

# **EXHIBIT 11**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

DAVID FLOYD, LALIT CLARKSON, DEON DENNIS  
and DAVID OURLICHT, individually and on  
behalf of a class of all other similarly  
situated,

Plaintiffs, Index No.

-against- 08 CIV 01034

THE CITY OF NEW YORK, NEW YORK CITY POLICE  
COMMISSIONER RAYMOND KELLY, in his  
individual and official capacity, et al,

Defendants.

-----x

November 23, 2009

10:42 a.m.

VOLUME II

CONTINUED DEPOSITION of JOSEPH  
ESPOSITO, taken by the Plaintiffs, at One Police  
Plaza, New York, New York before Karen Perlman, a  
Shorthand Reporter and Notary Public within and  
for the State of New York.

GREENHOUSE REPORTING, INC.  
875 Sixth Avenue - Suite 1716  
New York, New York 10001  
(212) 279-5108

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S :

BELDOCK, LEVINE & HOFFMAN, LLP

Attorneys for the Plaintiffs

99 Park Avenue

New York, New York 10016

BY: JONATHAN MOORE, ESQ.

RACHEL KLEINMAN, ESQ.

NEW YORK CITY LAW DEPARTMENT

OFFICE OF CORPORATION COUNSEL

Attorneys for the Defendants

100 Church Street

New York, New York 10007

BY: JENNIFER ROSSAN, ESQ.

LINDA DONAHUE, ESQ.

ALSO PRESENT:

KERRY SWEET, ESQ., NYPD Legal Bureau

1 J. Esposito  
2 Q. But in terms of being the person who  
3 is responsible in the department for ensuring  
4 that this order is complied with, has he  
5 delegated that duty to you, or has he maintained  
6 that responsibility in his office?  
7 A. Performance in this area will also  
8 be included in the CompStat review, at the very  
9 least that's me.  
10 Q. In terms of articulating the policy  
11 though, that there is a policy against racial  
12 profiling, there is a policy against stop and  
13 frisk, is that the province of the commissioner  
14 or the chief of the department?  
15 A. It's everyone's job in this agency.  
16 Q. Who is primarily responsible for it?  
17 MS. ROSSAN: Objection to form.  
18 A. Responsible for what?  
19 Q. Who has the last word on it?  
20 A. The last word on what, the policy?  
21 Q. On the policy regarding --  
22 A. He has the last word on the policy.  
23 Q. -- stop, question and frisk?  
24 That is with regard to stop,  
25 question and frisk, right?

1 J. Esposito  
2 A. He has the last word on every  
3 policy, including stop, question and frisk.  
4 Q. And including the department's  
5 policy regarding racial profiling, right?  
6 A. Yes.  
7 MR. MOORE: So when is he going to  
8 come testify?  
9 MS. ROSSAN: That is why I'm shaking  
10 my head. I object.  
11 MR. MOORE: Add that to the list of  
12 depositions.  
13 MS. ROSSAN: That you can't have.  
14 MS. DONOHUE: You're not getting it.  
15 MR. MOORE: That I can't have and  
16 that I'm not getting? We'll both see when  
17 it happens. Unless there has been an order  
18 today that you're aware of that I am not.  
19 MS. ROSSAN: We're sitting here with  
20 you.  
21 MR. MOORE: That doesn't mean you're  
22 not on your BlackBerry.  
23 THE WITNESS: We got a half hour  
24 left and then I got to take a break. We  
25 can come back later this afternoon, but I