of weapon.

21 Q. Do you know if the NYPD has a policy regarding racial  
22 profiling?

23 A. Yes. It's illegal.

24 Q. And when did you first learn about that policy?

25 A. In the police academy.

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D579flo5 Dang - direct

1 Q. Have you ever been trained on that policy?

2 A. Yes.

3 Q. When was that training?

4 A. During the police academy.

5 Q. And do you recall what that training consisted of?

6 A. Basically that, you know, stopping somebody based on their  
7 race, sexual orientation, sex, just -- it's wrong, it's  
8 immoral, it's illegal.

9 Q. Have you ever been trained on policing in a multicultural  
10 society?

11 A. Yes, I have.

12 Q. When did you receive that training?

13 A. During the academy.

14 Q. And, again, what was the content of that training, if you  
15 recall.

16 A. Well, I remember we had the number of speakers from  
17 different parts of the city, you know, civil rights speakers.  
18 People from the LBGT community would come speak with us. They  
19 would just give us, you know, their point of view of how they  
20 view police officers and how in certain situations how it would  
21 be better for us to say things this way or not that way.  
22 Certain, you know, politically correct terms that should be  
23 used.

24 I remember having to write a -- in our class, at  
25 least, we had to write a report -- we had to pick a

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D579flo5 Dang - direct

1 neighborhood in New York City, write a report on it, you know,  
2 talk about what type of ethnic culture in that neighborhood. I  
3 wrote about the Greek culture in Astoria. And we had to read  
4 that paper in front of everybody in the class.

5 Q. I'm going to hand you a copy of what was previously  
6 admitted into evidence as Defendants' trial Exhibit M12.

7 These are your police officers' monthly performance  
8 reports for the year of 2009.

9 Looking at the page that is currently on the screen  
10 which ends in Bates stamp number 15631.

11 Can you explain how you would fill this form out.

12 A. Well this form most patrol officers have to fill out at the  
13 end of the month. It basically on the left would be your  
14 assignment for that given day. So AC for me would be  
15 anticrime. And RDO is our regular day off.

16 In the columns to the right, the upper right lists  
17 just things, various activities that a cop could do. Not all  
18 of them. But, you know, generally speaking most of the  
19 activities that we could do in any given day.

20 Q. And looking here where it says conditions to be addressed,  
21 who would fill out that section?

22 A. Usually the individual officer will. He might have input  
23 from a supervisor. But I think most -- well at least for us in  
24 anticrime we would individually probably pick that one out.

25 Q. How would you determine, for example, this month for the

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D579flo5 Dang - direct

1 month of January 2009, you put GLA. And GLA stands for grand  
2 larceny auto, correct?

3 A. Yes.

4 Q. How would you determine what to write in that line?

5 A. Well maybe in this case I would probably have to look -- go  
6 over the crime trends of that period but it's usually -- has  
7 something to do with the crime trends, the current crime trends  
8 that are going on in the precinct at that time.

9 So I would put, for instance, GLA because maybe  
10 there's a lot of cars being stolen in Fort Greene at that  
11 period of time and I would try to focus my efforts on it.

12 Q. Now, turning to the back of this form, which ends in Bates  
13 stamp number 15632. You can see in this section which is  
14 listed as "to be completed by police officer." This is a  
15 section that you would fill out, correct?

16 A. Correct.

17 Q. And so looking at number one, general enforcement against  
18 crime, quality of life and traffic violations. How would you  
19 determine what to write in that box?

20 A. Well that's usually a list of general -- it's quality of  
21 life enforcements I think -- here I list -- I usually list the  
22 number of -- the summonses that I wrote, the type of summonses,  
23 each line by line, the type of summons that I wrote for that  
24 month.

25 Q. And so that was your practice when filling out this form,

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D579flo5 Dang - direct

1 right?

2 A. Correct.

3 Q. And were these monthly activity reports -- I'm sorry,  
4 monthly performance reports, were these signed by the  
5 supervisor?

6 A. Yes, they were.

7 Q. Now, I'm going to turn your attention to the monthly  
8 performance report for March of 2009 which is Bates stamp  
9 15635.

10 A. Okay.

11 Q. And looking at this column that is not redacted which is  
12 stop and frisks, how many stops did you perform that month?

13 A. Forty-two.

14 Q. And so turning to the next month which is April of 2009,  
15 and that is Bates stamp 15637. Looking at this month, how many  
16 stops did you perform?

17 A. Twenty-nine.

18 Q. Were you punished in any way for conducting fewer stops in  
19 April than you had in March of 2009?

20 A. No.

21 Q. Now, looking at Defendants' Exhibit M12 as a whole would  
22 you say that you conducted a stop everyday that you were on  
23 patrol?

24 A. No, not everyday.

25 MS. RICHARDSON: Your Honor I'm going to show  
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1 Defendants' Exhibit K12 which is a demonstrative drawn from M12  
2 and move for its admission.

3 MR. COREY: No objection.

4 MS. RICHARDSON: I'm sorry K14.

5 THE COURT: K14 is received not K12.

6 (Defendants' Exhibit K14 received in evidence)

7 Q. Officer Dang, this is a graph based on your monthly  
8 performance reports, which charts the number of UF 250s that  
9 you performed for every month during the calendar year of 2009.

10 So looking at this, you can see that throughout the  
11 course of the year you did not perform the same number of stops  
12 every month, correct?

13 A. Correct. I didn't.

14 THE COURT: Were you always assigned to patrol the  
15 same number of days per month? Or did that vary also?

16 THE WITNESS: It would stay between -- depending if I  
17 had vacation that month, but normally be fifteen to twenty days  
18 a month on average.

19 THE COURT: But it could differ per month?

20 THE WITNESS: It can.

21 THE COURT: And certainly when you were on vacation?

22 THE WITNESS: It would be a lot less. But it normally  
23 wouldn't be more than twenty but generally not less than  
24 fifteen.

25 THE COURT: And if you're not on patrol you wouldn't

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1 be doing the same number of stops, would you? If you're not  
2 assigned patrol?

3 THE WITNESS: No. No. If I'm not working on the  
4 streets it's either because I'm in grand jury testifying for a  
5 case or something.

6 THE COURT: So then you wouldn't be doing stops on  
7 those days?

8 THE WITNESS: No.

9 Q. So actually to follow up on your Honor's question.

10 If you look at the month of February, 2009 you can see  
11 that that is the month that you conducted the fewest number of  
12 stops.

13 A. Correct.

14 Q. Do you know why that is?

15 A. I believe I was -- had two weeks of vacation that month.

16 Q. And looking here for the months of July and August of 2009,  
17 you can see that those were the months where you conducted the  
18 most stops out of the calendar year, right?

19 A. Correct.

20 Q. Why is that?

21 A. Well that was a very particular violent time in our  
22 precinct. We had a lot of crimes just significantly spiked.  
23 Burglaries, robberies, and shootings.

24 In particular around -- in around Fort Greene Park,  
25 there was about 13 instances, beginning from July to

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D579flo5 Dang - direct

1 mid September, where a group of kids were coming out of the  
2 Ingersoll-Whitman housing development and attacking people  
3 inside the park or outside the park with a wooden cane and they  
4 were sending them to the hospital with concussions and bloody  
5 noses, whatever.

6 We had another burglary pattern along -- I believe it  
7 was sector David -- somebody was getting in behind the  
8 neighborhood fences and just climbing up through the windows  
9 from the back of these individuals' houses and there was  
10 probably at least fifteen burglaries involved in that.

11 And then with the number of shootings and -- that we  
12 were having in the precinct due to -- well I guess I got to  
13 give you some background on the number of shootings.

14 Q. Please do.

15 A. Back in 2004 there was a gang that operates on the Walt  
16 Whitman side of our housing development. We call them the  
17 Fleet Walk crew or the BGF Black Guerilla Family.

18 In 2004 a number of them, about 20 to 25 of them got  
19 picked up on a federal drug conspiracy sweep. Most of them  
20 took plea deals for like five to ten years.

21 So during that time I was just -- there was sort of a  
22 power vacuum in that area of the projects. So when they  
23 started slowly getting out in 2009, the summer of 2009, they're  
24 starting to come out on the streets and trying to reestablish  
25 themselves in the housing development, which led to a large

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1 number of shootings, people being shot -- not necessarily just  
2 people getting shot, but sometimes we get 911 calls for shots  
3 fired. We show up. Nobody is shot. But we see the cars have  
4 bullet holes in them. Or somebody's kitchen window has a  
5 bullet through it. Or shell casings on the sidewalk. Things  
6 like that. Just lots of violence.

7 MS. RICHARDSON: Your Honor, going back quickly to M12  
8 which is the monthly performance reports, which lists the  
9 assignments and days on patrol. I can represent to the Court  
10 that for the month of January of 2009 Officer Dang had 20 days  
11 on patrol. In February it was 9 days. March, 19 days. April,  
12 17 days. May, 19 days. June, 18 days. July, 20 days.  
13 August, 22 days. September, 21 days. October, 19 days.  
14 November, 12 days. And December 17 days.

15 THE COURT: Thank you.

16 Q. So Officer Dang, turning your attention back to July and  
17 August of 2009. What, if anything, were you doing to try to  
18 address the three conditions that you've just discussed?

19 A. Well we were basically concentrating our patrols at around  
20 Fort Greene Park and inside Ingersoll-Whitman development, the  
21 perimeter of Ingersoll-Whitman development.

22 We also, you know, sometimes we would change our  
23 schedule to fit the specific time that some of these patterns  
24 were happening, certain crimes were happening.

25 I remember I think towards the end of August and early

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1 September we changed our tours to work from I believe midnight  
2 to basically 8:00 in the morning for a few weeks in a row. We  
3 normally work from 9:30 in the morning to 6:00 p.m. or 5:30 in  
4 the afternoon to 1:00 or 2:00 a.m. But because these crimes  
5 were happening these specific times, we had to switch our whole  
6 schedule around.

7 Q. Now, are you aware that during the third quarter of 2009  
8 which is July, August and September of that year, that you were  
9 one of the four officers in the NYPD who conducted the most  
10 stops during that time period?

11 A. Yes, I am.

12 Q. I'm handing you an excerpt from Defendants' Exhibit L12  
13 which is already in evidence.

14 THE COURT: Are these all of the 250s for that  
15 quarter?

16 MS. RICHARDSON: Your Honor, if you recall, L12 is all  
17 of the 250s for that quarter. This is an excerpt of those.  
18 And these are the 250s that we had notified plaintiffs' counsel  
19 of in advance as well as the two UF 250s -- the 250s for the  
20 two stops that they discussed with Sergeant Marino.

21 THE COURT: With Sergeant --

22 MS. RICHARDSON: Sergeant Marino.

23 Q. Now, Officer Dang, I'm going to turn your attention to the  
24 first set of UF 250s in this group which end in Bates stamp  
25 number 15667 through 15678.

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1 Are these UF 250s all for the same stop?

2 A. Yes.

3 Q. What can you tell us about this stop.

4 A. This stop occurred at 24 Monument Walk which is an address  
5 inside the Ingersoll-Whitman housing development. The Monument  
6 Walk part stands out because the individuals that were stopped  
7 were part of the gang from the Monument Walks. They are known  
8 to be a very particularly violent gang, suspected in many  
9 shootings. They have been victims of shootings themselves.

10 We look the date July 14 --

11 MR. COREY: I have an objection. Did he say that the  
12 individual reminds him it was part of a gang? I'm just not  
13 hearing him.

14 THE WITNESS: The individuals.

15 MR. COREY: The individuals are redacted.

16 THE COURT: The individuals that were stopped were  
17 part of a gang. That's what he said. For the Monument Walk.  
18 Okay. I guess he recalls this group were stopped from the  
19 address.

20 MR. COREY: It's just that he was asked about this in  
21 his deposition and in his deposition the names were all  
22 redacted.

23 THE WITNESS: After the deposition I reviewed my memo  
24 book.

25 MR. COREY: And we haven't had an opportunity to  
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1 inspect whatever he's used to refresh his recollection in order  
2 to impeach him on.

3 THE COURT: I don't understand what the problem is.  
4 He's saying this group was stopped on Monument Walk where he  
5 knew there was gang activity. Still not identifying  
6 individuals.

7 MR. COREY: That's the point. We don't know who those  
8 individuals are. So they can't come and tell their side of the  
9 story.

10 THE COURT: Right.

11 MR. COREY: So it shouldn't come in for -- well, I  
12 guess I would just ask for clarification that none of these are  
13 being offered to prove that the stop was legal, constitutional.

14 THE COURT: I don't know about that.

15 MR. COREY: That's actually --

16 MS. RICHARDSON: I believe that we've already  
17 discussed this on a previous date several weeks ago.

18 We are offering the UF 250s to have Officer Dang  
19 explain what it is that he did as a police officer. They're  
20 not necessarily offered for the fact that these are lawful  
21 stops.

22 THE COURT: Okay.

23 MS. RICHARDSON: And I was actually getting to the  
24 issue with the deposition. And I can ask him those questions  
25 if you would like.

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1 THE COURT: Okay. Let's see what happens.

2 Q. So, Officer Dang, looking at this group of UF 250s, do you  
3 remember this stop?

4 A. Yes, I do.

5 THE COURT: How many are these again? You gave me the  
6 Bates range but I don't know how many people were stopped at  
7 once.

8 MS. RICHARDSON: I believe it's seven.

9 THE COURT: Okay.

10 MR. COREY: Actually it's six.

11 MS. RICHARDSON: I'm sorry. It's six. These are  
12 single-sided. So it's six stops.

13 THE COURT: I thought there was a question where it  
14 says were others stopped.

15 MR. MOORE: There is, Judge.

16 THE COURT: Front side or back?

17 MR. MOORE: Towards the bottom.

18 THE COURT: Bottom of the front side.

19 MR. MOORE: Yes.

20 THE COURT: Just yes or no. It doesn't ask how many.  
21 Okay.

22 Q. So Officer Dang, you remember this stop, correct?

23 A. Correct.

24 Q. And at your deposition you were actually asked questions  
25 about this stop, correct?

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1 A. Yes, I was.

2 Q. And you were shown one of the 250s that corresponds with  
3 this stop but not all of them.

4 Do you remember that?

5 A. I remember.

6 Q. So at your deposition why did you say that you weren't sure  
7 what your basis was for conducting this stop?

8 A. Well I wanted to know -- I observed that the one 250 that  
9 they showed me, I checked off the box yes for: Were other  
10 persons stopped? I wanted to see those other UF 250s.

11 And then also ask if there's a way that I could see  
12 the names that are not redacted because that -- I had strong  
13 feeling that this stop was definitely related to gang activity  
14 in the Monument Walk area. So knowing the names of those  
15 individuals would help me a lot.

16 THE COURT: On the front of each of those stops though  
17 the only box checked is furtive movements, right?

18 THE WITNESS: On the front?

19 THE COURT: Yes.

20 THE WITNESS: But on the back you'll see a number of  
21 boxes checked.

22 THE COURT: Right. I understand. I only asked you  
23 about the front right now.

24 THE WITNESS: Sorry.

25 THE COURT: Anyway you agree the front says furtive

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1 movements?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Okay.

4 Q. And so turning to the back of the 250 -- and this is just  
5 one of them. This is the one ending in 15668.

6 Did you check other boxes in the additional  
7 circumstances box?

8 A. Yes. I checked four other boxes.

9 The area has high incidence of reported offense.

10 Under type of investigation, the box that states time  
11 of day, day of week, season corresponding to reports of  
12 criminal activity.

13 The third one, suspect is associating with persons  
14 known for their criminal activity.

15 And the fourth one ongoing investigations.

16 THE COURT: What do you mean by the third one, suspect  
17 is associating with persons known for their criminal activity?  
18 What does that mean?

19 THE WITNESS: Well there are individuals out there  
20 that we identify as part of gang members in our precinct that  
21 we pay special attention to. These are individuals who have  
22 shown to be violent in the past. They've been arrested.

23 THE COURT: So you know that these six people you  
24 stopped had all been observed at the time of the stop or at  
25 some other time associated?

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D579flo5 Dang - direct

1 THE WITNESS: No. I mean as far as their criminal  
2 history is concerned or their relationships to.

3 THE COURT: When you stopped them, what did you know  
4 about associating with other persons?

5 THE WITNESS: Well I know these individuals to be --  
6 I'm familiar with them through previous arrests.

7 THE COURT: These six?

8 THE WITNESS: These individuals.

9 THE COURT: You knew them?

10 THE WITNESS: Myself, my team members.

11 THE COURT: They were known to you?

12 THE WITNESS: Right.

13 THE COURT: Okay.

14 Q. And how would you become aware of individuals who are  
15 members of gangs such that you would be able to check off this  
16 box, suspect is associating with persons known for their  
17 criminal activity?

18 A. Well what we do at the precinct level to get intelligence  
19 on gangs or you know violent criminals, in our precinct we pool  
20 our resources. We have discussions with the detective squad.  
21 We have an intel sergeant. Obviously, anticrime officers. We  
22 have commanding officer will do some of the research on it on  
23 his own.

24 And we pool those resources together and we identify  
25 individuals that have been suspected of violent crimes in the

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D579f1o5 Dang - direct

1 past. And obviously their criminal history will tell you  
2 themselves.

3 Some of these guys, we're not talking about one or two  
4 arrests apiece. We're talking about five, ten, fifteen,  
5 twenty, twenty-five arrests for these individuals. Some of  
6 them have spent jail, federal time. These are not nice people.  
7 So we definitely keep our tabs on them.

8 Q. And so for this stop you actually stopped six people at one  
9 time?

10 A. Correct.

11 Q. And you can see that on these UF 250s you checked off yes  
12 for "Were other persons stopped, questioned and frisked?"

13 A. Yes.

14 Q. Is it normal for you to stop groups of people at one time?

15 A. It happens. I don't know if it's normal or not. It  
16 happens.

17 Q. So turning your attention now to the second set of UF 250s  
18 in the group that I handed you. These are going to end in  
19 Bates stamp number 15709 through 15714.

20 Again, this is a stop where you stopped more than one  
21 person at a time, correct?

22 A. Yes.

23 Q. And, in fact, I'll represent that you stopped three people  
24 during this stop, correct?

25 A. Yes.

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D579f1o5 Dang - direct

1 Q. What can you tell us about this stop.

2 A. This is a stop where with our intelligence gathering --  
3 part of our intelligence gathering is we do on a regular basis  
4 we do warrant checks on individuals that we have, you know,  
5 concluded that they are part of gangs in our precinct. So we  
6 will do warrant checks for misdemeanor warrants, for regular  
7 violations, maybe they forgot to pay a ticket or drinking in  
8 public or something like that.

9 And when we go out to the patrol, no matter what, we  
10 want to get these guys off the street even if it's just for one  
11 night. And if we're arresting them for a warrant, it gets them  
12 off the street for one night. Maybe that leads to a safer  
13 night for everybody.

14 In this instance, we knew that one of the individuals  
15 that were arrested for return on a warrant, had a warrant. But  
16 as we approached them, this address is also -- it's in front of  
17 48 Fleet Walk on the sidewalk. They were standing in between  
18 two cars in the parking lot. And when we approached them they  
19 made movements that made us suspect that one of them might have  
20 had a weapon or secreted a weapon somewhere.

21 Anyway we placed this guy under arrest for his  
22 warrant. And the other individuals we stopped also. But they  
23 were frisked. But they were not searched.

24 Q. And so you can, in fact, see here on the one ending in 709  
25 that this individual, you checked yes for arrested and you

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1 wrote ROW right here?

2 A. Correct.

3 Q. And that's return on warrant?

4 A. Yes.

5 Q. And you just mentioned that the other two individuals were  
6 frisked but not searched.

7 A. Correct.

8 Q. And you'll see here that this person was searched, correct?

9 A. Yes. But that's because he was placed under arrest.

10 Q. I'm going to turn your attention to the next UF 250 which  
11 is 15751 and 15752. This is just one individual.

12 This is a stop that occurred on July 31, 2009,  
13 correct?

14 A. Correct.

15 Q. And, again, you checked off the box, "Was suspect  
16 arrested?"

17 "Yes."

18 A. Yes.

19 Q. And you see ROW here. So is that also returned on warrant?

20 A. Yes. This is a different type of warrant. He was -- this  
21 particular individual -- he was wanted for a citywide robbery  
22 pattern that involved him and two other individuals robbing  
23 commercial establishments at gunpoint. And that day we had  
24 received a wanted poster for this individual from the -- I  
25 believe it was major case squad. And so I already kind of had

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D579f1o5 Dang - direct

1 a familiarity with this individual, even before. So when I  
2 saw -- obviously when I saw him I stopped him. Made sure that  
3 the warrant or that he was -- he was who he was and made sure  
4 that he was still wanted by the major case squad.

5 But he was under arrest. He was placed under arrest.

6 Q. And so, in fact, you checked off "fits description" here as  
7 one of the circumstances which led to the stop, correct?

8 A. Correct.

9 Q. And that's because he matched the wanted poster?

10 A. Yes.

11 Q. Now, Officer Dang, why did you fill out a UF 250 in this  
12 case?

13 A. Well I mean even as we stopped him we're -- you can only be  
14 so sure, 90 percent to 95 percent sure that it was the guy even  
15 though you're kind of familiar with him. So we had to  
16 doublecheck, check his ID, check to make sure that he's still  
17 wanted. And then after that investigation of his identity,  
18 then you can place him under arrest.

19 Q. So you mentioned that this individual was arrested for a  
20 citywide robbery pattern; is that correct?

21 A. Correct. There were -- I believe it involved about seven  
22 instances between Bronx and Brooklyn that they were driving  
23 back and forth robbing commercial establishments.

24 Q. Is it unusual to have a pattern that is citywide?

25 A. No.

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1 MR. MOORE: Judge I'm just going to object to this  
2 detail underlining all of these UF 250s. I thought the purpose  
3 of it was to talk about how he was dealing with it, not with  
4 the circumstances that led him to do the search or do a stop.  
5 He's basically getting into evidence the justification for the  
6 stop, which I believe I understood was not permitted by your  
7 Honor's prior ruling.

8 THE COURT: I know. But I'm not understanding the  
9 difference between what you think is permitted and what you  
10 think is not permitted.

11 She's talking about a citywide robbery pattern and a  
12 description and a stop based on a description.

13 MR. MOORE: I think he can talk about it generally,  
14 but he's going into such detail.

15 THE COURT: What do you mean by generally?

16 MR. MOORE: If he says I stopped him because there was  
17 a robbery pattern, okay.

18 THE COURT: That's what I think he said.

19 MR. MOORE: But now he's going into, Well, I knew them  
20 from prior experience. You know, fit the description of  
21 somebody. And it's all very -- it seems to me it's much more  
22 detailed.

23 THE COURT: Than you expected or than you thought my  
24 ruling was?

25 MR. MOORE: I thought your ruling as that you weren't

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D579flo5 Dang - direct

1 going into the underlying circumstances of the stop and he can  
2 refer to it generally. If I'm wrong, I'm wrong.

3 THE COURT: I don't know. Because I don't recall when  
4 this ruling was. I'd have to review it. But --

5 MR. HELLERMAN: Your Honor, if I may add something.  
6 When plaintiffs' class members and named plaintiffs were on the  
7 stand, they were not allowed to testify about other stops.

8 THE COURT: I understand that.

9 MR. HELLERMAN: And that's because the city didn't  
10 have an opportunity --

11 THE COURT: Right.

12 MR. HELLERMAN: -- to do any investigation, as we  
13 didn't have any opportunity to do any investigation with  
14 respect to any of these stops because the names are blanked out  
15 we don't know the people stopped.

16 THE COURT: I realize that.

17 Then I'm not understanding what it was I said could be  
18 done with these stops.

19 MR. HELLERMAN: I'm not sure what you said could be  
20 done.

21 THE COURT: Right.

22 MR. HELLERMAN: But I understood that what could not  
23 be done was to prove the legality of the stop.

24 THE COURT: I hear that. But I have to see if he's  
25 crossing the line of what I said could be done. It's been a

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D579flo5 Dang - direct

1 lot of days, a lot of trial. I don't know what I said on that  
2 particular day.

3 MS. RICHARDSON: Your Honor, it's my recollection that  
4 your ruling was that Officer Dang would be able to use these  
5 250s to testify about how he does his police work which is  
6 exactly what he's doing.

7 Additionally, I would --

8 THE COURT: I guess he is going a little bit beyond  
9 that if he's going into the detail: I knew this fellow, I was  
10 looking for this fellow, I had a poster on this fellow.

11 That's a little more than saying how I do my police  
12 work, if I'm given a description of somebody, I will try to  
13 identify that person or stop that person.

14 So there is some tension here because if we're going  
15 to that level of detail, then the plaintiffs say we should have  
16 the right to have the identity of the person, find that person,  
17 and find out what their side of the stop is, so to speak.

18 MS. RICHARDSON: Your Honor, these are examples of how  
19 he does what he does. And also --

20 THE COURT: I know. But you are getting into  
21 specifics of the stops. And the plaintiffs are simply saying  
22 if you're going to do that they should have had notice of the  
23 stop to see if they could find the stopped person and get two  
24 sides of the story.

25 MS. RICHARDSON: The plaintiffs have had the UF 250s  
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D579f1o5 Dang - direct

1 themselves. I understand they didn't have the names. They  
2 also had the opportunity to ask Officer Dang. He was deposed  
3 in this case several years ago. They had the opportunity to  
4 ask him about these UF 250s, which they had prior to the  
5 deposition. And, in fact, they did ask him questions about two  
6 UF 250s and did not go into any detail about why he checked off  
7 the boxes that he checked or how he operates on a daily basis  
8 or what he recalls about the stops.

9 MR. COREY: I don't see how that changes anything  
10 given the representation that counsel made two weeks ago about  
11 what they would and would not be doing and particularly what  
12 you would allow and not allow.

13 THE COURT: We're so close to the end of the day that  
14 maybe you ought to isolate the portion of the transcript from  
15 two weeks ago where this was discussed and e-mail it over and  
16 I'll look at it. Because I just can't recall that day, that  
17 discussion, anything. But you all have the ability to search  
18 the transcript and find it. And you have the team to do it.  
19 So why don't you find where this discussion was and I'll review  
20 it.

21 MR. MOORE: All right, Judge.

22 THE COURT: We're not going to finish this officer  
23 today anyway. That's for sure. It's 4:27. He's coming back.  
24 And we have the day off. So that's good too. So alert me to  
25 where I discussed it. I'll reread the transcript. And I'll

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D579flo5 Dang - direct

1 alert you if I think there's a problem.

2 MR. COREY: I'll consult with counsel.

3 MS. RICHARDSON: Your Honor, since we are three  
4 minutes before the break then, this is -- much of the questions  
5 that I have remaining are about the UF 250s. And so I think if  
6 we could stop for the day, even though it's early, so that we  
7 can have time to resolve it.

8 MR. MOORE: Since we have three minutes --

9 THE COURT: So you're excused for today. We'll need  
10 you back on Thursday. So we'll start again Thursday at 10:00.

11 THE WITNESS: That's fine.

12 (Witness excused)

13 MR. MOORE: There are two witnesses who are  
14 identified, one for Friday, who is Captain Martine Materasso,  
15 on Thursday or Friday, depending on when we get to her, who was  
16 the executive officer of the 40th precinct where Pedro  
17 Serrano was an officer at. And also Deputy Inspector  
18 Christopher McCormack. I just want to make sure that the  
19 testimony will go to what is stated in the defendants' witness  
20 schedule, which is related to allegations of Pedro Serrano, and  
21 they're not going beyond that. So if they are, we've had no  
22 notice of what it will be.

23 MS. COOKE: Your Honor, first of all, plaintiffs  
24 identified Inspector McCormack on their case in chief and then  
25 chose not to call him. So, first, with respect to that.

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1 Second --

2 THE COURT: But you are calling him.

3 MS. COOKE: We are calling him. So they -- Officer  
4 Serrano has made very specific allegations of misconduct  
5 against both Inspector McCormack and Captain Materasso. So  
6 they will be answering to those and providing additional  
7 information to the extent it is about the way they supervise,  
8 the way that they conduct themselves as the executive officer  
9 and the deputy inspector of that precinct, issues with respect  
10 to stop, question and frisk, racial profiling, all of the  
11 issues to which Officer Serrano has made an issue with respect  
12 to those two individuals at the 40th precinct. Yes.

13 MR. MOORE: Well that was my concern. Which I have no  
14 problem with them going over anything that related to Officer  
15 Serrano, but --

16 THE COURT: But apparently they're also going to  
17 testify generally about their duties in the precinct.

18 MS. COOKE: Absolutely. To the extent there's been  
19 allegations about those two individuals supervising officers,  
20 instructing officers and either complicit with or directing  
21 racial profiling in that precinct, suspicionless stops in that  
22 precinct, summonses without probable cause in that precinct,  
23 arrests without probable cause. Absolutely all of those things  
24 will be addressed and responded to by those witnesses in  
25 response to the allegations by Officer Serrano.

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1 THE COURT: Well, you have your notice now.

2 MR. MOORE: So we have at least some notice. If there  
3 are any documents they're going to use with respect --

4 MS. COOKE: I have identified documents for both --

5 MR. MOORE: Excuse me.

6 MS. COOKE: -- for both witnesses. Mr. Moore has not  
7 responded to. Three weeks ago we identified documents for  
8 Captain Materasso. And last Saturday we identified documents  
9 for Deputy Inspector McCormack. Both of those now are far  
10 beyond, for Materasso, the 72-hour rule. We have not received  
11 exhibits for either witness in response from the plaintiffs.

12 MR. MOORE: All I was saying if there are any  
13 additional documents.

14 THE COURT: If there's anything you haven't identified  
15 that you intend to use, please make it known.

16 MS. COOKE: And Mr. Moore please respond today for  
17 Captain Materasso And inspector McCormack.

18 THE COURT: You mean if he intends to use different  
19 documents?

20 MS. COOKE: He's identified nothing.

21 THE COURT: He may be using the very documents you  
22 identified.

23 MS. COOKE: Other than the two I've identified for  
24 each witness.

25 THE COURT: You identified two?

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1 MS. COOKE: Two for Captain Materasso and three for  
2 Inspector McCormack.

3 THE COURT: That's it? You're only going to use five  
4 exhibits?

5 MS. COOKE: As of now, yes.

6 MR. MOORE: I can tell you we'll certainly be using  
7 the recording.

8 MS. COOKE: The transcript of that.

9 MR. MOORE: The transcript, yes.

10 Anyway, I know it's late. I didn't mean to stir up  
11 the pot. I just wanted to get some heads-up because we haven't  
12 had a chance to depose them.

13 THE COURT: Okay.

14 MR. MOORE: Thank you, Judge.

15 THE COURT: Okay. So I'll see you all Thursday at  
16 10:00.

17 Have you -- Ms. Grossman have you had any further  
18 information on the order from last night?

19 MS. GROSSMAN: I have to go back to my office and find  
20 out and -- thank you.

21 THE COURT: If you find that citation on the frisk,  
22 you can e-mail that in to my clerk also.

23 MS. GROSSMAN: There has been. We filed --

24 THE COURT: I can't hear you.

25 MS. GROSSMAN: We have filed with the Part I judge.

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1 THE COURT: You have filed?  
2 MR. DONAHUE: We are filing. I don't think it's hit  
3 it yet. We are en route. It will be there shortly.  
4 THE COURT: Do you know who the Part I judge is?  
5 MR. DONAHUE: I was told it was Judge Keenan, I  
6 believe.  
7 (Adjourned to May 9, 2013 at 10:00 a.m.)  
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|    | INDEX OF EXAMINATION                 |       |
|----|--------------------------------------|-------|
| 1  |                                      |       |
| 2  | Examination of:                      | Page  |
| 3  | BENJAMIN WHITE                       |       |
| 4  | Direct By Ms. Publicker . . . . .    | .6208 |
| 5  | Cross By Mr. Azmy . . . . .          | .6237 |
| 6  | Redirect By Ms. Publicker . . . . .  | .6262 |
| 7  | STACY BARRETT                        |       |
| 8  | Direct By Mr. Marutollo . . . . .    | .6263 |
| 9  | Cross By Mr. Moore . . . . .         | .6275 |
| 10 | Redirect By Mr. Marutollo . . . . .  | .6300 |
| 11 | Recross By Mr. Moore . . . . .       | .6302 |
| 12 | CHARLTON TELFORD                     |       |
| 13 | Direct By Ms. Richardson . . . . .   | .6303 |
| 14 | Cross By Ms. Martini . . . . .       | .6324 |
| 15 | Redirect By Ms. Richardson . . . . . | .6340 |
| 16 | Recross By Ms. Martini . . . . .     | .6342 |
| 17 | ANTHONY NAVARETTA                    |       |
| 18 | Direct By Ms. Richardson . . . . .   | .6343 |
| 19 | Cross By Ms. Martini . . . . .       | .6357 |
| 20 | Redirect By Ms. Richardson . . . . . | .6364 |
| 21 | Redirect By Ms. Martini . . . . .    | .6365 |
| 22 |                                      |       |
| 23 |                                      |       |
| 24 |                                      |       |
| 25 |                                      |       |

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KHA DANG  
Direct By Ms. Richardson . . . . . .6366

PLAINTIFF EXHIBITS

| Exhibit No.                   | Received |
|-------------------------------|----------|
| 569 . . . . .                 | .6250    |
| 557 . . . . .                 | .6318    |
| 557D . . . . .                | .6319    |
| 63, 144 through 147 . . . . . | .6324    |
| 556 . . . . .                 | .6338    |
| 555 . . . . .                 | .6339    |

DEFENDANT EXHIBITS

| Exhibit No.   | Received |
|---------------|----------|
| Z9 . . . . .  | .6230    |
| O12 . . . . . | .6349    |
| N12 . . . . . | .6360    |
| K14 . . . . . | .6381    |

