	HERN DISTRICT OF NEW YORK	
	D FLOYD, et al.,	
	Plaintiffs,	
	V .	08 CV 103
CITY	OF NEW YORK, et al.,	
	Defendants.	
	x	
		New York, April 25, 10:00 a.m
Befo	re:	
	HON. SHIRA A. S	CHEINDLIN,
		District
	APPEARAN	CES
BELD	OCK LEVINE & HOFFMAN, LLP Attorneys for Plaintiffs	
BY:	JONATHAN MOORE JENN ROLNICK BORCHETTA	
COVI	NGTON & BURLING, LLP Attorneys for Plaintiffs	
BY:	KASEY MARTINI GRETCHEN HOFF VARNER	
	ERIC HELLERMAN	
	BRUCE COREY	
CENT	BRUCE COREY ER FOR CONSTITUTIONAL RIGHTS	
CENT BY:	BRUCE COREY	

D4P8FL01

APPEARANCES (Cont'd) MICHAEL A. CARDOZO Corporation Counsel for the City of New York Attorney for Defendants 4 BY: HEIDI GROSSMAN BRENDA E. COOKE JOSEPH MARUTOLLO MORGAN D. KUNZ SUZANNA PUBLICKER LINDA DONAHUE LISA M. RICHARDSON JUDSON VICKERS

D4P8FL01

(Trial resumed) 2 MR. MOORE: Can I raise one matter before we start? 3 Yesterday in the examination of Mr. Reiter, Ms. 4 Publicker asked him whether he knew whether his opinions had 5 been ruled inadmissible in the Haus case. In fact, they were 6 not ruled inadmissible. Judge Dolinger in a report and recommendation to Judge Sweet, which was on appeal at the time 7 8 the case was settled, had indicated that he assumed his 9 competence and expertise. He didn't rule it inadmissible. He 10 just decided not to give it any weight in terms of his opinion 11 on that summary judgment recommended decision. So I didn't 12 want the impression to be left that he was found unqualified. 13 THE COURT: Obviously, the question was only did he 14 know? A question is never evidence. He said he didn't know. 15 So I wasn't going to consider it anyway. But you did the 16 research. Do you have the docket number for that case? I can 17 take judicial notice of the docket. 18 MR. MOORE: It's 03 Civ. 4915, Southern District of 19 New York. 20 THE COURT: I will find the rest from the docket. 21 MR. MOORE: Document 180 in the docket. THE COURT: It was only a question. His answer was, 22 2.3 no, I never heard any such thing. So I never would have taken 24 it as the truth anyway. 25 MR. MOORE: He was very upset about it.

MR. MOORE: He was very upset about it. SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FL01 THE COURT: I don't want him to be upset. MS. GROSSMAN: Just on the scheduling? No. 2 3 MS. BORCHETTA: Plaintiffs call James McCarthy. 4 JAMES McCARTHY, 5 called as a witness by the plaintiffs, 6 having been duly sworn, testified as follows: 7 THE COURT: State your full name, first and last, 8 spelling both for the record. 9 THE WITNESS: Lieutenant James McCarthy, J-A-M-E-S, 10 M-C-C-A-R-T-H-Y. 11 THE COURT: Thank you. 12 DIRECT EXAMINATION 13 BY MS. BORCHETTA: 14 Q. Good morning, Lieutenant McCarthy. 15 A. Good morning. 16 Q. You are currently a member of the NYPD, correct? 17 A. Yes. 18 Q. You graduated from the police academy in 1996? 19 A. Yes, ma'am. 20 Q. You were promoted to lieutenant on October 26, 2007, 21 correct? 22 A. Yes, ma'am.

Q. What was your rank in January and February of 2008?

23

24

25

A. Lieutenant.

Q. That was in what precinct?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D4P8FLO1 McCarthy - direct

- 1 A. The 107 Precinct.
- THE COURT: Which is what borough?
- 3 THE WITNESS: Queens, ma'am.
- 4 Q. As of January 2008, you had been a lieutenant for how long?
- 5 A. I'm sorry?
- 6 Q. As of January 2008, how long had you been a lieutenant?
- 7 A. Three months.
- 8 Q. In January of 2008, you supervised Sergeant Patrick Hegney,
- 9 correct?
- 10 A. I'm sorry?
- 11 Q. In January of 2008, you supervised Sergeant Patrick Hegney?
- 12 A. Patrick Hegney?
- 13 Q. Richard. I'm sorry. Richard Hegney. Did you supervise
- 14 him in 2008?
- 15 A. Not directly, ma'am.
- Q. When you say not directly, what do you mean?
- 17 A. He was a sergeant and a lieutenant supervisor sergeant,
- 18 ma'am.
- 19 Q. In January of 2008, you had meetings with all sergeants
- 20 under your supervision about once every two or three weeks,
- 21 right?
- 22 A. Under the replacement lieutenant, yes, ma'am.
- 23 Q. What do you mean under the replacement lieutenant?
- 24 A. Replacement lieutenant is the lieutenant that covers the
- 25 specific platoons when a lieutenant is not present or has off. SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1 McCarthy - direct

- 1 Q. Do you recall being deposed in this case?
- 2 A. Yes, ma'am.
- 3 Q. Do you recall that that deposition was November 13, 2009?
- 4 A. If that's the date, ma'am.
- 5 Q. As of the time of your deposition -- by that point you had
- 6 been a lieutenant for a couple of years, right?
- 7 A. I'm sorry. Yes, ma'am. At the time of the deposition,
- 8 yes, ma'am.
- 9 Q. By that time, it was your practice to have meetings with
- 10 the sergeants under your supervision about once every two or
- 11 three weeks, right?
- 12 A. Specifically, when I became the special operations
- 13 lieutenant, yes, ma'am.
- 14 Q. When did you become the special operations lieutenant?
- 15 A. Mid to late 2008.
- 16 Q. Your understanding is that an officer should complete a
- 17 UF-250 whenever he conducts a stop based on reasonable
- 18 suspicion, right?
- 19 A. Yes, ma'am.
- 20 Q. You believe a stop has occurred when an officer has
- 21 reasonable suspicion, right?
- 22 A. Yes, ma'am.
- 23 Q. So is it fair to say that your understanding of when a stop
- occurs is based on an officer's level of suspicion?
- 25 A. Yes, ma'am.

D4P8FLO1 McCarthy - direct

- 1 Q. As of your deposition in 2009, when you had been a
- 2 lieutenant for two years, you could not recall any occasion in
- 3 which a sergeant discussed with you a problem about the way an
- 4 officer completed a 250, right?
- 5 A. That's true, ma'am.
- 6 Q. As of the date of your deposition in 2009, again, when you
- 7 had been a lieutenant for two years, no sergeant ever discussed
- 8 with you a concern about an unlawful stop, right?
- 9 A. Not that I could recall, ma'am, no.
- 10 Q. You can't recall that now or not that you recall now?
- 11 A. Not that I recall, ma'am.
- 12 Q. As a lieutenant in the 107th Precinct, you reviewed 250s,
- 13 right?
- 14 A. I did.
- 15 Q. And you ordinarily reviewed them on the computer, right?
- 16 A. Usually the UF-250 index, yes, ma'am.
- 17 Q. When you conducted your review of 250s, you did not review
- 18 them to ensure that the stops were lawful, correct?
- 19 A. That's usually true, yes, ma'am.
- 20 Q. And you did not review the 250s to determine whether the
- 21 officer had reasonable suspicion, right?
- 22 A. When reviewing the 250 on the computer on the index, ma'am?
- 23 Is that what you're referring to.
- 24 Q. I am referring to when you reviewed 250s, you did not
- 25 review them to determine, as a lieutenant, to determine whether SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1 McCarthy - direct

1 the officer conducting the stop had reasonable suspicion?

- 2 A. When utilizing the index, yes, ma'am.
- 3 Q. I will ask the question again. When you were a lieutenant
- 4 and you were reviewing 250s, you did so without looking to
- 5 ensure whether the officer who conducted the stop had
- 6 reasonable suspicion, right?
- 7 A. When utilizing the index, yes, ma'am, that's true.
- 8 Q. That was the only time that you would be as a lieutenant
- 9 reviewing 250s, right?
- 10 A. Unless I was present when the officer did the 250, then I
- 11 was present on the scene, or the sergeant did the 250. But
- 12 when utilizing the index, yes, ma'am, that's true.
- 13 Q. I am going to hand you a copy of your deposition
- 14 transcript. You recall that you were under oath when you gave
- 15 this deposition?
- 16 A. Of course, yes, ma'am.
- 17 Q. You swore to tell the truth?
- 18 A. Yes.
- 19 Q. And did you tell the truth, right?
- 20 A. Yes, ma'am.
- 21 I couldn't read this. The writing is too small. I
- 22 apologize.
- THE COURT: Do you have a non-minuscript?
- MS. BORCHETTA: We will see if we can get a copy of it
- and come back to this.

SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1 McCarthy - direct

- 1 Q. It is small writing.
- 2 A. I apologize.
- 3 Q. Isn't it true that as a lieutenant you were only reviewing
- 4 250s to identify crime trends?
- 5 A. When utilizing the index, yes, ma'am. I was utilizing that
- 6 to identify crime trends, yes, ma'am.
- 7 Q. Isn't it true that no matter whether you were reviewing it
- 8 in the index or otherwise, you were only reviewing them for
- 9 crime trends?
- 10 A. No. If somebody were to actually give me the 250, that's
- 11 not what I would be reviewing it for, no, ma'am.
- 12 Q. Perhaps let's take a look at your deposition. Here is a
- 13 larger print version.
- 14 A. Thank you very much. Thank you.
- 15 Q. If you would turn to page 107.
- 16 A. Yes, ma'am.
- 17 Q. I will be reading line 20 through page 108, line 2. Do you
- 18 recall giving the following testimony in response to the
- 19 following questions:
- 20 "Q. So other than reviewing it to identify crime trends or to
- 21 identify potential suspects, do you review 250 forms for any
- 22 other purpose?
- 23 "A. No. I review the form to identify crime trends and
- 24 possibly outstanding perpetrators that possibly have committed
- 25 crimes."

D4P8FLO1 McCarthy - direct

- 1 Did you give that testimony?
- 2 $\,$ A. I do. And I believe when I said that I can clear it up, I $\,$
- 3 believe we were speaking about the index at that time.
- 4 Q. But your testimony was, "I review the form to identify
- 5 crime trends, " right?
- 6 A. I did say that, yes, ma'am.
- 7 Q. In your two years that you were a lieutenant prior to your
- 8 November 2009 deposition, you reviewed 250s once or twice a
- 9 week, correct?
- 10 A. Yes, ma'am.
- 11 Q. In all of those reviews, you never saw a problem or
- 12 deficiency in any of the 250s that you reviewed, correct?
- 13 A. No, ma'am.
- Q. No, that's correct? Is that correct or incorrect?
- 15 A. No, ma'am. I never found a problem, no.
- 16 Q. Are you saying today that when you were the lieutenant you
- 17 reviewed 250s other than when you were reviewing them in the
- 18 250 database?
- 19 A. Yes, ma'am.
- 20 Q. Let's look again at your deposition. Turning to page 100,
- 21 I will be reading lines 12 to 15. Do you recall giving the
- 22 following testimony:
- 23 "Q. Other than reviewing the data on the computer, do you
- 24 review UF-250 forms at any other time?
- 25 "A. No, ma'am."

D4P8FLO1 McCarthy - direct

- 1 Did you give that testimony?
- 2 A. Yes, ma'am.
- 3 Q. As a lieutenant in the 107th Precinct, you had instructed
- 4 sergeants regarding their review of officers' memo books,
- 5 right?

6

14

- A. That particular conversation I don't recall.
- 7 Q. You don't recall ever giving sergeants instructions about
- 8 their review of officer memo books?
- 9 A. Specifically right now, no, ma'am, I don't.
- 11 Q. Correct.
- 12 A. I apologize. I thought -- can we just go back? I thought you were saying activity logs.
 - THE COURT: Is there a difference?
- 15 THE WITNESS: I thought she was still speaking about
- 16 250s.
- THE COURT: Activity logs and memo books are the same?
 THE WITNESS: Yes, ma'am. I'm sorry.
- 19 Q. I will try the question again.
- 20 As a lieutenant in the 107th Precinct, you instructed
- 21 sergeants regarding their review of police officers' memo
- 22 books, right?
- 23 A. Yes, ma'am.
- 24 Q. And your instructions to the sergeants were to sign the
- 25 memo book frequently and review the memo books for completeness SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1 McCarthy - direct

- 1 and accuracy, right?
- 2 A. Yes, ma'am.
- 3 Q. But you never instructed sergeants under your supervision
- 4 to compare memo book entries related to stops to 250s completed
- 5 for those stops, right?
- 6 A. Specifically, no. But that does lend itself to accuracy
- 7 and completeness.
- 8 Q. But you never gave sergeants that instruction?
- 9 A. Directly those words, no, ma'am.
- 10 Q. Well, you never told them to compare memo books and 250s,
- 11 right?
- 12 A. No. But again.
- 13 Q. No sergeant under your supervision has ever informed you of
- 14 problems in memo book entries for police officers when you were
- in the 107th Precinct, right?
- 16 A. No, ma'am.
- 17 Q. I am going to show you an exhibit. It's already been
- 18 admitted in evidence. This is Plaintiffs' 249.
- 19 A. Thank you.
- 20 Q. If you turn to the third page -- on the first page, do you
- see this is a memo book for an officer named Moran?
- 22 A. Yes, ma'am.
- 23 Q. On the third page, which is NYC 556, do you see that there
- is an entry at 1415 for male stopped?
- 25 A. Yes, ma'am.

D4P8FLO1 McCarthy - direct

1 Q. And you would agree with me that this memo book entry does

- 2 not include the circumstances that led this officer to stop the
- 3 man?

4

- A. I'm sorry, ma'am?
- 5 Q. You would agree with me that this memo book entry does not
- 6 include circumstances that led to this stop?
- 7 A. Suspicious bulge.
- 8 Q. You're referring to the notation of suspicion bulge in the
- 9 memo book?
- 10 A. Yes, ma'am.
- 11 Q. But beyond that, this officer did not include anything
- 12 about the circumstances that led him to stop this person,
- 13 right?
- 14 THE COURT: Putting it a different way, the only
- notation is suspicious bulge, that's the circumstance, right?
- THE WITNESS: Yes, ma'am.
- 17 THE COURT: Was that sufficient for you?
- THE WITNESS: Yes, ma'am.
- 19 Q. And no sergeant discussed this memo book entry with you,
- 20 right?
- 21 A. No, ma'am. When was this entry made?
- 22 Q. This is January 2008.
- 23 A. OK. No. No sergeant did discuss this memo book entry with
- 24 me, no.
- Q. Going back briefly to the issue of comparing memo books to SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1 McCarthy - direct

1 250s, no supervisor of yours ever instructed you to instruct

- 2 sergeants under your supervision to compare UF-250s with memo
- 3 books, right?
- 4 A. No supervisor of mine?
- 5 Q. Right.
- 6 A. OK.
- 7 Q. I will try it again. You never instructed sergeants under
- 9 your supervision to compare memo books with UF-250s, right?
- 9 A. No, ma'am.
- 10 Q. And no supervisor of yours ever instructed you to tell the
- 11 sergeants under your supervision to compare memo books and
- 12 250s?
- 13 A. Not that I recall, no, ma'am.
- Q. And as a lieutenant in the 107th Precinct, you never
- instructed sergeants under your supervision to discuss UF-250s
- with their subordinate officers, right?
- 17 A. No, ma'am.
- 18 Q. You have never discussed the NYPD's policy regarding racial
- 19 profiling with officers under your supervision, right?
- 20 A. No, ma'am.
- 21 MS. BORCHETTA: No further questions, your Honor.
- 22 THE COURT: Thank you.
- 23 CROSS-EXAMINATION
- 24 BY MS. RICHARDSON:
- 25 Q. Good morning, Lieutenant McCarthy.

SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1 McCarthy - cross

- 1 A. Good morning, ma'am.
- 2 Q. How long have you been employed by the NYPD?
- 3 A. 17 and a half years.
- 4 Q. Did you attend and graduate from the NYPD police academy?
- 5 A. Yes, ma'am, I did.
- 6 Q. When did you graduate from the police academy?
- 7 A. June 30, 1995.
- 8 Q. Can you please walk the Court very briefly through your
- 9 various assignments with the NYPD after you graduated from the academy?
- 11 A. I graduated from the police academy on March 18, 1996. I
- 12 was assigned to the 73rd Precinct, which is in Brownsville,
- 13 Brooklyn. I was assigned to the field training unit while
- 14 there. After being assigned to the field training unit, I was
- assigned to the community policing unit, until I was promoted
- in August of 2000, when I was transferred to the Midtown North
- 17 Precinct. There I was assigned patrol, and from patrol I was
- 18 assigned to the field training unit supervisor, then to the
- 19 street narcotics enforcement unit. After that the peddler
- 20 unit, until I was promoted in October of 2007, when I was
- 21 transferred to the 107 Precinct. I was assigned as a
- 22 replacement lieutenant. And after being assigned as a
- 23 replacement lieutenant, I was assigned the special projects
- 24 lieutenant, and after special projects, the special operations
- 25 lieutenant, until early 2010, when I was transferred to the SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1 McCarthy - cross

- 1 Patrol Borough Queens South.
- 2 Q. You mentioned that when you were promoted to sergeant and
- 3 assigned to the Midtown North Precinct, that you were at one
- 4 point the field training sergeant?
- 5 A. Yes, ma'am.
- Q. Can you describe what your duties and responsibilities were
- 7 in that role?
- 8 A. Well, the Midtown North Precinct is in Midtown Manhattan.
- 9 We were assigned, the precinct, I believe it was 33 brand new
- 10 officers. They were broken into three squads of 11 each. I
- 11 had 11 police officers assigned to me in Manhattan. The new
- 12 police officer is usually tasked with street fairs, food
- 13 festivals, rock concerts, whatever is playing at Madison Square
- 14 Garden, Radio City Music Hall. It's very rare that they get a
- chance to actually go out on foot post, almost never in a car.
- 16 When they did have the opportunity to go out on their
- foot posts, they would go out. We would bring them in, meaning
- 18 myself, the training sergeant, bring them in a half hour at the
- 19 end of their tour, and at the end of their tour we would
- 20 discuss any interactions, any questions, any paperwork that any
- of the officers had prepared, and basically learn as a group
- from other people's experiences.
- 23 Q. Now, in your current assignment at Patrol Borough Queens
- 24 South, what is your current duties and responsibilities?
- 25 A. My current assignment is I work for Patrol Borough Queens SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FL01 McCarthy - cross

South investigations. I am an lieutenant assigned to

- 2 investigations.
- 3 Q. Have you in your current assignment ever conducted an
- 4 investigation concerning stop, question and frisk?
- A. There have been. It's a very small number of the cases
- 6 that we actually receive. They are assigned through the
- Internal Affairs Bureau. The majority of the cases have to 7
- 8 deal with police officers' domestic incidents, traffic law, law
- 9 summons, and a lot of cases have to do with property, the
- 10 vouchering of property.
- 11 Q. Out of the cases dealing with stop, question and frisk that
- 12 you do receive, do you recall any of them ever being
- 13 substantiated?
- 14 A. I can specifically recall one being substantiated, yes,
- 15 ma'am.

17

- 16 Q. What were the details of that investigation?
 - A. I believe the investigation was that a man had called the
- 18 police to state that he had a car on the back of his property,
- like an abandoned car on the back of his property, and that he 19
- 20 had saw three men either inside the car or breaking into the
- 21 car. The police responded and the investigation yielded that
- 2.2 the police did respond and removed the men from the car and did
- 2.3 frisk the men. Again, further along in the investigation it
- 24 was determined that the sergeant failed to ensure that a 250
- 25 was prepared, and the police officer did not prepare the 250. SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1 McCarthy - cross

- 1 Q. Did those officers receive any discipline for that?
- 2 A. They did, ma'am. They both received command disciplines.
- 3 Q. Prior to your current assignment, you were the special
- 4 operations lieutenant in the 107th Precinct, correct?
- 5 A. Yes, ma'am.
- 6 Q. Can you describe briefly what a special operations
- 7 lieutenant does?
- 8 A. The special operations lieutenant is tasked with being in
- 9 charge of all the specialty units that operate outside -- well,
- 10 most of the specialty units that operate outside the guise of
- 11 patrol: The anticrime team, the school team, sometimes the
- 12 traffic team, domestic.
- 13 Q. What area does the 107th Precinct cover?
- 14 A. That's Fresh Meadows, Queens, ma'am.
- 15 Q. How large is that command?
- 16 A. It's six square miles. It's a large command, ma'am.
- 17 Q. While you were assigned to the 107, how would you describe
- 18 the crime conditions there?
- 19 A. The precinct is made up mostly of residential. It's upper
- 20 middle class, most of it. But with that being said, there are
- 21 pockets of violent areas. In the north end, there is a housing
- 22 development Pomonok, and in the lower end of the precinct there
- 23 is, in sector Charlie specifically, there's three high
- 24 schools -- Thomas Jefferson, Jamaica High School and
- 25 Hillcrest -- that all go to school and dismiss within an hour SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1 McCarthy - cross

of each other. So you have a large influx of people at that time.

The 107th Precinct is unique in that it has three

- major highways that go through the precinct. You have the Van
- 5 Wyck, the Grand Central and the Long Island Expressway. So
- 6 that being said, with residential comes those crimes, the
- 7 burglaries and crimes against people's property, the cars and
- 8 stuff like that. It made for a very easy get off and get on
- 9 the highway before anybody was alerted.
- 10 Q. When did you become the special operations lieutenant at
- 11 the 107th Precinct?
- 12 A. July, August or September of 2008.
- 13 Q. Did you ever directly supervise Sergeant Hegney?
- 14 A. I believe I did at a short time in the beginning.
- 15 Q. At the beginning when you were the special operations
- 16 lieutenant?

3

- 17 A. When I first was assigned as the special operations
- 18 lieutenant, yes, ma'am.
- 19 Q. So in January of 2008, you were not his direct supervisor,
- 20 correct?
- 21 A. No, ma'am.
- 22 Q. Now, as a special operations lieutenant, would you discuss
- 23 with your officers what conditions they were supposed to
- 24 address?
- A. Most of those conversations occurred with their SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FLO1 McCarthy - cross

- 1 supervisors, yes, ma'am.
- 2 Q. How would you determine what the conditions were to tell
- 3 the supervisors?
- 4 A. After speaking with the commanding officer, reviewing
- 5 CompStat paperwork, reviewing the complaint reports, speaking
- 6 with the detective squad, if there were any trends or patterns
- 7 developed, and again, speaking with the CO, we would develop
- 8 and formulate a plan of where the latest trends and the
- 9 concentration should occur.
- 10 Q. As the special operations lieutenant, how would you
- 11 supervise your officers in terms of their stop, question and
- 12 frisk activity?
- 13 A. If I was on administrative duties, I would be inside the
- 14 command with the radio on. I would be able to hear the
- 15 officers conducting their stops. Between once and twice a
- 16 week, I would probably go out with one of the supervisors of
- 17 the specialty units, ride along with him, again monitoring the
- 18 radio, watching that supervisor, how he is supervising his
- 19 people, the jobs that he is showing up on, what I thought was
- 20 important and what he thought was important.
- 21 Q. Now, you mentioned when Ms. Borchetta was questioning you
- 22 that you would review the UF-250 index?
- 23 A. Yes, ma'am.
- Q. Is the index the same as the UF-250 database?
- 25 A. It is, ma'am. The index is just an index though. It's not SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1 McCarthy - cross

1 specific to -- it does not give all the information, the actual

- 2 form does.
- 3 Q. What information is included in the index?
 - A. At this time, I don't remember. It's just -- it's a short
- 5 blurb. It's not giving you all the information unless you
- 6 would open the actual 250. I believe it gave you the location,
- 7 the location of the stop.
- 8 Q. You remember it giving you the location?
- 9 A. I believe so. That's what I would have utilized it for, to
- 10 find out the location.
- 11 Q. Can you describe the type of training that you received at
- 12 the police academy?
- 13 A. The police academy is broken up into four blocks. The
- 14 first being physical education that was split in half, half of
- 15 it would be physical education, the second half would be
- 16 tactics/street encounters training. There would be a law
- 17 block, a social science block, and a police science block.
- 18 Q. Did any of that training include training on the law of
- 19 stop, question and frisk?
- 20 A. Yes, ma'am.
- 21 Q. Can you describe the training on stop, question and frisk
- 22 that you received at the academy?
- 23 A. Not that I recall specifically, no, ma'am.
- Q. But you know that you received training?
- 25 A. Yes, ma'am, absolutely.

D4P8FLO1 McCarthy - cross

1 Q. Did you also receive training on completing UF-250s at the academy?

- 3 A. Yes, ma'am.
- 4 $\,$ Q. Have you been trained on stop, question and frisk since you
- 5 left the police academy?
- 6 A. Yes.

15

16

17

18

19 20

21

22

2.3

24

25

- Q. What type of training have you received since you left the academy?
- 9 A. The form has evolved some. There was a change in the form, 10 and actually a couple of weeks, I believe it was approximately 11 six weeks ago, the borough training sergeant again made the 12 rounds to say that the procedure again had changed.
- Q. So thinking back to six weeks ago, what was the change in the procedure that you were trained for?

MS. BORCHETTA: Objection.

THE COURT: The objection is?

MS. BORCHETTA: Your Honor, the city has identified policy level people who will be describing, we understand, in detail the training, and we just think it would be duplicative to have this witness talk about something that happened as recently as a few weeks ago, especially when we have no notice of what that training was.

MR. CHARNEY: Also, this is that March 5, 2013 memo that Chief Hall was going to testify about, and you said that he should be the one to testify about it.

D4P8FLO1 McCarthy - cross

THE COURT: If I said that already, then Chief Hall is the person who should testify about it.

Do you plan to call him?

MS. GROSSMAN: Yes, your Honor. But to the extent that the Court wanted to develop testimony that showed that this is indeed happening. Plaintiffs are suggesting that many of our policies are not being followed out at the ground level. So we want to develop testimony --

THE COURT: I think that was yesterday's testimony. It certainly didn't relate to the last six weeks. It related to a number of years. That was his whole point in talking about operational versus written policies.

But two questions. You are aware of this new policy and you're carrying it out?

THE WITNESS: Yes, ma'am.

THE COURT: That's about it. Let's hear about the policy from Chief Hall. He says he carries it out. Fine. BY MS. RICHARDSON:

- 19 Q. Based on your training and experience, when can you stop 20 and question a citizen?
- 21 A. When you have reasonable suspicion to believe a crime was,
- is, or about to be committed.
- 23 Q. What paperwork, if any, are you required to fill out when
- you conduct a stop?

1

2

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

25 A. The UF-250 and the memo book, ma'am.

D4P8FLO1 McCarthy - cross

1 Q. Are officers required to fill out a UF-250 every time they

- 2 conduct a stop?
- 3 A. No, ma'am.
- 4 Q. When are they not required to fill out a UF-250?
- 5 A. If an officer were to have probable cause before the stop,
- 6 then they wouldn't be required to fill out a UF-250, ma'am.
- 7 Q. That's because they would have probable cause to make an
- 8 arrest?
- 9 A. Yes, ma'am.
- 10 Q. What is your understanding, if any, of the term furtive
- 11 movements?
- 12 A. I would define that as a suspicious movement.
- 13 Q. What exactly do you mean by a suspicious movement?
- 14 A. I would explain it in an example, if you were to look at
- 15 somebody and they were ducking and hiding behind a car, trying
- 16 numerous door handles on the car, looking up and down the
- 17 street, maybe hiding behind the car at the sight of police.
- 18 Q. Can you forcibly stop someone solely for exhibiting furtive
- 19 movement?
- 20 A. Absolutely not.
- 21 Q. What else would you need in order to conduct a stop in that
- 22 situation?
- 23 A. The time of day, maybe the knowledge of that person, crime
- trends that are happening in the area, a bunch of things
- 25 besides furtive movement you could use.

D4P8FLO1 McCarthy - cross

- 1 Q. What is your understanding of the term frisk?
- 2 A. Frisk would be the actual patting down of the outer
- 3 garments of a person.
- 4 Q. Based on your training and experience, when can you frisk a
- 5 person?
- 6 A. When you suspect that the person has a weapon.
- 7 Q. What level of suspicion is required to frisk a person?
- 8 A. Reasonable suspicion.
- 9 Q. Do you frisk every person that you stop?
- 10 A. No.
- 11 Q. What is your understanding regarding what kinds of
- 12 information officers must include in their memo book?
- 13 A. The memo book should have a detail of the officer's day,
- 14 their tour, their assignment, the jobs that they are assigned,
- any kind of activity that they conduct during that tour of
- duty, and their end of tour, and their signature.
- 17 Q. Has your practice of what to include in your memo book
- 18 changed over time at all?
- 19 A. I'm sorry. My practice?
- 20 Q. Correct. Has your practice of what to include in your memo
- 21 book changed at all over time that you have been in the NYPD?
- 22 A. Yes, ma'am. Yes.
- 23 Q. How has it changed?
- 24 A. Some things now require, I believe, more entries to be
- 25 made.

D4P8FLO1 McCarthy - cross

1 Q. Do you know if the NYPD has a policy prohibiting racial

- 2 profiling?
- 3 A. Yes, ma'am.
- 4 Q. What do you understand the policy to be?
- 5 A. Strictly forbidden.
- 6 Q. When did you first learn about the policy?
- 7 A. Sometime in the police academy, ma'am.
- 8 Q. Have you ever been trained on the NYPD policy regarding
- 9 racial profiling?
- 10 A. Yes, ma'am.
- 11 Q. When were you trained?
- 12 A. Specifically, I can't remember dates, but it's been
- 13 numerous times since graduating the police academy also, ma'am.
- 14 Q. Now, thinking back to when you were a police officer, did
- 15 you ever feel that if you did not conduct a certain number of
- stops, summonses or arrests that you would be punished?
- 17 A. No.
- 18 Q. As a supervisor, have you ever told an officer that he has
- 19 to complete a certain number of stops, summonses or arrests?
- 20 A. No, ma'am.
- MS. RICHARDSON: One minute, your Honor.
- No further questions, your Honor.
- THE COURT: Thank you.
- 24 Anything further?
- MS. BORCHETTA: Very briefly.

SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1 McCarthy - cross

- 1 REDIRECT EXAMINATION
- 2 BY MS. BORCHETTA:
- 3 Q. Lieutenant, you just testified about your understanding of
- 4 activity log entries having changed over time.
- 5 A. Yes, ma'am.
- 6 Q. Based on your understanding sitting here today, is this
- 7 memo book entry that we looked at earlier, that is Plaintiffs'
- 8 Exhibit 249, with respect to the stop indicated at time 1415,
- 9 is that sufficient?
- 10 A. I believe it is sufficient. I would like more information,
- 11 but I believe it to be sufficient, yes, ma'am.
- 12 Q. That's based on your current understanding of the NYPD's
- 13 current policy, right?
- 14 A. Again, ma'am, I believe that I understand it.
- 15 Q. So yes?
- 16 A. Yes, ma'am.
- 17 Q. You mentioned that you sometimes would listen to stops
- 18 being heard -- being called in over the radio?
- 19 A. Yes, ma'am.
- 20 Q. That's one way you were able to, you say, observe stops
- 21 that police officers under your supervision were engaging in?
- 22 A. Yes, ma'am.
- 23 Q. But that's only if the police officer called in the stop
- that he or she was conducting, right?
- 25 A. Yes, ma'am.

D4P8FL01 McCarthy - redirect Q. You did supervise Sergeant Hegney at some point, right? A. Yes, ma'am. 3 Q. At what point did you supervise him? 4 A. I believe sometime in July or August of 2008. Q. Until when? 5 6 A. Until when? I don't know when he was transferred, ma'am. 7 I don't know the date that he was transferred. 8 MS. BORCHETTA: No further questions. 9 THE COURT: Anything further? 10 MS. RICHARDSON: Nothing further. 11 THE COURT: Thank you. 12 THE WITNESS: Thank you very much. Have a nice day. 13 MS. BORCHETTA: At this point, the city will begin 14 calling witnesses, and before we begin that portion of the 15 trial we wanted to note a few things for the record. 16 THE COURT: When do we get Cirabisi, Farrell and 17 Walker? 18 MS. BORCHETTA: We sought to call Michael Farrell and 19 Steven Cirabisi in our case, but because of scheduling, we 20 agreed with the city to postpone our questioning of them until the city calls them. That's based on a stipulation that the 21 22 city will call each of these witnesses and that our questioning 2.3 of these witnesses on cross will be in no way limited. 24 THE COURT: OK. 25

MS. BORCHETTA: We also still need to submit to the

D4P8FLO1

2.2

2.3

Court deposition designations for the witnesses Barrelli and Provost, and we are working on those, and we will submit them to the Court hopefully very soon.

With respect to Mr. Provost's deposition designation, we just note that we will be submitting to the Court the deposition designations from both sides, as well as the objections, and the city has provided documents that they want admitted through that deposition designation, to which we object, and we will submit our objection when we submit the deposition designation about those exhibits.

As the Court might recall, we are incorporating certain parts of the Ligon injunction hearing into this case and some of them are whole cloth and some of them will be designations.

THE COURT: How are you doing that? You're doing it physically?

MS. BORCHETTA: That's what we were going to seek guidance from the Court. We didn't know whether the Court would want us to submit the transcripts again here or whether we should just submit the designations of the testimony that we are incorporating.

THE COURT: I don't know if we have a transcript.

If you would just tell us the date and pages and lines on the record here so that the record is clear as to what is being incorporating, that's fine.

D4P8FL01

MS. BORCHETTA: We will do that. THE COURT: What about Walker? 2 3 MS. BORCHETTA: Your Honor, Walker is a remedies only 4 witness. The Court has indicated that the remedies phase 5 should happen once liability for both sides has finished. So 6 we will be calling him whenever the liability evidence is 7 completed. 8 THE COURT: Is the city's evidence bifurcated that 9 way? I would think some of the policy people you're calling 10 really go to both. I don't know. How does this work? 11 MS. GROSSMAN: I think that we have said that there is 12 overlap. I think that's why the Court had Walker scheduled 13 later in the case. MR. CHARNEY: So he could hear the testimony of those 14 15 policy people. 16 THE COURT: Then do you have an expert in that field 17 too? 18 MS. GROSSMAN: Yes, we do. We just submitted a report 19 two weeks ago. 20 THE COURT: From? 21 MS. GROSSMAN: From Chip Stewart. 22 THE COURT: So that would be at the end also? 23 MS. GROSSMAN: Yes. 24 THE COURT: OK. 25 MS. BORCHETTA: With respect to the incorporation of SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1

2.3

Ligon testimony, some of the high-level witnesses who testified will be incorporated in their entirety, and we just note that the city is calling some of those people here, and the Court has already ruled that they cannot repeat their Ligon testimony. So we would object to the extent that these witnesses do repeat Ligon testimony.

THE COURT: I don't know how they can't. Give me an example of a real person that you're thinking of.

MS. BORCHETTA: Chief Shea, who is the next witness. THE COURT: Is that the next witness that you intend to call?

 $\ensuremath{\mathsf{MS}}$. COOKE: The city's first witness on the case in chief.

THE COURT: How are you going to not repeat a question that happened in the Ligon case? I can't sit her and rule and say, yes, that was asked, you can't ask it.

MS. COOKE: It's not my intention to repeat the testimony that is in the transcript from the Ligon hearing. Chief Shea's testimony with respect to training in stop, question and frisk, and specifically focused on trespass arrests, will stand as it stands in Ligon and incorporated here. There are more expansive issues and materials and documents related to the issues of training in this case.

THE COURT: I am afraid I am going to have a plaintiffs' lawyer popping up every other question saying, that SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FL01

2.2

2.3

was asked, that was asked. I don't have a transcript in front of me. I don't want to start looking at every question and answer and saying, you're right, you're wrong. I would really would find that to be burdensome.

MS. HOFF VARNER: Your Honor, if I may. The plaintiffs don't intend to object to questions that were asked in Ligon that would be necessary in this case for a foundation or context or to the extent that it is obviously more expansive than the narrow issues in Ligon. But Chief Shea did testify to broad training documents relative to stop, question and frisk. The testimony was not limited to the trespass issue. For example, he provided, I think, 26 pages of testimony about how officers were trained on the various factors, the check off boxes on the UF-250.

 $\ensuremath{\texttt{MS.}}$ COOKE: I don't intend to repeat any of that testimony.

THE COURT: Let's see what happens. I am just concerned that you will be popping up and down, and I am supposed to look through the transcript and say that exact question was asked. So try to keep your objections to a minimum.

MS. HOFF VARNER: We understand.

MS. BORCHETTA: Again, we seek guidance from the Court about the submission of transcripts that are tied to recordings. We have now agreed with the city on transcripts SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FL01

3

4

5

6

7

9

10

11

12

13

14

15

16

17

18

19

20

21

2.2

2.3

24

25

for the various recordings that have been submitted to the $\operatorname{\mathsf{Court}}$.

THE COURT: I need all the transcripts.

MS. BORCHETTA: We will provide them to the Court. We didn't know whether the Court would like to move their admission, which we hadn't done.

THE COURT: They are all going to be T.

MS. BORCHETTA: I will move for the admission now of Plaintiffs' Exhibit 284T. Those are related to the Polanco exhibit.

THE COURT: That's fine. Do the whole list.

MS. BORCHETTA: Plaintiffs' 289T, Plaintiffs' 297T1, Plaintiffs' 297T2, and Plaintiffs' 332T.

THE COURT: They are all received.

(Plaintiffs' Exhibits 284T, 289T, 297T1, 297T2, and 332T received in evidence)

MS. BORCHETTA: We also seek guidance on post-trial briefs. The parties had in the JPTO asked for three weeks once evidence closes, and we again seek guidance on whether the Court agrees with that schedule or whether the Court is going to order otherwise.

THE COURT: What do you expect to do in the post-trial briefs? Are you talking about briefs or findings of facts and conclusions of law where you key it to the transcript?

MS. BORCHETTA: Our understanding was that the Court SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1

2.2

2.3

would require findings of fact, conclusions of law, and post-trial briefs, three documents, that are tied together essentially, but yes, tying it to the transcript. We had seen examples from other cases that this Court has heard.

THE COURT: Every case is unique. Sometimes I just say submit proposed findings of fact and conclusions of law that you key to the transcript. Really, I say go back to the ones you submitted before the trial and just put the pages in.

What is going to be in a post-trial brief?

MS. BORCHETTA: Our understanding was that was the Court's practice. Our understanding was that we would have the findings of fact, conclusions of law — that the findings of fact will be tied to the transcript and that the conclusions of law would be very summary, and that the trial briefs would argue any issues of law that needed to be argued.

THE COURT: Haven't you done it already?

 $\,$ MS. BORCHETTA: We don't need to have it. It was our understanding it was this Court's practice.

THE COURT: Not necessarily if you did trial briefs already. Did we already have briefs?

MS. BORCHETTA: No, we did not. We had raised this before the trial and the Court said that we could do it at some point after the trial, and that's when the parties agreed to this three week timing in the joint pretrial order.

THE COURT: If you didn't have trial briefs before, SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FL01 1 then it's OK to have it after. 2 MS. BORCHETTA: I guess the question is the amount of 3 time. 4 THE COURT: Three weeks. But not responsive to each other. Both submit it simultaneously. 5 6 MS. BORCHETTA: Thank you. 7 Just for clarity, if the Court wanted briefs, we would 8 submit them. What I am hearing is that the Court does not want 9 briefs. 10 THE COURT: No. I thought we had them before. 11 MS. BORCHETTA: We did not. 12 THE COURT: We had a remedies brief. 13 MR. CHARNEY: Yes. 14 THE COURT: But we didn't have it on the substance. 15 As long as we didn't have it already, it's fine. I didn't want 16 it twice. I couldn't imagine what is left to say if you 17 already said it before the trial started. But if you didn't, 18 then that's fine. 19 MS. BORCHETTA: So then my understanding is we will 20 submit findings of fact, conclusions of law, and a post-trial 21 brief. 2.2

THE COURT: It's not three separate submissions. The proposed findings of facts and conclusions of law is usually one, and then one post-trial brief.

2.3

24

25

MS. BORCHETTA: The final issue that I need to raise SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FL01

2.3

is related to Officer Dang. The Court will recall, at the close of testimony earlier this week, we raised that the city was seeking to admit an exhibit with 127 UF-250s, and that we did not object to the admission of that exhibit, and we would seek to use that exhibit, but we are concerned about how many of those stops, if any, the city was seeking to establish the legality of stops because we didn't have any opportunity to investigate those stops. And the city, pursuant to this Court's order, identified seven different groups of UF-250s that are 17 stops for that officer.

And again, while we don't object to the city's using those 250s, to the extent that they can elicit testimony on supervision related to them or monitoring related to them, we don't object. In fact, we would seek to use it for that purpose. But we do object to their seeking to establish the legality of 17 stops when we have no idea who those people stopped were, where they didn't ever indicate prior --

THE COURT: Is that the city's intention? Who is putting this witness on?

MS. RICHARDSON: We have no intention of attempting to establish the legality of the stops, but we believe that we should be able to elicit information. There are certain check boxes on the 250. Plaintiffs have indicated they are checked off at certain rates and that officers check off, for example, furtive movements and it's meaningless. So we believe that we SOUTHERN DISTRICT REPORTERS, P.C.

2 3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19 20

21 2.2 2.3

24

25

should be permitted to question Officer Dang regarding these 250s about why he checked off furtive movements and establish what his practice is with respect to them.

MS. BORCHETTA: If the testimony is so limited, then that resolves our objection.

The final issue, just noting for the record, there were two discovery issues that came up during plaintiffs questioning of witnesses. One was whether there was an investigation into a racial profiling allegation in an OCD complaint, and the city still owes us that response. So we don't want to lose the right to that.

MS. COOKE: We provided a letter with several attachments by e-mail on April 22 and a declaration.

MS. BORCHETTA: To the extent that we have any issue with that submission, then we just don't want to waive any rights to seek further information.

Also, with respect to discovery from the Department Advocate's Office on the supposed reason that there was an increase in the declines to issue discipline in 2012. So we just note that's not yet fully resolved.

THE COURT: Was that one of the two women?
MS. COOKE: Commissioner Schwartz. The request has been made to her.

THE COURT: She said she would go back and pull that from her computer.

2.3

 MS. BORCHETTA: That's it.

 $\,$ MR. CHARNEY: One other issue related to the witnesses that the city is going to call. And this is related again to the Ligon issue.

Several of the high-level witnesses who are testifying in this case did testify in Ligon, and we talked about the try not to repeat the testimony. But our concern is that, to the extent they are testifying about matters that were not testified to in Ligon, these are witnesses we have never had a chance to depose.

THE COURT: Why is that? Everybody has been deposed. MR. CHARNEY: Because they were not disclosed as witnesses in this case until February of this year.

What your Honor had ruled, I believe in the March 5 conference, that three of those witnesses we would be permitted to depose. The city has decided not to call those three witnesses. So that's resolved.

There are still five others, and I guess our concern is, we realize they are going to try not to repeat their testimony from Ligon, but we don't really have any idea of what they are going to testify about if they are not going to testify about what they testified to in Ligon, and we have no proffer of any kind from the city about the subject matter of their testimony.

One of them is scheduled to testify tomorrow, SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

2.3

Inspector Lehr, who is a commanding officer from the 62nd Precinct. So we have no idea of what he is supposed to testify about, which we think is extremely prejudicial to us at this point. So we would request that the city provide us some kind of proffer of the subject matter of his testimony beyond the fact that it's not going to be overlapping with Ligon.

THE COURT: This one person?

MR. CHARNEY: There's four of them. There is Inspector Lehr, Inspector Catalina. Chief Hall, who is obviously a very important witness. We know he is going to talk about that one memo, but beyond that we have no idea what he is going to testify to. Then Brian McCarthy, who is simply identified as a remedies witness, but we have no idea what aspect of remedies. Because he is not their expert, he is a fact witness. We have no idea what he will testify about.

THE COURT: Is he a high level police department

17 person?

 $\,$ MR. CHARNEY: He is identified as a chief. So we just would like some kind of proffer as to what these individuals will be testifying about.

THE COURT: Remind me again why they weren't deposed. Because I said no?

MR. CHARNEY: They had identified a slew of high-level people. The resolution that your Honor came to was pick three, and we picked three, and then they decided not to call those SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FL01

2.3

three so we didn't have to depose those three. But there are these other four, who we didn't get to depose, and given where we are in the trial now, I don't know if that's something your Honor would allow us to do, especially since one of them is testifying tomorrow. I don't know if that's even possible. We just have no idea what they are going to testify about.

THE COURT: Which are the four names?

MR. CHARNEY: Kenneth Lehr. Then we have on the second page, number 30, we have Inspector Kevin Catalina. Then we have Chief James Hall and Chief Brian McCarthy.

THE COURT: Of those four, only Hall testified in the Ligon trial?

 $$\operatorname{MR}.$ CHARNEY: They all did. Your Honor said you didn't want repetition.

THE COURT: So you know very well who they are. They certainly described who they are.

 $\mbox{MR.\ CHARNEY:}\ \mbox{Yes.}\ \mbox{We know two of them are precinct commanders.}$

THE COURT: Which two are precinct commanders?

MR. CHARNEY: Lehr and Catalina are precinct commanders. And we know, of course, Chief Hall is the chief of patrol. And I believe Chief McCarthy works in the chief of

patrol's office. We know who they are and where they work, but we don't know what they are going to testify about. And we

know what they said in Ligon, obviously, but beyond that we SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO1

don't know what they are going to testify about here.

MS. GROSSMAN: First of all, they were all deposed in

Ligon.

2.3

 $\,$ THE COURT: I understand that. But that was limited to the issues in Ligon.

MS. GROSSMAN: Whatever was testified to at the Ligon hearing wasn't the complete testimony that was contained in the depositions that were in Ligon. So the plaintiffs have been on notice of these witnesses in Ligon as far back as October. They had access to the depositions. I think what you were contemplating, as I recall, back when you ordered us to produce these three witnesses for deposition is that they were replacements, they were current borough commanders that replaced the older borough commanders. And to the extent that there were new procedures and new policies, and there was new information, it was updated, and so you believed at that time, as I understood it, that they should have an opportunity to depose those witnesses for that purpose. That's not the same case here with Lehr, Catalina and Hall.

On the McCarthy issue, which is this high-level witness that the plaintiffs referred to, my understanding is that Mr. Dunn -- that that witness is more related to the Ligon remedy phase, and we identified Chief McCarthy for that purpose. So I believe Mr. Dunn identified him for that purpose. So we have been in communication with NYCLU to find SOUTHERN DISTRICT REPORTERS, P.C.

2.2

out if they have intentions of calling Chief McCarthy, and we thought that it was resolved that they were not. But then last night there was a confusing e-mail that seems to reserve rights to call, but I am not really sure what that means.

THE COURT: And he was deposed in the Ligon case?
MS. GROSSMAN: He was deposed and testified.
THE COURT: Do you intend to call him as a remedies

witness?

MR. DUNN: Your Honor, we haven't made a final decision on that, but I suspect we will not be calling him. Part of the confusion is the city has filed a brief, which you may not have read yet, in which they have basically not taken an issue with the remedies that you proposed in your order in Ligon. So there was some very small technical issues. So my guess is the factual presentation in the Ligon remedy is likely to disappear. I am not sure there is a dispute between the parties now about remedy.

MS. GROSSMAN: That is true if all the rulings have — if there is an appeal of the decision in Ligon and the city does not prevail, then the remedy proposed is something that we represented in our brief should be fine as set forth in our brief. So I think that's why there would not be an issue with Chief McCarthy.

 $\mbox{MR. DUNN:}\ \mbox{ I am not suggesting they are agreeing to liability.}$

THE COURT: I got that clearly. But if the liability verdict were to be sustained, or not appealed, the remedies would be worked out.

MS. GROSSMAN: Right.

MR. DUNN: That seems to be the case, yes.

(Continued on next page)

D4p9flo2 THE COURT: So you wouldn't be calling this chief or 2 officer? 3 MR. DUNN: We wouldn't be calling anybody and I don't understand -- the city wouldn't be calling anybody, though they 4 5 have not told us either. As you may recall, basically the way 6 you're set up here --THE COURT: I know. I was merging the remedies issue 7 8 that was open in Ligon because we never had it here on the 9 remedies issue with this trial. But you're saying the merger 10 is now going to break off because if the liability verdict is 11 upheld the two sides are in agreement. 12 MR. DUNN: On the Ligon remedies. 13 So to the extent that the city is saying Chief 14 McCarthy is in play only because we had put him in play --15 THE COURT: So is he a witness in the Floyd case? 16 MS. GROSSMAN: I was not contemplating at this time. 17 THE COURT: You were not contemplating calling him? 18 MS. GROSSMAN: It depended on what developed in the 19 testimony here. 20 THE COURT: I understand. But right now it's not your 21 intention? 2.2 MS. GROSSMAN: Not right now. 2.3 THE COURT: So there's three you're worried about now, 24 Lehr, Catalina and Hall. 25 So the issue is whether you should make a proffer and SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 it sounds like you should. What are these people going to testify to that's not repetitive of their testimony in Ligon 3 since they weren't deposed in Floyd. I know they were deposed 4 in Ligon. And I know that the plaintiffs team has had a chance to review that deposition. But they, I think, given the 6 absence of a deposition, are entitled to some kind of proffer, just standing up orally saying these are the subject matters 7 8 these three people intend to testify about. 9 One of them is tomorrow? 10 MR. CHARNEY: Yes. 11 THE COURT: And the other two are a ways off. So I 12 don't need the proffer on the other two this minute. So if 13 somebody -- it is --14 MR. CHARNEY: Lehr. 15 THE COURT: So what is Lehr going to cover? 16 MS. GROSSMAN: Well, if I may just take a step back, 17 your Honor. 18 The plaintiffs have been -- I understand and I know 19 you know that they've been aware of the existence --20 THE COURT: This is not helpful. I directed that the 21 proffer be made. Make the proffer. Tell me what Lehr is going 2.2 to cover. 2.3 He's a precinct commander. 24 MS. GROSSMAN: Probably very similar items to what 25 Inspector Ortiz testified to. There's really no surprise.

SOUTHERN DISTRICT REPORTERS, P.C.

2.3

Every witness has been asked about the QAD audits, about supervision, about the role a commanding officer plays in a command, the way that they look at stop, question and frisk, summonses, arrests; how is it that they are deploying their resources.

I don't think there's any surprise. We have Chief of Department, Chief Esposito, who has testified. And to the extent everything drills down to the commanding officer, it's about how the systems work up and down the chain of command.

In fact, the borough commanders, there's deposition designations. Many of the deposition designations by borough commanders and commanding officers are submitted to your Honor. The outline is there. It's all the same type of testimony, and I don't know that there's any difference.

THE COURT: So that proffer was helpful.

MR. CHARNEY: The only other thing is exhibits.

THE COURT: I was going to ask that next myself.

Do you plan to offer new exhibits through Precinct

Commander Lehr?

MS. GROSSMAN: The exhibits that are in the case are generally the type of exhibits we would be using but I have not had a chance to go through all the exhibits that I know that I want to use through Inspector Lehr.

Inspector Cirabisi -- we had Inspector Lehr and Inspector Cirabisi scheduled for tomorrow. I know that I SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

2.3

raised at the very early part of today a question about scheduling, which you suggested I just hold off. Given what plaintiffs' counsel and defense counsel have discussed yesterday that may address one issue for tomorrow but I'd rather not address that now.

THE COURT: But in terms of these documents, the exhibits -- are there exhibits that are not already in evidence that you plan to offer in evidence through them?

MS. GROSSMAN: Maybe there would be a sector map, you know, just to illustrate from, you know, a perspective, of a commanding officer for demonstrative purposes, which is not unlike some of the Google maps that we've seen, but it's a sector map. I am trying to get a copy of that so I can immediately turn it over to the plaintiffs.

I think the other evidence would be part of what's part of the record here.

THE COURT: What's already in evidence?

MS. GROSSMAN: Yes. If there's one or two I will ascertain that and try to get that to defendants immediately. But I would not -- I don't believe Lehr, we're going to have time to get to Lehr tomorrow even if we were to go forward. So we can maybe bump Lehr to next week and maybe whatever exhibits I can gather and identify for the plaintiffs we can give that to them.

MR. CHARNEY: We would ask that at the very least, SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

2.3

since we have been criticized for this numerous times, at least give us an idea. Are we talking about QAD audits? Are we talking about UF 250s? Just a sense of what --

MS. GROSSMAN: It's no surprise that — the plaintiffs will ask every witness about the 107 — let's say the 43 precinct. You're looking at the QAD audits like we looked at yesterday and we looked at the trend.

THE COURT: Right.

 $\,$ MS. GROSSMAN: I don't know that there's anything magical here or secret. That's the type of information the plaintiffs --

THE COURT: I think you've got what you generally asked for, Mr. Charney, in terms of a proffer on the immediate witness. We didn't cover all -- the other two. We're not really doing McCarthy.

 $\,$ MS. GROSSMAN: It's the same for Catalina. And Cirabisi -- it's the same for Catalina.

THE COURT: So that leaves Hall. When are we reaching Hall? Next week?

MS. GROSSMAN: Not for a few weeks.

Hall, if you think about the chief of department's testimony, it's the role that Chief Hall, as chief of patrol, would play, which has been discussed. And there was testimony from Chief Giannelli who was a former chief of patrol. And so the type of testimony that was developed there and what is SOUTHERN DISTRICT REPORTERS, P.C.

2.2

2.3

currently going on, if it's the same or different, would be the type of testimony we're talking about with Chief Hall in addition to the recent memo that we talked about.

MR. CHARNEY: With all due respect, that's just not in our view a sufficient proffer. The chief of patrol has so many areas of responsibility. I mean if they're going to stipulate that the topics that were covered in Chief Giannelli's deposition are the only topics they were going to ask him about that would be one thing.

THE COURT: She said and bringing it up to date. She said the type of testimony that was developed with Chief Giannelli and then what's currently going on. If it's different or if it's the same, in other words, bringing it current.

MR. CHARNEY: I guess my question is when they say type of testimony do they mean just the topics covered in that deposition or do they mean the responsibilities of the chief of patrol. Because there are many responsibilities of the chief of patrol that Chief Giannelli was not asked about.

THE COURT: Maybe they're not relevant to this case. We don't have to discuss it all further today. We have time to deal with that.

MS. BORCHETTA: Just one thing we need to clarify about exhibits. The plaintiffs have, despite the cherrypicked examples given to this Court, every week identified regardless SOUTHERN DISTRICT REPORTERS, P.C.

2.2

2.3

of whether exhibits were already admitted into evidence what exhibits we would use with a witness. And the purpose, the reason for that was because this Court said that it wanted efficient testimony. And so if the parties knew the exhibits that were being used we could all ask our questions as efficiently as possible.

To now suggest that the defendants going forward only have to say any exhibit admitted into evidence is not what plaintiffs have done.

MS. GROSSMAN: That's what --

THE COURT: I think she said that in response to my question of whether there were going to be new exhibits through Precinct Commander Lehr, and she said maybe one or two like the map, but that it would otherwise be exhibits in evidence. That didn't mean she was relieved of the responsibility to tell you which. But for now she was saying there are no other new exhibits. You will know which exhibits.

MS. BORCHETTA: Except Lehr is tomorrow and she has identified no exhibits so we are entitled to know a week before.

THE COURT: It can't be a week before anymore.

MS. BORCHETTA: For the clarity of the record we're entitled to know a week before the witness's exhibits regardless of whether they've already been admitted.

THE COURT: All right. Your next witness.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D4p9flo2 MS. GROSSMAN: Your Honor, before we move -- I don't 2 know if the plaintiffs are resting now. 3 THE COURT: I don't know either because the way this 4 is, they're calling some of their witnesses for scheduling 5 purposes through your witnesses. So they aren't resting now. 6 So obviously in terms of preserving the motion and making the motion this is not the time because they still have at a 7 8 minimum --9 MR. CHARNEY: At least three. 10 MS. BORCHETTA: And potentially, of course, rebuttal. 11 THE COURT: That's a different issue. 12 At a minimum, they have Cirabisi and Farell that they 13 are calling on their case but at the time you call them. So 14 they're not resting yet. We're taking witnesses out of order, 15 which is not uncommon in a nonjury trial. So that's the 16 answer. Not appropriate to make motions now. The plaintiffs 17 are not resting. 18 Now your witness. 19 MS. COOKE: Your Honor, the city calls Chief Shea. 20 JAMES SHEA, 21 called as a witness by the Defendant, 22 having been duly sworn, testified as follows: 2.3 DIRECT EXAMINATION 24 BY MS. COOKE:

Q. Good morning, Chief Shea.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

25

D4p9flo2 Shea - direct

- 1 A. Good morning.
- 2 Q. Would you please provide your educational background for
- 3 the court.
- 4 A. I graduated with a Bachelor of Science in police science
- 5 from John Jay University. And I attended the police department
- 6 and Columbia University Police Management Institute at the
- 7 Columbia Business School.
- 8 Q. When did you first become employed by the NYPD?
- 9 A. In 1991.
- 10 Q. What position do you presently hold in the police
- 11 department?
- 12 A. I'm presently a deputy chief assigned to the chief of
- departments office in charge of the department's anti crew/gang initiative.
- THE COURT: Anti what?
- THE WITNESS: Anti crew C-R-E-W like the loose gang.
- 17 THE COURT: You said anti crew?
- 18 THE WITNESS: Slash gang.
- 19 THE COURT: Thank you.
- 20 Q. How long have you held that position as the person
- 21 responsible for the anti crew/gang initiative?
- 22 A. Since around last October.
- 23 Q. What position did you hold prior to your current position?
- 24 A. Immediately prior or --
- 25 Q. Immediately prior.

D4p9flo2 Shea - direct

1 A. Immediately prior I was the commanding officer of the police academy.

- Q. What were your responsibilities as the commanding officer of the police academy?
- A. As the commanding officer of the police academy, I was responsible for all department training. It was broken down into recruit training for new police officers, school safety agents and traffic agents.

9 Then we had in-service training which is responsible 10 for training officers after they graduate the police academy.

Then we had a specialized training session, and the leadership training school.

- Q. How long did you serve as commanding officer of the police academy?
- 15 A. Roughly a little less than two years.
- 16 Q. And prior to serving as the commanding officer of the
- 17 police academy what was your position?

13

14

- 18 A. I was the commanding officer of the joint terrorism task 19 force.
- 20 Q. And what were your duties and responsibilities as the
- 21 commanding officer of the joint terrorism task force?
- 22 A. I supervised police officers and agents and partner
- 23 officers from other state and local and federal agencies in
- 24 international and domestic terrorism cases.
- 25 Q. And how long did you serve in that position? SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4p9flo2 Shea - direct

- A. Again, roughly two years.
- Q. What was your position prior to the joint terrorism task
- 3 force?
- 4 A. I was the commanding officer of the citywide robbery squad.
- Q. What is the citywide robbery squad?
- 6 A. We were responsible for the identification and
- 7 establishment of robbery and burglary patterns and then the
- 8 enforcement efforts against any patterns that covered more than
- 9 one precinct or more than one borough or jurisdiction.
- 10 Q. How long did you serve in that commanding officer position?
- 11 A. A little over two years, roughly.
- 12 Q. And prior to that, what was your appointment?
- 13 A. Prior to that I was the commanding officer of the 47
- precinct. And prior to that the commanding officer of the 49 precinct. And in both of those I was responsible for all 14
- 15
- 16 police operations within that precinct's geographical
- 17 boundaries.
- 18 Q. The 47 and the 49 are both located in the Bronx, correct?
- 19 A. Yes, they are.
- 20 Q. Prior to your appointment as commanding officer of those
- 21 two precincts, what was your appointment?
- 22 A. Immediately prior to the 49 I served as a captain in the
- 2.3 northern Manhattan initiative for narcotics and I was
- 24 responsible for all narcotics operations in upper Manhattan
- 25 Washington Heights area.

D4p9flo2 Shea - direct

Prior to that I was the executive officer of the 28th precinct in Manhattan. Prior -- that's the number two in the precinct.

Prior to that I served as lieutenant in the narcotics division covering the midtown and east side of Manhattan area. And keep going back?

Q. Yes.

4

5

6

7

8

9

10

11

12

13

14

15

A. Prior to that I was a lieutenant in the 46 precinct in the Bronx and I served as a platoon commander on the day tour.

Before I made lieutenant, I was the SNEU sergeant, Street Narcotics Enforcement Unit, on the Lower East Side of Manhattan.

And I was also the community policing sergeant on the midnight, in the 9th precinct on the Lower East Side of Manhattan.

16 And I started out as a police officer in the 28th 17 precinct in Harlem.

- 18 Q. Thank you. Chief Shea do you recall testifying as a
- witness in the Ligon v. City of New York preliminary injunction hearing in October of 2012?
- 21 A. Yes, I do.
- 22 Q. Do you recall that you testified over two days, October 19
- 23 and October 22?
- 24 A. Yes.
- 25 Q. And have you had an opportunity to review your trial SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4p9flo2 Shea - direct

- 1 testimony from the Ligon preliminary injunction hearing?
- 2 A. Yes.
- 3 Q. And do you adopt that testimony regarding NYPD training on
- 4 stop, question and frisk and trespass stops here today?
- 5 A. Yes, I do.
- 6 Q. Chief Shea I'm handing you what have been marked for
- 7 identification as Defendants' Exhibit W3 and Defendants'
- 8 Exhibit C8. C8 I've also printed out one of the documents on
- 9 the CD, which is a PowerPoint.
- 10 Chief Shea do you recognize the two documents I've
- 11 handed you and the disk?
- 12 A. Yes, I do.
- 13 Q. And what is Exhibit W3?
- 14 A. It is a lesson plan for a lesson titled recognizing the
- 15 characteristics of armed suspects.
- 16 Q. Are you familiar with the lesson plan, Defendants' Exhibit
- 17 W3?
- 18 A. Yes.
- 19 Q. How are you familiar with it?
- 20 A. I reviewed it when we put this course into the stop,
- 21 question and frisk course. And it was taught by the firearms
- 22 and tactic section prior to that.
- 23 Q. Is this lesson also a recruit training lesson at the police
- 24 academy?
- 25 A. Yes.

D4p9flo2 Shea - direct

1 Q. Looking at Exhibit C8 which is a disk including a print of

- the PowerPoint, one of the pieces of material on the disk, are
- 3 you familiar with those documents, C8?
- 4 A. Yes, the PowerPoint. This is the accompanying PowerPoint
- 5 that can be used with this lesson plan.
- 6 Q. Are you aware that there's a video that accompanies this
- 7 lesson plan on characteristics of armed suspects?
- 8 A. Yes.
- 9 Q. And have you viewed the video that's contained on C8?
- 10 A. Yes.

13

18

19

20

21

2.2

2.3

- 11 MS. COOKE: Your Honor, I would offer into evidence 12 Exhibit C8 and Exhibit W3.
 - MS. HOFF VARNER: No objection, your Honor.
- 14 THE COURT: Both are received, W3 and C8.
- MS. COOKE: Your Honor I'm now going to ask my colleague, we're going to play the video of characteris
- 16 colleague, we're going to play the video of characteristics of 17 armed suspects training.
 - THE COURT: How long is that video?
 - MS. COOKE: Less than ten minutes. And then after the video we'll deal with the PowerPoint but first we'll play the video.
 - (Defendants' Exhibits C8 and W3 received in evidence) (Videotape played)
- Q. Chief Shea the video we just watched on Exhibit C8 that accompanies the lesson plan of Exhibit W3, is it common that SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

1 the training academy uses videos in connection with lesson

- 2 plans?
- 3 A. Not always. But yes, they do.
 - Q. And what circumstances would videos commonly be used if at
- 5 all?

4

- 6 A. If, like in this case, we feel it would enhance the lesson
- 7 plan. Like in this case they felt that having the actual
- 8 officers who have encountered these situations describing it to
- 9 other police officers would help drive the lessons home.
- 10 Q. What about the content of the lesson? Was there something
- 11 that lends itself to being shown on video so the officer can
- 12 observe circumstances?
- 13 A. Well you're talking about bulges, about the way clothing
- 14 hangs, about movements. So it clearly helps to see those
- 15 actual movements other than seeing the instructor just
- 16 demonstrating them.
- 17 Q. With respect to the content of this lesson plan,
- 18 characteristics of armed suspects, why is that an important
- 19 topic for both recruits and current members of the service to
- 20 receive training on?
- 21 A. For two reasons. For safety purposes, characteristics of
- 22 armed suspects. It provides the recruits and our experienced
- officers with as much information and knowledge for their own
- 24 safety as possible. And also for the purposes of helping them
- determine if they have reasonable suspicion if someone is SOUTHERN DISTRICT REPORTERS, P.C.

5024 Shea - direct

D4p9flo2

armed.

4

16

17

18

19 20

21

2.2

2.3

24

25

Q. Is a component of this lesson plan an instruction on how to 2 3 conduct a frisk?

A. Yes, it is.

- 5 Q. How is it that officers are trained to conduct a frisk? 6 Explain and/or demonstrate for the Court.
- 7 A. Officers are taught that a frisk is an external grabbing of 8 the clothing where you just run your hands over the external 9 clothing, feeling for a bulge or a weapon.
- 10 Q. Which part of the body are officers instructed to frisk?
- 11 A. That depends. If they're frisking for -- if they get a --12 if they have enough reasonable suspicion -- everything depends 13 again, I've said before, fact patterns are infinite. But

14 everything depends on the fact pattern you're dealing with. 15

If you stop someone, for instance, and you suspect them of a robbery and you observe a bulge and you have reasonable suspicion that you're in danger because the totality of the circumstances lead you to believe you can articulate reasonable suspicion, if you pat down that bulge that you believe is a gun and it's clearly not, the frisk is over. You wouldn't continue the frisk.

On the other hand, if the call was of a man fleeing a shooting and you stop someone fitting that description running away from the right area in the right time, you might frisk the entire body because he could have hidden the gun anywhere on SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

1 his body since the shooting. So it depends on the circumstances.

THE COURT: Okay. I know I'm interrupting right at a dramatic moment but it's time for the morning recess. We'll reconvene at a quarter to twelve.

 $\,$ If I can just see Ms. Grossman and Mr. Moore at the sidebar for a moment. Thank you.

(Sidebar discussion off the record).

9 (Recess)

- 10 Q. Chief Shea before the break we were discussing the training 11 for officers with respect to conducting frisks. Do you recall 12 that?
- 13 A. Yes, I do.
- Q. What training are officers provided with respect to
- 15 conducting searches in the characteristics of armed suspects
- 16 lesson?

3

4

5

6

7

- 17 A. They're trained with the difference between a frisk and a
- 18 search. The frisk is that methodical patting down of the outer
- 19 clothing or an area where you feel the need to for your own
- 20 safety. A search is actually reaching inside the clothing to
- 21 remove something.
- 22 Q. And when is an officer trained that they are able to
- 23 conduct a search?
- 24 A. Well, postarrest or if they feel a bulge that they believe,
- 25 reasonably believe, is a weapon or something that could be used SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

1 to harm them.

2.2

2.3

Q. An what training are officers provided to be able to distinguish when they feel an object that they could potentially believe is a weapon?

A. It's done both in instruction and in the scenario phases. But basically we're back to that whole -- the fact patterns are infinite possibilities.

For instance, they're trained that a bulge is not automatically a weapon. You have to feel it. You have to be able to articulate why you felt that bulge is a weapon.

Cellphones, for instance, when I was a police officer if someone had a bulge at their waistband it was probably, unless they were carrying tools, it was probably a firearm. Now a majority of the population carries cellphones. So they had to be trained that you have to feel it. You know what people ordinarily carry.

In the movie, the wallet, a wallet is a wallet. But if you feel it and it feels unnaturally thick, unusually heavy, you can feel -- you have to make a decision. Is it a wallet or could it potentially be a firearm hidden in a wallet.

Again, the fact -- what they're trained is they have to be able to articulate through their training and experience why they felt that that bulge they touched or that item they touched was a weapon, that they suspected it enough to reach into someone's pocket and actually remove it.

D4p9flo2 Shea - direct

1 Q. When you referred to the movie, you were referring to the

- 2 video that accompanies this lesson plan that we viewed prior to
- 3 your testimony?
- 4 A. Yes, I was.
- 5 Q. With respect to the training recruits and officers receive
- on characteristics of armed suspects, what are the categories
- 7 of characteristics that the officers are trained to be alert
- 8 to?
- 9 A. In this video, we talk about six characteristics of armed
- 10 suspects. And the categories breakdown to -- they're listed on
- 11 page -- page four.
- 12 Q. Are you referring to Exhibit W3?
- 13 A. Yes. I apologize.
- Q. That's fine. Page four, I'll speak for the record, the
- 15 Bates stamp is NYC_2_0023109.
- 16 A. Yes.
- 17 Q. And you referred that officers are trained on six
- 18 categories?
- 19 A. Yes. They are listed in section seven here, VII, and they
- 20 are behavior -- they breakdown to behavior, physics,
- 21 appearance, clothing, intelligence, and environment.
- 22 Q. And those six categories or factors that you just listed,
- 23 those were represented in the training video in the scenarios
- that were presented?
- 25 A. And in the PowerPoint, yes.

D4p9flo2 Shea - direct

12

13

14

15

16

17

18

19

20

21

22

2.3

24

25

Q. And are officers trained that any one of those factors or categories are more important than another?

- 3 A. No. It's -- I want to be clear. These six aren't the only
- 4 things that the officer would be considering. But they're
- 5 broad categories that contain quite a few of the factors that
- 6 can be used to develop reasonable suspicion whether or not
- 7 someone is armed both for your own safety and to take police 8 action.
- 9 Q. With respect to the factor of intelligence, what are 10 officers trained that intelligence related to characteristics 11 of armed suspects means?
 - A. Intelligence would relate to an officer's prior knowledge of the area, the time of day, the person they're dealing with, potential activity in that area. I'll make a few examples.

If somebody has contacted the precinct — somebody from the community and said they overheard that tomorrow at high school dismissal there is going to be a big fight between two groups, that would be intelligence. You're aware that something might be happening.

If you're aware that there has been a higher than — high incidence of shooting incidents or 911 calls of shots fired in a particular area, that would be intelligence that you're aware of.

 $\label{thm:continuous} \mbox{If you know that a particular individual is involved} \mbox{ in an ongoing dispute with another dangerous individual to the SOUTHERN DISTRICT REPORTERS, P.C.}$

D4p9flo2 Shea - direct

2

3

4

5

6

7

9

14

15

16

17

18

19 20

21

2.2

2.3

24

25

point where it might make sense for him to be armed in case he encounters that individual, that would be intelligence.

It can come to the police through 911 calls, through community interactions, through suspect debriefings, through your own observations, through talking to other police officers. Again, many different ways.

- Q. With respect to an individual's behavior, what are officers trained to be alert to regarding the characteristics of armed suspects, training and behavior?
- 10 A. Behavior we like to -- we train the police officers that 11 someone carrying a firearm illegally engages in certain 12 behavior. Not always. Some people can be very cool. 13 Everybody is different.

But they are carrying a jail sentence on them. And when they encounter the police it's going to affect their behavior.

Examples from the video we displayed of the person who saw the police officer and immediately turned around and walked away with no indication that he was about to do that until he viewed the police officer.

They can be overly friendly. They can be -- it can be, again, anything. They can be overly friendly. They can be unnaturally aggressive.

Remember, sometimes they know they have a firearm on them and you don't so you might just be saying hi and they seem SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

2.3

overly aggressive because they think you know or you suspect they have a weapon.

They can have subconscious movements that would be comparable to doing something embarrassing — he describes it in the lesson plan pretty well — they're comparable to you doing something embarrassing and you're trying to keep your cool but you're sweating and your face gets flush because you're embarrassed. There's all kinds of different things in the behavior.

Q. Are any -- are officers trained that observing a single behavior alone is reasonable suspicion to stop someone?

A. No. It can't be because all behavior, they're trained, exists -- I'll use the phrase, furtive movements. Every furtive movement could have an innocent explanation. So somebody -- the gentleman I referred to on the video who turned could have just remembered I left my keys home. He didn't even notice police officer there.

So each movement, again, has to be taken -- I'll call it in concert with everything else you know to create a totality of the circumstances that you'll consider when you decide whether you have reasonable suspicion.

Q. We saw in the video -- and I'm going to show now the PowerPoint presentation, but there was in the video there were physical characteristics. Would you agree that there were -- the video included physical characteristics that could be SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

1 indicative of carrying a weapon, correct?

2 A. Yes.

2.3

Q. And on the screen now is a photograph that's contained —— I'm sorry the PowerPoint from Exhibit C8 doesn't have page numbers —— but it's on the screen. It's about five or six pages into the double-sided PowerPoint.

Can you describe, Chief Shea, what physical characteristic we're seeing in this photograph that might be indicative of a person carrying a weapon?

A. Yes. We train the police officers in this part that carrying a heavy object such as a weapon affects the way you move. And we use themselves as an example because all police officers carry weapons.

So, for instance, this gentleman, he's keeping his left arm a little close to his body in the first picture on the left. A little unnaturally close. His right arm is loose. His left is close. And then when he reaches down, he keeps his left arm pushed into the body. All police officers identify with this because if you have to bend down and you're carrying a weapon at your waist, you're unnaturally aware of the fact that you're bending over and it may fall out. So they understand that's what he's doing here. He's pinning something to his body. Again, on its own, it could be a tool. But it's indicative of the behavior that's characteristic of an armed suspect.

D4p9flo2 Shea - direct

2.3

Q. And turning to page in the PowerPoint two slides forward. We're looking at a photograph of a man's midsection with his hand at his waist.

What are officers trained that this physical behavior might be projecting?

A. It's called touching. And it's indicative of someone carrying a weapon is unnaturally aware of it. Again, because of the risk associated with carrying it.

And especially most criminals do not have the benefit of a holster. They spend money on guns, but they don't spend money on correct carrying systems to secure it. So usually they carry a weapon just tucked into their pants or using some kind of mock rigged method. So it's harder for them to move without worrying about it falling down. They have a tendency to touch it frequently to make sure that it's still there.

And again we relate it to all police officers — carrying a weapon, even legally in our society, is a huge responsibility. And every police officer does this at one time or another. They touch it to make sure that it's still there and safeguarded. So they understand the concept.

Q. Moving several slides in order in the PowerPoint to a photograph of a man directed at the side, wearing a jacket, in the photograph it is green jacket.

What are officers trained with respect to observing a man as he stands in this photograph?

D4p9flo2 Shea - direct

1 A. You can see that his jacket on his right side is -- there's

- 2 an unnaturally heavy object in it which is causing the jacket
- 3 to sag. You can tell how heavy it is by how the material is almost tightened as it sags down.
- ${\tt 9.}$ And what does that potentially indicate to the officer with
- 6 respect to training for characteristics of armed suspects?
 7 A. It indicates that it could possibly be a weapon because
- 8 handguns are unnaturally heavy. For an item their size, they
- 9 are one of the heaviest things I know of.

13

14

15

16

17 18

19

20

21

22

2.3

24

25

10 Q. If an officer were to make this observation of the man as 11 he stands in this photograph, what would they be trained to do? 12 A. This, again, is only one factor.

You can see the jacket is sagging to the point where the material is tight. You can even see, though I wouldn't want to infer too much from a single angle photograph, that it seems to be hanging lower than the other side of the jacket, which also indicates a heavy object.

But my son is an iron worker and he carries tools home all the time, which is why I keep mentioning tools. He could look like this too while he's waiting for the subway.

So it's just one indicator. It's something to be aware of.

And in this case the man seems kind of calm. Probably the best thing to do would be to watch him and see if you get any other indicators.

D4p9flo2 Shea - direct

2

3

4

5

6

7

8

17

18

19 20

21

But you may have that intelligence we spoke about. You may already know this gentleman is involved in an ongoing dispute or is a dangerous person known to carry weapons.

So absent knowing what other factors the police officer is aware of, I can't really say what they do at this second.

- Q. But taking this photograph alone, it wouldn't be reasonable suspicion to stop this person?
- 9 A. No. Just if you came across this person in the street, no it would not.
- 11 Q. And then now we move two slides forward in the PowerPoint. 12 Gentleman in the green jacket. Two photographs.

13 What are the officers trained with respect to
14 observations and characteristics of armed suspects using this
15 photograph?
16 A. Without even looking -- without looking at the PowerPoint

A. Without even looking -- without looking at the PowerPoint, the same thing. The right side of the jacket is hanging lower than the left side. There's a heavy item in that jacket pocket. And it's something to be aware of.

Again, that is not reasonable suspicion in and of itself. But it's something we would want the officer to be aware of and an observant officer should notice that.

aware of and an observant officer should notice that.

Q. And the next page in the PowerPoint is two more photographs of two more gentlemen in jackets. Are we looking at again a heavy object in the jacket?

D4p9flo2 Shea - direct

2.2

2.3

A. Yes. The heavy object the picture on the bottom left, you have visible bulging now. It's not just heavy. It's substantial. And it's hanging down in the jacket.

In the upper right, in addition to the bulge, you have what I would consider touching — in the upper right the right hand seems to be — not only does he have an object in the jacket, the right hand seems to be touching it as he's crossing the street, that kind of reassuring touch that I mentioned before.

 $\,$ THE COURT: Can I interrupt. I just want to make sure I understand the bulge.

The one that has the bulge in the lower right hand, there's been several like that, where the right-hand side of the jacket hangs lower, and you even volunteered that your son carries tools, he might look the same because the tool is lower in the right or left-hand side of his jacket.

Would that alone be enough for a reasonable suspicion stop? In other words, is that what you teach? Would that asymmetry of the jacket, the right side hanging lower because of the bulge, would that in itself be enough for a reasonable suspicion stop based on suspicion of possession of a weapon?

THE WITNESS: No, ma'am.

THE COURT: Okay. Thank you.

Q. And referring to the photograph in the upper right corner of the slide. You referred to the man grasping. Are you SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

referring, just so the record is clear, he's grasping his outer garment of the jacket and grasping what appears to be something inside the fold of the jacket of the pocket, correct?

A. Yes. That could be, as I just said, one of those reassuring touches.

There's also -- I don't want to call it unconscious because I can't get into the mind -- but there's also a tendency to cover. If you know it's a weapon and you see a police officer, a lot of times they'll move their hands or, again, referring to the video. I noticed the gentleman in the red was using a radio to cover the bulge inside. There's that tendency also where you'll observe them try cover the bulge. In addition to their clothing, they'll use their hands or another object.

Q. You referred to --

2.2

2.3

THE COURT: I'm sorry. I need to follow up. I don't think my question was entirely clear.

I think I got your opinion and experience in terms of the answer to that right-hand pocket being heavier itself is not enough for a reasonable suspicion stop. Is that also what you train?

THE WITNESS: Yes, ma'am.

Q. And with respect to the reference to the video, Chief Shea, you just made, the man with the radio, were you referring to the vignette with the gentleman all dressed in red with the SOUTHERN DISTRICT REPORTERS, P.C.

5037 Shea - direct

D4p9flo2

- boom box?
- 2 A. Yes.
- 3 Q. He was using the boom box, you believe from the video, to 4 obscure a weapon in front?
- A. Again, it's the complete fact pattern. He might have been.
- 6 It would have been one of the things that we'd expect you to
- watch for, that he was holding -- in addition to touching his 7
- 8 waistband, he was holding that radio in a way that obscured
- 9 your vision. It could have been coincidental, but it's
- 10 something that you would look for and use to complete your
- 11 totality of the circumstances.
- 12 Q. Chief Shea, what are recruits and uniformed members of the
- 13 service trained with respect to someone blading their body.
- 14 Are you familiar with that term?
- 15 A. Yes, I am.
- 16 Q. What does blading their body mean according to you?
- 17 A. Blading the body refers to someone who, when you approach
- 18 them, turns their body sideways so that one side is facing away
- 19 from you as opposed to just speaking directly to you.
- 20 Q. And what are officers trained that the movement of blading
- 21 one's body might be communicating about whether or not the
- 22 person is carrying a weapon?
- 2.3 A. Specifically about whether they're carrying a weapon,
- 24 they're trained that that blading of the body hides that side
- 25 of the body from you. It might be unintentional or it might be SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

2.3

intentional, that the person just hid one side of their body
from you.

3
O. Are officers trained to blade their body with respect to

- Q. Are officers trained to blade their body with respect to the side of their body they carry a firearm on?
- A. Yes, in certain circumstances. The other part of training about people blading their bodies is it's also potentially an aggressive stance. It's easier to fight in that stance than just loosely facing somebody completely exposed.

Officers are trained to watch out for that also. It doesn't necessarily mean it. But it's possible. And something you have to be aware of.

And as far as officers go, they're taught that if they blade their body and move their firearm away from the person, it makes it safer for them to retain their firearm if a situation turns physical.

Q. In the video, Chief Shea, there was a point in the video, the voiceover said something about a suspect's hands and then the video showed a gentleman putting his hands in the air.

What are officers trained with respect to the ability and the need to see someone's hands during a street encounter?

A. Well, it's -- during a street encounter depending on the intensity of the encounter or what your overall knowledge is, seeing someone's hands is crucial because hands are what human beings use to hurt other people with and if you can see their hands and they're empty and nonthreatening it takes the entire SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

tenor of the encounter down a notch. Whereas, someone who is refusing to show their hands or intentionally hiding them, at least possibly is doing that to either hide something from you or to prepare to use something against you.

So, it's not necessary. Some people aren't as aware of how they're standing as other people. Each culture might feel it's different and appropriate to stand in a different manner.

A refusal to show their hands or a reluctance to show their hands should be considered by officers as they're considering what they're dealing with.

- 12 Q. And if someone if an officer makes a stop and someone 13 has their hands in their pockets, what are officers trained to 14 do in that situation?
- 15 A. To ask them to remove their hands from their pockets.
 - Q. Would that be the case even if it was a level one or level
- 17 two encounter and not a reasonable suspicion based stop?
- 18 A. Yes.

3

5

6

7

9

10

11

16

- 19 Q. In the video, Chief Shea, that accompanies this lesson plan 20 there was also some discussion about the officer being alert 21 and not being distracted by the person they have stopped.
- and not being distracted by the person they have stopped
- Do you recall that piece of the video?
- 23 A. Yes.
- Q. What are officers trained with respect to the importance of not being distracted by someone while they're encountering them SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

1 on the street?

2.3

A. Your focus needs to remain on the person, especially if you suspect, as in this case we're discussing, that they might be armed. They can try to distract you themselves. They could try to pretend they were just a witness to a crime. They could try to get you to look in a different direction. Other members, friends or associates of theirs could try to distract you by being overly aggressive or overly friendly to give them time to move away or to hide or in the worst case scenario to prepare to attack you.

You could have inappropriate or unusual affection toward one other, people to pass a weapon from one person to another, from one sex to another. If they feel that the officer would be reluctant to search a female, that could be a distraction move.

You're never sure -- basically they are trained: If you feel the need to approach someone, a citizen, keep your attention on that person until your job is done. Do not allow them to distract you through any of these other methods.

But, again, some people are nervous and everybody reacts differently when they see the police. It doesn't necessarily mean anything. It has to be considered in the complete context.

Q. Chief Shea, in the training video there was discussion of firearms and unusual farms. Looking at the PowerPoint SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

2.3

presentation halfway through again -- apologize there are no page numbers -- there's a series of slides with respect to unusual firearms. And I'd just like to go through each slide and explain what a recruit officer is trained with respect to each potential firearm.

The first slide is a mobile cellphone gun.

What is it that officers and recruit officers are trained with respect to possible mobile cellphone guns?

THE COURT: Wait. What's a mobile cellphone gun?

THE WITNESS: It's a .22 caliber firearm disguised as an old style cellphone. It's a little outdated now.

THE COURT: Thank you.

THE WITNESS: The point of making recruits and in-service people aware of these weapons is just exactly that, making them aware of the existence of them so that they can be aware that they may come across them. Thankfully, they are rare. They are sold legally in certain parts of the country.

This one is, again, it's an old style phone. I think we'd pick this one up pretty quick these days because no self-respecting kid would carry it. It's an old style phone that at the time looked like a cellphone commonly carried. And it was actually a firearm. It was heavier, though.

Part of what we want to make the officer able to -- just because you touch a phone you can't say that might be a cellphone phone.

D4p9flo2 Shea - direct

1 Q. A cellphone gun, you mean?

2.3

A. A cellphone gun. It was a very distinctive item. It was heavier than the average cellphone. There were ways to distinguish it. But we didn't want them firing it by accident so we made them aware of it.

THE COURT: Who manufactured these things? THE WITNESS: I don't know.

THE COURT: Thank you.

Q. And two slides forward there's a pen gun. What are officers trained with respect to potential pen guns?

A. Again, the common name for this item, I've actually seen some of these, is a pen gun. But we train them and show them don't ignore what might be a pen. But it is different — how to distinguish it from a pen. It is heavier. It is slightly thicker. But be aware that these items, it has that little knob on the side, which is the cocking mechanism. Be aware that they're out there. And if you feel something, take your time. Make sure you know what you're feeling.

THE COURT: Are these pass also?

THE WITNESS: No. Every now and then you come across one of these.

Q. And two slides forward there's a knife gun. What are the officers trained with respect to the knife gun?

A. This is a little easier. Again, a knife like this is a weapon in and of itself that would probably be removed during a SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

dangerous encounter. But making them aware that there is a firearm hidden in the handle of this knife that can actually

3 discharge, again, a .22 round.

4

5

6

7

8

9

10

11

12

13

14

Q. And two slides forward there's a folding gun, which I believe we saw in the video inside the wallet that was removed from an individual.

Is that correct?

A. Yes. This is a small .22 caliber handgun. It's made in the United States by an American company. It can either be folded, as you see it in the top right, where it seems at first glance it might feel like a small folding knife that a lot of people carry legally, you know, like that size. Or you can see in the middle it can be incorporated into a belt buckle.

Q. Where it says outlaw?

15 A. Yes. They actually sell them like that, incorporated into a belt buckle.

And at the bottom they show it open and show how easy it is to flip it open and fire it.

Q. So if an officer were conducting a frisk and felt a hard object, is it the training of the officer to understand that a hard object in part could be a folding gun?

A. Well to consider the possibility. And, again, in totality with everything else.

Q. You spoke earlier, Chief Shea, about proper holstering of a weapon and whether or not that was or wasn't common with SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct individuals carrying illegal firearms.

Do you recall that?

2.2

2.3

A. Yes. It's very uncommon.

Q. So we have here on the next slide from the PowerPoint is the slide is titled the Jamaican holster.

Can you explain what we're seeing in this slide, in these photographs, and what officers are trained with respect to this carrying mechanism?

A. It's a method. It was popular among Jamaican posses in the Bronx and upper Manhattan back in the '80s and '90s, which is where it got the name. All it is taking an old style coat hanger and bending so you can put the barrel of the weapon into one bend and let it slide down inside your pants. And a bend on the other end of the wire holds it to your pants so it won't go down. It allows the weapon to go lower. So if you check the waistband, you won't feel it, it's below the waistband. But it allows the perpetrator to just grab that wire and pull it up.

They're out there. You see them every now and then. Everybody is still aware of this. It's been in movies.

The training for the officer is watch out for if you're patting someone down and you feel that wire be aware, keep patting, keep patting down and see where it leads and you may come to a gun. Or, again, there may be other things being carried.

D4p9flo2 Shea - direct

1 Q. One more unusual weapon. A few slides forward in the

- PowerPoint is a wallet gun. Can you describe what we're seeing
- 3 in the training for officers as they're conducting frisks?
- 4 A. That's just a holster for a very small handqun. These are
- 5 sold commercially also. They are holsters to hide smaller
- 6 handguns and it's not actually a wallet as you can see but it's
- 7 camouflaged as a wallet. So that you can put it in a back
- 8 pocket like a wallet and hopefully no one will notice it.
- 9 Again, the training for everybody would be just as I
- 10 alluded to in the thing. When you pat someone down, a wallet,
- 11 that may seem like a wallet at first glance. But if you pat it
- 12 well you'll feel -- you'll feel the gun or you'll feel that
- 13 there's something unnaturally heavy in that wallet. You can
- 14 ask for an explanation or you can -- if you're confident you
- 15 have reasonable suspicion this may be a gun, you can remove it.
- 16 Q. When you refer to patting down, you're referring to a
- 17 frisk?
- 18 A. Yes.
- 19 Q. Feeling that wallet or what appears to be a wallet during a
- 20 frisk?
- 21 A. Yes.
- 22 Q. And a few slides forward in the PowerPoint there's a slide
- 23 with two photographs of a gentleman with a red bandanna at his
- 24 waist and the slide says flagging.
- What is flagging, Chief Shea?

SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19 20

21

22

2.3

24

25

A. Flagging is a term used by some like street gangs where they wear a certain color bandanna to indicate their members in that gang.

These slides indicate how that in certain neighborhoods a common method of wearing this bandanna can be used to hide a firearm. And to be aware of it. They don't usually carry the bandanna in the front right like that. They usually carry it in the rear.

Again, doesn't necessarily mean that there's a gun but be aware that they have been used in the past to cover a weapon.

It's indicative also of how certain people like police officers you'll sometimes see coming to work will untuck one-half of their shirt to cover the firearm. And it's obvious that the shirt is not in or out. It's tucked in on one side and out on the other. It's obvious that they're covering a firearm with it.

This is kind of the same thing. They're using an item that they're wearing anyway just to cover the firearm. But it's a little unusual and should catch your notice. Q. Finally, Chief Shea with respect to the lesson plan of characteristics of armed suspects. In the video we saw in

several of the vignettes individuals either looking back or looking over their shoulder. What are officers trained with respect to that behavior and characteristics of armed suspects? SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

2.3

A. The -- again, that's one of the categories. That would fit in the category of behavior that we would teach them to be aware of. Most people, when they're walking, have somewhere to go. And they go in that direction. If you observe a street, you'll see that's the common pattern.

Someone who is constantly looking over his shoulder could be waiting for someone to join them. But it's a little different. And it's indicative -- people who carry guns frequently look around because, again, they know they're armed and they know that they're facing serious repercussions if they're caught. So they're trying to be more aware of the street.

In addition, most people who carry guns do so for a reason. And someone who is afraid someone else may try to hurt them and has armed himself to respond to that threat also is constantly looking around searching for that external threat like you might see an animal doing.

So they're looking, they're looking, they're looking because they're afraid someone is going to come and try to hurt them. That's also indicative. They might not be looking for the police. They may just being looking for anyone to come at them. Most people who are involved in that do not behave like that. So it should catch your attention and, as the lesson plan said, lead you to start watching to see what else you see about this person.

D4p9flo2 Shea - direct

Q. Chief Shea I'm handing you two exhibits that have been

marked Defendants' P11 and Defendants' V5 for identification.

Do you recognize those exhibits?

A. Yes, I do.

3 4

14

18

19

- 5 Q. And what do you recognize them to be?
- 6 A. They're part of the police student's guide that we give to
- 7 the new recruit police officers when they attend the academy
- 8 and that they're trained using.
- 9 Q. What part of the student's guide?
- 10 A. They deal with policing professionally.

11 MS. COOKE: Your Honor, I would offer these exhibits

12 P5 -- I'm sorry P11 and V5 into evidence. 13

THE COURT: Any objection?

MS. HOFF VARNER: We don't really object. I do

15 question the relevance of these sections of the police

16 student's guide but I'm happy to let them in and see how far we 17 go.

THE COURT: Okay. Both are received.

(Defendants' Exhibits P11 and V5 received in evidence)

20 Q. Chief Shea looking at these two exhibits, is Exhibit V5 an

older version of Exhibit P11? 21

- 22 A. Yes.
- 2.3 Q. And P11 is dated July of 2012; is that correct?
- A. Yes. That's the update. 24
- 25 Q. So we'll be referring to the most current selection of this SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

- 1 P11 for this testimony.
- 2 So this is a police student's guide titled policing professionally; is that correct?
- 4 $\,$ A. Yes. It deals with policing professionally is the best way
- 5 I can put it. Your everyday interactions as you go about the
- $\,$ business of policing, how to do it with the professionalism
- 7 that we expect from you in the NYPD.
- 8 Q. Would that involve policing professionally during street
- 9 encounters?
- 10 A. Yes. During every aspect of policing.
- 11 Q. What's the format of this training, policing
- 12 professionally?
- 13 A. It's formatted using mandatory patrol guide readings. So
- 14 they have to read the civilian complaint, witness statement,
- 15 and the processing civilian complaint section. And then they
- 16 would go into actual lessons. And then it would be
- 17 incorporated -- what they learned would be incorporated into
- 18 scenarios and testing situations.
- 19 Q. So officers would be examined at the police academy on the
- 20 content of policing professionally?
- 21 A. Yes, they would. There would not be a separate examination
- just on this. It would be part of their trimester exams.
- 23 Q. Looking at this police student's guide, discretion is the
- 24 first item listed on the lower portion of page one?
- 25 A. Yes, it is.

D4p9flo2 Shea - direct

Q. What are officers in the police academy trained with

2 respect to discretion and its relationship to street

3 encounters?

- A. The first thing they're taught is that the proper exercise of discretion is essential to policing in a free society. And
- of discretion is essential to policing in a free society. A
- 6 then they're taught what we consider discretion to be. We
- 7 consider it to be an impartial use of your ability and
- 8 authority to decide how you are going to deal with the
- 9 situation you are involved in, considering the laws and the
- 10 guidelines of the department. So sometimes officers have
- 11 discretion to make -- you know, to decide how they're going to
- 12 deal with it. Sometimes they do not.
- Q. With respect to training on policing professionally, are officers trained on how to communicate with civilians during
- 15 street encounters?
- 16 A. Yes. Oral communication and tactical communication are taught.

taught.Oral communication is just how you speak to people.

- Tactical communication is trying, for lack of a better term,
- 20 trying to achieve the outcome that you want in a way that
- 21 leaves everybody happy -- or as happy as they can be.
- 22 Sometimes in policing somebody is getting arrested or somebody
- is getting a summons and they will not be happy, but you should
- 24 still be handling yourself professionally, impartially, and as
- 25 calm as you can.

19

D4p9flo2 Shea - direct

2.3

THE COURT: So just to interrupt. If somebody is stopped and the stop is over and then the person who is stopped says can you give me your name and badge number, what's the officer supposed to do?

THE WITNESS: The officer is required to give their name and badge number. $\,$

- Q. With respect to perception, what are officers trained perception has to do with policing professionally?
- A. Well, when we talk about perception, again, there's a lot of training goes into turning someone into a police officer. And a good part of that is policing -- one second.

Trying to explain to them or teach them that policing in a free society is, like all our other laws, dependent on the consent of the people you're policing. And it's important that you — they perceive, since you are an arm of the government enforcing the laws — it's important that they perceive that they are being enforced in a fair, impartial manner. And sometimes even if you are enforcing it in what you believe to be a fair and impartial manner, the method in which you do that leaves the perception that you weren't, and that's damaging.

So we try to make them aware of that all the time so that they're aware, constantly thinking not only of what they're doing but of what perception they're leaving in the mind of the person they're dealing with.

Q. And in what ways are officers trained they can improve or SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo2 Shea - direct

2.3

provide a positive perception of their exercise of law enforcement authority in connection with a street encounter?

A. Well, they are -- we break it down in -- specifically in connection with the street encounter, we breakdown to teach the officer there are three components. We found the easiest way. There is how the you approach the person, the encounter itself, and what we call the disengagement from the encounter, how you leave the person. All three are equally important. And you can -- you can lose the -- for lack of a better word you, can lose the encounter during any of the three of them.

You don't have total control over how you do it. If you believe someone is armed, you have to approach as you saw on the video that was the exhibit. Sometimes you have to approach in a manner that's tactically safe and it might not be the most pleasant way to approach another person.

But you always, if $\--$ you always can take steps to improve that person's perception of what happened.

For instance, during the disengagement, if you had a call of a man with a gun fleeing a shooting and someone was running fitting the description and you stop that person, you might stop them at gunpoint because shots were just fired, it's confirmed, etc. He might — a lot of people run when they hear shots. He fit the description. You stopped him. You pat him down make sure he doesn't have a gun. You can now, assuming that you're not getting called to help somewhere else, you now SOUTHERN DISTRICT REPORTERS, P.C.

5053 D4p9flo2 Shea - direct should be aware that you stopped that person and they -- even 2 though you had reasonable suspicion, they were not armed with a 3 firearm. So you should take the time to explain to them why. 4 It can take a lot of methods, a lot of different ways. 5 Good officers can always talk and explain their actions. You can do what we call ten five-ing which is just repeating the 6 7 description from the radio dispatcher so the person hears and 8 is aware that they fit the description. 9 Sometimes people are mad. It's not pleasant to be 10 stopped by the police. 11 Even if they don't understand it at that moment, if 12 you do the right thing, then maybe later even, it will sink in 13 that -- and when they're not in the immediate moment of being stopped and they have a chance to think about it. 14 15 (Continued on next page) 16 17

18 19 20

21 22 23

24 25

D4P8FLO3 Shea - direct

A. (Continuing) We teach every officer that every stop involves two people, the officer making the stop -- obviously there could be more, but the crucial two are the officer making the stop and the person being stopped.

If the person being stopped is determined to be mad at you, there is nothing you can do about that, except behave professionally. However, that is not most people. That is not the vast majority of people. The vast majority of people, while they might be mad or unhappy at that moment, can be, if spoken to properly and if handled impartially and

11 professionally, will come to an understanding.

- 12 Q. With respect to perception, are officers trained regarding 13 their perception of the public in relation to policing
- 14 professionally?
- 15 A. Yes.

5

6

7

8

9

10

- Q. What is that training with respect to officers' perceptions of the public?
- 18 A. New York City, our training -- it's not necessarily in this
- 19 subject, in this chapter. New York City is a multicultural
- 20 city. That brings many different points of view to the people
- 21 we serve out in the city. And the officers are taught to
- 22 remember again that there are two people at every encounter and
- 23 the other person's life experiences may be vastly different
- 24 from your own. And some of them -- we have immigrant
- 25 populations, whose experience with the police in their last SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

2.3

country is very negative, and they have very good reason to be apprehensive when approached by uniformed police officers. We have racial and ethnic groups in this country that have had historic problems with police officers.

We teach the officers the history behind that and to be aware of it. We actually make each officer in a class -- a class is approximately 30 students. Each officer has to select one of the ethnic groups or racial groups or just groups in New York City, religious groups, and do a report on it to the rest of the class, and it cannot be their own ethnicity. And we make them aware that you will be dealing with many different people, and you cannot assume that the person you're speaking to brings the same life experience to the table as you do, and you need to be aware of that when you are explaining yourself and when you are handling the job.

I don't mean to make -- you do have to handle the job. The laws of this country will be enforced impartially, and if you have, for instance, a possible man with a gun, you have to handle it in a tactical manner. But there are always times when that knowledge and awareness can help you handle it professionally.

Q. With respect to policing professionally, you mentioned at the beginning of this police student's guide some mandatory reading regarding civilian complaints. How are officers trained that civilian complaints relate to policing

SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

1 professionally?

2.3

A. In New York City, it is the right of any citizen, who has an interaction with the police and wishes to make a complaint about it, to lodge that complaint with any employee of the New York City Police Department. We will take the complaint, and depending upon the nature of the complaint, it will either be referred to the Civilian Complaint Review Board, they handle allegations of force or abuse of authority or discourtesy or offensive language by statute, or, if it is just a disputed police action that does not fall into those categories, for instance, the most common one is an officer gave me a summons and I didn't run the red light, that would be investigated by the chief of department.

THE COURT: Do you need an officer's name and shield number to make a complaint?

THE WITNESS: No, ma'am.

THE COURT: You can make it without that, by just describing the incident?

THE WITNESS: We teach that we are mandated to accept any report. If we know who the officer is, they will be identified on the civilian complaint form. If not, there are procedures that supervisors should follow to try to identify the officer. If at the end of the day we are unable to do that, the complaint will still be taken so that the investigators down the road can attempt to identify the SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

- 1 subject.
- 2 Q. Are officers trained that civilian complaints will be part
- 3 of the officer's history with the police department?
- 4 A. Yes.
- 5 Q. Do what are officers trained with respect to the police
- 6 department's use of civilian complaints on their record?
- 7 A. It's a multifaceted question. You can get -- you can do
- 8 your job correctly and receive a civilian complaint. The
- 9 civilian has a right to complain if they feel they were treated
- 10 improperly. Somebody who was stopped on suspicion of carrying
- 11 a weapon and did not have a weapon may feel there was no basis
- 12 for stopping them, and they were just singled out unfairly. It
- 13 will then be investigated. I have had civilian complaints.
- 14 They didn't unduly affect my career. Plenty of officers
- receive them at one time or another. But we will track them,
- 16 and the police officers are taught that they will be tracked.
- 17 They will be kept on record, and at any point during your
- 18 career when we are considering you for a transfer or a
- 19 promotion, they will be considered, and a pattern or an
- 20 excessive amount, compared to other officers doing the same
- 21 enforcement assignment as you, will be looked at to see if it's
- 22 indicative of deficiencies in your performance instead of just
- 23 bad luck.
- 24 Q. What are officers trained with respect to policing
- 25 professionally regarding accountability for their actions as SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

- police officers?
- 2 A. Again, in this section, we teach that part of policing
- 3 professionally is that we must hold you accountable for your
- 4 actions. Again, it goes back to the compact between the people
- 5 we police and ourselves. We police at the consent of the
- 6 government. They have to feel that we are being impartial, and
- 7 they have to feel that we will be accountable for our actions.
- 8 Being a police officer is an awesome responsibility. You
- 9 legally carry a weapon in a free society. You have the
- 10 authority to stop someone who is going about their business on
- 11 the street. Those authorities are granted by the people we
- 12 serve, and they have to know that they are being carried out
- 13 correctly and that there will be accountability if they are
- 14 not. It's a 30,000 man force. People can do things wrong and
- things can be handled improperly, but there has to be
- 16 accountability if there is.
- 17 Q. Chief Shea, I am handing you what have been marked for
- 18 identification as Defendants' Exhibit R5 and Defendants'
- 19 Exhibit U11.
- 20 THE COURT: Thank you.
- 21 Q. Do you recognize those documents?
- 22 A. Yes, I do.
- Q. What do you recognize them to be?
- 24 A. These are two more sections of the police student's guide.
- 25 Again, one is the older -- R5 is the older section. U11 is the SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

1 update from July 2012 when they updated the guide. And they 2 deal with what police officers need to know about discretion.

 $\ensuremath{\,^{\text{MS.}}}$ COOKE: I would offer these Exhibits U11 and R5 into evidence.

MS. HOFF VARNER: No objection.

THE COURT: Received.

(Defendants' Exhibits U11 and R5 received in evidence)

- Q. Chief, I will be directing your attention to the most current version, which is Ul1. That's dated July 2012, correct?
- 11 A. Yes, it is.
- 12 Q. With respect to training that recruit police officers
- 13 receive regarding discretion, my first question is what
- 14 discretion do police officers have with respect to street
- 15 encounters?
- 16 A. Specifically with respect to street encounters?
- 17 Q. Yes.
- 18 A. Discretion is defined here in the first line. The
- 19 authority to decide how to resolve situations in different

20 ways.

3

4

5

6

7

8

9

10

- 21 So in relation to street encounters, you have
- 22 discretion, every officer encountering it has discretion how
- the encounter is going to move along. When they stop someone, they have the discretion of, do I have reasonable suspicion or
- do I not? Do I need to stop this person at this moment for

SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

what is going on, for whatever I suspect is happening? You

- have discretion -- short of domestic violence situations or
- 3 areas that we have considered must arrests, officers always
- 4 have discretion in how they are going to handle any individual 5 encounter.
- 6 Q. How are officers trained to exercise that discretion with 7 respect to issuing summonses?
- 8 A. It's not specifically to issuing summonses. I would
- 9 consider that how would you exercise your discretion upon an
- 10 observed traffic infraction? The discretion comes in before
- 11 you issue the summons. If you observe a traffic infraction or
- 12 a minor violation that would be a criminal summons or a parking
- 13 summons, you have discretion whether to issue the summons or
- 14
- whether to warn and admonish the person, or in the case of
- 15 parking, maybe to not issue the summons even if the person is
- 16 not there.

17

18

19

20

21

2.2

2.3

24

25

For example, a double-parked car is outside a nursery school, where there is no parking and if the parents didn't stop for a second and grab their child, they would have to park two blocks away and walk through dangerous intersections. I would expect them to use discretion and allow them to double park. Double-parked cars that are creating a hazardous condition that could lead to a pedestrian being hit by a car, say on Queens Boulevard, it would not be appropriate.

> The point is the discretion has to be done impartially SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

1 and based on the factors and the conditions as you know them.

- 2 It can't be based on any biases or prejudices of yours, and it
- 3 cannot be based on any kind of subjective factors that might
- 4 lead people to think you have biases or prejudices. It has to
- 5 be dealing with the condition at hand.

8

2.2

2.3

24

25

- 6 Q. Is the department's policy prohibiting racial profiling a
- 7 component of what officers are trained regarding discretion?
 - A. Yes, it is. It's reinforced that racial profiling is
- 9 absolutely prohibited, and has been in the department even
- 10 before the City Council made the rule against it.
- 11 Q. How are officers trained or police recruits trained that
- 12 they might abuse their discretion and be improper?
- 13 A. That's a big a lesson. The first obvious way is the way I
- just alluded to. You're using your discretion based on
- 15 subjective factors. Racial profiling would be the ugliest one.
- 16 But you could decide, I don't write summonses to people in the
- 17 construction industry because I have family members there.
- 18 That's not fair either. Your using your own subjective
- feelings to make your decision instead of an objective view of

what is happening at that moment.
In addition, you can abu

In addition, you can abuse your discretion in the opposite direction too by over-using it, by which I mean you're never taking enforcement action. You always have to remember that enforcement action is unpleasant. It's part of the job

though, but it's unpleasant. Every infraction you observe SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

affects the person doing it, but it also affects the people around them in the community.

So, for instance, if I had a late night group of kids -- I won't say kids, young adults drinking and making noise outside a residential area, and maybe the officer goes there and he recognizes that it's a one-time thing because it's graduation night or the last day of school, it's never happened before, the kids all live in the neighborhood. He is going to use discretion and warn and admonish them and send them home instead of writing a summons. That would be an appropriate use of discretion based on the objective factors.

If he went back an hour later, and now it's 2 in the morning instead of 1 in the morning, and the same kids are still there, after having gotten the opportunity to go home, and the people who live in the area are still being subjected to the loud noise and having to come home through people that are now getting drunk and potentially dangerous or damaging property, I would say now using discretion is inappropriate because it's not fair to the other people, not just the people that you're dealing with at that moment, the other people in the community around you.

The same could apply to discretion on stops.

23 Q. How so?

2.2

24 A. You always have the discretion to stop somebody of course.

Do I stop that person? Do I not? But you are a police SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct officer, and we expect you to enforce the laws and to 2 investigate crimes. 3 If I got a call of a robbery of a bodega and they gave 4 me a description of a man in a yellow shirt and green pants 5 fleeing the scene with a black hat on, and I saw that man 6 leaving, I would consider it an abuse of discretion not to stop 7 that person because you have too much reasonable -- time is 8 right and everything. So you can abuse discretion. If an 9 officer told me, I didn't stop that person because I was 10 utilizing my discretion, I would feel that's an abuse of 11 authority in the other direction. 12 MS. COOKE: I was going to move to two more exhibits. 13 THE COURT: Go ahead. 14 Q. Chief Shea, I am handing you what have been marked for 15 identification as Defendants' Exhibit T11 and Defendants' 16

- Exhibit N5. Do you recognize those documents?
- 17 A. Yes, I do.
- 18 Q. What are they?
- A. N5 is a July 2004 version of policing professionally, and 19 20 T11 is the July 2012 update, we just call it policing with 21 integrity. It describes the patrol guide procedures that we 22 expect you to read prior to the lesson, and then it has the 2.3 actual lesson plan, the mandatory reading for the lesson.
- 24 MS. COOKE: I would move the admission of N5 and T11. 25 MS. HOFF VARNER: No objection on T11. SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FLO3 Shea - direct 1 On N5, can you just break down which part is policing 2 professionally and which part is policing with integrity? 3 THE COURT: It says so in the title. 4 MS. HOFF VARNER: It's a very long exhibit. 5 THE COURT: I agree. 6 MS. HOFF VARNER: It wasn't clear to me what the 7 relationship between these two sections were. 8 THE COURT: It says it in the subheading so I will 9 just state the numbers. 10 Policing professionally seems to end on Bates 2768, 11 and policing with integrity seems to start on Bates 2475. 12 MS. HOFF VARNER: Was the testimony that policing with 13 integrity is the update of policing professionally? 14 THE COURT: Policing with integrity is the update of 15 policing with integrity. 16 MS. HOFF VARNER: And policing professionally is a 17 separate document? 18 MS. COOKE: I don't have a copy of N5 at this point. 19 THE COURT: The first 18 pages are policing 20 professionally. And then we start again with page 1 called policing with integrity, but it's stapled together. 21 MS. COOKE: It looks like we got part of policing 22 2.3 professionally stapled to the beginning. 24 THE COURT: Did you mean to do it that way? 25 MS. COOKE: No. SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct 1 THE COURT: So basically she just wants policing with integrity from January '05 and policing with integrity from 2 3 July 2012. 4 MS. HOFF VARNER: That's fine. Can I just put the 5 Bates number on the record? THE COURT: It begins with 2475 and it ends with 2108. 6 7 MS. HOFF VARNER: Perfect. 8 THE COURT: That's the January '05. And July 2012 is 9 T11. 10 BY MS. COOKE: 11 Q. Referring, Chief Shea, to the most current version of 12 policing with integrity? 13 THE COURT: That's T11. And the question is? Q. The question is, what is the recruit officers training 14 15 regarding integrity in street encounters? 16 THE COURT: Is there a particular page that addresses 17 street encounters? MS. COOKE: The concept of training is integrity, and 18 19 I am trying to focus --20 THE COURT: Is there a page that you're thinking of? MS. COOKE: Not a page in the training. I am trying 21 22 to focus the content of the testimony, your Honor. 2.3 THE COURT: OK. 24 A. The specific training about integrity in the police 25 department is that it is of paramount importance at all times. SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

1 I don't want to sound like I am repeating myself, but again, it
2 goes back to --

THE COURT: You are in danger of that because I don't think that answers her question. Although I like at the consent of the government.

What is your question?

- Q. What is the training that police recruits receive regarding integrity related to street encounters?
- 9 A. As related to street encounters, we expect the utmost 10 integrity from them at all times with no exceptions, whether 11 related to street encounters or anything else. If they do not
- display it, you see most of the homework assignment in the
- patrol guide deals with how we will handle people who display less than integrity.
- 15 Q. I see that activity logs is a patrol guide section? 16 THE COURT: 212-08.
- 17 A. Yes.

3

4

5

6

7

8

- Q. Why is patrol guide section 212-08 on activity logs part of policing with integrity?
- 20 A. Because the activity log is a legal document and is used --
- 21 that's why you're not allowed to tear any pages out or redact
- 22 anything or cross anything. You can cross something out as
- long as it still can be read. Because that is where the
- 24 officer will document their interactions and their police
- 25 services and their assignments. And that's why it's considered SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

1 part of integrity because we want to emphasize that this is

- 2 where you are documenting your assignments and the police
- actions you have taken and it is a legal document that will be used to verify.
- ${\tt Q.}$ What are officers trained with respect to issues of
- 6 corruption in street encounters?
- 7 A. Corruption just applies to everything. It's not really
- 8 corruption in street encounters, unless you're talking about
- 9 you're afraid someone will steal something from someone.
- 10 Street encounters would fall more into what we call misconduct,
- 11 which means any misbehavior by police officers. Both of them
- 12 are required to be reported by any officer who becomes aware of
- 13 them and will be investigated by the Internal Affairs Bureau.
- 14 That's 100 policy. The officer is not allowed to make any
- 15 judgment as to the merits of the corruption or misconduct.
- 16 They must report it to Internal Affairs, get a log number, and
- 17 allow them to investigate it.
- 18 Q. How are recruit officers tested on their knowledge of
- integrity with respect to law enforcement?
- 20 A. Recruit officers, like everything else, they will learn the
- 21 lesson. They will do the mandatory reading. They will attend
- 22 the classes with their instructors. Then they will be tested
- in a variety of ways. The most formal is the trimester exams,
- 24 where they will have to answer questions related to this
- 25 material. They will also have testing in various scenarios, SOUTHERN DISTRICT REPORTERS, P.C.

5068 D4P8FLO3 Shea - direct and they will go up to other parts of their training and it will be incorporated into other parts of their training, like the total integration training at the end of their time. 3 4 Q. Are integrity tests used for uniformed members of the 5 service with respect to integrity? 6 A. Yes, they are. Q. How? 7 8 A. The Internal Affairs Bureau has a unit that's dedicated to 9 doing integrity testing of officers on patrol, and they will 10 arrange for scenarios or situations -- I shouldn't call it a 11 scenario because people believe it's real. They will arrange 12 for situations that would allow the use of less integrity and 13 they will test the officer to see how they handle that 14 situation. 15 THE COURT: We are going to pause now for our luncheon 16 recess and reconvene at five after two.

 $\,$ I do need to see the same two folks at the side bar, but the rest of you are excused until five after.

(Luncheon recess)

19 20

17

18

21 22

232425

	D4P8FLO3 Shea - direct
1	AFTERNOON SESSION
2	2:05 p.m.
3	JAMES SHEA, resumed.
4	BY MS. COOKE:
5	Q. Chief Shea, I am handing you what has been marked for
6	identification as Defendants' Exhibits V11 and M5. Do you
7	recognize those exhibits?
8	A. Yes, I do.
9	Q. What do you recognize them to be?
10	A. They are the old police student's guide about policing
11	impartially and the importance of doing so, and then the July
12	2012 update to the police student's guide about policing
13	impartially and the importance of doing so. V11 is the update.
14	M5 is the old one.
15	MS. COOKE: I would offer these Exhibits V11 and M5
16	into evidence.
17	MS. HOFF VARNER: No objection.
18	THE COURT: Both received.
19	(Defendants' Exhibits V11 and M5 received in evidence)
20	Q. Chief Shea, looking at V11, which is the most current
21	version of the police student's guide on policing impartially,
22	what are police recruits trained with respect to policing
23	impartially?
24	A. Again, they are focused on the diverse nature of the
25	population of New York City on a daily basis, and they are then
	SOUTHERN DISTRICT REPORTERS, P.C.
	(212) 805-0300

D4P8FLO3 Shea - direct

trained on the importance of treating everybody impartially,
because -- pardon me, on the importance of treating everybody
impartially because it leads to that acceptance by everybody
that we are treating everybody fairly and that they have the
same rights under the police as anyone else. We don't want
anyone to think there is favoritism toward anybody.

So this deals with the importance of treating people impartially. And then we go into the department policy prohibiting racial profiling is covered in this section. We talk about bias and prejudice in this section. We talk about the difference between criminally profiling and racially profiling, a lot about understanding bias and development of prejudice. Then we talk about the things that they have to be wary about while they are communicating with people, how they can possibly appear to be partial even if they are not.

- 16 Q. With respect to policing impartially, are recruits
- instructed on the policy prohibiting racial profiling?
- 18 A. Yes, they are.

7

8

9

10

11

12

13

14

15

- 19 Q. What are they instructed?
- 20 A. They are given the policy and then -- they are given the
- 21 policy. They are instructed on how it's law and how racial
- 22 profiling is forbidden in the NYPD. And as I stated before, it
- 23 was forbidden even before the City Council made it law. Then
- 24 they are also taught about how, in addition to it being
- forbidden and unlawful, it's bad police work. It says treating SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

1 everybody impartially is good police work because it allows you

- to look at every incident fresh and start from scratch. You
- don't want to start with any preconceptions or bias.
- 4 Q. How are police recruits trained that policing impartially
- 5 relates to street encounters?
- 6 A. The same way it relates to any other police work. Street
- 7 encounters is the same as all the other. You have to use your
- 8 discretion impartially, you have to base it on the objective
- 9 facts at your command, and you cannot allow any of your own
- 10 subjective feelings of bias or prejudice be involved in your
- 11 decision-making.
- 12 Q. With respect to Exhibit V11, does the text of the police
- 13 student's guide contain information that you just discussed on
- 14 the training of racial profiling and the prohibition of racial
- 15 profiling?
- 16 A. Yes, it does. It's actually on page 13. The NYPD policy
- 17 prohibiting racial profiling.
- 18 Q. Are recruits tested on this section of policing impartially
- 19 at some point during their time at the police academy?
- 20 A. Yes, they are, multiple times. Again, they are tested the
- 21 same ways I spoke about before, the formal testing and the
- 22 scenarios and role plays. And, in addition, in the scenarios
- and role plays, they are always required to articulate the
- 24 factors that led to their taking whatever enforcement action
- 25 they took.

D4P8FLO3 Shea - direct

1 Q. Chief Shea, I am handing you what have been marked for

- 2 identification as Defendants' Exhibit S11 and P3. Do you
- 3 recognize those documents, Chief Shea?
- 4 A. Yes, I do.
- 5 Q. What do you recognize them to be?
- 6 A. S11 is the current July 2012 version of the police student
- 7 guide regarding policing a multicultural society. And P3 is
- 8 the lesson plan from the multicultural immersion course. It's
- 9 also called, "Advancing community trust together; act
- 10 together." That is a post-graduation course that all new
- 11 police officers attend after they graduate the academy.
- 12 Q. One more exhibit. T5. Do you recognize T5?
- 13 A. That's policing a multicultural society from the January
- 14 20, 2005 version.
- 15 Q. Do you see 2006 and 2007 in there as well?
- 16 A. I didn't look through the books.
 - THE COURT: Why do you have to put all those different
- 18 versions in?

17

22

2.3

24

25

- MS. COOKE: It's just to reflect that the material has been present in part of the police student's training throughout.
 - THE COURT: You can just ask him that, whether it's been present continually since 2005.
 - MS. COOKE: I would move the admission of S11, T5 -- THE COURT: It still is cluttering the record to put SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct in these three years. Just ask him. 1 2 After it was there in '05, has it been in there 3 continuously? 4 THE WITNESS: Yes, it has. 5 MS. COOKE: I would move the admission of S11, which is the 2012 section, and then P3 which is a lesson plan. 6 THE COURT: Any objection to S11 and P3? 7 8 MS. HOFF VARNER: No objection. 9 THE COURT: As I said, it's very clear on the record 10 that the same policy was there from 2005 on. 11 (Defendants' Exhibit S11 and P3 received in evidence) 12 Q. Chief Shea, looking first at S11, the section of the police 13 student's guide on policing a multicultural society, what does 14 that mean? 15 A. I have referred to it several times. Policing a 16 multicultural society is what police officers need to police 17 New York City where we have multiple cultures coming together 18 on an everyday basis. Q. In what form are the police recruits trained with respect 19 20 to the multicultural society content? 21 A. This is a mandatory reading, and they have mandatory patrol 22 guide reading regarding how to treat foreign nationals, just 2.3 the procedures necessary for treating foreign nationals; the 24 mayor's executive order about the city policy concerning 25 confidential information and immigrant access; and the SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

guidelines for interaction with limited English proficient persons, which is anyone that you're having a language barrier communicating with.

Then they are taught, as much as we can, they change daily, all the different communities that they will come into contact with in New York City, and the different lessons learned, that the police department has learned on dealing with each one. Every community brings their own culture here with them and their own, as I said before, their own previous experiences dealing with uniformed law enforcement, sometimes negative, from other countries. So we want to make sure that the officers are aware of all of that before they go out and have to deal with these communities.

- Q. How important a part of a police officer's training at the police academy is the lesson and the instruction on policing a multicultural society?
- A. It's very important. After they get this class, it also permeates all the other training, as I mentioned, the total integration training at the end, the scenarios, the role plays. Because once they graduate and go out into New York City and have to begin doing this, they now have to interact with multiple cultures on any given day, and it's impossible to
- guess because they could be working in one precinct and have to go to another precinct for the day, or have to go to a detail
 - at a holiday parade. So they really need to know what cultures SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

1 they will be coming into contact with.

> But more important, that base lesson of don't assume that the person you're dealing with comes from the same life experience as you and is reacting the same way to what is happening. Certain cultures treat eye contact differently, treat touching differently, treat witnesses and children talking to other adults differently, and the more you're aware of it the better a job you can do.

- 9 Q. Turning your attention to P3, which is a lesson plan cover 10 sheet, what is the lesson plan represented into P3?
- 11 A. It's a lesson plan for a scenario and what they call an
- 12 assessment, a five- to ten-minute scenario and then an
- 13 assessment. The scenario deals with a stop, but the officers
- 14 will not be doing the stop; they are observing three plain
- 15 clothes officers do a stop.

2 3

4

5

6

7

8

- 16 Q. Looking at the front page of P3 in the upper left corner
- 17 under the word "course," it identifies this as part of a
- 18 multicultural immersion course, advancing community trust
- 19 together for united New York. What is that?
- 20 A. That's a three-day course that the newly promoted police
- officers, by which I mean the recruits who have just graduated 21
- 2.2 from the police academy, their first three days as uniformed
- 2.3 police officers, they attend this three day advancing community
- trust together course. It's in addition to everything they 24
- 25 have learned in the academy, and they spend three days actually SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

1 interacting with members of various communities in New York

- 2 City. There is panel discussions. There are role plays and
- 3 discussion groups.
- 5 held?
- 6 A. The first day is held in the Apollo theater up on 125th
- 7 street, and there is a panel discussion moderated by the police
- 8 commissioner. That's intended to drive home the importance of
- 9 this training. And then there's break-out groups which meet in
- 10 the police academy where the different community organizations
- 11 get a chance to meet in smaller groups with the officers, and
- 12 we cycle them through so everybody gets to deal with everybody.
- 13 That's where the scenarios and the role plays and the
- 14 discussion groups occur.
- 15 Q. Who identifies the members of the community that
- 16 participate in this multicultural immersion course?
- 17 A. The community affairs office is heavily involved in this,
- 18 the training bureau is involved in this, the police
- 19 commissioner is involved, the police commissioner's community
- 20 liaisons are involved, and we reach out sometimes to critics of
- 21 the police department and invite them.
- 22 Q. Is it accurate to say there are varying views of the police
- 23 represented by members of the community?
- 24 A. Yes.
- Q. What is it that the police department intends for the SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FLO3 Shea - direct

officers to learn from these members of the community at this course?

- 3 A. The point is, after having trained them on the
- 4 multicultural nature of New York, we now want them to see it
- 5 and to deal with it firsthand, and to hear from the actual
- 6 members of the community, some of their experiences with the
- 7 police, whether positive or negative, and how it impacted them
- 8 and their view of the police.
- 9 Q. So looking at the actual lesson plan that's represented in
- 10 P3, could you briefly describe what the lesson is and what the
- 11 police department intends the officer to learn from
- 12 participating in this lesson?
- 13 A. This is what we call a scenario role play. The basic
- scenario is described. It will be the same for every group
- 15 that comes in. You want me to go through what this particular
- 16 one actually is?
- 17 Q. If you can generally describe it, yes.
- 18 A. It would open with a couple walking, a black man and a
- 19 white woman. The man is asking the woman for a date. He is
- 20 telling her what a good guy he is, what a great job he has.
- 21 She is described here as responsive but cautious. She is just
- 22 meeting him for the first. They are walking past two uniformed
- 23 police officers. That would be two members of the class. They
- would be assigned as the rookie police officers that these
- 25 people walk past. While they walk past, there is no SOUTHERN DISTRICT REPORTERS, P.C.

5078 Shea - direct D4P8FLO3 criminality going on, three plain clothes officers come out of an RMP. If we do it in the classroom, they just come out of 3 the other door to simulate an RMP. And they grab the man and 4 they pat him down. They tactically stopped the couple and they 5 pat him down, separate the man from the woman. He has no 6 weapon. Right as they finish, a radio run comes over saying 7 that the perpetrator who fits that description was caught 8 somewhere else. The three plain clothes officers, instead of 9 explaining to the man why they stopped him, just jump in the 10 car and leave. And at that point, the man and the woman are 11 arguing and separate, and I believe the man -- depending on how 12 it goes, these are never perfectly scripted, but he can claim 13 he was the victim of racial profiling. 14 Q. What is it that the moderator instructs the officers with respect to this lesson plan? 16 A. They let it work out and then everything depends upon how

- 15
- 17 the officers handle it. What we want to get across is how this 18 could have been handled better. There may have been nothing wrong with stopping this man if he fit the description of 19 20 someone involved in a very serious crime and was in the right 21 time and area. There may be nothing wrong with doing it
- 22 tactically, which as I said before is unpleasant, but that's
- 2.3 the way to do it to ensure the safety of everybody involved.
- 24 However, they could have explained to the man why that incident
- occurred instead of just jumping in their car and driving away. 25 SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct

2

3

4

5

6

7

8

9

10

11

In addition, to really do well on this scenario, nothing could stop the two officers from walking over and explaining to the man what happened, even though they weren't the ones who stopped him. And that's the point of the discussion afterwards. What was done improperly, the disengagement phase, what was done improperly by the officers we described? And then what you could have done, even though you weren't involved in the original action, kind of to protect the reputation of the police department, and, quite frankly, the man at that point deserves an explanation, and there is no reason why you can't give it to him.

- Q. This is just one lesson plan, but are there other scenario based lesson plans that newly graduated officers participate in in the multicultural society immersion course?
- 15 A. There are a lot of them, because for one reason, we don't 16 want them to tell everybody else what the scenario is, so we 17 have to keep mixing them up on people from class to class. So
- 18 they have a whole bank of scenarios that they will use.
- 19 Q. Is a repeated theme in there issues of race and cultural 20 sensitivity?
- A. The repeated themes for a stop and question, specifically ones, the repeated themes in stop and question scenarios would be, yes, policing in a multicultural society and sensitivity to those issues and the three parts of the stop, the approach, the
- 25 actual stop, and the disengagement. This one dealt mostly with SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO3 Shea - direct the disengagement because these officers didn't even do the approach and the stop, but there are others that include all three. (Continued on next page)

> SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4p9flo4 Shea - direct Q. And with respect to the participation by members of the 2 community in the multicultural emergent course, do members of 3 the community share with the officers their experiences being 4 stopped? 5 A. Yes. They do on -- they share their experiences. Some of 6 them are community leaders sharing the complaints of their community members. Some of them --7 8 THE COURT: Do some of those complaints involve racial 9 profiling? 10 THE WITNESS: Yes, stopping and feeling they were 11 racially profiled. 12 THE COURT: Some of the people complained that they were victims of racial profiling? 13 14 THE WITNESS: Yes. They feel the police action was 15 taken on the basis of their race. 16 THE COURT: So there are community members that make 17 those complaints? 18 THE WITNESS: Yes. 19 THE COURT: To whom do they make them? 20 THE WITNESS: To their community leaders, apparently. 21 THE COURT: Not to the police? 22 THE WITNESS: I've never -- I don't know. 2.3 THE COURT: Okay. THE WITNESS: They do that and then they are also 24 25 involved in some of the discussion groups. They would not be SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4p9flo4 Shea - direct actors for safety purposes and liability but they will be 2 involved in the discussion groups after incidents like this. Your Honor, could I answer your question earlier, the 3 4 last question? 5 THE COURT: Sure. 6 THE WITNESS: When I was a precinct commander there 7 were occasions when community members might come to a community 8 meeting and claim a family member or themselves was the subject 9 of police action and they fear it was influenced by their race. 10 THE COURT: So you heard that when you were a 11 commander? 12 THE WITNESS: Yes. THE COURT: That's what I was asking. Thank you. 13 14 Q. If I could have 184 on the screen. I believe it's already 15 in evidence. Plaintiffs' 184. 16 Chief Shea, I apologize. It's a little hard to read. 17 Do you recognize Plaintiffs' 184. It's already 18 offered into evidence. 19 A. Yes, I do. 20 Q. What is it? A. It is an operations order from March 13, 2002 explaining 21 22 the department's policy regarding racial profiling. 2.3 Q. Is this what you were referring to earlier when you referred to -- when you described that the racial profiling 24

25 prohibition existed before the policy was written I guess is SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

- 1 what you said?
- 2 A. Partially because there's nothing in here that I didn't
- 3 learn when I went to the academy in 1991. This is just
- 4 codified here.
- 5 Q. So this would have been the department's policy prohibiting
- 6 racial profiling that was used up and until -- I guess we'll
- 7 show you Exhibit 183 which is already in evidence as well,
- 8 which is a revision to the department's policy prohibiting
- 9 racial profiling in May of last year?
- 10 A. Yes.
- 11 Q. So the recruits would have received these interim order and
- 12 the operations order as part of their course materials,
- whichever was applicable for when they were in the academy?
- 14 A. Yes.

21

- 15 Q. Notwithstanding use of the actual interim order or
- 16 operations order, was there discussion of the prohibition of
- racial profiling during the time a recruit was at the police academy?
- 19 A. Could you repeat the question.
- 20 MS. HOFF VARNER: Objection to the form.
 - THE COURT: Can you repeat the question anyway.
- 22 Q. Regardless of whether the actual paper, piece of paper was
- used, was there discussion of the policy prohibiting racial
- 24 profiling with recruits while they were at the academy?
- THE COURT: I'll allow that.

SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

1 MS. HOFF VARNER: It's not clear to me at what time

- period she's talking about.
- 3 THE COURT: Could you give a timeframe.
- 4 BY MS. COOKE:
- 5 Q. Well for 184 it was in effect from 2002 through May of
- 6 2012, correct?
- 7 A. Yes.
- 8 Q. So while recruits were at the academy between 2002 and
- 9 2012, notwithstanding use of the actual paper, was racial
- 10 profiling discussed?
- 11 A. Yes. In the policing impartially sections and in the
- 12 community -- you know, the community section.
- 13 Q. Are you aware of anything that would prohibit an instructor
- of recruits at the police academy from discussing racial
- 15 profiling in any course?
- 16 A. Would prohibit them from?
- 17 Q. Yes.
- 18 A. No.
- 19 Q. And the same question with respect to the revised racial
- 20 profiling policy that was in May of 2012, Exhibit 183.
- 21 Regardless of whether the piece of paper was used during
- 22 instruction, are you aware that prohibition of racial profiling
- was discussed with recruits after May of 2012?
- 24 A. Was it? Yes, it was.
- 25 Q. And, again, is there anything prohibiting an instructor at SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

the police academy from discussing the policy prohibiting

- racial profiling regardless of the course material?
- 3 A. No, there's not.
- 4 Q. Are you aware of instances in which the discussion of the
- 5 policy prohibiting racial profiling was discussed
- 6 notwithstanding the fact it was not contained within a lesson
- plan for that course? 7
- 8 A. Yes. The policy against racial profiling was $\ensuremath{\mathsf{--}}$ is
- 9 discussed, again, during multiple times during the police
- 10 academy. I sat in on classes and observed that.
- 11 Q. Chief Shea, I'm handing you what has been marked for
- 12 identification as Defendants' R11. Do you recognize that
- 13 document?
- 14 A. Yes, I do.
- 15 Q. What is it?
- 16 A. It's the section of the police student's guide dated
- 17 July 2012 and it deals with the criminal procedure, the study
- 18 of the laws and rules governing the criminal justice system. 19
 - MS. COOKE: Your Honor, I offer Exhibit R11 into
- 20 evidence.
- 21 MS. HOFF VARNER: No objection.
- 22 THE COURT: R11 is received.
- 2.3 (Defendants' Exhibit R11 received in evidence)
- 24 Q. Chief Shea, looking at Exhibit R11 does the lesson and the
- 25 training with respect to criminal procedures involve the law SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

- of -- well does it involve the Fourth Amendment?
- 2 A. Yes, it does.
- 3 Q. Does it also involve a discussion of street encounters
- 4 including stop, question and frisks?
- 5 A. Yes. It opens up with a discussion of the Fourth Amendment
- 6 protections that every resident is entitled to. And then it
- 7 goes into how that affects you as you're doing your job. And
- 8 goes further and goes into the exceptions to the Fourth
- 9 Amendment approved by the Supreme Court.
- 10 Q. At what trimester of the police academy would a police
- 11 recruit receive criminal procedure instruction?
- 12 A. That's changed over the years. Only because law used to be
- 13 separate. And I can't speak to when exactly they got to this
- 14 lesson. But they learned this early because you can't start
- 15 teaching anything else until they know the rules. So it's in
- 16 the first trimester.
- 17 Q. In addition to the Fourth Amendment are recruit officers
- 18 trained on New York state constitutional law?
- 19 A. Yes, they are. They're trained on -- as part of this
- 20 lesson they're trained on New York state law and its
- 21 relationship to the United States -- Supreme Court's decisions.
- 22 And they're then trained on specifically, a huge one for us,
- they're trained on People v. DeBour which sets out the four
- levels of intrusiveness during street encounters.

There are probably two dozen what we call legal bureau SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

1 bulletins dealing with search and seizure that are included as

- 2 part of this lesson.
- 3 Q. Are the recruit officers tested on the material contained
- 4 in the criminal procedure section of the police student's
- 5 quide?
- 6 A. Yes, they are.
- 7 Q. In the context of instruction with respect to criminal
- 8 procedure, are police recruits instructed as to when it's
- 9 appropriate to frisk or search under the law?
- 10 A. Yes. The difference between a frisk and a search and then
- 11 when it's appropriate to do either, the legal basis for that is
- 12 here. Not how to do it. But just the legal basis for those
- 13 decisions.
- MS. COOKE: Just one moment, your Honor.
- Q. Chief Shea I'm going to hand you four documents at the same time but I'm going to have a question about three. It's
- exhibits marked for identification C4, Exhibit T3, Exhibit O3,
- 18 and Exhibit J11.
 - Directing your attention first to C4, O3, and J11.
- Do you recognize those three documents?
- 21 A. Yes.

19

25

- 22 Q. Beginning with I guess C4. What is it?
- 23 A. C4 is a PowerPoint presentation on a class of properly
- 24 preparing stop, question and frisk report.
 - O3 is the accompanying lesson plan for preparing -- SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct 1 proper preparation of a stop, question and frisk report. 2 THE COURT: What are you referring to as report? You 3 mean the UF 250? 4 THE WITNESS: Yes. 5 And J11 is the command level instructor's guide, like 6 an instructor's guide and lesson plan coversheet for stop, question and frisk. That's an in-service guide. 7 Q. Chief Shea, with respect to your prior testimony in the 8 9 Ligon preliminary injunction hearing do you recall testifying 10 about preparation of the stop, question and frisk report? 11 A. Yes. 12 Q. Do you recognize C4 and O3 as materials relating to the 13 Rodman's Neck refresher course training you testified about in 14 Ligon? 15 A. Yes. 16 MS. COOKE: Your Honor, I offer C3 and O4 into 17 evidence but intend to ask no questions as he's already 18 testified. 19 MS. HOFF VARNER: No objection. 20 THE COURT: Received. 21 (Defendants' Exhibits C3 and O4 received in evidence) 22 Q. With respect to J11, Chief Shea, it's also a command level 2.3 instructor's guide?

24 A. Yes, it.

25

Q. It predates the stop, question and frisk refresher course SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

1 at Rodman's Neck you've previously testified about; is that

2 correct?

- 3 A. Yes it does. It's dated 06-2008.
- 4 Q. Is the instruction consistent with the instruction from the
- 5 Rodman's Neck refresher course on preparing the stop, question

6 and frisk report?

- 7 A. Yes, it is. The difference is that this was intended for 8 precinct or command level instructors to use.
- 9 MS. COOKE: Your Honor, I would offer J11 into

10 evidence.

MS. HOFF VARNER: No objection.

12 THE COURT: J11 is received.

(Defendants' Exhibit J11 received in evidence)

14 Q. And then with respect to the T3 that I handed you, Chief

15 Shea.

11

13

16

17 Q. Do you recognize T3?

18 A. Yes, I do.

A. Yes.

19 O. What is T3?

20 A. It's what they call a forms workshop lesson plan.

21 It's workshops that we do or assessments that we do

22 after officers are trained to -- where they have to actually

fill out the forms, that they've learned -- that they've now learned about in an academic environment to this point.

learned about in an academic environment to this point.

MS. COOKE: Your Honor, I offer T3 into eviden

MS. COOKE: Your Honor, I offer T3 into evidence. SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

- 1 MS. HOFF VARNER: No objection.
- THE COURT: T3 is received.
- 3 (Defendants' Exhibit T3 received in evidence)
- 4 Q. Chief Shea, T3 is dated on the front page as being prepared by the curriculum and evaluation unit in October of 2008.

Do you see that?

7 A. Yes.

6

- 8 Q. Is this generally the same forms workshop lesson plan that
- 9 are in use presently at the police academy?
- 10 A. Yes.
- 11 Q. Would this instruction be for recruit level candidates or
- 12 uniformed members of the service as well?
- 13 A. Recruit level.
- 14 There's nothing to prevent you from using these
- 15 scenarios. They will apply in others. But they are prepared
- 16 for the recruit level.
- 17 Q. In these forms workshop lesson plans, do you see a lesson
- 18 plan with respect to preparing the stop, question and frisk
- 19 report on page -- I guess it begins on page Bates stamp 4187.
- 20 A. I might have went past it.
- 21 Q. It's D24 on the pagination of the document by the police
- 22 department.
- 23 A. Yes. 41 --
- 24 Q. -- 87?
- 25 A. 87. Begins form tutorial one. Stop, question and frisk SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

1 UF 250.

4

14

Q. Chief Shea, I'm handing you what's been marked for identification Defendants' Exhibit G4.

Do you recognize that?

- 5 A. Yes, I do.
- 6 Q. What is it?
- 7 A. It's a memo book -- it's a photocopy of a memo book insert
- 8 titled what is a stop, question and frisk encounter. And it's
- 9 actually a tear-off card. So there are three of the identical
- 10 cards and you can tear them off.
- 11 Q. So this exhibit, there's three of the front of the card and three of the back of the card; is that correct?
- 13 A. That's correct.
 - MS. COOKE: Your Honor, I offer G4 into evidence.
- MS. HOFF VARNER: No objection.
- 16 THE COURT: G4 is received.
- 17 (Defendants' Exhibit G4 received in evidence)
- 18 Q. When is the tear-off card reflected in G4 used?
- 19 A. The officers are instructed that the patrol guide procedure
- 20 tells them me may offer this card to somebody at the end of a
- 21 stop, question and frisk procedure.
- 22 Q. Is this part of the disengagement discussion with recruits,
- one of the three parts of the stop and frisk you testified to
- 24 earlier?
- 25 A. Yes. This would be part of it. You have the option of SOUTHERN DISTRICT REPORTERS, P.C.

Shea - direct D4p9flo4 giving this card -- the card is designed for one to give

somebody -- it has information on it that they can use. It

3 tells them the law, why a police officer is allowed to stop

4 them. It gives them -- for more information that they can go

to the New York City.gov/NYPD website. And on the back it puts 6

common factors that cause us to stop people. And a blanket statement that if you've been stopped and were not involved in

any criminal activity, we regret any inconvenience to you.

It can be used at times when officers don't have time to explain personally what happened; for instance, they stop someone and then hear another officer calling for help because he stopped the real person and now they're fighting. You could hand them the card as you run away, or it can just be used for somebody who is irate and does not want to hold a conversation with you. Sometimes you can give them -- they'll accept the card and you can hope they'll read it at a later date and at

16

17 least get some understanding or know how to proceed.

18 Q. Chief Shea, are you familiar with what a criminal pattern

19 is?

7

8

9

10

11

12

13

14

15

20 A. Yes.

Q. How are you familiar with a criminal pattern? 21

A. I ran the -- I mentioned before when I ran the citywide 22

2.3 robbery unit I was responsible for establishing patterns for

the city and also investigating and apprehending the 24

25 perpetrators of multijurisdiction patterns. And I taught for a SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

1 while in the criminal investigative course, I actually taught

- 2 pattern crimes and pattern crime investigation.
- 3 Q. Are recruit officers trained at the police academy with
- 4 respect to crime patterns?
- 5 A. Basic training, yes.
- 6 Q. And are uniformed members of the service, do they receive
- 7 training with respect to crime patterns?
- 8 A. Yes, they do.
- 9 Q. In what context?
- 10 A. At command level training. They would receive training
- 11 about patterns and then in their command they would be
- 12 constantly being trained on existing patterns within the
- 13 command and surrounding commands.
- Q. What's the difference between a pattern and a trend?
- 15 A. A trend in -- in the NYPD, we define a trend as an increase
- or decrease in the frequency of a crime.
- 17 A pattern we define as having common characteristics
- 18 that we believe it may be the same perpetrators committing the
- 19 crime.
- 20 Q. Do officers at the police academy receive training on
- 21 trends?
- 22 A. Yes. On what they -- officers -- by officers are you
- 23 referring to recruits?
- 24 Q. Recruit officers, yes.
- 25 A. Recruit officers receive the basic training; what a pattern SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

is, what a trend is, why it's important to you, why you should be aware of them before you go out on patrol.

 ${\tt Q.}$ Why is it important that officers be aware of patterns or

4 trends before they go on patrol?

- 5 A. It's important for safety purposes that they understand
- 6 what's happening around them in the precinct. If there is a -7 gunpoint robbery pattern involving two individuals dressed in a
 - certain type of clothing, we would want them to know that in
- 9 case they encounter the individuals. It's important so that
- while doing police work they can make their contribution to
- ending the pattern and protecting the people that are the

12 victims of it.

8

13

14

15

16

17

18

19

20

And it's just important in general because when they do their police work -- it adds to what we discussed before in the characteristics of armed subjects, the environmental factors, being aware of what's happening around you and what's going on in your command.

Q. Can a pattern be precinctwide?

THE COURT: I'm sorry?

- Q. Can a pattern be precinctwide?
- 21 A. The most basic kind would be precinctwide -- pardon me. A
- 22 pattern -- can I expand -- a pattern, when we establish
- 23 patterns, they are either precinct level. We use the term
- 24 precinct level patterns. That means the entirety of the

D4p9flo4 Shea - direct

1 borough pattern extends beyond one precinct into other

- 2 precincts in that borough. And a citywide pattern extends
- 3 beyond one borough into other boroughs. You could have
- 4 multijurisdictional, for instance, Queens and Nassau County.
- 5 Q. What are uniformed members of the service trained with
- 6 respect to multiprecinct or boroughwide patterns?
 7 A. They're investigated by the detective bureau.
 - A. They're investigated by the detective bureau. But every officer and person in those jurisdictions is made aware of them.

The rule is a pattern can be identified by anybody. We encourage everybody to look for the common characteristics. If it — once it's identified, though, it would go to the central robbery section that I used to command. And it would be looked at by the intelligence section there for two reasons; to see if there's any reason it shouldn't be a pattern and to see if there's any other cases that should be included in the pattern that the local people might have missed.

- 18 Q. What is a patrol officer trained to do in the course of
- their duties with respect to knowledge of a pattern?
- 20 A. When they come to work everyday, in every precinct there's
- 21 what's called the crime information center. In that crime
- 22 information central all ongoing patterns are displayed in two
- 23 ways. They're displayed written, with the descriptions of
- 24 what's going on; and they're displayed on a pin map to give a
- visual of what's occurring.

8

9

10

11

12

13

14

15

16

17

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4p9flo4 Shea - direct

2.3

Every officer is required to check that crime information center at the beginning of their tour and make themselves aware of ongoing patterns. And it's actually part of our total integration training at the end of the academy when we do the mock precinct for the recruits. They have to check the crime information center and be aware.

- Q. What about special officers such as anticrime or SNEU or conditions teams? What are they trained with respect to use of patterns in their police work?
- A. Everyone is trained to be aware of the patterns.

Anticrime officers are specifically tasked with investigating and dealing with street level crimes. So they would actually change their — they might — I won't speak for everyone. They might actually change their patrol methods or their — or what they're doing to address that pattern.

SNEU generally is assigned to street level narcotic sales but they would need to be aware of it.

Conditions teams, just like anticrime, might actually change their patrol methods to address the pattern.

Q. Chief Shea, I'm going to have displayed on the screen Plaintiffs' Exhibit 74 which is already in evidence. It's the revised most current version of the UF 250 form.

Is there a box on the UF 250 form where an officer could indicate awareness of pattern or trend as a basis for reasonable suspicion for the stop. If you could look at the SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

1 front and you can look at the back.

2 A. I'm like that lieutenant I can barely see it.

I would call it in -- go to additional circumstances factors on the back. Reports from victim/witness area having

5 high incidence of reported offense, or type under

investigation, and time of day, day of week, season

- 7 corresponding to the reports all would be relative to patterns.
- 8 Q. What about ongoing investigations in the far right column?
- 9 A. Yes. That would be ongoing investigations. But ongoing --
- 10 yeah. That would include too because that would include police
- officers aware of the ongoing investigation into the pattern.
- 12 Q. So those four boxes you identified are boxes you think an
- officer aware of a trend or a pattern could properly complete
- 14 the UF 250 form?

3

4

6

19

- 15 A. Yes. They could check them if they apply. Or they could
- 16 check other and put the -- and actually describe the pattern.
- Q. Chief Shea, I'm handing you three exhibits marked for identification Q3, R3, and Y3.
 - Do you recognize those exhibits?
- 20 A. Yes, I do.
- Q. Beginning with Q3, what do you identify that to be?
- 22 A. Q3 is a -- it's a training outline, a lesson plan
- 23 coversheet from the sergeant's leadership course which is under
- 24 our leadership training section. And it involves simulations,
- 25 simulated scenarios that sergeants will deal with. Everything SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct
from responding to a street encounter to emot

from responding to a street encounter to emotionally disturbed

persons or unlawful eviction, etc.

- 3 Q. And R3?
- 4 A. R3 is another sergeant's leadership course. One hour
- 5 course. And the lesson -- this is specifically a lesson on
- 6 stop, question and frisk. And it includes the responsibilities
- of reviewing the report properly, defining the legal issues,
- 8 administrative procedures, defining racial profiling and the 9 NYPD policy, supreme Court decisions, and confrontation
- 9 NYPD policy, supreme Court decisions, and confrontation 10 situations which sometimes are involved in stopping people.
- 11 Q. Finally Y3?
- 12 A. This looks -- it's the same as Q3, just revised for
- 13 simulations, on 2011. Yet, again, it's simulations that will
- be trained to new sergeants where they'll have to identify
- 15 procedures and perform the role of the patrol supervisor or the

MS. COOKE: Your Honor, I would offer Y3, R3, and Q3 into evidence.

THE COURT: Any objection?

MS. HOFF VARNER: No objection.

- THE COURT: All three received Q3, R3, Y3.
- 22 (Defendants' Exhibits Q3, R3, and Y3 received in

23 evidence)

18

19

20

21

- Q. Chief Shea, you identified these as sergeant's leadership
- courses; is that correct?

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4p9flo4 Shea - direct

- 1 A. Yes.
- Q. What's a sergeant's leadership course?
- 3 A. Newly promoted sergeants, before they go out onto the
- 4 street, they're promoted to sergeant, but before they go out
- onto the street they attend the sergeant's leadership course.
- 6 And they are trained in the difference between -- pardon me.
- 7 They are trained in the difference between being a police
- 8 supervisor as opposed to a police officer.
- 9 Q. With respect to street encounters you identified
- 10 Defendants' Exhibit R3 as, in particular, being specific to a
- 11 lesson plan on stop, question and frisk; is that correct?
- 12 A. Yes, it is.
- 13 Q. And what is it that sergeants are trained with respect to
- 14 what their responsibilities in a stop, question and frisk in
- 15 Exhibit R3?
- 16 A. Well, in addition to the review of everybody's legal
- 17 responsibilities and racial profiling and impartial law, the
- 18 desk officers are taught that they're required to review any
- 19 reports that come before the desk. And that includes the
- 20 UF 250 form. And then they also have some administrative
- 21 duties as far as forwarding it to the correct location. And
- 22 they instruct the members if they find them preparing
- 23 incorrectly.
- 24 Q. I'm sorry?
- 25 A. The patrol supervisor should be responding, if they can, to SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

the stop, should be responding and reviewing the UF 250 at the

- time and training the officer if there's any training issues
- 3 that are identified.
 - Q. With respect to the lawfulness of street encounters, are
- 5 sergeants trained that they're responsible for ensuring legal
- 6 street stops?

4

- 7 A. Yes. They should be reviewing every street stop that
- 8 they're aware of and ensuring that the officer can articulate
- 9 the reasonable suspicion necessary for the forcible stop.
- 10 Again, the desk officer has the specifically itemized
- 11 duty of instructing the officer if they feel that there was
- 12 anything wrong with the stop or that the officer's articulation
- is not as thorough as we would like, or if the form is not
- 14 prepared correctly.
- 15 Q. Turning your attention to Defendants' Exhibit Y3. Do you
- 16 see that this lesson plan coversheet on the top right indicates
- 17 time required, 14 hours?
- 18 A. Yes.
- 19 Q. So is this several days of instruction included in the
- 20 lesson plan of Y3?
- 21 A. Yes. Because this isn't just academic. This is role plays
- 22 and instruction.
- 23 Q. And what are the role plays that the sergeants in
- 24 participating in the lesson plan in Exhibit Y3 would be engaged
- 25 in?

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4p9flo4 Shea - direct

2.3

A. They would be engaged in all of them. The ones that refer to street stops would be the first one, identifying the procedures and performing the role of a patrol supervisor in a street encounter scenario.

- Q. And would that involve the sergeant carrying out the duties you just described of reviewing UF 250s?
- A. Yes. The difference between the training here and the training I talked about before, where we did scenarios and role call, is here the scenario is aimed at a responding supervisor not at the officers actually performing the stop.

So here what they tell the guide, the general guide is that the newly promoted sergeant will perform the role of a patrol supervisor in a stop, question and frisk scenario. They will respond to an arrest in the transit system. And the member will have previously stopped, questioned and frisked an unknown person based on a description of a man with a gun and no callback. Okay.

And then the sergeant arriving on the scene will be required to identify and utilize the correct procedures, validating if the person stopped was done so lawfully, ensuring that a stop, question and frisk report worksheet is completed, ensuring the proper memo book entries are made, verifying the arrest if one was made; and if the stop was unlawful, training the MOS on legal bureau bulletin Florida v. JL.

Q. Following the role play, is there a discussion and critique SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct of --A. Yes. 2 3 Q. -- the sergeant's involvement in the roll play? A. Always. Always. Especially at the supervisory level, we like to get everybody involved. And following the role play, 6 the other students in the class would be talking about what 7 could have been done better, what could have been done 8 differently, ideas, best practices that they've seen in their 9 experience. And they turn it into a classroom discussion. 10 Q. Chief Shea, I'm handing you three exhibits marked for 11 identification Defendants' L3, Defendants' M3, and Defendants' 12 13 MS. HOFF VARNER: Can I ask for the first exhibit 14 number that you justify gave. 15 MS. COOKE: L3. 16 MS. HOFF VARNER: Thank you. 17 Q. Chief Shea, do you recognize these three exhibits? 18 A. Yes, I do. Q. What do you recognize them to be? 19 20 A. L3 is a training bureau memo from Dr. O'Keefe who is the 21 deputy commissioner of training in the NYPD. And it orders a 22 stop, question and frisk review course. 2.3 THE COURT: When is this? 24 BY MS. COOKE:

> SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

Q. Is this the Rodman's Neck?

25

D4p9flo4 Shea - direct 1 A. The beginning of Rodman's Neck training. THE COURT: Remind me. When is that? 3 MS. COOKE: Was it in the spring of 2012? 4 THE WITNESS: About late winter, like March, April, 5 2012. 6 THE COURT: Thank you. 7 THE WITNESS: It lists the course objective, the 8 learning outcomes and the audience that we are expected to 9 train. 10 Q. And M3? 11 A. M3 is the review. This is the syllabus that was prepared 12 in response to the learning objectives identified by 13 Dr. O'Keefe. 14 Q. And E4? 15 A. E4 is the street encounters class PowerPoint presentation 16 that was presented by the NYPD legal bureau as part of the 17 course at Rodman's Neck. This is specifically the class by the 18 legal bureau. 19 Q. And I would offer these three exhibits, your Honor, into 20 evidence, L3, M3, and E4? MS. HOFF VARNER: No objection. 21 22 THE COURT: One moment. They are all received. L3, 2.3 M3, and E4. 24 (Defendants' Exhibits L3, M3, and E4 received in 25 evidence)

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4p9flo4 Shea - direct

1 Q. Chief Shea, you recall testifying at length with respect to

- the Rodman's Neck course in your Ligon testimony?
- 3 A. Yes, I do.
- 4 Q. Is that Rodman's Neck refresher course ongoing?
- 5 A. Yes, it is.
- 6 Q. Are you aware of how many officers have been trained
- 7 through that course at this point?
- 8 A. To date they are very close to six thousand.
- 9 Q. And you testified in your Ligon testimony that you were
- 10 responsible for formulating that course; is that correct?
- 11 A. At Dr. O'Keefe's instructions yes.
- 12 Q. Have you made any modifications to that course since it
- 13 began in late winter early spring 2012?
- 14 A. Yes. We added a -- the only modification we've made, we
- 15 added a component of a stop outside a building -- or an
- 16 encounter, I won't call it a stop because what happens depends
- 17 upon the students' reactions -- an encounter outside a
- 18 building.
- 19 Q. You're referring to the role play or scenario based
- 20 component of that training?
- 21 A. Yes.
- 22 Q. And if you could be a little bit more descriptive. Could
- 23 you explain to me what the addition to the scenario is that
- you're referring to?
- 25 A. We added -- we always had a vertical of the building where SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct officers had to patrol a building and encounter various scenarios. We added, as they approach the building, someone coming out and behaving in a suspicious manner. And then it 3 4 depends on how the officers react. 5 Q. Chief Shea, I'm handing you three more documents marked for 6 identification as U3, P5, and V3. 7 MR. MOORE: The second one again. MS. COOKE: U3, P5, V3. 8 9 MR. MOORE: Thank you. 10 Q. Do you recognize these documents? 11 A. Yes. U3 is a lesson coversheet and a lesson for in-service 12 training and it deals with policing housing developments, 13 including conducting interior vertical patrols, prepared by the 14 police academy in 2010. 15 P5 is a section of the police student guide dealing 16 with patrol operations to include vertical patrol. 17 V3 is a housing patrol lesson plan coversheet from 18 2011. It's for the recruits. And it is intending to give them the fundamentals needed to conduct random vertical patrols 19 20 specifically within housing buildings. 21 MS. COOKE: Your Honor, I would offer U3, P5, and V3 22 into evidence. 2.3 MS. HOFF VARNER: Your Honor, I would just note that 24

these documents are directly related to vertical patrols.

25

THE COURT: They are. Why are they being offered in SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct 1 this trial? 2 MS. COOKE: They involve the stop and frisk training, 3 just in the context of officers conducting vertical patrols. 4 THE COURT: True. But we don't have that issue in the 5 Floyd case. These are street stops. 6 MS. COOKE: As the chief just explained, some of the 7 encounters began outside on the street as an officer is 8 approaching a building to conduct a vertical. 9 MS. HOFF VARNER: Your Honor, you've specifically 10 excluded from this case witnesses --11 THE COURT: I know. The plaintiffs who wanted to be 12 plaintiffs here. And the city argued because they were in the 13 Housing Authority projects we shouldn't use them because that's Davis and not Floyd. And now you it you want to put these 14 15 three exhibits in. So maybe it's best to save then for another 16 day. 17 MS. COOKE: It was just for the context of the stop 18 encounters. 19 THE COURT: You have an awful lot of paper as to how 20 the training was done. I don't think we need these three 21 exhibits. 2.2 MS. COOKE: All right. 2.3 Q. Chief Shea, I'm handing you four exhibits that have been marked --24 25 THE COURT: How many more do you have? SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct MS. COOKE: A few more. 2 THE COURT: How many more? 3 MS. COOKE: Two of them are disks, your Honor, we 4 won't be using but we're introducing into evidence. 5 Two, your Honor, after this. 6 THE COURT: Okay. Thank you. 7 Q. I'm handing you K3, E8 which are two disks, F8, and G8. 8 MS. HOFF VARNER: Can you repeat those exhibit numbers 9 one more time. 10 MS. COOKE: K3, E8, F8, and G8. 11 E8 two disks. 12 THE COURT: Thank you. 13 Q. Chief Shea, beginning with E8, the two disks. Do you 14 recognize them? 15 A. Yes. They're stop, question and frisk training videos. 16 Q. And then F8 and G8. Do you recognize those documents? 17 A. Yes. They're stop, question and frisk film series, kind of a script to accompany the -- it's the script of the film of the 18 19 two disks. Q. Is one the teleprompter script and one a narrative script? A. F8 is the teleprompter final script. And then G8 is a narrative.

- 20
- 21
- 22
- 2.3 Q. And K3?
- 24 A. K3 is the command level instructor's guide that accompanies
- 25 the stop, question and frisk video series number 5.

SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct MS. COOKE: Your Honor, I offer K3, E8, F8 and G8 into 2 evidence. 3 MS. HOFF VARNER: No objection except to the -- to the 4 extent that these include videos and scripts of videos, just 5 not for the truth of the matter, just as training materials. 6 THE COURT: They are all training materials. 7 MS. HOFF VARNER: Yes. 8 THE COURT: Are you planning to play these videos? 9 MS. COOKE: No. 10 THE COURT: But you want to put them in evidence? 11 MS. COOKE: We could play them if --12 THE COURT: If their in evidence my choice is to watch 13 them in the courtroom or not in the courtroom, but if they're 14 in evidence they should be watched. 15 MS. COOKE: Okay. 16 THE COURT: How long are they? 17 MS. COOKE: There's five of them, your Honor. I don't 18 know the total. That's why I was not going to play them. 19 THE COURT: I know but I'm required to listen to them 20 if they're in evidence. Things that are in evidence are 21 supposed to be reviewed by the court otherwise it's not an 22 honest notion of what's in evidence. 2.3 Can you find out. Do you know how long roughly each 24 of those scenarios run? 25 MS. COOKE: We'll find out. SOUTHERN DISTRICT REPORTERS, P.C.

```
D4p9flo4
                               Shea - direct
               THE WITNESS: I'm thinking ten to fifteen minutes
 2
      each.
 3
              THE COURT: We're not going to do it now that's for
 4
      sure.
 5
              MS. COOKE: He'll check the time and we'll get back to
 6
     you.
 7
               THE COURT: So in any event K3, F8, G8 and what was
 8
      it?
 9
               MS. COOKE: E8 are the two disks.
10
               THE COURT: E8 are received but we have to talk about
11
      when to watch the videos.
12
               MS. COOKE: We'll get the time, your Honor.
13
      Q. With respect to the stop, question and frisk videos how
14
      many are in the series, Chief Shea?
15
      A. Five.
16
               THE COURT: Maybe we should watch one of those --
17
               MS. COOKE: Would you like to --
18
               THE COURT: -- just to all get a sense of what it is.
19
               MS. COOKE: The fifth one, your Honor?
20
               THE COURT: I don't care.
               MS. COOKE: That was the one that's most recent, the
21
22
     development of the Rodman's Neck refresher course. The other
23
      ones are more specific. One covers the reasonable suspicion.
24
      One covers I think the approach. And they are a little
25
      different. But the fifth one is more comprehensive.
                     SOUTHERN DISTRICT REPORTERS, P.C.
```

	D4p9flo4 Shea - direct
1	THE COURT: Maybe we should watch the fifth one.
2	(Pause)
3	MS. HOFF VARNER: I said just for the record is this
4	the same video that was viewed in part during the Ligon
5	preliminary injunction hearing? And Ms. Cooke said that it
6	was.
7	MS. COOKE: Your Honor, we don't have to offer the
8	five videos into evidence, the testimony of is already in,
9	in Ligon. It's not necessary.
10	THE COURT: So E8 is not in evidence.
11	MS. COOKE: We'll just forego that at this point.
12	THE COURT: All right.
13	Are you saying all five of those videos were in
14	evidence in Ligon?
15	MS. COOKE: No just the fifth one. The one we were
16	going to watch anyway. I believe. Actually now that I think
17	about it, they might have been all five. But we only did watch
18	part of the fifth one in Ligon.
19	MS. HOFF VARNER: I'm sorry. For the clarity of the
20	record I understand that the court is not receiving E8.
21	THE COURT: Right.
22	MS. HOFF VARNER: But what about F8 and G8 which are
23	the scripts of the videos that are in evidence.
24	THE COURT: Are you still offering those too?
25	MS. COOKE: I don't know that there's any problem with
	SOUTHERN DISTRICT REPORTERS, P.C.
	(212) 805-0300

D4p9flo4 Shea - direct the script. The script -- it's not offered for the truth. 1 2 THE COURT: She's not saying that. She's just saying 3 does it make sense to have the script without the video. If 4 you don't need the video, you don't need the script. I think 5 that's what she's saying. 6 MS. COOKE: I don't need the script. THE COURT: All right. Neither F8 nor G8 are received 7 8 in evidence. 9 MS. COOKE: Right. 10 (Defendants' Exhibit K3 received in evidence) 11 Q. Chief Shea, I'm handing you a document that's been marked 12 for identification as Plaintiffs' Exhibit 387. Do you 13 recognize that document? 14 A. Yes, I do. 15 Q. What do you recognize it to be? 16 A. It is the instructor assessment guide from the mock 17 precinct scenarios which are done at the police academy. 18 Q. Is this is for recruit officers? A. Yes, it is. 19 20 MS. COOKE: Your Honor, I would offer Plaintiffs' 21 Exhibit 387 into evidence. I didn't give you a copy. I will publish it on the screen. 22 2.3 THE COURT: Any objection? MS. HOFF VARNER: No objection. 24 25 THE COURT: 387 received. SOUTHERN DISTRICT REPORTERS, P.C.

SOUTHERN DISTRICT REPORTERS, P.C (212) 805-0300

D4p9flo4 Shea - direct

2.2

2.3

(Plaintiff's Exhibit 387 received in evidence)
Q. And Chief Shea, you said this was a lesson plan of role
play or mock stop, question and frisk scenario; is that
correct?

A. No. It's the instructor assessment guide for what we call — add the end of the police academy, before the total integration when we bring them up to the range and have them do a mock tour, we do a series of scenarios in what we call the mock precinct where they stay in the police academy and do them with their instructors. It's a little less realistic than when we take them up to an unfamiliar area and have them actually turn out.

So they would have do these scenarios. Stop, question and frisk are the first two. But will are also grand larceny complaints, quality of life complaints, landlord/tenant disputes.

And then the last two pages are a sample assessment form for the stop, question and frisk job. That's what the instructor would have as he watches the scenario.

So these recruits would be put into these scenarios and they would have to handle the job as it presented itself to them.

Q. So with respect to the recruit assessment form that you're referring, the last two pages, what are the metrics under which a recruit is assessed for their participation in this lesson SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

1 plan?

2.3

A. The recruits have to handle it and then each lesson plan is different. This one is the stop, question and frisk number one. They are judged on or graded on their radio communication, their knowledge of the law, their courtesy, professionalism and respect, and their tactics.

And you can -- you start at a hundred points. And then there are two grading metrics. We either deduct points for what we believe to be improper response or improper tactics, etc., and there's several -- in every scenario, there are also automatic failures where you have to be retrained in that area.

Q. What are the automatic failures represented in this assessment form for the stop, question and frisk role plays? A. For instance, this one, the radio communications at the top, you just lose points if you don't transmit the radio correctly.

But the knowledge of the law; for instance, did the recruit unjustifiably stop, search or frisk, if the answer is yes, they must — that's an automatic failure and it must be commented on by the instructor. Same for did the recruit use unnecessary force or did the recruit know what level of suspicion he or she was at. That's asked in a question immediately following the scenario.

Courtesy, professionalism and respect. The recruit SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4p9flo4 Shea - direct

being disrespectful to the individual or not behaving in a

- 2 professional manner are automatic failures also.
 - And then when you get to the bottom, tactics --
- 4 Q. Chief Shea, let me stop you. Is that correct on the
- 5 second, under courtesy, professionalism and respect, it says,
- 6 "Did recruit behave in a professional manner," and a fail
- 7 appears under yes?

3

8

- A. No. That's a typo. It should be under no.
- 9 Q. And then under tactics?
- 10 A. Tactics is minus five for using incorrect tactics.
- 11 Q. So the metrics that a recruit would fail participation in
- 12 this scenario are those related to courtesy, professionalism
- 13 respect and knowledge of the law?
- 14 A. Those are the automatic failures. They could pass those
- 15 and still fail if they accrue enough negative points for radio
- 16 communications and tactics. Seventy-five is passing. They
- 17 start at a hundred and they lose five for each thing they do
- 18 incorrectly. So there's two ways they could fail.
- Q. Automatic failure for knowledge of the law and courtesy, 19
- 20 professionalism and respect?
- A. Not all three. Any one. Any one of those being done 21
- 22 incorrectly is an automatic failure. They have to be retrained
- 2.3 and go through the scenario.
- 24 Q. Can a recruit graduate from the police academy without
- 25 successfully passing this scenario with a pass? SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - direct

1 A. No. They will do it again and again until they pass.

- Q. Chief Shea, what are recruit officers trained with respect
- 3 to handcuffing someone during a stop, question and frisk
 4 encounter?
- 5 A. They are trained that it is legally permissible under certain very narrow articulable circumstances.
 - Q. Under what circumstances would those be?
- A. You would have to be in such fear for your safety that you feel handcuffing the person is necessary to protect the safety of yourself and another person present.

Things that can contribute can be you alone in a crowd of many people. Somebody who is alleged to have a firearm and is fighting with you instead of complying with you.

Anything that you feel you must handcuff them to -- you know, to preserve the safety of everybody present.

- Q. And what are police officer recruits trained regarding when they can lay someone down or put them down on the ground during a stop, question and frisk encounter?
- 19 A. Again, that's a tactical decision that has to be made by 20 the responding officers. It's to be avoided. But if it's
- the responding officers. It's to be avoided. But if it's absolutely necessary -- and I used the same example multiple
- 22 perpetrators potentially armed and you're outnumbered by them
- or by yourself, or somebody who is refusing to comply initially

24 and making dangerous circumstances.

7

11

12

13

14

15

16

17

18

25

Again, like many things in policing, while it's not SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4p9flo4 Shea - direct

1 pleasant, it's preferable to the situation escalating to some

- 2 use of force. So if it can be done to kind of calm -- stop
- 3 everything and make everything safe so it can be investigated
 4 safely, it's permissible.
- Q. What are recruit officers trained regarding when they're allowed to move someone from one location to another during a stop and frisk encounter?
 - A. Same -- pretty -- almost the same thing. An unruly crowd, a crowd gathering that threatens the safety of everyone.

You might have somebody alleged to have just robbed somebody. And when you stop the person and you're waiting for the victim to come and do the identification procedure, a large crowd starts to gather that would not be safe to either you or the victim showing up on the scene.

Under certain -- a victim who is harmed and is not capable of traveling to the person, under certain very narrow circumstances you can -- you can move the person from the scene.

- 19 Q. What about the nature of the location such as like if the stop occurred on the --
- 21 A. That's always I should have mentioned that, like if you
- 22 stop someone in a dark alley that's just not conducive to an
- 23 identification procedure because it's too dark or if you stop
- 24 someone in an area --

8

9

10

11

12

13

14

15

16

17

18

Q. What about a subway platform?

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4p9flo4 Shea - direct

2.2

2.3

time.

1 A. A subway platform is inherently dangerous.

Yes, if you're stopping someone at a subway platform, I would much prefer to bring them up off the platform, even to the street. It's just safer. Moving trains are dangerous. You don't want to be in a fight or in a tussle with somebody.

Other example. I can probably think of others if I think. But the basic underlying concept is that for the safety of all concerned if you have to move them for either safety or to make the identification procedure more fair, you go ahead and do so.

MS. COOKE: Just one minute, your Honor. (Pause)

I have no further questions — just one second. I have no further questions for this witness at this $% \left(1\right) =\left(1\right) +\left(1\right)$

THE COURT: Do you think it might be an improvement to do a find and replace, if you know what I mean, every time it says stop, question and frisk it should say stop, question and possibly frisk? Would that be an improvement?

THE WITNESS: We actually -- yes. We actually made that improvement on the Rodman's Neck training.

THE COURT: But I notice a lot of these, a lot of these from 2012 still say stop-question-frisk, stop-question-frisk as if it's all one continuous action, which I don't think it should be.

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4p9flo4 Shea - direct

THE WITNESS: No, it -- you're right. It should be stop, question and possibly frisk is much more accurate.

THE COURT: Ms. Hoff Varner.

MS. HOFF VARNER: Yes, your Honor.

5 CROSS-EXAMINATION

BY MS. HOFF VARNER:

- 7 Q. Good afternoon, Chief Shea.
- 8 A. Good afternoon.
- 9 Q. Before we begin, I'm just going to hand up three documents.
- 10 The first is a copy of the deposition that you gave in the
- 11 Ligon case. The second two documents are your testimony from
- 12 the Ligon preliminary injunction hearing which took place over
- 13 two days. Two days, two documents. And if I could ask you,
- 14 you can just leave them to the side for now.
- 15 Chief Shea, you became the head of the police academy
- in June 2011; is that right?
- 17 A. Yes.

3

4

6

- 18 Q. And you left in mid 2012?
- 19 A. Sounds about right.
- 20 THE COURT: I'm sorry. To go where again? Where are
- 21 you now?
- 22 THE WITNESS: No. Mid 2012? No. I left toward
- 23 the -- sorry. I apologize. I left toward the end of 2012
- 24 around October. And I went to the chief of department's office
- 25 to handle the new crew/gang initiative.

SOUTHERN DISTRICT REPORTERS, P.C.

D4p9flo4 Shea - cross

1 Q. Can I ask why you moved -- you were the chief of the

- 2 terrorism unit, is that correct, prior to the police academy?
- 3 A. Yes, I was.
- 4 Q. Can I ask were you left and joined the police academy?
- 5 A. I was transferred there.
- 6 Q. Whose decision was that, do you know?
- 7 A. I'm an executive. The police commissioner's.
- 8 Q. As part of your work you put together the stop and frisk
- 9 refresher course that was offered at Rodman's Neck beginning in
- 10 the summer 2012, correct?
- 11 A. Yes.
- 12 I believe beginning before the summer, kind of, I
- 13 think.
- 14 Q. And you testified that you started work on that course in
- 15 March, April of 2012?
- 16 A. I believe.
- 17 Q. Chief Shea, under the law an officer makes a Terry stop
- 18 when he stops a person such that that person does not feel free
- 19 to leave, correct?
- 20 A. The standard -- the way I always say it is such that a
- 21 reasonable person would not feel free to leave.
- 22 Q. Okay. So when a reasonable person is stopped by an officer
- and does not feel free to leave, that's when a Terry stop has
- taken place, correct?
- 25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4p9flo4 Shea - cross

- 1 Q. And this is also sometimes called a forcible stop, correct?
- 2 A. Yes.
- 3 Q. So if I say forcible stop you'll understand that I mean a
- 4 stop where a reasonable person does not feel free to leave,
- 5 correct?
- 6 A. Yes.
- 7 Q. And under the constitution to make a forcible stop the
- 8 officer must have reasonable suspicion that a person has just,
- 9 is committing, or is about to commit a crime, correct?
- 10 A. Yes.
- 11 Q. And a police officer should fill out a UF 250 and enter
- 12 details into their memo book whenever that police officer makes
- 13 a forcible stop, correct?
- 14 A. Yes.
- 15 Q. But the recent training materials given to officers at
- 16 Rodman's Neck did not instruct police officers on that
- 17 standard, did it?
- 18 A. Pardon me?
- 19 Q. The recent training materials that were given to the active
- 20 duty police officers who attended the training at Rodman's Neck
- 21 didn't instruct officers on that standard, did it?
- 22 A. I believe it did.
- 23 (Continued on next page)

2425

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FLO5 Shea - cross

1 Q. Let's look at Exhibit C4. This was admitted in evidence

- with Ms. Cooke. These are the PowerPoint presentation slides
- 3 for a presentation that you testified was given at Rodman's
- 4 Neck entitled, "Properly preparing stop, question and frisk

5 report."

- Do you recognize this document?
- 7 A. Yes.
- 8 Q. This was the PowerPoint -- as you testified earlier -- this
- 9 was the PowerPoint that was given to officers at that stop and
- 10 frisk refresher course at Rodman's Neck, correct?
- 11 A. That was displayed to them. I don't think they left with
- 12 it, but I think it was shown.
- 13 Q. So they were shown this presentation?
- 14 A. Yes.
- 15 Q. I think that you just testified that as of now, 6,000
- 16 officers had attended the training at Rodman's Neck on the stop
- 17 and frisk refresher course?
- 18 A. Yes.

2.3

- 19 Q. So let's go ahead and look at page 3 of the presentation.
- 20 This slide says that, "We should only be preparing a
- 21 UF-250 for encounters that achieve reasonable suspicion, or
- 22 lead up to probable cause."
 - Did I read that correctly?
- 24 A. Yes. That's correct.
- 25 Q. And isn't it true that this presentation instructs officers SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

1 that they should prepare the UF-250 for encounters that achieve

- 2 reasonable suspicion?
- 3 A. Yes. But that's the standard for the Terry stop, is
- 4 reasonable suspicion.
- 5 Q. Isn't it true that this presentation does not instruct
- officers to fill out a UF-250 when they have made a forcible
- 7 stop?
- 8 A. I would not agree with that statement.
- 9 Q. Can you tell me where it says on this page that they should
- 10 prepare a UF-250 for encounters that are forcible stops?
- 11 A. It doesn't use the words forcible stops, but a reasonable
- 12 suspicion stop is a forcible stop. They are interchangeable.
- Q. So, in your view, any stop that has reasonable suspicion is
- 14 a forcible stop?
- 15 A. If an officer stops someone at the level of reasonable
- 16 suspicion, yes, that person is not free to leave until the
- investigation is completed. So that is by definition a
- 18 forcible stop, even if you don't use force.
- 19 Q. But officers can sometimes make a forcible stop without
- 20 reasonable suspicion, isn't that true?
- 21 A. No, they cannot.
- 22 Q. Isn't it true that in the real world, there are possibly
- 23 officers who will make a forcible stop without proper
- 24 reasonable suspicion?

25 THE COURT: You mean a bad stop?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D4P8FLO5 Shea - cross

MS. HOFF VARNER: Yes.

2 THE COURT: I guess sometimes people make a bad stop.

3 A. Is it possible? Yes.

4

5 6

7

8

9

10

11

12

13

14

17

18

19

20

21

22

- Q. And this document doesn't instruct officers, who make forcible stops but who lack reasonable suspicion, that they should fill out a UF-250, isn't that true?
- A. They shouldn't be stopping the person at all if they lack reasonable suspicion.

THE COURT: What she is saying is, but if they do, which they shouldn't, they should still fill out the form? I guess that's what she is saying.

- A. I don't think we would be training them though, if you do a bad stop, also fill out the form. I would be training them don't do the bad stop.
- 15 Q. I understand that you don't want any officers to make bad stops.

THE COURT: He's talking about training. He said he would never train somebody that if you make a bad stop, fill out the form. Because his training is don't make a bad stop. It's one thing to ask him what he thinks in the theoretical world, but in terms of training, he said he would never put down, if you make a bad stop, fill out a form.

- 23 $\,$ Q. Would you ever tell officers that they should fill out a
- 24 UF-250 whenever they have made a forcible stop?
- 25 A. Again, this is a -- I am telling them that. What we train SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross them, a stop based an reasonable suspicion means that the 2 person is not free to leave until you have concluded your 3 investigation of the offense you have the reasonable suspicion 4 for. What we train them is, at that point it is a forcible 5 stop, even if you do not use force. It doesn't even matter if 6 the person thinks they are allowed to leave. If you know you 7 wouldn't allow them to leave until the investigation is over, 8 you have forcibly stopped them and you will document that on a 9 250. So calling it a reasonable suspicion stop, to me it's 10 synonymous with a forcible stop. 11 Q. Do you worry that officers, who don't maybe have the same 12 background that you do, and who are seeing this on the screen, 13 would perhaps interpret this as only filling out a UF-250 when 14 they have reasonable suspicion? 15 A. No. 16 THE COURT: Well, I may understand where you're 17 heading, but I am not sure we are on the same page. 18 Under the DeBour levels, there seems to be levels of 19 questioning people or talking to people that are less than 20 reasonable suspicion stops, right? 21 THE WITNESS: Yes. 2.2 THE COURT: They don't have to fill out a 250 for those, right? 2.3 24 THE WITNESS: No, they do not. 25 THE COURT: Is that what you're getting at? SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FLO5 Shea - cross Because those, in your view and in your training, 1 2 don't require a UF-250? 3 THE WITNESS: No. 4 THE COURT: Only when it hits the level of reasonable 5 suspicion. 6 THE WITNESS: Yes, ma'am. 7 Q. So what you're telling me is that whenever you say 8 encounters that achieve reasonable suspicion, what you mean is 9 forcible stops, correct? 10 THE COURT: He said yes three times because he defines 11 them interchangeably. 12 MS. HOFF VARNER: That's all I am trying to get at. 13 THE COURT: He has done that. If you have gotten it, 14 you don't need it a second or third time. 15

Q. This presentation does not include any written instructions that would help an officer assess when a reasonable person

would not feel free to leave, isn't that correct?

A. Written instructions? Without going through it, we thoroughly cover the factors that would lead a reasonable

person to not feel free to leave. I don't know if they are

documented here. This seems to be mostly the actual UF-25021

22 report, filling it out correctly, and the disengagement.

2.3 Q. So your testimony is that this presentation doesn't include

24 written training that would help an officer assess when a

25 reasonable person would not feel free to leave?

16

17

18

19

20

SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

1 MS. COOKE: I would object to the mischaracterization 2 of the witness's testimony.

THE COURT: I don't know that she said that. She is trying to ask that question. I don't think she is

characterizing his testimony. She is trying to ask a question.

Maybe you did say, so you are saying, and that would be characterizing it.

- Q. Perhaps I can ask it this way. Can you point me to any page of this presentation that provides written training to help an officer assess when a reasonable person he is stopping would not feel free to leave?
- 12 A. No.

3

4

5

6

7

8

9

10

11

16

17

18

19

20

21

2.2

2.3

24

25

Q. And this presentation emphasizes that preparing a UF-250 for the wrong reason would actually be in error, isn't that correct? That's on NYC_2_--

THE COURT: Just give us the last four digits.

MS. HOFF VARNER: 3073.

THE COURT: That's way at the end.

"Remember, preparing UF-250 when not required and for the wrong reasons is preparing it in error." That's what it says, right?

THE WITNESS: Yes.

THE COURT: That seems self-explanatory.

Q. So now I would like to show you Exhibit 03, which was also admitted through Ms. Cooke, which is the lesson plan that goes SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

- 1 with this PowerPoint presentation.
- 2 This is dated April 2012, right?
- 3 A. Yes.
- 4 Q. This is a lesson plan, and do I understand correctly that
- 5 this is provided to the trainers so that they can then train
- 6 the members of the service?
- 7 A. It's provided to the trainers teaching this course to keep 8 the course consistent, yes.
- 9 Q. So this doesn't actually go to the members of the service
- 10 that are receiving the training?
- 11 A. No.
- 12 Q. This corresponds to the PowerPoint that we just looked at,
- 13 correct?
- 14 A. Yes.
- 15 Q. And this document, together with that same PowerPoint, are
- 16 consistent with the training that the academy recruits get,
- isn't that right?
- 18 A. This document is consistent with the training that the
- 19 existing officers get. The academy recruits get the same
- 20 training, but this particular document was intended for
- 21 officers post academy.
- 22 Q. So this document is actually the Rodman's Neck lesson plan,
- 23 correct?
- 24 A. Yes.
- Q. I guess what I am asking is, the substance of the document SOUTHERN DISTRICT REPORTERS, P.C.

Shea - cross

is consistent with what the recruits would get at the academy?

- A. Yes.
- 3 Q. Again, this document also specifically states that a UF-250
- 4 should be prepared when the officer has reasonable suspicion,
- 5 correct?
- A. Yes. 6
- Q. Again, this document doesn't include any written training 7
- 8 that would help an officer assess when a reasonable person
- 9 would not feel free to leave, isn't that right?
- 10 A. Yes.
- 11 Q. This document also emphasizes that preparing a UF-250 for
- 12 the wrong reason would be in error. That's on page 5. 13
 - THE COURT: It's number 6 on page 5.
- 14 Q. It's in the bold capital letters?
- 15 Α. Yes.
- 16 Q. So according to these 2012 training documents that have
- 17 been now shown to 6,000 members of the service, if an officer
- 18 interacts with a person at level 2, at the common law right of
- inquiry, but that person might nevertheless, or a reasonable 19
- 20 person does not feel free to leave, the officer should not
- 21 prepare a UF-250, correct?
- 22 A. I don't believe so.
- 2.3 MS. COOKE: I object to the form. She is
- 24 characterizing that Exhibit 03 was shown to 6,000 members. It
- 25 is a lesson plan. It went to instructors.

SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross
THE COURT: 6,000 members were trained pursuant to this lesson plan?
THE WITNESS: Yes.

 $\,$ THE COURT: So now you can ask your follow-up question.

2.2

2.3

Q. According to the PowerPoint presentation that we just saw, which has been shown to the 6,000 people, if an officer interacts with a person such that that person does not feel free to leave, that the officer lacks reasonable suspicion, the officer should not prepare a UF-250, correct?

A. No, I would not agree. The officers are trained that if the person has reasonable suspicion — if you have reasonable suspicion, then continue your investigation, and they are not free to leave. However, they are also trained that if you are not at the level of reasonable suspicion, then you cannot forcibly stop someone, and that's defined as when a reasonable person would not feel free to leave. So to say that they could be at DeBour and a reasonable person would not feel free to leave, that is not how we train them. We train them that if they are at level two, they have to make sure that they are not causing a reasonable person to feel they are not free to leave.

THE COURT: Her problem is a police officer and a stopped person may have pretty different views as to when you're free to go. We have heard testimony at the trial that most people who are stopped by police say, you have got to be SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

2.2

2.3

kidding me, I am not free to leave. The policeman is talking to me, I can't just say, goodbye, I don't want to talk to you.

So how does the police officer assess this notion of free to leave? Does he say to the person, I would like to talk to you, but you don't have to talk to me, you're free to go?

THE WITNESS: No. We do not train them to affirmatively make that statement.

THE COURT: So those who have testified at this trial have said they don't feel free to leave when a police officer is questioning them.

THE WITNESS: The training for the officer is to ensure that the officer knows they are free to leave.

THE COURT: But that's not the standard. It's whether an objectively reasonable person would feel free to leave.

We haven't talked to 8 million New Yorkers, but certainly the sample we have had here have all said, you don't do that when a police officer is questioning you, you don't say bye, I'm out of here. You answer the questions that are asked. You don't feel free to leave when questioned by a police officer, and particularly if there are multiple police officers, you don't feel free to leave.

So how are they supposed to be sensitized to this notion of when a reasonable person would objectively feel free to leave?

THE WITNESS: The way we try to do that is, in the SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FLO5 Shea - cross

2.3

scenario portion of the training at Rodman's Neck, where we have people at the DeBour level, who just either leave or want to leave and ask the officer, can I leave? And the officer is then graded on whether they know what level they are?

One scenario involves people where you have reasonable suspicion against one person in a hallway, but there are others who you do not, and there's multiple things happening and the officer has to make snap judgments on who is allowed to leave and who is not.

THE COURT: We are having a little colloquy, the witness and myself. So you can continue to observe the colloquy.

The problem is you're interested in the officer's mind, but the standard is whether an objectively reasonable person would feel free to leave. So, really, that officer has to say, would a person feel free to leave under the circumstance; not what do I think, but what would a reasonable person think? I guess that's hard to train them.

THE WITNESS: It's very difficult. I agree. We do train them to remember their body positioning, that you could affect a person's ability or feeling to leave, whether you're in uniform or plain clothes, whether your weapon is out or whether it's holstered, the tone of voice you use in speaking to them. We point out in the scenarios how you position yourself can clearly affect the person's ability. But you're SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

1 100 percent right, at the end, it's what the person believes despite what we do.

THE COURT: Not that person. That would be subjective. We say objectively.

I guess if we were having this conversation outside the courtroom, having a pleasant cup of coffee somewhere, I would suggest to you that nobody feels free to leave when the police are questioning them on the street, and that's a problem. I don't know how you overcome that problem, but I don't suspect the average citizen feels free to leave when being questioned by a police officer.

Here we are. We are back in the courtroom. We just had our little moment in the virtual coffee house.

14 BY MS. HOFF VARNER:

- Q. Chief Shea, before you designed the training materials that we just looked at, you conducted several focus groups, isn't that right?
- 18 A. Yes. I was involved in the design. Other people helped, 19 various instructors. I was kind of at the top.
- Q. But you personally conducted the focus groups, correct?
- 21 A. Yes.

3

4

5

6

7

8

9

10

11

15

16

17

- 22 Q. The participants at these focus groups included officers
- 23 who had recently graduated from the police academy, correct?
- 24 A. Yes.
- 25 Q. And in those focus groups, you learned that the UF-250 form SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FLO5 Shea - cross was being overused, isn't that right?

2.3

MS. COOKE: I note an objection for the record that this is beyond the scope of my direct examination. I purposely didn't get into repeating testimony by the chief regarding the

steps prior to the development of the course, the development of the course, and, in particular, plaintiffs' counsel raised the objection before I began that this not be repetitive.

THE COURT: Well, I have a problem. These plaintiffs' counsel were not present at Ligon. I have to give them some leeway. You were present. You the city were present. You had an opportunity to ask. I am not sure I can bind them to a question that they would have asked had they been there. Not that they are criticizing Mr. Dunn and his fine group, but they weren't the counsel. So I have to give them a little leeway to ask questions.

 $\,$ MS. COOKE: I am noting my objection for the record that we are appearing to retread testimony.

THE COURT: I hope it's not retreading. I hope she is asking a question that wasn't asked by plaintiffs' counsel. I have to give her a little leeway. I don't have the transcript in front of me. I don't want to look at page and line.

I have to trust as an officer of the court you're not asking an identical question that was asked in that trial.

 $$\operatorname{MS.}$ HOFF VARNER: I am just laying a little bit of foundation and then we will move on to my real points, which SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

- 1 were not raised in the Ligon hearing.
- 2 THE COURT: All right.
- 3 Q. I don't think I got your answer to the last question.
 - A. Could you repeat it, please?
- 5 Q. Sure. In those focus groups, you learned that the UF-250
- 6 was being overused, isn't that right?
- 7 A. I learned from officer -- yes, I learned that officers were
- 8 filling out UF-250s when they didn't need to.
- 9 Q. The participants in the focus groups didn't provide any
- data for the assertion that the UF-250s were being overused,
- 11 correct?

4

- 12 A. By data? No, it was focus groups. It was conversational
- 13 and anecdotal.
- 14 Q. You didn't do any follow-up to investigate whether it was
- in fact true that officers were overusing the UF-250, isn't
- 16 that right?
- 17 A. That's right.
- 18 Q. So you took the word of the officers?
- 19 A. That there was a potential training issue, yes.
- 20 Q. Actually, there was a training issue because they were
- 21 being overused?
- 22 A. Yes.
- 23 Q. To deal with this issue, you developed the training that we
- 24 just saw that's designed to ensure that officers fill out fewer
- 25 UF-250s, isn't that correct?

SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FLO5 Shea - cross

- 1 A. No, it's not.
- Q. Well, isn't it true that the training materials that we
- 3 just reviewed emphasize that officers should not fill out a
- 4 report for the incorrect reason or at the incorrect level of
- 5 suspicion? And I am looking at page 1 of the lesson plan,
- 6 which was Exhibit 03.
- 7 A. When I said it wasn't, I meant the way you -- I designed
- 8 the lesson plan to ensure that they filled out a UF-250 when
- 9 they were required to. I had no interest in lowering the
- 10 number, which is what you said. My interest was that the
- 11 UF-250 was filled out when it was required to be filled out by
- 12 department procedure.
- 13 Q. And only when it was required to be filled out?
- 14 A. Yes.
- 15 Q. Which was only when an officer had reasonable suspicion?
- 16 A. When an officer stopped someone based on reasonable
- 17 suspicion.
- 18 Q. If you look at Exhibit C4, which is the PowerPoint
- 19 presentation slides, this also addresses the concern that
- 20 officers were filling out UF-250s -- were overusing the UF-250
- 21 form, correct?
- 22 A. I don't know if I would characterize it as overusing, and I
- 23 don't want to quibble here, but they were using it incorrectly.
- 24 They were filling it out with -- they were using it to document
- 25 encounters that by department guidelines should have been SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

documented differently. So it's not overusing. It was

- 2 misusing.
- 3 Q. You testified at the Ligon preliminary injunction hearing
- 4 that the UF-250 form was being overused, isn't that right?
- 5 A. Yes, because they were using it when they shouldn't.
- 6 $\,$ Q. I am just trying to clarify that the word you used in your
- 7 testimony was overused.
- 8 A. If you say so. Again, when you just asked, my concern was
- 9 it was being used when it shouldn't have been, and the
- 10 encounters were not being documented as per department
- 11 guidelines, if they required to be documented.
- 12 Q. So your concern was that officers who were not making
- 13 forcible stops were nevertheless using a UF-250 to document
- their stop, is that right?
- 15 A. Yes. That officers who were not making forcible stops, who
- 16 were just encountering people at level one or two, were
- documenting that on a UF-250 form which they didn't need to.
- 18 Or officers who were making a summary arrest, for instance,
- 19 observing someone stealing someone's gold chain, that's a
- 20 classic example, but making a summary arrest, were doing a
- 21 UF-250 when in fact they began the encounter at the level of
- 22 probable cause.
- 23 Q. So let's go ahead and look at Exhibit E4, which was also in
- 24 evidence. This is the street encounters PowerPoint presented
- by the legal bureau at the Rodman's Neck stop, question and SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

- 1 frisk refresher course.
- 2 A. You just need to give me one second.
- 3 Q. It's also on the screen.
- 4 A. OK.
- 5 Q. So this particular training in Exhibit E4 instructed
- 6 officers on what they could do in making a level two encounter,
- 7 correct?
- 8 A. Could you show me the part you're referring to?
- 9 Q. Yes.
- 10 A. Thank you.
- 11 Q. It starts on page 14.
- 12 A. I'm there.
- 13 Q. If you look at page 16, which ends in Bates stamp 3000,
- 14 this document instructs officers that at level two they can ask
- 15 accusatory questions that would lead a person to believe that
- 16 the police consider him a suspect. Did I read that correctly?
- 17 A. Pardon? I think I am there now. I am looking at 3000?
- 18 Q. Yes.
- 19 A. Level two scope of questioning. Yes.
- 20 Q. The first bullet point on this slide states that a member
- 21 of the service, an MOS, may ask accusatory questions that would
- lead a person to believe that the police consider him a
- 23 suspect.
- 24 A. Yes.
- Q. And the second bullet point says the third bullet point SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

1 says that an individual can refuse to answer, answer only some

- 2 questions, and may walk away, correct?
- 3 A. Yes.
- 4 Q. So this is a level two stop, the individual should be free
- 5 to walk away?
- 6 A. Yes.
- 7 Q. And if you turn to page 18 of the document, which ends in
- 8 3002.
- 9 A. Thank you.
- 10 Q. This states that the police can't use force to detain an
- 11 individual at level two. And that's correct, isn't it?
- 12 A. The police may not use force? That's correct.
- 13 Q. But it also says that a member of the service may ask, and
- 14 an individual may consent, to a search of personal property,
- 15 correct?
- 16 A. Correct.
- 17 Q. And if you look at page 19, just the next page in the
- 18 document, this instructs officers that at level two, without
- 19 making a forcible stop, they could place their hands on a
- 20 holstered firearm, correct?
- 21 A. Yes.
- 22 Q. And it also instructs officers that at level two, they can
- 23 draw and conceal their weapon, correct?
- 24 A. Yes.
- Q. And it also instructs officers that at level two, they SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

1 could ask an individual to remove his or her hands from her

- 2 pockets, direct the individual to remove an item held in his or
- 3 her hand, or forcibly remove the individual's hand from his pocket, correct?
- 5 A. Yes.

11

12

13 14

15

16

17

18

19

20

21

2.2

2.3

24

25

- Q. These actions might suggest to a reasonable person that they weren't free to leave, isn't that right?
- 8 A. This is the legal bureau's training material and it's based on -- they are doing it based on New York state court decisions.

THE COURT: Well, I guess you're the witness. She is saying, you think a reasonable person would feel free to leave if an officer forcibly removed their hand from their pocket? It's a fair question.

THE WITNESS: Fair question.

Again, I don't mean to quibble. I guess it depends. Certain reasonable people might not feel free to leave if the officer put their hands on them and removes their hands from their pocket. In other areas, they may still --

THE COURT: At other times a citizen will say, get your hands off my hands, I am walking out of here?

THE WITNESS: A version of that has happened to me on various times, where they would say, take your hands off me, am I under arrest, I'm leaving, I'm walking out of here. It depends. I don't want to give an answer like, oh, I guarantee SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross anybody would feel free to leave or the opposite because I think it probably falls somewhere. But the legal decision came 3 down and said that that was permissible at that level. Q. It's one thing for you to say, get your hands off of my 4 pockets, because you have the training and experience. 5 6 THE COURT: He didn't say that. 7 I think you meant you were the officer? 8 THE WITNESS: I was the officer. 9 THE COURT: He said a citizen said. 10 MS. HOFF VARNER: Thank you for the clarification. I 11 was going to ask a whole other set of questions just based on 12 that. 13 Q. Even if these actions don't necessarily suggest to that 14 reasonable person that he is free to leave, isn't it true that 15 there is nothing in this presentation that actually gives 16 officers training on how to assess whether a person might 17 reasonably feel free to leave during this encounter? 18 19 Q. And nothing in this presentation gives officers training on 20 the lines between a level two stop and a forcible level three 21 stop or a Terry stop? A. I think the whole training, this particular lesson is about the legal differences between a level two and level three.

22

2.3

24 Q. This presentation, like the other that we looked at

25 already, teaches officers that a UF-250 must be prepared when SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FL05 Shea - cross the individual is stopped based on reasonable suspicion, is that right? It's on page 33, which ends in 3017. 3 A. I've got it. Maybe I don't have it. Q. It ends in 3017. It's on the screen as well. 4 5 6 Q. The NYPD's training materials have changed over time, isn't 7 that true? 8 A. Yes. 9 Q. I now would like to show you Defendants' Exhibit S3, which 10 is a lesson plan cover sheet for the 2006 basic plain clothes 11 training course. 12 A. Thank you. 13 THE COURT: This is S3? MS. HOFF VARNER: This is Defendants' S3. 14 15 THE COURT: Are you offering it? 16 MS. HOFF VARNER: I am.

THE COURT: I assume you don't object to it?

MS. COOKE: No objection. THE COURT: S3 is received.

(Defendants' Exhibit S3 received in evidence)

21 Q. I just want you to look at the last, I think it's the last 22 ten pages or so of the document, which are under the caption of

23 assorted law topics. The Bates stamp, just for clarification,

24 ends in 5786.

17

18

19

20

25 A. I think I am there.

> SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FLO5 Shea - cross

1 Q. So this is defined as and it's labeled as, "Basic plain

- 2 clothes training for police officers and sergeants," correct?
- 3 A. Yes.
- 4 Q. And it's dated May 16, 2006, correct?
- 5 A. Yes.
- 6 Q. So now go ahead and turn to what is labeled as the document
- 7 page 10, Bates stamp ending in 5789.
- 8 A. Yes.
- 9 Q. Actually, let me just go back to the prior page, which
- 10 starts off this discussion, "Under the common law right of
- 11 inquiry." Do you see that?
- 12 A. I see the words "common law right of inquiry" preceded by
- 13 number 2?
- 14 Q. We are in the same place.
- 15 If you look at subsection (g) under item 2, it says,
- 16 "What three things can an officer do under CLRI?" Do you see
- 17 that?
- 18 A. Yes.
- 19 Q. And CLRI is the common law right of inquiry?
- 20 THE COURT: Where is this?
- 21 Thank you. I have got it.
- 22 Q. So under this question, "What three things can an officer
- 23 do under CLRI?", there are three items. The first is continue
- 24 to observe the individual; the second is approach and use the
- 25 common law right of inquiry to ask name, address and

SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross explanation of conduct; and the third is ask for consent to search a bag. That's correct, right?

3

8

11

14

15

16

17

18

4 Q. But six years later in 2012, as we just saw in Exhibit E4, there was a much longer list of things that officers could do 6 under the common law right of inquiry without elevating the 7 encounter to a level three encounter, correct?

THE COURT: I would like to see those six again.

9 Is somebody pulling that up? 10

MS. HOFF VARNER: E4, please.

THE COURT: I have already forgotten the six.

12 MS. HOFF VARNER: It's page 19. The Bates number ends 13 in -- it started on 3000.

Q. So in 2012, members of the service were trained that they could ask accusatory questions. And then if you go on to page 3003, they were trained that they could place their hand on their firearm.

THE COURT: I remember those.

19 Q. Draw and conceal a weapon or forcibly remove the hand from 20 the pocket.

21 And none of those items are included in the 2006 plain 22 clothes training document, are they?

2.3

24 Q. If you turn back to the plain clothes training document, on 25 page 11, as of 2006, plain clothes officers were being trained SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

that under a level two -- I'm sorry -- under a level three

2 reasonable suspicion stop, a forcible Terry stop, an example of
3 force would include an oral command.

Do you see where the training sets that forth?

- 5 A. Yes. I am looking at subparagraph (g)?
 - Q. Exactly.

4

6

7

- A. Examples of force.
- 8 Q. It's page 11, Bates stamp 5790, item (g). It says that
- 9 examples of force include an oral command, grab or hold, tackle 10 if necessary, weapon drawn.

By 2012, as we saw in the Rodman's Neck presentation, oral commands, like a command to remove your hands from your

- pocket, was defined as a level two encounter, isn't that right?
- 14 A. But that's not -- oral command is not exclusive of that one
- 15 oral command.
- 16 Q. I understand.
- 17 A. I agree that that one oral command is defined -- remove
- 18 your hands from your pocket is defined as a level two, but
- 19 that's not oral command in general.
- 20 Q. Isn't it also true that a police video, seen by nearly
- 21 every police officer, trained officers that an oral command
- 22 like "stop, police" was in the category of a level two stop?
- 23 A. Yes, it is.
- 24 Q. So let's actually turn now to that individual video. I am
- going to show you what has been marked into evidence as SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

1 Defendants' Exhibit K3, which was already introduced. And I

- 2 think you have a copy of it.
- 3 This is the command level instructor's guide for the
- 4 stop, question and frisk video serious number 5, correct?
- 5 A. Yes, it is.
- 6 Q. It was drafted in June 2012?
- 7 A. Yes.
- 8 Q. Again, this is a document provided to the instructor, not
- 9 to the individual officers, correct?
- 10 A. Yes.
- 11 Q. It provides instructors with cues to help them instruct
- 12 uniformed members of the service on the legal basis for making
- 13 the stops, right?
- 14 A. Yes, it does.
- 15 Q. I assume that this is to ensure consistency among all of
- 16 the officers who see the video, correct?
- 17 A. Among the training, that's the purpose of the lesson plans,
- 18 yes.
- 19 Q. I just want to point out that this lesson plan highlights
- 20 factors that might contribute to reasonable suspicion, isn't
- 21 that right?
- 22 A. Where?
- Q. Looking at page 3, Bates stamp ending 3137.
- 24 A. I'm there.
- 25 Q. So it highlights factors that may contribute to reasonable SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

- 1 suspicion, correct?
- I am under item 2C2 at the bottom of the page.
- 3 A. It highlights a couple of the factors, yes.
 - Q. And the first one it highlights is information from an
- 5 identified informant, correct?
- 6 A. Yes.

4

- 7 Q. And it notes, over in the instructor cues, that information
- 8 from an anonymous caller to 911 is not by itself reasonable
- 9 suspicion, correct?
- 10 A. Correct.
- 11 Q. The lesson plan also highlights furtive behavior as a
- 12 factor that can contribute to reasonable suspicion, correct?
- 13 A. Yes.
- 14 Q. But there is no instructor cue relating to furtive
- 15 behavior, is there?
- 16 A. No.
- 17 Q. The document also says that resemblance to a crime suspect
- is a factor that can contribute, correct?
- 19 A. Correct.
- 20 Q. But there is no instructor cue that talks about the
- 21 limitations on whether race alone is enough to identify a crime
- 22 suspect, correct?
- 23 A. Correct.
- Q. And finally, it talks about flight, correct?
- 25 A. Yes.

D4P8FLO5 Shea - cross

1 Q. And there is no note that flight is not by itself enough to

- 2 establish reasonable suspicion, correct?
- 3 A. Correct.
- 4 Q. These are the only factors that are highlighted in the
- 5 lesson plan as the factors that could lead up to reasonable
- 6 suspicion?
- 7 A. No. They just define them as factors. They don't say they
- 8 are all inclusive or they are the only ones.
- 9 Q. I understand. But these are the only ones that are
- 10 discussed?
- 11 A. No. They are the only ones that are documented here. The
- 12 trainers can discuss any others that they want.
- 13 Q. So the trainers can discuss any other ones that they want,
- but there is no guidance in this document that tells
- instructors that they should discuss other factors?
- 16 A. Correct.
- 17 Q. Again, if you turn to page 5. If you look at item 3A1.
- 18 A. Roman numeral 3A1 beginning "in every stop situation"?
- 19 O. That's it.
- 20 A. I'm there.
- 21 Q. "In every stop situation that is based on reasonable
- 22 suspicion, this form" -- meaning the UF-250 -- "must be used."
- 23 That's a correct statement of the training, correct?
- 24 A. Yes.
- Q. And it also states under item 6 that, "Supervisors should SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

2.3

be evaluating officers' field stops and searches for courtesy, professionalism and respect and ability to prevent and identify criminal activity."

This sentence that I just read does not include evaluating field stops to ensure that they are based on constitutional standards for reasonable suspicion, does it? A. No. $\,$

Q. And it also states that -- actually, strike that.

I am now going to show you what I don't think —— I am actually not sure if this is in evidence, but it is Plaintiffs' Exhibit 368.

This is the script for film number 5, and it corresponds with the -- this is the script for the video that corresponds with the lesson plan that we just looked at, correct?

 $\,$ MS. COOKE: I think you objected to these scripts because the video wasn't coming in so neither of the scripts came in.

THE COURT: You said, if the video is not in, why should the script be in?

 $\,$ MS. HOFF VARNER: But I intend to introduce video number 5 alone, and only the portion that was already viewed by this Court in the Ligon injunctive relief hearing.

THE COURT: She does want video number 5. What you point out, Ms. Cooke, is in the record of the Ligon trial. I SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FLO5 Shea - cross don't remember everything that I heard in the Ligon trial. It was in October. So there is no problem in being sure that 3 video 5 and the transcripts are in. So I will admit 368. 4 MS. COOKE: To the extent she is only admitting an 5 excerpt of the video, it should only be an excerpt of the 6 transcript. MS. HOFF VARNER: That's fine. 7 8 (Plaintiffs' Exhibit 368 received in evidence) 9 Q. I want to turn your attention to page 5 of this script. 10 THE COURT: Is that Bates 1363? 11 MS. HOFF VARNER: 1364. 12 THE COURT: Go ahead. 13 Q. Before we do this, do you recognize that this document is 14 the script of video number 5 for the stop, question and frisk 15 video series? 16 A. During June 2012, yes. 17 Q. Looking back on page 5, this script states that, "Usually 18 just verbal commands, such as 'stop, police,' will not constitute a seizure." Do you see that line of the script? 19 20 A. Yes. 21 MS. HOFF VARNER: I would move that portion into 22 evidence. THE COURT: Right. That's fine. 1364 and 1365. 2.3 24 MS. COOKE: Of exhibit what? MS. HOFF VARNER: Plaintiffs' Exhibit 368. 25 SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross Actually, your Honor, I would also move the first page 2 in just so --3 THE COURT: Identifying it as film number 5? 4 MS. HOFF VARNER: So the Court can figure out what we 5 are talking. 6 THE COURT: Sure. That's fine. MS. HOFF VARNER: And that ends in Bates stamp 1359. 7 8 Q. I think you already testified that police officers are --9 virtually every police officer in the city has now seen this 10 video, is that right? 11 A. The majority. 12 MS. COOKE: I would just raise an objection. Pursuant 13 to the doctrine of completeness, I think that the entire video 14 and the entire script should come in. 15 THE COURT: That's fine too. I am sure the plaintiff 16 doesn't object. If that's more straightforward and simple, 17 that's fine. The entire video and the entire transcript are 18 now in evidence. Video number 5 and Plaintiffs' Exhibit 368 19 are all in evidence. I think this is coming straight out of

the opinion. It does sound familiar. MS. HOFF VARNER: I also, pursuant to the doctrine of completeness, move to admit the video, which is marked as Plaintiffs' 369.

20

21

22

2.3

24

25

THE COURT: 369 is received. (Plaintiffs' Exhibit 369 received in evidence) SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FLO5 Shea - cross

1 MS. HOFF VARNER: And if defendants want to show it, I will be happy to bring popcorn.

THE COURT: I am afraid it will have to be virtual.

4 BY MS. HOFF VARNER:

- ${\tt S}$ Q. Chief Shea, at the end of the day, you would agree that as
- 6 a result of the Rodman's Neck training, the NYPD was
- 7 instructing officers to fill out UF-250s only when they have
- 8 reasonable suspicion that the person stopped had committed, was
- 9 committing, or was about to commit a crime?
- 10 A. Yes.

3

- 11 Q. The NYPD was training officers that they could ask
- 12 accusatory questions, make demands, and even display their gun
- 13 at a level two encounter, all without making a forcible stop,
- 14 correct?
- 15 THE COURT: I don't think it said display gun.
- 16 A. It didn't.
- 17 THE COURT: You can put your hand on the gun and
- 18 conceal it.
- 19 Q. Or place their hand on a holstered gun?
- 20 A. Yes.
- 21 Q. All without elevating the encounter to a level three
- 22 encounter?
- 23 A. Yes.
- 24 Q. Even though, as you just testified, a reasonable person
- 25 might feel that he or she was not free to leave under those SOUTHERN DISTRICT REPORTERS, P.C.

	515
	D4P8FLO5 Shea - cross
1	circumstances?
2	A. It's the totality of the circumstances. Could that
3	contribute to it? Sure.
4	Q. And this training would result in fewer UF-250s being
5	completed, isn't that correct?
6	MS. COOKE: Objection, your Honor. I think that calls
7	for speculation.
8	THE COURT: No. I don't think it does. Basically, if
9	you don't have to fill it out, it's less than if you did have
10	to fill it out. It doesn't call for speculation. If you had
11	to fill it out, under those circumstances, there would be more
12	250s.
13	MS. COOKE: I guess speculative in terms of the number
14	of 250s the number of stops that are occurring, period.
15	THE COURT: I didn't understand what you said.
16	MS. COOKE: It's speculative because it's presuming he
17	is aware of the number of stops that would be
18	THE COURT: No. She is just saying, whatever that
19	number is, it would be more if it was these level two stops as
20	defined in these training materials. If all of those level two
21	as defined in these training material required a 250, it would
22	be X plus.
23	MS. COOKE: It's more than one.
24	THE COURT: It's X plus something.

25

THE COURT: It's X plus something.
You don't disagree with that? If you had to fill them SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FLO5 Shea - cross

1 out, it would be more than it is now.

2

3

4

5

6

7

8

11

12

13

14

15

16

17

18

19

20

THE WITNESS: The purpose of the training — as you pointed out, I didn't do any data checks after those focus groups. I was anecdotally told by a lot of people that they were doing them incorrectly, and we corrected that. I never did a data check to answer that officially.

- Q. Actually, I think you said that they were overusing the UF-250 form, and then you corrected the overuse?
- 9 A. I am sorry I am using overuse and incorrect together. It's the same thing.

THE COURT: You mean to say there is both underuse and overuse?

THE WITNESS: Pardon me?

THE COURT: You mean to say there was both underuse and overuse?

THE WITNESS: Specifically what I got from the focus groups would be overuse. They were documenting stops that did not rise to the level of a reasonable suspicious stop. Not even a stop, just a street encounter; they were documenting a common street encounter on a UF-250.

- 21 Q. So by correcting that problem, that would result in fewer UF-250s being prepared, correct?
- A. Yes. All I am pointing out, and again, I didn't do a data check to make sure that was true. I just took that anecdotal
- 25 thing and said, we have to correct that if true and make sure SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

1 that we reinforce the correct instructions.

2 Q. Are you aware that there were fewer UF-250s completed in

3 2012 than there were in 2011?

- A. Anecdotally.
- 5 Q. Anecdotally you are aware of that?
 - A. Yes.

4

6

11

12

7 THE COURT: Just anecdotally, you haven't seen the 8 statistics on that?

9 THE WITNESS: No. I have been doing this gang thing. 10 THE COURT: That's true.

Q. I would now like to show you Defendants' Exhibit Q11, which is the 2012 draft of policing legally street encounters.

This is the section of the police student's guide that is specifically dedicated to training recruits about stop and frisk, correct?

- 16 A. About street encounters, yes, which include stop and frisk.
- 17 Q. Do you recognize this document Q11?
- 18 A. Yes.
- 19 MS. HOFF VARNER: I would move to have it admitted.
- MS. COOKE: No objection.
- 21 THE COURT: Q11 is received.
- 22 (Defendants' Exhibit Q11 received in evidence)
- 23 Q. Turn your attention to page 16, Bates number 5787.
- This document trains officers on a few common factors
 which would give officers reasonable suspicion, correct?

 SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

1 A. Just to be specific, recruit officers. This is from the

- 2 recruit school, yes.
- 3 Q. If you look at the section labeled, "Factors that may lead
- 4 to reasonable suspicion, "it states, "The courts, however, have
- 5 identified a few common factors which would give an officer
- 6 reasonable suspicion, " correct?
- 7 A. Yes.
- 8 Q. And those factors include information from an informant?
- 9 A. Yes.
- 10 Q. And furtive behavior?
- 11 A. Yes.
- 12 Q. Resemblance to the suspect of a crime?
- 13 A. Yes.
- 14 Q. And flight, correct?
- 15 A. Yes.
- 16 Q. And you would agree that the description here provides some
- 17 objective and written standards for those four factors that
- 18 might lead to reasonable suspicion, correct?
- 19 A. Yes.
- 20 Q. But there is no written training on other factors that
- 21 might lead to reasonable suspicion, is there?
- 22 THE COURT: What about this next sentence, "Patrol
- 23 guide also states additional factors which could contribute to
- 24 reasonable suspicion"?
- 25 Q. Let me go back. There also is a bullet-pointed list that SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

1 identifies other factors that can contribute to reasonable

- 2 suspicion?
- 3 A. Yes.

4

6

14

15

16

17

18

- Q. But there is no explanatory test, is there?
- 5 A. Not on the bullet-pointed list, no.
 - Q. There is no detailed description like the detailed
- 7 description you see for furtive behavior or information from the informant?

9 THE COURT: He is going to say, yes, there is no 10 narrative. But does one need a narrative for time of day or 11 night? Some things don't need definitions and others might.

12 Q. Let's take one example of that. You would agree that there is no detailed training on the --

THE COURT: This is not going to be productive. None of these bullet points have narrative sections. I understand that. I am just pointing out for the record that some are self-explanatory, like time of day or night. Others might not be

- 19 Q. You just testified that time of day or night could be one of the factors you check off with respect to a robbery pattern,
- 21 correct?
- 22 A. If it's applicable.
- 23 Q. And you provided testimony about how time of day or night
- 24 would factor into reasonable suspicion about a robbery pattern,
- 25 correct?

D4P8FLO5 Shea - cross

1 A. I remember mentioning it. I don't remember testifying much about it.

- 3 Q. But that testimony, that description that you just gave,
- does not appear in Defendants' Exhibit Q11, does it?

5 A. No.

6

7

14 15

16

17

18

- THE COURT: No description of the bullet points appears in Q11.
- 8 Q. Isn't it true that the high-crime area as a factor for 9 reasonable suspicion could also encompass a whole range of 10 circumstances that you can't figure out just by looking at the 11 form?
- THE COURT: Where is high-crime area? The particular streets and areas involved?

MS. HOFF VARNER: Yes, your Honor.

THE COURT: What is your question about that?

- Q. Isn't it true that that particular factor could encompass a whole range of circumstances that you can't figure out just by checking off the box on the form?
- 19 A. It could encompass a whole range of factors that can't be identified just by a check box, that's what you're asking me?
- 21 Q. Yes.
- 22 A. Yes.
- 23 Q. Again, there is no detailed description --
- 24 THE COURT: Don't ask that again. There is no
- description for any of these bullet points. I see that. This SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FL05 Shea - cross is a nonjury trial, remember? I know there is no detailed description of the bullet points. I have said it four times. Q. You testified that as part of the NYPD training you conduct 3 4 role plays and scenarios, correct? 5 A. Yes. 6 Q. And I think you said that those were an important part of 7 the curriculum? 8 A. Yes. 9 Q. I am going to show you what has been marked as Defendants' 10 Exhibit N3, which was moved into evidence already. This is an 11 instructor assessment guide, stop, question and frisk role 12 play, December 18, 2003/2008. 13 MS. COOKE: I don't think N3 is in evidence. MS. HOFF VARNER: Let me fix that. 14 15 THE COURT: Did you say N or M? 16 MS. HOFF VARNER: N, as in Nancy. 17 THE COURT: Any objection? 18 MS. COOKE: No, your Honor, except I used the most current version because I was trying to limit the paper. 19 20 THE COURT: Why are we using this older version, Ms. 21 Hoff Varner? 22 We have a current version of this? 2.3 MS. COOKE: Plaintiffs' Trial Exhibit 287. THE COURT: That's in evidence? 24 25 MS. COOKE: Yes.

D4P8FLO5 Shea - cross 1 THE COURT: Why aren't you using Plaintiffs' 287? You weren't even doing training in 2003, were you? 2 THE WITNESS: No, ma'am. 3 4 MS. HOFF VARNER: I would just note under the footer, 5 it actually says, "Curriculum Development Unit October 2008." THE COURT: Were you doing it then? 6 7 THE WITNESS: No, ma'am. 8 THE COURT: You don't want to use the current version? 9 You want to use this old version? Go ahead if you really want 10 to. 11 MS. HOFF VARNER: It was additional --12 THE COURT: OK. 13 Q. All I want to do is show you the various fact patterns that 14 have been the subject of scenarios at the police academy. 15 If you look at N3, scene one, which ends in Bates 16 stamp 5803, this is a fact pattern for a stop, question and 17 frisk role play, and it involves an anonymous informant who 18 phones the police and gives a detailed description of a subject 19 carrying a gun at the location, correct? 20 A. "Anonymous informant phones police, gives detailed description of a subject carrying gun at the location, suspect 21 22 is waiting for the bus." Q. If you turn to the next page, scene two, this again is a 2.3 24 fact pattern about an identified caller who will state that he 25 or she observed one individual passing a gun to another SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FLO5 Shea - cross

- 1 individual, correct?
- 2 A. Yes.
- 3 Q. Both of these scenarios rely on some sort of a suspect
- 4 description?
- 5 A. Yes.
- 6 Q. And if we were to look at Plaintiffs' Exhibit 387, which I
- 7 now understand is the more updated version, those two scenarios
- 8 also both involve some sort of a suspect description, correct?
- 9 A. Yes.
- 10 Q. Let's turn back to Defendants' Exhibit Q11, the policing
- 11 legally street encounters guide. Pages 29 and 30 provide role
- 12 play scenarios related to stop and frisk, correct?
- 13 A. Yes.
- Q. On page 29, we have a scenario with a radio run of a man
- 15 with a gun, and then there is also a robbery pattern involving
- 16 a suspect with a specific description, correct?
- 17 A. Yes.
- 18 Q. And if you turn the page to page 30, scenario two is based
- 19 on a radio run for a suspicious male with a gun who is later
- 20 described by a complainant, correct?
- 21 A. Yes.
- 22 Q. And again, these scenarios rely on some sort of a suspect
- description, isn't that right?
- 24 A. Yes.
- 25 Q. I now want to show you what I think is in evidence as SOUTHERN DISTRICT REPORTERS, P.C. (212) 805-0300

D4P8FLO5 Shea - cross

1 Defendants' Exhibit Q3. This is the lesson plan cover sheet

- 2 for the sergeant's leadership course.
- 3 You have testified that this includes live simulations
- 4 that newly promoted sergeants go through as part of their
- 5 leadership training?
- 6 A. Yes.
- 7 Q. If you look at page 2 of this document, there is a
- 8 description of a live simulation of a stop based on a
- 9 description of a man with a gun, correct?
- 10 A. Yes. You're not there yet, but yes.
- 11 Q. There is a description of a man with a gun, and this is a
- 12 scenario for sergeant training, correct?
- 13 A. Yes.
- Q. Of these scenarios, all of these scenarios that we just
- 15 looked at, they are all based on some sort of a suspect
- 16 description, correct?
- 17 A. Yes.
- 18 Q. And none of these role plays are based on furtive
- 19 movements, correct?
- 20 A. No. There are furtive movements in addition to the
- 21 description, or a lack of furtive movements in addition to the
- 22 description described in some of these role plays, but they all
- 23 begin with a radio run of a description.
- Q. And because they all begin with a radio run of a
- description, none of these role plays involve a self-initiated SOUTHERN DISTRICT REPORTERS, P.C.

D4P8FL05 Shea - cross stop, isn't that correct? 2 A. Correct. 3 Q. I also just wanted to flag on the sergeant's training 4 scenario, this scenario is designed to help sergeants understand how to deal with the charge of racial profiling, 6 correct, at least in part? 7 A. You would have to show me the scenario we are discussing. 8 MS. HOFF VARNER: If we could just flip back to 9 Defendants' Exhibit Q3. 10 If you go to the next page, please. 11 I think I have the wrong one. 12 THE COURT: Given that it's 4:30, and it's painfully 13 apparent we are not going to finish your testimony today, we may as well stop. The Court has decided we are not sitting 14 15 tomorrow. So we will not be reconvening until Monday. You're 16 needed back on Monday at 10:00. 17 I think that's it, unless anybody has anything. 18 All right. See you Monday at 10:00. 19 (Adjourned to April 29, 2013, at 10:00 a.m.) 20 21 22 2.3 24 25

1	INDEX OF EXAMINATION
2	Examination of: Page
3	JAMES McCARTHY
4	Direct By Ms. Borchetta
5	Cross By Ms. Richardson
6	Redirect By Ms. Borchetta
7	JAMES SHEA
8	Direct By Ms. Cooke
9	Cross By Ms. Hoff Varner
10	PLAINTIFF EXHIBITS
11	Exhibit No. Received
12	284T, 289T, 297T1, 297T2, and 332T 4998
13	387
14	368
15	369
16	DEFENDANT EXHIBITS
17	Exhibit No. Received
18	C8 and W3
19	P11 and V5
20	U11 and R5
21	V11 and M5
22	S11 and P3
23	R11
24	C3 and O4
25	J11
	SOUTHERN DISTRICT REPORTERS, P.C.
	(212) 805-0300

1	Т3												.5090
2	G4												.5091
3	Q3,	R3,	and	Y.	3								.5098
4		м3,											.5103
5	K3												.5111
6	S3												.5141
7	Q11												.5154
8													
9													
10													
11													
12													
13													
14													
15													
16													
17													
18													
19													
20													
21													
22													
23													
24													
25													