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McNally

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

JAWAUN FRASER,

Plaintiff,

against 20-cv-4926 (CM)

THE CITY OF NEW YORK AND
UNDERCOVER OFFICER NUMBER
84, et al.,

Defendants.

-----x

GREGORY McNALLY

New York, New York

Wednesday, July 7, 2021

Reported by: Steven Neil Cohen, RPR

Job No. J7248710

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McNally
July 7, 2021
2:32 p.m.

Videoteleconference Deposition of
GREGORY McNALLY, taken by Plaintiff,
pursuant to notice, at New York, New York,
before Steven Neil Cohen, a Registered
Professional Reporter and Notary Public of
the State of New York.

1 McNally

2 APPEARANCES

3
4 JOEL B. RUDIN, ESQS.

5 152 West 57th Street

6 Eighth Floor

7 New York, New York 10019

8 Attorneys for Plaintiff

9 BY: MATTHEW WASSERMAN, ESQ.

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11 212-752-7600

12
13 THE CITY OF NEW YORK

14 OFFICE OF CORPORATION COUNSEL

15 100 Church Street

16 New York, New York 10169

17 Attorneys for Defendants

18 BY: BRIAN FRANCOLLA, ESQ.

19
20 ALSO PRESENT:

21 Siduri Beckman

22 Michael Puma, Esq.

23 Gulnora Tali, Esq.

McNally

IT IS HEREBY STIPULATED AND
AGREED, by and between counsel for the
respective parties hereto, that the sealing
and filing of the within deposition be
waived; that such deposition may be signed
and sworn to before any officer authorized
to administer an oath; that all objections,
except as to form are reserved to the time
of trial.

1 McNally

2 THE COURT REPORTER: I will make
3 a brief statement before we begin.

4 My name is Steven Neil Cohen. I
5 am a New York State notary and a
6 Registered Professional Reporter.

7 This deposition is being held
8 via videoconferencing equipment. The
9 witness and reporter are not in the
10 same room. The witness will be sworn
11 in remotely pursuant to agreement of
12 all parties. The parties stipulate
13 that the testimony is being given as
14 if the witness was sworn in person.

15 Let me remind everyone that only
16 one person can speak at a time. If
17 two people are speaking at the same
18 time the audio will disable and I will
19 not hear anything anyone is saying.

20 Thank you.

21 GREGORY McNALLY called as a witness by the
22 Plaintiff, having been duly sworn,
23 testified as follows:
24
25

1 McNally

2 EXAMINATION

3 BY MR. WASSERMAN:

4 Q. Good afternoon, Sergeant McNally.

5 A. Good afternoon.

6 Q. My name is Matthew Wasserman. I
7 am one of the attorneys representing the
8 plaintiff Jawaun Fraser in a Civil Rights
9 Act brought in the Southern District of New
10 York.

11 Do you understand that you are
12 here today to give deposition testimony in
13 connection with this lawsuit?

14 A. I do.

15 Q. The stenographer is here today
16 transcribe everything we are saying so I
17 would ask that you speak clearly and you
18 wait until I finish my question before you
19 answer. I will try to wait for you to
20 finish your answer before I ask the next
21 question.

22 The stenographer can't transcribe
23 nods or gestures so do you understand that
24 you should communicate everything verbally,
25 yes or no?

McNally

1
2 A. Yes.

3 Q. We are doing this deposition over
4 Zoom but it is not being recorded so it is
5 important that we get a clear record for the
6 stenographer.

7 If I ask you a question that you
8 don't understand or is in any unclear just
9 let me know and I will do my best to
10 rephrase it.

11 If you give an answer that is in
12 some way incomplete or inaccurate -- or
13 inaccurate do you understand that you may
14 and you should correct or supplement your
15 answer?

16 A. Okay.

17 Q. Do you understand that the oath
18 you just gave is the same oath you would
19 take in front of a judge and a jury?

20 A. I do.

21 Q. Is there any reason why you are
22 not able to testify to the best of your
23 recollection today?

24 A. No.

25 Q. Are you being represented by an

1 McNally

2 attorney today, Mr. McNally?

3 A. Yes.

4 Q. Who is representing you?

5 MR. FRANCOLLA: He is being
6 represented by Brian Francolla.

7 THE WITNESS: Brian Francolla.
8 My fault.

9 BY MR. WASSERMAN:

10 Q. Did you speak with that attorney
11 or those attorneys to prepare for today's
12 deposition?

13 A. Yes, I did.

14 Q. How many times?

15 A. On one prior occasion to this.

16 Q. When was that?

17 A. I believe a week ago. I don't
18 have the exact date. I apologize.

19 Q. That is fine.

20 For how long did you speak with
21 them?

22 A. Approximately an hour.

23 Q. Did you review any documents to
24 prepare for today's deposition?

25 A. I did.

1 McNally

2 Q. What did you review?

3 A. I reviewed a patrol guide
4 procedures, I reviewed the chapter for
5 courtroom testimony as well as a Power Point
6 presentation for courtroom testimony given
7 to police officers in the police academy.

8 Q. There were a number of years for
9 the courtroom testimony that we received in
10 discovery. Did you review a particular
11 year?

12 A. I tried to review several years
13 going back, I believe, to 2012 based upon
14 what we had available in our academy.

15 The material appears to have been
16 the same the entire time. I don't believe
17 there are any overtly differently worded
18 things. They are basically the same, all
19 that I used.

20 Q. Did you speak with anyone other
21 than your attorneys to prepare for today's
22 deposition?

23 A. No, I did not.

24 Q. Have you ever testified at a
25 deposition in a civil lawsuit before?

1 McNally

2 A. No, I have not.

3 Q. Starting with high school
4 graduation what is your educational
5 background?

6 A. I have a Bachelor's degree in
7 criminal justice.

8 Q. What is your employment history
9 after high school?

10 A. You mean what jobs I had
11 maintained?

12 Q. Yes. Exactly.

13 A. Okay. Well, I was a beach
14 lifeguard in Long Beach Island, I worked in
15 a Borders bookstore.

16 I was a police officer, part-time
17 police officer for two years in a township
18 called Stafford Township in South Jersey and
19 I was employed by the New York Police
20 Department in July of 2003.

21 Q. Since you joined NYPD in 2003 what
22 are your assignments?

23 A. Upon graduation I was assigned to
24 the 70 Precinct as a project impact as an
25 officer. After six months I was transferred

1 McNally

2 to the Brooklyn South Task Force for
3 approximately two to three months.

4 In October of 2004 I was
5 transferred to the 76 Precinct where I
6 remained for nine years. While there I
7 performed all three tours of duty, anti
8 crime, conditions, crime analysis, traffic
9 and was transferred to warrants within the
10 warrants division.

11 Afterwards I was promoted to
12 sergeant in 2013 and I was transferred to
13 the 24 Precinct in Manhattan.

14 In approximately October of 2015 I
15 was transferred to the academy as a sergeant
16 for -- as an instructor, official company
17 instructor.

18 About a year-and-a-half ago I was
19 made a team leader meaning I oversee several
20 other officers at the subject and then I was
21 placed in a position of admin. sergeant is
22 the best way to describe it.

23 Q. What is "admin. sergeant," what
24 does that entail?

25 A. It is primarily scheduling, making

1 McNally

2 sure everyone has class coverage,
3 implementing different projects that may be
4 going on. If there is a new way of perhaps
5 presenting material going over with the
6 classes.

7 I guess I was like a Swiss army
8 knife you might say. If something had to
9 get done I am usually the one to --

10 Q. That is also at the police
11 academy?

12 A. Yes.

13 Q. Do you understand that this
14 lawsuit pertains to the arrest and
15 prosecution of Jawaun Fraser whose
16 conviction was vacated on the basis of the
17 failure to disclose lawsuit information to
18 the defense?

19 A. I am not familiar right now.

20 Q. Do you understand that you are
21 here today to testify as a representative of
22 the NYPD?

23 A. I do.

24 Q. Do you understand that the
25 testimony you are giving today is on behalf

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McNally

of the City of New York?

A. Yes.

Q. Did you review the 30(b)(6) notice?

A. I did, yes.

Q. What 30(b)(6) topics are you prepared to testify about today?

A. The subjects 1 and 3, if I recall correctly from the bullet points.

Q. Will your testimony today be based on personal knowledge in preparation for this deposition or something else?

A. Based upon personal knowledge as well as preparation. I apologize.

Q. You mentioned that you had gone to the police academy in 2015. Do I have that right?

A. Yes.

Q. And since you have been out of the police academy have you taught particular sections or courses?

A. I primarily focus on teaching the law subjects however I also taught police science and social science subject as well,

1 McNally

2 extra training things but pertaining to the
3 actual subject matter those are the primary
4 ones.

5 Q. When you said you primarily teach
6 the "law subjects," are there particular law
7 subjects you teach or all of them?

8 A. All of them.

9 Q. So have you taught the subject on
10 court appearances?

11 A. I have.

12 Q. Have you taught the subject on
13 collecting and processing evidence?

14 A. I have taught it. I am not as
15 familiar with it as I am with the law
16 subjects but, yes, I have taught collecting
17 and processing evidence.

18 Q. As an instructor who is your
19 supervisor at the police academy?

20 A. Lieutenant Tillwitz, Lieutenant
21 Robert Tillwitz, T-I-L-L-W-I-T-Z.

22 Q. At the police academy do you teach
23 exclusively cadets or do you also teach
24 officers who are coming back for refresher
25 training or some other training?

1 McNally

2 A. I have only taught recruits.

3 Q. Is there training done for
4 detectives or supervisors at the police
5 academy or is it exclusively recruits taught
6 at the police academy?

7 A. The academy trains for the entire
8 department. That is a separate -- a
9 separate entity called in-service training.
10 Once they graduate the different units will
11 then take over from there. I don't -- I
12 primarily deal with the recruits.

13 Q. Understood.

14 Who decides the subject area of
15 training for police officers at the academy?

16 A. We have a curriculum unit that
17 will break out and create the actual
18 chapters for the student guide as well as
19 the Power Points that are presented.

20 Q. That curriculum committee, who
21 heads it?

22 A. Currently the lieutenant in charge
23 of that unit is Lieutenant Gallagher but I
24 am not entirely sure of the structure beyond
25 there.

McNally

1
2 Q. Okay.

3 A. The overall supervisor of recruit
4 training I guess more recently is Inspector
5 Sheehan.

6 Q. That is the chief recruit
7 training, am I right?

8 A. Inspector in charge of recruit
9 training section.

10 Q. Is the inspector responsible for
11 approving the content and taught or someone
12 else?

13 A. I am not entirely sure. I believe
14 he does that. I don't know who signs off on
15 it per se.

16 Q. Do you know if the police
17 commissioner or the chief of training are
18 involved?

19 A. I would imagine they would be but
20 again it is just me hypothesizing. I don't
21 know for sure how involved they would be or
22 not be.

23 Q. Okay. Who decides when or how to
24 update training materials?

25 A. That is something that would be

1 McNally

2 more in the area of the curriculum
3 department. I believe when they become
4 aware of new legal bulletins or new
5 procedures then at that point they will have
6 to reimplement that for the -- it is
7 immediate training that has to be updated
8 now or for the following class, they are the
9 ones who would be in charge of that.

10 Q. Have you heard of the U.S. Supreme
11 Court case Brady v. Maryland?

12 A. Yes.

13 Q. When did you first hear of Brady
14 v. Maryland?

15 A. I vaguely remember to be honest
16 when I was recruit officer but I became more
17 acquainted with it and had more clear
18 knowledge of it when I first started
19 teaching at the academy.

20 Q. Are new recruits trained on Brady
21 at the academy?

22 A. Yes, they are.

23 Q. Are you the instructor who has
24 taught them since 2015?

25 A. I am one instructor of many who

1 McNally

2 have taught them, yes.

3 Q. So are there multiple instructors
4 who teach the subject of court appearances?

5 A. Well, court appearances originally
6 when I first came on fell under the heading
7 of the law department -- under the law
8 department and then about two years ago it
9 switched to be a police science subject that
10 is now taught by police science instructors.
11 So each class has several instructors who
12 teach both law and police science.

13 Q. Okay. And you primarily teach
14 law, that is correct?

15 A. Primarily. Yes, that would be my
16 area.

17 Q. And is the training given at the
18 academy on Brady disclosures supposed to be
19 consistent with NYPD policies on Brady
20 disclosures?

21 A. How do you mean?

22 Q. So I mean does that training
23 reflect official NYPD policy as to the
24 duties of police officers with regard to
25 their Brady obligations?

1 McNally

2 A. Yes, I believe so.

3 Q. Who sets overall NYPD policy in
4 the area of Brady disclosures by police
5 officers?

6 A. I -- to be honest, I do not know.
7 I believe it may fall under OMAC but I don't
8 know what the acronym stands for but they
9 would be able to determine what is relevant
10 for us.

11 Q. Okay. Is that -- you said the
12 acronym is OMAC; is that correct?

13 A. I may have it wrong to be honest.
14 I apologize. I don't know if it is or not.
15 But it is determined I believe by downtown,
16 1PP, and matriculates to --

17 Q. Will that unit be part of the
18 legal bureau?

19 A. I wouldn't know.

20 Q. So why don't we -- I will go into
21 some of the documents in your drop box and
22 perhaps there is a lot I will try to go
23 through them as quickly as we can. So let's
24 start with Exhibit 114, if you would pull
25 that up.

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McNally
(Lesson plan from 2006 was marked
Exhibit 114 for identification)
BY MR. WASSERMAN:
Q. Sergeant McNally, do you have
Exhibit 114 up?
A. Just a moment please.
Q. Sure.
A. Okay.
Q. Do you recognize this document?
A. Just give me a moment to look it
over, please.
Q. Of course.
A. I don't recognize it specifically
but it appears to be a lesson plan.
Q. And am I correct in saying that it
appears to be a lesson plan from 2006?
A. I would have to go by your word on
that.
Q. Since you don't recognize that.
So are you aware of whether this document
mentions Brady v. Maryland at all?
A. I have not had a moment to look it
over yet.
Q. It is text searchable so you can

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McNally

do a control F search for Brady for example.

A. I don't see Brady marked in here under the search function.

Q. Okay. So you would agree that to the best of your knowledge this document doesn't mention Brady?

A. Not by the word "Brady," no.

Q. To the best of your knowledge does this lesson plan represent the training that NYPD had in place in 2006?

A. I would not be able to testify to that specifically as was not working there in 2006 but if this is what it says then I presume so.

Q. Okay. Let's move on to the next document, Exhibit 115.

(Student guide was marked Exhibit 115 for identification)

BY MR. WASSERMAN:

Q. Once you open that up let me know whether you recognize it -- whether you recognize this specific document or you just recognize the type of document that it is.

A. I am sorry. Which exhibit?

McNally

Q. 115.

A. I have it.

Q. Okay. So is this document familiar to you?

A. It appears to be a student guide copy of our court procedure for court appearances.

Q. When you say "a student guide," who would that be given to?

A. It is given to the recruit officers who attend the New York City Police Academy. This is generally what they will get for each trimester.

Q. So they are given a hard copy of this document?

A. If this is an early one, yes. More recently, since 2006, so, yes, they would have been given a hard copy. Three years ago, maybe more, they switched to a digital copy.

Q. That would be their personal copy that they could keep?

A. Yes.

Q. This guide appears to be about

1 McNally

2 court appearance, yes?

3 A. Yes.

4 Q. To the best of your knowledge does
5 it make any mention of Brady?

6 A. After quickly looking at it I
7 don't see it mentioned, no.

8 Q. You mentioned police student
9 guides are given to police officers. Who
10 approves their content?

11 A. Again, this is the same material
12 that is developed by the curriculum
13 department. They write the student guide as
14 well as the --

15 Q. So let's move forward to -- let's
16 see. Exhibit 119.

17 (Lesson plan for basic recruit
18 course training was marked Exhibit 119 for
19 identification)

20 THE WITNESS: Okay.

21 BY MR. WASSERMAN:

22 Q. Is this document familiar to you?

23 A. It appears to be a lesson plan for
24 recruit training, basic recruit course
25 training.

McNally

1
2 Q. It is for a lesson on court
3 appearances?

4 A. Yes.

5 Q. Have you seen this lesson plan
6 before?

7 A. Not this particular lesson plan,
8 no.

9 Q. To the best of your knowledge does
10 it refer at all to Brady?

11 A. Again, after quickly looking over
12 it I don't see it in this.

13 Q. So let's move on to Exhibit 120.

14 (Power Point presentation for
15 recruit training was marked Exhibit 120 for
16 identification)

17 BY MR. WASSERMAN:

18 Q. Are you familiar with this
19 document?

20 A. It appears to be a Power Point
21 presentation for recruit training.

22 Q. How would this information be
23 conveyed to students?

24 A. I am not entirely sure how they
25 displayed it then but it was probably done

1 McNally

2 via Power Point projector or possibly a
3 large TV screen perhaps they might use as
4 well.

5 Q. Would a copy of a Power Point
6 presentation like this be given to the
7 students or would they just be shown in a
8 class?

9 A. It would generally just be shown
10 in class. We try not to give them copies of
11 the projector or the Power Point
12 presentations.

13 Q. Understood.

14 This appears to be a Power Point
15 presentation on court appearances again?

16 A. Yes.

17 Q. Just take a look at, control F if
18 you like, let me know whether you would
19 agree that it doesn't appear to mention
20 Brady at all.

21 A. No, I don't believe it mentions
22 Brady by name.

23 Q. Let's move on to Exhibit 121.

24 (Student guide copy of court
25 appearances dated July 2014 was marked

McNally

Exhibit 121 for identification)

BY MR. WASSERMAN:

Q. This -- does this document look familiar to you at all?

A. It does look familiar to me.

Q. What does this document look like to you?

A. It appears to be a, again, another student guide copy of court appearances.

Q. It is dated July 2014, is that right?

A. Correct.

Q. Again, take a second to review it. Do a control F search if you need to.

Let me know whether you would agree that it doesn't mention Brady?

A. No, it does not appear to mention Brady by name.

Q. Is it correct that in the NYPD training materials on court appearances up until the date of July 2014 there was no mention of Brady?

A. Given the material I have been shown here I don't believe I see it

1 McNally

2 mentioned here, no.

3 Q. Okay. So that would be a yes?

4 A. Yes. Again, based upon what I
5 have seen.

6 Q. Understood.

7 So let's move on to Exhibit 122.

8 (Student guide copy of court
9 appearances dated January 2015 was marked
10 Exhibit 122 for identification)

11 BY MR. WASSERMAN:

12 Q. Does this look familiar to you?

13 A. It appears again to be a perhaps
14 student guide copy. It appears to be a
15 student guide copy of court appearances
16 dated from January 2015.

17 Q. I am going direct your attention
18 to page 19. There will be a subsection
19 entitled "Brady Material" on the bottom
20 right. It should be Bates stamped
21 Defendants 9869.

22 A. Just a moment please.

23 Q. Of course.

24 A. I am on page 19. "Brady
25 Material."

1 McNally

2 Q. Just take a moment to read that
3 subsection. It goes on to the next page.

4 A. Would you like me to read it out
5 loud?

6 Q. You can just read to yourself.
7 I will have a couple of questions
8 about it.

9 A. Okay.

10 Q. This subsection says that "An
11 important area of law that a police officer
12 should be familiar with is exculpatory
13 evidence commonly referred to as Brady
14 material;" is that correct?

15 A. Correct.

16 Q. It defines "exculpatory evidence"
17 as "evidence that tends to clear someone's
18 guilt," is that right as well?

19 A. That is correct as well.

20 Q. Would you agree that this is the
21 only section of this document that refers to
22 Brady material?

23 A. Yes.

24 Q. I am going to move on to the next
25 document. It is Exhibit 123.

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McNally

(Lesson plan for instructors for court appearances was marked Exhibit 123 for identification)

BY MR. WASSERMAN:

Q. Take a second to look at it and tell me what it looks like.

A. It appears to be a lesson plan for instructors of material for court appearances in the academy.

Q. Okay. I am going to direct your attention to page 26. It should be Bates stamped at the bottom defendant 9812. I apologize. It is page 26 in the pdf. It is actually page 25 at the bottom.

A. 25, okay.

Q. Do you see a slide entitled "Brady Material?"

A. Yes, I see it.

Q. Just take a second to read this page if you will.

A. Yes. Okay. I finished.

Q. This section defines "exculpatory evidence" as "evidence that tends to clear someone's guilt," is that right?

1 McNally

2 A. That is correct.

3 Q. It says that Brady material is the
4 same thing as exculpatory evidence; is that
5 correct?

6 A. Yes.

7 Q. In sum and substance, it is the
8 same training as the previous document that
9 you reviewed, is that right?

10 A. I would almost say it is
11 word-for-word, yes.

12 Q. Would you agree that this is the
13 only section in this document that deals
14 with Brady material?

15 A. Yes.

16 Q. Let's move on to the next
17 document. It is document 124.

18 (Power Point presentation
19 regarding court appearances was marked
20 Exhibit 124 for identification)

21 BY MR. WASSERMAN:

22 Q. Take a second to look at that and
23 see whether it is familiar to you.

24 A. It appears to be a Power Point
25 presentation regarding court appearances.

1 McNally

2 Q. I am going to direct your
3 attention to page 13 there should be a slide
4 that says "Brady Material" on the top.

5 A. Got it.

6 Q. It should be marked defendant 9762
7 at the bottom right-hand. Is that correct?

8 A. Correct.

9 Q. This slide says -- defines Brady
10 material as exculpatory evidence that tends
11 to clear someone's guilt?

12 A. Yes.

13 Q. Okay. Would you agree that the
14 only portion of this document referring to
15 Brady material is this slide?

16 A. It appears so, yes.

17 Q. Okay. I am going to skip forward
18 to Exhibit 133, that is July 2019.

19 (Lesson plan for court appearances
20 from the New York City Police Academy of
21 July 2019 was marked Exhibit 133 for
22 identification)

23 THE WITNESS: 133.

24 BY MR. WASSERMAN:

25 Q. Correct. Open it up and let me

1 McNally

2 know if that looks familiar to you.

3 A. It appears to be a lesson plan for
4 court appearances from the New York City
5 Police Academy.

6 Q. Have you taught using this lesson
7 plan before?

8 A. From this lesson plan, no, I don't
9 believe so.

10 Q. Okay. I will direct your
11 attention to page 23. It should be
12 marked -- I am sorry. It is 22 on the
13 bottom, 23 on the pdf.

14 A. Okay.

15 Q. There should be a slide saying
16 "Brady Material" there?

17 A. Yes.

18 Q. Take a second to review it and
19 then I will have a couple questions about
20 it.

21 A. Okay. I finished.

22 Q. Is this training in sum and
23 substance identical to the previous training
24 you reviewed on Brady material?

25 A. Yes. It appears so.

1 McNally

2 Q. It refers to Brady material as
3 exculpatory evidence again, is that right?

4 A. Yes, it does.

5 Q. It says again that "exculpatory
6 evidence" is "evidence that tends to clear
7 someone's guilt," is that right?

8 A. Correct.

9 Q. To the best of your knowledge is
10 this the only part of this training that
11 deals with Brady material?

12 A. To the best of my knowledge, yes,
13 it is.

14 Q. So let's move on to Exhibit 134.
15 (Power Point presentation for
16 court appearances was marked Exhibit 134 for
17 identification)

18 BY MR. WASSERMAN:

19 Q. Once you open it up let me know if
20 it looks familiar to you.

21 A. Okay.

22 Q. Does it look appear to you?

23 A. It appears to be a Power Point
24 presentation for court appearances.

25 Q. I will direct your attention to

McNally

page 15, it is a slide entitled "Brady
Material."

A. Okay.

Q. Does this appear to be the same
slide on Brady material as in the previous
Power Points you reviewed?

A. Yes, it does.

Q. Again, it defines "Brady material"
as "exculpatory evidence that tends to clear
someone's guilt?"

A. Yes.

Q. Is this the only section of the
training that deals with Brady material?

A. Yes, by word Brady, yes.

Q. So let's move on to Exhibit 135.

(Student guide copy of court
appearances listed under police science was
marked Exhibit 135 for identification)

BY MR. WASSERMAN:

Q. Does this look familiar to you?

A. Yes, it appears to be a student
guide copy of court appearances listed under
police science now.

Q. I am going to direct your

1 McNally

2 attention to page 21. There should be a
3 subheading entitled "Brady Material."

4 A. I see it.

5 Q. Okay. Take a second to review it
6 please?

7 A. Okay.

8 Q. And in sum and substance does it
9 appear to be the same Brady material as in
10 the previous police student guides that you
11 reviewed?

12 A. It does appear to be the same.

13 Q. To the best of your knowledge is
14 this the only section of the police
15 student's guide from July 2019 dealing with
16 Brady material?

17 A. Yes, it is.

18 Q. Okay. So I am going to go back
19 and we are going to go through the trainings
20 on collecting and processing evidence. So I
21 would like to start with Exhibit 113.

22 (Student guide copy of collecting
23 and processing evidence dated July 2006 was
24 marked Exhibit 113 for identification)

25 THE WITNESS: Okay.

McNally

BY MR. WASSERMAN:

Q. Does this look familiar to you?

A. It appears to be a student guide copy of collecting and processing evidence dated July 2006.

Q. I would like to direct your attention to page 38. It should be Bates stamped defendant 14937 at the bottom.

A. Okay.

Q. Do you see a subsection entitled "Brady Material"?

A. I do.

Q. Take a second to look that over.

A. Okay. I finished.

Q. In sum and substance does it appear to be identical to the training on Brady material on the police student guide to court appearances that you previously reviewed?

A. Yes, it does.

Q. It says that, "Another important area of law that a police officer should be familiar with is exculpatory evidence commonly referred to as Brady material;" is

1 McNally

2 that right?

3 A. That's right.

4 Q. It defines "exculpatory evidence"
5 as "evidence that tends to clear someone's
6 guilt"?

7 A. Yes.

8 Q. This -- is this the only
9 subsection that deals with Brady material in
10 this training?

11 A. On this frame, yes.

12 Q. I apologize. In this training.

13 A. I would have to go by your word
14 for it. I will search for to make sure.

15 Q. Please do if you don't mind.

16 A. Not at all.

17 It is mentioned there. It is
18 mentioned briefly and a homework question on
19 page 41 -- on page 41 is a homework question
20 asking you to define Brady material but that
21 question doesn't tell you what Brady
22 material is.

23 The only time it is explained is
24 on page 38.

25 On the end of each slide there

1 McNally

2 appears to be a homework question at the end
3 of each chapter.

4 Q. And the homework questions who are
5 those for?

6 A. The homework questions are for the
7 recruit officers.

8 Q. Are the recruit officers required
9 to complete those questions?

10 A. I am not entirely familiar with
11 the practice in 2006. I know that we tend
12 to have a separate section for homework
13 questions that we assign them.

14 Q. Do you make them do -- when you
15 assign homework do you make them do all of
16 the questions or just some of the questions?

17 A. It depends. It is generally up to
18 the instructor especially these days we can
19 be pretty independent what questions we
20 choose to ask them. That is primarily upon
21 the instructor.

22 Q. Okay. So let's move on to Exhibit
23 116.

24 (Lesson plan for collecting and
25 processing evidence from August 2003,

McNally

revised 2014 was marked Exhibit 116 for
identification)

BY MR. WASSERMAN:

Q. Does this look familiar to you?

A. It appears to be a lesson plan for
collecting and processing evidence from
August 2003. Revised 2014.

Q. I will direct your attention to
the bottom of page 33. Defendant 10377.

A. What page again, sir?

Q. Page 33.

A. 33. Okay.

Q. Do you see at the bottom Section
G, "Brady Material"?

A. Yes.

Q. Just take a second to look over
that Section G.

A. Okay.

Q. Is this section consistent with
the previous trainings you have seen on
Brady material?

A. Yes. It is in bullet point form
but appears to be the same material.

Q. And again it defines Brady

McNally

material as exculpatory evidence and as evidence that tends to clear someone's guilt?

A. Yes.

Q. So let's go on to Exhibit 117.

(Power Point presentation for collecting and processing evidence was marked Exhibit 117 for identification)

BY MR. WASSERMAN:

Q. Does this look at all familiar to you?

A. Yes. It appears to be a Power Point presentation for collecting and processing evidence.

Q. I apologize. Did you say that you have taught this class or you have not?

A. I have taught it briefly, yes. I am not as familiar with collecting and processing evidence as I am court appearance but I have taught it, yes.

Q. I am going to direct your attention to page 117, then 122 and 123.

Let me tell you -- so 117 is defendant 10328. At the bottom 122, it says

McNally

"Brady Material" on the top and that is
10333.

MR. WASSERMAN: I am directing
him to page first 117 which is
defendant 10328 and then to page 122
which is defendant 10333.

THE WITNESS: So I am on page --
defendant 10328.

BY MR. WASSERMAN:

Q. Okay. Just let's start by this
refers to the Brady role in this page?

A. It mentions Brady as well as
Rosario.

Q. But it doesn't define Brady on
this page; is that correct?

A. Not specifically, no.

Q. Okay. So let's move on to 122
which is defendant 10333.

A. Okay.

Q. Take a second to look at this page
and the following page.

A. Okay. I am finished.

Q. Okay. Is this training on the
Brady material consistent with the previous

1 McNally

2 training on Brady material you reviewed?

3 A. Yes, it appears so.

4 Q. Again, it refers to Brady material
5 as exculpatory evidence?

6 A. Yes.

7 Q. Again, it refers to it as evidence
8 that tends to clear someone's guilt, is that
9 right?

10 A. That's right.

11 Q. Okay. So let's go to Exhibit 118.

12 (Student guide copy of collecting
13 and processing evidence of the police
14 academy of July 2014 was marked Exhibit 118
15 for identification)

16 BY MR. WASSERMAN:

17 Q. Tell me whether this is familiar
18 to you and, if so, what it looks like.

19 A. That appears to be a student guide
20 copy of collecting and processing evidence
21 of the police academy.

22 Q. This one is dated July 2014; is
23 that right?

24 A. Yes, it is.

25 Q. Okay. So I am going to direct

1 McNally

2 your attention to page 55. It is defendant
3 10205.

4 A. Okay.

5 Q. Again, there is a subsection
6 entitled "Brady Material" on this page.
7 Take a second to read it over.

8 A. Okay. I finished.

9 Q. Would you agree that this section
10 on Brady material is in sum and substance
11 identical to the previous training you
12 reviewed on Brady material in the police
13 student's guide?

14 A. Yes, I would say so.

15 Q. This is the only section on Brady
16 material in this training; is that correct?

17 A. Just a minute. I will
18 double-check.

19 Again, there is that class
20 discussion, homework question on page 59
21 that says define Brady material but as far
22 as explaining what it is that is the only
23 page where it is, yes.

24 Q. So let's move on to Exhibit 127.

25 (Lesson plan for collecting and

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processing evidence was marked Exhibit 127
for identification)

THE WITNESS: Okay.

BY MR. WASSERMAN:

Q. Does this exhibit familiar to you?

A. It appears to be a lesson plan for
collecting and processing evidence.

Q. Okay. Take a moment and look
through it.

Am I correct in saying that there
is no discussion of Brady material in this
lesson plan?

A. You will have to give me a moment.

Q. Of course.

A. I don't believe it is mentioned.

Q. You said -- so other than the
lesson plans, the student guides and Power
Points that I just showed you were there
other written training materials used with
police recruits?

A. They do have things listed such as
mandatory reading usually at the beginning
of the Chapter. It is not something that we
would normally go over in class. It is just

1 McNally

2 understood that that is material that they
3 are as a police officer responsible for
4 knowing.

5 Q. Do those mandatory readings cover
6 Brady v. Maryland or the Brady doctrine?

7 A. I would have to look at some of
8 the chapters. One question -- some of them
9 go over legal bureau bulletins. I would
10 have to refresh my memory by looking at the
11 actual student copy itself.

12 Q. Other than the legal settings
13 materials on court appearance and collecting
14 and processing evidence that I just showed
15 you are you aware of any written NYPD
16 training materials on Brady?

17 A. As far as recruit training goes,
18 no.

19 Q. You mentioned "as far as recruit
20 training goes," are you familiar or do you
21 know of any additional training materials on
22 Brady given to supervisors?

23 A. I am not really familiar. I am
24 familiar with the legal bureau both that I
25 have read, I can't remember the exact name,

1 McNally

2 I apologize, but as far as training material
3 we go over in the academy or we distribute
4 ourselves, no.

5 Q. Okay. How about training given to
6 detectives, are you aware of any additional
7 training given to detectives on Brady?

8 A. No, I am not familiar. I am
9 not -- that is not my area.

10 Q. Is it correct that for the period
11 from January 2005 to July 2019 police
12 department training materials consistently
13 defined Brady material as exculpatory
14 evidence?

15 A. As defined in the evidence I have
16 seen here, then, yes.

17 Q. Are you aware of any other
18 documents or any other training materials
19 that define Brady material differently for
20 the period from January 2005 to July 2019?

21 A. As defined as Brady material? I
22 am not entirely sure that it is how you
23 worded that.

24 Q. Is there another way that it would
25 be worded that you are thinking of?

1 McNally

2 A. Can I ask you a question, a
3 question if you don't mind?

4 Q. We can take -- sir, actually I
5 prefer that you don't but if we need to take
6 a break after that question. So just other
7 than the term "Brady material" are there
8 other ways that you have heard Brady
9 materials referred to or exculpatory
10 evidence referred to, are there other terms
11 you have heard used?

12 A. I know you are supposed to
13 disclose information to --to your prosecutor
14 as far as you may have any kind of conflict
15 of interest perhaps or maybe if you have
16 some sort of testimony you have given that
17 was found incredible but as far as -- I
18 can't tell you where that training would
19 come from other than my own meetings.

20 Q. As far as you know was that part
21 of the police training materials for the
22 period from January 2005 to July 2019?

23 A. It would not be listed in the
24 recruit training materials, no.

25 Q. And is it correct that for the

1 McNally

2 period of January 2005 to July 2019 all NYPD
3 training materials defined as exculpatory
4 evidence as evidence that tends to clear
5 someone's guilt?

6 A. I would say it is a bit of a leap
7 to say "all NYPD materials." That is pretty
8 broad but as far as the recruit training
9 materials displayed here it is listed as
10 exculpatory evidence.

11 Q. So are you aware of other NYPD
12 materials that defined exculpatory evidence
13 differently than evidence that tends to
14 clear someone's guilt?

15 MR. PUMA: Counsel --

16 THE COURT REPORTER: Who is
17 speaking?

18 MR. PUMA: Michael Puma for
19 NYPD.

20 Can we just take a two-minute
21 break? The witness has asked for a
22 break after -- in between the last
23 question so I just ask that we take a
24 two-minute break.

25 MR. WASSERMAN: Sure. Once he

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McNally

answers this question, that is fine.
I just don't want him to take a break
while the question is pending but I am
happy to take a break after this
question.

MR. PUMA: I started to request
this prior to you asking the question
and you continued to finish the
question so I just ask for the
two-minute break.

MR. WASSERMAN: Okay. We can
take the two-minute break. And if it
is really a two-minute break that is
fine but I did not hear you ask that
so next time please make sure you
speak a little louder.

MR. PUMA: No problem. Sorry
about that. It shouldn't be more than
two minutes.

MR. WASSERMAN: Okay.

(Recess)

MR. WASSERMAN: Mr. Cohen, would
you mind re-reading the last question?

(Record read)

1 McNally

2 THE WITNESS: The answer is,
3 yes.

4 BY MR. WASSERMAN:

5 Q. Can you elaborate?

6 A. Well, as we leave the academy --
7 again, we only started at the starting off
8 point that Brady material is defined in the
9 student guide so they have a basic
10 understanding of it.

11 As you go into your precincts you
12 have training officers who will train you on
13 evidence that would be Brady material that
14 might be expanded again.

15 As I mentioned earlier it would be
16 like incredible testimony they give where if
17 a judge finds your testimony to be
18 inappropriate or perhaps if you have any
19 kind of complaints against you, you have any
20 criminal filings against you, you have to
21 make those known to the prosecutor.

22 Under that definition of Brady
23 that would fall under that umbrella.

24 Q. Okay. Is there any NYPD written
25 training materials that reflects that?

1 McNally

2 A. I believe there are some under
3 some in-service training programs. I am not
4 a trainer of those so I really can't testify
5 to the complete sum and substance of them.

6 Q. So are you aware of any specific
7 training materials that reflect that
8 understanding of Brady?

9 A. I had been shown some training
10 materials under -- in the files under police
11 action litigation section, which I mentioned
12 previously, what that kind of testimony was
13 and how you have to make that known to the
14 prosecutor who has to make it known to the
15 defense. This was not in the scope of my
16 training as an instructor.

17 Q. Okay. When you refer to that
18 document are you referring to a police legal
19 bureau bulletin by any chance?

20 A. One of them was, yes. I have it
21 in front of me perhaps.

22 MR. FRANCOLLA: Mr. Wasserman,
23 on the record, I can just add, I think
24 the way we envisioned it and I can
25 give you specifics here is that

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McNally

Sergeant McNally was not someone we were going to produce to discuss the supplemental trainings that he is referring to, PALS, which I did receive recently and I can turn over to you hopefully today.

Personally I haven't had the opportunity and I knew it wouldn't be part of this deposition so just as we navigate through this I just want to make sure that we weren't expecting him to necessarily weigh into those so it is not something that we didn't produce or forgot to produce or exists but we didn't get that we will supplement with.

I think our expectation was that as we close the loops on other outstanding issues of the general 30(b)(6) notice that you served for the police department someone -- those trainings will be provided well in advance and someone qualified to walk you through them would be designated

1 McNally

2 to testify.

3 MR. WASSERMAN: Okay. And --

4 MR. FRANCOLLA: Sorry. Go
5 ahead.

6 MR. WASSERMAN: That would be
7 the witness from the legal bureau.

8 MR. FRANCOLLA: Or -- yes.
9 Some -- that type of -- whether it is
10 specifically from there we just have
11 to identify separately. That is
12 something that I have been working
13 with PD counsel on as we speak.

14 We don't have the finalized
15 witness but they will cover that
16 topic, presumably if it is from the
17 legal bureau or someone qualified to
18 do that.

19 MR. WASSERMAN: Okay.

20 Understood.

21 BY MR. WASSERMAN:

22 Q. Sergeant McNally, I just want to
23 be clear.

24 Am I right in understanding that
25 your testimony is that for the police

1 McNally

2 academy training in January 2005 to July of
3 2019 Brady evidence was defined exclusively
4 as "exculpatory evidence and evidence that
5 tends to clear someone's guilt," but there
6 may have been other trainings given
7 in-service outside of the police academy?

8 A. That is correct, yes.

9 Q. Okay. Other than -- strike that.

10 The police academy training
11 materials we have gone through, do those
12 reflect NYPD policy as to Brady material?

13 A. How do you mean? Is that how it
14 is represented in the academy or is that how
15 it is seen department-wide?

16 Q. I mean the latter. Is the
17 training given in the police academy
18 consistent with the police department policy
19 as Brady material?

20 A. Within the limited scope of where
21 we begin that is how we started off. As you
22 leave the academy that definition is
23 expanded upon through additional training
24 well after you have graduated.

25 Q. Are you aware of any document

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McNally

other than the PALS document that we have previously referred to that defines Brady material other than the training materials -- strike that. That is a convoluted question.

Other than the training materials we previously discussed and the PALS materials you mentioned are you aware of any document that sets forth NYPD policy as to Brady materials?

A. There is a Legal Bureau Bulletin mentioned, Volume 47, number 1, subject, cross-examination of police witnesses that mentions that you must reveal again accusations against yourself to the prosecutor, you must release that information later.

That is a brief summary of it.

Q. That is the legal bureau bulletin dated December of 2017, is that right?

A. January 25th of 2017.

Q. January 25th. I apologize. Okay.
And -- hold on.

Some of the training materials

1 McNally

2 mentioned that Brady material could be oral
3 in addition to written.

4 Was there any training given on
5 the need to create a written record of Brady
6 material?

7 A. As far as retaining that, if I
8 could summarize, you basically are taught to
9 retain any kind of material that, generally
10 writing, I believe as we define that as
11 Rosario in the scope of the academy, but
12 generally you are taught any kind of
13 evidence you are taught to retain regardless
14 of what it may be.

15 Q. In a specific instance of an oral
16 statement that might be Brady material are
17 police recruits taught to write down oral
18 statements?

19 A. Not specifically write it down
20 perhaps but yes, I would imagine that you
21 would have to do that or if they recall that
22 they had to make that note.

23 It doesn't state specifically that
24 you have to write that down and relate that
25 to the prosecutor. To tell them if someone

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McNally

tells you something immediately write it down as quickly as you can so you don't forget it just so you can relay that information later on.

Q. There is no specific training on the need to write down Brady material if it is oral?

A. Not Brady material in particular, just any statement that may or may not be -- and that may be said that someone we are taught to basically write down as quickly as possible so you don't forget it or perhaps misremember it.

Q. Okay. Are you aware that more than one police officer or detective sometimes works on a particular case?

A. Yes.

Q. So how can the police department ensure that Brady material is handed over to the prosecution if more than one police officer or detective works on the case and no written record is made?

MR. FRANCOLLA: Objection.

You can answer if you

1 McNally

2 understand.

3 THE WITNESS: I am sorry. I
4 don't understand how you mean that.

5 BY MR. WASSERMAN:

6 Q. Okay. Let me try to rephrase.

7 Given that more than one police
8 officer or detective sometimes works on a
9 case if Brady material is orally conveyed to
10 one police officer how can the police
11 department make sure it is conveyed to the
12 prosecution if there is no written record
13 made?

14 A. I can't speak as to what
15 detectives do but as police and patrol
16 officers when we had our activity log
17 generally you write -- most statements are
18 there or you would write it directly on an
19 online or arrest form and when you supply
20 that to your prosecutor all that evidence
21 has to be supplied to the prosecutor.

22 Q. Okay. If a police officer doesn't
23 write down the Brady material how would it
24 be conveyed to the prosecutor if they didn't
25 speak with the prosecutor in person?

1 McNally

2 A. I really wouldn't know.

3 Q. You mentioned that sometimes there
4 were quizzes for recruits or there is
5 homework given, is that right?

6 A. That is correct.

7 Q. Were there any measures taken to
8 monitor that recruits were understanding and
9 absorbing the definition of Brady material?

10 A. That would have to be -- that
11 would be an individual instructor would have
12 to gauge that themselves.

13 Actually we have trimester tests
14 in which the questions may be given. That
15 would be the only way I would guess that
16 they can do if the recruit understood the
17 basics of it.

18 Q. Okay. You mentioned previously
19 in-service training and training officers.
20 Other than that is there any NYPD procedures
21 or supervision to ensure that officers
22 comply with the Brady rule?

23 A. As far as Brady material I believe
24 that would be it. There had to be through
25 training officers, the academy, maybe

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McNally
additional in-service training.
Q. Okay. So I would like to turn your attention to document 136.
(Instructor manual on court appearances of October 2019 was marked Exhibit 136 for identification)
BY MR. WASSERMAN:
Q. Take a second to look at that.
A. 136.
Q. 136.
A. Okay.
Q. Does this look familiar to you?
A. It appears to be an instructor manual on court appearances.
Q. Okay. It appears to be dated October 2019; is that correct?
A. Yes.
Q. I am going to direct your attention to page 47. It should be a slide on -- it is 47 in the pdf but it is 46 on the bottom right-hand corner. There will be a slide, "Adverse Credibility."
A. Okay.
Q. Take a second to read this slide

1 McNally

2 and this page. This is Exhibit 136.

3 A. Okay.

4 Q. The slide up top refers to adverse
5 credibility information as Giglio material
6 G-I-G-L-I-O; is that correct?

7 A. Correct.

8 Q. It says that "Adverse credibility
9 is a term often associated with any
10 information or material that tends to
11 impeach the character or testimony of the
12 prosecution witness at a criminal trial. In
13 the context of police witnesses this
14 impeachment material can be an officer's
15 disciplinary history and civil lawsuit
16 history," is that right?

17 A. Yes.

18 Q. It says that one of the most
19 common reasons that wrongful convictions are
20 overturned involves the suppression of
21 material that is favorable to the defendant
22 known as called Brady, is that right?

23 A. Right.

24 Q. It also says, "The issue of police
25 officers credibility at criminal prosecution

McNally

1
2 is often the paramount issue at trial," is
3 that right?

4 A. Yes.

5 Q. Okay. And this information wasn't
6 in the training materials that we reviewed
7 prior to October 2019; is that correct?

8 A. Not the previous ones, no.

9 Q. Okay. Are you aware of any
10 training materials prior to October 2019?

11 A. Basically from what I have seen
12 here no, I really can't say.

13 Q. Okay. This training was just
14 given to recruits at the police academy; is
15 that right, it wasn't in-service training?

16 A. I really can't speak to in-service
17 training but this particular slide is from
18 recruit training it appears.

19 Q. Understood.

20 Okay. So let's go on to Exhibit
21 138.

22 (Student guide copy for court
23 appearances for police science of October
24 2019 was marked Exhibit 138 for
25 identification)

McNally

BY MR. WASSERMAN:

Q. Take a look at that and see whether it looks familiar to you.

A. It appears to be a student guide copy for court appearances for police science.

Q. This is also dated October of 2019, yes. I direct your attention to page 36. There should be a subheading entitled "Adverse Credibility."

A. You said page 36?

Q. Page 36. That's right.

A. Okay. I see it.

Q. Okay. Take a second to read that subsection. It goes on to the next page. Page 37.

A. Okay.

Q. Is it correct that it says that the questions a prosecutor is likely to ask include whether an officer is aware of any pending or past lawsuit filed against him or her, what the suite was about and what the outcome was?

A. Yes.

1 McNally

2 Q. That -- this section on adverse
3 credibility wasn't in the prior versions of
4 the police student guides that we reviewed;
5 is that correct?

6 A. No, it was not.

7 Q. Prior to October of 2019 there is
8 nothing in the NYPD training materials used
9 at the police academy about adverse
10 credibility information or about Giglio,
11 G-I-G-L-I-O, information; is that correct?

12 A. Not from what I have seen here,
13 no.

14 Q. Okay. And other than from what
15 you have seen here are you independently
16 aware of anything prior to October 2019 in
17 NYPD training materials about adverse
18 credibility information or Giglio?

19 A. Legal bureau bulletin. I
20 mentioned it earlier. Legal Bureau
21 Bulletin, Volume 47, number 1.

22 Q. Is it correct that prior to
23 October 2019 there were no written NYPD
24 training materials dealing with the duty of
25 police officers to disclose impeachment

1 McNally

2 evidence more generally to the prosecution?

3 A. Not in the recruit training.

4 Again I can't speak to the in-service.

5 Q. Okay. Prior to October 2019 there
6 is nothing in the NYPD training materials
7 about the fact that civil lawsuits against
8 police officers can constitute impeachment
9 material; is that right?

10 A. Again, not in the recruit
11 material.

12 Q. Okay. Why was information about
13 impeachment material and adverse credibility
14 information added to the training materials?

15 A. To be honest I am not sure. I
16 don't write the material. I am not with the
17 group of -- so I don't know what changed.

18 Q. Do you understand that there is a
19 history of police officers not disclosing
20 impeachment material to the prosecution?

21 A. I can't testify as to that
22 history.

23 Q. Okay. Are you aware that police
24 officers are frequently sued for alleged
25 misconduct in the line of duty?

1 McNally

2 A. Yes.

3 Q. Are you aware that the issue of
4 whether police officers need to disclose
5 information about civil lawsuits against
6 them to prosecutors is an issue that
7 regularly comes up?

8 MR. FRANCOLLA: Objection.

9 You can answer.

10 THE WITNESS: Sorry?

11 MR. FRANCOLLA: You can answer
12 if you can.

13 THE WITNESS: I can't say as I
14 am familiar with, you know, the
15 statistics or anything like that. You
16 know you can't -- I really can't
17 testify factually to that.

18 BY MR. WASSERMAN:

19 Q. Okay. In the training materials
20 mentioned that failure to disclose
21 impeachment material was a leading cause of
22 convictions being vacated; is that correct?

23 A. In the 2019 issue, yes.

24 Q. Are you aware that convictions had
25 been vacated based on the prosecution's

1 McNally

2 failure to provide information about civil
3 lawsuits against police officers to defense
4 counsel?

5 A. I can't testify as to number-wise.
6 I guess I can say I assume that it has
7 happened but I really don't know as far as
8 how frequent it has been or if it is a
9 prevalent problem.

10 Q. We talked a little bit about
11 supervision as to Brady material generally.
12 What supervision does the NYPD have in place
13 to ensure that police officers disclose
14 impeachment evidence to the prosecution?

15 A. I would imagine it just has to be
16 going over the paperwork perhaps.

17 In more recent times you might
18 have body cam footage that can be reviewed
19 by a supervisor but beyond that I guess we
20 have to also -- again, I am not involved in
21 the detective bureau but detective
22 supervisors can go over that but that is not
23 something I can testify to as far as, you
24 know, intimate knowledge.

25 Q. Okay.

1 McNally

2 A. And if I had a patrol cop come in
3 I would have to look over his paperwork and
4 tell him that he has to -- you know, advise
5 him to provide everything he has.

6 Q. Okay. For the period from January
7 of 2005 to January of 2020 was there any
8 training at the police academy of police
9 officers -- strike that.

10 Other than the trainings that we
11 just went over from October 2019 are you
12 aware of any training of officers to reports
13 of lawsuits against them to their
14 supervisors or other members of the NYPD?

15 A. I have attended a seminar at the
16 academy pertaining to Giglio material as
17 well as other, you know, other subjects as
18 well but I do remember being mentioned in
19 seminars, yes.

20 Q. Was that specific to disclosing
21 information to the prosecution or to
22 disclosing information to other NYPD
23 officers and supervisors?

24 A. I believe, again I am going on my
25 memory here but I believe it was disclosing

1 McNally

2 it to the prosecutors.

3 Q. Okay. For the period of
4 January 2005 to January 2020 are you aware
5 of any NYPD policy, practice, procedure
6 about collecting information about civil
7 lawsuits against police officers?

8 A. How do you mean?

9 Q. So are you aware of any policy or
10 procedure that the NYPD had in place to
11 collect information about when police
12 officers were being sued?

13 A. I can't say I know of any
14 particular program.

15 Q. Do you know of any NYPD policy or
16 procedure in place in order to monitor
17 whether officers had been accused of failing
18 to disclose information about their own
19 credibility?

20 A. Again, I am not familiar with any
21 particular unit that does that. There may
22 be but I don't know which one it is.

23 Q. Okay.

24 MR. WASSERMAN: Brian, I am
25 correct in saying that subjects 5 and

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McNally

6 are going to be covered by someone else?

MR. FRANCOLLA: Yes. Whether it is one or it may be two so we are as square as possible as we work through it, but, yes, that is correct.

MR. WASSERMAN: Okay. If it is okay I would like to just take a five-minute break. I want to review my notes. I might be coming to the end of my questioning.

MR. FRANCOLLA: Okay. That works. Let's circle back in five.

(Recess)

THE COURT REPORTER: Did you want a copy of this transcript?

MR. FRANCOLLA: The witness will get one from plaintiff's counsel for the witness so I was not going to order one separately.

BY MR. WASSERMAN:

Q. Sergeant McNally, are you ready to go?

A. I am, yes.

McNally

1
2 Q. So I had a couple of questions and
3 then your counsel told me you wanted to
4 clarify some things. So we will get to that
5 right after I ask you a couple of questions.

6 A. Okay.

7 Q. I wanted to go back to Exhibit
8 138. If you don't mind pulling that up?

9 A. 138?

10 Q. 138. I would like to go back to
11 the section on "Adverse Credibility," page
12 36, going to page 37.

13 A. Okay.

14 Q. You see where it gives a bullet
15 point list of questions that a prosecutor is
16 likely to ask during preparation?

17 A. I do.

18 Q. Was there any training given on
19 whether police officers should volunteer
20 that information if they are not asked by a
21 prosecutor?

22 A. As far as any recruit training I
23 don't think it is phrased now exactly such
24 as that. But in the seminars I have been
25 and additional training after the fact it

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McNally

has been told if you are aware of anything such as this you are to make it known to the prosecutor.

Q. Okay. When you say the seminars you have been to that is the in-service training you have conducted yourself?

A. Yes.

Q. You have taught this course, the court appearances course, is that correct?

A. I have. This particular section we are looking at now is when it changed to police science so the law court appearances I taught was actually prior I believe to this material being in here.

Q. Okay. And so you have taught the prior version of court appearances but not this version; is that correct?

A. I don't believe I have, correct.

Q. All right.

In the prior version of court appearances it defines Brady as exculpatory evidence and evidence that tends to clear someone's guilt. But doesn't mention impeachment material, is that right?

1 McNally

2 A. No. It mentions -- it does go in
3 to say that a defense attorney will attempt
4 to impeach your character but doesn't go
5 into what that material may be, correct.

6 Q. When you taught that course did
7 you provide any additional information about
8 impeachment evidence that they should
9 disclose to the prosecutor?

10 A. In our own way we will sometimes
11 give additional information that we think is
12 necessary, things that we know on our own,
13 but as far as the training material that is
14 provided there nothing as far as that.

15 But as far as myself as an
16 instructor based upon what I learned on my
17 own I said, I suppose other instructors, we
18 do tell them if you are aware of something,
19 if you are aware -- you have some kind of
20 history or maybe you had some problems you
21 do have to tell this to the prosecutor.

22 Q. When you have given that
23 instruction it is based on the in-service
24 training or other experience you had as a
25 police officer?

1 McNally

2 A. Correct.

3 Q. Okay. You mentioned you or your
4 counsel mentioned that you wanted to clarify
5 something for the record. If you wouldn't
6 mind just putting that on the record and
7 then I will ask any followups that might
8 appear necessary?

9 A. Sure.

10 When I say that I was from the law
11 department, just to make it clear, the law
12 department within the academy structure not
13 as far as the legal department of the NYPD.

14 So the academy has three subjects
15 that are taught to be science, law and
16 social science.

17 So like a department, you know, of
18 law, that is what I was associated with but
19 not with the greater legal bureau of the
20 NYPD.

21 Q. Okay.

22 A. The second one you had asked
23 previously how would you report that you had
24 been sued. I think I misunderstood.

25 If you are the subject of a

1 McNally

2 subpoena or a lawsuit there is a procedure
3 for advising your CEO which would then
4 generate a report that goes to corporation
5 counsel legal to advise that you are being
6 sued.

7 Q. Can you go into that procedure?

8 A. What normally happens if you are
9 being sued it has to be done at the
10 commander you are assigned. You would
11 request legal representation and you would
12 submit that to your commanding officer to
13 corporation counsel and then the procedure,
14 as we teach it, if you don't hear anything
15 within ten days you have to contact legal
16 for followup.

17 That is basically where it ends
18 for us.

19 Q. When say you have to "contact
20 legal," is that the city law department or
21 the legal bureau of NYPD?

22 A. Legal bureau of NYPD.

23 Q. Okay. As far as you know does the
24 NYPD have any internal mechanism for
25 tracking which officers have been sued?

1 McNally

2 A. I am not entirely sure what that
3 method would be.

4 Q. You mentioned that you are
5 assigned to the law department of the
6 training bureau of the police academy, is
7 that right?

8 A. Yes.

9 Q. Did you receive any specific
10 training on law when you were assigned to
11 that department?

12 A. No.

13 Q. Okay.

14 MR. WASSERMAN: I don't think I
15 have any further questions. Thank you
16 very much for your time, Sergeant
17 McNally.

18 THE WITNESS: Of course.

19 MR. FRANCOLLA: I have a brief
20 question or two.

21 EXAMINATION

22 BY MR. FRANCOLLA:

23 Q. Sergeant McNally, you were shown
24 the Brady sections of various training
25 materials during your deposition.

1 McNally

2 Do you recall that?

3 A. I do.

4 Q. As an instructor is your teaching
5 on the subject limited solely to the words
6 on the page or is there expansion by you in
7 some way?

8 A. No. We expand -- expand upon our
9 own experiences and your own knowledge to
10 make the material more understandable to the
11 recruits.

12 Q. I think you mentioned this to
13 Mr. Wasserman in his own -- in your own way
14 you allow them to come into -- you allow
15 that to expand on the written topics on the
16 page, is that fair?

17 A. Yes.

18 MR. FRANCOLLA: That is all I
19 have.

20 (Continued on next page)

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McNally

MR. WASSERMAN: Nothing further.

Thank you again for your time.

MR. FRANCOLLA: Thank you.

(Time noted: 4:21 p.m.)

GREGORY MCNALLY

Subscribed and sworn to
before me this day
of 2021.

1 McNally

2 CERTIFICATE

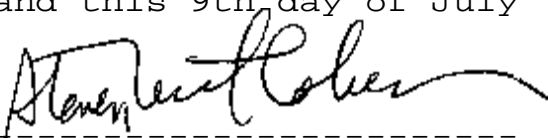
3 STATE OF NEW YORK)
4 : ss
5 COUNTY OF NEW YORK)

6 I, Steven Neil Cohen, a Registered
7 Professional Reporter and Notary Public
8 within and for the State of New York, do
9 hereby certify: That GREGORY McNALLY, the
10 witness whose deposition is herein before
11 set forth, was duly sworn by me and that
12 such deposition is a true record of the
13 testimony given by such witness.

14 I further certify that I am not
15 related to any of the parties to this action
16 by blood or marriage and that I am in no way
17 interested in the outcome of this matter.

18 I further certify that neither the
19 deponent nor a party requested a review of
20 the transcript pursuant to Federal Rule of
21 Civil Procedure 30(e) before the deposition
22 was completed.

23 In witness whereof, I have
24 hereunto set my hand this 9th day of July
25 2021.



STEVEN NEIL COHEN, RPR

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McNally		
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McNally

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Exhibit 117 Power Point 40
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Exhibit 127 Lesson plan for 43
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Exhibit 136 Instructor manual on 60
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Exhibit 138 Student guide copy for 62
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McNally

DEPOSITION ERRATA SHEET

Assignment No. J7248710

Case Caption: Jawaun Fraser vs. The City
of New York

DECLARATION UNDER PENALTY OF PERJURY

I declare under PENALTY OF PERJURY
that I have read the entire transcript of
my Deposition taken in the captioned
matter or the same has been read to me,
and the same is true and accurate, save if
any, as indicated by me on the DEPOSITION
ERRATA SHEET hereof, with the
understanding that I offer these changes
as if still under oath.

GREGORY McNALLY

Subscribed and sworn to on the _____ day
of _____, 2021 before me,

Notary Public,
in and for the State of _____.

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McNally

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