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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

New York, N.Y.
May 10, 2013
10:11 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

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15 Attorneys for Plaintiffs

15 BY: JONATHAN MOORE
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APPEARANCES (Cont'd)

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1 (In open court; trial resumed)
2 THE COURT: Good morning, everyone.
3 Please be seated.
4 MR. MOORE: Good morning, Judge.
5 No letters? Nothing to talk about?
6 THE COURT: Sorry?
7 MR. MOORE: No letters to talk about?
8 THE COURT: There is, but I'm not going to do it now.
9 MR. MOORE: Okay.

10 William Morris, resumed.

11 CROSS-EXAMINATION CONTINUED

12 BY MR. MOORE:

13 Q. Good morning, Chief Morris.

14 A. Good morning, sir.

15 Q. We were talking yesterday at the end about -- we were just
16 going to get into this question of the review that you directed
17 to be done following your receipt of the March 5, 2013 memo.

18 You directed a review of 250s to be done in four precincts of
19 the patrol borough Manhattan North?

20 A. Yes, sir, I did.

21 Q. And you directed Captain Natale to be responsible for that
22 review, correct?

23 A. Yes, I did.

24 Q. And he didn't actually do the review. He directed somebody
25 else to do it, correct?

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D5a9fl01 Morris - cross

- 1 A. That's my understanding.
2 Q. And so as far as you know, Captain Natale never actually
3 looked at those 250s, correct?
4 A. I don't know the answer to that.
5 Q. You never looked at them though, right?
6 A. No, sir, I did not.
7 Q. And those -- 40 of those -- ten 250s were examined from
8 four precincts in the patrol borough, correct?
9 A. Yes, sir.
10 Q. And do you know where that examination took place?
11 A. I'm sorry?
12 Q. Do you know where that examination took place?
13 A. It took place both at the precinct, the individual precinct
14 involved and also back at the office of the Manhattan north
15 investigations unit.
16 Q. Where are those forty 250s now, do you know?
17 A. They are either back at the original precincts where they
18 came from.
19 Q. Either or?
20 A. Because you started by saying either.
21 A. The 250s themselves are back at -- they're at the precincts
22 where they were taken from.
23 Q. So, after this review they were taken back to the precinct
24 and just distributed into the four different precincts; is that
25 correct?

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D5a9flol Morris - cross

- 1 A. Yes, sir.
2 Q. And nobody asked you to preserve those 40 UF 250s?
3 A. No, sir.
4 Q. This was a -- were you directed by anybody to do this
5 review?
6 A. Yes, sir, I was.
7 Q. Who directed you to do that review?
8 A. Chief Hall.
9 Q. Do you know if he was directed by anybody to do that
10 review?
11 A. I don't know the answer to that.
12 Q. So, you said in your declaration, you may recall, that the
13 testimony contained in your declaration is based on personal
14 knowledge and your review of NYPD records, correct?
15 A. Yes, sir.
16 Q. You don't have any personal knowledge of this review of the
17 forty 250s, do you?
18 A. I have the report that -- the verbal report that Captain
19 Natale gave me.
20 Q. In terms of personal knowledge, you never reviewed the
21 250s, correct?
22 A. No, sir. I did not.
23 Q. You didn't review those records, correct, the 250s, you
24 didn't review them?
25 A. Not the actual 250s.

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D5a9fl01 Morris - cross

1 Q. Right. Okay.

2 Did you receive -- to your knowledge the 250s had a
3 photocopy -- I was going to say Xerox -- photocopy of the memo
4 books attached to them; is that correct?

5 A. Could you ask that again.

6 Q. I'm sorry.

7 To your knowledge, the forty UF 250s that were
8 reviewed under the direction of Captain Natale had attached to
9 them or stapled to them photocopies of the memo books related
10 to those 250s?

11 A. Yes, sir. That's what I was told.

12 Q. And did you review any of those memo books?

13 A. No, sir. I didn't.

14 Q. And you found that of the -- so when I say you had no
15 personal knowledge, you don't have any personal knowledge as to
16 whether any of those 40 UF 250s are in compliance with the
17 departmental guidelines, correct?

18 A. I know based on what Captain Natale told me.

19 Q. So what he told you is just hearsay though, right? You're
20 a lawyer, right?

21 A. Yes, sir.

22 Q. You're trained as a lawyer?

23 A. I do not practice.

24 Q. So when I say personal knowledge, you're relying on what
25 Captain Natale told you?

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D5a9fl01 Morris - cross

1 A. Yes, sir. That's correct.

2 Q. And even in that --

3 MS. GROSSMAN: Your Honor, I would just note that the
4 declaration states just that, what the reliance was.

5 MR. MOORE: I'm not sure what that statement means.
6 The declaration says the testimony contained in this
7 declaration is based on personal knowledge and on my review of
8 NYPD records.

9 So to be accurate to what the declaration says.

10 Q. In any event, let's go back to this review. So 40 of these
11 UF 250s were reviewed according to what you learned, correct?

12 A. I'm sorry, sir?

13 Q. Forty of the UF 250s were reviewed -- forty UF 250s were
14 reviewed, correct?

15 A. Yes, sir.

16 Q. And even in that review it became clear to you that
17 officers were still failing to follow the directives from the
18 NYPD with regard to putting the details of their stops in their
19 memo books, correct?

20 A. Yes, sir.

21 Q. And, in fact, the pass rate, if you would, on this forty in
22 terms of whether they were complying with NYPD directives was
23 in effect sixty percent, right?

24 A. I'm not sure of the rate.

25 I know that 16 of those 40 had either an inadequate or
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D5a9fl01 Morris - cross

1 no explanation for the exact reason for the stop; 24 had it.

2 Q. Right. So, just simple math. Full compliance was

3 60 percent, right?

4 24 divided by 40 comes out to 60 percent?

5 A. Okay. I'll accept that.

6 MR. MOORE: The Court can take judicial notice of
7 that.

8 THE COURT: Correct.

9 Q. And so if you were -- if this was a QAD audit, the score on
10 the quad audit would be a two, right?

11 A. I'm not sure how QAD would score that.

12 Q. Well, you're familiar with the QAD audits, correct?

13 A. Yes, sir. I am.

14 MS. GROSSMAN: Your Honor, this is highly
15 inappropriate because this rating has to do with something -- a
16 different audit. This is not a rating parameter for what the
17 chief was just testifying.

18 THE COURT: One of the subjects in the QAD audits was
19 the adequacy of the memo books. Apparently there is a
20 mathematical formula for the rating we're about to see. So I'd
21 like to see the mathematical formula. I don't see what's
22 highly anything about it.

23 MS. GROSSMAN: Well, no. It's related to a different
24 audit.

25 THE COURT: I understand that. He's saying were the
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Morris - cross

1 audit -- the QAD audit conducted on just 40 UF 250s and were
2 only 60 percent in compliance, wouldn't that have been scored a
3 two? So we're going to see how the scoring --

4 MS. GROSSMAN: It doesn't have it in there.

5 THE COURT: If he can't prove it, he can't prove it.
6 He put something up on the board which I haven't looked at yet.

7 What were you going to say, Mr. Moore?

8 MR. MOORE: I'm showing you --

9 THE COURT: You don't need to ask him anything. It's
10 in evidence. You read it.

11 What does it say?

12 This is in evidence, right?

13 MR. MOORE: This is in evidence, Judge. Plaintiffs'
14 Exhibit 62.

15 THE COURT: What does it say?

16 MR. MOORE: This is the rating parameters for the QAD
17 audit of stop, question and frisk based on worksheet 802 which
18 as you recall reviews five UF 250s -- I'm sorry five memo book
19 entries. And the rating parameters are when you -- when there
20 are two errors out of five the rating is a two.

21 THE COURT: I see.

22 MR. CHARNEY: Three out of five is sixty percent.

23 BY MR. MOORE:

24 Q. Accepting that formula, Chief Morris, as the rating --

25 THE COURT: So when there's a 40 percent error rate
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D5a9fl01 Morris - cross

1 the rating is two?

2 MR. MOORE: Correct.

3 THE COURT: What do you not see in there,
4 Ms. Grossman?

5 MS. GROSSMAN: Well as Chief Cronin testified about
6 what it is that -- how the development of the rating parameters
7 occurred. This is a different audit and the purpose of the
8 audit is different from that.

9 THE COURT: That all may be but if there is a
10 40 percent error rate you get a rating of two. It's right on
11 there. Two out of five is 40.

12 MS. GROSSMAN: I understand that.

13 THE COURT: Good.

14 MS. GROSSMAN: I understand that. If this was a
15 different audit might be a different rating.

16 THE COURT: You're right. Anything is possible. But
17 if these 40 were the sample and there was a 40 percent error
18 rate of these 40, the rating would be two.

19 MS. GROSSMAN: But what QAD is auditing is different
20 than this.

21 THE COURT: Okay. You've certainly made your point.
22 That's fine.

23 Q. Now clearly a 40 percent failure rate on the audit was not
24 something you were happy with, though, right?

25 MS. GROSSMAN: I'm sorry. What are we talking about?

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Morris - cross

1 THE COURT: The 40 that were reviewed -- were you
2 happy that 40 percent of those were inadequate? Did that make
3 you happy that day, or were you somewhat less than happy?

4 THE WITNESS: I was less than happy.

5 THE COURT: Okay. I would think so.

6 MS. GROSSMAN: The question is the asking about the
7 audit. It's the audit rating, referring to this.

8 THE COURT: That's stricken. I asked him. I
9 rephrased. I said --

10 MS. GROSSMAN: That fine, your Honor.

11 THE COURT: Thank you, Ms. Grossman.

12 I said: Did the 40 percent error rate make you less
13 than happy that day? He agreed. It wasn't the happiest day on
14 the job.

15 Q. And what steps --

16 THE COURT: Because you would have loved to see a
17 hundred percent were correct, isn't that it? That would have
18 been a happy thing if all were right?

19 THE WITNESS: I'm always achieving to do the best.

20 THE COURT: So a hundred percent would have been a
21 happier thing?

22 THE WITNESS: Yes, your Honor.

23 THE COURT: Sure.

24 Q. And what steps did you take, if any, following your report
25 from Captain Natale to you that there was a 40 percent

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Morris - cross

1 deficiency rate, what steps did you take to remedy that, if
2 any?
3 A. I reported the results back to my superior.
4 Q. To Chief Hall, correct?
5 A. Yes, sir.
6 Q. And how did you do that? Did you do that in -- in a
7 memorandum form or did you do that orally?
8 A. No. I made some notes on what Captain Natale told me
9 verbally and then I reported that verbally to Chief Hall.
10 Q. Do you still have a copy of those notes that Captain
11 Natale -- that you made from your conversation with Captain
12 Natale?
13 A. Yes, sir.
14 Q. Do you have them with you?
15 A. No, sir.
16 Q. And so you reported them verbally to Chief Hall and what
17 happened after that?
18 A. (No response).
19 Q. Anything? Did you have any further discussion?
20 THE COURT: Let him think. You asked the question.
21 Now let him think about it.
22 MR. MOORE: Okay.
23 THE WITNESS: I'm not a hundred percent about the
24 sequence of events but there came a point where we sent out an
25 e-mail from the borough to the precincts that work for me where

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D5a9flol Morris - cross

1 they had to report back about the training that persons had
2 gotten in the precincts regarding the March 5 memo.

3 MR. MOORE: I would just note for the record, Judge,
4 we haven't been provided with a copy of that as well, so.

5 In any event, that's the answer.

6 Q. So, anything else that you've done with respect to doing
7 anything regarding this deficiency rate that was noted from the
8 review done by Captain Natale other than what you've just
9 testified to?

10 A. Just -- as I believe I testified to before, the ongoing
11 point about training on the front end and then the way that we
12 reviewed the QAD audits, the deficiency memos on the other
13 side.

14 Q. Now speaking of the QAD audits you've been the commanding
15 officer of patrol borough Brooklyn North -- I'm sorry,
16 Manhattan North -- thank you, Mr. Charney -- for almost three
17 years now, correct?

18 A. Yes, sir.

19 Q. The 2010 audit done by QAD for patrol borough Manhattan
20 North showed that you got an average of -- for the patrol
21 borough, boroughwide the average -- the audit score for that
22 category of whether officers are putting the details of their
23 stops in their memo books for 2010 was 1.6. Were you aware of
24 that?

25 A. I've been shown that report, yes.

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D5a9fl01 Morris - cross

1 Q. So, I don't need to show it to you again, right? You're
2 aware it was 1.6?

3 MR. MOORE: Would you like to see it, judge?

4 THE COURT: No.

5 Q. You're aware that the 2011 audit went down slightly to 1.5,
6 correct?

7 A. I know that the numbers have varied over time. I don't
8 know the exact numbers.

9 THE COURT: I'm sure he'll accept your representation.
10 That's what the chart shows.

11 THE WITNESS: Yes, your Honor.

12 Q. The average for 2012 went up to 2.4.

13 Will you accept that representation?

14 A. Yes, sir.

15 Q. So, notwithstanding that it went up to 2.4 in all three
16 years that you've been head of the patrol borough Manhattan
17 North, with respect to that category of the audit, the patrol
18 borough has failed that portion of the audit, correct?

19 A. Based on those numbers that you've cited here, yes, sir.

20 Q. And you don't disagree with those numbers? You don't
21 dispute those numbers, right?

22 A. No, sir.

23 Q. Now you indicated in your direct testimony that you have
24 borough CompStat meetings, correct?

25 A. Yes, sir.

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D5a9fl01 Morris - cross

1 Q. And in those borough CompStat meetings they're run somewhat
2 similar to the departmentwide CompStat meetings, correct?

3 A. Similar. Yes, sir.

4 Q. And you try to look at and identify spikes in crime as one
5 of the things you do, correct?

6 A. Yes, sir.

7 Q. And then you try to -- you also look at the -- if you're
8 looking at a particular precinct or selection of precincts you
9 would look at the number of arrests, summonses and 250s that
10 took place in those precincts for a certain period of time,
11 correct?

12 A. Yes, sir.

13 Q. And is one of the messages that you intend to send to your
14 commanders when you do those borough CompStat meetings is that
15 when there's a spike in crime you expect them to focus their
16 enforcement activity in those areas where there's a spike in
17 crime?

18 A. Yes, sir.

19 Q. And is one of the ways you measure whether they are being
20 successful is you look at the numbers of arrests -- in part you
21 look at the number of arrests, summonses and 250s that have
22 been generated in those areas targeted, correct?

23 A. Yes, sir.

24 Q. And those numbers are maintained not just on a daily or a
25 weekly but also monthly and a yearly basis, correct?

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D5a9fl01 Morris - cross

1 A. The enforcement numbers?

2 Q. Yes.

3 A. Yes, sir.

4 Q. And that's true not only on the borough level but on the
5 citywide CompStat meetings, a similar process of looking at the
6 numbers and looking at them for different periods of time takes
7 place at the CompStat meetings down at One Police Plaza,
8 correct?

9 A. Yes, sir.

10 Q. Now, you also talked a little bit about community
11 complaints. That -- you recall referring to community
12 complaints?

13 A. Yes, sir.

14 Q. In your direct testimony.

15 And I believe your testimony was that you've never
16 received a complaint by anybody in the community about racial
17 profiling?

18 A. Nobody has ever complained to me about racial profiling.

19 Q. Has anybody complained to you -- is it that term that
20 they've never complained about or is it just that term, or is
21 it the fact that nobody has ever complained that they've been
22 targeted for their -- for enforcement activity because they're
23 Black. Has anybody ever said that to you?

24 A. Could you say that question --

25 Q. That was a convoluted question.

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D5a9fl01

Morris - cross

1 Are you aware of any complaints that have been
2 received in the borough that enforcement activity has targeted
3 people because they are Black or because they're Hispanic. Set
4 aside the term racial profiling.

5 A. I've been aware of complaints regarding stops -- you know,
6 I've read them in the media. I've followed this case. I've
7 heard, you know, discussions in public, you know, community
8 groups about it. That specific question.

9 I can't recall anybody ever saying to me, you know,
10 stopped because I was Black. I can't recall that.

11 Q. Or Hispanic?

12 A. No. No. I can't recall that.

13 Q. There's a large Hispanic community in patrol borough
14 Manhattan North, correct?

15 A. Yes, sir.

16 Q. And is it your testimony that the only complaints you've
17 heard about with relation to stop is that people are being
18 stopped for no reason, right?

19 A. I've heard that, yes, being stopped for no reason.

20 Q. And you've heard that at community meetings that you
21 attend?

22 A. Yes, sir.

23 Q. Let's set aside for a moment media reports. I don't want
24 to talk about what you might have read in the media. I want to
25 talk about what you personally became aware of by attending

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D5a9fl01 Morris - cross

1 community meetings.

2 Have you -- you said you've heard complaints being
3 raised by people -- members of the community about being
4 stopped for no reason, correct?

5 A. It's just been like a general statement. Kids are being
6 stopped for no reason.

7 Q. Right. And that's coming from not only politicians in the
8 community but also members of the community, correct?

9 A. Yes. Yes, sir.

10 Q. There's open mic at these community meetings where people
11 in the community can come up and voice whatever they want to
12 say to the officers who are present, correct?

13 A. Certainly, yes, sir.

14 Q. And when those complaints are made, do you make any effort
15 to investigate those complaints?

16 A. No. Because it was a general statement that was made.

17 Q. And one of the things you've also heard is that cops are
18 being disrespectful when they stop people, correct?

19 A. Yes, sir.

20 Q. Have you done any effort to investigate those complaints?

21 A. To investigate -- no. Because I don't have -- it didn't
22 come to me as like a particular complaint. It was a more of a
23 generalized statement.

24 Q. Well if somebody -- some individual gets up at a community
25 meeting saying we have a problem because police officers are

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D5a9fl01 Morris - cross

1 being disrespectful in how they treat people when they stop
2 them. That's coming from a specific individual. Do you take
3 any steps to follow up with that specific individual about that
4 complaint?

5 A. When I've had complaints like that, I've directed usually
6 my community affairs person to go over and speak to the person
7 to see what it's regarding.

8 Q. And in no cases have they reported back that there's any
9 reason to be concerned, correct?

10 A. No. I wouldn't say that.

11 Q. Well have you investigated then -- or are you aware of
12 investigations that have gone forward beyond just sending your
13 community affairs person over?

14 A. No, I'm not.

15 Q. And you say -- you said in your declaration that was
16 provided to us before your testimony that the most common kind
17 of complaints that I have heard are about the misperception
18 that stops are conducted for no reason at all.

19 A. Yes, sir.

20 Q. Do you recall saying that in your declaration?

21 A. Yes, I did, sir.

22 Q. Well misperception, that's a conclusion that you're putting
23 on those complaints, right?

24 A. Yes. That's my view of them.

25 MR. MOORE: One second, your Honor.

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Morris - cross

1 (Pause)

2 MR. MOORE: Thank you, Chief Morris. I have no
3 further questions.

4 THE COURT: Ms. Grossman.

5 REDIRECT EXAMINATION

6 BY MS. GROSSMAN:

7 Q. Good morning, Chief.

8 A. Good morning, ma'am.

9 Q. Are there mechanisms in place that you're aware of where
10 the community can file complaints with the Civilian Complaint
11 and Review Board or the Internal Affairs Bureau?

12 A. Yes, ma'am.

13 Q. And when you attend community meetings is that communicated
14 to the community generally?

15 A. Not specifically.

16 Q. Now, if anyone were to come to you with a particular
17 complaint about racial profiling or stop, question and frisk,
18 is there -- would you expect -- I'm sorry. Let me rephrase it.

19 If a community member came to one of your community
20 affairs officers to complain about a specific occasion where
21 they were subject to an unconstitutional stop or they believed
22 they were racially profiled, would you expect your community
23 affairs person to refer that person to the Civilian Complaint
24 and Review Board or to the Internal Affairs Bureau?

25 MR. MOORE: Object to the form, would you expect.

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Morris - redirect

1 THE COURT: No. That's exactly what she wants to ask.
2 I'll allow that.

3 THE WITNESS: If it was a particular complaint
4 involving a particular person, I would expect my personnel to
5 appropriately refer that or to take the complaint themselves
6 and make the notifications.

7 THE COURT: What if it wasn't about a particular
8 officer but rather what the complainant viewed as a policy or a
9 practice, then would you expect it to go to CCRB or IAB?

10 THE WITNESS: No, your Honor.

11 THE COURT: So if the person said we think there's
12 this policy, what would be the right place to refer that
13 complaint?

14 THE WITNESS: It would kind of be a basis of knowledge
15 for me about what the community thinks is going on in terms of
16 that. And that goes to the police community relationship
17 moving forward. I would view that differently as opposed to a
18 specific complaint about a person being stopped
19 inappropriately.

20 THE COURT: Okay.

21 MS. GROSSMAN: Your Honor, forgive me. Yesterday I
22 failed to offer a particular document into evidence and it's
23 just a patrol guide procedure regarding borough commander
24 duties and responsibilities. So I'm going to show a copy of
25 this to the witness. It's Defendants' Exhibit E5.

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D5a9fl01 Morris - redirect

1 MR. MOORE: I have no objection.

2 THE COURT: E5 is received.

3 (Defendant's Exhibit E5 received in evidence)

4 Q. Are you familiar with this document, Chief?

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

6 Q. What is it?

7 A. It's the patrol guide section enumerating the duties of a
8 borough commander.

9 MS. GROSSMAN: I have no further questions, your
10 Honor.

11 THE COURT: Anything further for this witness?

12 MR. MOORE: Nothing further.

13 THE COURT: Okay. Thank you for coming back. You're
14 all done.

15 THE WITNESS: Thank you, your Honor. Good day.

16 THE COURT: Thank you. You too.

17 (Witness excused)

18 MS. COOKE: Your Honor, defendants call Captain
19 Martine Materasso.

20 MARTINE MATERASSO,

21 called as a witness by the Defendants,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. COOKE:

25 Q. Good morning, Captain Materasso.

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D5a9fl01

MATERASSO - DIRECT

1 A. Good morning.

2 Q. Could you describe your educational background for the
3 Court, please.

4 A. Sure. I have bachelor's degree.

5 Q. What your bachelor's degree in?

6 A. Criminal law justice.

7 Q. Where did you receive that degree?

8 A. Florida International University.

9 Q. You are currently employed with the NYPD?

10 A. Yes.

11 Q. When did you become employed with the NYPD?

12 A. March of 2000.

13 Q. Could you briefly describe your assignments you've held
14 with the NYPD beginning following your graduation from the
15 police academy.

16 A. Yes. I was -- once I graduated the police academy in
17 October 2000 I was assigned to the 52 precinct.

18 Then I was assigned about a year-and-a-half later to
19 Bronx vice.

20 I got promoted to sergeant, was assigned to the 43
21 precinct.

22 Then I got promoted to lieutenant. I was assigned to
23 Manhattan North 30 precinct and Manhattan North auto larceny.

24 Then I was promoted to captain. I was assigned a
25 short time to the 47 precinct. And currently to the 40

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1 precinct.

2 Q. The precincts you mentioned beginning with the 52, could
3 you identify the boroughs they are located in.

4 A. The 52 is in the Bronx. I was in Bronx vice.

5 The 43 is also in the Bronx.

6 Manhattan North is Manhattan North. The 30.
7 Manhattan North.

8 And back to the Bronx, the 47, and the 40.

9 Q. What were your duties and responsibilities in Bronx vice?

10 A. In Bronx vice I was an investigator in there. We were
11 assigned precincts. I covered the 45 precinct. There we would
12 do gambling, untaxed cigarettes, prostitution, A, B, C
13 violations.14 Q. What kind of -- when you said you were an investigator,
15 what did that mean?16 A. We were assigned case, complaints from the public or
17 self-generated cases.

18 Q. How would you investigate them?

19 A. We would go out and do observations. Sometimes undercover
20 buys. Depending on the case itself.

21 Q. And how long were you in Bronx vice?

22 A. A little bit over two years.

23 Q. Your current position at the 40 precinct is captain?

24 A. Yes.

25 Q. Are you also the executive officer of the precinct?

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1 A. Yes.

2 Q. How long have you held that position?

3 A. I was promoted in October 2011.

4 Q. Did you arrive at the 40 precinct in 2011?

5 A. January of 2012.

6 Q. And you've been the executive officer of the 40 precinct
7 the entire time?

8 A. Yes.

9 Q. Could you generally describe your duties and
10 responsibilities as an executive officer at the 40th
11 precinct.12 A. Yes. I actually do -- hold two hats. I'm the executive
13 officer as well as the impact captain, which means I'm assigned
14 to train and watch over the impact officers that are assigned
15 coming out of the police academy.16 As the executive officer duties, daily I review all
17 paperwork regarding accident reports, 61 reports, UF 250
18 reports. I oversee the special operations units, anticrime,
19 SNEU, the school unit, domestic violence unit.

20 THE COURT: Could you speak a little slower.

21 THE WITNESS: Sure. Sorry.

22 So, special operations unit, within there, I oversee
23 the traffic unit in the precinct, the training unit, things of
24 that nature.25 THE COURT: What's the geographic boundaries of the --
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1 THE WITNESS: Of the 40?

2 It's the southernmost part of the Bronx. So that
3 encompasses right over to Willis Avenue, the Third Avenue
4 bridge right there, the southern end 132 Street; going north to
5 163; going west to the Major Deegan; and then going east to
6 Prospect.

7 THE COURT: Thank you.

8 Q. In terms of geographic area, is the 40 comparatively a
9 small precinct in the Bronx or a large precinct in the Bronx?

10 A. Probably not the biggest as in like the 43. But
11 definitely -- it's a little bit over 2.2 square miles.

12 THE COURT: What was the population size?

13 THE WITNESS: I'm not exactly sure of the exact
14 population.

15 THE COURT: Not exact.

16 THE WITNESS: I mean we have some industrial, which is
17 in that southern end of the precinct where there are trucking
18 companies and things of that nature.

19 THE COURT: You promised to speak slower.

20 THE WITNESS: I did. I'm sorry. I apologize.

21 And we do have six housing developments as well as --
22 not so much private houses as much as other just regular six-
23 to eight-story buildings.

24 Q. With respect to the impact officers, how many impact
25 officers do you supervise as the impact captain?

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1 A. Currently I have one lieutenant, four sergeants and 55
2 officers.

3 Q. What about the remaining officers of the 40 precinct?
4 What's the number of officers?

5 A. Approximately two hundred including supervisors.

6 THE COURT: Including what?

7 THE WITNESS: Supervisors.

8 MR. MOORE: I didn't hear the number, Judge.

9 THE COURT: Two hundred including supervisors.

10 Q. Do you have any roles and responsibilities with respect to
11 training officers at the 40th precinct?

12 A. I do oversee the training unit. And if something does come
13 across, I either receive an e-mail or through department mail.
14 I do make it a point to then speak to the training officer or I
15 speak to the lieutenant or the sergeant may be conducting roll
16 call for that day and I will have him address it.

17 Q. Do you yourself stand roll call or conduct roll call at any
18 time?

19 A. I do sometimes go in there, yes.

20 Q. And on what indications would you stand for roll call,
21 address roll call?

22 A. If there was maybe a meeting regarding a pressing issue or
23 something of you know -- significant importance that we wanted
24 to address and possibly get done immediately I will go in there
25 and address it.

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1 Q. With respect to your supervisory responsibilities you
2 mentioned that you review a lot of paperwork, 61s, accident
3 reports, and the like.

4 Do you review all paperwork or what's your practice
5 with respect to the review of the paperwork?

6 A. With the review of the paperwork I will daily review at the
7 desk area when the officers do hand in the paperwork, at the
8 end of their tour. Throughout their tour I will review that
9 while standing there possibly engaging in another conversation.
10 I do receive certain paperwork on my desk in terms of crimes
11 for the day.

12 Q. What about the impact officers? Do you have any regular
13 practices with respect to review of their paperwork they
14 generate?

15 A. Not a regular review but I will not only review it at the
16 precinct but in the field if I do hear an instance come over
17 the radio that they might be at an accident scene, a person
18 stop scene, or just another crime, I will go there.

19 Q. You mentioned listening to the radio. What is your
20 practice with respect to listening to the police radio while on
21 duty?

22 A. Whether I'm in my office or in the field on patrol, I will
23 always have the radio on. Constantly monitoring it.

24 Q. What's the purpose of monitoring the radio?

25 A. Just so I could gauge exactly what's going on in the

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1 precinct. Whether we're holding possibly jobs, to verify that
2 the units are answering the jobs in a timely manner,
3 accountability.

4 Q. What are you able to tell about the work of your
5 supervisors by monitoring the radio?

6 A. I'm able to gauge when they are on the radio possibly
7 asking for, they call them rundowns, which is accountability of
8 where each sector is, what job they might be on and what
9 they're doing throughout the tour.

10 Q. What about meetings with supervisors, sergeants and
11 lieutenants in the command? Do you have meetings with the
12 supervisors?

13 A. We do have approximately monthly meetings. They are called
14 commanding officer meetings. And we do discuss there topics
15 that we need to either address and improve or also things we've
16 done that are very positive.

17 Q. And what about officer memo books? What responsibility do
18 you have with respect to reviewing officer memo books?

19 A. Well I do conduct the 250 self-inspection that I do review
20 officers' memo books. Also throughout the day if I am going to
21 review say a 250 that was handed in, I will then review a copy
22 of the memo book that is attached.

23 Q. And when conducting the review --

24 THE COURT: Since when were the memo books attached to
25 the 250s?

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1 THE WITNESS: Yes. Since -- since recently, ma'am.

2 THE COURT: When?

3 THE WITNESS: In March.

4 THE COURT: March 2013?

5 THE WITNESS: Yes.

6 THE COURT: Before that they weren't attached?

7 THE WITNESS: Correct.

8 THE COURT: Before that you didn't review them
9 together?

10 THE WITNESS: During the self-inspection when I would
11 do the inspection, I would request the memo books.

12 Q. Prior to March when you reviewed the 250 at the desk and
13 picked up a 250 to take a look at it, were there occasions
14 where you might speak to the officer about that 250?

15 A. Yes.

16 Q. And were there occasions where you might speak to the
17 officer and ask to look at their memo book with respect to that
18 250?

19 A. Yes.

20 Q. Were there occasions where you identify 250s that have been
21 completed improperly, missing information, or something like
22 that?

23 A. Yes.

24 Q. And what do you do on those occasions?

25 A. I will speak to the officer. I will either have them come

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1 in from patrol or I will speak to them the next day.

2 Q. What about occasions where you've requested to look at
3 the -- prior to March where you've had to request to look at
4 the officer's, a copy of the memo book, what were you looking
5 for in the memo book with respect to the 250?

6 A. I was looking for an entry regarding the actual stop.

7 Q. And were there occasions where you found the entries in the
8 officers' memo books to be insufficient?

9 A. Yes.

10 Q. What would you do on those indications?

11 A. I would instruct the officer that they put in a more
12 detailed description of what actually occurred.

13 Q. Are you able to issue discipline to officers who failed to
14 enter UF 250 information in the memo books?

15 A. Yes.

16 Q. And have you done that?

17 A. No.

18 Q. Are you aware that officers at the command have received
19 discipline for failing to enter entries in their memo books for
20 UF 250s?

21 A. Yes.

22 MR. MOORE: Judge, I think she's should say how she's
23 aware otherwise that's hearsay testimony.

24 THE COURT: Are you aware that officers in the command
25 have received discipline for failing to enter entries in their

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1 memo books. I mean she's the XO, aren't you?

2 THE WITNESS: Yes.

3 THE COURT: She would know -- you know about all
4 disciplines in the command, don't you?

5 THE WITNESS: Yes.

6 MR. MOORE: I'm sorry. I didn't hear your question.

7 THE COURT: You're aware of all disciplines in the
8 command. She said sure. I mean she is the XO. So I don't
9 have a problem with that question.

10 Q. Captain Materasso, are you familiar with an officer --

11 THE COURT: I'm not sure you ever got an answer to
12 your question, which was: Are you aware that officers at the
13 command have received discipline for failing to enter entries
14 in their memo books for the 250s?

15 THE WITNESS: Yes, your Honor.

16 THE COURT: Okay.

17 Q. Captain Materasso, are you familiar with an officer Pedro
18 Serrano --

19 A. Yes.

20 Q. -- in the 40 precinct?

21 How are you familiar with Officer Pedro Serrano?

22 A. I know he's an officer on the four-to-twelve unit. In
23 early 2000 when I was assigned to the precinct in January, I
24 did actually -- I was newly assigned there and there was an
25 incident where -- to boost moral, because moral in the precinct

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1 itself was a little --

2 MR. MOORE: Judge this is a period of time outside of
3 the lawsuit that she's now referring to.

4 MS. COOKE: 2012. I think she misspoke.

5 MR. MOORE: She said 2000.

6 THE COURT: I heard 2012.

7 MR. MOORE: Okay. Then I misunderstood.

8 THE COURT: You said 2012, right?

9 MS. COOKE: I heard 2012. If she said 2012 and you
10 heard it, then we just heard it as 2000 and we're here.

11 THE WITNESS: Twelve, yes.

12 THE COURT: She did say twelve. I heard it.

13 MR. MOORE: On this side we both heard 2000 and that
14 makes me feel better.

15 Q. So early 2012 you were saying moral --

16 A. So I was newly assigned to the precinct. Within a week, or
17 week or two previous to that, at which time I said to the roll
18 call, I went in, I had introduced myself.

19 THE COURT: Please, please.

20 THE WITNESS: I apologize.

21 I did go into the roll call. I did introduce myself.
22 And I did offer to the platoon that we were going to order in
23 some food and if they would like to order in to see me after.
24 And actually Officer Serrano is the one who came up to me and
25 he just wanted to express that he was looking forward to

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1 working with myself and the CO. And that he was apologetic to
2 the fact that everybody looked at me kind of with a cross eye
3 because they weren't used to having somebody offer in a
4 positive way to the platoon the way I was, so.

5 Q. And throughout 2012 how frequently would you see and
6 interact with Officer Serrano?

7 A. I would see him a couple times during the week throughout
8 because I didn't -- I did majority third platoon tours myself
9 as the XO. So I would see him and the other members of the
10 third platoon in passing.

11 Q. And prior to June of 2012 what was your understanding of
12 Officer Serrano as he conducted himself as a police officer?

13 A. I didn't hear anything positive nor negative towards --
14 about him.

15 MS. COOKE: We could put Defendants' Exhibit C10.
16 It's already in evidence. On the screen. I'll hand up paper
17 copies if you'd like.

18 Do you recognize Defendants' Exhibit C10?

19 THE WITNESS: Yes.

20 Q. And what do you recognize it to be?

21 A. Officer Serrano's evaluation.

22 Q. For what period?

23 A. For the year of 2011.

24 THE COURT: You were there that year?

25 THE WITNESS: No, I was not, your Honor.

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1 THE COURT: You were not there that year?

2 THE WITNESS: No.

3 Q. Did Officer Serrano appeal his performance evaluation from
4 2011?

5 A. Yes.

6 Q. What year did he appeal it?

7 A. 2012.

8 Q. Did you conduct the review of -- well the appeal meeting
9 for his appeal of this evaluation?

10 A. Yes, I did.

11 Q. And what overall score did Officer Serrano receive on this
12 evaluation?

13 A. He received a three.

14 THE COURT: Where is that overall rating?

15 MS. COOKE: The bottom left, your Honor.

16 THE COURT: I see it. Yes. It's out of four?

17 THE WITNESS: Yes -- oh, no, five.

18 THE COURT: Out of five.

19 Q. Is a five considered meeting standards?

20 A. Is a three?

21 Q. I'm sorry. Three considered meeting standards?

22 A. Yes.

23 Q. And officer -- on the back -- I'm sorry. On the front
24 Officer Serrano's sergeant who conducted -- who performed this
25 evaluation is Steven Monroe, correct?

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- 1 A. Correct.
- 2 Q. Were you familiar with Sergeant Monroe?
- 3 A. Yes.
- 4 Q. Was Officer Serrano put on performance monitoring as a
5 result of this evaluation?
- 6 A. No.
- 7 Q. What score triggers performance monitoring on the annual
8 evaluation?
- 9 A. 2.5 or lower.
- 10 Q. Was Officer Serrano's assignment switched as a result of
11 this evaluation?
- 12 A. No.
- 13 Q. In fact, the recommendation on this evaluation is that he
14 continue in his present assignment, correct?
- 15 A. Yes.
- 16 Q. When did you hear the appeal of Officer Serrano's
17 performance evaluation for 2011?
- 18 A. June of 2012.
- 19 Q. And who attended the meeting?
- 20 A. Myself, my administrative lieutenant, the immediate
21 supervisor Sergeant Monroe and Officer Serrano.
- 22 Q. Where did the meeting take place?
- 23 A. In my office.
- 24 Q. And when -- what time of day did the meeting take place?
- 25 A. Sometime after roll call which is usually conducted about

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1 1505 hours.

2 Q. What time is that?

3 A. 3:05 p.m.

4 Q. So sometime after 3:00 p.m. you began this evaluation
5 appeal meeting?

6 A. Yes.

7 Q. Who spoke first at the meeting?

8 A. Well once everybody came into my office I spoke first and I
9 had asked the sergeant if he believed that this was the score,
10 the rating that this officer should receive. And he had said
11 yes.

12 Q. And what happened next?

13 A. Then I had asked Officer Serrano: You're here to appeal
14 this evaluation? He said yes.

15 And then I said on what basis? And he told me that he
16 wanted to just express that he felt that the CO and myself
17 believe that if he did not arrest, summons a lot of people we
18 didn't think he was doing his job.

19 Q. What did you say in response to that?

20 A. I told him that is not the case at all. He is to address
21 his conditions while on patrol.

22 Q. What did you mean when you said he needs to address his
23 conditions while on patrol?

24 A. Pertaining to whatever sector or post he was assigned for
25 the day. There could be traffic conditions that needed

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D5a9flol1

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1 attention. There could be accident prone locations within that
2 traffic plan. There could be patterns of robbers that are out
3 there. There could be -- you know, other instances of
4 disorderly groups that needed to be addressed, things of that
5 nature.

6 Q. Prior to commencing this performance evaluation appeal
7 meeting did you review Officer Serrano's enforcement activity
8 from 2011?

9 A. Yes.

10 Q. How would Officer Serrano be aware of these conditions in
11 the 40 precinct that he would need to address?

12 A. Daily at roll call they are informed of the platoon's prior
13 crime occurrences or traffic occurrences as well as on the
14 computer. Everybody in the precinct has access to all the
15 crimes, all the 61s that they are able to review daily. As
16 well as just your knowledge of everyday patrol, what has
17 occurred on the previous days you have worked.

18 Q. During this meeting did you talk about Officer Serrano's
19 2011 enforcement activity numbers, the arrest summonses and
20 250s he conducted?

21 A. Not in a specific manner.

22 Q. Did Sergeant Monroe or Lieutenant Natale speak at any point
23 during this meeting?

24 A. Not other than the questions that I asked Sergeant Monroe.

25 Q. What was the result of the evaluation appeal?

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1 A. Once Officer Serrano had made that statement to me and I
2 had explained to him regarding addressing the conditions. I
3 had asked him if he would like to take this to the next step
4 which would be appealing to the borough level or would he like
5 to sign the evaluation.

6 Q. And what did he do?

7 A. He signed the evaluation.

8 Q. Officer Serrano has claimed that during this appeal meeting
9 he explained himself using the 28 criteria on the front of the
10 evaluation.

11 Do you agree that that happened during the meeting?

12 A. No. We did not discuss any of those areas.

13 Q. Officer Serrano claims that during this appeal meeting you
14 told him enforcement activity counted for 50 percent of this
15 evaluation.

16 Did you say that?

17 A. No, I did not.

18 Q. Did you suggest to Officer Serrano in any way that there
19 was a numerical weight assigned to his enforcement activity for
20 an annual evaluation?

21 A. No, I did not.

22 Q. Officer Serrano claims that in response to you telling him
23 there was 50 percent weight for enforcement activity, he said
24 that's a quota.

25 Did he say that to you?

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D5a9flol1

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1 A. No.

2 Q. Officer Serrano also claims he told you that quota wasn't
3 written down anywhere and you said it was in Operations Order
4 52.

5 Did you say that?

6 A. No, I did not.

7 Q. Did Officer Serrano mention quotas at all during his
8 evaluation appeal meeting?

9 A. No, he did not.

10 Q. Did Officer Serrano say anything to you during his
11 evaluation appeal meeting that you were describing or requiring
12 him to engage in illegal conduct?

13 A. No, he did not.

14 Q. Officer Serrano claims when he -- he told you, you were
15 talking about a quota that was illegal, you told him, "I can do
16 that."

17 Did you say that?

18 A. No, I did not.

19 Q. Was Operations Order 52 even mentioned during Officer
20 Serrano's appeal meeting?

21 A. No, it was not.

22 Q. Officer Serrano has claimed that he wanted to review
23 Operations Order 52 before he signed this 2011 evaluation but
24 that you forced him to sign it before he could.

25 Did you do that?

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1 A. No, I did not.

2 Q. Did Officer Serrano tell you he wanted to review something
3 called Operations Order 52 before signing his evaluation?

4 A. No, he did not.

5 Q. Did you tell Officer Serrano he had to sign the evaluation
6 before leaving your office during this meeting?

7 A. No, I did not.

8 Q. Could he have signed it later?

9 A. Yes.

10 Q. During his performance evaluation appeal meeting did you
11 pressure Officer Serrano to increase his enforcement activity?

12 A. No, I did not.

13 Q. During this meeting did you pressure Officer Serrano to
14 comply with quotas regarding enforcement activity?

15 A. No, I did not.

16 Q. Officer Serrano has claimed that supervisors at the 40th
17 precinct have told him in sum and substance that there are
18 quotas at the 40th precinct.

19 Are there quotas at the 40 precinct?

20 A. No, there are not.

21 (Continued on next page)

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Materasso - direct

1 Q. Officer Serrano claims that you have talked to him about
2 failing to meet quotas. Have you had those conversations with
3 Officer Serrano?

4 A. No, I have not.

5 Q. Officer Serrano claims that Deputy Inspector McCormack has
6 spoken to him about failing to meet quotas. Are you aware that
7 Deputy Inspector McCormack has said any such thing to Officer
8 Serrano?

9 THE COURT: Wait a minute. I'm not sure that one was
10 a fair question. Were you present every time McCormack spoke
11 with Serrano?

12 THE WITNESS: No, I was not.

13 THE COURT: She doesn't know.

14 Q. At any time you were present when Deputy Inspector
15 McCormack spoke to Officer Serrano, did you hear Deputy
16 Inspector McCormack speak to Officer Serrano about quotas?

17 A. No.

18 Q. Officer Serrano claims that the quota at the 40th Precinct
19 is 20 summonses and one arrest. Are you aware of any numerical
20 quota of 20 summonses and one arrest at the 40th Precinct?

21 A. No.

22 Q. Officer Serrano also claims there are quotas for UF-250s at
23 the 40th Precinct. Are there quotas for UF-250 activity at the
24 40th Precinct?

25 A. No.

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Materasso - direct

1 Q. Officer Serrano claims that the reason he received a 3 on
2 the 2011 performance evaluation is because he failed to meet
3 quotas. Do you agree with that statement?

4 A. No.

5 MR. MOORE: Asked and answered already too.

6 MS. COOKE: With respect to the evaluation it was not
7 asked and answered.

8 MR. MOORE: I believe it was. But she answered it
9 anyway.

10 Q. Officer Serrano claims that following this performance
11 evaluation appeal meeting, you illegally stopped and searched
12 three black men while Officer Serrano was present. Did you do
13 that?

14 A. No.

15 Q. What did happen following the performance evaluation appeal
16 meeting?

17 A. I received a phone call from Deputy Inspector McCormack,
18 and he stated that the narcotics team that had a major federal
19 case going on needed an ID on two subjects.

20 Q. Was Officer Serrano still present in your office when you
21 received this telephone call?

22 A. Yes.

23 Q. Who else was still present?

24 A. I can't say for sure if the administrative lieutenant was
25 present or if Sergeant Monroe was present.

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Materasso - direct

1 Q. What did you do after receiving this telephone call from
2 Deputy Inspector McCormack?

3 A. I did call the narcotic sergeant Vargas on the telephone.
4 I stated to him that I was going to get dressed and come out
5 and do the ID for him.

6 Q. Why didn't Deputy Inspector McCormack do the
7 identification?

8 MR. MOORE: Object to that, Judge.

9 THE COURT: I am not sure exactly what the question
10 means.

11 Why did you do it? I will start with that.

12 THE WITNESS: Deputy Inspector McCormack was not
13 working at the time so he had called me to do it.

14 Q. What did you say to Officer Serrano after you received the
15 phone call from Deputy Inspector McCormack and then called
16 Sergeant Vargas?

17 A. I had asked Officer Serrano if he received a car during
18 roll call, at which time he said yes. I said, OK, we need to
19 take a ride. Officer Serrano then went to hand me the keys. I
20 said, No, I need you to come with me.

21 Q. Did Officer Serrano tell you he didn't want to come with
22 you?

23 A. No.

24 Q. What information did Sergeant Vargas provide during the
25 phone call in your office at the 40th Precinct about the task

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Materasso - direct

1 he was asking you to do?

2 MR. MOORE: Objection. That's hearsay.

3 THE COURT: There has been a lot of hearsay that you
4 have been sitting here accepting.

5 Yes, that is hearsay. Objection sustained.

6 Q. What did you understand Sergeant Vargas needed you to do?

7 MR. MOORE: Same objection.

8 THE COURT: Sustained.

9 As a result of the phone call, did you take certain
10 action?

11 THE WITNESS: Yes, I did.

12 THE COURT: What action did you take?

13 THE WITNESS: Once I got into the vehicle with Officer
14 Serrano, we drove to the location where he would like me to ID
15 these two individuals. On the ride over to this location, I
16 did recall him back on the telephone, and I stated in the
17 automobile on my way, Can you please guide me into the location
18 of where the individuals are?

19 Q. Were you provided with a physical description of the
20 individuals you were supposed to ID?

21 A. Yes, I was.

22 Q. What was that description?

23 MR. MOORE: Objection, Judge.

24 THE COURT: It really doesn't matter.

25 You were given a description and then you saw the men?

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Materasso - direct

1 THE WITNESS: Yes.

2 THE COURT: Did they match the description?

3 THE WITNESS: Yes.

4 Q. Why did you need to ID these two individuals for the
5 narcotics investigation?

6 A. Sergeant Vargas had explained to me that --

7 MR. MOORE: Objection, Judge.

8 THE COURT: What he said is an out-of-court statement.
9 Was it part of the investigation to make a physical

10 ID?

11 THE WITNESS: A physical ID for what the case -- for
12 what had just occurred, yes. I was given information from the
13 sergeant on the New York City Police Department that an
14 undercover had just purchased crack in the hallway of a
15 building and that they needed for this federal case to have
16 these individuals ID'd for the case, so when the case takedown
17 would occur, they will be able to issue these arrest warrants.

18 Q. Have you conducted this kind of investigative ID before?

19 A. Yes, I have.

20 Q. Under what circumstance?

21 A. When I was in Bronx vice, I was on a team and we conducted
22 two major cases for gambling.

23 Q. In the course of investigating those cases, you conducted
24 investigative IDs of individuals after crimes of criminal
25 activity?

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D5A8FLO2

Materasso - direct

1 A. Yes.

2 Q. Was there probable cause to arrest these two persons that
3 you were ID'ing with Officer Serrano for the sale of crack
4 cocaine?

5 A. Yes.

6 Q. Why weren't they arrested at that time for the sale of
7 crack cocaine?

8 A. Because it was part of an ongoing federal major case.

9 Q. So when you arrived -- first of all, what was the location
10 you arrived at?

11 A. In front of 281 East 143.

12 Q. What is that address?

13 A. It's in front of a housing development.

14 Q. Which housing development?

15 A. Patterson.

16 Q. Are you familiar with the Patterson houses?

17 A. Yes.

18 Q. Are you familiar with crime conditions occurring in
19 Patterson?

20 A. Yes.

21 Q. What were those crime conditions in June 2012?

22 A. Well, I am aware that the original reason of starting this
23 major case was due to approximately ten shootings leading up
24 to --

25

MR. MOORE: This answer is not responsive to the
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D5A8FLO2

Materasso - direct

1 question. It was, what were the crime conditions at the time?

2 THE COURT: What were the crime conditions in June

3 2012?

4 A. Including up until June 2012, violence, straight-up
5 shootings.

6 Q. When had this narcotics investigation begun?

7 A. In 2011.

8 Q. How were you aware of the narcotics investigation?

9 A. We had monthly strategy meetings in the precinct
10 collectively, including housing, narcotics, gang, Bronx vice,
11 deputy commission operations office, different units that were
12 involved in this major case.

13 Q. How long did this case major case investigation go on?

14 A. Approximately a year.

15 Q. So when you arrived at 281 East 143rd Street, the Patterson
16 Houses, what did you do?

17 A. Once I confirmed on the phone that I was walking up to the
18 correct individuals with Sergeant Vargas, I did exactly see the
19 description that he was -- that he gave to me over the
20 telephone. Myself and Officer Serrano did engage the
21 individuals in a conversation.

22 Q. How many people did Sergeant Vargas describe to you prior
23 to your arrival at the location?

24 A. Two.

25 Q. When you arrived at the location, you saw the two

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D5A8FLO2 Materasso - direct

1 individuals fitting that description?

2 A. Yes.

3 Q. Were there any other individuals present?

4 A. Yes. There was a third male.

5 Q. Was it your understanding that you were to identify the
6 third male?

7 A. No.

8 Q. Why not?

9 A. He had nothing to do with the undercover sales.

10 Q. So you got out of the car and you approached these three
11 individuals. What happened next?

12 A. The three individuals were standing there. They were
13 standing in front of an electrical box, approximately three
14 feet long say, at which time the third individual that was not
15 asked to be ID'd was sitting on the top portion of it. I had
16 asked him just to get down, just to not be at a tactical
17 disadvantage, just to be on the safe side. Then I did engage
18 conversation with the other two males. I did tell them that
19 they were being questioned regarding a complaint I had received
20 from 911 regarding a disorderly group with bats.

21 Q. Why did you tell them that?

22 A. They had a bat at their feet.

23 THE COURT: A what?

24 THE WITNESS: A baseball bat.

25 Q. Had you in fact received a 911 call for disorderly conduct

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D5A8FLO2

Materasso - direct

1 for kids with bats?

2 A. No.

3 Q. So why did you tell them that?

4 A. Because not to compromise a major case investigation, do
5 some sort of a ruse or a little bit of a deception.

6 Q. But they did in fact have a bat?

7 A. Yes.

8 Q. What happened with the bat?

9 A. Officer Serrano removed the bat from the male wearing
10 the -- because I did have a detailed description. He did
11 remove the bat from the male with the striped blue shirt on
12 from his feet.

13 Q. Were you in uniform?

14 A. I was wearing a raid jacket.

15 Q. Does that identify NYPD on the jacket?

16 A. Yes.

17 Q. Was Officer Serrano in uniform?

18 A. Yes.

19 Q. So after you informed the men that you received a 911 call,
20 what happened next?

21 A. Due to the increase of violence and the shooting location
22 in and around that area, for my safety I did frisk them.

23 MR. MOORE: Objection to that answer. I ask that it
24 be stricken.

25 THE COURT: What is the objection?

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D5A8FLO2

Materasso - direct

1 MR. MOORE: It is a gratuitous comment about trying to
2 inflame the record with unsubstantiated claims about what is
3 going on.

4 THE COURT: I don't really understand that.

5 The question was, What happened next? And the answer
6 was basically a frisk, and she gave the reason for the frisk.

7 So the question was, What happened next? The real
8 answer was a frisk. What she added was why she did it, but
9 that would have been the next question anyway. I don't see any
10 harm.

11 MR. MOORE: Could I then have the answer read back?
12 Or maybe we can just ask her again.

13 THE COURT: "Due to the increase of violence and the
14 shooting location in and around that location, for my safety I
15 did frisk them."

16 The answer would have been, What happened next? I did
17 a frisk. The question would have been why, and it would have
18 been the same answer.

19 MR. MOORE: Thank you, Judge.

20 BY MS. COOKE:

21 Q. Were all three men frisked?

22 A. No, they were not.

23 Q. Who was frisked?

24 A. The two with the detailed description I had received from
25 the sergeant.

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D5A8FLO2

Materasso - direct

- 1 Q. Who conducted the frisk of those two men?
2 A. I did.
3 Q. Did Officer Serrano conduct any frisks?
4 A. No.
5 Q. When you frisked those two men, did you also conduct any
6 search?
7 A. No.
8 Q. Did you remove anything from either of the two men's
9 pockets?
10 A. Yes.
11 Q. Starting with the first man you searched, I believe you
12 said one man had a striped shirt?
13 A. Yes.
14 Q. Starting with the man with the striped shirt, what did you
15 remove from his pockets?
16 A. In his right pants pocket, he had a hard object, which I
17 asked him, What is this? He stated to me, It's just rolls of
18 money. At which time he said, You could take it out. I placed
19 it right in front of him on the electrical box.
20 Q. You removed an object from one pocket?
21 A. Yes.
22 Q. It's an object that you had felt a hard object during
23 conducting the frisk?
24 A. Yes.
25 Q. Did you remove anything else from that man with the striped

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D5A8FLO2

Materasso - direct

1 shirt's pockets?

2 A. No.

3 Q. The second individual, you frisked him?

4 A. Yes.

5 Q. And you didn't search him?

6 A. No.

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

8 Q. What did you feel during the frisk of the second gentleman?

9 A. In the left rear pants pocket, I felt a hard object. I
10 also asked him what that was. He had stated it was a wallet.

11 Q. So what happened when he stated it was a wallet?

12 A. He was wearing a type of jeans that had a flap over it. At
13 which time I couldn't totally tell exactly what it was because
14 it's uncommon during my daily routine to see an actual wallet
15 in someone's pocket.

16 Q. What did you do when he said it was a wallet?

17 A. I looked inside to verify it was a wallet.

18 Q. Was it a wallet?

19 A. Yes.

20 Q. Did you remove the wallet?

21 A. No.

22 Q. Officer Serrano claims that you went into the inside of the
23 pockets of all three of these men during this encounter and
24 pulled everything out of their pockets. Is that what happened?

25 A. No.

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Materasso - direct

- 1 Q. After you conducted the frisk for your safety, what
2 happened next?
- 3 A. I then asked the two individuals for their identification.
4 I wrote it down on a piece of paper.
- 5 Q. Did they provide you physical ID or did they just orally
6 provide it?
- 7 A. Physical New York State.
- 8 Q. What was Officer Serrano doing while you were writing down
9 the pedigree information?
- 10 A. Standing next to me.
- 11 Q. Was Officer Serrano writing anything down?
- 12 A. No.
- 13 Q. Officer Serrano claims that while this was happening, some
14 people from the housing development came around and started
15 yelling at you. Did that happen?
- 16 A. No.
- 17 Q. Officer Serrano claims that they were yelling, Why are you
18 harassing them? Did people yell that at you?
- 19 A. No.
- 20 Q. Were people present in the area while you were speaking to
21 these three men?
- 22 A. There were people going about their daily routine, yes.
- 23 Q. What, if anything, did any of them say to you?
- 24 A. No one said anything to me.
- 25 Q. Officer Serrano claims that at this point you got very

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D5A8FLO2

Materasso - direct

1 derogatory and started saying nasty things about them. Is that
2 what happened?

3 A. No.

4 Q. What do you recall the tone was of this encounter?

5 A. Very cordial tone.

6 Q. Officer Serrano claims --

7 THE COURT: I just want to review that last answer.

8 "What do you recall the tone was of this encounter?"

9 You said "very cordial tone"?

10 THE WITNESS: Yes.

11 Q. What was the demeanor of the gentlemen you had encountered
12 on the street?

13 A. Very nice and calm.

14 Q. When you were asking them for their pedigree information,
15 how were they responding?

16 A. Without any problem.

17 Q. Officer Serrano claims that you did not have reasonable
18 suspicion to make this stop. Do you agree with that statement?

19 A. No, I do not.

20 Q. Why not?

21 A. This was not a stop. This was an ID procedure.

22 THE COURT: Well, it was an ID procedure by you. But
23 from the perspective of the people you were talking to, was it
24 a stop?

25 THE WITNESS: I don't know if I could answer what they

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D5A8FLO2

Materasso - direct

1 perceived.

2 THE COURT: Well, they were frisked.

3 THE WITNESS: The people I was speaking with?

4 THE COURT: I guess they were stopped.

5 THE WITNESS: I assume they were very happy they
6 weren't arrested at that time.

7 THE COURT: They were stopped?

8 THE WITNESS: Yes.

9 THE COURT: You would agree they were stopped?

10 THE WITNESS: Yes.

11 Q. Did you have probable cause to arrest those two men at that
12 time?13 THE COURT: You already asked that, and she said yes,
14 and she didn't do it because it was an ongoing federal
15 investigation.

16 MS. COOKE: Thank you, your Honor.

17 Q. Were UF-250s prepared for this encounter?

18 A. Not by me, no.

19 Q. Why not?

20 A. Because it was not a stop.

21 THE COURT: I thought we just agreed there was a stop.
22 But that's OK.23 THE WITNESS: Perceived by them. But it was not a
24 stop by me. I had probable cause.

25 THE COURT: I understand the two of them.

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D5A8FLO2

Materasso - direct

1 Q. What did you do with the information you took down from the
2 men you ID'd?

3 A. I gave it to the narcotics officers.

4 Q. So what happened after you got the ID information from the
5 two men you encountered?

6 A. We got in the car and went back to the precinct.

7 Q. What was discussed between you and Officer Serrano on the
8 ride back to the precinct?

9 A. On the ride back to the precinct, I thought it might be a
10 nice opportunity for a training experience for him. Actually,
11 earlier in the appeal, he did mention to me that he does a lot
12 of warning admonishing and a lot of moving of groups. So I had
13 mentioned to him, here, for instance, if you got a 911 call
14 that someone in this building called and said these kids are
15 selling drugs and loitering in the lobby, and you went there,
16 do you think you would have looked further into the
17 investigative part of it, or would you have just moved that
18 group? He had said he probably would have just moved that
19 group.

20 Q. What, if anything, did you say in response to that?

21 A. Nothing.

22 Q. Are you aware of what happened with the narcotics
23 investigation with respect to the two men you ID'd?

24 MR. MOORE: Judge, I don't think that should be
25 permitted.

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Materasso - direct

1 THE COURT: What is the question?

2 MR. MOORE: Are you aware of what happened in this
3 narcotics investigation?

4 THE COURT: I agree. Objection sustained.

5 Q. Were the two men arrested?

6 MR. MOORE: Objection.

7 THE COURT: Objection sustained. I am only interested
8 in the stop that occurred then. She calls it the ID, but I
9 call it the stop. In any event, it's over when it's over.
10 Subsequent information is not relevant.

11 Q. When did the narcotics investigation end in the 40th
12 Precinct?

13 A. The case takedown was in December --

14 MR. MOORE: Objection.

15 THE COURT: I thought I decided I was not going to go
16 to the post-stop conduct.

17 MS. COOKE: It's not going to the post-stop conduct.
18 It's going to crimes conditions in the 40th Precinct.

19 MR. MOORE: I misunderstood that question.

20 Q. When did the narcotics operation --

21 THE COURT: Then she started talking about the
22 takedown, which is the arrest.

23 MS. COOKE: I am not getting into the arrest. I am
24 getting into the crime conditions.

25 THE COURT: But she answered the takedown occurred.

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D5A8FLO2 Materasso - direct

1 So that's stricken.

2 Tell us about the crime conditions.

3 THE WITNESS: OK.

4 Q. At the conclusion of the narcotics investigation, what
5 effect did that have on the crime conditions in the 40th
6 Precinct?

7 A. A dramatic increase in and around that area where the case
8 was focused on.

9 Q. An increase at the conclusion or a decrease at the
10 conclusion?

11 A. Decrease.

12 MR. MOORE: I thought you said increase.

13 THE WITNESS: I believe I said a dramatic decrease.

14 MS. COOKE: I just ask that Mr. Moore stop talking to
15 the witness from counsel table.

16 THE COURT: I think he is talking to himself. Many
17 people have talked to themselves during this trial.

18 If you're going to talk to yourself, do it silently,
19 Mr. Moore.

20 Q. Captain Materasso, are you aware that Officer Serrano
21 recorded a performance evaluation appeal meeting in 2013 with
22 Deputy Inspector McCormack?

23 A. Yes.

24 Q. Have you heard the audio recording of that meeting?

25 A. Yes.

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D5A8FLO2

Materasso - direct

1 Q. When Deputy Inspector McCormack identified Mott Haven as a
2 location within the 40th Precinct with crime problems,
3 specifically, grand larcenies and robberies, did you agree with
4 that statement?

5 MR. MOORE: I don't think this is appropriate for
6 counsel to ask this witness to comment on what is before you,
7 which is the statements of Deputy Inspector McCormack and
8 Officer Serrano on that statement.

9 THE COURT: Again, this was during the time she was
10 the XO or captain or both at the precinct, and all that's
11 really being asked is, Do you agree that there were crime
12 problems at the 40th Precinct, such as larcenies?

13 MS. COOKE: Grand larcenies and robberies at Mott
14 Haven.

15 MR. MOORE: If she wants to ask that without relation
16 to the statement.

17 THE COURT: You're right. You could say, putting
18 aside the statement, do you agree that there were? She is
19 thereby putting it together and making it easier to find it in
20 the transcript.

21 The bottom line is, do you agree there was a grand
22 larceny and robbery condition at Mott Haven when?

23 MS. COOKE: In 2012.

24 THE COURT: In 2012?

25 THE WITNESS: Yes, I agree.

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D5A8FLO2

Materasso - direct

- 1 Q. When Deputy Inspector McCormack described the suspects of
2 those robberies and grand larcenies in 2012 in Mott Haven as
3 male blacks, 14 to 20 or 21, do you agree with that statement?
4 A. Yes.
5 Q. Why?
6 A. Because that is the information that we were able to gather
7 from the complaint reports that the victims are reporting who
8 committed these crimes against them.
9 Q. Was it also descriptions of people who you knew at the 40th
10 Precinct got arrested for those crimes?
11 A. Yes.
12 Q. Is that description, male black, ages 14 to 21, sufficient
13 information alone for reasonable suspicion to stop someone in
14 Mott Haven?
15 A. Absolutely not.
16 Q. Why not?
17 A. Because you need a lot more than that to conduct a
18 reasonable suspicion stop.
19 Q. Officer Serrano claims that in order to force him to
20 increase his enforcement numbers, he was identified as the
21 arresting officer for arrests he did not make. Is it a
22 violation of department policy to process the arrest of another
23 officer?
24 A. No, it's not.
25 Q. Is there anything illegal about that conduct?

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D5A8FLO2

Materasso - direct

1 A. No.

2 Q. When an officer acts as the arresting officer, does the
3 officer complete paperwork indicating the arrest information is
4 learned from others?

5 A. Yes.

6 Q. When officers rely upon information supplied by other
7 officers, is that appropriate?

8 A. Yes.

9 Q. When an officer is assigned an arrest, can the officer take
10 steps to gain personal knowledge about the circumstances of the
11 arrest?

12 A. Yes.

13 Q. Officer Serrano claims that in order to force him to
14 increase his numbers of enforcement activity he had to ride
15 with a supervisor. Is that the reason an officer rides with a
16 supervisor at the 40th Precinct?

17 A. No.

18 Q. Did you ever order Officer Serrano to ride with a
19 supervisor?

20 A. No.

21 Q. Officer Serrano alleges that in order to force him to
22 increase his enforcement numbers, he had to write summonses.
23 Have you ever ordered Officer Serrano to write summonses?

24 A. No.

25 Q. Are you aware of Officer Serrano's summons activity while

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D5A8FLO2 Materasso - direct

1 he was an officer at the 40th Precinct?

2 A. Yes, I am.

3 Q. What was generally Officer Serrano's summons activity
4 you're aware of?

5 A. What I am aware of, because I do review daily what is
6 conducted within the confines of the precinct, I am aware that
7 it is significantly low.

8 Q. Are you aware of what kinds of summonses Officer Serrano
9 was issuing in the 40th Precinct?

10 A. Yes, I am.

11 Q. What generally was the nature of those summonses?

12 A. When I do look at those summonses, they are issued in a
13 desolate, non-residentially populated area of the precinct, and
14 the enforcement is related -- the top two are for detached
15 trailers and wheel chocks.

16 Q. What is a detailed trailer or wheel chock summons?

17 A. That's when the cab is removed from the trailer and it's
18 just down on its front legs, and then behind it the wheels
19 should have these rubber apparatuses so they don't roll.

20 Q. So the trailer won't roll away?

21 A. Yes.

22 Q. What conditions in the 40th Precinct would detached
23 trailers and missing wheel chock summonses be correcting?

24 A. As long as I have been in the precinct, which is a little
25 over a year, we haven't received any complaints via 911,

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D5A8FLO2

Materasso - direct

1 letters or 311 calls regarding detached trailers.

2 Q. Do you in fact receive complaints via the methods you just
3 described about other summonable offenses in the 40th Precinct?

4 A. Yes.

5 Q. What kind of summonable offenses do you receive complaints
6 about?

7 A. We receive numerous letters from lots of residents, in the
8 vicinity of 138th Street, that would just like some enforcement
9 conducted to help the safety of their children. Some women
10 have written letters that they feel they can't cross the
11 street, that the cars are not yielding for them in the
12 crosswalks. And any time a condition like this is brought to
13 our attention, we review these letters at roll call and we tell
14 the officers to please, the community is asking for your help,
15 you need to address these conditions.

16 Q. What are the primary traffic conditions that need to be
17 addressed in the 40th Precinct?

18 A. Since the 40th Precinct does encompass two major highways,
19 the Bruckner Expressway and the Major Deegan, as well as three
20 toll-free access points in and out of Manhattan, unfortunately,
21 those areas get very congested. We have numerous calls for
22 congestion via the 311 system as well as numerous letters. We
23 have accident-prone locations at the majority of the foots of
24 those access points in and out of the city, which the
25 accident-prone location means that a certain number of

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D5A8FLO2

Materasso - direct

1 accidents or injuries occurred at that specific location.

2 Q. What do you expect officers in the 40th Precinct to do to
3 correct these conditions you have just described?

4 A. We do analyze each location. So, for instance, if one
5 location the main contributing factor was a spill-back or a
6 rear end, we would expect the officers to enforce and issue
7 those types of summonses to prevent accidents and save lives.

8 Q. Officer Serrano claims that in order to force him to
9 increase his enforcement activity, he had to work checkpoints.
10 Did you ever order Officer Serrano to work a checkpoint?

11 A. No.

12 Q. Are checkpoints illegal?

13 A. No.

14 Q. Officer Serrano alleges that he has been subject to adverse
15 employment action because he failed to meet quotas at the 40th
16 Precinct. Have you taken adverse employment action against
17 Officer Serrano for failure to meet quotas?

18 A. No.

19 Q. Have you taken adverse employment action against Officer
20 Serrano at all?

21 A. No.

22 Q. Have you directed any other person at the 40th Precinct to
23 take adverse employment action against Officer Serrano?

24 A. No.

25 Q. Are you aware that any other person at the 40th Precinct

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D5A8FLO2

Materasso - direct

1 has taken adverse employment action against Officer Serrano?

2 A. No.

3 Q. Officer Serrano claims that this adverse employment action
4 includes poor performance evaluations in 2011 and 2012. Are
5 you aware what score Officer Serrano received on his
6 performance evaluation in 2012?

7 A. Yes.

8 Q. What was that score?

9 A. A 3.0.

10 Q. Do you believe Officer Serrano received poor performance
11 evaluations in 2011 and 2012?

12 A. No.

13 Q. Have you ever received a 3 on a performance evaluation as a
14 police officer?

15 A. Yes, I have.

16 Q. Officer Serrano claims that Deputy Inspector McCormack, in
17 and around November of 2012, threatened to switch Officer
18 Serrano's shift. Are you aware that Deputy Inspector McCormack
19 ever threatened to switch Officer Serrano's shift?

20 A. No.

21 THE COURT: Again, you could not have been present
22 every time they interacted, right?

23 THE WITNESS: Right.

24 THE COURT: So when you were present, you never heard
25 any such thing?

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Materasso - direct

1 THE WITNESS: Correct.

2 Q. Have you ever had any conversations with Deputy Inspector
3 McCormack about switching Officer Serrano's shift?

4 THE COURT: I would only take a yes or no to that.

5 A. No.

6 Q. Have you had, yes or no, have you had any such
7 conversations with anyone else at the 40th Precinct?

8 A. No.

9 Q. Officer Serrano claims he has been assigned unusual posts
10 in retaliation for the complaints he has voiced here in this
11 lawsuit about quotas. When did you first learn about Officer
12 Serrano's complaints about quotas?

13 A. January of 2013.

14 THE COURT: How did you learn?

15 THE WITNESS: I was advised by counsel.

16 MR. MOORE: I didn't hear the answer.

17 THE COURT: I was advised by counsel. I asked her how
18 she learned. I was advised by counsel.

19 Q. Since that time, January of 2013, did you assign Officer
20 Serrano to any unusual posts?

21 A. No, I did not.

22 Q. Prior to January 2013, had you assigned Officer Serrano to
23 any unusual posts?

24 A. No.

25 Q. Officer Serrano identifies these unusual posts were outside
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D5A8FLO2

Materasso - direct

1 the precinct in the Rockaways following Hurricane Sandy. Did,
2 in fact, the 40th Precinct send Officer Serrano to the
3 Rockaways following the hurricane?

4 MR. MOORE: That misstates Officer Serrano's
5 testimony. He did refer to that, but I don't think he limited
6 it to that.

7 THE COURT: He may have said that was one example. I
8 thought he testified he was aware many officers were sent to
9 help out in the Rockaways. I would have to go way back to the
10 transcript to see if that is an accurate way of phrasing it.

11 But the bottom line is, were other officers sent to
12 the Rockaways?

13 THE WITNESS: Yes.

14 Q. Is there anything unusual about the police department
15 redeploying resources after an event such as Hurricane Sandy?

16 A. No.

17 Q. Officer Serrano claims another unusual post assignment --

18 THE COURT: I don't know about another. I am not sure
19 of the context in which he mentioned the Rockaways. So
20 rephrase it.

21 Q. Officer Serrano claims an unusual post assignment is a foot
22 post. Are foot posts punishment?

23 A. No.

24 THE COURT: Actually, what he said there was that a
25 foot post is unusual for his level of seniority, I think. My

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D5A8FLO2

Materasso - direct

1 memory is the more lower, the newer officers are assigned to
2 foot posts, but usually the more senior people are not.

3 Is that sort of true? Is that an entry level
4 assignment and the more senior you get the less you do foot
5 posts?

6 THE WITNESS: When you're first assigned by impact,
7 they are all on foot. But when they are on patrol, the
8 assignments all vary and should have no bearing on how long you
9 have been there. There should be no bearing on that.

10 THE COURT: So it's not true that the more junior
11 people get foot posts and the more senior you get you get
12 assigned to the vehicles?

13 THE WITNESS: There's not that many foot posts, but
14 they should always be on a rotational basis. So if we had a
15 steady foot post, it should rotate no matter what.
16 Q. In 2013, did the 40th Precinct have --

17 THE COURT: Can I ask how much longer your direct is?
18 Because I was thinking I could take the break after the direct,
19 but maybe not. Just roughly.

20 MS. COOKE: According to my number, it looks like I
21 have 15 to 20 minutes.

22 THE COURT: Let's take our break now and reconvene
23 somewhere between quarter of and ten of.

24 (Recess)

25 THE COURT: I see the witness isn't here yet.

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D5A8FLO2

Materasso - direct

1 MS. GROSSMAN: If I may just for a brief moment
2 interrupt this witness. Earlier today Chief Morris provided
3 testimony and there was a question about the basis of the
4 declaration and the basis of his testimony based on personal
5 knowledge that Mr. Moore asked.

6 The witness would like to make sure that it's
7 understood that, based on the declaration that he submitted,
8 that it is based on -- he submitted a declaration in this case,
9 at your Honor's direction, and in it there's many, many
10 different topics that he provided information on. And some of
11 the information that he provided was based on review of
12 documents and some was based on personal knowledge.

13 The questions that Mr. Moore asked about the personal
14 knowledge regarding the 40 UF-250s that were reviewed were
15 based on Captain Natale's statements to him. And I just want
16 to make clear from the declaration that that statement was
17 based on what Captain Natale told him. And the witness is here
18 prepared to explain that.

19 THE COURT: He doesn't need to explain that. He
20 already explained it. I understood it.

21 MS. GROSSMAN: I just want it to be clear that the
22 personal knowledge was based on Captain Natale, not to suggest
23 that he misrepresented that he looked personally at the 250s.

24 THE COURT: There was no such inference argued or
25 drawn.

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D5A8FLO2

Materasso - direct

1 MS. GROSSMAN: Very good, your Honor.

2 MR. MOORE: And he testified to this. I asked him
3 questions.

4 MS. GROSSMAN: I just wanted to make sure that's
5 clear.

6 THE COURT: Captain, just a minute.

7 I think it is the time of the day where I should
8 address the scheduling for Monday, which was raised by the
9 letters submitted by the city on May 8 and the plaintiffs on
10 May 9 as to whether or not Dr. Fagan should be allowed to
11 testify once again in rebuttal to the most recent round of
12 testimony as between Dr. Fagan and Dr. Smith and Purtell.

13 There seemed to be four categories at issue, and I
14 studied all four and studied both letters. I said on the
15 record already, with respect to one of these categories, "We do
16 have to get to the bottom of it. It's an important case."
17 That was a quote with respect to the third of these categories,
18 based on certain new calculations that Dr. Fagan made using
19 Dr. Purtell's coding instructions.

20 Without going into the specifics of each of the four
21 categories and the reasons for my ruling, the real bottom line
22 is exactly what I said there. We do have to get to the bottom
23 of it. It's an important case. In all of these instances, I
24 conclude that I should hear the testimony. There were
25 last-minute changes in the titles of tables, in the description

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(212) 805-0300

D5A8FLO2

Materasso - direct

1 of columns in the tables. There was new calculations being
2 done that at one point the plaintiffs had done, but the city
3 didn't have time to review. I now think it's wise to have
4 everybody say what they have to say about each other's work in
5 these four specific areas, and the way I am going to do it is
6 this.

7 Dr. Fagan can be recalled. His testimony -- direct,
8 cross and redirect -- cannot, cannot exceed 90 minutes.
9 Dr. Purtell or Smith, whichever, can also be recalled after
10 hearing Dr. Fagan, and he will have the last word. It has to
11 end somewhere. So he can have the last word, that is Dr. Smith
12 or Purtell, I don't know which, not to exceed 90 months no
13 matter what. And I hope both will come in at less, but that's
14 the outside maximum. And nobody can create anything new that
15 the other side hasn't seen after, shall we say, noon tomorrow,
16 because you didn't have notice that you would be estopped.

17 So if there are any more little charts that Dr. Fagan
18 is preparing, or any more little charts that Dr. Smith or
19 Purtell are preparing, they have to be exchanged by noon
20 tomorrow. If you tell me you know they are working on it, you
21 would like till 5:00 tomorrow, that's OK too. But that has to
22 end too. Neither one can walk in on Monday morning with a new
23 demonstrative, a new chart, a new calculation. We are only
24 going to run into the same problem. Whatever side hasn't seen
25 it will say, we never saw this before, it's not fair, and I am

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(212) 805-0300

D5A8FLO2

Materasso - direct

1 going to agree with that. So you can tell me whether you want
2 noon or 5, but there has to be a hard stop. Any new
3 demonstrative from either of these two, I call it two because I
4 don't care if you pick Smith or Purtell, from either side, any
5 new demonstrative, any new calculation, any changes in any
6 material already in evidence, oh, we have made an error, we
7 have to change this title, anything that has to be done has to
8 be done by -- you tell me, Ms. Cooke, noon or 5?

9 MS. COOKE: I would prefer 5.

10 THE COURT: By 5 p.m. tomorrow. That's it. Anything
11 produced by either party after that is precluded.

12 MS. COOKE: I would like, though, to clarify that
13 whatever it is by 5 tomorrow is not new analysis. It's just a
14 demonstrative of existing opinions because --

15 THE COURT: Whatever it is though, the other side
16 hasn't seen. If it's a piece of paper, which looks like a
17 demonstrative or chart or anything else, or new math, I don't
18 care what it is, it has to be exchanged by 5:00 tomorrow.

19 MS. COOKE: With respect to the new math, new analyses
20 were provided by the plaintiffs, brand-new analyses, brand-new
21 coding files, brand-new analyses conducted by Professor Fagan,
22 which is clearly expressing a new opinion.

23 THE COURT: It's in your letter.

24 MS. COOKE: Yes.

25 THE COURT: I read your letter. I don't know which of
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(212) 805-0300

D5A8FLO2

Materasso - direct

1 the four categories you are referring to.

2 MS. COOKE: It falls into category one and it falls
3 into category two.

4 THE COURT: Category one is further question about
5 this population averaging effect. I am interested in that. I
6 want to hear what he has to say about it and your expert can
7 say whatever they have to say again about it. I hope it won't
8 be repetitive. You say he already had the opportunity, but
9 apparently wants to explain it further. That's not a big
10 surprise with this long trial. It's happened before. I have
11 heard plenty of repetitive and cumulative testimony from your
12 senior people. I would like to get this straightened out and
13 understand everybody's statistics. I am no expert in
14 statistics. It's hard to absorb. The more I hear, the more I
15 am going to understand. So that's not a problem.

16 You said it also relates to category four.

17 MS. COOKE: Category two.

18 THE COURT: I thought you said one and four.

19 MS. COOKE: Category two, and category three, and,
20 frankly, also category four.

21 THE COURT: Now you're telling me he's done four
22 different new analyses, one in every category. That's not how
23 I read your letter. So that seems to be a change in the
24 letter. I did not read the letter to say in every one of these
25 four categories, there is a brand new, totally new mathematical

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D5A8FLO2

Materasso - direct

1 analysis that we never saw before. Now you're saying that?

2 MS. COOKE: I am looking at my letter and I am
3 identifying it for your Honor.

4 With respect to the first category --

5 THE COURT: I thought we just covered the first
6 category. I am interested in the population averaging issue.
7 I don't think that was clearly discussed by either. I think
8 N14 was -- let me just make sure. That's the one that had the
9 mislabeled fourth row. That was corrected only on May 5. So
10 there is a basis to say that was somewhat of a last-minute
11 change on the defense side that the plaintiffs should have
12 further opportunity to discuss. So I don't know what the
13 problem is.

14 MS. COOKE: I guess the actual demonstrative, the
15 language was --

16 THE COURT: I am not really interested in rearguing
17 this. Again I have made a ruling. That's what it's going to
18 be. I am going to hear from Dr. Fagan. I am going to hear
19 from Dr. Smith or Purtell. They are limited to 90 minutes
20 each. And I have ruled.

21 MS. COOKE: If I might, your Honor, with respect to
22 the new analyses, to the extent that --

23 THE COURT: You can't be general. What new analysis?

24 MS. COOKE: The second category.

25 THE COURT: That's the one about the zeros?

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D5A8FLO2

Materasso - direct

1 MS. COOKE: Yes.

2 THE COURT: It was for the first time that Professor
3 Purtell explained how this Stata automatically dropped, what it
4 dropped, and it accounted for the 14,000. It wasn't just the
5 zero census tract months. It wasn't just the ones. It wasn't
6 just the twos. It was even the ones that had a substantial
7 number of zeros, and because of the way the estimates are
8 calculated, it had to be dropped so they are automatically
9 dropped. It seems to me that based on the misleading title of
10 that one, which had implied initially that only zero census
11 tract months were dropped, he wasn't fully understood.

12 MS. COOKE: All of the coding instructions for that
13 table --

14 THE COURT: Maybe he was misled by the title. The
15 title implied zero census tract months.

16 MS. COOKE: Now that he understands -- he has provided
17 the coding instructions in February.

18 THE COURT: I agree with you. I don't question you on
19 that. But the title said zero census tract months.

20 MS. COOKE: My point is what I received from the
21 plaintiffs, with respect to the new analysis with respect to
22 this item, item number two, it is based on a misstatement of
23 Professor Purtell's testimony. What I received was new
24 analyses that reflects what is done when only the zero, one and
25 two counts, as I identified the transcript section of the

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D5A8FLO2

Materasso - direct

1 record. So the opinion is inappropriate because it rebuts
2 nothing because it misrepresents Professor Purtell's testimony.
3 So I don't think that's proper rebuttal testimony or exhibits.

4 THE COURT: He better get it right. If he is going to
5 talk about those numbers, and those numbers clearly include
6 more than zeros, ones and twos, because Professor Purtell
7 specifically said, in essence, census tracts had a substantial
8 number of zeros in them, and because of the way the estimates
9 are calculated, it's impossible to use that data in a
10 regression, so Stata automatically drops those. You know it's
11 not just from zero, one and two. There is apparently a group
12 where there is a substantial number of zeros that just get
13 thrown out by the program.

14 MR. HELLERMAN: Professor Fagan will address
15 everything that got thrown out.

16 MS. COOKE: But the exhibit I have been provided --

17 THE COURT: That's the good news. That's why they
18 have till 5:00. Maybe they better correct that exhibit in view
19 of this conversation. Otherwise it's just going to get
20 disregarded as a useless opinion because it doesn't relate to
21 what actually occurred in the Purtell/Smith analysis. You will
22 win the point. If he gets it wrong, it's useless.

23 MR. HELLERMAN: The demonstrative that was provided
24 does not deal with the 14,000, but the testimony will.

25 THE COURT: Make a demonstrative that's useful then to
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D5A8FLO2

Materasso - direct

1 the Court. You have till 5:00 to do it. If the testimony will
2 but the demonstrative doesn't, then there is a disconnect.
3 Connect the demonstrative to the proposed testimony.

4 Go ahead.

5 MS. COOKE: With respect to the third category, your
6 Honor, table 8, again, what I understand that the plaintiffs'
7 expert, Professor Fagan, has done here is he has gone and taken
8 table 8, as he was aware and made aware and knew of it as of
9 February, and has now inserted new variables and new
10 information and rerun a new regression and reflecting what was
11 done.

12 THE COURT: Because Dr. Fagan says it was not clear
13 until May 6 what Dr. Purtell had excluded from table 8 based on
14 a misleading title. He had assumed that it had been just zero
15 census tract months. That was the title. You have to correct
16 it. I am not criticizing that at all, but apparently he was
17 misled by it, and he said, and of course Mr. Hellerman says in
18 the letter, that upon having realized that, he felt he had to
19 go back.

20 MS. COOKE: I do believe that's a new analysis. He
21 had all the underlying data.

22 THE COURT: We are not in disagreement on the
23 underlying facts. We are disagreeing on the outcome. I know
24 he had all the underlying data. I understand that. But it may
25 be, that with all that was going on here, busy work from all

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D5A8FLO2

Materasso - direct

1 sides, he missed it because the title said zero census tract
2 months. It's not your fault or my fault. It was an error.

3 MS. COOKE: I have the same position with respect to
4 table 10. Again, all of the information was provided in the
5 underlying data, the Stata code, with respect to table 10. I
6 know table 10 was not mentioned as a table when Professor Fagan
7 and Professor Purtell testified on Monday the 6th in rebuttal.
8 It was not identified that there would be new analyses prepared
9 and provided on table 10. Now I have been prepared new
10 analyses on table 10. I think that was a new opinion. We
11 weren't on notice of it. It's a third bite.

12 THE COURT: That one may be confusing me the most
13 because I said at the time, if needed, if it's something that
14 really makes a difference. And Mr. Hellerman says, it really
15 makes a difference because it shows that even using the
16 Smith/Purtell data, the racial composition of census tracts has
17 a more statistically significant effect on stops. I kind of
18 agree with you, Ms Cooke. I don't know why that is coming now.
19 That's an old issue. Why is it new?

20 MR. CHARNEY: If you remember when I was
21 cross-examining Professor Purtell on Friday, May 2nd, this
22 issue of the standard errors came up, and those standard errors
23 are what Professor Fagan uses to make this. Those weren't
24 provided.

25 MS. COOKE: They were provided in the code. They were

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D5A8FLO2

Materasso - direct

1 all provided in the Stata code and the information provided
2 with the report. They weren't listed specifically.

3 THE COURT: They are not in the chart in brackets like
4 they are in the plaintiffs'.

5 MS. COOKE: But that information was already there and
6 available in the code.

7 THE COURT: One at a time. Don't interrupt, Ms.
8 Cooke.

9 MS. COOKE: We then did provide, for the convenience
10 of Professor Fagan, we redid a table and just put a column.

11 THE COURT: With the standard error.

12 MS. COOKE: But those numbers were already produced
13 and available to him.

14 THE COURT: You see, I am not enough of a scientist or
15 a statistician or whatever it is called to know whether one
16 would see in the code the standard error.

17 MS. COOKE: It's present. It's visible. I don't have
18 a copy of a sample of the Stata print with me. There are
19 instructions and it appears in brackets. It appears as that
20 number, as that standard error deviation.

21 THE COURT: It says it right there, standard error
22 deviation?

23 MS. COOKE: Yes.

24 MR. CHARNEY: Your Honor directed the defendants to
25 produce those standard errors, which they did produce on

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D5A8FLO2

Materasso - direct

1 Sunday, May 5.

2 THE COURT: She is saying now he had it. He is a
3 statistical person, he is the doctor, and he had it all along.
4 You may not have known it, I may not have known it, but he
5 clearly should have known it. It says right there standard
6 error deviation.

7 MR. CHARNEY: Your Honor had asked that this
8 information be provided to you. I don't think it's ever been
9 provided to you.

10 MS. COOKE: We can provide to you the table that we
11 prepared which identifies the standard error in brackets.

12 We also did it for table 9.

13 THE COURT: All she is saying is she can provide it to
14 me as a courtesy, but that isn't the point. He had the
15 standard error deviation all along. So why is it fair to have
16 him do the fourth issue on Monday?

17 MR. CHARNEY: As your Honor is well aware, this is
18 actually just simple arithmetic where you divide the
19 coefficient by the standard error. This is something Professor
20 Fagan testified to at length about his own table. So the
21 purpose of these standard errors is for you to then compare the
22 coefficients in table 10 of the Purtell report so that you
23 could do your own arithmetic and determine --

24 THE COURT: So all the testimony is going to do is
25 save me the arithmetic? I would like that. That's it? It's

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D5A8FLO2

Materasso - direct

1 not going to be a new calculus, not a new opinion. He is going
2 to say, I am saving you the trouble of math. I have divided
3 the coefficient by the standard error throughout their table
4 10.

5 MR. HELLERMAN: That's right.

6 THE COURT: I will take his doing the calculus for me.

7 MS. COOKE: With that limitation, because it's not my
8 understanding of the demonstrative that's been provided to me
9 that that's a limitation.

10 THE COURT: Now, if I limit it to his doing the math
11 instead of me, I would be delighted not to have to divide each
12 coefficient by the standard error. If that's all he is going
13 to say, great.

14 MR. HELLERMAN: Your Honor, I also intend to ask him
15 to comment on the significance of the numbers in the chart.

16 MR. CHARNEY: Based on that arithmetic.

17 THE COURT: I understand.

18 MS. COOKE: But not performing any additional
19 analyses.

20 THE COURT: Not performing any additional analyses.

21 MS. COOKE: That I do understand has been done, and I
22 would like to preclude any additional analyses or opinions.

23 THE COURT: I agree with you on category 4. Just the
24 math that divides the coefficient by the standard error and
25 what it means. That's a clarification.

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D5A8FLO2

Materasso - direct

1 Again, where she pointed out that one of the
2 demonstratives is a disconnect in his testimony, let him bring
3 his demonstrative in light of his testimony by 5:00 tomorrow.
4 And we will have these two back to back and that's the end of
5 it. Smith Purtell gets the last word. That's it. Time
6 limits.

7 MS. COOKE: Any additional demonstratives are just a
8 demonstrative expressing something that already exists. It's
9 not a new calculation.

10 THE COURT: Correct. Even then, it has to be
11 exchanged by 5:00.

12 MS. COOKE: Correct.

13 THE COURT: Are we done with this?

14 Can the Smith/Purtell person be here Monday?

15 MS. COOKE: I am not sure about that. Professor
16 Purtell is in Albany. I have asked him to see if he can adjust
17 his schedule. There are finals and he is a professor. I have
18 an e-mail out to him to see if we can make that happen. I
19 understand.

20 THE COURT: I am not insisting they be back to back,
21 but usually you like him here to hear what is being said. It's
22 not critical because he can read it. So I am not saying it has
23 to be Monday. He can come Tuesday, Wednesday, Thursday or
24 Friday. I will hear him. He won't be able to help you with
25 the cross. That's the only thing. But he will be able to read

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D5A8FLO2

Materasso - direct

1 the transcript and be ready to say what he has to say. But no
2 new demonstratives or charts. He can take the stand a
3 different day because the notice is so short. That's not a
4 problem to me.

5 MS. COOKE: Thank you.

6 THE COURT: All right, Captain. We are back to you.

7 MARTINE MATERASSO, resumed.

8 BY MS. COOKE:

9 Q. Good afternoon, Captain Materasso.

10 Before the break, we were talking about unusual posts
11 or assignments in the 40th Precinct. Do you recall?

12 A. Yes.

13 Q. Were there school bus driver strike posts in the 40th
14 Precinct in 2013?

15 A. Yes.

16 Q. Would you describe for the Court why you had school bus
17 driver strike posts?

18 THE COURT: I don't know what the word "strike post"
19 means?

20 THE WITNESS: During the bus strike.

21 THE COURT: Now I know.

22 Q. Why did you have those in the 40th Precinct?

23 A. We had three locations within the confines of the 40, which
24 was three depots that the buses were parked at.

25 Q. What was the purpose of putting officers on foot post at

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D5A8FLO2 Materasso - direct

1 the strike post locations?

2 A. Just to make sure that everything was orderly and there was
3 no incidents occurring there.

4 Q. How many hours a day did the 40th Precinct have officers
5 covering strike posts?

6 A. 24 hours a day.

7 Q. For how many weeks, approximately, did this school bus
8 driver strike last?

9 A. Six to eight.

10 Q. How were the officers assigned to the strike post
11 assignments?

12 A. They were mandated to be two man coverage.

13 Q. Who decided which officers were assigned to a strike post
14 at any given day or tour?

15 A. The department.

16 Q. Did you make a decision to assign Officer Serrano to a
17 school bus driver strike post in 2013?

18 A. No.

19 Q. Were you aware that Officer Serrano covered a school bus
20 driver strike post in 2013?

21 A. Yes.

22 Q. How were you aware?

23 A. One day I was on patrol with Deputy Inspector McCormack, at
24 which time we visited all the locations, including the one he
25 was at.

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D5A8FLO2

Materasso - direct

1 Q. Why did you visit the strike post locations?

2 A. As per the executive within your command while you're
3 working, or if you have borough wide coverage, you are mandated
4 at least once per tour to visit these locations.

5 Q. Why?

6 A. Just to verify that the officers were there and they were
7 covered.

8 Q. You said the executive. Are you referring to someone at
9 the borough level?

10 A. Captains and above.

11 Q. Officer Serrano claims that he has been forced to work
12 overtime that he has not requested since making his complaints
13 in this case. Is overtime a punishment?

14 A. No.

15 MR. MOORE: Actually, that's not his testimony, Judge.
16 What she started to say was since he filed his EEO charge. I
17 believe that's what the testimony was.

18 THE COURT: I of course don't know what the testimony
19 was. Best recollection is the only question asked of counsel.

20 I have to go with your best recollection, Ms. Cooke.

21 Q. Is overtime a punishment, Captain Materasso?

22 A. No.

23 Q. Are officers compensated for their overtime hours?

24 A. Yes.

25 Q. Officer Serrano complains he has been sent to additional

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D5A8FLO2

Materasso - direct

1 training in retaliation for making the complaints he has made
2 here. Did you send Officer Serrano to additional training in
3 retaliation?

4 A. No.

5 (Continued on next page)
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D5a9flo3

Materasso -direct

- 1 Q. Is the stop and frisk course at Rodman's Neck a punishment?
2 A. No.
3 Q. Is Officer Serrano the only officer from the 40 precinct
4 you're aware of that has attended that course?
5 A. No.
6 Q. Officer Serrano testified that he's been picked apart for
7 command disciplines at the 40th precinct and identifies in
8 particular a request by you for a memo book of his in February
9 of 2013. Do you recall the incident Officer Serrano is
10 referring to?
11 A. Yes.
12 Q. Why did you request a copy of Officer Serrano's memo book
13 in February of 2013?
14 A. On the day in question I was performing some sort of a
15 four-to-twelve tour, at which time throughout my daily routine
16 I do review the roll call from the day tour, at which time I
17 noticed there was a few officers that did not sign out from
18 court as well as one officer who had signed out at a future
19 time that did not occur yet.
20 Q. Who was the officer who signed out at a time in the future?
21 A. Officer Serrano.
22 Q. Is it appropriate to sign out at a time that hasn't
23 occurred yet?
24 A. No.
25 Q. What did you do when you identified this sign out at a time

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D5a9flo3 Materasso -direct

1 in the future by Officer Serrano?

2 A. I brought this to the attention of the ICO's office.

3 Q. What did you ask the ICO to do?

4 A. To conduct an investigation.

5 Q. What did that investigation reveal?

6 MR. MOORE: Judge, we were not made aware of this. I
7 don't think it's -- I won't say it's fair -- I don't think it's
8 appropriate to permit her to testify about an investigation
9 that we were not made aware of.

10 MS. COOKE: Officer Serrano specifically identified
11 that he was picked apart for command disciplines.

12 THE COURT: I remember that phrase.

13 MS. COOKE: Selecting a memo book by Captain
14 Materasso.

15 THE COURT: I don't remember too much about the sign
16 out. What was that about, Ms. Cooke?

17 MS. COOKE: As Captain Materasso just testified, the
18 reason she requested Officer Serrano's memo book was because
19 she identified on the day in question that Officer Serrano had
20 signed out at a time --

21 THE COURT: That's not my question exactly. Did he
22 talk about the sign out as an issue?

23 MS. COOKE: He identified he had no reason to believe
24 she needed his memo book. She requested his memo book. He was
25 getting picked apart and overly --

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D5a9flo3

Materasso -direct

1 THE COURT: She's saying the reason why she wanted to
2 check --

3 MS. COOKE: The memo book was because to find out what
4 he had been doing that day and why he had signed out at a
5 future time which --

6 MR. MOORE: My concern is -- that's fine.

7 THE COURT: Not what happened with the subsequent
8 investigation.

9 MR. MOORE: Right. With the investigation.

10 MS. COOKE: But his testimony was he's being picked
11 apart for command discipline, which is punishment for
12 wrongdoing.

13 THE COURT: She responded why she pulled the memo
14 book. She wanted to verify when and why he signed out.

15 MS. COOKE: Am I permitted to ask the witness if he
16 was disciplined for this incident because he's been saying he's
17 been picked apart --

18 THE COURT: You want to ask her if he was disciplined?

19 MS. COOKE: For this incident, that she's described
20 she requested the memo book for.

21 THE COURT: I'll take a yes or no.

22 He said he picked apart for command discipline. Was
23 he disciplined for this one?

24 THE WITNESS: He received a command discipline, yes.

25 THE COURT: Well then there's sort of an agreement.

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(212) 805-0300

D5a9flo3 Materasso -direct

1 He was disciplined. Okay.

2 Q. Officer Serrano also claims that supervisors had been
3 checking on him an unusual number of times during his tour.

4 Are you aware that supervisors are checking on Officer Serrano
5 an unusual number of times?

6 A. No.

7 Q. As the executive officer of the 40 precinct, do you receive
8 complaints from members of the community about their
9 interactions with police officers?

10 A. Yes.

11 Q. What kind of complaints do you receive?

12 A. The majority are they believe they should not have received
13 a summons or been arrested.

14 Q. What --

15 MR. MOORE: Judge, let me just say. I mean we may get
16 this, but this was -- it was my understanding that Captain
17 Materasso was identified as a witness to respond to the
18 allegations made by Officer Serrano. And so this is now
19 venturing into an area, first of all, we've heard a lot of
20 testimony about it generally.

21 THE COURT: Certainly have.

22 MR. MOORE: It's in an area that we've had no notice
23 of, that we're going to talk about.

24 THE COURT: I'm less concerned about that.

25 But is it an area you might yourself want to go into

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D5a9flo3

Materasso -direct

1 of what complaints she heard from the community. You've asked
2 that of many witnesses. She's is an XO in a precinct in the
3 Bronx. I don't know if you wanted to go into that yourself.

4 MR. MOORE: The problem is we're at a severe
5 disadvantage because we were not able to do her deposition, so
6 we don't have any idea what the answers to any of the questions
7 are.

8 THE COURT: Do you want to or not, go into that area?

9 MR. MOORE: I do not, Judge.

10 MS. COOKE: Officer Serrano has testified --

11 THE COURT: The plaintiffs don't intend to go into
12 that area. There was no notice she was going to go into the
13 area. And I have heard a lot about the area. So, really, I
14 don't think you should be asking about community complaints.

15 MS. COOKE: Your Honor, to the extent that Officer
16 Serrano has testified that there are illegal stops, questions,
17 frisks, summonses, and arrests occurring at that time
18 direction -- you know, complicit from -- acquiescence of the
19 executive officer and the commanding officer and supervisors at
20 this precinct, I think it's directly relevant to that point.

21 THE COURT: I don't. I don't. That's what he says.
22 It has nothing to do with what the community is complaining.
23 I've had commanding officer after commanding officer say what
24 they've heard or what they haven't heard. Pretty much they say
25 people say they were stopped for no reason. People never seem

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D5a9flo3

Materasso -direct

1 to say I'm disproportionately stopped because we're Blacks or
2 Hispanics, or the word racial profiling. That they've never
3 heard. But they have heard repeatedly either the officers were
4 rude or we should never have been stopped in the first place.

5 So I'm aware of that. That is what the community is
6 telling the commanding officers, and I'm sure the borough
7 commander said the same thing.

8 MR. MOORE: Deputy Inspector McCormack will testify --

9 THE COURT: Exactly.

10 Say that again.

11 MR. MOORE: Deputy Inspector McCormack, who is
12 scheduled to testify.

13 THE COURT: Will probably cover that too.

14 I'm done with that, given the other deputy inspectors.

15 MS. COOKE: So I can cover it with Deputy Inspector
16 McCormack?

17 THE COURT: I think we're all in agreement with that.

18 MR. MOORE: Subject to me hearing the questions,

19 Judge.

20 THE COURT: Well the questions are: Have you heard
21 complaints --

22 MR. MOORE: If that's an area they want to cover, then
23 I'm on notice and that's fine.

24 THE COURT: Fine. Okay. Yes.

25 So the answer is yes.

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Materasso -direct

1 BY MS. COOKE:

2 Q. Following Officer Serrano's testimony in this case, was
3 there any response you received from the community of the 40
4 precinct about Officer Serrano's allegations?

5 A. No.

6 MR. MOORE: Object to -- I don't -- whatever she would
7 hear would be hearsay, Judge.

8 THE COURT: We know that.

9 MS. COOKE: I said was there any response.

10 MR. MOORE: Well, yes.

11 THE COURT: Let me read it again.

12 Following his testimony in this case?

13 MS. COOKE: It was widely publicized in the news, your
14 Honor.

15 THE COURT: I don't see the relevance to my trial
16 though, what response there was in the precinct or the
17 community.

18 No. I'm not going to allow that. I'm not going to
19 allow about how people felt about his testimony.

20 MS. COOKE: With respect to the allegations he made
21 about wrongdoing by officers.

22 THE COURT: That would be hearsay. Because then it
23 would be offered for truth of it.

24 MS. COOKE: No. Was there a response.

25 THE COURT: No. No. I'm not taking it.

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(212) 805-0300

D5a9flo3

Materasso -direct

1 MS. COOKE: Your Honor, I have no further questions at
2 this time.

3 THE COURT: All right. Mr. Moore.

4 MR. MOORE: Judge, first of all, you asked what the
5 population --

6 THE COURT: I did.

7 MR. MOORE: -- of the 40 precinct was. And according
8 to this exhibit Y8 which is the 2011 "Reasonable suspicion
9 stops," there's information with respect to that provided right
10 here.

11 THE COURT: What does it say? I can't make it out.
12 Residential population.

13 MR. MOORE: Of the 81 precinct.

14 MR. CHARNEY: Forty precinct.

15 MR. MOORE: Yes.

16 THE COURT: I see. So about 81,000 people, give or
17 take.

18 MR. MOORE: Right.

19 THE COURT: Does that look right to you?

20 THE WITNESS: Yes.

21 MR. MOORE: And I would just point out, since this
22 exhibit is in evidence, that the Black population is
23 26.2 percent of the 40 precinct, that they make up 53 percent
24 of the persons stopped.

25 THE COURT: Right.

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D5a9flo3 Materasso -direct

1 MR. MOORE: And 44 percent --

2 THE COURT: He's allowed to read from an exhibit in
3 evidence.

4 Go ahead. And what?

5 MR. MOORE: And 44.9 percent of all known crime
6 suspects.

7 THE COURT: That's what it says.

8 Good for you to see it too. Okay.

9 And that's a police department document?

10 MR. MOORE: That's their document.

11 THE COURT: So we all assume the accuracy of it.

12 MR. MOORE: I assume it's accurate.

13 THE COURT: Yes.

14 Have you seen that before, by the way?

15 THE WITNESS: I have, yes.

16 THE COURT: You have?

17 THE WITNESS: I have.

18 THE COURT: So you were familiar with it.

19 THE WITNESS: Yes. I have seen it.

20 CROSS-EXAMINATION

21 BY MR. MOORE:

22 Q. Good afternoon, Captain Materasso.

23 A. Good afternoon.

24 Q. You talked on direct about how sometimes officers pass
25 their arrests over to another officer. There's a procedure for

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(212) 805-0300

D5a9flo3 Materasso - cross

1 that in the police department, right?

2 A. Yes.

3 Q. And that could be for a number of reasons, could occur for
4 a number of reasons, correct?

5 A. Well they can't just decide to do it. A supervisor has to
6 do it.

7 Q. Correct. And doing that doesn't violate any departmental
8 regulations, correct?

9 A. No.

10 Q. It would be a violation of the department regulations to
11 ask an officer to swear to something that they didn't see,
12 correct?

13 A. Yes.

14 Q. And do you understand that that was what Officer Serrano's
15 objection to being asked to take another arrest, that he was
16 being asked to swear to something he didn't see? Do you know
17 anything about that?

18 A. Can you -- I don't understand the question.

19 THE COURT: That -- what he complained of is that
20 somebody asked him to swear to something he didn't see.

21 Did you know that that was his complaint.

22 THE WITNESS: This was -- a police officer that asked
23 him to do this?

24 MR. MOORE: Yes. In the 40th precinct.

25 THE WITNESS: Can you name this person?

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(212) 805-0300

D5a9flo3

Materasso - cross

1 MR. MOORE: Yes, he did actually.

2 THE COURT: I don't know.

3 My question is: Did you know that that was one of his
4 complaints?

5 THE WITNESS: I heard a complaint that he was
6 supposed -- take an arrest that he wasn't on the initial scene
7 for.

8 THE COURT: That wasn't my question to you.

9 Did you know that he says that he was asked to swear
10 to something he didn't see?

11 THE WITNESS: No, I didn't know.

12 THE COURT: That's fine.

13 MS. COOKE: Your Honor, note for the record that that
14 predates -- that incident that Officer Serrano predates her
15 time at the precinct.

16 THE COURT: It's not a problem. I just wanted to know
17 if she knew that was his complaint.

18 She said she doesn't know.

19 MS. COOKE: Just identify the incident that he
20 complained of occurs before she arrived at the precinct.

21 THE COURT: That's all fine. She doesn't know about
22 it. That's fine.

23 BY MR. MOORE:

24 Q. Actually, Captain, Officer Serrano's time, his work in the
25 40 precinct during 2011 predated your being in the 40 precinct,

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(212) 805-0300

D5a9flo3

Materasso - cross

1 correct.

2 A. Yes.

3 Q. And even though you weren't there for any of the period of
4 time that you were evaluating, you still -- that he was being
5 evaluated for, you still heard the appeal of that evaluation,
6 correct?

7 A. Yes.

8 Q. And at the time in 2011 who was the precinct commander of
9 the 40 precinct?

10 A. Deputy Inspector Nikas.

11 Q. When did Deputy Inspector McCormack become the precinct
12 commander?

13 A. October of 2011, I believe.

14 Possibly September. I'm not a hundred percent sure.

15 Q. We'll find out next week.

16 Presumably he would -- if it's September or October,
17 he would have been present for some period of time while, in
18 2011, while Officer Serrano was working in the 40 precinct,
19 correct?

20 A. Yes.

21 Q. And presumably he would have had some personal knowledge of
22 Officer Serrano's performance as an officer in 2011, correct?

23 MS. COOKE: Objection, your Honor, to the extent it's
24 calling for the witness to speculate about presumed knowledge
25 by Deputy Inspector McCormack about Officer Serrano in 2011.

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Materasso - cross

1 THE COURT: One moment.

2 He was the precinct commander. I guess he's really
3 just asking: Is the precinct commander, in your experience,
4 generally knowledgeable, at least somewhat, about all of the
5 officers in the precinct?

6 THE WITNESS: Being fair, if you just got there for
7 three months, I don't believe so, that he would have been able
8 to see everybody, no.

9 Q. May not have been able to see anybody?

10 A. Everybody.

11 Q. He might have been familiar with Officer Serrano?

12 THE COURT: That's speculation. He might have been.
13 He might not have been.

14 I asked her generally. She said generally, she said
15 in three months the deputy inspector might not know everybody
16 in the precinct.

17 Q. In any event you weren't there at all in 2011, correct?

18 A. Correct. I already answered that, yes.

19 Q. So when you sat down with Officer Serrano and the other
20 gentlemen to do the appeal of his evaluation, you had no
21 personal knowledge of how Officer Serrano performed in 2011,
22 correct?

23 A. Correct.

24 Q. You did have access to his prior performance evaluations,
25 though, right?

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(212) 805-0300

D5a9flo3 Materasso - cross

1 A. If I needed to, yes.

2 Q. And when you became the XO of the precinct, wouldn't that
3 have been standard practice for a new XO to review the
4 personnel in the precinct?

5 A. Standard to review all the officers?

6 Q. Was it your -- withdraw that.

7 When you became the XO of the 40 precinct did you
8 review your personnel who you were going to be commanding?

9 A. Each and every personnel no.

10 Q. Any of them?

11 A. I reviewed those that were on level monitoring, yes.

12 Q. So you didn't review, as a matter of course, review the
13 personnel files of all the officers in the precinct?

14 A. No.

15 Q. When it came time to do the evaluation -- I mean the appeal
16 of the evaluation of Officer Serrano, did you then access his
17 prior personnel evaluations?

18 A. No.

19 Q. Did you think -- why didn't you do that?

20 A. Because you're not being evaluated on those years. You're
21 being evaluated on the year that's current.

22 Q. Of which you had no knowledge of, right?

23 A. I didn't do the evaluation. The sergeant did.

24 Q. So, you didn't think it would be a good idea, since you had
25 no knowledge of Officer Serrano in 2011, to look at his prior

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(212) 805-0300

D5a9flo3

Materasso - cross

1 evaluations to see how he had done on those prior evaluations?

2 A. Not when the sergeant is the one doing the evaluation, no
3 because he --

4 THE COURT: I think he's saying you were doing the
5 appeal, though. You were looking at the appeal though, right?

6 THE WITNESS: Yes.

7 THE COURT: So he's saying do you think at sort of the
8 appellate level it would have been wise to look at prior
9 evaluations?

10 THE WITNESS: I'm just saying in my opinion, no,
11 because you're being evaluated on that year.

12 Q. In any event, you didn't do that?

13 A. No.

14 Q. And did any of the other people in the meeting, did they do
15 that? Did they look at his prior evaluations?

16 A. I can't answer for them.

17 Q. Was there a discussion with any of those folks about what
18 Officer Serrano's evaluation was in 2010?

19 A. No.

20 Q. Were you aware that his evaluation was higher than a three
21 in 2010?

22 A. No.

23 Q. Were you aware at any point that he got a four or a 3.5 in
24 the years prior to 2011?

25 A. I had not reviewed any of his information.

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(212) 805-0300

D5a9flo3

Materasso - cross

1 Q. Did he tell you that that was why he was appealing this
2 evaluation, because it was lower than what he previously had
3 gotten?

4 A. No.

5 Q. Did that make sense to you?

6 THE COURT: Does what make sense?

7 Q. That he would -- wouldn't be appealing a three if he had
8 gotten a three the year before?

9 MS. COOKE: Objection.

10 THE COURT: That calls for speculation. That's
11 sustained.

12 MR. MOORE: It calls for her speculation.

13 THE COURT: That's what I mean. It calls for the
14 witness to speculate. That's the basis of the objection.

15 MR. MOORE: So it's not her. It's just the
16 speculation part, Judge?

17 THE COURT: It calls for the witness to speculate.
18 That's why it's an appropriate objection that Ms. Cooke made.

19 Q. So, you didn't look at his prior performance evaluations.

20 Did you look at his monthly performance reports before
21 you did the appeal of his evaluation?

22 A. I did see his yearly enforcement, yes.

23 Q. So you did think it was a good idea to look at the prior
24 monthly performance reports but not the -- not his prior
25 evaluations, correct?

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(212) 805-0300

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Materasso - cross

1 A. Well that's how they have them packaged together.

2 THE COURT: Wait. You looked at the month -- no, no,
3 for 2011?

4 THE WITNESS: Yes.

5 THE COURT: Not 2010?

6 THE WITNESS: No.

7 THE COURT: And not 12. Just 2011?

8 THE WITNESS: Correct.

9 THE COURT: Okay.

10 Q. Well did you have the 2012 with you at the evaluation?

11 A. Not that I remember.

12 Q. When you say they're packaged together, where would they
13 be?

14 A. That's just the way the administrative lieutenant had the
15 appeals that we were going to be doing.

16 Q. Where would they be -- kept somewhere in --

17 THE COURT: Physically? Are they in a file drawer?

18 THE WITNESS: No. I mean that particular thing was
19 just whoever was going to appeal the evaluation was connected
20 to the year printout. For that officer. The year printout.
21 The printout.

22 THE COURT: I thought he said the monthly report.

23 THE WITNESS: Well, it's the same thing. Instead of
24 monthly, it's one whole year.

25 THE COURT: In one printout?

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1 THE WITNESS: Yes.

2 Q. So the monthly performance reports are summarized in one
3 document for the whole year? Is that what you're saying?

4 A. Correct.

5 THE COURT: Did you have to ask for that printout or
6 is it stored somewhere?

7 THE WITNESS: It justified happened to be my
8 administrative lieutenant already had everything together for
9 those who were asking for an appeal.

10 Q. So, you had this meeting in June of 2012. Why did you do
11 the evaluation and not Deputy Inspector McCormack?

12 A. It was just that I was there that day.

13 Q. How was it decided that the evaluation was going to be
14 conducted on that day, if you know? If you remember?

15 A. There's nothing --

16 Q. I'm sorry. The appeal of the evaluation.

17 A. Yeah. There is no set rules or regulations we follow. It
18 happened to be that he was in probably for that tour, and I was
19 working that day.

20 Q. Does the officer have to give the command some notice that
21 he wants to appeal the evaluation?

22 A. On the computer you would. There's -- actually select that
23 box.

24 Q. And did you have a discussion with Deputy Inspector
25 McCormack about whether he would do the appeal or whether you

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D5a9flo3 Materasso - cross

1 would do the appeal?

2 A. No.

3 Q. You just took it on your own to do it that day?

4 A. Well I had done other ones as well.

5 Q. And were you concerned in doing -- looking at -- in this
6 appeal of his evaluation, did you have any discussion with
7 Officer Serrano about his enforcement activity?

8 A. We did discuss it, yes.

9 Q. Did you talk about the number of his arrests?

10 A. I don't remember specifics, how it was discussed.

11 Q. Did you talk about whether his number of -- the number of
12 summons he was -- had generated for the year?

13 A. No. Like I just said, we didn't talk about specifics.

14 Q. Did you talk about the number of 250s he had generated?

15 A. No.

16 Q. Well part of what -- the performance -- monthly performance
17 reports are really a collection of numbers, correct?

18 A. If you look at it that way, they could be.

19 Q. Well, Exhibit B10, which I believe is in evidence. Do you
20 recognize this document?

21 A. Yes. It says monthly activity report.

22 Q. I'll identify it for the record as the monthly activity
23 report for Officer Serrano for the year -- for the month and
24 year October 2012.

25 And what you have been -- would have been looking at

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D5a9flo3

Materasso - cross

- 1 on the appeal would be a compilation of his monthly -- of these
2 monthly reports over a year's time in 2011, correct?
3 A. Yes.
4 Q. And the front page of this document -- in fact, even the
5 back page, as I understand we'll see in a minute -- is really a
6 tabulation of the types of enforcement activity he took during
7 a month, correct?
8 A. Certain days, yes.
9 Q. On the days when he's working, obviously?
10 A. Well there's some days that he's working, but he puts down
11 that he's not doing a tour on patrol.
12 Q. Correct. So in terms of his enforcement activity, if he is
13 assigned to 1PP he's probably not going to be doing enforcement
14 activity, correct?
15 A. Nor paperwork.
16 Q. Right. The second page of this document has -- collects
17 more numbers. And then there's a narrative portion, correct?
18 A. Yes.
19 Q. Now the summaries that you get, the yearly summary, is it
20 just the yearly summary of the numbers?
21 A. Yes.
22 Q. So there is no narrative portion in the yearly summary that
23 you have, correct?
24 A. Correct.
25 Q. So really all you're looking at in terms of looking at his

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(212) 805-0300

D5a9flo3

Materasso - cross

1 prior year's production is the numbers, right?

2 A. Yes.

3 Q. And do you recall telling him that -- having looked at
4 those numbers, that he didn't have enough arrests or enough
5 250s or enough summonses?

6 A. Absolutely not.

7 Q. And you don't recall him saying anything about, this sounds
8 like an illegal quota, right?

9 A. Absolutely not.

10 Q. And you don't recall him -- you don't recall raising with
11 him Operations Order 52?

12 A. Absolutely not.

13 Q. Were you aware of Operations Order 52 at that point?

14 A. I was unaware that that was the number for it, but I'm
15 familiar with the Quest program, yes.

16 Q. In your testimony on direct you were asked a lot of
17 questions about quotas.

18 Did you discuss whether Officer Serrano had met his
19 numerical goals that you think he should have met for 2011?

20 A. No, there are no numerical goals.

21 THE COURT: Have you ever heard the phrase performance
22 goals?

23 THE WITNESS: Yes.

24 THE COURT: You have. Do you know if any
25 commanders -- that's probably the wrong word but --

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D5a9flo3 Materasso - cross

1 MR. CHARNEY: Supervisors.

2 THE COURT: Supervisors ever set numbers for
3 performance goals; like I'm looking for 21, or I'm looking for
4 five and five as performance goals.

5 Have you ever heard anything like that?

6 THE WITNESS: Nothing specific like that.

7 But we do tell them everyday you're out there, you
8 should be addressing your conditions or helping the people that
9 need your help.

10 THE COURT: I know that.

11 I want you know if you've ever heard numbers related
12 to performance goals.

13 THE WITNESS: No.

14 THE COURT: Never?

15 THE WITNESS: No.

16 Q. You know who Lieutenant Barrett is, correct?

17 A. No, I do not.

18 Q. She's not -- she wasn't in the 40 precinct when you were
19 there?

20 A. No.

21 Q. Do you know who Lieutenant Doute or Sergeant Silva are?

22 A. I know who Sergeant Silva is.

23 THE COURT: Let me ask this question. If a supervisor
24 anywhere, your precinct or anywhere, said something like I'm
25 looking for 21 or I'm looking for five, five, and five, would

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D5a9flo3 Materasso - cross

1 you think that was wrong?

2 THE WITNESS: Yeah, because I haven't --

3 THE COURT: You think that would be wrong?

4 THE WITNESS: Yes. In that aspect, yes.

5 Because we're not telling people that you should go do
6 this certain number of things.

7 THE COURT: Okay.

8 Q. And you think that would be wrong because that would give
9 the wrong impression to the officer that they have to go
10 basically satisfy a numerical number, correct?

11 A. Exactly.

12 Q. Now, you're aware, are you not, Officer -- I'm sorry,
13 Captain Materasso.

14 A. That's okay.

15 Q. That Officer Serrano was also -- also appealed his 2011
16 evaluation?

17 MR. CHARNEY: Twelve.

18 Q. 2012 evaluation, correct?

19 A. I'm aware, yes.

20 Q. And did you have any discussions with Deputy Inspector
21 McCormack about that?

22 A. No.

23 Q. You recall no discussions with him about that?

24 A. No.

25 Q. Now you say that at some point -- I think you said after

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Materasso - cross

- 1 the appeal was concluded, you and Officer Serrano went to some
2 location in the Bronx to engage in some type of activity,
3 correct?
4 A. Within the precinct, five blocks from the precinct, we did,
5 yes.
6 Q. And what was the address again?
7 A. 281 143.
8 Q. East 143rd Street, correct?
9 A. Yes.
10 Q. And when you got there, you saw three black males standing
11 on the sidewalk, right?
12 A. No.
13 Q. You didn't see three black males?
14 A. No. Two black males one Hispanic male.
15 Q. Okay. Was the Hispanic male light skinned or dark skinned?
16 A. Medium complexion.
17 Q. Were there any other officers present when you got there?
18 A. Physically that we could see, no.
19 Q. Were you aware that there were other officers observing?
20 A. Yes.
21 Q. And you got out of the car and you went up to those three
22 individuals, correct, with Officer Serrano?
23 A. Yes.
24 Q. And -- but your attention was really, you were only focused
25 on two of them, correct?

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(212) 805-0300

D5a9flo3

Materasso - cross

- 1 A. Correct.
- 2 Q. But the third one, you had no idea who that third person
- 3 was, right?
- 4 A. Correct.
- 5 Q. You didn't know what the relationship was between him and
- 6 those two people, right?
- 7 A. Correct.
- 8 Q. But you never paid any attention to that third one, right?
- 9 A. He just stood on the side.
- 10 Q. You didn't ask him to -- you didn't go up to him and frisk
- 11 him for any reason?
- 12 A. No, I didn't. I only asked him to step off of the
- 13 electrical box.
- 14 Q. But you did go up and frisk the other two individuals,
- 15 correct?
- 16 A. Yes.
- 17 Q. Because you were in fear for your safety?
- 18 A. Yes.
- 19 Q. Is that why?
- 20 But you weren't in fear for your safety from the third
- 21 individual, right?
- 22 A. Correct.
- 23 Q. The bat that you described, that was on the ground?
- 24 A. Yes.
- 25 Q. Was it in close proximity when you arrived to all three

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D5a9flo3

Materasso - cross

1 individuals?

2 A. It was more in between the two identified individuals that
3 I was going to ID.

4 Q. In any event, it's your testimony that you had no concern
5 for your safety with the third individual so that's why you
6 didn't focus your attention on him, correct?

7 A. Correct.

8 Q. Did you ask Serrano to frisk that person?

9 A. No, I did not.

10 Q. Now you say you didn't search them but you did search them,
11 right?

12 A. Search the one pocket that I felt the hard object in, yes.

13 Q. You put your hand in the pocket, right?

14 A. Yes.

15 Q. And you took what was in the pocket out of the pocket,
16 correct?

17 A. Out of that specific one, yes.

18 Q. And that's a search, correct?

19 A. Of that pocket, yes.

20 Q. That's a search, right?

21 MS. COOKE: Asked and answered, your Honor.

22 Q. And you made no record of this activity you engaged in that
23 day, right?

24 A. I did hand the information to the narcotics officers.

25 Q. Did you make -- you didn't do any -- you didn't generate

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D5a9flo3

Materasso - cross

- 1 any document in your memo book, on any kind of departmental
2 form, any kind of UF 250 that recorded what you did on that
3 day, correct?
4 A. I do not carry a memo book. So, no, I did not put it in my
5 memo book.
6 Q. You didn't record it in any document in the police
7 department, correct?
8 A. I didn't, but I handed it to the narcotics officers who put
9 it in their investigative file.
10 Q. And I'm asking -- my question was you didn't record
11 anything, right?
12 A. I did not record it anywhere, no.
13 Q. And what you handed to the officers was just a name, right?
14 A. Their information, yes.
15 Q. Their information meaning their name, the pedigree
16 information?
17 A. Yes.
18 Q. So with regard -- nothing in what you handed to the
19 officers talked about any of the circumstances of the stop,
20 right?
21 A. Correct.
22 Q. And those two people -- when you walked up to that group of
23 three people, they were not free to leave, right?
24 A. The third one was.
25 Q. Well, did you tell him he was free to leave?

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(212) 805-0300

D5a9flo3 Materasso - cross

1 A. He didn't ask. He was just standing on the side.

2 Q. Well two officers walked up to three people standing
3 together, right?

4 A. He was standing on the side, as I explained.

5 Q. But you walked -- when you walked up, there were three
6 people standing together, right?

7 A. Like I just said, they weren't standing together. They
8 were on this electrical box.

9 THE COURT: I guess he's trying to say: Did you
10 perceive them to be together? Were the three together?

11 THE WITNESS: They were speaking. I can't say for
12 sure what they were doing but they were -- the other gentleman
13 was not identified in the original --

14 THE COURT: I got that. But they were speaking to
15 each other?

16 THE WITNESS: Yes.

17 THE COURT: So they were three people together at that
18 moment?

19 THE WITNESS: Yes.

20 THE COURT: Sure. Okay.

21 Q. And you -- when you walked up, did you take your gun out or
22 anything? Or you just walked up?

23 A. No.

24 Q. But you and Officer Serrano positioned yourselves so that
25 you would be able to be in the best position if something

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(212) 805-0300

D5a9flo3 Materasso - cross

1 happened, correct?

2 A. I would say so, yes.

3 Q. And that meant that -- have you ever heard the term
4 triangulation?

5 A. Through the department training or something?

6 Q. Yes.

7 A. No.

8 Q. Well, is it fair to say that Officer Serrano positioned --
9 you and Officer Serrano positioned yourself where you were able
10 to see what all three people were doing?

11 A. No. The one gentleman had nothing to do with it, was
12 completely to my left. If this was the box in front of me, the
13 gentleman with the striped shirt was in front of me here. And
14 the other gentleman was to my right. And Officer Serrano was
15 standing back here.

16 THE COURT: Are you saying you couldn't see the third
17 person?

18 THE WITNESS: He was only to my left. He was around
19 the side. No, I mean he wasn't --

20 THE COURT: I got -- I got that. I just want to know
21 if you could see him from where you were standing.

22 THE WITNESS: You could see him.

23 THE COURT: You could observe him?

24 THE WITNESS: Yeah.

25 Q. And these were individuals who were involved, as you said,

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D5a9flo3 Materasso - cross

1 in a major federal drug conspiracy, right?

2 A. A case, yes.

3 Q. And they were with somebody who you had no knowledge of,
4 right?

5 A. Yes.

6 Q. But you weren't concerned about him?

7 A. No, I was not.

8 Q. Let's take a look at the Officer Serrano's 2011 evaluation.

9 You had this with you at the appeal hearing -- appeal
10 conversation?

11 A. Yes.

12 Q. Are you required to write down -- make a written report of
13 the appeal?

14 A. No.

15 Q. What's the process?

16 You make a phonecall and indicate that he's -- an
17 appeal? Or what's the process if he wants to continue to
18 appeal?

19 A. He's required to do the next couple of steps.

20 Q. But you're not required to do anything, correct?

21 A. No.

22 Q. And is it your testimony that you don't recall discussion
23 in any of these categories?

24 A. No.

25 Q. That appear on this form?

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D5a9flo3

Materasso - cross

- 1 A. No.
- 2 Q. And you looked at the entire form, correct? The entire
3 evaluation?
- 4 A. Yes. The front and the back, yes.
- 5 Q. And you noticed the written comments by the reviewer -- by
6 the rater, that appear on page two, right?
- 7 A. By the reviewer? By the lieutenant?
- 8 Q. No. But the rater. I'm sorry. Steven Monroe.
- 9 A. Yes.
- 10 Q. And he says that Serrano adheres to the ethics of the
11 department and guidelines, right?
- 12 A. Yes.
- 13 Q. So that's a good thing, right?
- 14 A. Yes.
- 15 Q. And on that -- that's related to the box which says number
16 13, right?
- 17 A. Yes.
- 18 Q. Which on the front page do you see the box that says ethics
19 integrity?
- 20 A. Yes.
- 21 Q. He got a three and then the written comment is, relates to
22 that particular box, right?
- 23 A. Yes.
- 24 Q. But he only got a three out of five on that particular box,
25 right?

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D5a9flo3

Materasso - cross

1 A. Yes.

2 Q. On that particular behavioral dimension, you call it,
3 right?4 How could he have done better -- given what's written
5 there, how could he have done better -- withdraw that.6 Given what's written there, why didn't he get a five
7 in that particular -- for that particular --8 THE COURT: I think that's an inappropriate question.
9 She didn't rate him and she wasn't there.

10 MR. MOORE: Okay.

11 MS. COOKE: That was my objection.

12 THE COURT: Okay.

13 Q. Have you had experience in rating police officers for
14 evaluations?

15 A. I rated police officers and sergeants, yes.

16 Q. Many, right?

17 A. Yes. I'm not going to say that many, but I rated.

18 Q. Well, you rated also police officers in the past?

19 A. When I was a squad sergeant, yes.

20 Q. And you used this form?

21 A. No.

22 Q. Did you use a form that asked for how the officer performed
23 in terms of their police ethics and integrity?

24 A. Yes.

25 THE COURT: I'm going to interrupt now. We're just

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D5a9flo3

Materasso - cross

1 not going to finish you in time for the lunch break, that's
2 clear, because that's one minute away.

3 MR. MOORE: I didn't realize what time it is.

4 THE COURT: We're going to stop now. You weren't one
5 question away?

6 MR. MOORE: No.

7 THE COURT: So we're going to start again at five
8 after two.

9 MR. MOORE: All right. Thank you.
10 (Luncheon recess)

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D5a9flo3

Materasso - cross

AFTERNOON SESSION

2:07 p.m.

THE COURT: Mr. Moore.

MR. MOORE: Thank you, Judge.

Martine Materasso, resumed.

CROSS-EXAMINATION CONTINUED

BY MR. MOORE:

Q. Captain Materasso, I want to go back just a bit before we go on with the evaluation to the -- hold on one second.

I want to talk about the evaluation or the appeal.

At the appeal of the evaluation, you were present. There were two other officers present, correct?

A. Two supervisors.

Q. Did you have a conversation with them before the appeal?

A. No.

Q. Did they speak during the appeal?

A. Just the one question that I asked Sergeant Monroe.

Q. And that one question again was what?

A. I asked him when we first entered the room: Do you agree that this is the overall evaluation score he should have received?

Q. Right. And he had done the evaluation, of course?

A. Correct.

Q. And he didn't change his mind based on that one question, right?

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D5A9FLO3

Materasso - cross

1 A. No.

2 Q. So, you had access -- the only access you had in terms of
3 documents related to Serrano was the yearly summary of his
4 enforcement activity, correct?

5 MS. COOKE: Objection, your Honor.

6 This mischaracterizes that the only access she had was
7 to those documents.8 I believe her testimony those were the only documents
9 she had at the time of the appeal hearing.

10 MR. MOORE: That's fair enough.

11 Q. The only document you looked at prior to the appeal
12 hearing, appeal conversation was that yearly summary of his
13 activity, correct?

14 A. Yes.

15 Q. So the only information you really based your -- other
16 than -- and the conversation with Serrano you had, there was a
17 conversation with him in this appeal, correct?

18 A. Yes.

19 Q. And he said he thought he should get a higher rating,
20 correct?

21 A. No. That's not what I said.

22 Q. He said.

23 A. No. He didn't say that.

24 Q. Well, what was he appealing?

25 A. That's exactly the point. There's only one reason that you

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D5A9FLO3

Materasso - cross

1 could actually appeal an evaluation, and that's based on
2 factual error. You can't say I'm going to appeal my evaluation
3 because last year I got a higher score.

4 Q. Exactly.

5 And that's why he went through or tried to go through
6 all these categories on his evaluation, right?

7 A. No. With me he did not even bring that up at all.

8 The statement that I said earlier regarding what his
9 view was of myself and the CO was the only thing he said. This
10 was -- appeal took maximum five minutes.

11 Q. So you're sitting here and telling this Court that Officer
12 Serrano went through the process of trying to appeal his
13 evaluation and he didn't raise anything about his performance
14 as a police officer in 2011 with you?

15 A. No, he did not.

16 Q. Is that your testimony?

17 A. Yes, it is.

18 Q. Now, you have from time to time at the break we were
19 talking about the fact that you have experience in being the
20 rater of officers being evaluated, correct?

21 A. Yes.

22 Q. And so you're familiar with these categories of -- that are
23 rated like police ethics and integrity, correct?

24 A. Yes.

25 Q. And you're familiar with the category of judgment, right?

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Materasso - cross

1 A. Yes.

2 Q. And you're familiar with the category of interpersonal
3 skills, right?

4 A. Yes.

5 Q. Now, in your experience as a rater with respect to police
6 ethics and integrity, if the comment is that Serrano adheres to
7 the ethics of the department and guidelines, wouldn't that
8 qualify him for a higher rating than three?9 MS. COOKE: Objection, your Honor. To the extent it
10 calls for speculation.11 She can answer, I suppose, to the rating that is there
12 and what she knew about Officer Serrano and the appeal. But to
13 speculate as to what it would qualify for, she wasn't the
14 rater.15 THE COURT: But we had a similar question before and I
16 sustained the objection. But I think this is phrased in a
17 careful enough way that it's different.18 Right. It has to do with her experience as a rater.
19 I guess you could divorce it from Serrano.20 If someone adheres to the ethics of the department and
21 guidelines, wouldn't that qualify that person with a higher
22 rating than three?

23 THE WITNESS: It could possibly.

24 Q. Well what would you have to have more than the statement
25 that he adheres to the ethics of the department and guidelines

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D5A9FLO3

Materasso - cross

1 to, in your experience as somebody who has rated officers, what
2 would that person have to have more than what is stated in this
3 particular document to qualify that person for a higher than a
4 three?

5 A. I don't believe I could answer that because every
6 supervisor rates their cops differently.

7 Q. Well, there was no question -- you had no question while
8 you were talking with Serrano with respect to whether he
9 adhered to the ethics of the department, did you?

10 MS. COOKE: Objection, your Honor, to the extent
11 either it's presuming facts not in evidence. She hasn't
12 testified that she had no question. This question presumes she
13 had none.

14 THE COURT: She didn't know his work in 2011. So
15 obviously during that --

16 THE WITNESS: Yes, your Honor. Just one other thing.
17 You cannot actually appeal any comment on that. They're not
18 even up for discussion in the appeal process. So it's null and
19 void. You can't speak about it.

20 Q. So the facts that he could talk about was his performance,
21 right?

22 A. It would have to be that we based the appeal on a factual
23 error of some sort. It doesn't clarify what that error could
24 be. But it specifically says you cannot appeal comments.

25 Q. But you can appeal the score?

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D5A9FLO3

Materasso - cross

1 A. You could appeal the overall evaluation, yes. But not
2 specific comments.

3 Q. Presumably you can appeal, in the course of appealing the
4 overall score, you could appeal a particular score in a
5 particular category, right?

6 A. You could.

7 Q. And so in your experience as a rater, can you tell this
8 Court what else an officer would have to have to get a higher
9 score than three given that if you had the statement that the
10 officer adheres to the ethics of the department and guidelines?

11 MS. COOKE: Again, your Honor, I'm going to object.
12 It's calling for speculation as to what a hypothetical officer
13 would hypothetically have to have in order to get a three when
14 the three is assigned in this evaluation to a particular
15 officer for particular circumstances.

16 THE COURT: No. This is what I said I would allow.
17 This is the way I rephrased the question. I said if an officer
18 adheres to the guidelines in this category --

19 THE WITNESS: In my past experience, your Honor, for
20 instance, I had -- one of the units I was supervising, we had a
21 bribery arrest. So in that aspect, those officers adhere to a
22 higher standard. In that particular instance, I would probably
23 give them a higher score.

24 But, you know, there might have been another call for
25 found money.

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D5A9FLO3

Materasso - cross

1 There are different instances that could have happened
2 that might have brought my attention to say, wow, this person
3 really conducts themselves in the highest standards of the
4 department. So it's hard to say pertaining to him because I am
5 not rating him.

6 Q. But you're doing the appeal of the rating that he was
7 given?

8 A. He's not appealing the score to me. That never came up to
9 me.

10 Q. So I guess I don't understand then why you're even having a
11 conversation with him.

12 Part of the appeal process of an evaluation is that
13 you meet with your commanding officer or the XO, correct?

14 A. Yes.

15 Q. And what's that for?

16 A. He's supposed to form a basis of why the score he received
17 he was not worthy of. And then from there, we would make that
18 decision say, you know what, yes, your appeal is based on
19 factual error. It seems like you're correct. We're going to
20 go to the next level, and then we're going to go to the next
21 step, which is above us.

22 Q. And to do that, if an officer wanted to do that in your
23 experience, they would talk about how they felt they performed
24 in the areas that they were supposed to perform in and how they
25 had the behavioral dimensions they were supposed to have,

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D5A9FLO3 Materasso - cross

1 correct?

2 A. Anyone of the areas on this form, yes.

3 Q. If the appeal involved -- the person hearing, doing the
4 appeal, the CO or the XO, saying I don't want to talk about
5 those areas, I want to talk about your performance, that would
6 be incorrect, right?

7 A. I don't believe I understand the question.

8 Q. I want to talk about your enforcement activity. That would
9 not be something that the person in your position as the XO or
10 a captain should do, right?

11 A. Well, it's also a category on the sheet.

12 Q. What category is that?

13 A. Well it could be -- any one of them. It could be
14 processing arrests. It could be victim/prisoner interaction.

15 Q. How about apprehension intervention?

16 A. I would say that would be a category also.

17 Q. And it's your testimony that there was no discussion in
18 this conversation with Officer Serrano having anything to do
19 with his numbers in terms of his arrests, his summonses, or his
20 250 activity in 2011. Is that your testimony?

21 A. Rephrase that.

22 Q. Was there any discussion in this conversation you had with
23 Officer Serrano about his -- the numbers of his enforcement
24 activity in his summonses, arrests, or 250s?

25 A. When he did say that original statement, the general

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D5A9FLO3 Materasso - cross

1 enforcement was discussed. But nothing specific like you're
2 saying that he didn't bring up a specific category to me, no.
3 Q. So he did say generally what? What did he say generally?
4 When you said --

5 A. I'm sure we could read that back what I said before was, in
6 sum and substance, that he stated that he believed myself and
7 the CO did not believe he was doing a good job unless he
8 arrested summonsed and 250'd people.

9 Q. So did he talk about his numbers?

10 A. (No response).

11 Q. His actual numbers?

12 A. Maybe in a general term but nothing specific like you're
13 saying.

14 Q. You had those numbers though, right?

15 A. I had the paper, yes.

16 Q. And so did you talk to him about those numbers and say well
17 the numbers aren't high enough?

18 A. No. I never said that.

19 Q. Did you look -- did you form an opinion that the numbers
20 weren't high enough?

21 A. There is no set form that I should --

22 Q. I'm not asking whether there's a set form. I'm asking
23 whether you formed an opinion, as you sat there in that
24 meeting, that Officer Serrano was not performing at a high
25 enough level in terms of his enforcement activity?

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D5A9FLO3

Materasso - cross

1 A. Did I believe that he was everyday out there serving the
2 people of the 40 like he should be? I don't believe he was.
3 That's just an opinion though.

4 THE COURT: You said you don't believe he was -- you
5 said you don't believe he was out there serving the people. Is
6 that based on --

7 THE WITNESS: That is my opinion.

8 THE COURT: Was it based on looking at lower numbers
9 than you would have expected?

10 THE WITNESS: No, not numbers. Also, where he wasn't
11 doing that enforcement, like I discussed with those parking,
12 summonses and things of that nature.

13 THE COURT: You said "also" that. So was it also that
14 you saw the numbers, the totals when you looked at those
15 monthly reports on that printout?

16 THE WITNESS: Some officers sometimes don't have the
17 opportunity maybe to be out there because they are busy with
18 their -- they have a lot of things going on. So we understand
19 that's not an issue.

20 But when you are going to do the targeted enforcement,
21 and you're going to go to those areas that need help, then you
22 should at least be targeting the right things. If the traffic
23 is the condition, you should be targeting the traffic.

24 THE COURT: I got that, that you noticed the type of
25 summonses he was giving.

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D5A9FLO3 Materasso - cross

1 THE WITNESS: Yes.

2 THE COURT: That was not impressive. But did you also
3 notice the numbers themselves?

4 THE WITNESS: Yeah. That's what I'm trying to say,
5 that the numbers don't really mean anything. Well what -- even
6 if you wrote one summons for the whole year, was it something
7 that was effective, that might have saved somebody's life?
8 That's what we're looking for, not just a number. And it's not
9 just a number to have a parking summons. You should be issuing
10 a summons that's hazardous or that could help somebody.

11 Q. I thought all you had before you when you had this
12 conversation with Serrano, was the sheet that summarizes yearly
13 numbers. That's the only document you had before you, right?

14 A. Yes.

15 Q. And the evaluation?

16 A. Yes.

17 Q. And the only conversation you had with either Monroe or the
18 admin lieutenant was the one statement you said Sergeant Monroe
19 made, correct?

20 A. To my question, yes.

21 Q. So where did you get the information that his summons
22 activity was targeted at a particular location you thought was
23 inappropriate? Where did you get --

24 A. I explained that before.

25 Q. Hold on. Where did you get that information?

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D5A9FLO3

Materasso - cross

1 A. Daily we receive information from all the squads.

2 THE COURT: I'm sorry. Would that be 2012 or '11.

3 THE WITNESS: In 2012.

4 THE COURT: But you were reviewing '11.

5 THE WITNESS: '11. Yes.

6 THE COURT: So what he's saying when you were
7 reviewing '11 you just had that printout.

8 THE WITNESS: So as I was going through 2012. Those
9 are the ones I had been daily reviewing.

10 Q. I'm not talking about -- the appeal of the 2011 evaluation.

11 A. No. No. I understand that question. So I got a little
12 bit mixed up in terms of what I was reviewing. I apologize.

13 THE COURT: So all that you were reviewing was the
14 yearly printout.

15 THE WITNESS: Yes.

16 THE COURT: Which had total numbers of activity.

17 THE WITNESS: Yes. Yes. I apologize.

18 Q. So does that now refresh your recollection that you -- the
19 conversation was about his enforcement activity in terms of his
20 numbers and not about where he was targeting?

21 A. No. We didn't really speak about specific numbers, no.

22 Q. Now you're saying you didn't --

23 THE COURT: Not specific numbers. But did you feel
24 the numbers were low? That he wasn't doing his job well
25 enough?

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D5A9FLO3

Materasso - cross

1 THE WITNESS: That was just my opinion.

2 THE COURT: It was your opinion?

3 THE WITNESS: Yes.

4 THE COURT: Okay.

5 Q. So it was your opinion, but you didn't express it to him?

6 A. No.

7 Q. I believe you said that you've never issued a command
8 discipline for an improper 250 or memo book, correct?

9 A. Correct.

10 Q. And I believe you said on direct -- correct me if I'm
11 wrong -- that the only time you looked at memo books before
12 recently was when you were involved in self-inspections?

13 MS. COOKE: Objection, your Honor. That misstates the
14 witness's prior testimony.

15 MR. MOORE: She can answer if that's her testimony,
16 Judge.

17 THE WITNESS: You're saying that I just said that
18 earlier, that the only time I ever look at a memo book is then?

19 THE COURT: He believes you said on direct -- he
20 invites you to correct him if he's wrong -- that the only time
21 you looked at memo books recently was when you were doing
22 self-inspections.

23 THE WITNESS: I don't believe I said that. We could
24 look back at that or --

25 THE COURT: That's okay. What do you think you said

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D5A9FLO3

Materasso - cross

1 about looking at memo books? Before March of 2013, what do you
2 think?

3 THE WITNESS: For that specific 250?

4 THE COURT: No. No. No. When did you look at memo
5 books before March of 2013?

6 THE WITNESS: Just general when I would scratch a
7 sector, a post, a supervisor.

8 MR. MOORE: I'm sorry. Say that again.

9 THE COURT: Would scratch.

10 THE WITNESS: When you scratch.

11 Q. But that's not -- that's just scratching to show that you
12 visited the officer at the scene. You don't really do a
13 substantive review of the memo book?

14 A. I will review the day.

15 Q. That means you would review both the 250 that the officer
16 had written during the day and the memo book?

17 A. I'm not only looking for 250s.

18 Q. I understand. I'm asking about 250s though.

19 A. So in --

20 Q. When you do that scratch of an officer's memo book, do you
21 look at the memo book and the 250 at the same time?

22 A. So if I reviewed an officer's memo book that had written
23 that he did a 250 in there, would I look --

24 Q. Yes.

25 A. Maybe if he had, I would look; maybe I wouldn't look; maybe

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(212) 805-0300

D5A9FLO3 Materasso - cross

1 I would look at it at the precinct. I mean there's different
2 circumstances.

3 Q. Or maybe you wouldn't look at it at all, right?

4 A. Possibly.

5 Q. Did you do -- were you involved in any of the QAD
6 self-inspections of the 40th precinct?

7 A. Do I conduct --

8 Q. Are you involved in any of those?

9 THE COURT: Were you involved in those?

10 THE WITNESS: I don't understand the question.

11 THE COURT: Were you involved in the QAD

12 self-inspections conducted at the 40 precinct?

13 THE WITNESS: I conduct the 250 self-inspection.

14 THE COURT: Okay.

15 Q. And for what years -- you've been -- you were there in
16 2012, right?

17 A. Yes.

18 Q. And do you know how the precinct did on the 2012 stop,
19 question and frisk audit with respect to whether officers were
20 checking their memo book or putting details of the stops in
21 their memo book? Do you know how the precinct did in 2012?

22 A. Yes. I'm aware we scored very low.

23 Q. Well, you couldn't have gotten any lower, right?

24 A. I suppose.

25 Q. 1.0 is the lowest you can get, right?

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D5A9FLO3

Materasso - cross

1 A. Yes.

2 Q. And you were there -- you didn't get there until 2012,
3 right?

4 THE COURT: We've had that a dozen times.

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

6 MS. COOKE: Just a couple, your Honor.

7 REDIRECT EXAMINATION

8 BY MS. COOKE:

9 Q. When did the appeal meeting with Officer Serrano take
10 place?

11 A. Mid-June 2012.

12 Q. How many months had you been at the 40 precinct as of that
13 time?

14 A. Almost five.

15 Q. And in those months had you reviewed summonses for Officer
16 Serrano as you described during cross-examination with
17 Mr. Moore?18 MR. MOORE: Judge, it would be improper for her to
19 have based her evaluation --

20 THE COURT: I understand.

21 MR. MOORE: Her appeal of a 2011 evaluation on what
22 she learned in 2012.23 MS. COOKE: It's not the intent or import of my
24 question.

25 MR. MOORE: There could be no other intent.

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D5A9FLO3 Materasso - redirect

1 THE COURT: Go ahead.

2 MS. COOKE: Do you want me to repeat the question?

3 THE WITNESS: Yes, please.

4 Q. In those months, had you reviewed summonses, as you
5 described during cross-examination, with respect to Officer
6 Serrano?

7 A. Yes.

8 MS. COOKE: No further questions, your Honor.

9 RECROSS EXAMINATION

10 BY MR. MOORE:

11 Q. But you didn't review the summons for 2011, right?

12 A. No.

13 MR. MOORE: Okay. Nothing further.

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

15 (Witness excused)

16 MS. PUBLICKER: Defendants call officer Angel Herran.

17 ANGEL HERRAN,

18 called as a witness by the Defendants,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. PUBLICKER:

22 Q. Good afternoon, Officer Herran.

23 A. Good afternoon.

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

25 A. Approximately 18 years.

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D5A9FLO3 Herran - direct

- 1 Q. Where are you currently assigned?
2 A. 41 precinct.
3 Q. How long have you been assigned to the 41 precinct?
4 A. Eighteen years.
5 Q. Other than your regular police duties, do you serve any
6 other role in the 41 precinct?
7 A. Yes, I do. I'm a PBA delegate.
8 Q. And as that the Patrolmen's Benevolent Association?
9 A. Correct.
10 Q. What is the Patrolmen's Benevolent Association?
11 A. It's the union.
12 Q. How long have you been a delegate for the PBA?
13 A. Approximately ten years.
14 Q. How did you first become a delegate?
15 A. I was appointed I believe back in 2005 there was an
16 officer -- there was a delegate that couldn't perform his
17 duties anymore as a union rep and he went out under disability
18 and he appointed me as a delegate.
19 Q. Are union delegates usually elected?
20 A. Yes, they are.
21 Q. How long was your first term as a delegate?
22 A. I would say approximately seven to eight months.
23 Q. And what happened after that first term?
24 A. Then there was an election.
25 Q. And were you elected at that time?

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D5A9FLO3

Herran - direct

1 A. Yes, I was.

2 Q. How long was that term?

3 A. Four years.

4 Q. And did there come a time when you were reelected a second
5 time?

6 A. Yes, in 2010.

7 Q. And you were reelected in 2010. Was that after the roll
8 calls happened that Officer Polanco reported of you?

9 A. Yes.

10 Q. As the delegate, what do you do?

11 A. I represent officers, their legal right to have a union rep
12 there on any disciplinary hearings that the department has, any
13 investigation that the department has.

14 I also, as a communication between officers and
15 myself, and I educate them on whatever they need to know in
16 regards to pensions or the union.

17 Q. There are other sorts of union officials, correct?

18 A. Correct.

19 Q. And are those trustees, for example?

20 A. Yes, there is.

21 Q. Could you explain the difference to the Court between a
22 delegate and a trustee.

23 A. Well a delegate basically his duties are at the command
24 level; whereas, trustee has police excusals. He's excused from
25 any police duties and they work out of the union office.

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D5A9FLO3 Herran - direct

- 1 Q. So the trustees don't work within the command?
2 A. No, they do not.
3 Q. But the union delegates do?
4 A. Yes, they do.
5 Q. How many delegates are assigned per command?
6 A. Approximately three.
7 Q. And trustees, they're assigned by borough, correct?
8 A. Yeah, correct.
9 Q. How many trustees are assigned per borough?
10 A. Two.
11 Q. How do you interact with the trustees as a delegate?
12 A. Majority of the times I would perform them of any off duty
13 incidents, any officers that is -- possibly that would need an
14 attorney, I would have to inform them -- I would have to inform
15 the higher level of rank as a union rep, which is a trustee.
16 Q. The trustees, however, aren't attorneys, correct?
17 A. No.
18 Q. They would contact an attorney?
19 A. Correct. They have access to contact attorneys.
20 Q. How frequently do you meet with other union delegates and
21 trustees?
22 A. The union delegates, probably -- we'll see each other in
23 the command but maybe to get together maybe twice a month.
24 Q. And with trustees?
25 A. Trustees, the one time that we're at the PBA meeting.

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D5A9FLO3 Herran - direct

1 Q. What is discussed at the PBA meetings?

2 A. Well they could discuss health benefits, anything that --
3 any contracts, any new law that went into effect, any new
4 policies. That's where they were discussed, at the meetings.

5 Q. What do you do with the information that you learn from
6 these PBA meetings?

7 A. I would come back, myself and the two other delegates, and
8 come back and inform the officers.

9 Q. Are you paid more as a delegate?

10 A. Yes, I am.

11 Q. Does the NYPD pay you that extra income?

12 A. No.

13 Q. Who does?

14 A. The union.

15 Q. In your work as a union delegate do you ever mediate or
16 become involved in officers' performance evaluations or
17 appeals?

18 A. No.

19 Q. In your work as a union delegate do you ever mediate or
20 become involved in the adjudication of officers' command
21 disciplines?

22 A. Yes, I do.

23 Q. And what is your role in the adjudication of an officer's
24 command discipline?

25 A. Well they need a union rep to represent them. I would go

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D5A9FLO3 Herran - direct

1 there and help mediate adjudication meeting between the CO and
2 the officer.

3 Q. So who typically attends a command discipline adjudication?

4 A. The CO, the administrative -- I mean, I'm sorry. The ICO,
5 the officer, and myself.

6 Q. What types of command disciplines do you typically help to
7 adjudicate?

8 A. It could go as low as -- being off post, smoking cigarette
9 on post, losing department property, improper memo book. It
10 varies. But they are low violations.

11 (Continued on next page)

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D5A8FLO4

Herran - direct

1 Q. How would you try to help officers or represent them in an
2 adjudication for disciplinary issues such as being caught off
3 post?

4 A. Well, the first thing I would do is I would read the
5 command discipline, wanted to see if it was written correctly.
6 Two, I would see where the command discipline, the violation
7 occurred, to see if the officer was near his post and taking
8 some sort of action off post.

9 Q. Is there anything else that you would use in an
10 adjudication of a disciplinary issue such as being caught off
11 post?

12 A. Knowing that there is a possibility that the officer is
13 going to lose time, I would probably inform the CO of the
14 activity of that particular day. Also, this guy, he is doing
15 something so I wouldn't know why he would be written up for
16 that particular thing.

17 Q. Can you explain further how you might use activity when
18 helping to represent an officer in a command discipline
19 adjudication?

20 A. Well, that particular violation, whatever, would be written
21 that the officer was off post. I would look into his activity
22 and see if any activity was done for that particular day being
23 that he was off post.

24 Q. Have you ever seen a supervisor bring up or use a monthly
25 activity report while adjudicating a CD?

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D5A8FLO4

Herran - direct

1 A. No.

2 Q. Have you personally ever used a monthly activity report
3 when adjudicating a CD?

4 A. No.

5 Q. In circumstances where you have used an officer's activity
6 during your representation of them, are you saying that an
7 officer with high activity could get off without discipline
8 while a low performing officer may not?9 A. No, not necessarily. I would find what the circumstances
10 are. If I know I could help the officer by using activity, or
11 possibly using that he was the cop of the month, or he stopped
12 some robbery pattern, I would help them to lose less time.13 Q. Do you know what the supervisor, be it the ICO or the CO,
14 bases his opinion on when he makes the final adjudication?

15 A. No.

16 Q. Have there been times when you have advocated for an
17 officer and he received the maximum penalty?

18 A. Yes.

19 Q. Have there been times where you have not used an officer's
20 activity to advocate for that officer, but he nevertheless
21 receives the minimum penalty?

22 A. There are times, yes.

23 Q. When you attend these CD adjudications, are you aware of
24 the officer's prior disciplinary history?

25 A. Majority of the times, yes.

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D5A8FLO4 Herran - direct

1 Q. How are you aware of their prior disciplinary history?

2 A. The officer will inform me, or if I had represented him
3 previously, I would know.

4 Q. So are there times when you have sat in on adjudications
5 for the same officer on multiple occasions?

6 A. Yes.

7 Q. Have you ever seen an officer receive the same discipline
8 twice for the same offense?

9 A. No.

10 Q. So if an officer, for example, receives warn and admonish
11 for the first time offense, would you see that officer get warn
12 and admonish for any subsequent offenses for the same conduct?

13 A. No, he would lose some time.

14 Q. As a union delegate, is filing grievances related to the
15 union's contract one of your duties?

16 A. Yes.

17 Q. When would you file a grievance as a union delegate?

18 A. Anything that's against the contract, anything that's
19 against the law, I would inform the lawyer, a grievance lawyer
20 from the union.

21 Q. Would a quota from NYPD management violate the union's
22 contract with the NYPD?

23 A. Yes, it would.

24 Q. Has a police officer ever come to you in the command to
25 file a grievance relating to a quota?

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D5A8FLO4 Herran - direct

- 1 A. No.
2 Q. If you believed that management were instituting a quota,
3 would you file a grievance?
4 A. Yes, I would.
5 Q. As delegate, have you ever discussed a quota with
6 management at your precinct?
7 A. No.
8 Q. As a delegate, have you ever heard complaints from officers
9 that they have been threatened with discipline for not meeting
10 a certain number of summonses, arrests or UF-250s?
11 A. No.
12 Q. In your work as a union delegate, do you ever mediate or
13 become involved in officers' complaints about a shift change?
14 A. Am I involved in that? Yes.
15 Q. How are you involved in that?
16 A. The officer will inform me that his shift was changed, why,
17 and I would find out what it was. Majority of the times is
18 they were put on some sort of level, level one monitoring,
19 which they wouldn't be able to do the midnight shift.
20 Q. So officers on level one monitoring are not permitted to
21 work the midnight shift?
22 A. No.
23 Q. Has any officer ever complained to you that their shift was
24 changed as a result of a quota?
25 A. No.

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D5A8FLO4 Herran - direct

1 Q. Have you ever had an officer complain to you about being
2 made to be a sergeant's operator?

3 A. Complain? No.

4 Q. In your experience, do supervisors write summonses for
5 violations that the supervisor observes?

6 A. They could write them, but majority of times, they have the
7 officers write the summonses for them.

8 Q. Do you know why that is?

9 A. Sergeants usually don't have summonses on them.

10 Q. So what would happen when a supervisor such as a sergeant
11 would observe a summonable violation?

12 A. They would call an officer to whatever location they are
13 at.

14 Q. Can a police officer sign his name to a summons for a
15 violation that he or she did not observe?

16 A. No.

17 Q. So when called to the scene of a supervisor's violation,
18 what are the options available to a police officer?

19 A. When an officer is called to the scene where a sergeant
20 observes some sort of violation, he would order the officer to
21 write the summons. The officer would then write the top part
22 of the summons, and on the bottom he would usually line out I
23 personally observed, and then have the sergeant sign it.

24 Q. If you as delegate had heard that supervisors were
25 instructing officers to sign summonses that the police officer

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D5A8FLO4 Herran - direct

1 had not observed, what would you do?

2 A. I would, one, go to the sergeant, find out the
3 circumstances; two, go to the commanding officer; and then
4 three, I would inform my trustee.

5 Q. Why would you do that?

6 A. It's a violation. It's against the law to do that.

7 Q. Have you ever been told by a police officer that they were
8 asked to sign a summons for a supervisor, the violation of
9 which the officer had not observed?

10 A. No.

11 Q. Have officers in the 41st Precinct ever set numbers of
12 summonses and/or arrests that they should reach on a monthly
13 basis?

14 A. Yes, they have.

15 Q. How would the officers come up with that number?

16 A. They would talk in general what goal -- performance goal
17 they want to reach. It's been going on since I first came on
18 the job. Between the platoon or the squad, we will come up
19 with some particular number to come in with.

20 Q. Would management or bosses ever be involved in that
21 conversation?

22 A. No.

23 Q. Why would an officer choose -- strike that.

24 Why would officers choose to set numbers for
25 themselves?

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D5A8FLO4 Herran - direct

- 1 A. I would assume they want to know what is the average, if
2 you're below average, if you're above average. We would
3 normally call it like zeros or heroes. I'm assuming the
4 officers want to know what is the average, how would they stand
5 in the platoon or in the squad.
6 Q. When you first came on the job, what was the number?
7 A. The number was 25, 5 and 2.
8 Q. What did the 25 refer to?
9 A. Book of summonses, A summonses.
10 Q. Are those parkers?
11 A. Correct.
12 Q. What did the five refer to?
13 A. The B summonses, the moving violations.
14 Q. What did the two refer to?
15 A. The quality of life summonses, which we also call the C
16 summonses.
17 Q. Those are criminal court summonses?
18 A. Correct.
19 Q. Did there come a time when that number changed?
20 A. Yes.
21 Q. When did that change?
22 A. I believe when the book, the summons book went down to 20
23 summonses.
24 Q. So what did the numbers change to?
25 A. 20 and 1.

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D5A8FLO4 Herran - direct

1 Q. What did the 20 refer to?

2 A. The 20 referred to summonses and the one was arrest.

3 Q. At the time of the Polanco recordings, what was the number?

4 A. 20 and 1.

5 Q. Is that 20 number tied to a certain number of days on
6 patrol?

7 MR. CHARNEY: Objection. Leading.

8 THE COURT: I will allow it.

9 Do you know the answer?

10 THE WITNESS: I'm sorry.

11 THE COURT: She said, Is that 20 number tied to a
12 certain number of days on patrol?

13 THE WITNESS: Yes.

14 Q. How many days on patrol is that number tied to?

15 A. Approximately 20 to 22 days on patrol.

16 Q. So would an officer's expectations for activity depend on
17 how many tours that officer worked per month?

18 A. Yes.

19 Q. Are those numbers still in place in the 41st Precinct?

20 A. No, they are not.

21 Q. When did you stop agreeing on numbers with other officers?

22 A. When it came into law about the quota.

23 Q. Do you recall when that was?

24 A. I believe in 2010.

25 Q. Do you know if that was before or after the recordings that

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D5A8FLO4 Herran - direct

1 Officer Polanco made of you?

2 A. That was after.

3 Q. When these numbers were in place, was there ever any
4 punishment for failing to reach the numbers?

5 A. No.

6 Q. What would happen, for example, if somebody worked on crime
7 analysis and only had five days on patrol, but did not reach
8 that 20 and 1 number?

9 A. Nothing would happen.

10 Q. In 2009, was it difficult to issue 20 summonses in a single
11 month in the 41st Precinct?

12 MR. CHARNEY: Objection, your Honor.

13 THE COURT: Sustained.

14 MS. PUBLICKER: Your Honor, I asked --

15 THE COURT: I know what you're asking.

16 It says, "In 2009, was it difficult to issue 20
17 summonses in a single month in the 41st Precinct?"

18 I am sustaining the objection because I consider the
19 phrase "difficult" to be vague.

20 MS. PUBLICKER: If I asked him based on his personal
21 experience, whether he observed, for example, at least 20
22 summonses per month in the 41st Precinct?

23 THE COURT: You can't ask that either, but you can
24 say, Did you issue 20 summonses a month, was that difficult for
25 you? What kind of summonses did you issue? You can ask him

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D5A8FLO4 Herran - direct

1 about his own summonses, but not about the precinct, not about
2 others, not about whether it was difficult in the general
3 sense. You can ask him about his work.

4 MS. PUBLICKER: If I could have just one moment, your
5 Honor.

6 BY MS. PUBLICKER:

7 Q. To which officers in the command did the 20 and 1 number
8 apply?

9 A. To the patrol officers.

10 Q. Did officers ever set a goal for the number of UF-250 forms
11 that they should complete?

12 A. No.

13 Q. Did officers ever set a goal for the number of reasonable
14 suspicion stops that they should conduct?

15 A. No.

16 Q. Have you ever heard officers complain that they were being
17 forced to write a certain number of UF-250s on a monthly basis?

18 A. No.

19 Q. Why do you believe it is OK for officers to set a goal for
20 the numbers of activity that they conduct per month, but you
21 don't believe it's OK for management to do so?

22 A. Officers, they always compete among each other and they
23 always want to know where you stand, if it's an average
24 officer, if you're a good officer, a bad officer. They always
25 want to know some sort of average. That's what I believe. I

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1 think officers want some average and know where they stand in
2 the platoon or in the squad.

3 Q. How is that different from the number that they would
4 receive from management?

5 A. They never received anything from management.

6 Q. Have you heard the recordings made by Officer Polanco?

7 A. Yes.

8 Q. When did you first hear those recordings?

9 A. I don't know exactly when I did hear it. I think I was
10 informed that I was on YouTube, or something like that, and
11 that's when I heard -- the first time that I heard I was being
12 recorded.

13 Q. Do you recall what year that happened in?

14 A. 2009, possibly.

15 Q. Do you know the date that you were recorded by Officer
16 Polanco?

17 A. The date, no.

18 Q. Do you have an understanding of when the recordings were
19 made?

20 A. Yes.

21 Q. How do you have an understanding of when the recordings
22 were made?

23 A. Actually, I was on vacation for approximately two weeks. I
24 returned back for my first day of duty, and I was informed by
25 several officers that they weren't too happy with my

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D5A8FLO4 Herran - direct

1 co-delegate, and it was in regards to the amount of summonses
2 that he had written. I informed them that I would speak to
3 them all together, and we did. We went and we spoke in the
4 lunchroom, and they informed me that they saw the delegate's
5 activity and it was higher than what they wanted.

6 So at that point I went and I spoke to my co-delegate
7 at the time. He informed me that, yes, he had written more
8 than the performance goal for the platoon, and it was only
9 because he had several other overtime shifts and he had written
10 many more summonses because of the extra tours that he did.

11 Q. I'm sorry if you said it, but what was the name of that
12 delegate?

13 A. Officer Fundaro.

14 Q. Was Officer Fundaro with you when you spoke with the other
15 police officers?

16 A. Yes. I'm sorry. At the lunchroom?

17 Q. At the lunch room?

18 A. No.

19 Q. What did you do when you first got into the precinct that
20 day?

21 A. I went in and I spoke to the commanding officer at the time
22 to just let him know I was here. We had spoken about how was
23 vacation. I also informed him if anything was going on, if
24 there were any homicides or any patterns or anything new in the
25 command.

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D5A8FLO4 Herran - direct

1 MR. CHARNEY: I think it's unclear when this was. I
2 think there was a question about the understanding of when,
3 approximately, this was, and I don't think we have ever had any
4 indication.

5 MS. PUBLICKER: I asked him if he knew when it
6 happened. He said he did not recall the date, but he knew it
7 was after he returned from a vacation.

8 MR. CHARNEY: He never said when the vacation was.

9 THE COURT: Roughly, what year, what month?

10 THE WITNESS: I would say November.

11 THE COURT: Of what year?

12 THE WITNESS: 2009.

13 THE COURT: Thank you.

14 Q. Who was the commanding officer at that time?

15 A. Inspector McHugh.

16 Q. For how long did you speak with Inspector McHugh?

17 A. I would say approximately about an hour.

18 Q. Did you discuss numbers or activity during this meeting
19 with Inspector McHugh?

20 A. No, I did not.

21 Q. Did Inspector McHugh tell you that the union and management
22 had agreed on a 20 summonses and one arrest quota?

23 A. No.

24 Q. What did you do after you spoke to Inspector McHugh that
25 day?

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1 A. I went and I spoke to the officers that wanted to speak to
2 me in regards to my co-delegate's activity.

3 Q. This was the meeting in the lunchroom you referred to?

4 A. Correct.

5 Q. Again, just to clarify, your Honor, this was a meeting with
6 other police officers but that Officer Fundaro was not present
7 for?

8 A. Correct.

9 Q. I believe you stated that you then went and had a
10 conversation with Officer Fundaro?

11 A. Yes, I did.

12 Q. Besides speaking with Officer Fundaro, did you speak to the
13 union before the roll call that day?

14 A. No.

15 Q. Now, on the recording Officer Polanco made of you, you
16 state that the union is backing, quote unquote, 20 and 1. Is
17 that correct?

18 A. In the recording, did I hear that? Yes.

19 Q. Why did you believe at the time that the union was backing
20 a number of 20 and 1?

21 A. Well, also, at the time, when I spoke to Officer Fundaro in
22 regards to his activity that the other officers in the platoon
23 weren't happy with, he had informed me that the union -- that
24 he had heard some rumor that the union and the bosses met and
25 that there was agreement on 20 and 1.

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D5A8FLO4 Herran - direct

1 Q. Before that day, had you ever heard of the union and
2 management agreeing on a number for officers in the 41st
3 Precinct?
4 A. Absolutely not.
5 Q. Or anywhere else in the NYPD?
6 A. Absolutely not.
7 Q. Did that strike as you as strange?
8 A. Yes, it did.
9 Q. Why did that strike you as strange?
10 A. I have never heard of it.
11 Q. Did you ever look into this allegation by Officer Fundaro
12 further?
13 A. Yes, I did.
14 Q. When did you do that?
15 A. After the roll call, I called the trustee, Joe Anthony, and
16 I asked him in regards to, if there was any meeting while I was
17 away on vacation in regards to the union agreeing with the
18 bosses, or the bosses agreeing with the union, in regards to 20
19 and 1. And he told me absolutely not. And I said, OK, thank
20 you, I will speak to you later. At which time I went back -- I
21 informed the sergeant that was addressing the roll call if I
22 could have a couple of more minutes with the officers, at which
23 time I instructed the officers and informed them that there was
24 no such meeting ever, and whatever you guys agreed on in the
25 lunchroom, if that's what you guys want to do, then go ahead

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D5A8FLO4 Herran - direct

1 and do it.

2 Q. Have you ever heard that part of the roll call on any
3 recording?

4 A. No.

5 Q. Now, these recordings that Officer Polanco made of you, you
6 have heard these recordings?

7 A. Yes.

8 Q. Are these recordings a full and complete recording of you
9 addressing the roll call that day?

10 A. No.

11 Q. Do you have an understanding of when track one and track
12 six on which your voice appears, when these recordings were
13 made in relation to each other?

14 A. I don't understand.

15 Q. Do you know if these recordings were made on the same day?

16 A. Yes, they were, yes.

17 Q. Now, you stated that you did not believe these recordings
18 were a full and complete recording of you addressing roll call,
19 correct?

20 A. Correct.

21 Q. What is missing?

22 A. A lot of the middle of the recording and definitely the end
23 of the recording.

24 Q. How do you know that?

25 A. I know it because what I said towards the end of this roll

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D5A8FLO4 Herran - direct

1 call, that wasn't on the recording.

2 Q. Now, on the track one recording, Officer Fundaro speaks
3 after you speak in the roll call, is that correct?

4 A. Correct.

5 Q. Were you present for Officer Fundaro addressing the
6 officers at that point?

7 A. No, I wasn't.

8 Q. In the track one recording, you reference a sheet that the
9 platoon commander gave out. Do you recall that?

10 A. Yes.

11 Q. What was the sheet that you were referring to?

12 A. There is a sheet that the platoon commander has that he has
13 to fill out, a daily tally of whatever activity was done for
14 the particular day.

15 Q. Did that sheet require a specific amount of activities on
16 the part of the officer?

17 A. No. It just actually tallied whatever activity the
18 officers did.

19 Q. But it was different than a police officer's monthly
20 activity report?

21 A. Oh, yes, yes.

22 Q. At some point on the recording you state, "The sheet don't
23 exist." Do you remember that?

24 A. Yes.

25 Q. What did you mean by that?

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(212) 805-0300

D5A8FLO4 Herran - direct

1 A. When I found out that the sheet was being passed around or
2 was going to be a police officer's duty to fill out, I went
3 into the CO and said, this is not a police officer's duty to do
4 this sheet, and it's not even a form that the NYPD has for an
5 officer to fill out. And right after that the sheet no longer
6 exist.

7 Q. Do you have an understanding if that was the result of you
8 speaking to the commanding officer?

9 A. Yes.

10 Q. Was it a result of you speaking to the commanding officer?

11 A. Yes, it was.

12 Q. In the track one recording, you also make reference to
13 crushing the city. Do you remember that?

14 A. Yes.

15 Q. What did you mean by that?

16 A. What I meant by that, I think during that discussion there
17 was in regards to assigning arrest. The officers are not too
18 happy when they're assigned arrest. So they inform me that
19 they will be assigned arrest, and I kind of motivate them by
20 telling them crush the city. Pretty much they could assign you
21 the arrest. I know you're upset because it's a possibility you
22 might have to do something that night, or do something the next
23 day, but make your money, you're going to get paid overtime for
24 it.

25 Q. When you say the officers might have something to do that

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(212) 805-0300

D5A8FLO4 Herran - direct

1 night or the next day, how would being assigned another
2 officer's arrest impact their plans that evening or the next
3 day?

4 A. If they are doing a 4 to 12 and they had to do something
5 that night, they would have to stay and do all the paperwork
6 and process the arrest, and then possibility to go to court the
7 next day.

8 Q. If they did have to stay to process the arrest or go to
9 work the next day, would they make overtime for that work?

10 A. Yes, they will.

11 Q. Is that overtime time and a half pay?

12 A. Yes, time and a half.

13 Q. So when you stated crush the city, are you referring to the
14 amount of money the officer would make from that reassigned
15 arrest?

16 A. Yes, that's the same.

17 Q. Is it acceptable to assign an arrest from one police
18 officer to another?

19 A. Yes.

20 Q. In what circumstances?

21 A. It might be a sergeant got hurt; he might have to go to the
22 hospital and it would be reassigned to another officer. There
23 is also a possibility that the sergeant or lieutenant, captain,
24 might observe some violation, lawful arrest, and it's assigned
25 to an officer.

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(212) 805-0300

D5A8FLO4 Herran - direct

- 1 Q. An officer who is assigned a different officer's arrest,
2 would their paperwork be prepared any differently?
3 A. No.
4 Q. Would they sign paperwork any differently?
5 A. They will be informed by that officer.
6 Q. Could you explain that for the Court, what you mean by
7 informed by?
8 A. If I was assigned the arrest from another officer, one, I
9 will speak with the officer, find out the circumstances of the
10 arrest, do the paperwork, but also have him sign that he is
11 informing me of the particular charges or what he observed.
12 Q. So if you were doing your own arrest, you would not include
13 the language of, I am informed by, is that correct?
14 A. That's correct.
15 Q. You also heard the track six recording made of you by
16 Officer Polanco, correct?
17 A. Correct.
18 Q. Where was that recording made?
19 A. In the roll call.
20 Q. The same day as the recording on track one?
21 A. Yes.
22 Q. On that recording, you make reference to the bible in
23 regards to the adjudication of CDs. Do you remember that?
24 A. Yes.
25 Q. Are you aware that Officer Polanco testified that he

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(212) 805-0300

D5A8FLO4 Herran - direct

1 believed you were referring to monthly activity reports when
2 you used the term "the bible"?

3 A. Yes.

4 Q. Is that what you were referring to?

5 A. No.

6 Q. To what were you referring when you used the term "the
7 bible"?

8 A. We call the patrol guide the bible.

9 Q. How would you use the patrol guide when adjudicating CDs?

10 A. When they are adjudicating CDs, there's certain procedures
11 that you would do on particular jobs. If the officer
12 fails -- if there's six procedures and he fails to do one of
13 them, he is going to be written up for violation of that
14 procedure.

15 Q. You state on the recording as well that it's impossible to
16 have 25 to 26 days on patrol and have no activity, correct?

17 A. Correct.

18 Q. Why did you believe that was true?

19 A. My personal experience being on patrol, there's always some
20 sort of moving violation, parking, summonses, quality of life
21 summonses, there is some sort of activity, whether it's a
22 summonses, whether it's an accident report, whether it's a
23 complaint report, whether it's an aided report, whether it's an
24 alarm report, there is something to do within those 25 days.
25 It's impossible not to have any sort of activity in the 41

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(212) 805-0300

D5A8FLO4 Herran - direct

1 Precinct.

2 Q. Have you heard other recordings that Officer Polanco made
3 in the 41st Precinct?

4 A. Yes.

5 Q. When did you hear those recordings?

6 A. Also on YouTube.

7 Q. Were you present at the roll calls in those recordings in
8 which your voice does not appear?

9 A. No.

10 Q. Officer Polanco testified here in court that he went to you
11 several times regarding numbers and quotas. Did Officer
12 Polanco ever approach you regarding numbers or quotas?

13 A. No, he did not.

14 Q. Officer Polanco also testified that you told him that
15 everything was dealt with in the contract and that the union
16 was backing it up in reference to a number. Have you ever seen
17 the union's contract?

18 A. Yes.

19 Q. Have you ever seen a clause in the union contract setting a
20 performance goal for officers?

21 A. No.

22 Q. Have you ever seen a clause regarding a quota?

23 A. No.

24 Q. Or numbers in any manner?

25 A. No.

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D5A8FLO4 Herran - direct

1 Q. Officer Polanco testified that in track six you were
2 referring to Lieutenant Valenzano when you mentioned having
3 been in a car and writing summonses with the supervisor. Do
4 you recall that section of the recording?

5 A. No.

6 Q. Do you recall a section of the recording where you talk
7 about seeing activity when in the vehicle with the supervisor?

8 A. Yes.

9 Q. Were you referring to Lieutenant Valenzano at that point?

10 A. No.

11 Q. To whom were you referring?

12 A. To any supervisor that you're in the car with.

13 Q. So you were speaking generally?

14 A. Correct.

15 MS. PUBLICKER: Your Honor, if I could have just one
16 moment.

17 Thank you, your Honor. No further questions.

18 THE COURT: Mr. Charney.

19 CROSS-EXAMINATION

20 BY MR. CHARNEY:

21 Q. Good afternoon, Officer Herran.

22 A. Good afternoon.

23 Q. Now, you testified on direct that the 20 and 1 performance
24 goal was something that officers in the 41st Precinct set
25 themselves, is that right?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5A8FLO4 Herran - cross

1 A. Absolutely.

2 Q. So that did not come from anybody higher in the chain of
3 command in the NYPD?

4 A. No, it did not.

5 Q. You mentioned that you did listen to some of the other
6 recordings that Officer Polanco made other than the ones that
7 your voice is heard on, right?

8 A. Correct.

9 Q. So you heard the one where Sergeant Stukes was heard
10 speaking to roll call?

11 MS. PUBLICKER: No.

12 A. I don't know who Sergeant Stukes is.

13 Q. I'm sorry. Sergeant Bennett. You heard Sergeant Bennett
14 speaking on a recording?

15 A. Yeah.

16 Q. You heard Sergeant Bennett make reference to 25 and 1, 35
17 and 1?

18 A. Correct.

19 Q. And Sergeant Bennett is a sergeant in the 41st Precinct,
20 right?

21 A. Correct.

22 Q. He is not a patrol officer, right?

23 A. No, he is not.

24 THE COURT: Does that make him a supervisor?

25 THE WITNESS: Correct.

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D5A8FLO4 Herran - cross

1 Q. Now, you also said that track one, which is you speaking,
2 right, it's your testimony that that is a roll call in which
3 you addressed the officers on two different occasions in the
4 same roll call, is that your testimony?

5 A. I addressed that roll call one time, and then yes, I came
6 back afterwards.

7 Q. It's your testimony that when you came back, which that
8 portion is not heard on the recording, that's when you
9 clarified that the union and management had not agreed on the
10 20 and 1, is that right?

11 A. Absolutely.

12 Q. Now, you're aware that Officer Polanco has testified that
13 it's his understanding that the 20 and 1 did come from up above
14 in the chain of command in the NYPD, correct?

15 A. Correct.

16 Q. Was there an officer Victor Marrero who also worked in the
17 41st Precinct at the time that Officer Polanco did?

18 A. Yes, there was.

19 Q. Are you aware that his deposition testimony has been read
20 into the record in this trial?

21 A. I wasn't aware of that, no.

22 Q. Are you aware that he also understands that the 20 and 1
23 requirement came from up the chain of command in the NYPD?

24 A. OK.

25 Q. If you agree with me on both of those, are you at all

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(212) 805-0300

D5A8FLO4 Herran - cross

1 concerned that there was an understanding amongst police
2 officers in the 41st Precinct that the 20 and 1 requirement was
3 coming from above in the chain of command in the NYPD?

4 MS. PUBLICKER: Objection, your Honor. He has
5 testified that he is only aware of it because Mr. Charney just
6 told him that. It is speculation.

7 Q. If we assume, it's a hypothetical, if that were true, would
8 you be concerned at all that officers in the 41st Precinct
9 understood that their superiors were setting a performance goal
10 of 20 and 1?

11 MS. PUBLICKER: Objection, your Honor.

12 A. Within that roll call?

13 THE COURT: I don't think you can combine that
14 hypothetical and then a concern on behalf of actual people in
15 the actual precinct.

16 Q. If two officers in the precinct that you worked in, who
17 were at the roll calls that you addressed, if they understood
18 that this 20 and 1 requirement came from above, the chain of
19 command in the NYPD above a police officer, would you be at all
20 concerned about that?

21 MS. PUBLICKER: Objection.

22 THE COURT: If Polanco and Marrero thought that, would
23 that concern you?

24 THE WITNESS: Of course it would concern me.

25 Q. Did you listen to the recording that Officer Polanco made

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(212) 805-0300

D5A8FLO4 Herran - cross

1 of Inspector McHugh addressing the roll call?

2 A. No.

3 Q. Do you recall being at a roll call in which Inspector
4 McHugh discussed how the borough commander wanted the 41st
5 Precinct summons activity to increase?

6 A. No, I wasn't there.

7 Q. So you were not at a roll call where Inspector McHugh
8 stated to the officers that the increase was nonnegotiable?

9 A. I wasn't there for that.

10 MR. CHARNEY: One minute, your Honor.

11 Q. Now, do I have your testimony correct from direct that
12 prior to speaking to the officers at the roll call that's on
13 track one, you had a conversation with Inspector McHugh, is
14 that right?

15 A. Yes, I did.

16 Q. It's your testimony that during that discussion, you did
17 not discuss the 20 and 1 requirement?

18 A. I did not discuss that at all.

19 MR. CHARNEY: Your Honor, I want to show the witness
20 an exhibit that's already in evidence. This is the transcript
21 from the Polanco recordings, 284T.

22 Does your Honor want a copy? I was going to put it on
23 the elmo.

24 THE COURT: That's fine.

25 Q. Officer Herran, I know you have listened to the recordings.

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(212) 805-0300

D5A8FLO4 Herran - cross

1 Have you reviewed the transcripts of the recordings?

2 A. Of which recordings? My recordings?

3 Q. Track one and track six?

4 A. My recordings, yes.

5 Q. This is 284T. This is track one.

6 You agree that track one, the first portion, 3:03 to
7 8:01, that is you speaking on that portion?

8 THE COURT: The first five minutes.

9 Q. The first five minutes or so is you?

10 THE WITNESS: What he is showing me here, I remember
11 that.

12 Q. Do you see here where it says, "I spoke to the CO for about
13 an hour and a half on the activity, 20 and 1." Do you see
14 that?

15 MS. PUBLICKER: I would just note there is a hyphen,
16 dashes in between the hour and a half.

17 MR. CHARNEY: We can play it.

18 THE COURT: I see the dashes, but what is the point of
19 it?

20 MS. PUBLICKER: That they are two different thoughts.

21 MR. CHARNEY: Based on counsel's interpretation.

22 THE COURT: One second.

23 MR. CHARNEY: We can play it.

24 THE COURT: Then what?

25 BY MR. CHARNEY:

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(212) 805-0300

D5A8FLO4

Herran - cross

1 Q. I guess my question is, based on your review of this and
2 your having listened to the tape, isn't it correct that you did
3 tell the officers at roll call that you spoke to Inspector
4 McHugh about the activity, 20 and 1?

5 A. What I said in the roll call is I spoke to the CO. I might
6 have put it all together. I spoke to the CO for about an hour.
7 I wasn't referring to activity with the CO. I never spoke to
8 the CO in regards to activity.

9 Q. I guess my question is --

10 A. This part here, when I speak about 20 and 1, the union is
11 backing up, this is where I spoke to the co-delegate, which is
12 Officer Fundaro. I never spoke to the CO in regards to
13 activity.

14 THE COURT: Why don't you play it.

15 MR. CHARNEY: Can we play the first section?

16 (Audiotape played)

17 Q. Having heard that, do you have any concern that the
18 officers at the roll call having heard that would have
19 interpreted what you said as you spoke to Inspector McHugh
20 about the 20 and 1?

21 A. Absolutely, the way I said that, yes.

22 THE COURT: I'm sorry. What? What is your answer?

23 THE WITNESS: Yes.

24 THE COURT: Yes what?

25 THE WITNESS: They would have interpreted it that way,

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(212) 805-0300

D5A8FLO4

Herran - cross

1 the way I said it.

2 Q. Now, I know your testimony is that you, in fact, never
3 spoke to Inspector McHugh about the 20 and 1. But based on
4 your experience in the 41st Precinct, is it fair to say that
5 the supervisors were aware that the officers themselves had
6 this 20 and 1 requirement that they had created for themselves?

7 A. I don't know if the supervisors were aware of it, but I
8 know all the officers were aware of it.

9 Q. You know that Sergeant Bennett mentioned it, right?

10 A. He mentioned 25 and 1, 35 and 1.

11 Q. So at minimum, it would be fair to say that supervisor
12 Bennett, Sergeant Bennett was aware of it, right?

13 MS. PUBLICKER: Objection, your Honor. Speculating on
14 somebody else's knowledge.

15 THE COURT: One moment, please.

16 It's not so much a matter of speculating on someone
17 else's knowledge, but I don't understand the relationship
18 between Sergeant Bennett having mentioned 25 and 1, 35 and 1.

19 You gave that answer?

20 THE WITNESS: Correct.

21 THE COURT: So then the lawyer said, So at minimum,
22 it's fair to say that supervisor Bennett was aware of it,
23 right? Then she said objection.

24 THE WITNESS: I don't know what Bennett -- like I
25 said, it was just the officers that --

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D5A8FLO4

Herran - cross

1 THE COURT: Even though you know that Sergeant Bennett
2 mentioned --

3 THE WITNESS: I heard it on the recordings earlier.

4 THE COURT: If he mentioned it, wouldn't that mean he
5 was aware of it?

6 THE WITNESS: Aware of the 20 and 1?

7 THE COURT: Yes.

8 THE WITNESS: I'm assuming. I don't know.

9 THE COURT: That's his answer.

10 Q. You don't have any knowledge as to whether any sergeant,
11 lieutenant, captain or CO in the 41st Precinct was aware of
12 this 20 and 1 requirement?

13 A. Absolutely not.

14 Q. Do you know whether any sergeants or lieutenants were
15 present at the roll call you were speaking at where you
16 mentioned the 20 and 1?

17 A. No, they were not there.

18 Q. Now, were you present for the portion of the roll call on
19 track one where Officer Fundaro was addressing the officers?

20 A. No.

21 Q. But you have heard that recording, right?

22 A. A limited part of it.

23 Q. Have you heard the part where Officer Fundaro mentions the
24 20 and 1?

25 A. I believe so.

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(212) 805-0300

D5A8FLO4 Herran - cross

1 Q. Where he says that it's going to get a lot worse?

2 A. Right.

3 Q. Do you know what he meant by that?

4 MS. PUBLICKER: Objection. Testifying to what another
5 officer meant.

6 Q. What did you understand him to mean by saying it's going to
7 get a lot worse?

8 THE COURT: That I will allow. I always allow what
9 the person understood.

10 What did you understand it to mean?

11 MS. PUBLICKER: I would only object to the extent that
12 Officer Fundaro is not present.

13 THE COURT: I understand he wasn't present, but he has
14 heard it.

15 What was your understanding of that statement, it's
16 going to get a lot worse?

17 THE WITNESS: There is not going to be much help. He
18 always complained about not having enough patrolmen.

19 Q. So you didn't understand that to mean that the performance
20 goals for officers were going to get more demanding?

21 A. No.

22 Q. Now, you also mentioned that you have never received a
23 grievance regarding quotas, is that right?

24 A. Correct.

25 Q. Are you aware that the PBA has since 2010 filed nine

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(212) 805-0300

D5A8FLO4 Herran - cross

1 grievances related to quotas for police officers?

2 A. I am aware of it, yes. They also have an ad in regards to
3 it.

4 THE COURT: They also what?

5 THE WITNESS: Have an ad, advertising.

6 Q. You go to meetings with trustees and PBA delegates
7 regularly, right?

8 A. Once a month.

9 Q. Has the issue of quotas ever been discussed at any of those
10 meetings?

11 A. Absolutely not.

12 Q. But is it your understanding, based on your involvement
13 with PBA and you having reviewed these ads and your knowledge
14 of these grievances, that PBA as an organization believes that
15 there are quotas in the police department regarding enforcement
16 activity?

17 A. I am sure they have, but nothing was discussed in a meeting
18 about that.

19 MR. CHARNEY: One minute, your Honor.

20 Q. I want to actually show you, this is page 2 of Exhibit
21 284T. This is again track one, the portion you were speaking.

22 Do you see here on line 12 it says, "Now, the reason
23 we brought all the --"

24 THE COURT: "The reason is."

25 Q. "The reason is -- we brought all the supervisors. I sat in
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(212) 805-0300

D5A8FLO4 Herran - cross

1 there because corporal had a situation that he said it was 25.
2 They start to move up (unintelligible phrase). Supposedly,
3 it's not 25. He made a mistake. Inspector -- he said, 'Well,
4 when I first came on, it was 25, 10 and 2.'

5 Do you see that?

6 A. Yes.

7 Q. Are you referring there to what you had talked about on
8 direct as to what the summons requirements were when you first
9 came on the job?

10 A. Yes.

11 Q. Now, you had said, I believe on direct, that those
12 requirements were again entirely set by officers themselves,
13 right?

14 A. Correct.

15 Q. But here aren't you talking about a conversation or a
16 meeting you had with supervisors?

17 A. No. I never had a meeting with supervisors.

18 Q. Do you recall what you meant here by, "We brought all the
19 supervisors. I sat in there"?

20 A. I don't even remember that five, six lines there.

21 THE COURT: Why don't we play it?

22 MR. CHARNEY: I don't know where on the recording it
23 is. It's later than the portion we just listened to, but we
24 might have to listen for a little while.

25 Why don't we just pick up from exactly where we

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(212) 805-0300

D5A8FLO4

Herran - cross

1 stopped, which was right after the first 20 and 1 reference.

2 We can start from the beginning, 3:03.

3 THE COURT: We don't want the beginning.

4 MR. CHARNEY: This is within those first five minutes.

5 THE COURT: OK. All right.

6 Can I see the page again?

7 MR. CHARNEY: This is the second page of the
8 transcript. It's line 12.

9 THE COURT: OK.

10 (Audiotape played)

11 BY MR. CHARNEY:

12 Q. Having listened to that, do you now remember what you were
13 talking about when you were talking about "we brought all the
14 supervisors"?

15 A. I'll be honest with you, I don't understand what that
16 means. I don't know who corporal is. I don't know who
17 Inspector Wen is. I really don't know.

18 Q. What about this portion where he said he put people on foot
19 post because they weren't coming in with their F'ing 25?

20 A. I don't know what that is. I really don't know.

21 THE COURT: You don't know what that means? You said
22 it and you don't know?

23 THE WITNESS: I don't know if I said something or
24 something was said to me. It doesn't make any sense. I don't
25 know who corporal is. I don't know who Inspector Wen is. If I

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(212) 805-0300

D5A8FLO4 Herran - cross

1 was talking with regards to 25, 10 and 2, maybe it was when I
2 first came on. That's the only thing I can talk about.

3 Q. Then earlier in that portion we heard where you say,
4 "Fundaro, myself and Manzi," and those are the three PBA
5 delegates in the precinct?

6 A. Correct.

7 Q. "Got to go in there and adjudicate F'ing CDs on your
8 activity."

9 A. Right.

10 Q. Now, you testified a little bit about this on direct, but
11 can you tell me what you meant by that?

12 A. What I meant by that, like I said, sometimes I would go in
13 in the adjudication meetings, and knowing that the officer is
14 going to lose a substantial amount of time, I might use
15 activity as one to have less time taken away from them. I
16 might use cop of the month, or I might use they stopped a
17 pattern. I have got to try to get the least time I possibly
18 could for the officers.

19 Q. In other words, you would try to get a more lenient
20 punishment for an officer whose activity levels were higher
21 than, say, another officer's, right?

22 A. Not necessarily. It wouldn't just be activity. It could
23 be other things. The guy wasn't out sick. The guy did a lot
24 of days on patrol. He got a good medal. He stopped a robbery
25 pattern. It wouldn't just be activity, but it's something that

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(212) 805-0300

D5A8FLO4 Herran - cross

1 I would have in case I needed it.

2 Q. Were you ever successful in certain situations in getting a
3 more lenient discipline penalty for an officer because you were
4 able to point to the fact his activity was high?

5 A. No. I wish I could have.

6 Q. So you're saying there were never situations --

7 A. Majority of the times they had their goal, their set
8 punishment.

9 Q. I just want to make sure I have the terminology right.
10 When you were referring to the 20 and 1, is it correct that
11 that is a performance goal that is set for officers?

12 A. Correct.

13 Q. Is another term for that a productivity goal?

14 A. You call it productivity goal, performance goal.

15 Q. Are you familiar with Operations Order 52, speaking of
16 performance goals?

17 MS. PUBLICKER: Objection. This is beyond the scope
18 of my direct.

19 MR. CHARNEY: I just wanted to ask about the term
20 performance goal.

21 THE COURT: I will allow it.

22 MS. PUBLICKER: Operations Order 52 came out years
23 after this recording was made.

24 THE COURT: I know that. I will allow it.

25 Q. Are you familiar with that operations order?

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(212) 805-0300

D5A8FLO4

Herran - cross

1 A. Yes.

2 Q. Are you aware that they use the same term performance goal
3 in that operations order?

4 THE COURT: The same term as what?

5 Q. As I just asked you, that 20 and 1 was a performance goal.
6 Are you aware that they use the term performance goal in
7 Operations Order 52?

8 A. Yes.

9 Q. Based on what you think a performance goal is, would you
10 believe that the 20 and 1 would be an example of a performance
11 goal that would be permitted under Operations Order 52?

12 A. I would say yes.

13 MR. CHARNEY: No further questions.

14 MS. PUBLICKER: One moment, your Honor.

15 REDIRECT EXAMINATION

16 BY MS. PUBLICKER:

17 Q. With respect to representing an officer during a command
18 discipline adjudication, does pointing out the activity of that
19 officer on the day he is accused of being off post, for
20 example, help show the commanding officer that the subject
21 officer was still working?

22 A. Yes.

23 MS. PUBLICKER: No further questions.

24 MR. CHARNEY: No further questions.

25 THE COURT: Thank you.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5A8FLO4

1 MR. KUNZ: Next, your Honor, we are going to read in
2 some stipulations that the parties have reached in regard to
3 two witnesses related to the David Floyd stop.

4 MR. MOORE: Is that the end of the testimony for
5 today?

6 THE COURT: Let me just double-check. I forgot to
7 bring the revised list.

8 That puts us on schedule for the 13th.

9 Did you find out whether your expert can come, Ms.
10 Cooke, on the 13th?

11 MS. COOKE: I haven't heard back from him yet.

12 THE COURT: Have we heard yet from the part one judge?

13 MR. KUNZ: I checked half an hour ago, and I haven't
14 seen.

15 THE COURT: All right.

16 MR. KUNZ: Before I read in the actual stipulations,
17 the parties have agreed to the admission of six exhibits. So I
18 would just would like to move the admission of Exhibit R13,
19 S13, T13, X13, Y13, and S14.

20 MR. CHARNEY: No objection.

21 THE COURT: They are all received.

22 (Defendants' Exhibits R13, S13, T13, X13, Y13, and S14
23 received in evidence)

24 MR. KUNZ: To give your Honor a little context on the
25 first stipulation, I just want to publish an exhibit that's

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1 already in evidence. This is Exhibit K13. You may recall this
2 map from the David Floyd stop in the examination of Officer
3 Hernandez.

4 So the first stipulation is: 1359 Beach Avenue is at
5 most 0.8 miles --

6 THE COURT: I'm sorry. Can you point that out?
7 Thank you.

8 MR. KUNZ: Is at most 0.8 miles away from each of the
9 seven burglary pattern locations identified in Defendants' L4.
10 L4 is again the pattern sheet itself.

11 This is the next stipulation, the same exhibit here.

12 The farthest distance between any of the burglary
13 pattern locations identified in Defendants' L4 is 0.6 miles.
14 (1352 Elder Avenue to 1149 Stratford Avenue).

15 So that would be this dot here and that dot there.

16 THE COURT: Now that you showed me the dots, would you
17 read the sentence again?

18 MR. KUNZ: The farthest distance between any of the
19 burglary pattern locations identified in Defendants' Exhibit L4
20 is 0.6 miles.

21 THE COURT: I see.

22 MR. KUNZ: This is Exhibit N10. It's also in
23 evidence. This is the house where David Floyd was stopped in
24 front of, 1359 Beach Avenue.
25

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1 MR. KUNZ: And then this shot is also in evidence.
2 This is a better shot of the entire street. And just for the
3 record I was showing the Court Bates stamp numbers ending in
4 8757 and 8758.

5 So the next stipulation is Defendant's Exhibit R13 is
6 a fair and accurate depiction of 1240 Ward Avenue and 1228 Ward
7 Avenue (Two of the burglary locations identified in defendants
8 L4). The parties agree to admit the document into evidence.

9 The next is Defendant's Exhibit S13 is a fair and
10 accurate depiction of 1149 Stratford Avenue, 1187 Stratford
11 Avenue, and 1161 Stratford Avenue (Three of the burglary
12 locations identified in Defendants' Exhibit L4). The parties
13 agree to admit the document into evidence.

14 Defendant's Exhibit T13 is a fair and accurate
15 depiction of 1342 Elder Avenue and 1352 Elder Avenue (Two of
16 the burglary locations identified in Defendant's Exhibit L4).
17 The parties agree to admit the document into evidence.

18 Briefly, going back to Defendant's K13. The next two
19 exhibits have to do with the Bronx River Parkway that there was
20 testimony about.

21 Defendant's Exhibit X13 is a fair and accurate
22 depiction of East 172nd Street as it crosses the Bronx River
23 Parkway. The parties agree to admit the document into
24 evidence.

25 Defendant's Exhibit Y13 is a fair and accurate

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1 depiction Of east 174th Street as it crosses the Bronx River
2 Parkway. The parties agree to admit the document into
3 evidence.

4 The next stipulation does not have to do with any
5 exhibit so I'll just read it.

6 Floyd did not state in his deposition that he was
7 forced to stand against a wall.

8 The next four stipulations have to do with Defendant's
9 Exhibit S14. Your Honor has not seen this exhibit before.

10 According to the 2004-2008 NYPD complaint report
11 database, in January and February 2008, there were 66
12 complaints of burglaries within the 43rd precinct.

13 Of the 66 burglary complaints, 62 occurred within one
14 mile of 1359 Beach Avenue.

15 THE COURT: I know this isn't part of the stipulation.
16 I know you're not a witness. But I thought one of my opinions
17 way back I had a question about the timeframe how current they
18 were to this stop. Do you remember that. Because I think at
19 first I dismissed the claim and then I put it back in because
20 it turned out they were not that current.

21 MR. CHARNEY: It was a couple things.

22 THE COURT: Anybody else recollect this besides me?

23 MR. CHARNEY: It was the time period and also the
24 distance.

25 THE COURT: There was a question about time period?

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1 MR. CHARNEY: Some of these stipulations are going to
2 refer to January and February and some are going to refer to a
3 longer period of time. So -- I mean just so your Honor knows
4 all of this comes from a declaration that was submitted by
5 Ms. Mulet in regards to that motion that you ruled on. Instead
6 of her coming and reciting all of this, we stipulated to it
7 because it was in her declaration anyway.

8 THE COURT: Can we mark the declaration? Because that
9 must be what I relied on at the time of the motion.

10 MR. CHARNEY: You relied on that and then Professor
11 Fagan also put it in, but he's already testified.

12 THE COURT: Put aside him. But can we get that
13 declaration back so I don't have to dig it out and mark it as
14 an exhibit here so it will be part of this trial record?

15 MR. KUNZ: Sure.

16 THE COURT: Go ahead with what you were reading. You
17 were up to there were 66.

18 MR. KUNZ: So, I think I did the 62 occurred within
19 one mile of 1359 Beach Avenue.

20 Of the 66 burglary complaints, 28 occurred within
21 one-half mile of 1359 Beach Avenue.

22 Defendant's Exhibit S14 is a fair and accurate
23 depiction of what it purports to be -- namely, a map plotting
24 the location of the 66 burglary complaints made in the 43rd
25 precinct in January and February 2008. The map shows the

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1 location where David Floyd was stopped on February 28, 2008,
2 with one and one-half mile radius around that address
3 indicated. In addition, the map displays the boundaries of the
4 43 precinct, as well as census tracts, parks and NYCHA property
5 in the 43 precinct. The parties agree to admit the document
6 into evidence.

7 THE COURT: I have to ask is the NYCHA property the
8 light brown?

9 MR. KUNZ: Yes. The key on the --

10 THE COURT: I see it. Thank you.

11 MR. KUNZ: According to the 2004-2008 NYPD complaint
12 report database, in January and February 2008 there were seven
13 complaints of possession of stolen property within the 43
14 precinct.

15 According to the 2004-2008 NYPD complaint report
16 database, from July 1, 2007 until December 31, 2007 there were
17 233 complaints of burglaries and 19 complaints of possession of
18 stolen property within the 43rd precinct.

19 According --

20 THE COURT: One second, please.

21 Can you remind me when the Floyd stop was?

22 MR. CHARNEY: February 27, 2008.

23 THE COURT: Thank you.

24 MR. KUNZ: I think that's right and I'm just realizing
25 that -- there there's a typo in the 12th stipulation that I

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1 read, which indicated that the stop was on February 28 -- I'm
2 sorry February 28. It was, in fact, February 27.

3 THE COURT: Thank you.

4 MR. KUNZ: According to the 2004-2008 NYPD complaint
5 report database, in January and February 2008 there were 560
6 complaints of burglary, 106 complaints of possession of stolen
7 property, and 6 complaints of possession of burglary tools
8 within the Bronx.

9 According to the 2004-2008 NYPD complaint report
10 database, from July 1, 2007 until December 31, 2007, there were
11 2,213 complaints of burglaries, 300 --

12 THE COURT: I'm sorry. Are we going to get to it in
13 the Bronx?

14 MR. KUNZ: This is in the Bronx as well.

15 THE COURT: I'm sorry to interrupt. Go ahead.

16 MR. KUNZ: 310 complaints of possession of stolen
17 property and 10 complaints of possession of burglary tools
18 within the Bronx.

19 According to the 2004-2008 NYPD complaint report
20 database, in January 2008, there was only one reported burglary
21 in census tract No. 66, the census tract in which 1359 Beach
22 Avenue was located, and zero reported burglaries in the
23 immediately adjacent census tract No. 214.

24 As Your Honor can --

25 THE COURT: Is part of your stip did you cover

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1 February 2008?

2 MR. CHARNEY: That's in the last one.

3 MR. KUNZ: The next one is according to the 2004-2008
4 NYPD complaint report database, in February 2008, there were
5 zero reported burglaries in census tracts Nos. 66 and 214.

6 I was just going to point out, as your Honor can see,
7 the census tracts are indicated on this map with the red lines.
8 I can zoom in a little bit. It's may be hard to see.

9 MR. CHARNEY: See the two up there, 66 and 214?
10 Do you see where the star is?

11 THE COURT: Yes. Thank you.

12 All those other numbers, 208 -- these are all census,
13 all the red figures?

14 MR. CHARNEY: Yes.

15 MR. KUNZ: So that's the end of the stipulations. I
16 believe I actually may have a copy of the Tracy Mulet
17 declaration with me.

18 THE COURT: Then if you do -- which side will mark it
19 as an exhibit? Does it matter?

20 MR. KUNZ: We can mark it.

21 THE COURT: So it will be exhibit.

22 MR. KUNZ: I'll have to check.

23 Y14.

24 (Defendant's Exhibit Y14 received in evidence)

25 MR. KUNZ: And there was also exhibits that Ms. Mulet

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1 referred to which listed the actual addresses. We'll put those
2 in as well.

3 THE COURT: They can just be exhibits to the
4 declaration.

5 MR. KUNZ: Exactly. It will just be the entire
6 declaration with exhibits.

7 THE COURT: Okay. Sounds like we're done. Maybe --
8 what?

9 MR. CHARNEY: We had a question about the closing but
10 if your Honor wants to --

11 THE COURT: We can do that.

12 What I was going to say if -- Ms. Cooke, if you would
13 e-mail my clerk whenever you hear from Dr. Purtell or Dr. Smith
14 as to whether we're expecting them Monday or at what time. I
15 guess plaintiffs certainly want to know too so let us both
16 know.

17 MS. COOKE: My understanding, regardless, Professor
18 Fagan is Monday morning.

19 THE COURT: That is true because I was told that was
20 the only time he had the whole week.

21 MR. MOORE: It is.

22 THE COURT: What did you want to ask about?

23 MR. CHARNEY: We wanted to make sure we were on the
24 same page with respect to the closings. I guess two questions.
25 One is how much time each side is allotted and then the order.

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1 THE COURT: The order is you're last. You have the
2 burden of proof. That is standard in every civil case.

3 MR. CHARNEY: So that's easy.

4 THE COURT: There's only one summation each. We don't
5 do rebuttal summations in civil cases. So it's defense and
6 then plaintiff. As far as the time, I'm pretty open. What you
7 ask for is what you get. That has been my view up until now.

8 MR. CHARNEY: So is the entire day of May 20, ten to
9 four available?

10 THE COURT: Its available, if you can talk that long.

11 MR. CHARNEY: How long do you guys anticipate?

12 MS. GROSSMAN: I know we took an hour-and-a-half for
13 the opening so I know we'll need more than that.

14 THE COURT: So what do you think? Just basically you
15 want half of the full day?

16 MS. GROSSMAN: I think that makes sense, to allot
17 that. If we finish sooner --

18 THE COURT: So a full day is usually two and quarter
19 hours in the morning -- no, two-and-a-half. We go
20 two-and-a-half in the morning and we always go two-and-a-half
21 in the afternoon. So it sounds like you get 2:00 to 4:30. And
22 they get 10:00 to 12:45 with a fifteen-minute break.

23 MR. CHARNEY: That works for us.

24 THE COURT: If you're going to use any demonstratives,
25 I'll say it over and over again, you must show them to the

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1 other side unless they are already in evidence, if you create
2 another demonstrative for the purpose of summation.

3 MR. MOORE: Anything new.

4 THE COURT: Anything new. Sometimes lawyers use
5 PowerPoints or demonstratives during the summation. If you
6 plan to do that, you must show it to the other side first.

7 MR. CHARNEY: Thank you, your Honor.

8 THE COURT: Let's say by close of business Thursday so
9 there is no surprise -- no last minute surprises.

10 MR. CHARNEY: Yes, your Honor.

11 THE COURT: All right. I guess that's it.

12 MR. CHARNEY: Thank you your Honor.

13 THE COURT: See you Monday.

14 (Adjourned to May 13, 2013 at 10:00 a.m.)

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25

	INDEX OF EXAMINATION	
1		
2	Examination of:	Page
3	William Morris	
4	Cross By Mr. Moore6619
5	Redirect By Ms. Grossman6636
6	MARTINE MATERASSO	
7	Direct By Ms. Cooke6638
8	Cross By Mr. Moore6712
9	Redirect By Ms. Cooke6752
10	Recross By Mr. Moore6753
11	ANGEL HERRAN	
12	Direct By Ms. Publicker6753
13	Cross By Mr. Charney6781
14	Redirect By Ms. Publicker6796
15	DEFENDANT EXHIBITS	
16	Exhibit No.	Received
17	E56638
18	R13, S13, T13, X13, Y13, and S146797
19	Y146804
20		
21		
22		
23		
24		
25		

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